

that the land and improvements as well as all easements, rights, and appurtenances thereto and all personal property for use in connection therewith and described herein (the "Property") be submitted to the Condominium Property Act (the "Act"), Chapter 514A, Hawaii Revised Statutes, as amended, and does hereby submit its interest to a condominium property regime (hereinafter referred to as "Project"), and in furtherance thereof makes the following declarations as to divisions, limitations, restrictions, covenants, and conditions, and hereby declares and agrees that the Property shall be held, conveyed, mortgaged, encumbered, used, occupied, and improved subject to the declarations, restrictions, and conditions set forth in the Act, this Declaration, and the By-Laws of the Association of Apartment Owners of BROOKLYN'S HILLSIDE PHASE II (hereinafter referred to as "By-Laws") filed or recorded subsequent to this Declaration, as any of the same may from time to time be amended; which declarations, restrictions, and conditions shall constitute covenants running with the land which shall be binding on and for the benefit of the Declarant, its successors and assigns and all subsequent owners of all or any part of the Project and their respective successors, heirs, personal representatives, administrators, and assigns.

1. The Project. The Condominium Property Regime established shall be known as "BROOKLYN'S HILLSIDE PHASE II".

2. Land Description. The land in fee simple submitted to the condominium property regime is described in Exhibit "A" attached hereto and made a part hereof.

3. Description of the Project. The Project consists of the underlying land and improvements consisting of two (2) shade sheds. Each shade shed contains one (1) apartment (hereinafter collectively referred to as "apartment", "unit" or "dwelling" and the location of each building is delineated on the Condominium Map.

The improvements are hereinafter described in Exhibit "B" attached hereto and made a part hereof.

4. Description of Apartments; Access to Common Elements. One (1) freehold estate is hereby designated in each of the apartments. The Project consists of two (2) freehold estates. The apartments are further described in said Exhibit "B".

The Declarant and/or apartment owner may replace the shade sheds and change the layout, floor plans and elevations of the apartments and the parking as provided in paragraph 18, herein.

The apartments will have access to a public street from separate driveways.

The apartments will be numbered in the manner shown on said Condominium Map. All apartment areas are approximate and are based

on the net living area, as measured from the interior surface of the apartment perimeter walls.

The apartments by Unit Number, net living area and limited common area are set forth in Exhibit "B".

There will be no guest parking.

Should the descriptions and divisions set forth in this Declaration conflict with the depictions and divisions shown on the Condominium Map, the Condominium Map shall control. The Condominium Map is intended to show only the layout, number and dimensions of the apartments and elevations of the building(s) and is not intended and shall not be deemed to contain or make any other representation or warranty.

Notwithstanding anything to the contrary contained herein, the Declarant shall have, and hereby reserves, the absolute right to amend this Declaration and the Condominium Map without the consent or joinder of any apartment owner or any other party (including any mortgagee) holding any interest in any apartment of the Project, for the purpose of adjusting the plan or description of any apartment which has not yet been actually constructed, completed and conveyed, upon the condition that no such amendment shall in any way alter any apartment or common interest thereof which has been conveyed by the Declarant prior to the filing of such amendment in the Bureau of Conveyances, State of Hawaii, or the Office of the Assistant Registrar of the Land Court, State of Hawaii, as the case may be. Upon completion of the project, Declarant shall file the "as built" verified statement as required by Section 514A-12.

(a) Limit of Apartments. Each apartment shall be deemed to include the building comprising the apartment, including, specifically, but not limited:

(1) all perimeter walls, floors, foundations and roofs of each building; and

(2) all pipes, wires, conduits, or other utility and service lines in such building, or outside such building, if the same are not utilized for or serve more than one apartment.

5. Common Elements. One freehold estate is hereby designated as the common elements in all of the remaining portions and appurtenances of the Project, excluding those items defined as part of any apartment hereof, but including the portions of the land on which the buildings are located, including specifically, but not limited to:

(a) The land in fee simple described in Exhibit "A";

(b) All ducts, sewer lines, electrical equipment, pipes, wiring, and other central and appurtenant transmission facilities and installations which serve the apartments for services such as power, light, water, gas, refuse, telephone, radio, and television signal distribution; and

(c) Any and all other apparatus and installations of common use and all other parts of the Project necessary or convenient to its existence, maintenance or safety, and normally in common use.

6. Limited Common Elements. Certain parts of the common elements called "Limited Common Elements", are hereby designated and set aside for the exclusive use of each unit(s), and each unit(s) shall have appurtenant thereto exclusive easements for the use of such limited common elements. Unless otherwise specified, all costs, of every kind pertaining to each limited common element, including, but not limited to, costs of landscaping, maintenance, repair, replacement, and improvement, shall be borne entirely by the unit(s) to which it is appurtenant. The limited common elements so set aside and reserved to each unit is the limited common area of each apartment consisting of the land beneath and immediately adjacent thereto (including any yard areas, landscaping, driveway and access areas), as shown and delineated on said Condominium Map. The limited common area of each unit is set forth in Exhibit "B".

7. Common Interests. Each unit shall have appurtenant thereto an undivided percentage interest in all the common elements of the Project as follows:

<u>Unit No.</u>	<u>Common Interest %</u>
A	50%
B	50%

Each unit shall have said percentage interest in all common profits and expenses of the Project and for all other purposes, including voting on all matters requiring action by the unit owners.

8. Easements. In addition to any easements designated in the limited common elements, each unit and the common elements shall have and be subject to the following easements:

(a) Each unit shall have appurtenant thereto nonexclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services (including but not limited to electricity, water, and sewer) for and support of such unit; and in the other common elements for use according to their respective purposes. The Association of Apartment Owners (the "Association") shall have the right, to be exercised by its

Board of Directors, to change the use of the common elements or to lease or otherwise use the common elements for the benefit of the Association, all as provided and limited by the aforesaid Act, subject to the exclusive use of the limited common elements as provided in this Declaration.

(b) If any common element now or hereafter encroaches upon any unit or limited common element thereto, or if any part of any unit shall encroach upon any common element; or, either case, if such encroachment shall occur as a result of any settling or shifting of the Project or any part thereof, a valid easement for such encroachment and maintenance thereof, so long as it continues, does and shall exist. If any unit, building, or other improvement shall be partially or totally destroyed and then rebuilt, minor encroachments by any common elements upon any apartment or limited common element or by any unit upon any portion of the common elements due to reconstruction shall be permitted, and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist; PROVIDED, that in no event shall a valid easement for encroachment be created in favor of the owner of any unit or in favor of any owner of the common elements if such encroachment occurred due to the negligence or misconduct of said owner or owners.

(c) The Association shall have the right to be exercised by its Board of Directors or the managing agent, if any, to enter each unit and any limited common element for making emergency repairs therein necessary to prevent damage to any unit or common element.

(d) The Declarant reserves the right to grant to any public or governmental authority rights of ways and other easements, which are for the sole benefit of the Project, or which do not materially interfere with the use nor materially impair the value of any unit over, across, under and through the common elements and limited common elements for lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage, and other public services and utilities, and rights to enter for the purpose of installing, repairing, altering, and removing such lines and facilities and of trimming any trees in the way thereof; PROVIDED, that the Association, through the Board of Directors, with the consent or agreement of any holder of any then existing easements affected thereby, is authorized to grant, convey, transfer, cancel, relocate, or deal with any and all such public services and utilities easements now or hereafter located on or affecting the Project.

(e) The common elements shall be subject to such easements as the Association, through the Board, shall grant over, under, across, or through the common elements for any reasonable purpose, which shall include, but not be limited to those purposes

which are necessary to the operation, care, upkeep, maintenance, or repair of any unit, the common elements, or any limited common element or any easements for public utilities or for other public purposes.

9. Alteration and Transfer of Interests. The common interest and easements appurtenant to each unit shall have a permanent character, and shall not be altered without the consent of the owner of each unit affected thereby, and his mortgagee(s), expressed in a duly recorded amendment to this Declaration. The unit owners shall also have the right to subdivide or consolidate their units and reapportion the common interest appurtenant thereto upon a duly recorded amendment to this Declaration approved by the vote or written consent of only the unit owners of the subdivided or consolidated units and their mortgagees. Said common interest and easement appurtenant to each unit shall not be separated from said unit and shall be deemed to be conveyed or encumbered with said unit, even though not expressly mentioned or described in the conveyance or other instrument. The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by the Act.

