

1 AMENDED BY-LAWS  
2 OF  
3 THE ASSOCIATION OF OWNERS OF  
4 MAKAHA SURFSIDE

5  
6 ARTICLE I  
7 CONDOMINIUM OWNERSHIP. APPLICABILITY OF BY-LAWS  
8

9 Section 1. Condominium Ownership. The property is located at 85-175 Farrington Highway,  
10 Waianae, City and County of Honolulu, State of Hawaii, was submitted to the provisions of  
11 Chapter 514, Hawaii Revised Statutes (the "Horizontal Property Act"), now known as Chapter  
12 514B, Hawai'i Revised Statutes (the "Condominium Property Act"), by a Declaration filed in the  
13 Office of the Assistant Registrar of the State of Hawai'i as Document No. 608328, and known as  
14 the "Makaha Surfside" (herein known as the Project).  
15

16 Section 2 Applicability of By-Laws The provisions of these By-Laws are applicable to the  
17 project and to the use and occupancy thereof. All present and future owners, mortgagees, lessees,  
18 and occupants of apartments, parking stalls, Convenience Service Centers or other interests in  
19 the property and their employees, and any other persons who may use the facilities of the Project  
20 in any manner are subject to these By-Laws, the Declaration and the House Rules.  
21

22 The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of  
23 an apartment or other interest in the Project or use of any of the facilities of the Project shall  
24 constitute an agreement that these By-Laws, the House Rules and the provisions of the  
25 Declaration, as they may be amended from time to time, are accepted, ratified, and will be  
26 complied with.  
27

28 Section 3. Office The Office of the Project and of the Board of Directors (hereinafter called the  
29 Board) and of the Association of Owners (hereinafter called the Association) shall be located at  
30 the address of the Project in Honolulu, Hawaii. All meetings of the Association and of the Board  
31 shall be held at said address unless some other place is stated in the call provided that in the  
32 event of a natural disaster, such as a hurricane, an association meeting may be held outside the  
33 State.  
34

35 ARTICLE II  
36 BOARD OF DIRECTORS  
37

38 Section 1. Number and Qualification. The affairs of the Project shall be governed by a Board  
39 composed of seven (7) persons, all of whom shall be owners co-owners, vendees under an  
40 agreement of sale, a trustee of a trust which owns an apartment, or an officer, partner, member, or  
41 other person authorized to act on behalf of any other legal entity which owns an apartment. There  
42 shall not be more than one representative on the board from any one apartment.  
43

44 Section 2. Powers and Duties The Board of Directors of the Association shall be responsible  
45 only for the administration of those portions of the project relating to the apartments and the  
46 common elements appurtenant thereto. All other areas of the Project shall be administered by

1 and be the sole responsibility of the owners, their successors and assigns.

2  
3 The Board shall have the powers and duties necessary for the administration of the affairs of the  
4 apartments described above, and may do all such acts and things except as by law or by the  
5 Declaration or by these By-Laws and may not be delegated to the Board by the owners. Such  
6 powers and duties of the Board shall include, but shall not be limited to, the following:

7  
8 (a) Operation, care, security, upkeep and maintenance of the portions of the common  
9 elements;

10  
11 (b) Collection of monthly assessments from the apartment owners;

12  
13 (c) Employment and dismissal of the personnel necessary for the maintenance, repair,  
14 replacement and operation of the common elements;

15  
16 (d) Keeping of detailed accurate records of the receipts and expenditures affecting the  
17 common elements specifying and itemizing the maintenance and repair expenses incurred. Such  
18 records and vouchers authorizing payment shall be available for examination by the apartment  
19 owners or other owners of interests in the Project at convenient hours of weekdays;

20  
21 (e) Obtaining of insurance for the Project, including the apartments, pursuant to the  
22 provisions of the Declaration;

23  
24 (f) Making of repairs, additions and improvements to or alterations of the Project and  
25 repairs to the restoration of the Project in accordance with the other provisions of these By-Laws,  
26 after damage or destruction by fire or other casualty, or as a result of condemnation or eminent  
27 domain proceedings;

28  
29 (g) Determination of common expenses and fixing of common charges.

30  
31 Section 3 Additions Alterations or Improvements by the Board Whenever in the judgment of  
32 the Board the common elements shall require additions, alterations or improvements, costing in  
33 excess of two hundred and fifty thousand dollars (\$250,000.00) as adjusted from time to time in  
34 accordance with the annual percentage increase in the Consumer Price Index for All Urban  
35 Consumers (“CPI-U”) for Honolulu published by the U. S. Bureau of Labor Statistics (provided  
36 that if said index shall no longer be published, a comparable index published by the United  
37 States government shall be used) and the making of such additions, alterations or improvements  
38 shall have been approved by the owners of apartments, parking stalls and Convenience Service  
39 Centers having appurtenant thereto a majority of the total common interests, the Board shall  
40 proceed with such additions, alterations or improvements and shall assess all owners for the cost  
41 thereof as a common expenses. Any additional alterations or improvements costing two hundred  
42 and fifty thousand dollars (\$250,000.00) or less as adjusted from time to time in accordance with  
43 the annual percentage increase in the Consumer Price Index for All Urban Consumers (“CPI-U”) for  
44 Honolulu published by the U. S. Bureau of Labor Statistics (provided that if said index shall  
45 no longer be published, a comparable index published by the United States government shall be  
46 used) may be made by the Board without approval of the owners and the cost thereof shall

1 constitute part of the common expenses.

