

ASSOCIATION OF APARTMENT OWNERS OF TROPICANA VILLAGE-AIEA, PHASE 2 & 3

**BOARD OF DIRECTORS' RESOLUTION ALLOCATING
RESPONSIBILITY FOR MAINTENANCE, REPAIR, AND REPLACEMENT
RELATING TO UNIT DOORS, WINDOWS, SCREENS AND PATIOS/LANAIS**

WHEREAS, the Association of Apartment Owners of Tropicana Village-Aiea, Phase 2 & 3 condominium project (the "Project") is governed by the First Restatement of the Declaration of Condominium Property Regime of Tropicana Village-Aiea, Phase 2 and 3, as amended (the "Declaration") and the First Restatement of the By-Laws of the Association of Apartment Owners of Tropicana Village-Aiea, Phase 2 & 3 (the "By-Laws") (collectively, the "Governing Documents"), the Condominium Property Act, codified as Hawaii Revised Statutes, Chapter 514B, as amended, and, among other documents, the Hawaii Administrative Rules ("HAR"), Title 16, Chapter 107 relating to Condominium Property Regimes;

WHEREAS, pursuant to Article IV, Section 1 of the By-Laws, the Association's Board of Directors (the "Board") "shall at all times manage and operate the project and have such powers and duties as may be necessary or proper[. . .] therefor";

WHEREAS, HAR § 16-107-65(b) requires an association's board of directors to compile a list of association assets in connection with the calculation of an association's estimated replacement reserves;

WHEREAS, HAR § 16-107-65(b) provides that "[i]f the project's declaration and association's bylaws fail to clearly state whether a particular part of a condominium project is association property, the board may adopt a resolution allocating responsibility for that part to the association, an individual owner, or individual owners";

WHEREAS, pursuant to HAR § 16-107-65(b), said resolution shall indicate whether the part in question is: (1) an asset of the association; (2) the responsibility of an individual owner or individual owners, but fewer than all owners; or (3) partly an asset of the Association and partly the responsibility of fewer than all owners;

WHEREAS, pursuant to HAR § 16-107-65(b), said resolution shall also "state the basis of the board's decision and shall be effective to determine responsibility for replacement reserves for the part in question upon adoption and until changed by the board or by an amendment to the declaration or bylaws";

WHEREAS, Section A(1) of the Declaration provides that the Project consists of one hundred twelve (112) estates within the perimeter walls, floors and ceilings of each of the 112 apartment units contained in thirty-two (32) buildings;

WHEREAS, Section A(1)(c) of the Declaration defines the boundaries of the apartments and provides in relevant part that:

The respective apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls or interior load-bearing walls, the floors and ceilings surrounding each apartment or any pipes, wires, conduits or other utility or service lines running through such apartment which are utilized for or serve more than one apartment, the same being deemed common elements as hereinafter provided. Each apartment shall be deemed to include all the walls and

partitions which are not load-bearing within its perimeter walls, the inner decorated or furnished surfaces of all walls, floors and ceilings, and all fixtures originally installed therein including built-in range-oven, water heater, garbage disposer, range hood and dishwasher (Floor Plan Unit Type K only to include in addition to above washer-dryer).

WHEREAS, Section A(2) of the Declaration provides that the common elements include all remaining portions and appurtenances of the Project, and provides in subsection (b) that common elements include: "[a]ll foundations, floor slabs, columns, girders, beams, supports, unfinished perimeter and load-bearing walls, chases, entries and roofs of said buildings" and further provides in subsection (c) that the common elements also include: "[a]ll yards, grounds and landscaping, the swimming pool and other recreational facilities, all refuse facilities, mail boxes and patio slabs";

WHEREAS, Section A(3) of the Declaration describes the limited common elements of the Project, which are set aside for the exclusive use of certain apartments, and provides in subsections (b) and (c) that:

(b) The entry or entries of each apartment, refuse container and the patio slab shall be appurtenant to and for the exclusive use of such apartment.

