

any one accident or occurrence and ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) for property damage, or such higher limits as the Board of Directors or Fee Owner may from time to time establish with due regard to then prevailing prudent business practice in the State of Hawaii as reasonably adequate for the protection of the Board of Directors, the Association, the Fee Owner, all apartment owners, the Managing Agent and its employees and the employees of the Association, and from time to time cause to be deposited promptly with each mortgagee of record of any interest in an apartment and with the Fee Owner current certificates of such insurance, all without prejudice to the right of any apartment owners to maintain additional liability insurance for their respective apartments. Any such policy of insurance shall:

(a) Provide that the same shall not be invalidated by any act or neglect of the Board of Directors, the Fee Owner, or the apartment owners or any persons under any of them;

(b) Contain a waiver by the insurer of any right of subrogation to any right of the Board of Directors, the Fee Owner, or the apartment owners against any of them or any other persons under them;

(c) Contain a "severability of interest" endorsement precluding the insurer from denying the claim of an apartment owner because of negligent acts of the Board of Directors, the Association, the Managing Agent, the Fee Owner, or any other apartment owner; and,

(d) Provide that the 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 an apartment or condominium conveyance document and every other person in interest who shall have requested such notice of the insurer.

3. Directors' and Officers' Liability Insurance.

The Association, at its common expense, shall also effect and maintain directors' and officers' liability insurance covering the directors and officers of the Association with respect to their actions and activities as directors and officers of the Association, in any insurance company authorized to do business in the State of Hawaii with minimum limits as established by the Board of Directors, and from time to time deposit promptly with the Secretary of the Association current certificates of any such insurance. Any such policy of insurance shall 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 laymen'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 a copy of the summary to each apartment owner.

4. Additional Insurance Coverage. The Board of Directors may also procure insurance against such additional risks as the Board of Directors may deem advisable for the protection of the apartment owners of a character normally carried with respect to properties of comparable character and use in the State of Hawaii.

5. Annual Review of Insurance Programs. The Board of Directors shall review not less frequently than annually the adequacy of its entire insurance program and shall adjust its insurance program accordingly; the Board of Directors shall then report in writing its conclusions and action taken on such review to the Fee Owner, the owner of each apartment, and to the holder of any first mortgage on any apartment or condominium conveyance document covering an apartment who shall have requested a copy of such report or copies of all such reports. Copies of every policy of insurance procured by the Board of Directors shall be available for inspection by any apartment owner (or purchaser holding a contract to purchase an interest in an apartment) at the office of the Managing Agent.

N. INSURED DAMAGE OR DESTRUCTION.

1. If the Project is damaged by fire or other casualty which is insured against and said 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 Trustee for payment of the contractor employed by the Board of Directors to rebuild or repair such apartment and/or said limited common elements, including paint, floor covering and fixtures, 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, the Fee Owner, and any mortgagee of record of any interest in the apartment so damaged.

2. If such damage extends to two or more apartments and/or the limited common elements appurtenant thereto, or to any other common elements, the Board of Directors shall thereupon contract to repair or rebuild the damaged portions of the buildings, including all apartments and limited common elements so damaged, as well as the common elements, in accordance with plans and specifications therefor which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board of Directors, the Fee Owner, and any mortgagee of record of any interest in an apartment directly affected thereby; provided that in the event said modified plan eliminates

any apartment and such apartment is not reconstructed, the Trustee shall pay the Fee Owner, 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 (less the proportionate share of said apartment in the cost of debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds.

3. The insurance proceeds shall be paid by the 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 Paragraph N. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding any common elements other than any limited common elements, the Board of Directors shall levy, as soon as reasonably possible following the determination of the amount of such insufficiency, a special assessment on the owners of all apartments in proportion to their respective common interests. Any costs in excess of the insurance proceeds for the repairing and/or rebuilding of any apartment or limited common element appurtenant thereto (but not including any common elements within any apartment) shall be specially assessed against the owner of such apartment and said special assessment shall be secured by the lien created under Paragraph K of this Declaration.

4. 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 of Directors as the work progresses, but subject to the following conditions:

a. An architect or engineer (who may be an employee of the Board of Directors) shall be in charge of the work;

b. Each request for payment shall be made on seven (7) days' prior notice to the 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 of Directors for payments by the Board of Directors 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 Trustee the sum requested does not exceed the value of the work done to the date of such certificate;

c. Each request shall be accompanied by waivers of liens satisfactory to the 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 satis-

factory to the 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;

d. 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;

e. The fees and expenses of the Trustee as determined by the Board of Directors and the Trustee shall be paid by the Association as common expenses, and such fees and expenses may be deducted from any proceeds at any time in the hands of the Trustee; and

f. Such other conditions not inconsistent with the foregoing as the Trustee may reasonably request.

5. 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 the Trustee shall be paid or credited to all of the owners of the apartments and the holders of any mortgage on the apartments, as their interests may appear, in proportion to the respective common interests appurtenant to each apartment.

