

THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS:  
STATE OF HAWAII

BUREAU OF CONVEYANCES

Doc 2009-025072

FEB 20, 2009 12:00 PM

LAND COURT SYSTEM

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Return by: Mail [ ] Pickup [ ] To:

RICHARD S. EKIMOTO, ESQ.  
1001 Bishop Street, Suite 780, Honolulu, HI 96813-3410  
Telephone: (808) 523-0702

G:\CLIENT\PO\poinciana Manor\document\3-2-2 Terms of Directors Amendment Instrument.wpd

This document contains 5 pages

**AMENDMENT TO THE BYLAWS OF THE  
ASSOCIATION OF APARTMENT OWNERS OF POINCIANA MANOR**

**WHEREAS**, the Declaration of Condominium Property Regime for the Association of Apartment Owners of Poinciana Manor dated May 20, 1974 was recorded in the Bureau of Conveyances of the State of Hawaii in Liber 9956, Page 70.

**WHEREAS**, the By-Laws of the Association were attached as an Exhibit to the Declaration.

**WHEREAS**, the Restated By-Laws of the Association dated December 2, 1996 was recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 96-174226.

**WHEREAS**, the Condominium Map No. 358 was recorded in the Bureau of Conveyances, State of Hawaii.

**WHEREAS**, Hawaii Revised Statutes §514B-108(e) provides that the bylaws of condominium associations may be amended by the written consent of 67% of the apartment owners.

**WHEREAS**, more than 67% of the apartment owners approved the amendments to the Bylaws hereinafter set forth by written consent.

**NOW, THEREFORE**, the Bylaws as it may have been amended and/or restated, are hereby amended as follows:

**AMENDMENT NO. ONE:**

Article II, Section 3 of the Second Restatement of By-Laws of the Association of Apartment Owners of Poinciana Manor ("Bylaws") is hereby amended to read as follows:

Section 3. Election and Term. Election of directors shall be by cumulative voting by secret ballot at each annual meeting and any special meeting called for the purpose. Directors shall hold office for a period of three years and until their respective successors have been elected, subject to removal as herein provided, except that at the annual meeting for 2008, three directors shall be elected for three-year terms; at the annual meeting for 2009, two directors shall be elected for three-year terms and one director shall be elected for a one-year term (if one of the elected directors does not volunteer for the one-year term, then the elected director who received the lowest number of votes shall serve for a one-year term); at the annual meeting for 2010, two directors shall be elected for three-year terms; and continuing in the same repeating pattern regardless of which year this section becomes effective.

As a part of this Amendment No. 1, Article II, Section 1 of the By-Laws is hereby amended to read as follows:

Section 1. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of seven (7) persons each of whom shall be an owner, co-owner, vendee under an agreement of sale, a trustee of a trust which owns a unit, or an officer, partner, member, or other person authorized to act on behalf of any other legal entity which owns an apartment. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be owners for this purpose. There shall be no more than one representative on the Board of Directors from any one apartment. The Association's Resident Manager may not serve on the Board. The directors shall serve without compensation; provided, however, that directors may be reimbursed for travel costs and per diem provided owners are informed and majority approve of the expenses. Notwithstanding the foregoing, directors may expend Association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget includes these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the state, all other travel expenses incurred under this subsection shall be subject to the requirements of Section 514B-107(d), Hawai'i Revised Statutes, as amended.

AND, the undersigned officers of the Association hereby certify that the foregoing amendments were adopted by the written consent of more than 67% of the Poinciana Manor apartment owners.

18<sup>th</sup> IN WITNESS WHEREOF, the undersigned have executed these presents as of the day of February, 2009.

ASSOCIATION OF APARTMENT OWNERS OF  
POINCIANA MANOR

By: MEK  
Fred E. MEKE/vey  
Type Name  
Its: President

By: Ellen Spence  
Ellen Spence  
Type Name  
Its: Treasurer

NOT FOR REAL ESTATE TRANSACTIONS

STATE OF HAWAII )  
 : SS.  
CITY & COUNTY OF HONOLULU )

On this 18<sup>th</sup> day of FEBRUARY, 2009, in the First Circuit of the State of Hawaii, before me personally appeared FRED McKELVEY, personally known to me or proven to me on the basis of satisfactory evidence, who being duly sworn or affirmed, did say that such person was the PRESIDENT of the Association of Apartment Owners of Poinciana Manor, a Hawaii Nonprofit Corporation, that said person executed the foregoing instrument identified or described as "Amendment to the Bylaws of the Association of Apartment Owners of Poinciana Manor," as such person's free act and deed on having been duly authorized to execute such instrument in such capacity.

The foregoing instrument is dated 2/18/09 and contained 5 pages at the time of this acknowledgment/certification.

Donna Woodin  
Notary Public, State of Hawaii

DONNA WOODIN  
Printed Name of Notary Public  
My Commission Expires: 2/20/10

NOT FOR REAL ESTATE TRANSACTIONS

STATE OF HAWAII )  
 : SS.  
CITY & COUNTY OF HONOLULU )

On this 18<sup>TH</sup> day of FEBRUARY, 2009, in the First Circuit of the State of Hawaii, before me personally appeared ELLEN SPENCE, personally known to me or proven to me on the basis of satisfactory evidence, who being duly sworn or affirmed, did say that such person was the TREASURER of the Association of Apartment Owners of Poinciana Manor, a Hawaii Nonprofit Corporation, that said person executed the foregoing instrument identified or described as "Amendment to the Bylaws of the Association of Apartment Owners of Poinciana Manor," as such person's free act and deed on having been duly authorized to execute such instrument in such capacity.

The foregoing instrument is dated 2-18-09 and contained 5 pages at the time of this acknowledgment/certification.

