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ASHFORD & WRISTON  
ALII PLACE, SUITE 1400  
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Total Page(s): 11

FIRST RESTATEMENT OF THE ENABLING DECLARATION  
ESTABLISHING A PLAN  
FOR CONDOMINIUM OWNERSHIP

Condominium Map No. 244

WHEREAS, KIRCHMEYER DEVELOPMENT CORPORATION, a Hawaii corporation, general partner of Kanpak Limited Partnership, a limited partnership organized and registered under the laws of the State of Hawaii, whose post office address and place of business is 1993 Kihei Road, Kihei, County of Maui, State of Hawaii (hereinafter referred to as "Grantor"), executed the "Enabling Declaration Establishing A Plan For Condominium Ownership" dated September 18, 1972 (the "Declaration"), submitting the property of the project known as "The Island Surf" to the provisions of the Hawaii Condominium Property Act (Chapter 514A, Hawaii Revised Statutes, as amended), which Declaration was recorded in the Bureau of Conveyances of the State of Hawaii in Liber 8610 at Page 345, together with By-Laws attached to the Declaration as Exhibit A (the "By-Laws"), and site, elevation and floor plans filed in the Bureau as Condominium File Plan No. 244; (See Endnote 1) and

WHEREAS, said Grantor filed for record in the Bureau of Conveyances of the State of Hawaii a set of plans of the building showing the layout, location, Apartment No. and dimensions of the apartments, and constructed thereon a six-story, eighty-two (82) unit structure known as THE ISLAND SURF, said structure having been constructed in accordance with plans and specifications prepared by Fred W. Dixon, Inc.; and

WHEREAS, said Grantor established by the Declaration a plan for the individual ownership of the real property estates consisting of the area or space contained in each of the units in said structure, and the co-ownership by the individual and separate owners thereof, as

tenants in common, of all of the remaining real property which is hereinafter defined and referred to herein as the "common areas and facilities"; and

WHEREAS, the Declaration was amended by: the "Amendment of Declaration of Horizontal Property Regime" dated September 6, 1973, and recorded in the Bureau in Liber 9488 at Page 422; and the "Certificate of Amendment The Island Surf" dated July 22, 1980, and recorded in the Bureau in Liber 14884 at Page 227; and

WHEREAS, Section 514A-82.2, Hawaii Revised Statutes, empowers the Board of Directors of the Association of Apartment Owners of The Island Surf (the "Association") to restate the Declaration to include any amendments to it and to conform them to the provisions of Chapter 514A, Hawaii Revised Statutes, and any other statute, ordinance, rule, or regulation enacted by any governmental authority, by a resolution adopted by the Board of Directors; and

WHEREAS, at a meeting duly held on MAY 13, 2002, the Board of Directors resolved to restate the Declaration in accordance with Section 514A-82.2, Hawaii Revised Statutes;

NOW, THEREFORE, said Grantor, the fee owner of the following described real property, to-wit:

All of that certain parcel of land (portion of the land described in Land Patent Grant Number 8265 to Dora von Tempsky), situate, lying and being at Kamaole, Kula, Island and County of Maui, State of Hawaii, and being LOT NUMBER THIRTY-SIX (36), of the "KIHEI FARM SUBDIVISION", (the Map thereof not being recorded), the same being a PORTION OF LOT NUMBER TWENTY-A (20-A), of the "KAMAOLE HOMESTEADS", and thus bounded and described:-

Beginning at a pipe at the Southwest corner of this portion of the corner of the Government Road, the coordinates of said pipe referred to the initial point of said Lot 20A being 106.1 feet North and 472.2 feet West and the coordinates of said initial point of Lot 20A referred to the Government Survey Triangulation Station "Kamaole" being 1521.7 feet North and 661.6 feet West and running by true azimuths:

