BENJAMIN J. CAYETANO
GOVERNOR

KATHRYN S. MATAYOSHI
DIRECTOR

NOE NOE TOM
LICENSING ADMINISTRATOR

STATE OF HAWAII
REAL ESTATE BRANCH
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
250 SOUTH KING STREET ROOM 702
HONOLULU, HAWAII 96813

March 6, 1995

MEMORANDUM

TO: COUNCIL OF CO-OWNERS OF HALE MAKANI KAI
c/o Neeley & Anderson-Philip L. Lahne, Esq.
733 Bishop St. Suite 2301
Honolulu, HI 96813

FROM: Calvin Kimura, Supervising Executive Officer Calvin Kimura for

SUBJECT: Hale Makani Kai (fka Hawaii-Kai Condominium Project, Lot 5, File Plan No. 800)
Registration No. 6
SUPPLEMENTARY Public Report

Enclosed is one true copy of the Developer's Public Report issued an effective date by the Real Estate Commission ("Commission").

If the plan, set-up, use or value of this offering is changed, you will advise the Commission, giving sufficient information to aid in determining whether a change is material and a supplementary public report should be issued. It is your responsibility under the Condominium Property Regime Act (Chapter 514A, Hawaii Revised Statutes) to keep the Commission informed of changes which affect this registration.

Thirteen-month extensions may be granted through written requests to the Commission at least thirty (30) calendar days prior to expiration of the report's effective date, provided that **the Commission determines** that any changes to the project that may have occurred are not material.

Enclosure

cc: Neeley & Anderson-Philip L. Lahne, Esq. (w/o enclosure)

:kmck

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer Council of Co-Owners of Hale Makani Kai†

Address c/o Mr. Randal Bahner, 425 Kawaihae Street, Honolulu, Hawaii 96825

Project Name(*): Hale Makani Kai†

Address: 421-431 Kawaihae Street, Honolulu, Hawaii 96825

Registration No. 6

Effective date: March 6, 1995

Expiration date: April 6, 1996

Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission or any other government agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

Buyers are encouraged to read this report carefully, and to seek professional advice before signing a sales contract for the purchase of an apartment in the project.

Expiration Date of Reports. Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the effective date unless a Supplementary Public Report is issued or unless the Commission issues an order, a copy of which is attached to this report, extending the date for the report.

Exception: The Real Estate Commission may issue an order, a copy of which shall be attached to this report, that the final public report for a two apartment condominium project shall have no expiration date.

Type of Report:

___ **PRELIMINARY:** (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued when complete information is filed.

___ **FINAL** (white) The developer has legally created a condominium and has filed complete information with the Commission.

[ ] No prior reports have been issued
[ ] This report supersedes all prior public reports
[ ] This report must be read together with ___

✓ **SUPPLEMENTARY** (pink) This report updates information contained in the:

[✓] Preliminary Public Report dated: July 20, 1962
[✓] Final Public Report dated: August 3, 1962
[ ] Supplementary Public Report dated: ___

And

[ ] Supersedes all prior public reports
[✓] Must be read together with Preliminary Public Report & Final Public Report
[ ] This report reactivates the: ___ public report(s) which expired on ___

(†) Formerly known as Hawaii-Kai Condominium Project, Lot 5, File Plan No. 800
(*) Exactly as named in the Declaration

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

[ ] Required and attached to this report [✓] Not Required - disclosures covered in this report.

Summary of Changes from Earlier Public Reports:

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

[ ] No prior reports have been issued by the developer.

[✓] Changes made are as follows:

The Declaration of Horizontal Property Regime and the By-Laws of the Project will be extensively amended and up to three additional units are to be developed. The common interest appurtenant to the units will change from one-sixth to one-ninth, certain private yard areas have been designated as limited common elements, and the definitions of the units and common elements have been revised. Many other changes too numerous to summarize have been made and the purchaser should read all of the Public Reports and project documents thoroughly.

SPECIAL NOTICE

This Project is NOT governed by Chapter 514A, Hawaii Revised Statutes (the Condominium Property Act), because it was created prior to May 29, 1963. Instead, it is governed by Act 180, 1961 Session Laws of Hawaii, as amended by Act 9, 1962 Session Laws of Hawaii, pursuant to Section 2 of Act 101, 1963 Session Laws of Hawaii. Copies of those Acts are attached as Exhibit A. Among other things, this means that the various limitations on actions of the co-owners and the Council of Co-Owners and statutory mandates (such as replacement reserve requirements) that the Condominium Property Act imposes do not apply to this Project except to the extent they have been voluntarily adopted in the Project documents (and, therefore, could also be removed from the Project documents). Prospective purchasers are strongly advised read the Acts and the Project documents thoroughly and to seek the advice of qualified legal counsel as to the implications of this Project's unique status before purchasing. This Supplementary Public Report is intended to serve the same purpose as a Preliminary Public Report with respect to the units to be constructed.

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EXHIBIT A: Act 180, SLH 1961 and Act 101, SLH 1963
EXHIBIT B: Proposed Amended Declaration of Horizontal Property Regime
EXHIBIT C: Proposed Amended By-Laws of Council of Co-Owners
EXHIBIT D: Explanation of Number and Status of Buildings
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EXHIBIT K: Summary of Sales Contract
EXHIBIT L: Summary of Escrow Agreement

General Information on Condominiums*

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. In addition, certain requirements and approvals of the County in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owners/tenants) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements at the lessee's expense. Leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

If you are a typical condominium apartment owner, you will have two kinds of ownership: (1) ownership in your individual apartment; and (2) an undivided interest in the common elements.

"Common elements" are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of certain apartments. These common elements are called "limited common elements" and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged, or encumbered, and may be disposed of by will, gift, or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the project's Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

Operation of the Condominium Project*

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without a vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is important to all apartment owners that the transition from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

***See SPECIAL NOTICE, Page 2.**

I. PERSONS CONNECTED WITH THE PROJECT

Developer: Council of Co-Owners of Hale Makani Kai (Name) — Phone: (808) 395-8053 (Business)

425 Kawaihae Street (Business Address)

Honolulu, Hawaii 96825

Names of officers or general partners of developers who are corporations or partnerships:

Randal E. Bahner, President

Alden Zecha, Vice President

Gaynell Fuchs, Secretary

Raymond Szczybek, Treasurer

Real Estate Broker: Randal Bahner dba Sunshine Homes (Name) — Phone: (808) 395-8053 (Business)

6650 Hawaii Kai Drive, Ste. 226 (Business Address)

Honolulu, Hawaii 96825

Escrow: Old Republic Title & Escrow of Hawaii, Inc. (Name) — Phone: (808) 536-0842 (Business)

55 Merchant Street (Business Address)

Honolulu, Hawaii 96813

General Contractor: Not yet selected (Name) — Phone: _____ (Business)

_____ (Business Address)

_____

Condominium Managing Agent: Self-managed by the Council of Co-Owners (Name) — Phone: _____ (Business)

_____

Business Address

_____

Attorney for Developer: Philip L. Lahne, Esq. (Name) — Phone: (808) 536-8177 (Business)

Neeley & Anderson (Company Name)

733 Bishop Street, Ste. 2301 (Business Address)

Honolulu, Hawaii 96813

II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests and other information relating to the condominium project.

The Declaration for this condominium is:

[ ] Proposed
[✓] Recorded - Bureau of Conveyances Document No. _____
Book 4327 page 56
[ ] Filed - Land Court Document No. _____

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]: **See SPECIAL NOTICE, Page 2.** An Amended Declaration substantially in the form attached hereto as Exhibit B will be recorded prior to the sales of any additional Homes.

B. **Condominium Map (File Plan)** shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, and dimensions of each apartment.

The Condominium Map for this condominium project is:

[ ] Proposed
[✓] Recorded - Bureau of Conveyances Condo Map No. *_____
[ ] Filed - Land Court Condo Map No. _____

The Condominium Map has been amended by the following instruments [state name of document, date and recording/filing information]: ***See SPECIAL NOTICE, Page 2.** A general plot plan was shown on a map filed in the Bureau as Lot 5, File Plan 800; also, a copy of that plot plan was attached to each individual recorded dwelling lease mentioned in Exhibit I. The revised plan is recorded as Exhibit "B" attached to the Amended Declaration to be recorded as aforesaid.

C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

[ ] Proposed
[✓] Recorded* - Bureau of Conveyances Document No. _____
Book _____ page _____
[ ] Filed - Land Court Document No. _____

The Bylaws referred to above have been amended by the following instrument [state name of document, date and recording/filing information]: ***See SPECIAL NOTICE, Page 2.** Original By-Laws were not recorded, as permitted by Act 180, 1961 Session Laws of Hawaii. Amended By-Laws substantially in the form attached hereto as Exhibit C will be recorded prior to sales of any additional Homes.

D. **House Rules**. The Board of Directors may adopt house rules to govern the use and operation of the common elements and limited common elements. House rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial house rules are usually adopted by the developer.

The House Rules for this condominium are:

[ ] Proposed [ ] Adopted [✓] Developer does not plan to adopt house rules.

E. **Changes to Condominium Documents**

Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. Apartment Owners: Minimum percentage of common interest which must vote for or give written consent to changes:

	Minimum Set by Law	This Condominium
Declaration (and Condo Map)	N/A*	75%
Bylaws	N/A*	2/3rds
House Rules	---	N/A

* See SPECIAL NOTICE on Page 2. There are no legal mininums applicable to this Project and the documents can be amended at any time in accordance therewith to change the percentage required for amendment.

2. Developer:

[ ] No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.

[✓] Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:

To effect any changes or amendments required by law, any title insurance company, or any institutional mortgagee, or as may be required by an administrative agency of any state, territory, possession, or foreign country or other foreign jurisdiction as a condition precedent to marketing the additional Homes, if any, constructed pursuant to Paragraph 1 of the Declaration.

III. THE CONDOMINIUM PROJECT

A. **Interest to be Conveyed to Buyer**:

[✓]* Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple. ***See Paragraph 4, Section C, Page 20, "Additional Information."**

[ ] Leasehold or Subleasehold: Individual apartments and the common elements, which include the underlying land, will be leasehold.

Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.

Exhibit _____ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: _____

Rent Renegotiation Date(s): _____

_____

Lease Rent Payable: [ ] Monthly [ ] Quarterly
[ ] Semi-Annually [ ] Annually

Exhibit _____ contains a schedule of the lease rent for each apartment per [ ] Month [ ] Year.

For Subleaseholds:

[ ] Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:
[ ] Canceled [ ] Foreclosed

[ ] As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

[ ] Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or Subleasehold:

Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.

Exhibit _____ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: _____

Rent Renegotiation Date(s): _____

_____

Lease Rent Payable: [ ] Monthly [ ] Quarterly
[ ] Semi-Annually [ ] Annually

Exhibit _____ contains a schedule of the lease rent for each apartment per [ ] Month [ ] Year.

[ ] Other:

IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advise of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

B. **Underlying Land**:

Address: 421-431 Kawaihae Street
Honolulu, Hawaii 96825

Tax Map Key: 3-9-034-001 (1)
(TMK)

[✓] Address [ ] TMK is expected to change because Addresses for additional Homes to be assigned by Post Office upon completion

Land Area: 25,929 [✓] square feet [ ] acre(s) Zoning: A-1

Lessor
(Fee Owner): Trustees of the Estate of Bernice Pauahi Bishop
Name
P.O. Box 3466
Address
Honolulu, Hawaii 96801

Sublessor: _____
Name
_____
Address
_____

C. **Buildings and Other Improvements**:

1. [✓] New Building(s) [ ] Conversion of Existing Building(s) [ ] Both New and Existing Buildings (at the time of original registration)

2. Number of Buildings: 9* Floors Per Building 2

*Six existing; up to three additional may be built.

[✓] Exhibit D contains further explanations.

3. Principal Construction Material:

[✓] Concrete [✓] Hollow Tile [✓] Wood

[ ] Other _____

4. Permitted Uses by Zoning:

	No. of Apts.	Use Permitted By Zoning		No. of Apts.	Use Permitted By Zoning
[✓] Residential	9*	[✓] Yes [ ] No	[ ] Ohana		[ ] Yes [ ] No
[ ] Commercial		[ ] Yes [ ] No	[ ] Industrial		[ ] Yes [ ] No
[ ] Mix Res/Comm		[ ] Yes [ ] No	[ ] Agricultural		[ ] Yes [ ] No
[ ] Hotel		[ ] Yes [ ] No	[ ] Recreational		[ ] Yes [ ] No
[ ] Timeshare		[ ] Yes [ ] No	[ ] Other:		[ ] Yes [ ] No

*Six existing; up to three additional may be built.

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?
[✓] Yes [ ] No

5. Special Use Restrictions:

The Declaration and Bylaws may contain restrictions on the use and occupancy of the apartments. Restrictions for this condominium project include but are not limited to:

[✓] Pets: Usual and customary household pets in reasonable number

[ ] Number of Occupants: _____

[ ] Other: _____

[ ] There are no special restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 9* Trash Chutes: 0

*Depending on number of additional units.

Apt. Type	Quantity	BR/Bath	Net Living Area (sf)†	Lanai/Patio (sf)
A	3	3/1.5	1,350	186
A(R)	3	3/1.5	1,350	186
B*	1	3/2	1,474	
C*	1	3/2.5	1,549	
D*	1	3/2.5	1,476	

Total Apartments: 9*

*Types A and A(R) already exist; Types B, C, and D may be built.

†Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.

Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used.

Boundaries of Each Apartment:

See Exhibit E

Permitted Alterations to Apartments:

See Exhibit F

7. Parking Stalls:

Total Parking Stalls: 12-19*

	Regular		Compact		Tandem		
	covered	open	covered	open	covered	open	TOTAL
Assigned (for each unit)	2**	0	0	0	0	0	12-18*
Guest	0	1	0	0	0	0	1
Unassigned	0	0	0	0	0	0	0
Extra for Purchase	0	0	0	0	0	0	0
Other:	0	0	0	0	0	0	0
Total Covered & Open	12-19*		0		0		

*Depending on number of additional units built. **Type C has one covered and one open.

Each apartment will have the exclusive use of at least 2 parking stall(s). Buyers are encouraged to find out which stall(s) will be available for their use.

[ ] Commercial parking garage permitted in condominium project.

[ ] Exhibit _____ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

[✓] There are no recreational or common facilities.

[ ] Swimming Pool [ ] Storage Area [ ] Recreation Area

[ ] Laundry Area [ ] Tennis Court [ ] Trash Chute

[ ] Other: _____

9. Compliance With Building Code and Municipal Regulations; Cost to Cure Violations

[✓] There are no violations. [ ] Violations will not be cured.

[ ] Violations and cost to cure are listed below. [ ] Violations will be cured by _____

10. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations (For conversions of residential apartments in existence for at least five years):

N/A

11. Conformance to Present Zoning Code

a. [✓] No variances to zoning code have been granted.

[ ] Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but does not now conform to present zoning requirements.

	Conforming	Non-Conforming	Illegal
Uses	✓		
Structures	✓		
Lot	✓		

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

D. **Common Elements, Limited Common Elements, Common Interest**:

1. Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

[✓] described in Exhibit G.

[ ] as follows:

2. Limited Common Elements: Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

[ ] There are no limited common elements in this project.

[✓] The limited common elements and the apartments which use them, as described in the declaration, are:

[✓] described in Exhibit H.

[ ] as follows:

3. Common Interest: Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest". It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

[ ] described in Exhibit _____.

[✓] as follows:

Until such time as a certificate of occupancy is issued for Homes 107, 108, and 109, Homes 101 through 106 shall each have appurtenant thereto a 1/6th undivided interest in the common elements (hereinafter called the "common interest") for all purposes, including voting. Thereafter, each Home shall have appurtenant thereto an equal common interest, depending on the number of additional Homes completed, for all purposes, including voting.

E. **Encumbrances Against Title**: An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit I describes the encumbrances against the title contained in the title report dated September 18, 1994 and issued by Old Republic Title & Escrow of Hawaii, Inc..

Blanket Liens:

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

[ ] There are no blanket liens affecting title to the individual apartments.

[✓] There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

Type of Lien	Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance
Mortgage (Central Pacific Bank)	Buyer may be unable to complete the purchase; Buyer's deposit will be returned.

F. **Construction Warranties**:

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

1. Building and Other Improvements:

None as to Units 101-106. Contractor's warranties, if any, as to Units 107-109 will be assigned to purchasers.

2. Appliances:

None as to Units 101-106. Manufacturers' warranties will be assigned to purchasers of Units 107-109.

G. **Status of Construction and Estimated Completion Date**:

Units 101-106 completed in 1963. Anticipated completion of Units 107-109 is yet to be determined.

H. **Project Phases**:

The developer [✓] has [ ] has not reserved the right to add to, merge, or phase this condominium.

Summary of Developer's plans or right to perform for future development (such as additions, mergers or phasing):

Up to three additional units (Units 107, 108, and 109) can, but not necessarily will, be built.

IV. CONDOMINIUM MANAGEMENT

A. **Management of the Common Elements**: The Association of Apartment Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.

Initial Condominium Managing Agent: When the developer or the developer's affiliate is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial condominium managing agent for this condominium is:

[ ] not affiliated with the Developer.
[✓] self-managed by the Association of Apartment Owners
[ ] the Developer or the Developer's affiliate.
[ ] other _____

B. **Estimate of Initial Maintenance Fees**:

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, you apartment may be liened and sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.

Exhibit ___J___ contains a schedule of maintenance fees and maintenance fee disbursements.

C. **Utility Charges for Apartments**:

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

[✓] None [ ] Electricity [ ] Gas [ ] Water

[ ] Sewer [ ] Television Cable [ ] Other _____

I. MISCELLANEOUS

A. **Sales Documents Filed with the Real Estate Commission**:

Sales documents on file with the Real Estate Commission include but are not limited to:

[✓] Notice to Owner Occupants

[✓] Specimen Sales Contract
Exhibit __K__ contains a summary of the pertinent provisions of the sales contract.

[✓] Escrow Agreement dated October 25, 1994
Exhibit __L__ contains a summary of the pertinent provisions of the escrow agreement.

[ ] Other _____

B. **Buyer's Right to Cancel Sales Contract**: **See SPECIAL NOTICE on Page 2.**

1. Rights Under the Condominium Property Act (Chapter 514A, HRS):

Preliminary Report: Sales made by the developer are not binding on the prospective buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sale contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to $250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

Final Report or Supplementary Report to a Final Report: Sales made by the developer are binding if:

A) The Developer delivers to the buyer a copy of:
   1) Either the Final Public Report **OR** the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission;
   AND
   2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;
B) The buyer is given an opportunity to read the report(s); AND
C) One of the following has occurred:
   1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
   2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
   3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; AND
B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyer's should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:

A) Condominium Public Reports issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
B) Declaration of Condominium Property Regime.
C) Bylaws of the Association of Apartment Owners.
D) House Rules.
E) Condominium Map.
F) Escrow Agreement.
G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended). **See SPECIAL NOTICE, Page 2.**
H) Other: **Act 180, 1961 SLH; Act 9, 1962 SLH; Section 2 of Act 101, 1963 SLH. See Exhibit A; Declaration of Protective Provisions, as amended.**

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P. O. Box 541, Honolulu, HI 96809, at a nominal cost.

This Public Report is a part of Registration No. 6 filed with the Real Estate Commission on July 20, 1962.

Reproduction of Report. When reproduced, this report must be on:

[ ] yellow paper stock [ ] white paper stock [✓] pink paper stock

C. **Additional Information Not Covered Above**

1. Although the Developer is not legally required to provide buyers with all of the rights under Part IV of the Condominium Property Act (*see* SPECIAL NOTICE on Page 2), the Developer has voluntarily agreed with the Real Estate Commission that Part IV shall apply to prospective buyers of Units 107-109 as set forth in the Sales Contract.