10. Use. The apartments may be used for residential purposes by the owners, their tenants, families, domestic servants and social guests. The apartment or apartments designated for residential use shall not be rented for transient or hotel purposes, which is defined as (a) rental for any period less than thirty (30) days, or (b) any rental in which the occupants of the unit are provided customary hotel services such as room service for food and beverage, maid service, laundry and linen, or bellboy service. Except for such transient or hotel purposes, the owners of a unit shall have the absolute right to lease the same subject to limitations, restrictions, covenants, and conditions of this Declaration.

11. Service of Process. Yun Ching Divers, whose address is PO Box 12095, Honolulu, HI 96828, is hereby designated as the person(s) to receive service of process until such time as a Board of Directors of the Association of Apartment Owners of this Condominium Property Regime is elected by vote of the owners of units in the Project at which time and thereafter process may be served upon any member of said Board.

12. Administration of the Project. Operation of the Project and maintenance, repair, replacement, and restoration of the common elements, and any additions and alterations thereto, shall be in accordance with the provisions of the Act, this Declaration, and the By-Laws of the Association. The owner of each unit shall be solely responsible for the maintenance, repair, replacement, and restoration of such unit and appurtenant limited common elements, except as otherwise provided herein, and the Association shall be responsible for all common elements of the Project, and

specifically but without limitation, shall:

(a) Build, maintain, repair all fences, sewers, drains, roads, curbs, sidewalks, and parking areas which may be required by law to be made, built, maintained, and repaired upon adjoining or in connection with or for the use of the Project or any part thereof;

(b) Keep all common elements of the Project in a strictly sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Project or the use thereof;

(c) Well and substantially repair, maintain, amend, and keep all common elements of the Project, including without limitation, the building(s) thereof, with all necessary reparations and amendments whatsoever in good order and condition, except as otherwise provided herein, and maintain and keep said land and all adjacent land between any street boundary of the Project and the established curb or street line in a neat and attractive condition and all trees, shrubs, and grass therein in good cultivation and replant the same as may be necessary, repair and make good all defects in the common elements of the Project herein required to be repaired by the Association, of which notice shall be given by any owner or his agent, within thirty (30) days after the giving of such notice;

(d) Observe any setback lines affecting the Project shown on said condominium file plan and not erect, place, or maintain any building or structure whatsoever, except as otherwise approved in the setback along such boundary;

(e) Not erect or place on the Project any building or structure, including fences and walls, nor make additions or structural alterations to or exterior changes to any common elements of the Project, except in accordance with the plans and specifications, including a detailed plot plan first approved in writing by a majority of unit owners or such larger numbers thereof as may be required by law, including all owners of units thereby directly affected, and complete any such improvements diligently after the commencement thereof; and

(f) Not make or suffer any strip or waste or unlawful, improper, or offensive use of the Project.

13. Common Expenses. All charges, costs, and expenses whatsoever incurred by the Association for or in connection with the administration of the Project, including without limitation thereof, operation of the Project and maintenance, repair, replacement, and restoration of the common elements, any additions and alterations thereto, any labor, services, materials, supplies,

and equipment therefor, all liability whatsoever for loss or damage arising out of or in connection with the common elements, or any accident or fire on the common elements or nuisance thereon, and all premiums for hazard liability insurance herein required with respect to the Project, shall constitute a common expense of the Project for their respective portion or shares of which the unit owner shall be liable, the proportions for which shall be pursuant to Paragraph 7, herein.

The Board shall from time to time assess the common expense against all the units according to their respective obligations therefor, and the unpaid amount of such assessments against any unit shall constitute a lien against such apartment which may be foreclosed by the Board or managing agent as provided by said Act; PROVIDED, that thirty (30) days' prior written notice of intention to foreclose shall be mailed, postage prepaid to the apartment owner and all other persons having any interest in such apartment as shown in the Association's record of ownership. Said lien shall constitute a lien prior to all other liens except liens for taxes and assessments lawfully imposed by governmental authority against the unit, and all sums unpaid on mortgages of record, and costs and expenses including attorneys' fees as provided in such mortgages. The Board or the managing agent acting on behalf of the owners shall have the power to bid for such unit at foreclosure sale and acquire, hold, lease, mortgage, and convey such unit. A suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the liens securing the same. Where the mortgagee of a mortgage of record or other purchaser of an apartment obtains title to the unit as the result of a foreclosure of such mortgage, the acquirer of title, its successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association, chargeable to such unit, which became due prior to the acquisition of title to such unit by such acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from the owners of all of the units, including the acquirer, its successors and assigns.

14. Compliance With Declaration and By-Laws. All unit owners, their tenants, their families, employees, servants, and guests, and any other person who may in any manner use the Project, shall be bound by and comply strictly with the provisions of this Declaration, the By-Laws, the House Rules, and all agreements, decisions and determinations of the Association duly and lawfully made or amended from time to time, and failure to comply with any of the same shall be grounds for an action to recover sums due for damage or injunctive relief, or both, maintainable by the Board of Directors or managing agent on behalf of the Association, or in a proper case by an aggrieved unit owner.

15. Insurance.

A. Fire and Extended Coverage Insurance. The Association shall at all times keep the Project insured by a separate policy against loss or damage by fire with extended coverage by an insurance company or companies authorized to do business in Hawaii, in an amount sufficient to provide for the full repair or full replacement costs thereof without deduction for depreciation with an inflation guard endorsement. The Association shall also obtain flood insurance if the property is located in an identified flood hazard area as designated by the Department of Housing and Urban Development. In every case of such loss or damage, all insurance proceeds shall be used as soon as reasonably possible for rebuilding, repairing, or otherwise reinstating the building, except as provided herein and in paragraph 17 of this Declaration, in a good and substantial manner according to the original plan and elevation thereof, or such modified plans conforming to laws and ordinances then in effect as hereinafter provided, and the unit owner at its own expense shall make up any deficiency in such insurance proceeds. Every such policy shall (unless unobtainable at a reasonable cost):

1. Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any unit owner;

2. Contain no provision relieving the insurer for liability for loss occurring while the hazard to such building is increased, whether or not within the knowledge or control of the unit owner or Board, or because of any breach of warranty or condition or other act or neglect by the Board or any unit owner or any other persons under either of them;

3. Provide that such policy and the coverage thereunder may not be canceled (whether or not requested by the Board) except by the insurer giving at least sixty (60) days' prior written notice thereof to the Board and every other person in interest who shall have requested such notice of the insurer;

4. Contain a waiver by the insurer of any right of subrogation to any right of the Board or unit owners against any of them or any other persons under either of them;

5. Provide that the insurer, at the inception of the policy and on each anniversary date thereof, shall provide the unit owner with a written summary, in laymen's terms, of the policy. This summary shall include but not be limited to, a description of the type of policy, the coverage and limits thereof, the amount of the annual premium, and the renewal dates; and

6. Contain a standard mortgage clause which shall:

a. Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any unit or unit deed of the Project, in their respective order and preference, whether or not named therein;

b. Provide that such insurance as to the interest of any mortgage shall not be invalidated by any act or neglect of the Board or the unit owners or any persons under any of them; and

c. Waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of a hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause.

Provided, however, that subject to the Act, and with the approval of the Board, the apartment owners may at their own expense keep their apartment, the limited common area and all other common elements that are not limited common elements appurtenant to the other apartment, insured by a separate policy with the same coverages as required for the policy obtained by the Association.

Notwithstanding the foregoing, if the first mortgagee of any unit requires that fire insurance for all or a portion of the Project be carried by the Association, the Association shall procure and maintain the appropriate policy of fire insurance, with extended coverage, insuring the entire Project against loss by fire and other casualty. Any such policy or policies shall meet all of the requirements applicable to individual unit policies as set forth above and shall be in the name of the Association, for the use and benefit of each unit owner. The Association or any insurance trustee with whom the Association has entered into an insurance trust agreement shall hold any proceeds of insurance in trust for the unit owners and their first mortgage holder, as their interests may appear. Each unit owner and each unit owner's mortgagee shall be beneficiaries of the policy in the percentage of their respective common interests. Certificates of insurance shall be issued to each unit owner and mortgagee upon request. The cost of the policy shall be common expense. Such policy shall be primary in the event a unit owner has other insurance covering the same loss.

