

**BYLAWS
OF
THE ASSOCIATION OF APARTMENT OWNERS
OF
APUSENTO GARDEN CONDOMINIUM**

ARTICLE I

DEFINITIONS

Property defined

§1.01. The "Property" shall mean all of that certain real property located in Apusento, Chalan Pago, Municipality of Sinajana, Guam, and more particularly described as follows:

Description of Property

Lot Number 3381-9NEW NEW, Sinajana, Guam, Estate No. 626734, Suburban, as said lot is marked and Designated on Map Drawing No. L-1048, dated January 11, 1990 and recorded on January 16, 1990 in the Department of Land Management, Government of Guam, under Instrument No. 428353.

Area: 70,401.15 square meters.

Last Certificate of Title No.: 6001.

§1.02. The "Declaration" shall mean that certain Declaration of Horizontal Property Regime of Apusento Garden Condominium, applicable to the Project and filed in the Office of the Recorder, Guam, on August 2, 1991 under Instrument No. 458228, as the same may be amended from time to time in accordance with the terms thereof.

House Rules defined

§1.03. The "House Rules" mean those administrative rules and regulations adopted pursuant to §8.05, *infra*, governing the conduct of persons using the Project.

Other terms defined

§1.04. Other terms used herein shall have the meaning given to them in the Declaration and are hereby incorporated by reference and made a part hereof.

ARTICLE II

APPLICABILITY OF BYLAWS

Condominium ownership

§2.01 The Property has been submitted to the provisions of Chapter I, Title VI, Part IV, Division Second, Civil Code of Guam, (the "Horizontal Property Act"), by the Declaration simultaneously herewith, with horizontal property regime shall be known as **Apusento Garden Condominium**, (the "Project").

Applicability of Bylaws

§2.02. The provisions of these Bylaws are applicable to the Project and to the use and occupancy thereof. All present and future owners, mortgagees, lessees, and occupants of apartments or other interests in the Property and their employees, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration, and the House Rules.

2.02.01. **Acceptance of deed and acceptance of Bylaws.** The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of an

apartment or other interest in the Project or the use of any of the facilities of the Project shall constitute an agreement that these Bylaws, the House Rules and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified, and will be complied with.

Office

§2.03. The office of the Project and of the Board of Directors (the "Board") and of the Association of Owners (the "Association") shall be located at the Project. All meetings of the Association and of the Board shall be held at the Project unless some other place is stated in the call of the meeting.

ARTICLE III

MEMBERSHIP

Qualification

§3.01. All owners of apartments of the Project shall constitute 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. Any firm, corporation, trust or other legal entity or a combination thereof, owning any apartment in the Project duly recorded in its name shall be a member of the

Association, and either in person or by proxy entitled to vote the percentage of vote assigned to each apartment so owned at all meetings of the Association. Any provision to the contrary notwithstanding, co-owners or joint owners shall be deemed one owner entitled to the percentage vote allocated to their apartment.

Proof of membership

§3.02. No person or persons shall exercise the rights of membership until satisfactory proof has been furnished to the secretary of the Association of qualification as a member or nominee of a member pursuant to the terms of the Declaration. Such proof may consist of a copy of a duly executed and acknowledged deed or title insurance policy showing such person or the person nominating him is qualified in accordance therewith, which deed or policy shall be deemed conclusive in the absence of a conflicting claim based upon a later deed or policy. The sole qualification for membership shall be ownership of an apartment in the Project. No membership may be separated from the apartment to which it is appurtenant; provided, however, that the privileges of ownership may be exercised by a nominee of an owner designated in writing so long as (1) the nominee is a resident of the apartment to which the membership is appurtenant; (2) no charge is made for use of the membership in excess of the amount of any assessments levied against the owner by reason

thereof; and (3) any such assignment of privileges is revocable at the will of the owner.

No additional qualifications

§3.02 No initiation fees, costs, or dues shall be assessed against any person as a condition upon his exercise of the rights of membership except such assessments, levies, and charges as are specifically authorized under these Bylaws or the Declaration.

Certificates of membership

§3.03 The Board may provide for the issuance of certificates evidencing membership in the Association which shall be in such form as may be determined by the Board. All certificates evidencing membership shall be consecutively numbered. The name and address of each member and the date of issuance of the certificate shall be entered on the records of the Association maintained by the secretary. If any certificate shall become lost, mutilated, or destroyed, a new certificate may be issued therefor upon such terms and conditions as the Board may direct.

Place of meetings

§3.04. Meetings of the Association shall be held at the Project or such other suitable place convenient to the apartment owners as may be designated by the Board in writing.

Annual meetings

§3.05. The first annual meeting of the Association shall be held as soon as practicable after recording of the Declaration and these Bylaws upon the call of at least twenty percent (20%) of the apartment owners. Thereafter the annual meetings of the Association shall be held after the end of each succeeding accounting year.

Special meetings

§3.06. Special meetings of the Association may be held at any time upon the call of the President, or by resolution of the Board, or upon a petition signed by at least ten percent (10%) of the apartment owners and presented to the secretary. No business shall be conducted except as stated in the notice thereof unless by consent of at least a majority of the owners present, either in person or by proxy.

Notice of meetings

§3.07. A written or printed notice of every meeting of the Association stating whether it is an annual or special meeting, the authority for the call of the meeting, the place, day and hour thereof, and the purpose therefor shall be given by the secretary or the person or persons calling the meeting at least seven (7) days but no more than thirty (30) days before the date set for such meeting. Such notice shall be given to each member in any of the following ways: (i) by

leaving the same with him personally, (ii) by leaving the same at the residence or usual place of business of such member, (iii) by mailing it, postage prepaid, addressed to such member at his address as it appears on the records of the Association, or (iv) by publishing such notice to be published not less than two (2) times on successive days, the first publication thereof to be not less than three (3) nor more than ten (10) calendar days prior to the day assigned for the meeting. If notice is given pursuant to the provisions of this §3.07, the failure of any member to receive actual notice of the meeting shall in no way invalidate the meeting or any proceedings thereat.

