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Total Page(s): 22

FIRST RESTATEMENT OF THE BY-LAWS
OF
THE ASSOCIATION OF APARTMENT
OWNERS OF THE ISLAND SURF

WHEREAS, KIRCHMEYER DEVELOPMENT CORPORATION, a Hawaii corporation, general partner of Kanpak Limited Partnership, a limited partnership organized and registered under the laws of the State of Hawaii, whose post office address and place of business is 1993 Kihei Road, Kihei, County of Maui, State of Hawaii, executed the "Enabling Declaration Establishing A Plan For Condominium Ownership" dated September 18, 1972 (the "Declaration"), submitting the property of the project known as "The Island Surf" to the provisions of the Hawaii Condominium Property Act (Chapter 514A, Hawaii Revised Statutes, as amended), which Declaration was recorded in the Bureau of Conveyances of the State of Hawaii in Liber 8610 at Page 345, together with By-Laws attached to the Declaration as Exhibit A (the "By-Laws"), and site, elevation and floor plans filed in the Bureau as Condominium File Plan No. 244; (See Endnote 1) and

WHEREAS, the Declaration was amended by: the "Amendment of Declaration of Horizontal Property Regime" dated September 6, 1973, and recorded in the Bureau in Liber 9488 at Page 422; and the "Certificate of Amendment The Island Surf" dated July 22, 1980, and recorded in the Bureau in Liber 14884 at Page 227; and the By-Laws were also amended by the "Amendment to Bylaws for the Association of Apartment Owners of The Island Surf, A Horizontal Property Regime" acknowledged January 18, 1976, and recorded in the Bureau in Liber 11967 at Page 573; and

WHEREAS, Section 514A-82.2, Hawaii Revised Statutes, empowers the Board of Directors of the Association of Apartment Owners of The Island Surf (the "Association") to

restate the By-Laws to include any amendments to it and to conform them to the provisions of Chapter 514A, Hawaii Revised Statutes, and any other statute, ordinance, rule, or regulation enacted by any governmental authority, by a resolution adopted by the Board of Directors; and

WHEREAS, at a meeting duly held on MAY 13, 2002, the Board of Directors resolved to restate the By-Laws in accordance with Section 514A-82.2, Hawaii Revised Statutes;

NOW THEREFORE, the By-Laws are hereby restated to read as follows:

ARTICLE I

PLAN OF APARTMENT OWNERSHIP

SECTION 1. Apartment Ownership. The project located at 1993 Kihei Road, Kihei, County of Maui, State of Hawaii, known as "THE ISLAND SURF" is submitted to the provisions of Chapter 514A, Hawaii Revised Statutes. (See Endnote 1)

SECTION 2. By-Laws Applicability. The provisions of these By-Laws are applicable to the project. (The term "project" as used herein shall include the land.)

SECTION 3. Personal Application. All apartment owners, tenants of such owners, employees of owners and tenants, or any other persons that may in any manner use property or any part are subject to the Condominium Property Regime, State of Hawaii and the Declaration and By-laws of the association of apartment owners adopted pursuant to the Condominium Property Regime.

The mere acquisition or rental of any of the residential or commercial units (hereinafter referred to as "units") of the project or the mere act of occupancy of any of said units will signify that these By-Laws were accepted, ratified, and will be complied with. (See Endnote 2)

ARTICLE II

VOTING, MAJORITY OF OWNERS, QUORUM, PROXIES

SECTION 1. Voting. Voting shall be on a percentage basis and the percentage of the vote to which the owner is entitled is the percentage assigned to the unit or units in the Master Deed.

SECTION 2. Majority of Owners. As used in these By-Laws the term "majority of owners" shall mean those owners holding 51% of the votes in accordance with the percentages assigned in the Master Deed.

SECTION 3. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of a "majority of owners" as defined in Section 2 of this Article shall constitute a quorum.

SECTION 4. Proxies. Votes may be cast in person. The authority given by any apartment owner to another person to represent him at meetings of the Association shall be in writing, signed by the owner and delivered to the Secretary or the Managing Agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and must contain at least: the name of the Association, the date of the meeting of the Association, the printed name and signature of the person or persons giving the proxy, the apartment or apartments for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given. The proxy form which accompanies a notice of meeting shall be valid for the meeting to which the notice pertains and its adjournment only, may designate any person as proxy, and may be limited as the apartment owner desires and indicates. 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; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit.

All proxy forms, at a minimum, shall contain boxes wherein the owner may indicate that the owner wishes the proxy:

- (1) To be given for quorum purposes only;
- (2) To be given to a specific individual whose name is printed next to this box;
- (3) To be given to the board of directors as a whole and that the vote be made on the basis of the preference of the majority of the board; or
- (4) To be given to those directors present at the meeting and the vote to be shared with each board member receiving an equal percentage.

