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**TITLE GUARANTY OF HAWAII, INCORPORATED**

LAND COURT SYSTEM

REGULAR SYSTEM

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P.O. Box 780  
Kula, Hawaii 96790-0780

RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME  
OF WAILEA EKAHI III

WHEREAS, by Declaration of Horizontal Property Regime established by Chapter 514 of the Hawaii Revised Statutes filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 783305, (the "Original Declaration") together with Condominium Map No. 290, the Horizontal Property Regime known as Wailea Ekahi III was created by Wailea Development Company, a Joint Venture duly registered as a general partnership in the State of Hawaii; and

WHEREAS, the Original Declaration is hereby restated by resolution adopted by the Board of Directors pursuant to §514B-109(a), Hawaii Revised Statutes, to set forth all amendments to the Original Declaration as follows: Section 1 0(d) and a new Section 18 "Governing Law;" and

WHEREAS, the Original Declaration shall be restated as the Restated Declaration of Condominium Property Regime of Wailea Ekahi III, (the "Restated Declaration"), by resolution adopted by the Board of Directors pursuant to §514B-109(b), Hawaii Revised Statutes, to conform with the provisions of Hawaii Revised Statutes Chapter 514B;

NOW, THEREFORE, pursuant to §514B-109, Hawaii Revised Statutes, BE IT RESOLVED that the Restated Declaration shall be, and hereby is, adopted as the restated Declaration of Condominium Property Regime for Wailea Ekahi III.

Portions of said Restated Declaration so restated solely for purposes of information and convenience pursuant to §514B-109(b), Hawaii Revised Statutes, are: Sections 5(j), 8(c) and 15.

The Restated Declaration correctly sets forth without change the corresponding provisions of the Original Declaration, as amended, and the Restated Declaration supersedes the Original Declaration and all prior amendments thereto.

In the event of any conflict, the Restated Declaration shall be subordinate to any cited statute, ordinance, rule or regulation and to the Original Declaration and all prior amendments thereto.

The Transfer Certificates of Title issued for the respective apartments in the Wailea Ekahi III condominium project as of October 24, 2007, are listed on Exhibit A attached hereto and by this reference incorporated herein.

The Restated Declaration attached hereto is hereby adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

ASSOCIATION OF APARTMENT OWNERS  
OF WAILEA EKAHI

By \_\_\_\_\_  
Frederick L. Tompkins  
Its President

By \_\_\_\_\_  
Alexander Halsey  
Its Secretary

STATE OF HAWAII )  
 )  
COUNTY OF MAUI ) SS.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me personally appeared FREDERICK L. TOMPKINS, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the forgoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly-authorized execute such instrument in such capacities.



\_\_\_\_\_  
Notary Public, State of Hawaii,  
Printed Name \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF HAWAII )  
 )  
COUNTY OF \_\_\_\_\_ ) SS.

On this \_\_\_\_\_ day of \_\_\_\_\_ 2007, before me personally appeared ALEXANDER HALSEY, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the forgoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



\_\_\_\_\_  
Notary Public, State of Hawaii  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME OF WAILEA EKAHI III

WHEREAS, WAILEA LAND CORPORATION, a Hawaii corporation, whose principal place of business and post office address is 822 Bishop Street, Honolulu, Hawaii 96813, and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, whose principal place of business and post office address was 720 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, doing business as WAILEA DEVELOPMENT COMPANY, a Joint Venture duly registered in Hawaii as a general partnership, with its principal place of business and post office address as 822 Bishop Street, Honolulu, Hawaii 96813, hereinafter collectively referred to as the "Declarant", were the owners in fee simple of the land described in Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, the Declarant developed the Property as a condominium project (the "Project") in accordance with plans filed in the office of the Assistant Registrar of the Land Court of the State of Hawaii as Condominium Map 290 (the "Condominium Map"); and