2  
3 Section 4. Managing Agent and Manager. The Board may employ for the Association a  
4 management agent or manager, at a compensation established by the Board to perform such  
5 duties and services as the Board shall authorize including, but not limited to, the duties listed in  
6 Section 2 of this Article. The Board may employ any other employee or agent to perform such  
7 duties at such salaries as the Board may establish.

8  
9 Section 5. Election and Term of Office. Election of Directors may be by cumulative voting, shall  
10 be by secret ballot at each annual meeting unless waived, or at any special meeting called for that  
11 purpose. Directors shall hold office for a period of two (2) years or until their respective  
12 successors have been elected, subject to removal as herein provided.

13  
14 Section 6 Vacancies. Vacancies in the Board of Directors caused by any reason other than the  
15 removal of a Director by a vote of the Association shall be filled by vote of the majority of the  
16 remaining Directors, even though they may constitute less than a quorum, and each person so  
17 elected shall be a Director until a successor is elected at the next annual meeting of the  
18 association. Death, incapacity, or resignation of any Director shall cause his office to become  
19 vacant.

20  
21 Vacancies in the Board of Directors caused by any reason other than the removal of a director by  
22 a vote of the Association shall be filled by a majority of the remaining Directors until a  
23 successor is elected by the Association at the next annual meeting or duly noticed special  
24 Association meeting. Any special Association meeting to fill vacancies shall be held on a date  
25 that allows sufficient time for owners to declare their intention to run for election and to solicit  
26 proxies for that purpose.

27  
28 Section 7. Removal of Directors At any regular or special meeting duly called, any one or more  
29 of the Directors may be removed with or without cause by a majority of the owners and a  
30 successor shall then and there be elected to fill the vacancy thus created. Any Director whose  
31 removal has been proposed by the owners shall be given an opportunity to be heard at the  
32 meeting.

33  
34 Section 8 Compensation. No compensation shall be paid to Directors for their services as  
35 Directors. The directors may expend Association funds, which shall not be deemed to be  
36 compensation to the directors, to educate and train themselves in subject areas directly related to  
37 their duties and responsibilities as directors; provided that the approved annual operating budget  
38 shall include these expenses as separate line items. These expenses may include registration fees,  
39 books, videos, tapes, other educational materials, and economy travel expenses.

40  
41 Section 9 Organization Meeting. The first meeting of a newly-elected Board of Directors shall  
42 be held immediately after the meeting at which such Directors were elected, and no notice shall  
43 be necessary to the newly elected Directors in order legally to constitute such meeting, provided  
44 that a majority of the whole Board must be present.

45  
46 Section 10. Regular Meetings Regular meetings of the Board may be held at such time and

1 place as shall be determined from time to time by a majority of the Directors. Notice of regular  
2 meetings of the Board shall be given to each Director; by email , by telephone or by mail address  
3 to residence at least 7 days prior to meeting date. Notice of all Board meetings shall be posted by  
4 the managing agent, resident or site manager, or a member of the Board, in prominent locations  
5 within the project seventy-two hours prior to the meeting or simultaneously with notice to the  
6 Board.

7  
8 Section 11. Special Meetings Special meetings of the Board may be called by the President on  
9 one day's notice to each Director, given personally or by mail, addressed to his residence, or by  
10 telephone, or e-mail , which notice shall state the time, place (as hereinafter provided) and  
11 purpose of the meeting. Special meetings of the Board shall be called by the President or  
12 Secretary in like manner and on like notice on the written request of at least three Directors.

13  
14 Section 12 Waiver of Notice Before or at any meeting of the Board, any Director may, in  
15 writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving  
16 of such notice. Attendance by a Director at any meeting of the Board, shall be a waiver of notice  
17 by him of the time and place thereof. If all the Directors are present at any meeting of the Board,  
18 no notice shall be required and any business may be transacted at such meeting.

19  
20 Section 13. Board of Directors' Quorum. At all meetings of the Board, a majority of the  
21 Directors shall constitute a quorum for the transaction of business, and the acts of the majority of  
22 Directors present at a meeting at which a quorum is present shall be the acts of the Board. If, at  
23 any meeting of the Board, there may be less than a quorum present, the majority of those present  
24 may adjourn the meeting from time to time. At any such adjourned meeting, any business which  
25 might have been transacted at the meeting as originally called may be transacted without further  
26 notice.