Neither the Board of Directors nor a member of the Board shall use Association funds to solicit proxies; provided that this shall not prevent a Board member from exercising his right as an apartment owner under Section 5, below. A copy, facsimile, telecommunication, or other reliable reproduction of a proxy may be used instead of the original proxy, provided the copy, facsimile or other reproduction is a complete copy of the entire original proxy.

Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering an apartment or under an agreement of sale affecting an apartment. (See Endnote 3)

SECTION 5. Solicitation of Proxies. No resident manager or Managing Agent shall solicit, for use by the manager or Managing Agent, any proxies from any apartment owner, nor shall the resident manager or Managing Agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. If the Board of Directors intends to use Association funds to distribute proxies, the Board shall first post notice of its intent to distribute proxies in prominent locations within the project at least thirty days prior to its distribution of proxies; provided that if the Board receives within seven 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:

- (A) 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) 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.

The Board of Directors shall not adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to association matters on the common elements by apartment owners; provided that the Board of Directors may adopt rules regulating reasonable time, place, and manner of such solicitations or distributions, or both. The Board of Directors may prohibit commercial solicitations. (See Endnote 4)

ARTICLE III

ADMINISTRATION

SECTION 1. Association Responsibilities. The owners of the units will constitute the Association of Owners (hereinafter referred to as "Association") who will have the responsibility of administering the project, approving the annual budget, establishing and collecting monthly assessments and arranging for the management of the project pursuant to an agreement, containing provisions relating to the duties, obligations, removal and compensation of the management agent. Except as otherwise provided, decisions and resolutions of the Association shall require approval by a majority of owners.

SECTION 2. Place of Meetings. Meetings of the Association shall be held at the principal office of the project or such other suitable place convenient to the owners as may be designated by the Board of Directors.

SECTION 3. Annual Meetings. The annual meetings of the Association shall be held at a time, date and place as may be designated by the Board of Directors. At such meetings there shall be elected by ballot of the owners a Board of Directors in accordance with the requirements of Section 5 of Article IV of these By-Laws. The Apartment Owners may transact such other business at such meetings as may be designated by the Board of Directors. (See Endnote 5)

SECTION 3 (SIC) Place of Meetings. All meetings of the Association of Apartment Owners shall be held at the address of the condominium project, or elsewhere within the state as determined by the Board of Directors. (See Endnote 6)

SECTION 4. Special Meetings. It shall be the duty of the President to call a special meeting of the owners as directed by resolution of the Board of Directors or upon a petition signed by a majority of the owners and having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of four-fifths of the owners present, either in person or by proxy.

SECTION 5. Notice of Meetings. Notices of association meetings whether annual or special, shall be sent to each member of the association by the secretary at least fourteen days

prior to the meeting, and shall contain at least: the date and the items on the agenda for the meeting and a standard proxy form authorized by the association, if any. (See Endnote 7)

SECTION 6. Adjourned Meetings. If any meeting of owners cannot be organized because a quorum has not attended, the owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

SECTION 7. Order of Business. The order of business at all meetings of the owners of units shall be as follows:

- (a) Roll Call.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Reports of Committees.
- (f) Election of directors.
- (g) Unfinished business.
- (h) New business.

SECTION 8. Minutes of Meetings.

(a) Minutes of meetings of the Board of Directors and Association shall include the recorded vote of each Board member on all motions except motions voted on in executive session. The minutes of meetings of the Board of Directors and Association shall be available for examination by apartment owners at convenient hours at a place designated by the Board of Directors. The most current minutes of the Board of Directors, once approved, shall be available to any owner at no cost or on twenty-four hour loan at a convenient location designated by the Board. Copies of other meeting minutes shall be provided to any owner upon the Owner's request provided that the owner pays a reasonable fee for duplication, postage, stationery and other administrative costs associated with handling the request.

(b) Minutes of meetings of the Board of Directors and Association shall be approved at the next succeeding meeting; provided that for Board of Directors meetings, no later than the second succeeding meeting.

(c) Minutes of all meetings shall be available within seven calendar days after approval and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session. (See Endnote 8)

ARTICLE IV

BOARD OF DIRECTORS

SECTION 1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors composed of five persons each of whom must be an owner, co-owner, a spouse of an owner, vendee under an agreement of sale, or an officer of any corporate owner of an apartment. The partners of a general partnership and the general partners of a limited partnership shall be deemed to be the owners of an apartment for this purpose. Directors

shall not expend Association funds for their travel, Directors' fees, and per diem, unless owners are informed and a majority approve of these expenses. (See Endnote 9)

SECTION 1 (SIC) Books and Examination. The manager or board of directors shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing maintenance and repair expenses of the common elements and other expenses incurred. All records and the vouchers authorizing the payments shall be kept and maintained at the address of the project, or elsewhere within the State as determined by the board of directors, and shall be available for examination by the apartment owners at convenient hours of (sic) week days. (See Endnote 10)

SECTION 2. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these By-Laws directed to be exercised and done by the owners.

