

LAND COURT SYSTEM

REGULAR SYSTEM

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TITLE OF DOCUMENT:

AFFORDABLE APARTMENT DEED WITH COVENANTS  
AND FIVE-YEAR BUY-BACK OPTION

PARTIES TO DOCUMENT:

GRANTOR: 3702 LOWER HONOAPIILANI, LLC, a Colorado limited liability  
company

GRANTEE:

TAX MAP KEY(S): Maui 4-3-006-069; CPR No. \_\_\_\_\_

(This document consists of \_\_\_ pages.)

AFFORDABLE APARTMENT DEED WITH COVENANTS  
AND FIVE-YEAR BUY-BACK OPTION

KNOW ALL MEN BY THESE PRESENTS:

That on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 3702 LOWER HONOAPIILANI, LLC, a Colorado limited liability company, hereinafter called the "Grantor", for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to the Grantor paid by \_\_\_\_\_, whose address is \_\_\_\_\_, hereinafter called the "Grantee", the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the Grantee all of that certain real property more particularly described in Exhibit A attached hereto and made a part hereof, subject to the encumbrances noted therein (the "Apartment").

TOGETHER WITH all the rights, easements, privileges and appurtenances thereunto belonging or appertaining.

TO HAVE AND TO HOLD the same unto the Grantee, \_\_\_\_\_, in fee simple, forever.

PROVIDED, that Grantee is purchasing the Apartment pursuant to an Affordable Housing Agreement and program entered into between Grantor and the County of Maui, which Agreement is recorded in the State of Hawaii Bureau of Conveyance as Document No. 2005-042884, pursuant to which Grantee certified that (1) Grantee is an "Affordable Buyer" as defined in the Affordable Housing Agreement; (2) Grantee would continue to own and occupy the Apartment as a primary residence for a period of five years from the date of this Deed; (3) Grantee agrees to all other terms and conditions set forth in the Affordable Housing Agreement; and (4) Grantee has granted to the County of Maui the right and option to purchase the Apartment from Grantee if Grantee fails to comply with the owner-occupant requirement of the Affordable Housing Agreement, at a price which shall not exceed the sum of:

- (1) Grantee's actual cost to purchase the Apartment;
- (2) The cost of any improvements made to the Apartment by the Grantee; and
- (3) Simple interest on the Grantee's cash equity in the Apartment calculated at a rate of seven percent (7%) per year from the date of this deed.

AND the Grantor does hereby covenant with the Grantee that the Grantor is lawfully seised in fee simple of said granted premises and that the said premises are free and clear of all encumbrances except as aforesaid, and except for assessments for real property taxes not yet by law required to be paid. And the Grantor further covenants and agrees that the Grantor has good right to sell and convey the said premises in the manner aforesaid; that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

AND the Grantee does hereby covenant and agree to and with the Grantor that the

Grantee's interest under this Warranty Deed shall be subject to, and the Grantee will observe, perform, comply with and abide by, the Declaration of Condominium Property Regime of the condominium project described in said Exhibit A and the By-Laws of said condominium project, as either of the same may have been or may hereafter be amended.

IT IS MUTUALLY AGREED that the terms "Grantor" and "Grantee", as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, corporations or partnerships, and their and each of their respective successors in interest, heirs, executors, personal representatives, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more grantors, or by two or more grantees, all covenants of such parties shall be and for all purposes deemed to be joint and several.

The covenants and agreements of the Grantee shall run with the property described in Exhibit "A" attached hereto, shall be binding upon the Grantee and the Grantee's successors and assigns, and shall run in favor of and inure to the benefit of the Grantor and the Grantor's successors and assigns.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed these presents as of the day and year first above written.

3702 LOWER HONOAPIILANI, LLC

By \_\_\_\_\_

Its

Grantor

\_\_\_\_\_

Grantee

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
Name:

Notary Public, State of Colorado

My commission expires: \_\_\_\_\_

STATE OF HAWAII )  
 ) ss.  
COUNTY OF MAUI )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_ to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
Name:

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Name: \_\_\_\_\_

Second Circuit

Document Description: \_\_\_\_\_

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Notary Signature  
NOTARY CERTIFICATION

EXHIBIT A

FIRST: Apartment No. \_\_\_\_\_ of that certain condominium project known as “The West Maui Breakers”, as described in the Declaration of Condominium Property Regime of The West Maui Breakers dated February 25, 2005, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-069181 and as amended by instruments dated January 22, 2007, recorded in said Bureau as Document No. 2007-020183, dated March 22, 2007, recorded in said Bureau as Document No. 2007-078772, dated June 1, 2007, recorded in said Bureau as Document No. 2007-111924 and dated September 24, 2009, recorded in said Bureau as Document No. 2009-148543 (formerly called “The West Maui Breakers” and now known as “The Breakers”), and as shown on Condominium Map No. 813, as amended.

