

# **THE HEIGHTS AT WAILUNA**

## **RULES AND REGULATIONS**

### **SECTION 1: INTRODUCTION**

The following Rules and Regulations are established and designed to ensure maximum enjoyment of all members of The Heights at Wailuna and their guests, to protect all residents from inconveniences and nuisances caused by improper use of the premises, and to enhance the livability and desirability of The Heights at Wailuna.

All owners, residents and their guests shall be bound by these rules and by standards of reasonable conduct, whether covered by these rules and regulations or not. The mere acquisition, act of occupancy and/or presence in any apartment/unit and/or common area signifies that these rules and regulations are accepted and will be complied with.

These rules and regulations shall be enforced by the Managing Agent under the direction of the Board of Directors. All complaints and reports of violations should be directed immediately to the Managing Agent in writing.

Residents are responsible for ensuring that all members of their family, as well as their respective guests, comply with these rules and regulations. Owners are responsible for acquainting tenants with these rules and regulations and for taking steps as may be necessary to assure that all Residents & Guests conduct themselves in compliance herein.

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## SECTION 2: DEFINITIONS

AGENT	Any real estate broker, agent, company or individual who is empowered to act on behalf of any individual Apartment Owner.
APARTMENT	A Residence at the project known as THE HEIGHTS AT WAILUNA.
ARCHITECTURAL COMMITTEE	A Committee consisting of not less than three (3) members, appointed by the Board of Directors, (and who may be the Members of the Board of Directors). This Committee serves the Association to promulgate from time to time, standards as to landscaping, building fences, walls or other structures that do not conflict with provisions of the Declaration or the By-Laws of the Association.
ASSOCIATION	Shall mean and refer to THE HEIGHTS AT WAILUNA Association of Apartment Owners, Its successors in interest and its assigns.
ASSOCIATION OF OWNERS	All of the Owners acting as a group in accordance with THE HEIGHTS AT WAILUNA By-Laws and Declaration.
BOARD OF DIRECTORS	A duly elected Board constituted in accordance with THE HEIGHTS AT WAILUNA By-Laws representing The Association of Apartment Owners in all matters relating to the operation of the property which, in connection therewith, can from time to time modify or amend these House Rules and Regulations.
COMMON AREA	All real property owned by the Association for the common Use and enjoyment of the Owners, including all easements for parking purposes, easements for access and utilities purposes, and easements for drainage purposes.
CONDO LOT	Together with the Residence, the flat portion of ground upon which the Residence sits.
DECLARATION	Declaration of Horizontal Property Regime.
ENVIRONMENTAL PROTECTIVE CORRIDORS	An area depicted by shaded area 1 on the Condominium Map of certain Condo Lots as described in the By-Laws and in Section 4 of these Rules and Regulations, in which nothing may be built or planted above certain specified heights. These areas are known as the “EPC” areas.
GUEST	A person or persons who are on the premises for a short period of time at the invitation of a Resident.

LESSOR	The Trustees of the Estate of Bernice Pauahi Bishop.
MANAGING AGENT	The duly selected management firm whose responsibilities and that of its agents and employees are outlined in the By-Laws.
RESIDENCE	The home, which is designed and intended solely for use and occupancy as living quarters by a single family.
RESIDENT	Any person, including an Owner or their family, whose principal place residence is located at THE HEIGHTS AT WAILUNA

### SECTION 3: GENERAL RULES

#### 3.1 AIR CONDITIONERS, ETC.

Air conditioning units, wiring for electrical or telephone installations, machines or other equipment or appurtenances shall not be installed on the exterior of any Residence or building of the Project, or protrude through the walls, windows or roof thereof, without the written approval of the Board of Directors. All window units must be flush-mounted.

#### 3.2 CLOTHES DRYING

Outside clothes lines or other outside clothes drying or airing facilities shall be permitted only when they are not visible from neighboring Condo lot (s) and/or streets.

