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DECLARATION OF CONDOMINIUM PROPERTY REGIME

of

NAPILI GARDENS

CONDOMINIUM MAP NO. 2002

A. DEFINITION OF CERTAIN TERMS.

The terms defined below shall have the meaning set forth when used in this Declaration Of Condominium Property Regime:

1. "Fee Owner" refers to NAPILI GARDENS, INC., a Hawaii corporation, whose business and post office address is 210 Kawehi Place, Kula, Maui, Hawaii 96790, the owner in fee simple of the land described in Exhibit "A" attached hereto.

2. "Act" means the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes (1978) as amended to the date of this Declaration, and as the same may be amended hereafter.

3. "Apartment owner", "apartment owners", or "owners" means a person owning or persons owning jointly or in common an apartment in the Project and the common interest appertaining thereto; provided that:

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

(b) The purchaser of an apartment pursuant to an agreement of sale recorded in the Bureau of Conveyances shall have all the rights of an apartment owner; provided that the seller may retain the right to vote on "matters substantially affecting his security interest in the apartment" as that term is used in the Act; and

(c) In the event that any interest in an apartment is transferred to a trustee under a land title-holding trust under which substantially all powers of management, operation and control of the apartment remain vested in the trust beneficiary or beneficiaries, the beneficiary or beneficiaries of any such trust shall be deemed to be the owner or owners of the apartment to the extent of their interest therein except insofar as the trustee notifies the Association otherwise in writing. A transferee of the beneficial interest in any such trust shall have all of the rights and duties of an apartment owner when notice of such transfer is given to the Association by the trustee. Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purposes, and the transferor may continue to be recognized by the Association as the apartment owner and shall have all of the rights and obligations of ownership.

4. "Association of apartment owners" and "Association" means all owners of apartments in the Project acting as a group in accordance with this Declaration and the Bylaws.

5. "Board of Directors" refers to the board of directors of the Association.

6. "Bureau of Conveyances" means the Bureau of Conveyances of the State of Hawaii, the office in which conveyances of land located in Hawaii are recorded.

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

8. "Condominium Map" means the plans showing the layout, location, apartment numbers and dimensions of the apartments; elevations of the buildings of this Project; and parking layout filed in the Bureau of Conveyances as Condominium Map No. 2002, as amended from time to time.

9. "Declaration" means this Declaration of Condominium Property Regime of NAPILI GARDENS, as amended from time to time.

10. "Hazardous Discharge" means any event involving the use, deposit, disposal, spill or release of any Hazardous Material on, within or under the Project.

11. "Hazardous Material" means any hazardous or toxic substance, including those substances listed in the United States Department of Transportation hazardous Materials Table (49 Code of Federal Regulations, Section 172.101) or by the Environmental Protection Agency as hazardous substances (40 Code of Federal Regulations, Section 302), as amended, and substances that are or become regulated under law, radioactive materials, petroleum and petroleum products, asbestos, organic compounds known as polychlorinated biphenyls, and chemicals known to cause cancer or reproductive toxicity.

12. "Hazardous Materials Claim" means:

(1) Any action instituted or threatened with respect to an Apartment or the Project pursuant to any Hazardous Materials Law, and

(2) Any and all claims made or threatened by any third party against an Owner or the Association or any other person seeking damages, contribution, cost recovery, compensation, injunctive relief or similar relief resulting from a Hazardous Discharge or from the existence of any Hazardous Material on, within or under the Project.

13. "Hazardous Materials Law" means any law now existing or hereafter enacted affecting the Project relating to environmental conditions, industrial hygiene or Hazardous Materials.

14. "Majority of owners" (or other specified percentage of apartment owners) means the owners of apartments to which are appurtenant more than fifty percent (or other specified percentage) of the common interests.

15. "Project" means the NAPILI GARDENS condominium project to be developed by the Fee Owner on the land described in Exhibit "A".

16. "Project documents" means this Declaration, the Bylaws, and the Project Rules.

17. "Project Rules" means all of the rules and regulations adopted and promulgated from time to time by the Board of Directors pursuant to the Bylaws.

