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745 Fort Street	///
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Honolulu, Hawaii 96813	///
Attention: D. Scott MacKinnon	///
TITLE OF DOCUMENT:	TG-NAURU

BY-LAWS OF THE  
ASSOCIATION OF APARTMENT OWNERS  
OF NAURU TOWER

PARTIES TO DOCUMENT:

Developer: NAURU PHOSPHATE ROYALTIES DEVELOPMENT  
(HONOLULU), INC.

PROPERTY DESCRIPTION:	: LIBER/PAGE: N/A
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RUSH MOORE CRAVEN & STRICKLIN  
Attorneys at Law

BY-LAWS OF THE  
ASSOCIATION OF APARTMENT OWNERS  
OF NAURU TOWER

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TABLE OF CONTENTS

	<u>PAGE</u>
ARTICLE I     Introductory Provision . . . . .	1
Section 1   Definitions . . . . .	1
Section 2   Gender . . . . .	2
Section 3   Conflicts . . . . .	3
Section 4   Application . . . . .	3
ARTICLE II    Membership in Association; Association Meetings . . . . .	3
Section 1   Qualification . . . . .	3
Section 2   Place of Meetings . . . . .	3
Section 3   Annual Meetings . . . . .	3
Section 4   Special Meetings . . . . .	4
Section 5   Notice of Meetings . . . . .	4
Section 6   Quorum . . . . .	4
Section 7   Voting . . . . .	4
Section 8   Proxies and Pledges . . . . .	5
Section 9   Solicitation of Proxies; Restrictions Applicable to Solicited Proxies . . . . .	6
Section 10  Adjournment . . . . .	6
Section 11  Order of Business . . . . .	6
Section 12  Conduct of Association Meetings . . . . .	7
ARTICLE III   Board of Directors . . . . .	7
Section 1   Number and Qualifications . . . . .	7
Section 2   Powers . . . . .	7

	<u>PAGE</u>
Section 3 Election and Terms . . . . .	7
Section 4 Vacancies . . . . .	8
Section 5 Removal of Directors . . . . .	8
Section 6 Annual Meetings . . . . .	8
Section 7 Regular Meetings . . . . .	9
Section 8 Special Meetings . . . . .	9
Section 9 Additional Notice Posted . . . . .	9
Section 10 Waiver of Notice . . . . .	9
Section 11 Quorum of Board . . . . .	9
Section 12 Fidelity Bonds . . . . .	9
Section 13 Conflict of Interest . . . . .	10
Section 14 Copies of Project Documents to be Provided to Board Members . . . . .	10
Section 15 Conduct of Meetings . . . . .	10
<b>ARTICLE IV Officers . . . . .</b>	<b>11</b>
Section 1 Designation . . . . .	11
Section 2 Election and Term . . . . .	11
Section 3 Removal . . . . .	11
Section 4 President . . . . .	11
Section 5 Vice-President . . . . .	11
Section 6 Secretary . . . . .	11
Section 7 Treasurer . . . . .	12
Section 8 Audits . . . . .	12
Section 9 Indemnification . . . . .	12
<b>ARTICLE V Administration . . . . .</b>	<b>12</b>
Section 1 Management . . . . .	12
Section 2 Managing Agent . . . . .	16
Section 3 Representation . . . . .	16
Section 4 Execution of Instruments . . . . .	16

	<u>PAGE</u>
Section 5 Books of Receipts and Expenditures; Unpaid Assessments; Availability for Examination . . . . .	16
Section 6 Availability of Minutes of Meetings of Board of Directors and Association and of the Association's Financial Statement . . . . .	17
Section 7 Availability of Project Documents . . . . .	17
Section 8 Use of Association Funds by Directors . . . . .	17
Section 9 Restriction on Association's Employees' Ability to Sell or Rent Apartments . . . . .	17
ARTICLE VI Obligations of Apartment Owners . . . . .	18
Section 1 Assessments . . . . .	18
Section 2 Responsibilities of Apartment Owners . . . . .	18
Section 3 Repair and Maintenance of Apartments . . . . .	18
Section 4 Use of Project . . . . .	19
Section 5 Rules and Regulations . . . . .	22
Section 6 Expenses of Enforcement . . . . .	22
Section 7 Membership List . . . . .	22
Section 8 Mortgages . . . . .	22
ARTICLE VII Miscellaneous . . . . .	23
Section 1 Amendment . . . . .	24
Section 2 Owners May Incorporate . . . . .	24
Section 3 Subordination . . . . .	24
Section 4 Interpretation . . . . .	25
Certificate of Adoption . . . . .	25

BY-LAWS OF THE  
ASSOCIATION OF APARTMENT OWNERS  
OF NAURU TOWER

The following By-Laws shall apply to the Nauru Tower condominium project (herein called the "Project"), as described in and created by the Declaration of Condominium Property Regime of Nauru Tower (herein called the "Declaration") to be recorded or filed of record in the Bureau of Conveyances of the State of Hawaii or the Office of the Assistant Registrar of the Land Court of the State of Hawaii immediately preceding these By-Laws, which Project is being developed upon the land described in the Declaration and in Exhibit "A" attached hereto and made a part hereof, and to all present and future owners, tenants and occupants of any apartments 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 514A, Hawaii Revised Statutes, as amended (hereinafter called the "Act"), except as otherwise expressly provided herein. Unless clearly repugnant to the context, the following terms, whenever used in these By-Laws, shall be given the following meanings:

(A) "Apartment" as used herein means collectively the residential and commercial apartments in the Project, within the meaning of that term as used in the Act, as designated and described in the Declaration.

(B) "Apartment owner" or "owner" means a person owning, or the persons owning jointly or in common, an apartment and the common interest appertaining thereto, to the extent of such ownership; provided that the purchaser of an apartment pursuant to an agreement of sale recorded as aforesaid shall have all the rights of an apartment owner, including the right to vote, provided that the seller may retain the right to vote on "matters substantially affecting his security interest in the apartment" as that term is used in the Act.

(C) "Association" means the Association of Apartment Owners of the Project.

(D) "Board" means the Board of Directors of the Association.

(E) "Common elements" means those elements designated in the Declaration as common elements, including limited common elements.

(F) "Common expenses" includes the expenses, costs and charges designated as common expenses in Part K of the Declaration, including limited common expenses, and all other expenses, costs and charges designated as common expenses in these By-Laws or the Declaration.

(G) "Developer" means Nauru Phosphate Royalties Development (Honolulu), Inc., a Delaware corporation, its successors and assigns.

(H) "Land" means the Land designated and described in the Declaration and in Exhibit "A", which Land is subject to the withdrawal provisions set forth in the Declaration.

(I) "Fee Owner" means Nauru Phosphate Royalties (Honolulu), Inc., a Delaware corporation, its successors and assigns.

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

(K) "Majority of apartment owners" means the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interests, as established by the Declaration, and any other specified percentage of the apartment owners means the owners of apartments to which are appurtenant such percentage of common interests.

(L) "Managing Agent" means the managing agent, if any, employed by the Board pursuant to the provisions of Article IV, Section 2 of these By-laws.

(M) "Project" means and includes the Land, the buildings and all other improvements thereon (including the apartments 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.

(N) "Rules and Regulations" refers to the Rules and Regulations or House Rules for the conduct of owners, tenants, occupants and guests of apartments in the Project adopted by the Board of Directors as hereinafter provided.

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 By-Laws are set forth to comply with the requirements of the Act. In case any of these By-Laws conflict with the provisions of the Act or the Declaration, the provisions of the Act or the Declaration, as the case may be, shall control.

