

DECLARATION OF CONDOMINIUM
PROPERTY REGIME OF NAURU TOWER

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DECLARATION OF CONDOMINIUM PROPERTY REGIME
OF
NAURU TOWER

WHEREAS, NAURU PHOSPHATE ROYALTIES (HONOLULU), INC., a Delaware corporation (hereinafter called "Fee Owner"), owns in fee simple certain real property described in Exhibit "A" attached hereto and made a part hereof (hereinafter called the "Land"); and

WHEREAS, Fee Owner, as Lessor, and NAURU PHOSPHATE ROYALTIES DEVELOPMENT (HONOLULU), INC., a Delaware corporation (hereinafter called "Developer"), as Lessee, have entered into that certain Lease dated October 19, 1988, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1645704, as amended by First Amendment of Lease dated October 25, 1989, filed as aforesaid as Document No. 1681411 (hereinafter called the "Master Development Lease"), both of said documents duly noted on Transfer Certificate of Title No. 327,790, which provides for the development of the real property described in Exhibit "A"; and

WHEREAS, Developer intends to improve the Land by constructing thereon certain improvements hereinafter described in accordance with plans incorporated herein by reference and filed in said Office of the Assistant Registrar of the Land Court as Condominium Map No. 748 (hereinafter called the "Condominium Map").

NOW, THEREFORE, in order to create a mixed-use condominium project consisting of the Land and the improvements to be constructed thereon (hereinafter called the "Project"), the Fee Owner and Developer do hereby submit all of their respective interests in said property to the condominium property regime established by the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended, and in furtherance thereof make the following declarations as to divisions, limitations, restrictions, covenants and conditions and hereby declare and agree that said property is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, restrictions, and conditions set forth herein and in the By-Laws of the Association of Apartment Owners of Nauru Tower (hereinafter called the "By-Laws") filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii contemporaneously herewith, as the same may be amended from time to time, which declarations, restrictions and conditions are intended to create mutual servitudes upon each apartment within the project and to create reciprocal rights between the respective apartment owners, and which declarations, restrictions and conditions shall constitute equitable servitudes, liens and covenants running with the land and shall be binding on and for the benefit of the parties hereto, their respective successors, heirs, personal representatives and assigns, and all subsequent owners and lessees of all or

any part of the Project and their respective successors, heirs, personal representatives and assigns.

A. NAME OF PROJECT AND DESCRIPTION OF LAND.
The condominium property regime established hereby shall be known as Nauru Tower. All of the Land described in Exhibit "A" attached hereto is hereby submitted to the condominium property regime.

B. DEFINITIONS. The terms used herein shall have the meanings given to them in Chapter 514A, Hawaii Revised Statutes, as amended (hereinafter called the "Condominium Property Act" or the "Act"), except as otherwise expressly provided herein. Unless clearly repugnant to the context, the following terms, whenever used in this Declaration, shall be given the following meanings:

1. "Apartment" as used herein means collectively the residential and commercial apartments in the Project, within the meaning of that term as used in the Act, as designated and described in this Declaration.

2. "Apartment owner" or "owner" means a person owning, or the persons owning jointly or in common, an apartment and the common interest appertaining thereto, to the extent of such ownership; provided that the purchaser of an apartment pursuant to an agreement of sale filed as aforesaid shall have all the rights of an apartment owner, including the right to vote, 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.

3. "Association" means the Association of Apartment Owners of Nauru Tower, whose members consist of all owners of apartments in the Project.

4. "Board of Directors" or "Board" means the Board of Directors of the Association.

5. "By-Laws" means the By-Laws of the Association filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii contemporaneously herewith, as amended from time to time.

6. "Common elements" means those portions of the Project designated in this Declaration as common elements, including limited common elements.

7. "Common expenses" includes the expenses, costs and charges designated as common expenses in Paragraph K of this Declaration and all other expenses, costs and charges designated as common expenses in this Declaration or in the By-Laws.

8. "Common interest" or "common interests" means the undivided percentage interest in the common elements appurtenant to each apartment in the Project, as described in Paragraph E of this Declaration.

9. "Condominium Map" means the plans, elevations and specifications for the Project which have been filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Condominium Map No. _____, as amended from time to time.

10. "Declaration" means this instrument, as amended from time to time in the manner herein provided.

11. "Developer" means Nauru Phosphate Royalties Development (Honolulu), Inc., a Delaware corporation, its successors and assigns.

12. "Fee Owner" means Nauru Phosphate Royalties (Honolulu), Inc., a Delaware corporation, its successors and assigns.

13. "Limited common elements" means those portions of the common elements designated in Paragraph D, Section 3 of this Declaration as limited common elements.

14. "Limited common expenses" includes the expenses, costs and charges designated as limited common expenses in Paragraph K of this Declaration and all other expenses, costs, and charges designated as limited common expenses in this Declaration or in the By-Laws.

15. "Majority of apartment owners" means the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interests.

16. "Managing Agent" means the agent, if any, employed by the Board of Directors or the Developer pursuant to Paragraph J of this Declaration.

17. Any specified "percentage of the apartment owners" means the owners of apartments to which are appurtenant such specified percentage of the common interests.

18. "Project" means and includes the Land, the buildings and all other improvements thereon (including the apartments and the common elements) and all easements, rights and appurtenances belonging thereto, and all other property with respect to which a condominium property regime shall exist from time to time pursuant to this Declaration.

C. DESCRIPTION OF THE PROJECT. The Project shall include a 45-foot high platform with a basement level (hereinafter referred to as the "Platform"), as shown on the Condominium Map, which will be located adjacent to a 44-story building (hereinafter referred to as the "Tower"). The Project is constructed principally of concrete, hollow tile, wood, aluminum, glass and steel and shall contain three hundred four (304) residential apartments and ten (10) commercial apartments of which Commercial Apartment Nos. 1, 2, 3, 9 and 10 shall be subject to division into separate commercial apartments as provided in Paragraph Q below.

1. Platform.

(a) Level 1B. Level 1B of the Platform is the basement level of the Platform and will include sixty-three (63) standard-size covered parking stalls, twenty (20) compact-size covered parking stalls, eight (8) standard-size tandem covered parking stalls, two (2) stairways, an elevator, and an elevator machine room, as shown on the Condominium Map.