6. To the extent that any loss, damage or destruction to any building or other property is covered by insurance procured by the Board of Directors, the Board of Directors shall have no claim or cause of action for such loss, damage or destruction against the Fee Owner, any apartment owner or lessee. To the extent that any loss, damage or destruction to the property of any apartment owner or lessee is covered by insurance procured by such owner or lessee, such owner or lessee shall have no claim or cause of action for such loss, damage or destruction against the Board of Directors, the Association, the Fee Owner, the Managing Agent or any other apartment owner or any person claiming under any of them.

0. CONDEMNATION. In case at any time or times the Project or any part thereof shall be taken or condemned by any entity having the power of eminent domain, or shall be sold to such entity under threat of condemnation, all compensation and damages payable for or on account of the Land shall be payable to and be the sole property of the Fee Owner. All compensation and damages payable for or on account of the buildings and other improvements shall be equitably apportioned between the apartment owners and their respective mortgagees, if any. All portions of any such award payable on account of the apartment owners and their respective mortgagees, if any, shall be payable to a condemnation trustee, who shall be a bank or trust company designated by the Board of Directors doing business in the City and County of Honolulu, State of Hawaii. The Board of Directors shall arrange for the repair and restoration of the buildings and improvements in accordance with the

design thereof immediately prior to such condemnation or, if such repair and restoration in accordance with said design are not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board of Directors, the Fee Owner, and the mortgagees of record of any interest in an apartment directly affected thereby; provided, however, that (a) if only part of the Project is so taken or condemned, thereby rendering the remainder of said Land and said buildings and other improvements unsuitable for the purposes of the Project and the Association removes all remains of said buildings and other improvements and restores the remaining Land to good order and condition and even grade, using such compensation and damages to the extent necessary therefor, and causes all subsisting condominium conveyance documents covering apartments of the Project to be surrendered and all rent then accrued and taxes, assessments, rates and other charges payable for the then full current year to be paid to the Fee Owner or (b) if all or any part of any apartment is so taken or condemned, thereby rendering the remaining part thereof unsuitable for its purposes and the Association removes all remains of such apartment and restores the remaining common elements of the Project to good order and condition, using such compensation and damages to the extent necessary therefor, and causes the condominium conveyance document of such apartment to be surrendered and all rent then accrued and taxes, assessments, rates and other charges payable for the then full current year to be paid to the Fee Owner and by a duly executed amended declaration causes the remaining part of the Project to be reconstituted as a new horizontal property regime without such apartment, then such repair, restoration and replacement of said buildings and other improvements or of such apartment, as the case may be, need not be done. Upon any such surrender of a condominium conveyance document covering an apartment, the condemnation trustee shall disburse the portion of the proceeds of such award allocable to said apartment, less the proportionate share of said apartment in the cost of debris removal, to the owner of said apartment and the owner's mortgagees, if any, in satisfaction of the owner's interest in said apartment. No surrender of a condominium conveyance document covering an apartment may be made without joinder by the mortgagee. The condemnation trustee shall disburse the remainder of the proceeds of such award to the contractor engaged in such repair and restoration in appropriate progress payments and in the event such proceeds are insufficient to pay the costs thereof the Board of Directors is expressly authorized to pay such excess costs from the maintenance fund and if the maintenance fund is insufficient for this purpose the Board of Directors shall levy a special assessment on the owners of apartments in proportion to their common interests and said special assessment or assessments shall be secured by the lien created under Paragraph K hereof. In the event sums are received by the condemnation trustee in excess of the cost of repairing, restoring or removing said buildings and improvements, such excess proceeds shall be divided between the owners of apartments and

their respective mortgagees, if any, in proportion to their respective common interests appurtenant to each apartment.

P. UNINSURED CASUALTY, PARTIAL RESTORATION; AND DETERMINATION AGAINST RESTORATION.

1. Uninsured Casualty. In case at any time or times any improvements of the Project shall be substantially damaged or destroyed by any casualty not herein required to be 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%) or more of the common interests vote to the contrary. Any such restoration of the common elements shall be completed diligently by the Association at its common expense and the apartment owners shall be solely responsible for any restoration of their respective apartments so damaged or destroyed, according to the original plans and elevation thereof, or such other plan first approved by the Board of Directors, the Fee Owner, 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.
2. Partial Restoration. Restoration of the Project with less than all of the apartments after any casualty or condemnation may be undertaken by the Association only pursuant to an amended declaration, consented to by the Fee Owner and 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 liens affecting all or any part of the Project, by (a) removing the Project from the horizontal property regime established by the execution and recordation of this Declaration, (b) reconstituting all of the remaining apartments and common elements to be restored as a new horizontal property regime, and (c) providing for payment to the owner of each apartment not to be restored the agreed value of such apartment and its common interest.
3. Determination Against Restoration. Except as otherwise provided in Section 1 or Section 2 of this Paragraph P, in the event of an insured casualty or the condemnation of any part or all of the Project, the Project shall be repaired, rebuilt and restored as provided in Paragraph N hereof in the case of an insured casualty, and as provided in Paragraph O hereof in the case of condemnation, unless, within ninety (90) days after such a casualty or condemnation, it is determined by the affirmative vote of eighty percent (80%) of the apartment owners (including the owners of eighty percent

(80%) of the damaged or condemned apartments) that the Project not be so repaired, rebuilt or restored.