Section 4. Application. All present and future owners, lessees, mortgagees, purchasers under agreements of sale, tenants and occupants of apartments and their guests, patrons, customers, other business invitees and employees, and any other persons who may use any part of the Project in any manner are subject to these By-Laws, the Declaration, and the Rules and Regulations, as each may be amended from time to time. The acceptance of an apartment deed or other conveyance, mortgage, agreement of sale, lease or assignment of lease or rental agreement of an apartment or any interest therein, or the act of occupying an apartment, shall constitute an agreement that these By-Laws 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

### MEMBERSHIP IN ASSOCIATION; ASSOCIATION MEETINGS

Section 1. Qualification. All owners of apartments of the project shall constitute the Association of Apartment Owners (the "Association"). The owner of any apartment upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such ownership ceases for any reason, at which time membership of such owner in the Association shall automatically cease; provided, however, that to such extent and for such purposes, including voting, as shall be provided by lease of any apartment registered under Chapter 501 of the Hawaii Revised Statutes or recorded under Chapter 502 of the Hawaii Revised Statutes, the lessee of such apartment shall be deemed to be the owner thereof.

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

Section 3. Annual Meetings. The first annual meeting of the Association shall be held not later than one hundred eighty (180) days after the date of recordation of the first apartment conveyance, provided that prior to such first annual meeting forty percent (40%) or more of the apartments have been sold and the instruments conveying and/or demising the same have been recorded. If within one (1) year after recordation of the initial apartment conveyance forty percent (40%) or more of the apartments have not been sold and the instruments conveying and/or demising the same recorded, then the first

annual meeting shall be held as soon as practicable thereafter upon the call of at least ten percent (10%) of the apartment owners. Thereafter the annual meetings of the Association shall be held within three (3) months after the end of each accounting year.

**Section 4. Special Meetings.** Special meetings of the Association may be held at any time upon the call of the President or a petition signed by at least twenty-five percent (25%) of the apartment owners and presented to the Secretary. Upon the receipt of such call or petition, the Secretary shall send written notice of the meeting to all apartment owners and the meeting shall be held on the date and at the time specified in the petition or call or if unspecified then within thirty (30) days of the receipt of such call or petition at any reasonable time at the Project, unless some other suitable place within the State of Hawaii is designated by the Board.

**Section 5. Notice of Meetings.** The Secretary shall give written or printed notice of each annual and special meeting to every apartment owner according to the Association's record of ownership, and to every holder of a first mortgage on an apartment or of a condominium conveyance document demising the same, as shown in the Association's record of ownership or who have given the Board notice of their interest through the Secretary or the Managing Agent, at least fourteen (14) days but not more than thirty (30) days before the date set for such meeting. The notice of the meeting shall state whether it is an annual or special meeting, the authority for the call thereof, the place, day and hour of such meeting, the items on the agenda for such meeting and a standard proxy form authorized by the Association, if any. The notice shall be given in any of the following ways: (a) by delivering it personally to the apartment owner, or (b) if the apartment owner resides in the Project, by leaving it at such owner's apartment in the Project, or (c) by mailing it, postage prepaid, addressed to the apartment owner at the address of such owner as it appears on the Association's record of ownership. If notice is given pursuant to the provisions of this section, the failure of any apartment owner or mortgagee to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings at the meeting. The presence of an apartment owner or first mortgagee in person or by proxy at any meeting shall be deemed a waiver of any required notice to such owner or first mortgagee unless such owner or first mortgagee shall at the opening of the meeting object to the holding of such meeting because of the failure to give notice in accordance with these provisions.

**Section 6. Quorum.** The presence at any meeting in person or by proxy of a majority of apartment owners shall constitute a quorum. The acts of a majority of the voting power represented at any meeting at which a quorum is present shall be the acts of the Association unless otherwise provided in these By-Laws or the Declaration.



Section 7. Voting. Voting shall be on a percentage basis. Each apartment shall be entitled to a vote equal to the percentage of the common interests assigned to such apartment in the Declaration. Votes may be cast in person or by proxy by the respective apartment owners as shown in the record of ownership of the Association. A personal representative, guardian or trustee may vote in person or by proxy (as provided in Article II, Section 8) at any meeting of the Association as the "Owner" of any apartment owned or controlled by such person in such capacity, whether or not the Association's record of ownership shows such ownership or control by the personal representative, guardian or trustee, as long as evidence satisfactory to the Secretary that such person owns or controls such apartment in such capacity has been presented. The vote for any apartment owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other owner(s), and in case of protest each co-tenant shall be entitled to a share of such vote equal to the share of such co-tenant's ownership in such apartment. The purchaser of an apartment pursuant to an agreement of sale recorded in the Bureau of Conveyances of the State of Hawaii or filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii shall have all of the rights of an apartment owner, including the right to vote, except as to those matters expressly retained by the seller under such agreement of sale, and as permitted by law. Votes allocated to any area which constitutes a common element, as defined in Section 514A-13(h) of the Hawaii Revised Statutes, shall not be cast at any meeting of the Association, whether or not the area is designated as a common element in the Declaration.

Section 8. Proxies and Pledges. The authority given by any apartment owner to another person to represent him at meetings of the Association shall be in writing, and shall contain at least the name of the Association, the date of the meeting, the printed name and signature of the apartment owner or owners giving the proxy, the apartment or apartments for which the proxy is given, the printed name of the person or entity to whom the proxy is given and the date on which the proxy is given. To be valid, a proxy must be delivered to the Secretary of the Association or the Managing Agent no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains. A proxy shall be valid only for the meeting to which such proxy pertains and any adjournment thereof, may designate any person (including without limitation the Board of Directors as an entity) as proxy, and may be limited as the apartment owner desires and indicates, provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit. If a proxy is given to the Board of Directors as an entity, the proxy form shall contain a box wherein the apartment owner may indicate that the vote is to be shared with each Board member receiving an equal percentage. Proxy forms which are not so marked shall be considered a choice by the apartment owner that the vote be made on the basis of

34101

the preference of the majority of the Board. Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any apartment or interest therein, a true copy of which is filed with the Board through the Secretary or Managing Agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner.

Section 9. Solicitation of Proxies; Restrictions Applicable to Solicited Proxies. No resident manager or Managing Agent shall solicit, for use by such manager or Managing Agent, any proxies from any apartment owner of the Association which employs the resident manager or Managing Agent, nor shall the resident manager or Managing Agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. No member of the Board who uses Association funds to solicit proxies shall cast any of these proxy votes for the election or re-election of Board members at any Association meeting unless the proxy form specifically authorizes the Board member to vote for the election or re-election of Board directors and the Board first posts notice of its intent to solicit proxies in prominent locations within the Project at least thirty (30) days prior to its solicitation of proxies; provided that if the Board receives within seven (7) days of the posted notice a request by any owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall:

(A) Mail to all owners a proxy form containing either the names of all owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or

(B) Mail to all owners a proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of Association funds for soliciting proxies and their statements.

The statement shall not exceed one hundred words, indicating the owner's qualifications to serve on the Board and reasons for wanting to receive proxies.

Section 10. Adjournment. Any meeting of the Association may be adjourned and reconvened from time to time not less than forty-eight (48) hours from the time the original meeting was called as may be determined by majority vote of the apartment owners present, whether or not a quorum is present, without notice other than the announcement at such meeting. At any such adjourned and reconvened 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 11. Order of Business. The order of business at all meetings of the Association shall be as follows:

- 34201
- (a) Roll call.
  - (b) Proof of notice of meeting.
  - (c) Reading of minutes of preceding meeting.
  - (d) Report of officers.
  - (e) Report of committees.
  - (f) Election of inspectors of election.
  - (g) Election of directors.
  - (h) Unfinished business.
  - (i) New business.

Section 12. Conduct of Association Meetings. All meetings of the Association shall be conducted in accordance with the most current edition of Roberts' Rules of Order.

### 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 nine persons. All members of the Board shall be owners, co-owners, vendees under an agreement of sale, or an officer of any corporate owner of an apartment. The partners in a general partnership and the general partner(s) of a limited partnership shall be deemed to be the owners of an apartment for this purpose. There shall not be more than one (1) representative on the Board from any one (1) apartment. The directors shall serve without compensation, unless such compensation is specifically authorized by the Association at a regular or special meeting. The resident manager of the Project, if any, may not serve on the Board. Each Director shall owe the Association a fiduciary duty in the performance of the Director's duties.