B. SUBMISSION TO THE CONDOMINIUM PROPERTY REGIME.

The Fee Owner submits all of its right, title and interest in and to the land described in Exhibit "A" and all improvements now located or hereafter constructed on the land to a Condominium Property Regime as established by the Act. The Fee Owner declares that the land is owned and shall be owned, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to the declarations, restrictions, and conditions set forth in this

Declaration and in the Bylaws recorded in the Bureau of Conveyances concurrently herewith, as they may hereafter be amended, which declarations, restrictions, covenants and conditions shall constitute equitable servitudes, liens and covenants running with the land and shall be binding on and shall inure to the benefit of the Fee Owner, all subsequent owners and lessees of apartments in the Project, all subsequent owners and lessees of all or any part of the Project and their respective heirs, successors, successors in trust, personal representatives and assigns. All of the provisions of this Declaration are intended to create mutual servitudes upon each apartment within the Project and to create reciprocal rights among the apartment owners.

C. PROJECT NAME.

The Condominium Property Regime established hereby shall be known as NAPILI GARDENS.

D. DESCRIPTION OF THE LAND, BUILDINGS AND APARTMENTS.

1. Land. The land submitted to the Condominium Property Regime is described in Exhibit "A" attached hereto.

2. Buildings and Apartments. The Project consists of sixteen (16) residential apartments and no commercial apartments contained in three (3) buildings as more fully described in Exhibit "B" attached hereto and as shown on the Condominium Map. If the descriptions and divisions set forth in this Declaration conflict with the depictions and divisions shown on the Condominium Map, the latter shall control. The Condominium Map is intended only to show the layout, location, apartment numbers and dimensions of the apartments and elevations of the buildings and is not intended and shall not be deemed to contain or make any other representation or warranty.

3. Limits of Apartments. Each apartment includes, but is not limited to, all walls, columns and partitions which are not load-bearing within the apartment's perimeter walls, - the inner decorated or finished surfaces of all walls, floors and ceilings, - the doors, including garage doors, and door frames, including garage door frames, windows and window frames along the perimeters, the air space within the perimeters, and all fixtures originally installed in the apartment. The apartments shall not include the undecorated or unfinished surfaces of the perimeter party or non-party walls, the interior load-bearing columns, girders, beams and walls, the undecorated or unfinished surfaces of the floors and ceiling surrounding each apartment or any pipes, shafts, wires, conduits or other utility or service lines running through an apartment which are utilized for or serve more than one apartment, the same being deemed common elements as hereinafter provided.

4. Common Elements. The common elements include the land described in Exhibit "A" in fee simple and the limited common elements described below, and all other portions of the Project, other than the apartments, including,

specifically, but not limited to, the common elements mentioned in the Act that are actually constructed on the land, and all other portions of the Project necessary or convenient to its existence, maintenance and safety or normally in common use and which are not included as part of an apartment, including but not limited to those common elements described in Exhibit "B" and shown on the Condominium Map.

5. Limited Common Elements. Certain parts of the common elements, referred to as the "limited common elements", are hereby designated and set aside for the exclusive use of certain apartments, and such apartments shall have appurtenant, exclusive easements for the use of such limited common elements. The limited common elements are described in Exhibit "B" and shown on the Condominium Map.

E. OTHER EASEMENTS.

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

1. Each apartment shall have appurtenant nonexclusive easements in the common elements designed for such purposes for ingress and egress, utility services for and support, maintenance and repair of each apartment and for use of the other common elements according to their respective purposes, subject always to the exclusive use of the limited common elements as provided herein. Each apartment in a building shall have an appurtenant easement in the other apartments of the building for support.

2. If any part of the common elements now or hereafter encroaches upon an apartment, or if an apartment now or hereafter encroaches upon another apartment or upon a portion of the common elements, an easement shall exist for such encroachment and its maintenance for so long as the encroachment continues. If a building or other improvements are partially or totally destroyed and then rebuilt, or if minor shifts or settlement of a building or other improvements occurs, easements shall exist for minor encroachments by parts of the common elements upon an apartment or by an apartment upon parts of the common elements and for their maintenance for so long as the encroachments continue.

3. The Association shall have the irrevocable right, to be exercised by its Board of Directors, the managing agent or the resident manager, to enter each apartment and the limited common elements from time to time during reasonable hours as may be necessary for the operation of the property or at any time for making emergency repairs which may be necessary to prevent damage to any apartment or the common elements.