B. General Liability Insurance. The Board, on behalf of the Association, at its common expense, shall also effect and maintain at all times comprehensive general liability insurance covering all the unit owners with respect to the common elements of the Project and all apartments of the Project with a responsible insurance company authorized to do business in Hawaii with minimum limits as determined by the Board of Directors, without prejudice to the right of any apartment owner to maintain additional liability insurance for their respective unit. Such insurance

company shall deposit promptly with the Board current certificates of such insurance. Such policy of insurance shall: (a) Provide that the same shall not be invalidated by any act or neglect of the Board or unit owners or any persons under any of them; (b) Contain a waiver by the insurer of any right of subrogation to any right of the Board or unit owners against any of them or any other persons under them; (c) Contain a "severability of interest" endorsement, precluding the insurer from denying the claim of a unit owner because of negligent acts of the Association or other unit owners; and (d) Provide that the policy and its coverage may not be canceled or reduced (whether or not requested by the Board or an individual unit owner), except by the insurer giving at least sixty (60) days' prior written notice thereof to the Board, unit owners, every first mortgagee of a unit, and every other person in interest who shall have requested such notice of the insurer.

All premiums for insurance herein required to be obtained by the Board on behalf of the Association shall be a common expense to be paid by monthly assessments thereof, and such payments shall be held in a separate escrow account of the Association and shall be used solely for the payment of such premiums as the same become due. The requirements of this paragraph may be met by public liability insurance coverages contained in insurance policies of all of the unit owners, which shall name the Association as an additional insured.

C. Review By the Board. The Board shall review not less frequently than annually the adequacy of its entire insurance program, and shall adjust such insurance coverage accordingly. The Board shall then report in writing its conclusions and actions taken on such review to the owner of each unit and the holder of any mortgage on any unit who shall have requested a copy of such report(s).

16. Damage to Building(s). If any part of the improvements of a unit is damaged or destroyed by an insured or uninsured casualty, the same shall be reconstructed or repaired by the owner of such unit, unless said owner, with the consent of his mortgagee(s), decides against such reconstruction or repair, or if this Declaration is terminated by vote of all the unit owners and in accordance with the provisions of Section 514A-21 of the Act. Such reconstruction or repairs shall be made promptly and diligently by the owner of the unit affected provided that said owner will be provided a reasonable time for adjusting any insurance loss, preparations of building plans, hiring of contractors, architects and other professionals and arranging of financing.

17. Damage or Destruction of Common Elements. In case any of the common elements, other than the limited common elements, of the Project shall be damaged or destroyed, the Association shall promptly reconstruct and repair such improvements, unless the

Declaration is terminated by vote of all the unit owners pursuant to the provisions of Section 514A-21 of the Act. Restoration of the common elements shall be completed diligently by the Association at its common expense. Unless restoration is undertaken within a reasonable time after such casualty, the Association, at its common expense, shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good orderly condition and even grade.

18. Alteration of Project.

A. Changes to Apartments. Notwithstanding anything to the contrary contained in this Declaration each unit owner has the right, at his sole option, at any time, without the consent of anyone other than the holders of all liens affecting his unit, to improve, renovate, remodel, make additions to, remove, replace, or restore the improvements to or in his unit.

The foregoing is referred to collectively as "changes" and is subject to the following conditions:

(1) All building plans for any such changes must be prepared by a licensed architect or professional engineer and conform with the building codes, zoning laws, and other applicable County ordinances;

(2) The value of the unit after such changes shall not be less than the value before such changes;

(3) No change to any unit may result in the total square footage on the first floor of a unit in excess of the amount allowed under the applicable County ordinances, codes, rules, and regulations;

(4) No change may reduce the distance between improvements placed on each unit to less than required under the applicable County ordinances, codes, rules, and regulations;

(5) All changes shall be at the expense of the unit owner making the change and shall be expeditiously done in a manner that will not unreasonably interfere with the owners' use of their units;

(6) During the entire course of construction, the unit owner making such change will cause to be maintained at his expense builder's all-risk insurance in an amount not less than the estimated cost of construction. The Association shall be named as an additional insured and evidence of such insurance shall be deposited with the Association's managing agent;

(7) The unit owner making the change shall post a completion bond or such other bond, and in such amounts, as may be

required by his mortgagee(s). The Association shall be named as an additional beneficiary and evidence of such bond shall be deposited with the Association's managing agent;

(8) Prior to the commencement of construction, and as a condition thereto, the unit owner making such change shall give reasonable assurance to the Association of the owner's financial ability to complete and to pay for the change;

(9) If the Declaration is amended to accommodate any reconstruction or rebuilding, then the common interest appurtenant to each unit shall not be changed;

(10) The owner of any changed unit shall have the right and duty without the consent or joinder of any other person to amend and shall be required to amend this Declaration and the condominium map to accomplish any changes. If required by the Act, then promptly upon completion of the changes, the owner of the changed unit shall duly record any amendment to this Declaration with the Bureau of Conveyances, State of Hawaii, or Office of the Assistant Registrar of the Land Court of the State of Hawaii, as the case may be, together with a complete set of the floor plans of the Project as so altered, certified "as built" by a registered architect or professional engineer. All existing unit owners and all future apartment owners and their mortgagees, by accepting an interest in a unit, shall be deemed to have given to all other unit owners a power of attorney to execute an amendment to the Declaration solely for the purpose of describing the changes to any unit in the Declaration so that each unit owner shall hereafter have a power of attorney from all other unit owners to execute such amendment to the Declaration. This power of attorney shall be deemed coupled with each owner's interest in his unit (including his common interest) and shall be irrevocable;

(11) Each and every conveyance, lease, and mortgage or other lien made or created on an apartment and all common interests and other appurtenances thereto shall be subject to the provisions of this paragraph and any lease of a unit shall reserve to all unit owners the rights set forth in this paragraph.

B. Changes Other Than Apartments; Consolidation and Changes to Common Interest. Except as to changes to Apartments, changes to the Project or any building thereof or construction of any additional building or structural alteration or addition or addition to any building, different in any material respect from the Condominium Map of the Project, shall be undertaken by the Association of Apartment Owners only pursuant to an amendment of this Declaration, duly executed by or pursuant to vote of all the Apartment owners and accompanied by the written consent of the holders of all liens affecting any of the apartments, and in accordance with complete plans and specifications therefor first approved in writing by the Board, and promptly upon completion of

such restoration, replacement or construction, the Association shall duly file such amendment in the Bureau of Conveyances, State of Hawaii, or Office of the Assistant Registrar of the Land Court, State of Hawaii, as the case may be, together with a complete set of the floor plans of the Project as so altered, certified as built by a registered architect or professional engineer.

Provided, that the apartment owners shall have the right to consolidate their apartments and reapportion the common interest appurtenant thereto upon a duly recorded amendment to this Declaration approved in the manner provided in paragraph 20. Such consolidation shall also comply with the provisions of paragraph 18. A.

19. Condemnation. If the Project or any part thereof shall be taken or condemned by any authority having the power of eminent domain, or shall be sold to such authority under threat of condemnation, all compensation and damages for or on account of any land and improvements of the Project shall be payable to whomever the Board shall designate as trustee for all apartment owners and mortgagees according to the loss or damage to their respective apartments and appurtenant common interest and shall be used promptly by the Association to the extent necessary for restoring or replacing such improvements on the remaining land according to plans therefor approved in advance by a majority of the apartment owners, including all owners thereby directly affected, unless such restoration or replacement is impractical under the circumstances. Unless such restoration or replacement is undertaken within a reasonable time after such taking, condemnation or sale, the Association at its common expense shall remove all remains of such improvements on the remaining land and restore the site thereof to good orderly condition and even grade.

20. Amendment of Declaration. A. Generally. Except as otherwise provided herein or as provided for in the Act, this Declaration may be amended by an instrument recorded in the Bureau of Conveyances, State of Hawaii, or Office of the Assistant Registrar of the Land Court, State of Hawaii, as the case may be, signed, verified, and acknowledged by the President or Vice-President and Secretary or Treasurer of the Association of Apartment Owners of the Project, setting forth the amendment involved and that such amendment has been approved by one hundred percent (100%) of the unit owners at a meeting of the Association duly called and held for that purpose, or by written consent of the unit owners provided, however, that if said amendment increases or decreases the common interest appurtenant to any apartment, then said instrument shall also be signed and acknowledged by the owner of each unit and consented to by the respective mortgagees with respect to which the common interest appurtenant to such unit is either increased or decreased. Notwithstanding the foregoing, however, if (1) at any time prior to the first recording of any conveyance of an apartment in the Project in the Bureau of

Conveyances, State of Hawaii, or Office of the Assistant Registrar, State of Hawaii, as the case may be, of a unit, the Declarant may amend this Declaration (including Exhibits) and the By-Laws in any manner, without the consent of any apartment purchaser; and (2) at any time thereafter, the Declarant may amend this Declaration (and when applicable, the Condominium Map) to file the "as built" verified statement required by Section 514A-12 of the Act (i) so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plan thereto filed fully and accurately depicts layout, location, unit numbers, and dimensions of an improvement or change in a unit as built; or (ii) so long as the plans filed therewith involve only immaterial changes to the layout, location, or dimensions of the units as built or any change in any unit number.