Donna Woodin  
Notary Public, State of Hawaii

DONNA WOODIN  
Printed Name of Notary Public  
My Commission Expires: 2/20/10

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file

THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS:  
STATE OF HAWAII

BUREAU OF CONVEYANCES

DATE FEB. 19 2004 TIME 2:30

DOCUMENT NO. 2004.034565

AFTER RECORDATION, RETURN BY: MAIL ( ) PICK-UP ( )

Brooks Tom Porter & Quitiquit (CPP)  
841 Bishop Street, Suite 2125  
Honolulu, HI 96813 #526-3011 Total Pages:

TMK# (1) 4-2-001-048

AMENDMENT OF BY-LAWS OF THE  
ASSOCIATION OF APARTMENT OWNERS OF POINCIANA MANOR

KNOW ALL BY THESE PRESENTS:

WHEREAS, that certain Declaration of Horizontal Property Regime dated May 20, 1974, was recorded in the Bureau of Conveyances of the State of Hawaii in Liber 9956 at Page 70 (the "Declaration"), which created the "Poinciana Manor" condominium project (the "Project"); and

WHEREAS, the By-Laws of the Association of Apartment Owners of Poinciana Manor were attached to the Declaration (the "By-Laws"); and

WHEREAS, pursuant to Section 514A-82(b)(2) of the Hawaii Revised Statutes, at least sixty-five percent (65%) of the total interest in the common elements of the Project have voted or given their written consent to amend the By-Laws as set forth below.

NOW, THEREFORE, Article II, Section 1 of the By-Laws is

hereby amended to provide that the Board of Directors shall be composed of seven (7) persons.

The foregoing amendment shall be implemented as follows: At the next annual meeting of the Association following the recordation of this amendment, the six (6) directors whose terms are not expiring at said meeting, shall hold office until their respective terms expire, at which time their successors shall be elected and hold office in accordance with Article II, Section 3 of the By-Laws. With respect to the three (3) directors whose terms expire at said meeting, only one (1) successor shall be elected at such time and shall hold office in accordance with said Article II, Section 3.

The undersigned officers of the Association hereby certify that the foregoing amendment to the Bylaws was adopted with the written consent of at least sixty-five percent (65%) of the total interest in the common elements of the Project.

IN WITNESS WHEREOF, the undersigned have executed this instrument on this 29 day of January, 2004.

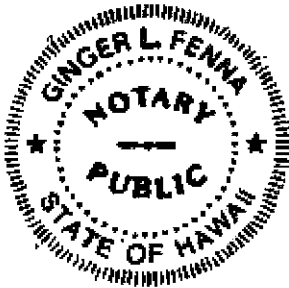
ASSOCIATION OF APARTMENT  
OWNERS OF POINCIANA MANOR

By Edward W. Andersen  
Print Name: EDWARD W. ANDERSEN  
Title: Secretary

By Robert A. Cyr  
Print Name:  
Title: Robert A. Cyr  
PRESIDENT

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

On this 29<sup>th</sup> day of January, 2004, before me personally appeared Edward W Andersen, to me personally known, who, being by me duly sworn, did say that he is the Secretary of the ASSOCIATION OF APARTMENT OWNERS OF POINCIANA MANOR, an unincorporated association, and that said instrument was signed on behalf of said association by authority of its Board of Directors and that said officer acknowledged said instrument to be the free act and deed of said association.

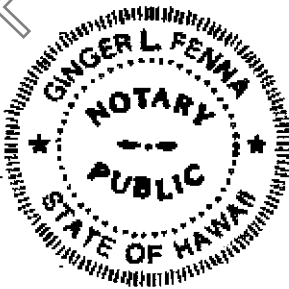


Ginger L. Fenna  
Notary Public, State of Hawaii  
GINGER L. FENNA  
(Print/Type Name)

My commission expires: 4/8/05

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

On this 29<sup>th</sup> day of January, 2004, before me personally appeared Robert A. Cyr, to me personally known, who, being by me duly sworn, did say that he is the President of the ASSOCIATION OF APARTMENT OWNERS OF POINCIANA MANOR, an unincorporated association, and that said instrument was signed on behalf of said association by authority of its Board of Directors and that said officer acknowledged said instrument to be the free act and deed of said association.



Ginger L. Fenna  
Notary Public, State of Hawaii  
GINGER L. FENNA  
(Print/Type Name)

My commission expires: 4/8/05



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THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS:  
STATE OF HAWAII

BUREAU OF CONVEYANCES

DATE 12-10-96 TIME 11:45  
DOCUMENT NO. 96-174226

LAND COURT SYSTEM

REGULAR SYSTEM

Return by: Mail [ ] Pickup [XX] To:

NEELEY & ANDERSON  
Attorneys at Law  
M. Anne Anderson (3548-0)  
733 Bishop Street, Suite 2301  
Honolulu, Hawaii 96813 (808) 536-8177  
pm\rest\bl.cov

#2

TITLE OF DOCUMENT:

SECOND RESTATEMENT OF BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF POINCIANA MANOR

PARTIES TO DOCUMENT:

ASSOCIATION OF APARTMENT OWNERS OF POINCIANA MANOR

PROPERTY DESCRIPTION:

\* POINCIANA MANOR CONDOMINIUM PROJECT

\* CONDOMINIUM MAP NO. 358

\* TMK NO. 4-2-001-048 (1)

SECOND RESTATEMENT OF BY-LAWS OF THE  
ASSOCIATION OF APARTMENT  
OWNERS OF POINCIANA MANOR

WHEREAS, by Declaration of Horizontal Property Regime (now known as the Declaration of Condominium Property Regime) dated May 20, 1974, recorded at the Bureau of Conveyances of the State of Hawaii (hereinafter referred to as the "Bureau of Conveyances") in Liber 9956, at Page 70 (Condominium Map No. 358), James C. Castle, James Gordon McIntosh and Hawaiian Trust Company, Limited, Trustees of the trust estates established pursuant to the Last Will and Testament, including Codicils First through Fifth, of Harold K. L. Castle, deceased, and Iolani School, a Hawaii eleemosynary corporation, as fee owners, and Lewers & Cooke, Inc., a Hawaii corporation, as lessee, did submit the property described in said Declaration to the provisions of the Horizontal Property Act, Chapter 514, Hawaii Revised Statutes, as amended, (now known as the "Condominium Property Act, Chapter 514A, Hawaii Revised Statutes");

WHEREAS, said Declaration of Horizontal Property Regime, as amended (hereinafter referred to as the "Declaration"), provided for the organization of the Association of Apartment Owners of Poinciana Manor (hereinafter referred to as the "Association") and established By-Laws therefor, which said By-Laws were attached to the Declaration and incorporated therein by reference;

WHEREAS, Section 514A-82.2(a), Hawaii Revised Statutes, provides that associations of apartment owners may at any time restate the by-laws of the associations to set forth all amendments thereof by resolution adopted by the Board of Directors;