Q. ALTERATION OF PROJECT.

1. Except as otherwise provided by the federal Fair Housing Act (42 U.S.C. Sec. 3601 et seq.), as amended by the Fair Housing Amendments Act of 1988, and the rules and regulations promulgated thereunder, as the same may be amended from time to time in the future and except as otherwise provided herein, restoration or replacement of the Project or any building or other structure thereof or construction of any additional building or other structure or structural alteration or addition thereto, different in any material respect from said Condominium Map of the Project, shall be undertaken by the Association or any apartment owner only pursuant to an amendment of this Declaration, duly executed by or pursuant to a vote or the written consent of at least seventy-five percent (75%) of the apartment owners together with the consent of all apartment owners whose apartments or the limited common elements appurtenant thereto are directly affected (as determined in a reasonable manner by the Board of Directors) and in accordance with complete plans and specifications therefor first approved in writing by the Fee Owner and the Board of Directors, and promptly upon completion of such restoration, replacement, construction, alteration or addition the Association shall duly record or file of record such amendment together with a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer; PROVIDED, HOWEVER, that this Section 1 of Paragraph Q shall not apply to or limit in any manner the rights and easements described in or referred to in Section 9 of Paragraph F above; PROVIDED FURTHER, HOWEVER, that the owner of any apartment may make any alterations or additions within the owner's apartment, except for enclosing any exterior lanai, with only the approval required hereinbelow, and that the owner of any two of the adjacent apartments listed below, which are separated by a common element that is a wall, with only the approval required hereinbelow, may: (a) alter or remove all or portions of the intervening wall, if the structural integrity of the building is not thereby adversely affected and if the finish of the common element then remaining is then restored to a condition substantially comparable to that of the common element prior to such alterations; and (b) make any alterations or additions within the portion of the hallway constituting a limited common element appurtenant to such apartment. These adjacent apartments include the following:

- (a) Apartment Nos. 3301 and 3302;
- (b) Apartment Nos. 3307 and 3308;
- (c) Apartment Nos. 3401 and 3402;
- (d) Apartment Nos. 3407 and 3408;
- (e) Apartment Nos. 3501 and 3502;
- (f) Apartment Nos. 3507 and 3508;
- (g) Apartment Nos. 3601 and 3602;
- (h) Apartment Nos. 3607 and 3608;

- (i) Apartment Nos. 3701 and 3702;
- (j) Apartment Nos. 3707 and 3708;
- (k) Apartment Nos. 3801 and 3802;
- (l) Apartment Nos. 3807 and 3808;
- (m) Apartment Nos. 3901 and 3902;
- (n) Apartment Nos. 3907 and 3908;
- (o) Apartment Nos. 4001 and 4002;
- (p) Apartment Nos. 4007 and 4008;
- (q) Apartment Nos. 4101 and 4102;
- (r) Apartment Nos. 4107 and 4108;
- (s) Apartment Nos. 4201 and 4202; and
- (t) Apartment Nos. 4207 and 4208.

The owner of any two of the adjacent apartments listed above may install a door or doors to such opening or openings in the intervening common element. Alterations or additions within an apartment, within the above-specified adjacent apartments, or within the aforesaid portion of the hallway constituting a limited common element appurtenant to such adjacent apartments shall require only the written approval thereof, including the apartment owner's plans therefor, by the Fee Owner, by the holders of first mortgage liens affecting such apartments (if the lien holders require such approval), by the appropriate agencies of the State of Hawaii and the City and County of Honolulu if such agencies so require, by the Board of Directors (which approval shall not be unreasonably or arbitrarily withheld or delayed), and by all other apartment owners thereby directly affected (as determined in a reasonable manner by the Board of Directors), and such alterations or additions may be undertaken without an amendment to this Declaration or filing of a complete set of floor plans of the Project as so altered; provided, however, if the alterations or additions are substantial in nature as reasonably determined by the Fee Owner or the Board of Directors, the Fee Owner or the Board of Directors may require that the owner of the apartment provide evidence satisfactory to the Fee Owner and/or Board of Directors of sufficient financing to complete such alterations or additions or, in lieu thereof, require that the owner obtain a performance and lien payment bond, naming as obligees the Fee Owner, the Board of Directors and the Association and collectively all apartment owners and their respective mortgagees of record, as their interests may appear, for a penal sum of not less than one hundred percent (100%) of the estimated cost of such construction. Prior to the termination of the common ownership of any such adjacent apartments, if the intervening wall shall have been altered or removed pursuant to the foregoing provisions and/or any entry to hallways sealed, the owner of such apartments shall be obligated to restore such intervening wall and/or hallway entries to substantially the same condition in which the same existed prior to such alteration or removal.

