

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

The following by-laws shall apply to the above-named condominium project (herein called the "project"), as described in and created by Declaration of Horizontal Property Regime (herein called the "Declaration") to be recorded and filed of record in the State of Hawaii contemporaneously herewith, and to all present and future owners, tenants and occupants of any apartments of the project and all other persons who shall at any time use the project:

ARTICLE I

MEMBERSHIP

Section 1. Qualification. All apartment owners of the project shall constitute the Association of Apartment Owners, herein called the "Association". The owner of any apartment upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such apartment ceases for any reason, at which time his membership in the Association shall automatically cease; provided, however, that to such extent and for such purposes, including voting, as shall be provided by lease or sublease of any apartment filed with the Board of Directors of the Association, the lessee or sublessee of such apartment shall be deemed to be the owner thereof.

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

Section 3. Annual Meetings. The first annual meeting of the Association shall be held as soon as practicable after recording of the Declaration and these by-laws upon the call of at least ten per cent (10%) of the apartment owners. Thereafter the annual meetings of the Association shall be held within three months after the end of each accounting year.

Section 4. Special Meetings. Special meetings of the Association may be held at any time upon the call of the President or a petition signed by at least twenty-five per cent (25%) of the apartment owners and presented to the Secretary.

Section 5. Notice of Meetings. The Secretary shall give written or printed notice of each annual and special meeting to every apartment owner according to the Association's record of ownership, at least five days before the date set for such meeting, stating whether it is an annual or special meeting, the authority for the call thereof, the place, day and hour of such meeting and the purpose therefor, in any of the following ways: (a) by delivering it to him personally, or (b) by leaving it at his apartment in the project or at his usual residence or place of business, or (c) by mailing it, postage prepaid, addressed to him at his address as it appears on the Association's record of ownership. If notice is given pursuant to the provisions of this section, the failure of any apartment owner to receive actual notice of any meeting shall in no way invalidate

such meeting or any proceedings thereat. The presence of any apartment owner in person or by proxy at any meeting shall be deemed a waiver of any required notice to such owner unless he shall at the opening thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof.

Section 6. Voting. The total number of votes on all issues shall be 100. Apartment owners shall be entitled to vote the percentage of the total votes equal to the percentage of the common interests appertaining to their respective apartments as set forth in the Declaration. Votes may be cast in person or by proxy by the respective apartment owners as shown in the record of ownership of the Association. An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association the vote of any apartment owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such apartment in such capacity. The vote for any apartment owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and in case of protest each cotenant shall be entitled to only a share of such vote in proportion to his share of ownership in such apartment.

Section 7. Quorum. The presence at any meeting in person or by proxy of a majority of apartment owners shall constitute a quorum and the acts of a majority of the apartment owners

at any meeting at which a quorum is present shall be the acts of the Association except as otherwise provided herein. The terms "majority" or "majority of apartment owners" herein means the owners of apartments to which are appurtenant more than fifty per cent (50%) of the common interests as established by the Declaration, and any other specified percentage of the apartment owners means the owners of apartments to which are appurtenant said specified percentage of the common interests as established by the Declaration.

Section 8. Proxies and Pledges. The authority given by any apartment owner to another person to represent him at meetings of the Association shall be in writing, signed by such owner and filed with the Secretary, and unless limited by its terms shall continue until revoked by writing filed with the Secretary or by the death or incapacity of such owner. Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any apartment or interest therein, a true copy of which is filed with the Board through the Secretary or Managing Agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner.

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

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

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

ARTICLE II

BOARD OF DIRECTORS

Section 1. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of six (6) persons. The directors shall serve without compensation.

Section 2. Powers. The Board of Directors shall have all powers necessary for the administration of the affairs of the Association and may do all such acts and things therefor unless prohibited by law, the Declaration or these by-laws or unless directed to be exercised or done only by the apartment owners.

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

one-third of the directors shall be elected for one year, one-third for two years and one-third for three years.

Section 4. Vacancies. Vacancies in the Board of Directors caused by any reason other than removal of a director by the Association shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a director until his successor is elected at the next annual meeting of the Association. Death, incapacity or resignation of any director or his continuous absence from the State of Hawaii for more than six months, shall cause his office to become vacant.

Section 5. Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the directors may be removed with or without cause by vote of a majority of apartment owners and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the apartment owners shall be given an opportunity to be heard at such meeting.

Section 6. Annual Meeting. An organizational meeting of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association, and no notice shall be necessary to any directors in order validly to constitute such meeting, provided that a majority of the whole Board shall be present. At such meeting the Board shall elect the officers of the Association for the ensuing year.

Section 7. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors,

but at least one such meeting shall be held during each calendar year. Notice of regular meetings of the Board shall be given to each director, personally or by mail, telephone or telegraph, at least one day prior to the date of such meeting.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called by the President on at least eight hours' notice to each director, given personally or by telephone or telegraph, which notice shall state the time, place and purpose of such meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and with like notice on the written request of at least two directors.