WHEREAS, the Declarant submitted its interest in the Property to a Horizontal Property Regime established by Chapter 514 of the Hawaii Revised Statutes, pursuant to that certain Declaration of Condominium Property Regime Under Chapter 514, Hawaii Revised Statutes, (the "Declaration"), filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 783805 and attached to the Declaration as Exhibit B was the Bylaws of Association of Apartment Owners, (Exhibit B to the Declaration, the Bylaws, has been separately restated and is not included in this Restated Declaration) ; and

WHEREAS, there now exists a new statute known as the "Condominium Property Act" designated as Chapter 514B of the Hawaii Revised Statutes, (in this Restated Declaration referred to as "the Act"); and

WHEREAS, at Section 514B-23(b) of the Act, an condominium association, with the vote or written consent of owners holding at least a majority of the project common interests may adopt the Act, as opposed to Chapter 514A, to be the condominium act governing the condominium association and its project; and

WHEREAS, owners holding more than a majority of the common interests with respect to the Wailea Ekahi III condominium project voted to amend the Declaration to the effect that the Wailea Ekahi III condominium project is to be governed by the provisions of the Act; and

WHEREAS, Pursuant to Section 514B-109(a) and (b) of the Act, the Board of Directors of the Association of Apartment Owners of Wailea Ekahi has voted to restate the Declaration to incorporate all amendments thereto prior to the recording of this Restated Declaration and the necessary provisions of the Act to have the Declaration conform to the Act;

NOW THEREFORE, the Declaration is restated to read as follows:

1. Name. The Condominium Property Regime established hereby shall be known as WAILEA EKAHI III.

2. Land Description. The land submitted to the Condominium Property Regime is described in Exhibit "A".

3. Description of the Project. The Project consists of one Hundred and Four (104) apartments contained in nineteen (19) buildings numbered 36 through 54, since this is the third phase of an incremental development, the beach pavilion in the first phase was designated as Building A, the other seventeen (17) buildings in the first phase was numbered 1 through 17 and the eighteen (18) buildings in the second phase were numbered 18 through 35. The buildings will be principally of wood frame construction with stucco exteriors, shake roofs and concrete slab ground floors with wood frame upper floors. The buildings are all two stories high containing the seven (7) different types of apartments described below ranging from single level studio apartments to split level two bedroom two and one half bath townhouse apartments.

There are eight (8) Type S apartments which are studio apartments, each containing approximately 484 square feet of interior floor area, including a living/dining/sleeping room, a kitchen and bathroom plus a lanai of approximately 116 square feet.

There are twenty-four (24) Type 1-1 apartments which are one bedroom, one bath apartments, each containing approximately 792 square feet of interior floor area, including a living/dining room, kitchen, bedroom and bathroom plus two lanais containing an aggregate of approximately 153 square feet.

There are thirty (30) Type 1-2A apartments which are one bedroom, two bath apartments, each containing approximately 885 square feet of interior floor area, including a living dining room, kitchen, bedroom and two bathrooms, plus two lanais containing an aggregate of approximately 205 square feet. The entry hall of Type 1-2A apartments is so arranged that the bedroom and one bathroom can be used separately from the rest of the apartment.

There are twenty-two (22) Type 1-2B apartments which are one bedroom, two bath apartments, each containing approximately 952 square feet of interior floor area, including a living/dining room, kitchen, bedroom and two bathrooms, plus two lanais containing an aggregate of approximately 228 square feet. The Type 1-2B apartment has a separate entry way into the bedroom so that the bedroom and one of the bathrooms can be used separately from the rest of the apartment.

There are four (4) Type 1-1 1/2T apartments which are one bedroom, one and one half bath apartments, each containing approximately 991 square feet of interior floor area, including, on the lower floor, a living room, dining room, kitchen and half bath and, on the upper floor, a bedroom and bathroom, plus a lanai on each floor containing an aggregate of approximately 254 square feet.