- |    |      |     |        |                                       |
|----|------|-----|--------|---------------------------------------|
| 1. | 160° | 05' | 140.0  | feet along road to a pipe;            |
| 2. | 250° | 05' | 290.4  | feet to a pipe;                       |
| 3. | 340° | 05' | 325.6  | feet to a pipe;                       |
| 4. | 102° | 40' | 344.64 | feet along road to the initial point. |

Containing an Area of 1.5519 Acres, or thereabouts.

hereby restates the following declaration as to divisions, covenants, restrictions, limitations, conditions and uses to which the above described real property and improvements thereon, consisting of a six-story, eighty-two (82) unit structure and appurtenances, may be put, hereby specifying that said declaration shall constitute covenants to run with the land and shall be

binding on said Grantor, its successors and assigns, and all subsequent owners of all or any part of said real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns;

A. Said Grantor, in order to establish a plan of condominium ownership for the above-described property and improvements, hereby covenants and agrees that it hereby divides said real property into the following separate freehold estates:

1. The eighty-two (82) separately designated and legally described freehold estates consisting of the spaces or areas, being the area or space contained in the perimeter walls of each of the eighty-two (82) units in said structure constructed on said property, consisting of sixty-four (64) residential apartments, sixteen (16) residential apartments with the dual purpose of commercial offices and two (2) commercial apartments, said spaces being defined, and referred to herein, as "apartments."

2. A freehold estate consisting of the remaining portion of the real property is described and referred to herein as the "common areas and facilities," which definition includes the structure and the property upon which it is located, and specifically includes, but is not limited to, the foundations, beams and supports, girders, walls, roofs, main walls, bearing walls, floors and ceilings, entrances and exits of said building, staircases, elevators and elevator shafts, lobbies, halls, parking area, laundry space, manager's quarters Apartment 205, office and storeroom, yards, refuse area, swimming pool, and sewer disposal system; all ducts, electrical equipment, wiring and other central and appurtenant installations for services, including power, light, water, disposal, telephone, water tanks and pumps or the like, or other public utility lines, and all other elements and facilities rationally in common use or necessary to the existence, upkeep and safety of the building.

B. For the purpose of this declaration, the ownership of each "apartment" shall include the respective undivided interest in the common areas and facilities specified and established in "E" hereof.

C. A portion of the "common areas and facilities" is hereby set aside and allocated for the restricted use of the respective "apartments", and is hereinafter designated, and as shown on survey attached hereto, and said areas shall be known as "restricted common areas and facilities."

D. The eighty-two (82) individual "apartments" hereby established shall be within one (1) six-story building. The building shall contain two (2) apartments on the first floor, and sixteen (16) apartments on the second through sixth floors.

The commercial apartments are located on the first floor, apartment numbers 100 and 101. The first floor commercial apartments contain an approximate area of 5,334 square feet with respect to Number 100, and 8,917 square feet with respect to Number 101.

The second floor residential-commercial apartments are all located on the second floor and are as follows:

1. Type "A" residential-commercial unit is numbered 206. It contains 2 rooms, 1 bath, and 2 lanais. It contains a total floor area of approximately 895 square feet, inclusive of the lanais.
2. Type "B" residential-commercial units are numbered 202, 203, 204, 205, 207, 208 and 209. Each contains 2 rooms, 1 bath, and 1 lanai. Each contains a total floor area of approximately 696 square feet, inclusive of the lanai.
3. Type "C" residential-commercial units are numbered 201, 210, 214 and 215. Each contains 3 rooms, 2 baths and 2 lanais. Each contains a total floor area of approximately 1,135 square feet, inclusive of the lanais.
4. Type "D" residential-commercial unit is numbered 200. It contains 3 rooms, 2 baths and 1 lanai. It contains a total floor area of approximately 1,014 square feet, inclusive of the lanai.
5. Type "D1" residential-commercial units are numbered 211 and 212. Each contains 3 rooms, 2 baths and 1 lanai. Each contains a total floor area of approximately 1,015 square feet, inclusive of the lanai.
6. Type "E" residential-commercial unit is numbered 216. It contains 3 rooms, 2 baths and 1 lanai. It contains a total floor area of approximately 1,050 square feet, inclusive of the lanai.