#### 3.3 DISTURBANCES

Residents shall not make or permit to be made, any disturbing and/or excessive noises in their Residence or in the Common Areas, nor shall they permit their guests to do such. All Residents shall avoid making noises and using musical instruments, radios, televisions and amplifiers in such manner as may disturb other Residents and/or their guests, or do anything or permit anything to be done that will interfere with the rights, comforts and convenience of other Residents or their guests.

#### 3.4 FIRES, BURNING

No Resident shall permit any exterior fires whatsoever within their Condo lot, except small barbecue and imu fires, and shall not permit any condition on or within their Condo lot which creates a fire hazard.

#### 3.5 GARAGES

Garages will be used only for the parking of vehicles, boats, trailers, or truck campers and for workshops and storage of lawn and garden maintenance equipment, etc.

#### 3.6 MAINTENANCE INSPECTION/RIGHT OF ENTRY

The Board of Directors, Managing Agent and its authorized agents has the right to enter any Condo lot and Common Area during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs required to prevent damage to any Residence or Common Area or the installation, inspection, repair or replacement of any Common Area.

#### 3.7 MAINTENANCE OF APARTMENTS AND CONDO LOTS

Residents shall, at their own expense, at all times, repair, maintain, amend and keep their Residences and Condo lots (except for that portion of the front yard of their Condo lot between the fence and the private street of the project\*), including and without limitation, all internal installations therein such as water, electricity, gas, telephone, sewer, sanitation, lights and all other fixtures and accessories belonging to their Residences, and all

foundations, walls, floors, roofs and ceilings of their Residences, in good order and condition except as otherwise provided by law or the Declaration. Residents shall be liable for all loss or damage caused by their failure to perform any such work diligently and in the case of such failure to perform, shall reimburse to the Association promptly on demand, all expenses incurred by the Association in performing any such work authorized by the Board of Directors or the Managing Agent.

\*The front yard of each Condo lot shall be planted, cultivated and maintained exclusively by the Association.

### 3.8 MAINTENANCE OF INSURABILITY

Nothing shall be allowed, done or kept in any Residence or Common Area of the Project which would create a fire hazard, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association.

### 3.9 NOTICES

Complaints and requests shall be made to the Managing Agent. Owners, Residents and/or Guests shall give immediate notice to the Managing Agent of any damage to the Common Areas and of any accident or injury occurrence in the Common Areas. Every Resident shall reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the Common Areas or any furniture, furnishment, or equipment thereof caused by such Resident or any person under such Resident.

### 3.10 PARKING

Residents and their guests shall not park their vehicles on any portion of their Condo lot visible from any adjacent property, except in a garage or on a paved driveway area; and boats, trailers, or truck campers will not be kept within or on any Condo lot except in a garage. All four wheels of vehicles parked in driveways shall be on the concrete driveway, specific exemptions to this Rule are units 1810K, 1810U, 1820E, 1820M, 1840K, 1850N, and 1840T. There shall be no parking permitted on the private roads within THE HEIGHTS AT WAILUNA. Guests parking should be accommodated on the Resident's driveway and overflow vehicles should be parked on Kaahumanu Street.

Motorcycles are licensed motor vehicles and are subject to these provisions. Vehicles parked in another Resident's driveway will be towed away at the Resident's request. The Managing Agent has the authority to have vehicles parked in unauthorized areas towed away at the vehicle owner's expense.

### 3.11 PETS

Livestock, poultry, or other animals shall not be allowed or kept in any part of the property; except that dogs, cats, and other household pets may be kept by Residents in reasonable numbers in their respective Residences and Condo lots, but shall not be kept, bred or used therein for any commercial purpose nor allowed on the Common Areas except in transit, when carried, or on a leash. Dogs and other pets shall not be allowed to be contained in those areas of a Condo lot described as side yards. (see Section 4.2b). Pets causing a nuisance or an unreasonable disturbance to any other Resident of THE HEIGHTS AT WAILUNA shall be permanently removed therefrom promptly upon notice given to the Resident by the Board of Directors or Managing Agent. Financial and all other responsibility for any personal property damage caused to any Resident, guest, employee of the Development, or to any member of the public, shall be that of the pet owner and/or Resident and not that of the Association. It is the responsibility of the pet owner to remove their pet's litter from their Condo lot and/or the Common Areas. Litter is to be wrapped securely and disposed of in the trash. The Board of Directors has the authority to levy special assessments for damage done to Common Areas by pets and for removal of pet litter.