There are fourteen (14) Type 2-2 apartments which are two bedrooms, two bath apartments, each containing approximately 1,172 square feet of interior floor area, including a living room, dining room, kitchen, two bathrooms and two bedrooms, plus three lanais containing an aggregate of approximately 333 square feet. The entry hall of Type 2-2 apartments is so arranged that one bedroom and bathroom can be separated from the rest of the apartment.

There are two (2) Type 2-2 1/2T apartments which are two bedrooms, two and a half bath townhouse apartments, each containing approximately 1,575 square feet of interior floor area including, on the lower floor, a kitchen, dining room, half bath and sunken living room, and on the upper floor, two bedrooms and two bathrooms, plus two lanais on each floor containing an aggregate of approximately 370 square feet. The Type 2-2 1/2T apartment has a separate entry way into one of the bedrooms so that this bedroom and one of the bathrooms can be used separately from the rest of the apartment.

Each townhouse and lower floor apartment has access to the common elements at the ground level. Each upper level apartment has access via an entry way and staircase to the common elements at ground level.

The County of Maui permit the use of, one of the bedrooms and one of the bathrooms of the Type 1-2A apartments, the Type 1-2B apartments, the Type 2-2 apartments and the Type 2-2 1/2T apartments separately from the remainder of the respective apartments.

Each residential apartment will have drapes and will be carpeted throughout except for the kitchens and bathrooms which will have tile. Each residential apartment will have a self-cleaning drop-in range and oven combination, two-door refrigerator freezer, disposal, dishwasher, water heater, washer and dryer.

The apartment numbers, apartment types, floor location and percentage of common interest appurtenant to each apartment are listed immediately below. The numbered portion of each apartment number indicates the number of the building in which it is located.

(THE REMAINDER OF THIS PAGE HAS INTENTIONALLY LEFT BLANK)

<u>Apartment No.</u>	<u>Apartment Type</u>	<u>Floor</u>	<u>Percentage</u>
36-A	1-2A	1	0.9425
36-B	1-2B	1	1.0139
39-C	1-1	1	0.8435
36-D	1-2A	2	0.9425
36-E	1-2B	2	1.0139
36-F	1-1	2	0.8435
37-A	1-1 1/2T	T	1.0554
37-B	1-2B	1	1.0139
37-C	1-2A	1	0.9425
37-D	1-2B	2	1.0139
37-E	1-2A	2	0.9425
38-A	1-2A	1	0.9425
38-B	1-2B	1	1.0139
38-C	2-2	1	1.2482
38-D	1-2A	2	0.9425
38-E	1-2B	2	1.0139
38-F	2-2	2	1.2482
39-A	1-1	1	0.8435
39-B	1-2A	1	0.9425
39-C	2-2	1	1.2482
39-D	1-1	2	0.8435
39-E	1-2A	2	0.9425
39-F	2-2	2	1.2482
40-A	1-2A	1	0.9425
40-B	1-2B	1	1.0139



<u>Apartment No.</u>	<u>Apartment Type</u>	<u>Floor</u>	<u>Percentage</u>
40-C	1-1	1	0.8435
40-D	1-2A	2	0.9425
40-E	1-2B	2	1.0139
40-F	1-1	2	0.8435
41-A	2-2	1	1.2482
41-B	1-2A	1	0.9425
41-C	2-2	2	1.2482
41-D	1-2A	2	0.9425
42-A	1-1 1/2T	T	1.0554
42-B	1-2B	1	1.0139
42-C	1-2A	1	0.9425
42-D	1-2B	2	1.0139
42-E	1-2A	2	0.9425
43-A	2-2	1	1.2482
43-B	1-2A	1	0.9425
43-C	1-1	1	0.8435
43-D	2-2	2	1.2482
43-E	1-2A	2	0.9425
43-F	1-1	2	0.8435
44-A	1-1	1	0.8435
44-B	S	1	0.5155
44-C	1-1 1/2T	T	1.0554
44-D	1-1	2	0.8435
44-E	S	2	0.5155
45-A	1-2A	1	0.9425
45-B	1-2B	1	1.0139
45-C	1-1	1	0.8435
45-D	1-2A	2	0.9425
45-E	1-2B	2	1.0139

