

**DEVELOPER'S PUBLIC REPORT  
FOR A CONDOMINIUM**

<b>CONDOMINIUM PROJECT NAME</b>	MAKINI AT KINAU
<b>Address</b>	1050 KINAU STREET, HONOLULU, HAWAII 96814
<b>Registration Number</b>	6147
<b>Effective Date of Report</b>	<b>December 14, 2006</b>
<b>Developer</b>	AVALON MAKINI LLC, a Hawaii limited liability company

**Preparation of this Report**

The Developer prepared this report to disclose relevant information, including "material facts", that are reasonably known to the Developer about the condominium project covered by this report. This report has been prepared pursuant to the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended from time to time. The law defines "material facts" to mean "any fact, defect, or condition, past or present that to a reasonable person, would be expected to measurably affect the value of the project, unit, or property being offered or proposed to be offered for sale."

This report has not been prepared or issued by the Real Estate Commission or any other governmental agency. The issuance by the Commission of an effective date for this Developer's Public Report (1) does not mean that the Commission approves or disapproves of the project; (2) does not mean that the Commission thinks that either all material facts or all pertinent changes, or both, about the project have been fully or adequately disclosed; or (3) is not the Commission's judgment of the value or merits of the project.

This report may be used by the Developer for promotional purposes only if it is used in its entirety. No person shall advertise or represent that the Commission has approved or recommended the project, this report or any of the documents submitted with Developer's application for registration of this project.

This report will be amended if, after the effective date of this report, any changes, either material or pertinent changes, or both, occur regarding the information contained in or omitted from this report. In that case, the Developer is required to submit immediately to the Commission an amendment to this report or an amended Developer's Public Report, clearly reflecting the changes, together with such supporting information as may be required by the Commission. In addition, the Developer may choose at any time to change or update the information in this report. Annually, at least thirty days prior to the anniversary date of the Effective Date of this report, the Developer shall file an annual report to update the material contained in this report. If there are no changes, the Developer is required to state that there are no changes. The Developer's obligation to amend this report or to file annual reports ends when the initial sales of all units in the project have been completed.

Purchasers are encouraged to read this report carefully and to seek professional advice before signing a sales contract for the purchase of a unit in the project.

Signing a sales contract may legally bind a purchaser to purchase a unit in the project, though a purchaser may have rights to cancel or rescind a sales contract under particular circumstances that may arise.

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*This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request.*

## SPECIAL ATTENTION

### **Condominium Not Created Yet. Sales Contract Not-Binding On Developer, Prospective Purchaser, Or Purchaser.**

The developer has a contract to acquire the fee interest in the Project and has submitted a copy of the contract to the Real Estate Commission together with a letter from the current fee owner stating no objection to the Developer obtaining an effective date for this Developer's Public Report.

The Developer has not yet recorded the Declaration, By-Laws and Condominium Map for this condominium project. This means that the condominium project has not yet been created and will not exist until the condominium documents are recorded.

As a result, any sales contract entered into by the purchaser or prospective purchaser is non-binding on the purchaser or prospective purchaser and the Developer and may be cancelled at any time by either the purchaser or prospective purchaser or the Developer. Upon cancellation, purchaser or prospective purchaser shall be entitled to a prompt and full refund of all moneys paid.

The sales contract between purchaser or prospective purchaser and Developer will become binding when All of the following events occur:

- The condominium documents have been recorded thereby creating the condominium property regime;
- A copy of an amended public report with an effective date issued by the Real Estate Commission has been delivered to the Buyer, along with copies of the recorded condominium documents; and
- The Buyer has waived Purchaser's 30-day right to cancel the sales contract.

The signed Declaration provides that at the time of recordation of the Declaration the Developer will be the fee owner of the Project and at that time, for those purchasers who elect not to cancel their unit sales contract; their condominium unit sales contract will be binding sales contracts, subject to the rest of its terms. If the Developer does not acquire the fee interest or if the Declaration is not recorded in the Bureau of Conveyances, the property will not have been converted to a condominium property regime and each purchaser will have a right to cancel his or her condominium unit sales contract and obtain a full refund of any deposits.

The Developer intends to accomplish the acquisition on or before one year from the effective date of this Public Report. Until the unit sales contracts are binding, and certain other requirements are satisfied no deposits can be released to the Developer from escrow.

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## **General Information On Condominiums**

A condominium is a special form of ownership of real property. To create a condominium in Hawaii after July 1, 2006, the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, must be followed. 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 and/or the building(s) and other improvements are leased to the purchaser. The lease for the land usually requires that at the end of the lease term, the lessees (unit owners) deliver their interest in the land to the lessor (fee property owner).

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

You will be entitled to exclusive ownership and possession of your unit. Subject to the documents governing them, condominium units may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift or operation of law.

Your unit will, however, be part of the group of units that comprise the condominium project. Study the project's Declaration of Condominium Property Regime, Bylaws of the Association of Unit Owners, Condominium Map and House Rules, if any, which are being concurrently delivered to you with this report. These documents contain important information on the use and occupancy of the units and the common elements of the project, as well as the rules and regulations of conduct for unit owners, tenants and guests.

## **Operation of the Condominium Project**

The Association of Unit Owners is the entity through which unit owners may take action with regard to the administration, management and operation of the condominium project. Each unit 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 a unit owner. The Board and officers can take certain actions without the vote of the unit owners. For example, the Board may hire and fire employees, increase or decrease maintenance fees, adopt budgets for revenues, expenses and reserves and regulate the use, maintenance, repair and replacement of common elements. Some of these actions may significantly impact the unit owners.

Until there is a sufficient number of purchasers of units to elect a majority of the Board, it is likely at first 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 purchasers should understand that it is important to all unit owners that the transition of control from the Developer to the unit owners be accomplished in an orderly manner and in a spirit of cooperation.

# 1. THE CONDOMINIUM PROJECT

## 1.1 The Underlying Land

Fee Simple or Leasehold Project	<input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold (attach Leasehold Exhibit)
Developer is the Fee Owner	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (but will be).
Fee Owner's Name if Developer is not the Fee Owner	Developer will be the fee owner prior to recordation of the Declaration of Condominium Property Regime with the Bureau of Conveyances of the State of Hawaii. See Page 1a.
Fee Owner's Address	P.O. Box 3467 Honolulu, Hawaii 96801
Address of Project	1050 Kinau Street Honolulu, Hawaii 96814
Address of Project is expected to change because	N/A
Tax Map Key (TMK)	(1) 2-4-013-032
Tax Map Key is expected to change because	N/A
Land Area	37,874 sq. ft (0.869 acres)
Developer's right to acquire the Property if Developer is not the Fee Owner (describe)	Developer entered into a Purchase and Sale Agreement with the current Fee Owner, dated January 5, 2006 and amended on May 2, 2006, to purchase the Land together with the building and improvements thereon (the "Property").

## 1.2 Buildings and Other Improvements

Number of Buildings	1
Floors Per Building	12
Number of New Building(s)	-0-
Number of Converted Building(s)	1
Principal Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	Concrete, aluminum, steel, glass

## 1.3 Unit Types and Sizes of Units

Unit Type	Quantity	BR/Bath	Net Living Area	Net Other Areas	Other Areas (lanai, garage, etc.)	Area
See Exhibit <u>A</u> .						

97	<b>Total Number of Units</b>
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Note: Net Living Area is the floor area of the unit measured from the interior surface of the perimeter walls of the unit. Other documents and maps may give floor area figures that differ from those above because a different method of determining floor area may have been used.

Developer's Note: The Area of the Parking Apartment Units is measured from the marked boundaries of the apartments as shown on the Condominium Map and as described in the Declaration.

**1.4 Parking Stalls**

Total Parking Stalls in the Project:	100
Number of Guest Stalls in the Project:	3
Number of Parking Stalls Assigned to Each Unit:	1 (One stall is assigned to each Residential Apartment Unit).
Attach Exhibit <u>B</u> specifying the Parking Stall number(s) assigned to each unit and the type of parking stall(s) (regular, compact or tandem and indicate whether covered or open)	
If the Developer has reserved any rights to assign or re-assign parking stalls, describe such rights.	
The Developer may amend the Declaration to re-assign and change the designation of parking stalls which are appurtenant to units owned by the Developer. Parking Apartment Units may be sold separately.	

**1.5 Boundaries of the Units**

Boundaries of the unit:  See Page 4-A.
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**1.6 Permitted Alterations to the Units**

Permitted alterations to the unit (if the unit is defined as a non-physical or spatial portion of the project, also describe what can be built within such portion of the project):  See Pages 4-A and 4-B.
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**1.7 Common Interest**

<u>Common Interest</u> : Each unit will have a percentage interest in the common elements appurtenant to each unit. This interest is called the "common interest". It is used to determine each unit's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by unit owners. The common interest for each unit in this project, as described in Declaration, is:
Described in Exhibit <u>A</u> .
As follows:

**1.8 Recreational and Other Common Facilities (Check if applicable):**

<input checked="" type="checkbox"/>	Swimming pool
<input checked="" type="checkbox"/>	Laundry Area
<input checked="" type="checkbox"/>	Storage Area
<input type="checkbox"/>	Tennis Court
<input type="checkbox"/>	Recreation Area
<input checked="" type="checkbox"/>	Trash Chute/Enclosure(s)
<input type="checkbox"/>	Exercise Room
<input checked="" type="checkbox"/>	Security Gate
<input type="checkbox"/>	Playground
<input checked="" type="checkbox"/>	Other (describe): Lobby, Pool Area, Office, Toilet, Outdoor Shower.

## **1.5 Boundaries of the Units**

Boundaries of the unit:

Each Residential Apartment Unit shall include all of the walls and partitions which are not load-bearing and which are within its boundaries and shall include only the finished surfaces of the perimeter walls, floors and ceilings. The respective units shall not include the undecorated or unfinished surfaces of the interior load-bearing walls or partitions, foundations, columns, girders, beams, footings, floor slabs, supports, roofs and ceilings located within or at the perimeter of or surrounding such unit, all of which are part of the common elements. Any shutters, awnings, window boxes, doorsteps, stoops, and all exterior doors and windows or other fixtures designed to serve a single unit, but are located outside the unit's boundaries, are limited common elements appurtenant exclusively to that unit.

Each Parking Apartment Unit shall be deemed to include a rectangular floor surface area bounded on the ends and sides by marked parallel lines (or, in some cases, by a wall, column, or other permanent boundary), as shown on the Condominium Map. Each Parking Apartment shall include the airspace enclosed by imaginary vertical planes extending upward from each of the floor surface boundary lines (or other permanent monument boundaries) to a height of ten (10) feet, or to one inch below the surface of the ceiling immediately above the Parking Apartment, whichever is lower. The Parking Apartments shall not be deemed to include the underlying slab except for its surface, nor any part of the ceiling immediately above said Parking Apartments, nor any pipes conduits, wires, or any other mechanical installations penetrating the Parking Apartments' air space.

## **1.6 Permitted Alterations to the Units**

Permitted alterations to the unit (if the unit is defined as a non-physical or spatial portion of the project, also describe what can be built within such portion of the project):

Except as otherwise provided in the Declaration or in the Bylaws, restoration, repair or replacement of the Project or of any building or other facility or construction of any additional building or structural alteration or addition to any structure, different in any material respect from said Condominium Map of the Project, shall be undertaken by the Association or any unit owners only pursuant to an amendment of this Declaration, duly executed by or pursuant to the affirmative vote of sixty-seven percent (67%) of the unit owners and accompanied by the written consent of all unit owners whose units or appurtenant limited common elements are directly affected, as determined in a reasonable manner by the Board, and in accordance with all of the requirements set forth in the Declaration, and promptly upon completion of such restoration, replacement or construction, the Association shall duly file of record such amendment, together with a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer; PROVIDED, HOWEVER, that notwithstanding any other provision in the Declaration to the contrary, the owner of a unit may make any alterations or additions within a unit. The alterations or additions permitted by the immediately preceding proviso shall require only the written approval thereof, including approval of the unit owner's plans therefor, by the holders of first mortgage liens affecting such unit (if the lien holders require such approval), by the appropriate agencies of the State of Hawaii and the County of Hawaii if such agencies so require, by the Board of Directors of the Association (which approval shall not be unreasonably or arbitrarily withheld or delayed), and such alterations or additions may be undertaken without an amendment to this Declaration or filing of a complete set of floor plans of the Project as so altered.

The Developer shall have the Development Rights as defined in the Condominium Property Act. Without limiting the generality of the foregoing, the Developer shall have the right to add or withdraw real estate, create units, common elements, subdivide units, combine units, convert units to common elements, or otherwise alter the Project. The Developer shall have the right, as set forth in this paragraph to makes changes or alterations to the

(Continued on Page 4-B)

Project, the units, and the common elements, without the approval of, consent or joinder of any unit owner. The Developer shall have the right to renovate the lobby and other common elements, create amenities such as spas, barbecue areas and otherwise change the Project and shall have the right to change the configuration of, alter the number of rooms of, decrease or increase the size of, change or delete appliances or fixtures or change the location of any unit (and the limited common elements appurtenant thereto) in the Project or to make other alterations in the Project. The Developer's rights to make changes to any unit shall not apply to any unit that has been conveyed to a purchaser thereof, except for minor changes to any common elements within or connected to the unit and minor changes to the unit which do not affect the physical location, design or size of any unit and do not affect the value of the unit. The Developer's rights to alter other portions of the Project without the approval or joinder of any unit owner shall be binding on any owner of a unit that has been conveyed so long as such changes do not materially and adversely affect the value of the sold units or the enjoyment and use by the owner of any sold units of any amenities (such as the swimming pool) in the Project. The Developer shall also have the right to amend the Declaration and the Condominium Map as provided in Section T of the Declaration.

Notwithstanding any other provision in the Declaration to the contrary, the Board of Directors of the Association (the "Board") shall have the right to install or cause the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements of the Project; provided that the same shall not be installed upon any limited common element without the consent of the owner or owners of the unit or units for the use of which the limited common element is appurtenant; and the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements by the Board shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit, or to be a structural alteration or addition to any building constituting a material change in the plans of the Project filed in accordance with the Condominium Property Act; provided that no such installation shall directly affect any nonconsenting unit owner. The Board shall have the right to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence or to provide an equivalent function by different means or methods. The abandonment or change of use of any television signal distribution or telecommunications equipment by the Board due to technological or economic obsolescence or to provide an equivalent function by different means or methods shall not be deemed to alter, impair or diminish the common interest, common elements, and easements appurtenant to each unit or to be a structural alteration or addition to any building different in any material respect from the plans of the Project filed in accordance with the Condominium Property Act.

There is no prohibition in the Declaration and Bylaws and therefore the Board has the right to assess and charge limited common element expenses to all unit owners by following the procedure set forth in Section 514B-41(C) of the Condominium Property Act.



**1.13 Uses Permitted by Zoning and Zoning Compliance Matters**

Uses Permitted by Zoning					
	Type of Use	No. of Units	Use Permitted by Zoning		Zoning
<input checked="" type="checkbox"/>	Residential	88	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	A-2
<input type="checkbox"/>	Commercial	0	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/>	Mix Residential/Commercial	0	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/>	Hotel	0	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/>	Timeshare	0	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/>	Ohana	0	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/>	Industrial	0	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/>	Agricultural	0	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/>	Recreational	0	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input checked="" type="checkbox"/>	Other (specify) Parking	9	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	A-2
Is/Are this/these use(s) specifically permitted by the project's Declarations or Bylaws?			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Variances to zoning code have been granted.			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Describe any variances that have been granted to zoning code.			N/A.		

**1.14 Other Zoning Compliance Matters**

Conforming/Non-Conforming Uses, Structures and Lots
<p>In general, a non-conforming use, structure or lot is a use, structure or lot that was lawful at one time but that does not now conform to present zoning requirements. Under present zoning requirements, limitations may apply to extending, enlarging or continuing the non-conformity and to altering and repairing non-conforming structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.</p> <p>If a variance has been granted or if uses, structures or lots are either non-conforming or illegal, the purchaser should consult with county zoning authorities as to possible limitations that may apply in situations such as those described above.</p> <p>A purchaser may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure or lot.</p>

	Conforming	Non-Conforming	Illegal
Uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Structures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lot	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<p>If a non-conforming use, structure or lot exists in this project, this is what will happen under existing laws or codes if the structure is damaged or destroyed:</p> <p>If the parking area is determined to be a nonconforming use, restriping of the parking area stalls may become necessary if the building or parking area is damaged or destroyed. See Page 7-A..</p>
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**1.15 Conversions**

<p><b>Developer's statements regarding units that may be occupied for residential use and that have been in existence for five years or more.</b></p>	<p><input checked="" type="checkbox"/> <b>Applicable</b></p> <p><input type="checkbox"/> <b>Not Applicable</b></p>
<p>Developer's statement, based upon a report prepared by a Hawai'i licensed architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the units:</p> <p>Based on an Existing Conditions Report prepared by a Hawaii-licensed architect, the present condition of structural components and mechanical and electrical installations material to the use and enjoyment of the units appear to be in fair to good condition.</p>	
<p>Developer's statement of the expected useful life of each item reported above:</p> <p>See Page 7-A.</p>	
<p>List of any outstanding notices of uncured violations of any building code or other county regulations:</p> <p>A maintenance shed is in violation of current codes. The Developer will demolish the maintenance shed.</p>	
<p>Estimated cost of curing any violations described above:</p> <p>The Developer estimates that the cost of demolishing the maintenance shed will be approximately \$30,000.00.</p>	

<p><b>Verified Statement from a County Official</b></p> <p>Regarding any converted structures in the project, attached as Exhibit <u>F</u> is a verified statement signed by an appropriate county official which states that either:</p> <p>(A) The structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built, and specifying, if applicable:</p> <ul style="list-style-type: none"> <li>(i) Any variances or other permits that have been granted to achieve compliance;</li> <li>(ii) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes; and</li> <li>(iii) Any violations of current zoning or building ordinances or codes and the conditions required to bring the structure into compliance;</li> </ul> <p>or</p> <p>(B) Based on the available information, the county official cannot make a determination with respect to the foregoing matters in (A) above.</p>
<p>Other disclosures and information:</p> <p>See Page 7-A.</p>

## 1.15 Conversions

Developer's statement of the expected useful life of each item reported above:

Reference is made to the Makini Reserve Study Summary which is available for review and which was prepared by Armstrong Consulting, Inc. dated July 17, 2006, which includes a life span estimate for certain components including the electrical upgrade, built up roofing system, elevator modernization and other components. In addition, the Existing Conditions Report states that the "apartment building, swimming pool, surface parking, landscaping and related improvements are generally in fair to good condition," the "existing mechanical systems appear to be in satisfactory condition," and the electrical systems within the Project, including "access control, surveillance, fire alarm, power, and lighting systems appear to be in good general working order." In providing this information, the Developer has relied on the Existing Conditions Report and the Reserve Study and on the consultants who provided these reports and the Developer does not warrant the same. No representations are made with respect to the expected useful life of each of these items.

Other Disclosures and information:

Except as hereinafter provided, and subject to the penalties set forth in Hawaii Revised Statutes Section 514B-69(b), the Project is in compliance with all zoning and building ordinances and codes, and all other permitting requirements applicable to the Project, pursuant to Hawaii Revised Statutes Section 514B-5 and 514B-32(a)(13). No variances have been granted to achieve the compliance. The Project contains no legal nonconforming conditions, uses, or structures, except that there is a question as to whether the width of the parking area corridors is permitted as a legal nonconforming use. The Developer is working with the Department of Planning and Permitting of the City and County of Honolulu to clarify and resolve this matter. Adjustments to the width may result in the down-sizing of existing stalls to meet current City & County requirements. As a result, some of the regular sized stalls may become compact stalls. Any other changes as a result of any adjustments to the striping and layout of the parking stalls will be reported to the Real Estate Commission and if necessary an amendment to this public report will be requested.

There is one violation of current codes as follows: A maintenance shed is in violation. The Developer is required to cure these violations and may use purchaser deposit money to pay the costs of demolition of the maintenance shed. The Developer intends to demolish the maintenance shed (which will cure the violation) within one year from the date of this public report. In Exhibit F, in addition to describing this shed, the Director of the Department of Planning and Permitting of the City and County of Honolulu also states that the parking layout changes require approval. Since as stated in the second letter of Exhibit F, the condition has been satisfied, the conditional use permit for joint development of parcel 30 and parcel 32 is in full force and effect. This means that both parcels are considered as one zoning lot in accordance with the Land Use Ordinance of the City and County of Honolulu, Section 21-5.380 and instead of there being only 65 parking spaces on one of the lots (the change that required approval), there are now a total of 100 parking spaces on the two combined lots.

**1.16 Project In Agricultural District**

<p><b>Is the project in an agricultural district as designated by the land use laws of the State of Hawaii?</b>  <b>If answer is "Yes", provide information below.</b></p>	<p><input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No</p>
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable state and county land use laws? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the answer is "No", provide explanation. N/A.</p>	
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable county real property tax laws? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the answer is "No", provide explanation and state whether there are any penalties for noncompliance. N/A.</p>	
<p>Other disclosures and information: N/A.</p>	

**1.17 Project with Assisted Living Facility**

<p><b>Does the project contain any assisted living facility units subject to Section 321-11(10), HRS?</b>  <b>If answer is "Yes", complete information below</b></p>	<p><input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No</p>
<p>Licensing requirements and the impact of the requirements on the costs, operations, management and governance of the project. N/A</p>	
<p>The nature and the scope of services to be provided. N/A</p>	
<p>Additional costs, directly attributable to the services, to be included in the association's common expenses. N/A</p>	
<p>The duration of the provision of the services. N/A</p>	
<p>Other possible impacts on the project resulting from the provision of the services. N/A</p>	
<p>Other disclosures and information. N/A</p>	

## 2. PERSONS CONNECTED WITH THE PROJECT

<p><b>2.1 Developer</b></p>	<p>Name: Avalon Makini LLC  Address: 841 Bishop Street, Suite 1601  Honolulu, Hawaii 96813</p> <p>Business Phone Number: (808) 587-7770  E-mail Address: <a href="mailto:ccf@avalon-development.com">ccf@avalon-development.com</a></p>
<p>Names of officers and directors of developers that are corporations; general partners of a partnership; partners of a limited liability partnership (LLP); or a manager and members of a limited liability company (LLC) (attach separate sheet if necessary).</p>	<p>The Developer is a Hawaii limited liability company whose sole member and manager is Avalon SMC, LLC.</p> <p>Avalon SMC, LLC is a member-managed Hawaii limited liability company whose sole member is Avalon Development Company LLC.</p> <p>Avalon Development Company LLC is a manager-managed Hawaii limited liability company whose sole member and manager is Christine Camp Friedman.</p>
<p><b>2.2 Real Estate Broker</b></p>	<p>Name: Avalon Realty, LLC  Address: 841 Bishop Street, Suite 1601  Honolulu, Hawaii 96813</p> <p>Business Phone Number: (808) 722-7818  E-mail Address: <a href="mailto:kendhchong@aol.com">kendhchong@aol.com</a>  Ken Chong, Principal Broker.</p>
<p><b>2.3 Escrow Depository</b></p>	<p>Name: Island Title Corporation  Address: First Hawaiian Tower, Suite 400  1132 Bishop Street  Honolulu, Hawaii 96813</p> <p>Business Phone Number: (808) 531-0261</p>
<p><b>2.4 General Contractor</b></p>	<p>Name: N/A  Address: N/A  Business Phone Number: N/A</p>
<p><b>2.5 Condominium Managing</b></p>	<p>Name: Hawaiiana Management Company, Ltd.  Address: 711 Kapiolani Boulevard, Suite 700  Honolulu, Hawaii 96813</p> <p>Business Phone Number: (808) 593-6896</p>
<p><b>2.6 Attorney for Developer</b></p>	<p>Name: Raymond S. Iwamoto &amp; Jennifer M. Young  Goodsill Anderson Quinn &amp; Stifel  Address: 1099 Alakea Street, Suite 1800  Honolulu, Hawaii 96813</p> <p>Business Phone Number: (808) 547-5600  E-mail Address: <a href="mailto:riwamoto@goodsill.com">riwamoto@goodsill.com</a> &amp; <a href="mailto:jyoung@goodsill.com">jyoung@goodsill.com</a></p>

### 3. CREATION OF THE CONDOMINIUM AND CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances (Regular System) or filing in the Office of the Assistant Registrar of the Land Court, or both, a Declaration of Condominium Property Regime, a Condominium Map and the Bylaws of the Association of Unit Owners. The Condominium Property Act (Chapter 514B, HRS), the Declaration, Bylaws and House Rules control the rights and obligations of the unit owners with respect to the project and the common elements, to each other, and to their respective units.

#### 3.1 Declaration of Condominium Property Regime

The Declaration of Condominium Property Regime contains a description of the land, buildings, units, common interests, common elements, limited common elements, and other information relating to the condominium project.		
Land Court or Bureau of Conveyances	Date of Document	Document Number
	Recordation pending	

Amendments to Declaration of Condominium Property Regime		
Land Court or Bureau of Conveyances	Date of Document	Document Number

#### 3.2 Bylaws of the Association of Unit Owners

The Bylaws of the Association of Unit Owners govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Unit 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 that affect how the condominium project will be governed.		
Land Court or Bureau of Conveyances	Date of Document	Document Number
	Recordation pending	

Amendments to Declaration of Condominium Property Regime		
Land Court or Bureau of Conveyances	Date of Document	Document Number

#### 3.3 Condominium Map

The Condominium Map contains a site plan and floor plans, elevations and layout of the condominium project. It also shows the floor plan, unit number and dimensions of each unit.	
Land Court Map Number	
Bureau of Conveyances Map Number	Recordation pending
Dates of Recordation of Amendments to the Condominium Map:	

**3.4 House Rules**

The Board of Directors may adopt rules and regulations (commonly called "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. Changes to House Rules do not need to be recorded to be effective.

The House Rules for this project:

Are Proposed	<input checked="" type="checkbox"/>
Have Been Adopted and Date of Adoption	<input type="checkbox"/>
Developer does not plan to adopt House Rules	<input type="checkbox"/>

**3.5 Changes to the Condominium Documents**

Changes to Condominium Documents: Changes to the Declaration, Bylaws and Condominium Map are effective only if they are duly adopted and recorded. Where permitted, the minimum percentages of the common interest that must vote for or give written consent to changes to the Declaration, Bylaws and Condominium Map are set forth below. The percentages for any individual condominium project may be more than the minimum set by law if the Declaration or Bylaws for the project so provide.

Document	Minimum Set by Law	This Condominium
Declaration	67%	67%
Bylaws	67%	67%

**3.6 Rights Reserved by the Developer to Make Changes to the Condominium Project or Condominium Documents**

<input type="checkbox"/>	No rights have been reserved to the Developer to change the Declaration, Bylaws, Condominium Map or House Rules (if any).
<input checked="" type="checkbox"/>	<p>Developer has reserved the right to change the Declaration, Bylaws, Condominium Map and House rules (if any) and to add to or merge the project or to develop the project in one or more phases, and such rights are summarized as follows:</p> <p>The Developer has reserved the right to amend the Declaration, Bylaws and Condominium Map (a) at any time prior to the filing of the first unit conveyance to a party not signatory to the Declaration; (b) to make any amendments required by law, by the Real Estate Commission of the State of Hawaii, by any title insurer issuing title insurance on the Project or any of the units, by any institutional lender lending funds on the security of the Project or any of the units, by any purchaser, insurer or guarantor of loans, including, for example, the Federal Housing Administration, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to purchase, insure or guarantee a loan made on the security of the Project or any of the units, or by any governmental agency; (c) to file the "as built" verified statement required by the Condominium Property Act, Section 514B-34; (d) to reflect alterations of the Project which the Developer is permitted to make pursuant to Section R of the Declaration. See Page 4-B. Under the Bylaws, the Developer has also reserved the right to designate and appoint a person to hold at least one (1) position on the Board of Directors, provided that the Developer owns at least one (1) unit in the Project.</p>

## 4. CONDOMINIUM MANAGEMENT

### 4.1 Management of the Common Elements

**Management of the Common Elements:** The Association of Unit 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.

The Initial Condominium Managing Agent for this project is (check one):

<input type="checkbox"/>	Not affiliated with the Developer
<input type="checkbox"/>	None (self-managed by the Association)
<input checked="" type="checkbox"/>	The Developer or an affiliate of the Developer
<input type="checkbox"/>	Other (explain)

### 4.2 Estimate of the Initial Maintenance Fees

**Estimate of the Initial Maintenance Fees:** The Association will make assessments against your unit to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your unit and the unit may be 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 G contains a breakdown of the estimated annual maintenance fees and the monthly estimated maintenance fee for each unit, certified to have been based on generally accepted accounting principles, with the Developer's statement as to when a unit owner shall become obligated to start paying the unit owner's share of the common expenses.

### 4.3 Utility Charges to be Included in the Maintenance Fee

If checked, the following utilities are included in the maintenance fee:

<input checked="" type="checkbox"/>	Electricity for the common elements
<input checked="" type="checkbox"/>	Gas for the common elements
<input checked="" type="checkbox"/>	Water
<input checked="" type="checkbox"/>	Sewer
<input type="checkbox"/>	TV cable
<input checked="" type="checkbox"/>	Other (specify) Electricity and water for the Units

### 4.4 Utilities to be Separately Billed to Unit Owner

If checked, the following utilities will be billed to each unit owner and are not included in the maintenance fee:

<input type="checkbox"/>	Electricity for the Unit only
<input type="checkbox"/>	Gas for the Unit only
<input type="checkbox"/>	Water
<input type="checkbox"/>	Sewer
<input checked="" type="checkbox"/>	TV cable
<input checked="" type="checkbox"/>	Other (specify) Unit Owners are to be separately billed an additional monthly fee for use of an Air Conditioning system.

## 5. SALES DOCUMENTS

### 5.1 Sales Documents Filed with the Real Estate Commission

Sales Documents on file with the Commission include, but are not limited to, the following:	
<input checked="" type="checkbox"/>	Specimen Sales Contract Exhibit <u>H</u> contains a summary of the pertinent provisions of the sales contract. Including but not limited to any rights reserved by the Developer.
<input checked="" type="checkbox"/>	Escrow Agreement dated: June 29, 2006, as amended August 14, 2006. Name of Escrow Company: Island Title Corporation Exhibit <u>I</u> contains a summary of the pertinent provisions of the escrow agreement.
<input type="checkbox"/>	Other

### 5.2 Sales to Owner-Occupants

If this project contains three or more residential units, the Developer shall designate at least fifty percent (50%) of the units for sale to Owner-Occupants.

<input checked="" type="checkbox"/>	The sales of units in this project are subject to the Owner-Occupant requirements of Chapter 514B.
<input checked="" type="checkbox"/>	Developer has designated the units for sale to Owner-Occupants in this report. See Exhibit <u>A</u> .
<input checked="" type="checkbox"/>	Developer has or will designate the units for sale to Owner-Occupants by publication.

### 5.3 Blanket Liens

Blanket Liens: A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project or more than one unit that secures some type of monetary debt (such as a loan) or other obligation. Blanket liens (except for improvement district or utility assessments) must be released as to a unit before the developer conveys the unit to a purchaser. The purchaser's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the unit to the purchaser.

<input checked="" type="checkbox"/>	There are <u>no blanket liens</u> affecting title to the individual units.
<input type="checkbox"/>	There are <u>blanket liens</u> that may affect title to the individual units.

Type of Lien	Effect on Purchaser's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance
N/A	N/A. See page 13-A.

### 5.4 Construction Warranties

Construction Warranties: Warranties for individual units and the common elements, including the beginning and ending dates for each warranty (or the method of calculating them), are as set forth below:

Building and Other Improvements: See Page 13-A.

Appliances: See Page 13-A.

### **5.3 Blanket Liens**

Developer's Note: There are no blanket liens at this time. However, the Developer may place a blanket mortgage on the entire Project when the Developer purchases the property from the fee owner. This mortgage will be a blanket lien affecting the title to all of the individual units. Effect: If the Developer places a blanket mortgage on the Project and defaults under this mortgage before the units are conveyed to the Buyers, the mortgagee or a foreclosure purchaser will have the right to decide whether to terminate or honor the sales contracts for the units. If there is a termination of the sales contract, the Buyers will be refunded, less any escrow cancellation fees, and the Buyers will have no further interest under the sales contracts.

### **5.4 Construction Warranties**

Building and Other Improvements:

None. There are no warranties on the Units, the common elements, the limited common elements, the Project or anything in the Units or in the Project with the sole and limited exception of manufacturer's warranties on new appliances. The Developer makes no warranties and there will be no contractor's warranty with respect to the materials or workmanship involved in the renovations of the Units, common areas or any other area of the Project, if any.