Together with appurtenant easements as follows:

- (a) An exclusive easement to use Parking Space No(s). \_\_\_\_\_ as shown on said condominium map.
- (b) Non-exclusive easement 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.
- (c) Exclusive easements to use other limited common elements appurtenant thereto designated for its exclusive use by the declaration.

SECOND: An undivided \_\_\_\_\_ percent 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, 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.

The land on which said condominium is more particularly described as follows:

All of that certain parcel of land (being all of Royal Patent 4591, Land Commission Award 3930, Apana 2 to Nauwele, Royal Patent Number 7491, Land Commission Award Number 3932, Apana 3 to Nalepo, Grant S-14686. Grant S-14687 and portions of Royal Patent Number 2153, Land Commission Award 3927, Apana 2 to Nakoholua and Royal Patent 415, Land Commission Award 75 to C. Cockett, situate at Honokowai and Mahinahina, Lahaina, Island and County of Maui, State of Hawaii, and more particularly described as follows:

Beginning at a found ½ inch pipe at the northwest corner of this lot on the easterly side of Lower Honoapiilani Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station “Manini” being 9,851.48 feet north and 12,358.70 feet west and running by azimuths measured clockwise from true south:

1. 280° 46' 649.20 feet along Royal Patent 4203, Land Commission Award 4239, Apana 1 to Kaukau to a found “+” mark on rock wall;

- |     |          |        |   |
|-----|----------|--------|---|
| 2.  | 9° 14'   | 112.10 | feet along the Honokowai Government Tract to a found ½ inch pipe;   |
| 3.  | 101° 42' | 322.19 | feet along the Honokowai Government Tract to a found ½ inch pipe;   |
| 4.  | 2° 02'   | 82.42  | feet along same to a found ½ inch pipe;   |
| 5.  | 281° 42' | 210.53 | feet along same to a found ½ inch pipe;   |
| 6.  | 0° 42'   | 65.68  | feet along same to a found ½ inch pipe;   |
| 7.  | 102° 34' | 541.44 | feet along the remainder of Royal Patent 2153, Land Commission Award 3927, Apana 2 to Nakoholua to a set “PK” nail; |
| 8.  | 102° 22' | 47.85  | feet along Lot 2-A of the Honokowai Government Remant to a found ¾ inch pipe;                                       |
| 9.  | 196° 38' | 137.26 | feet along Lot 2, TMK: (2) 4-3-6-167 to a found ½ inch pipe;  |
| 10. | 281° 17' | 5.28   | feet along Lower Honoapiilani Road to a found ½ inch pipe;  |
| 11. | 193° 40' | 101.67 | feet along same to the point of beginning and containing an area of 133,053 square feet, more or less.              |

Said above described parcel of land having been acquired as follows:

By Quitclaim Deed dated April 22, 2005, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-104535, to 3702 Lower Honoapiilani, LLC, a Colorado limited liability company, as to Apartment Nos. B-20 thru B-27, inclusive, B-30 thru B-37, inclusive B-40 thru B-47, inclusive, C-21 thru C-24, inclusive, C-30 and C-31, D-20 thru D-27, inclusive, D-30 thru D-37, inclusive, D-40 thru D-47, inclusive, E-20 thru E-27, inclusive, E-30 thru E-37, inclusive, E-40 thru E-47, inclusive, F-20 thru F-25, inclusive and F-40 thru F-45, inclusive).

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Reservation and Covenant contained in Land Patent Grant No. S-14,686 and Grant No. S-14,687, to-wit:

“Reserving to the State of Hawaii, its successors and assigns, in perpetuity, all minerals and surface and ground waters appurtenant to the land described, together with the right to enter, sever, prospect for, mine and remove such minerals by deep mining, strip mining, drilling and any other means whatsoever, and to occupy and use so much of the surface as may be required therefor or to capture, divert or impound water; provided, that the state shall pay just compensation to the surface owner for improvements taken as a condition precedent to the exercise of such reserved rights.

The patentee, for itself, her heirs and assigns, covenants that the use and enjoyment of the land herein granted shall not be in support of any policy which discriminates against anyone based upon race, creed, color or national origin.”