WHEREAS, Section 514A-82.2(b), Hawaii Revised Statutes, provides that associations of apartment owners may at any time restate the by-laws of the associations to amend the by-laws as may be required in order to conform with the provisions of Chapter 514A, Hawaii Revised Statutes, or any other statute, ordinance, rule, or regulation enacted by any governmental authority, by resolution adopted by the Board of Directors, and the restated by-laws shall be as fully effective for all purposes as if adopted by the vote or written consent of the apartment owners. Section 514A-82.2(b), Hawaii Revised Statutes, further provides that the by-laws as restated pursuant to that section shall: 1) identify each portion so restated; 2) contain a statement that those portions have been restated solely for the purposes of information and convenience; 3) identify the statute, ordinance, rule, or regulation implemented by the amendment; and 4) state that in the event of any conflict, the restated by-laws shall be subordinate to the cited statute, ordinance, rule, or regulation;

WHEREAS, Section 514A-82.2(c), Hawaii Revised Statutes, provides that upon the adoption of a resolution pursuant to Section 514A-82.2(a) or (b), Hawaii Revised Statutes, the restated by-laws shall set forth all of the operative provisions of the by-laws, as amended, together with a statement that the restated by-laws correctly set forth, without change, the corresponding provisions of the by-laws, as amended, and that the restated by-laws supersede the original by-laws and all prior amendments thereto;

WHEREAS, the Board of Directors of the Association by adoption of a resolution, voted to record a second restated version of the By-Laws which would set forth the provisions of the By-Laws, as amended and which would conform to Chapter 514A, Hawaii Revised Statutes, Chapter 515, Hawaii Revised Statutes, and the Federal Fair Housing Act, as amended.

NOW, THEREFORE, the By-Laws of the Association of Apartment Owners of Poinciana Manor are hereby restated for the second time as set forth in Exhibit "1" attached hereto. Each By-Law provision that has been restated has been identified in the endnotes attached thereto. Said provisions have been restated solely for the purposes of information and convenience. To the extent that there is any conflict between the provisions of the second restated By-Laws and the statute or statutes being implemented, the provisions of the second restated By-Laws shall be subordinate to said statute or statutes. The second restated version of the By-Laws correctly sets forth, without change, the corresponding provisions of the By-Laws, as amended. This second restated version of the By-Laws shall supersede the original By-Laws and all prior amendments thereto and the first restated version of the By-Laws; provided, however, that in the event of any conflict, the second restated version of the By-Laws shall be subordinate to the original By-Laws and all prior amendments thereto.

DATED: Honolulu, Hawaii, this 2nd day of December, 1996.

ASSOCIATION OF APARTMENT OWNERS  
OF PRINCIANA MANOR

By [Signature]  
Print Name: Cambridge Williams  
Its: Pres.

By [Signature]  
Print Name: Herbert E. Sawin III  
Its: V.P.

NOT FOR REAL ESTATE TRANSACTIONS

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 2nd day of December, 1996, before me personally appeared Herbert E. Sullivan, to me personally known, who being by me duly sworn, did say that ~~he~~ is the Vice President of the Board of Directors of the Association of Apartment Owners of Poinciana Manor, that said instrument was signed in behalf of said Association by authority of its Board of Directors, and that ~~he~~ executed the same as the free act and deed of said Association. Said Association has no seal.



Notary Public, State of Hawaii

My commission expires June 12, 1999

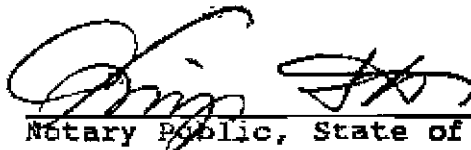
L.S.

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 2nd day of December, 1996, before me personally appeared Lawrence Williams, to me personally known, who being by me duly sworn, did say that ~~he~~ is the President of the Board of Directors of the Association of Apartment Owners of Poinciana Manor, that said instrument was signed in behalf of said Association by authority of its Board of Directors, and that ~~he~~ executed the same as the free act and deed of said Association. Said Association has no seal.



Notary Public, State of Hawaii

My commission expires June 12, 1999

L.S.

**EXHIBIT "1"**

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SECOND RESTATED BY-LAWS OF THE ASSOCIATION OF APARTMENT  
OWNERS OF POINCIANA MANOR

The following by-laws shall apply to the above-named condominium project (herein called the "project"), as described in and created by Declaration of Horizontal Property Regime (herein called the "Declaration" and now known as a "Declaration of Condominium Property Regime"), to be recorded or filed of record in the State of Hawaii contemporaneously herewith, and to all present and future owners, tenants and occupants of any apartments of the project and all other persons who shall at any time use the project. The mere acquisition or rental of any apartment or the mere act of occupancy of any apartment will signify that these by-laws are accepted, ratified and will be complied with.

ARTICLE I

MEMBERSHIP

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

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

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

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

Section 5. Notice of Meetings. The Secretary or Managing Agent shall give written or printed notice of each annual and special meeting to every apartment owner according to the Association's record of ownership at least fourteen days before the date set for the meeting. Each meeting notice shall state whether it is an annual or special meeting, the authority for the call thereof, and the purpose therefor, and contain at least: the date, time, and place of the meeting, the items on the agenda for the meeting, and a standard proxy form, if any, authorized by the Association. Notice shall be given to every apartment owner in one of the following ways: (a) by delivering it to him personally, or (b) by leaving it at his apartment in the project or at his usual

residence or place of business, or (c) by mailing it, postage prepaid, addressed to him at his address as it appears on the Association's record of ownership. If notice is given pursuant to the provisions of this section, the failure of any apartment owner to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings thereat. The presence of any apartment owner in person or by proxy at any meeting shall be deemed a waiver of any required notice to such owner unless he shall at the opening thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof.

Section 6. Quorum. The presence at any meeting in person or by proxy of a majority of apartment owners shall constitute a quorum, and the acts of the owners of apartments to which are appurtenant a majority of the common interest represented at any meeting at which a quorum is present shall be the acts of the Association except as otherwise provided herein. The term "majority of apartment owners" herein means the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interests as established by the Declaration, and any other specified percentage of the apartment owners means the owners of apartments to which are appurtenant such percentage of the common interests.

