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STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

OCT 26, 1998 08:01 AM

Doc No(s) 98-159807

/s/ CARL T. MATANABE  
ACTING  
REGISTRAR OF CONVEYANCES

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LAND COURT SYSTEM

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REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL  OR PICKUP

GE CAPITAL HAWAII, INC. - CREF  
P.O. BOX 2448  
HONOLULU, HAWAII 96804-2448



72675

TYPE OF DOCUMENT:

SECOND AMENDMENT TO MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT  
(TOTAL PAGES: \_\_\_\_\_)

PARTIES TO DOCUMENT:

LENDER: GE CAPITAL HAWAII, INC., a Hawaii corporation  
BORROWER: NAPILI GARDENS, INC., a Hawaii corporation  
CO-BORROWERS: DOUGLAS ANDERSON and ELIZABETH ANDERSON, husband and wife

TAX MAP KEY FOR PROPERTY: (2) 4-3-002-068 and (2) 2-2-006-099

SECOND AMENDMENT TO MORTGAGE,  
SECURITY AGREEMENT AND FINANCING STATEMENT

This Indenture made this 20th day of October, 1998, by and between  
NAPILI GARDENS, INC., a Hawaii corporation (the "Borrower") and DOUGLAS  
ANDERSON and ELIZABETH ANDERSON, husband and wife (collectively, the "Co-  
Borrowers") all of whose address is 210 Kawehi Place, Kula, Hawaii 96790 and GE CAPITAL  
HAWAII, INC., a Hawaii corporation, whose address is 745 Fort Street, Suite 1800, Honolulu,  
Hawaii 96813 (the "Lender").

## RECITALS:

A. GECC Financial Corporation, a Hawaii corporation ("GECC") made the Borrower and the Co-Borrowers a loan (the "Prior Loan") in the original principal amount of Three Million Six Hundred Thousand and No/100 Dollars (\$3,600,000.00), which Prior Loan is evidenced by a promissory note dated November 4, 1994, as amended by an unrecorded First Loan Modification Agreement dated November 6, 1996, but effective as of November 22, 1996 (the promissory note, as amended, is hereinafter referred to as the "Prior Note") and subject to the terms of a Construction Loan Agreement dated November 4, 1994 (the "Loan Agreement").

B. The repayment of the amounts due under the Prior Note is secured by, among other things, that certain Mortgage, Security Agreement and Financing Statement dated November 4, 1994, made by Borrower and Co-Borrowers in favor of GECC and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 94-191904, as amended by the Amendment to Mortgage, Security Agreement and Financing Statement dated November 6, 1996, filed in said Bureau as Document No. 96-160599 (the Mortgage, Security Agreement and Financing Statement as amended is hereinafter referred to as the "Mortgage").

C. GECC endorsed, sold, assigned, transferred, set over and delivered unto the Lender, all of GECC's right, title and interest in and to, among other things, the Prior Note, the Loan Agreement, and the Mortgage by that certain Assignment of Instruments recorded in said Bureau as Document No. 95-165779.

D. Lender made Borrower and Co-Borrowers an additional charge loan (the "Additional Charge Loan") of \$65,000.00 for, among other things, working capital for the 16-unit condominium commonly known as "Napili Gardens", which Additional Charge Loan is evidenced by an Additional Charge Promissory Note dated November 1, 1996 (the "Additional Charge Note").

E. The repayment of the amounts due under the Additional Charge Note is secured by, among other things, that certain Additional Charge Mortgage and Security Instruments dated November 6, 1996, made by Borrower and Co-Borrowers in favor of Lender and recorded in said Bureau as Document No. 96-160600 (the "Additional Charge Mortgage").

F. Borrower and Co-Borrowers have requested, and Lender has agreed, to amend among other things, the Mortgage and the Additional Charge Mortgage in the manner hereinafter set forth.