(b) Levels 2A and 2B. Levels 2A and 2B of the Platform will include forty-two (42) standard-size covered parking stalls, thirteen (13) compact-size covered parking stalls, one (1) handicap covered parking stall, thirty-six (36) standard-size tandem covered parking stalls, one (1) commercial apartment (Commercial Apartment No. 1), two (2) elevators, an elevator machine room, three (3) stairways, a mechanical equipment room, an electrical equipment room, a maintenance equipment room, a room for the HECO vault, a telephone equipment room, an emergency generator room, a loading dock, a loading area and two (2) storage areas, as shown on the Condominium Map.

Commercial Apartment No. 1 which is located on Levels 2A and 2B includes fifty-one (51) standard-size covered parking stalls, thirty-four (34) compact-size covered parking stalls, nine (9) standard-size tandem covered parking stalls, seven (7) compact-size tandem covered parking stalls, and three (3) handicap covered parking stalls. All or part of Commercial Apartment No. 1 may be altered in the future in order to accommodate a permitted use other than parking, as provided for in Paragraph Q below.

(c) Levels 3A and 3B. Levels 3A and 3B of the Platform will include thirty-four (34) standard-size covered parking stalls, thirteen (13) compact-size covered parking stalls, and thirty (30) standard-size tandem covered parking stalls, an elevator, and two (2) stairways, as shown on the Condominium Map.

(d) Levels 4A and 4B. Levels 4A and 4B (being the arrival level) of the Platform will include a driveway from Ala Moana Boulevard leading to the arrival level of the Tower, a porte cochere, a landscaped area, a driveway leading from the arrival level of the Tower to Waimanu Street, nine (9) standard-size uncovered parking stalls, one (1) handicap uncovered parking stall, sixty-five (65) standard-size covered parking stalls, twelve (12) compact-size covered parking stalls, twenty-two (22) standard-size tandem covered parking stalls, two (2) elevators, four (4) stairways, and a cooling tower, as shown on the Condominium Map.

(e) Levels 5A and 5B. Levels 5A and 5B of the Platform will include a swimming pool, swimming pool deck including two (2) whirlpool spas and a shower, restrooms, one (1) commercial apartment (Commercial Apartment No. 10), a pedestrian bridge connecting the Diamond Head wing of the Platform with the third floor of the

Tower, forty-nine (49) standard-size covered parking stalls, sixteen (16) compact-size covered parking stalls, two (2) elevators, and four (4) stairways, as shown on the Condominium Map.

(f) Level 6A. Level 6A of the Platform will include fifty-four (54) standard-size covered parking stalls, nine (9) compact-size covered parking stalls, an elevator, and a stairway, as shown on the Condominium Map.

(g) Level 7. Level 7 (being the top level) of the Platform will include a tennis court, a roof garden, a storage room, an elevator, and three (3) stairways, as shown on the Condominium Map.

2. The Tower.

(a) First Floor. The first floor of the Tower will include two (2) commercial apartments (Commercial Apartments Nos. 2 and 3), a terrace area, a mechanical room, a building maintenance/storage room, a trash room, an enclosed lobby for the service elevator, an enclosed lobby for the elevators serving the residential apartments, an elevator machine room, an electrical equipment room, a corridor and five (5) stairways, as shown on the Condominium Map.

(b) Second Floor. The second floor of the Tower (being on the arrival level of the Platform) will include a porte cochere, a lobby, three (3) rooms designated as offices nos. 1, 2, and 3, a mail room, three (3) commercial apartments (Commercial Apartments Nos. 4, 5 and 6), a terrace area, an enclosed lobby for the elevators serving the residential apartments, an elevator serving only the second and fourth floors of the Tower, a service elevator, and five (5) stairways, as shown on the Condominium Map.

(c) Third Floor. The third floor of the Tower (being on the same level as the pedestrian bridge connecting the Tower to the Diamond Head wing of Levels 5A and 5B of the Platform) will include two (2) commercial apartments (Commercial Apartments Nos. 7 and 8), the pedestrian bridge, an enclosed lobby for the elevators serving the residential apartments, and three (3) stairways, as shown on the Condominium Map.

(d) Fourth Floor. The fourth floor of the Tower (being on the same level as Levels 6A and 6B of the Platform) will include one (1) commercial apartment (Commercial Apartment No. 9), the service elevator, the elevator serving only the second and fourth floors of the Tower, an enclosed lobby for the elevators serving the residential apartments, and three (3) stairways, as shown on the Condominium Map.

(e) Fifth Floor. The fifth floor of the Tower will include two (2) mechanical rooms and four (4) stairways, as shown on the Condominium Map.

(f) Sixth through Thirty-Second Floors. Each of the sixth through thirty-second floors of the Tower will include eight (8) residential apartments, an electrical room, eight (8) storage lockers, a trash room, an enclosed lobby for the four elevators serving the residential apartments on these floors, the service elevator lobby, two (2) stairways, and a corridor, as shown on the Condominium Map.

(g) Thirty-Third and Thirty-Fourth Floors. Each of the thirty-third and thirty-fourth floors of the Tower will include eight (8) residential apartments, an electrical room, eight (8) storage lockers, a trash room, an enclosed lobby for the two express elevators serving the residential apartments on the thirty-third through forty-fourth floors (hereinafter called the "express elevators"), the service elevator lobby, two (2) stairways, and a corridor, as shown on the Condominium Map.

(h) Thirty-Fifth through Forty-Second Floors. Each of the thirty-fifth through forty-second floors of the Tower will include eight (8) residential apartments, a solarium, an electrical room, eight (8) storage lockers, a trash room, an enclosed lobby for the two express elevators, the service elevator lobby, two (2) stairways, and a corridor, as shown on the Condominium Map.

(i) Forty-Third through Forty-Fourth Floors. The forty-third floor of the Tower will include the first floor of four (4) two-level penthouse apartments, two (2) one-level penthouse apartments, a solarium, an electrical room, six (6) storage lockers, a trash room, an enclosed lobby for the two express elevators, the service elevator lobby, two (2) stairways, and a corridor, as shown on the Condominium Map.

The forty-fourth floor of the Tower will include the second floor of the four (4) two-level penthouse apartments, two (2) one-level penthouse apartments, a solarium, an electrical room, two (2) storage rooms, a trash room, an enclosed lobby for the two express elevators, and two (2) stairways, as shown on the Condominium Map.

(j) Rooftop. The rooftop of the Tower will include six (6) private roof terraces reserved respectively for the exclusive use of the penthouse apartments located directly beneath the terraces on the forty-fourth floor, six (6) private stairways leading to the roof terraces from the apartments below, an elevator machine room, nine (9) mechanical rooms, an exit corridor, two flat roof areas, and two (2) building stairways, as shown on the Condominium Map.