27  
28 Section 14. Bonds of Officers and Employees. The Association shall at all times maintain a  
29 fidelity bond covering persons, including the managing agent and its employees, who control or  
30 disburse funds of the Association. The premium on such bonds shall be paid by the Association.

31  
32 Section 15. Teleconference Meetings. The Board may permit any meeting to be conducted by  
33 any means of communication through which all directors participating may simultaneously hear  
34 each other during the meeting. A director participating in a meeting by this means is deemed to  
35 be present in person at the meeting. If permitted by the Board, any apartment owner may  
36 participate in a meeting conducted by a means of communication through which all participants  
37 may simultaneously hear each other during the meeting, provided that the Board may require that  
38 the apartment owner pay for the costs associated with the participation.

39  
40 ARTICLE III  
41 ASSOCIATION OF OWNERS  
42

43 Section 1 Annual Meeting. The annual meeting of the Association shall be held once a year,  
44 within 90 days following the close of the Association's fiscal year on a date to be decided by the  
45 Board.

1 Section 2. Special Meetings. Special meetings may be held at any time upon the call of the  
2 President or upon the call of owners of interests to which are appurtenant, in the aggregate, not  
3 less than twenty-five percent (25%) of the common interests. Upon receipt of such call, the  
4 Secretary shall send out notices of the meeting to all members of the Association by mail or  
5 email if authorized in writing by the owner.  
6

7 Section 3. Notice of Meetings. A written or printed notice of every meeting, the authority for  
8 the call of the meeting, the place, day and hour thereof, and the purpose therefor shall be given  
9 by the Secretary or the person or persons calling the meeting not less than fourteen days(14) days  
10 before the date set for such meeting. Such notice shall be given to each member in any of the  
11 following ways: (a) by leaving the same with him personally, or (b) by leaving the same at his  
12 place of residence or usual place of business of such member, or (c) by mailing it, postage  
13 prepaid, addressed to such member at his address as it appears on the records of the Association,  
14 or email if authorized in writing by the owner or (d) by publishing such notice in any newspaper  
15 of general circulation in the County wherein the Project is located, such notice to be published  
16 not less than two times on successive days, the first publication thereof to be not less than three  
17 days nor more than ten days prior to the day assigned for the meeting. If notice is given  
18 pursuant to the provisions of this section, the failure of any member to receive actual notice of  
19 the meeting shall in no way invalidate the meeting or proceedings thereat.  
20

21 Section 4. Waiver of Notice. The presence of all the members, in person or by proxy, at any  
22 meeting shall render the same a valid meeting, unless any member shall, at the opening of such a  
23 meeting, object to the holding of the same for noncompliance with the provisions of Section 3 of  
24 the ARTICLE III. Any meeting so held without objection shall, notwithstanding the fact that no  
25 notice of meeting was given, or that the notice was improper, be valid for all purposes, and at  
26 such meeting any general business may be transacted and any action may be taken.  
27

28 Section 5 Quorum. At any meeting of the Association, the owners of interests in aggregate  
29 which represents a majority of the total interest in the common interest are present; in person or  
30 by proxy shall constitute a quorum. The acts of a majority of a quorum present, in person or by  
31 proxy at any meeting shall be the acts of the Association, except as otherwise provided by law or  
32 By-Laws. "Majority" as used herein means more than fifty percent (50%).  
33

34 Section 6. Voting. Voting shall be on a percentage basis, and the percentage of the total vote to  
35 which the owner of any interest is entitled shall be the percentage assigned to such interest in  
36 accordance with the Declaration. Any specified percentage of the owners means the owners of  
37 interests to which they are appurtenant such percentage of the common interests as are  
38 established in accordance with the Declaration. Any person, firm, corporation, trust or other legal  
39 entity or a combination thereof, owning any unit in said Project duly recorded in his or its name,  
40 the ownership whereof shall be determined by the records of the Office of the Assistant Registrar  
41 of the Land Court, State of Hawaii, shall be a member of the Association, and either in person or  
42 by proxy entitled to vote the percentage of vote assigned to each interest so owned at all  
43 meetings of the Association. Any provision to the contrary notwithstanding co-owners or joint  
44 owners shall be deemed one owner entitled to the percentage vote allocated to their interest.  
45

46 Section 7. Voting. Proxies and pledges. The authority given by a member to another person to

1 represent such member at meetings of the Association shall be in writing, signed by such  
2 member or if such member is a firm, corporation, partnership, association, trust, or other legal  
3 entity, by the trustee, officer, partner, member, or other person authorized to act on behalf of any  
4 other legal entity which owns an apartment, and shall be filed with the Secretary. An executor,  
5 administrator, guardian or trustee may vote in person or by proxy at any meeting of the  
6 Association with respect to any interest owned or held by him in such capacity, whether or not  
7 the same shall have been transferred to his name by a duly recorded conveyance. In case such  
8 interest shall not have so been transferred to his name, he shall satisfy the Secretary that he is the  
9 executor, administrator, guardian or trustee holding such interest in such capacity. A proxy to be  
10 valid, shall comply with Section 514B-123, Hawai'i Revised Statutes, or any successor thereto.