Notwithstanding any provision in this Declaration to the contrary, neither the Association nor any apartment owner may enclose any exterior lanai within any apartment in the Project.

2. Notwithstanding any other provision in this Declaration to the contrary, prior to (i) the time that all apartments in the Project have been sold and recorded, and (ii) the filing by the Developer of the "as built" verified statement (with plans, if applicable) required by Section 514A-12 of the Hawaii Revised Statutes (but in no event later than December 31, 1995), the Developer shall have the right, without the approval, consent or joinder of any apartment owner or any other person other than the Fee Owner, (a) to make alterations in the Project (and/or to amend this Declaration and the Condominium Map accordingly) which change the configuration of, alter the number of rooms of, decrease or increase the size of, or change the location of any apartment (and the limited common elements appurtenant thereto) in the Project which is not sold and recorded; (b) to make alterations in the Project (and/or to amend this Declaration and the Condominium Map accordingly) which divide any of the commercial apartments (and/or the limited common elements appurtenant thereto) into any number of separate commercial apartments, provided that the total undivided percentage common interest appurtenant to all commercial apartments in the Project shall at all times equal 12.599% and that the limited common elements appurtenant to the commercial apartments shall remain, after any such division, limited common elements appurtenant to one or more of the commercial apartments; or (c) to make other alterations in the Project (and to amend this Declaration and the Condominium Map accordingly) which make minor changes in any apartment in the Project or the common elements which do not affect the physical location, design or size of any apartment which has been sold and recorded; PROVIDED, HOWEVER, that as to (a), (b), and (c) above, any such changes shall be reflected in an amendment to the Declaration as provided in Section 2 of Paragraph S of this Declaration. As used herein the term "sold and recorded" shall mean and refer to the sale of apartments in the Project, and the filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii of condominium conveyance documents or assignments of condominium conveyance documents transferring said interests in the apartments from the Fee Owner or the Developer to parties not signatory to the Declaration.

3. Notwithstanding any other provision in this Declaration to the contrary, the respective owners of Commercial Apartment Nos. 1, 2, 3, 9 or 10 may divide each such commercial apartment (and the limited common elements appurtenant thereto) into any number of separate commercial apartments, provided that with respect to each of the aforesaid commercial apartments: (a) the total undivided percentage common interest appurtenant to the separate commercial apartments shall at all time equal the percentage common interest appurtenant to the original commercial apartment from which the separate apartments were created, and (b) the limited common elements appurtenant to the original commercial apartment shall, after any such division, be designated limited common elements appurtenant to one or more of the separate commercial apartments. The subdivision of any one of Commercial Apartment Nos. 1, 2,

3, 9 or 10 into separate commercial apartments shall be reflected in an amendment to this Declaration which amendment need only be signed and approved by the Fee Owner and the owner or owners of the subdivided commercial apartment and their mortgagees, if any.

R. MAINTENANCE RESERVE FUND. The Board of Directors shall establish and maintain a Maintenance Reserve Fund by the assessment of and payment by all apartment owners in equal monthly installments of their respective proportionate shares of such reasonable annual amount as the Board of Directors may determine in its sole discretion as adequate to cover each apartment owner's obligations to provide for utilities, insurance, maintenance and repair of the common elements and other expenses of administration of the Project, which shall be deemed conclusively to be a common expense of the Project. The Board of Directors may include reserves for contingencies in such Fund, and such Fund may from time to time be increased or reduced in the discretion of the Board of Directors. The proportionate interest of each apartment owner in said 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 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.

S. AMENDMENT OF DECLARATION.

1. Except as otherwise provided herein or in said Condominium Property Act, this Declaration may be amended by vote of at least seventy-five percent (75%) of the apartment owners, and shall be effective only upon the filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii of an instrument setting forth such amendment and vote duly executed by the proper officers of the Association and consented to by the Fee Owner.

2. Notwithstanding the foregoing and notwithstanding the filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii of any or all condominium conveyance documents conveying interests in any or all of the apartments to any person, the Developer hereby reserves the right to successively amend this Declaration (including the By-Laws and, when applicable, the Condominium Map), without the consent, approval or joinder of the persons then owning or leasing the apartments, to file the "as built" verified statement (with plans, if applicable) required by Section 514A-12, Hawaii Revised Statutes, as amended, (a) so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed or being filed simultaneously

with such amendment fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built, or (b) so long as any plans filed therewith involve only changes to the layout, location, apartment numbers, dimensions of or other changes to the apartments and common elements as built which the Developer is permitted to make in accordance with Paragraph Q of this Declaration.