Section 7. Voting. Voting shall be on a percentage basis, and the percentage of the total vote to which each apartment is entitled shall be the percentage of the common interests

assigned to such apartment in the Declaration. Votes may be cast in person or by proxy by the respective apartment owners as shown in the record of ownership of the Association. An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any apartment owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such apartment in such capacity. The vote for any apartment owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and in case of protest each co-owner shall be entitled to only a share of such vote in proportion to his share of ownership in such apartment.

Section 8. Proxies and Pledges. The authority given by any apartment owner to another person to represent him at meetings of the Association shall be in writing. The proxy, to be valid, must be delivered to the Secretary of the Association or the Managing Agent no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and must contain at least: the name of the Association, the date of the meeting of the Association, the printed name and signature of the person or persons giving the proxy, the apartment or apartments for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given.

A proxy to be valid must also contain boxes wherein the owner has indicated 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. A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the apartment owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the apartment. No officer shall use Association funds to solicit proxies; provided that this shall not prevent an officer from exercising his or her right as an apartment owner.

The Association's Resident Manager and/or Managing Agent shall not solicit, for use by the Manager or Managing Agent, any proxies from any owner nor shall the Resident Manager or Managing Agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. No member of the Board who uses Association funds to solicit proxies shall cast any of these 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 directors and the Board first posts notice of its intent to solicit proxies in prominent locations within the project at least thirty

days prior to its solicitation of proxies; provided that if the Board receives within seven days of the posting a 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 statements shall not exceed one hundred words, indicating the owners' qualifications to serve on the Board and reasons for wanting to receive proxies. Voting rights transferred or pledged by mortgage, deed of trust, or agreement of sale of any apartment or interest therein, a true copy of which is filed with the Board through the Secretary or Managing Agent, shall not be affected by this Section 8 or its subsections.

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

might have been transacted by a quorum at the meeting as originally called.

Section 10. Order of Business. The order of business at all annual 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.
- (g) Election of directors.
- (h) Unfinished business, if any.
- (i) New business.
- (j) Adjournment.

Section 11. Rules of Order. All meetings of the Association and the Board of Directors shall be conducted in accordance with the most current edition of Robert's Rules of Order, Newly Revised.

## ARTICLE II

### BOARD OF DIRECTORS

Section 1. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of nine (9) persons each of whom shall be an owner, co-owner, vendee under an agreement of sale or an officer of any corporate owner of an apartment. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be

owners for this purpose. There shall not be more than one representative on the Board of Directors from any one apartment. The Association's Resident Manager may not serve on the Board. The directors shall serve without compensation; provided, however, that directors may be reimbursed for travel costs and per diem provided owners are informed and a majority approve of the expenses. Notwithstanding the foregoing, directors may expend Association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget includes these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the state, all other travel expenses incurred under this subsection shall be subject to the requirements of Section 514A-82(b)(10), Hawaii Revised Statutes, as amended.

Section 2. Powers. The Board of Directors shall have all powers necessary for the administration of the affairs of the Association and may do all such acts and things therefor as are not by law, the Declaration or these by-laws directed to be exercised or done only by the apartment owners.

Section 3. Election and Term. Election of directors shall be by cumulative voting by secret ballot at each annual meeting and any special meeting called for the purpose. Directors shall hold office for a period of three years and until their



respective successors have been elected, subject to removal as herein provided, except that at the first annual meeting one-third of the directors shall be elected for one year, one-third for two years and one-third for three years.

Section 4. Vacancies. Vacancies in the Board of Directors caused by any reason other than removal of a director by the Association shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected to fill a vacancy shall serve for the remainder of the term of the director whose vacancy he is elected to fill, unless sooner removed. Death, incapacity or resignation of any director, his continuous absence from the State of Hawaii for more than six months, his unexcused absence from three consecutive regular meetings of the Board of Directors, or his ceasing to be the sole owner or co-owner of an apartment, shall cause his office to become vacant.

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

Section 6. Annual Meeting. An organizational meeting of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association, and

no notice shall be necessary to any directors in order validly to constitute such meeting, provided that a majority of the whole Board shall be present. At such meeting the Board shall elect the officers of the Association for the ensuing year.

Section 7. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least one such meeting shall be held during each calendar quarter of every year. Notice of regular meetings of the Board shall be given to each director, personally or by mail, telephone or telegraph, at least one day prior to the date of such meeting.

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

Section 9. Waiver of Notice. Before or at any meeting of the Board of Directors any director may in writing waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice to him of such meeting. If all the directors are present at any meeting of the Board, no notice thereof shall be required, and any business may be transacted at such meeting.

Section 10. Quorum of Board. At all meetings of the Board of Directors a majority of the total number of directors established by these by-laws shall constitute a quorum for the transaction of business, and the acts of a majority of the directors present at any meeting at which a quorum is present shall be the acts of the Board. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 11. Fidelity Bonds/Registration. The Board of Directors shall secure fidelity bonds as required by Chapter 514A, Hawaii Revised Statutes, as that Chapter may be amended from time to time. The premiums on such bonds shall be paid by the Association. The Board shall also register the Association annually as required by Chapter 514A, as that Chapter may be amended from time to time.

Section 12. Posting of Notices of Board Meetings. Whenever practicable, notice of all Board meetings shall be posted by the Resident Manager or a member of the Board in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the Board.

Section 13. Conflict of Interest. A director shall not cast any proxy vote at any Board meeting nor shall a director vote at any Board meeting on any issue in which the director has a

conflict of interest. A director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that such disclosure was made. In the event of a conflict of interest by any director or directors, a majority of the disinterested directors shall constitute a quorum and shall be empowered to act on behalf of the Association on any such matter as to which such conflict exists.

Section 14. Documents Provided to Board Members. The Association, at its expense, shall provide all Board members with a current copy of the Association's Declaration, by-laws, and House Rules, and annually, with a current version of Chapter 514A, Hawaii Revised Statutes, with amendments.

### ARTICLE III

#### OFFICERS

Section 1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer, all of whom shall be elected by and from the Board of Directors. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. All officers shall be members of the Association and the Board. An apartment owner shall not act as an officer of the Association and an employee of the Managing Agent employed by the Association.

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

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

Section 4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. Subject to the control of the Board he shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. He shall also have such other powers and duties as may be provided by these by-laws or assigned to him from time to time by the Board.

