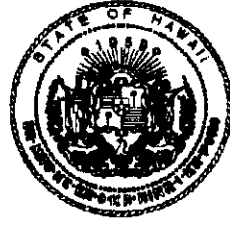


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/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

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Kiefer & Merchant LLC
Attention: David Merchant, Esq.
444 Hana Hwy., Ste. 204
Kahului, Maui, Hawaii 96732
Telephone: (808) 871-9701

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TITLE OF DOCUMENT:

**DECLARATION OF CONDOMINIUM PROPERTY REGIME
OF THE WEST MAUI BREAKERS**

PARTIES TO DOCUMENT:

DECLARANT: DOUGLAS E. MYERS and
3702 LOWER HONOAPIILANI, LLC, a Colorado limited liability
company

TAX MAP KEY(S): (2) 4-3-6: 02 & 69 (This document consists of 34 pages.)

**DECLARATION OF CONDOMINIUM PROPERTY REGIME
OF THE WEST MAUI BREAKERS**

THIS DECLARATION is made on February 25, 2005, by **Douglas E. Myers** ("Developer") and **3702 Lower Honoapiilani, LLC**, a Colorado limited liability company ("LLC") (Developer and LLC are hereinafter collectively referred to as "Declarant").

RECITALS

WHEREAS, LLC owns the fee simple interest in Lot 1-A of the Hale Kahekili Condominium Subdivision, containing approximately 83,046 square feet (hereinafter called "Lot 1-A"), situated at Honokowai, Maui, Hawaii, more particularly described as "Parcel One" in **Exhibit "A"** attached hereto and made a part hereof, together with the existing apartment building and other improvements thereon hereinafter described.

WHEREAS, Developer owns the fee simple interest in Lot 1-B of the Hale Kahekili Condominium Subdivision, containing approximately 50,007 square feet (hereinafter called "Lot 1-B"), situated at Honokowai, Maui, Hawaii, more particularly described as "Parcel Two" in **Exhibit "A"** attached hereto and made a part hereof, together with the existing apartment building and other improvements thereon hereinafter described.

WHEREAS, Lot 1-B is subject to that certain **Declaration of Horizontal Property Regime for "Hale Kahekili" Condominium Project, dated August 27, 1980**, and recorded in the Bureau of Conveyances of the State of Hawaii ("Bureau") in Liber 15676, Page 172, which was amended by (a) **Restated Declaration of the Horizontal Property Regime of Kahekili Grove (formerly known as Hale Kahekili), dated March 29, 1985** and recorded in the Bureau in Liber 18542, page 116, and (b) **Restated and Amended Horizontal Property Regime of Kahekili Grove (formerly known as Hale Kahekili), dated May 16, 1989** and recorded in the Bureau in Liber 23208, Page 1 (collectively, "the Old Declaration").

WHEREAS, the Old Declaration established a condominium property regime initially called "Hale Kahekili" and subsequently called "Kahekili Grove", which consisted of twenty-four condominium apartments located a single building constructed on Lot 1-B, all as shown on **Condominium Map No. 813** (the "Condominium Map") filed in the Bureau.

WHEREAS, none of the apartments in said condominium property regime were ever sold individually, and Developer, as current fee owner of Lot 1-B, is the owner of all right, title and interest in said apartments by virtue of that certain **Warranty Deed dated June 25, 2003**, recorded in the Bureau as **Document No. 2003-134744**.

WHEREAS, Developer has undertaken to develop five (5) new multi-story residential buildings on the Land, containing ninety (90) residential apartments.

WHEREAS, Declarant desires to amend and restate the Old Declaration in its entirety as set forth below and, by instrument filed concurrently herewith, to amend the Condominium Map, to (a) subject all of Lot 1-A and Lot 1-B (collectively the "Land") to the condominium property regime described herein, (b) change the name of the condominium property regime to "The West Maui Breakers", (c) create an additional ninety (90) condominium apartments located within the five (5) new buildings Developer is constructing, and (d) make various other amendments to the Old Declaration to implement all of the foregoing and bring the Project's documentation into compliance with Chapter 514A, Hawaii Revised Statutes.

NOW, THEREFORE, pursuant to Paragraph P of the Old Declaration and Hawaii Revised Statutes Sections 514A-11(11) & 514A-20, in order to create a condominium project consisting of said Land and the Improvements thereon (hereinafter called the "Project"), to be known as "The West Maui Breakers", the Declarant, by this Declaration of Condominium Property Regime (hereinafter called "the Declaration"), hereby amends and restates the Old Declaration in its entirety and submits the Land and all of its interests therein and all appurtenances thereto to a Condominium Property Regime established pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended, hereinafter sometimes referred to as the "Act", and in furtherance thereof makes the following declarations as to divisions, limitations, restrictions, covenants and conditions, and hereby declare and agree that the Land is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, restrictions and conditions set forth herein and in the By-Laws of the Association of Apartment Owners of The West Maui Breakers (hereinafter referred to as the "By-Laws") recorded in the Bureau concurrently herewith, as the same may be amended from time to time, which declarations, restrictions, and conditions shall constitute covenants running with the Land and shall be binding on and for the benefit of the Declarant and its successors and assigns, and all subsequent owners, lessees and sublessees of all or any part of the Project and their respective heirs, devisees, personal representatives, successors and assigns.

A. DEFINITIONS AND USE OF DEFINED TERMS

1. Use of Defined Terms. For purposes of construing and interpreting this Declaration and the Bylaws, the terms defined above and in Section 2 of this Article A, below, when written with initial capital letters in this Declaration or in the Bylaws shall have the meaning given such terms in the Introduction, above, and in Section 2 of this Article A, below. Such defined terms may be used in the singular or plural or in varying tenses or forms, but such variation shall not affect the defined meaning of such terms so long as those terms are written in initial capital letters. When such terms are used in this Declaration or in the Bylaws, but are written without initial capital letters, such terms shall have the meaning they have in common usage; provided, however, that where legal, technical or trade terms are used and the context in which such terms are used indicates that such terms are to be given their legal, technical or trade meanings, such terms shall be given such legal, technical or trade meanings.

2. Definitions of Defined Terms. As used in this Declaration and the Bylaws the following terms shall have the meanings set forth below:

a. "Act" means the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes.

b. "Agreement of Sale" means an agreement of sale recorded in the Bureau.

c. "Annual Budget" means that budget established by the Board to provide for the operation of the Project as set forth in Article VI, Section 8 of the Bylaws.

d. "Apartment" shall mean any one of the one hundred fourteen (114) condominium apartments contained in the Project, any two or more of which may sometimes be referred to collectively as "Apartments."

e. "Apartment Deed" means the legal instrument signed by Declarant conveying a fee simple interest in an Apartment and an undivided fee simple interest in the Common Elements to an Owner.

f. "Association" means the Association of Apartment Owners of The West Maui Breakers.

g. "Board" means the Board of Directors of the Association of Apartment Owners of The West Maui Breakers.

h. "Bureau" means the Bureau of Conveyances of the State of Hawaii.

i. "Bylaws" means the Bylaws of the Association of Apartment Owners of The West Maui Breakers recorded concurrently herewith in the Bureau, as amended from time to time.

j. "Capital Improvements Reserve Fund" means that fund established by the Board pursuant to Article VI, Section 3 of the Bylaws to provide for specific capital improvements for the Project.

k. "Common Elements" shall mean those parts of the Project which are defined in Article B, Section 3 of this Declaration as common elements. The term Common Elements includes those portions of the Project designated in this Declaration as Common Elements, as well as those designated as Limited Common Elements.

l. "Common Expenses" means and includes (a) all expenses of the administration, management, and operation of the Project and the maintenance, repair, and replacement of, and the making of any additions and improvements to, the Common Elements, and (b) all expenses authorized to be made by the Association

pursuant to this Declaration or the Bylaws or pursuant to the Act as set forth in Article J of this Declaration or Article VI of the Bylaws.