Appliances:

Appliance warranty information is not yet available because appliances have not yet been purchased. However, the Developer will transfer to the Buyer, without warranty, any manufacturer's warranties on new appliances that are transferable and cover appliances that may be sold with the units.

**5.5 Status of Construction, Date of Completion or Estimated Date of Completion**

<p>Status of Construction: There is no construction to be completed within the Project. The Project was originally completed in 1968. However, the Developer plans to make renovations to the units which may include, without limitation, installation of new appliances, cabinets, countertops, flooring, paint, closet doors, fixtures, and toilet, and other renovations such as electrical upgrades to allow the use of air conditioning systems and the replacement of jalousie windows. The Developer also plans to make renovations to the lobby and estimates that completion of all repairs and renovation of the Project will occur on or before one year from the effective date of this Public Report. Units will be sold in "as is" condition.</p>
<p>Completion Deadline: If a sales contract for a unit is signed before the construction of the unit has been completed, or, in the case of a conversion, completion of any repairs, does not occur by the completion deadline set forth below, one of the remedies available to a purchaser is a cancellation of the purchaser's sales contract. The sales contract may include a right of the Developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract may also provide additional remedies for the purchaser.</p>
<p>Completion Deadline for any unit not yet constructed, as set forth in the sales contract: N/A. All units have been constructed.</p>
<p>Completion Deadline for any repairs required for a unit* being converted, as set forth in the sales contract:  * The required demolition of the <u>maintenance shed</u> will be completed within one year from the effective date of this Report.</p>

**5.6 Developer's Use of Purchaser Deposits to Pay for Project Construction Costs Before Closing or Conveyance**

The Developer is required to deposit all moneys paid by purchasers in trust under a written escrow agreement with a Hawaii licensed escrow depository. Escrow shall not disburse purchaser deposits to the Developer or on behalf of the Developer prior to closing, except if a sales contract is canceled or if Developer has met certain requirements, which are described below.

**5.6.1 Purchaser Deposits Will Not Be Disbursed Before Closing or Conveyance**

<input type="checkbox"/>	<p>The Developer hereby declares by checking the box to the left that it shall use its own funds to complete the construction of the condominium project by the date indicated in Section 5.5 of this report, and the Developer, pursuant to its own analysis and calculations, certifies that it has sufficient funds to complete the construction of the condominium project. If the box to the left is checked, Sections 5.6.2 and 5.7, which follow below, will not be applicable to the project.</p>
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**5.6.2 Purchaser Deposits Will Be Disbursed Before Closing**

<p>Hawaii law provides that, if certain statutory requirements are met, purchaser deposits in escrow under a binding sales contract may be used before closing to pay for certain project costs. For this project, the Developer indicates that purchaser deposits may be used for the following purposes (check applicable box):</p>	
<input type="checkbox"/>	<p>For new construction: to pay for project construction costs described in the Developer's budget and approved by the Developer's lender or an otherwise qualified, financially disinterested person; or</p>
<input checked="" type="checkbox"/>	<p>For conversions: to pay for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance and legal fees, and for other incidental expenses.</p>

In connection with the use of purchaser deposits (check Box A or Box B):

<p><b>Box A</b> <input type="checkbox"/></p>	<p>The Developer has submitted all information and documents required by law and the Commission prior to the disbursement of purchaser deposits before closing. This means that the Developer may use such deposits before closing. If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>If Box A is checked, you should read and carefully consider the following notice, which is required by law:</p> <p><b><u>Important Notice Regarding Your Deposits: Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase.</u></b></p>
<p><b>Box B</b> <input checked="" type="checkbox"/></p>	<p>The Developer has <b>not</b> submitted all information and documents required by law and the Commission, and, until all such information and documents are submitted, thus, the Developer cannot use purchaser deposits.</p> <p>If the Developer later submits all information and documents required by law and the Commission for the use of purchaser deposits, then the Developer must provide an amendment to this report or an amended developer's public report to each purchaser who has signed a sales contract. At such time, the <b><u>Important Notice Regarding Your Deposits</u></b> set forth immediately above will apply to all purchasers and will be restated in the amendment to this report or an amended developer's public report. When an effective date for such an amendment or an amended developer's public report is issued, <b><u>you will not have the right to rescind or cancel the sales contract by reason of such submission and amendment.</u></b> (This, however, does not affect your right to rescind for material changes or any other right you may have to rescind or cancel the sales contract, as described in Section 5.8 below.) If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>You should understand that, although the <b><u>Important Notice Regarding Your Deposits</u></b> set forth above does not currently apply to you, it might apply to you in the future, and, therefore, you should read and carefully consider it now to ensure that you understand the risk involved in deciding whether to proceed with your purchase.</p>

**Material House Bond.** If the Developer has submitted to the Commission a completion or performance bond issued by a material house instead of a surety as part of the information provided prior to the use of purchaser deposits prior to closing or conveyance of a unit, the Developer shall disclose the same below and disclose the impact of any restrictions on the Developer's use of purchaser deposits.

## 5.7 Rights Under the Sales Contract

Before signing the sales contract, prospective purchasers should carefully review all documents relating to the project. These include but are not limited to the documents listed below. Items 2, 3 and 4 are made a part of this public report, as well as Item 5, if any, and are being delivered to you with this report.	
1.	<b>Developer's Public Report</b>
2.	<b>Declaration of Condominium Property Regime (and any amendments)</b>
3.	<b>Bylaws of the Association of Unit Owners (and any amendments)</b>
4.	<b>Condominium Map (and any amendments)</b>
5.	House Rules, if any
6.	Escrow Agreement
7.	Hawaii's Condominium Property Act (Chapter 514B, HRS, as amended) and Hawaii Administrative Rules (Chapter 16-107, adopted by the Real Estate Commission, as amended), provided that rules and regulations under Chapter 514B have not yet been adopted.
8.	Other:

Copies of the condominium and sales documents and amendments made by the Developer are available for review through the Developer or through the Developer's sales agent, if any. The Condominium Property Regime law (Chapter 514B, HRS) and the Administrative Rules (Chapter 107, HAR), are available online. Please refer to the following sites:

Website to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov)

Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

## 5.8 Purchaser's Right to Cancel or Rescind a Sales Contract

A purchaser's right to cancel a sales contract or to rescind a sales contract may arise under varying circumstances. In the sections below, some circumstances that will give rise to a purchaser's right to cancel or rescind are described, together with what a purchaser must do if the purchaser wishes to exercise any of the rights.

### 5.8.1 When a Sales Contract becomes Binding and Purchaser's 30-Day Right to Cancel a Sales Contract

A sales contract signed by a purchaser and the developer will not become binding on a purchaser or the Developer until the following events have taken place:

- (1) The purchaser has signed the sales contract.
- (2) The Developer has delivered to the purchaser a true copy of the developer's public report with an effective date issued by the Commission, together with all amendments to the report as of the date of delivery, and the project's recorded Declaration and Bylaws, House Rules (if any), the Condominium Map and any amendments to them to date (all of which are a part of the developer's public report). If it is impracticable to include a letter-sized Condominium Map, the Developer must provide written notice of an opportunity to examine the Condominium Map.
- (3) The Developer has delivered to the purchaser a notice of the purchaser's 30-day cancellation right on a form prescribed by the Commission.
- (4) The purchaser does at least one of the following:
  - (a) Waives the purchaser's right to cancel the sales contract within 30 days from receipt of the notice of the purchaser's 30-day cancellation right; or

- (b) Allows the 30-day cancellation period to expire without exercising the right to cancel; or
- (c) Closes the purchase of the unit before the 30-day cancellation period expires.

The purchaser or the Developer may cancel the sales contract at any time during the 30-day cancellation period, and the sales contract will be canceled and the purchaser's deposits returned to the purchaser, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.

### **5.8.2 Right to Cancel a Sales Contract if Completion Deadline Is Missed**

In addition to the purchaser's 30-day cancellation right described in Section 5.8.1 above, when a sales contract is signed before completion of construction of a project, the purchaser will have the right to cancel if the unit is not completed by certain deadlines. In conversion projects, there must be a deadline for completion of any required repairs. Every sales contract shall contain an agreement of the Developer that the completion of construction shall occur on or before the completion deadline, and that completion deadline is set forth in this report in Section 5.5. The sales contract shall provide that the purchaser may cancel the sales contract at any time after the specified completion deadline, if completion of construction does not occur on or before the completion deadline, as the same may have been extended. Upon a cancellation, the purchaser's deposits shall be refunded, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.00.

### **5.8.3 Purchaser's Right to Rescind a Binding Sales Contract After a Material Change**

If a "material change" in a project occurs after a purchaser has signed a sales contract that has become binding, the purchaser will have a 30-day right to rescind after notification and description of the material change. A material change is defined in the Condominium Property Act to be any change that "directly, substantially and adversely affects the use or value of (1) a purchaser's unit or appurtenant limited common elements; or (2) those amenities of the project available for the purchaser's use."

The purchaser will be informed of the material change by the developer on a form prescribed by the Commission containing a description of the material change.

After notice of the material change, the purchaser may waive the right to rescind by:

- (1) Checking the waiver box on the rescission form; or
- (2) Letting the 30-day rescission period expire, without taking any action to rescind; or
- (3) Closing the purchase of the unit before the 30-day rescission period expires.

The rescission form must be signed by all purchasers of the affected unit and delivered to the developer no later than midnight of the 30 calendar day after the purchasers received the rescission form from the developer. Purchasers who validly exercise the right of rescission shall be entitled to a prompt and full refund of any moneys paid.

A rescission right shall not apply in the event of any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the project's Declaration.

These provisions shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for the sale of a unit or any applicable common law remedies.

## 6. MISCELLANEOUS INFORMATION NOT COVERED ELSEWHERE IN THIS REPORT

**Unit Variations.** The Developer intends to renovate the Residential Apartment Units by installing new cabinets, countertops, paint, flooring, mirrored closet doors, fixtures (kitchen faucet, bathroom fixtures: shower head, shower handles (2), sink faucet, sink handles, shower curtain rod, toilet paper holder, towel rack, kitchen, bathroom and bedroom light fixtures, electric plugs, switches and covers, doorknobs for each door, chimes, interior door guards, and door stops for the front door), toilet, appliances (refrigerator, stove and garbage disposal) and a refinished tub. This list is subject to change but will be finalized and confirmed at the time a sales contract is signed for the unit. The Developer also intends to offer a Discount Addendum whereby if a buyer prefers to purchase the unit with the existing appliances, kitchen cabinets, flooring, toilet, etc. and executes the Discount Addendum with the Developer, then the Developer will not renovate the selected unit but will sell the the unit without any of these upgrades. The amount of the discount from the sales price will be set forth in the Addendum. If the purchaser executes a Discount Addendum to the Sales Contract to buy the unit without renovations, the foregoing items will not be installed in the Unit and the Unit will be sold with the existing appliances, cabinets, etc and therefore the interior of unrenovated units may vary substantially from the other units.

**Parking Apartment Units.** The Parking Apartment Units shall be used for the parking of vehicles only and for such other customary usages of parking spaces such as the occasional cleaning of vehicles, subject to the rules and regulations of the Association that are applicable to all parking stalls that are limited common elements. Ownership of a Parking Apartment Unit shall not entitle the owner to use any of the common elements of the Project, including without limitation the swimming pool, laundry and other common elements not essential to parking in the Parking Apartment Unit.

### **Hazardous Materials.**

The Developer neither prepared nor commissioned a Phase I Environmental Site Assessment and makes no representations or warranties whatsoever. The Developer has made no independent investigation as to asbestos or other hazardous substances in the apartments or in, under or around the Project, including but not limited to, radioactive material, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, and any and all other substances or materials defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" under, or for the purposes of, hazardous materials laws. Buyer acknowledges that in light of the age of the Project, there may be asbestos or other hazardous substances in the apartments, or in, under or around the Project. Because of the possible presence of such substances, Buyer should have the apartment inspected to determine the extent (if any) of such contamination and any necessary remedial action. The Developer will not correct any defects in the apartments or in the Project or anything installed or contained therein and Buyer expressly releases the Developer from any liability to Buyer if any hazardous materials are discovered.

### **Lead Warning Statement.**

Pursuant to federal law, 42 U.S.C. 4852(d), the Residential Lead-Based Paint Reduction Act, "Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk or developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

The Developer declares, subject to the penalties set forth in Section 514B-69, HRS, that this project conforms to the existing underlying county zoning for the project, zoning and building ordinances and codes and all applicable permitting requirements adopted by the county in which the project is located, all in accordance with Sections 514B-5 and 32(a)(13), HRS.\*\*

For any conversion, if any variances have been granted, they are specified in Section 1.14 of this report, and, if purchaser deposits are to be used by the Developer to cure any violations of zoning, permitting requirements or rules of the county in which the project is located, the violation is specified in Section 1.15 of this report, along with the requirements to cure any violation, and Section 5.5 specifies the date by which the cure will be completed.

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 purchasers 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. The Developer hereby agrees promptly to amend this report to report any pertinent or material change or both in any information contained in this report and to file annually a report to update the material contained in this report at least 30 days prior to the anniversary date of the effective date of this report.

AVALON MAKINI LLC, a Hawaii limited liability company

Printed Name of Developer

By: 

Duly Authorized Signatory\*

December 12, 2006

Date

Christine Camp Friedman, Manager

Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, City and County of Honolulu

Planning Department, City and County of Honolulu

\* Must be signed for a corporation by an officer; for a partnership or limited liability partnership (LLP) by the general partner; for a limited liability company (LLC) by the manager or an authorized member; and for an individual by the individual

\*\* See Page 7-A.

## EXHIBIT A

### **Unit Sizes and Types**

The Project contains a total of ninety-seven (97) Residential Apartment Units and Parking Apartment Units.

The Project's Residential Apartment Units are divided into six (6) different Types, designated herein and on the Condominium Map as Types 1, 1R, 2, 2R, 2A and 2B. The Residential Apartment Units are located on floors numbered 2 through 12, as shown on the Condominium Map.

The Project's Parking Apartment Units are considered to be of one (1) Type: "regular". The numbers of the Parking Apartment Units are shown in the Declaration and herein (but not on the Condominium Map) as prefixed with the letter "P". The Parking Apartment Units are either covered or partially covered and vary in net floor area, as shown herein and on the Condominium Map. The Parking Apartment Units are located on the Project land as shown on the Condominium Map.

The different types of Apartment Units are more particularly described as follows:

#### **Residential Apartments:**

The Project contains eighty-eight (88) Residential Apartment Units.

There are twenty-two (22) Type 1 Units and twenty-two (22) Type 1R Units. Each Type 1 and 1R Unit includes one bedroom, one bathroom, a kitchen, a living/dining room, and a lanai. The approximate net living area and lanai area of each Type 1 Unit is shown below.

There are sixteen (16) Type 2 Units and sixteen (16) Type 2R Units. Each Type 2 and 2R Unit includes two bedrooms, one bathroom, a kitchen, a living/dining room, and a lanai. The approximate net living area and lanai area of each Type 2 and 2R Unit is shown below.

There are eleven (11) Type 2AR Units. Each Type 2AR Unit includes two bedrooms, one bathroom, a kitchen, a living/dining room, and a lanai. The approximate net living area and lanai area of each Type 2A Unit is shown below.

There is one (1) Type 2B Unit. The Type 2B Unit includes two bedrooms, one bathroom, a kitchen, a living/dining room, and an enclosed lanai. The approximate net living area and lanai area of the Type 2B Unit is shown below.

#### **Parking Apartments:**

The Project contains nine (9) Parking Apartment Units. Each Parking Apartment Unit is either a covered or partially covered stall. The Parking Apartment Units vary in size, as shown below.

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The numbers, types, approximate areas, parking stall assignment and common interests of the Units are set forth in the chart that begins on the following page.

**Residential Apartment Units**

<u>Residential Apt. No.</u>	<u>Number of BR / Baths</u>	<u>Unit Type</u>	<u>Net Living Area (Sq. Ft.)</u>	<u>Other Areas (Lanai) Sq. Ft.</u>	<u>Total Sq. Ft. Area</u>	<u>Common Area Int. %</u>	<u>Parking Stall No.</u>	<u>Owner Occupant Unit **</u>
201	2/1	2B	609.0	52.6	661.6	1.3944%	84	No
202	2/1	2R	605.0	52.6	657.6	1.2811%	105	Yes
203	1/1	1R	466.8	52.6	519.4	0.9881%	96	Yes
204	1/1	1	466.8	52.6	519.4	0.9881%	95	No
205	1/1	1	466.8	52.6	519.4	0.9881%	101	Yes
206	1/1	1R	466.8	52.6	519.4	0.9881%	102	No
207	2/1	2AR	606.2	52.6	658.8	1.2840%	99	No
208	2/1	2	605.0	52.6	657.6	1.2811%	92	Yes
301	2/1	2	605.0	52.6	657.6	1.2811%	76	Yes
302	2/1	2R	605.0	52.6	657.6	1.2811%	91	No
303	1/1	1R	466.8	52.6	519.4	0.9881%	94	No
304	1/1	1	466.8	52.6	519.4	0.9881%	93	Yes
305	1/1	1	466.8	52.6	519.4	0.9881%	103	Yes
306	1/1	1R	466.8	52.6	519.4	0.9881%	104	Yes
307	2/1	2AR	606.2	52.6	658.8	1.2840%	83	No
308	2/1	2	605.0	52.6	657.6	1.2811%	98	No
401	2/1	2	605.0	52.6	657.6	1.2811%	60	No
402	2/1	2R	605.0	52.6	657.6	1.2811%	66	Yes
403	1/1	1R	466.8	52.6	519.4	0.9881%	90	Yes
404	1/1	1	466.8	52.6	519.4	0.9881%	97	No
405	1/1	1	466.8	52.6	519.4	0.9881%	77	Yes
406	1/1	1R	466.8	52.6	519.4	0.9881%	100	No
407	2/1	2AR	606.2	52.6	658.8	1.2840%	75	No
408	2/1	2	605.0	52.6	657.6	1.2811%	3	Yes
501	2/1	2	605.0	52.6	657.6	1.2811%	56	Yes
502	2/1	2R	605.0	52.6	657.6	1.2811%	9	No
503	1/1	1R	466.8	52.6	519.4	0.9881%	88	No
504	1/1	1	466.8	52.6	519.4	0.9881%	89	Yes
505	1/1	1	466.8	52.6	519.4	0.9881%	79	No
506	1/1	1R	466.8	52.6	519.4	0.9881%	78	Yes
507	2/1	2AR	606.2	52.6	658.8	1.2840%	40	Yes
508	2/1	2	605.0	52.6	657.6	1.2811%	4	No
601	2/1	2	605.0	52.6	657.6	1.2811%	74	No
602	2/1	2R	605.0	52.6	657.6	1.2811%	5	Yes
603	1/1	1R	466.8	52.6	519.4	0.9881%	16	Yes
604	1/1	1	466.8	52.6	519.4	0.9881%	17	No
605	1/1	1	466.8	52.6	519.4	0.9881%	13	Yes

<u>Residential Apt. No.</u>	<u>Number of BR / Baths</u>	<u>Unit Type</u>	<u>Net Living Area (Sq. Ft.)</u>	<u>Other Areas (Lanai) Sq. Ft.</u>	<u>Total Sq. Ft. Area</u>	<u>Common Area Int. %</u>	<u>Parking Stall No.</u>	<u>Owner Occupant Unit **</u>
606	1/1	1R	466.8	52.6	519.4	0.9881%	14	Yes
607	2/1	2AR	606.2	52.6	658.8	1.2840%	6	No
608	2/1	2	605.0	52.6	657.6	1.2811%	44	Yes
701	2/1	2	605.0	52.6	657.6	1.2811%	72	Yes
702	2/1	2R	605.0	52.6	657.6	1.2811%	73	No
703	1/1	1R	466.8	52.6	519.4	0.9881%	61	No
704	1/1	1	466.8	52.6	519.4	0.9881%	15	Yes
705	1/1	1	466.8	52.6	519.4	0.9881%	62	No
706	1/1	1R	466.8	52.6	519.4	0.9881%	12	Yes
707	2/1	2AR	606.2	52.6	658.8	1.2840%	8	Yes
708	2/1	2	605.0	52.6	657.6	1.2811%	45	No
801	2/1	2	605.0	52.6	657.6	1.2811%	55	No
802	2/1	2R	605.0	52.6	657.6	1.2811%	7	Yes
803	1/1	1R	466.8	52.6	519.4	0.9881%	87	Yes
804	1/1	1	466.8	52.6	519.4	0.9881%	63	No
805	1/1	1	466.8	52.6	519.4	0.9881%	80	Yes
806	1/1	1R	466.8	52.6	519.4	0.9881%	64	No
807	2/1	2AR	606.2	52.6	658.8	1.2840%	72	No
808	2/1	2	605.0	52.6	657.6	1.2811%	41	Yes
901	2/1	2	605.0	52.6	657.6	1.2811%	54	No
902	2/1	2R	605.0	52.6	657.6	1.2811%	46	No
903	1/1	1R	466.8	52.6	519.4	0.9881%	85	No
904	1/1	1	466.8	52.6	519.4	0.9881%	65	Yes
905	1/1	1	466.8	52.6	519.4	0.9881%	81	No
906	1/1	1R	466.8	52.6	519.4	0.9881%	86	Yes
907	2/1	2AR	606.2	52.6	658.8	1.2840%	42	No
908	2/1	2	605.0	52.6	657.6	1.2811%	70	Yes
1001	2/1	2	605.0	52.6	657.6	1.2811%	67	No
1002	2/1	2R	605.0	52.6	657.6	1.2811%	43	Yes
1003	1/1	1R	466.8	52.6	519.4	0.9881%	2	No
1004	1/1	1	466.8	52.6	519.4	0.9881%	38	No
1005	1/1	1	466.8	52.6	519.4	0.9881%	1	No
1006	1/1	1R	466.8	52.6	519.4	0.9881%	82	No
1007	2/1	2AR	606.2	52.6	658.8	1.2840%	68	No
1008	2/1	2	605.0	52.6	657.6	1.2811%	69	Yes
1101	2/1	2	605.0	52.6	657.6	1.2811%	52	Yes
1102	2/1	2R	605.0	52.6	657.6	1.2811%	53	No
1103	1/1	1R	466.8	52.6	519.4	0.9881%	37	No
1104	1/1	1	466.8	52.6	519.4	0.9881%	58	Yes
1105	1/1	1	466.8	52.6	519.4	0.9881%	59	No

<u>Residential Apt. No.</u>	<u>Number of BR / Baths</u>	<u>Unit Type</u>	<u>Net Living Area (Sq. Ft.)</u>	<u>Other Areas (Lanai) Sq. Ft.</u>	<u>Total Sq. Ft. Area</u>	<u>Common Area Int. %</u>	<u>Parking Stall No.</u>	<u>Owner Occupant Unit **</u>
1106	1/1	1R	466.8	52.6	519.4	0.9881%	18	Yes
1107	2/1	2AR	606.2	52.6	658.8	1.2840%	48	Yes
1108	2/1	2	605.0	52.6	657.6	1.2811%	47	No
1201	2/1	2	605.0	52.6	657.6	1.2811%	32	Yes
1202	2/1	2R	605.0	52.6	657.6	1.2811%	35	Yes
1203	1/1	1R	466.8	52.6	519.4	0.9881%	11	Yes
1204	1/1	1	466.8	52.6	519.4	0.9881%	57	No
1205	1/1	1	466.8	52.6	519.4	0.9881%	10	Yes
1206	1/1	1R	466.8	52.6	519.4	0.9881%	39	No
1207	2/1	2AR	606.2	52.6	658.8	1.2840%	31	No
1208	2/1	2	605.0	52.6	657.6	1.2811%	34	Yes

\* Net Living Area is the floor area of the unit measured from the interior surface of the unit perimeter walls

\*\* Developer reserves the right to substitute the units designated for sale to Owner-Occupants in this report.

**Parking Apartment Units**

<u>Parking Apartment Number:</u>	<u>Total Sq. Ft. Area</u>	<u>Common Interest</u>
P19	171.0	0.0010%
P20	180.5	0.0010%
P21	229.6	0.0010%
P22	229.6	0.0010%
P23	161.5	0.0010%
P24	161.5	0.0010%
P25	120.0	0.0010%
P26	180.5	0.0010%
P33	351.0	0.0020%

- Parking Apartment Units are covered or partially covered stalls.

**END OF EXHIBIT A**

**EXHIBIT B****Parking Stall Assignments and Types**

<u>Residential Apt. No.</u>	<u>Parking Stall Number</u>	<u>Type of Stall</u>	<u>Covered/Uncovered</u>
201	84	Regular	Uncovered
202	105	Regular	Uncovered
203	96	Regular	Uncovered
204	95	Regular	Uncovered
205	101	Regular	Uncovered
206	102	Regular	Uncovered
207	99	Regular	Uncovered
208	92	Regular	Uncovered
301	76	Regular	Uncovered
302	91	Regular	Uncovered
303	94	Regular	Uncovered
304	93	Regular	Uncovered
305	103	Regular	Uncovered
306	104	Regular	Uncovered
307	83	Regular	Uncovered
308	98	Regular	Uncovered
401	60	Regular	Uncovered
402	66	Regular	Uncovered
403	90	Regular	Uncovered
404	97	Regular	Uncovered
405	77	Regular	Uncovered
406	100	Regular	Uncovered
407	75	Regular	Uncovered
408	3	Regular	Uncovered
501	56	Regular	Uncovered
502	9	Regular	Uncovered
503	88	Regular	Uncovered
504	89	Regular	Uncovered
505	79	Regular	Uncovered
506	78	Regular	Uncovered
507	40	Regular	Uncovered
508	4	Regular	Uncovered
601	74	Regular	Uncovered
602	5	Regular	Uncovered
603	16	Regular	Uncovered
604	17	Regular	Uncovered
605	13	Regular	Uncovered
606	14	Regular	Uncovered

<u>Residential Apt. No.</u>	<u>Parking Stall Number</u>	<u>Type of Stall</u>	<u>Covered/Uncovered</u>
607	6	Regular	Uncovered
608	44	Regular	Uncovered
701	72	Regular	Uncovered
702	73	Regular	Uncovered
703	61	Regular	Uncovered
704	15	Regular	Uncovered
705	62	Regular	Uncovered
706	12	Regular	Uncovered
707	8	Regular	Uncovered
708	45	Regular	Uncovered
801	55	Regular	Uncovered
802	7	Regular	Uncovered
803	87	Regular	Uncovered
804	63	Regular	Uncovered
805	80	Regular	Uncovered
806	64	Regular	Uncovered
807	72	Regular	Uncovered
808	41	Regular	Uncovered
901	54	Regular	Uncovered
902	46	Regular	Uncovered
903	85	Regular	Uncovered
904	65	Regular	Uncovered
905	81	Regular	Uncovered
906	86	Regular	Uncovered
907	42	Regular	Uncovered
908	70	Regular	Uncovered
1001	67	Regular	Uncovered
1002	43	Regular	Uncovered
1003	2	Regular	Uncovered
1004	38	Regular	Uncovered
1005	1	Regular	Uncovered
1006	82	Regular	Uncovered
1007	68	Regular	Uncovered
1008	69	Regular	Uncovered
1101	52	Regular	Uncovered
1102	53	Regular	Uncovered
1103	37	Regular	Uncovered
1104	58	Regular	Uncovered
1105	59	Regular	Uncovered
1106	18	Regular	Uncovered

<u>Residential Apt. No.</u>	<u>Parking Stall Number</u>	<u>Type of Stall</u>	<u>Covered/Uncovered</u>
1107	48	Regular	Uncovered
1108	47	Regular	Uncovered
1201	32	Regular	Covered
1202	35	Regular	Covered
1203	11	Regular	Uncovered
1204	57	Regular	Uncovered
1205	10	Regular	Uncovered
1206	39	Regular	Uncovered
1207	31	Regular	Covered
1208	34	Regular	Covered
GUEST	49	Regular	Uncovered
GUEST	50	Regular	Uncovered
GUEST	51	Regular	Uncovered

- The actual size of each stall varies.
- As disclosed in the Sales Contract, the Regular sized parking stalls may become Compact sized stalls to meet current City & County requirements.

**END OF EXHIBIT B**

## EXHIBIT C

### Common Elements

The common elements consist of all portions of the Project other than the units, including specifically, but not limited to:

- a. The Land in fee simple, and any easements appurtenant thereto;
- b. All foundations, columns, girders, beams, footings, floor slabs, supports, unfinished portions of unit perimeter walls, party and load-bearing walls and partitions, roofs, the portions of the boundaries of the units described as common elements in paragraph 1. a. above, elevator cars, shafts, and doors, and related equipment, stairs and stairways, walkways, corridors, ramps, fences, entrances, entryways and exits of the building within the Project;
- c. All walkways, sidewalks, retaining walls, fences, gates, yard areas, driveways, drive lanes and all other common ways, parking areas, guest parking stalls, loading zones, pool enclosure areas, all landscaping, fences, gates, walls enclosing common elements, yards, and grounds;
- d. Those portions of any pipes, cables, conduits, chutes, flues, ducts, wires, vents, shafts, other utility or service lines, sewage treatment equipment and facilities (if any), electrical equipment, electrical closets, storage rooms, communications rooms, or other central and appurtenant transmission facilities and installations over, under and across the Project, or any other fixtures, whether located partially within and partially outside the designated boundaries of a unit, which serve more than one unit;
- e. The swimming pool and Pool Area within the Project, including the outdoor shower and restroom;
- f. The office, lobby, entry phone system, security cameras, and entry gate;
- g. All utility and maintenance rooms, closets and facilities, electrical and mechanical rooms, closets, and facilities, storage rooms, closets, and facilities, accessory equipment areas, trash chutes and rooms, and refuse areas;
- h. All laundry rooms, washers, dryers, and any and all other apparatus and installations of common use and all other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use;
- i. The limited common elements described in Exhibit D attached hereto.

END OF EXHIBIT C

## **EXHIBIT D**

### **Limited Common Elements**

The limited common elements set aside and reserved for the exclusive use of certain units, and such units are as follows:

- a. Each Residential Apartment Unit shall have appurtenant thereto as a limited common element the parking stall designated as appurtenant to the unit on Exhibit "B" attached hereto;
- b. Each of the Residential Apartment Units shall have appurtenant thereto as a limited common element the mailbox designated with the unit's number and located in the ground floor lobby area of the building.
- c. With respect to any chute, flue, duct, wire, conduit, cable, vent, shaft or other utility, service line and any other fixture which lies partially within and partially outside of a unit, those portions thereof serving only that unit shall be a limited common element appurtenant exclusively to such unit;
- d. Any walkway, stairway, entrance, exit, or steps which would normally be used only for the purpose of ingress to and egress from a specific unit or units shall be limited common elements appurtenant to and reserved for the exclusive use of such unit or units;
- e. Any shutters, awnings, window boxes, doorsteps, stoops, the exterior doors and windows that are part of the boundary of a unit and the lanai shown on the Condominium Map as adjacent to any exterior door of such unit and which lanai is accessible through such door are limited common elements appurtenant exclusively to such unit.
- f. The Residential Apartment Units as a group shall have appurtenant thereto as limited common elements, all common elements of the Project that are not required for the use, support and maintenance of the Parking Apartment units, including without limitation, the swimming pool, the elevators, the stairwells, hallways, laundry rooms, the three guest parking stalls, and all parts of the building and other parts of the Project not required for parking of vehicles in the Parking Apartment Units and not required for ingress and egress and pedestrian and vehicular access to and from Kinau Street and for structural support of the Parking Apartment Units. Such limited common elements are for the exclusive use of the owners of the Residential Apartment Units and their tenants and guests and the owners of the Parking Apartment Units shall not have access to nor the right to use such limited common elements.

**END OF EXHIBIT D**

**EXHIBIT E**

**Encumbrances Against Title as Contained in that certain  
Preliminary Report issued by Title Guaranty of Hawaii, dated August 26, 2006**

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. AS TO that certain parcel situate at Kulaokahua Plains, Honolulu, City and County of Honolulu, State of Hawaii, being LOT "A", 30,075 square feet, more or less:

(A) A perpetual right-of-way for road purposes, being a strip of land twenty (20) feet wide, and more particularly described as per as per survey prepared by Ryan M. Suzuki, Land Surveyor, with R.M. Towill Corporation, dated May 16, 2006, to-wit:

Beginning at the southwest corner of this right-of-way, being also along the northeast side of Kinau Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 3,063.76 feet south and 1,011.33 feet east and thence running by azimuths measured clockwise from true south:

- |    |          |        |  |
|----|----------|--------|--|
| 1. | 201° 12' | 120.00 | feet;  |
| 2. | 291° 12' | 20.00  | feet;  |
| 3. | 21° 12'  | 120.00 | feet along a portion of Royal Patent Grant 3355 to James Lycett;   |
| 4. | 111° 12' | 20.00  | feet along the northeast side of Kinau Street to the point of beginning and containing an area of 2,400 square feet, more or less. |

(B) Restriction of rights of access into and from Lunalilo Freeway, Federal Aid Interstate Project No. I-H1-1 (23), which restriction was imposed by the STATE OF HAWAII, by QUITCLAIM DEED dated May 21, 1969, recorded in Liber 6946 at Page 10.