B. Amendments Required by Law, Lenders, Title Insurers, Etc. Notwithstanding any provision of this Declaration, for so long as the Declarant retains any interest in a unit in the Project, Declarant shall have the right (but not the obligation) to amend this Declaration and By-Laws (and the Condominium Map, if necessary) without the consent or joinder of any unit owner, lienholder or other person or entity, for the purpose of meeting any requirement imposed by (i) any applicable law, (ii) the Real Estate Commission, (iii) any title insurance company issuing a title insurance policy on the Project or any of the units, (iv) any institutional lender lending funds on the security of the Project or any of the units, or (v) any other governmental or quasi-governmental agency including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development or the Veterans Administration; provided, however, that no amendment which could change the common interest appurtenant to a unit or substantially change the design, location or size of a unit shall be made without the consent of all persons having an interest in such unit. Each and every party acquiring an interest in the Project, by such acquisition, consents to the amendments described in this paragraph 20 and agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same, and appoints Declarant and its assigns as their attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on their behalf, which grant of such power, being coupled with an interest, is irrevocable for the duration of such reserved rights, and shall not be affected by the disability of such party or parties.

C. Mortgage Approval Required. Any provision of this Declaration notwithstanding, the approval of any eligible holders of first mortgages (as defined below on which at least fifty-one percent (51%) of the votes of units subject to mortgages held by such eligible holders are allocated shall be required to materially amend any provision herein, or to add any material provisions

hereto, which establish, provide for, govern or regulate any of the following: (a) voting; (b) assessments, assessment liens or subordination of such liens, (c) reserves for maintenance, repair and replacement of the common elements; (d) insurance or fidelity bonds; (e) right to use of the common elements; (f) responsibility for maintenance and repair of the several portions of the Project; (g) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (h) boundaries of any unit (except where the amendment merely reflects that a unit has been constructed according to alternate plans shown on the Condominium Map); (i) the interests in the common elements or limited common elements; (j) convertibility of units into common elements or of common elements into units; (k) leasing of units; (l) imposition of any right of first refusal or similar restriction on the right of a unit owner to sell, transfer, or otherwise convey his unit; (m) establishment of self-management of the Project by the Association where professional management has been required by any agency or corporation which has an interest or prospective interest in the Project; and (n) any provision that expressly benefits holders, insurers, or guarantors of first mortgages on units in the Project. To qualify as an "eligible holder of a first mortgage", a holder, insurer or guarantor of a first mortgage on a unit in the Project must have made a written request to the Association for timely written notice of proposed amendments to the condominium instruments. The request must state the name and address of the holder, insurer or guarantor and the number of the unit covered by the mortgage. In the event that an eligible holder of a first mortgage fails to appear at a meeting of the Association at which amendments of a material nature to this Declaration are proposed and considered, or fails to file a written response with the Association within thirty (30) days after it receives proper notice of the proposed amendment, delivered by certified or registered mail, with a "return receipt" requested, then and in any such event such amendments shall conclusively be deemed approved by such eligible holder of a first mortgage.

In addition to the foregoing, no amendment to this Declaration which would allow any action to terminate the condominium property regime created hereby for reasons other than substantial destruction or condemnation shall be made without the prior written approval of not less than sixty-seven percent (67%) of the eligible holders of a first mortgages.

D. Notwithstanding the foregoing, an apartment owner shall have the right without the consent or joinder of any other person to amend this Declaration and the Condominium Map to reflect the changes made to his unit in accordance with paragraph 18.A, of this Declaration. Promptly upon completion of such changes, the unit owner shall duly record with the Bureau of Conveyances or Assistant Registrar of the Land Court, an amendment to the Declaration and to the Condominium Map, together with a complete set of the floor plans showing the changes to the Project as so altered, certified

"as built" by a registered architect or professional engineer. All existing unit owners and all future unit owners and their mortgagees, by accepting an interest in a unit, shall be deemed to have given each unit owner a power of attorney to execute an amendment to the Declaration solely for the purpose of describing the changes to his respective unit on the Declaration so that each unit owner shall hereafter have a power of attorney from all the other unit owners to execute such amendment to the Declaration. This power of attorney shall be deemed coupled with each owner's interest in his unit (including its appurtenant common interest) and shall be irrevocable.

21. Maintenance Reserve Fund. The Board shall establish and maintain a Maintenance Reserve Fund by the assessment of and payment of all the unit owners in equal monthly installments of their respective proportionate shares of such reasonable annual amount as the Board may estimate as adequate to cover each unit owner's obligations to the Association. The Board may include reserves for contingencies in the assessment, and the assessment may from time to time be increased or reduced in the discretion of the Board. The amount of the common expenses allocated, used, or to be used for capital improvements, repair, or any capital expenditures, shall not be deemed income to the Association, but shall be credited upon the books of the Association to the paid-in surplus account as a capital contribution by the unit owner. The interest of each apartment owner in said Fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with such apartment though not expressly mentioned or described in the conveyance thereof. In case the Condominium Property Regime hereby created shall be terminated, said Fund remaining after full payment of all common expenses of the Association shall be distributed to all unit owners as their interest may appear, except for the interests of any units then reconstituted as a new Condominium Property Regime.

22. Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such provision had never been included herein.

23. Reserved Rights of Declarant. In addition to any rights reserved herein, the Declarant reserves the right for itself, its successors and assigns to do the following:

a. To maintain development facilities and conduct sales of units until unit deeds are issued to apartment purchasers with respect to all units in the Project. These rights shall include, but not be limited to, maintaining model units, operating a sales and construction office, conducting advertising, placing signs, using parking spaces, and erecting lighting in connection with such

sales; PROVIDED, however, that the Declarant shall not use any unit with respect to which a deed has been issued (other than to the developer); and PROVIDED FURTHER, that in exercising such right, the Declarant shall not interfere with the rights of any unit owner to the use of, or access to his apartment or any of the common elements appurtenant thereto.

b. To enter upon the land and the Project and carry on such construction and demolition activities as may be necessary in connection with such alterations, modifications, and restoration, including, but not limited to, parking and storage of construction equipment and materials, provided that the Declarant shall not interfere with the rights of any other unit owner to the use of or access to his apartment or any of the common elements thereto.

24. Definitions. The terms "majority" or the "majority of unit owners" herein means the owners of units to which are appurtenant more than fifty percent (50%) of the common interest of the Project, and any other specified percentage of the unit owners means the owners of units to which are appurtenant such percentage of the common interests. The headnotes or captions of each paragraph are for convenience only and shall not be construed as enlarging, restricting, modifying, or otherwise affecting the meaning or context thereof.

25. Project Compliance. The Declarant states that to the best of its knowledge the Project is in compliance with all ordinances, codes, rules, regulations, or other requirements in force at the time of construction. The Declarant states that to the best of its knowledge there was no variance granted from any ordinance, code, rule, regulation or other requirement in force at the time of its construction or from any current ordinance, code, rule, regulation or other requirement.

26. Binding Effect. All of the covenants, agreements, conditions, and restrictions herein contained shall extend and be binding upon the heirs, personal representatives, administrators, successors, and assigns of the respective parties hereto.

27. Subordination and Interpretation. This Declaration and any amendments hereto are subordinate and subject to the Act 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 said Act. In case any provision of this Declaration shall be held invalid, such invalidity shall not render invalid any other provision hereof which can be given effect.

IN WITNESS WHEREOF, the Declarant has executed this instrument this _____ day of _____, 2005.

