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TITLE GUARANTY OF HAWAII, INCORPORATED

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail Pickup To:

COUNTY OF MAUI
DEPARTMENT OF FINANCE
200 South High Street
Wailuku, Maui, Hawaii 96793
Telephone: (808) 270-7844

TITLE OF DOCUMENT:

**FIRST AMENDMENT TO THE AFFORDABLE HOUSING
AGREEMENT FOR THE WEST MAUI BREAKERS
(Now Known As "The Breakers")**

PARTIES TO DOCUMENT:

DOUGLAS E. MYERS

3702 LOWER HONOAPIILANI, LLC,
a Colorado limited liability company

COUNTY OF MAUI,
a political subdivision of the State of Hawaii

TAX MAP KEY(S): (2) 4-3-6:69; CPR Nos. 1 through 114

(This document consists of ¹⁰8 pages.)

atcl/np

**FIRST AMENDMENT TO THE AFFORDABLE HOUSING
AGREEMENT FOR THE WEST MAUI BREAKERS
(Now Known As "The Breakers")**

THIS FIRST AMENDMENT TO THE AFFORDABLE HOUSING AGREEMENT FOR THE WEST MAUI BREAKERS (now known as "The Breakers") ("Amendment") is made on the 10th day of November, 2009, by DOUGLAS E. MYERS, Trustee of The Douglas E. Myers Revocable Trust dated June 8, 2005, with full powers to sell, lease, mortgage, exchange, or otherwise dispose of, or deal with any property of said Trust ("Myers"), 3702 LOWER HONOAPIILANI, LLC, a Colorado limited liability company ("LLC") (Myers and LLC are hereinafter collectively referred to as "Owner") and the COUNTY OF MAUI, a political subdivision of the State of Hawaii ("County").

RECITALS

A. Douglas E. Myers dba West Maui Condos ("WMC") and the County executed the Affordable Housing Agreement for the West Maui Breakers ("Agreement") that is recorded in the Bureau of Conveyances of the State of Hawaii ("Bureau") as Document No. 2005-042884, by which WMC agreed to provide certain affordable housing units in the West Maui Breakers project.

B. Owner is successor to WMC and the project is now named "The Breakers".

C. Owner and the County desire to amend the Agreement so that the restrictions on affordable housing units comply with the requirements of the Federal Housing Administration ("FHA") of the U.S. Department of Housing and Urban Development ("HUD") for insuring mortgages of units subject to affordable housing restrictions as set forth in 24 CFR Section 203.41.

NOW THEREFORE, pursuant to Section 8G of the Agreement and in order to comply with HUD requirements, Owner and the County agree that the Agreement is amended as follows:

1. Article II Section E of the Agreement is amended and restated in its entirety as follows:

E. OWNER OCCUPANCY.

1. The Affordable Housing Units shall be available for occupancy upon completion of The Breakers and concurrently with the availability for occupancy of all the other units in The Breakers. Affordable Buyers must own and occupy their Affordable Housing Units for not less than five (5) years from the date of purchase. Owner shall be responsible to ensure that all Affordable Buyers comply with this provision.

2. If the Affordable Buyer does not comply with the owner-occupancy requirement, the County shall have the right and option to purchase the Affordable Housing Unit at a price which equals the sum of:

- (1) The Affordable Buyer's actual cost to purchase the Affordable Housing Unit;
- (2) The reasonable cost of any Improvements made to the Affordable Housing Unit by the Affordable Buyer;
- (3) The Affordable Buyer's reasonable costs of sale;
- (4) Any negative amortization on a graduated payment mortgage of the Affordable Housing Unit that is insured under 24 CFR § 203.45; and
- (5) Simple interest on the Affordable Buyer's cash equity in the Affordable Housing Unit at the rate of seven percent (7%) per year, provided that if the County exercises this option two or more years after the closing of the Buyer's purchase the amount payable under this subsection shall be the greater of such interest or fifty (50%) of the Appreciation of the Affordable Housing Unit.

For purposes of this Section, "Appreciation" means the difference between the original purchase price of an Affordable Housing Unit and the fair market value of the Affordable Housing Unit, as reasonably determined by the County, on the date the Affordable Housing Buyer ceases to comply with the owner-occupancy requirement, and "Improvements" means substantial structural or permanent fixed improvements to an Affordable Housing Unit that are lawfully made or paid for by an Affordable Buyer and that cannot be removed without substantial damage to the premises or substantial or total loss of value of said improvements.