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

Section 3. Election and Terms. Election of directors shall be by cumulative voting by secret ballot at each annual meeting and any special meeting called for that purpose. Directors shall hold office for a period of three (3) years and until their respective successors have been elected, subject to removal as herein provided, except that at the first annual meeting three (3) directors shall

34341

Be elected for one year terms, three (3) directors shall be elected for two year terms, and three (3) directors shall be elected for three year terms.

Section 4. Vacancies. Vacancies in the Board caused by any reason other than 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 be a director until a successor is elected at the next annual meeting of the Association. Death, incapacity or resignation of a director, or if a director ceases to qualify for office as set forth above, shall cause the office to become vacant.

Section 5. Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the directors may be removed with or without cause by vote of a majority of apartment owners and a successor may then and there be elected for the remainder of the term to fill the vacancy thus created; provided that an individual director shall not be removed (unless the entire Board is removed) if owners having sufficient votes to elect one director by cumulative voting present at such meeting shall vote against said removal. Such removal and replacement shall be in accordance with all applicable requirements and procedures in these Bylaws for the removal and replacement of directors, including, but not limited to, any provisions relating to cumulative voting. Any director whose removal has been proposed by the apartment owners shall be given an opportunity to be heard at such meeting. If such removal and replacement is to occur at a special Association meeting, the call for such meeting shall be by the president or by a petition to the secretary or Managing Agent signed by not less than twenty-five percent (25%) of the apartment owners as shown in the Association's record of ownership; provided that if the secretary or managing agent does not send out the notices for the special meeting within fourteen (14) days of receipt of then the petition, then the petitioners shall have the authority to set the time, date and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of these Bylaws. Except as otherwise provided herein, such meeting and the procedures adopted for the removal and replacement from office of directors shall be scheduled, noticed and conducted in accordance with these Bylaws.

Section 6. Annual Meetings. The Board shall meet at least once each year. An organizational meeting of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association. Notice of the annual Board meeting shall be given in a reasonable manner at least fourteen (14) days, if practicable, prior to such meeting and may be included with the notice of the annual meeting of the Association. At such meeting the Board shall elect the officers of the Association for the ensuing year.

Section 7. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least one such meeting shall be held during each calendar quarter of every year. Notice of regular meetings of the Board shall be given to each director, personally or by mail, telephone or messenger service, at least three (3) days prior to the date of such meeting.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called by the President on at least eight (8) hours' notice to each director, given personally or by telephone or messenger service, 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 9. Additional Notice Posted. Whenever practicable, notice of all Board meetings shall be posted by the resident manager of the project or a member of the Board of Directors in prominent locations within the project seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board.

Section 10. Waiver of Notice. Before or at any meeting of the Board 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 11. Quorum of Board. At all meetings of the Board a majority of the total number of directors established by these By-Laws shall constitute a quorum for the transaction of business, and the acts of a majority of the directors present at any meeting at which a quorum is present shall be the acts of the Board. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn and reconvene the meeting from time to time. At any such reconvened 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 12. Fidelity Bonds. The Board of Directors shall require that all directors, officers, employees and agents of the Association handling or responsible for funds belonging to or administered by the Association furnish adequate fidelity bonds in favor of the Association.

(a) If the Board chooses not to employ a Hawaii Managing Agent, a fidelity bond in an amount equal to \$500.00 multiplied by the number of apartments in the Project shall be secured by the Association at its expense:

14261

provided that the minimum amount of the bond shall not be less than \$20,000.00 nor greater than \$100,000.00;

(b) A Managing Agent employed by the Association shall provide evidence of a fidelity bond in an amount equal to \$500.00 multiplied by the aggregate number of units covered by all of the Managing Agent's condominium management contracts; provided that the minimum amount of the bond shall not be less than \$20,000.00 nor greater than \$100,000.00.

In addition, every such fidelity bond shall:

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

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

Section 13. Conflict of Interest. A director shall not vote or cast a proxy at any meeting of the Board on any issue in which such director has a conflict of interest. The director shall disclose the nature of the conflict of interest prior to a vote at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made. The determination of whether a conflict of interest exists as to a particular director or directors shall be made by a majority of the directors (excluding the director or directors alleged to be involved in a conflict of interest), which determination shall be conclusive and binding on all parties.

Section 14. Copies of Project Documents to be Provided to Board Members. The Association, at its expense, shall provide all Board members with a current copy of the Association's Declaration, By-Laws, House Rules, and, annually, a copy of the Act, with amendments.

Section 15. Conduct of Meetings. All meetings of the Board (whether organizational, annual or special) shall be conducted in accordance with the most current edition of Roberts' Rules of Order. All meetings of the Board shall be open to all members of the Association, provided that Association members who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board. The Board, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or litigation in which the Association is or may become involved. The nature of any and all business to be considered in executive session shall first be announced in open session. An apartment

owner shall not act as an officer of the Association and an employee of the Managing Agent employed by the Association.

#### ARTICLE IV

##### OFFICERS

Section 1. Designation. The principal officers of the Association shall be a President, Vice President, a Secretary and a Treasurer, all of whom shall be elected by, and in the case of the President from, the Board of Directors. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. An apartment owner shall not act as an officer of the Association and an employee of the Managing Agent employed by the Association.

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

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

Section 4. 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 By-Laws or assigned to him from time to time by the Board.

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

Section 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors, give all notices thereof as provided by these By-Laws, maintain and keep a continuous and accurate record of ownership of all apartments, have charge of such books, documents and records of the Association as the Board may direct, keep the minute book wherein resolutions shall be recorded, and in general

perform all the duties incident to the office of Secretary of a corporation organized under the laws of the State of Hawaii. The duties of the Secretary may be delegated to the Managing Agent.

Section 7. Treasurer. The Treasurer shall keep the financial records and books of account of the Association, and shall supervise the Managing Agent's custody of all funds of the Association, maintenance of accounts and financial records and preparation of financial reports.

Section 8. Audits. The Association shall require a yearly audit of the Association's financial accounts and no less than one yearly unannounced verification of the Association's cash balance by a public accountant or accounting firm; provided that the yearly audit and the yearly unannounced cash balance verification may be waived by a majority vote at an Association meeting. Any institutional holder of a first mortgage on an apartment may request and the Association shall provide said mortgagee with a copy of said yearly audited financial statement (if any) within ninety (90) days following the end of any fiscal year of the Association.

Section 9. Indemnification. The Association shall indemnify every director and officer and his executors and administrators against all expenses reasonably incurred by or imposed on him in connection with any action, suit or proceedings to which he may be made a party by reason of being or having been a director or officer of the Association, except in relation to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for negligence or willful misconduct; and in the absence of such final adjudication, indemnification shall be provided only in connection with such matters as to which the Association is advised by its legal counsel that the person to be indemnified committed no such breach of duty. The foregoing right of indemnification shall not be exclusive of any other rights to which such person may be entitled.