3. Effect(s), if any, of ASSIGNMENT dated December 30, 1976, recorded in Liber 11932 at Page 133, by and between FREDA MARTIN, also known as FREDERICA MARTIN, and CHARLES MAURICE MARTIN, as Trustee.
4. Agreement for Issuance of Conditional Use Permit under Section 21-5.380 of the Land Use Ordinance (LUO), dated July 27, 2006, recorded as Document No. 2006-138544 by Howard R. Green, also known as Howard Green, Successor Trustee under unrecorded Trust Agreement made by Freda Martin, also known as Frederica Martin, Charles M. Martin, Beryl Martin Haxton, Joan Martin Rodby and Anne Martin Wilson dated December 19, 1974, "Declarant".
5. Any unrecorded leases and matters arising from or affecting the same.
6. A CRM Wall crosses the south boundary of the subject lot into Kinau Street for a maximum distance of four-tenths (0.4) of a foot, as shown on survey map prepared by Ryan M. Suzuki, Land Surveyor, with R.M. Towill Corporation, revised May 24, 2006.
7. For Real Property Taxes that may be due and owing, reference is made to the Department of Finance, City and County of Honolulu.

**END OF EXHIBIT E**

EXHIBIT F

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR - HONOLULU, HAWAII 96813  
TELEPHONE: (808) 523-4432 • FAX: (808) 527-6743  
DEPT. INTERNET: [www.honolulu.gov](http://www.honolulu.gov) • INTERNET: [www.honolulu.gov](http://www.honolulu.gov)

MUFI HANNEMANN  
MAYOR



HENRY ENG, FAICP  
DIRECTOR

DAVID K. TANOUÉ  
DEPUTY DIRECTOR

2006/ELOG-529(AS)

August 7, 2006

Design Partners Incorporated  
1580 Makaloa Street, Suite 1100  
Honolulu, Hawaii 96814

Attention: Mr. Duane Hamada

Gentlemen:

Re: Condominium Conversion Project  
1050 Kinau Street  
Tax Map Key: (1) 2-4-13: 032

This is in response to your letter dated March 7, 2006, requesting verification that the structure located at the above-referenced property met all applicable code requirements at the time of construction.

Investigation revealed that the 12-story 88-unit apartment building met all applicable code requirements when it was constructed in 1968 along with 88 all-weather-surface off-street parking spaces on this 30,074 square-foot A-2 Apartment District zoned lot.

Investigation also revealed the following:

- 1) On July 20, 2006, a conditional use permit (File No. 2006/CUP-65) was approved with conditions for the joint development of Parcel 30 and the above-referenced Parcel 32. However, at the time of this letter the conditions have not been met.
- 2) On March 3, 1970, Building Permit No. 82277 was issued for a swimming pool. The construction of the pool eliminated approximately eight (8) parking spaces. However, since that time, the parking layout, including access driveways, has been further altered and there are now only 65 parking spaces on this zoning lot. Approval from the Department of Planning and Permitting is required for any changes to the parking layout.
- 3) A storage/maintenance shed, approximately 14 feet by 30 feet, has been constructed on the ewa side of the building without first obtaining the required building permit. If a permit cannot be obtained, then the shed must be demolished.

Design Partners Incorporated  
August 7, 2006  
Page 2

Note: A permit for the storage shed (item #3) and approval for the parking layout (item #2) must be obtained in a timely manner or a notice of violation will be issued.

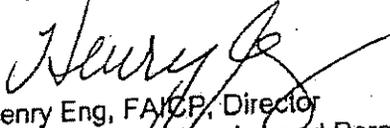
For your information, the Department of Planning and Permitting cannot determine all legal nonconforming uses or structures, as a result of the adoption or amendment of any ordinance or code.

No variances or other permits were granted to allow deviations from any applicable codes.

Conversion to a condominium property regime (CPR) is not recognized by the City and County as an approved subdivision. CPR delineates ownership; it does not create separate lots of record for subdivision and zoning purposes.

If you have any questions regarding this matter, please contact Mr. Ivan Matsumoto of our Commercial and Multi-Family Code Enforcement Branch at 527-6341.

Very truly yours,

  
Henry Eng, FAICP, Director  
Department of Planning and Permitting

HE:ft

doc469993

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 523-4432 • FAX: (808) 527-5748  
DEPT. INTERNET: www.honolulu.gov • INTERNET: www.honolulu.gov

MUR HANNEMANN  
MAYOR



HENRY ENG, FAICP  
DIRECTOR

DAVID K. TANOUÉ  
DEPUTY DIRECTOR

2006/ELOG-1918(DT)

August 9, 2006

Ms. Laurie Ann K. Sato  
Avalon Development Company  
841 Bishop Street, Suite 1601  
Honolulu, Hawaii 96813

Dear Ms. Sato:

Re: Conditional Use Permit (CUP) No. 2006/CUP-65  
Joint Development Agreement  
1048 Kinau Street - Makiki  
Tax Map Key 2-4-13-32

The executed joint development agreement, filed with the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2006-138544, meets Condition 1 of the above CUP. You may now proceed with processing of building permits.

If you have any questions, please call Dana Teramoto of our staff at 523-4648.

Very truly yours,

for Henry Eng, FAICP, Director  
Department of Planning and Permitting

HE:cs:

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## EXHIBIT G

### **Estimate of Initial Maintenance Fees**

Attached as Exhibit "1" is a breakdown of the monthly maintenance charges and the monthly estimated cost for each unit in the Project, prepared by Hawaiiana Management Company, Ltd., a Hawaii corporation, which is certified to have been based on generally accepted accounting principles. The attached breakdown of annual maintenance charges and the estimated cost for each unit are subject to change based on the actual cost of the items listed. The Developer can make no assurances regarding the estimated maintenance assessments. Variables such as inflation, uninsured casualty loss or damage, increased or decreased services from those contemplated by the Developer, unit owner delinquencies and other factors may cause the maintenance assessments to be greater or less than the estimated maintenance assessments.

The Developer will assume all the actual common expenses of the Project (and therefore a unit owner will not be obligated for the payment of his respective share of the common expenses) until such time as the Developer sends the owners written notice that, after a specified date, the unit owners shall be obligated to pay for the portion of common expenses that is allocated to their respective units. The Developer shall have no obligation to pay for any cash reserves or any other reserve amounts with respect to or attributable to the period during which the Developer assumes the actual common expenses of the Project.

The Units are not separately metered for electricity and/or water. There are no separate sub meters for the individual units and no sub meters to measure the utilization of electricity or water for the common elements, including the swimming pool. Instead, the Association will receive a master bill from the provider of the utility service. The payment of the master utility bills will be a common expense of the Association. As provided in the Bylaws, the Board of Directors will then separately bill each Unit for their owner's share of the utility bills. The Bylaws gives the Board the discretion to allocate the charges to each Unit in an equitable and fair manner, as determined by the Board in its sole business judgment and discretion. The Board may choose to allocate electricity and water according to the same or different methods, including without limitation, in accordance with the common interest appurtenant to each unit or some variation thereof, or in accordance with some other method, such as a method based on number of occupants in a Unit, Unit size, number of rooms, etc. Any method chosen by the Board will apply to the master bills which master bills will be for the utility usage for the entire Project, the units and the common elements, including the swimming pool, the elevators, laundry rooms, etc. Each unit owner will be legally obligated to pay the utility bills as charged to the unit owner by the Board as a common expense payable by each owner in the same manner as all other charges for common expenses. The allocation of the utility charges as determined by the Board shall be binding on each owner regardless of the relative usage of the common elements, such as the swimming pool by the owners or occupants of the units. If and until the Board decides on a different method of allocating the utility charges, all utility charges will be allocated in accordance with the common interest appurtenant to each Unit.

NOTE: THE DEVELOPER ADVISES THAT COSTS AND EXPENSES OF MAINTENANCE AND OPERATION OF A CONDOMINIUM PROJECT ARE VERY DIFFICULT TO ESTIMATE INITIALLY AND EVEN IF SUCH MAINTENANCE CHARGES HAVE BEEN ACCURATELY ESTIMATED, SUCH CHARGES WILL TEND TO INCREASE IN AN INFLATIONARY ECONOMY AND AS THE IMPROVEMENTS AGE. MAINTENANCE CHARGES CAN VARY DEPENDING ON SERVICES DESIRED BY UNIT OWNERS. THE BUYER SHOULD EXAMINE THE MAINTENANCE CHARGE SCHEDULE TO SEE WHAT SERVICES ARE INCLUDED IN THE SCHEDULE.

END OF EXHIBIT G

EXHIBIT "1"

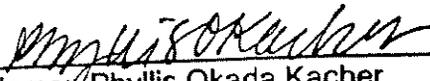
CERTIFICATE

I, the undersigned, duly sworn on oath, depose and affirm as follows:

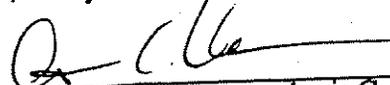
1. That I am the Senior Vice President for Hawaiiiana Management Company, Ltd., a Hawaii corporation, designated by the Developer of the Makini at Kinau condominium project (the "Project") to act as the Managing Agent for the management and administration of the Project.

2. That I hereby certify that the breakdown of the annual maintenance charges and the monthly estimated cost for each unit in the Project, as set forth in Exhibit "1" attached hereto and hereby incorporated herein by reference, were determined pursuant to a reserve study conducted in accordance with Section 514B-148 of the Hawaii Revised Statutes and Chapter 107 of the Hawaii Administrative Rules, and are reasonable estimates for the one-year period commencing September 1, 2006, based on generally accepted accounting principles.

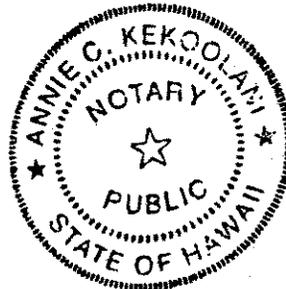
DATED: Honolulu, Hawaii, this 7<sup>th</sup> day of August, 2006.

  
Name: Phyllis Okada Kacher  
Title: Senior Vice President  
Hawaiiiana Management Company, Ltd.

Subscribed and sworn to before me  
this 7<sup>th</sup> day of August, 2006.

  
Typed or Printed Name: Annic C. Kekoolani  
Notary Public, State of Hawaii

My commission expires: 02-16-2010





7-31-06

## Estimated Maintenance Fees

Makini at Kinau  
(88 units)

Residential Apt. No.	Common Interest	Monthly Fees	Annual Fees
201	1.3944%	\$396.55	\$4,758.64
202	1.2811%	\$364.33	\$4,371.98
203	0.9881%	\$281.01	\$3,372.07
204	0.9881%	\$281.01	\$3,372.07
205	0.9881%	\$281.01	\$3,372.07
206	0.9881%	\$281.01	\$3,372.07
207	1.2840%	\$365.16	\$4,381.88
208	1.2811%	\$364.33	\$4,371.98
301	1.2811%	\$364.33	\$4,371.98
302	0.9881%	\$281.01	\$3,372.07
303	0.9881%	\$281.01	\$3,372.07
304	0.9881%	\$281.01	\$3,372.07
305	0.9881%	\$281.01	\$3,372.07
306	0.9881%	\$281.01	\$3,372.07
307	1.2840%	\$365.16	\$4,381.88
308	1.2811%	\$364.33	\$4,371.98
401	1.2811%	\$364.33	\$4,371.98
402	1.2811%	\$364.33	\$4,371.98
403	0.9881%	\$281.01	\$3,372.07
404	0.9881%	\$281.01	\$3,372.07
405	0.9881%	\$281.01	\$3,372.07
406	0.9881%	\$281.01	\$3,372.07
407	1.2840%	\$365.16	\$4,381.88
408	1.2811%	\$364.33	\$4,371.98
501	1.2811%	\$364.33	\$4,371.98
502	1.2811%	\$364.33	\$4,371.98
503	0.9881%	\$281.01	\$3,372.07
504	0.9881%	\$281.01	\$3,372.07
505	0.9881%	\$281.01	\$3,372.07
506	0.9881%	\$281.01	\$3,372.07
507	1.2840%	\$365.16	\$4,381.88
508	1.2811%	\$364.33	\$4,371.98
601	1.2811%	\$364.33	\$4,371.98
602	1.2811%	\$364.33	\$4,371.98
603	0.9881%	\$281.01	\$3,372.07
604	0.9881%	\$281.01	\$3,372.07
605	0.9881%	\$281.01	\$3,372.07
606	0.9881%	\$281.01	\$3,372.07
607	1.2840%	\$365.16	\$4,381.88
608	1.2811%	\$364.33	\$4,371.98
701	1.2811%	\$364.33	\$4,371.98

7-31-06

## Estimated Maintenance Fees

Makini at Kinau  
(88 units)

Residential Apt. No.	Common Interest	Monthly Fees	Annual Fees
702	1.2811%	\$364.33	\$4,371.98
703	0.9881%	\$281.01	\$3,372.07
704	0.9881%	\$281.01	\$3,372.07
705	0.9881%	\$281.01	\$3,372.07
706	0.9881%	\$281.01	\$3,372.07
707	1.2840%	\$365.16	\$4,381.88
708	1.2811%	\$364.33	\$4,371.98
801	1.2811%	\$364.33	\$4,371.98
802	1.2811%	\$364.33	\$4,371.98
803	0.9881%	\$281.01	\$3,372.07
804	0.9881%	\$281.01	\$3,372.07
805	0.9881%	\$281.01	\$3,372.07
806	0.9881%	\$281.01	\$3,372.07
807	1.2840%	\$365.16	\$4,381.88
808	1.2811%	\$364.33	\$4,371.98
901	1.2811%	\$364.33	\$4,371.98
902	1.2811%	\$364.33	\$4,371.98
903	0.9881%	\$281.01	\$3,372.07
904	0.9881%	\$281.01	\$3,372.07
905	0.9881%	\$281.01	\$3,372.07
906	0.9881%	\$281.01	\$3,372.07
907	1.2840%	\$365.16	\$4,381.88
908	1.2811%	\$364.33	\$4,371.98
1001	1.2811%	\$364.33	\$4,371.98
1002	1.2811%	\$364.33	\$4,371.98
1003	0.9881%	\$281.01	\$3,372.07
1004	0.9881%	\$281.01	\$3,372.07
1005	0.9881%	\$281.01	\$3,372.07
1006	0.9881%	\$281.01	\$3,372.07
1007	1.2840%	\$365.16	\$4,381.88
1008	1.2811%	\$364.33	\$4,371.98
1101	1.2811%	\$364.33	\$4,371.98
1102	1.2811%	\$364.33	\$4,371.98
1103	0.9881%	\$281.01	\$3,372.07
1104	0.9881%	\$281.01	\$3,372.07
1105	0.9881%	\$281.01	\$3,372.07
1106	0.9881%	\$281.01	\$3,372.07
1107	1.2840%	\$365.16	\$4,381.88
1108	1.2811%	\$364.33	\$4,371.98
1201	1.2811%	\$364.33	\$4,371.98
1202	1.2811%	\$364.33	\$4,371.98



## **EXHIBIT H**

### **Summary of Sales Contract**

The Sales Contract provides for the sale of a condominium unit (the "Unit") by the Developer to a Buyer. A specimen Sales Contract has been submitted to the Real Estate Commission and is available in the Sales Office of the Seller. ALL BUYERS AND PROSPECTIVE BUYERS SHOULD CAREFULLY READ THE SALES CONTRACT, INCLUDING ANY ADDENDUM, IN FULL, since this summary is NOT A COMPLETE DESCRIPTION of their provisions. The Sales Contract, among other things, covers in more detail the following items:

1. The Sales Contract is a binding agreement and provides the price for the unit, the amount of payments and when they are to be made to escrow. Although binding, the Seller may cancel the Sales Contract if the Buyer defaults or fails to furnish satisfactory evidence of ability to pay the purchase price or if the Buyer intends to finance the purchase and fails to obtain a loan commitment by the time specified in the Sales Contract. In certain cases, the Buyer may be responsible for escrow cancellation fees.
2. The Sales Contract provides that in addition to the purchase price, the Buyer will pay closing costs which includes notary fees, cost of drafting the recording the deed, title costs and title insurance premiums, fees such as telephone hook up fees, conveyance tax, Buyer's lender's costs, other customary fees, pro rated real property taxes and 50% of the escrow fee. In addition to two month's maintenance fees in advance (prorated depending on the closing date), another two month's maintenance fee will be payable by Buyer as a start up fee to be applied to start up costs and/or association reserves or to reimburse Seller for any advances.
3. THE SALES CONTRACT PROVIDES THAT THE PROJECT IS A CONVERSION OF AN EXISTING BUILDING AND THAT BUYER IS PURCHASING THE UNIT AS-IS, WITH ALL DEFECTS AND WITHOUT ANY WARRANTIES. THE SALES CONTRACT FURTHER PROVIDES THAT NO WARRANTIES ARE GIVEN AS TO THE STRUCTURAL, MECHANICAL AND ELECTRICAL SYSTEMS OF THE PROJECT, OR THE UNIT, THE COMMON ELEMENTS, LIMITED COMMON ELEMENTS, OR ANYTHING IN THE UNITS WITH THE SOLE EXCEPTION OF MANUFACTURER'S (AND NOT SELLER'S) WARRANTIES IF A UNIT IS SOLD WITH NEW APPLIANCES OR FIXTURES CONTAINED IN THE UNIT. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES AND THERE WILL BE NO CONTRACTOR'S WARRANTY WITH RESPECT TO THE MATERIALS OR WORKMANSHIP INVOLVED IN THE RENOVATION OF THE UNITS OR THE PROJECT. ALL UNITS WILL BE SOLD WITH NEW APPLIANCES AS DESCRIBED IN THE SALES CONTRACT UNLESS THE BUYER EXECUTES A DISCOUNT ADDENDUM IN WHICH CASE THE BUYER WILL PURCHASE THE UNIT WITH THE EXISTING APPLIANCES LOCATED IN THE UNIT. THE SELLER WILL MAKE AVAILABLE TO THE BUYER ANY EXISTING MANUFACTURER'S WARRANTIES ON NEW APPLIANCES. THE SALES CONTRACT FURTHER PROVIDES THAT THE SELLER HAS MADE NO REPRESENTATIONS ABOUT THE PHYSICAL CONDITION OF THE PROJECT OR UNIT.
4. By signing the Sales Contract, the Buyer acknowledges that the model units may not be exact replicas of the units in the Project. The Sales Contract provides that the Buyer will have an opportunity to inspect the Unit prior to Closing and defects found as a result of the inspection shall not be grounds to cancel this Contract. The Sales Contract provides that the Seller has no obligation to repair or remedy defects and that the Buyer agrees to close on the Unit in as is condition with all defects. The Sales Contract provides that the Seller has no responsibility for existing or future termite damage, mold or other condition, or for safety and security within the Project.
5. The Sales Contract provides that the Condominium Map for the Project is intended to show only the layout, location, unit numbers and dimensions of the units in the Project and is not intended to be and is not a warranty or promise of any kind by the Seller. The Sales Contract provides that certain items shown on the Condominium Map may change due to field changes and other factors. The Sales Contract provides that

Seller reserves the right to amend the Condominium Map, the Declaration and the other Project documents from time to time to reflect such changes.

6. The Sales Contract provides that Escrow may disburse to Seller all or portions of Buyer's funds deposited with Escrow prior to closing and prior to completion of construction of the Project to pay for project costs, construction costs, including repairs necessary to cure violations of county zoning and building ordinances and codes, and for architectural, engineering, finance and legal fees, and other incidental expenses of the Project, in accordance with and subject to the requirements of Hawaii's condominium law (Chapter 514B of the Hawaii Revised Statutes, as amended).
7. The Sales Contract confirms that NO ONE (INCLUDING THE SELLER OR ANY SALESPERSON) HAS TALKED TO BUYER AT ALL ABOUT ANY RENTAL INCOME OR RENTAL OR SALES SERVICES FOR BUYER'S UNIT and that IF BUYER WANTS TO RENT OR SELL THE UNIT, HOW BUYER DOES SO WILL BE UP TO BUYER SUBJECT TO THE RESTRICTIONS CONTAINED IN THE SALES CONTRACT AND IN THE DECLARATION, THE BY-LAWS, AND ANY OTHER DOCUMENTS AFFECTING THE PROPERTY. BUYER ALSO AGREES THAT NO ONE HAS TALKED TO BUYER AT ALL ABOUT INCOME FROM THE UNIT OR ANY OTHER ECONOMIC BENEFIT TO BE DERIVED FROM THE PURCHASE OR OWNERSHIP OF THE UNIT OR ABOUT THE TAX EFFECTS OF BUYING THE UNIT.
8. The Sales Contract provides that the Seller will bear the risk of loss to the Unit and the percentage interest in the common elements until the Date of Occupancy or the date the Condominium Unit Deed is recorded, whichever is first. After that date, the Buyer will bear the risk of loss to the Unit and the percentage common interest in the common elements.
9. Under the Sales Contract, the Developer promises to complete renovation of the units and common elements within the Project within one (1) year from the effective date of the Public Report, provided that the one (1) year period may be extended under certain circumstances specified in Section G.18 of the Sales Contract and, if not completed by this date (as it may be extended), the Buyer will have a right to cancel the Sales contract and receive a refund of all deposits.
10. The Sales Contract contains provisions relating to the sale of units to those buyers who qualify as owner-occupants under Hawaii's condominium law.
11. By signing the Sales Contract, the Buyer acknowledges that Seller may restripe the parking stalls, including the parking stall assigned to Buyer's Unit and the size of said parking stall may decrease to a compact sized stall.
12. If the Buyer defaults under the Sales Contract, the Seller may terminate the Sales Contract and Buyer may lose all of the deposits with Escrow and the Developer, at its option, may pursue other legal remedies. If the Developer defaults under the Sales Contract, the Buyer shall be entitled to specific performance of the Sales Contract, or shall have the right to cancel and terminate the Sales Contract, or, at its option, at its option, may pursue other legal remedies.
13. If the Buyer cancels and terminates the Sales Contract because of the Developer's default, the Developer shall repay to the Buyer all sums the Buyer has paid to the Developer or to Escrow under the Sales Contract.
14. The Sales Contract provides that the Parking Apartment Units are to be used only for the parking of vehicles and ownership of a Parking Apartment Unit shall not entitle the owner to use the swimming pool, laundry room, or other common elements of the Project.
15. The Sales Contract confirms that the Buyer has had the opportunity to read and approve certain important legal documents for the Project, including the Declaration, Bylaws, and Rules and Regulations.

16. The Sales Contract provides that prior to the Effective Date of the Sales Contract, the Seller shall have the right to change the Project and modify the Project's documents in any way, including (but not limited to) the right to increase the purchase price under the Sales Contract or to terminate the Project, in which case the Buyer will be entitled to a refund of all sums paid by Buyer under the Sales Contract.
17. By signing the Sales Contract, the Buyer acknowledges that sales, construction, and renovation activity at the Project by the Developer may continue after closing of the Buyer's purchase.
18. The Sales Contract limits the Buyer's right to assign or transfer the Sales Contract and provides that the Seller may require a consent fee for any transfer.

The foregoing provisions are intended to comply with (and shall be construed consistent with) the requirements of the Hawaii Contractor Repair Act, Chapter 672E of the Hawaii Revised Statutes ("Act"). In the event of an irreconcilable conflict between the foregoing provisions and the provisions of said Act, the provisions of the Act shall govern and control.

**NOTE: ALL BUYERS SHOULD READ THE SALES CONTRACT IN FULL AS THIS SUMMARY IS NOT ALL-INCLUSIVE AND DOES NOT CONTAIN A COMPLETE DESCRIPTION OF ALL PROVISIONS OF THE SALES CONTRACT. THIS SUMMARY IS INTENDED ONLY TO GIVE A BRIEF DESCRIPTION OF SOME OF THE ITEMS CONTAINED IN THE SALES CONTRACT, AND DOES NOT ALTER OR AMEND THE SALES CONTRACT IN ANY MANNER.**

**END OF EXHIBIT H**

## EXHIBIT I

### **Summary of Escrow Agreement**

Copies of the Escrow Agreement between the Seller and Island Title Corporation are submitted to the Real Estate Commission herewith and will be made available to prospective buyers upon request. The Escrow Agreement, among other things, covers in more detail the following items:

1. All monies received by Escrow under the Escrow Agreement shall be deposited within two business days after receipt by Escrow in an interest bearing account at a federally insured institution in the State of Hawaii, and all interest paid thereon shall accrue as specified in the Reservation of Sales contract, and if not specified, shall accrue to Seller.

2. Disbursements from the buyer's escrow fund shall not be made by Escrow until the Real Estate Commission has issued a Public Report on the Project, the buyer has been provided a copy of the Public Report and receipt and notice form, and buyer has signed the receipt and notice form and waived his right to cancel or the cancellation period has elapsed, and Seller has advised Escrow that the sales contract has become binding and the requirements of the Condominium Property Act have been met.

3. Disbursements from the buyer's escrow fund may be made to Seller, to be used by Seller for construction costs of the Project.

**IMPORTANT NOTICE REGARDING YOUR DEPOSITS: DEPOSITS THAT YOU MAKE UNDER YOUR SALES CONTRACT FOR THE PURCHASE OF THE UNIT MAY BE DISBURSED BEFORE CLOSING OF YOUR PURCHASE TO PAY FOR PROJECT COSTS, CONSTRUCTION COSTS, PROJECT ARCHITECTURAL, ENGINEERING, FINANCE, AND LEGAL FEES, AND OTHER INCIDENTAL EXPENSES OF THE PROJECT. WHILE THE DEVELOPER HAS SUBMITTED SATISFACTORY EVIDENCE THAT THE PROJECT SHOULD BE COMPLETED, IT IS POSSIBLE THAT THE PROJECT MAY NOT BE COMPLETED. IF YOUR DEPOSITS ARE DISBURSED TO PAY PROJECT COSTS AND THE PROJECT IS NOT COMPLETED, THERE IS A RISK THAT YOUR DEPOSITS WILL NOT BE REFUNDED TO YOU. YOU SHOULD CAREFULLY CONSIDER THIS RISK IN DECIDING WHETHER TO PROCEED WITH YOUR PURCHASE."**

NOTE: ALL BUYERS AND PROSPECTIVE BUYERS SHOULD READ THE ESCROW AGREEMENT AND ALL AMENDMENTS IN FULL AS THIS SUMMARY IS NOT ALL-INCLUSIVE AND DOES NOT CONTAIN A COMPLETE DESCRIPTION OF ALL PROVISIONS OF THE ESCROW AGREEMENT. THIS SUMMARY IS INTENDED ONLY TO GIVE A BRIEF DESCRIPTION OF SOME OF THE ITEMS CONTAINED IN THE ESCROW AGREEMENT, AND DOES NOT ALTER OR AMEND THE ESCROW AGREEMENT IN ANY MANNER.

END OF EXHIBIT I

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail  Pickup  To:

GOODSILL ANDERSON QUINN & STIFEL  
A LIMITED LIABILITY LAW PARTNERSHIP LLP  
Raymond S. Iwamoto  
Alii Place, Suite 1800  
1099 Alakea Street  
Honolulu, Hawaii 96813  
Phone: (808) 547-5600

Total Pages: \_\_\_\_\_

Tax Map Key No.: (1) 2-4-013: 032

**DECLARATION OF CONDOMINIUM PROPERTY REGIME**

**OF**

**MAKINI AT KINAU**

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WHEREAS, AVALON MAKINI LLC, a Hawaii limited liability company, whose principal place of business and post office address is 841 Bishop Street, Suite 1601, Honolulu, Hawaii 96813, hereinafter referred to as the "Developer", is acquiring and as of the date of recordation of this Declaration in the Bureau of Conveyances of the State of Hawaii will be the owner in fee simple of certain real property situated at 1050 Kinau Street, Honolulu, State of Hawaii, hereinafter referred to as the "Land", as more particularly described in **Exhibit "A"** attached hereto and hereby made a part hereof, together with the building and improvements thereon; and

WHEREAS, the Developer intends to convert the Land and the improvements thereon to a condominium project, hereinafter referred to as the "Project" by the recordation of this Declaration and the filing of the plans of the building and improvements located on the Land in the Bureau of Conveyances of the State of Hawaii as Condominium Map \_\_\_\_\_, hereinafter referred to as the "Condominium Map", which Condominium Map is hereby incorporated herein by reference;

NOW, THEREFORE, in order to create the Project, the Developer hereby submits the Land and all improvements thereon and all of its respective interests therein to a Condominium Property Regime established by the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended, and any successor statute, as amended, hereinafter sometimes referred to as the "Condominium Property Act", and in furtherance thereof makes the following declarations as to divisions, limitations, restrictions, covenants and conditions, and hereby declares and agrees that said property is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, restrictions and conditions set forth herein and in the Bylaws of the Association of Unit Owners of Makini at Kinau (hereinafter referred to as the "Bylaws") recorded in the Bureau of Conveyances of the State of Hawaii concurrently herewith, as the same may be amended from time to time, which declarations, restrictions, and conditions shall constitute covenants running with the land and shall be binding on and for the benefit of the Developer and its successors and assigns, and all subsequent owners, mortgagees, lessees and sublessees of all or any part of the Project and their respective heirs, devisees, personal representatives, successors and assigns, and any other person who may use any part of the Project. The term, "Developer" as used herein shall refer to the Developer named above and all others as defined by the Condominium Property Act. The terms, "successors and assigns" of the Developer as used herein shall refer to the others defined in the Condominium Property Act as "Developer".

A. NAME OF PROJECT. The Condominium Property Regime established hereby shall be known as "MAKINI AT KINAU".

B. DESCRIPTION OF LAND. All of the Land described in **Exhibit "A"** attached hereto is hereby submitted to the Condominium Property Regime.

C. DESCRIPTION OF BUILDING. The building is described in the Condominium Map and consists of a single twelve (12) story building, without a basement, containing forty-four (44) one-bedroom, one bath residential apartments and forty-four (44) two-bedroom, one-bath apartments, nine (9) parking apartments. There are one hundred (100) regular sized parking stalls (87 of which are uncovered, 13 of which are covered, 9 of which are parking apartments, and 88 of which are appurtenant to a residential apartment Unit in the Project, and 3 of which are guest stalls), two (2) elevators, lobby, office, mechanical, electric and other utility rooms, laundry rooms, storage rooms, trash chute and areas, and other common elements all as more particularly described herein as shown on the Condominium Map. The building is constructed principally of concrete, steel, aluminum, and glass. Also on the Land is a swimming pool area consisting of an outdoor shower, restroom, and a swimming pool (the "Pool Area").

D. DIVISION OF PROJECT. The Project is hereby divided into ninety-seven (97) separate freehold condominium unit estates consisting of eighty-eight (88) residential apartment Units and nine (9) parking apartment Units. Each individual residential apartment Unit and each individual parking apartment Unit as hereinafter described shall constitute a separate freehold condominium unit estate in accordance with the Condominium Property Act. All other portions of the Project shall constitute a single freehold estate constituting common elements as hereinafter described in accordance with the Condominium Property Act.

1. Residential Apartment Units.

(a) Eighty-Eight (88) separate freehold condominium unit estates are hereby established in the spaces within the perimeter walls, floors, ceilings, exterior doors and exterior windows of each of the eighty-eight (88) residential apartments in the Project, located on floors two (2) through twelve (12), as shown on the Condominium Map (the "Residential Apartment Units"). All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces of walls, floors, or ceilings that constitute the boundaries of the Residential Apartment Units are a part of the unit, and all other portions of the walls, floors, or ceilings, are a part of the common elements.

(b) Each Residential Apartment Unit shall include all of the walls and partitions which are not load-bearing and which are within its boundaries and shall include only the finished surfaces of the perimeter walls, floors and ceilings. The respective units shall not include the undecorated or unfinished surfaces of the interior load-bearing walls or partitions, foundations, columns, girders, beams, footings, floor slabs, supports, roofs and ceilings located within or at the perimeter of or surrounding such unit, all of which are part of the common elements. Any shutters, awnings, window boxes, lanais, doorsteps, stoops, and all exterior doors and windows or other fixtures designed to serve a single unit, but are located outside the unit's boundaries, are limited common elements appurtenant exclusively to that unit.