<u>Apartment No.</u>	<u>Apartment Type</u>	<u>Floor</u>	<u>Percentage</u>
45-F	1-1	2	0.38435
46-A	1-2A	1	0.9425
46-B	1-2B	1	1.0139
46-C	2-2	1	1.2482
46-D	1-2A	2	0.9425
46-E	1-2B	2	1.0139
46-F	2-2	2	1.2482
47-A	1-2A	1	0.9425
47-B	1-2B	1	1.0139
47-C	1-1	1	0.38435
47-D	1-2A	2	0.9425
47-E	1-2B	2	1.0139
47-F	1-1	2	0.8435
48-A	2-2 1/2T	T	1.6774
48-B	S	1	0.5155
48-C	1-1	1	0.8435
48-D	S	2	0.5155
48-E	1-i	2	0.8435
49-A	1-2A	1	0.9425
49-B	1-2B	1	1.0139
49-C	1-1	1	0.8435
49-D	1-2A	2	0.9425
49-E	1-2B	2	1.0139
49-F	1-1	2	0.8435
50-A	1-2A	1	0.9425
50-B	1-2B	1	1.0139
50-C	1-1	1	0.8435
50-D	1-2A	2	0.9425
50-E	1-2B	2	1.0139
50-F	1-1	2	0.8435

<u>Apartment No.</u>	<u>Apartment Type</u>	<u>Floor</u>	<u>Percentage</u>
51-A	2-2	1	1.2482
51-B	1-2B	1	1.0139
51-C	1-2A	1	0.9425
51-D	2-2	2	1.2482
51-E	1-2B	2	1.0139
51-F	1-2A	2	0.9425
52-A	1-1	1	0.8435
52-B	S	1	0.5155
52-C	1-1 1/2T	T	1.0554
52-D	1-1	2	0.8435
52-E	S	2	0.5155
53-A	1-1	1	0.8435
53-B	S	1	0.5155
53-C	2-2 1/2T	T	1.6774
53-D	1-1	2	0.8435
53-E	S	2	0.5155
54-A	2-2	1	1.2482
54-B	1-2A	1	0.9425
54-C	2-2	2	1.2482
54-D	1-2A	2	0.9425

The project also contains driveways and parking areas containing 131 parking stalls, one swimming pool and one paddle tennis court.

4. Limits of Apartments. The respective apartments shall not be deemed to include the undecorated or unfinished walls, the floors and ceilings surrounding each apartment, or any pipes, wires, conduits or other utility lines running through such apartments which are utilized for or serve more than one apartment, the same being deemed common elements as hereinafter provided.

Each apartment shall include any adjacent lanai shown on the Condominium Map and serving only such apartment. Each apartment shall be deemed to include all the walls and partitions which are not load bearing within its perimeter walls, the inner decorated or finished surfaces of all walls, floors and ceilings, and the built-in fixtures.

5. Common Elements. The common elements will include all portions of the land and improvements other than the respective apartments. In other words, common elements will include the apartment buildings, the land on which all apartment buildings are located, and all common elements mentioned in the Horizontal Property Act which are

actually constructed on the land described herein, and specifically shall include, but shall not be limited to:

- (a) Said land in fee;
- (b) All foundations, supports, bearing walls and exterior stairs, landings and entranceways of said buildings;
- (c) All roofs;
- (d) All housekeeping stations, yards and refuse areas;
- (e) All ducts, electrical equipment, wiring and other central and appurtenant installations for services, including power, light, cold and hot water, refuse and telephone;
- (f) All parking stalls;
- (g) A swimming pool and paddle tennis court;
- (h) All other devices or installations upon the land existing for or rationally of common use to all the owners of apartments within the project;
- (i) The term "common elements" shall include the limited common elements described below;
- (j) Designation of additional areas to be common elements or subject to common expenses shall require the approval of 67% of the apartment owners, but the foregoing owner approval shall not apply to the purchase of an apartment for a resident manager, which may be purchased with the approval of the Board. (Section 514B-104(a)(8) of the Act)