4. Each apartment owner shall have an appurtenant easement in common with the owners of all of the other apartments to use all pipes, wires, ducts, cables, conduits and public utility lines and other common elements located in the other apartments and serving an owner's apartment. Each apartment shall be subject to an easement for access to any common elements located in the

apartment in favor of the owners of all other apartments served by such common elements.

5. The Fee Owner reserves the right for itself and its respective successors and assigns to delete, relocate, realign, reserve and grant easements and rights of way at any time for utilities, sanitary and storm sewers, cable television transmission facilities, refuse disposal, driveways, parking areas, access roadways and other similar purposes, over, across, under and through the common elements, whether for purposes of developing and/or servicing additional phases and increments or not, including without limiting the generality of the foregoing, the right of entry to construct, reconstruct, operate, maintain, repair and relocate such lines, facilities and appurtenances and to grant any such easements or rights of way to governmental agencies or utility or service companies. These reserved rights shall be exercised in a manner that will not materially impair or interfere with the use of any apartment. Each owner, by purchasing an apartment in this Project, consents to any such deletion, relocation, realignment, reservation and granting of easements and/or rights of way as provided above without the necessity of any owner entering into any further agreement respecting such action or document; provided, however, that such owner agrees to join in and execute such documents and instruments and do such other things as may be necessary or convenient to effect the same promptly at the request of the Fee Owner without payment of additional consideration.

6. The Fee Owner and its respective agents, successors, mortgagees and assigns, shall have the right to conduct extensive sales activities on and at the Project, as may be provided in the sales agreements between the Fee Owner and apartment owners, until the Fee Owner no longer holds any fee simple or leasehold interest in an apartment of the Project, which right shall be binding on the apartment owners and their heirs, successors and assigns.

7. The Fee Owner, its agents, employees, contractors, licensees, successors, mortgagees and assigns shall have an easement over, under and upon the property subject to this Declaration as may be reasonably necessary for the development, construction and/or repair of improvements on the property.

F. COMMON INTEREST.

1. Allocation of Undivided Common Interest. Each apartment shall have an appurtenant undivided interest (referred to as the "common interest") in all common elements of the Project and the same proportionate share in all common profits and common expenses of the Project (except as may otherwise be provided in the Bylaws) and for all other purposes, including voting, as set forth in Exhibit C attached. The common interest appurtenant to each apartment was calculated by dividing the approximate total net floor area of each apartment by the approximate total net floor area of all apartments in the Project.

2. Alterations and Transfers of Common Interest. The common interest and easements appurtenant to each apartment shall have a permanent character

and shall not be altered except by an amendment to this Declaration which contains the consent of all owners affected. The common interest and appurtenant easements shall not be separated from the apartment to which they appertain and shall be deemed to be conveyed or encumbered with that apartment even though such interest or easements are not expressly mentioned in the conveyance or other instrument. The common elements shall remain undivided and the right to partition or divide any part of the common elements shall not exist except as provided in the Act.

G. PURPOSES AND USE.

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

1. Each apartment shall at all times be occupied and used as a permanent or temporary residence in accordance with applicable laws, this Declaration and the Bylaws, and for no other purposes. Provided, however, the enclosed garage, which is a part of each apartment, never shall be used as living quarters or any other residential purpose. Any lease or rental agreement of an apartment shall (i) have a term of at least six (6) months unless the prior written approval of the Board of directors is obtained and (ii) provide that it shall be subject in all respects to the provisions of the Project documents and that the failure of the lessee or tenant to comply with the terms of these documents shall be a default under the lease or rental agreement. No "time share plan", as that term is defined in Chapter 514E of the Hawaii Revised Statutes, shall be allowed at the Project.

2. The owner of any two or more apartments separated by a party wall, floor or ceiling, may, with the consent of the owner's mortgage lenders, alter or remove all or portions of the intervening wall if the structural integrity and soundness of the Project is not adversely affected. The two apartments shall not be deemed to have merged or to constitute a single apartment due to such alterations. At the termination of the common ownership of adjacent apartments the walls of which shall have been altered or removed pursuant to the foregoing provisions, the owner shall restore the intervening wall to substantially the same condition as existed prior to the alteration or removal.

3. No owner of an apartment shall place or permit any sign, awning or canopy, or advertising matter or decoration or lettering within or without an apartment which shall be visible from outside of the apartment. The Board of Directors shall establish reasonable and uniform regulations permitting the placement and maintenance of identifying signs and insignia of such sizes and material and in such locations as shall be aesthetically suitable and appropriate to the design and function of the Project.