EXHIBIT "A"

All that certain parcel of land (being portion(s) of the land(s) described in and covered by Deed to H. H. Parker by the Superintendent of Public Works, dated August 7, 1900, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 209, Page 400), situate, lying and being at Kanohuluiwi, Kaneohe, District of Koolaupoko, City and County of Honolulu, State of Hawaii, being Lot 97-B, (same being a portion of Lot 97 of the "Halekauwila Farms", described as follows:

Beginning at the East corner of this lot, the South corner of Lot 97-A, and on the Northwest side of Keaahala Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HEEIA" being 11,369.21 feet South and 6,444.38 feet East and running clockwise from True South:

1. 56° 05' 00" 50.00 feet along the Northwesterly side of Keaahala Road;
2. 146° 05' 00" 200.00 feet along the Northeasterly side of Lot 95;
3. 236° 05' 00" 50.00 feet along the Southeasterly side of Lot 95;
4. 326° 05' 00" 200.00 feet along the Southwesterly side of Lot 97-A to the point of beginning and containing an area of 10,000 square feet, more or less, as per survey of Francis E. McGrail, Licensed Professional Land Surveyor, Certificate No. 7279.

Being the land conveyed by deeds dated May 16, 2001 and June 7, 2001, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2001-115859 and 2001-115860, respectively.

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Reservation in favor of the State of Hawaii of title to all minerals and metallic mines.
2. Matters as shown on survey plat entitled "Perimeter Survey Sketch" dated April 6, 2001 and prepared by Francis E. McGrail, Registered Professional Land Surveyor, Certificate No. 7279, as disclosed in deed dated May 16, 2001, recorded as Document No. 2001-115859.
3. Ten (10) foot road widening setback, as shown on Survey of

Francis E. McGrail, Registered Professional Land Surveyor,
Certificate No. 7279.

4. Unrecorded agreement between Yun Ching Divers and Department of Planning and Permitting, City and County of Honolulu Construction of Improvements (Fire Hydrant Required by the Board of Water Supply).

5. Mortgage dated July 11, 2001, in favor of Aames Funding Corporation, a California corporation, dba Aames Home Loan Corporation, organized under the laws of the State of California, recorded as Document No. 2001-115861. **(Affects this and other property)**

6. Mortgage dated October 14, 2003, in favor of Finance Factors, Limited, a Hawaii corporation, recorded as Document No. 2003-229036. **(Affects this and other property)**

END OF EXHIBIT "A"

EXHIBIT "B"

Description of the Project.

Units A and B are one-story shed with shade cloth siding and no roof and no basement.

Description of the Apartments.

Each unit contains one room.

The net living area, other area and limited common area for each of the apartments are listed as follows:

<u>Unit No.</u>	<u>Net Living Area</u>	<u>Other Area</u>	<u>Limited Common Area</u>
A		16 sq.ft.	6,217 sq.ft.
B	---	16 sq.ft.	3,783 sq.ft.

LAND COURT SYSTEM

REGULAR SYSTEM

RETURN BY: MAIL () PICKUP () TO:

Declarant: Yun Ching Divers, wife of Loren C. Divers

Document: Amendment No. 1 to Declaration of Condominium
Property Regime of Brooklyn's Hillside Phase II
(Architect's Certification)

TMK: (1) 4-5-21-092

AMENDMENT NO. 1 TO
DECLARATION OF CONDOMINIUM PROPERTY REGIME
OF
BROOKLYN'S HILLSIDE PHASE II
(Architect's Certification and Exhibit "B")

WHEREAS, by Declaration of Condominium Property Regime dated July 25, 2005, recorded in the Bureau of Conveyances, State of Hawaii as Doc. No. 2006-048621 (the "Declaration"), that certain fee simple real property described in Exhibit "A" attached thereto was submitted to a condominium property regime (the "Property"), the condominium map for the project was recorded as Condominium Map No. 4190;

WHEREAS, the limited common areas for Unit A and Unit B were reversed in Exhibit "B" of said Declaration;

WHEREAS, Exhibit "B" of said Declaration and the architect's certification attached thereto need to be amended as hereinafter set forth;

NOW, THEREFORE, the Declarant hereby replaces the Certification originally attached to said Condominium Map and records in place thereof the Certification of Registered Architect/Professional Engineer attached hereto as Exhibit "A".

FURTHERMORE, the Declarant hereby amends Exhibit "B" of said Declaration to show that Unit A has a limited common area of 3,783 square feet and Unit B has a limited common area of 6,712 square feet.

AND FURTHERMORE, an amended Exhibit "B" is attached hereto.

IN WITNESS WHEREOF, the Declarant has executed this instrument this _____ day of _____, 2006.

YUN CHING DIVERS

Declarant

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 2006, before me personally appeared YUN CHING DIVERS, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Notary Public, State of Hawaii
Print Name:
My commission expires:

EXHIBIT "B"
(Revised 5/23/06)

Description of the Project.

Units A and B are one-story shed with shade cloth siding and no roof and no basement.

Description of the Apartments.

Each unit contains one room.

The net living area, other area and limited common area for each of the apartments are listed as follows:

<u>Unit No.</u>	<u>Net Living Area</u>	<u>Other Area</u>	<u>Limited Common Area</u>
A	---	16 sq.ft.	3,783 sq.ft.
B	---	16 sq.ft.	6,217 sq.ft.

LAND COURT SYSTEM

REGULAR SYSTEM

RETURN BY: MAIL () PICKUP () TO:

Declarant/

Address: Yun Ching Divers, wife of Loren Divers
PO Box 12095
Honolulu, HI 96828

Document: By-Laws of the Association of Apartment Owners of
Brooklyn's Hillside Phase II

TMK: (1) 4-5-21-004

BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS

OF

BROOKLYN'S HILLSIDE PHASE II

ARTICLE I
CONDOMINIUM OWNERSHIP; APPLICABILITY OF BY-LAWS; PROJECT OFFICE

1. Condominium Ownership. The property more fully described in Exhibit "A" (hereafter "Property") of the Declaration of Condominium Property Regime (hereafter "Declaration"), recorded and/or filed prior to these By-Laws, has been submitted to the provisions of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended, (hereafter "Act") by said

Declaration. The condominium project thereon shall be known as "BROOKLYN'S HILLSIDE PHASE II" (hereafter "Project").

2. Applicability of By-Laws. The provisions of these By-Laws are applicable to the Project and to the use and occupancy of the units thereof. All present and future owners, mortgagees, lessees, and occupants of units or other interests in the Property and their employees, and any other persons who may use the facilities of the Project in any manner are subject to the provisions of these By-Laws and the House Rules.

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

Any person, firm, corporation, trust, or other legal entity or a combination thereof, owning any unit in the Project shall be a member of the Association (hereafter "Association").

3. Office. The office of the Project and of the Board of Directors (hereafter "Board") and of the Association shall be located at the address of the Project. All meetings of the Association and of the Board shall be held at said address unless some other place is stated in the call.

ARTICLE II **BOARD OF DIRECTORS**

1. Number and Qualification. The affairs of the Association shall be governed by a Board composed of not more than two (2) people. The members of the Board shall be owners, co-owners, vendees under an agreement of sale, or an officer of any corporate owner of a unit; provided, that in no event shall the resident manager, if any, of the Project serve on the Board; provided, further that there shall be not more than one representative from any one unit on the Board. For purposes of this section, "Owners" shall mean the person owning, or the persons owning jointly or in common, a unit and the common interest appurtenant thereto; provided that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by lease filed with the Board, a lessee of a unit shall be deemed to be an owner thereof. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be owners of a unit.

2. Powers and Duties. The Board shall be responsible only for the administration of the common elements of the Project and the limited common elements to the extent it affects the common elements of the Project. All other areas of the Project shall be

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

The Board shall have the powers and duties necessary for the administration of the aforesaid common elements and limited common elements, and may do all such acts except as by law, by the Declaration, or by these By-Laws may not be delegated to the Board by the owners. Such powers and duties of the Board shall include, but not be limited to, the following:

(a) Operation, care, upkeep, and maintenance of the common elements;

(b) Collection of monthly maintenance fees and other assessments from the owners;

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

(d) Keeping of detailed, accurate records of the receipts and expenditures affecting the common elements specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred, and authorizing preparation of the accountant's annual financial statements. Such records and vouchers authorizing payment shall be available for examination by the unit owners in the Project at convenient hours of the weekdays;

(e) Obtaining of insurance for the Project pursuant to the provisions of the Declaration and the Act, as amended;

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

(g) Determination of common expenses and fixing of maintenance fees and other assessments; and

(h) Any other actions in the interest and for the benefit of the Project and the Association which from time to time may be necessary.

3. Additions, Alterations, or Improvements By the Board. No additions, alterations, or improvements to the common elements of the Project costing in excess of ONE THOUSAND AND NO/100 DOLLARS (\$2,000.00), shall be made without prior approval of the owners of units having appurtenant thereto a majority of the total common interests. Any additions, alterations, or improvements to the

common elements of the Project costing TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00) or less may be made by the Board without approval of the unit owners and the cost thereof shall constitute part of the common expenses.