11  
12 Section 8. Adjournment Any meeting of the Association may be adjourned from time to time to  
13 such place as may be determined by majority vote of the members present, whether a quorum be  
14 present or not, without notice other than the announcement of the meeting. Any such adjourned  
15 meeting at which a quorum shall be present, an business may be transacted which might have  
16 been transacted by a quorum at the meeting as originally called.

17  
18 ARTICLE IV  
19 OFFICERS  
20

21 Section 1. Designation. The principal officers of the Association shall be a President, a Vice  
22 President, a Secretary, and a Treasurer, all of whom shall be elected by and from the Board of  
23 Directors. The Directors may appoint an assistant treasurer, an assistant secretary, and such other  
24 officers, who need not be members of the Board, as they in their judgment deem necessary.

25  
26 Section 2. Election of Officers. The officers of the Association shall be elected annually by the  
27 Board at the organization meeting of each new Board and shall hold office at the pleasure of the  
28 Board.

29  
30 Section 3 Removal of Officers. Upon an affirmative vote of a majority of the members of the  
31 Board, any officer may be removed, either with or without cause, and his successor elected at  
32 any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

33  
34 Section 4 President The President shall be the chief executive officer of the Association and a  
35 member of the Board. The President shall preside at all meetings of the Association and of the  
36 Board shall have all of the general powers and duties which are usually vested in the office of  
37 President of an Association, including but not limited to the power to appoint committees from  
38 among the owners from time to time as the President may decide is appropriate to assist in the  
39 conduct of the affairs of the Association.

40  
41 Section 5. Vice President. The Vice President shall take the place of the President and perform  
42 his duties whenever the President shall be absent or unable to act. If neither the President nor the  
43 Vice President is able to act, the Board shall appoint some other member of the Board to do so on  
44 an interim basis. The Vice President shall also perform such other duties as shall from time to  
45 time be imposed by the Board of Directors.

1 Section 6. Treasurer. The Treasurer shall supervise the management agent's or manager's  
2 custody of all funds of the Association, maintenance of accounts and records thereof, and  
3 preparation of final reports thereof.  
4

5 Section 7. Secretary. The Secretary shall attend and keep the minutes of all meetings of the  
6 Board and of the Association, shall give all notices as provided by these By-Laws, and shall have  
7 such other powers and duties as may be incidental to the office of Secretary, given by these By-  
8 Laws or assigned from time to time by the Directors. If the Secretary is not present at any  
9 meeting, the presiding officer shall appoint a Secretary Pro Tem who shall keep the minutes of  
10 such meeting and record them in the books provided for that purpose.  
11

12 Section 8 Auditor. The Association shall require an annual audit of the Association financial  
13 accounts and no less than one annual unannounced verification of the Association's cash balance  
14 by a public accountant.  
15  
16

17 ARTICLE V  
18 OBLIGATIONS OF THE OWNERS  
19

20 Section 1 Determination of Common Expenses and Fixing of Common Charges The Board  
21 shall from time to time, and at least annually, prepare a budget for the Project, determine the  
22 amount of common charges payable by the owners to meet common expenses of the Project, and  
23 allocate and assess such common charges among the owners according to their respective  
24 common interests. The common expenses shall include, among other things, the cost of all  
25 insurance premiums on all policies of insurance required to be or which have been obtained by  
26 the Board pursuant to the Declaration. The Board shall advise all owners promptly, in writing, of  
27 the amount of common charges payable by each of them respectively, as determined by the  
28 Board. Such charges shall be due and payable by each of them respectively, as determined by  
29 the Board. Such charges shall be due and payable monthly in advance of the first day of the  
30 month, shall be subject to a late fee penalty, an amount determined by the Board of Directors, ten  
31 (10) days after the due date until paid, and with such interest shall be a lien on the entire  
32 condominium interest of the delinquent owner, assessed prior in right to all other charges  
33 whatsoever except that such lien shall be 1) subordinate to assessments, liens and charges in  
34 favor of the state of Hawaii for taxes past due and unpaid on such apartment of interest. 2  
35 )Subordinate to the lien of any mortgage instrument duly recorded. Said expenses and  
36 assessments shall be received periodically by the Board to determine if any adjustment of the  
37 charges are necessary.  
38