m. "Common Interest" means the undivided percentage interest set forth in Article C of this Declaration that is appurtenant to an Apartment.

n. "Condominium Map" means Condominium Map 813 filed in the Bureau, as amended by instrument filed in the Bureau concurrently herewith, and as further amended from time to time.

o. "Condominium Property Regime" shall have the meaning set forth in the Act.

p. "Cost of Living Factor" means, for any date, that fraction whose numerator (the "Current Index") is the Consumer Price Index for Urban Consumers for the Standard Metropolitan Statistical Area of Honolulu ("Consumer Price Index"), published by the Bureau of Labor Statistics of the United States Department of Labor in effect on such date and whose denominator (the "Base Index") is the Consumer Price Index in effect on the date of this Declaration; provided, however, that for any date for which the relevant Current Index is less than or equal to the Base Index, the Cost of Living Factor shall be one (1). The Base Index as of the date hereof is 189.2. If the Consumer Price Index is discontinued, the Cost of Living Factor shall be calculated based upon that price index published by the Bureau of Labor Statistics which shall be determined by the Board to most closely approximate the purchasing power of all consumers in the City and County of Honolulu. If the Bureau of Labor Statistics shall cease to publish any price index which the Board deems to be comparable, the Cost of Living Factor shall be determined by the Board based on comparable statistics on changes in the purchasing power of the consumer dollar for the applicable period, as published by a responsible and recognized governmental or private authority.

q. "Declarant" means Douglas E. Myers and 3702 Lower Honoapiilani, LLC, collectively, and their respective successors and assigns.

r. "Declaration" means this Declaration of Condominium Property Regime of The West Maui Breakers, as amended from time to time. This Declaration amends and restates the Old Declaration in its entirety.

s. "Developer" means the developer of the Project, Douglas E. Myers, his successors and assigns.

t. "Eligible Mortgage Holder" means a first mortgagee of an Apartment that has requested, pursuant to Article VIII, Section 5(e) of the Bylaws, that the Association provide it with written notice of certain matters that may affect the Project or the Apartment in which it has an interest.

u. "Eligible Mortgage Holders' Consent" means the consent of Eligible Mortgage Holders holding mortgages on Apartments representing the specified

percentage of the Common Interest that is appurtenant to Apartments subject to mortgages held by Eligible Mortgage Holders. In any case where this Declaration or the Bylaws require Eligible Mortgage Holders' Consent, the failure of a mortgagee to respond within thirty (30) days of receipt of a written request for such consent that is mailed, postage prepaid, registered or certified mail, return receipt requested, to the last known address of such mortgagee, shall be deemed to constitute a consent.

v. "General Operating Reserve" means that fund established by the Board to provide financial stability for the Project as is more fully described in Article VI, Section 2 of the Bylaws.

w. "House Rules" means the administrative rules and regulations governing the use and operation of the Project established pursuant to Article X, Section 1 of the Bylaws.

x. "Improvements" shall mean the improvements now or hereafter existing on, above, or under the Land, including, without limitation, the improvements described in this Declaration and the Old Declaration.

y. "Land" means Lot 1-A and Lot 1-B designated above in this Declaration and described in **Exhibit "A"** to this Declaration, including all easements and other rights appurtenant thereto.

z. "Limited Common Elements" means those Common Elements designated in Article B, Section 4 of this Declaration that are reserved for the exclusive use of one or more Apartments to the exclusion of other Apartments.

aa. "Majority of Apartment Owners" means the Owners of Apartments to which are appurtenant more than fifty percent (50%) of the Common Interest.

bb. "Managing Agent" means an entity employed by the Board pursuant to Article III, Section 3 of the Bylaws to manage the operation of the Project.

cc. "Opinion of Counsel" means a written opinion of an attorney selected by the Board and licensed to practice before the Courts of the State of Hawaii advising the Association regarding the legality of certain action taken or proposed to be taken by the Association.

dd. "Owner" means a person, corporation, partnership, limited liability company, or other entity owning severally or as a co-tenant an Apartment and the Common Interest appertaining thereto; provided that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by the terms of any lease recorded in the Bureau, a lessee or sublessee of an Apartment or interest therein shall be deemed to be the Owner of such Apartment to the extent provided in such lease. The vendee of an Apartment pursuant to an Agreement of Sale shall have the rights of an Owner, including the right to vote; provided that the vendor may retain the right to vote on matters substantially affecting such vendor's security interest in the

Apartment as provided in Section 514A-83 of the Act. Where the Owner is a corporation, partnership, or limited liability company, the method for designating the natural person who shall act as and for the Owner is as set forth in the Bylaws. Prior to the first recordation of an Apartment Deed regarding an Apartment, the Declarant shall be deemed to be the Owner of that Apartment and shall have all of the rights and responsibilities of an Owner with respect thereto that are set forth in this Declaration, the Bylaws, and the Act.

ee. "Project" means the condominium project consisting of the Land and the Improvements created by this Declaration.

ff. "Project Architect" means such architect for the Project as the Board may select from time to time.

gg. "Quorum" shall, with respect to the Association, have the meaning set forth in Article II, Section 2 of the Bylaws and shall, with respect to the Board, have the meaning set forth in Article III, Section 13 of the Bylaws.

hh. "Real Estate Commission" means the Real Estate Commission of the State of Hawaii.

ii. "Resident Manager" means the person retained by the Board pursuant to Article III, Section 2(j) of the Bylaws to manage the day-to-day operations of the Project.

jj. "Trustee" means that bank or trust company having a principal place of business in the State of Hawaii designated by the Board to hold and administer condemnation or insurance proceeds for the Project.

B. DESCRIPTION OF APARTMENTS AND DIVISION OF PROPERTY

The Project is hereby divided into the freehold estates described and designated below.

1. Description of the Building. The Project contains six buildings: one (1) existing four-story building identified as Building A on the Condominium Map, four (4) new four-story buildings identified as Buildings B, D, E and F on the Condominium Map and one (1) new three-story building identified as Building C on the Condominium Map, all without basements. The buildings are constructed principally of concrete, masonry and wood, as shown on the Condominium Map.

2. Description of the Apartments. One hundred fourteen (114) fee simple estates are hereby designated in the spaces within the perimeter walls, floors and ceilings of each of the one hundred fourteen (114) Apartments of the Project, which spaces, together with appurtenant lanais, are designated on the Condominium Map and described as follows:

a. Apartment Numbers and Locations. The Apartment numbers, locations, interior area, lanai area, and numbers of rooms are shown on the Condominium Map.

b. Apartment Boundaries. Each Apartment shall be deemed to include (i) all the walls and partitions which are not load-bearing within its perimeter walls, (ii) all pipes, shafts, ducts, pumps, conduits, wires and other utility or service lines running through such Apartment which are utilized for and serve only that Apartment, (iii) the inner decorated or finished surfaces of all walls, floors and ceilings, (iv) any doors or panels along the perimeter walls of such Apartment, (v) all cranks, frames and other window or sliding door hardware, (vi) all appliances and fixtures installed therein and replacements thereof, (vii) any adjacent lanai to which such Apartment has direct, exclusive access, including any lanai storage closet, and (viii) any air conditioning equipment or apparatus within the Apartment. The respective Apartments shall not be deemed to include: (i) the undecorated or unfinished surfaces of the perimeter (including party) walls, interior load bearing walls, or lanai slabs or railings, (ii) the undecorated or unfinished surface of the floors and ceilings surrounding each Apartment, or (iii) any pipes, shafts, ducts, pumps, valves, wires, conduits or other utility or service lines which are utilized for or serve more than one Apartment, the same being deemed Common Elements as hereinafter provided.

c. Access. Each Apartment has immediate access through Common Element hallways, elevators, stairwells, corridors, lobbies and walkways of the Project to public streets and to the common areas of the Project.