6. Limited Common Elements. Limited common elements and apartments to which their use is reserved are:

- (a) Exterior staircases, landings and entranceways shall be limited common elements for the exclusive use of the apartments they serve.
- (b) Any trellis-covered privacy area adjacent to an apartment shall be a limited common element for the exclusive use of that apartment.

7. Percentage of Undivided ownership to be Conveyed. The percentage of undivided interest in all of the common elements appertaining to the apartments is shown opposite each apartment under the heading to the Project" above. The aggregate percentage of undivided interest in the common interior floor area. The Declarant

covenants and agrees that the undivided interest in the common areas and facilities and the title to the respective apartments to be conveyed shall not be separated or separately conveyed and each said undivided interest shall be deemed to be conveyed or encumbered with its respective apartment even though the description in the instrument of conveyance may refer only to one or other of the interests. The voting rights of apartment owners, as well as their share of the common expenses shall be in proportion to their common interest.

8. Easements The apartments and common elements shall also have and be subject to the following easements:

- (a) Each apartment shall have appurtenant thereto non-exclusive easement in the common elements designed for such purposes for ingress to, egress from, and support, maintenance and repair of such apartment; in the other common elements for use according to their respective purposes; and in all other apartments in the same building for support;
- (b) If any part of the common elements now or hereafter encroaches upon any apartment, or if any apartment now or hereafter encroaches upon any other apartment or upon any portion of the common elements, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. In the event the apartment buildings shall be partially or totally destroyed and then rebuilt, minor encroachments of any parts of the common elements upon any apartment, or of any apartment upon any other apartment, or upon any portion of the common elements due to construction, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist;
- (c) The Association shall have the irrevocable right, to be exercised by the Board, to have access to each apartment at any time as may be necessary for making emergency repairs to prevent damage to the common elements or to another apartment or apartments. Each apartment owner shall afford the Association and the other apartment owners, and to the employees, independent contractors or agents of the Association or other apartment owners, during reasonable hours, access through the owner's apartment reasonably necessary for the operation the Project and the maintenance, repair and replacement of an apartment. Unless entry is made pursuant to the circumstances described in the first sentence of this subsection (c), if damage is inflicted on the common elements or on any apartment through

which access is taken, the apartment owner responsible for the damage, or the Association if it is responsible, is liable for the prompt repair thereof; provided that the Association shall not be responsible to pay the cost of removing or replacing any finished surfaces or other barriers that impede its ability to maintain and repair the common elements; (Section 514B-137 of the Act)

- (d) Each apartment owner shall have an easement in common with the owners of all other apartments to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other apartments or limited common elements and serving his apartment. Each apartment and its appurtenant limited common elements shall be subject to an easement for access to any common elements located in such apartment or its appurtenant limited common elements in favor of the owners of all other apartments served by such common elements.

9. Alteration and Transfer of Interests. The common interest and easements appurtenant to each apartment shall have a permanent character, and shall not be altered without the consent of all of the apartment owners affected expressed in an amendment to this Declaration duly recorded. The common interest and easements shall not be separated from the apartment to which they appertain, and shall be deemed to be conveyed, leased or encumbered with such apartment even though such interest or easements are not expressly mentioned or described in the conveyance or other instrument.

10. Purposes. (as amended in June 2008)

- a. (i) The residential apartments hereinabove described shall at all times be used as permanent or temporary residences, or as hotel rooms, and for no other purposes.