39 Section 1A Use of Apartments. No trade of business of any kind may be conducted in or from  
40 any residential Apartment except that an Owner or occupant residing in a residential Apartment  
41 may conduct such business activity within the Apartment so long as: (a) the existence or  
42 operation of the business activity is not apparent or detectable by sight, sound, or smell from the  
43 exterior of the Apartment: (b) the business activity conforms to all zoning requirements: (c) the  
44 business activity does not involve persons coming onto the common elements who do not reside  
45 in the condominium: (d) the business activity does not increase the liability or casualty insurance  
46 obligation or premium of the Association: and (e) the business activity is consistent with the

1 residential character of the Association and does not constitute a nuisance or hazardous or  
2 offensive use, as may be determined in the sole discretion of the Board of Directors.

3  
4 Section 1B No Timesharing. The residential apartments in the Project or any interest therein  
5 shall not be sold, transferred, conveyed, leased, occupied, rented or used for or in connection  
6 with any time-sharing plan, arrangement or program, including without limitations any so-called  
7 “vacation license”, “travel club or other membership” or “time-interval ownership” arrangement.  
8 The term “time-sharing” as used shall be deemed to include, but shall not be limited to any plan,  
9 program or arrangement under which the right to use, own, lease or possess an apartment or  
10 apartments in the Project rotates among persons on a periodically recurring basis according to a  
11 fixed or floating interval or period of time, whether by way of deed, lease, association or club  
12 membership, beneficial interest under a Hawaii Land Trust, rental or use agreement, co-tenancy  
13 agreement, partnership or otherwise.

14  
15 Section 1C Insurance – Apartments

16  
17 (1) As provided by Section 514B-143(g), Hawaii Revised Statutes and  
18 notwithstanding anything to the contrary herein or in the Declaration, the  
19 Board shall have the authority to require Apartment Owners to obtain  
20 reasonable types and levels of insurance in an amount determined by the  
21 Board from time to time. The liability of an Apartment Owner shall include  
22 but not be limited to the deductible of the Owner whose Apartment was  
23 damaged, any damage not covered by insurance required by this subsection, as  
24 well as the decorating, painting, wall and floor coverings, trim, appliances,  
25 equipment, and other furnishings.

26  
27 (2) If the apartment Owner(s) do not purchase or produce evidence of insurance  
28 requested by the Board, the Board may, in good faith, purchase the insurance  
29 coverage and charge the reasonable premium cost back to the Apartment  
30 Owner or Owners. In no event shall the Association or Board be liable to any  
31 person with regard to the failure or neglect of an Owner to purchase insurance,  
32 for a decision by the Board not to purchase insurance for the Owner as  
33 provided in the Condominium Property Act, or with regard to the timing of its  
34 purchase of the insurance or the amounts or types of coverage obtained.

35  
36  
37 Section 1D Damage and Destruction. If the building is damaged by fire other casualty which is  
38 insured against and said damage is limited to a single unit, the insurance proceeds shall be used  
39 by the Board, for payment of the contractor employed by the Board to rebuild or repair such  
40 Apartments, including paint, floor covering and fixtures, in accordance with the original plans  
41 and specifications therefor. If such damages extends to two or more Apartments or extends to any  
42 part of the limited common elements or the common elements:

43  
44 a) If apartments owners do not within six (6) months after such casualty agree in writing,  
45 in accordance with the provisions of the Declaration that the building need not be rebuilt, the  
46 Board shall contract to repair or rebuild the damaged portions of the building including all

1 Apartments so damaged, as well as the common elements, in accordance with plans and  
2 specification therefor, which will restore the same to the design immediately prior to destruction.  
3 The insurance proceeds shall be paid by the board or by the insurance trustee, if any, to the  
4 contractor employed for such work, in accordance with terms of the contract for such  
5 construction. If the insurance proceeds are insufficient to pay all the costs of repairing and/or  
6 rebuilding such damaged portions of the building, the board is expressly authorized to pay such  
7 costs in excess of the insurance proceeds from the maintenance fund, and if the maintenance  
8 fund is insufficient for this purpose, the Board shall levy a special assessment on the owners of  
9 the apartments in proportion to their respective common interest.