Waiver of notice

§3.08. The presence of all the members, in person or by proxy, at any meeting shall render the same a valid meeting, unless any member shall, at the opening of such meeting, object to the holding of the same for noncompliance with the provisions of §3.07, *supra*. Any meeting so held without objections shall, notwithstanding the fact that no notice of meeting was given, or that the notice given was improper, be valid for all purposes, and at such meeting any general business may be transacted and any action may be taken; **provided**, however, that where a member has pledged his vote by mortgage, deed of trust, or agreement of sale, only the presence of the pledgee will be counted in determining whether

notice is waived with regard to business dealing with such matters upon which the member's vote is so pledged.

Quorum

§3.09. The presence at any meeting in person or by proxy of a majority of apartment owners shall constitute a quorum, and the acts of a majority of the apartment owners at any meeting at which a quorum is present shall be the acts of the Association **except** as otherwise provided herein. The term "majority of a apartment owners" herein means owners of apartments to which are appurtenant more than fifty percent (50%) of common interests as established by the Declaration, and any other specified percentage of the apartment owners means the owners of apartments which are appurtenant such percentage of common interests. In the event a member has pledged his vote by mortgage, deed of trust, or agreement of sale, the member's vote will be recognized in computing a quorum with regard to any business conducted concerning such matters upon which said member's vote is so pledged or mortgaged **unless** the mortgage, deed of trust, or agreement of sale provides otherwise, in which event such instruments shall control.

Voting

§3.10. 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 interest assigned to such apartment in the Declaration. Votes may be cast in person or by proxy by 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 cotenant shall be entitled to only a share of such vote in proportion to his share of ownership in such apartment; provided, that when the vote of owner or owners has been pledged by mortgage, deed of trust, or agreement of sale of any apartment or interest therein, an executed copy of which is on file in the Association's record of ownership only the vote of the pledgee will be recognized upon those matters upon which the owner or owners' vote is so pledged.

Voting - Proxies and Pledges

§3.11. The authority given by a member to another person to represent such member at meetings of the Association shall be in writing, signed by such member or if a unit is

jointly owned then by all joint owners, or if such member is a corporation, by the proper officers thereof, and shall be filed with the secretary, and **unless** limited by its terms, such authority shall be deemed good until revoked by a writing filed with the secretary or by the death or incapacity of such owner. Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any apartment or interest therein, a true copy of which is filed with the Board through the secretary or managing agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner.

Adjournment

§3.12. Any meeting of the Association may be adjourned from time to time not less than six (6) hours from the time the original meeting was called 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.

Order of business

§3.13. 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.
- (i) New business.
- (j) Adjournment.

ARTICLE IV

BOARD OF DIRECTORS

Number and qualifications

§4.01. The affairs of the Association shall be governed by the Board, composed of five (5) persons, each of whom shall be the sole owner or co-owner of record of an apartment. If a corporation is an apartment owner, any officer of such corporation shall be eligible to serve as director so long as he remains an officer of such corporation.

Limitation on responsibility

§4.02. The Board shall be responsible only for the administration of those portions of the Project relating to the apartments and the common elements appurtenant thereto. All other areas of the Project shall be administered by and be

the sole responsibility of the owners, their successors and assigns.

Powers and duties

§4.03. The Board shall have the powers and duties necessary for the administration of the affairs of the Association, and may do all such acts and things **except** as by laws or by the Declaration or by these Bylaws may not be delegated to the Board of by the owners.

Nomination

§4.04. Nomination for election to the Board shall be made from the floor at the annual meeting of the apartment owners; and by a nominating committee appointed by the Board prior to each annual meeting of the apartment owners.

Election; cumulative voting

§4.05. Voting for directors shall be by secret written ballot. At such election the owner or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The person receiving the highest number of votes shall be elected. Each owner may cumulate his votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which he is entitled or distribute his votes on the same principle among

as many candidates as he thinks fit.

Term of office of directors

§4.06. Directors shall hold office for a period of one (1) year and until their respective successors have been elected, subject to removal as herein provided, except that at the first annual meeting one (1) of the directors shall be elected for one (1) year, two (2) for two (2) years, and two (2) for three (3) years.

Vacancies

§4.07. Vacancies in the Board caused by any reason other than removal of a director by a vote of the Association shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a director until his successor is elected at the next annual meeting of the Association. Death, incapacity or resignation of any director, or his continuous absence from Guam for more than six (6) months, or his ceasing to be the sole owner or co-owner of an apartment, shall cause his office to become vacant.

Removal of directors

§4.08. At any regular or special meeting of the Association duly called, any one (1) 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.

Compensation

§4.09. No compensation shall be paid to directors for their services as directors. No remuneration shall be paid to a director for services performed by him for the Association in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board before the services are undertaken. A director may not be an employee of the Association **provided**, however, that an employee of the managing agent may be a director.

Organizational

§4.10. An organization meeting of the Board 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.

Regular meetings

§4.11. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by majority of the directors, but at least one (1) such meeting shall be held during the calendar quarter of every year. Notice of regular meetings of the Board shall be given to each director, personally or by mail, telephone or messenger service, at least three (3) days prior to the date of such meeting. Notice of the time and place of such meeting shall also be posted at a prominent place or places within the common area of the Project.

Special meetings

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

Quorum of board

§4.14. At all meetings of the Board, a majority of the total number of directors established by these Bylaws 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 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.

Open meetings

§4.15. Regular and special meetings of the Board shall be open to all owners; provided, however, that owners who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board.