## ARTICLE V

### ADMINISTRATION

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

- (a) Supervision of its immediate management and operation;
- (b) Maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto;



14261

(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 apartment of all water, sewer, electricity and such other utility services and utilities as the Board shall deem necessary either at the expense of such apartment or as a common expense or limited common expense as determined by the Board, including specifically, without limiting the foregoing, the provision of chilled water to Commercial Apartment Nos. 1 and 10, as an expense of the respective apartments, at a cost approximately equal to the Association's cost of producing such chilled water, as equitably determined by the Board of Directors based upon an engineer's report. The Board of Directors shall not be obligated to provide chilled water to either Commercial Apartment No. 1 or No. 10 unless and until the owner of such apartment completes the work required to extend the air conditioning system to the owner's apartment, at the owner's expense;

(e) Employment, supervision and dismissal of such personnel as may be necessary for the maintenance and operation of the Project;

(f) Preparation at least sixty (60) days before each fiscal year of a proposed budget and schedule of assessments for such year;

(g) Collection of all installments of assessments levied and payment of all common expenses authorized by the Board;

(h) Purchase and maintenance in effect of all policies of hazard 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 or the Board;

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

(j) Opening of bank accounts on behalf of the Association and designating the signatories required therefor;

(k) Purchasing or leasing or otherwise acquiring in the name of the Board or its designee, corporate or otherwise, on behalf of all apartment owners, apartments in the Project offered for sale or lease, but only with prior approval of apartment owners having not less than seventy-five percent (75%) of the common interests;

(l) Purchasing of apartments at foreclosure or other judicial sale in the name of the Board or its designee, corporate or otherwise, on behalf of all apartment owners, but only with prior approval of apartment owners

having not less than seventy-five percent (75%) of the common interests:

(m) Selling, subleasing, mortgaging, voting the votes appurtenant to (other than for the election of members of the Board), or otherwise dealing with apartments acquired by the Board or its designee, corporate or otherwise, on behalf of all apartment owners;

(n) Organizing or forming corporations or trusts, including land trusts, to act as designees of the Board in acquiring title to or leasing of apartments on behalf of all apartment owners;

(o) Making of repairs, additions and improvements to or alterations of the Project and repairs to and restoration of the Project in accordance with the other provisions of these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;

(p) Borrowing money for any purpose authorized by these By-Laws or the Declaration, upon such terms and conditions as are approved by the Board, and granting a security interest in personal property owned by the Association as security for any such loan; provided that any loan of TEN THOUSAND DOLLARS (\$10,000) or more shall first be approved by at least seventy-five percent (75%) of the Apartment Owners.

(q) Procuring legal and accounting services necessary or proper in the operation of the buildings or enforcement of these By-Laws;

(r) Notification of all persons having any interest in any apartment according to the Association's record of ownership of delinquency exceeding thirty (30) days in the payment of any assessment against such apartment;

(s) Notification in writing of all institutional holders of first mortgages on apartments, or on condominium conveyance documents demising the same, as shown in the Association's record of ownership or of which the Secretary of the Association has been given written notice, of any loss to, or taking of, the common elements of the project if such loss or taking exceeds TEN THOUSAND DOLLARS (\$10,000.00); and

(t) Notification in writing to the institutional holder of the first mortgage on any apartment, or of the condominium conveyance document demising the same, as shown in the Association's record of ownership or of which the Secretary of the Association has been given written notice, of any loss to such apartment which exceeds ONE THOUSAND DOLLARS (\$1,000.00);

(u) Establishment of such penalties and fines as it deems appropriate with respect to enforcement of the

14221

provisions of the Declaration, these By-Laws and the Rules and Regulations; provided such penalties and fines are not inconsistent with the law or the provisions herein, and the unpaid amount of such penalties and fines against any apartment owner shall constitute a lien against his interest in his apartment which may be foreclosed by the Board or Managing Agent in the same manner as provided in the Condominium Property Act for common expenses; provided, however, that the lien for such penalties and fines shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the apartment and to all sums unpaid on mortgages of record. In the event such penalties and fines are established, the Board may authorize the Managing Agent or resident manager to impose them upon apartment owners, tenants and employees of an apartment owner, and any other persons using the property for any purpose whatsoever.

1. Appeal Procedure. The person penalized (herein called the "offender") may appeal from the penalty imposed by the Board, the Managing Agent, or the resident manager, as follows:

(i) Notice of Appeal. The offender may appeal such penalty within thirty (30) days after receiving notice thereof, by filing with the Secretary a written notice of his or her appeal and the reasons therefor. The filing of a notice of appeal shall not halt the accrual of any ongoing penalties imposed for the violation which is the subject of the appeal. However, the Board may waive or rescind all or part of the aforesaid penalties at the time of the hearing of such appeal.

(ii) Time for Hearing Appeal. All appeals shall be heard at a meeting of the Board within ninety (90) days after notice of appeal has been filed with the Secretary.

(iii) Procedure. The cause of the penalty shall be reported in writing by the Board, the Managing Agent, or the resident manager at such meeting, with a statement of the facts on which the penalty was based, a copy of which shall be furnished to the appellant at least ten (10) days before the meeting, at which time a copy thereof shall also be filed with the Secretary. The appellant shall then present his or her defense in writing, to which the Board or its designee may reply orally. The appellant or any one owner or other person on his or her behalf may then respond, and the Board or its designee may again speak in support of the penalty imposed. Thereafter, no further discussion, except among the Board itself, shall be allowed.

(iv) Disposition of Appeal. The Board shall vote as to whether the penalty shall be affirmed. If a majority of those present vote in the affirmative, the penalty shall stand and shall be remitted by the offender in full, within seven (7) days of the date of such meeting. If less than a majority of those present vote in the affirmative, then the penalty shall thereby be rescinded.

Section 2. Managing Agent. The Board of Directors may employ a responsible Hawaii Managing Agent to manage and control the Project subject at all times to direction by the Board, with all of the administrative functions specifically set forth in the preceding Section 1 and with such other powers and duties and at such compensation as the Board may establish from time to time. Any Managing Agent employed by the Board shall be either a real estate broker licensed in compliance with Chapter 467 of the Hawaii Revised Statutes, as amended, and the rules of the Real Estate Commission of the State of Hawaii, or a corporation authorized to do business under the Chapter 406 of the Hawaii Revised Statutes, as amended. Any such employment contract with a Managing Agent shall provide: (a) that it may be terminated by the Board of Directors for cause on no more than thirty (30) days' written notice and without cause on no more than ninety (90) days' written notice; (b) that in no event shall a termination fee be due and owing the Managing Agent in the event of such termination; and (c) in no event shall such employment contract be for a fixed term exceeding one (1) year.

The Managing Agent shall from time to time provide evidence satisfactory to the Board that the Managing Agent maintains a fidelity bond in the minimum amount required by Section 514A-84, Hawaii Revised Statutes, as amended, or such higher amount as the Board may require.

Section 3. Representation. The President or Managing Agent, acting on behalf of and subject to the direction of the Board of Directors, shall represent the Association or any two or more apartment owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements or more than one apartment, and on its or their behalf may institute, defend, intervene in, prosecute and settle any such action, suit, hearing or other proceeding, without prejudice to the rights of any apartment owner individually to appear, sue or be sued. Service of process on two or more apartment owners in any such action, suit, hearing or other 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 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. Books of Receipts and Expenditures; Unpaid Assessments; Availability for Examination. 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 delinquent dollar amount of any unpaid assessments for common expenses. The Managing Agent or Board of Directors shall also keep monthly statements indicating the total current delinquent dollar amount of assessments for common expenses. The Managing Agent or Board of Directors shall also keep monthly statements indicating the total current delinquent dollar amount of assessments for common expenses. All records and the vouchers authorizing the payments shall be kept and maintained at the address of the Project, or elsewhere within the State as determined by the Board and shall be available for examination by the apartment owners at convenient hours of weekdays. The Managing Agent or Board shall not transfer by telephone Association funds between accounts, including, but not limited to, the general operating account and reserve fund account. No person shall knowingly make any false certificate, entry or memorandum upon, or knowingly alter, destroy, mutilate or conceal any of the books or records of the Managing Agent or Association.

Section 6. Availability of Minutes of Meetings of Board of Directors and Association and of the Association's Financial Statement. The minutes of meetings of the Board and of the Association and the Association's financial statements shall be available for examination by apartment owners at convenient hours at a place designated by the Board and shall be mailed to any apartment owner upon the apartment owner's request, and shall include the recorded votes of each Board member on all motions except motions voted on in executive session.

Section 7. Availability of Project Documents. An accurate copy of the Declaration, these By-laws, the Rules and Regulations, if any, the master lease, if any, a sample original conveyance document, and all public reports and any amendments thereto, shall be kept at the Managing Agent's office. The Managing Agent shall provide copies of those documents 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. In the event that the Project is not managed by a Managing Agent, the foregoing requirements shall be undertaken by a person or entity, if any, employed by the Association to whom this function is delegated.

Section 8. Use of Association Funds by Directors. Members of the Board of Directors shall not expend the funds of the Association for their travel, Director's fees, if any, and per diem unless apartment owners are informed and a majority of apartment owners approve the expenses.