Section 9. 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 to him of such meeting. If all the directors are present at any meeting of the Board, no notice thereof shall be required, and any business may be transacted at such meeting.

Section 10. Quorum of Board. At all meetings of the Board of Directors a majority of the total number of directors established by these by-laws shall constitute a quorum for the transaction of business, and the acts of a majority of the directors present at any meeting at which a quorum is present shall be the acts of the Board. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. Any such adjourned

meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 11. Fidelity Bonds. The Board of Directors shall require that all officers, employees and agents of the Association handling or responsible for its funds, shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

ARTICLE III

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 in the case of the President from, the Board of Directors. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.

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

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

Section 4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors.

Subject to the control of the Board he shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. He shall also have such other powers and duties as may be provided by these by-laws or assigned to him from time to time by the Board.

Section 5. Vice-President. The Vice-President shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. He shall also have such other powers and duties as may be assigned to him from time to time by the Board.

Section 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors, give all notices thereof as provided by these by-laws, maintain and keep a continuous and accurate record of ownership of all apartments, have charge of such books, documents and records of the Association as the Board may direct, and in general perform all the duties incident to the office of Secretary.

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

Section 8. Auditor. The Association shall appoint annually a public accountant or accounting firm as auditor, who shall not be an officer of the Association nor own any interest in any apartment, to audit the books and financial records of the Association as required by law or directed additionally by the Board of Directors.

ARTICLE IV

ADMINISTRATION

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

(a) Supervision of their immediate management and operation;

(b) Maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto;

(c) Purchase, maintenance and replacement of any equipment and provision of all water and utility services required for the common elements;

(d) Provision at each apartment of all water, sewer, electricity and such other utility services and utilities as the Board shall deem necessary either at the expense of such apartment or as a common expense as determined by the Board;

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

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

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

(h) Purchase and maintenance in effect of all policies of hazard and liability insurance for the project required by the Declaration and such other insurance and bonds as may be required or authorized by the Declaration or the Board;

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

(j) Notification of all persons having any interest in any apartment according to the Association's record of ownership of delinquency exceeding 60 days in the payment of any assessment against such apartment; provided, however, that the Board shall have no power to impair the use and enjoyment of an apartment and its appurtenant limited common elements in a manner inconsistent with the Declaration and these by-laws.

Section 2. Managing Agent. The Board of Directors shall annually employ a responsible Hawaii corporation as Managing Agent to manage and control the project subject at all times to direction by the Board, with all the administrative functions set forth specifically in the preceding Section 1 and such other powers and duties and at such compensation as the Board may establish.

Section 3. Representation. The President or Managing Agent, subject to the direction of the Board of Directors, shall represent the Association and may represent any two or more apartment owners similarly situated as a class in any

action, suit, hearing or other proceeding concerning the Association, the common elements or more than one apartment, and on its or their behalf institute, defend, intervene in, prosecute and settle any such actions, suits and proceedings, without prejudice to the rights of any apartment owners individually to appear, sue or be sued. Service of process on two or more apartment owners in any such action, suit or proceeding may be made on the President or Managing Agent.

Section 4. Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by such person or persons as shall be provided by general or special resolution of the Board of Directors or, in the absence of any such resolution applicable to such instrument, by the President or Vice-President and by the Treasurer or Secretary.

ARTICLE V

OBLIGATIONS OF APARTMENT OWNERS

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

Section 2. Maintenance of Apartments. Every apartment owner shall at his own expense at all times well and substantially repair, maintain, amend and keep his apartment, including without limitation all internal installations therein such as water, electricity, gas, telephone, sewer, sanitation, air conditioning,

lights and all other fixtures and accessories belonging to such apartment and the interior decorated or finished surfaces of all walls, floors and ceilings of such apartment, and all glass walls, doors and windows, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided by law or the Declaration, and shall be liable for all loss or damage whatsoever caused by his failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association promptly on demand all expenses incurred by it in performing any such work authorized by the Board of Directors or the Managing Agent. Every apartment owner and occupant shall reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishings and equipment thereof caused by such owner or occupant or any person under either of them and shall give prompt notice to the Managing Agent of any such loss or damage or other defect in the project when discovered.

Section 3. Use of Project.

(a) The apartments of the project shall be used only for their respective purposes, as set forth in the Declaration.

(b) The common elements of the project shall be used only for the purposes for which they were designed.

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

(d) Every apartment owner and occupant shall at all times keep his apartment in a strictly clean and sanitary condition and observe and perform all terms and conditions of the Association and these by-laws, all laws, ordinances, rules and regulations now or hereafter made by any governmental authority or the Association applicable thereto.

(e) Except as expressly permitted in the Declaration, no apartment owner or occupant shall make or suffer any strip or waste of his apartment or alter or remove any furniture, furnishings or equipment of the common elements and no owner or occupant shall make or suffer any unlawful or improper use of his apartment or the project.