3. Common Elements. One freehold estate is hereby designated in all remaining portions of the Project, herein called the "Common Elements," including specifically but not limited to:

a. The Land, in fee simple, and any and all easements and appurtenances thereto.

b. All unfinished, undecorated portions of all perimeter (including party) walls and interior load-bearing walls, the undecorated or unfinished surfaces of floors and ceilings, all lanai slabs and railings, all structural components, foundations, floor slabs, columns, girders, beams, supports, shafts, ceilings and spaces between the ceiling and the floor slab or roof above, roofs, exterior surfaces of the Project, including any paint or coating thereon, and all exterior windows.

c. All yards, grounds planters, trellises and landscaping and other refuse facilities, if any, whether within or appurtenant to the Project.

d. All roads, covered and uncovered parking areas, driveways, ramps, loading areas or zones, and walkways which are rationally of common use by Owners of more than one Apartment, including the following parking stalls shown on the Condominium Map which shall be guest parking stalls: Stall Nos. 71 to 77 inclusive, 84 to 94 inclusive, 103, 104, 169 to 188 inclusive, and 199.

e. All ducts, pumps, valves, sewer lines, drain lines, electrical equipment, cables, wiring, chutes, pipes, shafts, wires, conduits or other utility or service lines which are utilized for or serve more than one Apartment and other central and appurtenant transmission facilities over, under and across the Project which serve more than one Apartment for services such as power, light, water, gas, sewer, refuse, telephone and radio and television signal distribution.

f. The individual electrical meters for each of the Apartments, together with the electrical lines from such meters to the Apartments, but only to the point where such lines enter the Apartments.

g. The utility rooms in the Project as shown on the Condominium Map.

h. The Recreation Center within Building C, and the existing pool, pool deck area, and pool building shown on the Condominium Map.

i. All storage areas, hallways, corridors, stairs, stairways, mechanical rooms, electrical rooms, communications rooms, trash rooms, and other similar areas which are not part of an Apartment.

j. Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

4. Limited Common Elements. Certain parts of the Common Elements, herein called the "Limited Common Elements," are hereby designated, set aside and reserved for the exclusive use of certain Apartments, and such Apartments shall have appurtenant thereto exclusive easements for the use of such Limited Common Elements as set forth herein. Except as specifically provided herein, the costs and expenses of every description pertaining to the Limited Common Elements, including but not limited to the costs of maintenance, repair, replacement, improvement or additions to the Limited Common Elements shall be a Common Expense. Notwithstanding anything to the contrary contained in this Declaration, no amendment of this Declaration affecting the Limited Common Elements appurtenant to an Apartment or Apartments shall be effective without the consent of the Owner or Owners affected.

a. Parking. The parking stalls for the Project are shown on the Condominium Map. Parking stalls are either assigned to individual apartments or designated as guest stalls. Parking stall assignments are listed in **Exhibit B**. Each Apartment's assigned parking stall shall be a Limited Common Element appurtenant to that Apartment. Upon compliance with Section 514A-14 of the Act, each Owner shall have the right, from time to time, to assign and reassign the parking stall(s) assigned the Owner's Apartment to another Apartment in the Project, provided that the Association and Managing Agent shall be promptly notified of all assignments and reassignments of parking stalls.

b. Mailboxes. Each Apartment shall have as a limited common element the mailbox located at the Project that bears the same number as the Apartment.

C. COMMON INTEREST

Each Apartment shall have appurtenant thereto an undivided percentage interest in all Common Elements of the Project (the "Common Interest"), and the same proportionate share in all common profits and Common Expenses of the Project and for all other purposes including voting. The Common Interest of each Apartment is based on the square footage of such Apartment as a percentage of the square footage of all Apartments in the Project. The Common Interest appurtenant to each Apartment type is listed in **Exhibit B**.

D. ALTERATION AND TRANSFER OF THE COMMON INTEREST

The Common Interest and easements appurtenant to each Apartment shall have a permanent character and shall not be altered without the consent of all of the Apartment Owners affected, expressed in an amendment to this Declaration duly recorded or except as otherwise set forth in this Declaration. The Common Interest and easements shall not be separated from the Apartment to which they appertain, and shall be deemed to be conveyed, leased or encumbered with such Apartment even though such interest or easements are not expressly mentioned or described in the conveyance or other instrument. The Common Elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by the Act.

E. EASEMENTS

In addition to any easements of record, the Apartments and the Common Elements shall also have, or be subject to as the case may be, the following easements:

1. Easement of Ingress and Egress. Each Apartment shall have appurtenant thereto nonexclusive easements in the Common Elements designed for such purposes as ingress to, egress from, utility services for and support of such Apartment for such purposes; in the other Common Elements for use according to their respective purposes, subject always to the exclusive use of the Limited Common Elements as provided herein; and in all other Apartments for support; and subject to any changes with respect to the Common Elements pursuant to the provisions of Section 514A-13(d) of the Act.

2. Easement for Encroachments. If any part of the Common Elements now or hereafter encroaches upon any Apartment or Limited Common Element, or if any Apartment encroaches upon the Common Elements or upon any other Apartment or appurtenant Limited Common Element, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. In the

event that the improvements in the Project shall be partially or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Project, minor encroachments (as determined by the Board) of any parts of the Common Elements, Apartments, or Limited Common Elements due to such construction, shifting, settlement or movement shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist.

3. Easement for Access to Common Elements Located in Apartments. Each Apartment and Limited Common Element shall be subject to an easement in favor of the Owners of all other Apartments, exercisable by the Board of Directors and its Managing Agent, without liability to any Owner for trespass or other consequential damage, during reasonable hours, for access to any Common Elements located in such Apartment or Limited Common Element.

4. Easement for Access Through Apartments to Common Elements for Emergency Repairs. The Association shall have the right, to be exercised by its Board or the Managing Agent, without liability to any Owner for trespass or other consequential damage, to enter each Apartment or Limited Common Element from time to time during reasonable hours as may be appropriate for the operation of the Project or, at any time, for making emergency repairs therein which may be necessary to prevent damages to any Apartment, Common Element, or Limited Common Element.

5. Power of Association to Grant Certain Easements. To the extent permitted by law, the Association shall have the right, to be exercised by its Board, upon the condition that prior to taking such action the Board obtain an Opinion of Counsel stating that the Association may legally undertake such action, to grant within the Common Elements (other than the Limited Common Elements), easements and rights-of-way over, across, and under the Common Elements (other than the Limited Common Elements) for utilities, sanitary and storm sewers, cable television, and other public services and to relocate, realign or cancel the same provided that such easements, their use, relocation, realignment, or cancellation shall not materially impair or interfere with the use of any Apartment.

F. USE

1. Residential Uses Permitted; All Other Uses, Including Time Share and Transient Vacation Rentals, Prohibited. The Apartments shall be occupied and used only as private dwellings by the respective Owners thereof, their tenants, families, domestic servants and social guests and for no other purpose. The Apartments shall not be used as retail or wholesale stores, service shops, or shops. The Apartments shall also not be used for in Time Share Plans or for Transient Vacation Rentals, as such terms are defined in Hawaii Revised Statutes, Chapter 514E or Maui County Code Title 19. Subject to the foregoing prohibition on Transient Vacation Rentals, Owners of the respective Apartments shall have the absolute right to lease such Apartments subject to all provisions of this Declaration, the Bylaws, and the House Rules; provided, however, that all leases shall be in writing, signed by the Owner or Owner's representative and the tenant.

2. Owners' Right to Sell. The Owners of the respective Apartments shall have the absolute right to sell or otherwise transfer such Apartments subject to all provisions of the Act, this Declaration, and the Bylaws attached hereto.

3. Prohibition of Activities Which Jeopardize the Project. No Owner shall do or suffer or permit to be done anything to any Apartment or appurtenant Limited Common Element or elsewhere on the Project which will (a) jeopardize the safety or soundness of the Project, or (b) create a nuisance or interfere with or unreasonably disturb the rights of other Owners and occupants, or (c) result in the cancellation of any insurance required for the Project by the Bylaws.