Section 9. Restriction on Association's Employees' Ability to Sell or Rent Apartments. The

Association's employees shall not engage in selling or renting apartments in the project, except apartments owned by the Association, unless such activity is approved by the affirmative vote of sixty-five percent (65%) of all apartment owners.

## ARTICLE VI

### OBLIGATIONS OF APARTMENT OWNERS

**Section 1. Assessments.** All apartment owners shall pay to the Managing Agent in advance on the first day of each and every month the monthly installments of assessments against their respective apartments for common expenses of the Project in accordance with the Declaration.

**Section 2. Responsibilities of Apartment Owners.** An apartment owner shall be responsible for the conduct of his lessee(s), tenant(s), or guest(s) and shall, upon request of the Board or Managing Agent, immediately abate and remove, at his expense, any structure, thing or condition that may exist with regard to the occupancy of his apartment by his lessee(s), tenant(s) or guest(s) which is a violation hereof, or of the Declaration, or of any rules and regulations adopted by the Board, or, if the apartment owner is unable to control the conduct of his lessee(s), tenant(s) or guest(s), the apartment owner shall, upon request of the Board or Managing Agent, immediately remove such lessee(s), tenant(s) or guest(s) from the Project, without compensation for lost rentals or any other loss or damage resulting therefrom.

### **Section 3. Repair and Maintenance of Apartments.**

(a) Every apartment owner shall at his own expense at all times well and substantially repair, maintain, amend and keep his apartment, including without limitation all internal installations therein such as water, electricity, gas, telephone, sewer, sanitation, air conditioning, lights and all other fixtures and accessories belonging to such apartment and the interior decorated or finished surfaces of all walls, floors and ceilings of such apartment, with all necessary repairs 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 or the Managing Agent. Every apartment owner and occupant shall reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishings and equipment thereof caused by such owner or occupant or any person under either of them and shall give prompt notice to the Managing Agent of any such loss or damage or other defect in the Project when discovered.

1428:

(b) It is intended that the exterior of the building that includes the apartments of the Project shall present a uniform appearance. To attain that result each apartment owner agrees that the Board may require the apartment owner at his sole expense to paint or repair his lanai and the Board may regulate the design and appearance of the repairs and replaced items, the type of surface and the type and color of paint to be used. In the alternative, the Board is authorized to contract for the repairs, painting or surfacing of all such lanais. If the Board contracts for such items, the Board may either seek reimbursement from the owner thereof (who shall then bear such cost individually) or the Board may make payment therefor out of the maintenance fund. Further, no draperies shall be installed in the apartments the exterior side of which is anything but an unpatterned, uniform color prescribed by the Board.

Section 4. Use of Project.

(a) The apartments of the Project shall be used only for their respective purposes as set forth in the Declaration and for no other purpose.

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

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

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

(e) No apartment owner or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of his apartment or the Project nor alter or remove any furniture, furnishings or equipment of the common elements.

(f) Except as otherwise provided by the federal Fair Housing Act (42 U.S.C. Sec. 3601 et seq.), as amended by the Fair Housing Amendment Act of 1988, and the rules and regulations promulgated thereunder, as the same may be amended from time to time in the future, and except as otherwise permitted by the provisions of the Declaration, no apartment owner or occupant shall erect or place in the Project any building or structure including fences and walls, nor make any additions or alterations to any common elements of the Project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with plans and specifications, including a detailed plot plan, prepared by a licensed architect if so required by

the Board, and approved by the Board and a majority of apartment owners (or such larger percentage required by law or the Declaration), including all owners of apartments thereby directly affected.

(g) No apartment owner shall decorate or landscape any entrance of his apartment or any other portion of the Project except in accordance with standards therefor established by the Board or specific plans approved in writing by the Board.

(h) All occupants shall exercise extreme care about making noises and in the use of musical instruments, radios, televisions and amplifiers that may disturb other occupants.

(i) No garments, rugs or other objects shall be hung from the windows or facades of the Project.

(j) No rugs or other objects shall be dusted or shaken from the windows of the Project or cleaned by beating or sweeping on any hallway or exterior part of the Project.

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

(l) No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the Project; except as otherwise provided below and except that, with the prior written consent of the Board, dogs, cats and other household pets in reasonable number may be kept by the apartment owners and occupants in their respective apartments but shall not be kept, bred or used therein for any commercial purpose nor allowed on any common elements except in transit when carried or on a leash. Notwithstanding any provision to the contrary contained herein, certified guide dogs and signal dogs (as identified below) and other such animals specially trained to assist handicapped individuals (hereinafter collectively referred to as "specially trained animals") shall be permitted at the Project subject to the following restrictions:

(i) Such specially trained animals shall not be kept, bred, or used at the Project for any commercial purpose;

(ii) Such specially trained animals shall be permitted on the common elements (including but not limited to the recreation areas) provided the specially trained animal is on a leash.

Any pet as described above and any specially trained animal causing a nuisance or unreasonable disturbance to any other occupant of the Project shall be permanently removed therefrom promptly upon notice given by the Board of Directors or Managing Agent; provided, however, that any such notice



given with respect to a specially trained animal shall provide that before such animal must be removed, its owner shall have a reasonable time to acquire a replacement specially trained animal unless the Board determines that such animal poses an imminent serious threat of physical harm to other occupants of the Project. The Directors may from time to time promulgate such rules and regulations regarding the continued keeping of such pets and specially trained animals as the circumstances may require or the Board may deem advisable.

The term "guide dog" shall mean "any dog individually trained by licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and rigid handle grasped by the person" as defined in Section 515-3(8), Hawaii Revised Statutes, as the same may be amended from time to time in the future.

The term "signal dog" shall mean "any dog trained to alert a deaf person to intruders or sounds," as defined in Section 515-3(8), Hawaii Revised Statutes, as the same may be amended from time to time in the future.

(m) No apartment owner or occupant shall without the written approval of the Board install any wiring for electrical or telephone installations, television antenna, machines or air-conditioning units, or other equipment or appurtenances whatsoever on the exterior of the Project or protruding through the walls, windows or roof of the Project.

(n) No apartment owner or occupant shall place or maintain any television or other antennas on the Project visible from any point outside of the Project, nor install awnings, shades, blinds, screens or other similar objects on the exterior lanai of any apartment.

(o) Nothing shall be allowed, done or kept in any apartments or common elements of the Project which would overload or impair the floors, walls or roofs of the Project, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association.

(p) No lighting of the tennis court located at the project shall be allowed past 10:00 p.m. Notwithstanding any of the provisions of Article VI, Section 1 of these By-Laws, this subparagraph (p) may not be amended to permit the lighting of the tennis courts later than 10:00 p.m. without the prior written consent of the Hawaii Community Development Authority, State of Hawaii or its successor.

(q) No apartment owner shall enclose any exterior lanai within an apartment in the Project. Notwithstanding any of the provisions of Article VII, Section 1 of these By-Laws, this subparagraph (q) may not be amended without the prior written consent of the Fee Owner.

14461

Section 5. Rules and Regulations. The Board of Directors, upon giving notice to all apartment owners in the same manner as herein provided for notice of meetings of the Association and opportunity to be heard thereon, may adopt, amend or repeal any supplemental rules and regulations governing details of the operation and use of the common elements not inconsistent with any provision of law, the Declaration or these By-Laws; provided, however, that the initial rules and regulations governing the operation and use of the common elements of the Project shall be adopted by the Developer of the Project.

Section 6. Expenses of Enforcement. Every apartment owner shall pay to the Association promptly on demand all costs and expenses including reasonable attorneys' fees incurred by or on behalf of the Association in collecting any delinquent assessments against such apartment, foreclosing its lien therefor, or enforcing any provisions of the Condominium Property Act, the Declaration, these By-Laws or the Rules and Regulations against such owner or any occupant of such apartment.