3. Reservation set forth in Deed dated August 22, 1950, recorded in said bureau, in Liber 2388, Page 81, to-wit:

“Pursuant to the provisions of Executive Order 9909, dated December 5, 1947, filed December 8, 1947, with the Division of the Federal Register (12 Fed. Reg. 8223, December 9, 1947), all uranium, thorium, and all other minerals determined pursuant to Section 5 (b) (1) of the Atomic Energy Act of 1946 (60 stat. 761) to be peculiarly essential to the production of fissionable material, contained, in whatever concentration, in deposits in Parcel No. 4 covered by this instrument are hereby reserved for the use of the United States, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine and remove the same, making just compensation for any damage or injury occasioned thereby. However, such land may be used, and any rights otherwise acquired by this disposition may be exercised, as if no reservation of such materials had been made; except that, when such results in the extraction of any such materials from the land in quantities which may not be transferred or delivered without a license under the Atomic Energy Act of 1946, as it now exists or may hereafter be amended, such materials shall be the property of the United States Atomic Energy Commission, and the Commission may require delivery of such materials to it by any possessor thereof after such material has been separated as such from the ores in which it was contained. If the Commission requires the delivery of such materials to it, it shall pay to the person mining or extracting the same, or to such other person as the Commission determines to be entitled thereto, such sums, including profits, as the Commission deems fair and reasonable for the discovery, mining, development, production, extracting, and other services performed with respect to such material prior to such delivery, but such payment shall not include any amount on account of the value of such material prior to such delivery, but such payment shall not include any amount on account of the value of such material before removal from its place of deposit in nature. If the Commission does not require delivery of such material to it, the reservation hereby made shall be of no further force or effect.”

(As to that portion covered by Royal Patent Number 415, Land Commission Award Number 75 to C. Crockett)

4. Consolidation Agreement dated May 9, 1979, recorded in said Bureau in Liber 13831, Page 197, by and between William A. Jorgensen, Tove K. Jorgensen, James E. Cain and Priscilla A. Cain, as Owner and the County of Maui.



5. Section VII (C) Agreement for West Maui Areas, dated January 19, 1981, recorded in said Bureau in Liber 15304, Page 82, by and between the County of Maui, Department of Water Supply, "County", William A. Jorgensen and Tove K. Jorgensen, Husband and Wife, "Owner", and J & J Development Co., Inc., a Hawaii corporation, "Developer".

6. Easement dated November 16, 1981, recorded in said Bureau in Liber 16049, Page 650, in favor of Maui Electric Company, Limited, a Hawaii corporation, and Hawaiian Telephone Company, a Hawaii corporation (now known as Verizon Hawaii, Inc.) for utility purposes .

7. Terms, provisions, covenants, conditions and reservations contained in Declaration of Condominium Property Regime of The West Maui Breakers dated February 25, 2005, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-069181.

Said Declaration amends and restates in its entirety that certain Declaration of Horizontal Property Regime of Hale Kahekili, dated August 27, 1980 filed in said Bureau as Document No. in Liber 15676, Page 172, which was heretofore amended by instruments dated August 28, 1981, recorded in said Bureau in Liber 15789, Page 796, dated May 13, 1982, recorded in said Bureau in Liber 16374, Page 782, dated March 29, 1985, recorded in said Bureau in Liber 18542, Page 116, dated May 16, 1989, recorded in said Bureau in Liber 23208, Page 1, and dated May 16, 1989, recorded in said Bureau in Liber 23208, Page 41.

Said Declaration was amended by instruments dated January 22, 2007, recorded in said Bureau as Document No. 2007-020183, dated March 22, 2007, recorded in said Bureau as Document No. 2007-078772, dated June 1, 2007, recorded in said Bureau as Document No. 2007-111924 and dated September 24, 2009, recorded in said Bureau as Document No. 2009-148543.

8. Condominium Map No. 813, filed in said Bureau, as amended.

9. The Bylaws of the Association of Apartment Owners of The West Maui Breakers dated February 25, 2005, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-069182.

Said Bylaws was amended by instrument dated September 24, 2009, recorded in said Bureau as Document No. 2009-148544.

10. Terms, provisions, covenants, conditions and reservations contained in Affordable Housing Agreement for The West Maui Breakers dated ----- (acknowledged on February 24, 2005 and February 25, 2005), recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-042884.

Said Affordable Housing Agreement was amended by instrument dated November 10, 2009, recorded in said Bureau as Document No. 2009-176702.

Tax Map Key No.: (2) 4-3-006-069; CPR No. \_\_\_\_\_