D. DIVISION OF PROPERTY. The Project is hereby divided into the following separate freehold estates:

1. Apartments. There are hereby established in the Project three hundred four (304) residential apartments and ten (10) commercial apartments (Commercial Apartments

Nos. 1, 2, 3, 9 and 10 are each subject to division into any number of separate commercial apartments as provided in Paragraph Q below) for a total number of three hundred fourteen (314) apartments (subject to adjustment pursuant to Paragraph Q below) as designated and shown on said Condominium Map.

(a) Residential Apartments. Each residential apartment consists of the spaces within the perimeter and party walls, windows, doors, floors and ceiling of the respective residential apartments as shown on the Condominium Map.

(i) Floor Plans and Location of Residential Apartments. The residential apartments are constructed according to several different floor plans. A description of each of said floor plans is set forth in Exhibit "B" attached hereto and for every purpose made a part hereof.

Each residential apartment is numbered and located in the manner shown on the Condominium Map.

Each residential apartment will have the number of rooms (exclusive of lanai), approximate net living floor area in square feet (exclusive of lanai) and approximate net lanai floor area in square feet as set forth in Exhibit "C" attached hereto and for every purpose made a part hereof.

The approximate net living floor areas set forth in Exhibit "C" are based on measurements taken from the interior surface of all perimeter walls, except that no reduction has been made to account for interior walls, ducts, vents, shafts, stairways and the like located within the perimeter walls. All approximate net lanai floor areas set forth in Exhibit "C" are based on measurements taken from the interior surface of all perimeter walls which do not separate the interior of the residential apartments from the lanais, from the exterior surface of all perimeter walls which separate the interior of the residential apartments from the lanais, and from the interior edge of the exterior railings or other boundaries of the lanais. All floor areas set forth in Exhibit "C" are not exact but are approximations based on the floor plans of each type of residential apartment.

(ii) Access to Common Elements. Each of the residential apartments have immediate access to the corridors, stairways, and/or elevators of the Tower which lead to the lobby areas and all other common areas of the Project.

(iii) Limits of Residential Apartments. Notwithstanding the floor areas set forth on Exhibit "C" and the manner in which such floor areas have been measured, the respective residential apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter or party walls or interior load-bearing walls or partitions, the foundations, columns, girders,

beams, floor slabs, supports, floors and ceilings surrounding each residential apartment or any pipes, wires, vents, shafts, ducts, conduits or other utility or service lines or enclosed spaces for wiring, pipes, air exhaust, or air conditioning running through or otherwise located within such residential apartment which are utilized for or serve more than one residential apartment, the same being deemed common elements as hereinafter provided. Each residential apartment shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter or party walls, doors and door frames, windows and window frames, louvers (if any), shutters (if any), panels, the inner decorated or finished surfaces of all walls, floors and ceilings, the lanais shown on the Condominium Map to the inner decorated or finished surfaces of the exterior perimeter walls of such lanais and to the exterior edge of the exterior railings or other boundaries of such lanais, and all fixtures originally installed therein.

(b) Commercial Apartments. Each commercial apartment consists of the spaces within the exterior perimeter walls (if any) and/or the imaginary vertical planes (where there is no perimeter wall), floors and ceilings of the respective commercial apartment as shown on the Condominium Map. A description of each of the commercial apartments is set forth on Exhibit "D" attached hereto and for every purpose made a part hereof.

Each commercial apartment is numbered and located in the manner shown on the Condominium Map.

Each commercial apartment will have the approximate net floor area in square feet set forth in Exhibit "D" attached hereto and for every purpose made a part hereof. (The approximate net floor area of each of the commercial apartments is also set forth in Exhibit "C".) The approximate net floor areas set forth in Exhibits "C" and "D" are based on measurements taken from the interior surface of all perimeter walls and/or the imaginary vertical planes (where there is no perimeter wall) as shown on the Condominium Map, except that no reduction has been made to account for interior walls, ducts, vents, shafts, stairways and the like located within the perimeter walls and/or the imaginary vertical planes (where there is no perimeter wall). The floor areas set forth in Exhibits "C" and "D" are not exact but are approximations based on the floor plans of each commercial apartment.

(i) Access to Common Elements. The commercial apartments will have immediate access to the walkways, corridors, elevators and/or stairways which lead to the lobby areas and other common areas of the Project.

(ii) Limits of Commercial Apartments. Notwithstanding the floor areas set forth on Exhibits "C" and "D" and the manner in which such floor areas have been measured, the commercial apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter or party walls or interior load-bearing walls or

partitions, the foundations, columns, girders, beams, floor slabs, supports, floors and ceilings located within or at the perimeter of or surrounding each apartment, any pipes, wires, vents, shafts, ducts, conduits or other utility or service lines or enclosed spaces for wiring, pipes, air exhaust or air conditioning running through or otherwise located within such apartment which are utilized for or serve more than one apartment, all of which are deemed common elements as hereinafter provided. Each commercial apartment shall be deemed to include all of the walls and partitions which are not load-bearing and which are within its perimeter or party walls and/or imaginary vertical planes (where there is no perimeter wall); the inner decorated or finished surfaces of all walls, floors, and ceilings; all windows (if any), window frames (if any), louvres (if any), shutters (if any), panels, doors and door frames along its perimeter; and all of the fixtures (if any) originally installed therein.

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

- (a) The Land in fee simple;
- (b) All foundations, floor slabs, columns, girders, beams, supports, perimeter, party and load-bearing walls and partitions (excluding the finishes thereon), roofs, lobby areas, stairways (excluding the private stairways located within and serving only one apartment), elevators, walkways, corridors, ramps, loading areas, elevator lobby areas, entrances, entry ways and exits of said building(s), the porte cochere, all storage rooms not located within an apartment, all maintenance rooms, all elevator machine rooms, all mechanical rooms, all electrical rooms (including the room for the electrical vault of Hawaiian Electric Co., Inc.), and all trash rooms;
- (c) The tennis court;
- (d) All yards, grounds, walkways, walkway railings, landscaping, refuse facilities and gardens;
- (e) The swimming pool and appurtenant deck area, all toilets and restroom facilities not located within an apartment, and the cooling tower;
- (f) All driveways, driveway ramps, parking stalls and parking areas (other than those located within a commercial apartment);
- (g) All vents, shafts, sewer lines, electrical equipment, pipes, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one apartment for services such as power, light, gas (if any), water, cablevision (if any), air conditioning, sewer,

refuse, telephone, and radio and television signal distribution (if any), except for the microwave antenna or antennae and/or other electronic or telecommunications equipment and facilities belonging to Developer or Fee Owner or such person or entity authorized by Developer or Fee Owner, as more particularly set forth in Section 9 of Paragraph F below;

(h) Any and all other apparatus and installations existing for common use, such as tanks, pumps, motors, fans, compressors, and, in general, all other installations and apparatus existing for common use and any and all other parts of the Project necessary or convenient to its existence, maintenance or safety, or normally in common use.