SECTION 3. Other Duties. In addition to duties imposed by these By-Laws or by resolutions of the Association, the Board of Directors shall be responsible for the following:

- (a) Care, upkeep and surveillance of the project and the common areas and facilities and the restricted common areas and facilities.
- (b) Collection of monthly assessments from the owners.
- (c) Designation and dismissal of the personnel necessary for the maintenance and operation of the project, the common areas and facilities and the restricted common areas and facilities.

SECTION 4. Management Agent. The Board of Directors may employ for the Association a management agent who meets the requirements of Section 514A-95, Hawaii Revised Statutes, at a compensation established by the Board to perform such duties and services as the Board shall authorize including, but not limited to, the duties listed in Section 3 of this Article. (See Endnote 11)

SECTION 5. Election and Term of Office. At the expiration of the term of office of each respective Director, his successor shall be elected to serve a term of two (2) years. The Directors shall hold office until their successors have been elected and hold their first meeting. (See Endnote 12)

SECTION 6. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Association shall be filled by vote of the 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.

SECTION 7. Removal of Directors. At any regular or special meeting duly called, any one or more of the Directors may be removed with or without cause by a majority of the owners and a successor shall then and there be elected to fill the vacancy thus created. Such removal and replacement shall be in accordance with all applicable requirements and procedures in the By-Laws for the removal and replacement of Directors, including, but not limited to, any

provisions relating to cumulative voting. If such removal and replacement is to occur at a special Association meeting, the call for such meeting shall be by the President or by a petition to the Secretary or Managing Agent signed by not less than twenty-five per cent of the apartment owners as shown in the Association's record of ownership; and provided further that if the Secretary or Managing Agent shall fail to send out the notices for the special meeting within fourteen days of receipt of the petition, then the petitioners shall have the authority to set the time, date and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of the By-Laws. Except as otherwise provided herein, such meeting for the removal and replacement from office of directors shall be scheduled, noticed, and conducted in accordance with the By-Laws. Any Director whose removal has been proposed by the owners shall be given an opportunity to be heard at the meeting. (See Endnote 13)

SECTION 8. Organization Meeting. The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, providing a majority of the whole Board shall be present.

SECTION 9. Regular Meeting. 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 two such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meeting.

SECTION 10. Special Meetings. Special Meetings of the Board of Directors may be called by the President on three days notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least three Directors.

SECTION 11. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

SECTION 11A. Posting of Notice. Whenever practicable, notice of all Board meetings shall be posted by the resident manager or a member of the Board in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the Board of Directors. (See Endnote 14)

SECTION 12. Board of Directors' Quorum. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts

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

SECTION 12A. Owner Attendance at Board Meetings.

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

(b) The Board of Directors, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or litigation in which the Association is or may become involved. The nature of any and all business to be considered in executive session shall first be announced in open session. (See Endnote 15)

SECTION 13. Fidelity Bonds. In compliance with Sections 514A-95 and 514A-95.1, Hawaii Revised Statutes, the Board of Directors shall require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association. (See Endnote 16)

SECTION 14. Audit. In accordance with Section 514A-96, Hawaii Revised Statutes, the members of the Association of Apartment Owners shall require, by vote at the annual meeting, a yearly audit of the Association books by a certified public accountant. The Association shall also make available or distribute copies of the audited financial statement as required by Section 514A-96, Hawaii Revised Statutes. (See Endnote 17)

SECTION 15. Conflict of Interest. A Director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made. (See Endnote 18)

SECTION 16. Documents to be Furnished to Directors; Education Expenses.

(a) The Association, at its own expense, shall provide all Board members with a current copy of the Association's Declaration, By-Laws, House Rules, and annually, a copy of Chapter 514A with amendments.

(b) The Directors may expend association funds, which shall not be deemed to be compensation to the Directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as Directors; provided that the approved annual operating budget include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements of Section 514A-82(b)(10), Hawaii Revised Statutes. (See Endnote 19)

SECTION 17. Duty of Directors. Each Director shall owe the Association a fiduciary duty in the performance of the Director's responsibilities. (See Endnote 20)

SECTION 18. Prohibition on Employment of Officers. An owner shall not act as an officer of the Association and an employee of the Managing Agent employed by the Association. (See Endnote 21)

SECTION 19. Prohibition on Employees Selling or Renting Units. The Association's employees shall not engage in selling or renting apartments in the project except Association-owned units, unless such activity is approved by an affirmative vote of sixty-five per cent of the Association members. (See Endnote 22)

ARTICLE V

OFFICERS

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

SECTION 2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board and shall hold office at the pleasure of the Board.

