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Carlsmith Ball LLP  
2200 Main Street, Suite 400  
Wailuku, HI 96793

Attention: Nancy Zhao  
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THIS DOCUMENT CONTAINS 53 PAGES

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TITLE OF DOCUMENT:

AMENDED AND RESTATED BY-LAWS OF THE ASSOCIATION OF OWNERS  
OF  
KIHEI COMMERCIAL CONDOMINIUM II

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PARTIES TO DOCUMENT:

DEVELOPER: JS MCA KIHEI LLC, a Nevada limited liability company  
c/o MCA Realty, Inc.  
18818 Teller Avenue, Suite 250, Irvine, California 92612

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PROPERTY DESCRIPTION: : DOCUMENT NO(S): 2001-095549  
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: LAND COURT DOCUMENT NO.: N/A  
:  
: TRANSFER CERTIFICATE OF  
: TITLE NO(S): N/A

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**AMENDED AND RESTATED BY-LAWS OF THE ASSOCIATION OF OWNERS**  
**OF**  
**KIHEI COMMERCIAL CONDOMINIUM II**

THESE AMENDED AND RESTATED BY-LAWS OF THE ASSOCIATION OF OWNERS OF KIHEI COMMERCIAL CONDOMINIUM II are made this 31<sup>st</sup> day of January, 2018, by JS MCA KIHEI LLC, a Nevada limited liability company, whose mailing address is c/o MCA Realty, Inc., 18818 Teller Avenue, Suite 250, Irvine, California 92612 (hereinafter called the "Developer").

**W I T N E S S E T H T H A T :**

WHEREAS, pursuant to that certain Declaration of Condominium Property Regime dated May 9, 2001, executed by the Developer's predecessor-in-interest, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-095548 (hereinafter referred to as the "Declaration"), the real property more particularly described therein, and the Improvements constructed thereon, were submitted to a Condominium Property Regime pursuant to Chapter 514A, Hawaii Revised Statutes, as amended ("Chapter 514A");

WHEREAS, the condominium Project known as KIHEI COMMERCIAL CONDOMINIUM II (hereinafter referred to as the "Project"), established pursuant to said Declaration, is more particularly shown and described on Condominium Map No. 3285 filed in said Bureau of Conveyances, and any amendments thereto (hereinafter referred to as the "Condominium Map");

WHEREAS, the Declaration was subsequently amended by those certain instruments dated September 6, 2001, June 27, 2007, and July 1, 2008, respectively, and recorded in the Bureau of Conveyances as Document Nos. 2001-140242, 2007-115382, and 2008-106898;

WHEREAS, originally, the Project consisted of two (2) units known as Unit A and Unit B;

WHEREAS, KIHEI CC, LLC, a Hawaii limited liability company ("KIHEI CC"), subsequently acquired Unit B, and, pursuant to a reserved right in Section 18.0 of the Declaration, amended the Declaration by the aforementioned instrument dated June 27, 2007, and recorded in the Bureau of Conveyances as Document No. 2007-115382, to subdivide Unit B into seventy-one (71) new units;

WHEREAS, the operation of the Project is governed by those certain By-Laws of the Association of Owners dated May 9, 2001, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-095549, as amended by that certain instrument dated September 6, 2001, recorded in said Bureau of Conveyances as Document No. 2001-140243 (the "By-Laws");

WHEREAS, KIHEI CC transferred its ownership of sixty-one (61) B Units to the Developer pursuant to that certain Limited Warranty Deed dated September 29, 2017, and recorded in the Bureau of Conveyances as Document No. A-64810626;

WHEREAS, KIHEI CC transferred and assigned all of the rights it held, as the previous developer, under the Declaration, By-Laws and Condominium Map to the Developer pursuant to that certain Assignment of Developer's Rights dated September 29, 2017, and recorded in the Bureau of Conveyances as Document No. A-64810628, as amended by that certain Correction to Assignment of Developer's Rights dated November 22, 2017, and recorded in the Bureau of Conveyances as Document No. A-65350699;