4. Prohibition of Unauthorized Alteration or Decoration to the Exterior and Common Areas of the Project. No Owner of an Apartment shall, without the written approval and consent of the Board, place or permit the attachment, hanging, projection or protrusion of any object, garments or materials of any kind from the roofs, exterior walls, windows, lanais, or doors of the Apartments, or the placement of any other matter or decoration within or without the Apartment which shall be visible from the exterior of the Project, nor shall any Owner change or alter any of the exterior glass windows, in any way, nor shall any Owner change the exterior appearance of the Project in any manner.

5. Lanais. No Apartment Owner shall place any object (other than appropriate outdoor lanai furniture as determined by the Board) on any lanai, without first having received the approval of the Board and the Project Architect. Plants, bikes, watersports equipment, laundry, towels and other personal property shall not be kept, hung or stored on lanais. In order to preserve the uniform appearance of the Project, Apartment Owners may not paint, plaster, tile, finish, or otherwise decorate the exterior surfaces of the walls, railings, floors or ceilings of any lanai. Any repairs to the lanai railings shall be administered by the Association through the contractor or contractors selected by the Board for such purpose. Repair or replacement of the lanai, lanai railings, or lanai slabs resulting from intentional or negligent misuse of the lanai area shall be at the Owner's expense. All other lanai railing and slab replacements or repairs shall be a Common Expense. Owners may not enclose their Apartment lanais.

6. Owners to Maintain Apartments in Good Order. The Owner of an Apartment shall keep the interior of such Apartment and all plumbing, electrical, air conditioning and other fixtures and appurtenances in good order and repair and shall be responsible for any damage or loss caused by failure to do so.

G. ADMINISTRATION OF PROJECT

Administration of the Project shall be vested in the Association, consisting of all Owners of the Project in accordance with this Declaration and the Bylaws. The administration, fiscal management and operation of the Project, and the maintenance, repair, replacement and restoration of the Common Elements, and any additions and alterations thereto, and perpetual maintenance of the open areas and private roadways

and utilities of the Project, shall be in accordance with the provisions of the Act, this Declaration and the Bylaws and specifically, but without limitation, the Association shall:

1. Improvements Required by Law. Make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks, street lights, parking areas and other improvements which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Common Elements or any part thereof.

2. Observance of Laws Concerning Maintenance of the Project. Keep all Common Elements of the Project 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 during the period that they are applicable to the Project or the use thereof.

3. Association to Maintain Project in Good Order. Well and substantially repair, maintain and keep all Common Elements of the Project, in good order and condition except as otherwise provided herein, and maintain and keep the Land in a neat and attractive condition and maintain and keep all trees, shrubs and landscaping in the Project in good cultivation and replant the same as may be necessary. In the event that any Owner shall give written notice of an alleged defect in the repair or maintenance of any Common Element, the Board, consistent with generally accepted standards of practice and sound business judgment, shall review the claim of the alleged defect; if the Board determines that the defect is one which the Association should remedy, the Board shall, if practicable, commence appropriate repairs or maintenance with respect to such defect within not less than thirty (30) days of the receipt of such notice and shall thereafter proceed with due diligence to complete the repair and to make good such defect.

4. Construction of Improvements, Bonding. Before commencing or permitting construction of any improvement on the Project the Board may obtain, or cause the construction contractor to obtain, performance and payment bond(s) or certificate(s) thereof naming as obligees collectively all Owners and their respective mortgagees as their interests may appear, in a penal sum not less than one hundred percent (100%) of the cost of such construction and with a corporate surety authorized to do business in Hawaii, guaranteeing performance of such construction free and clear of any mechanics' and materialmen's liens or any liens in lieu of mechanics' and materialmen's liens.

5. Association Not to Permit Waste or Improper Use. Not make or suffer any strip or waste or unlawful, improper or offensive use of the Project.

6. Observance of Setbacks. Observe any setback lines affecting the Project and not erect, place, or maintain any building or structure whatsoever, except approved fences or walls, between any street boundary of the Project and the setback lines along such boundary.

7. Plans and Specifications for Improvements, Diligent Completion of Construction Projects. Not erect or place on the Project any building or structure including fences and walls, nor make additions or structural alterations to or exterior changes of any Common Elements of the Project whatsoever, except in accordance with plans and specifications including detailed plot plans, prepared by a licensed architect, if so required by the Board, and approved by the Board and by the percentage of Apartment Owners as required by law and this Declaration, and complete any such improvements diligently after the commencement thereof.

8. Compliance with Laws and Restrictions. Observe and comply with the provisions of any restrictions pertaining to the Land.

H. MANAGING AGENT: SERVICE OF PROCESS

Operation of the Project shall be conducted for the Association by a responsible corporate Managing Agent duly registered with the Real Estate Commission who shall be appointed by the Association in accordance with the Bylaws and the Act. The Managing Agent is hereby authorized to receive service of legal process in all cases provided in the Act. The initial Managing Agent shall be Destination Maui, Inc., a Hawaii corporation, whose principal place of business and post office address is 841 Alua Street, Suite 102, Wailuku, Maui, Hawaii 96793.

I. COMPLIANCE WITH DECLARATION AND BYLAWS

All Owners, and their respective employees, tenants, families, agents, servants and guests, and any other persons who may in any manner use the Project, shall be bound by and comply strictly with the provisions of this Declaration, the conditions and restrictions set forth herein, with the Bylaws and with the House Rules adopted pursuant thereto and all agreements, decisions and determinations of the Association as lawfully made or amended from time to time, and failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board on behalf of the Association, or, in a proper case, by any aggrieved Apartment Owner. Each Apartment Owner shall have standing to maintain an action to enforce the terms and conditions of this Declaration, the Bylaws and the House Rules; provided, however that (a) no Owner may bring an action on behalf of the Association or on behalf of more than one (1) Owner, except in accordance with the provisions of the Act with respect to derivative actions and (b) any judgment, award or other recovery on behalf of an Association shall be payable only to the Association as a realization of the Association.

J. COMMON EXPENSES

All charges, costs and expenses incurred or to be incurred by the Association pursuant to this Declaration, the Bylaws or the Act for or in connection with the administration, management and operation of the Project and the maintenance, repair, replacement of or the making of any additions or improvements to the Common Elements, inclusive of any reserves for future charges, costs or expenditures, shall

constitute the Common Expenses of the Project for which each Owner shall be severally liable in proportion to such Owner's respective shares of the Common Interest, except as otherwise provided herein.

K. INSURANCE

The Association, as a Common Expense, shall maintain insurance with an insurance company licensed to do business in the State of Hawaii covering the Common Elements and all exterior and interior walls, floors and ceilings as shown on the Condominium Map against loss or damage by fire or other casualty in an amount sufficient to provide for the replacement or repair thereof. In every case of such loss or damage all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing, or otherwise reinstating the damaged or destroyed improvements in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as shall first be approved by the Board. Any deficiency in such insurance proceeds shall be a Common Expense of the Association. The Association, as a Common Expense, shall also maintain such other insurance as may be required by the Bylaws or the Act.

L. RESTORATION AND TERMINATION OF PROJECT

1. Restoration of the Project. If the Project is substantially damaged or destroyed by fire or other casualty and is capable of being restored under the laws in force at that time without eliminating any of the Apartments (even if such restoration otherwise requires modification of the building plans), the Project shall be rebuilt, repaired and restored unless (i) Owners of Apartments to which are appurtenant at least sixty-seven (67%) of the Common Interest (or such higher percentage as may be required by the Act) affirmatively vote not to restore the Project, and (ii) there is Fifty-One Percent (51%) Eligible Mortgage Holder's Consent to that determination not to restore the Project. The Association shall rebuild and restore the Common Elements of the Project in good and substantial manner according to the Condominium Map or according to such modified plan conforming to laws and ordinances then in effect as shall be first approved by the Board; any deficiency in insurance proceeds available to pay for such restoration shall be a Common Expense of the Association; the Owners shall be solely responsible for any restoration of their respective Apartments so damaged or destroyed. If such restoration is not approved, or if such restoration is not commenced within a reasonable time after such casualty, in no event more than one hundred eighty (180) days following the date of such casualty, the Association, as a Common Expense, shall (a) remove all remains or improvements so damaged or destroyed and restore the site thereof to good and orderly condition and even grade, (b) sell the Land, and (c) disburse the Land sale proceeds and all remaining insurance proceeds to the Apartment Owners' (or their mortgagees of record, if any, if required under the mortgage documents), pro rata in accordance with the Common Interest appurtenant to each Owner's Apartment.