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

SECTION 4. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of president of an Association, including but not limited to the power to appoint committees from among the owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

SECTION 5. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. 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 so do on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

SECTION 6. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary.

SECTION 7. Treasurer. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

ARTICLE VI

OBLIGATIONS OF THE OWNERS

SECTION 1. Assessments. All owners are obligated to pay monthly assessments imposed by the Association to meet all project communal expenses, which may include a liability insurance policy premium and an insurance premium for a policy to cover repair and reconstruction work in case of hurricane, fire, earthquake or other hazard. The assessments shall be made pro rata according to the percentage of common interest of the unit owned, as stipulated in the Master Deed.

SECTION 1A. Owners May Not Withhold Assessments.

(a) No apartment owner shall withhold any assessment claimed by the Association. An apartment owner who disputes the amount of an assessment may request a written statement clearly indicating:

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

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

(b) An apartment owner who pays the Association the full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If the apartment owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under Part VII of Chapter 514A, Hawaii Revised Statutes; provided that an apartment owner may only file for arbitration if all amounts claimed by the Association are paid in full on or before the date of filing. If the apartment owner fails to keep all Association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the apartment owner pays all Association assessments

within thirty days of the date of suspension, the apartment owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all Association assessments by the end of the thirty-day period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The apartment owner shall be entitled to a refund of any amounts paid to the Association which are not owed. (See Endnote 23)

SECTION 1B. Budgets and Reserves.

(a) The Board of Directors shall prepare and adopt an annual operating budget and distribute it to the apartment owners. At a minimum, the budget shall include the following:

- (1) The estimated revenues and operating expenses of the Association;
- (2) Information as to whether the budget has been prepared on a cash or accrual basis;
- (3) The total replacement reserves of the Association as of the date of the budget;
- (4) The estimated replacement reserves the Association will require to maintain the property, based on a reserve study performed by the Association;
- (5) A general explanation of how the estimated replacement reserves are computed;
- (6) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves; and
- (7) Information as to whether the amount the association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to paragraph (4).

(b) The association shall assess the apartment owners to either fund a minimum of fifty per cent of the estimated replacement reserves or fund one hundred per cent of the estimated replacement reserves when using a cash flow plan. For each fiscal year, the association shall collect the amount assessed to fund the estimated replacement reserves for that fiscal year reserves, as determined by the association's plan except that the Association may follow rules adopted by the Real Estate Commission to permit an association to fund in increments, over three years, estimated replacement reserves which have been substantially depleted by an emergency.

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

- (1) Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and
- (2) Separate, designated reserves for each part of the property for which capital expenditures or major maintenance will exceed \$10,000. Parts of the property for which capital expenditures or major maintenance will not exceed \$10,000 may be aggregated in a single designated reserve.

(d) Neither the Association nor an apartment owner, director, officer, managing agent, or employee of the Association who makes a good faith effort to calculate the estimated replacement reserves for the Association shall be liable if the estimate subsequently proves incorrect.

(e) At the request of the Real Estate Commission, the Association shall provide a copy of the annual operating budget of the Association as part of the Association's registration with the commission under Section 514A-95.1, Hawaii Revised Statutes.

(f) The Board may not exceed its total adopted annual operating budget by more than twenty per cent during the fiscal year to which the budget relates, except in emergency situations. Prior to the imposition or collection of an assessment under this paragraph, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Owners with the notice of assessment.

(g) The requirements of this section shall override any requirements in the Association's Declaration, By-Laws, or any other Association documents relating to preparation of budgets, calculation of reserve requirements, assessment and funding of reserves, with the exception of:

- (1) Any provisions relating to the repair and maintenance of property,
- (2) Any requirements in the Association's Declaration, By-Laws, or any other Association documents which require the Association to collect more than fifty per cent of reserve requirements; or
- (3) Any provisions relating to upgrading the common elements, such as additions, improvements, and alterations to the common elements.

(h) Subject to the procedures of Section 514A-94, Hawaii Revised Statutes, and any rules adopted by the Real Estate Commission, if the Board fails to comply with this section, any apartment owner may enforce compliance by the Board. In any proceeding to enforce compliance, if the Board has not prepared an annual operating budget and reserve study, the Board shall have the burden of proving it has complied with this section.

(i) As used in this section:

"Capital expenditure" means an expense which results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset which extends the life of an existing asset for a period greater than one year.

"Cash flow plan" means a minimum twenty-year projection of an association's future income and expense requirements to fund fully its replacement reserves requirements each year during that twenty-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that twenty-year period, except in an emergency.