WHEREAS, the Developer desires to: (1) make certain revisions and amendments to the By-Laws and for the Project to be governed by Chapter 514B, Hawaii Revised Statutes, as amended ("Chapter 514B"), rather than Chapter 514A; and (2) restate the By-Laws into one instrument by incorporating all prior recorded By-Law amendments thereto as noted above;

WHEREAS, Article X, Section 1 of the By-Laws and Section 514A-82(b)(2), Hawaii Revised Statutes, provide that the By-Laws may be amended pursuant to the vote or written consent of the Owners of units representing at least sixty-five percent (65%) of the Common Interest; and in accordance with Section 514B-23(b), Hawaii Revised Statutes, the By-Laws may be amended by the vote or written consent of a majority of the Unit Owners to allow the Project to operate under Chapter 514B;

WHEREAS, the Developer, representing forty-two and 2,427/10,000 percent (42.2427%) of the Common Interest, desires to amend the By-Laws as hereinafter provided, and for the Project to operate under Chapter 514B, and AMERICAN GL PEARL STORAGE 17 (HI) LLC, a Delaware limited liability company, the Owner of Unit A and representing fifty percent (50%) of the Common Interest, by its signature hereto, hereby consents to said amendment and for the Project to operate under Chapter 514B;

NOW, THEREFORE, in consideration of the premises, the By-Laws are hereby amended and restated in their entirety as follows:

ARTICLE I  
INTRODUCTORY PROVISIONS

Section 1. Condominium Status. The Developer's predecessor-in-interest, KCOM CORP., a Hawaii corporation, and VALENTINE PEROFF, JR., husband of Barbara Joanna Peroff, Trustee of the Valentine Peroff, Jr. Revocable Living Trust created by unrecorded Trust Agreement dated July 7, 1989, having all powers under said trust, including full power to sell, convey, exchange, mortgage, lease, assign or otherwise deal with and dispose of all lands of the trust estate and interests therein, pursuant to that certain Declaration of Condominium Property Regime dated May 9, 2001, recorded

in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-095548, as amended, submitted the property more particularly described therein to a condominium property regime known as KIHEI COMMERCIAL CONDOMINIUM II, as originally established by Chapter 514A, Hawaii Revised Statutes.

Notwithstanding the submission of the Land and the Improvements of the Project to Chapter 514A, Hawaii Revised Statutes, as amended, from and after the date of this instrument, the Project shall be operated under Chapter 514B, Hawaii Revised Statutes (the "Act")

Section 2. Applicability of By-Laws. The provisions of these By-Laws are applicable to the Project and to the use and occupancy thereof. All present and future Owners, vendees under Agreements of Sale, mortgagees, lessees, and occupants of Units or other interests in the property and their employees, and any other persons who may use the facilities of the Project in any manner, are subject to these By-Laws, the Declaration, and the Project Rules and Regulations.

The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Unit or other interest in the Project or use of any of the facilities of the Project shall constitute an agreement that these By-Laws, the Project Rules and Regulations, and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified, and will be complied with.

Section 3. Definitions. The terms used herein with initial capital letters shall have the meanings given to them in Section 21.0 of the Declaration, except as expressly otherwise provided herein.

Section 4. Conflicts. In any case where any of these By-Laws conflicts with the provisions of the Act or the Declaration, the provisions of the Act or the Declaration, as the case may be, shall control. In the case of a conflict between the Act and the Declaration, the Act shall control.

## ARTICLE II ASSOCIATION OF OWNERS

Section 1. Membership. All Owners of the Project together 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 until such time as his or her ownership of such Unit ceases for any reason. In the event that the Project is terminated, the Association shall consist of all former Owners who owned Units at the time of termination and who are entitled to distributions of proceeds under Section 514B-47 of the Act, or such Owners' heirs, successors or assigns.