3. Notwithstanding the foregoing and until the filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii of condominium conveyance documents covering all of the apartments in the Project (including all interests therein) in favor of parties not a signatory to the Declaration and other than to any mortgagee of the Fee Owner or the Developer, the Fee Owner and Developer hereby reserve the right to amend this Declaration, the By-Laws and the Condominium Map, without the approval, consent or joinder of any purchaser of an apartment or any interest therein (including any lessee), and to make such amendments as may be required by law, by the Real Estate Commission of the State of Hawaii, by any title insurance company issuing a title insurance policy on the Project or any of the apartments or any interest therein, by any institutional lender lending funds on the security of the Project or any of the apartments or any interest therein, or by any governmental agency of any state, territory, possession or foreign county or other foreign jurisdiction as a condition precedent to the marketing or sale of apartments or any interests therein in any such jurisdiction; provided, however, that no such amendment which would change the common interest appurtenant to an apartment or substantially change the design, location or size of an apartment shall be made without the consent to such amendment by all persons having an interest in such apartment.

4. Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. For example, if the Declaration expressly states that 80% of the owners must concur with a proposal to remove any part of the Project from the condominium property regime, then the vote of 80% of the owners is necessary to amend this provision regardless of the percentage prescribed in the general provision pertaining to amendments of the Declaration. As used herein, a "material" amendment to the Declaration includes a change to provisions directly affecting any of the following: voting rights; responsibility for maintenance and repair; boundaries of any apartment; convertibility of apartments into common elements or vice versa; expansion or contraction of the Project (other than by the exercise of the Developer's or Fee Owner's reserved rights); imposition of restrictions on an owner's right to sell or transfer his apartment; a decision to establish self-management rather than professional management; or an action to terminate the legal status of the Project after substantial destruction or condemnation occurs.

5. No amendment of any provision contained in this Declaration or in the By-Laws that grants or reserves rights in favor of the Developer or the Fee Owner shall be effective unless signed and acknowledged by the Developer and/or Fee Owner whose rights are to be affected.

6. Notwithstanding the foregoing provisions of this paragraph, the owners of the respective apartments, with the consent of the mortgagee(s) of the affected apartments, if any, shall have the right, subject to all applicable statutes, ordinances and rules and regulations of governmental agencies, to change the designation of parking spaces which are appurtenant to their respective apartments solely by amendments to this Declaration and the respective condominium conveyance documents involved, such amendments to be executed solely by the respective apartment owners of such apartments and such mortgagee(s), if any, provided that such amendments shall be effective only upon the filing of the same in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, and provided further that at all times at least one parking space shall be appurtenant to each residential apartment in the Project. A copy of such conveyance and amendment shall be given to the Board of Directors of the Association by the affected owners within fifteen (15) days of the filing thereof.

T. RESERVATION TO MERGE PROJECTS AND RESERVED RIGHTS CONCERNING DEVELOPMENT OF SUBSEQUENT PROJECTS.

1. Notwithstanding any provision to the contrary contained or implied in this Declaration, the Developer shall have the right, but not the obligation, at its sole option and discretion, at any time up to but not later than December 31, 2010, to merge or cause the merger of the Project with another project or projects (hereinafter called the "Subsequent Project(s)") to be developed by the Developer on any portion of the real property described in Exhibit "F" attached hereto and made a part hereof (exclusive of the real property constituting the Land of the Project as described in Exhibit "A" attached hereto, which description may be amended in the future pursuant to Paragraph U herein), as permitted under the Planned Development Permit for 404 Piikoi Project dated November 7, 1984 (PD 2-84), as approved by the Hawaii Community Development Authority of the State of Hawaii, as amended, and as the same may be further modified or amended from time to time in the future (hereinafter called the "Planned Development Permit"). The Subsequent Project(s) may include up to the total number of residential, commercial, and industrial apartments allowed under the Planned Development Permit, together with such supporting and servicing common elements as the Developer determines in its sole discretion are beneficial to the Subsequent Project(s). The Developer further reserves the right to construct said additional units in two or more phases, in which case any portion of the real property described hereinabove for the development of the Subsequent Project(s) may be subdivided to accommodate such phases.

2. The purpose of the merger provisions of this Paragraph T is to provide for a merger of this Project and the Subsequent Project(s) as if the projects involved had been developed as one single project. A merger may occur with respect to the Subsequent Project(s), or any one of them, at the same or different times, and merger with respect to one of said projects shall not affect the right of the Developer to merge another project or projects at a later date, subject to all of the provisions of this Declaration.

3. Merger shall take effect with respect to a particular Subsequent Project upon the happening of all of the following conditions with respect thereto:

(a) Recordation in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (hereinafter called "Land Court") and/or in the Bureau of Conveyances of the State of Hawaii (hereinafter called "Bureau of Conveyances"), as appropriate, by the Developer of a Declaration of Condominium Property Regime and By-Laws covering the Subsequent Project in a form substantially identical hereto (except for the descriptions of apartments and the common elements and the percentage of common interest therein and except for such matters as may be required to conform to any amendments of Chapter 514A, Hawaii Revised Statutes, enacted subsequent to the recordation hereof) and a Condominium Map depicting the plot and floor plans and elevations of the Subsequent Project, both complying with the requirements of Chapter 514A, Hawaii Revised Statutes, as amended; and

(b) Recordation in the Land Court and/or Bureau of Conveyances of the State of Hawaii by the Developer of a "Certificate of Merger", which certificate shall contain:

(i) A certification by a Hawaii registered architect or professional engineer that the final plans theretofore filed for the projects being merged, or being filed simultaneously with such certificate, fully and accurately depict the layout, location, apartment numbers, dimensions and elevations of the apartments of the projects being merged, as built;

(ii) A certification by the Developer that the Subsequent Project has been substantially completed, that a notice of completion has been filed, that the period for filing of mechanics' and materialmen's liens has expired and that no mechanics' or materialmen's lien has been filed; and

(iii) The common interest of each apartment of the merged project after completion of the subject merger. All such actions necessary to effect the merger may be taken by the Developer alone, and shall not require the consent of any of the owners of the apartments of this Project or the Subsequent Project(s).