### 3.12 PRESERVATION OF DRAINAGE PATTERNS

Each Resident shall do what is necessary to preserve and maintain the drainage patterns of their Condo lot and adjoining Condo lot (s).

### 3.13 RENTAL OF RESIDENCES

Residents (owners) who rent their Residences assume responsibility for their agents and their tenants. Residents (owners) or their agents will notify the Managing Agent within five (5) days of any change in tenancy and will ensure that new tenants receive a current copy of these THE HEIGHTS AT WAILUNA Rules and Regulations, and WAILUNA RECREATION ASSOCIATION Rules and Regulations.

### 3.14 RUGS, ETC.

Rugs, garments or other objects shall not be hung from the windows or facades of any building or otherwise displayed in public view. Rugs or other objects shall not be dusted or shaken from the windows or doors of any Residence or cleaned by beating or sweeping on any walkways, lanais, entries or other exterior part of the project.

### 3.15 SCREEN DOORS

Additional screen doors may be installed at the Resident's expense if they are of quality construction and conform with the exterior of the building.

### 3.16 SIGNS

No signs of any nature, except those installed by the Developer, including without limitation, commercial, political or similar signs, visible from neighboring property shall be erected or maintained upon or within any residence or Condo lot except:

- a. Such signs as may be required by legal proceeding;
- b. Residence identification signs of a combined total face area of one square foot or less for each Residence.
- c. Not more than one “For Sale” or “For Rent”, sign having a maximum face area of three square feet, such sign to refer only to the premises on which it is situated.

### 3.17 STORAGE

Visible storage of furniture, fixtures, appliances, trash containers, and other goods and chattels not in active use is not permitted.

### 3.18 TELEVISION ANTENNAE, ETC.

Refer to The Heights at Wailuna Antenna Installation Policy.

### 3.19 BULKY ITEMS

It is the Responsibility of the Resident to arrange with the City & County for bulky item or Green Waste Pick-up and to assure that items are not left on the common area over a 24-hour period.

### 3.20 USE OF THE PROJECT AND COMMON AREAS

- a. Residences shall be used for residential purposes only as stated in the Declaration.
- b. All Common Elements of the Project shall be used only for their respective purposes as designed.
- c. No Resident or Apartment occupant shall plant or cultivate or landscape the Common Elements or the front portion of their Condo lot, or place, store or maintain within or upon any of the Common Elements any furniture, packages or objects of any kind, or otherwise obstruct transit through such Common Elements or the front of their Condo lot.
- d. Owners & Residents are urged to familiarize themselves with the terms and conditions of Article VI of the By-Laws entitled “Architectural Control”, as these terms and conditions shall require the strict compliance of all Residents (see Section 5 of these Rules and Regulations).
- e. There shall be no improvements or emplacements of movable personal property in excess of two and one-half (2-1/2) feet in height above existing grade within five (5) feet of any Condo lot boundary line.
- f. Plants, trees or other landscaping, or fences, walls or other improvements, or the placing of any item of personal property of any kind shall not be permitted to exist

within an Environmental Protective Corridor (EPC) area that exceeds two and one-half (2-1/2) feet in height above existing grade.

- g. Plants, hedges, trees or other landscaping shall not be permitted within the side yard or rear yard of any Condo lot that shall extend above the existing roof line of the dwelling unit as it appears in the initial Condominium Map.
- h. Construction of improvements on a Condo lot shall be limited to a footprint of 350 square feet beyond what appears in the initial Condominium Map and no improvement shall be added above the roofline of the dwelling unit, as detailed in the Second Amendment to the By-Laws recorded 12/3/2024 in the Bureau of Conveyances as Document No. A-9103000534 amending Article V, Section 5, Subsection (h) of the By-Laws.
- i. Residents shall keep their Residence and Condo lot neat, clean, and in a strictly sanitary condition and shall be required to observe and perform all laws, ordinances, rules and regulations made by governmental authority or the Association with respect to the use of the Project.