(c) The Project's Residential Apartment Units are divided into six (6) different Types, designated herein and on the Condominium Map as Types 1, 1R, 2, 2R, 2A and 2B. The Residential Apartment Units are identified by unit number and unit type and are located on floors numbered 2 through 12, as shown on the Condominium Map. The approximate net living area and lanai area of each Type 1, 1R, 2, 2R, 2A and 2B Unit is shown on **Exhibit "B"** attached hereto and made a part hereof. There are twenty-two (22) Type 1 Units and twenty-two (22) Type 1R Units. Each Type 1 and 1R Unit includes one bedroom, one bathroom, a kitchen, a living/dining room, and a lanai. There are sixteen (16) Type 2 Units and sixteen (16) Type 2R Units. Each Type 2 and 2R Unit includes two bedrooms, one bathroom, a kitchen, a living/dining room, and a lanai. There are eleven (11) Type 2AR Units. Each Type 2AR Unit includes two bedrooms, one bathroom, a kitchen, a living/dining room, and a lanai. There is one (1) Type 2B Unit. The Type 2B Unit, identified as Unit 201, includes two bedrooms, one bathroom, a kitchen, a living/dining room, and an enclosed lanai. The dimensions of this enclosed lanai are measured in approximately the same manner as the non enclosed lanais except that there is no wall or other feature separating the apartment from the lanai.

(d) The Residential Apartment Units are also described in **Exhibit "B"** attached hereto and made a part hereof. The approximate floor area of each Residential Apartment Unit type is reported in **Exhibit "B"** as net living area and is based on measurements taken from the interior surface of all perimeter walls, except that no reduction is made to account for interior walls, ducts, vents, shafts, and the like that may be located within the perimeter walls and the method of measurement does not correspond with or adjust for the description of what is included as part of each unit, that portion of the boundaries of each unit that are part of the common elements and those elements within each unit that are part of the common elements as herein described. The approximate net lanai floor areas set forth in **Exhibit "B"** are based on measurements taken from the interior surface of all perimeter walls of the lanais which do not separate the interior of the Residential Apartment Units from the lanais, from the exterior surface of all perimeter walls which separate the interior of the Residential Apartment Units from the lanais, and from the interior edge of the railings, walls or other exterior boundaries of the lanais.

(e) The Residential Apartment Units as a group shall have appurtenant thereto as limited common elements, all common elements of the Project that are not required for the use, support and maintenance of the Parking Apartment units, including without limitation, the swimming pool, the elevators, the stairwells, hallways, laundry rooms, the three guest parking stalls, and all parts of the building and other parts of the Project not required for parking of vehicles in the Parking Apartment Units and not required for ingress and egress and pedestrian and vehicular access to and from Kinau Street and for structural support of the Parking Apartment Units. Such limited common elements are for the exclusive

use of the owners of the Residential Apartment Units and their tenants and guests and the owners of the Parking Apartment Units shall not have access to nor the right to use such limited common elements. The owners of the Parking Apartment Units shall be limited to rights of vehicular and pedestrian access to and from Kinau Street and their respective Parking Apartment Units and the right to park vehicles in the Parking Apartment Units. The Parking Apartment Units shall be used for the parking of vehicles only and for such other customary usages of parking spaces such as the occasional cleaning of vehicles, subject to the rules and regulations of the Association that are applicable to all parking stalls that are limited common elements. The Association shall adopt only such rules that are applied uniformly to all parking stalls whether such stalls are Parking Apartment Units or limited common elements.

(f) Should the descriptions and divisions set forth in this Declaration conflict with the depictions and divisions shown on the Condominium Map, the Condominium Map shall control. The Condominium Map, however, is intended to show only the site plan for the Project, the location, layout and access to a public road, elevations and floor plans of the building and the layout, location, boundaries, unit numbers and dimensions of the units, a parking plan with location, layout and stall numbers of the parking stalls in the Project and is not intended and shall not be deemed to contain or make any other representation or warranty.

## 2. Parking Apartment Units.

(a) Nine (9) separate freehold condominium unit estates are hereby established in the parking spaces within the perimeter walls, floors, ceilings, column or fixed boundary or line markings of each of the nine (9) parking spaces designated on the Condominium Map as stall numbers 19, 20, 21, 22, 23, 24, 25, 26, and 33 (the "Parking Apartment Units").

(b) Each Parking Apartment Unit shall be deemed to include a rectangular floor surface area bounded on the ends and sides by marked parallel lines (or, in some cases, by a wall, column, or other permanent boundary), as shown on the Condominium Map. Each Parking Apartment shall include the airspace enclosed by imaginary vertical planes extending upward from each of the floor surface boundary lines (or other permanent monument boundaries) to a height of ten (10) feet, or to one inch below the surface of the ceiling immediately above the Parking Apartment, whichever is lower. The Parking Apartments shall not be deemed to include the underlying slab except for its surface, nor any part of the ceiling immediately above said Parking Apartments, nor any pipes, conduits, wires, or any other mechanical installations penetrating the Parking Apartments' air space.

(c) The Parking Apartment Units are identified by parking stall number and are located as shown on the Condominium Map.

3. Access. Each of the Residential Apartment Units and Parking Apartment Units will have immediate access to the walkways, stairways, driveways, elevators and/or other common areas of the Project and to Kinau Street.

4. Common Elements. One freehold estate is hereby designated in all remaining portions of the Project, being described and referred to herein as "common elements", including specifically, but not limited to:

(a) Said Land in fee simple, and any easements appurtenant thereto;

(b) All foundations, columns, girders, beams, footings, floor slabs, supports, unfinished portions of unit perimeter walls, party and load-bearing walls and partitions, roofs, the portions of the boundaries of the units described as common elements in paragraph 1(a) above, elevator cars, shafts, and doors, and related equipment, stairs and stairways, walkways, corridors, ramps, fences, entrances, entryways and exits of the building within the Project;

(c) All walkways, sidewalks, retaining walls, fences, gates, yard areas, driveways, drive lanes and all other common ways, parking areas, guest parking stalls, loading zones, pool enclosure areas, all landscaping, fences, gates, walls enclosing common elements, yards and grounds;

(d) Those portions of any pipes, cables, conduits, chutes, flues, ducts, wires, vents, shafts, other utility or service lines, sewage treatment equipment and facilities (if any), electrical equipment, electrical closets, storage rooms, communications rooms, or other central and appurtenant transmission facilities and installations over, under and across the Project, or any other fixtures, whether located partially within and partially outside the designated boundaries of a unit, which serve more than one unit;

(e) The swimming pool and Pool Area within the Project, including the outdoor shower and restroom;

(f) The office, lobby, entry phone system, security cameras, and entry gate;

(g) All utility and maintenance rooms, closets and facilities, storage rooms, closets, and facilities, electrical and mechanical rooms, closets, and facilities, accessory equipment areas, trash chutes and rooms, and refuse areas;

(h) All laundry rooms, washers, dryers, and any and all other apparatus and installations of common use and all other parts of the Project

necessary or convenient to its existence, maintenance and safety, or normally in common use;

(i) The limited common elements described in Paragraph 1(e) and Paragraph 5 of Section D hereinbelow.

5. Limited Common Elements. Certain parts of the common elements, herein called and designated "limited common elements", are hereby set aside and reserved for the exclusive use of certain units, and such units shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements so set aside and reserved are as follows:

(a) Each Residential Apartment Unit shall have appurtenant thereto as a limited common element the parking stall designated as appurtenant to the unit on **Exhibit "B"** attached hereto;

(b) Each of the Residential Apartment Units shall have appurtenant thereto as a limited common element the mailbox designated with the unit's number and located in the ground floor lobby area of the building;

(c) With respect to any chute, flue, duct, wire, conduit, cable, vent, shaft or other utility, service line and any other fixture which lies partially within and partially outside of a unit, those portions thereof serving only that unit shall be a limited common element appurtenant exclusively to such unit;

(d) Any walkway, stairway, entrance, exit, or steps which would normally be used only for the purpose of ingress to and egress from a specific unit or units shall be limited common elements appurtenant to and reserved for the exclusive use of such unit or units;

(e) Any shutters, awnings, window boxes, doorsteps, stoops, the exterior doors and windows that are part of the boundary of a unit and the lanai shown on the Condominium Map as adjacent to any exterior door of such unit and which lanai is accessible through such door are limited common elements appurtenant exclusively to such unit.

(f) The limited common elements described in Paragraph 1(e) of Section D above.

E. COMMON INTEREST. Each unit shall have appurtenant thereto an undivided percentage interest in the common elements of the Project, hereinafter referred to as the "common interest", and except as may be otherwise described in the Bylaws, the same proportionate share in all common profits and expenses of the Project and for all other purposes, including voting, as set forth in **Exhibit "B"** attached hereto. The percentages of common interests appurtenant to the various Residential Apartment Units in the Project were determined by dividing the net living floor area of the respective Residential Apartment Units by the total net

living floor area of all Residential Apartment Units in the Project and then translating each quotient into its percentage equivalent. Slight adjustments were then made in the percentages assigned to certain of the units, including the Parking Apartment Units so as to yield percentage interests totaling 100%.

F. EASEMENTS. In addition to any easements described in **Exhibit "A"** attached hereto and to the exclusive easements established in the limited common elements, the units and common elements shall also have and be subject to the following easements:

1. Each unit shall have appurtenant thereto nonexclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for and support, maintenance and repair of such unit; in the other common elements for use according to their respective purposes; and in all other units and common elements of the building in which it is located.

2. If any part of the common elements now or hereafter encroaches upon any unit or limited common element, or if any unit now or hereafter encroaches upon any other unit or upon any portion of the common elements, a valid easement for such encroachment and the maintenance thereof shall and does exist so long as such encroachment continues. In the event the buildings of the Project shall be partially or totally destroyed and then rebuilt, minor encroachments of any parts of the common elements or of any unit due to such construction shall be permitted and valid easements for such encroachments and the maintenance thereof shall exist for so long as such encroachment exists.

3. The Association of Unit Owners of the Project shall have the irrevocable right, to be exercised by its Board of Directors or the Managing Agent, to have access to each unit and/or the limited common elements from time to time during reasonable hours as may be necessary for the operation of the Project, for making emergency repairs therein necessary to prevent damage to any units or common elements or for the inspection, installation, repair, maintenance or replacement of any common elements.

4. The Association of Unit Owners of the Project shall have the right, exercisable by its Board of Directors, to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the common elements of the Project for any reasonable purpose, which may include, but shall not be limited to, those purposes which are necessary to the operation, care, upkeep, maintenance or repair of any unit, the common elements or any easements for utilities or for any public purpose.

5. The Association of Unit Owners of the Project shall have the right, exercisable by its Board of Directors, to transfer, cancel, relocate and otherwise deal with any easement over, under, across or through any lands adjacent to the Project, which may be appurtenant to the Land of the Project, for any reasonable purpose, which may include, but shall not be limited to, any of the same purposes set forth in Paragraph 4 of this section or for the reason that any owner of any such lands adjacent to the Project exercises any right to require the relocation of any such easement.

6. Until the sale of the last Unit by the Developer, the Developer shall have the right to conduct extensive sales activities utilizing the common elements and any unit(s) still owned by the Developer, including the use of model units, sales and management offices, and sales displays and activities.

7. Until December 31, 2012, the Developer, its agents, employees, contractors, licensees, successors and assigns shall have a nonexclusive easement over the common elements of the Project, as may be reasonably necessary for the completion of any improvements to and correction of defects and other punchlist items in the common elements.

8. The Developer, its successors and assigns shall have the right to transfer, cancel, relocate and otherwise deal with any easement over, under, across, along, upon and through any lands adjacent to or in the vicinity of the Project, which would be or may be appurtenant to the Land, for electrical, gas, telephone, cable television, communications and other utility purposes, and for sanitary sewer, drainage and drainline, waterline, and flowage purposes.

9. The Developer, its successors and assigns shall have nonexclusive easements for vehicular and pedestrian access, for use of the driveway, drive lanes, parking areas, parking stalls and for electrical, gas, telephone, cable television, communications and other utility purposes, and easements for sanitary sewer, drainage and drainline, waterline, and flowage purposes over, under, across, along, upon and through the Land, together with the right to designate easements for the aforesaid purposes, if necessary or desirable, subject to the reasonable consent of the Association of Unit Owners as to location, and together also with rights of reasonable access thereto in connection with the exercise of said easement rights, and to grant to the owner or owners of land in the vicinity of the Project, the State of Hawaii, the City and County of Honolulu, Hawaiian Electric Company, Hawaiian Telcom, Inc., any other appropriate governmental agency, and/or any other public or private utility or other corporation, partnership, individual or entity, easements for the purpose of providing such services over, under, across, along, upon and through the Land under the usual terms and conditions required by the grantee of such easement rights, and together also with the right to also delete or cancel designated or granted easements that are not required or no longer serve the aforesaid purposes; provided, however, that such easement rights must be exercised in such manner as to not unreasonably interfere with the use of the Land by the unit owners and those claiming by, through or under the unit owners, and in connection with the installation, maintenance or repair of any facilities pursuant to any of said easements the Land shall be promptly restored by and at the expense of the person owning and exercising such easement rights to substantially the condition of the Land immediately prior to the exercise thereof; and the acceptance or acquisition by any party of any interest in the Project shall constitute an undertaking and agreement by such party (a) to join in and execute, upon request, any and all documents designating and/or granting any such easements, and (b) to perform and carry out at such party's expense, or to cause the Association of Unit Owners to perform and carry out as a common expense, any obligation in any such grant of easement rights, or in any grant of easement specifically referred to in this Declaration, any obligation with respect to providing and

maintaining any screening or landscaping or similar requirement as to facilities within the Land which may now or hereafter be required by law, ordinance or governmental agency.

G. ALTERATION AND TRANSFER OF INTERESTS. Except as otherwise provided in Section S or in any other section of this Declaration, the common interest and easements appurtenant to each unit shall have a permanent character, shall not be altered without the consent of all owners of units affected thereby as expressed in an amendment to this Declaration duly recorded in the Bureau of Conveyances of the State of Hawaii, shall not be separated from the unit to which they appertain, and shall be deemed to be conveyed, leased or encumbered with such unit even though not expressly mentioned or described in the conveyance or other instrument. The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by said Condominium Property Act.

H. PURPOSES AND RESTRICTIONS AS TO USE.

1. Each unit shall be occupied and used for residential purposes only. If a unit owner rents his unit to any third party, the unit owner shall provide each tenant with a copy of this Declaration, the Bylaws and the Rules and Regulations. An owner who rents his unit shall at all times remain primarily and severally liable to all other unit owners and to the Association for any failure on the part of such owner's tenant(s) to observe and comply with all provisions of this Declaration, the Bylaws, the Rules and Regulations and all other applicable laws. Notwithstanding any other provision contained in this Declaration or the to the contrary, no unit shall be used for bed and breakfast establishment purposes, boarding facilities, rooming or lodging houses, group living facilities, the promotion or sale of timeshare, fractional ownership, exchange (whether the program is based on direct exchange of occupancy rights, cash payments, reward programs or other point or accrual systems) or other membership programs, plans or arrangements through which a participant in the program, plan or arrangement acquires an ownership interest in the unit with attendant rights of periodic use and occupancy or acquires contract rights to such periodic use and occupancy of the unit or acquires contract rights to a portfolio of accommodations including the unit (an "Occupancy Plan"), or for the operation of any business that directly or indirectly promotes the sale of an Occupancy Plan. Other than the foregoing restrictions (including restrictions contained in the condominium unit deed conveying a unit), the owners of the respective units shall have the absolute right to lease the same, provided that such lease is in writing and for a term of not less than thirty (30) days and is expressly made subject to the covenants and restrictions contained in this Declaration, the Bylaws and the Rules and Regulations.

2. The Association of Unit Owners of the Project and any unit owner shall not suffer anything to be done or kept in his unit or elsewhere in the Project which will (a) jeopardize the soundness or safety of the Project, reduce the value thereof, or impair any easement, as reasonably determined by the Board, (b) interfere with or otherwise unreasonably disturb the rights of other owners and occupants, (c) obstruct any walkway, stairway or corridor of any building, or (d) increase the rate of property insurance on any building or the contents thereof.

3. Except as otherwise expressly provided in Section R of this Declaration, a unit owner shall not, without the prior written consent of the Board of Directors of the Association, make any structural alteration in or additions to the unit, make any interior alterations in or additions to the unit visible from the exterior of the unit, or make any alterations in or additions to the exterior of the unit or to any other portion or portions of the common elements, nor shall a unit owner, without the prior written consent of the Board of Directors of the Association, display any sign in or upon any doors, windows, lanais, walls, or other portions of the unit or the common elements to be visible from the exterior of the unit, provided, however, that this restriction shall not apply to signs displayed by the Developer for sales purposes prior to the completion of sales of all units in the Project.

4. Notwithstanding anything contained hereinabove to the contrary, the Developer shall have the right to conduct extensive sales activities at and in the Project, including the use of model units, sales and management offices, and extensive sales displays and activities as set forth in Paragraph 6 of Section F of this Declaration.

5. The units located on the third through twelfth floor of the building shall be required to utilize only such flooring materials and/or systems which meet the acoustic standards of an Acoustic Impact Isolation Class of IIC 45 or better (ASTM Designation E492).

6. Notwithstanding anything to the contrary contained in this Declaration, the Bylaws or the Rules and Regulations, owners with disabilities shall be allowed reasonable exemptions from this Declaration, the Bylaws and the Rules and Regulations, when necessary to enable them to use and enjoy their units and the common elements, provided that any owner with a disability desiring such an exemption shall make such request, in writing, to the Board. The request shall set forth, with specificity and in detail, the nature of the request and the reason that the requesting party needs to be granted such an exemption. The Board shall not unreasonably withhold or delay its consent to such request, and any such request shall be deemed to be granted if not denied in writing, within forty-five (45) days of the Board's receipt thereof, or within forty-five (45) days of the Board's receipt of additional information reasonably required by the Board in order to consider such request, whichever shall last occur.

I. ADMINISTRATION OF PROJECT. Administration of the Project shall be vested in its Association of Unit Owners, herein called the "Association", consisting of all unit owners of the Project, in accordance with the Bylaws of the Association. Operation of the Project and maintenance, repair, replacement and restoration of the units, common elements, and any additions and alterations thereto, shall be in accordance with the provisions of said Condominium Property Act, this Declaration and the Bylaws, and specifically but without limitation the Association shall:

1. Make, build, maintain and repair all gulches, fences, walls, sewers, drains, roads, curbs, sidewalks and parking areas, which may be required by law to be made, built, maintained and repaired, or for the protection of the Project (as determined by the Board), upon or adjoining or in connection with or for the use of the Project or any part thereof.

2. Keep all common elements of the Project in a strictly clean and sanitary condition, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Project or the use thereof; provided, however, that unless otherwise specifically provided in Paragraph 4 of this Section I, the owner of each unit shall be primarily responsible to keep such unit in such clean and sanitary condition.

3. Well and substantially repair, maintain, amend and keep all common elements of the Project, and the lanais with all necessary reparations and amendments whatsoever in good order and condition, except as otherwise provided herein; provided, however, that unless otherwise specifically provided in Paragraph 4 of this Section I, the owner of each unit shall be primarily responsible to well and substantially repair, maintain, amend and keep such unit (other than the lanai) with all such necessary reparations and amendments whatsoever in good order and condition. The Residential Apartment Unit owners shall be responsible for the ordinary day to day cleaning of the lanai appurtenant to each unit.

4. Regularly inspect, maintain, paint, resurface and/or replace the exterior surfaces of all perimeter walls of the buildings and the exterior surfaces of all exterior doors, exterior door frames, window frames, trim, fences and walls in the buildings, with the right to regulate the design and appearance of such exterior surfaces, the types of surfaces, and the types and colors of paint or other materials to be used, and with the right to enter, and permit entry by its contractors into, any unit or limited common elements appurtenant thereto from time to time during reasonable hours as may be necessary for the performance of such inspection, maintenance, painting, resurfacing or replacement. Payment for any such inspection, maintenance, painting, resurfacing or replacement shall be made out of the general maintenance fund of the Association; provided, however, that any such inspection, maintenance, painting, resurfacing or replacement necessitated by the negligence, misuse or neglect of a unit owner or occupant or any person under either of them, to the extent the costs thereof are not paid with insurance proceeds, shall be charged to such unit owner or the unit owner of the unit of such occupant, as a special assessment secured by the lien created under Section K of this Declaration.

5. Maintain and keep said Land and all adjacent land between any street boundary of the Project and the established curb or street line in a neat and attractive condition and all gravel, trees, shrubs and grass thereon in good cultivation, and replant the same as may be necessary, and repair and make good all defects in the common elements of the Project herein required to be repaired by the Association, of which notice shall be given by any unit owner or his agent.

6. Not erect or place on the Project any building or structure, including fences and walls, nor make additions or structural alterations to, or exterior changes of, any common elements of the Project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with Section R of this Declaration and in accordance with plans and specifications, prepared by a licensed architect, if so required by the Board of

Directors of the Association, and approved by the Board of Directors of the Association, and complete any such improvements diligently after commencement thereof.

7. Before commencing or permitting construction of any improvement on or to the Project where the cost thereof exceeds Twenty-Five Thousand and No/100 Dollars (\$25,000.00) or such other amount as may be determined by the Board of Directors from time to time, obtain a performance and lien payment bond naming as obligees, the Board of Directors of the Association, the Association, and collectively all unit owners and their respective mortgagees of record, as their respective interests may appear, with a responsible corporate surety authorized to do business in the State of Hawaii, guaranteeing the full and faithful performance of the contract for such construction free and clear of all mechanics' and materialmen's liens for such construction and the payment of all subcontractors, labor and materialmen, for a penal sum of not less than one hundred percent (100%) of the cost of such construction.

8. Have the irrevocable right, to be exercised by its Board of Directors or Managing Agent, to have access to any unit or limited common elements appurtenant thereto from time to time during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs therein required to prevent damage to any units or common elements or for the installation, repair or replacement of any common elements.

9. Not make or suffer any strip or waste or unlawful, improper or offensive use of the Project.

10. Not commit any act or neglect whereby the Project or any part thereof at any time becomes subject to any attachment, judgment, lien, charge or encumbrance whatsoever.

11. Comply with all encumbrances, restrictive covenants and agreements, and setback lines affecting the use of the Land upon which the Project is situated which are referred to or described in **Exhibit "A"** attached hereto or otherwise affect the Land from time to time.

12. Be bound by the waivers of claims, rights of action and suits against the Developer, its successors and assigns, contained in the unit conveyances by the Developer to purchasers of units in the Project, and the Association shall not bring against the Developer, its successors and assigns, any claim or right of action or suit relating to any of the matters waived by the purchasers in such unit conveyances.

J. MANAGING AGENT. Operation of the Project shall be conducted for the Association by a responsible Managing Agent which shall be appointed by the Association in accordance with the Bylaws, except that the initial Managing Agent shall be appointed by the Developer. The Managing Agent is hereby authorized to receive service of legal process in all cases provided in said Condominium Property Act.

K. COMMON EXPENSES.

1. Except as otherwise provided herein, all charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration of the Project, including without limitation of the generality of the foregoing, all charges for taxes (except real property taxes and such other taxes which are assessed separately on each unit and the common interest in the common elements appertaining thereto or the personal property or any other interest of the unit owner), assessments, insurance, including fire and other casualty and liability insurance required to be maintained by the Association pursuant to Section L of this Declaration, any liability whatsoever for loss or damage arising out of or in connection with the common elements or any accident, fire or nuisance thereon, costs of repair, reinstatement, rebuilding, replacement, and restoration of the common elements of the Project and any additions and alterations thereto, yard, janitorial and other similar services, wages, accounting and legal fees, management fees and other necessary expenses of upkeep, maintenance, management and operation incurred on or for the common elements of the Project, and the lanais, and the cost of all utility services, including water, electricity, gas, garbage disposal, telephone and other similar services, unless separately metered or assessed, the wages of the resident manager, if any, the cost of leasing the resident manager's unit, if any, and all other sums designated as common expenses under the Condominium Property Act, this Declaration and the Bylaws, shall constitute common expenses of the Project for which all unit owners shall be severally liable in proportion to the common interests appurtenant to their respective units or such other allocation as may be set forth in the Bylaws; PROVIDED, HOWEVER, that all charges, costs and expenses incurred by the Association only for or in connection with any of the limited common elements, including without limitation of the generality of the foregoing, all costs of maintenance, repair, replacement, additions and improvements to the limited common elements, shall constitute limited common expenses of the Project for which only the owners of the units to which such category of limited common elements are appurtenant shall be severally liable in proportion to the ratio that their respective common interests bear to the sum of the common interests of the units to which such category of limited common elements are appurtenant (such charges, costs and expenses incurred only for or in connection with any of the limited common elements are hereinafter called "limited common expenses"); and PROVIDED, FURTHER, HOWEVER, that all charges, costs and expenses incurred by the Association which are necessitated by the negligence, misuse or neglect of a unit owner or occupant or any person under either of them may be charged to such unit owner or the unit owner of the unit of such occupant, as a special assessment secured by the lien created under this Section K.

2. No unit owner may exempt the unit owner from liability for the unit owner's contribution toward the common expenses or limited common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit.

3. The Board of Directors of the Association shall from time to time assess the common expenses and limited common expenses against all the units in their respective proportionate shares as set forth in this Section K or as otherwise set forth in the Bylaws. All sums assessed by the Association but unpaid for the share of common expenses or limited

common expenses shall constitute a lien on such unit with priority over all other liens, except: (i) liens for taxes and assessments lawfully imposed by governmental authority against such unit; and (ii) all sums unpaid on any mortgage of record that was recorded prior to the recordation of a notice of a lien by the Association, and costs and expenses including attorneys' fees provided in such mortgages. The lien of the Association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in Chapter 667 of the Hawaii Revised Statutes, by the Board or the Managing Agent on behalf of the Association, in like manner as a mortgage of real property. The Board or the Managing Agent, acting on behalf of the Association, may bid on the unit at such foreclosure sale, and acquire and hold, lease, mortgage and convey the unit. Action to recover a money judgment for unpaid common expenses or limited common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses or limited common expenses owed.

4. In a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid common expenses, limited common expenses or assessments chargeable to such unit 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. Any such grantor or grantee, however, shall be entitled to a statement from the Board, either directly or through the Managing Agent or the resident manager, if any, setting forth the amount of the unpaid common expenses, limited common expenses or assessments chargeable to such unit, and except as to the amount of subsequently dishonored checks mentioned in such statement as having been received within the 30-day period immediately preceding the date of such statement, the grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth in the statement.

5. Except as provided in the Condominium Property Act, when the mortgagee of a mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of the mortgage, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the common expenses, limited common expenses or assessments by the Association chargeable to the unit which became due prior to such acquisition of title to the unit by the acquirer. The unpaid share of common expenses, limited common expenses and assessments shall be deemed common expenses collectible from all unit owners, including the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the unit shall be deemed to acquire title and shall be required to pay the unit's share of common expenses, limited common expenses and assessments beginning: (a) thirty-six (36) days after the order confirming the sale to the purchaser has been filed with the court; (b) sixty (60) days after the hearing at which the court grants the motion to confirm the sale to the purchaser; (c) thirty (30) days after the public sale in a nonjudicial power of sale foreclosure pursuant to Section 667-5 of the Hawaii Revised Statutes; or (d) upon the recording of the instrument of conveyance, whichever occurs first; provided that the mortgagee of record or other purchaser of the unit shall not be deemed to acquire title under paragraph (a), (b), or (c), if transfer of title is delayed past the thirty-six (36) days specified in paragraph (a), the sixty (60) days specified in paragraph (b), or the thirty (30) days specified in paragraph (c), when a person who appears at the hearing on the motion or a party to the foreclosure action requests

reconsideration of the motion or a party to the foreclosure action requests reconsideration of the motion or order to confirm sale, objects to the form of the proposed order to confirm sale, appeals the decision of the court to grant the motion to confirm sale, or the debtor or mortgagor declares bankruptcy or is involuntarily placed into bankruptcy. In any such case, the mortgagee of record or other purchaser of the unit shall be deemed to acquire title upon recordation of the instrument of conveyance.

6. No unit owner shall withhold any assessment claimed by the Association. A unit owner who disputes the amount of an assessment may request a written statement clearly indicating:

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

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

(c) The amount of attorneys' fees and costs, if any, included in the assessment;

(d) That under Hawaii law, a unit owner has no right to withhold assessments for any reason; and

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

(f) That payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owed.

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

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

L. INSURANCE – PROPERTY AND LIABILITY.

1. To the extent reasonably available, the Association, at its common expense, shall purchase and at all times maintain the following:

(a) Property insurance (i) on the common elements, including the limited common elements, the units, and common personal property of the Association, (ii) providing coverage for ISO special form causes of loss or its equivalent; and (iii) in a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date. Any coinsurance requirement in the policy shall be eliminated through the activation of an agreed value option or endorsement as is appropriate under the policy form and an inflation guard endorsement. The property insurance shall be in the name of the Association with each owner and occupant as additional insureds. The property insurance need not cover improvements and betterments to the units installed by the unit owners, but if improvements and betterments are covered, any increased cost of such insurance shall be assessed by the Association against the units affected. For purposes of this paragraph, "improvements and betterments" mean all decorating, fixtures, and furnishings installed or added to and located within the boundaries of the unit, including electrical fixtures, appliances, air conditioning and heating equipment, water heaters or built-in cabinets installed by unit owners.

(b) Commercial general liability insurance written on an occurrence form to include coverage for claims and liabilities arising in connection with the ownership, existence, use or management of the Project, coverage for premises and operations, products and completed operations, personal and advertising injury, blanket contractual liability, lawsuits related to employment contracts, and fire legal liability with the following minimum limits:

Bodily Injury and Property Damage

\$1,000,000 per occurrence  
\$2,000,000 general aggregate  
\$2,000,000 products and completed operations

Personal and Advertising Injury

\$1,000,000 per person/organization  
\$1,000,000 general aggregate

Fire Legal Liability

\$100,000 any one fire

\$100,000 general aggregate

The liability insurance policy shall insure the Board, the Association, the Managing Agent, and their respective employees and agents and all persons acting as agents therefor. The Developer shall be included as an additional insured in its capacity as a unit owner, Managing Agent, resident manager, Board member or officer. The unit owners shall be included as additional insured parties only for claims and liabilities arising in connection with the ownership, existence, use or management of the common elements. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) A fidelity bond covering the Managing Agent and all directors, officers, trustees, employees and volunteers who control or disburse funds belonging to or administered by the Association, naming the Association as the insured and providing coverage in such amounts as the Board deems adequate, but in no event in any amount less than (a) the estimated maximum funds (including reserve funds) that will be in the custody of the Association or the Managing Agent at any time; (b) a sum equal to three (3) months' aggregate assessments on all units (including reserve funds); or (c) any minimum amount required under the Condominium Property Act. Every such bond shall contain a waiver of any defense based upon the exclusion of persons who serve without compensation from any definition of the term "employee" or similar term, and, by appropriate endorsement, provide coverage for any such persons not otherwise covered.

(d) Directors and officers liability coverage at a level deemed reasonable by the Board. Directors and officers liability coverage shall extend to all contracts and other actions taken by the Board in their official capacity as directors and officers, but shall exclude actions for which the directors or officers are not entitled to indemnification under this Declaration or the Bylaws.

(e) Flood insurance if the property is located in a special flood hazard area as delineated on flood maps issued by the Federal Emergency Management Agency. The flood insurance shall comply with the requirements of the National Flood Insurance Program and the Federal Insurance Administration.

2. The Board, in the case of a claim for damage to a unit or the common elements, may: (a) pay the deductible amount as a common expense; (b) after notice and an opportunity for a hearing, assess the deductible amount against the owners who caused the damage or from whose units the damage or cause of loss originated; or (c) require the unit owners of the units affected by the damage to pay the deductible amount.

3. The Board of Directors of the Association may also procure insurance against such additional risks as the Board of Directors considers appropriate to protect the Association, the unit owners, or officers, directors or agents of the Association, of a character normally carried with respect to properties of comparable character and use in the State of Hawaii.

4. The Board of Directors of the Association will review not less frequently than annually the adequacy of its insurance program and shall report in writing its conclusions and action taken on such review to each unit owner and to each mortgagee of record of any interest in a unit which shall have requested a copy of such report. In conducting the review discussed in the immediately prior sentence, the Board of Directors may consult with its insurer or other insurance consultant. The Board of Directors of the Association shall increase the limits of all insurance from time to time so that the same are not less than such limits as are being carried generally for similar properties in the area.

5. Copies of every policy of insurance procured by the Board of Directors of the Association shall be available for inspection by any unit owner (or purchaser holding a contract to purchase an interest in a unit) at the office of the Managing Agent, and certificates of insurance shall be issued to each unit owner and mortgagee upon request.