4. From and after the date of the recordation of said Certificate of Merger with respect to a particular Subsequent Project, the following consequences shall ensue:

(a) Use of Common Elements. The apartments in each of the projects shall have the right to use the common elements in each project to the same extent and subject to the same limitations as are imposed upon an apartment in each project just as though the merged projects had been developed initially as a single undivided project.

(b) Association and Board of Directors. The associations of apartment owners of each of the projects shall be merged into a single association governing the merged project. The Board of Directors of this Project immediately prior to the merger shall govern the merged project after completion of the merger, and at a special meeting called by the Board of Directors of this Project for that purpose within thirty (30) days after the recordation of the Certificate of Merger, the apartment owners may remove said existing Board of Directors and elect a new Board of Directors to govern the merged project until the next annual meeting. Procedures for calling and holding such meetings shall be those as set forth in the By-Laws.

(c) Common Interests. The percentage of common interest appurtenant to each apartment in the merged project shall be recalculated so that such percentage is equal to a fraction, the numerator of which is the floor area of the apartment (including the lanai, if any) and the denominator of which is the total floor area of all apartments in the merged project.

(d) Interpretation. For purposes hereof, the merged increments shall be treated as part of a single project developed as a whole from the beginning, and there shall be only one Association of Apartment Owners and one Board of Directors, and the Declaration of Condominium Property Regime and By-Laws applicable to each merged increment shall be construed as one document applicable to the entire project constituting the merged increments except to the extent expressly otherwise provided for therein. It is the purpose hereof to provide that from and after the date of each merger all of the property so merged shall be treated as though it had been developed, divided into apartments, held, occupied and used by the owners thereof as a single undivided project.

5. In connection with, and only to the extent necessary for the creation of such additional apartments and common elements, as aforesaid, the Developer shall have the right up to December 31, 2010 or upon merger of all of the Subsequent Project(s), whichever shall first occur, to amend or add common elements; to amend or add parking spaces; to enter upon the Project premises with employees, agents and contractors for all purposes reasonably necessary for or useful to constructing and completing said

additional apartments and common elements according to plans and specifications or amended plans and specifications approved by the officer of the City and County of Honolulu having jurisdiction over the issuance of building permits; to connect the additional apartments and/or common elements to the Project and to alter the common elements of the Project to provide access for the Subsequent Project(s) through the parking areas and driveway ramps within the Platform to Ala Moana Boulevard; to connect the additional apartments and/or common elements to utilities of the Project; to file amendments to the Declaration for purposes of certifying condominium maps filed as reflecting the improvements shown therein to be "as built"; and to sell the additional apartments. Such rights shall also include the following:

(a) The right and an easement to enter upon and use the common elements of the Project and do all things reasonably necessary, desirable or useful, for the purposes of designing, developing, constructing and completing the Subsequent Project(s), connecting the same to the Project, providing access for the Subsequent Project(s) through the parking areas and driveway ramps of the Project to Ala Moana Boulevard or Piikoi Street, connecting the Subsequent Project(s) to the utility installations of the Project, and selling the apartments in the Subsequent Project(s), provided that there shall not be caused thereby any interruption other than a temporary interruption in the service of utilities to the Project;

(b) The right in the nature of an easement over and upon the Project to create and cause dust, noise, vibration and other nuisances created by and resulting from any work connected with or incidental to the development, construction and sale of apartments in the Subsequent Project(s) or to the construction of any access for the Subsequent Project(s) through the common elements of the Project;

(c) The right to enter the common areas of the Project for the purpose of showing prospective purchasers of apartments in the Project or in the Subsequent Project(s) the facilities of the Project;

(d) The right to place signs upon the Project in conjunction with sales of apartments in the Subsequent Project(s);

(e) The right of the Developer to use any apartment in the Project owned or rented by the Developer for administrative, sales or display purposes until all apartments in all Subsequent Project(s) are sold. The Developer shall in the exercise of the rights reserved to it in this Paragraph T, make reasonable efforts consistent with maintaining the orderly progress of the design, development, construction, completion, and sale of the apartments in the Subsequent Project(s) to minimize interference with the normal use and enjoyment of the Project by the apartment owners.