### 3.21 VEHICLES

- a. House trailers, mobile homes, permanent tents, or similar facilities or structures shall not be kept, place or maintained upon or within any Condo lot at any time.
- b. Boats, trailers or trucks of more than one ton capacity shall not be permitted to be kept, placed or maintained upon or within any Condo lot.
- c. Trailers, truck campers, vehicles or boats shall not be constructed, or reconstructed or repaired upon or within any Condo lot in such a manner that such construction, reconstruction or repair is visible from neighboring properties, nor shall any vehicle not licensed and in good operating condition be maintained upon or within any Condo lot so as to be visible from any neighboring property, provided that nothing in this paragraph shall prevent a Resident from performing maintenance work or minor repairs on their own trailer, truck camper, vehicle or boat in their garage.
- d. Vehicle repairs in the Common Areas other than for reasons of emergency are prohibited. Residents are responsible for leakage of gas and oil in Common Areas. Spills and leakage will be cleaned up as soon as possible by the Resident to avoid damage to the asphalt covering. Vehicles must be maintained in operable condition or be removed from the Common Area.
- e. Vehicles may be washed in the Resident's garage or on the driveway area immediately in front of the Resident's garage. No other area may be used for vehicle washing.

### 3.22 WINDOW BARS OR GRILLWORK

Requests to install exterior bars or grills over windows will not be approved.

### 3.23 WINDOW TINTING

Requests to install bronze or smoked, non-reflective window tinting will generally be favorably considered, but must be approved in writing by the Board of Directors. Samples of tinting to be used must be submitted with the application to the Board of Directors. Reflective window tinting of any kind will not be approved.

### 3.24 FLAG DISPLAY

A single, standard size (3' x 5') Flag of the United States ("U.S. flag"), Hawaii State flag, or United States Armed Forces Flag may be displayed on a single projected, angled flagpole installed on the siding on either side of a unit's garage door under the garage roof eave line. The U.S. flag shall be flown in accordance with applicable laws, rules, and customs and any amendments thereto as may be adopted from time to time, including, but not limited to the U.S. Flag Code and 4 U.S. Code §8(g) of the U.S. Flag Code providing that "the flag should never have placed upon it, nor any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, or drawing of any nature." The Hawaii State flag shall be flown in accordance with Hawaii Revised Statutes §5-19 and any amendments thereto as may be adopted from time to time. Freestanding flagpoles are not permitted on Condo Lots.

## SECTION 4: CONDO LOT USE DEFINED

### 4.1 CONDO LOT YARD AREAS AND COMMON AREA FENCES

All Condo lots have a front yard area as defined in a. below. Various specific Condo lots have a side yard area and a rear yard area as defined in b. and c. below. Other specific Condo lots also have side and rear yards that are not governed by the definitions given in b. and c. below. Residents must ascertain from perusal of the By-Laws compatible with the specific Increment within which their Condo lot exists, if their Condo lot is as described in b. and c. below or if it is not governed by the particular descriptions given therein.

- a. The front yard area of all Condo lots is that yard area of the Condo lot located between the front fence (and the garage and front of the dwelling unit) and the road that is a portion of the project.
- b. The side yard area of the above mentioned specific Condo lots is that portion of a Condo lot located between adjoining dwelling units.
- c. The rear yard area of the above mentioned specific Condo lots is that land area behind the house which is that part of the dwelling unit furthest from the garage.

### 4.2 RESTRICTIONS ON USE OF CONDO LOTS

#### a. Front, side and rear Yard Area Restrictions

There are certain restrictions on the use of the three (3) different yard areas as follows:

##### (1) Front Yard Areas

The front yard shall be planted, cultivated, landscaped and maintained exclusively by the Association for the exclusive benefit of the Resident owner.