The residential apartments are designated on said plans and described as follows:

1. Type "A" one-bedroom units are numbered 306, 406, 506, and 606. Each contains 1 bedroom, 1 bath, a living-dining room, kitchen and two lanais. Each contains a total floor area of approximately 895 square feet, inclusive of the lanais.
2. Type "B" one-bedroom units are numbered 302, 402, 502, 602, 303, 403, 503, 603, 304, 404, 504, 604, 305, 405, 505, 605, 307, 407, 507, 607, 308, 408, 508, 608, 309, 409, 509, and 609. Each contains 1 bedroom, 1 bath, a living-dining room, kitchen and lanai. Each contains a total floor area of approximately 696 square feet, inclusive of the lanai. (See Endnote 2)
3. Type "C" two-bedroom units are numbered 301, 401, 501, 601, 310, 410, 510, 610, 314, 414, 514, 614, 315, 415, 515, and 615. Each contains 2 bedrooms, 2 baths, a living-dining room, kitchen and two lanais. Each contains a total floor area of approximately 1,135 square feet, inclusive of the lanais.
4. Type "D" two-bedroom units are numbered 300, 400, 500, and 600. Each contains 2 bedrooms, 2 baths, a living-dining room, kitchen and lanai. Each contains a total floor area of approximately 1,014 square feet, inclusive of the lanai.
5. Type "D1" two-bedroom units are numbered 311, 411, 511, 611, 312, 412, 512, and 612. Each contains 2 bedrooms, 2 baths, a living-dining room,

kitchen and lanai. Each contains a total floor area of approximately 1,015 square feet, inclusive of the lanai.

6. Type "E" two-bedroom units are numbered 316, 416, 516, and 616. Each contains 2 bedrooms, 2 baths, a living-dining room, kitchen and lanai. Each contains a total floor area of approximately 1,050 square feet, inclusive of the lanai.

All of the first digits of the numbers used in the above signifies the floor the unit is located on.

The apartments are numbered with the number of the floor followed by a final digit indicating the number of apartment on each floor, as follows:

First Floor:	100 and 101.
Second Floor:	200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 214, 215, and 216.
Third Floor:	300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 314, 315, and 316.
Fourth Floor:	400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 414, 415, and 416.
Fifth Floor:	500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 514, 515, and 516.
Sixth Floor:	600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 614, 615, and 616.

The immediate common elements to which each apartment has access will be the adjoining walkway, hall or passageway.

E. The undivided interest in the "common areas and facilities" hereby established and which shall be conveyed with each respective "apartment" as well as their proportionate representation for voting purposes in the Association of Apartment Owners, is as follows:

Type "A" residential-commercial and residential one-bedroom unit –

An undivided 1.04478% interest (5 units)

Type "B" residential-commercial and residential one-bedroom unit –

An undivided 0.81248% interest (34 units)

Type "C" residential-commercial and residential two-bedroom unit –

An undivided 1.32494% interest (20 units)

Type "D" residential-commercial and residential two-bedroom unit -

An undivided 1.18369% interest (5 units)

Type "D1" residential-commercial and residential two-bedroom unit -

An undivided 1.18462% interest (10 units)

Type "E" residential-commercial and residential two-bedroom unit -

An undivided 1.22572% interest (5 units)

Commercial Unit Number 100 -

An undivided 6.27691 interest

Commercial Unit Number 101

An undivided 10.48282% interest

Apartment 205, a residential-commercial unit, shall be the manager's quarters and part of the common elements. It will not be assigned any percentage of the undivided interest of the common areas and facilities.