10  
11 b) The cost of the work shall be paid out from time to time or at the direction of the  
12 Board as the work progresses, subject to the following conditions:

- 13  
14 i. A certified architect and/or registered professional engineer will be in charge of  
15 the work.  
16 ii. Notice of payment shall be made not less than seven (7) days and shall be  
17 accompanied by a certificate from the architect and or engineer stating the work  
18 completed has been done in compliance with the approved plans and  
19 specifications and that the sum requested is required to reimburse the board for  
20 payments by the Board to or is justly due to the contractor, subcontractor, and all  
21 other persons rendering services or material for the work ( giving a brief  
22 description of such services and materials), and that when added to all sums  
23 previously paid out by the Board, the sum requested does not exceed the value of  
24 the work done to date of certificate.  
25 iii. Each request shall be accompanied by waivers of liens satisfactory to the Board or  
26 Insurance Trustee, covering that part of the work for which payment or  
27 reimbursement is being requested and by a title company insurance policy that  
28 insures that no liens are filed on the work completed.  
29 iv. The request for payment after the work has been completed shall be accompanied  
30 by a copy of any certificate required by authority to render legal occupancy of the  
31 premises.  
32 v. The fees and expenses of the Insurance trustee as determined by the Board and/or  
33 insurance trustee shall be paid by the Association as a common expenses, such  
34 fees and expenses may be deducted from any proceeds at any time in the hands of  
35 Insurance trustee.  
36 vi. Such other conditions not inconsistent with the foregoing as the Board may  
37 reasonably request.

38  
39 c) Upon the completion of the work and payment in full therefore, any remaining proceeds  
40 of the insurance then and thereafter in the hands of the Board or the Insurance Trustee if any,  
41 shall be paid or credited to the Owners of the Apartments (or to the holder of the mortgage  
42 on an Apartment if applies)in proportion to their respective common interest.)  
43

44 d) To the extent that any loss, damage or destruction to the building or other property is  
45 covered by insurance procured by the Board, the Board shall have no claim or cause of action  
46 for such loss, damage or destruction against any Apartment Owner or lessee is covered by

1 insurance procured by such Owner or lessee, such Owner or lessee shall have no claim or  
2 cause of action for such a loss, damage or destruction against the Board, Managing Agent or  
3 any other apartment Owner or the Association. All policies of insurance referred to in this  
4 paragraph (d) shall contain appropriate waivers of subrogation.  
5

6 e) Disposition of the Building. In the event all apartment owners shall agree in writing,  
7 consented to by mortgagees of their respective interests, that the building need not be rebuilt,  
8 the insurance proceeds shall be used to remove the remaining improvements on the land  
9 included in the Association. The balance if any shall be allocated to the Apartment Owners  
10 in accordance with the interest in common elements appurtenant to each apartment, provided  
11 that no payment shall be made to an Apartment Owner until there has been paid from his  
12 share of the proceeds and all liens on that owners apartment.  
13

14 f) Condemnation. In the event of a taking in condemnation or by eminent domain of part or  
15 all of the common elements, the award made for such taking shall be payable to the Board of  
16 Directors and the Apartment Owners on the request of the Board shall execute an assignment  
17 of their interest in any such award to the Board. In the event of partial taking, the Board shall  
18 arrange for the repair and restoration of such common elements and the Board shall disburse  
19 the proceeds of such awards so received to the contractors engaged in such repair and  
20 restoration in the appropriate progress payments noted above. In the event of all of the  
21 building is taken, the Board shall disburse the net proceeds of such award received by the  
22 Board in the same manner as required to distribute insurance proceeds.  
23

24 Section 2 Maintenance and Repair. (a) All maintenance of and repairs to any apartment,  
25 parking stall or Convenience Service Center, structural or non-structural, ordinary or  
26 extraordinary, (other than maintenance of and repairs to any common elements contained therein,  
27 and not necessitated by the negligence, misuse or neglect of the owner thereof shall be made by  
28 the owner thereof. Each owner shall be responsible for all damages to any and all other  
29 apartments, parking stalls and Convenience Service Centers and/or to the common elements, that  
30 his failure to do so may engender. (b) All maintenance, repairs and replacements to the common  
31 elements, whether located inside or outside of the apartments, parking stalls or Convenience  
32 Service Centers, (unless necessitated by the negligence, misuse or neglect of an owner, in which  
33 case such expense shall be charged to such owner), shall be made by the Board and charged to all  
34 owners as a common expense  
35

36 (b) An apartment Owner grants a right of access to his apartment to the Manager and/or  
37 Managing agent and /or any other person authorized by the Board of Directors, the Manager or  
38 the Managing Agent, for the purpose of making inspections or for the purpose of correcting any  
39 condition originating in his Apartment and threatening another Apartment or a common element,  
40 or for the purpose of performing installations, alterations or repairs to the mechanical or  
41 electrical services or other common elements in his apartment or elsewhere in the building,  
42 provided that request for entry are made in advance and that any such entry is at a time  
43 reasonably convenient to the Owner. In case of an emergency, such right of entry shall be  
44 deemed granted, to be effective immediately, whether the Owner is present at the time or not.  
45 The Association shall not be responsible to pay the costs of removing or replacing any finished  
46 surfaces or other barriers that impede its ability to maintain and repair the common elements.