2. The Amended Declaration of Condominium Property Regime and Amended By-Laws of the Hale Makani Kai Council of Co-Owners intentionally exclude a number of provisions which would have been required had the Condominium Property Act applied to the Project and have been specifically drafted to provide the co-owners with the maximum amount of individual freedom consistent with the minimal requirements of existence as a condominium project. For example, most maintenance, repair, and replacement obligations are delegated to the individual unit owners at their own expense and not as a common expense, and the definition of an "apartment" in this Project includes portions of the Project which are often defined as common elements in other projects. Every effort has been made to limit common expenses to those portions of the Project which are truly common to all owners, such as foundations and loadbearing walls which affect all of the apartments. The Project documents should be read carefully in this regard.

3. **THE DESIGNATION OF LIMITED COMMON ELEMENT PRIVATE YARD AREAS AS SHOWN IN EXHIBIT "B" OF THE AMENDED DECLARATION DOES NOT CONSTITUTE A LEGAL SUBDIVISION AND IS NOT TO BE DEEMED OR CONSTRUED AS MEANING THE PROPERTY CAN BE LEGALLY SUBDIVIDED.**

4. The Property is presently leasehold. The lessor is the Trustees of the Estate of Bernice Pauahi Bishop. Each of the current lessees has entered into a contract with the lessor for the purchase of the lessor's interest in the Property. The leased fee interest will be acquired by the Developer prior to the construction or sale of any additional Homes and the existing leases will be either cancelled or appropriately amended prior to any such sale so that all owners of Homes will receive an equal common interest in fee simple.

5. Purchasers of Homes 107, 108, and 109 may not have direct access to the Marina or have Marina use privileges until arrangements are made with the Hawaii Kai Marina Community Association ("HKMCA") for HKMCA membership and payment of HKMCA dues and assessments by such purchasers. Developer will use its best efforts to arrange for such membership prior to the sales of any additional Homes, but does not warrant or represent that it will be able to do so. After the closing of any such sales, it will be the responsibility of the individual purchasers to make such arrangements. By letter dated December 12, 1994, the HKMCA has indicated no objection to the construction of direct access stairs for Homes 107, 108, and 109 and that appropriate arrangements for dues payments and assessments will be made after Certificates of Occupancy are issued.

6. No buyer's funds will be used for the construction of the additional Homes. If any such Home is not built, the buyer's deposits will be refunded in full.

7. Portions of the garages of the existing units encroach into a 15 foot setback easement established by the Trustees of the Estate of Bernice Pauahi Bishop when the Project was constructed as part of the Hawaii Kai uniform plan of development. These encroachments have existed since the original construction of the Project and the Trustees have agreed not to seek the removal of the enroaching portions of the garages. However, a remote possibility exists that other owners of Hawaii Kai land could assert that they are third-party beneficiaries of the setback easement and seek to enforce the setback. None of the proposed additional Homes encroach into the setback area.

D. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

Council of Co-Owners of Hale Makani Kai

Name of Developer

By: _____ 10/26/94

Duly Authorized Signatory Date

RANDAL E. BAHNER, President

print name & title of person signing above

Distribution:

Department of Finance, City and County of Honolulu
Planning Department, City and County of Honolulu
Federal Housing Administration

shall be delivered to each member of the legislature at least thirty days before the 1962 regular session convenes.

SECTION 4. Effective date. This Act shall take effect upon its approval.

(Approved July 10, 1961.) **H.B. 9.**

ACT 179

A Bill for an Act Relating to Discharge of Mechanics' and Materialmen's Liens by Posting a Bond.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 193 of the Revised Laws of Hawaii 1955 is hereby amended by adding thereto a new section 193-43.1 to read as follows:

"Sec. 193-43.1. Any mechanics' and materialmen's lien which covers an entire subdivision of ten or more lots may be discharged at any time by the owner, lessee, principal contractor, or intermediate subcontractor filing with the clerk of the circuit court of the county in which the property is located or with the assistant registrar of the land court (if registered land is affected), cash in twice the amount of the sum for which the claim for the lien is filed, conditioned for the payment of any sum for which the claimant may obtain judgment upon his claim."

SECTION 2. This Act shall take effect upon its approval.

(Approved July 10, 1961.) **H.B. 1055.**

ACT 180

A Bill for an Act to Provide for the Creation of Horizontal Property Regimes and Regulations Therefor.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act shall be known as the "Horizontal Property Act."

SECTION 2. There is hereby added to the Revised Laws of Hawaii 1955 a new chapter, which chapter and its sections shall be appropriately numbered by the Revisor of Statutes and to read as follows:

"CHAPTER ....., HORIZONTAL PROPERTY REGIMES.

PART I.

Section 1. This chapter shall be known as the 'Horizontal Property Regime'.

Section 2. **Definitions.** Unless it is plainly evident from the context that a different meaning is intended, as used herein:

(a) 'Apartment' means an enclosed room occupying all or part of a floor in a building of one or more floors or stories regardless of whether it be destined for residence, for office, for the operation of any industry or business, or for any other type of independent use, provided it has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare;

EXHIBIT A

(b) 'Commission' means the real estate license commission of the state department of treasury and regulation;

(c) 'Condominium' means the ownership of single units in a multi-unit structure with common elements;

(d) 'Condominium project' means a real estate condominium project; a plan or project whereby six or more apartments, rooms, office spaces, or other units in existing or proposed building(s) or structure(s) are offered or proposed to be offered for sale;

(e) 'Co-owner' means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns an apartment within the building;

(f) 'Council of co-owners' means all the co-owners as defined in subsection (e) of this section;

(g) 'Developer' means a person who undertakes to develop a real estate condominium project;

(h) 'General common elements' means and includes:

(1) The land whether leased or in fee simple, on which the building stands;

(2) The foundations, main walls, roofs, halls, lobbies, stairways, and entrance and exit or communication ways;

(3) The basements, flat roofs, yards, and gardens, except as otherwise provided or stipulated;

(4) The premises for the lodging of janitors or persons in charge of the building, except as otherwise provided or stipulated;

(5) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks and pumps, and the like;

(6) The elevators, garbage incinerators and, in general all devices or installations existing for common use; and

(7) All other elements of the building rationally of common use or necessary to its existence, upkeep and safety;

(i) 'Limited common elements' means and includes those common elements which are agreed upon by all the co-owners to be reserved for the use of a certain number of apartments to the exclusion of the other apartments, such as special corridors, stairways and elevators, sanitary services common to the apartments of a particular floor, and the like;

(j) 'Majority of co-owners' means fifty-one per cent of the co-owners;

(k) 'Master deed' or 'master lease' means the deed or lease recording the property of the horizontal property regime;

(l) 'Person' means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof;

(m) 'Property' means and includes the land whether leasehold or in fee simple, the building, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto;

(n) 'To record' means to record in accordance with the provisions of chapter 343, or to register in accordance with the provisions of chapter 342;

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

Section 3. **Horizontal property regimes.** Whenever a developer, a sole owner or the co-owners of a building expressly declare, through the recordation of a master deed or lease, which shall set forth the particulars enum-

erated by section 7, their desire to submit their property to the regime established by this chapter, there shall thereby be established a horizontal property regime.

Section 4. **Status of apartments within an horizontal property regime.** Once the property is submitted to the horizontal property regime, an apartment in the building may be individually conveyed and encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other apartments in the building of which they form a part, and the corresponding individual titles and interests shall be recordable.

Section 5. **Joint or common ownership of an apartment.** Any apartment may be jointly or commonly owned by more than one person.

Section 6. **Ownership of apartments, of common elements.** An apartment owner shall have an exclusive right to his apartment and shall have a common right to a share, with other co-owners, in the common elements of the property.

PART II

THE MASTER DEED OR LEASE OF THE HORIZONTAL PROPERTY REGIME; RECORDATION.

Section 7. **Recordation.** The bureau of conveyances and the land court shall immediately set up the mechanics and method by which recordation or registration of a master deed or lease and the individual apartments may be made. Provisions shall be made for the recordation of the individual apartments on subsequent re-sales, mortgages and other encumbrances, as is done with all other real estate recordations. The master deed or lease to which section 3 refers shall express the following particulars:

(a) The description of the land, whether leased or in fee simple, and the building, expressing their respective areas;

(b) The general description and number of each apartment, expressing its respective areas;

(b) The general description and number of each apartment, expressing its area, location and any other data necessary for its identification; and

(c) The description of the general common elements of the building.

Section 8. **Apartment deeds.** The deed of each individual apartment shall express the particulars prescribed under letters (a) and (b) of section 7 relative to the apartment concerned and shall also express all encumbrances thereon.

Section 9. **Waiver of the regime.** All the co-owners or the sole owner of a building constituted into an horizontal property regime may waive this regime and request the registrar of the bureau of conveyances or of the land court to re-group or merge the records of the filial estates with the principal property, provided, that the filial estates are unencumbered, or if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the property owned by the debtors.

Section 10. **Merger no bar to re-constitution.** The merger provided for in the preceding section shall in no way bar the subsequent constitution of the property into another horizontal property regime whenever so desired and upon observance of the provisions of this chapter.

PART III
ADMINISTRATION.

Section 11. **Horizontal property regime by-laws.** The administration of every building constituted into an horizontal property regime shall be governed by by-laws approved and adopted by the council of co-owners. The by-laws may be amended from time to time by the council.

Section 12. **Record of receipts and expenditures.** The administrator, or the board of administration, or the person appointed by the by-laws of the regime, shall keep a book with a detailed account of the receipts and expenditures affecting the building and its administration and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or in behalf of the regime. Both the book and vouchers accrediting the entries made thereupon shall be available for examination by all the co-owners at convenient hours on working days that shall be set and announced for general knowledge. All books and records shall be kept in accordance with good accounting procedures and be audited at least once a year by an auditor outside of the organization.

Section 13. **Pro-rata contribution toward expenses.** All co-owners are bound to contribute pro-rata toward the expenses of administration and of maintenance and repair of the general common elements, and, in the proper case, of the limited common elements of the building, and toward any other expense lawfully agreed upon by the council of co-owners.

No co-owner shall be exempted from contributing toward such expenses by waiver or non-use of the use or enjoyment of the common elements, both general and limited, or by abandonment of the apartment belonging to him.

Section 14. **Property taxes.** The laws relating to home exemptions from state property taxes shall be applicable to the individual apartments, which shall have the benefit of home exemption in those cases where the owner of a simple family dwelling would qualify. Property taxes assessed by the State shall be assessed on and collected on the individual apartments and not on the building as a whole.

Section 15. **Priority of liens.** Upon the sale or conveyance of an apartment, all unpaid assessments against a co-owner for his pro-rata share in the expenses to which section 13 refers shall first be paid out of the sales price or by the acquirer in preference over any other assessments or charges of whatever nature except the following:

(a) Assessments, liens, and charges in favor of the State for taxes past due and unpaid on the apartment; and

(b) Payments due under mortgage instruments duly recorded.

PART IV
REGULATION BY COMMISSION.

Section 16. **Notification of Intention.** Prior to the time when a condominium project is to be offered for sale in this State, the developer shall notify the commission in writing of his intention to sell such offerings.

Section 17. **Questionnaire and Filing Fee.** The notice of intention shall be accompanied by a fee of $50 and by a verified copy of a questionnaire properly filled in. The questionnaire will be in such form and content as will require full disclosure of all material facts reasonably available.

Section 18. **Inspection.** After appropriate notification has been made pursuant to sections 16 and 17, an inspection of the condominium project may be made by the commission.

Section 19. **Inspection Expenses.** When an inspection is to be made of projects, the notice of intention shall be accompanied by the filing fee, together with an amount estimated by the commission to be necessary to cover the actual expenses of such inspection, not to exceed twenty dollars ($20) a day for each day consumed in the examination of the project plus reasonable first-class transportation expenses.

Section 20. **Waiver of Inspection.** The commission may waive initial inspection when in its opinion, a preliminary or final public report can be substantially drafted and issued from the contents of the questionnaire and other or subsequent inquiries. Failure of the commission to notify the developer of its intent to inspect his project within ten days after notification of intention is properly filed pursuant to sections 16 and 17 will be construed a waiver of such inspection.

Section 21. **Public Report.** When the commission makes an examination of any project, it shall make a public report of its findings, which shall contain all material facts reasonably available. A public report shall neither be construed to be an approval nor disapproval of a project. No unit in a condominium project shall be offered for sale until the commission shall have issued a final or substitute public report thereon, nor shall reservations to purchase be taken until the commission has issued a preliminary, final or substitute public report.

Section 22. **Preliminary Public Report.** A preliminary public report may be issued by the commission upon receipt of a notice of intention filing which is complete except for some particular requirement, or requirements, which is, or are, at the time not fulfilled, but which may reasonably be expected to be completed.

Section 23. **Copy of Public Report to be Given to Prospective Purchaser.** The developer shall not enter into a binding contract or agreement for the sale of any unit in a condominium project unit

(a) A true copy of the commission's final or substitute public report thereon with all supplementary public reports, if any has been issued, has been given to the prospective purchaser,

(b) The latter has been given an opportunity to read same, and,

(c) His receipt taken therefor.

Receipts taken for any public report shall be kept on file in possession of the developer subject to inspection at a reasonable time by the commission or its deputies, for a period of three years from the date the receipt was taken.

Section 24. **Supplementary Public Report.** If, after a final or substitute public report has been issued, the commission shall deem it necessary to conduct further inquiries or investigations in order to protect the general public in its real estate transactions, the commission may issue a supplementary public report describing the findings thereof. Upon the issuance of a supplementary public report, it shall be the duty of the developer to issue a true copy thereof to all purchasers.

Section 25. **True Copies of Public Report.** The true copies of the commission's public report shall be an exact reproduction of those prepared by the commission.

Section 26. **Notice of Change.** It is unlawful for the developer of the project, after it is submitted to the commission, to materially change the set-up or value or use of such offering without first notifying the commission in writing of such intended change and substantially notifying all purchasers and prospective purchasers of such change.

Section 27. **Request For Hearing By Developer.** When a final, preliminary or substitute public report is not issued within a reasonable time after notice of intention is properly filed pursuant to sections 16 and 17, or if the developer is materially grieved by the form or content of a public report, the developer may, in writing, request and shall be given a hearing by the commission within a reasonable time after receipt of request.

Section 28. **Penalties For Violations of Certain Provisions.** Every officer, agent or employee of any company, and every other person who knowingly authorizes, directs or aids in the publication, advertisement, distribution or circularization of any false statement or representation concerning any project offered for sale or lease, and every person who, with knowledge that any advertisement, pamphlet, prospectus or letter concerning any said project contains any written statement that is false or fraudulent, issues, circulates, publishes or distributes the same, or shall cause the same to be issued, circulated, published or distributed, or who, in any other respect, violates or fails to comply with any of the provisions set forth in Part IV, or who in any other respect violates or fails, omits or neglects to obey, observe or comply with any order, decision, demand or requirement of the commission under Part IV, is guilty of a misdemeanor, and shall be punished by a fine not exceeding $1,000 or by imprisonment for a term not exceeding one year or by both such fine and imprisonment.

Section 29. **Investigatory Powers.** If the commission has reason to believe that a developer is violating any provision set forth in Part IV, or the rules and regulations of the commission made pursuant thereto, the commission may investigate the developer's project and examine the books, accounts, records and files used in the project of the developer. For the purposes of examination, the developer is required to keep and maintain record of all sales transactions and of the funds received by him pursuant thereto, and to make them accessible to the commission upon reasonable notice and demand.

Section 30. **Power to enjoin.** Whenever the commission believes from satisfactory evidence that any person has violated any of the provisions of Part IV or the rules and regulations of the commission made pursuant thereto, it may conduct an investigation on such matter, and bring an action in the name of the people of the State of Hawaii in any court of competent jurisdiction against such person to enjoin such person from continuing such violation or engaging therein or doing any act or acts in furtherance thereof.

Section 31. **Deposit of fees.** All fees collected under this part shall be remitted by the commission to the treasurer of this State, and shall be placed to the credit of the special fund of the real estate commission.

Section 32. **Chapter not exclusive.** The provisions of this chapter shall be in addition and supplemental to all other provisions of the Revised Laws of Hawaii 1955, as amended, provided that wherever the application of the provisions of this chapter conflict with the application of such other provisions, this chapter shall prevail.

Section 33. **Supplemental regulations governing an horizontal property regime.** Whenever they deem it proper, the boards of supervisors of the various counties or the city council of the city and county of Honolulu may adopt supplemental rules and regulations governing a horizontal property regime established under this chapter in order to implement this program.

Section 34. **Severability.** If any provision of this chapter, or any section, sentence, clause, phrase or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of the chapter and of the application of any such provision, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby."

SECTION 3. Effective date. This Act shall take effect upon its approval.

(Approved July 10, 1961.) **H.B. 1142.**

ACT 181

An Act Relating to the Employees' Retirement System, and Making an Appropriation Therefor.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 6-20 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended in the following respects:

a. By amending the definition of the term "average final compensation" by adding thereto at the end thereof the following:

"In computing the compensation of a member as a justice of the supreme court or a judge of a circuit court of the territory, the compensation payable by the United States, as well as by the territory, shall be included."

b. By amending the definition of the term "employee" by inserting the word "other" before the words "elective officers."

c. By inserting therein, after the definition of the term "fireman," the following:

" 'Judge': A justice of the supreme court or a judge of the circuit court of this State after the admission of this State into the union."

SECTION 2. Section 6-25 of the Revised Laws of Hawaii 1955 is hereby amended to read as follows:

"Sec. 6-25. Persons ineligible for membership; optional membership. The board may deny the right to become members to any class of part time employees, or it may, in its discretion, make optional with persons in such class their individual entrance into membership; provided, that no officer or employee entering service after January 1, 1928, who is entitled to become a member of any pension fund under the provisions of part III, shall be entitled to become a member of the system. Elective officers shall be eligible for membership, and their individual entrance into membership shall be at their option."

SECTION 3. Section 6-35 of the Revised Laws of Hawaii 1955 is hereby amended to read as follows:

"Sec. 6-35. Statement filed after July 1, 1947. Notwithstanding the foregoing, any member may file with the board, on a form approved by the board, a statement of all service as an employee or other service paid for by the State or county rendered prior to the date of his last becoming a member

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ACT 8

A Bill for an Act Amending Section 260-18, Revised Laws of Hawaii 1955, Relating to Coroner's Physician.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Purpose. Section 11 of Article III of the state constitution provides for the consideration and enactment in a budget session of all urgency measures deemed necessary in the public interest. Said Section 11 further provides that no urgency measure shall be considered unless a statement of fact constituting such urgency shall be set forth in a section thereof and until such section shall have been first approved by each house. Pursuant to said Section 11 of Article III of the state constitution, this act is hereby declared to be an urgency measure deemed necessary in the public interest. The following is a statement of fact constituting such urgency:

At present there is a difference of opinion between the attorney general and the county attorneys of the state as to the definition of the coroner's physician. The change sought will correct the ambiguity in the existing law and would make certain who is to perform the autopsy in cases requiring police attention.

SECTION 2. Means. Section 260-18, Revised Laws of Hawaii 1955, is hereby amended to read as follows:

"Sec. 260-18. Coroner's physician; laboratory facilities. The city and county physician or any of his assistants in the city and county of Honolulu, and any experienced or qualified government physician designated by the coroner in the counties of Hawaii, Maui and Kauai, shall be the coroner's physician for such county or city and county. The facilities of the laboratories of the state department of health shall be made available to the coroner's physician. The term government physician as used in this chapter means a physician employed by the State or any of its political subdivisions."