Executive session

§4.16. The Board may, with the approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Fidelity bonds

§4.17. The Board may require that all officers, employees and agents of the Association handling or responsible for its funds, shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

ARTICLE V

OFFICERS

Designation

§5.01. The principal officers of the Association shall be a president, a vice-president, a secretary and a treasurer, all of whom shall be elected by, and in the case of the president from, the Board. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary and as the Board may from time to time create by resolution.

Election and term

§5.02. The officers of the Association, **except** such officers as may be appointed in accordance with §5.03, **infra**, shall be elected annually by the Board at its organizational meeting and each shall hold his office for one (1) year **unless** he shall sooner resign or shall be removed, or otherwise disqualified to serve.

Special appointments

§5.03. The board may appoint such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

Resignation and removal

§5.04. Any officers may be removed from office either with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president, or the secretary. Such resignation shall take effect at the date of receipt of such notice or at any later time specified therein, and, **unless** otherwise specified therein, the acceptance of such resignation shall be not be necessary to make it effective. Upon resignation or removal of an officer, the position shall be filled in the manner prescribed in this Article V of these Bylaws for regular appointment to such office. The appointee to such vacated office shall serve the remainder of the term of the officer he replaces.

Multiple offices

§5.05. The offices of secretary or assistant secretary and treasurer may be held by the same person. No person shall be appointed to more than one or any of the other offices **except** in the case of special offices created pursuant to §5.03., **supra**.

President

§5.06. The president shall be the chief executive officer of the Association and shall:

5.06.01. **Preside.** Preside over all meetings of the members and of the Board.

5.06.02. **Sign.** Sign as president all deeds, contracts, and other instruments in writing which have been first approved by the Board, unless the Board, by duly adopted resolution, has authorized the signature of a lesser officer;

5.06.03. **Call meetings.** Call meetings of the Board whenever he deems it necessary in accordance with rules and upon notice agreed upon by the Board. The notice period shall, **except** for emergencies, in no event be less than three (3) days;

5.06.04. **General supervision.** Subject to the control of the Board, exercise general supervision and direction over the management and conduct of the business and affairs of the Association, having all of the general powers and duties which are usually vested in the office of president of an association, including but not limited to the power to appoint committees from among the owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association, and such other powers and duties as may be provided by these Bylaws or assigned to him from time to time by the Board.

Vice-president

§5.07. The Vice-president shall:

5.07.01. **Act for president.** Act in the place and in the stead of the president in the event of his absence, inability, or refusal to act;

5.07.02. **Other duties.** Exercise and discharge such other duties as may be required of him by the Board. In connection with any such additional duties, the vice-president shall be responsible to the president.

Secretary

§5.08. The secretary shall:

5.08.01. **Record.** Keep a record of all meetings and proceedings of the Board and of the owners;

5.08.02. **Seal.** Keep the seal of the Association, if any, and affix it on all papers requiring such seal;

5.08.03. **Notices.** Serve such notices of meetings of the Board and the owners required either by law or by these Bylaws;

5.08.04. **Roll.** Keep appropriate current records showing the owners of this Association together with their addresses;

5.08.05. **Sign.** Sign as secretary all deeds, contracts, and other instruments in writing which have been first approved by the Board if said instruments require a second Association signature unless the Board has authorized

another officer to sign in the place and stead of the secretary by duly adopted resolution;

5.08.06. **Other duties.** Have charge of such other books, documents and records of the Association as the Board may direct, and in general perform all the duties incident to the office of the secretary. If the secretary is not present at any meeting, the presiding officer shall appoint a secretary **pro tempore** who shall keep the minutes of such meeting and record them in the books provided for the purpose.

Treasurer

§5.09. The treasurer shall:

5.09.01. **Funds.** Receive and deposit in such bank or banks as the Board may from time to time direct, all of the funds of the Association;

5.09.02. **Books.** Be responsible for and shall supervise the maintenance of books and records to account for such funds of the Association;

5.09.03. **Disburse.** Disburse and withdraw accordance with prescribed procedures;

5.09.04. **Distribute statement.** Distribute the financial statements for the Association required by these Bylaws;

5.09.05. **Supervise managing agent.** Supervise the managing agent's handling of funds of the Association, maintenance of accounts and records thereof and preparation of

reports.

Auditor

§5.10. 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.

ARTICLE VI

BOOKS AND RECORDS

Inspection by owners

§6.01. The governing instruments of the Association, the register of apartment owners, the books of account, and the minutes of meetings of the Board and of committees of the Board shall be available for inspection and copying by any member of the Association, or by his duly appointed representative, for any purpose reasonably related to his interest as a member, at the principal office of the Association, subject to the following:

6.01.01. **Notice.** At least forty-eight (48) hours written notice is given to the secretary of the Association by the member desiring to make the inspection;

6.01.02. **Time.** Any such inspection is made during regular business hours; and

6.01.03 **Fee.** A fee of \$0.25 per page for the cost of reproducing copies of documents is paid by the member requesting such copies.

Inspection by directors

§6.02. Every director shall have the books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director shall include the right to make extracts and copies of documents.