4. The Fee Owner reserves the right until such time as the total condominium project is developed in accordance with the Condominium Map and the Fee Owner no longer holds a fee simple or leasehold interest in any apartment, to erect signs on the Project and use apartments as sales offices and as models for display to the public pursuant to the sales of apartments in this Project.

5. The owners of the respective apartments shall have the absolute right to sell, lease, rent or otherwise transfer such apartments subject to all provisions of the Act, this Declaration and the Bylaws.

6. An apartment owner shall not use his apartment for any purpose which will injure the reputation of the Project or suffer anything to be done or kept in his apartment or elsewhere in the Project which will (a) jeopardize the soundness of any building in the Project, (b) create a nuisance or interfere with or unreasonably disturb the rights of other owners and occupants, (c) increase the rate of fire insurance on any building or the contents of any building, or (d) reduce the value of the property.

7. Each apartment owner may use the common elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other apartment owners, provided that the Board of Directors shall have the right:

(a) To change the use of the common elements upon approval of seventy-five percent of the owners;

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

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

(d) To enact, amend and repeal rules and regulations reasonably restricting and regulating use of the common elements, provided that such rules and regulations shall be enacted, amended or repealed in accordance with and shall be consistent with the terms of the Project documents, and shall not be in derogation of the rights reserved to Fee Owner in the Project documents.

H. ADMINISTRATION OF PROJECT.

1. Administration. The administration of the Project shall be governed by the Act, the Project documents and the apartment deed demising to each

owner his interest in his apartment and the common elements of the Project, as the same may be amended from time to time. The right and duty to administer the Project is vested in the Association and the Board of Directors in accordance with this Declaration and Bylaws. Apartment owners acting for any purpose in connection with the common elements for the government, operation or administration of the Project and in accordance with the Act and the Project documents shall be deemed to be acting as the Association. Without limiting the generality of the foregoing, the Association shall:

(a) Build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be built, maintained and repaired upon or adjoining or in connection with or for the use of the property;

(b) Observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority applicable to the Project;

(c) Well and substantially repair, maintain, preserve and keep all common elements in good order and a strictly clean and sanitary condition, except as otherwise provided herein, and maintain and keep the land and all adjacent land between any street boundary of the property and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass in good cultivation and replant the same as may be necessary, and repair all defects in the common elements required to be repaired by the Association;

(d) Observe any setback lines affecting the property and not place or maintain any building or structure whatsoever except approved fences or walls between any street boundary of the property and the setback line along such boundary;

(e) Not make or suffer any strip or waste or unlawful, improper or offensive use of the property;

(f) Not erect or place on the property any building or structure, including fences and walls, nor make additions or structural alterations or exterior changes to any common elements, nor place or maintain any signs, posters or bills whatsoever on the property, except in accordance with plans and specifications, including a detailed plot plan prepared by a licensed architect, first approved by a majority of owners (or such larger percentage as required by law or this Declaration) including all owners of apartments directly affected, as determined by the Board of Directors, and complete any such improvements with due diligence; and

(g) Before commencing or permitting construction of any improvement having a cost in excess of $10,000.00, obtain a bond naming as obligees all owners as their interests may appear, in a sum not less than one hundred percent of the cost of such construction and with a corporate surety authorized to do business in Hawaii assuring performance of such construction free and clear of all mechanics' and materialmen's liens, and

all claims in lieu of mechanics' and materialmen's liens arising under the Act.

2. Managing Agent. The Association may delegate the management and operation of the Project to a responsible managing agent duly registered with the Real Estate Commission of the State of Hawaii who shall be appointed by Board of Directors in accordance with the Bylaws, provided that the initial managing agent shall be appointed by the Fee Owner.

3. Service of Process. The managing agent is authorized to receive service of legal process in all cases provided in the Act. Until such time as a managing agent is designated, Mr. Robert Rowland, whose principal place of business and post office address is c/o Case & Lynch, 33 Lono Avenue, Suite 470, Kahului, Maui, Hawaii 96732 shall serve as agent for service of legal process.