The above respective undivided interests established and to be conveyed with the respective "apartments" as indicated above, cannot be changed, and said Grantor, its successors and assigns, and grantees, covenant and agree that the undivided interests in the "common areas and facilities" and the fee titles to the respective "apartments" conveyed therewith, shall not be separated or separately conveyed, and each said undivided interest shall be deemed to be conveyed or encumbered with its respective "apartments" even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the "apartment".

F. The "restricted common areas and facilities" allocated for the restricted uses of the respective "apartments" are as follows:

Parking spaces as designated on said plan by number corresponding to the number of apartments to which they are pertinent shall be appurtenant to and for the exclusive use of such apartment.

G. Said Grantor, its successors and assigns, by this declaration, and all future owners of the "apartments", by their acceptance of their deeds, covenant and agree as follows:

1. That the "common areas and facilities" shall remain undivided; and no owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the condominium.

2. That the "apartments" shall be occupied and used by the respective owners only as provided by the laws of the State of Hawaii and ordinances of the County of Maui and for no other purpose.

3. The owner of the respective "apartments" shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors, and ceilings surrounding his respective "apartment", nor shall said owner be deemed to own pipes, wires, conduits or other public utility lines running through said respective "apartments" which are utilized for, or serve more than one "apartment", except as tenants in common with the other "apartment" owners as heretofore provided in "E". Said owner, however, shall be deemed to own the walls and partitions which are contained in said owner's respective "apartment", and also shall be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings, including plaster, paint, wallpaper, etc.

4. The owners of the respective "apartments" agree that if any portion of the "common areas and facilities" encroaches upon the "apartments", a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure is partially or totally destroyed, and then rebuilt, the owners of "apartments" agree that minor encroachment of parts of the "common areas and facilities" due to construction shall be permitted and that valid easement for said encroachment and the maintenance thereof shall exist.

5. That an owner of an "apartment" shall automatically, upon becoming the owner of an "apartment" or "apartments", be a member of the Association of Apartment Owners in The Island Surf, hereinafter referred to as the "Association", and shall remain a member of said Association until such time as his ownership ceases for any reason, at which time his membership in said Association shall automatically cease.

6. That the owners of "apartments" covenant and agree that the administration of the condominium shall be in accordance with the provisions of this Declaration, the By-Laws of the Association which are made a part hereof and attached as Exhibit "A". (See Endnote 3)

7. That each owner, tenant or occupant of an "apartment" shall comply with the provisions of this Declaration, the By-Laws, decisions and resolutions of the Association or its representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages, or for injunctive relief.

8. That this declaration shall not be revoked or any of the provisions herein amended unless all of the owners and the mortgagees of all of the mortgages covering the "apartments" unanimously agree to such revocation or amendment by duly recorded instruments. (See Endnote 4)

9. That no owner of an "apartment" may exempt himself from liability for his contribution towards the common expenses by waiver of the use or

enjoyment of any of the common areas and facilities or by the abandonment of his "apartment".

H. All sums assessed by the Association but unpaid for the share of the common expenses chargeable to any family unit shall constitute a lien on such apartment prior to all other liens except only (1) tax liens on the "apartment" in favor of any assessing unit and special district, and (2) all sums unpaid on mortgages of record which were recorded prior to the recordation of a notice of lien by the Association, and costs and expenses, including attorneys' fees provided in such mortgages. Such lien may be foreclosed by suit or by nonjudicial or power of sale foreclosure procedures set forth in Chapter 667, Hawaii Revised Statutes, by the manager or Board of Directors, acting on behalf of the owners of the "apartments", in like manner as a mortgage of real property. In any such foreclosure the "apartment" owner shall be required to pay a reasonable rental for the "apartment", if so provided in the By-Laws, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The manager or Board of Directors, acting on behalf of the owners of the "apartments", shall have power, unless prohibited herein, to bid in the unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. (See Endnote 5)

I. Where the mortgagee of a first mortgage of record or other purchaser of an "apartment" obtains title to the unit as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such "apartment" which become due prior to the acquisition of title to such "apartment" by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the "apartments" including such acquirer, his successors and assigns.