(c) All other common elements of the project which are rationally related to less than all of said apartments or buildings shall be limited to the use of such apartments or buildings.

WHEREAS, the Association's Condominium Map shows "lanais," "decks," and "balconies" on various sheets;

WHEREAS, Section F(3) of the Declaration provides that the administration of the Project is vested in the Association and the Association's duties include, but are not limited to, the following:

[w]ell and substantially repair, maintain, amend and keep all common elements of the project, including without limitation the buildings 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 thereon in good cultivation, and replant the same as may be necessary, and 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;

WHEREAS, Article IV, Section 1(b) of the By-Laws provides that the Board has the powers and duties as may be necessary, including:

(b) Maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto, excluding additions or alterations to the common elements constructed by apartment owners pursuant to Paragraph M of the Declaration, as amended, except as otherwise provided in Article V, Section 2 of the By-Laws, as amended;

WHEREAS, Article V, Section 2 of the By-Laws, which describes the maintenance obligations of the owners, provides that:

Every apartment owner shall, at his own expense at all times well and substantially repair, maintain, amend and keep his apartment, including without limitation all internal installations therein such as water, electricity, gas, telephone, sewer, sanitation, air conditioning, lights and all other fixtures and accessories belonging to such apartment and the interior decorated or finished surfaces of all walls, floors and ceilings of such apartment, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided by law or the Declaration, and shall be liable for all loss or damage whatsoever caused by his failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association promptly on demand all expenses incurred by it in performing any such work authorized by the Board of Directors or the Managing Agent. Every apartment owner and occupant shall reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishing and equipment thereof caused by such owner or occupant or any person under either of them and shall give prompt notice to the Managing Agent of any such loss or damage or other defect in the project when discovered.

Each apartment owner shall, at his own expense and at all times, well and substantially repair, maintain, amend, and keep any additions or alterations constructed by said apartment owner or any previous owner of said owner's apartment with all necessary reparations and amendments whatsoever, in good order and condition. In the event that an apartment owner fails to diligently perform the aforementioned work, the Association, after providing such apartment owner with reasonable notice to do so, shall perform such work and such apartment owner shall be liable for all loss or damage whatsoever caused by his failure to perform such work and shall reimburse the Association promptly upon demand for all expenses incurred by the Association in performing the aforementioned work.

WHEREAS, Article V, Section 3(d) of the By-Laws also provides that:

(d) Every apartment owner and occupant shall at all times keep his apartment in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority or the Association for the time being applicable to the use of the project.

WHEREAS, Article V, Section 3(g) of the By-Laws provides that:

(g) No apartment owner shall decorate or landscape any entrance, hallways, planting area or lanai appurtenant to his apartment except in accordance with standards therefor established by the Board of Directors or specific plans approved in writing by the Board.

WHEREAS, Section M of the Declaration provides that any additions and/or alterations to an apartment or a limited common element requires the approval of the Trustees and the Board, who have the authority to withhold approval of any addition/alteration "on aesthetic grounds, to preserve the uniform appearance" of the Project and may also impose reasonable conditions upon their approval.

WHEREAS, the above-cited sections of the Declaration and By-Laws do not clearly state whether the unit doors (i.e., front and rear wooden doors and sliding glass doors) and windows (including all components thereof, i.e., the window operators/window hardware, and jalousie glass), as well as the screens appurtenant to the unit doors and windows (including all components thereof), which serve only that unit, are common elements, limited common elements, or part of the apartments;

WHEREAS, the above-cited sections of the Declaration and By-Laws only mention "patio slabs", while the Condominium Map shows "lanais," "decks" and "balconies", and the Declaration and By-Laws do not clearly state whether the lanais, decks, and balconies, which serve only a particular unit, are common elements, limited common elements, or part of the apartments;

WHEREAS, Hawaii Revised Statutes § 514B-35, relating to Unit Boundaries, provides in relevant part:

Except as provided by the declaration:

(2) If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element appurtenant solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements;

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, lanais, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but are located outside the unit's boundaries, are limited common elements appurtenant exclusively to that unit.