I. INSURANCE.

The Association at its common expense shall at all times keep the buildings and all improvements insured against loss or damage by fire with extended coverage as provided in the Bylaws. In every case of such loss or damage all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the buildings and improvements in a good and substantial manner as provided in this Declaration and the Bylaws.

J. RESTORATION AFTER CASUALTY.

In case any improvements in the Project are damaged or destroyed by any casualty, such improvement shall be repaired and restored as provided in the Bylaws unless at least eighty percent (80%) of the apartment owners vote not to repair or restore the improvements. 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 to good orderly condition and even grade. In the absence of a vote not to restore or rebuild, there shall be an affirmative obligation on the owners of the apartments to restore and rebuild the Project.

Any restoration of the common elements shall be completed diligently by the Association at its common expense and to the extent not covered by insurance maintained by the Association, the apartment owners shall be solely responsible for the restoration of their respective apartments.

In the event the owners determine not to repair and restore the improvements, all insurance proceeds remaining after the site is cleared and restored to good condition and even grade shall be divided among the apartment owners (and their mortgagees, if any, as their interests appear) in proportion to their common interests.

K. ALTERATION OF THE PROJECT.

1. Repair, reconstruction, restoration, replacement of the Project or any building or other structure or construction of any additional building or other structure or structural alteration or addition thereto, different in any material respect from the Condominium Map shall be undertaken by the Association or any apartment owners only pursuant to an amendment of this Declaration. Except as expressly provided otherwise in this Declaration, any such amendment shall be duly executed by or pursuant to the affirmative vote of seventy-five percent of the apartment owners, and in accordance with complete plans and specifications therefor first approved in writing by the Board. Promptly upon completion of such repair, reconstruction, restoration, replacement, construction, alteration or addition, the Association shall duly record and file of record such amendment together with a complete set of floor plans of the Project as so altered, certified as-built by a licensed, registered architect or professional engineer.

2. Any alterations or additions solely within an apartment or within a limited common element appurtenant to and for the exclusive use of an apartment or more than one apartment, shall require only the written approval thereof, including the plans thereof, by the owners of such apartment(s), by the holders of first mortgage liens affecting such apartment(s) (if the lienholders require such approval), by the appropriate agencies of the State of Hawaii and the County of Maui if such agencies so require, and by the Board (which approval shall not be unreasonably or arbitrarily withheld or delayed), and by all other owners thereby directly affected (as determined in a reasonable manner by the Board). Upon completion of such alterations or additions, the apartment owner(s) directly affected shall duly record and file of record an amendment to this Declaration together with the approved plans showing only such alterations or additions within an apartment space or within a limited common element as aforesaid. Such amendment to this Declaration need only be executed by the apartment owner(s) directly affected and their first mortgagees, as may be required.

3. Any other provision in this Declaration to the contrary notwithstanding, prior to (i) the time that all apartments in the Project have been sold and the conveyance thereof recorded, and (ii) the filing by Fee Owner of the "as built" verified statement (with plans, if applicable) required by Section 514A-12 of the Act, Fee Owner shall have the right, without being required to obtain the consent or joinder of any person or group of persons, including the Association, any apartment owner or any mortgagee, lienholder, apartment purchaser or any other person who may have an interest in the Project, to do the following:

(a) To make alterations in the Project (and 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 the conveyance thereof recorded; and

(b) 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 in the common elements which do not affect the physical location, design or size of any apartment which has been sold and the conveyance thereof recorded.

L. COMPLIANCE WITH PROJECT DOCUMENTS.

1. All apartment owners, their tenants, families, employees and guests, and any other persons who may in any manner use the property, shall be bound by and comply strictly with the provisions of the Project documents and all agreements and determinations of the Association as lawfully made or amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Board of Directors or managing agent on behalf of the Association or, in a proper case, by any aggrieved apartment owner.

2. All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for: (i) collecting any delinquent assessments against any owner's apartment, (ii) foreclosing any lien thereon, (iii) enforcing any provision of the Project documents or the Act, and (iv) complying with rules and regulations of the Real Estate Commission, shall be promptly paid on demand to the Association by the apartment owner; provided, that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by the apartment owner as a result of the action of the Association, shall be promptly paid on demand to the apartment owner by the Association.

M. USE OF HAZARDOUS MATERIAL.

1. Restriction on Use. An owner shall not cause or permit any Hazardous Material to be generated, used, transported, stored or disposed of upon, in or about his or her apartment or the common elements, except in a manner that complies with all applicable Hazardous Materials Laws.