ARTICLE VII

ADMINISTRATION

Management

§7.01. The board 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:

7.01.01. **Supervise management.** Supervision of its immediate management and operation;

7.01.02. **Maintain common elements.** Maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto;

7.01.03. **Purchase equipment and utilities.** Purchase, maintenance and replacement of any equipment and provision of all water and utility services required for the

common elements;

7.01.04. **Provide utilities to apartments.** 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;

7.01.05. **Employ personnel.** Employment, supervision and dismissal of such personnel as may be necessary for the maintenance and operation of the Project;

7.01.06. **Prepare budget.** Preparation at least thirty (30) days before each fiscal year of a proposed budget and schedule of assessments for such year;

7.01.07. **Collect assessments.** Collection of all installments of assessments levied and payment of all common expenses authorized by the Board;

7.01.08. **Purchase insurance.** Purchase and maintenance in effect of all policies of hazard and liability required by the Declaration and such other insurance and bonds as may be required or authorized by the Declaration or the Board;

7.01.09. **Control funds.** 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;

7.01.10. **Notify delinquents.** Notification of all persons having any interest in any apartment according to the

Association's record of ownership of delinquency exceeding thirty (30) days in the payment of any assessment against such apartment; and

7.01.11. **Fix fines.** Establishment of such penalties and fines as it deems appropriate with respect to enforcement of the provisions of the Declaration, these Bylaws and the House Rules adopted pursuant to §8.05, **infra; provided,** that such penalties and fines are not inconsistent penalties and fines against any apartment owner shall constitute a lien against his or her interest in his or her apartment which may be foreclosed by the Board or managing agent in the same manner as provided in the Horizontal Property Act for common expenses.

Managing agent

§7.02. The Board shall annually employ a responsible Guam 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 §7.01., **supra,** and such other powers and duties and at such compensation as the Board may establish, **subject** to prior approval of every such employment contract by a majority of apartment owners.

Representation

§7.03. The president or managing agent, **subject** to the direction of the Board, shall 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 owner individually to appear, sue or be sued. Service of process on two or more apartment owners in any such action, suit or proceeding may be made on the president or managing agent. Every first mortgage to whom the lessee is required by the terms of the mortgage to pay the same or, whenever there is not such mortgage, 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 apartment of all rent, taxes, assessments and other charges thereunder payable to their lessors.

Execution of instruments

§7.04. 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 or, in the absence of any such resolution applicable to such instrument, by the president or vice-president and by the treasurer or secretary.

ARTICLE VIII

OBLIGATIONS OF APARTMENT OWNERS

Assessments

§8.01. All assessments shall be made and collected in accordance with this §8.01. and the provisions of §8.02. *infra*. Each owner shall be liable for a proportionate share of the common expenses, such shares being the same as the percentage of undivided interest in the common elements appurtenant to the apartment owned by the apartment owner as set forth in the Declaration, within thirty (30) days prior to the annual meeting of the Association, the Board shall estimate the common expenses and capital contributions for the following year. The estimated capital contributions may include such amount as the Board may deem proper for general working capital, for the general operating reserve, for a reserve fund for replacements and major maintenance, and shall take into account any expected income, surplus, or deficit in the common expenses for any prior year. These estimated capital contributions and common expenses shall be presented at the annual meeting and thereafter shall be assessed on a monthly basis to the apartment owners in proportion to their percentage of undivided interest in the common elements as set forth in the Declaration. If the estimated common expenses prove inadequate for any reason, including nonpayment of any apartment owner's assessments, the Board may, by resolution duly adopted, make additional assessments, which shall be

assessed to the apartment owners in the same manner as the estimated common expenses. Each apartment owner shall be obligated to pay to the Board as his mortgagee assessments made pursuant to this §8.01. on or before the first day or each month, or in such other reasonable manner as the Board shall designate; notwithstanding the foregoing, the Developer shall pay assessments only on completed units owned by the Developer. The funds received by the Board from assessment shall be kept in either the capital account or in the common expense fund and shall be expended by the Board only in accordance with the provisions of the Horizontal Property Acts, the Declaration, and these Bylaws.

8.01.01. Effect of failure to estimate expenses.

The failure by the Board before the expiration of any year to estimate the common expenses as required herein shall not be deemed a waiver or modification in any respect of the provisions of the Declaration or these Bylaws, or a release of the apartment owner from the obligation to pay any release of the apartment owner from the obligation to pay any past or future assessments, and the estimated common expenses fixed for the previous and current year shall continue until a new estimate is fixed.

8.01.02. No exemptions. No apartment owner may exempt himself from liability for common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his or her apartment.

8.01.03. **Treasurer to record.** The treasurer shall keep or cause to be kept detailed records of all receipts and expenditures, including expenditures affecting the common areas and facilities, specifying and itemizing the maintenance, repair, and replacement expenses of the common elements and any other expenses incurred. In accordance with the actions of the Board assessing common expenses against the apartments and owners, the treasurer shall keep an accurate record of such assessments and of the payments thereof by each owner.

8.01.04. **Interest; lien.** The monthly installments of assessment shall bear interest at the rate of eighteen percent (18%) per annum ten (10) days after due date until paid, and with such interest shall be a lien on the entire condominium interest of the delinquent owner, as provided in §8.02, *infra*. Said assessments shall be reviewed periodically by the Board to determine if any adjustment of the charges are necessary. In any event any owner is delinquent in the payment of any monthly assessment for a period in excess of ninety (90) calendar days, the Board or managing agent is authorized to sever or disconnect all utility connections to his apartment.

Collection of assessments

§8.02 All common expense assessments shall be a separate, distinct, and personal liability of the owner of the apartment at the time each assessment is made. The Board

shall have the rights and remedies in the Horizontal Property Act, the Declaration, and these by laws to enforce the collection of assessments for common expenses.

8.02.01. **Statement of unpaid assessments.** Any person who shall have entered into a written agreement to purchase an apartment shall be entitled to obtain a written statement from the treasurer setting forth the amount of unpaid assessments charged against the apartment and its owners, and if such statement does not reveal the full amount of the unpaid assessments as of the date it is rendered, neither the purchaser nor the apartment be a liable for the payment of an amount in excess of the unpaid assessments shown thereon; **provided,** that the former owner-grantor shall remain so liable. Any such excess which cannot be promptly collected from the former owner-grantor shall be reassessed by the Board as a common expense to be collected from all apartment owners, including, without limitation, the purchaser of the apartment, his successors and assigns. The new owner shall, and the former owner shall not, be liable for any assessments made after the date of transfer of title to an apartment, even though the common expenses for the expenses incurred for the advances made by the Board for which the assessment is made relate in whole or in part to any period prior to that date.