6. Any insurance coverage required in this Section L shall be subject to availability with responsible insurance companies authorized to do business in the State of Hawaii. Where such coverage is not available, or is not available at a reasonable cost, then the Board shall substitute such other insurance coverage as is acceptable to institutional lenders for units in projects similar in construction, location and use.

7. Insurance policies carried pursuant to this section shall include each of the following provisions:

(a) Each unit owner and mortgagee shall be an insured person under the policy with respect to liability arising out of the unit owner's interest in the common elements or membership in the Association;

(b) The insurer shall waive its right to subrogation under the policy against any unit owner of the Project or members of the unit owner's household and against the Association and the members of the Board;

(c) The unit owner shall waive the unit owner's right of subrogation under the Association policy against the Association and the Board;

(d) If obtainable at reasonable cost, provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of setoff, counterclaim, apportionment, proration or contribution by reason of any other insurance obtained by or for any unit owner;

(e) If obtainable at reasonable cost, contain no provision relieving the insurer from liability for loss occurring while the hazard to such buildings is increased, whether or not within the knowledge or control of the Board of Directors of the Association, the Managing Agent, any unit owner or any other persons under any of them or because of any breach of warranty or condition or any other act or neglect by the Board of Directors of the Association, the Managing Agent, any unit owner or any other persons under any of them;

(f) If obtainable at reasonable cost, provide that such policy may not be canceled or reduced by amount or type of coverage, whether or not requested by the Board of Directors of the Association, except by the insurer's giving at least sixty (60) days' prior written notice thereof to the Board of Directors of the Association and any mortgagee of record of any interest in any unit;

(g) If obtainable at reasonable cost, contain a waiver by the insurer of any right to deny liability because of vacancy of any unit or units;

(h) If obtainable at reasonable cost, contain a "severability of interest" endorsement precluding the insurer from denying the claim of the Board of Directors of the Association, the Association, the Managing Agent, or any unit owner because of negligent acts of any of the others;

(i) Contain a standard mortgagee clause which shall:

(1) Provide that any reference to a mortgagee in such policy shall mean and include all holders, insurers and guarantors of mortgages of any unit of the Project, their respective successors and assigns, in their respective order and preference, whether or not named therein;

(2) Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board, the Association, the Managing Agent, any unit owner or any other persons under any of them; and

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

(j) If obtainable at reasonable cost, contain a provision waiving any right of the insurer to repair, rebuild or replace if a decision is made pursuant to this Declaration and the Bylaws not to reinstate, rebuild or restore the damage or destruction;

(k) Satisfy all other requirements for insurance (1) under the Condominium Property Act, (2) under other applicable federal, state or local law,

or (3) by any purchaser, insurer or guarantor of loans, including, for example, the Federal Housing Administration, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to purchase, insure or guarantee a loan made on the security of the Project or any of the units.

8. If at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same property covered by the policy, the Association's policy shall be the primary insurance.

9. Any insurance coverage procured by the Board of Directors of the Association shall be without prejudice to the right of any unit owner to insure his unit, the limited common elements appurtenant thereto, and the contents thereof for his own benefit and at his own expense. The Board may require unit owners to obtain insurance, with such minimum limits as the Board shall designate, covering their personal liability and compensatory but not consequential damages to another unit caused by the negligence of the owner or the owner's guests, tenants or invitees, or regardless of any negligence originating from the unit. The personal liability of a unit owner shall include the deductible of the owner whose unit was damaged, any damage not covered by insurance required under this paragraph, as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment, and other furnishings.

10. If the unit owner does not purchase or produce evidence of insurance requested by the Board, the directors may, in good faith, purchase the insurance coverage and charge the reasonable premium cost of such insurance to the unit owner as a special assessment. In no event shall the Board be liable to any person either with regard to its decision not to purchase the insurance policy, or with regard to the timing of the purchase of the insurance policy or the amounts or types of coverages obtained.

#### M. INSURED CASUALTY.

1. Any loss covered by the property insurance policy under Section L shall be adjusted by and with the Association. The insurance proceeds for that loss shall be payable to the Association, or to an insurance trustee designated by the Association for that purpose. The insurance trustee or the Association shall hold any insurance proceeds in trust for unit owners and mortgagees as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged common elements, the bare walls, ceilings and floors of the units, and then to any improvements and betterments the Association may insure.

2. If the Project is damaged by fire or other casualty which is insured against and said damage is limited to a single unit and/or the limited common elements appurtenant thereto, all of the insurance proceeds shall be used by the Association or insurance trustee for payment of the contractor employed by the Board of Directors of the Association to rebuild or repair such unit and/or limited common elements, including paint, floor covering and fixtures, in accordance with plans and specifications therefor which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said plans and specifications is not permissible under the laws then in force, in accordance with such plans and

specifications as shall be previously approved by the Board of Directors of the Association, any mortgagee of record of any interest in the unit so damaged, and the eligible holders of first mortgages (as defined in Section T of this Declaration) on units to which at least fifty-one percent (51%) of the votes of units subject to mortgages held by such eligible holders of first mortgages are allocated.

3. If such damage extends to two or more units and/or the limited common elements appurtenant thereto, or to any other common elements, the Board of Directors of the Association shall thereupon contract to repair or rebuild the damaged portions of any building or buildings, including all units and limited common elements so damaged, as well as the common elements, in accordance with plans and specifications therefor which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plans as shall be previously approved by the Board of Directors of the Association, any mortgagee of record of any interest in a unit directly affected thereby, and the eligible holders of first mortgages (as defined in Section T of this Declaration) on units to which at least fifty-one percent (51%) of the votes of units subject to mortgages held by such eligible holders of first mortgages are allocated; provided that in the event said modified plans eliminate any unit and such unit is not reconstructed the Trustee shall pay the owner of said unit and any mortgagee of record of any interest in said unit, as their interests may appear, the portion of said insurance proceeds allocable to said unit (less the proportionate share of said unit in the cost of debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds.

4. Prior to the commencement of any rebuilding or repair pursuant to this Section M, the Board of Directors or the unit owner contracting for such rebuilding or repair shall comply with all of the requirements of Section I of this Declaration.

5. The insurance proceeds shall be paid by the Association or insurance trustee to the contractor employed for such work, in accordance with the terms of the contract for such construction and in accordance with the terms of this Section M. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding any common elements, the Board of Directors of the Association shall levy a special assessment on the owners of all units in proportion to their respective common interests. Any costs in excess of the insurance proceeds for the repairing and/or rebuilding of any unit shall be specially assessed against such unit and said special assessment shall be secured by the lien created under Section K of this Declaration.

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

- (a) An architect or engineer (who may be an employee of the Board of Directors) shall be in charge of the work;

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

(c) Each request shall be accompanied by waivers of liens satisfactory to the Association or insurance trustee, covering that part of the work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Association or insurance trustee, that there has not been filed with respect to the premises any mechanics' or other lien or instrument for the retention of title with respect to any part of the work not discharged of record;

(d) The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the premises legal;

(e) The fees and expenses of the insurance trustee, if any, as determined by the Board of Directors and the insurance trustee shall be paid by the Association as common expenses, and such fees and expenses may be deducted from any proceeds at any time in the hands of the insurance trustee; and

(f) Such other conditions not inconsistent with the foregoing as the Association or insurance trustee may reasonably request.

7. Upon completion of the work and payment in full therefor, any remaining proceeds of insurance then or thereafter in the hands of the Board of Directors of the Association or insurance trustee shall be paid or credited to the owners of the units and the holders of any mortgages on the units, as their interests may appear, in proportion to the respective common interests appurtenant to each unit.

8. To the extent that any loss, damage or destruction to any buildings or other property is covered by (or, under Paragraph 1 of Section L of this Declaration, should have been covered by) insurance procured by the Board of Directors of the Association, the Board of Directors of the Association shall have no claim or cause of action for such loss, damage or destruction against any unit owner (other than for any special assessment levied pursuant to Paragraph 5 of this Section M). To the extent that any loss, damage or destruction to the property of any unit owner is covered by insurance procured by such unit owner, such

unit owner shall have no claim or cause of action for such loss, damage or destruction against the Board of Directors of the Association, the Managing Agent or any other unit owner or any person claiming under any of them.

N. UNINSURED CASUALTY. In case at any time or times any improvements of the Project shall be substantially damaged or destroyed by any casualty not insured against, such improvements shall be rebuilt, repaired or restored unless sixty-seven percent (67%) of all unit owners vote not to rebuild, repair or restore. Any such restoration of the common elements shall be completed diligently by the Association at its common expense and the unit owners shall be solely responsible for any restoration of their respective units so damaged or destroyed, according to the original plans and specifications thereof or such other plans and specifications first approved in the same manner as provided in Paragraph 6 of Section I of this Declaration. Unless such restoration is undertaken within a reasonable time after such casualty, the Association at its common expense shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good order and condition and even grade.

O. CONDEMNATION.

1. In case at any time or times 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 payable for or on account of the Land, the buildings and other improvements of the Project shall be payable to the Association or such bank or trust company authorized to do business in the State of Hawaii as the Board shall designate as trustee for all unit owners and mortgagees of record affected thereby, according to the loss or damage to their respective units and appurtenant common interests, and shall be used promptly by the Association to the extent necessary for restoring or replacing said buildings and other improvements on the remaining Land according to modified plans and specifications therefor first approved as herein provided, unless such restoration or replacement is impractical in the circumstances. In the event of a partial taking in which any unit is eliminated or not restored, the Association or the trustee shall disburse the portion of the proceeds of such award allocable to said unit less the proportionate share of said unit in the cost of debris removal, to the owner and mortgagee, if any, of said unit, as their interests may appear. The Association or the trustee shall disburse the remainder of the proceeds of such award payable for or on account of said buildings and other improvements to the contractor engaged in such repair and restoration in the same manner funds are disbursed for repair and restoration work under Section M above, and in the event such proceeds are insufficient to pay the costs thereof the Board of Directors of the Association shall levy a special assessment or assessments on the owners of the units in the same manner as set forth in Paragraph 5 of Section M hereof in case of damage by fire or other casualty and said special assessment or assessments shall be secured by the lien created under Section K hereof. Unless such restoration or replacement is undertaken within a reasonable time after such condemnation, the Association at its common expense shall remove all remains of such improvements so taken or condemned and restore the site thereof to good order and condition and even grade. In the event the sums received by the Association or trustee are in excess of the cost of repairing, restoring or removing said buildings and other improvements, such excess proceeds shall be

divided between the owners of the units and any mortgagees of the units, as their interests may appear.

2. In case at any time or times only a leasehold interest in 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, then and in every such case, notwithstanding the foregoing provisions of Paragraph 1 of this Section O, all compensation and damages payable for or on account of such leasehold interest shall be payable to the unit owners affected by such taking or condemnation and any mortgagees of such units; provided, however, that such taking or condemnation shall not affect the obligations of such unit owners under this Declaration.

P. PARTIAL RESTORATION. Restoration of the Project with less than all of the units after casualty or condemnation may be undertaken by the Association only pursuant to an amended declaration, duly adopted by the affirmative vote of all of the unit owners and by all holders of liens affecting all or any part of the Project, (i) removing the Project from the condominium property regime established by the execution and recordation of this Declaration, (ii) reconstituting all of the remaining units and common elements to be restored as a new condominium property regime, and (iii) providing for payment to the owner of each unit not to be restored the agreed value of such unit and the common interest appurtenant thereto.

Q. DETERMINATION AGAINST RESTORATION. When an election is permissible under the terms of this Declaration, the Project shall be repaired, rebuilt or restored in the event of damage or destruction to all or any part of the buildings and common elements, unless, within ninety (90) days after such damage or destruction, it is determined by the vote of sixty-seven percent (67%) of the unit owners (including the owners of sixty-seven percent (67%) of the damaged or destroyed units) that the Project not be so repaired, rebuilt or restored.

R. ALTERATION OF PROJECT.

1. Except as otherwise provided herein or in the Bylaws, restoration, repair or replacement of the Project or of the building or other facility or construction of any additional building or structural alteration or addition to any structure, different in any material respect from said Condominium Map of the Project, shall be undertaken by the Association or any unit owners only pursuant to an amendment of this Declaration, duly executed by or pursuant to the affirmative vote of sixty-seven percent (67%) of the unit owners and accompanied by the written consent of all unit owners whose units or appurtenant limited common elements are directly affected, as determined in a reasonable manner by the Board, and in accordance with all of the requirements of Paragraph 6 of Section I of this Declaration, and promptly upon completion of such restoration, replacement or construction, the Association shall duly file of record such amendment, together with a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer; PROVIDED, HOWEVER, that notwithstanding any other provision in this Declaration to the contrary, the owner of a unit may make any alterations or additions within a unit. The alterations or additions permitted by the immediately preceding proviso shall require only the

written approval thereof, including approval of the unit owner's plans therefor, by the holders of first mortgage liens affecting such unit (if the lien holders require such approval), by the appropriate agencies of the State of Hawaii and the County of Hawaii if such agencies so require, by the Board of Directors of the Association (which approval shall not be unreasonably or arbitrarily withheld or delayed), and such alterations or additions may be undertaken without an amendment to this Declaration or filing of a complete set of floor plans of the Project as so altered.

2. The Developer hereby reserves Development Rights as defined in the Condominium Property Act. Without limiting the generality of the foregoing, the Developer shall have the right to add or withdraw real estate, create units, common elements, subdivide units, combine units, convert units to common elements, or otherwise make changes or alterations to the Project; the units and the common elements, without the approval of, consent or joinder of any unit owner. Without limiting the generality of the foregoing, the Developer shall have the right to renovate the lobby and other common elements, create amenities such as spas, barbecue areas and otherwise change the Project and shall have the right to change the configuration of, alter the number of rooms of, decrease or increase the size of, change or delete appliances or fixtures or change the location of any unit (and the limited common elements appurtenant thereto) in the Project or to make other alterations or renovations to the Units or in the Project. The Developer's rights to make changes to any unit shall not apply to any unit that has been conveyed to a purchaser thereof, except for minor changes to any common elements within or connected to the unit and minor changes to the unit which do not affect the physical location, design or size of any unit and do not affect the value of the unit. The Developer's rights to alter other portions of the Project without the approval or joinder of any unit owner shall be binding on any owner of a unit that has been conveyed so long as such changes do not materially and adversely affect the value of the sold units or the enjoyment and use by the owner of any sold units of any amenities (such as the swimming pool) in the Project. The Developer shall also have the right to amend this Declaration and the Condominium Map as provided in Section T of this Declaration.

3. Notwithstanding any other provision in this Declaration to the contrary, the Board shall have the right to install or cause the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements of the Project; provided that the same shall not be installed upon any limited common element without the consent of the owner or owners of the unit or units for the use of which the limited common element is appurtenant; and the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements by the Board shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit, or to be a structural alteration or addition to any building constituting a material change in the plans of the Project filed in accordance with the Condominium Property Act; provided that no such installation shall directly affect any nonconsenting unit owner. Notwithstanding any other provision in this Declaration to the contrary, the Board shall have the right to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence or to provide an equivalent function by different means

or methods. The abandonment or change of use of any television signal distribution or telecommunications equipment by the Board due to technological or economic obsolescence or to provide an equivalent function by different means or methods shall not be deemed to alter, impair or diminish the common interest, common elements, and easements appurtenant to each unit or to be a structural alteration or addition to any building different in any material respect from the plans of the Project filed in accordance with the Condominium Property Act. As used in this paragraph, "directly affect" means the installation of television signal distribution and telecommunications equipment in a manner which would specially, personally, and adversely affect a unit owner in a manner not common to the unit owners as a whole, and "television signal distribution" and "telecommunications equipment" shall be construed in their broadest possible senses in order to encompass all present and future forms of communications technology.

S. PROJECT EASEMENTS.

1. No Obligations Regarding Improvements. Nothing in the foregoing Section R or in this Section S shall be construed as a representation or warranty by Developer that the Developer will undertake any changes or any improvements to the Project or to require Developer to develop or construct any such changes or improvements.

2. Easements for Construction and Sale of Units and Improvements. The Developer shall have, and hereby reserves, an easement over, under and across the common elements of the Project for the purposes of commencing and completing all work connected with or incidental to the development, renovation and sale of the units, together with the right, in the form of an easement, to create and cause noise and other nuisances necessitated by and resulting from any work connected with or incidental to the development, construction and sale of the units.

3. Easements for Sales Activities. The Developer shall have the right to conduct extensive sales activities utilizing the common elements of the Project and any unit(s) still owned by the Developer, including the use of model units, sales and management offices, and extensive sales displays and activities.

4. Easements for Completion of Improvements. The Developer, its agents, employees, contractors, licensees, successors and assigns shall have a nonexclusive easement over the common elements of the Project, as may be reasonably necessary for the completion of any improvements to and correction of defects and other punchlist items in the common elements of the Project.

## T. AMENDMENT OF DECLARATION.

1. Except as otherwise provided herein or in said Condominium Property Act, this Declaration may be amended by the affirmative vote or written consent of the owners of units to which are appurtenant sixty-seven percent (67%) of the common interests, and shall be effective only upon the recordation in the Bureau of Conveyances of the State of Hawaii of an instrument setting forth such amendment and vote or written consent duly executed by the proper officers of the Association; provided, however, that this Section T and any other provision herein which gives the Developer any right or authority can be amended only if, in addition to such vote or written consent of the unit owners, Developer or its successors or assigns gives written consent to such amendment; provided further, however, that the approval of eligible holders of first mortgages (as defined below) on units to which at least fifty-one percent (51%) of the votes of units subject to mortgages held by such eligible holders of first mortgages are allocated shall be required for amendments of a material nature, which consist of a change to any of the provisions governing the following: (a) voting; (b) assessments, assessment liens or subordination of such liens; (c) reserves for maintenance, repair and replacement of the common elements; (d) insurance or fidelity bonds; (e) rights to use of the common elements; (f) responsibility for the maintenance and repair of the several portions of the Project; (g) expansion or contraction of the Project or the addition or expansion of property to the Project in a manner other than that specified in Section S of this Declaration; (h) boundaries of any unit; (i) the interests in the common elements or the limited common elements; (j) convertibility of units into common elements or of common elements into units; (k) leasing of units; (l) imposition of any right of first refusal or similar restriction on the right of a unit owner to sell, transfer or otherwise convey his or her unit; (m) establishment of self-management by the Association where professional management has been required previously by this Declaration or the Bylaws or by an eligible holder of first mortgage; (n) any provision that expressly benefits holders, insurers or guarantors of mortgages on units in the Project; (o) restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard in a manner other than that specified in this Declaration and in accordance with the plans and specifications therefor which will restore the same to the design immediately prior to condemnation or damage; (p) any election to terminate the legal status of the Project as a condominium property regime after substantial destruction or a substantial taking in condemnation of the Project; (q) reallocation of the interests in the common elements after a partial condemnation or a partial destruction of the Project in a manner other than that specified in this Declaration or by applicable law; provided further, however, that the approval of eligible holders of first mortgages on units to which at least sixty-seven percent (67%) of the votes of units subject to mortgages held by such eligible holders of first mortgages are allocated shall be required to terminate the legal status of the Project as a condominium property regime for reasons other than substantial destruction or a substantial taking in condemnation of the Project. To qualify as an "eligible holder of first mortgage", a first mortgagee must have made a written request to the Association for timely written notice of proposed amendments to the condominium instruments. In the event that an eligible holder of first mortgage fails to appear at a meeting of the Association at which amendments to this Declaration are proposed and considered, or fails to file a written response with the Association within thirty (30) days after it receives proper notice of the proposed amendment, delivered by certified or registered mail,

with a "return receipt" requested, then and in any such event the approval of such amendments by such eligible holder of first mortgage shall be conclusively assumed. Notwithstanding the foregoing, at any time prior to the recordation in said Bureau of Conveyances of the first unit conveyance in favor of a party not a signatory to this Declaration, the Developer hereby reserves the right to amend this Declaration, the Bylaws and the Condominium Map in any manner, without the approval, consent or joinder of any other person.

2. Notwithstanding the foregoing and until the recordation in said Bureau of Conveyances of unit conveyances or agreements of sale with respect to all of the units in the Project, in favor of parties not a signatory to this Declaration, the Developer hereby reserves the right to amend this Declaration, the Bylaws and the Condominium Map, without the approval, consent or joinder of any purchaser of a unit or any of the persons then owning or leasing any unit, to make such amendments as may be required by law, by the Real Estate Commission of the State of Hawaii, by any title insurance company issuing a title insurance policy on the Project or any of the units, by any institutional lender lending funds on the security of the Project or any of the units, by any purchaser, insurer or guarantor of loans, including, for example, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable it to purchase, insure or guarantee a loan made on the security of the Project or any of the units, or by any governmental agency; provided, however, that, except as otherwise provided herein, no such amendment which would change the common interest appurtenant to a unit or substantially change the design, location or size of a unit or the building in which it is located shall be made without the consent to such amendment by all persons having an interest in such unit.

3. Notwithstanding the foregoing and notwithstanding the filing of any unit conveyances or agreements of sale with respect to any or all of the units in favor of any person, the Developer hereby reserves the right to successively amend this Declaration (including the Bylaws and, when applicable, the Condominium Map), without the approval, consent or joinder of any purchaser of a unit or any of the persons then owning or leasing any unit, to file the "as built" verified statement (with plans, if applicable) required by the Condominium Property Act, (i) so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed or being filed simultaneously with such amendment fully and accurately depict the layout, location, unit numbers and dimensions of the units as built, or (ii) so long as any plans filed therewith involve only changes to the layout, location, unit numbers or dimensions of or other changes to the units and common elements as built which the Developer is permitted to make in accordance with Section R of this Declaration.

4. Notwithstanding the foregoing and notwithstanding the filing of any unit conveyances or agreements of sale with respect to any or all of the units in favor of any person, the Developer hereby reserves the right to successively amend this Declaration (including the Bylaws and, when applicable, the Condominium Map), without the approval, consent or joinder of any purchaser of a unit or any of the persons then owning or leasing any unit, or any other person, to make such amendments necessary or appropriate to reflect such alterations in the

5. Project which the Developer is permitted to make in accordance with Section R of this Declaration.

6. Notwithstanding the foregoing, any unit owner may transfer or exchange a parking stall assigned as a limited common element to such owner's unit to another unit in the Project. Any transfer shall be executed and recorded as an amendment to this Declaration and the amendment need only be executed by the owner of the unit whose limited common element parking stall is being transferred and the owner of the unit to which the limited common element parking stall is being transferred, subject to any required consents of mortgagees or apartment lessors. A copy of the amendment as recorded shall be promptly delivered to the Association. A transfer of any Parking Apartment Unit shall be executed and recorded as a condominium unit deed or conveyance in the same manner as a conveyance of any condominium unit. A copy of the recorded deed or conveyance instrument shall be promptly delivered to the Association. Notwithstanding the foregoing, the Developer hereby reserves the right to amend this Declaration, without the approval, consent or joinder of any other person, to change the designation of parking stalls which are appurtenant to units owned by the Developer. The amendment need only be signed by the Developer and shall be effective upon recordation in said Bureau of Conveyances.

U. COMPLIANCE WITH DECLARATION AND BYLAWS. All unit owners, their tenants, lessees, families, servants, guests, invitees, licensees, employees, and any other persons who may in any manner use the Project, or any part thereof, shall be bound by and subject to the provisions of said Condominium Property Act and to the provisions of this Declaration, the Bylaws of the Association, and all agreements, decisions and determinations of the Association as lawfully made or amended from time to time. All unit owners, their tenants, lessees, families, servants, guests, invitees, licensees, employees, and any other persons who in any manner use the Project, or any part thereof, shall comply strictly with the Bylaws and with the 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 this Declaration. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Managing Agent or the Board of Directors of the Association on behalf of the Association or by the Developer or, in a proper case, by an aggrieved unit owner.

In the event of the failure of any unit owner to comply fully with any of the foregoing within fifteen (15) days after written demand therefor by the Board of Directors of the Association, the Board of Directors shall promptly give written notice of such failure to the holder of any mortgage of such unit as shown in the Association's record of ownership or who has given the Board of Directors notice of its interest through the Secretary of the Association or the Managing Agent.

All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association or the Board of Directors for:

1. Collecting any delinquent assessments against any owner's unit; or
2. Foreclosing any lien thereon; or
3. Enforcing any provision of this Declaration, the Bylaws, the Rules and Regulations adopted pursuant to the Bylaws or said Condominium Property Act; or
4. Enforcing the rules of the Real Estate Commission of the State of Hawaii;

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

If any claim by an owner is substantiated in any action against the Association, any of its officers or directors, or the Board of Directors to enforce any provision of this Declaration, the Bylaws of the Association, the Rules and Regulations adopted pursuant thereto, or the Condominium Property Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by the owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless: (i) the owner first shall have demanded and allowed reasonable time for the Board of Directors to pursue such enforcement; or (ii) the owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board of Directors would have been fruitless.

If any claim by a unit owner is not substantiated in any court action against the Association, any officer or director of the Association, or the Board to enforce any provision of the Declaration, Bylaws, Rules and Regulations, or the Condominium Property Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by the Association shall be awarded to the Association.

The acceptance of a unit conveyance, agreement of sale, mortgage or rental agreement, or the entering into occupancy of any unit in the Project, shall constitute an agreement that the provisions of this Declaration or the Bylaws of the Association and the Rules and Regulations adopted pursuant thereto, as each may be amended from time to time, are accepted, ratified and will be strictly complied with by a unit owner, his tenants, lessees, family, servants, guests, invitees, licensees and employees, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any

interest or estate in such unit as though such provisions were recited and stipulated at length in each and every unit conveyance, agreement of sale, mortgage or rental agreement thereof.

The Association shall be bound by the waivers of claims, rights of action and suits against the Developer, its successors and assigns, contained in the unit conveyances by the Developer to purchasers of units in the Project, and the Association shall not bring against the Developer, its successors and assigns, any claim or right of action or suit relating to any of the matters waived by the purchasers in such unit conveyances.

V. SECURITY. Neither the Developer nor the Association shall be considered in any way an insurer or guarantor of security within the Project and each unit owner agrees not to hold the Developer or the Association liable for any loss or damage such unit owner or anyone else may suffer by reason of a failure to provide adequate security or from the ineffectiveness of any security measures undertaken at the Project. Each unit owner assumes all risk of injury, loss or damage that may arise due to a failure to provide adequate security or from the ineffectiveness of any security measures undertaken at the Project. By acquiring an interest in a unit in the Project, each unit owner acknowledges and agrees that neither the Developer nor the Association has made any representations or warranties, either express or implied, about any security measures at the Project and such unit owner has not relied upon any such representations or warranties.

W. MEDIATION/ARBITRATION OF DISPUTES CONCERNING THE ACT, THIS DECLARATION, THE BYLAWS OR THE RULES AND REGULATIONS.

1. If any party to a dispute concerning one or more unit owners and the Association, Board, Managing Agent or one or more unit owners requests mediation of a dispute relating to the interpretation, application, or enforcement of the Condominium Property Act or this Declaration, the Bylaws, the Rules and Regulations or any other matter specified by Section 161 of the Act, the other party in such dispute shall be required to participate in such mediation. Both parties agree that each party shall be wholly responsible for its own costs of participating in mediation, unless both parties agree that one party shall pay all or a specified portion of the mediation costs. If the mediation has not been completed within two months from commencement, the parties are not required to participate in further mediation unless agreed to by both parties, but either party may request that the dispute be submitted to arbitration in accordance with the requirements of 514B-162 of the Act. Nothing in this section shall be interpreted to require either (i) the mediation of any dispute which is either exempt from mediation pursuant to Section 514B-161 of the Act; or (ii) the arbitration of any dispute which is either exempt from or determined to be unsuitable for arbitration pursuant to Section 514B-162 of the Act.

X. MEDIATION OF CERTAIN DISPUTES INVOLVING THE DEVELOPER OR DEVELOPMENT TEAM MEMBERS.

1. Any and all claims or disputes in any way connected with the design, development, construction, renovation, sale, marketing, financing, warranties, or any other activity or matter relating to the Project, between one or more unit owners and/or the

Association, on the one hand, and the Developer and/or the Developer's affiliates, on the other hand (a "Dispute"), and the parties to such Dispute are unable to resolve the Dispute through negotiation, the Dispute shall be submitted to mediation, prior to the commencement of any lawsuit.

2. At the Developer's option, the mediation shall include all or any of the Developer's agents, architects, consultants, engineers, contractors, subcontractors, suppliers, representatives or other third parties ("Related Parties"), and any action by the unit owner(s) and/or the Association against any of the Related Parties (and not directly against the Developer) in respect of the Project which the Developer shall determine directly or indirectly affects the Developer, shall at the Developer's option, be subject to these mediation provisions.

3. All fees and costs in connection with the mediation shall be paid equally by the parties.

4. In addition, any lawsuits for defective construction may be subject to the requirements of the Hawaii Contractor Repair Act, Chapter 672E of the Hawaii Revised Statutes ("Hawaii Contractor Repair Act"). The foregoing provisions are intended to comply with the requirements of the Hawaii Contractor Repair Act. In the event of an irreconcilable conflict between the foregoing provisions and the provisions of the Hawaii Contractor Repair Act, the provisions of the Hawaii Contractor Repair Act shall control.

Y. CONFLICTS; CHANGES IN LAW. In the event of any conflict or inconsistency between the provisions of this Declaration and the Condominium Property Act, the provisions of the Condominium Property Act shall prevail. In the event any change in the Condominium Property Act shall result in a conflict or inconsistency between the provisions of this Declaration and the Condominium Property Act, the provisions of the Condominium Property Act, or its successor statute, shall prevail.

Z. INVALIDITY. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such provision had never been included therein.

AA. WAIVER. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

BB. CAPTIONS. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

CC. DEFINITIONS. The terms "majority" or "majority of unit owners" herein means the owners of units to which are appurtenant more than fifty percent (50%) of the common interests, and any specified percentage of the unit owners means the owners of units to which are appurtenant such percentage of the common interests. The term "unit conveyance" herein means a unit deed conveying a unit in the Project, together with the common interest

appurtenant thereto, to the purchaser thereof. References to "Developer" shall include the Developer and its successors and assigns.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.  
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed these presents this \_\_\_\_ day of \_\_\_\_\_, 2006.

**AVALON MAKINI LLC,**  
a Hawaii limited liability company

By Avalon SMC, LLC,  
a Hawaii limited liability company  
Its Manager

By Avalon Development Company LLC,  
a Hawaii limited liability company  
Its Managing Member

By \_\_\_\_\_  
Name: Christine Camp Friedman  
Title: Manager

"Developer"

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

On this \_\_\_\_ day of \_\_\_\_\_ 2006, before me personally appeared CHRISTINE CAMP FRIEDMAN, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Notary Public, State of Hawaii  
My Commission expires: \_\_\_\_\_

## EXHIBIT "A"

### -PARCEL FIRST:-

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Grant Number 3355 to James Lycett) situate, lying and being at Kulaokahua Plains, Honolulu, City and County of Honolulu, State of Hawaii, being LOT "A", and thus bounded and described as per survey dated May 16, 2006, to-wit:

Beginning at the southwest corner of this parcel of land, being also along the northeast side of Kinau Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 3,040.26 feet south and 950.73 feet east and thence running by azimuths measured clockwise from true South:

- |    |          |        |   |
|----|----------|--------|---|
| 1. | 201° 12' | 252.50 | feet along a portion of Royal Patent Grant 3276 to H. J. Agnew;   |
| 2. | 291° 12' | 150.00 | feet along the southwest side of Lunalilo Freeway (F.A.P. I-H1-1(23));  |
| 3. | 21° 12'  | 132.50 | feet along Lots 4, 3, 2 and 1 being a portion of Royal Patent Grant 3298 to Edward Everett;   |
| 4. | 111° 12' | 65.00  | feet along a portion of Royal Patent Grant 3355 to James Lycett;  |
| 5. | 21° 12'  | 120.00 | feet along a portion of Royal Patent Grant 3355 to James Lycett;  |
| 6. | 111° 12' | 85.00  | feet along the northeast side of Kinau Street to the point of beginning and containing an area of 30,075 square feet, more or less. |

-PARCEL SECOND:-

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Grant Number 3355 to James Lycett) situate, lying and being at Kulaokahua Plains, Honolulu, City and County of Honolulu, State of Hawaii, and thus bounded and described as per survey dated May 16, 2006, to-wit:

Beginning at the southwest corner of this parcel of land, being also along the northeast side of Kinau Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 3,071.00 feet south and 1,029.98 feet east and thence running by azimuths measured clockwise from true South:

- |    |          |        |  |
|----|----------|--------|--|
| 1. | 201° 12' | 120.00 | feet along Lot A being a portion of Royal Patent Grant 3355 to James Lycett;   |
| 2. | 291° 12' | 65.00  | feet along Lot A being a portion of Royal Patent Grant 3355 to James Lycett;   |
| 3. | 21° 12'  | 120.00 | feet along Lot 1 being a portion of Royal Patent Grant 3298 to Edward Everett;   |
| 4. | 111° 12' | 65.00  | feet along the northeast side of Kinau Street to the point of beginning and containing an area of 7,800 square feet, more or less. |

Together with a perpetual, free and uninterrupted right-of-way for road purposes only, over, along, upon and across all of the following described strip of land twenty feet wide, being a portion of said Grant 3355 to James Lycett situated on the north side of Kinau Street, Honolulu, City and County of Honolulu, State of Hawaii, and thus bounded and described as per survey dated May 16, 2006, to-wit:

Beginning at the southwest corner of this right-of-way, being also along the northeast side of Kinau Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 3,063.76 feet south and 1,011.33 feet east and thence running by azimuths measured clockwise from true South:

1. 201° 12'            120.00                    feet;
2. 291° 12'            20.00                    feet;
3. 21° 12'            120.00                    feet along a portion of  
Royal Patent Grant 3355  
to James Lycett;
4. 111° 12'            20.00                    feet along the northeast  
side of Kinau Street to  
the point of beginning  
and containing an area of  
2,400 square feet, more  
or less.