6. In the event of each merger as aforesaid, each owner of an apartment in the Subsequent Project then merged with this Project shall be required to advance to the Association, as constituted after merger, upon filing of the respective Certificate of Merger, that owner's proportionate share of an amount equal to the total Association funds on deposit immediately prior to such merger for operation of the merged project, including the Maintenance Reserve Fund, but excluding funds which will be expended during the next 30 days (hereinafter called the "Net Maintenance Reserve Fund"). The proportionate share of the Net Maintenance Reserve Fund of each apartment owner in the Subsequent Project shall equal the product of multiplying the common interest appurtenant to the owner's apartment by the amount of the Net Maintenance Reserve Fund.

7. The Developer shall have the right to execute, acknowledge and deliver any and all instruments necessary or appropriate for the purpose of carrying out the provisions and exercising the rights, powers and privileges granted by this Paragraph T, all as the true and lawful attorney-in-fact of the respective owners from time to time of the apartments of the Project as herein originally constituted or as merged as aforesaid. Said special power of attorney is coupled with an interest, is irrevocable, and shall not be affected by the death or disability of any principal. The entering into a contract to purchase an apartment or any interest therein, the acceptance of a condominium conveyance document or other conveyance or the entering into a lease or occupancy or the taking of a mortgage or other lien on an apartment or any interest therein shall automatically constitute a consent by all present and future apartment owners, tenants, occupants, and lienholders, to the exercise of the reserved rights provided for in this Paragraph T, including but not limited to the provisions of Section 8, below. Although such automatic consent shall be deemed legally sufficient for the purposes set forth herein and no further acts shall be needed to effectuate such merger, all such present and future owners, tenants, occupants and lienholders of such apartments shall, if requested, join in, consent to, or execute all instruments and documents which the Developer deems necessary or desirable to effect the provisions of this Paragraph T.

8. After completion of the merger of the Project with any Subsequent Project, as provided in this Paragraph R, the Developer shall have the irrevocable right to amend the Declaration and By-Laws for each increment in their entirety so that there shall be one amended Declaration and By-Laws for all increments for the sole purpose of showing the merged project with a consolidated description of the land, buildings, apartments, common elements, limited common elements and common interests, and of incorporating into such amended Declaration and By-Laws any statutory requirements enacted subsequent to the recordation of this Declaration and the By-Laws attached hereto, without otherwise changing the form or content of such Declaration and

By-Laws. The apartment owners hereby give the Developer their irrevocable power of attorney coupled with an interest to amend the Declaration of such purpose. After the last Subsequent Project is merged in the Project, the amended Declaration shall omit this Paragraph T.

9. Upon the expiration or earlier termination of the Master Development Lease, all rights reserved in this Paragraph T in favor of the Developer shall automatically terminate with respect to the Developer and shall run in favor of the Fee Owner or any assignee of the Fee Owner.

10. If any one or more of the provisions of this Paragraph T shall be declared to be contrary to law, then such provision or provisions shall be null and void and shall be deemed separable from the remaining provisions of this Paragraph T and shall in no way affect the enforceability of any other provision hereof.

U. DEVELOPER'S AND FEE OWNER'S OPTION TO SUBDIVIDE AND WITHDRAW AREAS. The Developer and the Fee Owner may, but the Developer and Fee Owner are under no obligation to, withdraw from the Project any portion or all of those areas designated in Exhibit "G" as possible withdrawal areas. Notwithstanding anything to the contrary in this Declaration, the Developer and the Fee Owner shall, from time to time and at any time up to but not later than December 31, 1993, have the right at their option, to require alteration of the Project by subdividing and withdrawing from the Project and the condominium property regime all or any portion of the common element areas designated in Exhibit "G" (attached hereto and made a part hereof) as "possible withdrawal areas", on the following terms and conditions:

(1) Developer or Fee Owner shall, at their expense and without being required to obtain the consent or joinder of any apartment owner, lien holder or other person: (a) duly subdivide the land of the Project to permit withdrawal of the designated area or areas, including obtaining subdivision approval from the City and County of Honolulu and from the Land Court of the State of Hawaii; and (b) execute and record an amendment to this Declaration and the Condominium Map to subdivide and withdraw any areas chosen for withdrawal;

(2) Every apartment owner and all holders of liens affecting any of the apartments in the Project shall, if required by law or by the Developer or the Fee Owner, join in, consent to, and execute all instruments and documents necessary or desirable to effect the subdivision and withdrawals provided for in this Paragraph U.

(3) The withdrawal of an area shall become effective upon the filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii of (a) an amendment to the Declaration provided for in subparagraph (1) of this Paragraph U, (b) an exhibit setting

forth a description of the land withdrawn from the Project, (c) a memorandum of withdrawal, and (d) a partial surrender of the Master Development Lease executed by the Developer and Fee Owner under which the Developer surrenders the withdrawn areas from the Master Development Lease.

Each and every party acquiring an interest in the Project, by such acquisition, consents to such subdivisions and withdrawals from the Project as provided in this Paragraph U and to any amendment or amendments of this Declaration and the filing thereof in said Office of the Assistant Registrar of the Land Court to effect the same; agrees to execute such documents and instruments and do such other things as may be necessary or convenient to effect the same including without limitation the execution of a partial surrender of the Master Development Lease surrendering the property withdrawn to the Fee Owner; and appoints the Developer and the Fee Owner and their respective assigns its attorney-in-fact with full power of substitution to execute such documents and instruments and to do such things on its behalf, 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.