Section 2. Classes. The Association shall be comprised of a Unit A Class and a B Unit Class. The Owner of any Unit, upon acquiring title thereto, shall automatically become a member of the Unit Class to which such Owner's Unit belongs. The Owner of

Unit A shall be a member of the Unit A Class. Each B Unit Owner shall be a member of, and all B Unit Owners shall comprise, the B Unit Class. Each class shall vote on and determine issues affecting their Unit Class. The Unit A Class, for instance, may vote on and determine issues pertaining to only the Unit A Class, and the B Unit Class may vote on and determine issues only pertaining to the B Unit Class. The number of Units comprising the B Unit Class may increase or decrease if B Units are consolidated and/or subdivided.

Section 3. Purpose. The Association shall be organized and operated for the purposes of administrative and fiscal management of the Project and for managing, maintaining, acquiring, constructing, and caring for the Association property, which includes the General Common Elements, any real property which is not part of the General Common Elements but which the Association either owns or leases, any personal or moveable property owned or leased by the Association, and any fixtures owned or leased by the Association; provided, however, that unless otherwise provided in the Declaration or these By-Laws: (a) Unit Limited Common Elements shall be managed and maintained by the Owner of the Unit to which such Unit Limited Common Element is appurtenant; (b) Unit A Limited Common Elements shall be managed and maintained by the Unit A Class; and (c) B Unit Limited Common Elements shall be managed and maintained by the Association on behalf of the B Unit Class.

Section 4. Annual Meeting. The first annual meeting of the Association shall be held not later than 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 of the Units in the Project have not been sold and recorded at the end of one year after recordation of the first Unit conveyances, an annual meeting shall be called if ten percent (10%) of the Unit Owners so request. The terms "recorded" and "recordation" shall mean and refer to the recordation of Unit Deeds transferring the Units to an Owner. At such meeting, the Unit Owners shall elect a Board. Prior to that time, the Association shall consist solely of the Developer who shall have authority to act in all matters as the Association. Thereafter, unless otherwise set by the Board with thirty-five (35) days advance notice, the annual meeting of the Association shall be held on the second Monday in the Third calendar month following the close of the Association's fiscal year. If permitted by law, members of the Association may participate in any annual meeting by means of a conference telephone or similar communication equipment through which all members participating may simultaneously hear each other during the meetings. If telephonic participation is requested by an Owner, the cost of such telephonic participation shall be paid for by such Owner.

Section 5. Special Meetings. Special meetings of the Association may be held at any time upon the call of the President, a majority of the Board, or by a petition to the Secretary or Managing Agent signed by not less than twenty-five percent (25%) of the Owners as shown in the Association's record of ownership, and except as otherwise provided in these By-Laws, the business considered shall be limited to that stated in the notice of the special meeting. Upon receipt of such call or petition, the Secretary or Managing Agent shall send out written notice of the special meeting to all members of

the Association in the manner provided in Section 6 below. In the event that the Secretary or Managing Agent shall fail to send out notices for the special meeting within fourteen (14) days of receipt of any petition to have such meeting, the petitioner(s) calling for the meeting shall have the authority to set the time, date and place for the special meeting, and may send notices in accordance with the provisions for such notice contained in these By-Laws. The meeting shall be held at the time and place specified in such call, or if unspecified, at any reasonable time within sixty (60) days from receipt of the petition. If permitted by law, members of the Association may participate in any special meeting by means of a conference telephone or similar communication equipment through which all members participating may simultaneously hear each other during the meetings. A special meeting and procedures adopted for the removal and replacement of Directors shall be conducted in accordance with Article III, Section 8 of these By-Laws pertaining to the removal, replacement and election of Directors.