SECTION 3. Effective date. This act shall take effect upon its approval.

(Approved May 14, 1962.) H.B. 520.

1962 Session Laws

ACT 9

A Bill for an Act Relating to Horizontal Property Regimes and Amending Act 180, Session Laws of Hawaii 1961.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Purpose. Section 11 of Article III of the Constitution of the State of Hawaii provides for the consideration and enactment in a budget session of all urgency measures deemed necessary in the public interest. Said section 11 further provides that no urgency measure shall be considered unless a statement of facts constituting such urgency shall be set forth in a section thereof and until such section shall have been first approved by each house. Pursuant to said section 11 of Article III of the Constitution of the State of Hawaii, this act is hereby declared to be an urgency measure deemed necessary in the public interest. The following is a statement of facts constituting such urgency:

EXHIBIT A-1

The purposes of this amendment are (1) to encourage a horizontal property regime involving construction of units, not only of two or more apartments, rooms, office spaces, or other units in existing or proposed building(s) or structure(s) which are multi-unit structures vertically constructed with common elements as presently provided, but also of such apartments, rooms, office spaces, or other such units in single structures horizontally constructed with common elements, (2) to encourage construction of condominium units pursuant to the newly adopted resort-hotel zoning ordinance of the City and County of Honolulu and to enable projects which are presently stymied by the narrow interpretation of the existing horizontal property act to be initiated and completed under said act, as amended, in the State of Hawaii, (3) to make it clear that the substantive law relating to the land court has not been changed by Act 180, and (4) to clear up certain ambiguous sections in the act.

SECTION 2. Section 2(c), Act 180, Session Laws of Hawaii 1961, is hereby amended to read as follows:

"(c) 'Condominium' means the ownership of single units, with common elements, located on property within the horizontal property regime."

SECTION 3. Section 2(d), Act 180, Session Laws of Hawaii 1961, is hereby amended to read as follows:

"(d) 'Condominium project' means a real estate condominium project; a plan or project whereby a condominium of two or more apartments located within the horizontal property regime are offered or proposed to be offered for sale."

SECTION 4. Section 2(e), Act 180, Session Laws of Hawaii 1961, is hereby amended by deleting the word "association" after the word "partnership" in the first line of said section.

SECTION 5. Section 2(j), Act 180, Session Laws of Hawaii 1961, is hereby amended to read as follows:

"(j) 'Majority of co-owners' means fifty-one per cent of the co-owners as determined by the respective interests held by such co-owners."

SECTION 6. Section 2(k), Act 180, Session Laws of Hawaii 1961, is hereby amended to read as follows:

"(k) 'Master deed' or 'master lease' means the deed or lease recording the property of the horizontal property regime. 'Declaration' means a declaratory statement by the fee owner, lessee or developer placing the property under the horizontal property regime."

SECTION 7. Section 3, Act 180, Session Laws of Hawaii 1961, is hereby amended to read as follows:

"Section 3. **Horizontal property regimes.** Whenever a developer, a sole owner or the co-owners of a building expressly declare, through the recordation of a master deed or lease together with a declaration, which deed, lease or declaration shall set forth the particulars enumerated by section 7, their desire to submit their property to the regime established by this chapter, there shall thereby be established a horizontal property regime. In the event that the master deed or lease is already recorded, the recordation of the declaration shall be deemed sufficient to achieve the same result."

SECTION 8. Section 7, Act 180, Session Laws of Hawaii 1961, is hereby amended to read as follows:

"Section 7. **Recordation.** The bureau of conveyances and the land court shall immediately set up the mechanics and method by which recordation of

a master deed or lease and the individual apartments may be made. Provisions shall be made for the recordation of the individual apartments on subsequent re-sales, mortgages and other encumbrances, as is done with all other real estate recordations; provided, however, that land court certificates of title shall not be issued for apartments. The master deed or lease to which section 3 refers shall express the following particulars:

"(a) The description of the land, whether leased or in fee simple, and the buildings, expressing their respective areas;

"(b) The general description and number of each apartment, expressing its area, location and any other data necessary for its identification; and

"(c) The description of the general common elements of the building."

SECTION 9. Section 32, Act 180, Session Laws of Hawaii 1961, is hereby amended to read as follows:

"Section 32. **Chapter not exclusive.** The provisions of this chapter shall be in addition and supplemental to all other provisions of the Revised Laws of Hawaii 1955, as amended; provided, however, that this act shall not change the substantive law relating to land court property, and provided, further, that if this act shall conflict with chapters 342 and 343, Revised Laws of Hawaii 1955, chapters 342 and 343 shall prevail."

SECTION 10. This Act shall take effect upon its approval.

(Approved May 14, 1962.) **H.B. 591.**

ACT 10

A Bill for an Act Relating to Motor Vehicle Registration and Amending Section 160-9 of the Revised Laws of Hawaii 1955.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is hereby declared to be an urgency measure deemed necessary in the public interest within the meaning of Section 11 of Article III of the Constitution of the State of Hawaii.

The following is a statement of facts constituting such urgency:

The Finance Department of the City and County of Honolulu is in the process of converting its present automobile registration system to IBM automatic data processing system. This conversion has already begun and a substantial investment made. The new automobile registration system will be completed before the end of this year and should be in effect by January 1, 1963. Under this system, the certificate of registration may be renewed annually either by presenting the last issued certificates of registration or the last issued application for renewal, the latter of which will be IBM processed.

This new system will result in greater efficiency in automobile registration procedure and faster service to the public as well as in substantial savings in operational costs.

Since the present laws do not cover the use of last issued applications for renewal of automobile registration, it is necessary to include this provision in our licensing laws so that up-to-date, present-day equipment may be utilized in processing automobile registration renewals. Therefore, this Act is considered an urgency measure deemed necessary in the public interest.

the vacancy for the unexpired term and such appointee shall be of the same political party as the person he succeeds.

(b) Whenever any vacancy in the membership of the senate occurs, the term of which ends at the next succeeding general election, the governor shall make an appointment to fill the vacancy for the unexpired term and such appointee shall be of the same political party as the person he succeeds.

In the case of a vacancy, the term of which does not end at the next succeeding general election:

(1) If it occurs forty days or more prior to the next succeeding primary election, such vacancy shall be filled for the unexpired term at the next succeeding general election. The governor shall issue a proclamation designating the election for filling such vacancy. All candidates for such unexpired term shall be nominated and elected in accordance with the provisions of this chapter. Pending such election the governor shall make a temporary appointment to fill the vacancy and the person so appointed shall serve until the election of the person duly elected to fill such vacancy. Such appointee shall be of the same political party as the person he succeeds.

(2) If it occurs less than forty days prior to the next succeeding primary but ten or more days prior to the next succeeding general election, such vacancy shall be filled for the unexpired term at the next succeeding general election. The governor shall issue a proclamation designating the election for filling such vacancy. All candidates for such unexpired senate term shall be nominated by the county committees of the parties and elected in accordance with the provisions of this chapter. Pending such election the governor shall make a temporary appointment to fill the vacancy and the person so appointed shall serve until the election of the person duly elected to fill such vacancy. Such appointee shall be of the same political party as the person he succeeds.

(3) If it occurs less than ten days prior to the next succeeding general election, the governor shall make an appointment to fill the vacancy for the unexpired term and such appointee shall be of the same political party as the person he succeeds."

SECTION 2. Section 11-3 of the Revised Laws of Hawaii 1955, as amended, is hereby repealed in its entirety.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 29, 1963.) S.B. 419.

1963 Session Laws

ACT 101

An Act Relating to Horizontal Property Regimes and Amending Act 180, Session Laws of Hawaii, 1961, as Amended.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. The chapter added to the Revised Laws of Hawaii 1955 by section 2 of Act 180, Session Laws of Hawaii, 1961, is hereby amended by renumbering sections 16 to 34, inclusive, thereof as sections 27 to 45, inclusive, and by amending sections 1 to 15, inclusive, thereof

EXHIBIT A - 2

so that the same shall be renumbered as sections 1 to 26, inclusive, and shall read as follows:

"Section 1. This chapter shall be known as the 'Horizontal Property Act'.

Section 2. **Definitions.** Unless it is plainly evident from the context that a different meaning is intended, as used herein:

(a) 'Apartment' means a part of the property which is intended for any type of independent use, whether residence, office, the operation of any industry or business or other use, and which includes all of a building or one or more rooms or enclosed spaces located on one or more floors (or part or parts thereof) in a building, with a direct exit to a public street or highway or to a common element or elements leading to such street or highway. An apartment may also include any unenclosed space in the building which is adjacent to and accessible directly from any one or more of the rooms or enclosed spaces included in the apartment.

(b) 'Apartment owner' means the person owning, or the persons owning jointly or in common, an apartment and the common interest appertaining thereto; provided, that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by lease filed with the board of directors, a lessee of an apartment shall be deemed to be the owner thereof.

(c) 'Association of apartment owners' means all of the apartment owners acting as a group in accordance with the bylaws and declaration.

(d) 'Commission' means the real estate commission of the state department of treasury and regulation.

(e) 'Common elements', unless otherwise provided in the declaration, means and includes:

(1) The land included in the horizontal property regime, whether leased or in fee simple;

(2) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes and entrances and exits of the building or buildings;

(3) The basements, flat roofs, yards, gardens, recreational facilities, parking areas and storage spaces;

(4) The premises for the lodging or use of janitors and other persons employed for the operation of the property;

(5) Central and appurtenant installations for services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerators;

(6) The elevators, escalators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(7) Such facilities as may be designated as common elements in the declaration; and

(8) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

(f) 'Common expenses' means and includes:

(1) Expenses of operation of the property; and

(2) All sums designated common expenses by or pursuant to the provisions of this Act, the declaration or the bylaws.

(g) 'Common interest' means the percentage of undivided interest in the common elements appertaining to each apartment, as expressed in the declaration, and any specified percentage of the common interests means such percentage of said undivided interests in the aggregate.

(h) 'Common profits' means the balance of all income, rents, profits and revenues from the common elements remaining after the deduction of the common expenses.

(i) 'Condominium' means the ownership of single units, with common elements, located on property within the horizontal property regime.

(j) 'Condominium project' means a real estate condominium project; a plan or project whereby a condominium of two or more apartments located within the horizontal property regime are offered or proposed to be offered for sale.

(k) 'Declaration' means the instrument by which the property is submitted to the provisions of this Act, as hereinafter provided, and such declaration as from time to time amended.

(l) 'Developer' means a person who undertakes to develop a real estate condominium project.

(m) 'Limited common elements' means and includes those common elements designated in the declaration as reserved for the use of a certain apartment or certain apartments to the exclusion of the other apartments; provided, that no amendment of the declaration affecting any of the limited common elements shall be effective without the consent of the owner or owners of the apartment or apartments for the use of which such limited common elements are reserved.

(n) 'Majority' or 'majority of apartment owners' means the owners of apartments to which are appurtenant more than fifty per cent of the common interests, and any specified percentage of the apartment owners means the owners of apartments to which are appurtenant such percentage of the common interests.

(o) 'Master deed' or 'master lease' means any deed or lease showing the extent of the interest of the person submitting the property to the horizontal property regime.

(p) 'Operation of the property' means and includes the administration and operation of the property and the maintenance, repair and replacement of, and the making of any additions and improvements to, the common elements.

(q) 'Person' means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

(r) 'Property' means and includes the land, whether leasehold or in fee simple, to the extent of the interest held therein by the owner or lessee submitting such interest to the horizontal property regime, the building or buildings, all improvements and all structures thereon and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been or are intended to be submitted to the regime established by this chapter.

(s) 'To record' means to record in accordance with the provisions of chapter 343, or to register in accordance with the provisions of chapter 342.

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

Section 3. **Horizontal property regimes.** Whenever the sole owner or sole lessee or all of the owners or all of the lessees of a property expressly declare, through the execution and recordation of a master deed or lease, together with a declaration, which declaration shall set forth the particulars enumerated by section 11, his or their desire to submit the property to the regime established by this chapter, there shall thereby be established a horizontal property regime with respect to the property, and this chapter shall be applicable to the property. In the event that the master deed or lease is already recorded, the recordation of the declaration shall be deemed sufficient to achieve the same result.

Section 4. **Status of apartments.** Each apartment, together with the common interest appertaining thereto, shall for all purposes constitute real property and may be individually conveyed, leased or encumbered and be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other apartment or apartments in the property of which it forms a part, and the corresponding individual titles and interests shall be recordable.

Section 5. **Ownership of apartments.** The apartment owner shall be entitled to the exclusive ownership and possession of the apartment. Any apartment may be jointly or commonly owned by more than one person.

Section 6. **Common elements.**

(a) Each apartment shall have appurtenant thereto a common interest as expressed in the declaration.

(b) The common interest appurtenant to each apartment as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all of the apartment owners affected, expressed in an amended declaration duly recorded. The common interest shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(c) The common elements shall remain undivided and no right shall exist to partition or divide any part thereof, except as otherwise expressed in this Act. Any provision to the contrary shall be null and void.

(d) 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 always to the exclusive use of the limited common elements as provided in the declaration.

(e) The operation of the property shall be carried out as provided herein and in the declaration and the bylaws.

(f) 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.

Section 7. **Compliance with covenants, bylaws and administrative provisions.** Each apartment owner shall comply strictly with the bylaws 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 of apartment owners or, in a proper case, by an aggrieved apartment owner.

Section 8. **Certain work prohibited.** No apartment owner shall do any work which would jeopardize the soundness or safety of the property, reduce the value thereof or impair any easement or hereditament, nor may any apartment owner add any material structure or excavate any additional basement or cellar, without in every such case the unanimous consent of all the other apartment owners being first obtained.

Section 9. **Liens against apartments; removal from lien; effect of part payment.**

(a) Subsequent to recording the declaration as provided in this Act, and while the property remains the subject of a horizontal property regime, no lien shall arise or be created against the common elements. During such period, liens may arise or be created only against the several apartments and their respective common interests.

(b) Labor performed on or materials furnished to an apartment shall not be the basis of a lien pursuant to part II of chapter 193 against the apartment of any apartment owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any apartment in the case of emergency repairs thereto. No labor performed on or materials furnished to the common elements shall be the basis of a lien thereon, but all funds received and to be received by the manager or board of directors in payment of common expenses, and the right to receive such funds, shall constitute trust funds for the purpose of paying the cost of such labor or materials performed or furnished at the express request or with the consent of the manager or board of directors, and the same shall be expended first for such purpose before expending any part of the same for any other purpose.

Section 10. **Common profits and expenses.** The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners in proportion to the common interests appurtenant to their respective apartments.

Section 11. **Recordation and contents of declaration.** The bureau of conveyances and the land court shall immediately set up the mechanics and method by which recordation of a master deed or lease and the declaration may be made. Provisions shall be made for the recordation of instruments affecting the individual apartments on subsequent resales, mortgages and other encumbrances, as is done with all other real estate recordations; provided, however, that land court certificates of title shall not be issued for apartments. The declaration to which section 3 refers shall express the following particulars:

(a) Description of the land, whether leased or in fee simple, on

which the buildings or buildings and improvements are or are to be located.

(b) Description of the building or buildings, stating the number of stories and basements, the number of apartments and the principal materials of which it or they is or are constructed or to be constructed.

(c) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms and immediate common element to which it has access, and any other data necessary for its proper identification.

(d) Description of the common elements.

(e) Description of the limited common elements, if any, stating to which apartments their use is reserved.

(f) The percentage of undivided interest in the common elements appertaining to each apartment and its owner for all purposes, including voting.

(g) Statement of the purposes for which the building or buildings and each of the apartments are intended and restricted as to use.

(h) The name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of such person which shall be within the county or city and county in which the property is located.

(i) Provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair or restore the property in the event of damage or destruction of all or part of the property.

(j) Any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this Act.

(k) The method by which the declaration may be amended, consistent with the provisions of this Act.

Section 12. **Contents of deeds or leases of apartments.** Deeds or leases of apartments shall include the following particulars:

(a) Description of the land as provided in section 11 of this Act, or the post office address of the property, including in either case an appropriate reference to the recording of the declaration.

(b) The apartment number of the apartment in the declaration and any other data necessary for its proper identification.

(c) Statement of the use for which the apartment is intended and restrictions on its use.

(d) The common interest appertaining to the apartment.

(e) All encumbrances on the apartment and any further details which the grantor and grantee, or lessor and lessee, may deem desirable to set forth consistent with the declaration and this Act.

Section 13. **Copy of the floor plans to be filed.** Simultaneously with the recording of the declaration, there shall be filed in the office of the recording officer a set of the floor plans of the building or buildings, showing the layout, location, apartment numbers and dimensions of the apartments, stating the name of the property or that it has no name, and bearing the verified statement of a registered architect or professional engineer certifying that it is an accurate copy of portions of the plans of the building or buildings as filed with and approved by the

county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings. If such plans do not include a verified statement by such architect or engineer that such plans fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built, there shall be recorded prior to the first conveyance or lease of any apartment an amendment to the declaration to which shall be attached a verified statement of a registered architect or professional engineer certifying that the plans theretofore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built. Such plans shall be kept by the recording officer in a separate file for each property, indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated 'apartment ownership', with the name of the property, if any, and each containing an appropriate reference to the recording of the declaration. Correspondingly, the record of the declaration shall contain a reference to the file number of the floor plans of the building or buildings on the property affected thereby.

Section 14. **Blanket mortgages and other blanket liens affecting an apartment at time of first conveyance or lease.** At the time of the first conveyance or lease of each apartment, every mortgage and other lien affecting both such apartment and any other apartment shall be paid and satisfied of record, or the apartment being conveyed or leased and its common interest shall be released therefrom by partial release duly recorded.

Section 15. **Removal from provisions of this Act.**

(a) If (i) apartment owners owning not less than eighty per cent in number of apartments in the aggregate, and owning apartments to which are appurtenant not less than eighty per cent of the common interests, shall execute and record an instrument to the effect that they desire to remove the property from the provisions of this Act, and the holders of all liens affecting any of the apartments of the apartment owners executing such instrument shall consent thereto by instruments duly recorded, or (ii) the common elements shall suffer substantial damage or destruction and such damage or destruction shall not have been rebuilt, repaired or restored within a reasonable time after the occurrence thereof or the apartment owners shall have earlier determined as provided in the declaration that such damage or destruction shall not be rebuilt, repaired or restored, then, and in either such event, the property shall be subject to an action for partition by any apartment owner or lienor as if owned in common, in which event the sale of the property shall be ordered by the court and the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the apartment owners in proportion to their respective common interests, provided, however, that no payment shall be made to an apartment owner until there has first been paid off out of his share of such net proceeds all liens on his apartment. Upon such sale, the property shall cease to be the subject of a horizontal property regime or subject to the provisions of this Act.

(b) All of the apartment owners may remove a property, or a part

of a property, from the provisions of this Act by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the apartments consent thereto, by instruments duly recorded. Upon such removal from the provisions of this Act, the property, or the part of the property designated in such instrument, shall cease to be the subject of a horizontal property regime or subject to the provisions of this Act, and shall be deemed to be owned in common by the apartment owners in proportion to their respective common interests.

Section 16. **Removal no bar to subsequent resubmission.** The removal provided for in the preceding section shall in no way bar the subsequent resubmission of the property to the provisions of this Act.

Section 17. **Bylaws.** The operation of the property shall be governed by bylaws, a true copy of which shall be annexed to the declaration and made a part thereof. No modification of or amendment to the bylaws shall be valid unless set forth in an amendment to the declaration, which amendment is duly recorded.