2. Notices. An owner shall give written notice to the Board of Directors within three business days after the Owner learns or first has reason to believe that (i) a Hazardous Discharge has occurred, or (ii) a Hazardous Materials Claim has been made by any governmental agency or third person, or (iii) any report, notice or compliant has been made to or filed with any governmental agency concerning the presence, use or disposal of any Hazardous Material at the Project. The notice shall be accompanied by copies of (i) all permits, licenses, and proofs of disclosure to governmental agencies pertaining to the Hazardous Material that is the subject of the claim, (ii) any material safety data sheets pertaining to such substances that are required by applicable law, and (iii) any claim, report, complaint, notice, warning or other communication that is in the possession of or is reasonably available to the owner. The Association shall have the right to join and participate, as a party, if it so elects in any actions initiated in respect of any Hazardous Materials Claim.

3. Indemnity. If the generation, use, transportation, storage, or disposal of Hazardous Materials by an owner results in contamination of an apartment or the common elements, the owner shall hold harmless the Association, the Board of Directors and all other owners from (i) all damages, including foreseeable and unforeseeable consequential damages, diminution in value of an apartment, losses and damages for the loss or restriction on use of an apartment, any part of the common elements or of any amenity of the Project, (ii) sums paid in settlement of claims, (iii) all reasonable expenses, including attorneys' fees, consultant fees and expert fees which arise as a result of any investigation by the Association, or the defense of Hazardous Materials Claims (whether or not formal administrative or legal action is filed) by the Association or any owner, and (iv) all costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restorative work required by any governmental agency because of a Hazardous Material present in the soil or ground water on or under the apartment or the common elements.

4. Cleanup.

(a) By an Owner. Without limiting the foregoing, if the presence of any Hazardous Material at an apartment or the common elements caused or permitted by an owner results in any contamination of the Project, the owner shall promptly take all actions at his or her sole expense as are necessary to return he Project to the condition existing prior to the Hazardous Discharge; provided that the Board's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Project.

(b) By the Association. If the presence of any Hazardous Material on the common elements results in any contamination of the common elements, the Association shall promptly take all actions as are necessary to clean up and restore the common elements in accordance with all Hazardous Materials Laws, and all owners shall be severally liable for the cost of any such cleanup and restoration as a common expense to the extent such costs are not chargeable to the owners of one or more apartments, as provided in this Declaration or the Bylaws, and are not reimbursed to the Association by those owners.

5. Survival. The obligations under this Section M shall survive the termination of the ownership of an apartment in the Project.

N. AMENDMENT OF THE DECLARATION.

1. Except as otherwise expressly provided in the Project documents or in the Act, this Declaration may be amended by the affirmative vote or written consent of seventy-five percent of the owners of apartments at a meeting of the Association called for the purpose. However, except as otherwise expressly provided in the Project documents, no amendment affecting any of the limited common elements shall be effective without the consent of the owners of apartments to which the limited common elements are appurtenant, and no

amendment changing a common element to a limited common element shall be effective without an affirmative vote of all owners. An amendment will be effective when a written instrument, duly executed by such owners or by any two officers of the Association, is recorded at the Bureau of Conveyances.

2. At any time prior to the first recording in the Bureau of Conveyances of a conveyance or transfer (other than for security) of an apartment and its appurtenances to a party not a signatory hereto, the Fee Owner may amend this Declaration (including the Bylaws, Condominium Map, and exhibits) in any manner without approval or consent of any apartment purchaser.

3. The Fee Owner may amend this Declaration (and when appropriate the Condominium Map) without the consent or joinder of any person or group of persons, including the Association, any apartment owner or any mortgagee, lienholder, apartment purchaser or any other person who may have an interest in the Project or in any apartment, to file an amendment to which is attached a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed or being filed with the amendment fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments, as built, or so long as the plans being filed simultaneously with the amendment involve only immaterial changes to the layout, location and dimensions of the apartments as built or any change in any apartment number.

O. MISCELLANEOUS.

1. Invalidity. If any provision of this Declaration shall be declared invalid, all other provisions of this Declaration shall continue in full force and effect as if the invalid provision had not been included.