4. Managing Agent. The Board may employ for the Association a managing agent, 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 2 of this Article. The duties conferred upon the managing agent by the Board may at any time be revoked, modified, or amended by the owners of interest in the Project to which are appurtenant, in the aggregate, a majority of the total undivided interest in the common elements, at a duly held meeting. The Board may employ any other employee or agent to perform such duties, at such salaries, as the Board may establish. The managing agent shall not commingle any Association funds with its own funds. Said agent may dispose of any records of the Project in the manner provided by the Act.

5. Election and Term of Office. Election of directors may be by cumulative voting, if requested by any owner, and shall be by secret ballot at each annual meeting unless waived, or at any special meeting called for that purpose. The directors except as otherwise provided in these By-Laws shall hold office for a period of two (2) years or until their respective successors shall have been elected and qualified, except that at the first election one director shall be elected for a term of one (1) year, and one director shall be elected for a term of two (2) years.

6. Vacancies. Vacancies on the Board 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. 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.

7. Removal. The entire Board or any individual director, may be removed from office by a vote of a majority of the owners at any regular or special meeting called for such purpose. If the removal of a director or directors is to occur at a special meeting, the call for the meeting shall be by the President or by a petition to the Secretary or managing agent signed by not less than twenty-five percent (25%) of the owners as shown in the Association ownership list. In the event, the Secretary or managing agent does not send out notices of the special meeting within fourteen (14) days of the receipt of the petition, then petitioners shall have the authority to set the time, date and place for the special meeting and send out the notices for the special meeting in accordance with the By-Laws. If any or all directors shall be so removed, new directors

may be elected at the same meeting for the remainder of the term of the director or directors so removed; provided, however, that if the director or directors so removed were elected by cumulative voting, new directors shall be elected by cumulative voting.

8. Director's Compensation and Reimbursement of Expenses. No compensation shall be paid to directors for their services as directors. The directors shall not expend Association funds for their travel, director's fees and per diem unless owners are informed and a majority approve these expenses.

9. Organization Meeting. The first meeting of a newly elected Board shall be held within one week 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, provided that a majority of the whole Board must be present.

10. Regular Meeting. The Board shall meet at least once per year. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the directors. Notice of regular meetings of the Board shall be given to each director, personally or by mail addressed to his residence, or by telephone, at least fourteen (14) days prior to the day named for such meeting.

11. Special Meetings. Special meetings of the Board may be held upon the call of the President, any director, or by petition of any one unit owner, on fourteen (14) days' notice to each director, given personally or by mail addressed to his residence or by telephone, which notice shall state the time, place, and purpose of the meeting.

12. Posting of Meeting Notice. Whenever practicable, notice of all Board meetings shall be posted by a director in prominent locations within the Project seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board.

13. Waiver of Notice. Before or at any meeting of the Board, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board, unless he objects to the calling of the same, shall be a waiver of notice by him of the date, 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.

14. Board of Directors' Quorum. At all meetings of the Board, 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. If, at any meeting of the Board, there is 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.

15. Bonds. The Board shall require that all officers and employees handling or responsible for Association funds shall furnish such bond as may be required by law. The premiums on such bond shall be paid by the Association.

16. Proxy Voting. A director shall not cast any proxy vote at any board meeting.

17. Conduct of Meetings. All meetings of the Board, except for executive sessions, shall be open to all owners. Unless a majority of a quorum of the Board votes otherwise, owners present may participate in any deliberation or discussion, except for executive sessions. The Board may adjourn a meeting and reconvene in executive session to discuss and vote on personnel matters or pending or possible litigation involving the Association. The nature of any and all business to be considered in executive session shall first be announced in open session.

All meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order.

18. 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. The meeting minutes shall record the fact that a disclosure was made. A director shall not vote on any matter in which the director has a conflict of interest.

19. Copies of Project Documents. The Association, at its expense, shall provide all Board members with a current copy of the Declaration, By-Laws, House Rules and annually a copy of the Act with amendments.

20. Access to Apartments. The owners shall have the irrevocable right, to be exercised by the Board, to have access to each apartment from time to time for making emergency repairs in the apartment to prevent damage to the common elements.

ARTICLE III **ASSOCIATION OF OWNERS**

1. Annual Meetings. The first meeting of the Association shall be held not later than one hundred eighty (180) days after recordation of the first unit conveyance, provided forty percent

(40%) or more of the Project has been sold by the Developer and recorded. If forty percent (40%) of the Project is not sold and recorded at the end of one year, an annual meeting shall be called, provided ten percent (10%) of the owners so request. The annual meeting of the Association shall be held on the first Wednesday in the second month following the close of the Association's fiscal year, or as soon thereafter as possible; and shall be held at the address of the Project or elsewhere within the State of Hawaii as determined by the Board.

2. Special Meetings. Special meetings may be held at any time upon the call of owners of units to which are appurtenant, in the aggregate, twenty-five percent (25%) of the common interest. Upon receipt of such call, the Secretary shall send out notices of the meeting to all owners.

3. Notice of Meetings. A written notice of every meeting of the Association stating whether it is an annual or special meeting, the authority for the call of the meeting, the place, day and hour thereof, the items on the agenda of such meeting, and containing a standard proxy form authorized by the Association shall be given by the Secretary or the person or persons calling the meeting at least fourteen (14) days before the date set for such meeting. Such notice shall be given to each owner by leaving the same with him personally, leaving the same at the residence or usual place of business of such owner, or by mailing it, postage prepaid, addressed to such owner at his address as it appears on the records of the Association. If the notice is given pursuant to the provisions of this section, the failure of any owner to receive actual notice of the meeting shall in no way invalidate the meeting or any proceedings. All meetings of the Association shall be held at the address of the Project or elsewhere within the State of Hawaii as determined by the Board.

4. Waiver of Notice. The presence of a quorum of owners, in person or by proxy, at any meeting shall render the same a valid meeting, unless any owner shall, at the opening of such meeting, object to the holding of the same for noncompliance with the provision of Section 3 of this Article III. Any meeting so held without objection shall notwithstanding the fact that no notice of meeting was given, or that the notice given was improper, be valid for all purposes, and at such meeting any general business may be transacted and any action may be taken.

5. Quorum. At any meeting of the Association, the owners of units in the Project to which are appurtenant in the aggregate, a majority of the total interest in the common elements, present in person or by proxy, shall constitute a quorum, and the concurring vote of said majority shall be valid and binding upon the Association, except as otherwise provided by law or these By-Laws. "Majority" as used herein, means more than fifty percent (50%).

6. Voting. Voting shall be on a percentage basis and the percentage of the total vote to which the owner of any unit is entitled shall be the percentage assigned to such unit in accordance with the Declaration. Any specified percentage of the owners means the owners of interests to which are appurtenant such percentage of the common interests as are established in accordance with the Declaration. Any person, firm, corporation, trust, or other legal entity or a combination thereof, owning any unit in the Project is a member of the Association, and either in person or by proxy entitled to vote the percentage of vote assigned to each unit so owned at all meetings of the Association. Any provision to the contrary notwithstanding co-owners or joint owners as herein described shall be deemed one owner entitled to the percentage of vote allocated to their unit. The exercise of the aforementioned vote by the co-owners or joint owners shall be pursuant to Section 7 herein. The votes, if any, allocated to any area which constitutes a common element, shall not be cast at any Association meeting, whether or not it is so designated in the Declaration.

7. Voting-Proxies and Pledges. The authority given by an owner to another person to represent such owner at meetings of the Association shall be in writing, signed by such owner or if a unit is jointly owned then by all joint owners, or if such owner is a corporation, by the proper officers thereof, and shall be filed with the Secretary. The proxy forms may designate any person as proxy and may be limited as the owner desires and indicates. Proxies may be given to the Board, provided that the proxy form shall contain a box wherein the owner may indicate that the owner wishes the vote to be shared with each director receiving an equal percentage. Proxy forms which are not marked shall be considered a choice by the owner that the vote be made on the basis of the preference of the majority of the Board. A personal representative, administrator, guardian, or trustee may vote in person or by proxy at any meeting of the Association with respect to any unit owned or held by him in such capacity, whether or not the same shall have been transferred to his name by a duly recorded conveyance. In case such unit shall not have been transferred to his name, he shall satisfy the Secretary that he is the personal representative, administrator, guardian, or trustee holding such unit in such capacity.