Section 18. **Contents of bylaws.** The bylaws shall provide for at least the following:

(a) The election from among the apartment owners of a board of directors, the number of persons constituting the same and that the terms of at least one-third of the directors shall expire annually; the powers and duties of the board; the compensation, if any, of the directors; the method of removal from office of directors; and whether or not the board may engage the services of a manager or managing agent, or both, and specifying which of the powers and duties granted to the board by this Act or otherwise may be delegated by the board to either or both of them.

(b) Method of calling meetings of the apartment owners; what percentage, if other than a majority of apartment owners, shall constitute a quorum; and what percentage shall, consistent with the provisions of this Act, be necessary to adopt decisions binding on all apartment owners.

(c) Election of a president from among the board of directors who shall preside over the meetings of the board of directors and of the association of apartment owners.

(d) Election of a secretary who shall keep the minute book wherein resolutions shall be recorded.

(e) Election of a treasurer who shall keep the financial records and books of account.

(f) Operation of the property, payment of the common expenses and determination and collection of the common charges.

(g) Manner of collecting from the apartment owners their share of the common expenses.

(h) Designation and removal of personnel necessary for the maintenance, repair and replacement of the common elements.

(i) Method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common elements.

(j) Such restrictions on and requirements respecting the use and maintenance of the apartments and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable

interference with the use of their respective apartments and of the common elements by the several apartment owners.

(k) That seventy-five per cent of the apartment owners may at any time modify or amend the bylaws, but each one of the particulars set forth in this section shall always be embodied in the bylaws.

Section 19. **Books of receipts and expenditures; availability for examination.** The manager or board of directors, as the case may be, shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for examination by the apartment owners at convenient hours of week days.

Section 20. **Waiver of use of common elements; abandonment of apartment; conveyance to board of directors.** No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his apartment. Subject to such terms and conditions as may be specified in the bylaws, any apartment owner may, by conveying his apartment and his common interest to the board of directors on behalf of all other apartment owners, exempt himself from common expenses thereafter accruing.

Section 21. **Separate taxation.** The laws relating to home exemptions from state property taxes shall be applicable to the individual apartments, which shall have the benefit of home exemption in those cases where the owner of a single-family dwelling would qualify. Property taxes assessed by the State shall be assessed on and collected on the individual apartments and not on the property as a whole. Without limitation of the foregoing, each apartment and the common interest appertaining thereto shall be deemed to be a parcel and shall be subject to separate assessment and taxation for all types of taxes authorized by law, including, but not limited to, special assessments.

Section 22. **Priority of lien.**

(a) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens, except only (i) liens for taxes and assessments lawfully imposed by governmental authority against such apartment, and (ii) all sums unpaid on mortgages of record. Such lien may be foreclosed by suit by the manager or board of directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the apartment owners, shall have power, unless prohibited by the declaration, to bid in the apartment at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

(b) Where the mortgage of a mortgage of record or other purchaser of an apartment obtains title to the apartment as a result of foreclosure of the mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the association of apartment owners chargeable to such apartment which became due prior to the acquisition of title to such apartment by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners, including such acquirer, his successors and assigns.

Section 23. **Joint and several liability of grantor and grantee for unpaid common expenses.** In a voluntary conveyance the grantee of an apartment shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantor or grantee shall be entitled to a statement from the manager or board of directors, as the case may be, setting forth the amount of the unpaid assessments against the grantor, and neither such grantor nor such grantee shall be liable for, nor shall the apartment conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

Section 24. **Insurance.** The manager or board of directors, if required by the declaration, bylaws or by a majority of the apartment owners, shall have the authority to, and shall, obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Such insurance coverage shall be written on the property in the name of such manager or of the board of directors of the association of apartment owners, as trustee for each of the apartment owners in proportion to their respective common interests. Premiums shall be common expenses. Provision for such insurance shall be without prejudice to the right of each apartment owner to insure his own apartment for his benefit.

Section 25. **Actions.** Without limiting the rights of any apartment owner, actions may be brought by the manager or board of directors, in either case in the discretion of the board of directors, on behalf of two or more of the apartment owners, as their respective interests may appear, with respect to any cause of action relating to the common elements or more than one apartment. Service of process on two or more apartment owners in any action relating to the common elements or more than one apartment may be made on the person designated in the declaration to receive service of process.

Section 26. **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 submitted to the provisions of this Act shall be subject to this Act and to the declaration and bylaws of the association of apartment owners adopted pursuant to the provisions of this Act.

(b) All agreements, decisions and determinations lawfully made by the association of apartment owners in accordance with the voting per-

centages established in this Act, the declaration or the bylaws shall be deemed to be binding on all apartment owners."

SECTION 2. This Act shall take effect upon its approval; provided, however, that the provisions of Act 180, Session Laws of Hawaii, 1961, as heretofore amended, shall continue in effect with respect to, and shall govern the rights, interests and remedies of all persons owning interests in or liens upon, any property subject to a horizontal property regime created pursuant to said Act 180 prior to the effective date of this Act; and provided, further, that if all of the owners of apartments in any property subject to a horizontal property regime created pursuant to said Act 180 prior to the effective date of this Act, together with all of the holders of liens affecting any of such apartments, shall execute and record a declaration in form and content as required for the establishment of a horizontal property regime with respect to the property under the provisions of said Act 180 as amended by this Act, thereafter a horizontal property regime with respect to the property shall exist under the provisions of said Act 180 as amended by this Act and the provisions of said Act 180 as amended by this Act shall apply with respect to the property and shall govern the rights, interests and remedies of all persons owning interests in or liens upon the property.

(Approved May 29, 1963.) **S.B. 497.**

ACT 102

An Act Relating to Home Exemption for Apartments in a Multiunit Apartment Building & Prescribing Requirements Therefor.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 128-14, Revised Laws of Hawaii 1955, as amended, is hereby further amended by renumbering paragraph (3) thereof to (4) and by adding after paragraph (2) thereof the following:

"(3) An apartment which is a living unit (held under a proprietary lease by the tenant thereof) in a multiunit residential building on land held by a cooperative apartment corporation (of which the proprietary lessee of such living unit is a stockholder) under a lease for a term of five years or more for residential purposes and which apartment is used as a residence by such lessee-stockholder, where the lease and any extension or renewal have been duly entered into and recorded prior to January 1 of the year for which the exemption is claimed, and whereby such lessee-stockholder agrees to pay all taxes during the term of the lease provided that, (1) the exemption shall not be allowed in respect to any cooperative apartment unit where the owner of such cooperative apartment unit claims exemption on a home or other cooperative apartment unit; and, (2) the owner or owners of a cooperative apartment building or premises shall not be permitted exemptions where a husband and wife owner of a cooperative apartment unit own separate cooperative apartment units or separate homes owned by each of them, unless they are living separate and apart, in which case the owner of

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PHILIP L. LAHNE, ESQ.
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AMENDED DECLARATION OF HORIZONTAL PROPERTY REGIME OF HALE MAKANI KAI

EXHIBIT B

941026

AMENDED DECLARATION OF HORIZONTAL PROPERTY REGIME
HALE MAKANI KAI

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AMENDED DECLARATION OF CONDOMINIUM PROPERTY REGIME
HALE MAKANI KAI

WHEREAS, the Trustees of the Estate of Bernice Pauahi Bishop (the "Trustees"), owned in fee simple that certain real property described in Exhibit "A", attached hereto and incorporated herein by reference; and

WHEREAS, the Trustees, as "Lessor", and Kaiser Hawaii-Kai Development Corporation, a Nevada corporation, as "Lessee" (hereinafter called the "Declarants") submitted said real property and the improvements located thereon as more particularly described in that certain Master Lease and Declaration dated July 24, 1962, recorded in the Bureau of Conveyances of the State of Hawaii in Book 4327, Page 56 (the "Declaration"), to a horizontal property regime pursuant to Act 180, 1961 Session Laws of Hawaii; and thereby created the condominium project consisting of said real property and improvements, to be known as "Hawaii Kai Condominium Project, Lot 5, File Plan 800," now to be known as HALE MAKANI KAI (hereinafter called the "Project"), and in furtherance thereof made certain declarations as to divisions, limitations, restrictions, covenants, and conditions, and thereby declared and agreed that said real property and improvements shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to said declarations, which declarations constitute covenants running with the real property and shall be binding upon and for the benefit of the Declarants and the Declarants' successors and assigns, and all subsequent owners and lessees of all or any part of the Project and each of their respective successors, heirs, executors, administrators, and assigns, as well as all other persons who use the Project or any portion thereof, in any manner whatsoever; and

WHEREAS, all of the Co-Owners have voted to amend the Declaration in its entirety to read as set forth herein;

NOW, THEREFORE, the Declaration shall be and hereby is amended to read as follows:

A. DIVISION OF PROPERTY. The Project is to be known as HALE MAKANI KAI and is hereby divided into the following separate freehold estates:

1. Homes. Six separate and distinct freehold estates are presently designated in the spaces bounded by the exterior perimeter walls, floors, roofs, foundations, beams, and supports which are utilized for or serve only one dwelling, and the decorated or finished outer surfaces thereof, if any, and the undecorated and unfinished surfaces of the loadbearing party walls separating the various dwellings, as shown in Exhibit "B" attached hereto and incorporated herein by reference. Each such dwelling shall include all pipes, wires, conduits, and other utility and service lines contained wholly within such dwelling and which are utilized exclusively by and serve only such dwelling. Each dwelling shall also be deemed to include all doors, door frames, thresholds, transoms, windows, window frames, locks, hinges and other hardware installed therein or in connection therewith (regardless of whether the same are a portion of or installed in a load-bearing or nonload-bearing wall). Up to three additional freehold estates, as shown in said Exhibit "B," shall be so designated upon the issuance of certificates of occupancy therefor by the Building Department of the City and County of Honolulu.

Said dwellings are designated as Unit 101, Unit 102, Unit 103, Unit 104, Unit 105, Unit 106, Unit 107, Unit 108, and Unit 109, and are sometimes referred to herein collectively as the "Homes". The term "Home" as used herein shall have the same meaning as the term "Apartment" as used in the Act 180, 1961 Session Laws of Hawaii. There are five unit types: Type A, Type A (Reverse), Type B, Type C, and Type D. All of the presently designated estates are Type A or Type A (Reverse).

Type A units have two stories comprising a living room, family room, kitchen, dining area, bathroom, on the ground floor and three bedrooms and a bathroom on the second floor, with a net living area of approximately 1,350 sq. ft. Additionally, there is a 106 sq. ft. lanai, 137 sq. ft. outdoor utility area and 315 sq. ft. two-care garage on the ground floor and an 80 sq. ft. balcony on the second floor. The Type A units are Units 102, 104, and 106.

Type A (Reverse) units are identical to the Type A units, but with a reversed floor plan. The Type A (Reverse) units are Units 101, 103, and 105.

If built, the Type B unit will be similar to the Type A units except that there is no lanai or balcony. There is a living room, family room, kitchen, dining area, and bathroom on the ground floor and three bedrooms and a bathroom on the second floor, with a net living area of approximately 1,474 sq. ft. Additionally, there is a 46 sq. ft. covered entry, a 97 sq. ft. outdoor utility area, and a 357 sq. ft. two-car garage on the ground floor. The Type B unit is Unit 107.

If built, the Type C unit will have two stories comprising a living room, kitchen, dining area, and half-bathroom on the ground floor and three bedrooms and two bathrooms on the second floor, with a net living area of approximately 1,549 sq. ft. Additionally, there is a 55 sq. ft. covered entry, a 186 sq. ft. one-car garage, and one open parking space on the ground floor. The Type C unit is Unit 108.

If built, the Type D unit will have two stories comprising a living room, kitchen, dining area, and half-bathroom on the ground floor, and three bedrooms, a family room, and two bathrooms on the second floor, with a net living area of approximately 1,476 sq. ft. Additionally, there is a 25 sq. ft. covered entry and 351 sq. ft. two-car garage on the ground floor. The Type D unit is Unit 109.

All Homes are primarily of hollow tile and concrete construction and have "Brai" roofs.

2. Common Elements. The common elements shall consist of all portions of the Project except the Homes, and shall specifically include, but not be limited to:

(a) The land in fee simple.

(b) All sidewalks, pipes, wires, conduits, and other utility and service lines which are utilized for or serve two or more of the Homes.

(c) The foundations, columns, girders, beams, supports, loadbearing walls (including party walls), roofs, floors, and ceilings which are utilized for or serve two or more of the Homes.

(d) Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use.

3. Limited Common Elements. Certain parts of the common elements are hereby set aside and reserved for the exclusive use of one or more Homes and shall constitute limited common elements appurtenant thereto. Each Home shall have an exclusive easement for the use of the limited common elements appurtenant thereto, except as otherwise provided herein. The cost of maintenance, repair, upkeep, and replacement of each limited common element shall be assessed to the owner of the Home to which such limited common element is appurtenant, except that such costs shall be divided equally between the Homes to which a limited common element is appurtenant in the case of limited common elements appurtenant to more than one Home. The limited common elements are as follows:

(a) The private yard areas as shown in Exhibit "B" attached hereto and the fences or walls separating or delineating such private yard areas as shown thereon shall be appurtenant to the respective Homes.

(b) One mailbox shall be appurtenant to and for the exclusive use of each Home.

(c) All pipes, wires, conduits, and other utility and service lines not contained within a Home but used by and servicing less than all of the Homes, shall be appurtenant to and for the exclusive use of the Homes using and serviced by such pipes, wires, conduits, and other utility and service lines.

(d) All portions of the Project which are rationally related to or used by less than all of the Homes, including but not limited to roofs, roof trusses and supports, floors, and ceilings, shall constitute limited common elements appurtenant to the Home or Homes to which such portions of the Project are rationally related.

B. COMMON INTEREST. Until such time as a certificate of occupancy is issued for Homes 107, 108, and 109, Homes 101 through 106 shall each have appurtenant thereto a 1/6th undivided interest in the common elements (hereinafter called the "common interest") for all purposes, including voting. Thereafter, each Home shall have appurtenant thereto an equal common interest, depending on the number of additional Homes completed, for all purposes, including voting.

C. EASEMENTS. In addition to any easements herein designated in the common elements, each Home shall have appurtenant thereto non-exclusive easements in all of the common elements: (a) for utility services for and support of such Home, and (b) for use according to their respective purposes, subject always to the exclusive use of the limited common elements as herein provided. If any part of the common elements encroaches upon any Home or limited common element, a valid easement shall exist for such encroachment and for the maintenance thereof, so long as such encroachment continues. In the event that any Home is partially or totally destroyed and then rebuilt, necessary minor encroachments upon any part of the common elements due to such rebuilding shall be permitted, and valid easements for such encroachments and for the maintenance thereof shall exist.

D. ALTERATION AND TRANSFER OF INTEREST. The common interest and easements appurtenant to each Home shall have a permanent character and shall not be altered without the consent of the owner of such Home as expressed in an amendment to this Declaration recorded in the Bureau of Conveyances, and except as otherwise set forth in this Declaration, shall not be separated from such Home and shall be deemed to be conveyed or encumbered with such Home even though not expressly mentioned or described in the instrument evidencing such conveyance or encumbrance. The common elements shall remain undivided and no right shall exist to partition or divide any part thereof, except as provided by law.

E. USE. Each Home shall be occupied and used for residential purposes only, and no Home shall be used in connection with the carrying on of any profession, trade, or business whatsoever which is incompatible with such use. The owner of each Home shall have the absolute right to rent or lease such Home, or any portion thereof, for residential purposes, for periods of any duration, subject to all of the provisions of this Declaration and the By-Laws of the HALE MAKANI KAI Council of Co-Owners recorded in the Bureau of Conveyances contemporaneously herewith (hereinafter called the "By-Laws").

F. ADMINISTRATION OF THE PROJECT. Administration of the Project shall be vested in the HALE MAKANI KAI Council of Co-Owners (hereinafter called the "Council"), which shall be a nonprofit corporation incorporated under the laws of the State of Hawaii consisting of the owner(s) of each Home, as set forth in the By-Laws. Operation of the Project and maintenance, repair, replacement, and restoration of the common elements and any additions and alterations thereto shall be in accordance with the provisions of law, this Declaration, and the By-Laws. Specifically, but without limitation, the Council shall:

1. Comply with all applicable laws, ordinances, rules, and regulations now in effect or hereafter made by any governmental authority.

2. Maintain and repair the common elements as may be required by law.

3. Well and substantially repair, maintain, amend, and keep all common elements with all necessary reparations and amendments whatsoever in a clean, sanitary, and attractive manner and in good order and condition, maintain and keep the common elements in a neat, clean, sanitary, and attractive condition, maintain and keep all trees, shrubs, and grass thereon, if any, in good cultivation, and replant the same if necessary, and repair and make good all defects in the common elements, except as otherwise provided herein.

Notwithstanding anything to the contrary contained in this Declaration or the By-Laws, each owner of a Home to which a limited common element is appurtenant shall promptly perform, on behalf of the Council, all such duties and responsibilities of the Council as to such limited common element at such owner's sole cost and expense, provided that in the case of a limited common element appurtenant to two or more Homes, such costs shall be divided equally between the Homes to which the limited common element is appurtenant. Upon so doing, such owner shall thereby be discharged from liability to the Council for any assessment which would otherwise be imposed by the Council for its performance of such work.

4. Before commencing the construction of any improvement in or to the common elements costing in excess of $25,000.00, obtain a bond or certificate thereof

naming as Obligees the owners of the Homes as their interests may appear, in a penal sum not less than the full amount of the cost of such construction and with a corporate surety authorized to do business in Hawaii, guaranteeing completion of such construction free and clear of all mechanics' and materialmen's liens or other claims which might be imposed against the common funds of the Council. However, this requirement may be waived upon the condition that lien waivers in a form satisfactory to the Board shall be obtained from all contractors and suppliers providing labor, services, and materials for such improvement.

5. Have the irrevocable right, to be exercised by its Board of Directors (hereinafter called the "Board") or Managing Agent (if any), or by their authorized employees, agents, or representatives, to enter any Home and/or limited common element from time to time to make such repairs therein or to take such other action as reasonably appears necessary for the proper operation of the Project or to prevent damage to any common element or other Home. Except in the case of an emergency, at least forty-eight (48) hours prior notice of such entry shall be provided to the occupant of the Home (or appurtenant limited common element) to be entered, or to the owner thereof, in the event that the occupant cannot be contacted at that time.

6. Not erect or place on the common elements any building or structure, including fences and walls, nor make additions, alterations, or changes to the common elements, nor place or maintain thereon any permanent signs which would affect the appearance of the Project, without the vote or written consent of a majority of the owners and complete any such improvements diligently after the commencement thereof, and provided, further, that the Council shall make no such additions, alterations, or change to any limited common element without the prior written approval of the owner(s) of the Home(s) to which such limited common element is appurtenant.

7. Not make nor suffer any strip or waste or unlawful, improper, or offensive use of the Project.

8. Perform all acts and functions which are to be performed by the Council pursuant to this Declaration and the By-Laws.

G. SERVICE OF PROCESS. Any officer of the Board is hereby authorized to receive service of legal process in all cases provided for by law.

H. COMMON EXPENSES. All charges, costs, and expenses whatsoever incurred by the Council for or in connection with the administration of the Council and the operation of the common elements, including without limitation, any maintenance, repair, replacement, and restoration of the common elements, and any additions and alterations thereto, any labor, services, materials, supplies, and equipment therefor, any liability whatsoever for loss or damage arising out of or in connection with the common elements, or any accident, fire, or nuisance thereon, and any premiums for hazard and liability insurance herein required with respect to the Project, shall constitute common expenses of the Council which shall be divided between the owners of the Homes in accordance to the respective common interests appurtenant thereto, except as otherwise provided herein.