3. Limited Common Elements. Certain parts of the common elements, herein called the "limited common elements", are hereby designated and set aside for the exclusive use of certain apartments, and such apartments shall have appurtenant thereto exclusive easements for the use of such limited common elements as follows:

(a) Each residential apartment shall have appurtenant thereto and reserved for its exclusive use the parking stall or stalls assigned to it as set forth in Exhibit "C" attached hereto and for every purpose made a part hereof. The parking stalls are designated on said Condominium Map by numbers and the number or numbers of the parking stall or stalls assigned to each residential apartment are set forth opposite the number of such apartment in Exhibit "C".

(b) Each residential apartment and each commercial apartment shall have for its exclusive use one (1) mailbox bearing the same number as such apartment.

(c) Each residential apartment shall have appurtenant thereto and reserved for its exclusive use the storage locker or lockers bearing the same number as such residential apartment and located on the same floor as such apartment.

(d) Each of the residential apartments located on the forty-fourth floor of the Tower shall have appurtenant thereto and reserved for its exclusive use the roof terrace located on the rooftop directly above the apartment.

(e) The four main elevators serving the residential apartments located on the sixth floor through the thirty-second floor, together with the related elevator shafts and the related elevator equipment and machinery, shall constitute limited common elements appurtenant to and for the exclusive use of the residential apartments located on floors 6 through 32.

(f) The two express elevators serving the residential apartments located on the thirty-third floor through the forty-fourth floor, together with the related

elevator shafts and the related elevator equipment and machinery, shall constitute limited common elements appurtenant to and for the exclusive use of the residential apartments located on floors 33 through 44.

(g) The elevator running only from the second floor to the fourth floor of the Tower, together with the related elevator shaft and the related elevator equipment and machinery, shall constitute limited common elements appurtenant to and for the exclusive use of Commercial Apartment No. 9.

(h) The portion of the corridor on the thirty-third floor located at the Ewa end of the corridor and adjacent to the entrances to Apartment Nos. 3301 and 3302, covering an area of approximately 40 square feet, shall constitute a limited common element appurtenant to and for the exclusive use of Apartment Nos. 3301 and 3302. The portion of the corridor on the same floor located on the opposite Diamond Head end of the corridor and adjacent to the entrances to Apartment Nos. 3307 and 3308, covering an area of approximately 40 square feet, shall likewise constitute a limited common element appurtenant to and for the exclusive use of Apartment Nos. 3307 and 3308.

On the thirty-fourth floor through and including the forty-second floor of the Tower, the same approximately 40 square foot area at each end of the corridor on each floor shall likewise constitute limited common elements appurtenant to and for the exclusive use of the two apartments located adjacent to such area, all as shown on the Condominium Map.

(i) The elevator lobby and corridor on each of the floors containing residential apartments (i.e., the sixth floor through the forty-fourth floor) shall constitute limited common elements appurtenant to the residential apartments on that floor.

(j) The swimming pool, whirlpool spas and appurtenant deck area, the toilets and restroom facilities located adjacent to the pool deck and not located within an apartment, and the tennis court shall constitute limited common elements appurtenant to and for the exclusive use of all of the residential apartments.

(k) The cooling tower and all other equipment and appurtenances comprising a part of the air conditioning system at the Project shall constitute limited common elements appurtenant to and for the exclusive use of all residential apartments and all commercial apartments located within the Tower of the Project; provided, however, that the owner or owners of Commercial Apartment Nos. 1 and 10 may, at such owner's expense, perform such work as shall be required to extend the air conditioning system to provide air conditioning to Commercial Apartment Nos. 1 and 10, respectively, which work shall require only the approval of the Board of Directors (which approval shall not be unreasonably or

arbitrarily withheld or delayed) and the approval of the appropriate agencies of the State of Hawaii and City and County of Honolulu, if such agencies require. Notwithstanding such extension, however, the cooling tower and all other equipment and appurtenances comprising a part of the air conditioning system of the Project shall not at any time constitute a limited common element appurtenant to Commercial Apartment Nos. 1 and 10.

(l) The eleven (11) standard-size covered guest parking stalls located on Levels 3A and 3B of the Platform (designated on the Condominium Map as parking stall nos. C-20 through C-30, inclusive), and the nine (9) standard-size uncovered guest parking stalls and one (1) handicap uncovered guest parking stall located on the arrival level of the Platform (designated on the Condominium Map as parking stall nos. G-1 through G-10, inclusive), shall constitute limited common elements appurtenant to and for the exclusive use of all of the residential apartments.

(m) The ten (10) standard-size covered parking stalls, one (1) compact-size covered parking stall, and the thirty (30) standard-size tandem covered parking stalls located on Levels 3A and 3B of the Platform (designated on the Condominium Map as parking stall nos. C-31 through C-71, inclusive) shall constitute limited common elements appurtenant to and for the exclusive use of all of the commercial apartments.

E. COMMON INTEREST. Each apartment shall have appurtenant thereto an undivided percentage interest in all common elements of the Project (herein called the "common interest"), and the same proportionate share in all common profits and expenses of the Project and for all other purposes, including voting, as set forth in said Exhibit "C", attached hereto and for every purpose made a part hereof, (subject to future adjustments pursuant to the provisions of Paragraph T hereinbelow).

F. EASEMENTS. In addition to any easements described in Exhibit "A" attached hereto, to the exclusive easements herein designated in the limited common elements, and to any reserved easements provided for in Paragraph T hereinbelow, the apartments and common elements shall also have and be subject to the following easements:

1. 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, subject always to the exclusive or limited use of the limited common elements, if any, as herein provided; and in all other apartments of the building(s) for support.