(ii) If title to an apartment is not held by one person or entity as a tenant in severalty, then the following multiple ownership provisions shall apply:

- (1) The title to the apartment may be divided into no more than two (2) undivided interests, with the minimum undivided interest share being no less than one-sixth of the total ownership interest in the apartment. The aggregate number of persons holding title to one or more of the two (2) undivided interests when added to the aggregate number of persons designated as "apartment owners," (as described in the last paragraph of this subsection (iii)), by any entity holding title to one or more of the two (2) undivided interests shall not exceed four (4) in number; or, as an alternative,
- (2) Title to the apartment may be held by no more than four (4) joint tenants.

(iii) If title to an apartment is held by more than one owner, (for purposes of this subparagraph (iii) a married couple or registered domestic partners being considered "one owner," whether they take title individually or as co-trustees of a trust), the owners of the undivided ownership interests in the apartment must designate a single managing agent with whom the Board or the resident manager will communicate on all Association matters and to whom all notices with respect to the owners' apartment may be sent - including, but not limited to, notice with respect to Association meetings and delinquencies - which communications and/or notices shall be deemed notice to all of the owners of the apartment.

All owners holding an undivided interest as multiple owners of an apartment shall be required to sign and be bound by an Owners' Operating Agreement for their apartment. The Owners' Operating Agreement shall designate the Managing Agent as chosen by the owners. The designated Managing Agent must be a natural person who is an owner of the apartment. The name, address and telephone number of the designated

Managing Agent shall be contained in the Owners' Operating Agreement. The Operating Agreement must be updated and resigned by all owners upon any change in ownership among the multiple owners.

A copy of the current Owners' Operating Agreement for every Ekahi apartment owned by multiple owners shall be kept on file in the office of the Resident Manager. The Resident Manager of Ekahi Village, the Board of Directors of the Association and the employees of the Association shall be entitled to rely on the accuracy and validity of the Owners' Operating Agreement for each apartment, as filed in the Resident Manager's office, for all purposes related to the official business of the Association.

If any owner of an undivided interest in an apartment is an entity, and not a natural person, each such owner entity may designate no more than three individuals who shall be recognized as "apartment owners" for purposes of this Section 10(a) and possessing and exercising all of such entity's use rights and privileges as an apartment owner at the Project as set forth in this Declaration and the Bylaws. Any other individuals occupying such entity's apartment shall be considered as guests or renters, subject to the provisions of this Declaration and the Bylaws concerning guests or renters.

(iv) The Association shall have the right and power, to be exercised by the Board of Directors of the Association, to deny any person entry to, or the possession of, any Apartment for which a time share plan has been created in violation of subsection 10(d) below, so long as such violation shall continue. The Board of Directors may also bring an action on behalf of the Association to obtain appropriate injunctive relief to prevent any violation of this Section 10, or to require the observance of this Section 10, without being required to post a bond as a condition to obtaining such injunctive relief, whether temporary, preliminary, or permanent. Nor shall the Association be required to show in any such action, that other relief is inadequate or that the damages suffered by the Association or by any apartment owner are or may be irreparable.

(v) **(as amended 8/19/08)** If title to an apartment at the time of the recording of this Amendment to Section 10(a), "this Amendment," would be in violation of the provisions of this Amendment, the title to such apartment shall be allowed to remain as documented at the time of the recording of this Amendment and shall not be deemed a violation of the provisions of this Amendment. PROVIDED, HOWEVER, after the recording of this Amendment when all or any interest in such apartment shall be conveyed, the title to such apartment shall conform to the provisions of this Amendment.

(vi) - **(as amended 7/09)** Nothing in this Section 10(a) shall prohibit an owner from transferring, during the owner's lifetime or by a trust or testamentary instrument, an undivided interest in the owner's apartment to any lineal descendant of the owner. The term "lineal descendant" as used in this subparagraph (vi) shall mean a natural born or adopted child or grandchild of the owner. Provided, however, an undivided interest in any apartment acquired from a lineal descendant by any person who is not a lineal descendant of any owner of the apartment, shall be held and be subject to the terms and conditions of items (ii) through (v) of this Section 10(a).