2. Partial Restoration of the Project. If the Project shall be damaged or destroyed by fire or other casualty and is not capable of being restored under the laws then in force without eliminating one or more Apartments, the Project shall be rebuilt, repaired and restored in accordance with modified plans approved by the Board if (a) the Board has agreed to pay the Owner of any Apartment that is eliminated compensation for such Owner's Apartment, (b) eighty percent (80%) of the Owners of Apartments that are not eliminated under such modified plans vote in favor of restoration, and (c) there is Sixty-Seven Percent (67%) Eligible Mortgage Holders' Consent to such restoration. For purposes of this paragraph, the compensation payable to the Owner of any eliminated Apartment shall be the amount determined by multiplying that Apartment's Common Interest percentage by the total of (a) the available insurance proceeds and (b) the fair market value of the Land at that time. The Association shall rebuild and restore the Common Elements of the Project in good and substantial manner according to the original plan and elevation thereof or according to such modified plan conforming to laws and ordinances then in effect as shall be first approved by the Board; any deficiency in insurance proceeds shall be a Common Expense of the Association; the Owners shall be solely responsible for any restoration of their respective Apartments so damaged or destroyed. If such restoration is not approved, or if such restoration is not commenced within a reasonable time after such casualty, in no event more than one hundred eighty (180) days following the date of such casualty, the Association, as a Common Expense, shall (a) remove all remains or improvements so damaged or destroyed and restore the site thereof to good and orderly condition and even grade, (b) sell the Land, and (c) disburse the Land sale proceeds and all remaining insurance proceeds to the Apartment Owners' (or their mortgagees of record, if any, if required under the mortgage documents), pro rata in accordance with the Common Interest appurtenant to each Owner's Apartment.

3. Termination for Other Reasons. The Project may be removed from the provisions of the Act in accordance with Section 514A-21(a)(1) of the Act, provided that there is at least Eighty Percent (80%) Eligible Mortgage Holders' Consent to such removal.

M. ALTERATION OF PROJECT

1. General Provisions. Except as otherwise expressly provided in this Article M to the contrary, restoration or replacement of the Project or any portion thereof or construction of any additional building or structural alteration or addition to any building, different in any material respect from the Condominium Map of the Project, shall be undertaken by the Association or any Apartment Owner only pursuant to an amendment of this Declaration in accordance with Article O, below, duly executed pursuant to the provisions thereof, accompanied by the written consent, as may be required, of the holders of all liens affecting any of the Apartments involved, and in accordance with complete plans and specifications therefor first approved in writing by the Board, and promptly upon completion of such restoration, replacement or construction the Association or Owner, as the case may be, shall duly record or file of record such amendment, together with a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer.

2. Additions or Alterations Solely Within an Apartment. Subject to the provisions of this Declaration, the Bylaws, the House Rules, and the Act, each Owner of an Apartment shall have the right, at any time, and from time to time, at such Owner's sole cost and expense, and without the necessity of the consent or joinder of any other Apartment Owner or the amendment of the Declaration, but with the prior approval of the Board and with the presentation of such plans and specifications and other materials as the Board may require as is more fully set forth in Section J.6 of the Bylaws, to make any of the following alterations solely within the Apartment space as defined in Section 2(b) of Article B above: to install, maintain, remove, and rearrange partitions and other structures from time to time within such Apartment, and to paint, paper, panel, plaster, tile, finish, and do or cause to be done such other work on the interior surfaces of the ceilings, floors and walls within any such Apartment and to finish, alter or substitute any plumbing, electrical or other fixtures attached to said ceilings, floors and walls as shall be appropriate for the utilization of such Apartment by such Owner or the tenants or lessees thereof; provided, however, that nothing contained in this paragraph shall authorize any work or alteration which would jeopardize the soundness or safety of any part of the Project, reduce the value thereof, adversely affect any Common Element or other Apartment, alter the uniform external appearance of the Project, or affect or impair any easement or right of any other Apartment Owner.

3. Installation of Washers and Dryers; Washer Hoses. For any Apartment that is currently plumbed for installation of a washer and dryer, an Owner may install such appliances so long as (a) they are installed in the plumbed location, (b) the Board approves such installation in advance, and (c) except in Apartments that have ducts for washer/dryer venting, the appliances shall be non-venting models. All washing machines shall use washer hoses reinforced with stainless steel braid or other water hoses approved by the Board. Board approval of the installation of washers or dryers or of water hoses shall not under any circumstances (x) be deemed a representation or assurance by the Board of their quality, reliability or safety, (y) relieve any Owner or liability or responsibility for damage (including flooding or water damage) or injury that they cause, or (z) render the Board liable or responsible for damage (including flooding or water damage) or injury that they cause.

4. Installation of Air Conditioners. Each Owner may, with the approval of the Board, install an air conditioning system serving the Owner's Apartment. Only quiet air conditioner models approved by the Board may be installed. Each Owner shall be solely responsible for the installation, repair, and maintenance of any air conditioning equipment in the Owner's Apartment. Each Owner shall promptly repair any damage to the building that results from the installation, maintenance, use or repair of such lines and equipment.

5. Adjoining Apartments May Be Combined The Owner of any two adjoining Apartments may, with the consent of the Board and of any mortgagee of such Apartments and at the Owner's sole expense, alter or remove all or portions of the non-structural or load bearing portion of the intervening wall which separates such Apartments if the structural integrity of the Project is not thereby affected and if the

Common Elements affected are restored to a condition comparable to that of the Common Elements prior to such alteration of such Common Elements. In addition to all other requirements set forth herein, any alteration or removal of all or portions of such wall shall be done pursuant to written plans and specifications drawn by a licensed architect or structural engineer and approved by the Project Architect and such work shall be personally supervised by said architect or engineer. Any Owner making the alterations permitted hereunder shall secure a performance and payment bond naming as obligees said Owner and collectively the Owners of all other Apartments as their interests may appear in a penal sum of not less than one hundred percent (100%) of the cost of any construction, guaranteeing the payment of funds in an amount necessary to ensure the completion thereof free and clear of all mechanic's and materialmen's liens, and that any such construction shall be carried out in strict compliance with all applicable laws, rules and regulations. Each Owner of such adjoining Apartments may install in and attach to such opening or openings in such wall, doors and other service devices and may remove and retain ownership of the items so installed. Upon the termination of the common ownership of such adjoining Apartments, any intervening wall which has been altered or removed pursuant to the foregoing provisions shall be restored at the Owner's expense to substantially the same condition which existed prior to such alteration or removal, if the new Owner or Owners do not consent to such alteration.

6. Maintenance Expenses for Common Elements Converted to Limited Common Elements. Any part of the Common Elements of the Project which, because of the alterations as provided for in this Article M, serves or is used by exclusively one (1) or more Apartments shall become a Limited Common Element appurtenant to and for the exclusive use of such Apartment or Apartments and any costs in connection therewith shall be borne as provided in Section 4 of Article B.

7. Apartment Owners to Execute Amendment Documents in Certain Cases In the event that any change or alteration made in accordance with Article M, requires an amendment to this Declaration and/or to the Condominium Map, such amendment shall be executed by the Owner of the affected Apartment or Apartments, and shall become effective upon recordation in the Bureau. Such amendment shall not require the consent or joinder of the Owner of any other Apartment or any other person or entity, other than any mortgagee of such Apartment or Apartments.