Subject to the provisions of Paragraph F.3., above, all costs and expenses incurred by the Council which are attributable to any limited common element, whether for

its maintenance, repair, or replacement, for any addition or improvement thereto, or for any other purpose whatsoever, shall be assessed by the Council to the owners of the Home(s) to which such limited common element is appurtenant, which said assessment shall constitute a lien upon such member's Home which may be foreclosed in the same manner as a mortgage of real property.

The Board shall from time to time assess each owner of a Home for his or her share of the common expenses and for the cost to the Council of any expenses attributable to the limited common elements appurtenant to such Home. The unpaid amount of such assessments shall constitute a lien against the Home of such owner which may be foreclosed by the Board in the same manner as a mortgage of real property as provided in the By-Laws.

I. COMPLIANCE WITH DECLARATION AND BY-LAWS. Each owner of a Home, his or her tenants, families, servants, and guests, and any other persons who may in any manner use the Project, shall be bound by and comply strictly with the provisions of this Declaration, the By-Laws, and all agreements, decisions, and determinations of the Board and the Council as lawfully made or amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due, damages, and/or injunctive relief, maintainable by the Board or the Managing Agent, if any, on behalf of the Council, or in a proper case, by any aggrieved owner or occupant of a Home.

J. FIRE AND CASUALTY INSURANCE. Without prejudice to the right of each Member to insure such Member's apartment and personal property for his or her benefit, the Board shall procure and at all times maintain from a company or companies authorized to do business in Hawaii a policy or policies (hereinafter collectively called the "Policy") of insurance written in the name of the Council as trustee for the Members, covering the common elements and, whether or not part of the common elements, all exterior and interior walls, floors, and ceilings, in accordance with the as-built condominium plans and specifications, but excluding any personal property of or improvements made by an Member, against loss or damage by fire and also property coverage on a Special Form, Agreed Amount, basis for an amount as nearly as practicable equal to one hundred per cent (100%) of the insurable replacement cost without deduction for depreciation thereof, including such deductibles, co-insurance, and self-insurance amounts as the Board deems reasonable and prudent in its sole discretion and sound business judgment. Flood insurance may also be provided either under the federal Flood Disaster Protection Act, if the Project is located in an identified flood hazard area as designated by the U.S. Department of Housing and Urban Development, or a policy or policies of commercial insurance if otherwise deemed necessary or appropriate. Alternatively, the Board may elect to permit the owners of the Homes to maintain equivalent insurance in their individual names and at their individual expense, provided that the aggregate insurance coverage so maintained is at all times at least equal to that which would otherwise have been required to be maintained by the Board pursuant to the terms of this Paragraph J, and that each such policy names the Council as an additional insured thereunder. In no event shall the Board or any individual director be liable to any Member, mortgagee, insurer, tenant or other occupant, or any other person whatsoever for any uninsured loss or damage except in the event of a final adjudication of gross negligence or intentional misconduct in the procurement of the Policy. In every case of such loss or damage all insurance proceeds shall be used as soon as is reasonably practical for rebuilding, repairing, or otherwise reinstating the affected property in a good and substantial manner according to the original plans or such modified plans as may be approved by the Board, it being understood that such approval shall

not be unreasonably withheld or delayed. Except to the extent of its other duties as set forth herein, the Council shall not be liable for any deficiency in such insurance proceeds. Unless not reasonably obtainable, as determined by the Board in its sole and absolute discretion, each such policy of insurance shall:

1. Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of, any other insurance obtained by or for any owner of a Home;

2. Contain no provision relieving the insurer from liability for loss occurring while the hazard to the Homes is increased, whether or not within the knowledge or control of the Board, or because of any breach of warranty or condition or any other act or neglect by the Board, any owner of a Home, or any other persons occupying a Home;

3. Provide that such policy may not be cancelled (whether or not requested by the Board) except by the insurer giving at least thirty (30) days' prior written notice thereof to the Board and to every other party having a legal interest in a Home who shall have made written request to the insurer for such notice;

4. Contain a waiver by the insurer of any right of subrogation to any right of the Board or any of the owners of Homes against the Board, against any of the other owners of Homes, or against any other persons occupying a Home;

5. Contain a standard mortgagee clause which shall:

(a) Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages on the Homes, in their respective order and preference, whether or not named therein;

(b) Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board, the owners of the Homes, or any persons occupying a Home;

(c) Waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any vacancy or hazardous use, any requirement that the mortgagee pay any premium thereon, and any contribution clause; and

(d) Provide that without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to such bank or trust company as is designated by the Board.

The Board shall, as a common expense of the Council, also effect and maintain comprehensive general liability insurance at all times covering all owners of the Homes with an insurance company authorized to do business in Hawaii with minimum limits of not less than $1,000,000 per injury and $5,000,000 per occurrence, and $1,000,000 for property damage, unless the Board approves the purchase of such insurance with lesser limits, without prejudice to the right of any owner of any Home to maintain additional liability insurance for his or her own Home.

The Board may procure insurance against such additional risks as the Board may deem reasonable and prudent under the circumstances for the protection of the Council and the Members. In the event that the full amount or kind of insurance required or permitted by this Paragraph J is not obtainable from an authorized insurer, the Board may procure surplus lines insurance from an unauthorized insurer with an A.M. Best Rating of "A" or greater (or equivalent) in accordance with Chapter 431, Article 8, Part III, Hawaii Revised Statutes, as the same may be amended from time to time.

K. CONDEMNATION. If the Project or any part thereof shall be taken or condemned by any authority having the power of eminent domain, or shall be sold to such authority under threat of condemnation, all compensation and damages for or on account of the real property and improvements so taken or condemned shall be payable to the Board as trustee for all owners of the Homes and their mortgagees according to the loss or damage to their respective Homes and appurtenant improvements and common interests, and shall be used promptly by the Council, to the extent necessary, for restoring or replacing such real property and improvements according to plans therefor first approved by the Board and the affected owner(s), in the case of the taking or condemnation of one or more of the Homes, any limited common elements appurtenant thereto, or any portion thereof, unless such restoration or replacement is impractical in the circumstances. No such approval shall be unreasonably withheld.

L. UNINSURED CASUALTY. If any common element is substantially damaged or destroyed by any casualty not herein required to be insured against, the affected common element shall be rebuilt, repaired, and/or restored unless the owners of two-thirds (2/3) of the Homes vote or consent in writing to refrain from so doing. Any such rebuilding, repair, and/or restoration of the common elements shall be completed diligently by the Council at its common expense, and the owners of the Homes shall be solely responsible for any such restoration, rebuilding, and/or repair of their respective Homes and appurtenant limited common elements so damaged or destroyed, according to the original plans and elevations thereof or such other plans first approved by the Board, which approval shall not be unreasonably withheld. Unless the restoration, rebuilding, and/or repair of such damaged or destroyed Homes and/or appurtenant limited common elements is undertaken within a reasonable time after such casualty, the owner thereof shall at his or her own expense remove all remains of said Home and appurtenant limited common elements and restore the land which constituted a limited common element appurtenant to such Home to good, orderly condition, and even grade.

M. ALTERATION OF PROJECT. No work shall be done to the Homes, the limited common elements appurtenant thereto, or any other part of the Project, by any owner of a Home or any other person, which could jeopardize the soundness or safety of the Project, reduce the value thereof, impair any easement or hereditament, detract from the appearance of the Project, interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of the Project, or directly affect any nonconsenting owner in any unreasonable manner, all as determined by the Board, without in every such case first obtaining the consent of the owners of all other Homes. Except as otherwise provided by law, all other additions to or alterations of any Home or its appurtenant limited common elements by the owner of such Home shall be permitted without restriction, provided that the owner or other person making such additions or alterations shall comply strictly with all applicable laws, ordinances,

and regulations of any governmental entity, and shall also obtain all necessary permits, at such person's sole expense.

N. MAINTENANCE FUND. The Board shall establish and maintain a Maintenance Fund by assessment of the owner of each Home in monthly installments of such reasonable amount as the Board shall annually estimate as adequate to cover the expense of providing for common utilities (if any), insurance, maintenance, and repair and replacement of the common elements, as well as all other costs of administering the Project and the Council, including but not limited to the cost of capital improvements and alterations to the Project, which amounts shall be conclusively deemed to constitute a common expense of the Council. Such assessments may include reserves for contingencies and may from time to time be increased or reduced at the discretion of the Board. Additionally, the Board shall be empowered to levy special assessments against the owners of the Homes if necessary to accumulate or maintain a sufficient sum in said fund. The proportionate interest of each owner of a Home in said fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with each Home, even though not expressly mentioned or described in the conveyance thereof. If the Horizontal Property Regime is terminated or waived, all amounts remaining in said fund after the full payment of all common expenses of the Council shall be distributed to the owners of the Homes at that time, in their respective shares.

O. AMENDMENT OF DECLARATION. Except as otherwise provided herein or in said Act 180, 1961 Session Laws of Hawaii, this Declaration may hereafter be amended by the affirmative vote or written consent of the owners of seventy-five percent (75%) of the Homes and shall be effective only upon the recording in the Bureau of Conveyances of an instrument setting forth such amendment and vote or consent, duly executed by the proper officers of the Council, as set forth in the By-Laws; provided that the Board of Directors of the Council may, without the consent of any owner or lien holder, amend this Declaration and the plans annexed hereto in order to effect any changes or amendments required by law, any title insurance company, or any institutional mortgagee, or as may be requested or required by an administrative agency of any state, territory, possession, or foreign country or other foreign jurisdiction or by the Hawaii Kai Marina Community Association ("HKMCA") as a condition precedent to marketing the additional Homes, if any, constructed pursuant to Paragraph 1.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the undersigned have executed these presents as of this _____ day of _____, 1994.

_____
RAYMOND J. SZCZYBEK

_____
ALICE H. SZCZYBEK

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

On this _____ day of _____, 199_, before me appeared RAYMOND J. SZCZYBEK, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

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

On this _____ day of _____, 199_, before me appeared ALICE H. SZCZYBEK, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

ALLEN LOUIS ZECHA

By_____
ALDEN D. ZECHA
His Attorney-in-Fact

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

On this _____ day of _____, 199_, before me appeared ALDEN D. ZECHA as Attorney-in-Fact for ALLEN LOUIS ZECHA under Specific Power of Attorney dated June 24, 1994 recorded in the Bureau of Conveyances as Document No. 94-_____, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

_____
ELLEN M. HOGAN

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

On this _____ day of _____, 199_, before me appeared ELLEN M. HOGAN, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

_____
RANDAL E. BAHNER

_____
JENNIFER J. BAHNER

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

On this _____ day of _____, 199_, before me appeared RANDAL E. BAHNER, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

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

On this _____ day of _____, 199_, before me appeared JENNIFER J. BAHNER, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

_____
ANTHONY ESBER

_____
LORI ESBER

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

On this _____ day of _____, 199_, before me appeared ANTHONY ESBER, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

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

On this _____ *day of* _____, 199_, before me appeared LORI ESBER, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

ROLAND J. FUCHS

By_____
GAYNELL M. FUCHS
His Attorney-in-Fact

_____
GAYNELL M. FUCHS

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

On this _____ day of _____, 199_, before me appeared GAYNELL M. FUCHS, as Attorney-in-Fact for ROLAND J. FUCHS under Power of Attorney dated March 31, 1966 recorded in the Bureau of Conveyances in Book 13367 at Page 592, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

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

On this _____ day of _____, 199_, before me appeared GAYNELL M. FUCHS, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

EXHIBIT "A"

ALL of that certain parcel of land situate at Maunalua, Honolulu, City and County of Honolulu, State of Hawaii, being part of R.P. 4474, L.C. Aw. 7718, Apana 80 to Victoria Kamamalu, described as follows:

LOT 5, area 25,929 square feet, more or less, as shown on the map filed in the Bureau of Conveyances of the State of Hawaii as File Plan No. 800, and also known as Lot 5 of Kala-Kai Marina Unit 1-CR.

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Title to all minerals and metallic mines reserved to the State of Hawaii.

2. A 15 foot building setback line as shown on File Plan 800.

3. DECLARATION OF PROTECTIVE PROVISIONS
   Dated: July 5, 1962
   Book: 4313
   Page: 205

   AMENDMENT thereof by instrument:
   Dated: September 21, 1967
   Book: 6040
   Page: 22

4. Covenants, conditions, restrictions, reservations, agreements, obligations, provisions, easements and bylaws set forth in the Declaration of Horizontal Property Regime dated July 24, 1962, recorded in the Bureau of Conveyances of the State of Hawaii in Book 4327, Page 56.

5. GRANT OF EASEMENT
   Dated: January 21, 1963
   Book: 4451
   Page: 154
   In favor of: HAWAIIAN ELECTRIC COMPANY, INC.

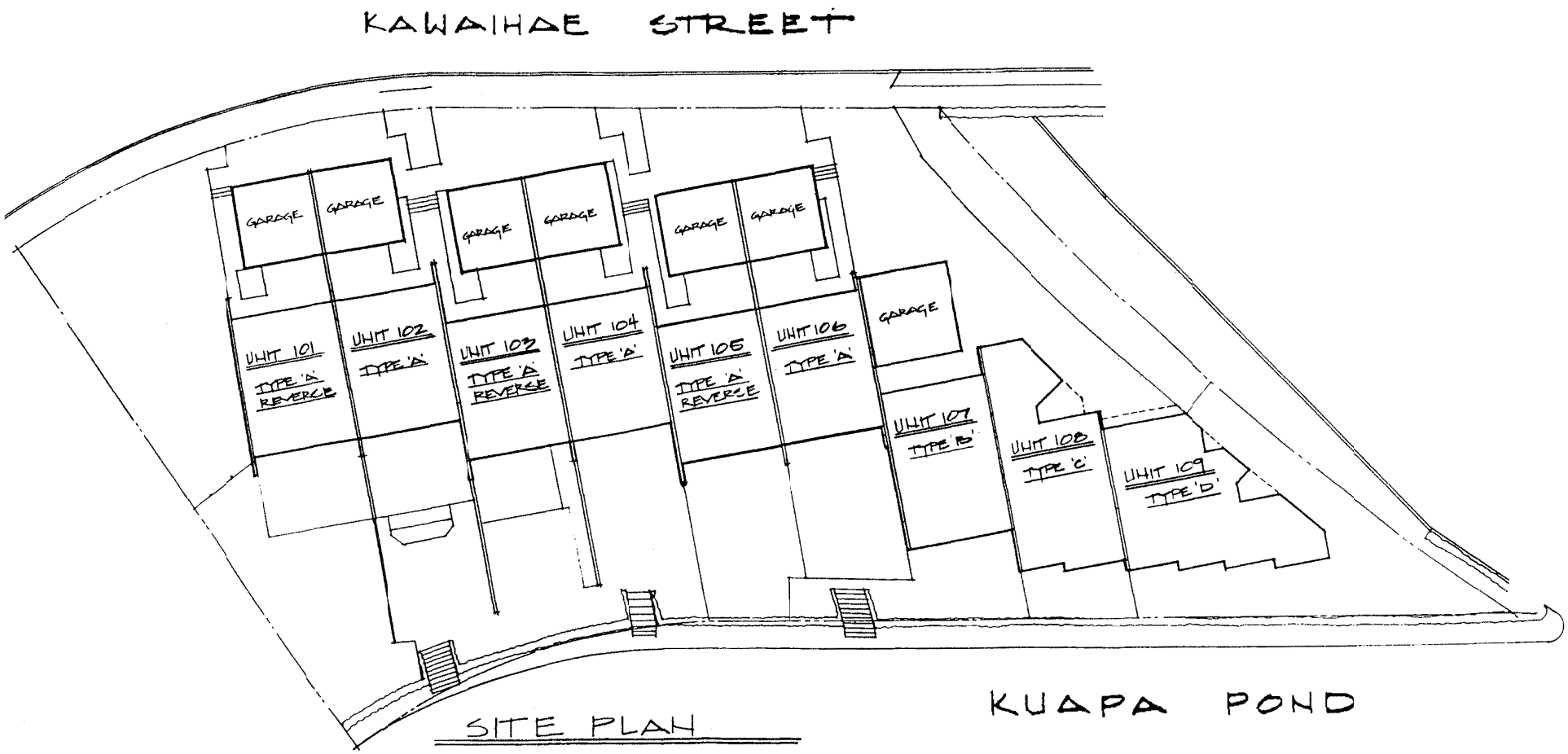
8. Any adverse claim based upon the assertion that:

   (a) Said land or any part thereof is now or at any time has been below the highest of the high water marks of the Kuapa Pond, in the event that the boundary of said property has been artificially raised or is now or at any time has been below the high water mark, if Kuapa Pond is in its natural state.

   (b) Some portion of said land has been created by artificial means or has accreted to such portion so created.

   (c) Some portion of said land has been brought within the boundaries thereof by an avulsive movement of the Kuapa Pond, or has been formed by accretion to any such portion.

7. Liens and charges for upkeep and maintenance of the Hawaii Kai Marina as provided in various Declarations of Covenants, Conditions and Restrictions of record, including but not limited to Marina Deed, Assignment of Leases, Protective Provisions and Restrictive Covenants dated May 9, 1991, recorded as aforesaid as Document No. 91-091202, as amended by instrument dated October 22, 1991, recorded as aforesaid as Document No. 92-022678.



SITE PLAN

TMK: 1-3-9-034-001

EXHIBIT B
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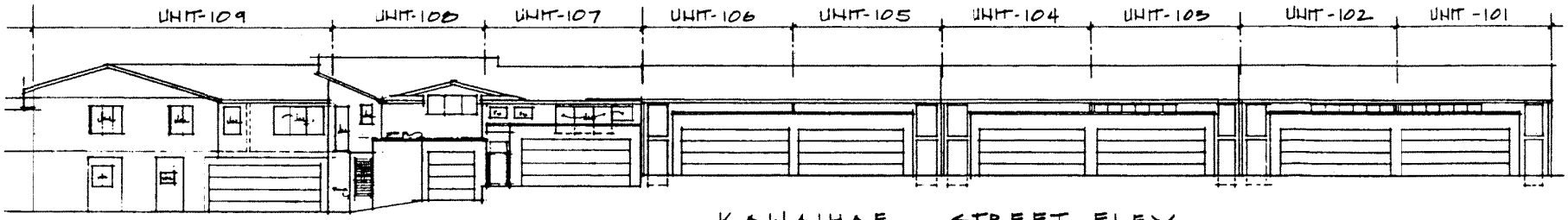
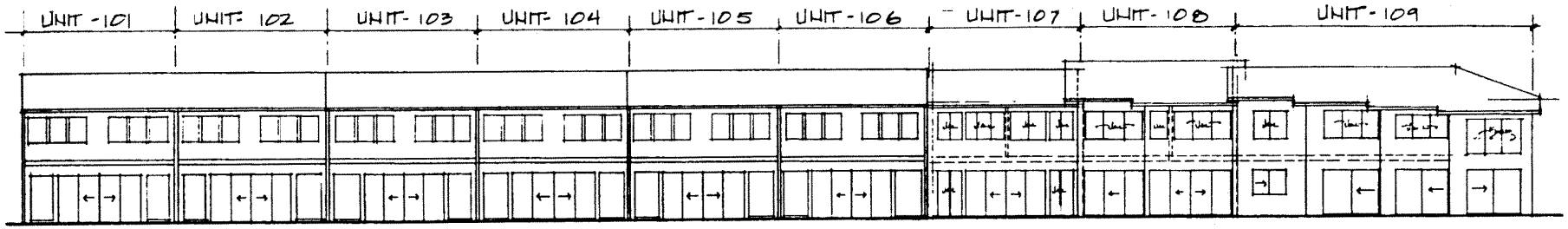


KAWAIHAE STREET ELEV.