"Emergency situation" means extraordinary expenses:

- (1) Required by an order of a court;
- (2) Necessary to repair or maintain any part of the property for which the Association is responsible where a threat to personal safety on the property is discovered;
- (3) Necessary to repair any part of the property for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget; or

- (4) Necessary to respond to any legal or administrative proceeding brought against the Association that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget.
- (5) Necessary for the Association to obtain adequate insurance for the property which the Association must insure.

"Major maintenance" means an expenditure for maintenance or repair which will result in extending the life of an asset for a period greater than one year.

"Replacement reserves" means funds for the upkeep, repair, or replacement of those parts of the property including, but not limited to roofs, walls, decks, paving, and equipment, which the Association is obligated to maintain. (See Endnote 24)

SECTION 2. Maintenance and Repair.

(a) Every owner must perform promptly all maintenance and repair work within his own unit, which if omitted would affect the project in its entirety or in a part belonging to other owners, being expressly responsible for the damages and liabilities that his failure to do so may engender.

(b) All the repairs or internal installations of the unit such as water, light, gas, power, sewage, telephones, air conditioners, sanitary installations, doors, windows, lamps and all other accessories belonging to the unit area shall be at the owner's expense.

(c) An owner shall reimburse the Association for any expenditures incurred in repairing or replacing any common area and facility damaged through his fault.

SECTION 3. Use of Units – Internal Changes.

(a) All units shall be utilized for lawful purposes only.

(b) Except as provided in Article XIV of the By-Laws, and Section 514A-89, Hawaii Revised Statutes, an owner shall not make structural modifications or alterations in his unit or installations located therein without previously notifying the Association in writing, through the Management Agent, if any, or through the President of the Board of Directors, if no management agent is employed. The Association shall have the obligation to answer within twenty (20) days and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification or alteration. (See Endnote 25)

SECTION 4. Use of Common Areas and Facilities and Restricted Common Areas and Facilities.

(a) An owner shall not place or cause to be placed in the lobbies, vestibules, stairways, elevators and other project areas and facilities of a similar nature both common and restricted, any furniture, packages or objects of any kind. Such areas shall be used for no other purpose than for normal transit through them.

SECTION 5. Right of Entry.

(a) An owner shall grant the right of entry to the management agent or to any other person authorized by the Board of Directors or the Association in case of any emergency originating in or threatening his unit, whether the owner is present at the time or not.

(b) An owner shall permit other owners, or their representatives, when so required, to enter his unit for the purpose of performing installations, alterations or repairs to the mechanical or electrical services, provided that requests for entry are made in advance and that such entry is at a time convenient to the owner. In case of an emergency, such right of entry shall be immediate.

(c) The apartment owners shall have the irrevocable right, to be exercised by the Board of Directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments. (See Endnote 26)

SECTION 6. Rules of Conduct.

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(a) Residents of the project shall be allowed to post any signs, advertisements, posters, or name plates of any kind in or on the project unless disapproved by the Association.

(b) Residents shall exercise extreme care about making noises or the use of musical instruments, radios, television and amplifiers that may disturb other residents.

(c) It is prohibited to hang garments, rugs, etc. from the windows or from any of the facades of the project.

(d) It is prohibited to dust rugs, etc., from the windows, or to clean rugs, etc., by beating on the exterior part of the project.

(e) It is prohibited to throw garbage or trash outside the disposal installations provided for such purposes in the service areas.

(f) No owner, resident or lessee shall install wiring for electrical or telephone installation, television antennae, machines or air conditioning units, etc., on the exterior of the project or that protrude through the walls or the roof of the project except as authorized by the Association.

ARTICLE VII

AMENDMENTS TO PLAN OF APARTMENT OWNERSHIP

SECTION 1. By-Laws. These By-Laws may be amended in any respect not inconsistent with provisions of law or the declaration by the vote or written consent of sixty-five percent (65%) of all apartment owners; provided that any proposed By-Law amendment with the rationale for the proposal may be submitted by the Board of Directors or by a volunteer apartment owners' committee. If submitted by that committee, it shall be accompanied by a petition signed by not less than twenty-five per cent of the apartment owners as shown in the Association's record of ownership. The proposed By-Laws, rationale, and ballots for voting on any proposed By-Law shall be mailed by the Board of Directors to the owners at the expense of the Association for vote or written consent without change within thirty days of the receipt of the petition by the Board of Directors. The vote or written consent required to adopt the proposed By-Law shall not be less than sixty-five per cent of all apartment owners; provided that the vote or written consent must be obtained within one hundred twenty days after mailing. In the event that the By-Law is duly adopted, then the Board shall cause the By-Law amendment to be recorded in the Bureau of Conveyances. The volunteer apartment owners' committee shall be precluded from submitting a petition for a proposed By-Law which is substantially similar to that

which has been previously mailed to the owners within one year after the original petition was submitted to the Board. This subsection shall not preclude any apartment owner or voluntary apartment owners' committee from proposing any By-Law amendment at any annual Association meeting. (See Endnote 27)