8.02.02. **Marshal's sale.** In the event that title to an apartment is transferred at a marshal's sale pursuant to execution upon any lien against the apartment, the Board shall

give notice in writing to the marshal of any unpaid assessments for common expenses of or advances by the Board which have not therefore been reduced to a lien, which shall be paid out of the proceeds of the sale prior to the distribution of any balance to the former owner against whom the execution was issued. The purchaser at such sale and the apartment involved shall not be liable for unpaid assessments for common expenses and for any expenses of or advances by the Board which become due prior to the marshal's sale of the apartment. Any such unpaid assessments which cannot be promptly collected from the former owner shall be reassessed by the Board as a common expenses to be collected from all the owners, including the purchaser who acquired title at the marshal's sale, his successor, and assigns. To protect its right to collect unpaid assessments for common expenses which are a lien against an apartment; and for any expenses of and advances by the Board, the Board may on behalf of all the owners purchase the apartment at the marshal's sale; provided, such action is authorized by the affirmative vote of a majority of the members of the Board.

8.02.03. **Statements.** In addition to the statements issuable to purchasers of apartments, the Board shall provide a current statement of unpaid assessments for common expenses and for any expenses of and advances by the Board in respect of the apartment, to the owner, to any person who shall have entered into a binding agreement to purchase the apartment,

and to any mortgagee, on request at reasonable intervals.

8.02.04. **Reassessments of unpaid assessments.** In all cases where all or part of any assessments for common expenses of and advances by the Board cannot be promptly collected from the persons or entities liable therefor under the Horizontal Property Act, the Declaration, or these Bylaws, the Board shall reassess the same as a common expense, without prejudice to its right of collection against such persons or entities.

8.02.05. **Lien for unpaid assessments.** All sums assessed to any apartment pursuant to this §8.02, together with interest thereon as provided herein, shall be secured by a lien on such unit in favor of the Board. Such lien shall be superior to all other liens and encumbrances on such apartment, **except** only for (i) valid tax and special assessments liens on the apartment in favor of any governmental assessing authority; and (ii) encumbrances on the interest of the owner recorded prior to the date that notice of the lien provided for herein is recorded which by law would be a lien prior to subsequently recorded encumbrances. All other lienors acquiring liens on any apartment after the Declaration shall have been recorded shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent by specifically set forth in the instrument creating such liens.

8.02.06. **Notice of lien.** To evidence a lien for sums assessed pursuant to this §8.02, the Board may prepare a written notice of lien setting forth the amount of the assessment, the due date, the amount remaining unpaid, the name of the owner of the apartment, and a description of the apartment. Such a notice shall be signed by such body and may be recorded in the Office of the Recorder, Guam. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such liens may be enforced by foreclosure by the Board in the same manner in which mortgages on real property may be foreclosed in Guam. In any such foreclosure, the owner shall be required to pay the cost and expenses of such proceeding, the cost and expenses of filing the notice of lien, and all reasonable attorney's fees. All such costs, expenses, and fees shall be secured by the lien being foreclosed. The lien shall also secure, and the owner shall also be required to pay to the Board, any assessments against the apartment which shall become due during the period of foreclosure. The Board shall have the right and the power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale to acquire, hold, convey, lease, rent, encumber, use, and otherwise deal with the same as the owner thereof.

8.02.07. **Release.** A release of lien shall be executed by the Board and recorded in the Office of the Recorder, Guam, upon the payment of all sums and secured by a

lien which has been made the subject of a recorded notice of lien.

8.02.08. **Payment by encumbrancer.** Any encumbrancer holding a lien on an apartment may pay, but shall not be required to pay, any amounts secured by the lien created by this §8.02, and upon such payments such encumbrancers shall be subrogated to all rights of the Board with respect to such lien, including priority.

8.02.09. **Reports of overdue assessments.** The Board shall report to any encumbrancer of an apartment any unpaid assessments remaining unpaid for longer than thirty (30) calendar days after the same shall have become due; provided, however, that such encumbrancer first shall have furnished to the Board written notice of such encumbrance.

8.02.10. **Rent.** In any foreclosure of a lien for assessments, the apartment owner subject to the lien shall be required to pay a reasonable rental for the apartment, and the Board shall be entitled to the appointment of a receiver to collect the same.

8.02.11. **Personal obligation assessments.** The amount of any annual or special assessment against any apartment shall be the personal obligation of the owner thereof to the Board. Suit to recover a money judgment for such personal obligation shall be maintainable by the Board without foreclosing or waiving the lien securing the same. No owner may avoid or diminish any personal obligation by waiver

of the use and enjoyment of any of the common areas or by abandonment of his or her apartment.

8.02.12. **Denial of use.** In addition to and not limited by any other remedy provided for herein, the Board may restrict or deny the use and enjoyment of any common element to any owner, his family, guests, or assigns, who is delinquent in the payment of any regular or special assessment.

8.02.13. **Collection from tenant.** If the owner shall, at any time, let or sublet his apartment and shall default for a period of three (3) months in the payment of assessments, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the owner the rent due or becoming due, and the payment of such rent to the Board shall be sufficient payment and discharge of such tenant or subtenant and the owner to the extent of the amount paid.

Maintenance of apartments

§8.03. Every apartment owner shall at his own expense at all times well and substantially repair, maintain, amend and keep his apartment, including, without limitation, all internal installations therein such as water, electricity, gas, telephone, sewer, sanitation, air conditioning, lights and all other fixtures and accessories belonging to such apartment and the interior decorated or finished surfaces of all walls, floors and ceilings of such apartment, with all

necessary reparations and amendments whatsoever in good order and condition, **except** as otherwise provided by law or the Declaration, and shall be liable for all loss or damage whatsoever caused by his or her 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 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 to any 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.