Section 7. Membership List. The resident manager or the Managing Agent or Board of Directors shall keep an accurate and current list of the members of the Association and their addresses, including the names and addresses of all vendees under any agreement of sale on an apartment in the Project, if any. This list shall be maintained at the address of the Project or elsewhere within the State of Hawaii as designated by the Board and a copy thereof shall be available, at cost, to any member of the Association, as provided in the Declaration or By-Laws or Rules and Regulations or, in any case, to any member who furnishes to the resident manager or Managing Agent or Board of Directors a duly executed and acknowledged affidavit stating that the list (a) will be used by such owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to Association matters, and (b) shall not be used by such owner or furnished to anyone else for any other purpose. Every apartment owner shall promptly cause to be duly recorded or filed of record the deed, lease, agreement of sale, assignment or other conveyance to him of such apartment or other evidence of his title thereto and shall file a copy of such document(s) with the Board through the Secretary or the Managing Agent.

Section 8. Mortgages.

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

(b) Notice of Unpaid Common Expenses. The Association, whenever so requested in writing by an apartment owner or any mortgagee of any interest in an

apartment, shall promptly report to such person any then unpaid assessments for common expenses due from the apartment owner involved.

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

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

(e) Mortgage Protection. Notwithstanding any provision to the contrary in these By-Laws:

(1) Any first mortgagee who obtains title to an apartment pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage or conveyance in lieu of foreclosure will not be liable for such apartment's unpaid dues or charges which accrue prior to the acquisition of title to such apartment by the mortgagee.

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

(3) The Declaration and By-Laws shall not give an apartment owner or any other party priority over any rights of first mortgagees of apartments pursuant to their mortgages in the case of a distribution to apartment owners of insurance proceeds or condemnation awards for losses to or a taking of the apartments, common elements or both.

(4) Notwithstanding any other provision of these By-Laws, no amendment of this Section 8(e) shall affect the rights of the holder of any mortgage who has notified the Association of its interest unless such mortgagee consents to the filing of such amendment.

## ARTICLE VII

### MISCELLANEOUS

Section 1. Amendment. These By-Laws may be amended in any respect not inconsistent with provisions of law or the Declaration at any meeting of the Association

14281

duly called for such purpose, by written consent of not less than sixty-five percent (65%) of all apartment owners; provided that each one of the items set forth in Section 514A-82 of the Hawaii Revised Statutes, as amended, shall always be embodied in these By-Laws. Any amendment to the By-Laws that is adopted in accordance with the provisions of this section shall be effective upon the recording of the amendment in the Bureau of Conveyances of the State of Hawaii. Proposed bylaws with the rationale for the proposal may be submitted by the Board or by a volunteer apartment owners' committee. If submitted by such a committee, it shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the apartment owners as shown in the Association's record of ownership. The proposed bylaw, rationale, and ballots for voting on the proposed bylaw shall be mailed by the Board to the owners at the expense of the Association for vote or written consent without change within thirty (30) days of the receipt of the petition by the Board. The vote or written consent required to adopt the proposed bylaw shall be sixty-five per cent (65%) of all apartment owners; provided that the vote or written consent must be obtained within one hundred twenty days (120) after mailing. In the event that the bylaw is duly adopted, then the Board shall cause the bylaw amendment to be recorded in the Bureau of Conveyances or filed in the Land Court, as the case may be. The volunteer apartment owners' committee shall be precluded from submitting a petition for a proposed bylaw which is substantially similar to that which has been previously mailed to the owners within one year after the original petition was submitted to the Board. These provisions shall not preclude any apartment owner or voluntary apartment owners' committee from proposing any bylaw amendment at any annual association meeting.

Section 2. Owners May Incorporate. All of the rights, powers, obligations and duties of the apartment owners imposed by these By-laws 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. The formation of such corporation shall in no way alter the covenants, conditions and restrictions set forth in these By-laws, and the Articles of Incorporation and By-laws of such corporation shall be subordinated to and controlled by these By-laws. Any action taken by such corporation in violation of any or all of the covenants, conditions and restrictions contained in these By-laws shall be void and of no effect.

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

34761

Section 4. Interpretation. In case any provision of these By-Laws shall be held invalid, such invalidity shall not render invalid any other provision hereof which can be given effect. Nothing in these By-Laws shall be deemed or construed to authorize the Association or Board of Directors to conduct or engage in active business for profit on behalf of any or all of the apartment owners.

CERTIFICATE OF ADOPTION

The undersigned, being the owner and developer of all apartments of the Project, hereby adopts the foregoing as the By-Laws of the Association of Apartment Owners of Nauru Tower, this 25th day of October, 1989.

NAURU PHOSPHATE ROYALTIES  
DEVELOPMENT (HONOLULU), INC.

By   
Do Chief Executive Officer

CITY OF MELBOURNE, AUSTRALIA )  
 )  
CONSULATE GENERAL OF THE )  
 )  
UNITED STATES OF AMERICA )

SS: Commonwealth of Australia )  
 )  
State of Victoria )  
 )  
City of Melbourne )  
 )  
Consulate General of the )  
 )  
United States of America )

I, SANDRA A STEVENS, Consul  
of the United States of America at Melbourne, Australia,  
duly commissioned and qualified, do hereby certify that on  
this 27th day of October, 1989, before me personally  
appeared Theodore C. Moses, to  
me personally known, who, being by me duly sworn, did say  
that he is the Chief Executive Officer of NAURU PHOSPHATE  
ROYALTIES DEVELOPMENT (HONOLULU), INC., a Delaware  
corporation, that the seal affixed to the foregoing  
instrument is the corporate seal of said corporation, and  
that said instrument was signed and sealed in behalf of  
said corporation by authority of its Board of Directors,  
and said Officer acknowledged said instrument  
to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand  
and official seal the day and year first above mentioned.



SANDRA A. STEVENS  
Consul of the  
United States of America

EXHIBIT "A"

-FIRST:-

(A) All of those certain parcels of land situate on Auahi Street, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOTS: 3-B, area 31,437.0 square feet,  
as shown on Map 3, and  
3-B-1, area 6,814.0 square feet,  
as shown on Map 3,

the maps referred to herein are filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1290 of Mina Leleo Moikeha, Esther Leleo Keola and William Moses Leleo:

Together with an easement or right of way for street purposes, in common with Hawaiian Dredging Company, Limited, its successors and assigns, across Lot A-2, as shown on Map 2 of said Application, Part 2 of "L" Street, as shown on Map 1 of Land Court Application No. 880 of Bishop Trust Company, Limited, and Lot 3, as shown on Map 3 of Land Court Application No. 784 of Hawaiian Dredging Company, Limited.

(B) All of that certain parcel of land situate near Ala Moana, at Kalia, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT 3-A, area 41,867.0 square feet, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1290 of Mina Leleo Moikeha, Esther Leleo Keola and William Moses Leleo;

Together with a right of way, 12.00 feet wide, to be used for road purposes only, in common with the Hawaiian Dredging Company, Limited and John Sheridan MacKenzie, and their heirs, executors, administrators, successors and assigns, across Lot A-1-A of Land Court Application No. 789, described as follows:

Beginning at a concrete post mark "+" at the North corner of this piece of land, being also the West corner of the above described lot and at the end of Course 3 of Lot A of Land Court Application No. 789, and thence running by azimuths measure clockwise from true South:

- |    |      |     |        |   |
|----|------|-----|--------|---|
| 1. | 302° | 02' | 12.76  | feet along the above described lot to a pipe;   |
| 2. | 12°  | 00' | 163.00 | feet to a pipe;   |
| 3. | 122° | 02' | 12.76  | feet along the former North side of Ala Moana to a United States Coast and Geodetic Survey Concrete Monument;     |
| 4. | 102° | 00' | 146.00 | feet along Land Court Application No. 1098 to the point of beginning and containing an area of 1,740 square feet. |

Together also with a right of way to be used for road purposes only, in common with said John Sheridan MacKenzie and his heirs and assigns, across the whole of Lot 1, area 784 square feet, as shown on Map 1, of said Application No. 1290.

RECORDED: B. HANO: Inability of getting Typing or Printing GREAT SECRETARY in this document when received.