PARCEL FIRST AND PARCEL SECOND  
BEING THE PREMISES ACQUIRED BY DEED

GRANTOR :    HOWARD R. GREEN, also known as Howard Green, as Successor Trustee under unrecorded Trust Agreement made by Freda Martin, also known as Frederica Martin, Charles M. Martin, Beryl Martin Haxton, Joan Martin Rodby and Anne Martin Wilson, dated December 19, 1974, with full powers to sell, mortgage, lease or otherwise deal with the land

GRANTEE :    AVALON MAKINI LLC,  
a Hawaii limited liability company

DATED : \_\_\_\_\_  
RECORDED : \_\_\_\_\_

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. -AS TO PARCEL FIRST:-

(A) A perpetual right-of-way for road purposes, being a strip of land twenty (20) feet wide, and more particularly described as per as per survey prepared by Ryan M. Suzuki, Land Surveyor, with R.M. Towill Corporation, dated May 16, 2006, to-wit:

Beginning at the southwest corner of this right-of-way, being also along the northeast side of Kinau Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 3,063.76 feet south and 1,011.33 feet east and thence running by azimuths measured clockwise from true south:

- |    |          |        |   |
|----|----------|--------|---|
| 1. | 201° 12' | 120.00 | feet;   |
| 2. | 291° 12' | 20.00  | feet;   |
| 3. | 21° 12'  | 120.00 | feet along a portion of<br>Royal Patent Grant<br>3355 to James Lycett;  |
| 4. | 111° 12' | 20.00  | feet along the northeast<br>side of Kinau Street to<br>the point of beginning<br>and containing an area<br>of 2,400 square feet,<br>more or less. |

(B) Restriction of rights of access into and from Lunalilo Freeway, Federal Aid Interstate Project No. I-H1-1 (23), which restriction was imposed by the STATE OF HAWAII, by QUITCLAIM DEED dated May 21, 1969, recorded in Liber 6946 at Page 10.

3. Any unrecorded leases and matters arising from or affecting the same.
4. A CRM Wall crosses the south boundary of the subject lot into Kinau Street for a maximum distance of four-tenths (0.4) of a foot, as shown on survey map prepared by Ryan M. Suzuki, Land Surveyor, with R.M. Towill Corporation, revised May 24, 2006.
5. Agreement for Issuance of Conditional Use Permit under Section 21-5.380 of the Land Use Ordinance (LUO), dated July 27, 2006, recorded as Document No. 2006-138544 by Howard R. Green, also known as Howard Green, Successor Trustee under unrecorded Trust Agreement made by Freda Martin, also known as Frederica Martin, Charles M. Martin, Beryl Martin Haxton, Joan Martin Rodby and Anne Martin Wilson dated December 19, 1974, "Declarant".

6. Effect(s), if any, of ASSIGNMENT dated December 30, 1976, recorded in Liber 11932 at Page 133, by and between FREDA MARTIN, also known as FREDERICA MARTIN, and CHARLES MAURICE MARTIN, as Trustee.

END OF EXHIBIT "A"

EXHIBIT "B"

Residential Apartment Units

<u>Residential Apt. No.</u>	<u>Number of BR / Baths</u>	<u>Unit Type</u>	<u>Net Living Area (Sq. Ft.)</u>	<u>Other Areas (Lanai) Sq. Ft.</u>	<u>Total Sq. Ft. Area</u>	<u>Common Area Int. %</u>	<u>Parking Stall</u>
201	2/1	2B	609.0	52.6	661.6	1.3944%	84
202	2/1	2R	605.0	52.6	657.6	1.2811%	105
203	1/1	1R	466.8	52.6	519.4	0.9881%	96
204	1/1	1	466.8	52.6	519.4	0.9881%	95
205	1/1	1	466.8	52.6	519.4	0.9881%	101
206	1/1	1R	466.8	52.6	519.4	0.9881%	102
207	2/1	2AR	606.2	52.6	658.8	1.2840%	99
208	2/1	2	605.0	52.6	657.6	1.2811%	92
301	2/1	2	605.0	52.6	657.6	1.2811%	76
302	2/1	2R	605.0	52.6	657.6	1.2811%	91
303	1/1	1R	466.8	52.6	519.4	0.9881%	94
304	1/1	1	466.8	52.6	519.4	0.9881%	93
305	1/1	1	466.8	52.6	519.4	0.9881%	103
306	1/1	1R	466.8	52.6	519.4	0.9881%	104
307	2/1	2AR	606.2	52.6	658.8	1.2840%	83
308	2/1	2	605.0	52.6	657.6	1.2811%	98
401	2/1	2	605.0	52.6	657.6	1.2811%	60
402	2/1	2R	605.0	52.6	657.6	1.2811%	66
403	1/1	1R	466.8	52.6	519.4	0.9881%	90
404	1/1	1	466.8	52.6	519.4	0.9881%	97
405	1/1	1	466.8	52.6	519.4	0.9881%	77
406	1/1	1R	466.8	52.6	519.4	0.9881%	100
407	2/1	2AR	606.2	52.6	658.8	1.2840%	75
408	2/1	2	605.0	52.6	657.6	1.2811%	3
501	2/1	2	605.0	52.6	657.6	1.2811%	56
502	2/1	2R	605.0	52.6	657.6	1.2811%	9
503	1/1	1R	466.8	52.6	519.4	0.9881%	88
504	1/1	1	466.8	52.6	519.4	0.9881%	89
505	1/1	1	466.8	52.6	519.4	0.9881%	79
506	1/1	1R	466.8	52.6	519.4	0.9881%	78
507	2/1	2AR	606.2	52.6	658.8	1.2840%	40
508	2/1	2	605.0	52.6	657.6	1.2811%	4
601	2/1	2	605.0	52.6	657.6	1.2811%	74

<u>Residential Apt. No.</u>	<u>Number of BR / Baths</u>	<u>Unit Type</u>	<u>Net Living Area (Sq. Ft.)</u>	<u>Other Areas (Lanai) Sq. Ft.</u>	<u>Total Sq. Ft. Area</u>	<u>Common Area Int. %</u>	<u>Parking Stall</u>
602	2/1	2R	605.0	52.6	657.6	1.2811%	5
603	1/1	1R	466.8	52.6	519.4	0.9881%	16
604	1/1	1	466.8	52.6	519.4	0.9881%	17
605	1/1	1	466.8	52.6	519.4	0.9881%	13
606	1/1	1R	466.8	52.6	519.4	0.9881%	14
607	2/1	2AR	606.2	52.6	658.8	1.2840%	6
608	2/1	2	605.0	52.6	657.6	1.2811%	44
701	2/1	2	605.0	52.6	657.6	1.2811%	72
702	2/1	2R	605.0	52.6	657.6	1.2811%	73
703	1/1	1R	466.8	52.6	519.4	0.9881%	61
704	1/1	1	466.8	52.6	519.4	0.9881%	15
705	1/1	1	466.8	52.6	519.4	0.9881%	62
706	1/1	1R	466.8	52.6	519.4	0.9881%	12
707	2/1	2AR	606.2	52.6	658.8	1.2840%	8
708	2/1	2	605.0	52.6	657.6	1.2811%	45
801	2/1	2	605.0	52.6	657.6	1.2811%	55
802	2/1	2R	605.0	52.6	657.6	1.2811%	7
803	1/1	1R	466.8	52.6	519.4	0.9881%	87
804	1/1	1	466.8	52.6	519.4	0.9881%	63
805	1/1	1	466.8	52.6	519.4	0.9881%	80
806	1/1	1R	466.8	52.6	519.4	0.9881%	64
807	2/1	2AR	606.2	52.6	658.8	1.2840%	72
808	2/1	2	605.0	52.6	657.6	1.2811%	41
901	2/1	2	605.0	52.6	657.6	1.2811%	54
902	2/1	2R	605.0	52.6	657.6	1.2811%	46
903	1/1	1R	466.8	52.6	519.4	0.9881%	85
904	1/1	1	466.8	52.6	519.4	0.9881%	65
905	1/1	1	466.8	52.6	519.4	0.9881%	81
906	1/1	1R	466.8	52.6	519.4	0.9881%	86
907	2/1	2AR	606.2	52.6	658.8	1.2840%	42
908	2/1	2	605.0	52.6	657.6	1.2811%	70
1001	2/1	2	605.0	52.6	657.6	1.2811%	67
1002	2/1	2R	605.0	52.6	657.6	1.2811%	43
1003	1/1	1R	466.8	52.6	519.4	0.9881%	2
1004	1/1	1	466.8	52.6	519.4	0.9881%	38
1005	1/1	1	466.8	52.6	519.4	0.9881%	1
1006	1/1	1R	466.8	52.6	519.4	0.9881%	82
1007	2/1	2AR	606.2	52.6	658.8	1.2840%	68
1008	2/1	2	605.0	52.6	657.6	1.2811%	69

<u>Residential Apt. No.</u>	<u>Number of BR / Baths</u>	<u>Unit Type</u>	<u>Net Living Area (Sq. Ft.)</u>	<u>Other Areas (Lanai) Sq. Ft.</u>	<u>Total Sq. Ft. Area</u>	<u>Common Area Int. %</u>	<u>Parking Stall</u>
1101	2/1	2	605.0	52.6	657.6	1.2811%	52
1102	2/1	2R	605.0	52.6	657.6	1.2811%	53
1103	1/1	1R	466.8	52.6	519.4	0.9881%	37
1104	1/1	1	466.8	52.6	519.4	0.9881%	58
1105	1/1	1	466.8	52.6	519.4	0.9881%	59
1106	1/1	1R	466.8	52.6	519.4	0.9881%	18
1107	2/1	2AR	606.2	52.6	658.8	1.2840%	48
1108	2/1	2	605.0	52.6	657.6	1.2811%	47
1201	2/1	2	605.0	52.6	657.6	1.2811%	32
1202	2/1	2R	605.0	52.6	657.6	1.2811%	35
1203	1/1	1R	466.8	52.6	519.4	0.9881%	11
1204	1/1	1	466.8	52.6	519.4	0.9881%	57
1205	1/1	1	466.8	52.6	519.4	0.9881%	10
1206	1/1	1R	466.8	52.6	519.4	0.9881%	39
1207	2/1	2AR	606.2	52.6	658.8	1.2840%	31
1208	2/1	2	605.0	52.6	657.6	1.2811%	34

**Parking Apartment Units**

<u>Parking Apartment Number:</u>	<u>Total Sq. Ft. Area</u>	<u>Common Interest</u>
P19	171.0	0.0010%
P20	180.5	0.0010%
P21	229.6	0.0010%
P22	229.6	0.0010%
P23	161.5	0.0010%
P24	161.5	0.0010%
P25	120.0	0.0010%
P26	180.5	0.0010%
P33	351.0	0.0020%

END OF EXHIBIT J

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail  Pickup  To:

GOODSILL ANDERSON QUINN & STIFEL  
A LIMITED LIABILITY LAW PARTNERSHIP LLP  
Raymond S. Iwamoto  
Alii Place, Suite 1800  
1099 Alakea Street  
Honolulu, Hawaii 96813  
Phone: (808) 547-5600

Total Pages: \_\_\_\_\_

Tax Map Key No.: (1) 2-4-013:032

**BYLAWS OF THE  
ASSOCIATION OF UNIT OWNERS OF  
MAKINI AT KINAU**

EXHIBIT K

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**BYLAWS OF THE  
ASSOCIATION OF UNIT OWNERS OF  
MAKINI AT KINAU**

The following Bylaws shall apply to the MAKINI AT KINAU condominium project (herein sometimes called the "Project"), as described in and created by the Declaration of Condominium Property Regime of Makini at Kinau (hereinafter called the "Declaration") to be recorded in the Bureau of Conveyances of the State of Hawaii contemporaneously herewith, and to all present and future owners, tenants and occupants of any units of the Project and all other persons who shall at any time use the Project:

**ARTICLE I**

**INTRODUCTORY PROVISION**

Section 1. Definitions. The terms used herein shall have the meanings given to them in the Declaration and in Chapter 514B, Hawaii Revised Statutes, as amended, and any successor statute, as amended (hereinafter called the "Condominium Property Act"), except as otherwise expressly provided herein. Unless clearly repugnant to the context, the following terms, whenever used in these Bylaws, shall be given the following meanings:

- (a) "Association" means the Association of Unit Owners of the Project.
- (b) "Association property" shall have the meaning ascribed thereto in Article II, Section 2(B).
- (c) "Board" means the Board of Directors of the Association.
- (d) "Common elements" means those elements designated in the Declaration as common elements, including limited common elements.
- (e) "Common expenses" includes the expenses designated as common expenses in Article VII, Section 1 of these Bylaws and all other sums designated as common expenses under the Condominium Property Act or the Declaration.
- (f) "Cumulative voting" shall have the meaning ascribed thereto in Article III, Section 2 below.
- (g) "Developer" means Avalon Makini LLC, a Hawaii limited liability company, its successors and assigns. The term, "successors and assigns" of the Developer, as used herein, shall refer to the others defined in the Condominium Property Act as "Developer".
- (h) "Land" means the land designated and described in the Declaration.

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

(j) "Majority of the owners" shall have the meaning ascribed thereto in Article II, Section 6 below.

(k) "Majority of the owners present at any meeting" shall have the meaning ascribed thereto in Article II, Section 6 below.

(l) "Managing Agent" means the managing agent of the Project.

(m) "Owner" or "unit owner" means a person owning, or the persons owning jointly or in common, a unit and the common interest appertaining thereto, to the extent of such ownership; provided that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by lease recorded in the Bureau of Conveyances of the State of Hawaii, the lessee of a unit or interest therein shall be deemed to be the owner of such unit, and provided further that the purchaser of a unit pursuant to an agreement of sale recorded as aforesaid shall have all the rights of a unit owner, including the right to vote, provided that the seller may retain the right to vote on matters substantially affecting his security interest in the unit, including but not limited to, the right to vote on: (i) any partition of all or part of the Project; (ii) the nature and amount of any insurance covering the Project and the disposition of any proceeds thereof; (iii) the manner in which any condemnation of the Project shall be defended or settled and the disposition of any award or settlement in connection therewith; (iv) the payment of any amount in excess of insurance or condemnation proceeds; (v) the construction of any additions or improvements, and any substantial repair or rebuilding of any portion of the Project; (vi) the special assessment of any expenses; (vii) the acquisition of any unit in the Project; (viii) any amendment to the Declaration or these Bylaws; (ix) any removal of the Project from the condominium property regime; and (x) any other matter that would substantially affect the security interest of the seller.

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

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

(p) "Sold and recorded" shall have the meaning ascribed thereto in Article II, Section 3.

(q) "Unit" as used herein means a unit in the Project, within the meaning of that term as used in the Condominium Property Act, as designated and described in the Declaration.

(r) "Unit conveyance" means an condominium unit deed conveying a unit in the Project, together with the common interest appurtenant thereto, to a unit owner.

Section 2. Gender. All pronouns used herein shall include the male, female and neuter genders and shall include the singular or plural numbers, as the case may be.

Section 3. Conflicts. These Bylaws are set forth to comply with the requirements of the Condominium Property Act. In case any of these Bylaws conflict with the provisions of the Condominium Property Act or the Declaration, the provisions of the Condominium Property Act or the Declaration, as the case may be, shall control.

Section 4. Application. All present and future owners, lessees, mortgagees, vendees under agreements of sale, tenants and occupants of units and their invitees, licensees, guests and employees, and any other persons who may use any part of the Project in any manner are subject to these Bylaws, the Declaration and the Rules and Regulations, as each may be amended from time to time. The acceptance of a unit conveyance, mortgage, agreement of sale, or rental agreement of a unit, or the act of occupying a unit, shall constitute an agreement that these Bylaws, the Declaration and the Rules and Regulations, as they may be amended from time to time, are accepted, ratified and will be strictly complied with.

## ARTICLE II

### ASSOCIATION OF UNIT OWNERS

Section 1. Membership. All owners of units in the Project shall constitute the Association. The owner of any unit upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such unit ceases for any reason, at which time his membership in the Association shall automatically cease.

Section 2. Powers of the Association. The Association shall have all of the powers with respect to the operation and regulation of the Project conferred upon the Association by, or which may be conferred upon the association of unit owners of a condominium project pursuant to the provisions of, the Condominium Property Act, including without limiting the generality of the foregoing:

(a) The election of a Board of Directors.

(b) The management, maintenance, acquisition, construction and care of the Association property. As used herein, the term "Association property" includes the common elements of the Project, property held by the Association, property commonly held by its members, property within the Project privately held by its members but which may be subject to a common maintenance assessment by the Association for such purposes as insurance, and property owned by any governmental agency or private or public utility and used for the benefit of the Association's members.

(c) The collection of common expenses and limited common expenses from the owners.

(d) The designation and removal of personnel necessary for the maintenance, repair and replacement of the common elements.

(e) The establishment of such restrictions and requirements not inconsistent with the Declaration, the Condominium Property Act or these Bylaws regarding the use and maintenance of the units and the use of the common elements.

(f) The amendment of these Bylaws in accordance with the Declaration, Article IX, Section 9 hereof, and the Condominium Property Act.

(g) Any and all powers not inconsistent with any law or the Declaration, which are reasonably incidental to the fulfillment of the purposes of the Condominium Property Regime set forth in the Declaration, or are reasonably incidental to the exercise of the Association's powers as set forth in the Declaration or herein.

Nothing in this Section 2 shall prohibit the delegation by the Association of any of its powers in accordance with these Bylaws, as amended from time to time. Notwithstanding anything to the contrary provided herein, until the Board of Directors of the Association is elected at the first annual meeting of the Association, the Developer will have the right to exercise all of the powers of the Association and the Board of Directors and officers of the Association, including voting. Thereafter, the Developer, as the owner of any unsold Units, shall be entitled to vote the interest of each such Unit.

Section 3. Meetings. The first meeting of the Association shall be held upon the call of the Developer not later than one hundred eighty (180) days after recordation of the first unit conveyance, provided that forty percent (40%) or more of the units in the Project have been sold and recorded. If forty percent (40%) or more of the units in the Project have not been sold and recorded at the end of one (1) year after recordation of the first unit conveyance, an annual meeting shall be called, provided at least ten percent (10%) of the owners so request. The term "sold and recorded" shall mean and refer to the sale of units in the Project, and the filing of unit conveyances transferring interests in the units from the Developer to parties not signatory to the Declaration. Thereafter, annual meetings of the Association shall be held within ninety (90) days following the close of the fiscal year of the Association as selected by the Board of Directors, on such date as the Board of Directors may designate, or if the Board of Directors shall fail to designate such date by the forty-fifth (45th) day following the close of said fiscal year, then on the third Tuesday in the third calendar month following the close of said fiscal year. Each annual meeting shall be a general meeting, and at such meeting any business within the powers of the Association, without special notice of such business, may be transacted except as limited by law, the Declaration or these Bylaws. Special meetings of the Association may be called by the President, a majority of the Board, or by a petition to the Secretary or the Managing Agent signed by not less than twenty-five percent (25%) of the unit owners as shown in the Association's record of ownership; provided that if the Secretary or Managing Agent fails to send out the notices for the special meeting within fourteen (14) days of receipt of the petition,

the petitioners shall have the authority to set the time, date and place for the special meeting and to send out the notices and proxies for the special meeting in accordance with these Bylaws and the Condominium Property Act. At any special meeting only such business shall be transacted as shall have been indicated by a specific or general description in the notice of such meeting. All meetings of the Association shall be held at the address of the Project or such other suitable place within the State of Hawaii as determined by the Board of Directors; provided that in the event of a natural disaster, such as a hurricane, an Association meeting may be held outside the State of Hawaii.

Section 4. [RESERVED].

Section 5. Notice of Meetings. Any notices permitted or required to be given herein must be in writing and may be: (a) hand-delivered; (b) sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner; or (c) at the option of the unit owner, expressed in writing, by electronic mail to the electronic mailing address designated in writing by the unit owner. The notice of any meeting of the Association must state the date, time, and place of the meeting, and the items on the agenda, including the general nature and rationale of any proposed amendment to the Declaration or these Bylaws, and any proposal to remove a member of the Board; provided that this section shall not preclude any unit owner from proposing an amendment to the Declaration or these Bylaws or to remove a member of the Board at any annual Association meeting. Notices of all Association meetings, whether annual or special, shall be given at least fourteen (14) days before the date of the meeting. If delivery is made by mail, the notice shall be deemed to have been given twenty-four (24) hours after a copy of it has been deposited in the United States mail, postage prepaid, addressed to the person to whom the notice is to be given at the address given by such person to the Board of Directors from time to time, in writing, or to the unit which such person owns if no address has been given to the Board of Directors. Upon written request for notice delivered to the Board of Directors, the holder of any duly recorded mortgage against any unit shall promptly be furnished a copy of any and all notices permitted or required herein to be made to the owner or owners whose unit is subject to such mortgage and which notices are specifically requested by the holder of such mortgage. Said request for notice need not be renewed and shall entitle the holder of such mortgage requesting such notice to receive all notices sent to the owner or owners whose unit is subject to said mortgage from and after the date of said request until said request is withdrawn or the mortgage is discharged of record. If notice is given pursuant to the provisions of this section, the failure of any unit owner to receive actual notice of the meeting shall in no way invalidate the meeting or any proceedings thereat. The presence of all owners, in person or by proxy, at any meeting shall render the same a valid meeting notwithstanding that notice thereof was not given or was improper, unless any owner shall at the opening of such meeting object to the holding of such meeting because of the failure to comply with the provisions of this section.

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

by the Declaration. The term "majority of the owners present at any meeting" shall mean owners of units to which are appurtenant more than fifty percent (50%) of the aggregate common interests appurtenant to units owned by those present at the meeting. Any other specified percentage of the owners means the owners of units to which are appurtenant such percentage of the common interests.

Section 7. Voting. All owners shall be members of the Association and shall be entitled to vote at meetings thereof. Voting shall be on a percentage basis with the percentage of the total vote to which each unit is entitled being the same as the percentage of the common interests assigned to such unit in the Declaration. The vote for any unit owned of record by two or more persons may be exercised either in accordance with the agreement of a majority in interest by all co-owners, or individually by any one of them present at any meeting in the absence of protest by the other co-owner or co-owners of the unit to the person presiding over the meeting before the polls are closed. In no event, however, shall the percentage of vote for any unit be fractionalized. Votes may be cast in person or pursuant to a proxy duly executed by a unit owner. If the unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. In the absence of protest, any owner may cast the votes allocated to the unit by proxy. A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the Secretary or the Managing Agent. A proxy is void if it purports to be revocable without notice. A personal representative, guardian or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any unit owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such unit in such capacity. The purchaser of a unit under any agreement of sale recorded in said Bureau of Conveyances shall have all the rights of an owner, including the right to vote, unless the seller under such agreement of sale retains the right to vote pursuant to the Condominium Property Act. No votes allocated to a unit owned by the Association may be cast for the election or re-election of directors.

Section 8. Proxies and Pledges. The authority given by any unit owner to another person to represent him at meetings of the Association shall be in writing. A unit owner may vote by mail or electronic transmission through a duly executed proxy.

(a) A proxy, to be valid, must: (i) be delivered to the Secretary or the Managing Agent no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains; (ii) contain at least the name of the Association, the date of the meeting of the Association, the printed names and signatures of the persons giving the proxy, the unit numbers for which the proxy is given, the names of the persons to whom the proxy is given, and the date that the proxy is given; (iii) if it is a standard proxy form authorized by the Association, contain boxes wherein the owner has indicated that the proxy is given: (a) for quorum purposes only; (b) to the individual whose name is printed on a line next to this box; (c) to the Board of Directors as a whole and that the vote be made on the basis of the preference of the majority of the directors present at the meeting; or (d) to those directors present at the meeting with the vote to be shared with each director receiving an equal percentage. The proxy

form shall also contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report.

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

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

(d) Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering a unit or under an agreement of sale affecting a unit.

(e) With respect to the use of Association funds to distribute proxies: (i) if the Board intends to use Association funds to distribute proxies, including the standard proxy form referred to in this Section 8, the Board shall first post notice of its intent to distribute proxies in prominent locations within the Project at least twenty-one (21) days before its distribution of proxies. If the Board receives within seven (7) days of the posted notice a request by any unit owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall mail to all unit owners either: (a) a proxy form containing the names of all unit owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or (b) a proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of Association funds for soliciting proxies and their statements. The statement, which shall be limited to black text on white paper, shall not exceed one single-sided 8-1/2" x 11" page, indicating the owner's qualifications to serve on the Board or reasons for wanting to receive proxies; and (ii) the Board or member of the Board may use Association funds to solicit proxies as part of the distribution of proxies. If a member of the Board, as an individual, seeks to solicit proxies using Association funds, the Board member shall proceed as a unit owner under subpart (i) of this subsection.

(f) No Managing Agent or resident manager, if any, or their employees, shall solicit, for use by the Managing Agent or the resident manager, if any, any proxies from any unit owner of the Association that retains the Managing Agent or resident manager, nor shall the Managing Agent or the resident manager, if any, cast any proxy vote at any Association meeting except for the purpose of establishing a quorum.

(g) The Board shall not adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to Association matters on the common elements by unit owners; provided that the Board may adopt rules regulating reasonable time, place, and manner of the solicitations or distributions, or both. The Board of Directors may prohibit commercial solicitations.

Section 9. Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the owners present, whether or not a quorum is present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

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

- (a) Roll call.
- (b) Proof of notice of meeting.
- (c) Reading of minutes of preceding meeting.
- (d) Report of officers.
- (e) Report of Board of Directors.
- (f) Report of committees.
- (g) Election of directors (when so required).
- (h) Appointment of Auditor.
- (i) Unfinished business.
- (j) New business.

Section 11. Conduct of Meetings. All meetings of the Association shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.

Section 12. Minutes of Meetings. The minutes of meetings of the Association shall be approved at the next succeeding annual meeting or by the Board, within sixty (60) days after the meeting, if authorized by the unit owners at an annual meeting. If approved by the Board, units owners shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty (30) days after approval. Minutes of all meetings of the Association shall be available within seven (7) calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty (60) days after the meeting. An owner shall be allowed to offer corrections to the minutes at an Association meeting.

Section 13. Committees. The Association may create and appoint such general or special committees as the affairs of the Association may require and define the authority and duties of such committees.

### ARTICLE III

#### BOARD OF DIRECTORS

Section 1. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of five (5) directors. Each of the directors shall be the owner or co-owner of record of a unit, a vendee of a unit under an agreement of sale, a trustee or beneficiary of a trust which owns a unit, or an officer, partner, member or other person authorized to act on behalf of any other legal entity which owns a unit. The partners in a general partnership and the general partners of a limited partnership or limited liability partnership shall

be deemed to be the owners of a unit for the purpose of serving on the Board. There shall not be more than one representative on the Board of Directors from any one unit. No resident manager or employee of the Project shall serve on the Board of Directors. Except as specifically authorized by the Association at an annual or special meeting, no director shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the course of acting as such director. An owner shall not act as director and an employee of the Managing Agent. Any owner who is a board member of an Association and an employee of the Managing Agent shall not participate in any discussion regarding a management contract at a board meeting and shall be excluded from any executive session of the board where the management contract or the property manager will be discussed.

Section 2. Election and Term. Election of directors shall be by cumulative voting by secret ballot at each annual meeting and each special meeting called for that purpose. An owner shall provide notice of the owner's intent to cumulatively vote before voting commences. Directors shall hold office for a period not to exceed two (2) years and until their respective successors have been elected, subject to removal as herein provided. Directors shall be elected at each annual meeting to fill the vacancy in the office of director occurring as of the time of such meeting. The term "cumulative voting" as used herein means that each owner may cast for any one or more nominees to the Board a vote equivalent to the vote which such owner is entitled to multiplied by the number of directors to be elected, and each owner shall be entitled to cumulate his votes and give all thereof to one nominee or to distribute his votes in such manner as he shall determine among any or all of the nominees, and the nominees receiving the highest number of votes on the foregoing basis, up to the total number of directors to be elected, shall be deemed elected. Notwithstanding the foregoing and any other provision contained in these Bylaws or the Declaration to the contrary, during the period that the Developer owns at least one (1) unit in the Project, the Developer, at its Discretion, shall at all times have the right to designate and appoint a person to hold at least one (1) position on the Board of Directors.

Section 3. Vacancies. Any vacancies in the Board of Directors other than a vacancy caused by the natural expiration of the term of a director or the removal of a director by the Association shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall serve until his successor is elected at the next annual meeting of the Association. Death, incapacity or resignation of any director, or his ceasing to be the owner or co-owner of a unit or the purchaser of a unit under an agreement of sale or the officer of a corporate owner of a unit or a partner in a general partnership or a general partner in a limited partnership which owns a unit or has purchased a unit under an agreement of sale, shall cause his office to become vacant.

Section 4. Removal of Directors. At any annual or special meeting of the Association duly called, any member of the Board may be removed and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be by a vote of a majority of the unit owners and, otherwise, in accordance with all applicable requirements and procedures in these Bylaws for the removal and replacement of directors, and, if removal and replacement is to occur at a special meeting, Article II, Section 3 of these Bylaws. Any director whose removal has been proposed by the unit owners shall be given an opportunity to be heard at such meeting.

Any director who shall miss three (3) consecutive meetings of the Board may be removed by vote of a majority of the remaining directors, even though they may constitute less than a quorum; provided, however, that this right of removal shall be without prejudice to the unit owners' right to remove directors as provided in this Section 4. The replacement of the director removed by the Board shall be in accordance with all applicable requirements and procedures in these Bylaws for the replacement of directors. Any director removed by the Board shall not be eligible for reelection to the Board for a period of one (1) year after such director's removal.

Section 5. Organizational Meetings. The first meeting of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association, and no notice shall be necessary to any directors in order validly to constitute such meeting, provided that a majority of the whole Board shall be present. At such meeting the Board shall elect the officers of the Association for the ensuing year.

Section 6. Regular Meetings. The Board of Directors shall meet at least once a year. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least one such meeting shall be held during each calendar year. Notice of regular meetings of the Board shall be given to each director in a reasonable manner at least fourteen (14) days, if practicable, prior to the date of the meeting.

Section 7. Special Meetings. Special meetings of the Board of Directors may be called by the President on at least three (3) days' notice to each director, given personally or by telephone, or facsimile transmission, which notice shall state the time, place and purpose of such meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and with like notice on the written request of at least two (2) directors.

Section 8. Conduct of Meetings. All meetings of the Board of Directors, other than executive sessions, shall be open to all members of the Association, and Association members who are not on the Board of Directors may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board of Directors votes otherwise. The Board of Directors, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon matters: (a) concerning personnel; (b) concerning litigation in which the Association is or may become involved; (c) necessary to protect the attorney-client privilege of the Association; or (d) necessary to protect the interests of the Association while negotiating contracts, leases, and other commercial transactions. The general nature of any business to be considered in executive session shall first be announced in open session. All meetings of the Board of Directors (whether organizational, regular or special) shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. A director shall not vote by proxy at Board meetings.

Section 9. Notices; Waiver of Notice. Notice of all Board meetings and other notices to the directors shall be given to each director by the Secretary or the person or persons calling the meeting. Notice of all Board meetings shall be posted by the Managing Agent,

resident manager, if any, or a member of the Board, in prominent locations within the Project seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board of Directors. Before or at any meeting of the Board of Directors, any director may in writing waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice to him of such meeting. If all the directors are present at any meeting of the Board, no notice thereof shall be required, and any business may be transacted at such meeting.