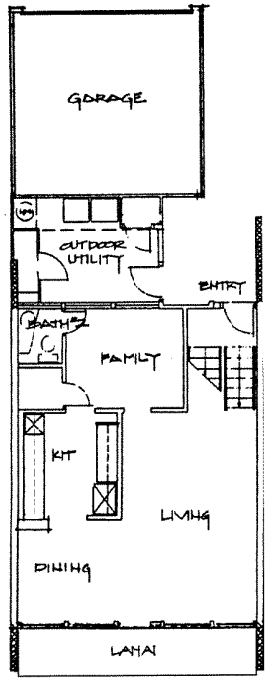


KAUPA POND ELEV.

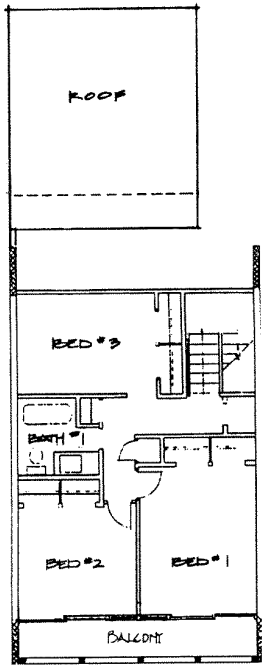
EXHIBIT B
Page 2 of 3

TYPE "A"

1st Floor	675
2nd Floor	675
Total Living	1,350
Garage	315
Outdoor Utility	137
Lanai	106
Balcony	80



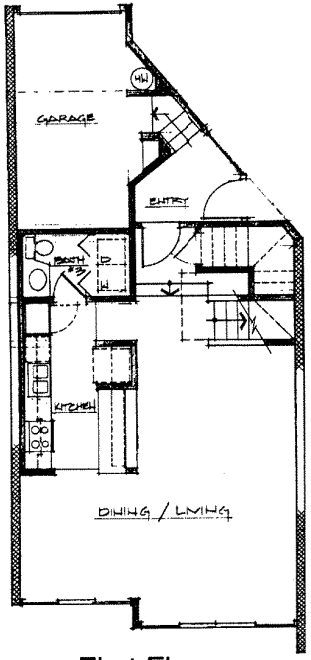
First Floor



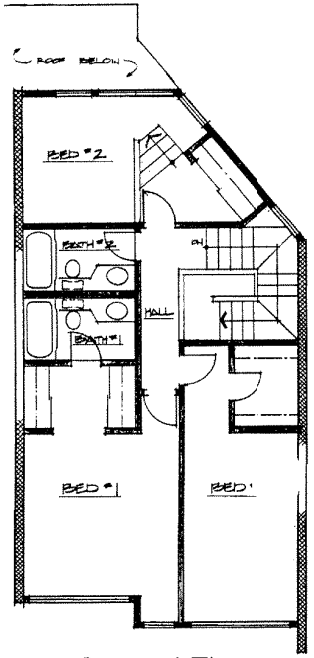
Second Floor

TYPE "C"

1st Floor	685
2nd Floor	864
Total Living	1,549
Garage	186
Covered Entry	55



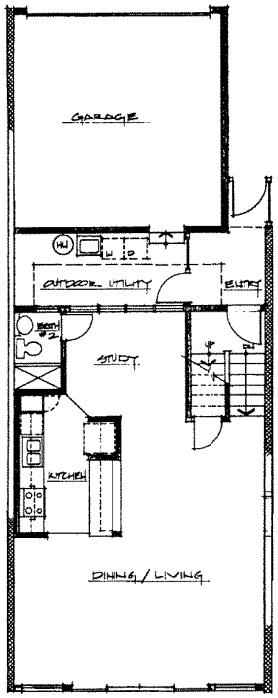
First Floor



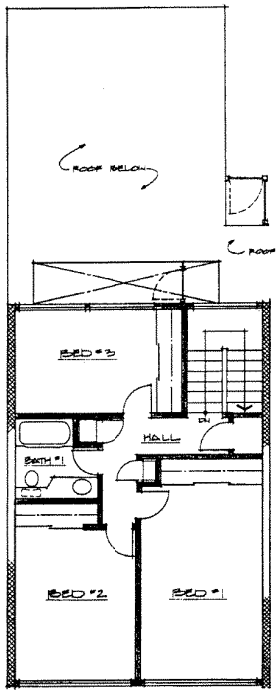
Second Floor

TYPE "B"

1st Floor	737
2nd Floor	737
Total Living	1,474
Garage	351
Outdoor Utility	97
Covered Entry	46



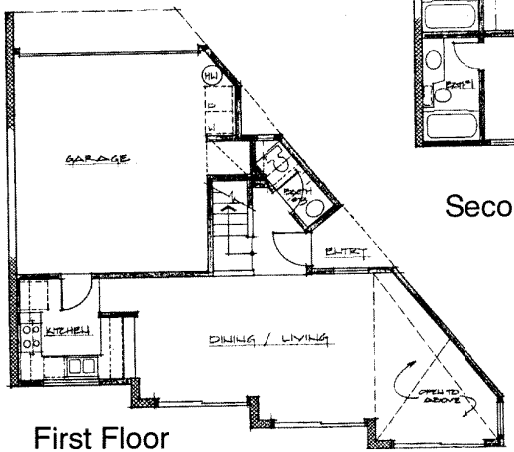
First Floor



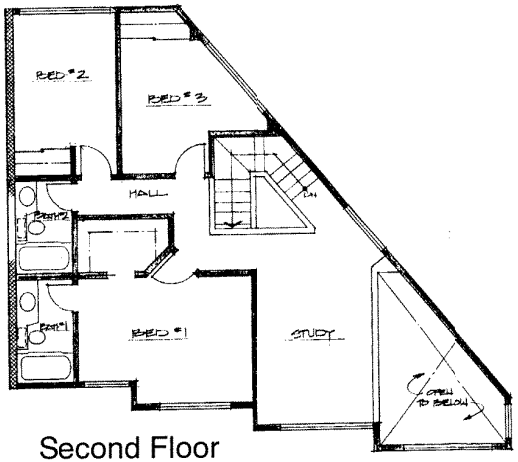
Second Floor

TYPE "D"

1st Floor	563
2nd Floor	913
Total Living	1,476
Garage	351
Covered Entry	25



First Floor



Second Floor

EXHIBIT B

LAND COURT SYSTEM	REGULAR SYSTEM

Return by: Mail [ ] Pickup [X] To:

PHILIP L. LAHNE, ESQ.
NEELEY & ANDERSON
733 BISHOP STREET, STE. 2301
Honolulu, Hawaii 96813
Telephone: (808) 536-8177

BY-LAWS
OF THE HALE MAKANI KAI COUNCIL OF CO-OWNERS

941026

EXHIBIT C

BY-LAWS OF THE HALE MAKANI KAI
COUNCIL OF CO-OWNERS

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BY-LAWS OF THE
HALE MAKANI KAI
COUNCIL OF CO-OWNERS

ARTICLE I - MEMBERSHIP

Section 1. Qualification. Each person, corporation, partnership, or other legal entity that becomes the owner, co-owner, or vendee under an agreement of sale of any of the Homes, upon acquiring such interest in a Home, shall immediately become a Member of the HALE MAKANI KAI Council of Co-Owners (hereinafter called the "Council") and shall remain a Member thereof until such time as he or she no longer holds such interest, at which time his or her membership in the Council shall automatically cease. The holder of a general or special power of attorney from such an owner, co-owner, or vendee of record shall be deemed to be such owner, co-owner, or vendee for the purposes of these By-Laws and the Declaration. The terms "Home" and "Member" shall have the same meaning as the terms "Apartment" and "Co-Owner", respectively, in Act 180, 1961 Session Laws of Hawaii.

Section 2. Place of Council Meetings. All Council meetings shall be held at the Project or elsewhere within the State as determined by the Board.

Section 3. Annual Council Meetings. Annual Council meetings shall be held upon the call of the President during the first three calendar months following the end of t he immediately preceding fiscal year, on a date selected by the Board of Directors.

Section 4. Special Council Meetings. Special Council meetings may be held at any time upon the call of the President or any two directors, provided that no director shall call more than two (2) Council meetings within any consecutive thirty (30) day period in th e event of objection by any other director thereto. No business shall be conducted at any special Council meeting except as is expressly set forth in the notice of such meeting.

Section 5. Notice of Council Meetings. The Secretary shall give written or printed notice of each annual and special Council meeting to each Member according to th e Council's record of ownership, at least fourteen (14) days prior to the date of such meeting, stating whether it is an annual or special Council meeting, the authority for the call thereof, the date, time, and place of such meeting, the items on the agenda for such meeting, and a standard proxy form authorized by the Board in any of the following ways: (a) by delivering it to him or her personally, (b) by leaving it at his or her residence or place of business, (c) by mailing it, postage prepaid, addressed to him or her at his or her designated mailing address as shown in the Council's record of ownership, or (d) by transmitting it by telecopier, telegraph, electronic mail, or other means reasonably calculated to reach the Member. If notice is given pursuant to the provisions of this Section 5, the failure of any Member to receive actual notice of any Council meeting shall in no way invalidate such meeting or any of the proceedings thereat. The presence of any Member in person or by proxy at any Council meeting shall constitute a waiver of any required notice to such Member.

Section 6. Quorum. The presence at any Council meeting of a majority of the common interest, in person or by proxy, shall constitute a quorum, and all acts receiving the affirmative vote of a majority in common interest of the Members present and voting at such

meeting, in person or by proxy, shall be the acts of the Council except as otherwise provided herein.

Section 7. Voting. The owner(s) of each Home is/are entitled to a total of o ne (1) vote. Votes may be cast at any Council meeting in person or by proxy by the owners of the Homes, as shown in the Council's records. The vendee of a Home pursuant to an agreement of sale recorded in the Bureau of Conveyances shall have the right to cast the v ote assigned to the owner(s) such Home, except to the extent that such vote is retained b y the vendor of such Home in such agreement of sale. A personal representative, administrator, guardian, or trustee may vote in person or by proxy at any Council meeting, the vote for any Home owned or controlled by him or her in such capacity, provided that he or she shall first present evidence satisfactory to the Secretary that he or she owns or controls that Home in such capacity. The vote for any Home owned of record by two or more persons and/or entities may be exercised by any one of them present in person or by proxy at any Council meeting in the absence of protest or conflicting proxy by any of the other record owners of such Home, and in case of protest or conflicting proxy, each co-owner of a Home shall be entitled to only that share of the vote assigned to that Home as is proportionate to his or her share of ownership in such Home.

Section 8. Proxies and Pledges. The authority given by a Member to another person to represent him or her at Council meetings shall be in writing and filed with the Secretary or the Project's managing agent prior to the meeting for which it is given. It shall state the name of the Council, the date of the meeting, the printed name and signature of the Member giving the proxy, the Home(s) for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date the proxy is given. Such proxy shall be valid for the Council meeting for which it is given and its adjournments only, may designate any person or entity as proxy, and may be limited as the Member giving such proxy desires and indicates, provided that no proxy shall be irrevocable unless coupled with a financial interest in the Home. Unless otherwise limited by their terms, proxies may be cast by their holders upon any or all matters coming before the meeting to which they pertain, without the necessity of informing the Member providing such proxy of the nature of the matter(s) voted upon. Except as otherwise provided herein, proxies may be revoked by written instrument filed with the Secretary notwithstanding anything contained in the proxy to the contrary, and shall be deemed to have been revoked by the death or mental incapacity of t he Member providing such proxy. Voting rights transferred or pledged by mortgage, deed of trust, agreement of sale, or other security instrument, a true copy of which is filed with the Board of Directors, shall be exercised only by the person or entity designated in such instrument until the written release or other termination thereof is filed with the Board of Directors in like manner.

No resident manager or other employee of the Council or managing agent employed by the Council, if any, shall solicit, for use by such manager or managing agent, any proxies from any Member, nor shall he or she cast any proxy vote at any Council meeting.

Section 9. Adjournment. Any Council meeting may be adjourned from time to time to such date, time, and place as may be determined by the affirmative vote of a majority of the Members present, in person or by proxy, regardless of whether or not there is a quorum, and no notice of such adjournment shall be required to be given. Notice of the date,

time, and place of such adjourned meeting shall be provided to the absent Member(s) in the manner set forth in Section 5 of this Article I. At any such adjourned meeting at which a quorum is present, any business which could have been transacted at the Council meeting as originally called may be transacted.

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

a. Proof of notice of meeting.
b. Approval of minutes of preceding annual Council meeting.
c. Report of officers, if any.
d. Report of committees, if any.
e. Unfinished business (when applicable).
f. New business.
g. Adjournment.

Section 11. Rules of Order. All Council and Board meetings shall be conducted in accordance with the most current edition of *Robert's Rules of Order, Newly Revised.*

ARTICLE II - BOARD OF DIRECTORS

Section 1. Number and Qualifications. The affairs of the Council shall be governed by a Board consisting of one (1) director from each of the Homes. Each director shall be an owner, co-owner, vendee under an agreement of sale, or an officer of any corporate owner of a Home. There shall not be more than one director from any one Home, provided, however, that in the event that the appointed director from any Home is unable to attend any meeting of the Board or is temporarily unable to serve, any other owner of that Home may serve as an alternate director representing that Home in the absence of protest from any other owner of the Home. The partners in a general partnership and the general partners in a limited partnership shall be deemed to be the owners of a Home for this purpose. No resident manager or other employee of the Council or employee of the managing agent shall serve on the Board.

Section 2. Powers. The Board shall have all of the powers necessary for the administration of the affairs of the Council and may do all such acts and things therefor as are not by law, the Declaration, or these By-Laws directed to be exercised or done only by the Members.

Section 3. Election of Directors; Term of Office. If a Home is owned by a single person, then such person shall automatically be deemed to be the director representing that Home. The director who represents any Home owned by other than a single person shall be appointed, and may be removed any time, by the owners of that Home. The initial appointment of directors shall occur prior to the first annual meeting. Directors shall hold office for a period of three (3) years and until the adjournment of the third annual Council meeting following their appointment, and may be reappointed by the owners of such Home as many times as they desire.

Section 4. Vacancies. Vacancies on the Board shall be filled in the same manner as provided for the appointment of directors in Section 3 of this Article II, and each director so appointed shall hold office for the remaining balance of his or her predecessor's term. Death, incapacity, or resignation of any director, or his or her ceasing to be qualified under the provisions of Section 1 of this Article II to serve as a director, shall cause his or her seat to become vacant.

Section 5. Organizational Board Meeting. An organizational Board meeting shall be held immediately following each annual Council meeting. Notice of the annual Council meeting shall be deemed to constitute notice of the organizational Board meeting and no further notice of the organizational Board meeting shall be required. At such meeting the officers of the Council for the ensuing year shall be elected by the concurring vote of a majority of directors in attendance.

Section 6. Regular Board Meetings. Regular Board meetings may be held at such time and place as shall be determined from time to time by the concurring vote of a majority of the directors. At least one (1) regular Board meeting shall be held each year.

Section 7. Special Meetings. Special Board meetings may be called by the President or any two directors on at least three (3) days' notice to the other directors, given personally or by telephone, telegraph, telecopier, electronic mail, leaving a copy of the notice at the director's residence or place of business, or any other method reasonably calculated to reach the director, which notice shall state the date, time, place, and purpose of such meeting, provided that no director shall join in the call of more than two (2) special Board meetings within any consecutive thirty (30) day period in the event of objection by any other director thereto.

Section 8. Waiver of Notice. A director may at any time waive notice of any Board meeting in writing, and such waiver shall be deemed equivalent to the receipt of such notice. Attendance by a director at any Board meeting shall be a waiver of notice to him or her of such meeting.

Section 9. Quorum of Board; No Attendance by Proxy. At all Board meetings the presence of two-thirds (2/3) of the directors shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the directors in attendance at a meeting at which a quorum is present shall be necessary for any act of the Board. In the absence of a quorum, any such meeting may be adjourned to such time, date, and place as shall be approved by the directors present, and no further notice thereof shall be required to be given. Any business which might have been transacted at the Board meeting as originally called may be transacted at any such adjourned meeting at which a quorum is present. No director shall give any other person a proxy to attend or vote at any Board meeting on behalf of such director nor shall any director cast any proxy vote at any Board meeting.

Section 10. Fidelity Bonds. Fidelity bonds in such amounts as the Board deems reasonable and prudent may be obtained covering all officers and employees of the Council handling or responsible for Council funds. The premiums for such bonds shall constitute a common expense.

Section 11. Director and Officer Conflicts of Interest. (a) Voting at Meetings. No director shall vote on any issue as to which such director has a conflict of interest. Each director shall disclose the nature of any conflict of interest prior to the vote on any such matter at a Board meeting, and the minutes of the meeting shall record the fact that such a disclosure was made. As to any issue concerning which a director has a conflict of interest, the vote of a majority of the disinterested directors shall be deemed to be the vote of the Board for all purposes. In the event that the number of directors who do not have a conflict of interest with respect to a given issue is less than a quorum, then a quorum shall consist of such disinterested directors for purposes of voting on that issue only.

(b) Effect. No contract or other transaction between the Council and any other person, firm, corporation, association or other organization, and no act of the Council, shall in any way be affected or invalidated by the fact that any of the directors or officers of the Council are parties to such contract, transaction or act or are pecuniarily or otherwise interested in the same or are directors or officers or members of any such other firm, corporation, association or other organization, provided that the interest of such director shall be disclosed and said transaction is authorized or approved by vote or consent sufficient for that purpose as provided hereinabove without counting the votes or consents of such interested officers or directors, and the contract or transaction is fair and reasonable to the Council.

(c) Liability. Neither any director nor officer of the Council, being so interested in any such contract, transaction, or act of the Council which shall be approved by the Board of Directors as aforesaid, nor any such other person, firm, corporation, association or other organization in which such director or officer may be a director, officer or member, shall be liable or accountable to the Council, or to any member thereof, solely by reason of being an interested person, for any loss incurred by the Council pursuant to or by reason of such contract, transaction or act, or for any gain received by any such other party pursuant thereto or by reason thereof.

(d) Scope of Section. For the purposes of this Section, "conflict of interest" shall mean that a director has a direct personal or pecuniary interest not common to other members of the Council, provided that a director shall not be deemed to have a conflict of interest solely on account of the fact that the director's Apartment is or may be affected by the matter to be voted upon. A director who is a plaintiff in any proceeding against the Council or is a defendant in any proceeding brought against such director by the Council shall be conclusively deemed to have a conflict of interest with regard to such proceeding.

Section 12. Directors' Compensation. The directors shall serve without compensation for serving as such, provided that nothing herein shall be deemed to prohibit the reimbursement of directors for expenses incurred by them for the benefit of the Council or from receiving compensation for services provided to the Council in any capacity other than a director.

Section 13. Attendance and Participation by Members. (a) Members who are not directors may attend all meetings of the Board, except executive sessions, and may participate in any deliberation or discussion, other than executive sessions, unless a majority

of a quorum of the Board votes otherwise, subject to such reasonable limitations as the Board may adopt.

(b) The Board may, by a vote of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss personnel matters or litigation in which the Council is or may become involved or other matters which the Board deems confidential. The general nature of any and all business to be considered in executive session shall first be announced in open session.

(c) Any action which could properly be taken by the Board of Directors at a meeting may be taken by the Board of Directors by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting may hear each other at the same time

Section 14. Minutes. Minutes of meetings of the Board shall include the recorded vote of each Board member on all motions except motions voted on in executive session.