(b) The owner of an apartment shall not use or permit to be used the same for any purpose which will injure the reputation of the Project. Such owner shall not suffer anything to be done or kept in said apartment or elsewhere which will jeopardize the soundness of the buildings, or which will interfere with or unreasonably disturb the rights of other owners, or which will obstruct the exterior stairways or entranceways, or which will increase the rate of fire insurance on the buildings, or the contents thereof, or which will reduce the value of the buildings.

(c) The owner of an apartment shall not without the prior written consent of the Board, make any structural alterations in or additions to the apartment, or make any alterations in or additions to the exterior of the apartment (including awnings, jalousies or screens) or to any other portion or portions of the common elements



unless otherwise provided in the Bylaws.

(d) Use or occupancy of any apartment for, in connection with, or pursuant to any time-sharing plan is expressly prohibited. As use herein, the phrase "time-sharing plan shall be deemed to include, but shall not be limited to, any legal or equitable estate or interest in any apartment, pursuant to a plan or program whereby the right to use, occupy or possess such apartment shifts or circulates among two or more persons, corporation, partnerships, or other entities, on a periodically recurring or other basis, whether according to a fixed or floating time schedule or otherwise. This provision expressly includes time-sharing plans of every type whatsoever, including, but not limited to, plans or programs whereby the members' or participants' interest is of any of the following types: fee, leasehold, right to use, license, partnership, corporation, association or club membership. Notwithstanding the foregoing, this provision shall not be construed to prohibit any time-sharing plan or program which has been in existence prior to the enactment of this provision provided that any such plan or program is continued in existence up until the enactment of this provision. (prior amendment recorded as Document No. 1210107)

11. Service of Process. Wailea Land Corporation with its address at 822 Bishop Street, Honolulu, Hawaii 96813 is hereby designated as the agent to receive service of process until such time as the Board of Directors of the Association of Apartment owners of this Condominium Property Regime is elected, at *which* time and thereafter process may be served upon any member of the Board.

12. Percentage of Votes Required for Rebuilding. In the event of damage or destruction of all or any part of buildings, the percentage of votes by the apartment owners which shall be determinative of whether not to rebuild, repair or restore a building shall be a vote of the owners in the building so damaged or destroyed, owning at least seventy-five percent (75%) of the common interests appurtenant to the apartments in such building and a vote of the owners of apartments so damaged in such building owning at least seventy-five percent (75%) of the common interests appurtenant to the damaged apartments in such building. That is to say, there shall be an affirmative obligation to rebuild in absence of a vote not to rebuild as herein provided. If more than one building is damaged or destroyed, the votes of apartment owners in each building shall be considered separately.

In the event of substantial damage or destruction of all or part of any other

common elements on the land, the percentage of votes which shall be determinative of whether not to rebuild, repair or restore such damaged or destroyed common elements shall be a vote of the owners of seventy-five percent (75%) of the interests in the common elements. That is to say, there shall be an affirmative obligation to rebuild in absence of a vote not to rebuild as herein provided.

13. Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such provision had never been included herein.

14. Bylaws of the Association of Apartment Owners. In furtherance of the provisions of this Declaration, Declarant hereby approves and adopts the Bylaws of the Association of Apartment Owners (Exhibit "B"). Declarant hereby affirms that the property described in this Declaration shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved in accordance with said Bylaws. In the event of any discrepancy between a provision of this Declaration and a provision of said Bylaws, the provisions of this Declaration shall prevail.

15. Amendment. This Declaration of Condominium Property Regime may be amended, consistent with the provisions of the Act, as amended, with the approval of the owners of at least sixty-seven percent (67%), (Section 514B32(11) of the Act), of the interests in the common elements evidenced by an instrument in writing, signed and acknowledged by an two (2) officers of the Association of Apartment owners, which amendment shall be effective upon filing with the office of the Assistant Registrar of the Land Court of the State of Hawaii; provided, however, (deletion - no longer applicable)

16. Controlling Declarations. This Declaration of Condominium Property Regime is made subject to the provisions of the Declaration of Covenants and Restrictions and the Declaration of Merger, and in case of any conflict the provisions of the Declaration of Covenants and Restrictions and the Declaration of Merger shall control.