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

Section 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors, give all notices thereof as provided by these by-laws, maintain and keep a continuous and accurate record of

ownership of all apartments, have charge of such books, documents and records of the Association as the Board may direct, and in general perform all the duties incident to the office of Secretary. The duties of the Secretary may, from time to time, be delegated by the Board of Directors to the Association's Managing Agent.

Section 7. Treasurer. The Treasurer shall maintain and keep the financial records and books of account of the Association, prepare regular reports thereof and be responsible for the deposit and custody in the name of the Association of all its funds and securities. The duties of the Treasurer may, from time to time, be delegated by the Board of Directors to the Association's Managing Agent.

Section 8. Auditor. The Association shall appoint annually a public accountant or accounting firm as auditor, who shall not be an officer of the Association nor own any interest in any apartment, to audit the books and financial records of the Association as required by law or directed additionally by the Board of Directors. In accordance with Section 514A-96, Hawaii Revised Statutes, the Association shall require an annual audit of the Association's financial accounts and no less than one annual unannounced verification of the Association's cash balance by a public accountant. The Board of Directors shall make available a copy of the annual audit to each apartment owner at least thirty days prior to the annual meeting which follows the end of the fiscal year. The Board shall provide upon all official proxy forms a box wherein the owner may indicate that the owner wishes to

obtain a copy of the annual audit report. The Board shall not be required to submit a copy of the annual audit report to the owner if the proxy form is not marked. If the annual audit has not been completed by that date, the Board shall make available: (a) an unaudited year end financial statement for the fiscal year to each apartment owner at least thirty days prior to the annual meeting; and (b) the annual audit to all owners at the annual meeting, or as soon as the audit is completed, whichever occurs later. If the Association's fiscal year ends less than two months prior to the convening of the annual meeting, the year to date unaudited financial statement may cover the period from the beginning of the Association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed.

#### ARTICLE IV

##### ADMINISTRATION

Section 1. Management. The Board of Directors shall at all times manage and operate the project and have such powers and duties as may be necessary or proper therefor including without limitation the following:

(a) Supervision of its immediate management and operation;

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

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

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

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

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

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

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

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

(j) Notification of owners of an apartment, as shown on the Association's record of ownership, of a delinquency exceeding sixty (60) days in the payment of any assessment against



such apartment; provided, however, that the failure of the Board to give such notice shall not create any defenses or causes of action in favor of any defaulting apartment owner or any other person;

(k) Establishment of such penalties and fines as it deems appropriate with respect to enforcement of the provisions of the Declaration, these by-laws and the house rules, or any statute, ordinance, or applicable requirement of any governmental entity; PROVIDED such penalties and fines are not inconsistent with law or the provisions herein, and the unpaid amount of such penalties and fines against any apartment owner shall constitute a lien against his interest in his apartment which may be foreclosed by the Association acting by and through its Board of Directors or Managing Agent in the same manner as provided in the Condominium Property Act for common expenses.

(l) Subject to any approval requirements and spending limits contained in the Declaration or these by-laws, the Board of Directors may authorize the borrowing of money to be used by the Association for the repair, replacement, maintenance, operation, or administration of the common elements of the project, or the making of any additions, alterations, and improvements ~~thereof~~. The costs of such borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to such borrowing, shall be a common expense of the project; provided that owners representing fifty per cent of the common interest and apartments give written consent to

such borrowing, having been first notified of the purpose and use of the funds.

(m) Subject to any approval requirements and spending limits in the Declaration or these by-laws, the Board may authorize the installation of meters to determine the use by the apartments of utilities, including electricity, water, gas, fuel, out sewage, and drainage.

(n) The Board of Directors is authorized to purchase apartments at foreclosure sales as provided by Section 514A-90, Hawaii Revised Statutes, as amended from time to time. The Board shall be authorized, on behalf of the Association, to purchase one or more apartments on the open market upon obtaining the approval of a majority of apartment owners. The Board shall be authorized to sell, mortgage, vote the common interest appurtenant thereto, and to otherwise deal with any apartments purchased by it on behalf of the Association.

If the Board of Directors purchases one or more apartments, the Association shall be liable for the common expenses assessed against such apartment(s). The common interest appurtenant to each apartment owner's unit shall not be altered on account of such purchase.

The Board of Directors shall have the authority, on behalf of the Association, to borrow funds from one or more financial institutions upon such terms and conditions as it deems appropriate or necessary in connection with the purchase of one or more apartments as provided for herein, and it shall be further

empowered to do all other things and sign all documents incidental to the purchase of said apartment(s) and/or the procurement of such loan(s).

All documents incidental to the purchase of one or more apartments as authorized herein or the procurement of a loan in connection with such purchase may be signed by any two of the President, Vice-President, Treasurer, or Secretary.

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

Section 3. Representation. The Board of Directors may represent the Association or any two or more apartment owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements or more than one apartment, and on its or their behalf may institute, defend, intervene in, prosecute and settle any such actions, suits and proceedings, without prejudice to the rights of any apartment owners individually to appear, sue or be sued. Service of process on two or more apartment owners in any such action, suit or proceeding in which the Board has elected to represent any two or more owners may be made on the Managing Agent. Every first mortgagee to whom the lessee is required to pay the same or, whenever there is no such mortgagee, every Managing Agent shall

also be the agent of the respective lessees under any apartment leases filed with the Board for the collection, custody and payment of all rent, taxes, assessments and other charges thereunder payable to their Lessors.

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

Section 5. Telephone Conference Meetings. Any director who is not physically in attendance at any organizational, regular, or special meeting of the Board of Directors, but who is in contact with the Board of Directors by telephone, and who is thereby able to participate in the discussions, reports, debates, votes, and other matters conducted at such meeting, shall be deemed to be in attendance at such meeting for all purposes, including, but not limited to, the establishment of a quorum. If all of the directors participate in the meeting of the Board of Directors by telephone conference call, apartment owners will be included in such meeting upon request, so as to be permitted to attend the meeting; subject, however, to the right of the Board of Directors to exclude such apartment owners from listening to any matters considered at an executive session during such meeting.