(C) All of that certain parcel of land situate at  
Kalia, Waikiki, Honolulu, City and County of  
Honolulu, State of Hawaii, described as follows:

LOT 2-A-1, area 1,255.0 square feet, as shown on  
Map 3, filed in the Office of the Assistant Registrar of the  
Land Court of the State of Hawaii with Land Court Application  
No. 1288 of Hina Leleo Moikeha, Esther Leleo Keola and William  
Hosoe Leleo;

-SECOND:-

All of those certain parcels of land situate at  
Kalia, Waikiki, Honolulu, City and County of  
Honolulu, State of Hawaii, described as follows:

(A) LOTS: A-1-A, area 10,809.0 square feet,  
as shown on Map 11, and  
A-1-B-2-A, area 2,867.0 square feet, and  
A-1-B-3-A, area 28,778.0 square feet,  
as shown on Map 14,  
the maps referred to herein are filed in the Office of the  
Assistant Registrar of the Land Court of the State of Hawaii  
with Land Court Application No. 709 of Hawaiian Dredging  
Company, Limited;

(B) LOT A-7-A, area 137.0 square feet, as shown on  
Map 3, filed in the Office of the Assistant  
Registrar of the Land Court of the State of Hawaii with Land  
Court Application No. 1306 of Matsue Morimoto;

(C) LOTS: 1, area 784.0 square feet,  
as shown on Map 1; and  
2-A-2, area 10,781.0 square feet,  
2-A-3, area 15,117.0 square feet,  
2-B-2, area 5,276.0 square feet, and  
2-B-3, area 3,831.0 square feet,  
as shown on Map 3,  
the maps referred to herein are filed in the Office of the  
Assistant Registrar of the Land Court of the State of Hawaii  
with Land Court Application No. 1250 of Hina Leleo Moikeha,  
Esther Leleo Keola and William Hosoe Leleo;

Together with a right of way 12.00 feet wide, to  
be used for road purposes only, in common with the Hawaiian  
Dredging Company, Limited, across Lot A-1 of Application No.  
769;

(D) LOTS: A, area 1,796.0 square feet,  
B, area 3,522.0 square feet,  
C, area 5,320.0 square feet, and  
D, area 2,819.0 square feet,  
as shown on Map 1,  
filed in the Office of the Assistant Registrar of the Land  
Court of the State of Hawaii with Land Court Application No.  
1949 of John Sheridan MacKenzie and Beatrice Sorenson  
MacKenzie, husband and wife;

RECORDED & INDEXED  
IN THE OFFICE OF THE ASSISTANT REGISTRAR  
OF THE LAND COURT OF THE STATE OF HAWAII  
ON 11/15/1950



**-THIRD:-**

All of those certain parcels of land situate at  
Kalia, Waikiki, Honolulu, City and County of Honolulu, State of  
Hawaii, described as follows:

LOTS: 3, area 484.8 square feet, and  
4, area 1,822.8 square feet,  
as shown on Map 1,

filed in the Office of the Assistant Registrar of the Land  
Court of the State of Hawaii with Land Court Application No.  
1280 of Hina Leleoo Koihehe, Esther Leleoo Koola and William  
Kossas Leleoo;

Together with a right of way, appurtenant to  
Lots 3 and 4, to be used for road purposes only, across Lot  
A-1-A of Application 789;

Together with a right of way for road purposes,  
appurtenant to Lots 3 and 4, across Lot 1, of said Application;

**-FOURTH:-**

All of that certain parcel of land situate at  
Kalia, Waikiki, Honolulu, City and County of Honolulu, State of  
Hawaii, described as follows:

LOT A-1-A area 130,058.0 square feet, as shown  
on Map 4, filed in the Office of the Assistant Registrar of the  
Land Court of the State of Hawaii with Land Court Application  
No. 1306 of Matsuo Morimoto;

Together with an easement or right of way for  
street purposes, appurtenant to Lot A-1-A, across Lot A-2 as  
shown on Map 2 of Application 1306, Part 2 of "L" Street, as  
shown on Map 1 of Application 880, and Lot 3, as shown on Map 2  
of Application 784;

**-FIFTH:-**

All of that certain parcel of land situate at  
Kalia, Waikiki, Honolulu, City and County of Honolulu, State of  
Hawaii, described as follows:

LOT A-1-B-1 area 10,828.6 square feet, as shown  
on Map 12, filed in the Office of the Assistant Registrar of  
the Land Court of the State of Hawaii with Land Court  
Application No. 789 of Hawaiian Dredging Company, Limited;

Together with an easement or right of way for  
street purposes, appurtenant to Lot A-1-B-1, across Lot A-2, as  
shown on Map 2 of Application 1306, Part 2 of "L" Street, as  
shown on Map 1 of Application No. 880, and Lot 3, as shown on  
Map 2 of Application 784;

Parcels FIRST, SECOND, THIRD, FOURTH and FIFTH  
being all of the premises described in Transfer Certificate of  
Title No. 327,790 issued to MAURU PHOSPHATE ROYALTIES (HONOLULU),  
INC., a Delaware corporation.

SUBJECT, HOWEVER, to the following:

1. -AS TO PARCEL FIRST:-

-As to Lot 3-A:-

(A) By Final Order of Condemnation, dated December 8, 1972, filed in Civil No. 33119, in the Circuit Court of the First Circuit, State of Hawaii, on December 8, 1972, filed as Land Court Document No. 611430 on December 8, 1972, re drainage easements over portions of Lots 3-A, 3 and 4 and construction easements over portion of Lot 3-A, besides other land, were condemned by the City and County of Honolulu.

(B) Delineation of Easement (1840 square feet) for drainage purposes over and across Lot 3-A, as shown on Maps 3 and 4, as set forth by Land Court Order No. 37100, filed March 20, 1973.

2. -AS TO PARCEL SECOND:-

(A) -As to Lot A-1-A:- A right of way for road purposes across Lot A-1-A, in favor of the owners and occupants of R. P. 3782, L. C. A. 97 F. L., their heirs and assigns, to use in common with the L & C Limited, its successors and assigns, as set forth in Deed dated July 23, 1942, and filed as Land Court Document No. 64232, recorded in Liber 1788 at Page 104.

(B) -As to Lots 1 and A-1-A:- Grant in favor of Levers & Cooke, Limited, for road purposes only over Lots A-1-A and 1, as granted in Deed dated July 23, 1942, filed as Land Court Document No. 64234.

(C) -As to Lots 1 and A-1-A:- Grant of easement in favor of Levers & Cooke, Limited, for underground water pipe lines etc. under Lots A-1-A and 1, dated November 8, 1946, filed as Land Court Document No. 89098, recorded in Liber 2054 at Page 192.

(D) -As to Lots 2-B-2:- An easement in favor of the City and County of Honolulu, for the free flowage of water over and along the ditch crossing Lot 2-B-2, as shown on Map 3 of Application No. 1280.

(E) -As to Lot 1:- Easement in favor of the Board of Water Supply, City and County of Honolulu, for a right of way for an underground water line or pipe lines over, through and across Lot 1.

(F) -As to Lots 1, 2-A-2, 2-A-3 and 2-B-2:- An easement in favor of the Board of Water Supply, City and County of Honolulu, for a right of way for an underground water line or pipe lines over, through and across an area of two and one-half feet on either side of center line, said center line being described as follows:

RECORDED'S MEMO: Legibility of Writings, Typing or Printing Indefinitive in this Document when received. READING INSTRUCTION

Beginning at a point situated on the east boundary of Lot 1, from which point the true azimuth and distance to the beginning of Course No. 1 of Land Court Application No. 1250 being 30° 44' and 39.33 feet, thence running by true azimuths and distance measured clockwise from true south:

1. 281° 16' 68.02 feet across Lot No. 2;
2. 282° 10' 33.38 feet across Lot No. 2;
3. 292° 06' 26.75 feet across Lot No. 2;
4. 298° 34' 46.11 feet across Lot No. 2;
5. 311° 43' 41.33 feet across Lot No. 2;
6. 224° 25' 39.78 feet across Lot No. 2;
7. 314° 04' 9.39 feet across Lot No. 2;
8. 224° 39' 30.48 feet from which point the true azimuth and distance to the end of Course No. 6 of L. C. Av. 1250 being 332° 44' and 49.73 feet.