2. If any part of the common elements now or hereafter encroaches upon any apartment or limited common

element or if any apartment or limited common element 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 shall and does exist for so long as such encroachment continues. In the event any building(s) of the Project shall be partially or totally destroyed and then rebuilt or in the event of any shifting, settlement or movement of any portion of the Project, minor encroachments of any parts of the common elements or apartments or limited common elements due to such construction, shifting, settlement or movement shall be permitted and valid easements for such encroachments and the maintenance thereof shall and does exist for so long as such encroachment exists.

3. The Association of Apartment Owners of the Project shall have the right, to be exercised by its Board of Directors or Managing Agent, to enter any apartments and/or limited common elements, if any, from time to time during reasonable hours as may be necessary for the operation of the Project or at any time for making emergency repairs therein required to prevent damage to any apartments or common elements or for the inspection, repair, painting, resurfacing, maintenance, installation or replacement of any common elements.

4. The Developer and its agents, employees, contractors, licensees, successors, and assigns shall have the right to conduct extensive sales activities on and at the Project, including without limitation, the use of model apartments, sales and management offices, and extensive sales displays and activities until the earlier to occur of (a) thirty-six (36) months from the date of the filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii of the first condominium conveyance document conveying an apartment in the Project and a leasehold interest in the Land to the purchaser of the apartment or to a party not a signatory to this Declaration; or (b) the closing of the sale of the last unsold apartment in the Project. In the event that the Developer is unable to sell all of the apartments within said thirty-six (36) month period, the Developer and its agents, employees, contractors, licensees, successors, and assigns shall, nevertheless, continue to have the right to conduct sales activities on and at the Project until the closing of the sale of the last unsold apartment in the Project, provided that such sales activities are conducted in an unobtrusive manner which will not unreasonably interfere with the use, possession, and aesthetic enjoyment of the Project by the other apartment owners. In the event that the Developer's mortgage lender or any successor to or assignee of the Developer's mortgage lender shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or by an assignment in lieu of foreclosure, such mortgage lender, its successors and assigns, shall have the right to conduct such extensive sales activities on the Project until at least ninety-five percent (95%) of all of the apartments have been sold and closed, notwithstanding the foregoing. The provisions

contained in this Section 4 of Paragraph F are subject to Developer's reserved rights to conduct sales activities pursuant to Paragraph T herein.

5. The Developer, its agents, employees, contractors, licensees, successors, and assigns shall have an easement over and upon the Project, including the common elements, limited common elements, and any apartment, as may be reasonably necessary for the completion of any improvements to and correction of defects and other punch-list items in the common elements or any apartment. Such easement shall terminate twenty-four (24) months after the later to occur of (i) the date of the filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii of the first condominium conveyance document conveying an apartment in favor of a party not a signatory to this Declaration; or (ii) "the date of completion" (as the term is used in Chapter 507, Part II, Hawaii Revised Statutes) of the improvement to be completed or corrected.

6. The Developer and the Fee Owner hereby reserve the right 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, any easements for utilities or for any public purpose or any easements required for any Subsequent Project as described in Paragraph T herein, including, but not limited to, easements for ingress to such Subsequent Project(s) from Piikoi Street, Waimanu Street, or Ala Moana Boulevard or other private or public streets or roads or for egress from said Subsequent Project to such streets, roads or boulevard.

The Developer and the Fee Owner hereby further reserve the right to accept any easements for ingress to and egress from the Project over, under, across or through portions of the land subject to withdrawal from the Project pursuant to Paragraph U of this Declaration and to incorporate such easements into the common elements of the Project.

The Developer and the Fee Owner hereby further reserve the right to transfer, cancel, relocate or otherwise deal with any easement over, under, across or through any lands adjacent to or across the street from 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 above in this Section 6 of Paragraph F or for the reason that any owner of any such lands adjacent to or across the street from the Project exercises any right to require the relocation of any such easement.

The foregoing rights of the Developer set forth in this Section 6 of Paragraph F shall terminate upon December 31, 2010 or upon merger of all of the Subsequent Project(s) pursuant to Paragraph T, whichever shall first occur.

To the extent that joinder of any apartment owner and lien holder or other person who may have any interest in the Land or the Project or any apartment in it may be required in order to validate any act or thing done pursuant to the foregoing reservations, such joinder shall be accomplished by power of attorney from each of the owners, lien holders or other such parties, the acquiring or acceptance of ownership in an apartment or of a lien covering an apartment or any other interest in the Project or Land subject to this Declaration being a grant of such power and the grant being coupled with an interest, being irrevocable.

7. The Association shall have the right, exercisable by its Board of Directors and subject to the prior written approval of the Fee Owner, to 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 limited common element or any easements for utilities or for any public purpose.

8. The Association shall have the right, exercisable by its Board of Directors and subject to the prior written approval of the Fee Owner, to transfer, cancel, relocate, and otherwise deal with any easement over, under, across or through any lands adjacent to and across the street from the Project, for any reasonable purpose, which may include, but shall not be limited to, any of the same purposes set forth in Section 7 above of this Paragraph F or for the reason that any owner of any such lands adjacent to or across the street from the Project exercises any right to require the relocation of any such easement.

9. Until the termination of all condominium conveyance documents covering apartments in the Project, (a) the Developer and the Fee Owner shall have a right and easement to construct, install, operate, repair, maintain, and/or relocate microwave antenna or antennae and/or other electronic and telecommunications equipment and facilities on, within or from the rooftop of the Tower, together with the right to connect the same with or to any transmission or reception facilities or other point(s) within or outside of the Project, through any of the apartments and/or common elements of the Project, and together also with the right to transmit and receive microwave signals; and (b) the Developer and Fee Owner shall have the right to grant, convey, assign and transfer such right and easement to any other person or entity, including without limitation, the owners of KITV-Channel 4.

G. ALTERATION AND TRANSFER OF INTERESTS. Except as otherwise expressly provided herein, the common interest and easements appurtenant to each apartment shall have a permanent character, shall not be altered without the

consent of all owners of apartments affected thereby as 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 have given the Board notice of their interest through the Secretary of the Association or the Managing Agent, shall not be separated from such apartment and shall be deemed to be conveyed or encumbered with such apartment even though not expressly mentioned or described in the conveyance or other instrument. Except as otherwise provided in Paragraph U of this Declaration, the common elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by said Condominium Property Act, and, without limiting the provisions of Section 514A-21(a) of the Hawaii Revised Statutes, any such partition or division shall be subject to the prior written consent thereto by the holders of any first mortgage, filed of record, of any apartment or of any condominium conveyance document demising the same.