Section 10. Quorum of Board. At all meetings of the Board of Directors a majority of the total number of directors established by these Bylaws shall constitute a quorum for the transaction of business, and action by a majority of the directors present at any meeting at which a quorum is present shall constitute action by the Board. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 11. Powers and Duties of the Board. The Board of Directors shall have the powers and duties necessary to act in all instances on behalf of the association and for the administration of the affairs of the Association and may do all such acts or things set forth in the Condominium Property Act, the Declaration and these Bylaws to be done by the Board of Directors, except as otherwise expressly prohibited.

Section 12. Conflicts of Interest. A director shall not vote at any Board meeting on any issue in which the director has a conflict of interest. A director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made. "Conflict of interest", as used in this section, means an issue in which a director has a direct personal or pecuniary interest not common to other members of the Association.

Section 13. Minutes of Meetings. The minutes of the meetings of the Board of Directors shall: (a) shall include the recorded vote of each Board member on all motions except motions voted on in executive session; (b) be approved no later than the second succeeding regular meeting; (c) be available within seven (7) calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty (60) days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.

Section 14. Action By Directors Without Meeting. Any action required or permitted to be taken at any meeting of the directors or of a committee of the directors may be taken without a meeting if all of the directors or all of the members of the committee, as the case may be, sign a written consent setting forth the action taken or to be taken at any time before or after the intended effective date of such action. Such consent shall be filed with the minutes of the directors' meetings or committee meetings as the case may be and shall have the same effect as a unanimous vote.

Section 15. Directors' Telephone Meetings. Subject to the notice requirements contained in these Bylaws, members of the Board of Directors or any committee designated thereby may participate in a meeting of such Board or committee by means of a conference telephone or similar communication equipment through which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. If permitted by the Board, any unit owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear each other during the meeting, provided that the Board may require that the unit owner pay for the costs associated with the participation.

Section 16. Duty of Directors. In the performance of their duties, each member of the Board of Directors shall owe the Association a fiduciary duty and exercise the degree of care and loyalty required of a director of a nonprofit corporation organized under Chapter 414D of the Hawaii Revised Statutes, as amended.

Section 17. Copies of Documents. The Association at its expense shall provide all Board members with a current copy of the Declaration, Bylaws, Rules and Regulations, and, annually, a copy of the Condominium Property Act, with amendments.

Section 18. Expenditure of Association Funds.

(a) Directors shall not expend Association funds for their travel, director's fees, and per diem, unless the owners are informed of the expenditures and a majority of the owners approves of these expenses; provided that, with the approval of the Board, directors may be reimbursed for actual expenditures incurred on behalf of the Association. The minutes of the Board meetings shall reflect in detail the items and amounts of the reimbursements.

(b) Directors may expend Association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget shall include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State of Hawaii, all other travel expenses incurred under this subpart shall be subject to the requirements of the foregoing subpart (a) of this section.

## ARTICLE IV

### OFFICERS

Section 1. Designation. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. All officers shall be members of the Board. Except as specifically authorized by the Association at an annual or special meeting, no

officer shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the course of acting as such officer. An owner shall not act as both an officer of the Association and an employee of the Managing Agent.

Section 2. Election and Term. The officers of the Association shall be elected annually by the Board of Directors at its organizational meeting or any special meeting called for such purpose and shall hold office at the pleasure of the Board.

Section 3. Duty of Officers. In the performance of their duties, each officer of the Association shall owe to the Association a fiduciary duty and exercise the degree of care and loyalty required of an officer of a corporation organized under Chapter 414D of the Hawaii Revised Statutes.

Section 4. Removal. Any officer may be removed either with or without cause by vote of a majority of the members of the Board of Directors, and his successor shall be elected at any regular meeting of the Board or any special meeting called for such purpose.

Section 5. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. Subject to the control of the Board he shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. He shall also have such other powers and duties as may be provided by these Bylaws or assigned to him from time to time by the Board.

Section 6. Vice President. The Vice President shall perform all of the duties and exercise all of the powers and rights of the President provided by these Bylaws or otherwise during the absence or disability of the President, or whenever the office of President is vacant, and shall perform all other duties assigned by the Board.

Section 7. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors, give all notices thereof as provided by these Bylaws, maintain and keep a continuous and accurate record of ownership of all units, maintain and keep the minute book wherein resolutions shall be recorded, have charge of such books, documents and records of the Association as the Board may direct, and in general perform all the duties incident to the office of Secretary and all other duties assigned by the Board.

Section 8. Treasurer. The Treasurer shall maintain and keep the financial records and books of account of the Association, prepare regular reports thereof and be responsible for the proper deposit and custody in the name of the Association of all its funds and securities. The Treasurer shall, in general, perform all the duties incident to the office of Treasurer and all other duties assigned by the Board.

## ARTICLE V

### ADMINISTRATION

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

- (a) Supervision of its immediate management and operation;
- (b) Operation, care, upkeep, maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto;
- (c) Purchase, maintenance and replacement of any equipment and provision of all water and utility services required for the common elements;
- (d) Provision at each unit of all water, electricity, cable television, and such other utility services and utilities as the Board shall deem necessary either at the expense of such unit or as a common expense as determined by the Board;
- (e) Designation, employment, supervision and removal of such personnel as may be necessary for the operation, repair and maintenance of the common elements and the Project, including without limitation, a resident manager;
- (f) Making contracts and incurring liabilities in connection with the exercise of any of the powers and duties of the Board;
- (g) Purchasing or providing or causing to be provided all other materials, supplies, furniture, goods and services required by these Bylaws, or by law, or which the Board, in its discretion, deems necessary or appropriate for the proper operation and maintenance of the Project, or which are used in common or jointly by the common elements and units, in each case to the extent such goods and services shall not be otherwise provided;
- (h) Payment of all common expenses and limited common expenses which the Association is required to pay for pursuant to the Declaration, these Bylaws, the Waikoloa Village Covenants or by law or which in the Board's opinion shall be necessary or proper for the operation and maintenance of the Project or for the enforcement of these Bylaws, provided that if any such payment is required because of the particular actions or negligence of the owners of particular units, the cost thereof shall be specially assessed to the owners of such units;
- (i) Opening of bank accounts on behalf of the Association and designating the signatories thereof;
- (j) Delegation of its powers and duties to committees, agents, officers, representatives and employees;

(k) From time to time to adopt and/or amend the Rules and Regulations which govern the details of the operation and use of the Project, including, without limitation, the use lanais within the Project; provided, however, that no such Rules and Regulations shall be effective if disapproved by a resolution of the Association adopted at a meeting duly called for such purpose; provided, further, that nothing herein shall be construed to require that a meeting of the Association be called for the purpose of approving or disapproving Rules and Regulations adopted by the Board of Directors; provided further, however, that the initial Rules and Regulations may be adopted by the Développeur and, prior to the first meeting of the Association and the election of the initial Board of Directors, the Developer shall have the right, from time to time, to amend the Rules and Regulations;

(l) Within sixty (60) days prior to the beginning of each fiscal year, to cause to be prepared and to approve a budget covering the itemized estimated income of the Project, if any, from all sources and the estimated cost of maintaining and operating the Project during the ensuing fiscal year, including all expenses for taxes, insurance premiums, improvements, assessments, utility charges, maintenance and operating expenses, the wages of the resident manager or property manager, if any, assessments imposed on unit owners, the cost of leasing the resident manager's unit, if any, and all other charges and outgoings of any description for which the Association or its property may be assessed or become liable, plus the reserves established by these Bylaws and any other reasonable reserves for such purposes, less any surpluses from the operation of prior years, if any. In addition, the Board of Directors shall prepare and approve a schedule of monthly assessments against each unit owner for his proportionate share of such estimated cost of maintaining and operating the Project for such ensuing year;

(m) Levy and collection of all monthly and special assessments of the common expenses, all assessments of limited common expenses and other charges payable by the unit owners;

(n) Purchase and maintain in effect of all policies of property and liability insurance for the Project required by the Declaration and such other insurance and bonds as may be required or authorized by the Declaration, these Bylaws or the Board;

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

(p) Notify all persons having any interest in any unit according to the Association's record of ownership of delinquency exceeding sixty (60) days in the payment of any assessment against such unit;

(q) Make additions and improvements to or alterations of the Project and repairs to and restoration of the Project in accordance with the provisions of the Declaration or the Condominium Property Act after damage or destruction by fire or other casualty or as a result of condemnation;

(r) Procure legal and accounting services necessary or proper for the operation of the Project or the interpretation, enforcement or implementation of the Declaration, these Bylaws and any other material documents affecting the Project;

(s) Pay any amount necessary to discharge any lien or encumbrance levied against the entire Project or any part thereof which may in the opinion of the Board constitute a lien against the Project or against the common elements or limited common elements rather than merely against the interest therein of particular owners. If one or more owners are responsible for the existence of any such lien, they shall be jointly and severally liable for the cost of discharging such lien and for the costs incurred by the Board by reason of such lien;

(t) Maintain and repair any unit if such maintenance or repair is necessary, in the discretion of the Board, to protect the common elements, the limited common elements or any other portion of the buildings and if the owner or owners of said unit shall have failed or refused to perform said maintenance or repair within a reasonable time in the circumstances after written notice of the necessity of the same shall have been delivered by the Board to said owner or owners, provided that if the owner or owners of a unit have failed or refused to perform the same, the Board shall levy a special assessment against such unit for the cost of such maintenance or repair and any attorneys' fees and other expenses incurred in levying and collecting such special assessment;

(u) From time to time to enforce, modify and make agreements with respect to any lease or tenancy of any portions of the common elements on behalf of the unit owners;

(v) Provided it obtains the prior approval of owners having not less than sixty-seven percent (67%) of the common interests, purchase any unit of the Project from the owner thereof or at foreclosure or other judicial sale, on behalf and in the name of the Association or its nominee, corporate or otherwise, and thereafter sell, lease, mortgage, vote the common interests appurtenant to and otherwise deal with such unit; provided, however, that the Association's employees shall not engage in selling or renting units in the Project except Association-owned units, unless such activity is approved by not less than sixty-seven percent (67%) of the common interests;

(w) Enforce the provisions of the Declaration, these Bylaws and the Rules and Regulations;

(x) Provided it obtains the prior approval of owners having not less than sixty-seven percent (67%) of the common interests, change the use of the common elements;

(y) On behalf of the Association, lease or otherwise use for the benefit of the Association those common elements that the Board determines are not actually used by any of the unit owners for a purpose permitted by the Declaration; provided that unless the lease is approved by the owners of at least sixty-seven percent (67%) of the common interests, the lease shall have a term of no more than five (5) years and may be terminated by the Board or the

lessee on no more than sixty (60) days prior written notice; provided that the requirements of this subsection shall not apply to any leases, licenses or other agreements entered into for the purposes authorized by Section 514B-140(d) of the Condominium Property Act;

(z) On behalf of the Association, lease or otherwise use for the benefit of the Association those common elements that the Board determines are actually used by one or more unit owners for a purpose permitted in this Declaration upon obtaining the approval of the owners of sixty-seven percent (67%) of the common interests, including all directly affected owners that the Board reasonably determines actually use the common elements, and the owners' mortgagees; provided that the requirements of this subsection shall not apply to any leases, licenses or other agreements entered into for the purposes authorized by Section 514B-140(d) of the Condominium Property Act; and

(aa) When personalty in or on the common elements has been abandoned, sell the personalty in a commercially reasonable manner, store such personalty at the expense of its owner, donate such personalty to a charitable organization, or otherwise dispose of such personalty in its sole discretion; provided that no such sale, storage, or donation shall occur until sixty (60) days after the Board of Directors complies with the following: (i) The Board of Directors notifies the unit owner in writing of (a) the identity and location of the personalty, and (b) the Board of Directors' intent to so sell, store, donate, or dispose of the personalty. Notification shall be by certified mail, return receipt requested, to the unit owner's address as shown by the records of the Association or to an address designated by the unit owner for the purpose of notification or, if neither of these is available, to the unit owner's last known address, if any; or (ii) If the identity or address of the unit owner is unknown, the Board of Directors shall first advertise the sale, donation, or disposition at least once in a daily paper of general circulation within the circuit in which the personalty is located. The proceeds of any sale or disposition of personalty under this section shall, after deduction of any accrued costs of mailing, advertising, storage, and sale, be held for the unit owner for thirty (30) days. Any proceeds not claimed within this period shall become the property of the Association.

Nothing herein contained shall be construed to give the Board of Directors authority to conduct an active business for profit on behalf of the owners, or any of them, or the Association.

Notwithstanding anything to the contrary contained herein, the Board shall have no power to impair the use and enjoyment of a unit or the limited common elements appurtenant thereto in a manner inconsistent with the Declaration or these Bylaws.

## Section 2. Managing Agent.

(a) Except as otherwise provided in the Declaration with respect to the initial Managing Agent, the Board of Directors (on behalf of the Association) shall at all times employ a responsible corporation or other limited liability company authorized to do business in the State of Hawaii, registered with the Real Estate Commission of the State of Hawaii pursuant to the Condominium Property Act (if required under the Condominium Property Act), as Managing Agent to manage the operation of the Project, subject at all times to direction by the

Board, with all the administrative functions and duties set forth specifically in the preceding Section 1 and in the Declaration and such other powers and duties and at such compensation as the Board may establish.

(b) In addition to the required qualifications set forth above and in the Declaration, any such Managing Agent employed by the Board shall meet the following qualifications at the time of employment: (i) such Managing Agent shall be licensed as a real estate broker in compliance with Chapter 467 of the Hawaii Revised Statutes and the rules of the Real Estate Commission or be a corporation authorized to do business under Article 8 of Chapter 412 of the Hawaii Revised Statutes; and (ii) such Managing Agent shall obtain and keep current a fidelity bond in an amount equal to \$500.00 multiplied by the aggregate number of units of the Association managed by the Managing Agent; provided that the minimum amount of bond shall not be less than \$20,000.00 nor greater than \$500,000.00. The Managing Agent shall permit only employees covered by the fidelity bond, and any principals of the Managing Agent who cannot be covered by the fidelity bond, to handle or have custody or control of any Association funds. The fidelity bond shall protect the Managing Agent against the loss of any of the Association's moneys, securities or other properties caused by the fraudulent or dishonest acts of employees of the Managing Agent.

(c) Every such property management contract between the Board on behalf of the Association and the Managing Agent (i) shall provide (a) that the Managing Agent shall not contract for any expenditure of any funds of the Association in excess of \$2,500.00 without the express approval of the Board (except in cases of emergency requiring prompt action to avoid further loss or involving manifest danger to life or property) and without having solicited whenever possible in advance not less than two (2) written bids for the expenditure, detailed and accurate written records of which shall be kept by the Managing Agent for the Board in accordance with these Bylaws, (b) that the Managing Agent shall not commingle any Association funds with its own funds, (c) that in the event the contract is amended, renewed or extended, the fidelity bond mentioned above shall also be amended, if necessary, to cover such amendment, renewal or extension, and (d) that the contract may be terminated by the Board, at its option with or without cause on no more than ninety (90) days' written notice and without any further liability thereunder (other than for any indebtedness to or unreimbursed advances made by the Managing Agent on behalf of the Association or other liabilities or claims, which are in existence or which shall have accrued or arisen prior to such termination) and without any obligation to pay any termination fee therefor; and (ii) shall contain such other terms and conditions as the Board shall determine to be in the best interests of the Association.

(d) The Managing Agent shall keep and disburse funds collected on behalf of the Association in strict compliance with the property management contract, Chapter 467 of the Hawaii Revised Statutes, the rules of the Real Estate Commission, and all other applicable laws.

Section 3. Representation. The President or Managing Agent, subject to the direction of the Board of Directors, shall represent the Association or any two (2) or more unit owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements, or more than one unit, and on its or their behalf may

institute, defend, intervene in, prosecute and settle any such action, suits and proceedings without prejudice to the rights of any unit owners individually to appear, sue or be sued. Service of process on two (2) or more unit owners in any such action, suit or proceeding may be made on the President or Managing Agent.

Section 4. Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by such person or persons as shall be provided by general or special resolution of the Board of Directors or, in the absence of any such resolution applicable to such instrument, by the President or Vice President and by the Treasurer or Secretary. Without limiting the generality of the foregoing, the preparation, execution, certification, and/or filing of amendments to the Declaration and/or these Bylaws on behalf of the Association may be undertaken by such person or persons as shall be provided by general or special resolution of the Board of Directors or, in the absence of any such resolution applicable to such instrument, by the President or Vice President and by the Treasurer or Secretary.

Section 5. Record of Ownership.

(a) Every unit owner shall promptly cause to be duly recorded the unit conveyance, agreement of sale or other conveyance to him of such unit or other evidence of his title thereto and shall file such document with and present such other evidence of his title to the Board of Directors through the Managing Agent and shall also file a copy of any mortgage affecting his interest in such unit and the note secured thereby and provide such other information in connection therewith as provided in Article VIII, Section 1 hereof.

(b) The Managing Agent or resident manager, if any, or the Board shall keep an accurate and current list of all members of the Association and their current addresses, the names and addresses of each vendee under an agreement of sale covering a unit providing that the vendee thereunder shall be deemed to be the owner of the unit, and the names and addresses of all lessees or sublessees of units. The list shall be maintained at a place designated by the Board and a copy shall be available, at cost, to any member of the Association who furnishes to the Managing Agent or resident manager, if any, or the Board, a duly executed and acknowledged affidavit stating that the list (i) will be used by such owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to Association matters, and (ii) shall not be used by such owner or furnished to anyone else for any other purpose. Every owner shall pay to the Association or the Managing Agent on demand a reasonable fee or service charge for the registration on the records of the Association of any change of ownership of a unit.

Section 6. Association Records. The Association shall keep financial and other records sufficiently detailed to enable the Association to comply with requests for information and disclosures related to the resale of units. Except as otherwise provided by law, all financial and other records shall be made reasonably available for examination by any unit owner and the owner's authorized agents. Association records shall be stored on the island on which the Project is located; provided that if original records, including but not limited to invoices, are

required to be sent off-island, copies of the records shall be maintained on the island on which the Project is located.

Section 7. Association Records to be Maintained.

(a) An accurate copy of the Declaration, these Bylaws, the Rules and Regulations, a sample original unit conveyance, all public reports on the Project issued by the Real Estate Commission of the State of Hawaii, and any amendments thereto, shall be kept at the Managing Agent's office.

(b) The Managing Agent or Board shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The Managing Agent or Board shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses and limited common expenses.

(c) Subject to Article V, Section 6 of these Bylaws, all records and the vouchers authorizing the payments and statements shall be kept and maintained at the address of the Project, or elsewhere within the State of Hawaii as determined by the Board of Directors.

(d) The Developer, Board and Managing Agent shall ensure that there is a written contract for managing the operation of the Project, expressing the agreements of all parties including but not limited to financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments. Copies of the executed contract and any amendments shall be provided to all parties to the contract.

Section 8. Copies of Documents. Upon the request of any unit owner, mortgagee or other interested party, the Secretary or the Managing Agent shall furnish such party with copies of these Bylaws and the Declaration as amended and shall certify that such copies are current to the date of such certification; provided, however, that the requesting party shall pay a service charge and the cost of reproduction of such documents.

Section 9. Availability and Disposal of Association Records.

(a) The Association's most current financial statement shall be provided to any interested unit owner at no cost or on twenty-four-hour loan, at a convenient location designated by the Board of Directors. The meeting minutes of the Board of Directors, once approved, for the current and prior year shall either:

(1) Be available for examination by unit owners at no cost or on twenty-four-hour-loan at a convenient location at the Project, to be determined by the Board of Directors; or

(2) Be transmitted to any unit owner making a request for the minutes, by the Board of Directors, the Managing Agent, or the Association's representative,

within fifteen (15) days of receipt of the request; provided that the minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the owner, if the owner indicated a preference at the time of the request; and provided further that the owner shall pay a reasonable fee for administrative costs associated with handling the request.

Costs incurred by unit owners pursuant to this subsection shall be subject to Article V, Section 10 of these Bylaws.

(b) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the Association for the duration those records are kept by the Association and delinquencies of ninety (90) days or more shall be available for examination by unit owners at convenient hours at a place designated by the Board of Directors, provided that (i) the Board of Directors may require owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the Association or its members or both, and (ii) the owners pay for administrative costs in excess of eight (8) hours per year. Copies of these financial records shall be provided to any owner upon the owner's request; provided that the owner pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

(c) After any Association meeting, and not earlier, owners shall also be permitted to examine proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election; provided that: (i) owners shall make a request to examine the documents within thirty (30) days after the Association meeting; (ii) the Board may require owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association or its members or both, and (iii) owners shall pay for administrative costs in excess of eight (8) hours per year. If there are no requests to examine proxies and ballots, the documents may be destroyed thirty (30) days after the Association meeting. If there are requests to examine proxies and ballots, the documents shall be kept for an additional sixty (60) days, after which they may be destroyed. Copies of tally sheets, owners' check-in lists, and the certificates of election from the most recent Association meeting shall be provided to any owner upon the owner's request, provided that the owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(d) The Managing Agent shall provide copies of Association records maintained pursuant to these Bylaws to owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the Managing Agent of a reasonable charge to defray any administrative or duplicating costs.

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

(f) An Association may comply with this section by making information available to unit owners, at the option of each unit owner, and at no cost, for downloading the information from an Internet site.

(g) The Managing Agent may dispose of records of the Association which are more than five (5) years old, except tax records, which shall be kept for seven (7) years, without liability if the Managing Agent first provides the Board with written notice of the Managing Agent's intent to dispose of the records if not retrieved by the Board of Directors within sixty (60) days, which notice shall include an itemized list of the records proposed to be disposed. In accordance with Section 514B-154(d) of the Condominium Property Act, the Managing Agent shall provide copies of association records maintained pursuant to Sections 514B-152, Sections 514B-153, and Sections 514B-154 of the Act, to owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the Managing Agent of a reasonable charge to defray any administrative or duplicating costs.

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

Section 10. Notice of Cost of Providing Information. No unit owner who requests legal or other information from the Association, the Board, the Managing Agent or their employees or agents, shall be charged for the reasonable cost of providing the information unless the Association notifies the unit owner that it intends to charge the unit owner for the reasonable cost. The Association shall notify the unit owner in writing at least ten (10) days prior to incurring the reasonable cost of providing the information, except that no prior notice shall be required to assess the reasonable cost of providing information on delinquent assessments or in connection with proceedings to enforce the law, the Declaration, these Bylaws or the Rules and Regulations. After being notified of the reasonable cost of providing the information, the unit owner may withdraw the request, in writing. A unit owner who withdraws a request for information shall not be charged for the reasonable cost of providing the information.

Section 11. Registration, etc. The Association shall comply with the registration requirements as provided in the Condominium Property Act.

Section 12. Audits, etc.

(a) The Association shall require an annual audit of the Association's financial accounts and no less than one annual unannounced verification of the Association's cash balance by a public accountant. Any holder, insurer or guarantor of a first mortgage on any unit or any interest therein may request and the Association shall provide said holder, insurer or guarantor with a copy of any such annual financial statement within ninety (90) days following the end of any fiscal year of the Association, upon payment by the holder, insurer or guarantor of a fee equal to the cost of reproduction and postage for mailing of such statement.

(b) The Board of Directors shall make available a copy of the annual audit to each unit owner at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year. The Board shall not be required to submit a copy of the annual audit report to a unit owner if the proxy form issued to said unit owner is not marked to indicate that the owner wishes to obtain a copy of the report. If the annual audit has not been completed by that date, the Board shall make available:

- (i) An unaudited year end financial statement for the fiscal year to each unit owner at least thirty (30) days prior to the annual meeting; and
- (ii) The annual audit to all owners at the annual meeting, or as soon as the audit is completed, but not later than six (6) months after the annual meeting.

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

## ARTICLE VI

### MAINTENANCE AND USE OF PROJECT

Section 1. Maintenance and Repair of Units. Every unit owner shall at his own expense at all times well and substantially repair, maintain, amend and keep his unit, including without limitation all doors, sliding glass doors (if any), windows, window fixtures, and all internal installations within the unit such as water, electricity, gas (if any), telephone, sanitation, lights, and all other fixtures and accessories belonging to such unit, if any, including interior walls and partitions and the inner decorated or finished surfaces of the perimeter walls, floors, ceilings and roofs of such unit, if any (but excluding the lanai), with all necessary reparations and amendments whatsoever in good order and condition, except as otherwise provided by law or the Declaration, and shall be liable for all loss or damage whatsoever caused by his failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association promptly on demand all expenses incurred by it in performing any such work authorized by the Board of Directors or the Managing Agent.

Section 2. Maintenance and Repair of Common Elements. Except as hereinabove expressly provided in Section 1 to the contrary, all maintenance, repairs and replacements to the common elements and the limited common elements, whether located inside or outside of the units, shall be made by the Board and be charged to all the owners as a common expense or a limited common expense; provided, however, that any such maintenance, repair or replacement necessitated by the negligence, misuse or neglect of a unit owner or occupant or any person under either of them, shall be charged to such unit owner or the unit owner of the unit of such occupant, as a special assessment constituting a lien against his interest in his unit which may be foreclosed by the Board or Managing Agent in the same manner as provided in the

Condominium Property Act for unpaid common expenses. Without limitation of the generality of the foregoing, every unit owner shall reimburse the Association 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 owner or any occupant of his unit or any person under either of them and shall give prompt notice to the Managing Agent of any such loss or damage or other defect in the Project when discovered.

Section 3. Right of Access. Each unit owner shall afford to the Association and the other unit owners, and to their agents, employees, or independent contractors during reasonable hours, access through the owner's unit reasonably necessary for the Association's operation of the property or the other unit owners' maintenance, repair and replacement of said unit owner's unit. The Board may establish procedures to determine whether a unit owner's access into another unit is reasonably necessary and for entry by a unit owner into another unit for said maintenance, repair and/or replacement. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the Association, if it is responsible, shall be liable for the prompt repair thereof; provided that the Association shall not be responsible to pay the costs of removing or replacing any finished surfaces or other barriers that impede its ability to maintain and repair the common elements. The Association shall have the irrevocable right, to be exercised by the Board, to have access to each unit at any time as may be necessary for making emergency repairs to prevent damage to the common elements or to another unit or units.

Section 4. High-Risk Components in Units

(a) The Board, after notice to all unit owners and an opportunity for owner comment, may determine that certain portions of the units, or certain objects or appliances within the units such as washing machine hoses and water heaters, pose a particular risk of damage to other units or the common elements if they are not properly inspected, maintained, repaired or replaced by owners. Those items determined by the Board to pose a particular risk are "high risk components" for purposes of this subpart.

(b) With regard to items designated as high risk components, the Board may require any or all of the following: (i) inspection (a) at specified intervals, or (b) upon replacement or repair by the Association or by inspectors designated by the Association; (ii) replacement or repair at specified intervals whether or not the component is deteriorated or defective; and (iii) replacement or repair (a) meeting particular standards or specifications established by the Board, (b) including additional components or installations specified by the Board, or (c) using contractors with specific licensing, training or certification approved by the Board.

(c) The imposition of requirements by the Board under subpart (b) shall not relieve unit owners of obligations to maintain, repair and replace high-risk components.

(d) If the unit owner fails to follow the requirements imposed by the Board pursuant to this section, the Association, after reasonable notice, shall enter the unit to

perform the requirements with regard to such high-risk components and the cost and expense shall be assessed to the unit owner as a special assessment.

Section 5. Use of Project.

(a) All of the units in the Project shall be used only for such purposes stated in the Declaration.

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

(c) No unit owner or occupant shall place, store or maintain in the roadways, walkways, grounds or other common elements of similar nature, any furniture, packages or objects of any kind or otherwise obstruct transit through such common elements.

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

(e) No unit owner or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of his unit or the limited common elements appurtenant thereto or of the Project.

(f) No unit owner or occupant shall erect or place in the Project any building or structure including fences and walls, nor make any exterior additions or alterations to the units, limited common elements or any common elements of the Project, except in accordance with (a) plans and specifications, prepared by a licensed architect if so required by the Board, and submitted to and approved by the Board, and (b) all provisions of the Declaration and unit conveyances. No garments, rugs or other objects shall be hung from the windows or facades of the Project.

(g) No unit owner or occupant shall permit any person who is residing or visiting with him to loiter or play in any common areas of the Project which the Board may designate as a nonplay or hazardous area, such as the parking area.

(h) Pets.

(i) No livestock, poultry, rabbits, dogs, cats, birds or other animals or pets whatsoever shall be allowed or kept in any unit or any other part of the Project, except that aquarium fish may be kept in the unit.

(ii) In no case shall any animal prohibited by any applicable law (including the Condominium Property Act) be allowed anywhere on the Project.

(iii) Notwithstanding the foregoing restrictions on pets or anything contained herein to the contrary, guide dogs, signal dogs, or other similar animals upon

which disabled owners, occupants or guests depend for assistance shall be permitted to be kept by such owners, occupants and guests in their units and shall be allowed to walk throughout the common elements while on a leash, provided that such animals shall at all times be accompanied by their owners while present upon the common elements. If such a guide dog, signal dog or other similar animal causes a nuisance or unreasonable disturbance or poses a threat to the health or safety of any owner, occupant or guest, the owner thereof will be given an opportunity to rectify the problem by measures which fall short of ejection of the animal from the Project. Ejection will be required only if the Board reasonably determines that less drastic alternatives have been unsuccessful. If such an animal is ejected, it will nonetheless be allowed to remain at the Project for a reasonable period of time while the owner thereof attempts to find a suitable replacement animal, provided that the problem is controlled to a sufficient degree that the continued presence of the animal during that time does not constitute an unreasonable imposition upon, or threat to the safety or health of, other owners, occupants or guests.

(iv) In no event shall the Board, the Association, the Managing Agent or resident manager be or be deemed to be liable for any loss, damage or injury to persons or property caused by or arising in connection with any owner's, occupant's or guest's guide dog, signal dog or other similar animal. By acquiring an interest in a unit in the Project, each owner agrees to indemnify, defend and hold harmless the Board, the Association, the Managing Agent and the resident manager against any claim or action at law or in equity arising out of or in any way relating to such owner's or occupant's or guest's guide dog, signal dog or other similar animal.

(v) All guide dogs, signal dogs, or other similar animals permitted by these Bylaws and kept anywhere on the Project must be registered immediately with the Managing Agent.

(i) No unit owner or occupant shall without the written approval of the Board of Directors install any wiring for electrical or telephone installations, television antenna, machines, or other equipment, fixtures, appliances or appurtenances whatsoever on the exterior of the building in the Project or protruding through the walls, windows or lanais thereof; provided, however, as follows:

(i) A unit owner or occupant may install air-conditioning units in accordance with a written request and plans and specifications prepared by a licensed architect (if so required by the Board) that are submitted to and approved by the Board, all in accordance with all provisions of the Declaration. The cost of installing, maintaining and operating the air-conditioning unit shall be each such unit owner's responsibility. The flow of condensate from an air-conditioning unit should be directed away from the limited common elements.

(j) Nothing shall be allowed, done or kept in any unit or common element (including the limited common elements) of the Project which would overload or impair the floors, walls or roofs thereof, or cause the cancellation or invalidation of any insurance thereon maintained by or for the Association, nor shall any noxious or offensive activity or nuisance be made or suffered therein or thereon.

(k) Window coverings shall be white in color.

(l) No highly reflective finish, other than glass (which, however, may not be tinted or mirrored), shall be used on the exterior of the building in the Project.

(m) No unit owner may lease or rent his unit for a period of less than thirty (30) days. Any lease or rental agreement must be in writing and must be subject to the requirements of the Declaration, these Bylaws and the Association's Rules and Regulations.

(n) Except as otherwise permitted by the Declaration or these Bylaws, no alteration or addition to a unit nor any alteration or addition to the common elements may be made without the prior written approval of the Board.

(o) Notwithstanding anything to the contrary contained in these Bylaws, the Declaration or the Rules and Regulations, owners with disabilities shall be permitted to make reasonable modifications to their units and/or limited common elements, at their expense (including the cost of obtaining any bonds required by the Declaration, these Bylaws or the Condominium Property Act), if such modifications are necessary to enable them to use and enjoy their units and/or the limited common elements appurtenant thereto, as the case may be, provided that any owner with a disability desiring to make such modifications shall make such request, in writing, to the Board. That request shall set forth, with specificity and in detail, the nature of the request and the reason that the requesting party needs to make such modifications. The Board shall not unreasonably withhold or delay its consent to such request, and any such request shall be deemed to be granted if not denied in writing, within forty-five (45) days of the Board's receipt thereof, or within forty-five (45) days of the Board's receipt of additional information reasonably required by the Board in order to consider such request, whichever shall last occur. Nothing contained herein shall exempt an owner from making all amendments to these Bylaws, the Declaration or the Condominium Map necessitated by any changes permitted under this subpart.