Section 6. Notice of Meetings. The Secretary shall cause written notice of all meetings, annual or special, stating the date, time, and place of the meeting and whether it is annual or special, together with a standard proxy form authorized by the Association, if any, and any other notices permitted or required to be delivered by these By-Laws, to be given by hand delivering such notice(s) and form, by mailing, postage prepaid to the mailing address of each Unit or any other address designated in writing by the Owner, or, at the option of the Owner, expressed in writing, by facsimile or electronic mail to the electronic mailing address designated in writing by the Owner, at least fourteen (14) calendar days before the date assigned for the meeting. The notice must state the authority for holding the meeting, the items on the agenda, including the general nature and rationale of any proposed amendment to the Declaration or these By-Laws, and any proposal to remove a Director; provided that nothing herein shall preclude an Owner from proposing an amendment to the Declaration or these By-Laws or to remove a Director at any annual meeting. Upon written request for notices delivered to the Board, the holder of any duly recorded mortgage or deed of trust from any Owner may obtain a copy of any and all notices permitted or required to be given to the Owner, whose interest is subject to said mortgage or deed of trust.

Section 7. Waiver of Notice. Notice can be considered waived as follows:

A. Anyone who attends a meeting, in person or by proxy, waives any right to claim that notice was not given properly unless, when the meeting begins, he or she objects to holding it because notice was not given properly.

B. An Owner may waive notice of any Association meeting by signing a document (1) that waives notice, or (2) that consents to or approves the action taken at the meeting, or (2) that approves the minutes of the meeting. All such documents must be filed with the Association records and made a part of the minutes of the meeting.

C. An Owner automatically waives notice of any Association meeting if he or she does not file a written objection with the Secretary or the Managing Agent within

fifteen (15) calendar days after he or she receives written notice of any action taken at an Association meeting. A copy of the minutes, among other things, will be treated as written notice.

Upon notice being given in accordance with the provisions hereof, the failure of any Owner to receive actual notice of any meeting shall not in any way invalidate the meeting or proceedings thereat. Each Owner shall keep the Association informed of any changes in address.

Section 8. Quorum. The term "quorum" refers to the number or percentage of Owners who must be present at a meeting to conduct business for all Owners, the Unit A Class Owner and the B Unit Class Owners as follows:

A. All Owners. For meetings of the Association with respect to all matters that may be voted on by all Owners, a majority of the Common Interest of Owners must be present to have a quorum unless a different number is required by law, the Declaration, or another part of these By-Laws.

B. Unit A Owner. With respect to those matters that affect only the Unit A Owner, Unit A, Unit Limited Common Elements appurtenant to Unit A, and Unit A Limited Common Elements, which may only be voted on by or which require a vote of only the Unit A Owner, a majority of the Unit A Class must be present to have a quorum unless a different number is required by law, the Declaration, or another part of these By-Laws.

C. B Unit Owners. With respect to those matters that affect only the B Unit Owners, the B Units, Unit Limited Common Elements appurtenant to B Units, and the B Unit Limited Common Elements, which may only be voted on by or which require a vote of only the B Unit Owners, a majority of the B Unit Class must be present to have a quorum unless a different number is required by law, the Declaration, or another part of these By-Laws.

Members are "present" at a meeting if: (1) they attend it in person or by telephonic conference or similar communication equipment through which all Association members participating may simultaneously hear each other during the meeting, or (2) their proxy holder attends it for them, or (3) someone else permitted by these By-Laws attends it for them.

Section 9. Voting. The vote of a majority of the Common Interest, Unit A Class Common Interest, and/or B Unit Class Common Interest present or represented at a meeting at which a quorum is present shall be binding upon all Owners, Unit A Class Owners, and/or B Unit Class Owners, respectively, for all purposes, except where a higher percentage vote is required in the Declaration, these By-Laws, or by law. Notwithstanding the preceding sentence: (1) where a vote requires a majority of Owners, the term "majority of Owners" shall mean the Owners to which are appurtenant more than fifty percent (50%) of the total Common Interest or Class Common Interest

with respect to the Unit A Class and B Unit Class; and (2) where a vote requires a specific percentage of Owners, the specified percentage of the Owners means Owners to which are appurtenant such percentage of the Common Interest (or Class Common Interest with respect to the Unit A Class and the B Unit Class).