ARTICLE III - OFFICERS

Section 1. Designation. The principal officers of the Council shall be a President, a Secretary, and a Treasurer, each of whom shall be a director, and shall be appointed by the Board. The Board may elect one or more Vice Presidents and such other officer(s) as in its judgment may be necessary. No employee of the managing agent employed by the Council, if any, shall act as an officer of the Council.

Section 2. Election and Term. The officers of the Council shall be appointed annually by the Board at its organizational Board meeting.

Section 3. President. The President shall be the chief executive officer of the Council and shall preside at all Council and Board meetings. Subject to the control of the Board, the President shall exercise general supervision and direction over the management and conduct of the business and affairs of the Council. The President shall also have such other powers and duties as may be provided by these By-Laws or assigned to him or her from time to time by the Board.

Section 4. Vice-President. The Vice-President, if any, or if more than one shall have been appointed, the Vice-Presidents in order of priority of appointment, shall assume and perform the duties of the President whenever the office of the President is vacant. Each Vice-President shall have such other powers and duties as may be given to that person by law or in these By-Laws and as may be assigned to that person from time to time by the Board of Directors or by the President.

Section 5. Secretary. The Secretary shall keep the minutes of all Council and Board meetings, shall give all notices of each such meeting as provided by these By-Laws, shall maintain and keep an accurate and current list of Council Members containing each Member's current name and address, including the current names and addresses of vendees under agreements of sale. The Secretary shall also have charge of such books, documents,

and records of the Council as the Board may direct, shall have such other powers and duties as may be provided by these By-Laws or assigned to him or her from time to time by the Board, and shall perform all of the duties incident to the office of Secretary. The Secretary shall assume and perform the duties of the President whenever the office of the President is vacant, if no Vice President has been elected.

Section 6. Treasurer. The Treasurer shall maintain and keep the financial records and books of account of the Council, shall prepare reports thereof not less frequently than annually, and shall be responsible for the proper deposit and custody in the name of the Council of all of its funds and securities.

Section 7. Compensation of Officers. No officer shall receive any compensation from the Council for acting as such but may at the discretion of the Board be reimbursed for any expenses, including travelling and living expenses, that are reasonably incurred in the conduct of the Council's affairs.

ARTICLE IV - ADMINISTRATION

Section 1. Management. The Board shall have all powers and duties which are necessary or appropriate for the administration of the affairs of the Council, including but not limited to the operation of the Project, and may do all such acts and things except as by law, the Declaration, or these By-Laws may not be delegated to the Board of Directors by the Members.

The powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

(a) Enforcement of the provisions of the Declaration, these By-Laws, and the House Rules, if any;

(b) Payment of all taxes and assessments which are or could become a lien on the Project, the common elements, or any portion thereof. Where one or more Members are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of its discharge, along with any and all costs incurred by the Council by reason thereof;

(c) Delegation of such of its powers as it deems necessary or appropriate to committees, agents, officers, representatives, and/or employees;

(d) Contracting for such materials and/or services as it deems necessary or appropriate;

(e) Contracting for fire, casualty, liability, and other insurance on behalf of the Council, pursuant to the provisions of Paragraph J of the Declaration;

(f) Entering into or upon any Home at its reasonable discretion, from time to time, by and through its employees, agents, designees, and/or the managing agent, if any, and/or any other person designated by the managing agent, if any, and without liability to any Member for trespass, damage, or otherwise, to protect the common elements or the person

or property of any Member, occupant, or other person, if for any reason a Member fails or refuses to maintain and repair such Home within a reasonable time under the circumstances after written notice of the necessity of such maintenance or repair delivered by the Board to such Member. Such written notice shall not be necessary in the event of emergency or other such circumstances as make it reasonably necessary to enter as aforesaid, without such notice. In any such event, the Board shall be empowered to levy a special assessment against such Member for the cost of such maintenance or repair;

(g) Determination of the sum required for the administration of the affairs of the Council, including, without limitation, the operation and maintenance of the Project;

(h) Collection of assessments from the Members;

(i) Employment and dismissal of the personnel necessary for the maintenance, operation, repair, and replacement of the common elements;

(j) Opening bank accounts on behalf of the Council and designating the signatures required therefor;

(k) Purchasing, leasing, or otherwise acquiring Homes offered for sale or lease, in the name of the Board or its designee, corporate or otherwise, on behalf of all Members;

(l) Purchasing Homes at foreclosure or judicial sale, in the name of the Board or its designee, corporate or otherwise, on behalf of all Members;

(m) Selling, subleasing, mortgaging, voting the votes appurtenant to Homes acquired by the Board (other than for the election of members of the Board), or otherwise dealing with such Homes;

(n) Organizing corporations to act as designees of the Board in purchasing, leasing, or otherwise acquiring title to Homes;

(o) Keeping all of the common elements in a strictly clean and sanitary condition, and observing and performing all laws, ordinances, rules, and regulations now or hereafter made by any governmental authority for the time being applicable to the Project or the use thereof;

(p) Well and substantially repairing, maintaining, amending, and keeping all of the common elements, with all necessary reparations and amendments whatsoever in good order and condition, except as otherwise provided herein and in the Declaration, maintaining, amending, and keeping the land in a neat and attractive condition and all trees, shrubs, and grass thereon in good cultivation, replanting the same as may be necessary, and repairing and making good all defects in the common elements herein required to be repaired by the Council;

(q) Improving, altering, or making additions to the Project in accordance with these By-Laws;

(r) Observing any setback lines affecting the Project as may be shown on the Condominium Map, and not erecting, placing, or maintaining any building or structure whatsoever except approved fences or walls between any street boundary of the Project and the setback line along such boundary;

(s) Not making or suffering any strip or waste or unlawful, improper, or offensive use of the Project;

(t) Before commencing construction of any improvement, alteration, or addition to the Project costing in excess of $25,000.00, obtaining a bond or certificate in a penal sum not less than the cost of such construction and with a corporate surety authorized to do business in Hawaii, guaranteeing completion of such construction free and clear of all mechanics' and materialmen's liens; provided, however, that this requirement shall be null and void in the event that such bond or certificate cannot be obtained at a reasonable cost, as determined by the Board; provided further, that this requirement may be waived upon the condition that lien waivers in a form satisfactory to the Board shall be obtained from all contractors and suppliers providing labor, service, and materials for the improvement, alteration, or addition in question;

(u) Procuring legal, accounting, and other services necessary or proper for the administration of the Council, the operation of the Project, or the enforcement of these By-Laws, the Declaration, or the House Rules, if any;

(v) Paying all common expenses out of the Council's funds which the Board of Directors or the Council is required to pay pursuant to these By-Laws, the Declaration, or by law, or which in its opinion are necessary or proper for the administration of the affairs of the Council, the operation of the Project, or for the enforcement of the Project's Declaration, By-Laws, and/or House Rules, if any. If any such payment is required because of the action or negligence of any Member, the Board shall be empowered to specially assess such amount to that Member, which said assessment shall constitute a lien upon such Member's Home which may be foreclosed in the same manner as a mortgage of real property;

(w) Keeping or causing the managing agent, if any, to keep an accurate and current list of the Members of the Council, their current addresses, and the names and addresses of agreement of sale vendees, if any. The list shall be maintained at such place as is designated by the Board and a copy shall be available, at cost, to any Member who furnishes to the Board or the managing agent, if any, a duly executed and acknowledged affidavit stating: (1) that the list will be used by such Member personally and only for the purpose of soliciting votes or proxies or providing information to other Members with respect to Council matters, and (2) shall not be used by such Member or furnished to anyone else for any other purpose;

(x) Keeping, or causing the managing agent, if any, to keep, detailed, accurate records, in chronological order of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred, and also keeping, or causing the managing agent, if any, to keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses;

(y) Borrowing funds in such amounts and under such terms and conditions as the Board deems necessary or appropriate for the management or operation of the Project.

Section 2. Managing Agent. The Board may at its discretion employ a managing agent to manage and control the Project, subject at all times to the direction of the Board, and may delegate to the managing agent, if any, such of the administrative functions set forth in the preceding Section 1 of this Article IV as the Board deems appropriate, along with such other powers and duties and at such compensation as may be determined by the Board.

Section 3. Representation. The Board or managing agent, if any, subject to the direction of the Board, shall represent the Council and/or the Members, as applicable, in any action, suit, hearing, or other proceeding concerning the Council, the common elements, or any two or more of the Homes, 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 Member to appear individually or to sue.

Section 4. Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts, and other instruments shall be signed on behalf of the Council by such person or persons as shall be provided by general or special resolution of the Board or, in the absence of any such resolution applicable to such instrument, by any two officers of the Council.

Section 5. Audit. There shall be an annual audit and at least one annual unannounced verification of the Council's cash balance by a certified public accountant, provided that the Members of the Council may waive said audit and/or cash balance verification by the vote of a majority of all of the Members at a Council meeting. The Board shall make a copy of such annual audit, if any, available to each owner.

ARTICLE V - OBLIGATIONS OF MEMBERS

Section 1. Assessments. All Members shall pay to the Treasurer or managing agent, if any, a monthly assessment in the amount determined by the Board and assessed against each Home for the common expenses of the Project, in accordance with the Declaration and these By-Laws.

Section 2. Maintenance of Homes. Every Member and occupant shall at his or her own expense at all times well and substantially repair, maintain, amend, and keep his or her Home, including without limitation all internal installations therein such as water, electricity, gas, telephone, sewer, sanitation, lights, and all other fixtures and accessories belonging to such Home, with all necessary reparations and amendments whatsoever, in good order and condition, and shall be liable for all loss or damage whatsoever to the common elements, any of the other Homes, or any property contained within the common elements or any of the other Homes, caused by his or her failure to perform any such work diligently. In case of such failure after reasonable notice to perform any such work, the Council, its managing agent, if any, or any of the employees or representatives thereof may perform such work, and the Member shall promptly reimburse the Council for all expenses incurred by it thereby, which said expenses shall constitute a lien upon such Member's Home which may

be foreclosed in the same manner as a lien for unpaid common expenses. Each Member and occupant shall also reimburse the Council promptly on demand for all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishings, and equipment thereof caused by such Member or occupant or any person occupying a Home under either of them, which said expenses shall constitute a lien upon such Member's Home which may be foreclosed in the same manner as a lien for unpaid common expenses, and shall give prompt notice to the Board or the managing agent, if any, of any such loss, damage, or other defect in the Project when discovered. Neither the Council nor the Board shall be liable for any loss or damage to a Member's Home or personal property caused by such Member's failure to promptly report such loss, damage, or defect in the Project or occurring prior to such report being made, unless such loss or damage to the Member's Home or personal property is proximately caused by the Board's gross negligence or willful misconduct in the performance of its duties.

Section 3. Use of Project.

(a) All common elements shall be used only for their respective purposes as designed.

(b) All occupants shall avoid making noises or playing musical instruments, radios, televisions, or amplifiers in such manner as may disturb any other occupant.

(c) Dogs, cats, and other usual and customary animals may be kept in reasonable number by occupants in their respective Homes and upon the limited common elements appurtenant thereto, pursuant to such rules and regulations as the Board may adopt, provided that no such animals may be kept in violation of any laws, ordinances, rules, or regulations now or hereafter made by any governmental authority, and provided further, that such animals shall not be kept, bred, or used for any commercial purpose. Any such animal causing a nuisance or unreasonable disturbance to any occupant of the Project, as determined by the Board in its sole discretion, shall be promptly and permanently removed from the Project upon notice to do so by the Board or the managing agent, if any.

(d) Every Member and occupant shall at all times keep his or her Home in a strictly clean and sanitary condition and comply with all applicable laws, ordinances, rules, and regulations now or hereafter made by any governmental authority.

(e) No Member or occupant shall make or suffer any strip or waste or unlawful, improper, or offensive use of his or her Home or the Project, or alter or remove any of the Council's furniture, furnishings, or equipment from the common elements.

(f) No refuse, garbage, or trash of any kind shall be thrown, placed, or kept in the common elements except in appropriate containers to be provided and maintained by each Member or occupant for such purpose.

(g) No Member or occupant shall install any wiring for electrical or telephone installations, machines, air-conditioning units, or other equipment or appurtenances whatsoever on the exterior of any building of the Project or protruding through the walls, windows, or roof thereof, nor erect, place, or maintain any television or other antenna on any building of the Project which is visible from any point outside of his or her Home, except in accordance with Paragraph M of the Declaration.

(h) Except for limited common elements, no Member or occupant shall erect or place upon the common elements of the Project any building or structure, including fences and walls, make any additions or alterations to any common elements, place or maintain thereon any signs, posters, or bills whatsoever, or decorate or landscape any common element, except in accordance with Paragraph M of the Declaration.

(i) Nothing shall be allowed, done, or kept in any Home or common element which would overload or impair the floors, walls, or roofs thereof, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Council.

Section 4. House Rules. The Board may adopt, amend, and repeal rules and regulations ("House Rules") governing the operation and use of the Project and the common elements not inconsistent with any provision of law, the Declaration, or these By-Laws.

Section 5. Expenses of Enforcement and Defense. Every Member or occupant of a Home shall promptly reimburse the Council for all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Council in collecting any delinquent assessments against such Member's Home, foreclosing its lien therefor, enforcing any provisions of the Declaration, these By-Laws, or the House Rules, if any, against such Member or occupant, or defending against any claim or cause of action brought against the Council by such Member or occupant, which said costs and expenses shall constitute a lien upon such Member's Home which may be foreclosed in the same manner as a lien for unpaid common expenses.

Section 6. Record of Ownership. Every Member shall promptly cause the deed, assignment, or other conveyance to him or her of a Home or other evidence of his or her title thereto, to be filed in the Bureau of Conveyances, and shall also file such instrument with the Board or the managing agent, if any.

Section 7. Termination of Occupancy. The violation of any of the covenants, conditions, or restrictions contained in these By-Laws, the Declaration, any law applicable to the Project, or the House Rules by a tenant or occupant other than a Member, shall give the Board of Directors the right in addition to any other rights or remedies provided by law, these By-Laws, the Declaration, or the House Rules, but not the obligation, to initiate and prosecute

to conclusion a legal action to terminate any lease, rental agreement or other occupancy right of such tenant or occupant and/or to obtain a court order directing such tenant or occupant to immediately and permanently vacate such residence and to refrain from re-entering the Project and in such event, the Council shall have no liability to the Member for lost rentals or any other consequence of such termination or removal. All costs and expenses incurred by the Council in prosecuting such legal action, including attorneys' fees, shall be assessed against the owner of the Home in question and shall constitute a lien upon such Home which may be foreclosed by the Council through its Board of Directors in the same manner as unpaid common expense assessments.

Section 8. Default in Payment of Assessments. Each monthly assessment and each special assessment shall be separate, distinct and personal debts and obligations of the Member against whom the same are assessed. In the event of a default or defaults in payment of any such assessment or assessments, the Board of Directors shall have all remedies provided in Chapter 514A, Hawaii Revised Statutes, and in addition to any other remedies herein or by law provided, the Board of Directors may enforce each such obligation as follows:

(a) By suit or suits at law to enforce each such assessment obligation. Each such action shall be brought in the name of the Board or the Council and the Board or Council, as the case may be, shall be deemed to be acting on behalf of all the Members. Any judgment rendered in any such action shall include all costs and expenses incurred by the Council, including reasonable attorneys' fees. Upon full satisfaction of any such judgment, it shall be the duty of the Board to authorize such person or persons as the Board may designate from time to time by general or special resolution, acting in the name of the Board, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

(b) At any time after the occurrence of any such default, the Board may give a notice to the defaulting Member, with a copy to the Mortgagee of such Member, if such Mortgagee has furnished its name and address to the Board, which said notice shall state the date of the delinquency, the amount of the delinquency and make a demand for payment thereof or may file a claim of lien against the Home of such delinquent Member. Such claim of lien shall state (1) the name of the delinquent Member or reputed Member, (2) a description of the Home 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 By-Laws and the Declaration, and (5) that a lien is claimed against said described Home in an amount equal to the amount of the stated delinquency. Any such claims of lien shall be signed and acknowledged by any two or more members of the Board or such other person or persons as the Board may designate from time to time by general or special resolution and shall be dated as of the date of the execution by the last such person to execute said claim of lien. Each default shall constitute a separate basis for a claim of lien or a lien. In the event the foreclosure is under power of sale, the Board, or any person designated by it in writing, shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted. The certificate of sale shall be executed and acknowledged by any two members of the Board or by the person conducting the sale or such other person or persons as the Board may designate from time to time by general or special resolution.

(c) For the purposes of this Section, a certificate executed and acknowledged by any two members of the Board shall be conclusive upon the Board and the Members in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any Member shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his Home (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 as determined by the Board from time to time. In the event any claims of liens have been recorded and thereafter the Board shall receive payment in full of the amount claimed to be due and owing, then upon demand of the Member or his successor, and payment of a reasonable fee, as determined by the Board from time to time, the Board, acting by any two members or such other person or persons as the Board may designate from time to time by general or special resolution, shall execute and acknowledge (in the manner provided above) a release of lien, stating the date of the original claim of lien, the amount claimed, the date, and the document number of the claim of lien as recorded, the fact that the lien has been fully satisfied and that the particular lien is released and discharged, such release of lien to be delivered to the Member or his successor upon payment of the fee.

(d) If a Member shall fail to pay any common expense assessment or other assessment when due, such Member shall pay a late fee for each such default or defaults in such amount as shall be determined by the Board of Directors from time to time. Late fees shall be assessed on the fifteenth (15th) day of each month and an additional late fee, determined by the Board as aforementioned, shall be assessed on the fifteenth (15th) day of each subsequent month that any portion of the delinquent amount remains unpaid. All delinquent assessments shall bear interest at the maximum rate allowed by law from the date of such default until paid. Late fees and interest charged under this provision shall constitute a lien against the unit of the delinquent Member, which lien may be foreclosed upon in like manner as a lien for unpaid common expenses.

(e) Notwithstanding any provision to the contrary contained in these By-Laws, if a Member shall fail to pay an assessment when due, the Board of Directors may, in its discretion, upon ten (10) days written notice to the Member, declare due and owing the entire unpaid balance of such Member's projected common expense assessments for the fiscal year in which the default occurs. If the Board of Directors subsequently makes adjustments in the projected common expense assessments for the relevant fiscal year causing either an increase or decrease in the monthly installments owed by such Member, then the Member shall pay the deficiency or receive a credit for the adjusted amount of the installments within thirty (30) days after the date of the transmittal of notice by the Council to such Member of such increase or decrease.

(f) All late fees, interest, expenses, costs, and attorneys' fees assessed against a Member shall be promptly paid on demand to the Council by the Member. The Board of Directors shall be authorized to adopt a policy whereby payments received from the Members may be applied toward the indebtedness of such Members to the Council in such order as the Board of Directors may specify, subject to any notice requirements of the Condominium Property Act, as amended. In the absence of the adoption of such a policy, payments from Members shall be applied in the following order: (i) toward the payment of expenses, costs, and attorneys' fees assessed against the delinquent Member; (ii) toward the payment of late fees and interest assessed against the delinquent Member; and (ii) the balance remaining, if

any, toward the payment of common expense assessments. Such acceptance and application of payments shall not be construed as an "accord and satisfaction" or "compromise and settlement", or as a waiver of any rights the Council shall have against such Member for any and all outstanding amounts due and owing to the Council and the Board of Directors, at its sole discretion, may refuse acceptance of any payment which may be insufficient to satisfy all amounts due and owing to the Council.