V. OWNERS MAY INCORPORATE. All of the rights, powers, obligations and duties of the apartment owners imposed by this Declaration and the By-Laws of the Association recorded immediately following this Declaration, may be exercised and enforced by a nonprofit membership corporation formed by the apartment owners under the laws of the State of Hawaii for the purposes herein set forth. The formation of such corporation shall in no way alter the covenants, conditions and restrictions set forth in this Declaration or in the By-Laws of the Association, and the Articles of Incorporation and By-Laws of such corporation shall be subordinated to and controlled by this Declaration and the By-Laws of the Association. Any action taken by such corporation in violation of any or all of the covenants, conditions and restrictions contained in this Declaration or in the By-Laws of the Association shall be void and of no effect.

W. NON-LIABILITY OF FEE OWNER. The parties hereto expressly acknowledge and declare that:

1) The Fee Owner has joined in this Declaration solely for the purpose of submitting Fee Owner's interest in the Land to the condominium property regime in accordance with Section 514A-20 of the Hawaii Revised Statutes, as amended;

2) The Project is the consequence of a development undertaken solely by Developer and the Fee Owner has not controlled or participated in any way, either as a joint venturer or in any other capacity, in the planning or construction of any buildings or other improvements of the Project or any part thereof; and

3) The Fee Owner shall not be responsible for any design or construction defects of said development or for any other claims or liabilities arising therefrom or for any redesign or for any reconstruction or repair hereafter.

X. PLANNED DEVELOPMENT AGREEMENT AND HAWAII COMMUNITY DEVELOPMENT AUTHORITY'S DISTRICT-WIDE IMPROVEMENT DISTRICT ASSESSMENT PROGRAM. The conditions imposed by the Planned Development Agreement dated October 19, 1988, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1645703, by and between Hawaii Community Development Authority, State of Hawaii, and Fee Owner, shall run with the Land and shall bind and constitute notice to all subsequent lessees, grantees, assignees, mortgagees, lienors and any other persons who shall claim an interest in the Land and Hawaii Community Development Authority shall have the right to enforce the Planned Development Agreement by appropriate action at law or suit in equity against all such persons.

The Project is subject to Hawaii Community Development Authority's District-Wide Improvement District Assessment Program and may be assessed for the cost of improvements made in the vicinity of the Project.

Y. INTERPRETATION AND CAPTIONS. In case any provision of this Declaration shall be held invalid, such invalidity shall not render invalid any other provision hereof which can be given effect.

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or any provision hereof.

Z. WAIVER. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

IN WITNESS WHEREOF, the Fee Owner and the Developer have executed these presents this 25th day of October, 1959.

NAURU PHOSPHATE ROYALTIES
(HONOLULU), INC.

BY [Signature]
Its Chief Executive Officer
"Fee Owner"

NAURU PHOSPHATE ROYALTIES
DEVELOPMENT (HONOLULU), INC.

BY [Signature]
Its Chief Executive Officer
"Developer"

CITY OF MELBOURNE, AUSTRALIA)		Commonwealth of Australia)
CONSULATE GENERAL OF THE)	SS:	State of Victoria)
UNITED STATES OF AMERICA)		City of Melbourne) SS
		Consulate General of the)
		United States of America)

I, SANDRA A STEVENS, Consul

of the United States of America at Melbourne, Australia,
duly commissioned and qualified, do hereby certify that on
this 25th day of October, 1989, before me personally
appeared Theodore C. Moses, to
me personally known, who, being by me duly sworn, did say
that he is the Chief Executive Officer OF NAURU PHOSPHATE
ROYALTIES DEVELOPMENT (HONOLULU), INC., a Delaware
corporation, that the seal affixed to the foregoing
instrument is the corporate seal of said corporation, and
that said instrument was signed and sealed in behalf of
said corporation by authority of its Board of Directors,
and said Officer acknowledged said instrument
to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand
and official seal the day and year first above mentioned.

Sandra A. Stevens

SANDRA A. STEVENS
Consul of the
United States of America

CITY OF MELBOURNE, AUSTRALIA)		Commonwealth of Australia)
CONSULATE GENERAL OF THE)	SS:	State of Victoria)
UNITED STATES OF AMERICA)		City of Melbourne) SS
		Consulate General of the)
		United States of America)

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say that he is the Chief Executive Officer of NAURU
PHOSPHATE ROYALTIES (HONOLULU), INC., a Delaware corpora-
tion, that the seal affixed to the foregoing instrument
is the corporate seal of said corporation, and that
said instrument was signed and sealed in behalf of said
corporation by authority of its Board of Directors, and
said Officer acknowledged said instrument to
be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand
and official seal the day and year first above mentioned.

Sandra A. Stevens

SANDRA A. STEVENS
Consul of the
United States of America