Notwithstanding anything to the contrary herein:

A. With respect to all matters that concern both Unit A and the B Units, all Owners shall vote on such matters, and the decision by Owners of Units to which are appurtenant at least seventy-five percent (75%) of the Common Interest shall be binding upon all Owners.

B. With respect to all matters that concern only Unit A, only Unit A Class Owners shall vote on such matters, and the decision by a majority of the Unit A Class Common Interest shall be binding upon all Owners;

C. With respect to all matters that concern only the B Units, only B Unit Class Owners shall vote on such matters, and the decision by a majority of the B Unit Class Common Interest shall be binding upon all Owners.

Any person, firm, corporation, trust or other legal entity or a combination thereof, owning any Unit in the Project duly recorded in his or its name, the ownership whereof shall be determined by the records of the Bureau of Conveyances, State of Hawaii, shall be a member of the Association, and either in person or by proxy entitled to vote the percentage of vote assigned to each interest so owned at all meetings of the Association. 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 such person in such capacity, whether or not the same shall have been transferred to such person in the Association's record of ownership, provided that evidence satisfactory to the Secretary that such person owns and controls such Unit in such capacity has been presented. If only one of several Owners of a Unit is present at a meeting of the Association, that Owner is entitled to cast all votes allocated to that Unit. The vote for any Unit owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others before the polls are closed, and in case of protest each co-tenant shall be entitled to share of such vote equal to the share of such co-tenant's ownership in such Unit. The purchaser of a Unit 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 a Unit Owner, including the right to vote, except as to those matters expressly retained by the seller under such Agreement of Sale as permitted by law.

Section 10. Proxies and Pledges.



Votes allocated to a Unit may be cast pursuant to a proxy duly executed by a Unit Owner. An Owner may vote by mail or electronic transmission through a duly executed proxy.

A. A proxy, to be valid, must: (1) 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; (2) contain at least the name of the Association, the date of the meeting of the Association, the printed name(s) and signature(s) of the person(s) giving the proxy, the Unit number for which the proxy is given, the name of the person to whom the proxy is given, and the date that the proxy is given; (3) 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 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 Owner 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:

(1) If the Board intends to use Association funds to distribute proxies, including the standard proxy form referred to in this Section II.10, the Board shall first post notice of its intent to distribute proxies in prominent locations within the Project at least twenty-one (21) calendar days before its distribution of proxies. If the Board receives within seven (7) calendar 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 mail to all Owners either: (a) a proxy form containing the names of all 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 and indicate the Owner's qualifications to serve on the Board or reasons for wanting to receive proxies.

(2) 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 an Owner under subpart (1) of this Subsection.

F. The Managing Agent or its employees, shall not solicit, for use by the Managing Agent, any proxies from any Owner of the Association that retains the Managing Agent, nor shall the Managing Agent 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 Owners; provided that subject to applicable approval rights of the Developer, the Board may adopt rules regulating reasonable time, place, and manner of the solicitations or distributions, or both.

H. If a 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 of the Association or the Managing Agent. A proxy is void if it purports to be revocable without notice.

Section 11. Adjournment. Any meeting of the Association may be adjourned from time to time not less than forty-eight (48) hours from the time the original meeting was called and to such place and time as may be determined by majority vote of the Owners present, whether a quorum be present or not, without notice other than the announcement at the meeting. At any such adjourned meeting at which a quorum shall be present, any business that might have been transacted by a quorum at the meeting as originally called, may be transacted.

Section 12. Order of Business. The order of business at all meetings of the Association shall be as follows:

- A. Roll call;
- B. Proof of notice of meeting;
- C. Reading of minutes of preceding meeting;
- D. Report of Officers;
- E. Report of committees;

- F. Election of Directors;
- G. Unfinished business;
- H. New business.