2. Incorporation of Exhibits. All Exhibits attached to this Declaration are incorporated herein by reference.

3. Incorporation of Condominium Map. Condominium Map No. 2002 is incorporated herein by reference.

4. Other Terms. Terms which are used in this Declaration but are not otherwise defined shall have the meaning given to those terms by the Act, if defined therein.

IN WITNESS WHEREOF, the Fee Owner has executed this instrument this 2nd day of March, 1994.

NAPILI GARDENS, INC.

By _____
Douglas D. Anderson
Its President

Fee Owner

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 2nd day of March, 1994, before me personally appeared DOUGLAS D. ANDERSON, to me personally known, who, being by me duly sworn, did say that he is the President of NAPILI GARDENS, INC., a Hawaii corporation, and 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 the said Officer acknowledged said instrument to be the free act and deed of said corporation.

Notary Public, State of Hawaii

My commission expires: 4-20-95

EXHIBIT "A"

Being Lot 8-C-1-A of the Consolidation and Resubdivision of the Lots 8-C-1 and 8-C-2 of the "MAILEPAI HUI LANDS", being also a portion of Royal Patent 1663, Land Commission Award 5524, Apana 1 to L. Konia, situate at Napili 2 & 3, Kaanapali, Lahaina, Island and County of Maui, State of Hawaii, described as follows:

Beginning at the southwestly corner of this parcel of land being a point on the northerly boundary line of Lot 8-C-3 of the "MAILEPAI HUI LANDS", being also the southeasterly corner of Lot 8-C-1-B of the Consolidation and Resubdivision of Lots 8-C-1 and 8-C-2 of the "MAILEPAI HUI LANDS", the coordinates of said point of beginning referred to Government Survey Triangulation Station "MALO", being 10,032.79 feet south and 9,092.32 feet west and running by azimuths measured clockwise from true South; thence,

1. Following along the southeasterly boundary line of Lot 8-C-1-B of the Consolidation and Resubdivision of Lots 8-C-1 and 8-C-2 of the "Mailepai Hui Lands", on a curve to the right with a radius of 10,048.72 feet, the chord azimuth and distance being 206° 02' 34.5" 40.83 feet to the point; thence

2. 207° 09' 30" 31.52 feet along the southeasterly boundary line of Lot 8-C-1-B of the Consolidation and Resubdivision of Lots 8-C-1 and 8-C-2 of the "Mailepai Hui Lands" to a point; thence,

3. 207° 09' 30" 26.00 feet along the same to a point; thence,

4. 207° 09' 30" 55.66 feet along the same to a point; thence,

5. Following along the southeasterly boundary line of Lot 8-C-1-C of the Consolidation and Resubdivision of Lots 8-C-1 and 8-C-2 of the "Mailepai Hui Lands" on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being 245° 06' 35" 36.90 feet to a point; thence,

6. 283° 03' 40" 200.29 feet along Lot 8-D of the "Mailepai Hui Lands" to a point; thence,

7. 13° 03' 40" 172.25 feet along Lot 8-C-3 of the "Mailepai Hui Lands" to a point; thence,

8. 103° 03' 40" 266.14 feet along the northerly boundary of Lot 8-C-3 of the "Mailepai Hui Lands" to the point of beginning and containing an area of 0.967 acre, more or less, as per survey of Sherman Dudley DePonte, Registered Professional Land Surveyor, Certificate No. 6960.

SUBJECT, HOWEVER, to the restriction of vehicular access along courses 1, 2, 4 and 5 of the above described parcel of land.

Being all of the land conveyed to Napili Gardens, Inc., a Hawaii corporation, by Warranty Deed dated July 3, 1991 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 91-097962.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

2. Section VII(c) Agreement for West Maui Areas by and between Napili Gardens, Inc., a Hawaii corporation, and the Department of Water Supply of the County of Maui, dated November 4, 1991 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 91-160942.

3. Subdivision Agreement (Three Lots or Less) by and between Napili Gardens, Inc., a Hawaii corporation, and the County of Maui, a body politic and corporate and a political subdivision of the State of Hawaii, dated January 14, 1992 and recorded in said Bureau of Conveyances as Document No. 92-045719.