WHEREAS, Section H of the Declaration defines common expenses in relevant part as follows:

All charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration of the project, including without limitation the operation thereof, any maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto (excluding additions and alterations constructed or made by apartment owners pursuant to the provisions of this Declaration and/or the By-Laws), any labor, services, materials, supplies and equipment therefor, any liability whatsoever for loss or damage arising out of or in connection with the common elements or any accident, fire or nuisance thereon, and any premiums for hazard and liability insurance herein required with respect to the project shall constitute common expenses of the project for which all apartment owners shall be severally liable in proportion to their respective common interests. Except as otherwise provided in this Declaration or the By-Laws, the Board of Directors of the Association (herein called the "Board") shall from time to time assess the common expenses against all of the apartments in their respective proportionate shares, and the unpaid amount of such assessments against any apartment shall constitute a lien against such apartment which may be foreclosed by the Board or Managing Agent as provided by said Condominium Property Act, provided that 30 days' prior written notice of intention to foreclose shall be mailed, postage prepaid, to the Trustees

and all other persons having any interest in such apartment as shown in the Association's record of ownership.

WHEREAS, Hawaii Revised Statutes § 514B-41(a) provides that "all limited common element costs and expenses, including but not limited to maintenance, repair, replacement, additions, and improvements, shall be charged to the owner or owners of the unit or units to which the limited common element is appurtenant in an equitable manner as set forth in the declaration";

WHEREAS, no provision in the Declaration or in the By-Laws provides for the manner in which expenses associated with limited common elements, including the expenses associated with the unit doors and windows, as well as the screens appurtenant to the unit doors and windows (including all components of the unit doors, windows, and screens), the patios, lanais, decks, and balconies (the "patios and lanais") that serve only one unit, are to be allocated;

WHEREAS, it has been the Association's historical practice to treat the unit doors and windows (including all components thereof) that serve only one unit as limited common elements appurtenant solely to the one unit they serve as the Association has not expended Association funds to maintain and/or repair the unit doors or windows (including all components thereof); however, the Association has historically replaced unit doors and windows (including all components thereof), if the Board was able to make a determination that the damage to the unit doors and windows that necessitated the replacement was not caused due to the fault/negligence of an owner and/or occupant (i.e., if an owner/occupant caused the damage to a unit door and/or window, the respective unit owner was responsible for the replacement thereof);

WHEREAS, it has been the Association's historical practice to treat screens (including all components thereof) that serve only one unit as limited common elements appurtenant solely to the one unit they serve as the Association has not expended Association funds to maintain, repair, and/or replace the screens (including all components thereof);

WHEREAS, in order to maintain a uniform exterior appearance, to help ensure the safety of the buildings, and to help protect any adjacent common elements, the patios and lanais, that serve only one unit, are treated as limited common elements appurtenant solely to the one unit they serve;

WHEREAS, because the Project's Declaration and By-Laws fail to clearly state whether all or only portions of the doors, windows and screens are common elements, limited common elements, or part of the apartments, in order to allocate responsibility for the maintenance, repair, and/or replacement of the same, under HAR § 16-107-65, the Board of Directors may adopt a resolution to allocate such responsibility;

WHEREAS, because the Project's Declaration and By-Laws fail to clearly state whether the patios and lanais are common elements, limited common elements, or part of the apartments, in order to allocate responsibility for the maintenance, repair, and/or replacement of the same, under HAR § 16-107-65, the Board of Directors may adopt a resolution to allocate such responsibility; and

WHEREAS, the Board of Directors has determined that it is in the best interest of the Association to adopt a policy to formally allocate responsibility for the unit doors, windows, and screens (including all components thereof), as well as the patios and lanais.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors hereby adopts the following policy allocating responsibility for maintenance, repair and/or replacement of the unit doors, windows, and screens, as well as the patios and lanais, to be effective

May 19, 2021.