Section 6. Termination of Occupancy. The violation of any of the covenants, conditions, or restrictions contained in these by-laws, the Declaration, the Condominium Property Act, or the House Rules by a tenant or occupant other than an owner, shall give the Board of Directors the right in addition to any other rights or remedies provided by law, these by-laws, the Declaration, or the House Rules, but not the obligation, to initiate and prosecute to conclusion a legal action to terminate any lease, rental agreement or other occupancy right of such tenant or occupant and/or to obtain a court order directing such tenant or occupant to immediately and permanently vacate such residence and to refrain from reentering the project and in such event, the Association shall have no liability to the owner for lost rentals or any other consequence of such termination or removal. The tenant and/or occupant in question and the owner of the apartment in question shall be jointly and severally liable for all costs and expenses incurred by the Association in prosecuting such legal action, including, but not limited to, attorneys' fees and costs. Said sums shall constitute a lien upon the owner's apartment which may be foreclosed by the Association through its Board of Directors in the same manner as unpaid common expense assessments. This provision is not intended to limit or restrict, in any manner whatsoever, the rights or remedies of the Association in the enforcement of its governing instruments.

ARTICLE V

OBLIGATIONS OF APARTMENT OWNERS

Section 1. Assessments. All apartment owners shall pay to the Managing Agent in advance on the first day of each and every month the monthly installments of assessments against their respective apartments for common expenses of the project in accordance with the Declaration, and also, with respect to any lease of any apartment filed with the Board of Directors, unless otherwise directed pursuant to the terms of such lease, a monthly sum determined by the Managing Agent to be sufficient to accumulate and pay when due all rent, taxes, assessments and other charges thereunder payable by the Lessee of such apartment.

Section 2. Maintenance of Apartments. Every apartment owner shall at his own expense at all times well and substantially repair, maintain, amend and keep his apartment, including without limitation all internal installations therein, such as water, electricity, gas, telephone, sewer, sanitation, air-conditioning, lights and all other fixtures and accessories belonging to such apartment and the interior decorated or finished surfaces of all walls, floors and ceilings of such apartment, and any appurtenant patios, storage and privacy areas, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided by law or the Declaration, and shall be liable for all loss or damage whatsoever caused by his failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association

promptly on demand all expenses incurred by it in performing any such work authorized by the Board of Directors or the Managing Agent. Every apartment owner and occupant shall reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishings and equipment thereof caused by such owner or occupant or any person under either of them and shall give prompt notice to the Managing Agent of any such loss or damage or other defect in the project when discovered.

Section 3. Use of Project.

(a) All apartments of the project shall be used only for residential purposes, and no apartment shall be used as a tenement or rooming house or for or in connection with the carrying on of any trade or business whatsoever.

(b) All common elements of the project shall be used only for their respective purposes as designed.

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

(d) Every apartment owner and occupant shall at all times keep his apartment in a strictly clean and sanitary condition and maintain and keep his privacy area, if any, in a neat and attractive 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.

(e) No apartment owner or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of his apartment or the project nor alter or remove any furniture, furnishings or equipment of the common elements.

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

(g) No apartment owner shall decorate or landscape any entrance, or privacy area of his apartment or other portion of the project except in accordance with standards therefor established by the Board of Directors or specific plans approved in writing by the Board.

(h) All occupants shall avoid making noises and using musical instruments, radios, televisions and amplifiers that may disturb other occupants.



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

(j) No rugs or other objects shall be dusted or shaken from the windows of the project or cleaned by beating or sweeping on any walkways, hallways, privacy areas or other areas of the project.

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

(l) No livestock, poultry, rabbits, dogs, cats, birds, or other animals whatsoever shall be allowed or kept in any part of the project, except as follows:

Any dog, cat, bird, or other common and generally accepted household pet which was kept in or upon the project prior to the recordation at the Bureau of Conveyances of the State of Hawaii of an amendment to these by-laws incorporating this restriction and which was registered with the resident manager within thirty (30) days after the recordation of said amendment, shall be allowed to remain in or upon the project provided, however, that any animal so allowed to remain in or upon the project shall:

- (1) Be promptly and permanently removed from the project by its owner if it causes a nuisance to or otherwise unreasonably disturbs an owner or occupant of an apartment, upon receipt by

- such animal's owner or by an occupant of the apartment in which the animal is being kept, of written notice to do so for that reason by the Board of Directors or the Managing Agent;
- (2) Not be kept, bred, or used in or upon the project for any commercial purpose;
  - (3) Not be allowed in or upon any portion of the common elements of the project except in transit during which time such animal shall be carried or held on a leash or harness; and
  - (4) Not be substituted or replaced by another animal, except upon its death as provided herein, nor be allowed to return to the project in the event that the animal or its owner ceases to continuously reside in the project at any time subsequent to the effective date of this provision. Upon the death of the animal, the owner of the animal may replace the animal with another similar animal and continue to do so for as long as the owner continues to reside in the owner's apartment or another apartment at the project.

Notwithstanding the foregoing or any other provision herein, nothing herein shall serve to prohibit visually impaired persons from keeping certified seeing-eye dogs, hearing impaired persons from keeping certified signal dogs, and physically

handicapped persons from keeping certified service dogs in their apartments. Nothing herein is intended to limit or restrict access to or interfere with the use and enjoyment of the apartment or project by handicapped persons. This rule will not be enforced in any manner that would constitute a violation of the Federal Fair Housing Act or Chapter 515, Hawaii Revised Statutes.

(m) No apartment owner or occupant shall without the written approval of the Board of Directors install any wiring for electrical or telephone installations, television antenna, machines or air-conditioning units, or other equipment or appurtenances whatsoever on the exterior of the project or protruding through the walls, windows or roof thereof.

(n) No apartment owner or occupant shall erect, place or maintain any television or other antennas on said project visible from any point outside of his apartment without the approval of the Board of Directors.

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

(p) None of the provisions of the project documents are intended to be in contravention of the State Fair Housing Act or the Federal Fair Housing Act. The Board will at all times comply with the provisions of said Fair Housing Acts when acting

upon requests by handicapped persons to make reasonable modifications to their apartments and/or the common elements of the project if the proposed modifications are necessary to enable said handicapped persons to have full use and enjoyment of the project. The Board will also comply with the provisions of said Fair Housing Acts when acting upon requests by handicapped persons for exemptions from any of the provisions of the project documents which would interfere with said handicapped persons' equal opportunity to use and/or enjoy their apartments and/or the common elements of the project.