SECTION 1 (SIC) Attorneys Fees and Expenses of Enforcement. All costs and expenses, including reasonable attorney's fees, incurred by or on behalf of the association for:

1. Collecting any delinquent assessments against any owner's apartment;
2. Foreclosing any lien thereon;
3. Enforcing any provisions of the declaration, bylaws, house rules, and the Condominium Property Act; or
4. The rules and regulations of the real estate commission;

Against an owner or any occupant of an apartment shall be promptly paid on demand to the association by the apartment owner; provided that if the claims upon which the association takes any action are not substantiated, all costs and expenses, including reasonable attorney's fees, incurred by the apartment owner as a result of the action of the association, shall be promptly paid on demand to the apartment owner by the association. (See Endnote 28)

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

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

If any claim by an owner is not substantiated in any court action against the Association, any of its officers or directors, or its Board of Directors to enforce any provision of the Declaration, By-Laws, house rules or the Condominium Property Act, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the Association shall be awarded to the Association, unless the action was filed in small claims court or prior to filing the action in a higher court the owner has first submitted the claim to mediation, or to arbitration under the Condominium Property Act, and made a good faith effort to resolve the dispute under any of those procedures. (See Endnote 29)

ARTICLE VIII

MORTGAGEES

SECTION 1. Notice to Association. An owner who mortgages his unit, shall notify the Association through the Management Agent, if any, or the President of the Board of Directors in the event there is no Management Agent, the name and address of his mortgagee; and the Association shall maintain such information in a book entitled "Mortgagees of Units."

SECTION 1 (SIC) Personal Application. All apartment owners, tenants of such owners, employees of owners and tenants, or any other persons that may in any manner use property or any part are subject to the Condominium Property Act and the declaration and bylaws of the

association of apartment owners adopted pursuant to the Condominium Property Act. (See Endnote 30)

SECTION 2. Notice of Unpaid Assessments. The Association shall at the request of a mortgagee of a unit report any unpaid assessments due from the owner of such unit.

ARTICLE IX

COMPLIANCE

These By-Laws are set forth to comply with the requirements of Chapter 514A, Hawaii Revised Statutes.

In case any of these By-Laws conflict with the provisions of said Statute, it is hereby agreed and accepted that the provisions of the Statute will apply.

ARTICLE X

CONFLICT OF INTEREST

SECTION 1. Conflict of Interest. A Director shall not vote at any board meeting on any issue in which he has a conflict of interest. (See Endnote 31)

ARTICLE XI

RESIDENT MANAGER

SECTION 1. Resident Manager. No resident manager of the condominium shall serve on the board of directors. (See Endnote 32)

ARTICLE XII

LIST OF MEMBERS

SECTION 1. List of Members. The resident manager or managing agent, or board of directors shall keep an accurate and current list of members of the association of apartment owners and their current addresses and the names and addresses of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the board of directors and be made available to owners in accordance with Section 514A-83.3, Hawaii Revised Statutes. (See Endnote 33)

ARTICLE XIII

CONDUCT OF MEETINGS

SECTION 1. Conduct of Meetings. All association and board of directors meetings shall be conducted in accordance with Roberts Rules of Order, or other accepted rules for the conduct of meetings. (See Endnote 34)

ARTICLE XIV

DISCRIMINATION PROHIBITED

The Association shall not engage in any prohibited discrimination. The apartment owners adopt the following provisions to implement that policy, which shall apply regardless of any contrary requirement in the Association documents:

(a) In granting or withholding any approval or consent required under the Association documents, the Board of Directors shall avoid any prohibited discrimination.

(b) In enforcing any requirement of the Association documents, the Board shall avoid any prohibited discrimination against children, particularly in evaluating any request relating to occupancy restrictions or leasing or renting any apartment located in the Project.

(c) The Board may suspend any requirement of the Association documents which, if enforced, would result in prohibited discrimination. If the Board suspends any requirement which can be amended only with apartment owner approval, the Board shall propose the amendment or deletion of the requirement at the next meeting of the apartment owners, whether annual or special. The Board or the apartment owners may call a special meeting of the apartment owners for that purpose, in compliance with the By-Laws.