N. RESERVATIONS OF RIGHTS BY DECLARANT

Except as otherwise provided in this Declaration, the Declarant has not reserved any right with respect to the Project including, without limitation, the right to make additions, modifications or deletions to the Project, to merge the Project or to develop the Project in phases, except as follows:

1. Reservation of Power to Grant Easements The Declarant reserves to itself the non-exclusive right to grant from time to time within the Common Elements (other than the Limited Common Elements), easements and rights-of-way over, under, and across the Common Elements (other than the Limited Common Elements) for

utilities, sanitary and storm sewers, drains, cable television and other utility services for two (2) or more Apartments and the right to relocate, realign or cancel the same, on such terms and conditions as the Declarant may determine in Declarant's reasonable discretion, provided that such easements, their use, relocation, realignment, or cancellation shall not materially impair or interfere with the use of any Apartment.

2. Reservation of Power to Grant Access to TMK (2) 4-4-1-106 The Declarant reserves to itself the non-exclusive right to grant from time to time easements over and across the internal roadways of the Project (a) for access to and from Lower Honoapiilani Road by owners and residents of any future residential project developed on the parcel adjacent to the Project bearing Tax Map Key No. (2) 4-4-1-106, provided that such owners' use shall be subject to the same rules, regulations and use restrictions applicable to owners and residents of the Project, and (b) for emergency public access from Lower Honoapiilani Road to Honoapiilani Highway, all on such terms and conditions as the Declarant may determine in Declarant's reasonable discretion.

3. Reservation of Power to Grant Recreational Facilities Use Rights. The Declarant reserves to itself the exclusive right to grant the owners in any future residential project developed by Declarant or an affiliate of Declarant on the parcel adjacent to the Project bearing Tax Map Key No. (2) 4-4-1-106 a license to use the Project's pool, recreation center, and other recreational facilities on such terms and conditions as the Declarant may determine in Declarant's reasonable discretion, provided that such owners' use shall be subject to the same rules, regulations and use restrictions applicable to owners and residents of the Project.

4. Reservation of Power to Amend Parking Plan to Create Emergency Vehicle Turnaround. The Declarant reserves to itself the exclusive right to amend the parking plan to create a "turnaround" area for emergency vehicles. The amendment, if made, would move parking stalls number 29 and 30 to a currently vacant area between Building E and Building F. The area currently reserved for parking stalls number 29 and 30 would be used for the turnaround area.

5. Required Amendments The Declarant reserves the right to make, at any time prior to the recordation of an Apartment Deed for the last Apartment in the Project, amendments to the Declaration, the Bylaws, or the Condominium Map that are required by law, by the Real Estate Commission, by a title insurance company, by a mortgage lender, or by any governmental agency (including the County of Maui, VA, HUD, FNMA and/or FHLMC), provided that such amendments shall not change the Common Interest appurtenant to an Apartment or substantially change the design, location or size of any Apartment for which an Apartment Deed has been recorded.

6. Restatement. Any other provision of this Declaration notwithstanding, the board, upon resolution duly adopted, shall have the authority as set forth in the Act to restate this Declaration from time to time to set forth any prior amendments hereof, or to amend this Declaration as required to conform with the provisions of the Act or any other statute, ordinance, rule or regulation enacted by any governmental authority.

7. Amendment to Change Apartments. Notwithstanding anything herein to the contrary, at any time before or after the execution and recording of this Declaration by the Declarant in the State of Hawaii Bureau of Conveyances, the Declarant reserves the right to amend this Declaration and related condominium documents from time to time to change the layout or floor area of any apartment to reflect changes to meet marketing, architectural or construction requirements, or the exercise of certain options offered to purchasers to change apartment layout, floor plan and floor area. Declarant may execute and record each such amendment unilaterally and without requiring the consent or joinder of any owner or any prospective purchaser of any apartment or any mortgage holder. Said amendment may change the Condominium Map to reflect the new configuration of any apartments to change the description of apartments and to revise the statement of apartment net living areas, and other changes as shall be appropriate under the circumstances.

8. Consent to Developer's Reserved Rights; Appointment of Developer and Association as Attorney-in-Fact. Each and every person acquiring an interest in the Project, by such acquisition, consents to all of the rights reserved unto the Declarant as set forth in the Declaration, including but not limited to those rights as set forth in Section N.1. through N.7, and to the recording of any and all documents necessary to effect the same in the Bureau; agree to execute, deliver and file such documents and instruments and do such other things as may be necessary or convenient to effect the same. If the joinder or consent of any such person shall be required by law or any other document, each such person appoints the Declarant, or Declarant's successors and assigns if applicable, as such person's attorney-in-fact with full power of substitution to execute, deliver and file such documents and instruments and to do such things on his behalf, and to receive or send any legal notices required by the Act, and to receive service of process (legal papers) as to legal proceedings in the Bureau, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any apartment or interest therein, whether by deed, mortgage, or any other instrument of conveyance. Without limitation to the generality of the rights reserved unto Declarant hereunder, Declarant will have the right to execute, deliver and record any amendment to this Declaration or to the Condominium Map, Bylaws and/or House Rules, any easement instrument, any deed, any amendment to an apartment deed, assignment of rights or interest, or such other document or instrument that may be necessary or appropriate to permit Declarant to exercise its rights pursuant to the provision of this Declaration.

Each and every party acquiring an interest in the Project, by such acquisition, also appoints the Association as such party's attorney-in-fact with full power of substitution to receive and accept on such party's behalf any and all legal notices required by or pursuant to the Act, and to receive service of process in connection with any other legal proceedings.

O. AMENDMENT OF DECLARATION

Except as otherwise provided herein or in the Act, this Declaration may be amended by affirmative vote of Owners of Apartments to which seventy-five percent (75%) of the Common Interest is appurtenant, evidenced by an instrument in writing, signed and acknowledged by any two (2) officers of the Association, which amendment shall become effective upon recordation in the Bureau. Notwithstanding the foregoing and notwithstanding the sale of any of the Apartments, the Declarant acting alone may amend this Declaration to: (1) file the "as built" verified statement (with plans, if applicable) required by Section 514A-12 of the Act, so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed fully and accurately depict the layout, location, Apartment numbers and dimensions of the Apartments as built, or so long as any plans filed therewith involve only non-material changes to the layout, location, Apartment numbers and dimensions of the Apartments as built; (2) assign or change, from time to time, the assignments of individual parking stalls to individual Apartments for which an Apartment Deed has not been recorded, which assignments or changes in assignments shall be accomplished by an amendment to the Declaration; and (3) exercise the rights reserved to the Declarant in Article N hereof.

Subject to the rights reserved to the Declarant in the preceding paragraph, Fifty-One Percent (51%) Eligible Mortgage Holders' Consent shall be required to make any amendment of a "material nature" to this Declaration. For purposes of the preceding sentence, an amendment hereof shall be deemed to be of a "material nature" if it changes a provision governing: (a) voting rights; (b) increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens; (c) reductions in reserves for maintenance, repair and replacement of Common Elements; (d) responsibility for maintenance and repairs; (e) reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use; (f) redefinition of any Apartment boundaries; (g) convertibility of Apartments into Common Elements or of Common Elements into Apartments; (h) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (i) hazard or fidelity insurance requirements; (j) imposition of any restrictions on the leasing of Apartments; (k) imposition of any restrictions of an Owner's right to sell or transfer the Owner's Apartment; (l) a decision by the Association to establish self-management if professional management had been required previously by the Declaration or Bylaws or by an Eligible Mortgage Holder; (m) restoration or repair of the Project after damage or partial condemnation in a manner other than that specified in the Declaration and Bylaws; or (n) any provisions that expressly benefit mortgage holders, insurers, or guarantors.

P. REDESIGNATION OF APARTMENTS AND COMMON AREAS

Except in accordance with the provisions of the Act, no Apartment or portion thereof may be designated as a Common Element and no portion of the

Common Elements may (a) be designated as an Apartment or (b) made subject to the obligation to pay a portion of the Common Expenses.

Q. INVALIDITY, WAIVER, CAPTIONS, GENDER AND CHANGES IN LAW

The invalidity of any provision of this Declaration for any reason shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such provision had never been included herein. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur. 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 this Declaration or the intent of any provision hereof. The use

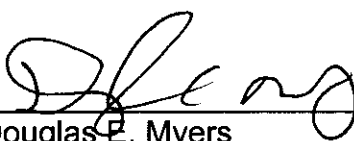
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of any gender in this Declaration shall be deemed to include either or both genders and the use of the singular shall be deemed to include the plural whenever the context shall so require. In the event of a change in statutory law applicable to this Project occurring after the recordation of the Declaration and the Bylaws, such change in law shall control over the provisions of the Declaration or the Bylaws only to the extent the legislative body enacting such change in law expressly provided that the provisions of such change in law shall control over provisions to the contrary in preexisting condominium documents; in such event, the Board shall be authorized to act in accordance with such change in statutory law.

R. DISCLAIMER OF WARRANTIES; DECLARANT CERTIFICATION. The execution of this Declaration by the Declarant shall not constitute any warranty, express or implied, that the provisions and representations contained in this Declaration (including any exhibits hereto), as amended from time to time, are accurate; or that any buildings, structures or other improvements described in this Declaration (including any exhibits hereto), as the same may be amended from time to time, and any plans or specifications relating thereto, are proper or structurally safe or sound. The Condominium Map sets forth the layout, location, dimensions and apartment numbers of Apartments, the name of the Project, the floor plan and elevation of the building, the general location and layout of common areas and the location of parking stalls. To the extent that the Condominium Map shows or depicts any other detail or feature of the Common Elements or the location or configuration of a feature or detail of the Common Elements which differs from the Project as constructed, the Condominium Map shall not constitute a representation or warranty by the Declarant.

The Declarant declares, pursuant to Sections 514A-11(13) and 514A-40(a)(9) of the Act, and subject to the penalties set forth in Section 514A-49(b), that the Project is in compliance with all county and building ordinances and codes and all other permitting requirements applicable to the project. No variance has been granted from any variance or code to achieve such compliance, and the Project does not contain any legal non-conforming uses.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the date first set forth above.



Douglas E. Myers

3702 Lower Honoapiilani, LLC

By: _____

Its: _____

Attachments:

Exhibit A -- Land Description

Exhibit B – Apartment Description, Common Interest Allocation, and Parking Assignments

STATE OF HAWAII)
) ss.
COUNTY OF MAUI)

On this 19th day of January, 2005, 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.

Jodie E. Yasuda
Name: Jodie E. Yasuda L.S.

Notary Public, State of Hawaii

My commission expires: 7/8/2005

STATE OF Colorado)
)
COUNTY OF Boulder) ss.

On this 25th day of February, 2005, before me personally appeared Reginald V. Golden to me personally known, who, being by me duly sworn, did say that such person is the Manager of 3702 LOWER HONOAPIILANI, LLC, a Colorado limited liability company, and that said instrument was duly authorized and executed on behalf of said company, and said managing member further acknowledged said instrument to be the free act and deed of said company.

Robina Engen
Name:
Notary Public, State of ~~Hawaii~~ Colorado
My commission expires: 8/20/2008

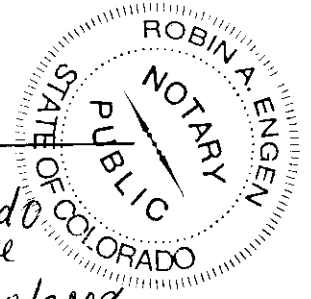


EXHIBIT A

LAND DESCRIPTION

PARCEL ONE:

All of that certain parcel of land (being portions of Royal Patent 415, Land Commission Award 75 to C. Crockett and Royal Patent 4591, Land Commission Award 3930, Apana 2 to Nauwele), being Lot 1-A, of the "Hale Kahekili Condominium", situate at Honokowai and Mahinahina 4, Lahaina (Kaanapali), Island and County of Maui, State of Hawaii, and more particularly described as follows:

Beginning at a pipe at the westerly corner of this lot, being also the northeast corner of Lot 1-B, Hale Kahekili Condominium, the coordinates of which referred to Government Survey Triangulation Station "Manini" being 9,788.64 feet north and 12,373.98 feet west and running by azimuths measured clockwise from true south:

1. 193° 40' 64.67 feet along the easterly side of Lower Honoapiilani Highway to a pipe;
2. 280° 46' 649.20 feet along Royal Patent 4203, Land Commission Award 4239, Apana 1 to Kaukau to a pipe;
3. 9° 14' 112.10 feet along the Honokowai Government Tract to a pipe;
4. 101° 42' 420.19 feet along the Honokowai Government Tract and Lot 1-B, Hale Kahekili Condominium to a pipe;
5. 11° 42' 76.00 feet along Lot 1-B, Hale Kahekili Condominium to a pipe;
6. 102° 34' 198.65 feet along Lot 1-B, Hale Kahekili Condominium to a pipe;
7. 192° 34' 108.45 feet along Lot 1-B, Hale Kahekili Condominium to a pipe;
8. 103° 40' 39.00 feet along Lot 1-B, Hale Kahekili Condominium to the point of beginning and containing an area of 83,046 square feet, more or less.

Being a portion of the premises conveyed to 3702 Lower Honoapiilani Road, LLC, a Colorado limited liability company, by Warranty Deed dated November 9, 2004, recorded in said Bureau as Document No. 2004-235524.

PARCEL TWO:

All of that certain parcel of land (portions of the land described in and covered by Royal Patent Number 415, Land Commission Award Number 75 To C.

Crockett and Royal Patent Number 4591, Land Commission Award Number 3930, Apana 2 to Nauwele, Royal Patent Number 7491, Land Commission Award Number 3932, Apana 3 to Nalepo, Royal Patent Number 2153, Land Commission Award Number 3927, Apana 2 to Nakoholua, and Lots 2-B and 2-C, Honokowai Government Tract), being Lot Number 1-B, situate, lying and being at Honokowai and Mahinahina 4, Lahaina (Kaanapali), Island and County of Maui, State of Hawaii, and more particularly described as follows:

Beginning at the northwest corner of this Lot, on the easterly side of the Lower Honoapiilani Highway, the coordinates of which referred to government survey triangulation station "Manini" being:

9,788.64 feet north
12,373.98 feet west

and running by azimuths measured clockwise from true south:

1. 283° 40' 39.00 feet along Lot 1-A Hale Kahekili Condominium;
2. 12° 34' 108.45 feet along Lot 1-A Hale Kahekili Condominium;
3. 282° 34' 198.65 feet along Lot 1-A Hale Kahekili Condominium;
4. 191° 42' 76.00 feet along Lot 1-A Hale Kahekili Condominium;
5. 281° 42' 98.00 feet along Lot 1-A Hale Kahekili Condominium;
6. 2° 02' 82.42 feet along the Honokowai Government Tract;
7. 281° 42' 210.53 feet along the Honokowai Government Tract;
8. 0° 42' 65.68 feet along the Honokowai Government Tract;
9. 102° 34' 541.44 feet along the remainder of Royal Patent 2153, Land Commission Award 3927, Apana 2 to Nakoholua;
10. 102° 22' 47.85 feet along Lot 2-A Honokowai Government Remnant;
11. 196° 38' 137.26 feet along Lower Honoapiilani Highway;
12. 281° 17' 5.28 feet along Lower Honoapiilani Highway;
13. 193° 40' 37.00 feet along Lower Honoapiilani Highway to the point of beginning and containing an area of 50,007 square feet, more or less.

Being a portion of the premises conveyed to Douglas E. Myers by Warranty Deed dated June 25, 2003, recorded in said Bureau as Document No. 2003-134744.

SUBJECT, HOWEVER, to the following:

1. As to PARCEL ONE and PARCEL TWO above:

a. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

b. 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.”

c. 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)

d. 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.

e. 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".

2. As to PARCEL TWO above only:

a. Matters as shown on Condominium Map No. 813, filed in said Bureau.

b. Terms, provisions, covenants, conditions and reservations contained in Declaration of Horizontal Property Regime of Hale Kahekili, dated August 27, 1980 filed in said Bureau as Document No. in Liber 15676, Page 172.

Said Declaration was amended by the following 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.

c. 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.

Tax Map Keys: Maui 4-3-006-002 (PARCEL ONE), Maui 4-3-006-069 (PARCEL TWO)

EXHIBIT B

**Apartment Descriptions, Common Interest Ownership, and
Parking Stall Assignment**

Building	Apartment No.	Apartment Type	Square Feet	Lanai Sq. Ft.	Total Sq. Ft.	Common Interest %	Parking Stall(s)
BLDG. A	125	X-2	616	103	719	0.81401%	1
	126	X-3	607	103	710	0.80382%	2
	127	X-3	607	103	710	0.80382%	3
	128	X-3	607	103	710	0.80382%	4
	129	X-3	607	103	710	0.80382%	5
	130	X-2	616	103	719	0.81401%	6
	225	X-2	616	103	719	0.81401%	7
	226	X-3	607	103	710	0.80382%	8
	227	X-3	607	103	710	0.80382%	9
	228	X-3	607	103	710	0.80382%	10
	229	X-3	607	103	710	0.80382%	11
	230	X-2	616	103	719	0.81401%	12
	325	X-2	616	103	719	0.81401%	13
	326	X-3	607	103	710	0.80382%	14
	327	X-3	607	103	710	0.80382%	15
	328	X-3	607	103	710	0.80382%	16
	329	X-3	607	103	710	0.80382%	17
	330	X-2	616	103	719	0.81401%	18
	425	Y-6	829	103	932	1.05516%	19, 20
	426	Y-7	814	103	917	1.03818%	21, 22
427	Y-7	814	103	917	1.03818%	23, 24	
428	Y-7	814	103	917	1.03818%	25, 26	
429	Y-7	814	103	917	1.03818%	27, 28	
430	Y-6	829	103	932	1.05516%	29, 30	
BUILDING B	B-20	A	573	122	695	0.78648%	31
	B-21	B(HC)	573	72	645	0.73023%	32
	B-22	B	573	72	645	0.73023%	33
	B-23	A	573	122	695	0.78648%	34
	B-24	A	573	122	695	0.78648%	35
	B-25	B	573	72	645	0.73023%	36
	B-26	B	573	72	645	0.73023%	37
	B-27	A	573	122	695	0.78648%	70
	B-30	A	573	122	695	0.78648%	40, 41
	B-31	B	573	72	645	0.73023%	44, 45
	B-32	B	573	72	645	0.73023%	48, 49
	B-33	A	573	122	695	0.78648%	52, 53
	B-34	A	573	122	695	0.78648%	56, 57
	B-35	B	573	72	645	0.73023%	60, 61
	B-36	B	573	72	645	0.73023%	64, 65
	B-37	A	573	122	695	0.78648%	68, 69
B-40	G	910	122	1032	1.16837%	38, 39	
B-41	D	428	71	499	0.56594%	42, 43	
B-42	H	820	73	893	1.01100%	46, 47	
B-43	J	797	122	919	1.04088%	50, 51	
B-44	J	797	122	919	1.04088%	54, 55	

Building	Apartment No.	Apartment Type	Square Feet	Lanai Sq. Ft.	Total Sq. Ft.	Common Interest %	Parking Stall(s)
	B-45	H	820	73	893	1.01100%	58, 59
	B-46	D	428	71	499	0.56594%	62, 63
	B-47	G	910	122	1032	1.16837%	66, 67
BUILDING C	C-21	A	573	122	695	0.78648%	83
	C-22	B	573	72	645	0.73023%	82
	C-23	B	573	72	645	0.73023%	81
	C-24	A	573	122	695	0.78648%	80
	C-30	E	669	0	669	0.75740%	79
	C-31	E	669	0	669	0.75740%	78
BUILDING D	D-20	A	573	122	695	0.78648%	102
	D-21	B(HC)	573	72	645	0.73023%	101
	D-22	B	573	72	645	0.73023%	100
	D-23	A	573	122	695	0.78648%	99
	D-24	A	573	122	695	0.78648%	98
	D-25	B	573	72	645	0.73023%	97
	D-26	B	573	72	645	0.73023%	96
	D-27	A	573	122	695	0.78648%	95
	D-30	A	573	122	695	0.78648%	165, 166
	D-31	B	573	72	645	0.73023%	161, 162
	D-32	B	573	72	645	0.73023%	157, 158
	D-33	A	573	122	695	0.78648%	153, 154
	D-34	A	573	122	695	0.78648%	149, 150
	D-35	B	573	72	645	0.73023%	145, 146
	D-36	B	573	72	645	0.73023%	141, 142
	D-37	A	573	122	695	0.78648%	137, 138
	D-40	G	910	122	1032	1.16837%	167, 168
	D-41	D	428	71	499	0.56594%	163, 164
	D-42	H	820	73	893	1.01100%	159, 160
	D-43	J	797	122	919	1.04088%	155, 156
D-44	J	797	122	919	1.04088%	151, 152	
D-45	H	820	73	893	1.01100%	147, 148	
D-46	D	428	71	499	0.56594%	143, 144	
D-47	G	910	122	1032	1.16837%	139, 140	
BUILDING E	E-20	A	573	122	695	0.78648%	176
	E-21	B(HC)	573	72	645	0.73023%	175
	E-22	B	573	72	645	0.73023%	174
	E-23	A	573	122	695	0.78648%	173
	E-24	A	573	122	695	0.78648%	172
	E-25	B	573	72	645	0.73023%	171
	E-26	B	573	72	645	0.73023%	170
	E-27	A	573	122	695	0.78648%	169
	E-30	A	573	122	695	0.78648%	165, 166
	E-31	B	573	72	645	0.73023%	161, 162
	E-32	B	573	72	645	0.73023%	157, 158
	E-33	A	573	122	695	0.78648%	153, 154
	E-34	A	573	122	695	0.78648%	149, 150
	E-35	B	573	72	645	0.73023%	145, 146
	E-36	B	573	72	645	0.73023%	141, 142
	E-37	A	573	122	695	0.78648%	137, 138
	E-40	G	910	122	1032	1.16837%	167, 168
E-41	D	428	71	499	0.56594%	163, 164	
E-42	H	820	73	893	1.01100%	159, 160	
E-43	J	797	122	919	1.04088%	155, 156	
E-44	J	797	122	919	1.04088%	151, 152	

Building	Apartment No.	Apartment Type	Square Feet	Lanai Sq. Ft.	Total Sq. Ft.	Common Interest %	Parking Stall(s)
	E-45	H	820	73	893	1.01100%	147, 148
	E-46	D	428	71	499	0.56594%	143, 144
	E-47	G	910	122	1032	1.16837%	139, 140
BUILDING F	F-20	N	1,043	306	1349	1.52726%	210, 211
	F-21	L	1,224	252	1476	1.67104%	208, 209
	F-22	K	955	302	1257	1.42310%	206, 207
	F-23	K	955	302	1257	1.42310%	204, 205
	F-24	L	1,224	252	1476	1.67104%	202, 203
	F-25	N	1,043	306	1349	1.52726%	200, 201
	F-40	J	797	122	919	1.04088%	197, 198
	F-41	F	653	71	724	0.81967%	195, 196
	F-42	M	1,016	122	1138	1.28838%	193, 194
	F-43	M	1,016	122	1138	1.28838%	191, 192
	F-44	F	653	71	724	0.81967%	189, 190
F-45	J	797	122	919	1.04088%	212, 213	
TOTALS			76,134	12,194	88,328	100.00000%	