H. USE.

1. Residential Apartments. Except when the holder of the first mortgage on a residential apartment has entered into possession of a residential apartment following (i) a default under its first mortgage, (ii) a foreclosure proceeding, or (iii) a conveyance in lieu of foreclosure, the residential apartments shall be occupied and used only as private residential dwellings by the respective owners thereof, their tenants, families, domestic servants and guests, and for no other purpose. The residential apartments shall not be used, leased, rented or any undivided interest therein be transferred for time-sharing purposes or under any time-sharing plan, agreement or arrangement as the same is defined under Chapter 514E, Hawaii Revised Statutes, as amended. Except for time-sharing, the owners of the respective residential apartments shall have the absolute right to sell, lease, rent or otherwise transfer such residential apartments subject to all provisions of this Declaration and the By-Laws recorded immediately following this Declaration.

2. Commercial Apartments. The commercial apartments (and all commercial apartments into which said apartments are or may be divided pursuant to Paragraph "Q" below) shall be operated and used only for "commercial" purposes or uses, as said term "commercial" is defined or described in the Kaka'ako Community Development District Plan and the Kaka'ako Community Development District Rules established by the Hawaii Community Development Authority, as amended from time to time; provided, however, that if Commercial Apartment No. 1 should be divided in the future so as to create a separate commercial apartment or apartments, each consisting of a single parking stall, the use of the newly created parking stall apartment or apartments shall be limited solely to parking purposes. Subject to the terms of the condominium conveyance document, if any, covering the commercial apartment or apartments, the owner

or owners of each of the commercial apartments shall have the absolute right to rent or lease all or any portion of portions of their respective commercial apartments in connection with such commercial operation or use for any length of time and upon such terms and conditions as the owner or owners of such commercial apartments shall determine. Any amendment to this Section 2 of Paragraph H and any amendment to this Declaration that would limit or interfere in any way with the use of said commercial apartments or with ingress to or egress from any commercial apartment in the Project shall require the prior written consent of all directly affected commercial apartment owners.

3. Use of Common Elements. Subject to the rights reserved by the Developer and the Fee Owner elsewhere in this Declaration or in the By-Laws and subject also to the exclusive or limited use of the limited common elements, each apartment owner may use the common elements in accordance with the purposes for which they were intended without hindering or encroaching upon the lawful rights of the other apartment owners, subject to the rights of the Board of Directors:

(a) Upon the approval of the owners of seventy-five percent (75%) of the common interests, to change the use of the common elements;

(b) On behalf of the Association, to lease or otherwise use for the benefit of the Association those common elements which are not actually used by any of the apartment owners for an originally intended special purpose, as determined by the Board; provided that unless the approval of the owners of seventy-five percent (75%) of the common interest is obtained, any such lease shall not have a term exceeding five (5) years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty (60) days written notice; and

(c) To lease or otherwise use for the benefit of the Association those common elements not falling within subparagraph (b) above, upon obtaining: (1) the approval of the owners of seventy-five percent (75%) of the common elements, including all directly affected owners and all owners of apartments to which such common elements are appurtenant in the case of limited common elements, and (2) the approval of all mortgagees of record on apartments with respect to which owner approval is required by (1) above, if such lease or use would be in derogation of the interest of such mortgagees.

I. ADMINISTRATION OF PROJECT. Administration of the project shall be vested in its Association of Apartment Owners, herein called the "Association", consisting of all apartment owners of the Project in accordance with the By-Laws of the Association. Operation of the Project and maintenance, repair, replacement and restoration of the common elements, and any additions and alterations thereto,

shall be in accordance with the provisions of the Condominium Property Act, this Declaration and the By-Laws and specifically but without limitation the Association shall:

1. Make, build, maintain and repair all fences, sewers, drains, roads, driveways, driveway ramps, curbs, sidewalks, parking areas and other improvements which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Project or any part thereof.

2. Keep all common elements of the Project in a strictly clean and sanitary condition, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Project or the use thereof.

3. Well and substantially repair, maintain, amend and keep all common elements of the Project, including without limitation the buildings thereof, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided herein, and maintain and keep said Land and all adjacent land between any street boundary of the Project and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass thereon in good cultivation and replant the same as may be necessary, and repair and make good all defects in the common elements of the Project herein required to be repaired by the Association, of which notice shall be given by any owner or his agent, within thirty (30) days after the giving of such notice or such additional period as may be reasonably necessary to complete such work in the exercise of due diligence; PROVIDED, HOWEVER, that the owners of apartments to which a private roof terrace is appurtenant as a limited common element shall be required to repair, maintain, amend and keep in good order and condition their respective roof terrace; and PROVIDED FURTHER, HOWEVER, that the owners of apartments to which are appurtenant the approximately 40 square foot area at the end of the corridor, more specifically described in Section 3(h) of Paragraph D, shall be required to repair, maintain, amend and keep in good order and condition the respective corridor area appurtenant to their apartments as limited common elements if and when said owners should enclose said area appurtenant to their respective apartments, as permitted under Section 1 of Paragraph Q hereinbelow.

4. Before commencing or permitting construction of any improvement on the Project where the cost thereof exceeds Twenty-Five Thousand and No/100 Dollars (\$25,000.00), obtain a performance and lien payment bond naming as obligees, the Fee Owner, the Board of Directors, the Association and collectively all apartment owners and their respective mortgagees of record, as their respective interests may appear, with a responsible corporate surety authorized to do business in the State of Hawaii, guaranteeing the full and faithful performance of the contract for such construction free and clear of all mechanics' and

materialmen's liens for such construction and the payment of all subcontractors, labor and materialmen, including mechanics' and materialmen's liens arising under Section 514A-16 of the Hawaii Revised Statutes, as the same may be amended from time to time, for a penal sum of not less than one hundred percent (100%) of the estimated cost of such construction.

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

6. Not make or suffer any strip or waste or unlawful, improper or offensive use of the Project.

7. Have the right to be exercised by its Board of Directors or Managing Agent, to enter any apartment or limited common elements appurtenant thereto from time to time during reasonable hours as may be necessary for the operation of the Project or at any time for making emergency repairs therein required to prevent damage to any apartments or common elements or for the installation, repair or replacement of any common elements.