(d) A disabled occupant of the Project may keep a certified guide dog, signal dog, or other animal required because of the occupant's disability. If such an animal causes a nuisance, the occupant will be given a reasonable opportunity to resolve the problem by measures which fall short of removing the animal from the Project. If the Board determines those measures have been unsuccessful, it may require removal of the animal. If the Board requires removal, the occupant will be allowed reasonable time to obtain a suitable substitute animal. During that time, the animal creating the nuisance will be allowed to remain on the Project, provided its continued presence does not create an unreasonable imposition on any other occupant. In addition, a disabled guest of an apartment owner or occupant may bring a certified guide dog, signal dog, or other animal required for assistance onto the Project, provided the animal does not cause a nuisance or unreasonable disturbance.

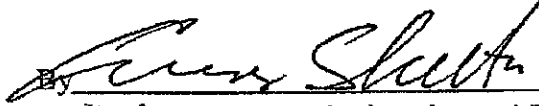
(e) At their own expense, disabled occupants may: (i) make reasonable modifications to an apartment or the common areas; and (ii) have reasonable exemptions from requirements of the Association documents, to enable the occupants to have full use and enjoyment of the Project. A disabled occupant requiring a modification or exemption shall submit a written request to the Board specifying the nature of the request and why it is necessary. The Board shall not unreasonably withhold or delay its consent to the request, and any such request shall be deemed to be granted if not denied in writing, within forty-five (45) days after the Board receives it.


As used in this section: "Prohibited discrimination" means any discrimination prohibited by any Federal or State law or any ordinance of the County of Maui. "Association documents: means the Declaration, By-Laws, House Rules, or any other documents of the Association. (See Endnote 35)

ADOPTION OF RESTATED BY-LAWS

The undersigned of said project hereby adopts the foregoing as the Restated By-Laws of its Association of Apartment Owners, this 11th day of June, 2002.

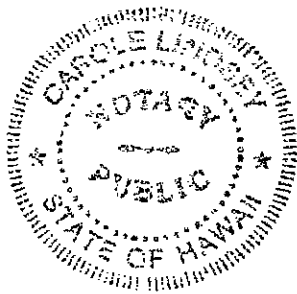
ASSOCIATION OF APARTMENT OWNERS
OF THE ISLAND SURF

By 
Its PRESIDENT ISLAND SURF AOA

By 
Its SECRETARY, ISLAND SURF AOA

STATE OF HAWAII)
)
) SS.
)
COUNTY OF MAUI)

On this 11th day of June, 2002, before me personally appeared Greg Shelton and Diane T. Dooley, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Carole Lindsey
Print Name: CAROLE LINDSEY
Notary Public, State of Hawaii

My Commission Expires: 12-15-02

ENDNOTES

The following endnotes correspond to provisions in the By-Laws which have been restated to conform to Chapter 514A, Hawaii Revised Statutes, and the Federal Fair Housing Act, as amended (42 U.S.C. Sections 3601 *et seq.*), and to integrate all amendments made to the By-Laws. These Restated By-Laws correctly state without change the corresponding provisions of the original By-Laws, as amended, and supersede the original By-Laws and all prior amendments thereto. This Restatement is made solely for the purpose of information and convenience. In the event of a conflict, the Restated By-Laws shall be subordinate to the cited statute and original By-Laws.

1. Act 98 (SLH, 1977) re-designated Chapter 514 as Chapter 514A, Hawaii Revised Statutes, and Act 65 (SLH, 1988) redesignated the Horizontal Property Act as the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes ("HRS"). Therefore, throughout this restatement, references to the previous usage have been amended to reflect present terminology.
2. Article I, Section 3 was amended by the "Certificate of Amendment The Island Surf," dated July 22, 1980 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 14884, Page 227.
3. Article II, Section 4 was amended by the "Certificate of Amendment The Island Surf," dated July 22, 1980 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 14884, Page 227, and has been further amended to conform to Section 514A-83.2, HRS, which states formal requirements for proxies, states when they must be submitted to the Association, and places limits on their solicitation and use.
4. Article II, Section 5 has been added to incorporate the requirements of Sections 514A-82(b)(4) and 514A-83.3, HRS, relating to this solicitation of proxies by resident managers, owners, Managing Agents, and Board members.
5. Article III, Section 3 was amended by the "Amendment to Bylaws for the Association of Apartment Owners of The Island Surf A Horizontal Property Regime," acknowledged January 18, 1976 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 11967, Page 573.
6. Article III, Section 3 was also amended by the "Certificate of Amendment The Island Surf," dated July 22, 1980 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 14884, Page 227. It is apparent that the amendment mistakenly stated that it was amending Section 3 when it actually was amending Section 2. The Restatement cannot change amendments already approved, hence the designation "SECTION 3 (SIC)." Nevertheless, it appears that this section supersedes the original Article III, Section 2.
7. Article III, Section 5 was amended by the "Certificate of Amendment The Island Surf," dated July 22, 1980 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 14884, Page 227.