Section 9. Collection from Tenant. If the Member shall at any time rent or lease the Member's Home and shall default for a period of thirty (30) days or more in the payment of the Member's proportional maintenance expense or any installment thereof, the Board may at its option, so long as such default shall continue, demand and receive from any renter or lessee (hereinafter in this paragraph referred to as "lessee") of the Member occupying the Home or from any person who collects such rent on behalf of the Member (hereinafter called the "Member's agent"), the rent due or becoming due from such lessee to the Member up to an amount sufficient to pay all sums due from the Member, including interest, if any, and any such payment of such rent to the Board by the lessee or Member's agent shall be sufficient discharge of such lessee and Member's agent, if any, as between such lessee and Member's agent, if any, and the Member to the extent of the amount so paid; but any such demand or acceptance of rent from any lessee or Member's agent shall not be deemed to be a consent to or approval of any lease by the Member or a release or discharge of any of the obligations of the Member hereunder or an acknowledgment of surrender of any rights or duties hereunder. In the event that the Board makes demand upon the lessee or Member's agent as aforesaid, neither the lessee nor the Member's agent, if any, shall 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, provided, however, that the Board may not exercise this right if a receiver has been appointed to take charge of the premises pending a mortgage foreclosure or if a mortgagee is in possession pending a mortgage foreclosure.

ARTICLE VI - MISCELLANEOUS

Section 1. Amendment. These By-Laws may be amended in any respect not inconsistent with the provisions of law or the Declaration by the vote or written consent of the owners of two-thirds (2/3) of the common interests, effective only upon the recording of an instrument in the Bureau of Conveyances setting forth such amendment, duly executed by the Members or by any two officers.

Section 2. Indemnification of Officers and Directors.

(a) Indemnification Generally. The Council shall indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Council) by reason of the fact that such person is or was a director or officer of the Council or of any division of the Council, or is or was serving at the request of the Council as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines, settlements, and other amounts actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a

manner such person reasonably believed to be in or not opposed to the best interests of the Council, and, with respect to any criminal action or proceedings, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Council or, with respect to any criminal action or proceeding, create a presumption that the person had reasonable cause to believe that such person's conduct was unlawful.

(b) Suits by or in the Right of the Council. The Council shall indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Council to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Council or of any division of the Council, or is or was serving at the request of the Council as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Council and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of such person's duty to the Council unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(c) Effect of Success in Defense. To the extent that a director or officer of the Council or of any division of the Council, or a person serving at the request of the Council as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Subsections (a) and (b), or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

(d) Authorization for Indemnification. Any indemnification under Subsections (a) and (b) of this Section (unless ordered by a court) shall be made by the Council only if authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Subsection (a) or (b). Such determination may be made:

(1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding; or

(2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion to the Council;

(3) if a quorum of disinterested directors so directs, by a majority of the Members; or

(4) the court in which such proceeding is or was pending upon application made by the Council or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney or other person is opposed by the Council.

(e) Expenses. Expenses incurred in defending any action, suit or proceeding may be paid by the Council in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in a particular case upon receipt of an undertaking by or on behalf of the director or officer to repay such amount unless it shall ultimately be determined that such person is entitled to be indemnified by the Council as authorized in this Section.

(f) Indemnification Not Exclusive. The indemnification provided by this Section shall not be deemed exclusive of any other rights to which those indemnified may be entitled and shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such person.

(g) Insurance. The Council shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or other agent of the Council or of any division of the Council, or is or was serving at the request of the Council as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Council would have the power to indemnify such person against such liability under the provisions of this Section. Any such insurance may be procured from any insurance company designated by the Board of Directors, including any insurance company in which the Council shall have any equity or other interest, through stock ownership or otherwise.

(h) Fiduciaries of Employee Benefit Plans. Indemnification, expense advancement or the purchase of insurance for the benefit of any fiduciary of any employee benefit plan or trust for the benefit of employees of the Council or another corporation in which the Council owns shares shall be made upon the authorization of the Board of Directors.

(i) Limitation of Liability. No person who serves as an officer or director of the Council without remuneration or expectation of remuneration shall be liable for damage, injury, or loss caused by or resulting from the person's performance of, or failure to perform, the duties of the position to which the person was elected or appointed, unless the person is finally adjudicated to have been guilty of gross negligence or willful misconduct or breach of fiduciary duty in the performance of, or failure to perform, such duties.

Section 3. Subordination. These By-Laws are subordinate and subject to all of the provisions of Act 180, 1961 Session Laws of Hawaii and the Declaration (including any amendments thereto), which shall control in that order in the event of conflict with these By-Laws. All of the terms herein (except where clearly repugnant to their context) shall have the same meaning as in Act 180, 1961 Session Laws of Hawaii or the Declaration.

Section 4. Interpretation. If 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.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the undersigned have executed these presents as of this _____ day of _____, 1994.

_____
RAYMOND J. SZCZYBEK

_____
ALICE H. SZCZYBEK

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

On this _____ day of _____, 199_, before me appeared RAYMOND J. SZCZYBEK, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

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

On this _____ day of _____, 199_, before me appeared ALICE H. SZCZYBEK, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

ALLEN LOUIS ZECHA

By_____
ALDEN D. ZECHA
His Attorney-in-Fact

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

On this _____ day of _____, 199_, before me appeared ALDEN D. ZECHA as Attorney-in-Fact for ALLEN LOUIS ZECHA under Specific Power of Attorney dated June 24, 1994 recorded in the Bureau of Conveyances as Document No. 94-_____, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

_____
ELLEN M. HOGAN

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

On this _____ day of _____, 199_, before me appeared ELLEN M. HOGAN, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

_____
RANDAL E. BAHNER

_____
JENNIFER J. BAHNER

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

On this _____ day of _____, 199_, before me appeared RANDAL E. BAHNER, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

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

On this _____ day of _____, 199_, before me appeared JENNIFER J. BAHNER, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

_____
ANTHONY ESBER

_____
LORI ESBER

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

On this _____ day of _____, 199_, before me appeared ANTHONY ESBER, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

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

On this _____ day of _____, 199_, before me appeared LORI ESBER, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

ROLAND J. FUCHS

By_____
GAYNELL M. FUCHS
His Attorney-in-Fact

_____
GAYNELL M. FUCHS

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

On this _____ day of _____, 199_, before me appeared GAYNELL M. FUCHS, as Attorney-in-Fact for ROLAND J. FUCHS under Power of Attorney dated March 31, 1966 recorded in the Bureau of Conveyances in Book 13367 at Page 592, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

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

On this _____ day of _____, 199_, before me appeared GAYNELL M. FUCHS, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii

My commission expires:_____

EXHIBIT D

Explanation of Number and Status of Buildings

Hale Makani Kai was originally developed in 1962 with six two-story attached dwellings, denominated in the original Master Lease and Declaration as Dwellings A, B, C, D, E, and F and in the Amended Declaration (see Exhibit B) as Home Nos. 101, 102, 103, 104, 105,and 106. The Developer intends to construct and sell up to three additional attached units as shown on the plans attached to the Amended Declaration as Homes Nos. 107, 108, and 109. No time of completion for the new buildings has been estimated.

EXHIBIT E

Boundaries of Apartments

Each Home shall consist of the spaces bounded by the exterior perimeter walls, floors, roofs, foundations, beams, and supports which are utilized for or serve only one dwelling, and the decorated or finished outer surfaces thereof, if any, and the undecorated and unfinished surfaces of the loadbearing party walls separating the various dwellings. Each such dwelling shall include all pipes, wires, conduits, and other utility and service lines contained wholly within such dwelling and which are utilized exclusively by and serve only such dwelling. Each dwelling shall also be deemed to include all doors, door frames, thresholds, transoms, windows, window frames, locks, hinges and other hardware installed therein or in connection therewith (regardless of whether the same are a portion of or installed in a load-bearing or nonload-bearing wall).

EXHIBIT F

Permitted Alterations to Apartments

No work shall be done to the Homes, the limited common elements appurtenant thereto, or any other part of the Project, by any owner of a Home or any other person, which could jeopardize the soundness or safety of the Project, reduce the value thereof, impair any easement or hereditament, detract from the appearance of the Project, interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of the Project, or directly affect any nonconsenting owner in any unreasonable manner, all as determined by the Board, without in every such case first obtaining the consent of the owners of all other Homes. Except as otherwise provided by law, all other additions to or alterations of any Home or its appurtenant limited common elements by the owner of such Home shall be permitted without restriction, provided that the owner or other person making such additions or alterations shall comply strictly with all applicable laws, ordinances, and regulations of any governmental entity, and shall also obtain all necessary permits, at such person's sole expense.

EXHIBIT G

Common Elements

The common elements shall consist of all portions of the Project except the Homes, and shall specifically include, but not be limited to:

(a) The land in fee simple.

(b) All sidewalks, pipes, wires, conduits, and other utility and service lines which are utilized for or serve two or more of the Homes.

(c) The foundations, columns, girders, beams, supports, loadbearing walls (including party walls), roofs, floors, and ceilings which are utilized for or serve two or more of the Homes.

(d) Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use.

EXHIBIT H

Limited Common Elements

Certain parts of the common elements are set aside and reserved for the exclusive use of one or more Homes and shall constitute limited common elements appurtenant thereto. Each Home shall have an exclusive easement for the use of the limited common elements appurtenant thereto, except as otherwise provided herein. The cost of maintenance, repair, upkeep, and replacement of each limited common element shall be assessed to the owner of the Home to which such limited common element is appurtenant, except that such costs shall be divided equally between the Homes to which a limited common element is appurtenant in the case of limited common elements appurtenant to more than one Home. The limited common elements are as follows:

(a) The private yard areas as shown in Exhibit "B" attached to the Declaration and the fences or walls separating or delineating such private yard areas as shown thereon shall be appurtenant to the respective Homes.

NOTE: Land areas referenced herein are not legally subdivided lots.

(b) One mailbox shall be appuratenant to and for the exclusive use of each Home.

(c) All pipes, wires, conduits, and other utility and service lines not contained within a Home but used by and servicing less than all of the Homes, shall be appurtenant to and for the exclusive use of the Homes using and serviced by such pipes, wires, conduits, and other utility and service lines.

(d) All portions of the Project which are rationally related to or used by less than all of the Homes, including but not limited to roofs, roof trusses and supports, floors, and ceilings, shall constitute limited common elements appurtenant to the Home or Homes to which such portions of the Project are rationally related.

EXHIBIT I

Encumbrances Against Title

1. Title to all minerals and metallic mines reserved to the State of Hawaii.

2. A 15 foot building setback line as shown on File Plan 800.

3. DECLARATION OF PROTECTIVE PROVISIONS
   Dated: July 5, 1962
   Book: 4313
   Page: 205

   AMENDMENT thereof by instrument:
   Dated: September 21, 1967
   Book: 6040
   Page: 22

4. Covenants, conditions, restrictions, reservations, agreements, obligations, provisions, easements and bylaws set forth in the Declaration of Horizontal Property Regime dated July 24, 1962, recorded in the Bureau of Conveyances of the State of Hawaii in Book 4327, Page 56.

5. GRANT OF EASEMENT
   Dated: January 21, 1963
   Book: 4451
   Page: 154
   In favor of: HAWAIIAN ELECTRIC COMPANY, INC.

8. Any adverse claim based upon the assertion that:

   (a) Said land or any part thereof is now or at any time has been below the highest of the high water marks of the Kuapa Pond, in the event that the boundary of said property has been artificially raised or is now or at any time has been below the high water mark, if Kuapa Pond is in its natural state.

   (b) Some portion of said land has been created by artificial means or has accreted to such portion so created.

   (c) Some portion of said land has been brought within the boundaries thereof by an avulsive movement of the Kuapa Pond, or has been formed by accretion to any such portion.

7. Liens and charges for upkeep and maintenance of the Hawaii Kai Marina as provided in various Declarations of Covenants, Conditions and Restrictions of record.

8. *DWELLING LEASES, for a term of fifty-six (56) years commencing August 1, 1962 as follows:

DWELLING LEASE NO. 12,375-A
Dated: November 19, 1962
Book: 4848
Page: 583

DWELLING LEASE NO. 12,375-B
Dated: November 19, 1962
Book: 4788
Page: 401

DWELLING LEASE NO. 12,375-C
Dated: November 19, 1962
Book: 4705
Page: 452

DWELLING LEASE NO. 12,375-D
Dated: November 19, 1962
Book: 6006
Page: 9

DWELLING LEASE NO. 12,375-E
Dated: November 19, 1962
Book: 4695
Page: 479

DWELLING LEASE NO. 12,375-F
Dated: November 19, 1962
Book: 4718
Page: 327

*To be cancelled or amended prior to the conveyance of any additional Homes.

9. For information regarding real property taxes as may be due and owing, reference is made to the City and County of Honolulu Director of Finanace.

EXHIBIT J

ESTIMATE OF INITIAL MAINTENANCE FEES
AND
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:*

Apartment	Monthly Fee x 12 months =	Yearly Total
All	$15.00	$180.00

*All major portions of the Project are apartments or limited common elements for which the owners are responsible. Each owner is also responsible for procuring and maintaining insurance against loss by fire with respect to that owner's apartment and limited common elements.

The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency.

Estimate of Initial Maintenance Fee Disbursements:

	Monthly x 12 months =	Yearly Total
Utilities and Services	N/A	
Air Conditioning		
Electricity		
[ ] common elements only		
[ ] common elements and apartments		
Elevator		
Gas		
Refuse Collection		
Telephone		
Water and Sewer		
Maintenance, Repairs and Supplies	N/A	
Building		
Grounds		
Management	N/A	
Management Fee		
Payroll and Payroll Taxes		
Office Expenses		
Reserves(*)	$135.00	$1,620.00
Taxes and Government Assessments	N/A	
Audit Fees	N/A	
Other	N/A	
TOTAL	$135.00	$1,620.00

I, Randal Bahner, as president of the Council of Co-Owners of Hale Makani Kai, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared based upon the historical records and practices of the Project.

Randal Bahner

Date: 10/26/94

(*) Mandatory reserves pursuant to §514A-83.6, Hawaii Revised Statutes, not required for this Project -- see SPECIAL NOTICE, Page 2.

EXHIBIT K

Summary of Sales Contract

The specimen Sales Contract contains, among other things, the following provisions:

1. SELLER'S RIGHT TO MODIFY DOCUMENTS/PROJECT. Subject to any applicable rescission rights that Buyer may have pursuant to Section 514A-63, Hawaii Revised Statutes:

(a) Seller reserves the right to modify the Declaration, By-Laws, Condominium Map, Apartment Deed, and other documents as may be required by law, any title insurance company, any institutional mortgagee or governmental agency, or as otherwise may be deemed necessary or appropriate by Seller, and Buyer authorizes Seller to make and specifically approves all changes to said documents and the Project, provided that such approval shall not be deemed to constitute a waiver of Buyer's rescission rights under Section 514A-63, Hawaii Revised Statutes.

(b) Buyer acknowledges that the Architect in its sole discretion may increase or decrease the thickness of any wall within the Apartment, resulting in the room dimensions becoming smaller or larger than those shown on the Condominium Map, and Buyer hereby authorizes and specifically approves any such changes. Seller further reserves the right to require alterations of the Project (and to modify any such documents as Seller deems necessary or appropriate in light of such changes) to change the configuration of, to alter the number of rooms of, to decrease or increase the size of, or to change the location of any other apartment and/or parking area, and to make other changes to the Apartment, any of the other apartments, or the common elements. No taking by eminent domain of an easement or other limited right or of a portion of the common elements shall be deemed grounds for cancellation of this Agreement.

2. WARRANTIES. SELLER WILL ASSIGN ANY CONTRACTORS' OR MANUFACTURERS' WARRANTIES TO BUYER. EXCEPT FOR SUCH ASSIGNMENT, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE HOMES, COMMON ELEMENTS, APPLIANCES, FURNISHINGS, OR ANYTHING INSTALLED IN OR UPON THE APARTMENTS OR THE PROJECT OR USED IN CONNECTION WITH THE APARTMENTS OR THE PROJECT IN ANY MANNER, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, HABITABILITY, WORKMANLIKE CONSTRUCTION, OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

3. TIME IS OF THE ESSENCE; SELLER'S REMEDIES; COSTS AND ATTORNEYS' FEES. Time is of the essence with regard to each of the terms of the Sales Contract, and if Buyer shall default in any payment when due, or fail to perform any other obligation required of the Buyer hereunder, Seller may notify Buyer in writing of such default and if such default shall not be cured within fifteen

(15) days after receipt of such notice, Seller may, at Seller's option, terminate the Sales Contract by written notice to Buyer. In such event, all sums paid by Buyer thereunder shall belong absolutely to Seller as liquidated damages, or at Seller's option, Seller may pursue any other remedies in law or in equity for specific performance, damages, or otherwise, and all costs, including reasonable attorneys' fees, incurred by reason of default by Buyer shall be borne by Buyer.

4. ASSIGNMENT. Buyer may not assign its rights or obligations under the Sales Contract or any portion thereof without the prior written consent of Seller, which consent may be withheld and/or conditioned upon the payment of a consent fee in such amount as may be determined by Seller, at Seller's sole discretion.

5. LATE PAYMENT. Without prejudice to Seller's right of termination, Buyer will be assessed interest at one percent (1%) per month on any scheduled payment from the date it is due until paid.

EXHIBIT L

SUMMARY OF ESCROW AGREEMENT: An escrow agreement (hereinafter called the "Escrow Agreement") detailing the manner in which purchasers' funds are to be handled, has been executed and a copy thereof has been filed with the Commission. The Escrow Agent is OLD REPUBLIC TITLE & ESCROW COMPANY, a Hawaii corporation (hereinafter referred to as "Escrow"). The escrow agreement, among other things, contains the following provisions:

Sale Contracts Deposited in Escrow. As of when Developer shall enter into a sales contract for the sale of a unit it shall deliver an executed copy of such sales contract to Escrow. Each sales contract shall require that all payments to be made thereunder shall be made to Escrow and shall be accompanied by the initial deposit required thereunder.

Receipt of Funds by Escrow. Developer shall pay over to Escrow all payments made by purchasers under sales contracts. This includes any loan payments from purchasers' lenders. In accordance with Developer's written instructions to Escrow, Escrow shall deposit all funds received in accounts at a federally insured bank, savings and loan association or other financial institution which pays interest on deposits.

Conditions to be Met Prior to Disbursement. No disbursements of funds held in escrow shall be made unless and until the following conditions have been fulfilled:

a. The Real Estate Commission has issued a supplementary public report (the "Supplementary Report") on the Project; and the purchaser has received a copy of the Supplementary Report and given Developer a receipt for it; and

b. The Developer has given Escrow a written waiver of any option reserved in any sales contract to cancel such sales contract.

c. The Additional Homes have been completed and certificates of occupancy issued.

Disbursement of Purchaser's Funds. The funds in escrow shall be disbursed in accordance with the directions of the Developer and Developer's mortgagee only upon completion of the buildings of the Project and when Escrow shall have received satisfactory evidence that all mechanics' and materialmen's liens have been cleared or sufficient funds have been set aside to cover such claims.

Return of Funds and Documents. A purchaser shall be entitled to a return of his funds and Escrow will pay such funds to such purchaser, without interest, minus Escrow's cancellation fee, if one of the following has occurred:

a. Escrow receives a written request from the Developer to return funds to purchaser; or

b. With respect to a purchaser whose funds were obtained prior to the issuance of the Supplementary Report, the purchaser has exercised his right to cancel the agreement pursuant to Section 514A-62, Hawaii Revised Statutes, as amended; or

c. A purchaser has exercised his right to rescind the contract pursuant to Section 514A-63, Hawaii Revised Statutes, as amended.

Purchaser's Default. Developer will notify Escrow in writing that a purchaser has defaulted and that Developer has cancelled that purchaser's Sales Contract. Escrow will then treat the purchaser's funds, less Escrow's cancellation fees, as belonging to Developer.