8. Provide chilled water to Commercial Apartment Nos. 1 and 10, as an expense of the respective apartments, at a cost approximately equal to the Association's cost of producing such chilled water, as equitably determined by the Board of Directors based upon an engineer's report. The Association shall not be obligated to provide chilled water to either Commercial Apartment No. 1 or No. 10 unless and until the owner of such apartment completes the work required to extend the air conditioning system within the Tower to the owner's apartment, at the owner's expense.

J. MANAGING AGENT; SERVICE OF LEGAL PROCESS. Operation of the Project may be conducted for the Association by a responsible corporate Managing Agent who shall be appointed by the Association in accordance with the By-Laws, except that the initial Managing Agent shall be appointed by the Developer. The Managing Agent shall be authorized to receive service of legal process in all cases provided in the Condominium Property Act. The initial Managing Agent shall be Hawaiiana Management Company, the principal place of business and post office address of which is 1270 Ala Moana Boulevard, Honolulu, Hawaii 96814.

K. COMMON EXPENSES. The term "common expenses" shall mean and include all charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration, management, and operation of the Project and all other sums designated as common expenses under the Act, this Declaration or the By-Laws of the Association, including, without limiting the generality of the foregoing, the following: all charges for taxes (except real property taxes and other such taxes or assessments

which are or may hereafter be assessed separately on each apartment and the common interest in the common elements appertaining thereto or the personal property or any other interest of the apartment owner), assessments, costs of maintenance, repair, rebuilding, replacement and restoration of the common elements and any additions and alterations thereto, any labor, services, materials, supplies and equipment therefor, any liability whatsoever for loss or damage arising out of or in connection with the common elements or any accident, fire or nuisance thereon, yard, janitorial or other similar services, wages, accounting and legal fees, management fees, and other necessary expenses of upkeep, maintenance, management and operation incurred on or for the common elements, the cost of pest control services, whether or not affecting any particular apartment or apartments, any premiums for insurance, including hazard and liability insurance herein required to be maintained by the Association, and the cost of all utility services, including water, electricity, gas (if any), garbage disposal, sewer, sewage treatment, telephone and other similar services, unless separately metered or otherwise separately attributable to an apartment or group of apartments, in which case the amount charged or attributable to each apartment or group of apartments, as determined by the Board of Directors, shall be payable by the owner or owners of such apartments. Except as otherwise provided herein or in the By-Laws of the Association, the common expenses of the Project shall be charged to the apartment owners in proportion to the common interests appurtenant to their respective apartments; PROVIDED, HOWEVER, that all charges, costs and expenses incurred by the Association only for or in connection with any apartment or any limited common elements, including but not limited to, all costs of maintenance, repair, replacement, additions and improvements to the apartments or the limited common elements and utility costs arising therefrom (such as, for example, electricity costs arising from the operation of the air conditioning system), shall constitute limited common expenses of the Project for which only the owner of any such apartment shall be liable, or for which only the owner of the apartment to which such limited common elements are appurtenant shall be liable or, if the limited common elements are appurtenant to more than one apartment, the owners of such apartments to which such limited common elements are appurtenant shall be severally liable in proportion to the ratio that the approximate square footage of their respective apartments, including lanais, bears to the sum of the approximate square footages of the apartments, including lanais, to which such limited common elements are appurtenant (such charges, costs and expenses incurred only for or in connection with any apartment or limited common element being herein called "limited common expenses") (the apartment owners' respective proportionate shares of the limited common expenses arising from certain limited common elements appurtenant to more than one apartment are set forth in Exhibit "E" attached hereto and made a part hereof); PROVIDED, HOWEVER, that the allocation of the limited common expenses arising from the operation of the air conditioning system and the

provision of air conditioning to the apartments located within the Tower of the Project may from time to time be adjusted by the Board of Directors based upon an engineer's report regarding the fair and equitable allocation of such expenses; and PROVIDED FURTHER, HOWEVER, that all charges, costs and expenses incurred by the Association which are necessitated by the negligence, misuse or neglect of an apartment owner or occupant or any person under either of them shall be charged to such apartment owner or the owner of the apartment of such occupant, as a special assessment secured by the lien created under this Paragraph K.

No apartment owner may exempt himself from liability for his contribution toward the common expenses and limited common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his apartment.

The Board of Directors shall from time to time assess the common expenses and limited common expenses against all the apartments in their respective proportionate shares, and the unpaid amount of such assessments against any apartment shall constitute a lien against such apartment prior to all other liens, except only (i) liens for taxes and assessments lawfully imposed by governmental authority against such apartment and (ii) all sums unpaid on any mortgage of record which was recorded prior to the recordation of a notice of a lien by the Association, and costs and expenses including attorney's fees provided in such mortgages. The lien of the Association for an unpaid assessment may be foreclosed by the Board of Directors or Managing Agent as provided by said Condominium Property Act, provided that thirty (30) days' prior written notice of intention to foreclose shall be mailed, postage prepaid, to all persons having any interest in such apartment as shown in the Association's record of ownership. When the mortgagee of a mortgage of record or other purchaser of an apartment acquires title to such apartment as a result of the remedies provided in the mortgage, foreclosure of the mortgage, or a sale in lieu of foreclosure, such mortgagee or such other purchaser, as the case may be, and their respective heirs, devisees, personal representatives, successors and assigns, shall not be liable for the share of the common expenses, limited common expenses, or assessments chargeable to such apartment which became due prior to such acquisition of title. Such unpaid shares shall be deemed common expenses collectible from all of the apartment owners, including such mortgagee or such other purchaser and their respective heirs, devisees, personal representatives, successors and assigns.

If an apartment owner shall default for a period of thirty (30) days or more in the payment of his share of the common expenses, the Board of Directors may, at its option, so long as such default shall continue, demand and receive from any renter or lessee of the apartment owner, the rent due or becoming due from such renter or lessee to the apartment owner up to an amount sufficient to pay all sums due from the apartment owner, including interest, if

any, and any such payment of rent to the Board of Directors by the renter shall be sufficient discharge of such renter, as between such renter and the apartment owner to the extent of the amount paid. Any such demand or acceptance of rent from any renter or lessee shall not be deemed to be a consent to or approval of any lease by the apartment owner or a release or discharge of any of the obligations of the apartment owner hereunder, or an acknowledgement or surrender of any rights or duties hereunder. In the event that the Board of Directors makes demand upon the renter or lessee, the renter or lessee shall not have the right to question the right of the Board of Directors to make such demand, but shall be obligated to make the payments to the Board of Directors as demanded by the Board; provided, however, that the Board of Directors may not exercise this right if a receiver has been appointed to take charge of the premises pending a mortgage foreclosure, if a mortgagee is in possession pending a mortgage foreclosure or if the Developer or the Fee Owner is the apartment owner.