8. Article III, Section 8 has been added to incorporate the statutory requirements for minutes stated in Sections 514A-83.4 and 83.5, HRS, including the requirements that votes of board members be recorded in the minutes.
9. Article IV, Section 1 was first amended by the "Amendment to Bylaws for the Association of Apartment Owners of The Island Surf A Horizontal Property Regime," acknowledged January 18, 1976 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 11967, Page 573. This section was later amended in its entirety by the "Certificate of Amendment The Island Surf," dated July 22, 1980 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 14884, Page 227. The last sentence of this section was added to reflect the restrictions of Section 514A-82(b)(10), HRS, on the rights of Board members to spend association funds for their travel, fees, and per diem unless the owners approve.
10. Article IV, Section 1 was also amended by the "Certificate of Amendment The Island Surf," dated July 22, 1980 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 14884, Page 227. It is apparent that the amendment was probably not intended to take the place of the original Section 1, however, hence its designation as "SECTION 1 (SIC)."
11. Article IV, Section 4 has been amended to reference the requirements for managing agents stated in Section 514A-95, HRS.
12. Article IV, Section 5 was amended by the "Amendment to Bylaws for the Association of Apartment Owners of The Island Surf A Horizontal Property Regime," acknowledged January 18, 1976 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 11967, Page 573.
13. Article IV, Section 7 has been amended to incorporate the requirements of Section 514A-82(b)(1) relating to removal of directors.
14. Article IV, Section 11A has been added to incorporate the requirements of Section 514A-82(b)(9), HRS, relating to posting of notice of Board of Directors' meetings.
15. Article IV, Section 12A has been added to incorporate the requirements of Section 514A-83.1, HRS, relating to the right of owners to attend Board meetings and the right of the Board to adjourn and reconvene in executive session.
16. Article IV, Section 13 has been amended to incorporate a reference to the fidelity bond requirements of Sections 514A-95 and 514A-95.1, HRS.
17. Article IV, Section 14 has been added to reference the requirements of Section 514A-96, HRS, relating to distribution of audit information to owners. Unlike the original By-Laws, Section 514A-96 now requires audits for the Association.
18. Article IV, Section 15 has been added to incorporate the requirements of Section 514A-82(b)(5), HRS, requiring Directors to disclose conflicts of interest prior to any vote on the issue for which a conflict arises. Note that, under Article X, a Director may not vote on any issue in which he has a conflict of interest.

19. Article IV, Section 16, subsections (a) and (b) have been added to incorporate the requirements of Sections 514A-82(b)(11), HRS, relating to the documents which must be provided to members of the Board of Directors, and 514A-82(b)(12) relating to education expenses, respectively.
20. Article IV, Section 17 has been added to incorporate the requirement of Section 514A-82.4, HRS, imposing a fiduciary duty on all Directors to the Association of Apartment Owners.
21. Article IV, Section 18 has been added to incorporate the requirements of Section 514A-82(b)(7), HRS, restricting an owner from acting as an officer of the Association and an employee of the Association's managing agent.
22. Article IV, Section 19 has been added to incorporate the restrictions of Section 514A-82(b)(8), HRS, on the right of Association employees to sell or rent apartments in the condominium in which they are employed, without owner approval.
23. Article VI, Section 1A has been added to incorporate the provisions of Section 514A-90(c) and (d) as subsections (a) and (b), which restrict an owner's right to withhold assessments from the Association, provide owners with a right to receive a full statement of all amounts owed, and permit an owner who pays amounts claimed by the Association to request arbitration or mediation to resolve any disputes about the amounts owed.
24. Article VI, Section 1B has been added to incorporate the provisions of Section 514A-83.6, HRS.
25. Article VI, Section 3(b) has been amended to incorporate a reference to Article XIV of the By-Laws, which recognizes the special rights which the Federal Fair Housing Act provides for families with children and disabled occupants and guests of the project, and to Section 514A-89, HRS which limits owner modifications.
26. Article VI, Section 5(c) has been added to incorporate the rights given to the Association by Section 514A-82(b)(6), HRS, to enter the apartments of owners in the project when necessary for the operation of the property or in the case of emergencies.
27. Article VII, Section 1 has been amended to incorporate the reduced requirements for owner approval of By-Law amendments (which reduces the approval requirements retroactively from 75% to 65%) and to incorporate the requirements relating to the rights of a volunteer owners' committee comprised of apartment owners to propose amendments to the By-Laws of the Association, all as stated in Section 514A-82(b)(2), HRS.
28. Article VII, Section 1 was also amended by the "Certificate of Amendment The Island Surf," dated July 22, 1980 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 14884, Page 227. That amendment was probably not intended to take the place of the original Section 1, however, hence its designation as "SECTION 1 (SIC)."
29. Article VII, Section 1 (SIC) has been further amended to incorporate the requirements stated in Section 514A-94, HRS.