(f) Except as expressly permitted in the Declaration, no apartment owner or occupant shall erect or place in the project any building or structure, including fences and walls, nor make any additions or alterations to any common elements of the project, nor in the case of a residential owner or occupant place or maintain thereon any signs, posters or bills whatsoever, except in accordance with plans and specifications including detailed plot plan, prepared by a licensed architect if so required by the Board and also approved by a majority in interest of apartment owners involved (or such larger percentage required by law or the Declaration).

(g) Except as expressly permitted in the Declaration, no apartment owner shall decorate or landscape any entrance, hallway, planting area, court or lanai appurtenant to his apartment and generally visible, except in accordance with standards therefor established by the Board of Directors or specific plans approved in writing by the Board.

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

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

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

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

(l) No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the project, except that dogs, cats and other household pets in reasonable number may be kept by the apartment owners and occupants in their respective apartments but shall not be kept, bred or used therein for any commercial purpose nor allowed on any common elements except in transit when carried or on leash, provided that no such pet shall be allowed on the roofs and recreation decks at any time or for any purpose and further provided that any such pet causing a nuisance or unreasonable disturbance to any other occupant of the project shall be permanently removed therefrom promptly upon notice given by the Board of Directors or Managing Agent.

(m) No apartment owner or occupant shall without the written approval of the Board of Directors install any wiring for electrical or telephone installations, television antenna,

machines or air-conditioning units, or other equipment or appurtenances whatsoever on the exterior of the project or protruding through the walls, windows or roof thereof.

(n) Nothing shall be allowed, done or kept in any apartments or common elements of the project which would overload or impair the floors, walls or roof thereof, or cause any increase in the premium rates ordinarily prevailing for the use allowed or the cancellation or invalidation of any insurance thereon maintained by or for the Association.

(o) In order for the project to present a uniform exterior appearance, all drapes, curtains, shades, or other material placed against any window visible from the exterior shall be white or off-white in color or shall be lined with a material of that color.

Section 4. House Rules. The Board of Directors, upon giving notice to all residential apartment owners in the same manner as herein provided for notice of meetings of the Association and opportunity to be heard thereon, may adopt, amend or repeal any supplemental rules and regulations governing details of the operation and use of the common elements exclusively appertaining to the residential apartments of the project. Supplemental rules and regulations governing the operation and use of common elements exclusively appertaining to the commercial apartment of the project shall be adopted from time to time by the owner thereof and presented in writing to the Secretary of the Association promptly upon adoption thereof. The Board of Directors in the manner provided herein may adopt, amend or repeal any supplemental rules and regulations governing details of the operation and use of the common elements appertaining to both the residential apartments

and commercial apartment of the project. Notwithstanding any of the foregoing provisions of this section, any supplemental rules and regulations which adversely affect the operation or use of any of the common elements of the project by either the residential apartments or the commercial apartment shall not be adopted or effective without the affirmative vote of seventy-five per cent (75%) of the owners of such apartments adversely affected. Any supplemental rules and regulations adopted pursuant to this section shall be consistent with applicable laws, the Declaration and these by-laws.

Section 5. Expenses of Enforcement. Every apartment owner shall pay to the Association promptly on demand all costs and expenses including reasonable attorneys' fees incurred by or on behalf of the Association in collecting any delinquent assessments against such apartment, foreclosing its lien therefor or enforcing any provisions of the Declaration or these by-laws against such owner or any occupant of such apartment.

Section 6. Record of Ownership. Every apartment owner shall promptly cause to be duly recorded and filed of record the deed, lease, sublease, assignment or other conveyance to him of such apartment or other evidence of his title thereto and shall file a copy of such document of title with the Board of Directors through the Managing Agent, and the Secretary shall maintain all such information in the record of ownership of the Association.

Section 7. Mortgages. Any apartment owner who mortgages his apartment or any interest therein shall notify the Board of Directors through the Managing Agent of the name and address of his mortgagee, and also of the release of such mortgage,

and the Secretary shall maintain all such information in the record of ownership of the Association. The Board of Directors or Managing Agent at the request of any mortgagee or prospective purchaser of any apartment or interest therein shall report to such person the amount of any assessments against such apartment then due and unpaid.

ARTICLE VI

MISCELLANEOUS

Section 1. Amendment. These by-laws may be amended in any respect not inconsistent with provisions of law or the Declaration by vote of seventy-five per cent (75%) of all the apartment owners at any meeting of the Association duly called for such purpose. Such amendment shall be effective only upon the recording and filing of record of an amendment to the Declaration setting forth such amendment of these by-laws.

Section 2. Indemnification. The Association shall indemnify every director and officer and his executors and administrators against all expenses reasonably incurred by or imposed on him in connection with any action, suit or proceeding to which he may be made a party by reason of being or having been a director or officer of the Association, except in relation to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for negligence or misconduct; and in the absence of such final adjudication, indemnification shall be provided only in connection with such matters as to which the Association is advised by its legal counsel that the person to be indemnified committed no such breach of duty. The foregoing right of indemnification shall not be exclusive of any

other rights to which such person may be entitled.

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

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