Section 13. Conduct of Meetings. All Association meetings shall be conducted in accordance with the most recent edition of Roberts Rules of Order Newly Revised. Meetings may be conducted by any reasonable means that allow participation by all Owners in any deliberation or discussion.

Section 14. Place of Meeting. All meetings of the Association shall be held at the address of the Project, or elsewhere within the State as determined by the Board; provided that in the event of a natural disaster, such as a hurricane, an Association meeting may be held outside the State.

Section 15. Minutes. Minutes of meetings of the Association shall be approved at the next succeeding regular meeting or by the Board, within sixty (60) calendar days after the meeting, if authorized by the Owners at an annual meeting. Minutes of all meetings of the Association shall be available within seven (7) calendar days after approval and unapproved final drafts of minutes shall be available within sixty (60) calendar days after the meeting. If approved by the Board, Owners shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty (30) calendar days after approval. An Owner shall be allowed to offer corrections to the minutes at an Association meeting. The minutes of meetings of the Association shall be available for examination by Unit Owners at convenient hours at a place designated by the Board.

### ARTICLE III BOARD OF DIRECTORS

Section 1. Number and Qualification. The affairs of the Association shall be governed by the Board. The Board shall be comprised of one (1) Unit A Director and three (3) B Unit Directors, who shall be elected as set forth in Section III.6 below. Each Director shall be an Owner, co-Owner, a vendee under an Agreement of Sale, a trustee of a trust that 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 of a general partnership and the general partners of a limited partnership or limited liability partnership shall be deemed to be Owners for purposes of serving on the Board. There shall not be more than one (1) Director from any one (1) Unit. No employee of the Association shall serve on the Board. Any Director who is an employee of a Managing Agent shall not participate in any discussions regarding the condominium management agreement at a Board meeting and shall be excluded from any executive session where such Managing Agent or condominium management agreement will be discussed. In the performance of their duties, Directors shall owe the Association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation

organized under Chapter 414D, Hawaii Revised Statutes, as amended. During the Development Period, to the extent permitted by applicable law, the Developer has the right, but not the obligation, to appoint one (1) B Unit Director to the Board. The Directors shall serve without compensation.

Section 2. Annual Meeting. An annual organizational meeting of the Board 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 to validly 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. Notice of the annual Board meeting shall be given to the Association members in a reasonable manner at least fourteen (14) days, if practicable, prior to such meeting, and may be included in the notice of the annual Association meeting.

Section 3. Powers and Duties of Board.

The Board shall have the powers and duties necessary for the administration of the affairs of the Project in compliance with all governmental requirements and the Declaration, and for the maintenance, upkeep and repair of the Project in good order and condition, and may do all such acts and things except as by law or by the Declaration or by these By-Laws may not be delegated to the Board by the Owners. Subject to the foregoing, the Board may act in all instances on behalf of the Association. The Board shall have all rights set forth in the Act subject to any and all approval requirements as set forth in the Act, the Declaration and these By-Laws. A Director shall not cast any proxy vote at any Board meeting. Subject to the terms of the Declaration, the powers and duties of the Board shall include, but shall not be limited to, the following:

A. Enforcing the provisions of the Declaration, these By-Laws, and the Project Rules and Regulations;

B. Paying 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 it and for the costs incurred by the Board by reason of such lien;

C. Delegating its powers to committees, agents, officers, representatives and employees.

D. Purchasing materials, supplies, furniture, labor and services, making repairs and structural alterations, and payment of all insurance premiums, taxes and assessments and other Common Expenses which the Board is required to secure, make or pay pursuant to these By-Laws or by law or which in its opinion shall be

necessary or proper for the operation of the Project or the enforcement of these By-Laws, provided that if any such materials, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes or assessments are 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;

E. Contracting for fire, casualty, liability and other insurance on behalf of the Association, pursuant to the provisions of Section 13.0 of the Declaration;