17. Binding Effect. All of the covenants, agreements and conditions herein contained shall extend to and be binding upon the heirs, executors, administrators and assigns of the respective parties hereto.

18. Governing Law. Notwithstanding anything to the contrary in this Declaration, the Project Bylaws, House Rules and/or the Condominium Map, this Project

shall be governed by the provisions of Chapter 514B of the Hawaii Revised Statutes, as the same shall be amended from time to time, and this Declaration and the Project Bylaws, House Rules and/or Condominium Map, shall be deemed amended to the extent necessary to conform to and be consistent with the provisions of said Chapter 514B of the Hawaii Revised Statutes, as amended from time to time. (prior amendment recorded as Document No.

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EXHIBIT A

All of that certain parcel of land situate at Honuaula, Island and County of Maui, State of Hawaii, described as follows:

Lot 39-B, area 10.118 acres, as shown on map 10, filed with Land Court Application No. 1804.

EXHIBIT "A"WAILEA EKAHI III

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<u>APT NO.</u>	<u>HPR NO.</u>	<u>TCT NO(S)</u>
36A	1	412,656
36B	2	841,343
36C	3	733,008
36D	4	325,508
36E	5	542,220
36F	6	358,070
37A	7	535,943
37B	8	869,782
37C	9	741,255
37D	10	540,599
37E	11	614,537
38A	12	789,946
38B	13	631,851
38C	14	430,230
38D	15	768,939
38E	16	513,839
38F	17	260,927
39A	18	670,758
39B	19	825,576
39C	20	188,797
39D	21	583,434
39E	22	648,443
39F	23	436,191
40A	24	547,974
40B	25	638,644
40C	26	196,615

40D	27	303,833
40E	28	436,786
40F	29	188,517
41A	30	562,379
41B	31	820,961
41C	32	543,591
41D	33	702,196
42A	34	281,275
42B	35	634,456
42C	36	802,371
42D	37	504,032
42E	38	761,110
43A	39	192,672
43B	40	754,679
<b>APT NO.</b>	<b>HPR NO.</b>	<b>TCT NO(S)</b>
43C	41	336,019
43D	42	731,071
43E	43	400,422
43F	44	522,521
44A	45	280,196
44B	46	321,457
44C	47	469,933
44D	48	836,843
44E	49	860,853
45A	50	879,779
45B	51	590,595
45C	52	879,776
45D	53	191,390
45E	54	453,392
45F	55	865,596
46A	56	316,179
46B	57	467,388
46C	58	611,176
46D	59	673,525
46E	60	843,170
46F	61	567,626
47A	62	714,951
47B	63	277,798
47C	64	196,526
47D	65	690,092
47E	66	634,432
47F	67	733,293
48A	68	552,884
48B	69	699,163
48C	70	819,747
48D	71	669,145

48E	72	843,566
49A	73	587,941
49B	74	558,961
49C	75	807,866
49D	76	800,655
49E	77	603,286
49F	78	395,352
50A	79	650,929
50B	80	528,264
50C	81	650,560
50D	82	255,749
50E	83	505,147
50F	84	518,443
51A	85	737,534
<b>APT NO.</b>	<b>APR NO.</b>	<b>TCT NO(S)</b>
51B	86	451,478
51C	87	635,047
51D	88	779,559
51.E	89	188,259
51F	90	626,079
52A	91	750,742
52B	92	435,156
52C	93	669,947
52D	94	842,163
52E	95	470,718
53A	96	197,862
53B	97	831,720
53C	98	771,958
53D	99	767,665
53E	100	764,961
54A	101	858,568
54B	102	511,665
54C	103	864,620
54D	104	326,352