

ASSOCIATION OF APARTMENT OWNERS OF PUNAHOU ROYALE

BOARD POLICY REGARDING

MODIFICATION AGREEMENTS

Owners wishing to perform unit modifications requiring approval of the Board of Directors will, at the discretion of the Board, enter into a Modification Agreement with the Association prior to the commencement of work. The Modification Agreement, similar to the attached sample, will be prepared by the Association attorney and subsequently filed with the land court.

DRAFT

LAND COURT SYSTEM

REGULAR SYSTEM

Return by: Mail [] Pickup [] To:
Richard S. Ekimoto
1001 Bishop Street, Suite 780, Honolulu, HI 96813
Telephone: (808) 523-0702

G:\CLIENT\P\Punahou Royale\gm\Modification Agreement.wpd

This document contains ____ pages

TITLE OF DOCUMENT: **AGREEMENT FOR MODIFICATION (ENCUMBRANCE)**

PARTIES TO DOCUMENT:

Association: ASSOCIATION OF OWNERS OF PUNAHOU ROYALE, a Hawaii
condominium association

Apt Owners:

Apt Owners' Addr: 1541 Dominis Street, Apt. _____, Honolulu, HI 96822

PROPERTY DESCRIPTION:

PROJECT : PUNAHOU ROYALE
Condo. Map No. : 427
Apartment No. : _____

TMK No.: (1) 2-4-23-26
CPR No.: _____
TCT No.: _____

THIS AGREEMENT is made this _____ day of _____, 201____,
by and between the above referenced Apartment Owners (hereinafter collectively the "Owners") and
the ASSOCIATION OF OWNERS OF PUNAHOU ROYALE, a Hawaii condominium association
(hereinafter the "Association"), by and through its Board of Directors (hereinafter the "Board").
Owners are the owners of the above-referenced apartment ("Apartment") as noted by that certain
instrument dated _____, filed in the Office of the Assistant Registrar of the Land
Court of the State of Hawaii as Document No. _____ and noted on Transfer Certificate of

Title No. _____, which said property is more particularly described in Exhibit “A” attached hereto and incorporated herein by reference.

WHEREAS, the Declaration of Horizontal Property Regime of Punahou Royale, dated August 1, 1980 (the “Declaration”) was filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1025249 together with By-Laws of the Association of Owners of Punahou Royale (“By-Laws”) attached thereto, and plans filed in said Land Court as Condominium Map No. 427 (“Condominium Map” or “Condominium File Plan”).

WHEREAS, Condominium Map No. 427 was filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

WHEREAS, Article VI, Section 2(b) of the By-Laws, as amended, provides that improvements made by an apartment owner which will affect the exterior appearance, structural integrity, or infringe upon any common elements of the building, must first obtain the written approval for said improvements from the Board.

WHEREAS, Hawaii Revised Statutes Section 514B-140(c) provides that, subject to the provisions of the Declaration, nonmaterial structural additions and alterations to the common elements, apartments and limited common elements shall require approval of the Board of Directors and such percentage, number, or group of apartment owners as may be required by the declaration or bylaws, provided that installation of solar energy devices shall be allowed on single-family residential dwellings or townhouses.

WHEREAS, Owners desire to make or have made, with the Board’s approval, such nonmaterial structural additions and/or modifications as are hereinafter described;

NOW, THEREFORE, the Board hereby grants permission to Owners to make the additions, modifications or improvements which are more fully described in Exhibit “B” attached hereto and incorporated herein by reference (hereinafter referred to as “Improvements”). Said approval is specifically limited to the completion of the Improvements within one year of the recordation date of this Agreement, in strict conformance with the plans and specifications approved by the Board. Said approval is further predicated upon strict conformance with an application having been approved by the Building Department of the City and County of Honolulu, if necessary, a copy of which shall be provided to the Board prior to the commencement of the Improvements.

IN CONSIDERATION of the Association’s approval to make the Improvements, the Owners hereby agree to promptly repair and/or replace, to the satisfaction of the Board, any damage, destruction, injury or diminution in value to any common element or limited common element of the Punahou Royale condominium project arising in any manner whatsoever, whether through the Owners’ negligence or otherwise, from the installation of the Improvements. Except as otherwise provided herein, such repair and/or replacement shall be such that the affected common element or limited common element is returned to a condition equivalent to its condition immediately preceding said damage, destruction, injury or diminution in value. The Owners agree to pay all costs and

expenses of said repair and/or replacement. In the event the Owners fail to meet their obligation to repair or replace as set forth herein, the Association and/or workers approved by the Association are hereby authorized to make any such repairs and/or replacements as it deems necessary, shall have the right to enter said apartments in order to make such repairs and/or replacements, and shall not thereby be deemed guilty in any manner of trespass. The Owners shall promptly pay to the Association upon demand all sums expended by the Association for such purpose.

The Owners further agree to indemnify and hold harmless the Association and the Board, as well as all owners of individual apartments at the Punahou Royale condominium project, from any and all liability, loss or damage which may arise as a result of the Improvements. The Owners specifically and expressly acknowledge that all owners of individual apartments at the Punahou Royale condominium project are intended to be third-party beneficiaries of this Agreement.