F. Operation, care, upkeep, maintenance and repair of the Common Elements and any additions or alterations thereto (including, but not limited to, coordination with the appropriate vendors for the prompt repair of any roof leaks with respect to Buildings B-1, B-2 and B-3 while keeping in mind the preservation of any roof warranties), subject to the obligations of the Unit Owners with respect to the Limited Common Elements as more particularly set forth in the Declaration;

G. Preparing and adopting, for the Association, an annual budget of the Common Expenses required for the affairs of the Association in compliance with Section 514B-148 of the Act (including, without limitation, the operation and maintenance of the Project in accordance with the Declaration and these By-Laws), and determination of the amounts of regular and special assessments;

H. To cause a reserve study to be conducted on behalf of the Association and establish reserves as required by the Act, subject to the provisions of the Declaration;

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. Exercising a right of entry in or upon any privately owned Unit at any time and from time to time during reasonable hours and without liability to any Owner for trespass, damage or otherwise, but (1) only where necessary (in connection with construction, maintenance or repair) to protect the Common Elements, Limited Common Elements, or any Unit or Units, and (2) subject to Section 6.0.e of the Declaration regarding access to Unit A; provided that the Board shall have a right of entry in the event of emergencies pursuant to Section 514B-137(b) of the Act and in accordance with Section 6.0.e of the Declaration;

K. Maintenance and repair of any Unit when such maintenance or repair is necessary, in the discretion of the Board, to protect the Common Elements and Limited Common Elements or any other portion(s) of the Project and the Owner or Owners of said Unit shall have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair is delivered by the Board to said Owner or Owners; provided that 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 or collecting such special assessment;

L. Levy and collection of regular and special assessments of the Common Expenses and other charges payable by the Unit Owners;

M. Employment and dismissal of the personnel necessary for the maintenance, operation, repair and replacement of the Common Elements, provided that an Owner shall not act as an Officer of the Association and an employee of the Managing Agent employed by the Association;

N. Subject to the provisions of Section VIII.2 of these By-Laws, adoption and amendment of Project Rules and Regulations covering the details of the operation and use of the Common Elements of the Project and the enforcement of those Project Rules and Regulations;

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

P. To the extent permitted by law and subject to the requirements of Section 514B-105(e) of the Act, purchasing or leasing or otherwise acquiring in the name of the Association or its designee, corporate or otherwise, on behalf of all Owners, Units offered for sale or lease. The expense of any leasing, acquiring, maintaining or operating any such Unit by the Board shall be a Common Expense;

Q. To the extent permitted by law and subject to the requirements of Section 514B-105(e) of the Act (but without any requirement to obtain the consent of any other party), purchasing Units at foreclosure or other judicial sales, or acquiring Units by way of a deed in lieu of foreclosure, in the name of the Association or its designee, corporate or otherwise, on behalf of all Owners;

R. To the extent permitted by law, selling (including entering into listing agreements with real estate brokers), leasing, subleasing, mortgaging, voting the votes appurtenant to (other than for the election of members of the Board), or otherwise dealing with Units acquired by the Association or its designee, corporate or otherwise, on behalf of all Owners;

S. Organizing corporations to act as designees of the Board in acquiring title to or leasing of Units on behalf of all Unit Owners;

T. Making 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 and the Declaration;

U. Borrowing money for the repair, replacement, maintenance, operation, or administration of the Common Elements and personal property of the Project, or the

making of any additions, alterations, and improvements thereto; provided that written notice of the purpose and use of the funds is first sent to all Owners and Owners representing fifty percent (50%) of the Common Interest vote or give written consent to the borrowing, subject to the requirements of Article II, Section 9 of these By-Laws.