##### (2) Side Yard Areas

The side yard area as defined in 4.1 b., shall be planted, cultivated, landscaped and maintained by the Resident, but this area shall be a passive type of area (a no activity area) because of the proximity of the adjoining dwelling unit. This side yard is basically for use for ingress and egress and there shall be no continuing activities permitted in this area. Pets shall not be allowed to be housed and/or maintained in these side yard areas. In addition, no fences, walls or other improvements, or hedges or other dense plantings shall be permitted or allowed that would tend to cut down on or restrict the natural light and the natural circulation of air. Likewise, no additional artificial lighting of the side yard shall be permitted except for low voltage walkway lighting.

##### (3) Rear Yard Areas

The rear yard area as defined in 4.1, c., shall be deemed to be the active area for normal and typical activities relating to family usage of a private yard.

#### b. Environmental Protective Corridor (EPC) Restrictions

The following Condo lots within THE HEIGHTS AT WAILUNA have an area known as an Environmental Protective Corridor (EPC): 2-20, 22-30, 31-41, 43-48, 51-60, 82-85, 86 & 87, 96-118, 120.

Restrictions for Condo lots having an EPC area are that no plants, trees or other landscaping or fences, or walls or other improvements, or the placing of personal property of any kind shall be permitted to exist within an EPC area that exceed two and one-half (2-1/2) feet in height above existing grade.

## SECTION 5: ARCHITECTURAL CONTROL

### 5.1 ARCHITECTURAL COMMITTEE

An Architectural Committee appointed by the Board of Directors of the Association, in its discretion may promulgate from time to time standards as to landscaping, building, fences, walls or other structures that do not conflict with provisions of the Declaration or those By-Laws.

### 5.2 ARCHITECTURAL APPROVAL

Residents shall refrain from any construction of buildings, fences, walls, or other structures on their Condo lot, nor shall Residents make any exterior addition to or change or alteration to their Residence, including patio covers, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors.

### 5.3 ENVIRONMENTAL PROTECTIVE CORRIDORS

As stated in Section 4.2, b., it is the desire of the Association to protect certain environmental corridors within certain Condo lots. Consequently, those certain Condo lots listed in the By-Laws and shown on the Condominium Map have shaded areas within the rear yard in which nothing may be built with a height greater than two and one-half (2-1/2) feet above existing grade and nothing may be planted which grows to a height in excess of two and one-half (2-1/2) feet above existing grade. These areas are known as the "EPC" areas.

### 5.4 RESIDENT WAIVER BY MUTUAL CONSENT

Should two adjacent Resident owners so agree in writing, they may, with the prior written approval of the Board of Directors and with the concurrence of the Architectural Committee, construct a fence or wall between their Condo lots to a height not exceeding six (6) feet above the highest finished dwelling unit (Residence) slab. Should such a wall or fence be desired, then the Resident proposing such a wall must have their neighbor's permission attached to and made a part of the drawing which the Resident then submits to the Board of Directors for approval; and prior to granted approval of the fence in writing, the Board of Directors must assure itself that said fence will not adversely affect any EPC area in the Project.

### 5.5 LANDSCAPING APPROVAL

The provisions of this Section 5.5 are subordinate to the provisions of Section 5.3, "Environmental Protective Corridors", set forth above.

- a. Trees, bushes, shrubs or plants, which at maturity, and without clipping or pruning would exceed the height of the dwelling house (Residence) on a Condo lot, shall not be planted or emplaced until the plans and specifications for the placement of

any such trees, bushes, shrubs or plants have been submitted to the Board of Directors and in turn have been approved in writing by the Architectural Committee as to the preservation of the natural view and aesthetic beauty which each Condo lot is intended to enjoy.