Whenever any such unit is owned by two or more persons, natural or legal, jointly, according to records at the Bureau of Conveyances, State of Hawaii, or Office of the Assistant Registrar of the Land Court, State of Hawaii, as the case may be, the vote therefor may be exercised by not more than one of the owners present in the absence of protest by the owners or others. In the event of protest, the vote shall be divided among the co-owners present according to each of their respective ownership interest. A proxy form which accompanies a notice for any meeting shall be valid only for that meeting and its adjournment and no other.

No resident manager or managing agent shall solicit, for his use any proxies from any owner of the Association, nor shall he cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. No director who uses Association funds to solicit proxies, shall cast any proxy votes for the election or reelection of Board members at any association meeting unless the proxy form specifically authorizes the Board member to vote for the election or reelection of Board members and the Board first posts notice of its intent to solicit proxies in prominent locations within the Project at least thirty (30) days prior to its solicitation of proxies; provided, if the Board receives within seven (7) days of the posted notice request by any owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall: a. mail to all owners a proxy form containing either the names of all owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or b. mail to all owners a proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of Association funds for soliciting proxies and their statements. The statement shall not exceed one hundred words indicating the owner's qualifications to serve on the Board and the reasons for wanting to receive proxies.

A proxy, to be valid, must be delivered to the Secretary of the Association 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, must contain at least: the name of the Association, the date of the meeting, the printed name and signature of the person or persons giving the proxy, the unit or units 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, and contain boxes where the owner(s) can indicate that the proxy is given: (a) for quorum purposes only, (b) to the individual whose name is printed on a line next to this box, (c) to the board of directors as a whole and that the vote be made on the basis of the preference of the majority of the board, or (d) to those directors present at the meeting and the vote to be shared with each board member receiving an equal percentage. Proxies may be given to the Board as an entity. Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering a unit or under an agreement of sale affecting a unit.

8. 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 inspectors of election, if applicable.
- (g) Election of directors, if applicable.

- (h) Unfinished business.
- (i) New business.

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 owners present, whether a quorum be present or not, without notice other than the announcement of the meeting. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

10. Conduct of Meetings. All meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order.

11. Agreement of Sale and Land Trusts. Unless otherwise specified in the pertinent documents, and subject to the "one vote, one representative" requirement as set forth above, the vendees named in an agreement of sale and the trustee named in a land trust for a unit in the Project shall be considered to be the owner for all purposes of this Article.

12. Audit. The Association shall require a yearly audit of the Association financial accounts and at least one unannounced verification of the Association's cash balance by a public accountant; provided, the yearly audit and the unannounced verification of the cash balance may be waived by a majority vote of the owners at an Association meeting.

13. Approval to Sell or Rent Apartments by Association Employees. Association employees shall not engage in selling or renting apartments in the Project except apartments owned by the Association unless such activity is approved by an affirmative vote of sixty-five percent (65%) of the owners.

ARTICLE IV **ASSOCIATION FUNDS, MINUTES AND RECORDS**

1. Handling of Association Funds. The funds in the general operating account of the Association shall not be commingled with funds of other activities such as lease rent collections and rental operations. For purposes of this section lease rent collections and rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the Association.

All funds collected by the Association shall be: a. deposited in a financial institution located in the State of Hawaii whose deposits are insured by an agency of the United States government; b. held by a corporation authorized to do business under Chapter 406, Hawaii Revised Statutes; or c. invested in the obligations of the United States government.

All funds collected by the Association shall be disbursed by employees of the Association under the supervision of the Board. All funds collected by a managing agent, if any, shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the Board.

The Board shall not transfer Association funds by telephone between accounts, including but not limited to the general operating account and reserve fund account.

2. Minutes and Records. The minutes of the Board and of the Association meetings as well as the Association's financial statements shall be available for examination by owners at convenient hours at a place designated by the Board; in addition, upon request of any owner, such documents shall be mailed to any owner, at his cost and expense for reproduction and mailing. The minutes of the meetings of the Board and of the Association must include the recorded vote of each member on each motion, except motions voted on in executive session.

The Board shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The Board shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses.

All records and vouchers authorizing payments and statements shall be kept and maintained at the address of the Project or elsewhere within the State as determined by the Board.

3. Examination of Books and Records. The owner and each mortgagee shall be permitted to examine the books and records of the Association during reasonable hours on business days, and each mortgagee shall have the right to require the submission of annual reports and other financial data.

4. Owners' List. The Board shall keep an accurate and current list of owners and their current addresses and the names and addresses of the vendees under an agreement of sale. The list shall be maintained at a place designated by the Board and a copy shall be available, at cost, to any owner who furnishes to the Board a duly executed and acknowledged affidavit stating that the list will be used by the owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to association matters and shall not be used by the owner or furnished to anyone else for any other purpose.

ARTICLE V
OFFICERS

1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, elected by the Board and with respect to the office of President, from the Board. All officers shall be owners. The Directors may appoint an assistant treasurer, an assistant secretary, and such other officers as they in their judgment deem necessary.

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

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

4. President. The President shall be the chief executive officer of the Association and a member of the Board. He shall preside at all meetings of the Association and of the Board. 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.

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 shall appoint some other member of the Board to do so 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.

6. Treasurer. The Treasurer shall keep the financial records and books of account and shall supervise the managing agent's or manager's custody of all funds of the Association, maintenance of accounts and records thereof and preparation of final reports thereof.

7. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Board and of the Association, shall give all notices as provided by these By-Laws, and shall have such other powers and duties as may be incidental to the office of Secretary, given him by these By-Laws or assigned to him from time to time by the Directors. If the Secretary is not present at any

meeting, the presiding officer shall appoint a secretary pro tempore who shall keep the minutes of such meeting and record them in the books provided for that purpose.

8. Auditor. The Association may at any meeting appoint a certified public accountant engaged in the business of auditing to act as auditor of the Association and to perform such audits and fiscal duties as may be requested of him by the Association.

9. Prohibition on Officers. An owner shall not act as an officer of the Association and an employee of the managing agent, if any, employed by the Association.

ARTICLE VI **OBLIGATIONS OF THE OWNERS**

1. Determination of Common Expenses and Fixing of Common Charges. The Board shall from time to time, and at least annually, prepare a budget for the Project, determine the amount of the common charges payable by the owners to meet the common expenses of the Project and allocate and assess such common charges among the owners according to their respective common interests. The common expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board pursuant to the Declaration, and reasonable attorneys' fees and costs related to enforcement of collection for common expenses, over and above the interest provided hereinbelow. The Board shall advise all owners, promptly, in writing, of the amount of common charges payable by each of them, respectively as determined by the Board. Such charge shall be due and payable monthly in advance on the first day of every month. An owner shall pay a late charge of five percent (5%) of any monthly installment not received within ten days after the due date and delinquent payments shall bear interest at the rate of eight percent (8%) per annum until paid. All such sums assessed but unpaid for the share of common expenses chargeable to any unit shall be a lien on the interest of the delinquent owner, prior in right to all other liens whatsoever except that such lien shall be subordinate: (1) to assessments, liens and charges in favor of the State of Hawaii for taxes past due and unpaid on such unit or other interest, and (2) to the lien of any mortgage instrument duly recorded.

2. Maintenance and Repair.

(a) All maintenance or repairs to any unit or the limited common elements, ordinary or extraordinary, (other than maintenance of and repairs to any common elements contained therein) shall be made by the owner of the unit, except as such repairs may be covered by insurance. All maintenance, repairs or replacements to the common elements, whether located inside or outside of the units, shall be made by the Board and be charged to all the unit owners as a common expense unless the same results

from the negligence, misuse or neglect by a unit owner and is not covered by insurance, in which case such unit owner shall reimburse the Association for the cost thereof.

(b) Any and all improvements by an owner which will affect the exterior appearance, structural, integrity, or infringe upon any common elements of the Project, must first obtain written approval for said improvements from the Board of Directors.

3. Representation. The managing agent, if one is hired, subject to the direction of the Board, shall represent the Association or any two or more owners similarly situated as a class in any action, suit, hearing, or other proceeding concerning the Association, the common elements or more than one unit, and on its or their behalf may institute, defend, intervene in, prosecute and settle any such actions, suits, and proceedings, without prejudice to the rights of any owners individually to appear, sue or be sued. Service of process on two or more owners in any such action, suit, or proceeding may be made on the managing agent, if any.