In the event the Board determines that it is necessary or desirable for the Improvements to be removed or relocated for the repair or maintenance of the Project or for the operation of the Project, the Owners shall remove the Improvements at Owners expense for the time period determined by the Board. After the repairs, maintenance or other events or circumstances necessitating the removal of the Improvements are completed, the Owners may replace the Improvements in accordance with this Agreement.

In the event the Owners fail to comply with any of the terms contained in this Agreement or any covenants or conditions contained in Exhibit "B", the Owners agree to pay the Association all amounts expended by the Association for the enforcement of this Agreement, including attorneys' fees, court costs, sheriffs' fees, and any and all other costs, together with interest at the rate of twelve percent (12%) per annum upon all amounts expended by the Association in enforcing the terms and conditions of this Agreement.

It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, the validity of the remaining portions or provisions hereof shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid or unenforceable.

The parties hereto agree that this Agreement may be recorded as an equitable servitude on the property described in said Exhibit "A" which shall be binding upon the Owners' successors-in-interest and assigns, as well as each and every other person and/or entity having an ownership interest in said property in the future.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date first written above.

OWNER(S):

ASSOCIATION OF OWNERS OF PUNAHOU
ROYALE

DRAFT

Print Name: _____

By: _____

DRAFT

Print Name: _____

Type Name
Its: _____

DRAFT

By: _____

Type Name
Its: _____

STATE OF HAWAII)

: SS.

CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 20____, in the First Circuit of the State of Hawaii, before me personally appeared _____, personally known to me or proven to me on the basis of satisfactory evidence, who being duly sworn or affirmed, did say that such person was the _____ of the Association of Owners of Punahou Royale, a Hawaii condominium association, that said person executed the foregoing instrument identified or described as “Agreement for Modification (Encumbrance),” as such person’s free act and deed on having been duly authorized to execute such instrument in such capacity.

The foregoing instrument is dated _____ and contained _____ pages at the time of this acknowledgment/certification.

Notary Public, State of Hawaii

Printed Name of Notary Public

My Commission Expires: _____

STATE OF HAWAII)

: SS.

CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 20____, in the First Circuit of the State of Hawaii, before me personally appeared _____, personally known to me or proven to me on the basis of satisfactory evidence, who being duly sworn or affirmed, did say that such person was the _____ of the Association of Owners of Punahou Royale, a Hawaii condominium association, that said person executed the foregoing instrument identified or described as "Agreement for Modification (Encumbrance)," as such person's free act and deed on having been duly authorized to execute such instrument in such capacity.

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Notary Public, State of Hawaii

Printed Name of Notary Public

My Commission Expires: _____

EXHIBIT "A"

The land referred to is situated in the State of Hawaii, and is described as follows:

FIRST:

Apartment Number _____ of that certain Condominium Project known as "PUNAHOU ROYALE", as shown on Condominium Map No. 427, and described in the Declaration of Horizontal Property Regime dated August 1, 1980, recorded in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document Number 1025249, as amended.

Together with appurtenant easements as follows:

- (a) Non-exclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for and support of said apartment; in the other common elements for use according to their respective purposes subject always to the exclusive or limited use of the limited common elements as provided in the Declaration, as amended, and in all other apartments and limited common elements of the building for support.
- (b) Easements for encroachments and entry and such other easements as are set forth in the Declaration, as amended.
- (c) An exclusive easement to use Parking Stall No. _____, as shown on said Condominium Map.

SECOND:

An undivided _____ % interest in all common elements of the project and in the land on which said Project is located as established for said apartment by the Declaration, as amended, or such other percentage interest as hereinafter established for said apartment by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof.

Being all the property described in Apartment Deed dated _____, recorded in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. _____.

Being all the property described in and covered by Transfer Certificate of Title No. _____.

THE LAND UPON WHICH SAID CONDOMINIUM IS LOCATED IS DESCRIBED AS FOLLOWS:

All that certain parcel of land situate at the West Corner of Dominis and Poki Streets, at Anapuni, City and County of Honolulu, State of Hawaii, described as follows:

Lot 1-A, area 21,263 square feet, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 130 of George Kiyoshi Yamashiro and others.

Subject to the following:

1. Title to all minerals and metallic mines reserved to the State of Hawaii.
2. Condominium Map No. 427, filed in the Office of the Assistant Registrar of the Land Court, State of Hawaii.
3. Covenants, conditions, restrictions, reservations, agreements, obligations, provisions, easements and by laws set forth in the Declaration of Horizontal Property Regime dated August 1, 1980, recorded in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 1025249, as amended, but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.
4. Terms, provisions and conditions as contained in the Apartment Deed and the effect of any failure to comply with such terms, provisions and conditions.
5. Any and all easements encumbering the apartment herein mentioned, and/or the common interest appurtenant thereto, as created by or mentioned in said Declaration, as said Declaration may be amended from time to time in accordance with the law and/or in the Apartment Deed, and/or as delineated on said Condominium Map.

End of Exhibit "A"