Use of project

§8.04. The following limitations shall apply to the use of the Project:

8.04.01. **Apartment use.** All apartments of the Project shall be used only for the purposes indicated in the Declaration. Apusento Garden (Guam) Inc., (the "Developer") may maintain a sales office and model apartment upon the Project for a period of three (3) years from the date hereof or from the completion of improvements in Phase Two of the Project, whichever is longer.

8.04.02. Common elements used for designed purposes. All common elements of the Project shall be used only for their respective purposes as designed.

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

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

8.04.05. No waste or nuisance. No apartment owner or occupant shall make or suffer any stripping 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.

8.04.06. No changes without approval. 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 an accordance with plans and specifications including detailed plot plan, prepared by a

licensed architect if so required by the Board and also approved by a majority of apartment owners (or such larger percentage required by law or the Declaration) including all owners of apartments thereby directly affected; provided, however, that for a period of three years from the date hereof the Developer shall have the right to place or maintain signs in the Project.

8.04.07. No decoration to entrance without approval. No apartment owner shall decorate or landscape any entrance of his or her apartment or any other portion of the Project except in accordance with standards therefor established by the Board or specific plans approved in writing by the Board.

8.04.08. No loud noises. All occupants shall exercise extreme care about making noises and in the use of musical instruments, radios, televisions and amplifiers that may disturb other occupants.

8.04.09. No garments hung from windows. No garments, rugs or other objects shall be hung from the windows or facades of the Project.

8.04.10. No rugs dusted. No rugs or other objects shall be dusted or shaken from the windows of the Project or cleaned by beating or sweeping on any hallway or exterior part of the Project.

8.04.11. No trash except in containers. No refuse, garbage or trash of any kind shall be thrown, placed or kept on any common elements of the Project outside of the disposal

facilities provided for such purpose.

8.04.12. **No animals.** No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the Project **except** that dogs, cats and other household pets in reasonable number may be kept by the apartment owners and occupants in their respective apartments but shall not be kept, bred or used therein for any commercial purpose nor allowed on any common elements **except** in transit when carried or on leash; **provided**, that any such pet causing a nuisance or unreasonable disturbance to any other occupant of the Project shall be permanently removed therefrom promptly upon notice given by the Board or the managing agent.

8.04.13. **No wiring.** No apartment owner or occupant shall without the written approval of the Board 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.

8.04.14. **No antennas.** No apartment owner or occupant shall erect, place or maintain any television or other antennas on the Project visible from any point outside of the Project.

8.04.15. **No overload.** 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.

House Rules

§8.05. The Board, 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 such reasonable rules and regulations, to be called House Rules, governing the conduct of persons using the Project as it may deem necessary. Prior to the adoption by the Board of its own set of House Rules, the Developer may adopt initial House Rules to govern the conduct of apartment owners. Copies of such House Rules, upon adoption, amendment, modification, or repeal thereof shall be delivered to each apartment in the Project and shall be binding upon all members of the Association, occupants of the apartment, and other users of the Project.

Litigation

§8.06. If any action is brought by one or more but less than all apartment owners on behalf of the Association and recovery is had, the plaintiff's expenses, including reasonable counsel's fees, shall be a common expense; **provided**, however, that if such action is brought against the apartment owners or against the Board, the officers employees,

or agents thereof, in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the owners, the plaintiff's expenses, including counsel fees, shall not be charged to or borne by the other owners, as a common expense or otherwise.

8.06.01. **Board to defend.** Complaints brought against the Association, the Board or the officers, employees, or agents thereof, in their respective capacities as such or the Project as a whole, shall be directed to the Board, which shall promptly give written notice thereof to the apartment owners, and any mortgagees and shall be defended by the Board, and the owners and mortgagees shall have no right to participate other than through the Board in such defense. Complaints against one or more, but less than all owners, shall be directed to such owners, who shall promptly give written notice thereof to the Board and to the mortgagees affecting such apartments, and shall be defended by such owners.

Record of ownership

§8.07. Every apartment owner shall promptly cause to be duly recorded or filed or recorded at the Office of the Recorder, Guam, the deed, lease, assignment or other conveyance to him or her 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 through

the managing agent, and the secretary shall maintain all such information in the records of ownership of the Association.

Mortgages

§8.08. Any apartment owner who mortgages his or her apartment or any interest therein shall notify the Board 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 records of ownership of the Association. In addition, any mortgagee of an apartment may file a copy of his or her mortgage or send a certified copy of a letter indicating the recording date thereof and giving the names of the parties, apartment and other pertinent data, with the managing agent who shall maintain such information in the records of ownership of the Association. After such filing, the Board, through its managing agent shall notify the mortgagee of any apartment owner who is in default in his common expense contribution. The mortgagee, at its option, may pay the delinquent expenses.

Right of entry

§8.09. The managing agent and any person authorized by the Board shall have the right to enter each apartment in case of any emergency originating in or threatening such apartment whether or not the owner or occupant is present at the time. Every apartment owner and occupant, when so required, shall

permit other apartment owners or their representative to enter his or her apartment at reasonable times for the purpose of performing authorized installations, alterations, or repair to the common elements therein for central services; provided that requests for entry are made in advance.

**Abatement and restraint of
violations by owner**

§8.10. The violation of any House Rules or the breach of any provision contained in these Bylaws, or the breach of any provision of the Declaration, shall give the Board the right, in addition to any other rights set forth in these Bylaws:

8.10.01. **Entry.** To enter the apartment in which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting owner, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provisions of these Bylaws, and the Board shall not thereby be deemed guilty in the manner of trespass; or

8.10.02. **Enjoin.** To enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, and in any such proceeding the Board, if it prevails, shall be entitled to costs and reasonable attorney's fees.