- b. Plans submitted must show in detail the proposed elevations and locations of any proposed trees, bushes, shrubs or plants, including their location and elevation in relation to all other Condo lots subject to these restrictions.
- c. Approval of plans by the Board of Directors may be withheld if in the reasonable opinion of the Architectural Committee the view of any Condo lot would be impeded by the location of any tree, bush, shrub or plant, or in any other manner. In any event, the Board shall have the right to require any Resident to remove, trim, top or prune any tree, bush, shrub, or plant, which in the opinion of the Architectural Committee impedes or detracts from the view of any Condo lot.

#### 5.6 LANAI STRUCTURES, SUN SHADES, ETC.

Lanais, sun shades, etc., shall be designed to continue and/or complement architectural features of the Residence. The exterior appearance of the addition shall be built and finished to match the color and trim of the Residence. No such structure shall be built within an EPC area. Complete plans and specifications for any such structures must be submitted to the Board of Directors for the consideration of the Architectural Committee and the Resident must have written approval from the Board of Directors for the proposed structure prior to commencement of construction (see By-Laws, Article VI, Section 5. “Lanai Structures, Sun Shades and Gazebos”).

#### 5.7 REPAINTING

All repainting of any exterior surfaces must have the prior written approval of the Board of Directors. Contact the Managing Agent for “Request & Approval for Repainting” form.

#### 5.8 CONSENTS

The Architectural Committee and Board of Directors shall, within sixty (60) days after receiving plans, specifications and a fully completed “Heights at Wailuna Application for Modifications, Additions or Improvements” (“application”), review, approve or disapprove, and communicate the Board’s decision in writing to the applicant owners(s) (i.e., the “applicant(s)”) regarding, the application, provided that nothing shall prohibit the Board, Architectural Committee and the applicant(s) from entering into a written agreement to extend the deadline for the Architectural Committee and the Board to review, approve or disapprove, and communicate the Board’s written decision to the applicant(s) regarding, any application, to the extent an application may require additional time to complete the review process, including, but not limited to consultation with qualified third-party professionals. Such written agreement extending the time for review of, approval or disapproval of, and communication of the Board’s written decision regarding, any application shall be signed by 1) the Board President or Vice President and 2) the Secretary

or Treasurer and by all applicants identified on the application. Modifications which are commenced or completed without prior, written Board approval and/or which are non-compliant with The Heights at Wailuna Architectural-Modification Guidelines (“Architectural-Modification Guidelines”), By-Laws, Declaration, these House Rules and Regulations and/or any applicable Board Policy resolution shall be removed or corrected as directed in writing by the Board at the owner’s or owners’ sole expense.

## SECTION 6: PAYMENT OF MAINTENANCE FEES AND ASSESSMENTS

### 6.1 ASSESSMENTS

All Resident owners shall pay to the Managing Agent in advance on the first day of each and every month:

- a. The monthly installments of assessments against their respective Residence from common expenses of the Project.
- b. All assessments against each Residence pertaining to a limited common element appurtenant to such Residence.
- c. All assessments against each Residence by the WAILUNA RECREATION ASSOCIATION.
- d. With respect to any lease of any Residence filed with the Board of Directors, 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 Residence.

### 6.2 ASSESSMENT OF LATE CHARGES

Should all the above stated monthly charges not be received by the Managing Agent on or before the 15th day after said charges are due, the Managing Agent may assess a late payment charge of \$15.00 to the appropriate Resident owner; and if said charges, including said late payment charge are not received within thirty (30) days after said monthly charges are due, an additional late charge in the amount of \$15.00 and interest at the rate of one per cent (1%) per month calculated from such due date may be assessed. The amount of the late charge and interest rate may be adjusted by the Board of Directors.

## SECTION 7: ENFORCEMENT OF GOVERNING DOCUMENTS

### 7.1 RESPONSIBILITY FOR ENFORCEMENT

It shall be the responsibility of the Managing Agent and/or the Managing Agent's duly appointed representative to enforce these House Rules and Regulations for THE HEIGHTS AT WAILUNA, as well as the Declaration, By-Laws, Architectural-Modification Guidelines, and Board Policy Resolutions, as may be amended and/or restated from time to time (collectively, the "governing documents"). Such enforcement includes, but shall not be limited to issuance of verbal and written warnings, written notices of violation ("citations") and assessment of fines for the violation of any of the governing documents by any owner, occupant or guest of either.