In the event that assessments received during any year are in excess of the actual expenditures for such year by the Association for common expenses of the Project, the Board of Directors may, subject to approval by the apartment owners at the next annual meeting, determine that such excess shall be:

- (a) Applied in whole or in part to reduce the assessments for the immediately subsequent year;
- (b) Designated in whole or in part as a capital contribution to the Association to be used for future capital improvements and replacements;
- (c) Segregated and held in whole or in part as a Custodial Fund to be expended solely for specifically designated capital improvements and replacements; or
- (d) Segregated and added in whole or in part to the Maintenance Reserve Fund established hereunder.

The proportionate interest of each apartment owner in said capital contributions, Custodial Fund or Maintenance Reserve Fund, cannot be withdrawn or separately assigned but shall be deemed to be transferred with such apartment even though not expressly mentioned or described in the conveyance thereof. In case the Condominium Property Regime hereby created shall be terminated or waived, said capital contributions, Custodial Fund or Maintenance Reserve Fund remaining after full payment of all common expenses of the Association shall be distributed to all apartment owners in their respective proportionate shares except for the owners of any apartments then reconstituted as a new condominium property regime.

L. COMPLIANCE WITH DECLARATION AND BY-LAWS. All apartment owners, their tenants, families, servants and guests, and any other persons who may in any manner use the Project, or any part thereof, shall be bound by and comply strictly with the provisions of this Declaration and the By-Laws of the Association, and all agreements, decisions and determinations of the Association as lawfully made or amended from time to time, and failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board of Directors or Managing Agent on behalf of the Association or, in a proper case, by any aggrieved apartment owner; in the event of the failure of any apartment owner to comply fully with any of the same within thirty (30) days after written demand therefor by the Association, the Association shall promptly give written notice of such failure to the holder of any first mortgage of such apartment or of the condominium conveyance document covering the same, as shown in the Association's record of ownership or who has given the Board of Directors notice of its interest through the Secretary of the Association or the Managing Agent.

M. INSURANCE.

1. Hazard Insurance. The Association at its common expense shall at all times keep all buildings of the Project, including the common elements and, whether or not part of the common elements, all exterior and interior walls, floors, and ceilings and all exterior glass, in accordance with the as-built plans and specifications, insured against loss or damage by fire and other damages under a condominium special property broad form policy of insurance with an extended coverage endorsement, or such other special form policy of insurance that provides equivalent coverage, in an insurance company authorized to do business in Hawaii having a financial rating by Best's Insurance Reports of Class A VI or better in an amount sufficient to provide for the full repair or full replacement thereof without deduction for depreciation, with an inflation guard endorsement and a water damage endorsement, in the name of the Association, as trustee for all apartment owners and all mortgagees of record according to the loss or damage to their respective apartments and appurtenant common interests and in the name of the Fee Owner. Such insurance shall be payable in case of loss to such bank or trust company authorized to do business in the State of Hawaii as the Board of Directors shall designate (herein sometimes called the "Trustee") for the custody and disposition as herein provided of all proceeds of such insurance, and the Association shall from time to time cause to be deposited promptly with the Fee Owner and with each mortgagee of record with any interest in an apartment true copies of such insurance policies or current certificates thereof and promptly notify in writing each such mortgagee of record of any deposit with the Trustee of any proceeds of such insurance, all without prejudice to the right of each apartment owner to insure his apartment for his own bene-

fit. Flood insurance shall also be provided under the provisions of the federal Flood Disaster Protection Act of 1973, if the property is located in an identified flood hazard area with minimum limits equal to the aggregate of the outstanding principal balances of all mortgage loans on apartments in the Project or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. Except as provided in Paragraph N, 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 in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as shall be first approved by the Board of Directors and the Fee Owner and as herein provided, and the Association at its common expense shall make up any deficiency in such insurance proceeds. Every such policy of insurance shall:

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

(b) Contain no provision relieving the insurer from liability for loss occurring while the hazard to such buildings is increased, whether or not within the knowledge or control of the Board of Directors, the Managing Agent, or the Fee Owner, or because of any breach of warranty or condition or any other act or neglect by the Board of Directors, the Managing Agent, the Fee Owner, any apartment owner, or any other persons under any of them;

(c) Provide that such policy and the coverage thereunder may not be cancelled or substantially modified (whether or not requested by the Association) except by the insurer giving at least sixty (60) days' prior written notice thereof to the Board of Directors, the Fee Owner, the Managing Agent, every first mortgagee of record of an apartment and every 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 of Directors, the Association, the Fee Owner, or any apartment owners against any of them or any other persons under any of them;

(e) Contain a waiver by the insurer of any right to deny liability because of vacancy of any apartment or apartments;

(f) Contain a waiver by the insurer of any right of the insurer to repair, rebuild or restore the improvements of the Project, if the apartment owners

decide pursuant to Paragraph N hereof not to repair, rebuild or restore the damaged or destroyed improvements;

(g) Provide that the insurer, at the inception of the policy and on each anniversary date thereof, shall provide the Board of Directors with a written summary, in layman's terms, of the policy. This summary shall include, without limitation, a description of the type of policy, the coverage and limits thereof, the amount of the annual premium, and the renewal dates. Upon receipt of such summary from the insurer, the Board of Directors shall provide the summary to the apartment owners; and

(h) Contain a standard mortgagee clause which shall:

(i) Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any apartment in or condominium conveyance document covering 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 of Directors, the Association, the Managing Agent, the Fee Owner, or apartment owners or any persons under any of them;

(iii) Waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause; and

(iv) Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by the Board of Directors.

(i) If obtainable, be accompanied by the certificate of a licensed insurance broker or agent certifying that the policy complies with and satisfies the requirements of this Section 1 of Paragraph M.

2. Liability Insurance. The Board of Directors, on behalf of the Association and at its common expense, shall also effect and maintain at all times comprehensive general liability insurance, covering all apartment owners, the Board of Directors, the Association, the Fee Owner, the Managing Agent and its employees, and the employees of the Association with respect to the Project in a responsible insurance company authorized to do business in Hawaii and having a financial rating by Best's Insurance Reports of Class A VI or better, with minimum limits of not less than TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) for personal injury to or death of any number of persons in