Section 4. House Rules. The Board of Directors, upon giving notice to all apartment owners in the same manner as herein provided for notice of meetings of the Association and opportunity to be heard thereon, may adopt, amend or repeal any supplemental rules and regulations governing details of the operation and use of the common elements not inconsistent with any provision of law, the Declaration or these by-laws.

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

Section 6. Record of Ownership. Every apartment owner shall promptly cause to be duly recorded or filed of record the

deed, lease, assignment or other conveyance to him of such apartment or other evidence of his title thereto and shall file such lease with and present such other evidence of his title to the Board of Directors through the Managing Agent, and the Secretary shall maintain all such information in the record of ownership of the Association.

Section 7. Mortgages. Any apartment owner who mortgages his apartment or any interest therein shall notify the Board of Directors through the Managing Agent of the name and address of his mortgagee, and also of the release of such mortgage, and the Secretary shall maintain all such information in the record of ownership of the Association. The Board of Directors or Managing Agent at the request of any mortgagee or prospective purchaser of any apartment or interest therein shall report to such person the amount of any assessments against such apartment then due and unpaid.

Section 8. Default in Payment of Assessments. Each monthly assessment and each special assessment shall be the separate, distinct and personal debt and obligation of the apartment owner against whom the same is assessed. In the event of a default or defaults in the payment of any such assessment or assessments, the Association, acting through its Board of Directors, may enforce each such obligation as may be provided by law or these by-laws. In addition to any other remedies herein or by law provided, the Association, through its Board, shall have the

rights and remedies and may enforce each such obligation as set forth below.

(a) All sums assessed by the Association but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on the apartment prior to all other liens, except (1) liens for taxes and assessments lawfully imposed by governmental authority against the apartment, and (2) all sums unpaid on any valid mortgage of record which was recorded prior to the recordation of a notice of a lien by the Association, and costs and expenses including attorneys' fees provided in such valid mortgages. The lien of the Association may be foreclosed by action by the Association or the Board of Directors, acting on behalf of the Association, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment and the Association shall be entitled to the appointment of a receiver to collect the same. An action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. Any judgment rendered in any action filed by or on behalf of the Association to collect delinquent sums due and owing shall include all costs and expenses incurred by the Association in connection with such action, including reasonable attorneys' fees.

(b) At any time after the occurrence of any default, the Board may file a written notice of lien against the apartment of such delinquent owner which said lien shall be a continuing lien against the apartment for all ongoing assessments

and other sums becoming due and owing until paid; provided, however, that nothing herein shall prevent the Board from recording additional or updated liens from time to time. Any such written notice of lien shall be signed and acknowledged by any two or more members of the Board or such other person or persons as the Board may designate from time to time by general or special resolution.

(c) If the apartment owner fails to pay any assessment when due, such apartment owner shall pay a late fee for each such default or defaults in such amount as shall be determined by the Board of Directors from time to time. An additional late fee, in such amount as is determined by the Board from time to time, shall be assessed each subsequent month that a portion of the delinquent amount remains unpaid. The Board of Directors may also impose interest at the maximum rate of interest then allowed by law on all delinquent assessments from the date of such default until paid. Late fees and interest charged under this provision shall constitute a lien against the apartment of the delinquent apartment owner, which may be foreclosed upon in like manner as a mortgage of real property.

(d) Notwithstanding any provision to the contrary contained in these by-laws, if an owner shall fail to pay an assessment when due, the Board of Directors may, in its discretion, upon at least thirty (30) days written notice to the owner, declare due and owing the entire unpaid balance of such owner's projected common expense assessments for the fiscal year in which the default occurs. If the Board of Directors subsequently makes adjustments

in the projected common expense assessments for the relevant fiscal year causing either an increase or decrease in the monthly installments owed by such owner, then the owner shall pay the deficiency or receive a credit for the adjusted amount of the installment within thirty (30) days after the date of the transmittal of notice by the Association to such owner of such increase or decrease.

(e) All late fees, expenses, costs, and attorneys' fees assessed against an apartment owner shall be promptly paid on demand to the Association by such owner. The Board of Directors shall be authorized to adopt a policy whereby payments received from apartment owners may be applied toward the indebtedness of such owners to the Association in such order as the Board of Directors may specify, subject to any notice requirements of the Condominium Property Act, as amended. For example, the Board of Directors may adopt a policy whereby payments received from apartment owners shall be applied in the following order: 1) toward the payment of expenses, costs, and attorneys' fees assessed against the delinquent apartment owners; 2) toward the payment of late fees assessed against the delinquent apartment owners; and 3) the balance remaining, if any, toward the payment of common expense assessments. Such acceptance and application of payment shall not be construed as a waiver of any rights the Association shall have against such apartment owners for any and all outstanding amounts due and owing to the Association and the Board of Directors, at its sole discretion, may refuse acceptance of any payment which may be



insufficient to satisfy all amounts due and owing to the Association.

(f) All late fees, interest, attorneys' fees costs, and other expenses incurred by the Association in the collection of delinquent assessments or other sums due or charged under any provision in the Declaration or these by-laws or pursuant to any provision of Chapter 514A, Hawaii Revised Statutes, shall be assessed against the delinquent owner and shall constitute a lien against the apartment of said owner, which lien may be foreclosed upon in the same manner as a mortgage of real property. Said lien shall have the same priority as established by Chapter 514A, Hawaii Revised Statutes, as amended, for liens for common expenses.

Section 9. Collection of Rent from Tenants and Agents.

If an apartment owner shall at any time rent or lease his apartment and shall default for a period of thirty (30) days or more in the payment of the apartment owner's share of the common expenses, the Board may, at its option, so long as such default shall continue, demand and receive from any renter or lessee (hereinafter in this paragraph referred to as "lessee") of the apartment owner occupying the apartment or from any agent of such apartment owner who is in receipt of proceeds from the rental or lease of such apartment owner's apartment, the rent due or becoming due from such lessee or from any agent to the apartment owner up to an amount sufficient to pay all sums due from the apartment owner, including interest, late fees, expenses, costs, and attorneys' fees, if any, and any such payment of such rent to the Board by the lessee or agent shall be

sufficient discharge of such lessee or agent, as between such lessee and/or agent and the apartment owner to the extent of the amount so paid; but any such demand or acceptance of rent from any lessee or agent shall not be deemed to be a consent to or approval of any lease by the apartment owner or a release or discharge of any of the obligations of the apartment owner hereunder or an acknowledgement of surrender of any rights or duties hereunder. In the event that the Board makes demand upon the lessee or agent as aforesaid, the lessee and/or agent shall not have the right to question the right of the Board of Directors to make such demand, but shall be obligated to make said payments to the Board as demanded by the Board with the effect as aforesaid, provided, however, that the Board may not exercise this right if a receiver has been appointed to take charge of the premises pending a mortgage foreclosure or if a mortgagee is in possession pending a mortgage foreclosure.