3. The Affordable Buyer must notify the County if the buyer proposes to sell the Affordable Housing Unit to a purchaser not eligible for program benefits ("Buyer's Notice"). The County shall within forty five (45) days after receipt of the Buyer's Notice ("Option Period") exercise its option to purchase the Affordable Housing Unit. If the County does not exercise its option within that 45-day period, the County shall be deemed to have waived the option. If the County, pursuant to Section E.2 of this Agreement, exercises its purchase option because the Affordable Buyer has breached the owner-occupancy requirement, the County's purchase shall occur within a reasonable time after such breach not to exceed any period of time determined by the Secretary of Housing and Urban Development. At closing, the Affordable Buyer shall convey the Affordable Housing Unit to the County or its designee free and clear of all mortgages, liens or encumbrances. For purposes of this Section, "County" shall mean, in addition to those persons identified in Article I of the Agreement, persons authorized to exercise the County's purchase

option provided the Maui County Council has authorized the purchase by passage of a resolution pursuant to Maui County Code Section 3.44.015.

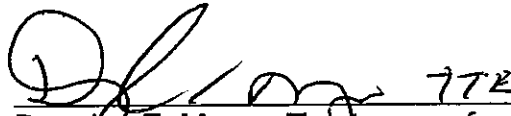
4. The restrictions of this Section E shall be included in the deeds for all Affordable Housing Units.

5. The restrictions of this Section E shall automatically and permanently terminate with respect to an Affordable Housing Unit upon foreclosure or deed-in-lieu of foreclosure of the Unit, or upon assignment of an insured mortgage of the Unit to the U.S. Department of Housing and Urban Development.

3. No Other Amendments; Execution. Except as provided above, the Agreement, as heretofore amended, remains in full force and effect. This Amendment may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. Duplicated unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

[Signature Page Follows]

IN WITNESS WHEREOF, Owner and County have executed this Amendment to as of the date first set forth above.



Douglas E. Myers, Trustee as aforesaid

3702 Lower Honoapiilani, LLC
By Gemini Capital, LLC
Its Manager

By _____
Reginald V. Golden
Its Manager

COUNTY OF MAUI

By _____
CHARMAINE TAVARES
Mayor

APPROVED AS TO FORM AND
LEGALITY:

Deputy Corporation Counsel
County of Maui


APPROVAL RECOMMENDED:

Lori Tsuhako, Director
Department of Housing and Human Concerns

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Its Manager

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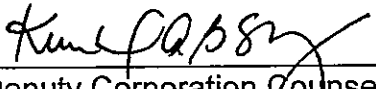
By _____

Its:

COUNTY OF MAUI

By 
CHARMAINE TAVARES
Mayor

APPROVED AS TO FORM AND
LEGALITY:



Deputy Corporation Counsel
County of Maui


APPROVAL RECOMMENDED:



Lori Tuhako, Director
Department of Housing and Human Concerns

STATE OF COLORADO)
COUNTY OF Boulder) ss.

On this 5 day of November, 2009, before me personally appeared DOUGLAS E. MYERS 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.


ZAHRA ALLARAKHIA
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires Sept. 25, 2012

Zahra Allarakhia
Name:

Notary Public, State of Colorado

My commission expires: 9/25/2012

STATE OF HAWAII)
)
COUNTY OF MAUI)

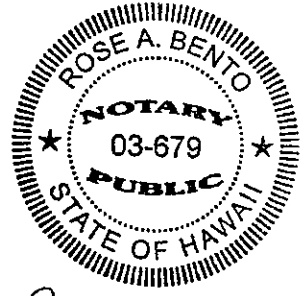
ss.

On this 3 day of Nov, 2009, before me personally appeared Reginald V. Golden 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.

Rose A. Bento

Name: Rose A. Bento
Notary Public, State of Hawaii

My commission expires: 11/23/11



Date: 11/3/09

Number of Pages: 8

Name: Rose A. Bento

Second Circuit

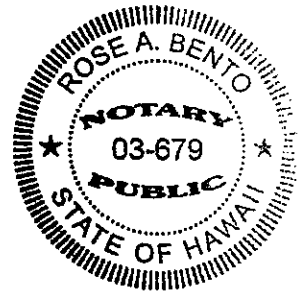
Document Description:
First Amendment to the affordable housing

Rose A. Bento

Notary Signature

NOTARY CERTIFICATION

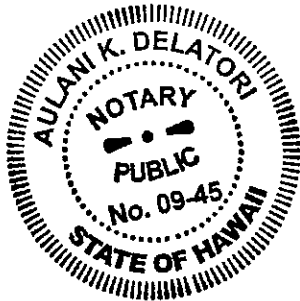
Rose A. Bento



STATE OF HAWAII)
)
COUNTY OF MAUI) ss.

On this 10th day of November, 2009, before me personally appeared CHARMAINE TAVARES, to me personally known, who being by me duly sworn did say that she is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 9-18 of the Charter of the County of Maui; and said CHARMAINE TAVARES acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Aulani K. Delatoro
Name: Aulani K. Delatoro
Notary Public, State of Hawaii
My commission expires: 02/22/2013

Date: November 8, 2009
Name: Aulani K. Delatoro
Document Description: First Amendment to the Affordable Housing Agreement for the West Maui Breakers (Now Known As "The Breakers")

Number of Pages: 8 10 aka/np
Second Circuit

Aulani K. Delatoro
Notary Signature
NOTARY CERTIFICATION