(G) -As to Lots A and B:- Easement "1", 12.00 feet wide, over, along, across and under a portion of Lots A and B, as shown on Map 1 of Application No. 1540.

As to said Easement "1" only:

(i) A perpetual right of way 12.00 feet wide for a roadway, water pipe lines, sewer lines, storm drains and all public utility purposes in favor of the City and County of Honolulu and the Board of Water Supply of the City and County of Honolulu, their respective successors in interest and assigns.

(ii) The rights of the State of Hawaii as reserved in Deed dated February 21, 1946, recorded in Liber 1946 at Page 312.

(iii) A Grant of easement in favor of Lowers & Cooke, Limited, dated July 23, 1942, filed as Document No. 64334, recorded in Liber 1708 at Page 109, and to that certain Grant dated November 8, 1946, filed as Land Court Document No. 89088, recorded in Liber 2004 at Page 192.

(iv) The rights of the owners and occupants of Land Court Applications 789 and 1250 and their respective heirs, successors in interest and assigns, to use the same perpetually in common with Dillingham Corporation and others entitled as a right of way and for all public utility purposes.

(H) -As to Lots 1, 2-A-2, 2-A-3, A-1-A, A and B:- Drainage and temporary construction easement across Lots 1, 2-A-2, 2-A-3, A-1-A, A and B, in favor of City and County of Honolulu pursuant to Final Order of Condemnation (Civil No. 33119), dated December 8, 1973, filed as Land Court Document No. 611630; said temporary construction easements shall automatically terminate upon completion of construction.

(I) -As to Lot A-1-A:- Delineation of Easement (3333 square feet) for drainage purposes, over and across Lot A-1-A, as shown on Map 22, Land Court Application No. 789, as set forth by Land Court Order No. 37099, filed March 20, 1973.

(J) -As to Lots 2-A-2 and 2-A-3:- Delineation of Easements, area of easements 741 square feet and 540 square feet, for drainage purposes, over and across Lots 2-A-2 and 2-A-3, respectively, as shown on Map 4, Land Court Application No. 1280, as set forth by Land Court Order No. 37100, filed March 20, 1973.

(K) -As to Lots A and B:- Delineation of Easements, area of easements 1815 square feet and 97 square feet, for drainage purposes, over and across Lots A and B, respectively, as shown on Map 4, Land Court Application No. 1280, as set forth by Land Court Order No. 37101, filed March 20, 1973.

3. -AS TO PARCEL THIRD:-

(A) -As to Lots 3 and 4:- Easement for a right of way for an underground water line or pipe lines across Lots 3 and 4 (besides other premises) in favor City and County of Honolulu, Board of Water Supply.

(B) -As to Lots 3 and 4:- Easement for drainage purposes across Lots 3 and 4 to City and County of Honolulu pursuant to Land Court Document No. 611430.

4. All recorded and unrecorded leases, subleases or tenant occupancy agreements and all recorded and unrecorded liens or encumbrances on or against any such leases, subleases or tenant occupancy agreements.

5. Provisions of the Kahaaka Community Development District Plan and of the Planned Development Permit, dated November 7, 1984, No. PD 2-84, issued to the Hauru Phosphate Royalties Trust by the Hawaii Community Development Authority.

6. PLANNED DEVELOPMENT AGREEMENT dated October 19, 1988, filed as Land Court Document No. 1648763, by and between HAWAII COMMUNITY DEVELOPMENT AUTHORITY, STATE OF HAWAII and HAURU PHOSPHATE ROYALTIES (HONOLULU), INC., a Delaware corporation.

PARTIAL ASSIGNMENT OF RIGHTS AND OBLIGATIONS UNDER PLANNED DEVELOPMENT PERMIT dated October 19, 1988, filed as Land Court Document No. 1646277, made by and between HAURU PHOSPHATE ROYALTIES (HONOLULU), INC., a Delaware corporation, and HAURU PHOSPHATE ROYALTIES DEVELOPMENT (HONOLULU), INC., a Delaware corporation.

Consent given by HAWAII COMMUNITY DEVELOPMENT AUTHORITY STATE OF HAWAII, by instrument filed as Land Court Document No. 1646278.

RECORDED IN HAWAII: Legibility of Writing, Typing or Printing INSURE BUREAU

7. LEASE

LESSOR : NAURU PHOSPHATE ROYALTIES (HONOLULU), INC., a Delaware corporation

LESSEE : NAURU PHOSPHATE ROYALTIES DEVELOPMENT (HONOLULU), INC., a Delaware corporation

DATED : October 19, 1988

FILED : Land Court Document No. 1645704

TERM : 67 years 2 months commencing November 1, 1988 and ending on December 31, 2055

as amended by First Amendment of Lease dated October 25, 1989, filed as Land Court Document No. 1681411.

8. AGREEMENT REGARDING ALLOCATION OF SPACE TO INDUSTRIAL USE dated October 19, 1988, filed as Land Court Document No. 1646279, made by and between HAWAII COMMUNITY DEVELOPMENT AUTHORITY, STATE OF HAWAII and NAURU PHOSPHATE ROYALTIES (HONOLULU), INC., a Delaware corporation.
9. AGREEMENT TO PROVIDE NECESSARY PERPETUAL PUBLIC EASEMENT AREAS FOR UPPER-LEVEL PEDESTRIAN WALKWAYS dated October 19, 1988, filed as Land Court Document No. 1646280, made by and between HAWAII COMMUNITY DEVELOPMENT AUTHORITY, STATE OF HAWAII and NAURU PHOSPHATE ROYALTIES (HONOLULU), INC., a Delaware corporation.
10. That certain Mortgage, Security Agreement and Financing Statement dated October 25, 1989 between THE REPUBLIC OF NAURU FINANCE CORPORATION and NAURU PHOSPHATE ROYALTIES DEVELOPMENT (HONOLULU), INC., as Mortgagor, and SL CAPITAL CORPORATION, THE MITSUI TRUST AND BANKING COMPANY, LIMITED, CROWN LEASING USA INC., and NK LEASING (U.S.A.) INC., as Mortgagee, filed as Land Court Document No. 1682567.
11. The terms, conditions and provisions of that certain Consent to Mortgage of Lease and Estoppel Certificate dated October 25, 1989 made by NAURU PHOSPHATE ROYALTIES (HONOLULU), INC., filed as Land Court Document No. 1682568.
12. That certain Mortgage, Security Agreement and Financing Statement dated October 25, 1989 between THE REPUBLIC OF NAURU FINANCE CORPORATION and NAURU PHOSPHATE ROYALTIES (HONOLULU), INC., as Mortgagor, and SL CAPITAL CORPORATION, THE MITSUI TRUST AND BANKING COMPANY, LIMITED, CROWN LEASING USA INC., and NK LEASING (U.S.A.) INC., as Mortgagee, filed as Land Court Document No. 1682569.
13. The terms, conditions and provisions of that certain Subordination Agreement dated October 25, 1989 between NAURU PHOSPHATE ROYALTIES DEVELOPMENT (HONOLULU), INC., and SL CAPITAL CORPORATION, THE MITSUI TRUST AND BANKING COMPANY, LIMITED, CROWN LEASING USA INC., and NK LEASING (U.S.A.) INC., filed as Land Court Document No. 1682570.

14. The terms, conditions and provisions of that certain Assignment of Landlord's Interest dated October 25, 1989 made by MAURU PHOSPHATE ROYALTIES (HONOLULU), INC., as Assignor, and SL CAPITAL CORPORATION, THE MITSUI TRUST AND BANKING COMPANY, LIMITED, CROWN LEASING USA INC., and NK LEASING (U.S.A.) INC., as Assignees, filed as Land Court Document No. 1682571.

END OF EXHIBIT "A"