ARTICLE IX

RESOLUTION OF DISPUTES

Grievances and Disciplinary Committee

§9.01. In order to promote homogeneity of ownership, democratic self-rule by the Association, uniformity and stability in operation, and timely and appropriate resolution of grievances and disputes, there shall be established a Grievance and Disciplinary Committee (the "Committee").

Agreement of Association members

§9.02. By becoming a member of the Association, an owner agrees to submit to the Committee any dispute which may arise between such a person and any other owner or occupant of an apartment, the Association, or Board, or officers which cannot be resolved between the concerned parties in *bona fide* private negotiations. An owner must exhaust the means provided in his Article IX for the resolution of disputes before resorting to a court of law in all matters concerning the internal affairs of the Association.

Organization

§9.03. The Committee shall consist of three (3) members. Each of the members must be owners of apartments in the Project. No member of the Committee shall serve on any committee or subcommittee or serve as an officer of the Association during the time he is a member of the Committee.

Appointment

§9.04. Members of the Committee shall be appointed by the Board. Members of the Committee shall serve for a term of one (1) year; **provided**, however, that two (2) of the initial members of the Committee appointed by the first Board shall serve for initial terms of two (2) years and the balance of the initial members of the Committee shall serve for initial terms of one (1) year. Whenever there shall occur a vacancy on the Committee due to death, resignation, or by any other cause, the Board shall appoint a successor member to serve for the unexpired term.

Commencement of grievance action

§9.05. A grievance between two or more apartment owners or occupants, or between an owner or owners and the Association, Board, or officers, shall be submitted to the Committee along with a filing fee of \$50.00 after **bona fide** efforts have been made by the concerned parties to reconcile the differences between them through private negotiations and through the arbitration efforts of the managing agent. A grievance shall be filed with the Committee by preparing and submitting to the Committee a written complaint naming the parties involved and stating the facts that form the basis of the grievance. As evidence that **bona fide** efforts have been made by the concerned parties to resolve the differences between them, the moving party shall also file with the

Committee at the time a grievance complaint is filed, an affidavit or declaration under penalty of perjury signed by the moving party and the managing agent setting forth in detail the nature of the efforts previously made to reconcile the differences between the concerned parties.

Notices

§9.06. Within ten (10) calendar days of the date on which the written complaint is filed with the Committee, the moving party will serve a copy of the the complaint and a notice of grievance upon the opposing party. The notice of grievance shall contain the following:

9.06.01. **Names.** The names of the parties to the grievance.

9.06.02. **Complaint.** A statement that a copy of the complaint is being served therewith, which explains the nature of and facts concerning the grievance.

9.06.03. **Hearing.** A statement that the Committee will conduct a hearing into the grievance and will render a decision in written form based upon written testimony and other evidence submitted by the parties involved.

9.06.04. **Rights.** A statement that the parties will have an opportunity to confront and cross-examine adverse witnesses through depositions and written interrogatories.

Evidence gathering procedures

§9.07. The Committee will render decisions based upon evidence submitted to the Committee by the parties involved in a grievance action. Parties will be required to submit their evidence in the form of written documents which may be derived from depositions, written interrogatories, and other sources.

9.07.01. **Depositions.** No sooner than twenty (20) calendar days after and for a period of one hundred twenty (120) calendar days from the date of commencement of a grievance action, any party may take the testimony on any person, including a party, by deposition. Any party desiring to take the deposition of any person shall give seven (7) calendar days notice in writing to every party to the action and to the person who is to be deposed. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. The Committee may, for cause shown, enlarge or shorten the period of time for taking depositions. The depositions shall be taken before one of the officers of the Association. In no case shall such officers be a member of the Committee. The officer before whom the deposition is to be taken shall put the witnesses on oath and shall personally, or by someone acting under his discretion and in his presence, record the testimony of the witness. If requested by one of the parties, the testimony shall be transcribed, the costs thereof to be borne by the party requesting the transcription. All objections made at

the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be noted by the officer upon the deposition.

9.07.01.01. **Submission to witness; changes; signing.** When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, **unless** such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall then be signed by the witness, **unless** the parties by stipulation waive the signing or the witness is ill or cannot be found, or refuses to sign. If the deposition is not signed by the witness within ten (10) calendar days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed **unless** the Committee holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

9.07.01.02. **Certification and filing by officer; exhibits; copies; notice of filing.** The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the

testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file it with the Committee. Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copies made by any party, **except** that (1) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (2) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the Committee, pending final disposition of the action. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent. The party taking the deposition shall give prompt notice of its filing to all other parties.

9.07.02. **Interrogatories to parties.** Any party may serve upon any other party written interrogatories to be

answered by the party after commencement of the action and upon any other party with or after service of the notice and complaint upon that party. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers and objections are to be signed by the person making them. The party upon whom the interrogatories have been served shall serve a copy of the answers and objections, if any, within ten (10) calendar days after service of the interrogatories, except that a defendant may serve answers or objections within twenty (20) calendar days after service of the summons and complaint upon that defendant. The Committee may allow a shorter or longer time. The party submitting the interrogatories may move for an order with respect to any objection to or other failure to answer an interrogatory.