Unit Doors, Windows, and Screens

All unit doors and windows (including, but not limited to, front and rear wood doors, sliding glass doors, any frames, operable hardware, window operators, and jalousie glass related thereto) (the "doors and windows"), as well as all screens appurtenant to the unit doors and windows (including all components thereof) (the "screens"), that serve only one unit, are to be treated as limited common elements appurtenant to the unit they serve.

Maintenance & Repairs of Unit Doors, Windows, and Screens

The owners of the units to which the respective unit doors, windows, and screens are appurtenant shall be responsible for the physical maintenance and/or repair of all unit doors, windows, and screens (including, all components thereof), at the sole cost and expense of the unit owner.

If, after being provided with reasonable notice, an owner fails to perform necessary maintenance and/or repairs to their respective unit doors, windows, and screens (including, all components thereof), the Association, through its Board of Directors, may perform the necessary maintenance and/or repairs to the respective unit doors, windows, and screens (including, all components thereof). The associated costs, charges, and expenses shall be assessed against the respective owner's account as a special assessment.

Replacements of Unit Doors, Windows, and Screens

Except as otherwise provided herein, the Association shall be responsible for conducting/facilitating the replacement of the unit doors and/or windows (including, all components thereof). The associated costs, charges, and expenses shall be a common expense of the Association.

If it is determined by the Board of Directors that unit doors and/or windows (including, all components thereof) need to be replaced due to the fault/negligence of an owner, or any individuals for whom the owner is responsible, the subject owner shall be responsible for conducting/facilitating the replacement, at the sole cost and expense of the unit owner.

The owners of the units to which the respective screens are appurtenant shall be responsible for the replacement of said screens (including, all components thereof), at the sole cost and expense of the unit owner.

If owners conduct/facilitate the replacement of any unit doors, windows, and/or screens (including, any components thereof), the owners shall only use, purchase, and/or install items of the same style, design and quality of the original parts as installed when the buildings were built. Owners, in the event of any deviation from

the style, design and/or quality, must obtain the prior written approval from the Board of Directors before any such installation.

Patios and Lanais

The patios, lanais, decks, and balconies (collectively, the "patios and lanais") that serve only one unit are to be treated as limited common elements appurtenant to the unit they serve.

Maintenance, Repair, and Replacement for Patios and Lanais

Owners shall be responsible for ensuring that the patios and/or lanais, appurtenant to their respective units, are kept in a clean condition.

If any maintenance (beyond regular cleaning, which is an owner's responsibility), repairs, and/or replacements of the patios and/or lanais are necessary, owners are required to inform the Association's Managing Agent as soon as possible.

In order to maintain a uniform exterior appearance, to help ensure the safety of the buildings, and to help protect any adjacent common elements, the Association, through its Board of Directors, shall be responsible for planning, contracting, and directing any necessary maintenance (except for the regular cleaning of the patios and lanais, which is the owner's responsibility), repair and/or replacement of the patios and/or lanais.

All administrative expenses for the planning, contracting, and directing of the maintenance, repair, and/or replacement of the patios and/or lanais will be paid by the Association as a common expense (i.e., the administrative costs associated with obtaining quotes, reviewing contracts, and other related preliminary planning, contracting, and/or directing work).

All other expenses for any maintenance, repair, and/or replacement of the patios and/or lanais (i.e., all expenses other than administrative expenses) shall be assessed to the owner or owners of the unit or units to which the limited common element patio and/or lanai is appurtenant.

CERTIFICATE OF SECRETARY

THIS CERTIFIES that the undersigned is the Secretary of the above-named Association and that the foregoing is the full, true and correct resolution passed by the Board of Directors thereof at a meeting of said Board held on May 19, 2021, legally called and held, at which a quorum was present and voting.

IN WITNESS WHEREOF, I have hereunto set my hand this 19 day of May, 2021.

Bonnie A. Scott
Secretary
ASSOCIATION OF APARTMENT OWNERS OF
TROPICANA VILLAGE-AIEA, PHASE 2 & 3