1  
2 Section 3 Representation. The Board, shall represent the Association or any two or more owners  
3 similarly situated as a class in any action, suit, hearing or other proceeding concerning the  
4 Association, the common elements or more than one apartment, parking stall or Convenience  
5 Service Center, and on its or their behalf may institute, defend, intervene in, prosecute and settle  
6 any such actions, suits and proceedings, without prejudice to the rights of any owners  
7 individually to appear, sue or be sued. Service of process on two or more owners in any such  
8 action, suit or proceeding shall be made as provided by law and the rules of court.  
9

10 Section 4 Foreclosure of Lien. In any suit to foreclose a lien against any owner of an  
11 apartment, parking stall or Convenience Service Center, the Association shall be represented  
12 through the Board. The Manager or Board acting on behalf of the owners, shall have the power  
13 to bid for and acquire any such apartment, parking stall or Convenience Service Center at the  
14 foreclosure sale. The delinquent owner shall be required to pay to the Association a reasonable  
15 rent for such apartment, parking stall or Convenience Service Center until sale or foreclosure,  
16 together with all costs and reasonable attorney's fees. Suit to recover a money judgment for  
17 unpaid common expenses shall be maintainable with all costs and reasonable attorney's fees  
18 without foreclosing or waiving the lien securing the same.  
19

20 Section 5. House Rules. The Board may, from time to time, adopt, amend, modify and/or  
21 revoke in full or in part, such reasonable rules and regulations, to be called House Rules  
22 governing the conduct of persons using said Project as it may deem necessary. Copies of such  
23 House Rules, upon adoption, amendment, modification and/or revocation thereof shall be  
24 delivered to each owner of an apartment, parking stall and Convenience Service Center in the  
25 Project and shall be binding upon its members of the Association, occupants of apartments, and  
26 other users of the premises. House Rules will be delivered by email to all residents who have  
27 provided their email addresses, and will be posted on the (3) three bulletin boards on the  
28 property, and posted on the Makaha Surfside Web site within 48 hours of changes or additions.  
29

30 Section 6. Title. Every owner shall promptly cause to be duly recorded in the Office of the  
31 Assistant Registrar of the Land Court, State of Hawaii, the deed, lease, assignment or other  
32 conveyance to him of his apartment or other evidence of his title thereto. Such evidence of title  
33 must be filed with the Manager who shall maintain such information in the record of ownership  
34 of the Association.  
35

36 Section 7. Animals. No animals whatsoever shall be kept or allowed in any part of the project,  
37 provided that:

38 (a) Notwithstanding the foregoing, any owner that is keeping a pet in the owner's  
39 apartment as of the date of recordation stamped on the first page hereof may upon the death of  
40 the animal, replace the animal with another and continue to do so for as long as the owner  
41 continues to reside in the Project.

42 (b) Tenants or owners who are persons that are handicapped as defined in Chapter  
43 515, Hawai'i Revised Statutes, and who do not have an equal opportunity to use and enjoy  
44 apartments or the common elements on account of such handicap or disability, may be permitted  
45 to keep animals as a reasonable accommodation when such accommodation is necessary to  
46 afford the person with such equal opportunity; provided that such persons:

1 (i) provide such information as is necessary to establish that the person is  
2 disabled, if the disability is not apparent;

3 (ii) provide such information as is necessary to establish the need for the use  
4 of the animal to afford the person equal use and enjoyment of the housing, including but not  
5 limited to a report from the person's treating physician, psychiatrist, psychologist, other mental  
6 health professional, or social worker to establish that the animal provides support and alleviates  
7 at least one of the symptoms or effects of the person's disability.

8 (c) Animals shall not be kept, bred or used for any commercial purpose, nor allowed  
9 on any common elements except in transit when carried or on a leash and in the owner's full  
10 control or be allowed to defecate or urinate on the common elements, and the owner must clean  
11 up after the animal in the event that the animal defecates or urinates upon the common elements  
12 and repair any damage to the Project caused by the animal.

13 (d) Any animal which is causing a nuisance or unreasonable disturbance to any other  
14 occupant of the building including but not limited to making excessive noise, or which poses a  
15 threat to the health or safety of any owner, occupant or guest, including but not limited to lunging  
16 at, threatening or attacking any owner, occupant or guest shall, upon notice given by the Board of  
17 Directors or Managing Agent, be immediately and permanently removed from the premises.  
18 "Excessive noise" means continuous and/or incessant barking, baying, crying, howling, or any  
19 other noise which disturbs any person at any time of day or night for ten consecutive minutes or  
20 intermittently for twenty minutes.

21 (e) All animals must be registered with the Resident or Site Manager.

22 (f) Notwithstanding anything herein to the contrary, animals which exhibit aggressive  
23 or vicious behavior are not permitted.

24 (g) Animal waste must not be disposed of in a toilet or sink or elsewhere where it will  
25 enter the waste disposal or storm drain systems. It must be double-bagged and placed in a  
26 dumpster.