4. Subdivision Agreement (Three Lots or Less) by and between Napili Gardens, Inc., a Hawaii corporation, and the County of Maui, a body politic and corporate and a political subdivision of the State of Hawaii, dated January 14, 1992 and recorded in said Bureau of Conveyances as Document No. 92-099574.

5. Subdivision Agreement (Large Lots) by and between Napili Gardens, Inc., a Hawaii corporation, and the County of Maui, a body politic and corporate and a political subdivision of the State of Hawaii, dated February 12, 1992 and recorded in said Bureau of Conveyances as Document No. 92-145804.

6. That certain Mortgage, Security Agreement and Financing Statement between Napili Gardens, Inc., a Hawaii corporation, as mortgagor, and GECC Financial Corporation, a Hawaii corporation, as mortgagee, dated December 15, 1992 and recorded in said Bureau of Conveyances as Document No. 92-207178.

END OF EXHIBIT "A"

Tax Key: 4-3-02:68 (2)

EXHIBIT "B"

NAPILI GARDENS

DESCRIPTION OF BUILDINGS:

The Project shall contain three (3) two story buildings, with Building A containing four (4) residential apartments; Building B containing six (6) residential apartments; and Building C containing six (6) residential apartments, for a total of sixteen (16) residential apartments. The buildings will be constructed principally of concrete, masonry, plaster, wood, vinyl/wood siding, glass and related materials.

DESCRIPTION OF APARTMENTS:

The Project shall contain sixteen (16) three-bedroom, two and one-half bath apartments. Each apartment contains three levels -- the partially subterranean basement level consisting of separate garages, and a lower and upper level living areas. Each apartment shall be furnished with a refrigerator, stove/oven, range hood, dishwasher, disposal, trash compactor, carpets, and television cable connection. All apartments shall be constructed according to the following basic floor plan:

The apartments shall contain three bedrooms, two and one-half bathrooms, clothes closets, closet containing a water heater, washer and dryer, hall closet for linens and storage, kitchen, dining room, living room, and two car enclosed garage. All apartments have direct access to the common elements of the project through their main entry door which leads to a stairway down to the common elements.

LOCATION AND NUMBERING OF APARTMENTS:

The three (3) buildings of the Project are numbered A, B, and C as shown on the Condominium File Plan. Each apartment in the Project shall be designated by a three-digit number preceded by the letter of the building in which it is located. Apartments in Building A are numbered 1, 2, 3, 4; Apartments in Building B are numbered 5, 6, 7, 8, 9, 10; and Apartments in Building C are numbered 11, 12, 13, 14, 15, and 16. The apartment numbers and locations are more fully illustrated on the Condominium File Plan.

APPROXIMATE FLOOR AREA OF APARTMENTS:

Apartment Type	Approximate Net Floor Area* (square feet)			Approximate Gross Floor Area** (square feet)		
	Interior	Patio	Total	Interior	Patio	Total
ALL	1,758	N/A	1,758	1,894	N/A	1,894

*The approximate net floor area of each apartment as set forth above is measured from the interior surface of the apartment perimeter walls and includes all of the walls and partitions within its perimeter walls, whether load-bearing or non-load-bearing.

**The approximate gross floor area of each apartment as set forth above includes all of the walls and partitions within its perimeter walls, the entirety of the perimeter non-party walls, and the interior half of its perimeter party walls, whether load-bearing or non-load-bearing.

NOTE: THE FLOOR AREAS SHOWN ARE APPROXIMATE ONLY. THE FEE OWNER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE FLOOR AREA OF ANY PARTICULAR APARTMENT.

COMMON ELEMENTS:

The common elements of the Project shall specifically include, but are not limited to, the following:

1. The land described in Exhibit "A".

2. All structural components, such as foundations, girders, columns, beams, floor slabs, supports, perimeter walls, load-bearing walls, floors, ceilings (except the inner or decorated surfaces of the perimeter walls, load-bearing walls, floors and ceilings), roofs, stairs and entry areas to the buildings.

3. All yards, grounds, gardens, planters, plants, landscaping, refuse facilities, roads, driveways, and walkways.

4. All ducts, electrical equipment, wiring, pipes and other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one apartment for services such as power, light, water, gas, sewer, telephone and radio and television signal distribution, if any.

EXHIBIT "C"

NAPILI GARDENS

Apartment Type	Apartment No.	Undivided Common Interest of Each Apartment
ALL	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16	.0625 (6.25%)