NOW, THEREFORE, the Borrower, Co-Borrowers and Lender hereby agree to modify and amend the Mortgage and the Additional Charge Mortgage as follows:

1. Paragraph D(28)(j)(v) on page 27 of the Mortgage is hereby deleted in its entirety and replaced with the following:

(v) Simultaneously with each release of a Unit, there shall be paid to the Mortgagee in cash or certified check the greater of: (a) \$250,000.00; or (b) the net sales proceeds from the sale of the Unit (the "Net Sales Proceeds"). Net Sales Proceeds shall be determined by deducting the following from the total of all sales

proceeds for the Unit: (i) the \$3,500.00 portion of the Release Fee due upon the sale of the Unit (which shall also be paid simultaneously with the release); and (ii) reasonable commissions and normal closing costs approved by Mortgagee. Mortgagee shall have the right to review the closing statements for the sale of each Unit to insure that Mortgagee is being paid all of the Net Sales Proceeds, and to review the commissions and closing costs. Such payments for partial releases shall be made to the Mortgagee from all closings of condominium unit sales until such time as all amounts due and owing and payable to Mortgagee under this Mortgage and any other loan documents, including the Release Fees, shall have been paid in full.

IN WITNESS WHEREOF, the Borrower, Co-Borrowers and Lender have caused this instrument to be duly executed on the date first hereinabove written.

GE CAPITAL HAWAII, INC.,  
a Hawaii corporation

By Dean Hirabayashi  
Name: DEAN HIRABAYASHI  
Title: ASSISTANT VICE PRESIDENT

By Loralyn B. Cachola  
Name: LORALYN B. CACHOLA  
Title: SENIOR VICE PRESIDENT

Lender

NAPILI GARDENS, INC.,  
a Hawaii corporation

By Douglas D. Anderson  
Name: Douglas D. Anderson  
Title: President

By Elizabeth S. Anderson  
Name: Elizabeth S. Anderson  
Title: Vice President / Secretary

Borrower

Douglas D. Anderson  
DOUGLAS ANDERSON

Elizabeth S. Anderson  
ELIZABETH ANDERSON

Co-Borrowers

STATE OF HAWAII

)

COUNTY OF MAUI

)

SS.

On this the \_\_\_\_\_ day of OCT 21 1998, 19\_\_\_\_, before me personally

appeared DEAN HIRABAYASHI and LORALYN B. CACHOLA  
Name of Signer Name of Signer

personally known to me -OR-  proved to me on the basis of satisfactory evidence to be the  
person(s) who executed the within instrument as ASSISTANT VICE PRESIDENT and  
Corporate Title

SENIOR VICE PRESIDENT of GE CAPITAL HAWAII, INC., on behalf of the  
Corporate Title

corporation therein named, and acknowledged to me that the corporation executed it. Witness my  
hand and official seal.

Gloria J. Ah Nee  
Notary Public, State of Hawaii

GLORIA J. AH NEE  
Printed Name of Notary Public

My commission expires: 3-26-99

STATE OF HAWAII  
COUNTY OF MAUI

)  
) SS.  
)

On this the 14th day of October, 1998, before me personally  
appeared Douglas Anderson and Elizabeth Anderson,  
Name of Signer Name of Signer

personally known to me -OR-  proved to me on the basis of satisfactory evidence to be the  
person(s) who executed the within instrument as President and  
Corporate Title  
Vice President  
Corporate Title of NAPILI GARDENS, INC., on behalf of the

corporation therein named, and acknowledged to me that the corporation executed it. Witness my  
hand and official seal.

Lorrie Ann Chaga LS  
Notary Public, State of Hawaii, 2nd Judicial Circuit  
Lorrie Ann Chaga  
Printed Name of Notary Public

My commission expires: April 29, 2001

STATE OF HAWAII  
COUNTY OF MAUI

)  
) SS.  
)

On this the 14th day of October, 1998, before me personally appeared

DOUGLAS D. ANDERSON and ELIZABETH ANDERSON,  personally known to me -OR-   
proved to me on the basis of satisfactory evidence who, being by me duly sworn or affirmed, did say  
that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if  
applicable in the capacities shown, having been duly authorized to execute such instrument in such  
capacities.

Lorrie Aulige LS  
Notary Public, State of Hawaii, 2nd Judicial Court  
Lorrie Ann Onaga  
Printed Name of Notary Public

My commission expires: April 29, 2001