4. Foreclosure of Lien. In any suit to foreclose a lien against any owner of any unit, the Association may be represented through its managing agent or Board in like manner as any mortgagee of real property. The managing agent or Board acting on behalf of the unit owners, shall have the power to bid for and acquire any such unit at the foreclosure sale. The delinquent owner shall be required to pay the Association all its costs and reasonable attorneys' fees without foreclosing or waiving the lien securing the same.

5. House Rules. Two-thirds of the Board may, from time to time, adopt, amend, modify, and/or revoke in full or in part, such reasonable rules and regulations, to be called the House Rules, governing the conduct of persons using the Project as it may deem necessary. Copies of such House Rules, upon adoption, amendment, modification, and/or revocation thereof shall be delivered to each owner in the Project and shall be binding upon all owners, occupants of the unit and other users of the Project or the unit.

6. Title. Every owner shall promptly cause to be duly recorded in the Bureau of Conveyances, State of Hawaii, or Office of the Assistant Registrar of the Land Court, State of Hawaii, as the case may be, the deed, assignment or other conveyances, to him of his unit or other evidence of his title thereto. Such evidence of title must also be filed with the Board who shall maintain such information in the record of ownership of the Association.

7. Mortgages. Any mortgagee of a unit shall file a copy of his mortgage or send a certified copy of a letter indicating the recording date thereof and giving the names of the parties, unit and other pertinent data, with the Board within ten (10) days after execution of the same. The Board shall maintain such information

in the records of ownership of the Association. After such filing, the Board shall notify the mortgagee of any unit owner who is in default in his common expense contribution. The mortgagee, at his option, may pay the delinquent expenses.

8. Mortgagee Protection. Notwithstanding any provision to the contrary in these By-Laws:

(a) Any mortgagee of a mortgage of record who obtains a title to a unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage or deed in lieu of foreclosure, will not be liable for such unit's unpaid dues or charges which accrue prior to the date of acquisition of title to such unit by the mortgagee or acquirer pursuant to foreclosure of the mortgage or deed in lieu of foreclosure.

(b) All taxes, assessments, and charges which may become liens prior to any mortgage of record under the laws of the State of Hawaii shall relate only to the individual units and not the Project as a whole.

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

(d) No amendments to this section shall affect the rights of the holder of any mortgage of record who has notified the Association of its interest unless such mortgagee consents to the filing of such amendments.

ARTICLE VII **LIABILITY OF DIRECTORS AND OFFICERS**

1. Exculpation. No director or officer shall be liable for acts or defaults of any other director, officer, or other owner or for any loss sustained by the Association except for willful misconduct or willful negligence.

2. Indemnification. Every director, officer, and owner of the Association shall be indemnified by the Association against all reasonable costs, expenses, and liabilities, including attorneys' fees actually and necessarily incurred by or imposed upon him in connection with any claim, action, suit, proceeding, investigation, or inquiry of whatever nature in which he may be involved as a party or otherwise by reasons of his having been a director, officer, or owner, whether or not he continues to be such director, officer, or owner at the time such costs, expenses, or liabilities are incurred or imposed except in relation to matters as to which he shall be finally adjudged, in such action, suit, proceeding,

investigation, or inquiry, to be liable for willful misconduct or willful negligence toward the Association in the performance of his duties, or in the absence of such final adjudication, any determination of such liability by the opinion of legal counsel selected by the Association. The foregoing right to indemnification shall be in addition to and not in limitation of all other rights to which such person may be entitled as a matter of law and shall inure to the benefit of the legal representative of such person.

ARTICLE IX
MEDIATION; MANDATORY ARBITRATION

1. Mediation. If an owner or the Board requests mediation of a dispute involving the interpretation or enforcement of the Declaration, the By-Laws, house rules or involving certain sections of the Condominium Act as set forth therein, the other party in the dispute shall be required to participate in mediation. If an owner or the Board refuses to participate in the mediation of a particular dispute, a court may take the refusal into consideration when awarding expenses, costs, and attorney's fees in accordance with Sec. 514A-94, Hawaii Revised Statutes, as may be hereafter amended.

2. Mandatory Arbitration. At the request of any party, any dispute concerning one or more owners and the Association, the Board, or managing agent, or one or more owners relating to the interpretation, application, or enforcement of the Act, the Declaration, the By-Laws, or the House Rules, shall be submitted to arbitration. Unless otherwise agreed to by the parties, the arbitration shall be conducted in accordance with the procedures and subject to the restrictions and exclusions set forth in the Act.

ARTICLE X
COMPLIANCE

Each owner shall comply with all provisions of the Act, the Declaration, By-Laws, and the House Rules, as any of the same may be amended from time to time. In addition to the remedies provided in the Act, the Association, acting through the Board shall be entitled to the following relief:

(a) Additional Expense. Each owner shall be liable for the expense of all upkeep by the Association rendered necessary by his act, neglect or carelessness or the act, neglect or carelessness of any of his employees, agents, licensees, invitees, tenants, or guests.

(b) Costs and Attorney's Fees. In any proceeding arising out of any alleged default by an owner, the prevailing party shall

be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be determined by the court.

(c) No Waiver of Rights. The failure of the Association, the Board, or any owner(s) to enforce any provision of the Act, the Declaration, By-Laws, and the House Rules shall not constitute a waiver of the right of the Association, the Board, or any owner to enforce such provision in the future. All rights, remedies and privileges granted to the Association, the Board, or any owner(s) pursuant to any provision of the Act, the By-Laws, or the House Rules shall be deemed to be cumulative, and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the person(s) exercising the same from exercising such other rights, remedies, and privileges as may be granted to such person(s) by the Declaration, By-Laws, House Rules, or by law.

(d) Legal Proceedings. Violation of any provision of the Act, the Declaration, By-Laws, or the House Rules shall be grounds for relief, including (without limitation) an action or suit: (i) to recover any sums due, (ii) for damages, (iii) for injunctive relief, (iv) any other relief provided for by the Act, the Declaration, By-Laws or the House Rules, (v) for any other remedy available at law or in equity, and (vi) for any combination of any of the foregoing, all of which relief may be sought by the Association, the Board and in any appropriate case, by any aggrieved owner(s), and shall not constitute an election of remedies.

(e) Fines. The Board may levy reasonable fines against any owner for any violation of the Act, the Declaration, By-Laws, or the House Rules, not to exceed such owner's annual assessment for each separate violation. No fine may be levied unless and until the owner is given written notice of such violation; provided, however, that each day thereafter that such violation continues shall constitute a separate violation. Written request by the owner for a hearing on such violation(s) prior to the imposition of a fine therefor shall suspend the imposition of such fine until such hearing is held.

ARTICLE XI **AMENDMENT; CONFLICT**

1. Amendment. These By-Laws may be amended in any respect not inconsistent with provisions of law or the Declaration at a meeting duly called for such purpose or by written consent of sixty-five percent (65%) of the apartment owners, provided that any and all amendments shall conform to Section 514A-82, Hawaii Revised Statutes, as amended. The proposed amendment with the rationale may be submitted by the Board or by a volunteer apartment owners' committee. If submitted by said committee, it shall be accompanied by a petition signed by not less than twenty-five percent (25%) of

the owners as shown on the owner's list. The proposed amendment, rationale, and ballots for voting on the proposed amendment shall be mailed by the Board to the owners at the expense of the Association for vote or written consent without change within thirty (30) days of the receipt of the petition by the Board. The vote or written consent required to adopt any amendment shall not be less than sixty-five percent (65%) of all owners; provided, however, that the vote or written consent must be obtained within one hundred twenty (120) days after mailing. In the event the amendment or amendments are duly adopted then the Board shall cause the amendment or amendments to be recorded in the Bureau of Conveyances, State of Hawaii or filed the Office of the Assistant Registrar of the Land Court, State of Hawaii, as the case may be. The volunteer apartment owners' committee shall be precluded from submitting a petition for a proposed amendment which is substantially similar to that which has been previously mailed to the owners within one (1) year after the original petition was submitted to the Board. This foregoing provision shall not preclude any owner or voluntary apartment owners' committee from proposing any amendment at any annual Association meeting.

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

ADOPTION OF BY-LAWS

The undersigned hereby adopts the foregoing as the By-Laws of the Association of Apartment Owners of BROOKLYN'S HILLSIDE PHASE II this _____ day of _____, 2005.

YUN CHING DIVERS

Declarant

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 2005, before me personally appeared YUN CHING DIVERS, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Notary Public, State of Hawaii
My commission expires: