

DECLARATION CHECKLIST

PROJECT NAME KAI MAKANI

REGISTRATION NO. _____
(For Office Use Only)

Page No.. Section

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|---------------------------------|----|--|
| <u>p. 3 4.1</u> | 1. | Description of the land whether <input checked="" type="checkbox"/> fee simple or <input type="checkbox"/> leasehold |
| <u>p. 3 4.2 and Exhibit B-1</u> | 2. | Description of the building(s). |
| <u>Exhibit B-1</u> | a. | Number of buildings. |
| <u>Exhibit B-1</u> | b. | Number of stories. |
| <u>n/a</u> | c. | Number of basements. |
| <u>p. 3 4.2 and Exhibit B-1</u> | d. | Number of apartments. |
| <u>Exhibit B-1</u> | e. | Principal materials of construction. |
| <u>Exhibit B-1</u> | 3. | Description of the apartments. |
| <u>Exhibit B-2</u> | a. | Apartment number of each apartment. |
| <u>Exhibit B-1</u> | b. | Location of each apartment. |
| <u>Exhibit B-2</u> | c. | Approximate area of each apartment. |
| <u>Exhibit B-1</u> | d. | Number of rooms of each apartment. |
| <u>Exhibit B-1</u> | e. | Immediate common element to which each apartment has access. |
| <u>Exhibit B-1</u> | f. | Designated parking stall if considered a limited common element. |
| <u>Exhibit B-1</u> | g. | Other data necessary for proper identification of the apartments. |
| <u>Exhibit B-2</u> | h. | Net living area of enclosed portion of apartment to be measured from interior surface of apartment perimeter walls. Lanai or patio areas considered as part of apartment to be computed and reported separately from the apartment area. |
| <u>p. 5 5.1</u> | 4. | Description of common elements. |
| <u>p. 6 5.2</u> | 5. | Description of limited common elements and apartments to which reserved. |
| <u>p. 10 7</u> | 6. | The percentage of undivided interest in common elements appertaining to each apartment and its owner for all purposes, including voting. |
| <u>p. 10 8</u> | 7. | Statement of purposes for which the building(s) and each apartment are intended and restricted as to use. |
| <u>p. 14 10</u> | 8. | The name of a person authorized to receive service of process with address of residence or place of business in the county or city in which property is located. |

- p. 17 13.2 9. Provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair or restore the property in the event of damage or destruction to all or part of the project.
- p. 25 16.1 10. The method by which the declaration may be amended, provided that an amendment to the declaration shall require a vote or written consent of 75% of all apartment owners, except for projects with five or less apartments, which may require more than 75% of all apartment owners.
- p. 26 16.2 11. Description of any additions, deletions, modifications and reservations as to the property.
- n/a _____ 12. Any provision concerning the merger or addition of later phases of the project.
- not included 13. If applicable, in the case of a project which includes one or more existing structures being converted to condominium status, a statement of whether any variance has been granted from any ordinance or code to achieve such compliance and whether, as a result of the adoption or amendment of any ordinance or code, the project presently contains any legal non-conforming uses or structures.
- not included 14. A declaration subject to the penalties set forth in section 514A-49(b) that the project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000). Developers requesting an effective date for a developer's final public report shall instead make this declaration in the final public report (including a developer's final public report for a converted project).

DECLARATION OF CONDOMINIUM PROPERTY REGIME
OF
KAI MAKANI

CONDOMINIUM FILE PLAN NO. 3849

1.	DEFINITION OF CERTAIN TERMS	-1-
1.1	"Act"	-1-
1.2	"apartment"	-1-
1.3	"Association of Apartment Owners"	-1-
1.4	"board of directors" and "board"	-1-
1.5	"Bylaws"	-1-
1.6	"common elements" and "limited common elements"	-1-
1.7	"condominium documents"	-1-
1.8	"Condominium Map"	-1-
1.9	"Declarant" or "Developer"	-1-
1.10	"Declaration"	-1-
1.11	"Developer"	-1-
1.12	"Fee Owner"	-1-
1.13	"Land"	-2-
1.14	"majority of owners"	-2-
1.15	"mortgagee" or "apartment mortgagee"	-2-
1.16	"owner" or "owners"	-2-
1.17	"Project"	-2-
1.18	"recorded"	-2-
1.19	"rules and regulations"	-3-
2.	SUBMISSION TO THE CONDOMINIUM PROPERTY REGIME	-3-
3.	PROJECT NAME	-3-
4.	DESCRIPTION OF THE LAND, BUILDINGS AND APARTMENTS	-3-
4.1	Land	-3-
4.2	Buildings and Apartments	-3-
4.3	Limits and Measurements of Apartments	-4-
	(a) Boundaries	-4-
	(b) Descriptions	-4-
	(c) Measurements	-4-
	(d) Access	-4-
	(e) What is Included in Apartments	-4-
5.	COMMON ELEMENTS	-5-
5.1	Common Elements	-5-
5.2	Limited Common Elements	-6-

5.3	Common Expenses and Costs Relating to Common Elements and Limited Common Elements	-6-
5.4	Responsibilities	-7-
6.	EASEMENTS AND OTHER RIGHTS	-8-
7.	RISKS, NUISANCES AND DISCLOSURES	-10-
(a)	Agricultural and Commercial Operations and Traffic	-10-
(b)	Development Operations	-10-
(c)	Use of Reclaimed Wastewater	-10-
8.	COMMON INTEREST	-10-
9.	PURPOSES AND USES	-11-
(a)	Residential Uses	-11-
(b)	Restrictions	-12-
(c)	Visible Signs or Other Changes	-12-
(d)	Common Elements	-12-
(e)	Developer's Sales	-12-
(f)	Additions or Alterations Solely Within an Apartment	-12-
(g)	Environmental	-13-
(h)	Leasing	-13-
(i)	Animals	-13-
10.	EXEMPTIONS FOR PERSONS WITH DISABILITIES	-14-
11.	SERVICE OF PROCESS	-14-
12.	ADMINISTRATION OF PROJECT	-14-
13.	INSURANCE AND DAMAGE	-15-
13.1	Commercial Property Insurance	-15-
13.2	Liability Insurance	-17-
13.3	Liability Insurance for Members of the Board and Officers of the Association	-18-
13.4	Review of Insurance Program	-19-
13.5	Waivers of Subrogation	-19-
13.6	Substitute Coverage	-19-
14.	INSURED CASUALTY AND UNINSURED CASUALTY	-19-
14.1	Insured Casualty	-19-
(a)	Collection of Insurance Proceeds	-19-
(b)	Insured Casualty to Single Apartment	-20-
(c)	Other Insured Casualty	-20-
(d)	Insufficient Insurance Proceeds	-20-
(e)	Disbursement of Insurance Proceeds	-21-

	(f) Excess Insurance Proceeds	-22-
	(g) Mutual Release of Claims	-22-
14.2	Uninsured Casualty; Partial Restoration and Determination Against Restoration	-22-
	(a) Uninsured Casualty	-22-
	(b) Partial Restoration	-23-
15.	CONDEMNATION	-23-
15.1	Condemnation Trustee	-23-
15.2	Allocation of Condemnation Proceeds	-24-
15.3	Condemnation of Entire Project	-24-
15.4	Partial Taking	-24-
16.	COMPLIANCE WITH CONDOMINIUM DOCUMENTS	-25-
16.1	Compliance	-25-
16.2	Costs	-26-
17.	AMENDMENTS OF THE DECLARATION	-26-
17.1	Amendments Generally	-26-
17.2	Amendments Required By Law, Lenders, Title Insurers, Etc.	-27-
17.3	Restatement	-27-
18.	CONSENT TO DEVELOPER'S RESERVED RIGHTS; APPOINTMENT OF DEVELOPER AND ASSOCIATION AS ATTORNEY-IN-FACT	-28-
19.	CAPTIONS	-28-
20.	CONFLICT BETWEEN DECLARATION AND THE ACT	-29-
21.	SPECIAL RESPONSIBILITIES OF ASSOCIATION WITH RESPECT TO DECLARANT'S COMPLETION OF THE COMMON ELEMENTS	-29-
22.	ALLEGED DEFECTS; RIGHT OF DEVELOPER TO CURE	-29-
23.	ALTERNATIVE DISPUTE RESOLUTION	-37-
24.	SEVERABILITY	-39-
25.	INTERPRETATION	-39-
26.	INVALIDITY AND CHANGES IN LAW	-39-

1. DEFINITION OF CERTAIN TERMS.

The terms defined below shall have the following meanings in this Declaration:

1.1 "Act" means the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes (1978), as amended to the date of this Declaration.

1.2 "apartment" is defined in the Act as the specific unit of the condominium ownership.

1.3 "Association of Apartment Owners" and "Association" means all owners of apartments in the Project acting as a group as the "Association of Apartment Owners of Kai Makani" in accordance with this Declaration and the Bylaws. The Association shall be incorporated as a Hawaii corporation under HRS Chapter 415B.

1.4 "board of directors" and "board" refer to the board of directors of the Association.

1.5 "Bylaws" means the Bylaws of the Association recorded in the Bureau of Conveyances concurrently with this Declaration, as amended from time to time.

1.6 "common elements" and "limited common elements" are defined in Sections 4 and 5 below.

1.7 "condominium documents" means this Declaration, the Bylaws, Condominium Map and any other condominium documents.

1.8 "Condominium Map" means the plans showing the layout, location, apartment numbers and dimensions of the apartments and elevations of the apartments of this Project recorded as Condominium Map No. 3829, as amended from time to time.

1.9 "Declarant" or "Developer" means the Fee Owner.

1.10 "Declaration" means this Declaration of Condominium Property Regime of Kai Makani as amended from time to time.

1.11 "Developer" refers to the Declarant.

1.12 "Fee Owner" refers to WS Kai Makani, Inc., a Colorado corporation,

whose principal place of business and post office address is 5960 DTC Boulevard, Suite 280W, Englewood, Colorado 80111. WS Kai Makani, Inc. is the purchaser of the Land described in Exhibit "A" attached hereto under that certain Purchase Agreement for Real Property, dated September 8, 2004, recorded in the State of Hawaii Bureau of Conveyances, under which the fee simple title to the Land will be conveyed to WS Kai Makani, Inc.

1.13 "Land" means the land described in Exhibit "A" attached hereto and made a part hereof.

1.14 "majority of owners" (or other specified percentage of owners) means the owners of apartments to which are appurtenant more than fifty percent (50%) (or other specified percentage) of the common interests as defined in Section 7 and Exhibit "B".

1.15 "mortgagee" or "apartment mortgagee" means the holder of a mortgage encumbering the fee simple title to or recorded leasehold interest in an apartment.

1.16 "owner" or "owners" when referring to an apartment means a person owning or persons owning jointly or in common an apartment in the Project and the common interest appertaining thereto provided that:

(a) To such extent and for such purposes, including the exercise of voting rights, as shall be provided by a recorded lease, a lessee of an apartment shall be deemed to be an apartment owner.

(b) The purchase of an apartment pursuant to a recorded agreement of sale shall have all the rights of an apartment owner; provided that the seller may retain the right to vote on "matters substantially affecting his security interest in the apartment" as that term is used in the Act; provided, however, that the term "agreement of sale" shall mean an agreement for the purchase and sale of an apartment which shall give the buyer possession of the apartment upon the effective date of said agreement and shall retain title in the seller as to secure seller against future non-payment or non-performance of future obligations.

1.17 The "Project" means Kai Makani, a condominium, established by this Declaration.

1.18 "recorded" means recorded in the State of Hawaii Bureau of Conveyances.

1.19 "rules and regulations" or "rules" refers to the rules and regulations adopted from time to time as provided in the Bylaws, and any amendments, governing the operation and use of apartments and common elements.

2. SUBMISSION TO THE CONDOMINIUM PROPERTY REGIME.

The Fee Owner submits the Land described in Exhibit "A" and all improvements now located or hereafter constructed on the Land to a Condominium Property Regime as established by the Act. The Fee Owner declares that the Land is owned and shall be owned, conveyed, mortgaged, encumbered, leased, rented, occupied and improved subject to the declarations, restrictions and conditions set forth in this Declaration and in the Bylaws recorded concurrently herewith, as they may hereafter be amended, which declarations, restrictions, covenants and conditions shall constitute equitable servitudes, liens and covenants running with the Land and shall be binding on and shall insure to the benefit of the Fee Owner, all subsequent owners and lessees of apartments in the condominium, all subsequent owners and lessees of all or any part of the condominium and their respective heirs, successors, successors in trust, personal representatives and assigns. All of the provisions of this Declaration are intended to create mutual servitudes upon each apartment within the condominium and to create reciprocal rights among the apartment owners.

3. PROJECT NAME.

The Condominium Property Regime established hereby shall be known as "KAI MAKANI".

4. DESCRIPTION OF THE LAND, BUILDINGS AND APARTMENTS.

4.1 Land. The Land submitted to the Condominium Property Regime is described in Exhibit "A" attached hereto. The Land is submitted in fee simple.

4.2 Buildings and Apartments. The Project consists of one hundred twelve (112) residential apartments and no commercial apartments, all contained in twenty-two (22) residential buildings, as more fully described in Exhibit "B" attached hereto and as shown on the Condominium Map. If the descriptions and divisions set forth in this Declaration conflict with the depictions and divisions shown on the Condominium Map, this Declaration shall control. The Condominium Map is intended only to show the layout, location, apartment numbers and dimensions of the apartments and elevations of the buildings and is not intended and shall not be deemed to contain or make any other representation or warranty.

4.3 Limits and Measurements of Apartments.

(a) Boundaries. Each apartment consists of the space within the boundaries shown on the Condominium Map, which is enclosed by the perimeter walls and the imaginary vertical planes bounding the exterior edges of the front and sides of the concrete slab of the lanai, the floor, and the ceiling, as shown on the Condominium Map.

(b) Descriptions. The different apartment types, including the number of rooms in each type, are described in Exhibit "B" attached hereto and made a part hereof. The apartment number, apartment type, approximate net living floor area (exclusive of the covered lanai), and the approximate area of the lanai are shown in Exhibit "B" attached hereto and made a part hereof. Exhibit "B" also identifies the undivided interest in the common elements appurtenant to each apartment.

(c) Measurements. The approximate net living floor areas set forth in Exhibit "B" are based on measurements taken from the interior surface of all perimeter walls, and no reduction is made to account for interior walls, ducts, vents, shafts, and the like located within the apartment perimeter boundaries. The approximate floor areas of the covered lanais set forth in Exhibit "B" are based on measurements taken from (i) the exterior surface of each wall which separates the interior living areas of the apartment from the lanai or porch and (ii) the exterior edge of the concrete slab of the lanai or porch. All floor areas set forth in Exhibit "B" are not exact but are approximations based on the floor plans of each type of apartment. All stated dimensions and areas are approximate in nature. Actual floor areas and interior dimensions upon completion of construction may vary as a result of reasonable construction tolerances and changes which do not adversely affect the value of the apartment.

(d) Access. Each ground floor apartment has an entry on the ground floor common entry porch and immediate access to common element driveways, walkways and grounds and other common elements of the Project. Each second floor apartment has an entry on the second floor common entry porch which has access to an exterior common stairway which in turn has immediate access to common element driveways, walkways and grounds and other common elements of the Project.

(e) What is Included in Apartments. Each apartment shall be deemed to include: (i) all the walls, partitions and components thereof which are not load-bearing within its perimeter walls; (ii) all non-load-bearing, non-structural interior components of the apartment's perimeter and party walls; (iii) the interior

decorated or finished surfaces of all perimeter walls and load-bearing walls, floors and ceilings, including all plasterboard components and floor coverings; (iv) all doors and windows with associated frames, which are located along the perimeters; (v) all fixtures originally installed in the apartment; (vi) all pipes, plumbing, wiring, fixtures, outlets and switches which serve only that apartment; and (vii) its attached covered lanai. The apartments shall not be deemed to include: (a) the load-bearing or structural components of the perimeter walls and all exterior components of perimeter walls, whether or not load-bearing or structural excepting doors and windows as provided in clause (iv) above, (b) all load-bearing or structural components of all interior walls and party walls, (c) the undecorated or unfinished surfaces of the floors and ceilings surrounding each apartment, including any attic space located above said ceilings, (d) any pipes, shafts, wires, conduits or other utility or service lines running through such apartment which are utilized for or serve more than one apartment or (e) the finished surfaces which the Association shall have the responsibility to maintain as a common expense under Section 5.4 below, the same being deemed common elements as hereinafter provided.

5. COMMON ELEMENTS.

5.1 Common Elements. The common elements include all other elements of the Project not included with any apartment, including but not limited to:

- (a) The Property in fee simple;
- (b) All elements of each building which are not owned by the Owner of any apartment, including but not limited to, all foundations, columns, girders, beams, supports, perimeter walls, load-bearing walls, roof structures (including without limitation, all attic spaces, roof joists, sheathing and roofing materials), which are located outside the apartment, and all pumps, ducts, pipes, wires, conduits or other utility service lines which are utilized for or serve more than one apartment, and generally all equipment, apparatus, installations, fixtures and personal property existing for common use in the buildings or located on the Land;
- (c) All pipes, wires, ducts, conduits or other utility service lines running through any apartment which are utilized by or serve more than one apartment;
- (d) The Clubhouse (shown on the Condominium Map as Building P), pool, pool deck and landscaping and all roads, driveways and other common ways; all parking spaces and areas; all trees; landscaping, grounds, exterior irrigation

systems, fences, gates, retaining walls; all trash enclosures; the central mailbox facilities; and all accessory equipment areas located on the Land or in any building;

(e) All distribution systems for water, sewer and utility services which serve more than one apartment and which are not owned by the County of Maui or any public utility (and including use meters, if any, whether or not located within the apartment);

(f) The railings and supporting columns of all lanais;

(g) All finished surfaces which the Association shall have the responsibility to maintain as a common expense under Section 5.4 below.

5.2 Limited Common Elements. The limited common elements shall be the following:

(a) The individual lockers located in Storage Lockers "X", "Y" and "Z" as shown on the Condominium Map. Storage Locker "X" contains individual lockers numbered 101 through 110, inclusive. Storage Locker "Y" contains individual lockers numbered 201 through 224, inclusive, and Storage Locker "Z" contains individual lockers numbered 301 through 338, inclusive. Individual lockers will be assigned to individual apartments by Declarant in the deed of each apartment to the apartment purchaser. Not all apartments will receive an individual locker.

(b) One parking stall, to be numbered by Declarant on the Condominium Map and assigned to each apartment by Declarant in the first deed of said apartment to its purchaser. One or more additional stalls may be assigned by the Declarant or the board of directors from time to time on such terms and conditions as provided by the Declarant or the board of directors in their respective discretion.

5.3 Common Expenses and Costs Relating to Common Elements and Limited Common Elements. All provisions of the Bylaws relating to common expenses, limited common expenses and the rights and remedies of the Association in connection therewith are hereby incorporated into this Declaration by reference.

Each apartment owner shall be liable for a proportionate share equal to said apartment's "common interest" as defined in Section 7 below of all costs, expenses, assessments, taxes and charges described in the Bylaws as "common expenses". The method of determining and collecting common expenses shall be

as set forth in the Bylaws. All sums chargeable as common expenses to any apartment but unpaid (or chargeable as additional expenses owed to the Association by each apartment owner as provided in the Bylaws but unpaid) shall constitute a lien on such apartment, which lien shall have such priority and may be foreclosed by the Association as provided in the Bylaws and in the Act.

All costs associated with maintaining, repairing and replacing the storage lockers shall be borne by those apartments (as a group) to which individual lockers are assigned as limited common elements, and each such apartment shall pay an equal share of such costs. The Association shall manage such maintenance, repair and replacement on behalf of all apartments to which storage lockers are assigned.

5.4 Responsibilities. Except as otherwise provided in this Section 5.4, the owner of each apartment shall be responsible for maintaining the interior of said apartment (including the lanai).

Without limiting the generality of the foregoing, the owner of each apartment shall be responsible for maintaining the following items located within or in proximity to each apartment: (i) plasterboard walls and plasterboard ceilings located within or on the inside surface of the perimeter walls of the apartment; (ii) doors and associated hardware located within the apartment; (iii) junction boxes and electrical outlets located within the apartment or in the perimeter walls, floors or ceilings of the apartment; (iv) all wiring light fixtures, whether located within or on the outside walls of the apartment; (v) electrical breaker panels serving only the apartment; (vi) plumbing lines serving only the apartment; (vii) water closets, sinks and fixtures, tubs, showers, cabinets and countertops, and appliances; (viii) all floor, wall and ceiling coverings located within the apartment; and (ix) the interior space and exterior door of any individual storage locker assigned to said apartment as a limited common element.

The responsibility and expense of painting, maintaining, repairing and replacing the railings and supporting columns of all lanais and the building exterior within the lanais and all lanai floor surfaces (other than carpeting or other floor covering placed by the apartment owner) and all exterior doors and windows shall be borne by the Association as a common expense as part of a standard program of regular exterior maintenance, in order to maintain the exteriors of all buildings in a uniform, safe and attractive condition. However, any costs of repair, maintenance or replacement which in the reasonable judgment of the board of directors (or the managing agent) are caused by any act or neglect of the apartment owner shall be billed to and paid by the owner of said apartment as a special assessment.

6. EASEMENTS AND OTHER RIGHTS.

In addition to the easements established as limited common elements, the apartments and common elements shall also have and be subject to the following easements:

(a) Each apartment shall have appurtenant thereto non-exclusive easements in the common elements designed for such purposes for ingress to, egress from utility services for, and support, maintenance, and repair of such apartment; in the other common elements for use according to their respective purposes for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners; and in all other apartments and common elements of the apartment building in which such apartment is located for support.

(b) If any part of the common elements now or hereafter encroaches upon any apartment or limited common element or if any apartment now or hereafter encroaches upon any other apartment or upon any portion of the common elements, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist; provided, however, that if an encroachment is caused directly or indirectly by the intentional act or neglect of any apartment owner, the board, in its sole discretion, may demand that such owner take such steps as are necessary to remove the encroachment, and the apartment owner causing the encroachment shall be liable for all expenses, costs and fees arising in connection with such removal. In the event any building shall be partially or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any portion of any building, encroachments upon any part of the common elements or any apartment due to the same shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist for so long as such encroachment exists.

(c) The Association shall have the irrevocable right, to be exercised by the board of directors, to have access to each apartment and any limited common elements from time to time during reasonable hours as may be necessary for the operation or maintenance of the Project (including any apartment), or at any time for making emergency repairs therein necessary to prevent damage to the common elements or to any other apartment.

(d) The association shall have the right, to be exercised by the board, to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the common elements of the Project for any reasonable purpose, which may include, but shall not be limited to,

those purposes which are necessary to the operation, care, upkeep, maintenance or repair of any apartment, the common elements or any easements for utilities or for any public purpose.

(e) The Association shall have the right, to be exercised by the board, to transfer, cancel, relocate and otherwise deal with any easement over, under, across or through any lands adjacent to the Project, which may be appurtenant to the Land of the Project, for any reasonable purpose, which may include, but shall not be limited to, any of the same purposes set forth in the preceding subparagraph (d) or for the reason that any owner of any such lands adjacent to the Project exercises any right to require the relocation of any such easement.

(f) The Declarant shall have the right to conduct extensive sales activities utilizing the common elements and any apartments owned or leased by the Declarant with respect to sales of the Project and other property in the vicinity of the Land, including the use of model apartments, sales and management offices and parking areas and utilizing extensive sales displays and activities.

(g) The Declarant, its agents, employees, contractors, licensees, successors and assigns, shall have an easement over and upon the Project as may be reasonably necessary for the completion of the Project and the sale of all apartments in the Project.

(h) The Declarant hereby reserves the right to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across, or through the common elements for any reasonable purpose, which may include, but shall not be limited to, those purposes which are necessary to the operation, care, upkeep, maintenance or repair of any apartment or the common elements or any easements for utilities or for any public purpose.

(i) If the Project or any part thereof is found not to be in compliance with any federal, state or local law in effect at the time of completion of the Project, the Declarant shall have the right, at its election, at any time thereafter to enter the Project and make such modifications to the common elements as are necessary, in the Declarant's judgment, to bring the Project into compliance with the applicable laws. This right shall include, but shall not be limited to, the right to cause noise, dust and other disturbances and nuisances incidental to modifying the common elements as required; provided, however, that the Declarant or any party performing such work on behalf of the Declarant shall make reasonable efforts to minimize such disturbances and nuisances.

7. RISKS, NUISANCES AND DISCLOSURES.

(a) Agricultural and Commercial Operations and Traffic. All owners and occupants of apartments are hereby notified that certain lands nearby or abutting the Project are zoned to permit or require agricultural operations and the development and operation of public and commercial uses and that owners and occupants of the Project may be subject to noise, dust, odors, emissions and other nuisances in connection with such operations or the development, construction and operation of such facilities. Also, the Project is located on South Kihei Road, which is a major thoroughfare subject to noise, dust, exhaust emissions and other nuisances. Declarant (and its respective officers, directors, employees and agents of each) shall not have any liability or responsibility for any such noise, dust, odors, emissions and nuisances. Each owner of an apartment, by taking title to said apartment, thereby waives all such rights and claims against Declarant and others whose activities shall be creating or exacerbating such conditions.

(b) Development Operations. All owners and occupants of the Project are hereby notified that any or all of the apartments may be subject to noise, dust, emissions, traffic and other nuisances resulting from site grading, road building and construction of the Project, in the roads or common areas or on adjacent or nearby lands. The Declarant and others performing such work shall not have any liability to the owners and occupants of any apartment for damages and inconvenience resulting from said operations. Each owner of an apartment, by taking title to said apartment, thereby waives all such rights and claims.

(c) Use of Reclaimed Wastewater. The grounds of the Project may be irrigated with reclaimed and treated wastewater produced by the Kihei sewage treatment plant operated by the County of Maui. Said water may be received by the Project's irrigation system in a condition which the County of Maui has undertaken to treat and provide in accordance with sound environmental management practices.

8. COMMON INTEREST.

(a) Each apartment shall have appurtenant thereto an undivided percentage interest (herein sometimes called the "common interest") in the common elements of the Project and in all common profits and expenses of the Project, and for all other purposes, including voting as shown on Exhibit "B" attached hereto and made a part hereof. All references herein or in the Bylaws to the vote or consent of a specified percentage of the apartment owners shall mean the owners of apartments to which are appurtenant such percentage of the common interests. In the event of certain changes in apartments described in

Section 17.4, this Declaration shall be amended to provide for changes to the common interests appurtenant to each apartment. The common interest of each apartment is based on the ratio of its total floor area (including net living area and lanai area) contained within said apartment to the aggregate floor areas of all apartments in the aggregate, and is set forth in Exhibit "B" hereto.

(b) Except as otherwise provided in this Declaration, the undivided interest in the common elements and other 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, which amendment shall contain the consent thereto by the holders of any first mortgage on such apartments as shown in the Association's record of ownership, or who shall have given the board notice of their interest through the secretary of the Association or the managing agent (if any) and 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 and each apartment shall remain undivided, and no right shall exist to partition or divide any portion of the common elements or any apartment except as provided in the Act and as otherwise expressly provided herein. This Declaration and the Condominium Property Regime created hereby cannot be terminated except in accordance with the Act and the provisions of this Declaration and the Bylaws.

9. PURPOSES AND USES.

The Project and each of the apartments are intended for and shall be restricted to the following purposes and uses:

(a) Residential Uses. Each apartment shall be occupied and used for residential purposes only. A apartment owner may rent his, her or its apartment to any third party for a period of not less than the longer of (a) minimum rental period, if any, imposed by the zoning code or other applicable law, or (b) sixty (60) consecutive days. Each rental agreement shall be in writing and a copy thereof shall be provided to the managing agent prior to occupancy. The owner shall provide each rental tenant with a copy of the rules and regulations and Bylaws for the tenant's review. An owner who rents his apartment shall at all times remain primarily and severally liable to all other apartment owners and to the Association for any failure on the part of such owner's tenant(s) to observe and comply with all provisions of this Declaration, the Bylaws, the rules and regulations and all other applicable laws.

In no event shall any apartment or any interest therein be sold, transferred, conveyed, leased, occupied, rented or used for or in connection with any timesharing purpose or under any timesharing plan, arrangement or program, including without limitation any so-called "vacation license", "travel club membership" or "time interval ownership" arrangement. The term "timesharing" as used herein shall mean any plan, program or arrangement which is a "timeshare plan" as defined by Hawaii Revised Statutes Section 514E-1, as amended or any successor statute. No apartment may be used as a rooming house, for bed and breakfast purposes, or for the carrying on of any business, trade or profession except for rentals as permitted herein.

(b) Restrictions. No owner will suffer anything to be done or kept in an apartment or elsewhere in the Project which would jeopardize the soundness of the Project, or which will interfere with or unreasonably disturb the rights of other apartment owners, or which will increase the rate of the hazard insurance on the Project or the contents thereof, or which will reduce the value of the Project.

(c) Visible Signs or Other Changes. The owner of any apartment will not, without the prior written consent of the board of directors, display any sign or place any other thing in or upon any doors, windows, walls or other portions of the apartment or the common elements so as to be visible from the exterior, provided, however, that this restriction shall not apply to signs displayed by the Developer for sales purposes prior to the completion of sales of all apartments in the Project.

(d) Common Elements. The common elements shall be used only for the purposes for which they are designed and intended.

(e) Developer's Sales. Notwithstanding anything contained hereinabove to the contrary, the Developer shall have the right to conduct sales activities as provided in Section 6(f) and (g) above.

(f) Additions or Alterations Solely Within an Apartment. Notwithstanding anything to the contrary contained herein, 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, but with notice to the Association and with prior written approval of the board, to make any of the following alterations solely within the apartment which such owner owns: to install, maintain, remove and rearrange partitions (including the party wall between two apartments owned by the same owner) and other structures from time to time within such apartment or limited common element to finish, alter or substitute any plumbing, electrical or other

fixtures attached to the ceilings, floors and walls as shall be appropriate for the utilization of such apartment or limited common element by such owner or the tenants and lessees thereof, and to tile (subject to acoustical transfer considerations), re-carpet, and do or cause to be done such work on the floors of any apartment or limited common element; 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, materially adversely affect any other apartment or limited common element, materially alter the uniform external appearance of the Project, materially increase the transfer of sounds, noise, air or smoke to other apartments or common elements, materially affect or impair any easement or rights of any of the other apartment owners, or materially interfere with or deprive any non-consenting owner of the use or enjoyment of any part of the common element. The board will have the right to form an architectural review committee, and to establish such procedures as it deems appropriate to process any owner-initiated request for modifications or alterations of apartments. Further, nothing in this paragraph shall prohibit the board from effecting such changes within an apartment or limited common element, or to require same, in order that the buildings of the Project may continue to comply with applicable law, including any fire code requirements.

(g) Environmental. There will be no hazardous, toxic or regulated substances or materials stored, produced, handled or used in the condominium except in strict conformity with all applicable laws, rules and regulations. Such prohibited substances include materials and substances which are defined as hazardous or toxic, or otherwise regulated under federal or state environmental laws, rules or regulations.

(h) Leasing. Any lease or rental agreement of an apartment shall provide that it shall be subject in all respects to the provisions of the condominium documents and that the failure of the lessee or tenant to comply with the terms of these documents shall be a default under the lease or rental agreement. An owner who rents his apartment shall at all times remain primarily and severally liable to all other apartment owners and to the Association for any failure on the part of such owner's tenant(s) to observe and comply with all provisions of this Declaration, the Bylaws, the rules and regulations and all other applicable laws.

(i) Animals. No dogs, cats or other animals shall be allowed except as expressly permitted in the Bylaws. No cats, dogs or any other animal shall be allowed to run loose, unleashed, and no animal shall be permitted to relieve itself on the Common Elements or adjacent property.

10. EXEMPTIONS FOR PERSONS WITH DISABILITIES.

Notwithstanding anything to the contrary contained in this Declaration, the Bylaws or the rules and regulations, owners with disabilities shall be allowed reasonable exemptions from this Declaration, the Bylaws and the rules and regulations, when necessary and as appropriate to enable them to use and enjoy their apartments and/or the common elements, provided that any owner with a disability desiring such an exemption shall make such request, in writing, to the board of directors. That request shall set forth, with specificity and in detail, the nature of the request and the reason that the requesting party needs to be granted such an exemption. The board of directors shall not unreasonably withhold or delay its consent to such request, and any such request shall be deemed to be granted if not denied in writing, within forty-five (45) days of the board's receipt thereof, or within forty-five (45) days of the board's receipt of additional information whichever shall last occur. If the request requires any modification to the exterior of the apartment or limited common elements appurtenant thereto, or a modification which otherwise affects the exterior appearance of the Project, the modifications must be approved by the board of directors at the expense of the applicant.

11. SERVICE OF PROCESS.

Richard Marcus, whose post office address is c/o Mancini, Welch & Geiger LLP, 33 Lono Avenue, Suite 470, Kahului, Hawaii 96732, is hereby designated as the agent to receive such service of process until such time as the board of directors and officers of the Association are elected, at which time and thereafter process may be served upon any officer of the Association.

12. ADMINISTRATION OF PROJECT.

The administration of the Project shall be governed by the Association and shall be governed by the Act, this Declaration, the Bylaws, the rules and regulations, the apartment deed conveying to each owner his interest in his apartment, and all other applicable federal, state or local laws, rules and regulations and each apartment owner shall comply strictly therewith. Without limiting the generality of the Association's functions and duties under this Declaration or applicable law or custom, the Association shall:

(a) Make, build, maintain and repair all fences, drains, roads, curbs and sidewalks which may be required by law to be made, built, maintained and repairs upon or adjoining or in connection with or for the use of the common elements or any part thereof;

(b) Keep all common elements in a strictly clean, orderly and sanitary condition, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the common elements or the use thereof;

(c) Well and substantially repair, maintain, amend, and keep all common elements and limited common elements with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided herein or in the Bylaws;

(d) Not at any time make or suffer any strip or waste or unlawful or improper or offensive use of the common elements; and

(e) Observe and perform all of the limitations, restrictions, covenants and conditions to be observed and performed under this Declaration, the Bylaws and the rules and regulations.

13. INSURANCE AND DAMAGE.

13.1 Commercial Property Insurance. The board, on behalf of the Association, shall at all times keep all buildings and common elements of the Project, and whether or not part of the common elements, all exterior and interior walls, floors, ceilings, cabinets, appliances, wall coverings, floor covering, permanently installed fixtures and built-in fixtures, as installed or their replacements, insured against loss, destruction and damage by all perils of direct physical damage by a commercial property insurance policy or policies written on the Insurance Service Office (commonly referred to as "ISO") "Special Form" used in the State of Hawaii or its equivalent, with an amount of coverage equal to 100% of the replacement cost of the buildings and improvements of the Project and including the following endorsements: (1) replacement cost coverage, (2) agreed amount, and (3) building ordinance coverage insuring against contingent liability from the operation of federal, state or county laws, statutes, ordinances or regulations concerning the improvements or structures on or about the Land, demolition of such improvements or structures and increased cost of construction of such improvements or structures, all such coverage being with such deductibles as the board shall deem appropriate; and additionally the board will cause to be purchased a difference-in-conditions policy to include flood, earthquake, backup sewers, broad form collapse coverage, and building ordinance coverage with deductible amounts and a limit of liability determined to be prudent by the board. If the Project is located in an identified flood hazard area as now or hereafter designated by the United States Department of Housing and Urban Development, the Association shall also procure flood insurance required under the provisions of

the Flood Disaster Protection Act. The board shall have the authority to change or update the forms and terms of coverage from time to time as the board may deem prudent.

The Association shall purchase the insurance required under this Section 13 from an insurance company authorized to do business in Hawaii and having a rating by Best's Insurance Reports of Class A:VI or better, in the name of the Association for the benefit of all owners and their mortgagees according to the loss or damage to their respective apartments and appurtenant common interest and payable in case of loss in excess of \$50,000 to such bank or trust company authorized to do business in the State of Hawaii as the board may designate, as trustee (the "Insurance Trustee"), for the custody and disposition as herein provided of all proceeds of such insurance, without prejudice to the right of each owner to insure his apartment for his own benefit.

Subject to the provisions of this Declaration, 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 buildings and other improvements and fixtures required to be insured hereunder in a good and substantial manner according to the original plans and elevations thereof of such modified plans conforming to laws and ordinances then in effect as shall be first approved as herein provided, and the Association at its common expense shall make up any deficiency (including deductible amounts) in such insurance proceeds.

All premiums on the policy or policies required under this Section 13 shall be borne by the owners of the apartments as a common expense in proportion to their undivided interests in the common elements.

Every such policy of insurance shall, unless unobtainable:

(a) Provide that the liability of the insurer thereunder shall be primary and shall not be affected by, and that the insurer shall not claim any right or set-off, counterclaim, apportionment, proration or contribution by reason of, any other insurance obtained by or for any owner;

(b) Contain no provision relieving the insurer from liability for loss occurring while the hazard to any building is increased, whether or not within the knowledge or control of the board, or because of any breach of warranty or condition or any other act or neglect by the board or any owner or any other persons under either of them;

(c) Provide that such policy and the coverage thereunder may not

be canceled, reduced or substantially modified (whether or not requested by the board) except by the insurer giving at least thirty (30) days' prior written notice thereof to the board, every mortgagee of any apartment, and any other person in interest who shall have requested such notice of the insurer;

(d) Contain a waiver by the insurer of any right of subrogation to any right of the board or any of the owners against any of them or any other persons under them;

(e) Contain a provision waiving any right of the insurer to repair, rebuild or replace if a decision is made pursuant to this Declaration or the Bylaws not to reinstate, rebuild, or restore the damaged or destroyed improvements;

(f) Require the insurance carrier, at the inception of the policy and on each anniversary date thereof, to provide the board with a written summary of the policy including the type of policy, a description of the coverage and limits thereof, amount of annual premium, and renewal dates; and the summary shall be in layman's terms and the board shall provide a copy thereof to each owner; and

(g) Contain a standard mortgage clause on ISO commercial property form which shall, unless unobtainable:

(i) Name the holder of any mortgage affecting any apartment whose name shall have been furnished to the board and to the insurer and provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any apartment of the Project, in their respective order and preference, whether or not named therein;

(ii) Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the board or the owners or any persons under them;

(iii) Provide that, without affecting any protection afforded by such mortgage clause, any proceeds payable under such policy shall be payable to the Insurance Trustee for the owners and their mortgagees as their respective interests may appear.

13.2 Liability Insurance. The board, on behalf of the Association, shall also effect and maintain at all times, to the extent reasonably available, commercial general liability insurance, including coverage for premises/operations, independent contractors, contractual liability, personal injury, employees as additional insureds, broad form property damage, covering all owners with respect to the Project, in an

insurance company authorized to do business in Hawaii, with combined single limits of liability for bodily injury and property damage of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate or such higher limits as the board may from time to time establish with due regard to the prevailing prudent business practice in the State of Hawaii as reasonably adequate for the protection of the Association, the board, all owners, the managing agent and employees of the Association, without prejudice to the right of any of the owners to maintain additional liability insurance for their respective apartments.

All premiums on the policy or policies required under this Section 13 shall be borne by the owners of the apartments in proportion to their undivided interests in the common elements.

Each such policy, unless unobtainable, shall:

(a) Contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in any building, whether within the control or knowledge of the board, or because of any breach of warranty or condition caused by any owner or by any act or neglect of the owner or tenant of an apartment;

(b) Provide that the policy and its coverage may not be canceled, reduced or substantially modified (whether or not requested by the board) except by the insurer giving at least thirty (30) days' prior written notice thereof to the board, all owners and their mortgagees and every other person in interest who shall have requested such notice of the insurer;

(c) Contain a waiver by the insurer of any subrogation to any right of the board, the managing agent or any owner against any of them or any other person under their control; and

(d) Contain a "severability of interest" clause precluding the insurer from denying the claim of an owner because of negligent acts of the Association or other owners.

13.3 Liability Insurance For Members of the Board and Officers of the Association. The board, on behalf of the Association at its common expense, may effect and maintain liability insurance covering members of the board and officers of the Association with minimum coverage in such amounts as shall be determined by the board. Any such insurance policy shall require the insurance carrier, at the inception of the policy and on each anniversary date thereof, to provide the board with a written summary of the policy, including the type of policy, a description of

the coverage and limits thereof, the amount of annual premium, and renewal dates; and the summary shall be in layman's terms and the board shall provide a copy thereof to each apartment owner.

13.4 Review of Insurance Program. The board shall review not less frequently than annually the adequacy of its entire insurance program and shall report in writing its conclusions and action taken on such review to the owner of each apartment and to the holder of any mortgage on any apartment who shall have requested a copy of such report. At the request of any mortgagee of any interest in any apartment, the board shall furnish to such mortgagee a copy of the property and liability policies referred to in this Section 13.

13.5 Waivers of Subrogation. To the extent that any loss, damage or destruction to any building or any common elements is covered by insurance procured by the board, the board shall have no claim or cause of action for such loss, damage or destruction against any owner. To the extent that any loss, damage or destruction to the property of any owner is covered by insurance procured by such owner, such owner shall have no claim or cause of action for such loss, damage or destruction against the board, the managing agent, any resident manager, any other owner or the Association. All policies of insurance referred to in this Section 13 shall contain appropriate waivers of subrogation by the insurers.

13.6 Substitute Coverage. Any insurance coverage specified in this Section 13 shall be subject to availability with responsible insurance companies authorized to do business in the State of Hawaii. Where such coverage is not available, or is not available at a reasonable cost, then the board shall substitute such other insurance coverage as is acceptable to institutional lenders for apartments in projects similar in construction, location and use.

14. INSURED CASUALTY AND UNINSURED CASUALTY.

14.1 Insured Casualty.

(a) Collection of Insurance Proceeds. In the event of any damage to all or any portion of the Project by fire or other casualty which is insured against, the board of directors shall take all reasonable steps necessary to collect the insurance proceeds and deposit the same with the Insurance Trustee at the earliest practicable date and, except as otherwise provided herein, to cause all rebuilding or repairing work to be undertaken and completed as hereinafter provided as promptly as may be reasonably possible in the circumstances.

(b) Insured Casualty to Single Apartment. If any portion of the Project is damaged by fire or other casualty which is insured against and such damage is limited to a single apartment and/or the limited common elements appurtenant thereto, all of the insurance proceeds shall be used by the Insurance Trustee for payment of the contractor employed by the board of directors to rebuild or repair such apartment and/or limited common elements (including paint, floor covering, fixtures, and mechanical, electrical and other equipment therein which are deemed to be common elements as provided herein) in accordance with the original plans and specifications therefor, or if reconstruction in accordance with said plans and specifications is not permissible under the laws then in force, in accordance with such modified plans and specifications as shall be previously approved by the board of directors and any mortgagee of record of any interest in the apartment or limited common elements so damaged.

(c) Other Insured Casualty. If any insured-against damage to the Project should occur other than the damage described in the preceding paragraph, the board of directors shall thereupon contract to repair or rebuild the damaged portions of the Project (including paint, floor covering, fixtures, and any mechanical, electrical and other equipment therein which are deemed to be common elements as provided herein), in accordance with the original plans and specifications therefor, or if reconstruction in accordance with said plans and specifications is not permissible under the laws then in force, in accordance with such modified plans and specifications as shall be previously approved by the board of directors and the mortgagee of record of any interest in an apartment directly affected thereby. In the event said modified plans or modifications eliminate any apartment or its appurtenant limited common elements and such apartment or limited common elements are not reconstructed, the Insurance Trustee shall pay the owner of said apartment and any mortgagee of record of any interest in said apartment, as their interests may appear, the portion of said insurance proceeds allocable to said apartment and limited common elements (less the proportionate share of said apartment in the cost of debris removal) and shall disburse the balance of the insurance proceeds as hereinafter provided for the disbursement of insurance proceeds.

(d) Insufficient Insurance Proceeds. The insurance proceeds shall be paid by the Insurance Trustee to the contractor employed for such work, in accordance with the terms of the contract for such construction and in accordance with the terms of this Section 14. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding, then the board of directors shall levy, as soon as reasonably possible following the determination of the amount of such insufficiency, a special assessment (i) with respect to the repairing and/or rebuilding of the common elements, exclusive of limited common elements, against

the owners of all apartments, except for apartments being eliminated from the Project, in proportion to their common interests, (ii) with respect to the repairing and/or rebuilding of an apartment, against the owner of such apartment, and (iii) with respect to the repairing and/or rebuilding of any limited common element, against the owners of all apartments to which such limited common element is appurtenant. In the case of limited common elements appurtenant to more than one apartment, each such apartment's share of the special assessment shall be determined by dividing the common interest appurtenant to such apartment by the aggregate common interests appurtenant to all apartments to which the limited common element is appurtenant, and multiplying the resulting percentage by the total amount of the special assessment for the limited common element. All of the foregoing special assessments shall be secured by the lien as a common expense.

(e) Disbursement of Insurance Proceeds. The cost of the work (as estimated by the board of directors) shall be paid out from time to time or at the direction of the board as the work progresses, but subject to the following conditions:

(i) An architect or engineer (who may be an employee of the board) shall oversee the work;

(ii) Each request for payment shall be made on seven (7) days prior notice to the Insurance Trustee and shall be accompanied by a certificate to be made by such architect or engineer stating that all of the work completed has been done in compliance with the approved plans and specifications and that the sum requested is justly required to reimburse the board for payments by the board to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services or materials), and that when added to all sums previously paid out by the Insurance Trustee the sum requested does not exceed the value of the work done to the date of such certificate;

(iii) Each request shall be accompanied by waivers of liens satisfactory to the Insurance Trustee, covering that part of the work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Insurance Trustee, that there has not been filed with respect to the premises any mechanics' or other lien or instrument for the retention of title with respect to any part of the work not discharged of record;

(iv) The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates

required by law to render occupancy of the premises legal;

(v) The fees and expenses of the Insurance Trustee as determined by the board of directors and the Insurance Trustee shall be paid by the Association as a common expense, and such fees and expenses may be deducted from any proceeds at any time in the hands of the Insurance Trustee; and

(vi) Such other conditions not inconsistent with the foregoing as the Insurance Trustee may reasonably request.

(f) Excess Insurance Proceeds. Upon completion of the work and payment in full therefor, any remaining proceeds of insurance then or thereafter in the hands of the board of directors or of the Insurance Trustee shall be paid or credited (i) for proceeds attributable to the common elements exclusive of the limited common elements, to the owners of all the apartments and the holders of any mortgage on the apartments, as their interests may appear, in proportion to their common interests, or (ii) for proceeds attributable to an apartment and the limited common elements appurtenant to such apartment, to the owner of such apartment and the holder of each mortgage on such apartment, as their interests may appear.

(g) Mutual Release of Claims. To the extent that any loss, damage or destruction to any portion of the Project or other property is covered by insurance procured by the board of directors, the Association, apartment owners and board of directors shall have no claim or cause of action for such loss, damage or destruction against any apartment owner (other than for any special assessment levied pursuant to Section 14 of this Declaration), the Declarant, the board of directors or any officer of the Association. To the extent that any loss, damage or destruction to an apartment, limited common elements appurtenant thereto or any other property of an apartment owner is covered by insurance procured by such owner, such owner shall have no claim or cause of action for such loss, damage or destruction against the Association, board of directors, any officer of the Association, the managing agent, the Developer or any other apartment owner or any person claiming under any of them.

14.2 Uninsured Casualty; Partial Restoration and Determination Against Restoration.

(a) Uninsured Casualty. In case at any time or times any improvements of the Project shall be substantially damaged or destroyed by any casualty not insured against, such improvements shall be rebuilt, repaired or restored unless apartment owners owning eighty percent (80%) or more of the

apartments in number and owning apartments to which are appurtenant eighty percent (80%) of the common interests vote to the contrary. Any such approved rebuilding, repair, or restoration shall be borne (i) by the Association as a common expense with respect to any common elements, exclusive of limited common elements, and (ii) with respect to any limited common elements, by the owner(s) of the apartment(s) to which such limited common elements are appurtenant.

The apartment owners shall be solely responsible for any restoration of their respective apartments so damaged or destroyed. Such rebuilding, repair or restoration shall be performed in accordance with the original plans and specifications therefor or such other plans and specifications first approved by the board of directors, and the mortgagees of record of any interest in an apartment directly affected thereby. Unless such restoration is undertaken within a reasonable time after such casualty, the Association, at its common expense, shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good orderly condition and even grade.

(b) Partial Restoration. Restoration of the Project with less than all of the apartments after casualty or condemnation may be undertaken by the Association only pursuant to an amendment to this Declaration, duly adopted by the affirmative vote of not less than eighty percent (80%) of the apartment owners, including at least eighty percent (80%) of the owners of apartments that will not be restored, and by all holders of mortgages encumbering the apartments that will not be restored, by (a) removing the Project from the condominium property regime established by this Declaration, (b) reconstituting all of the remaining apartments and common elements to be restored as a new condominium property regime, and (c) providing for payment to the owner of each apartment not to be restored and such owner's mortgagee, if any, as their interests may appear, the then fair market value of such apartment, less such apartment's proportionate share of the cost of debris removal. If the board of directors and the owner of a removed apartment are unable to agree upon such fair market value within one hundred eighty (180) days after such damage or destruction has occurred, then such fair market value shall be determined by any judge of the State of Hawaii Second Circuit Court.

15. CONDEMNATION.

15.1 Condemnation Trustee. In case at any time or times the Project or any part thereof shall be taken or condemned by any authority having the power of eminent domain, or shall be sold to such authority under threat of condemnation, all compensation and damages for or on account of any common elements of the Project shall be payable to such bank or trust company (the "Condemnation

Trustee") authorized to do business in Hawaii as the board shall designate as trustee for all apartment owners and mortgagees according to the loss or damage to their respective apartments and appurtenant common interests.

15.2 Allocation of Condemnation Proceeds. In the event all or any of the apartments are taken and there is no final judicial determination of the amount of condemnation proceeds allocable to each apartment so taken, the amount of the condemnation proceeds allocable to each apartment (including the apartment's appurtenant interest in the common elements) shall be determined by a real estate appraiser ("appraiser") who shall be a member of the American Institute of Real Estate Appraisers, or any successor organization and who shall have acted on behalf of the apartment owners in the condemnation proceedings; or, if no such appraiser shall have acted on behalf of the apartment owners or if more than one appraiser shall have acted on behalf of the apartment owners, then an appraiser with such qualifications shall be selected by the board to determine the amount of condemnation proceeds allocable to each apartment.

15.3 Condemnation of Entire Project. If the entire Project is taken, the Condemnation Trustee shall pay each apartment owner and mortgagee, as their interests may appear, the portion of the condemnation proceeds determined in the above manner.

15.4 Partial Taking.

(a) In the event of a partial taking of the Project in which (i) any apartment is physically eliminated, or (ii) a portion thereof is eliminated and the remaining portion cannot be repaired or rebuilt in a manner satisfactory to the owner of the apartment, then such apartment shall be removed from the Project and the Condemnation Trustee shall disburse to the owner and any mortgagee of such apartment, as their interests may appear, in full satisfaction of their interests in the apartment, the portion of the proceeds of such award allocable to such eliminated or removed apartment after deducting the proportionate share of such apartment in the cost of debris removal, and the apartment owners shall amend this Declaration to reflect the removal of said apartment(s) and the appropriate adjustment in the ownership of the common elements.

(b) In the event of any partial taking of any of the common elements of the Project, the board shall arrange for any necessary repairs and restoration of the improvements remaining after the taking in accordance with the design thereof immediately prior to such condemnation or, if repair and restoration in accordance with such design are not permissible under applicable laws and regulations then in force, in accordance with such modified plan as shall be first

approved by the board, and the mortgagee of record of each apartment in the Project remaining after such taking. If the sums held by the Condemnation Trustee are insufficient to pay the cost for such repair and restoration, the board shall pay such excess as a common expense, and if necessary shall levy a special assessment against the apartment owners.

(c) If the sums received as a result of a partial condemnation exceed the total of any amounts payable to the owner and mortgagee of a removed apartment and the amount of costs for debris removal and for repair and restoration of the remaining buildings and improvements, such excess shall be divided among the apartment owners including the owners of any eliminated apartments in accordance with their interest in the common elements prior to the condemnation.

(d) Unless restoration or replacement is undertaken within a reasonable time after such taking, condemnation or sale, the Association at its common expense shall remove all remains of such improvements on the remaining Land and restore the site thereof to good orderly condition and even grade.

16. COMPLIANCE WITH CONDOMINIUM DOCUMENTS.

16.1 Compliance. All apartment owners, their tenants, families, employees and guests, and any other persons who may in any manner use the apartments, common elements or limited common elements, shall be bound by and comply strictly with the provisions of the condominium documents and all agreements and determinations of the Association as lawfully made or amended from time to time. Each owner will include in the terms of each lease of said owner's apartment a requirement that tenant shall comply with all covenants and conditions contained in this Declaration, the Bylaws, the rules and regulations or any other applicable condominium documents. 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 of directors on behalf of the Association or, in a proper case, by any aggrieved apartment owner.

In addition to enforcement against the owner(s), the Association or any aggrieved owner may bring any such action directly against any tenant or occupant of any apartment. In any action by the Association for collection of unpaid common expense assessments, the Association shall have the right to collect such sums directly from any tenant (or owner's rental agent) of the delinquent apartment by requiring by written notice that said tenant (or said agent) pay the rent directly to the Association.

Also, the board of directors shall have the right to terminate some or all utility services to an apartment upon not less than sixty (60) days prior written notice if the board deems it necessary or appropriate for the purpose of enforcing collection of common expenses or compliance with the condominium documents.

16.2 Costs. All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for: (i) collecting any delinquent assessments against any owner's apartment, (ii) foreclosing any lien thereon, and (iii) enforcing any provision of this Declaration, the Bylaws, the rules and regulations or any other condominium documents or the Act against a apartment owner or any tenant or occupant of any apartment, shall be promptly paid on demand to the Association by the apartment owner; provided, that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by the apartment owner as a result of the action of the Association, shall be promptly paid on demand to the apartment owner by the Association.

17. AMENDMENTS OF THE DECLARATION.

17.1 Amendments Generally. Except as otherwise expressly provided herein or in the Act, this Declaration may be amended only by the affirmative vote or written consent of the owners of apartments in the Project to which are appurtenant seventy-five percent (75%) of the common interests, evidenced by an instrument in writing, signed and acknowledged by any two (2) officers of the Association, which amendment shall be effective upon recording; provided, however, that notwithstanding the foregoing provision, at any time prior to the first recording of a conveyance or transfer (other than for security) of an apartment and its appurtenances to a party not a signatory hereof, the Declarant may amend this Declaration (including all exhibits), the Bylaws and the Condominium Map in any manner, without the consent or joinder of any apartment purchaser or any other party. Notwithstanding the lease, sale or conveyance of any of the apartments, the Developer may amend this Declaration (and when applicable, any exhibits to this Declaration) and the Condominium Map to file the "as-built" verified statement required by Section 514A-12 of the Act (i) so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans thereof filed fully and accurately depict the layout, location, apartment numbers, and the dimensions of the apartments as built, or (ii) so long as the plans filed therewith involve only minor changes to the layout, location, or dimensions of the apartments as built or any change in the apartment number.

Notwithstanding anything herein to the contrary, none of the following provisions of this Declaration shall be amended without the Declarant's written

joinder and consent, which may be withheld in Declarant's sole and unreviewable discretion:

- (a) This Section 17.1 and Section 17.2; or
- (b) The easements and rights reserved under Section 6(a) through (i) inclusive.

Also, any such rights or easements set forth in this Declaration in favor of Declarant or others shall be deemed to be vested and irrevocable, notwithstanding any amendment to this Declaration which shall purport to alter, amend or revoke such rights or easements.

17.2 Amendments Required By Law, Lenders, Title Insurers, Etc. For so long as the Developer owns any apartment, the Declarant shall have the further right (but not the obligation) to amend this Declaration and the Bylaws (and the Condominium Map, if appropriate) without the consent or joinder of any apartment owner, lienholder or other person or entity, for the purpose of meeting any requirement imposed by (i) any applicable law; (ii) the Real Estate Commission of the State of Hawaii; (iii) any title insurance company issuing a title insurance policy on the Project or any of the apartments; (iv) any institutional lender lending funds on the security of the Project or any of the apartments; (v) any other governmental or quasi-governmental agency including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development or the Veterans Administration; or (vi) any unforeseen condition necessitating reasonable adjustment to any apartments or common elements or the terms and conditions of this Declaration to correct any errors or misstatements, resolve unforeseen problems or implement the general purpose and intent of the Project; provided, however, that no amendment which would change the common interest appurtenant to a apartment or substantially change the design, location or size of a apartment or its apartment building, shall be made without the consent of all persons having an interest in such apartment.

17.3 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.

18. 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 Developer as set forth in this Declaration; including, but not limited to those rights as set forth in Sections 6(f) through (i), and Article 17, and to the recording of any and all documents necessary to effect the same in the Bureau of Conveyances; agrees 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 Developer and its assigns his 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 law, and to receive service of process (legal papers) as to legal proceedings in the Bureau of Conveyances of the State of Hawaii, 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 Developer hereunder, Developer 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 Developer to exercise its rights pursuant to the provisions 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 law, and to receive service of process in connection with any other legal proceedings.

19. CAPTIONS.

The head notes or captions of each paragraph are for convenience only and shall not be constructed as enlarging, restricting, modifying or otherwise affecting the meaning or context thereof.

20. CONFLICT BETWEEN DECLARATION AND THE ACT.

In the event of a conflict or inconsistency between the provisions of this Declaration and the Act as a result of a change in the Act or otherwise, the provisions of the Act shall prevail.

21. SPECIAL RESPONSIBILITIES OF ASSOCIATION WITH RESPECT TO DECLARANT'S COMPLETION OF THE COMMON ELEMENTS.

In the event that the improvements to the common elements to be installed by the Declarant have not been completed prior to the first sale and transfer of interest of a apartment, and in the further event that the Association is the obligee under a bond to secure the Declarant's completion of such improvements, then if such improvements have not been completed within 120 days after the completion date specified in the "Planned Construction Statement" appended to the bond, the board shall decide whether or not to bring action to enforce the obligations secured by the bond. If the Association has given an extension in writing for the completion of any such improvements, then the board shall decide whether or not to enforce the obligations secured by the bond if such improvements have not been completed within thirty (30) days after the expiration of the extension period. In the event that the board determines not to take action to enforce the obligations secured by the bond, or fails to determine whether or not to take action, then, in either such event, upon petition signed by apartment owners representing not less than five percent (5%) of the total voting power of the Association, the board shall call a special meeting of the Association, at which meeting the Association shall vote (a) to confirm the board's decision not to take action, or (b) to override the board's decision not to take action, or (c) to decide the matter in the event that the board has reached no decision. Said special meeting of the Association shall be held not less than thirty-five (35) days nor more than forty-five (45) days following the board's receipt of the petition. At such special meeting a vote of a majority of the voting power of the apartment owners (excluding the vote of the Developer) shall be deemed to constitute the decision of the Association. In the event that the Association votes either to override the board's decision or to enforce the obligations secured by the Bond in the event the board has reached no decision, the board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

22. ALLEGED DEFECTS; RIGHT OF DEVELOPER TO CURE.

It is Developer's intent that all buildings and other improvements constructed or renovated in the Project be built or made in compliance with all applicable building codes and ordinances and that such improvements be of a quality that is

consistent with good construction and development practices for similar projects. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether an alleged defect exists and Developer's responsibility therefor. It is Developer's intent to resolve all disputes and claims regarding "Alleged Defects" (as defined below) amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association, board and all owners shall be bound by the following claim resolution procedure:

(a) In the event that the Association, board or any owner or owners (collectively "Claimant") claim, contend or allege that any portion of the common elements or any improvements constructed on the Land are defective or that Developer, its agents, consultants, contractors or subcontractors (collectively "Agents") were negligent or are otherwise liable for defects in the planning, design, engineering, grading, construction, installation, management or other development thereof (collectively an "Alleged Defect"), Developer hereby reserves the right and easement for itself, on behalf of its general contractor, and for any successor or assign to inspect, evaluate, repair and/or replace such Alleged Defect as set forth herein.

(b) In the event that a Claimant discovers any Alleged Defect, Claimant shall, within fifteen (15) days of discovery of the Alleged Defect, deliver a written notice (the "Notice of Alleged Defect") to Developer which shall include all of the following:

(i) A preliminary list of Alleged Defects citing in reasonable detail the characteristics, nature, extent and possible causes of the Alleged Defects (a "Preliminary List of Alleged Defects");

(ii) A summary of the results of a survey or questionnaire distributed to the owners to determine the nature and extent of the Alleged Defects, if such a survey has been conducted or questionnaire has been distributed; and

(iii) Either a summary of the results of testing conducted to determine the nature and extent of the Alleged Defects or the actual test results, if such testing has been conducted.

(c) The Notice of Alleged Defect shall, upon deliver to Developer, commence a period of time not to exceed ninety (90) days, unless the Claimant and Developer agree to a longer period, during which the Claimant and Developer shall either, in accordance with the requirements of this article, attempt to settle

the dispute or attempt to agree to submit it to alternative dispute resolution in accordance with the provisions of Article 23 of this Declaration.

(d) Except as provided in this section, the Notice of Alleged Defect shall, upon mailing, toll all statutory and contractual limitations on actions against Developer (if and to the extent that Developer may be responsible for the defects claimed), whether named in the notice or not, including claims for indemnity applicable to the claim, for a period of one hundred and fifty (150) days or a longer period agreed to in writing by Claimant and Developer; provided, however, at any time, Developer may give written notice (the "Cancellation Notice") to cancel the tolling of the statute of limitations provided in this subsection. Upon delivery of a Cancellation Notice, the Claimant and Developer shall be relieved of any further obligation to satisfy the requirements of this section except that Claimant shall not be relieved of the obligations under subsection (l) below, and if the Association is a Claimant, then the Association shall not be relieved of the obligations under subsection (k)(ii), below. The tolling of all applicable statutes of limitations shall cease thirty (30) days after a Cancellation Notice is delivered to the Claimant.

(e) Within twenty-five (25) days of the date the Claimant delivers the Notice of Alleged Defect to Developer, Developer may request in writing (the "Request to Meet and Confer") to meet and confer with the Claimant, if Claimant is an owner, or with the board, if Claimant is the Association, and to inspect the Project and conduct testing, including testing which may cause physical damage to any property within the Project, in order to evaluate the claim. If Developer does not make a timely Request to Meet and Confer, the Claimant and Developer shall be relieved of any further obligation to satisfy the requirements of this section; provided, however, that Claimant shall not be relieved of the obligations under subsection (l) below, and if the Association is a Claimant, the Association shall remain obligated to satisfy the requirements of subsection (k)(ii) below. Unless Developer and the Claimant otherwise agree, the meeting (the "Initial Meeting") shall take place no later than ten (10) days from the date of the Request to Meet and Confer at a mutually agreeable time and place. If the Association is a Claimant, the Association shall provide to all owners, notice of the time and place of the Initial Meeting pursuant to the provisions of the Bylaws dealing with meetings of the board. The discussions at the Initial Meeting shall be privileged communications and shall not be admissible in evidence in any civil action unless Developer and the Claimant consent to their admission. The Initial Meeting shall be for the purpose of discussing all of the following:

- (i) The nature and extent of the Alleged Defects;
- (ii) Proposed methods of correction, to the extent there is

sufficient information;

(iii) Proposals for submitting the dispute to alternative dispute resolution; and

(iv) Requests from Developer to inspect the Project and conduct testing.

(f) If Claimant has conducted inspection and testing prior to the date it sent the Notice of Alleged Defect to Developer, the Claimant shall, at the earliest practicable date after the Initial Meeting and no later than five (5) days after the Initial Meeting, make available to Developer, the general contractor or others for inspection and testing at least those areas inspected or tested by the Claimant. Developer shall further have the right, upon reasonable notice to Claimant and the owners of apartments upon which Developer intends to enter, during normal business hours to enter onto or into, as applicable, the Project, including, without limitation, any apartment or other improvement constructed within the Project, for the purpose of inspection and testing (including testing that may cause physical damage to any property in the Project) in order to evaluate the Alleged Defect, and each owner and the Association shall make such areas available to Developer for inspection and testing. The inspection and testing shall be completed within fifteen (15) days from the date the Claimant makes such areas available for inspection and testing, unless the Claimant and Developer agree to a longer period or unless inspection and testing cannot reasonably be completed within such time. If Developer does not timely complete the inspection and testing, Claimant shall be relieved of any further obligation to satisfy the requirements of this section; provided, however, that Claimant shall not be relieved of the obligations under subsection (l) below, and if the Association is a Claimant, the Association shall remain obligated to satisfy the requirements of subsection (k)(ii) below. In conducting such inspection and testing, Developer shall be entitled to take any actions it deems reasonable and necessary under the circumstances.

(g) Developer shall pay all costs of inspection and testing that it is requested by Developer, shall restore the property to the condition, within a reasonable and appropriate time period, which existed immediately prior to the testing, and shall indemnify the Association and each owner of an apartment upon which Developer enters for the purposes of inspection and testing for any damages resulting from such inspection and testing.

(h) The results of the inspection and testing shall not be inadmissible in evidence in any civil action solely because the inspection and testing was conducted pursuant to this section.

(i) Within thirty (30) days of the completion of inspection and testing or within thirty (30) days of the Initial Meeting, if no inspection and testing is conducted pursuant to this section, Developer shall submit to the Claimant the following:

(i) A request to meet with the Claimant if Claimant is an owner, or with the board if the Claimant is the Association, to discuss a written settlement offer;

(ii) A written settlement offer and a concise explanation of the specific reasons for the terms of the offer. This offer may include an offer to submit the dispute to alternative dispute resolution (the "Settlement Offer");

(iii) A statement that Developer has access to sufficient funds to satisfy the conditions of the Settlement Offer; and

(iv) A summary of the results of the testing conducted by Developer for the purpose of determining the nature and extent of the Alleged Defects if this testing has been conducted unless the Claimant provided Developer with actual test results pursuant to subsection (f) above, in which case Developer shall provide the Claimant with actual test results.

If Developer does not timely submit the items required by this subsection (l), the Claimant shall be relieved of any obligations to meet and confer with Developer about the Settlement Offer; otherwise, Claimant or the board, as the case may be, shall meet and confer with Developer about the Settlement Offer no less than ten (10) days after Developer submits the items described in subsections (l)(i) through (l)(iv) above.

(j) At any time after the Notice of Alleged Defect is delivered to Developer, the Claimant and Developer may agree in writing to modify or excuse any of the time periods or other obligations imposed by this section. Except for the notice required pursuant to subsection (k) below, all notices, requests, statements or other communications required pursuant to this section shall be delivered by first-class registered or certified mail, return receipt requested.

(k) If Claimant is the Association, then the Association shall comply with either subsection (k)(i) or (k)(ii) below. The failure of the Association to comply with this subsection (k) shall be a procedural deficiency to an action for damages by the Association against Developer.

(i) If the board rejects the Settlement Offer, then the board

shall hold a meeting (the "Owner Meeting") open to every owner no less than fifteen (15) days before the Association commences an action for damages against Developer. No less than fifteen (15) days before the Owner Meeting is held, a written notice shall be sent to each owner specifying all of the following:

(1) That a meeting will take place to discuss alleged issues that may lead to the filing of a civil action, and the time and place of this meeting;

(2) The options that are available to address the alleged issues including the commencement of an action in accordance with Article 22 of this Declaration, and a statement of the various alternatives that are reasonably foreseeable by the Association to pay for those options and whether these payments are expected to be made from the use of general operating reserve account funds or the imposition of regular assessments or special assessments or emergency assessment increases;

(3) The complete text of any Settlement Offer and a concise explanation of the specific reasons for the terms of the Settlement Offer received from Developer and of any offer by Developer to submit the dispute to alternative dispute resolution in accordance with Article 23 of this Declaration;

(4) The preliminary list of defects provided by the Association to the Developer pursuant to this section, and information about where and when owners may inspect those documents;

(5) A description of the attempts of Developer to correct such Alleged Defect and the opportunities provided to Developer to correct such Alleged Defect;

(6) The estimated cost to repair such Alleged Defect;

(7) The name and professional background of the attorney retained by the Association to pursue the claim against Developer and a description of the relationship (if any) between such attorney and any members of the board;

(8) A description of the fee arrangement between such attorney and the Association;

(9) The estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Developer and the source of the funds

which will be used to pay such fees and expenses; and

(10) The estimated time necessary to conclude the action against Developer.

Developer shall pay all expenses attributable to sending the Settlement Offer and any offer for alternative dispute resolution to all owners. Developer shall also pay the expense of holding the Owner Meeting, not to exceed TEN DOLLARS (\$10.00) per owner other than Developer.

The discussions at the Owner Meeting and the contents of the notice of Owner Meeting and the items required to be specified in such notice are privileged communications and are not admissible in evidence in any civil action, unless the Association consents to their admission.

(ii) If the Association is relieved of its obligation to satisfy the requirements of this section other than this subsection (k)(ii) and subsection (l) below, then the Association may commence an action for damages against Developer only if the Association sends a written notice to each owner at least thirty (30) days prior to commencing such action, which notice shall include all of the following:

(1) The preliminary list of defects provided by the Association to Developer and a list of any other documents provided by the Association to Developer pursuant to this section, and information about where and when owners may inspect those documents;

(2) The options, including civil actions, that are available to address the alleged issues;

(3) A statement informing the owners of the procedure required by the Project documents for the owners to call a special meeting of the owners and that if the owners meet such procedure, a special meeting of the owners shall be called;

(4) A description of the attempts of Developer to correct such Alleged Defect and the opportunities provided to Developer to correct such Alleged Defect;

(5) The estimated cost to repair such Alleged Defect;

(6) The name and professional background of the

attorney retained by the Association to pursue the claim against Developer and a description of the relationship (if any) between such attorney and any members of the board;

(7) A description of the fee arrangement between such attorney and the Association;

(8) The estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Developer and the sources of the funds which will be used to pay such fees and expenses; and

(9) The estimated time necessary to conclude the action against Developer.

(l) Any judgment or award in connection with any legal action, cause of action, proceeding, reference or arbitration against Developer alleging damages (i) for the costs of repairing or replacement of any Alleged Defect, (ii) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (iii) for any consequential damages resulting from such Alleged Defect, shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. In the event the Association recovers any funds from Developer (or any other person or entity) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's general operating reserve fund unless at least seventy-five percent (75%) of the voting power of the Association elects to allocate or distribute the remaining funds otherwise.

(m) As soon as is reasonably practicable after the Association and the Developer have entered into a settlement agreement or the matter has otherwise been resolved regarding alleged defects in the common elements, where the defects giving rise to the dispute have not been corrected, the Association shall, in writing, inform only the owners whose names appear on the records of the Association that the matter has been resolved, by settlement agreement or other means, and disclose all of the following:

(i) A general description of the defects that the Association reasonably believes, as of the date of the disclosure, will be corrected or replaced;

(ii) A good faith estimate, as of the date of the disclosure, of when the Association believes that the defects identified in subsection (m)(i) above, will be corrected or replaced. The Association may state that the estimate

may be modified;

(iii) The status of the claims for defects in the design or construction of the Project that were not identified in subsection (m)(i) above, whether expressed in a preliminary list of alleged defects sent to each owner or otherwise claimed and disclosed to the owners. The Association may amend the disclosures required pursuant to this subsection (m) and any amendments shall supersede any prior conflicting information disclosed to the owners.

(n) Nothing set forth in this section shall be construed to impose any obligation on Developer to inspect, repair or replace any item or Alleged Defect for which Developer is not otherwise obligated to do under any contract, the condominium documents or applicable law. The right of Developer to enter, inspect, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by Developer in the State of Hawaii Bureau of Conveyances.

23. ALTERNATIVE DISPUTE RESOLUTION.

In the event of the occurrence of any controversy or claim arising out of, or related to, this Declaration or to any alleged construction or design defects pertaining to the common elements or to buildings or other improvements in the Project ("dispute"), if the dispute cannot be resolved by negotiation, the parties to the dispute agree to submit the dispute to mediation by a mediator mutually selected by the parties. If the parties are unable to agree upon a mediator, then the mediator shall be appointed by Dispute Prevention & Resolution, Inc. In any event, the mediation shall take place within thirty (30) days of the date that a party gives the other party written notice of its desire to mediate the dispute. If the dispute is not resolved through mediation, the dispute shall be resolved through arbitration pursuant to this article and the then-current rules and supervision of Dispute Prevention & Resolution, Inc. The duties to mediate and arbitrate hereunder shall extend to any officer, employee, shareholder, principal, partner, agent, trustee-in-bankruptcy, affiliate, subsidiary, third-party beneficiary, or guarantor of all parties making or defending any claim which would otherwise be subject to this article.

The arbitration shall be held in the State of Hawaii before a single arbitrator who is knowledgeable in the subject matter at issue. The arbitrator's decision and award shall be final and binding and may be entered in any court having jurisdiction thereof. The arbitrator shall not have the power to award punitive, exemplary or consequential damages, or any damages excluded by, or in excess of, any damage limitations expressed in this Declaration or any other agreement between the

parties. In order to prevent irreparable harm, the arbitrator may grant temporary or permanent injunctive or other equitable relief for the protection of property rights.

Issues of arbitrability shall be determined in accordance with the federal substantive and procedural laws relating to arbitration; all other aspects of the dispute shall be interpreted in accordance with, and the arbitrator shall apply and be bound to follow, the substantive laws of the State of Hawaii. Each party shall bear its own attorneys' fees associated with negotiation, mediation and arbitration and other costs and expenses shall be borne as provided by the rules of the American Arbitration Association.

If court proceedings to stay litigation or compel arbitration are necessary, the party who unsuccessfully opposed such proceedings shall pay all associated costs, and attorneys' fees which are reasonably incurred by the other party.

The arbitrator may order the parties to exchange copies of non-rebuttable exhibits and copies of witness lists in advance of the arbitration hearing. However, the arbitrator shall have no other power to order discovery or depositions unless and then only to the extent that all parties otherwise agree in writing.

Neither a party, witness or the arbitrator may disclose the facts of the underlying dispute or the contents or results of any negotiation, mediation or arbitration hereunder without prior written consent of all parties, unless and then only to the extent required to enforce or challenge the negotiated agreement or the arbitration award, as required by law, or as necessary for financial and tax reports and audits.

No party may bring a claim or action, regardless of form, arising out of or related to this Declaration or to any construction or design defects claims pertaining to the common elements or to the buildings or other improvements of the Project, including any claim of fraud, misrepresentation, or fraudulent inducement, more than one year after the cause of action accrues, unless the injured party cannot reasonably discover the basic facts supporting the claim within one year.

Notwithstanding anything to the contrary in this article, in the event of alleged violation of a party's property or equitable rights, including, but not limited to, unauthorized disclosure of confidential information, that party may seek temporary injunctive relief from any court of competent jurisdiction pending appointment of an arbitrator. The party requesting such relief shall simultaneously file a demand for mediation and arbitration of the dispute, and shall request Dispute Prevention & Resolution, Inc. to proceed under its rules for expedited procedures,.

In no event shall any such court-ordered temporary injunctive relief continue for more than thirty (30) days.

If any part of this article is held to be unenforceable, it shall be severed and shall not affect either the duties to mediate and arbitrate hereunder or any other part of this article.

24. SEVERABILITY.

If any term stated in this instrument is subsequently determined to be invalid, illegal or unenforceable, that determination shall not affect the validity, legality or enforceability of the remaining terms stated in this instrument unless that is made impossible by the absence of the omitted term.

25. INTERPRETATION.

The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform condominium property regime whereby the owners of apartments shall carry out and pay for the operation and maintenance of the Project as a mutually beneficial and efficient establishment.

26. INVALIDITY 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.

In the event of a change in statutory law applicable to this Project occurring after the filing of the Declaration or 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 provides that the provisions of such change in law shall control over provisions to the contrary in preexisting condominium documents.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the 28th day of Sept., 2004.

WS KAI MAKANI, INC.

By: *Richard Marcus*
Richard Marcus
Its: President

"Declarant"

- Exhibit "A" Description of Land
- Exhibit "B" Description of Buildings, Apartments, Floor Areas and Common Interest Percentages

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 28th day of September, 2004, before me personally appeared Richard Marcus, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Kristin E.S. Neoka
Notary Public, State of Hawaii
Printed Name: Kristin E.S. Neoka
My Commission Expires: May 1, 2005

la

of 7,619.44 feet the chord
azimuth and distance being
165° 25' 18" 167.56 feet
to the point of beginning,
containing an area of 2.79
acres, more or less.

PARCEL SECOND:

All of that certain parcel of land (being all of the land[s] described in and covered by Land Patent Grant Number 11,293 issued to Clarence R. Baldwin) situate, lying and being at Waiakoa, District of Kula, Island and County of Maui, State of Hawaii, being LOT 17 of the "WAIAKOA HOUSE LOTS" and thus bounded and described:

Beginning at a pipe at the Southwest corner of this lot, the Northwest corner of Lot 18, Waiakoa House Lots, and on the East side of Kihei-Makena Road (40 feet wide), the coordinates of said point of beginning referred to a + on rock (Kalaepohaku) at seashore and on the boundary between the lands of Pulehunui and Waiakoa being 2,558.99 feet South and 708.54 feet East, and the coordinates of said + on rock (Kalaepohaku) referred to Government Survey Triangulation Station "PUU-O-KALI" being 17,875.5 feet North and 25,735.0 feet West, as shown on Government Survey Registered Map 3028, and running by azimuths measured clockwise from true South:

1. Along the East side of Kihei-Makena Road on a curve to the right having a radius of 7,619.44 feet, the chord azimuth and distance being 167° 16' 04" 323.42 feet;
2. 260° 34' 417.14 feet along Lot 16, Waiakoa House Lots, to a pipe;
3. 380° 25' 171.00 feet along Lot 3, Waiakoa Homesteads, Makai Section, (Grant 7209 to John Kupahau) to a pipe;
4. 350° 32' 152.00 feet along same to a pipe;
5. 80° 34' 393.44 feet along Lot 18, Waiakoa House Lots, to the point of beginning;

containing an area of 3.00 acres,
more or less.

PARCEL THIRD:

All of that certain parcel of land (being portion[s] of the land[s] described in and covered by Land Patent Grant Number 7209 to John Kupahau) situate, lying and being at Waiakoa Makai Homestead at Kula, District of Kihei, Island and County of Maui, State of Hawaii, and thus bounded and described:

Beginning at a pipe on the Northeast corner of this lot, East corner of land owned by Zenkichi Shiroma and wife, Karen, on the West side of Government Road, the coordinates of which point referred to Triangulation Station "KALAEPOHAKU" are 2,480.81 feet South and 1,555.24 feet East and running by azimuths measured clockwise from true South:

1. 335° 19' 30.70 feet along the West side of Government Road to a pipe;
2. 80° 34' 175.00 feet along remainder of Grant 7209 to a pipe;
3. 6° 54' 182.00 feet along same to a pipe;
4. 64° 28' 245.51 feet along same to a pipe;
5. 171° 32' 12.00 feet along Lot 17 of Waiakoa House Lots to a pipe;
6. 171° 25' 171.00 feet along same to a pipe;
7. 167° 36' 89.54 feet along Lot 16 of Waiakoa House Lots to an iron pin;
8. 260° 34' 455.90 feet along land owned by Zenkichi Shiroma and wife, Karen, to the point of beginning, containing an area of 1.546 acres, more or less.

NOTE: Attention is invited to the discrepancy between the area contained in the metes and bounds description of the land described in Parcel 3 above, and the area of 1.538 acres as shown on the Tax Maps.

TOGETHER WITH a perpetual, nonexclusive easement for sight distance purposes, as granted by, Sight Distance Easement, dated January 23, 1996, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 96-020098; being more particularly described as follows:

All of that certain parcel of land (being portion[s] of the land[s] described in and covered by Land Patent Grant Number 7209 to John Kupahau) situate, lying and being at Waiakoa Makai Homesteads at Kula, District of Kihei, Island and County of Maui, State of Hawaii, being a portion of Lot 16 of Wai Wai Paa Subdivision, and thus bounded and described prepared by Harold Zane, Licensed Professional Land Surveyor with Austin, Tsutsumi & Associates, Inc.:

Beginning at the Southeast corner of this parcel of land, on the Southwest side of Kenolio Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 2,012.52 feet South and 1,477.19 feet East and running by azimuths measured clockwise from true South:

1. 80° 34' 00" 3.00 feet along the remainder of Land Patent Grant 7209 to John Kupahau;
2. 159° 32' 30" 39.29 feet along the remainder of Land Patent Grant 7209 to John Kupahau, along the remainder of Lot 16 of Wai Wai Paa Subdivision;
3. 335° 19' 00" 39.97 feet along the Southwest side of Kenolio Road to the point of beginning and containing an area of 58 square feet, more or less.

PARCEL FOURTH:

LOT 2
KAI MAKANI SUBDIVISION

All of that certain parcel of land, being Lot 2 of the Kai Makani Subdivision (the map thereof not being recorded), being a portion of Grant 7209 to John Kupahau, situated at

Waiakoa, Kihei (Kula), Island and County of Maui, State of Hawaii, and being more particularly described as follows:

Beginning at a 3/4-inch pipe with yellow plastic cap stamped "RLS 2715, RLS 5983" at the East corner of this parcel of land, on the Southwesterly boundary of the Kenolio Road right-of-way, said point also being the Northeasterly corner of Lot 1 of said Kai Makani Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

18,374.06 feet North
24,942.43 feet West

and running by azimuths measured clockwise from true South:

Thence along said Lot 1 of the Kai Makani Subdivision, along the remainder of Grant 7209 to John Kupahau on the arc of a curve to the left, concave Southeasterly with a radius of 12.00 feet, the chord azimuth and distance being:

1. 117° 56' 30" 14.57 feet to a 3/4-inch pipe with yellow plastic cap stamped "RLS 2715, RLS 5983";
2. 80° 34' 00" 148.65 feet along said Lot 1 of the Kai Makani Subdivision, along the remainder of said Grant 7209 to John Kupahau to a 3/4-inch pipe with yellow plastic cap stamped "RLS 2715, RLS 5983";
3. 6° 54' 00" 157.79 feet along said Lot 1 of the Kai Makani Subdivision, along the remainder of said Grant 7209 to John Kupahau to a 3/4-inch pipe with yellow plastic cap stamped "RLS 2715, RLS 5983";
4. 238° 10' 00" 85.66 feet along said Lot 1 of the Kai Makani Subdivision, along the remainder of said Grant 7209 to John Kupahau to a 3/4-inch pipe with yellow plastic cap stamped "RLS

2715, RLS 5983" at the West corner of Lot R of the Waiakoa Makai Homesteads;

5. 335° 19' 00" 300.00 feet along Lots R, S, T and U of the Waiakoa Makai Homesteads, along the remainder of said Grant 7209 to John Kupahau to a 3/4-inch pipe with yellow plastic cap stamped "RLS 2715, RLS 5983" on the Northwesternly boundary of Grant 7108;
6. 67° 21' 00" 414.66 feet along Lots 1-1-A and 1-4-A, along said Grant 7108 to a 3/4-inch pipe with yellow plastic cap stamped "RLS 2715, RLS 5983" on the Easterly boundary of Lot 18 of the Waiakoa House Lots, also being the Easterly boundary of Grant 11,492 to Harold M. Baldwin;
7. 162° 00' 00" 133.80 feet along said Lot 18 of the Waiakoa House Lots, along said Grant 11,492 to Harold M. Baldwin to a 3/4-inch pipe with yellow plastic cap stamped "RLS 2715, RLS 5983" at the Southeast corner of Lot 17 of said Waiakoa House Lots, also being the Southeast corner of Grant 11,293 to Clarence Baldwin;
8. 171° 32' 00" 140.00 feet along said Lot 17 of the Waiakoa House Lots, along said Grant 11,293 to Clarence Baldwin to a found 1/2-inch pipe at the South corner of Parcel 26 of Tax Map Key: (2) 3-9-041;

9. 244° 28' 00" 245.51 feet along said Parcel 26 of Tax Map Key: (2) 3-9-041, along the remainder of said Grant 7209 to John Kupahau to a found 1/2-inch pipe;
10. 186° 54' 00" 182.00 feet along said Parcel 26 of Tax Map Key: (2) 3-9-041, along the remainder of said Grant 7209 to John Kupahau to a 3/4-inch pipe with yellow plastic cap stamped "RLS 2715, RLS 5983";
11. 260° 34' 00" 175.00 feet along said Parcel 26 of Tax Map Key: (2) 3-9-41, along the remainder of said Grant 7209 to John Kupahau a 3/4-inch pipe with yellow plastic cap stamped "RLS 2715, RLS 5983" on said Southwesterly boundary of the Kenolio Road right-of-way;
12. 335° 19' 00" 21.60 feet along said Southwesterly boundary of the Kenolio Road right-of-way to the point of beginning and containing an area of 2.655 Acres, more or less.

Being all of the property described in the Deed of Aneaha Makani, LLC to Cathy Associates, LLC and Mary Associates, LLC, recorded in the said Bureau of Conveyances as Document No. 2004-176308.

END OF EXHIBIT A

Tax Key: (2) 3-9-41: 2, 3, 26 and 38

EXHIBIT "B"

APARTMENT NUMBERS AND TYPES; NUMBERS OF BEDROOMS AND BATHROOMS; APPROXIMATE NET LIVING AREA OF APARTMENTS; APPROXIMATE NET SQUARE FOOTAGE OF LANAIS; AND PERCENTAGE OF COMMON INTEREST; LOCATION, LAYOUT AND OTHER APARTMENT INFORMATION

KAI MAKANI CONDOMINIUM PROJECT					
CHART 1					
Apartment Number	Apartment Type	Number of Bedrooms / Baths	Net Living Area	Net Square Footage of Lanai	Percentage of Common Interest
A101	D	2 / 2	1126	184	0.94%
A102	C	2 / 2	1075	232	0.94%
A103	D	2 / 2	1126	184	0.94%
A201	D	2 / 2	1126	184	0.94%
A202	C	2 / 2	1075	232	0.94%
A203	D	2 / 2	1126	184	0.94%
B101	E	3 / 2	1238	139	0.99%
B102	E	3 / 2	1238	139	0.99%
B201	E	3 / 2	1238	139	0.99%
B202	E	3 / 2	1238	139	0.99%
C101	D	2 / 2	1126	184	0.94%
C102	C	2 / 2	1075	232	0.94%
C103	D	2 / 2	1126	184	0.94%
C201	D	2 / 2	1126	184	0.94%
C202	C	2 / 2	1075	232	0.94%
C203	D	2 / 2	1126	184	0.94%
D101	E	3 / 2	1238	139	0.99%
D102	E	3 / 2	1238	139	0.99%
D201	E	3 / 2	1238	139	0.99%
D203	E	3 / 2	1238	139	0.99%
E101	B	2 / 2	823	158	0.70%
E102	A	2 / 2	811	177	0.70%
E103	B	2 / 2	823	158	0.70%
E201	B	2 / 2	823	158	0.70%
E202	A	2 / 2	811	177	0.70%
E203	B	2 / 2	823	158	0.70%
F101	E	3 / 2	1238	139	0.99%
F102	E	3 / 2	1238	139	0.99%
F201	E	3 / 2	1238	139	0.99%
F203	E	3 / 2	1238	139	0.99%

EXHIBIT "B"

APARTMENT NUMBERS AND TYPES; NUMBERS OF BEDROOMS AND BATHROOMS; APPROXIMATE NET LIVING AREA OF APARTMENTS; APPROXIMATE NET SQUARE FOOTAGE OF LANAIS; AND PERCENTAGE OF COMMON INTEREST; LOCATION, LAYOUT AND OTHER APARTMENT INFORMATION

KAI MAKANI CONDOMINIUM PROJECT					
CHART 1					
Apartment Number	Apartment Type	Number of Bedrooms / Baths	Net Living Area	Net Square Footage of Lanai	Percentage of Common Interest
G101	E	3 / 2	1238	139	0.99%
G102	E	3 / 2	1238	139	0.99%
G201	E	3 / 2	1238	139	0.99%
G203	E	3 / 2	1238	139	0.99%
H101	E	3 / 2	1238	139	0.99%
H102	E	3 / 2	1238	139	0.99%
H201	E	3 / 2	1238	139	0.99%
H203	E	3 / 2	1238	139	0.99%
I101	B	2 / 2	823	158	0.70%
I102	A	2 / 2	811	177	0.70%
I103	B	2 / 2	823	158	0.70%
I201	E	2 / 2	823	158	0.70%
I202	A	2 / 2	811	177	0.70%
I203	B	2 / 2	823	158	0.70%
J101	B	2 / 2	823	158	0.70%
J102	A	2 / 2	811	177	0.70%
J103	E	2 / 2	823	158	0.70%
J201	B	2 / 2	823	158	0.70%
J202	A	2 / 2	811	177	0.70%
J203	E	2 / 2	823	158	0.70%
K101	E	3 / 2	1238	139	0.99%
K102	E	3 / 2	1238	139	0.99%
K201	E	3 / 2	1238	139	0.99%
K203	E	3 / 2	1238	139	0.99%
L101	D	2 / 2	1126	184	0.94%
L102	C	2 / 2	1075	232	0.93%
L103	D	2 / 2	1126	184	0.94%
L201	D	2 / 2	1126	184	0.94%
L202	C	2 / 2	1075	232	0.93%
L203	D	2 / 2	1126	184	0.94%

EXHIBIT "B"

APARTMENT NUMBERS AND TYPES; NUMBERS OF BEDROOMS AND BATHROOMS; APPROXIMATE NET LIVING AREA OF APARTMENTS; APPROXIMATE NET SQUARE FOOTAGE OF LANAIS; AND PERCENTAGE OF COMMON INTEREST; LOCATION, LAYOUT AND OTHER APARTMENT INFORMATION

KAI MAKANI CONDOMINIUM PROJECT						
CHART 1						
Apartment Number	Apartment Type	Number of Bedrooms / Baths	Net Living Area	Net Square Footage of Lanai	Percentage of Common Interest	
M101	E	3 / 2	1238	139	0.99%	
M102	E	3 / 2	1238	139	0.99%	
M201	E	3 / 2	1238	139	0.99%	
M203	E	3 / 2	1238	139	0.99%	
N101	D	2 / 2	1126	184	0.94%	
N102	C	2 / 2	1075	232	0.93%	
N103	D	2 / 2	1126	184	0.94%	
N201	D	2 / 2	1126	184	0.94%	
N202	C	2 / 2	1075	232	0.93%	
N203	D	2 / 2	1126	184	0.94%	
O101	D	2 / 2	1126	184	0.94%	
O102	C	2 / 2	1075	232	0.93%	
O103	D	2 / 2	1126	184	0.94%	
O201	D	2 / 2	1126	184	0.94%	
O202	C	2 / 2	1075	232	0.93%	
O203	D	2 / 2	1126	184	0.94%	
Q101	E	2 / 2	823	158	0.70%	
Q102	A	2 / 2	811	177	0.70%	
Q103	E	2 / 2	823	158	0.70%	
Q201	E	2 / 2	823	158	0.70%	
Q202	A	2 / 2	811	177	0.70%	
Q203	E	2 / 2	823	158	0.70%	
R101	E	3 / 2	1238	139	0.99%	
R102	E	3 / 2	1238	139	0.99%	
R201	E	3 / 2	1238	139	0.99%	
R203	E	3 / 2	1238	139	0.99%	
S101	D	2 / 2	1126	184	0.94%	
S102	C	2 / 2	1075	232	0.93%	
S103	D	2 / 2	1126	184	0.94%	
S201	D	2 / 2	1126	184	0.94%	
S202	C	2 / 2	1075	232	0.94%	
S203	D	2 / 2	1126	184	0.94%	

EXHIBIT "B"

APARTMENT NUMBERS AND TYPES; NUMBERS OF BEDROOMS AND BATHROOMS; APPROXIMATE NET LIVING AREA OF APARTMENTS; APPROXIMATE NET SQUARE FOOTAGE OF LANAIS; AND PERCENTAGE OF COMMON INTEREST; LOCATION, LAYOUT AND OTHER APARTMENT INFORMATION

KAI MAKANI CONDOMINIUM PROJECT						
CHART 1						
Apartment Number	Apartment Type	Number of Bedrooms / Baths	Net Living Area	Net Square Footage of Lanai	Percentage of Common Interest	
T101	E	3 / 2	1238	139	0.99%	
T102	E	3 / 2	1238	139	0.99%	
T201	E	3 / 2	1238	139	0.99%	
T203	E	3 / 2	1238	139	0.99%	
U101	D	2 / 2	1126	184	0.94%	
U102	C	2 / 2	1075	232	0.93%	
U103	D	2 / 2	1126	184	0.94%	
U201	D	2 / 2	1126	184	0.94%	
U202	C	2 / 2	1075	232	0.94%	
U203	D	2 / 2	1126	184	0.94%	
V101	B	2 / 2	823	158	0.70%	
V102	A	2 / 2	811	177	0.70%	
V103	B	2 / 2	823	158	0.70%	
V201	B	2 / 2	823	158	0.70%	
V202	A	2 / 2	811	177	0.70%	
V203	B	2 / 2	823	158	0.70%	
W101	E	3 / 2	1238	139	0.99%	
W102	E	3 / 2	1238	139	0.99%	
W201	E	3 / 2	1238	139	0.99%	
W203	E	3 / 2	1238	139	0.99%	
TOTAL			120,668	18,890	100%	

EXHIBIT "B"

Descriptions of Buildings: There are three types of buildings containing apartments: Type 1, Type 2 and Type 3. Each building is constructed of concrete, wood, glass, tile and related materials. The buildings containing apartments are lettered consecutively A through W and located as shown on the Condominium Map. Building P is the common clubhouse. Buildings X, Y and Z are storage locker structures.

(a) Type 1 Buildings. There are five Type 1 buildings, buildings lettered E, I, J, Q and V, as shown on the plan. Each Type 1 building contains six apartments, including two Type A apartments and four Type B apartments. Each Type 1 building has two stories with one Type A apartment and two Type B apartments on each floor. Each Type 1 building has a ground floor entry porch and a second floor entry porch and an exterior stairway to provide access to second floor apartments.

(b) Type 2 Buildings. There are ten Type 2 buildings, buildings lettered B, D, F, G, H, K, M, R, T and W, as shown on the plan. Each Type 2 building contains four Type E apartments. Each Type 2 building has two stories with two Type E apartments on each floor. Each Type 2 building has a ground floor entry porch and a second floor entry porch and an exterior stairway to provide access to second floor apartments.

(c) Type 3 Buildings. There are seven Type 3 buildings, buildings lettered A, C, L, N, O, S and U, as shown on the plan. Each Type 3 building contains six apartments, including two Type C apartments and four Type D apartments. Each Type 3 building has two stories with one Type C apartment and two Type D apartments on each floor. Each Type 3 building has a ground floor entry porch and a second floor entry porch and an exterior stairway to provide access to second floor apartments.

Locations of Apartments: In each building, each apartment bears a letter and a number: the letter is the letter of the building and the number is the number of the apartment itself. The first number of each apartment denotes the floor which it is located on, so that each apartment numbered 101, 102 or 103 is located on the ground floor and each apartment numbered 201, 202 or 203 is located on the second floor. Apartments are numbered from left to right as you face the side of the building on which the entry porches are located so that the apartments on the left side are numbered 101 (ground floor) and 201 (second floor). To the right of those apartments the apartments are numbered 102 on the

ground floor and 202 on the second floor. In each Type 1 building and Type 3 building, there are two additional units on the far right, numbered 103 on the ground floor and 203 on the second floor. The locations of all apartments are shown on that portion of the Condominium Map labeled "Address Plan".

Layouts of Apartments: The apartment layouts are according to the apartment type as designated in the second column of the preceding chart. Apartments in each type are laid out as follows:

(a) Type A: Each Type A apartment contains two bedrooms, two baths, a kitchen, living/dining area and lanai, and has a net living area of 856 square feet, a lanai area of 177 square feet and a total area of 1,033 square feet.

(b) Type B: Each Type B apartment contains two bedrooms, two baths, a kitchen, living/dining area and lanai, and has a net living area of 866 square feet, a lanai area of 158 square feet and a total area of 1,024 square feet. The Type B apartments numbered 103 and 203 are the mirror image of the Type B apartments bearing the numbers 101 and 201.

(c) Type C: Each Type C apartment contains two bedrooms, two baths, a kitchen, living/dining area and lanai, and has a net living area of 1,128 square feet, a lanai area of 232 square feet and a total area of 1,360 square feet.

(d) Type D: Each Type D apartment contains two bedrooms, two baths, a kitchen, living/dining area and lanai, and has a net living area of 1,176 square feet, a lanai area of 184 square feet and a total area of 1,360 square feet. The Type D apartments numbered 103 and 203 are the mirror image of the Type D apartments bearing the number 101 and 201.

(e) Type E: Each Type E apartment contains three bedrooms, two baths, a kitchen, living/dining area and lanai, and has a net living area of 1,299 square feet, a lanai area of 139 square feet and a total area of 1,438 square feet. The Type E apartments numbered 102 and 202 are the mirror image of the Type E apartments bearing the number 101 and 201.

END OF EXHIBIT "B"