Method of decision-making

§9.08. The decisions of the Committee shall be based on the written evidence which is timely and properly filed with the Committee by the parties to a grievance action. Only evidence which meets the requirements of relevancy and materiality as set forth in the then current Federal Rules of Evidence shall be used by the Committee in arriving at its decision in grievance actions. After having read and evaluated the evidence filed with the Committee, the members

of the Committee shall propose possible solutions to the dispute between the concerned parties. The two best proposed solutions shall be voted upon in a secret ballot held between a quorum of members of the Committee. Whichever solution receives the majority of the votes cast in the secret ballot shall be the decision in a grievance action timely and properly brought before it in no more than thirty (30) days following the date in which all evidence has been duly submitted to the Committee by the parties involved in such grievance action. Each decision of the Committee shall be announced to the Association membership no later than thirty (30) days after each such decision has been reached. After such a decision has been reached and announced the file of the Committee shall be open to the inspection of Association members, members of the Board, and officers of the Association on regular business days and during regular business hours.

ARTICLE X

LIABILITY OF OFFICERS

Exculpation

§10.01. Members of the Board, the officers and any assistant officer, agent, and employees of the Association i) shall not be liable to the apartment owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, **except** for their own willful misconduct or gross negligence; (ii) shall have no personal

liability in contract to an owner or any other person or entity under any agreement, instrument, or transaction entered into by them in behalf of the Association in their capacity as such (iii) shall have no personal liability in tort to any owner or any person or entity, direct or imputed, by virtue of acts performed by them, or acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse, or condition of the Project, which might in any way be assessed against or imputed to them as a result or by result or by virtue of their capacity as such.

Indemnification

§10.02. The apartment owners shall indemnify and hold harmless, any person, his heirs and personal representatives, from and against all personal liability and all expenses including counsel fees, incurred or imposed, or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative instituted by any one or more apartment owners, or any other persons or entities, to which he shall be or shall be threatened to be made a party by reason of the fact that he is or was a member of the Board or as officer or assistant officer, agent or employee of the Association, other than to the extent, in any, that such liability or expense shall be attributable to his willful

misconduct or bad faith; provided, that in the case of any settlement, the Board shall have approved the settlement, which approval is not to be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or vote of apartment owners or of the Board or otherwise. The indemnification by the apartment owners as contained herein shall be paid by the Board on behalf of the apartment owners and shall constitute a common expense and shall be assessed and collectible as such.

ARTICLE XI

MISCELLANEOUS

Amendment to Bylaws

§11.01. Except for Developer's right to maintain an office and model unit and as otherwise provided in the Declaration, these Bylaws may be amended, modified, or revoked in any respect from time to time by the owners of interests in the Project to which are appurtenant, in the aggregate, seventy-five percent (75%) of the common interests, at a meeting duly called for such purpose. No amendment to the Bylaws shall be effective until set forth in an amendment to the Declaration duly recorded in the Office of the Recorder, Guam.

Subordination

§11.02. These Bylaws are subordinate and subject to all

provisions of the Declaration and any amendments thereto, and the Horizontal Property Act, which shall control in case of any conflict. All terms herein (**except** where clearly repugnant to the context) shall have the same meaning as in the Declaration or the Horizontal Property Act.

No waiver

§11.03. The failure of the Board or its contractors to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions, or restrictions of the Declaration or these Bylaws, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or relinquishment, for the future, of such term, covenant, condition, or restriction; but such term, covenant, condition, or restriction shall remain in full force and effect. The receipt and acceptance by the Board or its contractor of the payment of any assessment from an owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Board of any provisions hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

Interpretation

§11.04. In case any provision of these Bylaws shall be held invalid, such invalidity shall render invalid any other

provision hereof which can be given effect. Nothing in these Bylaws shall be deemed or construed to authorize the Association or Board to conduct or engage in active business for profit on behalf of any or all of the apartment owners.

Captions

§11.05. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws nor the intent of any provisions hereof.

Effective date

§11.06. These Bylaws shall take effect upon recording of the Declaration, to which these are an exhibit.

Tax-exempt status

§11.07. The Board and members of the Association shall conduct the business of the Association in such manner that the Association qualify and be considered an organization exempt from Federal and Guam income taxes pursuant to Internal Revenue Code §528 and Guam Government Code §§19542 and 19605, as amended.

Filing

§11.08. The Board shall cause to be timely filed any annual election for tax-exempt status as may be required under



GRAPHIC SCALE

(1" = 100')

NO. 1936
Doc. # 3032.47

POB N 154.717.564
E 170.130.055

Doc. # 332907
LOT 3439.2

TRACT

TRACT 1936 R/W E.
13° 28' 08" E.

Doc. # 3032.47
528.29

362.05'

S 71° 53' 43" E

168.83

N

50 R/W

Doc. # 3032.47

S 9° 11' 42" W 34.12

LOT 3:
Doc. # 3456

S 75° 04' 17" E

451.71

S 80° 58' 43" W

N 79° 54' 17" W 360.00

775.40

~~LOT 3381-LANE W.~~

~~A. 19,999.93 S.M.~~
~~or 215,277 S.M.~~

LOT 3381-9 NEW N

Area = 2757,769 S. Ft. or 70,401.12

~~LOT 3381-9 NEW~~

~~A. 50,400.65 S.M.~~
~~or 1,111,111 S.M.~~

EXHIBIT E

02° 02' E -

Federal or Guam law, and shall undertake to cause the Association to comply with statutes, rules, and regulations which have been or shall be adopted by Federal and Guam agencies pertaining to such exemptions.

Fiscal year

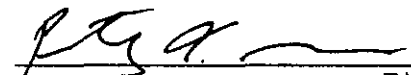
§11.09. The fiscal year of the Association shall be such as from time to time be established by the Association.

CERTIFICATE OF ADOPTION

The undersigned, being the owner of all apartments of the Project hereby adopt the foregoing as the Bylaws of the Association of Apartment Owners of "Apusento Garden Condominium" this 23rd day of July, 1991.

APUSENTO GARDEN (GUAM) INC.

By:


PETE ICHIRO MIZUSHIMA Its duly
authorized representative.

(007\Apusento)