### 7.2 RESPONSIBILITY FOR PAYMENT OF FINES; PERSONS SUBJECT TO CITATION

Fines will be assessed only against the owner by reason of the violation of the governing documents by either 1) the owner; 2) the owner's occupant, tenant or guest; or 3) the guest of the owner's occupant or tenant. Written citations will be sent to the owner (and the "offending party", if the "offending party" is a person other than the owner). The "offending party" is the person who committed the offense (a.k.a., infraction or violation).

### 7.3 "SUBSEQUENT" OR "CONTINUING" VIOLATIONS

If there is a repeat violation of the same or similar rule or other governing documents provision after the date of the first or subsequent written notice of violation, the violation shall be considered a new or "subsequent violation" subject to the next written citation and fine under the fining schedule set forth in Sections 7.4 – 7.6 of these Rules and Regulations, unless otherwise provided herein. If a violation is not corrected by the deadline stated in the first or subsequent written notice of violation, the violation shall be considered a new or "continuing violation" subject to the next written citation and fine under the fining schedule set forth in Sections 7.4 – 7.6 of these Rules and Regulations, unless otherwise provided herein.

### 7.4 FIRST VIOLATION

A **written notice of first violation** citing the specific infraction and specifying the required corrective action and deadline for correction (usually by the end of the calendar month following the citation date) shall be sent by the Managing Agent to the owner (and the offending party, if the offending party is not the owner).

### 7.5 SECOND VIOLATION

If, following the date of the written notice of first violation, there is a subsequent violation of the same or similar governing documents provision or the first violation is not corrected by the deadline provided in the written notice of first violation, a **written notice of second violation** citing the specific infraction and specifying the required corrective action and deadline for correction shall be sent by the Managing Agent to the owner (and the offending

party, if the offending party is not the owner), and a \$50 fine will be assessed against the owner.

#### 7.6 THIRD VIOLATION/NONCOMPLIANCE

If, following the date of the written notice of second violation, there is a subsequent violation of the same or similar governing documents provision or the second violation is not corrected by the deadline provided in the written notice of second violation, a **written notice of third violation** citing the specific infraction and specifying the required corrective action and deadline for correction shall be sent by the Managing Agent to the owner (and the offending party, if the offending party is not the owner), and a \$150 fine per month will be assessed against the owner on the first day of each month until the violation is corrected. In addition, the Board may also refer the violation to the Association's attorney for further legal enforcement action, and attorneys' fees and costs incurred by the Association as a result of such referral shall be assessed against the owner, occupant, tenant, guest, employee of an owner, or any other person who may in any manner use the property responsible for the violation in accordance with Hawaii Revised Statutes ("HRS") section 514B-157(a)(3), provided that the Board need not wait until after the third violation to refer a violation to the Association's attorney, and nothing shall prevent the Board from referring any matter to the Association's attorney for enforcement at any time.

#### 7.7 TEMPORARY PAUSES

If more time is needed to correct a violation, an owner may request to temporarily pause fines. A temporary pause does not reset the violation process but rather delays the date upon which the next fine shall be assessed. If the violation has not been corrected once the temporary pause has elapsed, the regular fining schedule shall resume.

All pauses shall be for such time period as the Board deems reasonable, but, in no case, shall any pause exceed three calendar months. Once a pause in assessment of fines for a violation is granted, no further extensions for compliance will be granted. All pauses shall be granted solely at the discretion of the Board of Directors on a case-by-case basis as the Board deems reasonable.

Requests must be submitted in writing to the Managing Agent before the first monthly fine is imposed and shall include an explanation as to why additional time is needed, the anticipated correction date, other relevant details/exhibits, and documentary evidence. An Application for Modifications, Additions or Improvements must also accompany the request, if applicable.