## 27 28 Section 8 Enforcement of Declaration, By-Laws and House Rules.

29  
30 (a) Fines and Penalties. In the event that any owner or occupant of an apartment, any  
31 renter, lessee, or guest, or occupant of an apartment fails to comply with any provision of the  
32 Declaration, these By-Laws, or the house rules and regulations, the Board may, in its sole and  
33 absolute discretion impose reasonable fines in such amount and/or penalties of such nature  
34 (including the temporary or permanent loss of the use of any common element) as the Board  
35 shall determine from time to time and in accordance with procedures established by the Board.  
36 Any fine imposed pursuant to this section shall be paid promptly upon demand and shall  
37 constitute a lien upon the apartment of such Owner which may be foreclosed in the same manner  
38 as the lien for unpaid common expenses. The Owner or person committing such violation shall  
39 be afforded and opportunity to appeal any such fine or penalty by submitting a written request  
40 setting forth the reasons why such fine or penalty should be reversed, waived, or modified. The  
41 person submitting such a request shall be informed in writing of the decision of the Board with  
42 regard thereto; provided however, that the fine or penalty shall not be stayed pending the  
43 outcome of such appeal. The decision of the Board on such appeal shall be final and conclusive.

44  
45 (b) Litigation, Costs and Expenses. All costs and expenses incurred including reasonable  
46 attorney's fees shall be paid for by the offending party and owner in the event of any action to

1 recover penalties and damages or for injunctive relief.

2  
3 (c) Abatement and Enjoinment of Violations by Apartment owners. The violation of any  
4 rule or regulation adopted by the Board of Directors or the breach of any By-Laws contained  
5 herein, or the breach of any provision of the Declaration shall give the Board of Directors the  
6 right, in addition to any other rights set forth in these By-Laws:

7  
8 i. to enter the apartment in which, or as to which , such violations or breach exists  
9 and to summarily abate and remove, at the expense of the defaulting apartment  
10 Owner, any structure, thing or condition that may exist therein contrary to the intent  
11 and meaning of the provisions hereof, and the Board of Directors shall not thereby be  
12 deemed guilty in any manner of trespass: or

13 ii. to enjoin, abate or remedy by appropriate legal proceedings, either at law or in  
14 equity, the continuance of any such breach, and all cost thereof, including attorney's  
15 fees, shall be borne by the defaulting apartment Owner.\_

16  
17 ARTICLE VI  
18 EXECUTION OF INSTRUMENTS

19  
20 Section 1 Instruments Generally. All checks, drafts, notes, bonds, acceptances, contracts and all  
21 other conveyances shall be signed by such person or persons as shall be provided by general or  
22 special resolution of the Board, and in the absence of any such resolution applicable thereto such  
23 instrument shall be signed by the President or Vice President and by the Treasurer or Secretary or  
24 Assistant Treasurer or Assistant Secretary.

25  
26 ARTICLE VII  
27 LIABILITY OF OFFICERS

28  
29 Section 1 Exculpation. No Director or Officer of the Association or Board shall be liable for  
30 acts or defaults of any other Director, Office or other member or for any loss sustained by the  
31 Association except for willful misconduct or willful negligence.

32  
33 Section 2. Indemnification. Every Director, Officer and Member of the Association shall be  
34 indemnified by the Association against all reasonable costs, expenses and liabilities (including  
35 counsel fees) actually and necessarily incurred by or imposed upon him in connection with any  
36 claim, action, suit, proceeding, investigation or inquiry of whatever nature in which he may be  
37 involved as a party or otherwise by reason of his having been a Director, Officer or Member of  
38 the Association or Board, whether or not he continues to be such Director, Officer or Member at  
39 the time such costs, expenses or liabilities are incurred or imposed except in relation to matters  
40 as to which he shall finally be adjudged, in such action, suit, proceeding, investigation or inquiry,  
41 to be liable for willful misconduct or willful negligence toward the Association in the  
42 performance of his duties, or in the absence of such final adjudication, any determination of  
43 liability by the opinion of legal counsel selected by the Association. The foregoing right of  
44 indemnification shall be in addition to and not limitation of all other rights to which such person  
45 may be entitled as a matter of law and shall inure to the benefit of the legal representative of such  
46 person.

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ARTICLE VIII  
BY-LAWS

Section 1 Amendment. These By-Laws may be amended, modified or revoked in any respect from time to time by the vote or written consent of at least sixty-seven percent of the common interest. No amendment to the By-Laws shall be effective until set forth in an amendment to the Declaration duly recorded in the Office of the Assistant Registrar of the Land Court, State of Hawaii.

Section 2 Conflict. In the event of any conflict between these By-Laws and the provisions of Chapters 514A and/or 514B Hawaii Revised Statutes, as amended, the latter shall govern and apply.

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