#### ARTICLE VI

##### MISCELLANEOUS

Section 1. Amendment. These by-laws may be amended in any respect not inconsistent with provisions of law or the Declaration at any time by affirmative vote or written consent of at least sixty-five percent (65%) of the apartment owners. The amendment shall be effective only upon the recording of an instrument setting forth such amendment of these by-laws at the Bureau of Conveyances of the State of Hawaii.

Section 2. Liability/Indemnification. No Director or officer of the Association shall be liable for damage, injury, or loss caused by or resulting from his performance of, or failure to perform, duties of the position to which he was appointed or elected, unless he was grossly negligent or engaged in wilful misconduct in the performance of, or failure to perform, such duties. The Association shall indemnify every director and officer and his executors and administrators against all expenses reasonably incurred by or imposed on him in connection with any action, suit or proceeding to which he may be made a party by reason of being or having been a director or officer of the Association, except in relation to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or wilful misconduct; and in the absence of such final adjudication, indemnification shall be provided only in connection with such matters as to which the Association is advised by its legal counsel that the person to be indemnified committed no such breach of duty. The foregoing right of indemnification shall not be exclusive of any other rights to which such person may be entitled.

Section 3. Subordination. These by-laws are subordinate and subject to all provisions of the Declaration and any amendments thereto and the Condominium Property Act (Chapter 514A, Hawaii Revised Statutes, as amended), which shall control in case of any conflict. In the case of conflict between the Declaration and the Condominium Property Act, the Condominium Property Act shall

control. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in the Declaration or said Condominium Property Act.

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

Section 5. Waiver. Failure of the Board of Directors to insist upon strict performance or compliance with any of the provisions of the Condominium Property Act, the Declaration, these by-laws, and/or the house rules by an apartment owner shall not be construed as a waiver or relinquishment of any such provisions or a waiver or relinquishment of the right of the Board of Directors to insist upon performance or compliance at any future date.

Section 6. Incorporation. The Board of Directors shall be authorized to take all steps necessary or appropriate to incorporate the Association as a nonprofit corporation under the laws of the State of Hawaii, provided that such incorporation shall be subject to and shall not be deemed to alter or impair the terms, covenants and conditions of these by-laws or the Declaration, these by-laws shall be the by-laws of such corporation, and the Articles of Incorporation thereof shall be subordinate to and controlled by these by-laws and the Declaration. Any action taken by such

corporation in violation of any of the terms, covenants or conditions contained in these by-laws or the Declaration shall be void and of no effect.

NOT FOR REAL ESTATE TRANSACTIONS

**SECOND RESTATED BY-LAWS OF THE ASSOCIATION OF APARTMENT  
OWNERS OF POINCIANA MANOR**

**ENDNOTES**

The following By-Law provisions have been restated for the reasons set forth below:

1. The name of the Association has been restated in the title of the By-Laws to read "Poinciana Manor" rather than "Poinciana Garden" pursuant to that certain amendment of the Declaration and By-Laws recorded at the Bureau of Conveyances of the State of Hawaii in Liber 10363, at page 132.
2. Article I, Section 5 of the By-Laws has been restated to conform with Section 514A-82(b)(3), Hawaii Revised Statutes.
3. Article I, Section 8 of the By-Laws has been restated to conform with Section 514A-82(b)(4) and Section 514A-83.2(a) - (e), Hawaii Revised Statutes.
4. Article II, Section 11 of the By-Laws has been restated to conform with Section 514A-95.1, Hawaii Revised Statutes.
5. Article II, Section 12 of the By-Laws has been added to conform with Section 514A-82(b)(9), Hawaii Revised Statutes.
6. Article III, Section 1 of the By-Laws has been restated to conform with Section 514A-82(b)(7), Hawaii Revised Statutes.
7. Article III, Section 8 of the By-Laws has been restated to conform with Section 514A-96, Hawaii Revised Statutes.
8. Article IV, Section 1(1) of the By-Laws has been added to conform with Section 514A-82.3, Hawaii Revised Statutes.
9. Article IV, Section 1(m) of the By-Laws has been added to conform with Section 514A-15.5(b), Hawaii Revised Statutes.
10. Article V, Section 3(p) of the By-Laws has been added to conform with the provisions of the Federal Fair Housing Act.

11. Article VI, Section 1 of the By-Laws has been restated to conform with Section 514A-82(b)(2), Hawaii Revised Statutes.
12. The following provisions have been restated to incorporate the language of the amendment of the By-Laws which was recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 96-06740:

Introduction

Article I, Section 2  
Article I, Section 6  
Article I, Section 10  
Article II, Section 1  
Article II, Section 4  
Article II, Section 12  
Article III, Section 1  
Article III, Section 6  
Article III, Section 7  
Article IV, Section 1(j)  
Article IV, Section 1(k)  
Article IV, Section 2  
Article IV, Section 3  
Article IV, Section 4  
Article V, Section 3(1)  
Article VI, Section 2  
Article VI, Section 3

13. The following provisions have been added to incorporate the language of the amendment of the By-Laws which was recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 96-06740:

Article I, Section 11  
Article II, Section 13  
Article II, Section 14  
Article IV, Section 1(n)  
Article IV, Section 5  
Article IV, Section 6  
Article V, Section 8  
Article V, Section 9  
Article VI, Section 5  
Article VI, Section 6 (Note: The word "By-Laws" was changed in this section to "by-laws" for consistency.)

All provisions of the By-Laws which have been restated to implement the provisions of the Federal or State Fair Housing Acts and/or Chapter 514A, Hawaii Revised Statutes, have been restated solely for the purpose of information and convenience. In the event of any conflict, the restated provisions shall be subordinate to the provisions of the Federal and State Fair Housing Acts and Chapter 514A, Hawaii Revised Statutes.