V. Procuring legal, financial consulting, real estate brokerage, and accounting services, including opinions of counsel necessary or proper in the operation of the Project or enforcement or implementation of the Declaration, the Act, these By-Laws, the Project Rules and Regulations and any other material documents affecting the Project;

W. Representing the Unit Owners in any proceedings, negotiations, settlements or agreements related to the allocation of any losses, awards or proceeds from the condemnation, destruction or liquidation of all or part of the Project, or from the termination of the Project;

X. Paying for all Common Expenses, which the Board is required to pay for pursuant to the terms of these By-Laws or by law, or which in the Board's opinion shall be necessary or proper for the operation of the Project or for the enforcement of these By-Laws; 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; and provided further that any Common Expenses referred to herein relating only to Unit A shall be Unit A Class Expenses and payable by the Owner of Unit A based on the Unit A Class Common Interest, and any Common Expenses relating only to the B Units shall be B Unit Class Expenses and payable by the Owners of the B Units based on their respective B Unit Class Common Interest;

Y. Appointing a Managing Agent and delegating to it such powers as the Board deems necessary or appropriate, delegation of which is not otherwise prohibited herein or in the Declaration or by law;

Z. Keeping, or causing the Managing Agent, if any, to keep a current list of members of the Association and their current addresses, and the names and addresses of the vendees under Agreements of Sale, if any, as provided in Section VIII.5 of these By-Laws;

AA. Maintaining a current file of all Unit Deeds, subsequent deeds and other forms of conveyance (including, but not limited to, Agreements of Sale), for resolution of such questions as ownership and voting rights;

BB. Reviewing for the purpose of approval or disapproval of any Unit Owners requests to alter their respective Units;

CC. Establishing such penalties and fines as it deems appropriate with respect to enforcement of the provisions of the Act, the Declaration, these By-Laws, and the

Project Rules and Regulations, including penalties and fines for failure or refusal to pay to the Association on demand all costs and expenses required to be paid hereunder; provided such penalties and fines are not inconsistent with the law or the provisions herein. The unpaid amount of such penalties and fines against any Owner shall constitute a lien against the Owner's Unit, which may be foreclosed by the Board or Managing Agent in the same manner as provided herein and in the Act for Common Expenses; provided, however, that the said lien for such penalties and fines shall be subordinate to liens for taxes and assessments lawfully imposed by any governmental authority against the Unit and to all sums unpaid on mortgages of record;

DD. Establishing policies and procedures for evicting tenants for violations of the Act, the Declaration, these By-Laws, and the Project Rules and Regulations, where an Owner fails to take corrective action following notice by the Board or the Managing Agent of such violations.

EE. Granting permits and licenses for, and easements for utility, roadway and other purposes over, under or upon the Common Elements (including Limited Common Elements), as necessary for the operation of the Project;

FF. Receiving easements in favor of the Association as necessary for the operation of the Project; and

GG. Taking any other actions in the interest of and for the benefit of the Project and the Association, consistent with the Act, the Declaration, and these By-Laws, that from time to time may be necessary.

#### Section 4. Additions, Alterations or Improvements by the Board.

A. Subject to Section V.5 herein, whenever in the judgment of the Board the Common Elements (including the General Common Elements and the Limited Common Elements) shall require additions, alterations or improvements, costing in excess of one hundred thousand dollars (\$100,000.00), and the making of such additions, alterations or improvements shall have been approved by the Owners of Units having appurtenant thereto a majority of the total Common Interests, Unit A Class Common Interest, B Unit Class Common Interest, or the Developer (with respect to Capital Upgrades to the B Unit Limited Common Elements) as the case may be in accordance with Section III.4.B below, the Board shall proceed with such additions, alterations or improvements and shall assess the Unit Owners for the cost thereof as a Common Expense, Unit A Class Expense, or B Unit Class Expense, as the case may be. Any additions, alterations or improvements costing one hundred thousand dollars (\$100,000.00) or less may be made by the Board without approval of the Unit Owners subject to Section III.4.C below, and the cost thereof shall constitute part of the Common Expenses, Unit A Class Expenses, or B Unit Class Expenses, as the case may be.

B. Any additions, alterations or improvements to the Common Elements costing in excess of ONE HUNDRED THOUSAND (\$100,000.00):