#### 7.8 CORRECTING VIOLATIONS

It is the sole responsibility of the owner to prove that a violation has been corrected. A violation is not considered corrected until such time as the owner provides documentary and/or photographic proof of the correction to the Managing Agent or Board of Directors,

and the Managing Agent and/or the Board deem that such documentation and/or photo(s) constitute satisfactory proof the violation has been corrected.

## 7.9 APPEALS

Appeals may be filed under the following guidelines:

- a) Notice of Appeal. Owners may appeal a citation and/or fine issued against them by submitting a written notice of appeal which must be received by the Managing Agent **within 30 days** of the date of the initial citation. The notice of appeal must include a copy of the applicable citation; a statement of facts of the violation, including reasons for appeal; names and addresses of witnesses, if any and copies of any proposed exhibits. The written notice of appeal (including the aforementioned information and documents) shall be sent to the Managing Agent by USPS Certified Mail, Return Receipt Requested, which, as of the date of these Rules and Regulations is: Hawaiian Properties, PO Box 38078, Honolulu, Hawaii 96837-1078. The date of receipt by the Managing Agent, as certified by the Post Office, shall constitute the Date of Appeal.
- b) Notice of Hearing. **Within 30 days** of receiving a timely written notice of appeal, the Managing Agent will send a written notice to the owner advising of the date, time and place of the Board meeting at which the appeal will be considered.
- c) Hearing. The Board will consider all owner appeals during a regular meeting of the Board, or a special meeting of the Board called to consider such appeals.
- d) Evidence & Witnesses. At the Board meeting where the appeal is considered, the appealing owner shall have the right to present oral and written evidence, present and question witnesses in support of the appeal, and cross-examine any adverse witnesses, unless otherwise provided herein. The Board shall have the right to question and cross-examine the appealing owner and any witnesses who testify in connection with any appeal.
- e) Alternative Option for Appeal Based Solely on Written Submissions. In lieu of presentation of an appeal in person, an owner may present an appeal based solely on written submissions, provided that such owners must still submit a written notice of appeal, including the information and documents described in Section 7.9, Subsection a above, to the Managing Agent within **30 days** of the date of the initial citation. An owner who desires to present an appeal based solely on written submissions must ensure all written submissions in support of the appeal (e.g., witness statements, exhibits) are RECEIVED by the Managing Agent **not less than 72 hours prior** to the Board Meeting at which the appeal is scheduled to be considered. Owners electing to appeal based solely on written submissions will be limited to such timely submitted and received written submissions and will not be permitted to testify at the hearing; to call, question, or cross-examine any witnesses at the hearing; nor to present any new evidence at the hearing.
- f) Delivery of Decision on Appeal. The Board shall deliver to the appealing owner, **within thirty (30) days after the meeting** where the appeal is considered, a written

decision which specifies the fines or penalties levied, if any, following its consideration of the appeal, and the reasons for the decision.

- g) Decision on Appeal Final. The decision of the Board as to any owner's appeal shall be final and binding and shall not be appealable, provided that pursuant to HRS section 514B-104(a)(11), if the fine, if applicable, is paid in full, the owner shall have the right to initiate a dispute resolution process as provided by HRS section 514B-161 or section 514B-162, or by filing a request for an administrative hearing under a pilot program administered by the State of Hawaii Department of Commerce and Consumer Affairs.
- h) Payment of Fines. All fines must be paid to the Association within **15 days** of the date of the written citation and/or the Board's written decision on appeal, *whichever is later*.
- i) Failure to Timely Pay Fines. If any fine imposed against an owner is not paid within the applicable period specified above, the fine shall be deemed a special assessment chargeable against the owner's apartment. Additionally, if any fine is not paid within the applicable period specified above, the owner shall be assessed a late fee for each month the fine remains unpaid, and reasonable attorneys' fees and expenses will be assessed in accordance with HRS section 514B-157(a)(3), should any governing documents violation be referred to the Association's attorney for enforcement. The amount of late fee assessed pursuant to this paragraph shall be the same as the late fee assessed to delinquent common and/or special assessments payable to the Association.