(i) [RESERVED].

(p) Project Landscaping.

(i) All landscaping within the Project shall comply the requirements of utility companies providing utilities for the Project. These requirements may include, without limitation, minimum setback requirements from utility easement areas and utility facilities.

(ii) Trees, plants, irrigation lines, spray/bubbler heads, plastic sheets or any material that promotes moisture build-up beneath the surface should not be placed within thirty (30) inches (the "Dry Area") of the building. Any spray or bubbler head shall be adjusted so as not to throw water onto the exterior of the building or the Dry Area.

(iii) Trees and plants shall not be planted under building eaves and must be planted so as not to damage or impair the building, fences, drainage swales or utility easements. No trees shall be planted in any drainage easements.

(iv) A minimum two percent (2%) slope away from all buildings shall be maintained at all times to ensure proper drainage and to prevent water from ponding.

(v) Plants susceptible to termite infestation or with invasive or aggressive root systems shall not be used.

## ARTICLE VII

### COMMON EXPENSES, UNIT EXPENSES, BUDGETS AND RESERVES, AND TAXES

#### Section 1. Common Expenses, Budgets and Reserves.

(a) The Association shall assess each unit owner for, and each unit owner shall be liable for and pay, a share of the common expenses in proportion to the common interest appurtenant to his unit or as otherwise provided in Section 3 below.

(b) In addition to the items otherwise designated in these Bylaws as common expenses, the common expenses of the Project shall include all sums designated as common expenses in Section K of the Declaration. The common expenses may also include such amounts as the Board of Directors may deem appropriate to make up any deficit in the common expenses for any prior year and a replacement reserves fund for the Project. The common expenses may also include such amounts as may be required, by special assessment, for the purchase or lease of any unit by the Board or its nominee, corporate or otherwise, on behalf of the Association, as permitted under Hawaii law or these Bylaws.

Assessments of common expenses shall be payable in monthly installments on the first day of each month, commencing with respect to each unit on the first day of the first month following the issuance by the appropriate county agencies of a temporary or permanent certificate of occupancy for such unit (or if no certificate of occupancy will be issued, the first day of the first month following the date that the Developer determines that such unit is complete enough to be occupied). Payments of assessments for common expenses shall be made to the Association (through the Managing Agent). The Developer shall fix the rate of monthly installments of common expenses until such rate shall be redetermined by the Board of Directors. The Board may from time to time during any year increase the assessment rate or impose a special assessment to make up any existing deficiency whenever for any reason the rate then in effect shall prove inadequate, provided that the Board, either directly or through the Managing Agent or resident manager, if any, shall send to all unit owners thereby affected written notice of any such increase or special assessment not less than thirty (30) days before the effective date of such increase or assessment. Assessments of limited common expenses shall be payable on the first day of the month following the month in which the notice of the assessment is given to the owner of the unit subject to such assessment.

If, at the end of any year, there should be any excess unspent funds collected by assessments, the same shall be used or applied by the Board, in its sole discretion, (i) to pay common expenses in the following year; or (ii) to be placed in the replacement reserves.

The Developer may assume all the actual common expenses of the Project by stating in the Developer's public report that the unit owner shall not be obligated for the payment of the owner's share of the common expenses until such time the Developer sends the owners written notice that, after a specified date, the unit owners shall be obligated to pay for the portion of common expenses that is allocated to their respective units. If the Developer elects to assume the actual common expenses of the Project as aforesaid, then, notwithstanding any other provisions in these Bylaws to the contrary, the Developer shall have no obligation to pay for any replacement reserves or any other reserve amounts with respect to or attributable to the period during which the Developer assumes the actual common expenses of the Project.

(c) The Board of Directors shall prepare and adopt an annual operating budget, and within thirty (30) days after the adoption of the budget, the Board shall make available a copy of the budget to all the unit owners. The budget shall include at least the following:

- (i) The estimated revenues and operating expenses of the Association;
- (ii) Information as to whether the budget has been prepared on a cash or accrual basis;
- (iii) The total replacement reserves of the Association as of the date of the budget;
- (iv) The estimated replacement reserves the Association will require to maintain the Project based on a reserve study performed by the Association;
- (v) A general explanation of how the estimated replacement reserves are computed;
- (vi) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves; and
- (vii) Information as to whether the amount the Association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a percent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to subpart (iv).

(d) The Association shall assess the unit owners to either fund a minimum of fifty percent (50%) of the estimated replacement reserves or fund one hundred percent (100%) of the estimated replacement reserves when using a cash flow plan; provided that the Association need not collect estimated replacement reserves until the fiscal year which begins after the Association's first annual meeting. For each fiscal year, the Association shall collect the amount assessed to fund the estimated replacement reserves for that fiscal year, as determined by the Association's plan.

(e) The Association shall compute the estimated replacement reserves by a formula which is based on the estimated life and the estimated capital expenditure or major maintenance required for each part of the Project. The estimated replacement reserves shall include:

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

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

(f) Neither the Association, nor the Developer, nor any unit owner, director, officer, Managing Agent, or employee of the Association who makes a good faith effort to calculate the estimated replacement reserves for the Association shall be liable if the estimate subsequently proves incorrect.

(g) Except in emergency situations or with the approval of a majority of the unit owners, the Board may not exceed its total adopted annual operating budget by more than twenty percent (20%) during the fiscal year to which the budget relates. Before imposing or collecting an assessment under this subpart that has not been approved by a majority of the unit owners, the Board shall adopt a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the unit owners with the notice of assessment.

(h) The requirements of this section shall override any requirements in the Declaration, these Bylaws or any other Association documents relating to preparation of budgets, calculations of reserve requirements, assessments and funding of reserves, and expenditures from reserves with the exception of:

- (i) Any requirements in the Declaration, these Bylaws or any other Association documents which require the Association to collect more than fifty percent (50%) of reserve requirements; or

- (ii) Any provisions relating to upgrading the common elements, such as additions, improvements, and alterations to the common elements.

(i) The terms "capital expenditure", "cash flow plan", "emergency situation", "major maintenance" and "replacement reserves" shall have the meanings given to them in the Condominium Property Act.

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

(k) All funds collected by the Association, or by the Managing Agent, shall be :

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

(l) All funds collected by the Association or the Managing Agent shall be invested only in:

- (i) Deposits, investment certificates, savings accounts and certificates of deposit;
- (ii) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten (10) years after the purchase date unless approved otherwise by a majority vote of the unit owners at an

annual meeting or special meeting of the Association or by written consent of a majority of the unit owners; or

- (iii) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten (10) years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual meeting or special meeting of the Association or by written consent of a majority of the unit owners;

provided that before any investment longer than one (1) year is made by the Association, the Board must approve the action; and provided further that the Board must clearly disclose to owners all investments longer than one (1) year at each annual meeting.

(m) All funds collected by the Association shall only be disbursed by employees of the Association under the supervision of the Board. All funds collected by the Managing Agent from the Association shall be held in a client trust fund and shall be disbursed only by the Managing Agent or the Managing Agent's employees under the supervision of the Board.

(n) The Managing Agent or the Board shall not, by oral instruction over the telephone, transfer Association funds between accounts, including but not limited to the general operating account and the reserve fund account.

(o) Unless otherwise provided herein or in the Bylaws, if the Board reasonably determines that the extra cost incurred to separately account for and charge for the costs of maintenance, repair, or replacement of limited common elements is not justified, the board may adopt a resolution determining that certain limited common element expenses will be assessed in accordance with the undivided common interest appurtenant to each unit. In reaching its determination, the board shall consider:

- (i) The amount at issue;
- (ii) The difficulty of segregating the costs;
- (iii) The number of units to which similar limited common elements are appurtenant;
- (iv) The apparent difference between separate assessment and assessment based on the undivided common interest; and
- (v) Any other relevant factors, as determined by the board.

The resolution shall be final and binding in the absence of a determination that the board abused its discretion.

Section 2. Payment as Agent. The Board will pay or cause to be paid, on behalf of the owners, all common expenses and limited common expenses. Each owner, as principal, shall be liable for and pay his share, determined as provided in the Declaration and these Bylaws, of all such expenses; and the Board shall be responsible, as agent for each owner, only to transmit the payments made by the owner to third persons to whom such payment must be made by the owner. The Board may require the Managing Agent to assist it in its duties hereunder. The Board or Managing Agent collecting the expenses shall not be liable for payment of such expenses as principal but only as the agent of all owners to transmit said payments to third persons to whom such payments must be made by the owners.

Section 3. Taxes and Assessments. Each owner of a unit shall be obligated to have the real property taxes for such unit and its appurtenant interest in the common elements assessed separately by the proper governmental authority and to pay the amount of all such real property taxes so determined. The foregoing sentence shall apply to all types of taxes which now are or may hereafter be assessed separately by law on each unit and the common interest in the common elements appertaining thereto or the personal property or any other interest of the owner. Each owner shall execute such documents and take such action as may be reasonably specified by the Board to facilitate dealing with the proper governmental authority regarding such taxes and assessments. Each owner shall be obligated to pay to the Board his proportionate share of any assessment by the Board for any portion of taxes or assessments, if any, assessed against the entire Project or any part of the common elements as a whole and not separately, such payment to be made as directed by the Board. If, in the opinion of the Board, any taxes or assessments may be a lien on the entire Project or any part of the common elements, the Board may pay such taxes or assessments as part of the common expenses. Such assessments by the Board shall be secured by the lien created by Article VII, Section 4 hereof.

Section 4. Default in Payment of Assessments. Each monthly assessment, each limited common expense assessment, and each special assessment shall be the separate, distinct and personal debt and obligation, as of the date of assessment, of the owner against whom the same are assessed and, in the case of a unit owned by more than one person, shall be the joint and several obligation of such co-owners. Any assessment not paid within ten (10) days after the due date thereof shall bear interest at the rate of one percent (1%) per month from such due date until paid and also shall be subject to a late payment charge in such amount as shall be established from time to time by the Board of Directors. The Board of Directors may adopt a policy whereby payments received from unit owners shall be applied toward the indebtedness of such unit owners to the Association in such order as the Board of Directors shall determine. In the event of a default or defaults in payment of any such assessment or assessments and in addition to any other remedies the Board of Directors may have, the Board of Directors may enforce each such obligation as follows:

(a) By suit or suits at law to enforce such assessment obligation. Each such action must be authorized by a majority of the Board at a regular or special meeting thereof, and any such suit may be instituted by any one (1) member of the Board or by the Managing Agent if the latter is so authorized in writing. Each such action shall be brought by the Board in the name of the Board and the Association, and the Board shall be deemed to be acting on behalf of the Association. Any judgment rendered in any such action shall include, where permissible

under any law, a sum for attorneys' fees in such amount as the court may adjudge against such defaulting owner. Upon full satisfaction of any such judgment, it shall be the duty of the Board to authorize any two (2) members thereof, acting in the name of the Board and the Association, 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 (acting upon the authorization of the majority thereof at any regular or special meeting) may give a notice to the defaulting owner (with a copy to the mortgagee of such owner if such mortgagee has furnished its name and address to the Board) stating the date of the delinquency, the amount of the delinquency and making demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the Board may file a claim of lien against the unit of such delinquent owner. Such claim of lien shall state (i) the name of the delinquent owner, (ii) a designation of the unit against which the claim of lien is made, (iii) the amount claimed to be due and owing (after the allowance of any proper offset), (iv) that the claim of lien is made by the Board pursuant to the terms of these Bylaws and the Condominium Property Act, and (v) that a lien is claimed against such unit in an amount equal to the net amount of the stated delinquency plus any accrued interest and costs of enforcement, including attorneys' fees, if any. Any such claim of lien shall be signed and acknowledged by any two (2) or more members of the Board, by the attorney for the Association or by the Managing Agent and shall be dated as of the date of the execution by such attorney or the Managing Agent or the last such Board member to execute such claim of lien. Upon filing of a duly executed original or copy of such claim of lien in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, the Board shall have all remedies provided in the Condominium Property Act. Each default shall constitute a separate basis for a claim of lien, but a single claim of lien may be recorded with respect to more than one default. The owner of a unit against which such lien of the Association is foreclosed shall pay a reasonable rental for such unit and the plaintiff in such a foreclosure shall be entitled to a receiver to collect the rental owed.

(c) For the purposes of this Section 4, a certificate executed and acknowledged or made under penalty of perjury by any two (2) members of the Board or the Managing Agent shall be conclusive upon the Board and the owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any owner shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his unit (or the fact that all assessments due are paid if such is the case) within fifteen (15) days after demand therefor and upon payment of a reasonable fee or service charge, in an amount fixed from time to time by the Board. If any claim of lien is recorded as aforesaid and thereafter the Board receives payment in full of the amount claimed to be due and owing (including accrued interest and any costs of enforcement), then upon demand of the owner and payment of a reasonable fee, the Board, acting by any two (2) members, shall execute, acknowledge and deliver to the owner a release of lien, stating the date of the original claim of lien, the amount claimed, the date, and the document number where the claim of lien is recorded in the Bureau of Conveyances of the State of Hawaii, and that the lien is fully satisfied, released and discharged.

(d) In conjunction with or as an alternative to foreclosure proceedings, where a unit is owner-occupied, the Association may authorize its Managing Agent or Board of

Directors to, after sixty (60) days' written notice to the unit owner and to the unit's first mortgagee of the nonpayment of the unit's share of the common expenses, terminate the delinquent unit's access to the common elements and cease supplying a delinquent unit with any and all services normally supplied or paid for by the Association. Any terminated services and privileges shall be restored upon payment of all delinquent assessments but need not be restored until payment in full is received.

(e) Before the Board of Directors or Managing Agent may take the actions permitted under subsection (d), the Board shall adopt a written policy providing for such actions and have the policy approved by a majority vote of the unit owners at an annual or special meeting of the Association or by the written consent of a majority of the unit owners.

#### Section 5. Collection from Tenant.

(a) If the owner of a unit rents or leases the unit and is in default for thirty (30) days or more in the payment of the unit's share of the common expenses or the limited common expenses, the Board of Directors, for as long as the default continues, may demand in writing and receive each month from any tenant occupying the unit, an amount sufficient to pay all sums due from the unit owner to the Association, including interest, if any, but the amount shall not exceed the tenant's rent due each month. The tenant's payment under this section shall discharge that amount of payment from the tenant's rent obligation, and any contractual provision to the contrary shall be void as a matter of law.

(b) Before taking any action under this section, the Board shall give to the delinquent unit owner written notice of its intent to collect the rent owed. The notice shall: (i) be sent both by first-class and certified mail; (ii) set forth the exact amount the Association claims is due and owing by the unit owner; and (iii) indicate the intent of the Board to collect such amount from the rent, along with any other amounts that become due and remain unpaid.

(c) The unit owner shall not take any retaliatory action against the tenant for payments made under this section.

(d) The payment of any portion of the unit's share of common expenses and/or limited common expenses by the tenant pursuant to a written demand by the Board is a complete defense, to the extent of the amount demanded and paid by the tenant, in an action for nonpayment of rent brought by the unit owner against a tenant.

(e) The Board may not demand payment from the tenant pursuant to this section if: (i) a commissioner or receiver has been appointed to take charge of the premises pending a mortgage foreclosure; (ii) a mortgagee is in possession pending a mortgage foreclosure; or (iii) the tenant is served with a court order directing payment to a third party.

(f) In the event of any conflict between this section and any provision of Chapter 521 of the Hawaii Revised Statutes, the conflict shall be resolved in favor of this section; provided that if the tenant is entitled to an offset of rent under Chapter 521 of the Hawaii Revised Statutes, the tenant may deduct the offset from the amount due to the Association, up to

the limits stated in Chapter 521 of the Hawaii Revised Statutes. Nothing herein precludes the unit owner or tenant from seeking equitable relief from a court of competent jurisdiction or seeking a judicial determination of the amount owed.

(g) Before the Board may take the actions permitted under subsection (a), the Board shall adopt a written policy providing for the actions and have the policy approved by a majority vote of the unit owners at an annual or special meeting of the Association or by the written consent of a majority of the unit owners.

Section 6. Late Fees, Legal Fees, Fines and Interest. The Association shall not deduct and apply portions of common expense payments and limited common expense payments received from a unit owner to unpaid late fees, legal fees, fines and interest (other than amounts remitted by a unit owner in payment of late fees, legal fees, fines and interest) unless the Board adopts and distributes to all owners a policy stating that: (a) failure to pay late fees, legal fees, fines, and interest may result in the deduction of such late fees, legal fees, fines and interest from future common expense payments and limited common expense payments, and all payments shall be first applied to unpaid late fees, legal fees, fines and interest, so long as a delinquency continues to exist; and (b) late fees may be imposed against any future common expense payment or limited common expense payment that is less than the full amount owed due to deduction of unpaid late fees, legal fees, fines and interest from the payment.

## ARTICLE VIII

### MORTGAGES AND MORTGAGEES

Section 1. Notice to Board of Directors. Any unit owner who mortgages his interest in a unit shall notify the Association (through the Board of Directors or the Managing Agent) of the name and address of his mortgagee and shall file a conformed copy of his mortgage with the Association within ten (10) days after the execution of same. The Association shall maintain such information in a book entitled "Mortgages of Units".

Section 2. Notice of Unpaid Common Expenses. The Association, whenever so requested in writing by an owner or holder, insurer or guarantor of a mortgage of a unit and upon payment of a reasonable fee or service charge by the unit owner, in an amount fixed from time to time by the Board, shall promptly report any then unpaid assessments of common expenses and limited common expenses due from the unit owner involved, and if no request is made then notice shall be given as provided in Article V, Section 1(p) hereof.

Section 3. Notice of Default. The Board, when giving notice to a unit owner of a default in paying common expenses or limited common expenses or any other default in performance of any obligations under the Declaration, these Bylaws, the Rules and Regulations or other document of the Association, shall send a copy of such notice to each mortgagee of such unit whose name and address has theretofore been furnished to the Association.

Section 4. Examination of Books. Each mortgagee and each insurer and guarantor of first mortgages that are secured by one or more units in the Project shall be

permitted to examine the books and records of the Association at convenient hours of business days, but not more frequently than once a month.

Section 5. Right of Access. Each mortgagee and its agents shall have a right of access through the common elements (other than the limited common elements) of the Project for the purpose of passage to any unit on which it holds a mortgage, provided that entry into any such unit or the limited common elements appurtenant thereto by the mortgagee or its agents shall be at the sole risk of the mortgagee and shall be made strictly in accordance with and subject to the terms of its mortgage.

Section 6. Mortgage Protection. Notwithstanding any other provision contained in these Bylaws or the Declaration:

(a) Liens in favor of the Association on any unit and its appurtenant interest in the common elements created by the Declaration, these Bylaws or the Condominium Property Act, shall be subject and subordinate to the rights of the holder of any indebtedness secured by any recorded mortgage of such interests, made for value, that was recorded prior to the recordation of the notice or notices of such liens by the Association, provided that after the foreclosure of any such mortgage there shall be a lien upon the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed to such unit, if falling due after the date of the acquisition of title (as defined in Section K of the Declaration) or pursuant to the Condominium Property Act, which lien shall have the same effect and be enforced in the same manner as provided in Article VII, Section 4 hereof.

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

(c) The Declaration and Bylaws shall not affect the rights of a unit owner with respect to the rights of first mortgagees of units pursuant to their mortgages in the case of a distribution made in accordance with the Declaration and Bylaws to unit owners of insurance proceeds or condemnation awards for losses to or a taking of units and/or common elements.

(d) No amendment to this Article VIII shall affect the rights of the holder of any first mortgage recorded in the Bureau of Conveyances of the State of Hawaii who does not join in the execution thereof if such mortgage was recorded prior to the recordation of such amendment.

(e) Any holder, insurer or guarantor of a mortgage of a unit or any interest therein whose interest appears in the record of ownership of or who has otherwise delivered a written request to the Association shall be entitled to:

(i) Prior written notice of any proposed amendment to the Declaration or these Bylaws;

(ii) Prior written notice of any proposed termination of the Condominium Property Regime;

(iii) Timely written notice of any actual or threatened condemnation or eminent domain proceeding affecting the Condominium Property Regime or any portion thereof;

(iv) Written notice of any default of the unit owner which is not cured within sixty (60) days;

(v) Written notice of any significant damage or destruction to the common elements or to the unit covered by the mortgage held or insured by such person;

(vi) Upon request therefor and the payment by the unit owner or such person of the fee or service charge mentioned in Section 2 above, a statement of any then unpaid assessments for common expenses and limited common expenses due from the owner of the unit involved;

(vii) A copy of all pleadings filed in any lawsuit, administrative proceeding, or other action affecting the Project or any portion thereof, at such person's expense for reproduction costs and at such person's specific written request;

(viii) Prior written notice of any proposal to subdivide, encumber, sell or transfer the common elements or any part thereof; provided, however, that the granting of easements for public or private utilities or for public purposes consistent with the intended use of the common elements of the Project, the relocation of any easements appurtenant to the Project over other lands pursuant to the exercise of any right to relocate such easements by the owner of such other lands, shall not be deemed a transfer within the meaning of this clause;

(ix) A lapse, cancellation, or material modification of any insurance policy maintained by the Association.

Section 7. Release of Information. To the extent permitted by applicable law, the Board of Directors may provide any information available to it pertaining to a unit or the Project to a mortgagee of such unit and such mortgagee may provide any information to the Board of Directors regarding the mortgagor, the mortgagor's loan and the status of such loan.

## ARTICLE IX

### GENERAL PROVISIONS

Section 1. Abatement and Enjoyment of Violations by Unit Owners. The violation of any of the Rules and Regulations or the breach of any by-law contained herein or of any provision of the Declaration, shall give the Board the right, in addition to any other rights set

forth in these Bylaws, (a) to enter the unit and/or limited common elements appurtenant thereto in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting unit owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions thereof or hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; provided, however, that the Board shall institute appropriate legal proceedings before any items of construction can be altered or demolished; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, and all costs thereof, including attorneys' fees, shall be borne by the defaulting unit owner.

Section 2. Penalties for Violations. The violation by any unit owner of any of the covenants, conditions and restrictions set forth in the Declaration, the Bylaws or the Rules and Regulations adopted pursuant thereto, shall give the Board the right, in addition to any other rights set forth in the Bylaws, to assess a reasonable fine against such owner; provided that if any such violation continues for a period of ten (10) days after notice of violation has been given to such owner, such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties. The unpaid amount of such fines against any unit owner shall constitute a lien against his interest in his unit which may be foreclosed by the Board of Directors or the Managing Agent in the same manner as provided in the Condominium Property Act for unpaid common expenses. No penalty may be imposed under this section until the unit owner accused of any such violation has been afforded the right to have a hearing before the Board of Directors or a committee designated by the Board to conduct such hearing, or has waived such right in writing. Each such unit owner shall have the right to be heard in person, by submission of a written statement, or through a spokesperson, at any such hearing.

Section 3. Expenses of Enforcement.

(a) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for: (i) collecting any delinquent assessments against any owner's unit; (ii) foreclosing any lien thereon; or (iii) enforcing any provision of the Declaration, these Bylaws, the Rules and Regulations, the Condominium Property Act, or the rules of the Real Estate Commission of the State of Hawaii, against any owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the Project, shall be promptly paid on demand to the Association by such person or persons; provided that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the Association, shall be promptly paid on demand to such person or persons by the Association. The unpaid amount of such costs and expenses payable by any unit owner shall constitute a lien against his interest in his unit which may be foreclosed by the Board of Directors or the Managing Agent in the same manner as provided in the Condominium Property Act for unpaid common expenses.

(b) If any claim by a unit owner is substantiated in any action against the Association, any of its officers or directors, or the Board to enforce any provision of the Declaration, Bylaws, Rules and Regulations, or the Condominium Property Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by such unit owner shall be

awarded to such owner; provided that no such award shall be made in any derivative action unless (i) the unit owner first shall have demanded and allowed reasonable time for the Board to pursue such enforcement; or (ii) the unit owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board would have been fruitless.

If any claim by a unit owner is not substantiated in any court action against the Association, any of its officers or directors, or the Board to enforce any provision of the Declaration, Bylaws, Rules and Regulations, or the Condominium Property Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by the Association shall be awarded to the Association, unless prior to filing the action the unit owner has first submitted the claim to mediation, or to arbitration under the Condominium Property Act, and made a good faith effort to resolve the dispute under any of those procedures.

#### Section 4. Indemnification.

(a) The Association 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 Association) by reason of the fact that he is or was a director, officer or employee of the Association, or is or was serving at the request of the Association as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees and any expenses of establishing a right to indemnification hereunder), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his 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 he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The Association 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 Association to procure a judgment in its favor by reason of the fact that he was a director, officer or employee of the Association, or is or was serving at the request of the Association as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees and any expenses of establishing a right to indemnification hereunder) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association 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 gross negligence or misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought or any other court having jurisdiction in the premises shall determine upon application that, despite the adjudication of liability but in view of all of the

circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(c) To the extent that a person who is or was a director, officer or employee of the Association, or is or was serving at the request of the Association as a director, officer or employee 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 subsection (a) or (b) of this Section 4, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under this Section 4 (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer or employee is proper in the circumstances because he has met the applicable standard of conduct set forth in subsection (a) or subsection (b) of this Section 4. Such determination shall be made (i) 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 (ii) if such a quorum is not obtainable, or even if obtainable if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion to the Association or (iii) by a majority vote of the members.

(e) Expenses incurred in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Association 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, officer or employee to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Section 4.

(f) Any indemnification pursuant to this Section 4 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled and shall continue as to a person who has ceased to be a director, officer or employee of the Association, and shall inure to the benefit of the heirs and personal representatives of such a person.

(g) The Association shall have the power to purchase and maintain insurance (in such amount as shall be determined by the Board) on behalf of any person who is or was a director, officer or employee of the Association, or is or was serving at the request of the Association as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Section 4. Premiums for such insurance shall be common expenses.

Section 5. Waiver. The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of the unit owner hereunder or to exercise any right or option herein contained, or to serve any notice, or to institute any action or summary proceeding, shall not be construed as a waiver, or a

relinquishment for the future, of such covenant or option or right, but such covenant or option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by the unit owner hereunder, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver, express or implied, by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in a duly adopted resolution of the Board of Directors.

Section 6. Subordination. Except as otherwise provided herein, these Bylaws are subordinate and subject to all of the provisions of the Declaration and any amendments thereto and to all of the provisions of the Condominium Property Act, which shall control in case of any conflict. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in the Declaration and the Condominium Property Act.

Section 7. Notices. All notices to the Association or the Board shall be sent by first class mail, postage prepaid, to the Board, c/o the Managing Agent or, if there be no Managing Agent, to the office of the Board or to such other address as the Board may hereafter designate from time to time. Except as otherwise expressly provided in these Bylaws, all notices to any owner shall be sent by first class mail, postage prepaid, to the post office address of such owner given by such owner to the Board of Directors from time to time, in writing, or to the unit which such owner owns if no such address has been given to the Board of Directors. Except as otherwise expressly provided in these Bylaws, all notices to mortgagees of units and insurers and guarantors of mortgages of units shall be sent by first class mail, postage prepaid, to their respective addresses, as designated by them from time to time, in writing, to the Board. Except as otherwise expressly provided in these Bylaws, all notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

Section 8. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of these Bylaws, or the intent of any provisions thereof.

Section 9. Amendment. Except as otherwise provided herein, the provisions of these Bylaws may be amended by the affirmative vote or written consent of the owners of units to which are appurtenant sixty-seven (67%) of the common interests, which amendment shall be effective upon recordation in the Bureau of Conveyances of the State of Hawaii of an instrument setting forth such amendment and vote or written consent, duly executed and acknowledged by such owners or the proper officers of the Association; provided, however, that the approval of eligible holders of first mortgages (as defined below) on units to which at least fifty-one percent (51%) of the votes of units subject to mortgages held by such eligible holders of first mortgages are allocated shall be required for amendments of a material nature, which consist of a change to any of the provisions governing the following: (a) voting; (b) assessments, assessment liens or subordination of such liens; (c) reserves for maintenance, repair and replacement of the common elements; (d) insurance or fidelity bonds; (e) rights to use of the common elements; (f) responsibility for the maintenance and repair of the several portions of the Project; (g) construction of improvements, renovation or development of the Project in a manner other than

that specified in Section S of the Declaration; (h) boundaries of any unit; (i) the interests in the common elements or the limited common elements; (j) convertibility of units into common elements or of common elements into units; (k) leasing of units; (l) imposition of any right of first refusal or similar restriction on the right of a unit owner to sell, transfer or otherwise convey his or her unit; (m) establishment of self-management by the Association where professional management has been required previously by the Declaration or these Bylaws or by an eligible holder of first mortgage; (n) any provision that expressly benefits holders, insurers or guarantors of mortgages on units in the Project; (o) restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard in a manner other than that specified in the Declaration and in accordance with the plans and specifications therefor which will restore the same to the design immediately prior to condemnation or damage; (p) any election to terminate the legal status of the Project as a condominium property regime after substantial destruction or a substantial taking in condemnation of the Project; (q) reallocation of the interests in the common elements after a partial condemnation or a partial destruction of the Project in a manner other than that specified in the Declaration or by applicable law; provided further, however, that the approval of owners of units to which are appurtenant the percentage common interests required by Section 514B-47 of the Condominium Property Act and all of the eligible holders of first mortgages on such units shall be required to terminate the legal status of the Project as a condominium property regime; and provided further that any proposed bylaws together with the detailed rationale for the proposal may be submitted by the Board or by a volunteer unit owners group. If submitted by such a group, the proposal shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the unit owners as shown in the Association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed by-law shall be mailed by the Board to the unit owners at the expense of the Association for vote or written consent without change within thirty (30) days of the receipt of the petition by the Board. The vote or written consent, to be valid, must be obtained within three hundred sixty-five (365) days after mailing for a proposed by-law submitted by either the Board or a volunteer unit owners group. If the by-law is duly adopted, the Board shall cause the by-law amendment to be recorded in said Bureau of Conveyances. The volunteer unit owners group shall be precluded from submitting a petition for a proposed by-law which is substantially similar to that which has been previously mailed to the unit owners within three hundred sixty-five (365) days after the original petition was submitted to the Board. This section shall not preclude any unit owner or volunteer unit owners group from proposing any by-law amendment at any annual meeting of the Association. To qualify as an "eligible holder of first mortgage", a first mortgagee must have made a written request to the Association for timely written notice of proposed amendments to the condominium instruments. In the event that an eligible holder of first mortgage fails to appear at a meeting of the Association at which amendments to these Bylaws are proposed and considered, or fails to file a written response with the Association within thirty (30) days after it receives proper notice of the proposed amendment, delivered by certified or registered mail, with a "return receipt" requested, then and in any such event the approval of such amendments by such eligible holder of first mortgage shall be conclusively assumed.

Section 10. Owners May Incorporate. All of the rights, powers, obligations and duties of the owners imposed hereunder may be exercised and enforced by a nonprofit membership corporation formed by the owners under the laws of the State of Hawaii for the

purposes herein set forth. Such corporation shall be formed upon the written approval of owners having no less than sixty-seven percent (67%) of the common interests. The formation of such corporation shall in no way alter the terms, covenants and conditions herein set forth, and the Articles and Bylaws of such corporation shall be subordinated hereto and controlled hereby. Any action taken by such corporation in violation of any or all of the terms, covenants or conditions contained herein shall be void and of no effect.

Section 11. Interpretation. The provisions of these Bylaws shall be liberally construed to effectuate the purpose of creating a uniform condominium complex whereby the owners of units shall carry out and pay for the operation and management of the Project as a mutually beneficial and efficient establishment. Nothing in these Bylaws shall be deemed or construed to authorize the Association or the Board to conduct or engage in active business for profit on behalf of any or all of the unit owners.

Section 12. Severability. If any provision of these Bylaws is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of these Bylaws, and these Bylaws shall continue in full force and effect and be construed and enforced as if such provision had not been included, or had been modified as above provided, as the case may be.

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CERTIFICATE OF ADOPTION

The undersigned hereby adopt the foregoing BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF MAKINI AT KINAU CONDOMINIUM this \_\_\_\_ day of \_\_\_\_\_, 2006.

**AVALON MAKINI LLC,**  
a Hawaii limited liability company

By Avalon SMC, LLC,  
a Hawaii limited liability company  
Its Manager

By Avalon Development Company LLC,  
a Hawaii limited liability company  
Its Managing Member

By \_\_\_\_\_  
Name: Christine Camp Friedman  
Title: Manager

"Developer"

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me personally appeared **CHRISTINE CAMP FRIEDMAN**, to me personally known, who being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Notary Public, State of Hawaii

My Commission expires: \_\_\_\_\_

END OF EXHIBIT K