J. In the event the property subject to this Enabling Declaration is totally or substantially damaged or destroyed, the repair, reconstruction, or disposition of the property shall be as provided by a majority vote of the Association of Apartment Owners in The Island Surf.

K. In a voluntary conveyance of an "apartment" the grantee of the unit shall be jointly and severally liable with the Grantor for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the manager or Board of Directors of the Association, as the case may be, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the "apartment" conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount therein set forth.

L. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Hawaii Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, this Declaration or in the By-Laws, shall be deemed to be binding on all owners of "apartments", their successors and assigns.



M. That the Board of Directors of the Association of Owners, or the Management Agent, or Manager shall obtain and continue to effect blanket property insurance in form and amounts satisfactory to mortgagees holding first mortgages covering "apartments" but without prejudice to the right of the owner of an "apartment" to obtain individual insurance.

O. That insurance premiums for any blanket insurance coverage shall be a common expense to be paid by monthly assessments levied by the Association of Owners; and that such payments shall be held in a separate escrow account of the Association of Owners and used solely for the payment of the blanket property insurance premiums as such premiums become due. (See Endnote 6)

P. That so long as said Grantor, its successors and assigns, owns one or more of the "apartments" established and described herein, said Grantor, its successors and assigns shall be subject to the provisions of this Declaration and of Exhibit "A" attached hereto; and said Grantor covenants to take no action which would adversely affect the rights of the Association with respect to assurance against latent defects in the property or other right assigned to the Association, the members of such association and their successors in interest, as their interests may appear, by reason of the establishment of the condominium.

Q. Until changed, the person to receive service of process in the cases provided for in said Chapter 514A, is KEN KIRCHMEYER, president of Kirchmeyer Development Corporation, and his place of business and post office address is 1993 Kihei Road, Kihei, Maui, Hawaii.

Q.1 Construction of the structure described herein has been completed and the architect's verified statement certifying such construction was attached as Exhibit A to the "Amendment of Declaration of Horizontal Property Regime" dated September 6, 1973, and recorded in the Bureau of Conveyances, State of Hawaii in Liber 9488 at Page 422. (See Endnote 7)

R. The terms "Declaration" and "Condominium Ownership" as used herein shall mean and include the terms "Master Deed" and "Apartment Ownership" respectively.

Dated at Wailuku, Maui, Hawaii, this 11<sup>th</sup> day of JUNE, 2002.

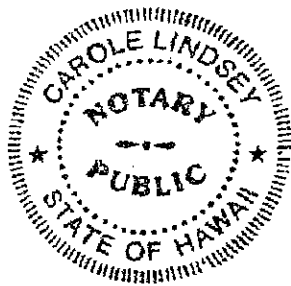
ASSOCIATION OF APARTMENT OWNERS  
OF THE ISLAND SURF

By [Signature]  
Its PRESIDENT ISLAND SURF ADOAO

By [Signature]  
Its SECRETARY IS SURF ADOAO

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

On this 11<sup>th</sup> day of June, 2002, before me personally appeared Greg Shelton and Diane T. Dooley, to me personally known, 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 capacity shown, having been duly authorized to execute such instrument in such capacity.



Carol Lindsey  
Print Name: CAROLE LINDSEY  
Notary Public, State of Hawaii  
My Commission Expires: 12-15-02

## ENDNOTES

The following endnotes correspond to provisions in the Declaration which have been restated to conform to Chapter 514A, Hawaii Revised Statutes, and the Federal Fair Housing Act, as amended (42 U.S.C. Sections 3601 et seq.), and to integrate all amendments made to the Declaration. This Restated Declaration correctly states without change the corresponding provisions of the original Declaration, as amended, and supersedes the original Declaration and all prior amendments thereto. This Restatement is made solely for the purpose of information and convenience. In the event of a conflict, the Restated Declaration shall be subordinate to the cited statute and original Declaration.

1. Act 98 (SLH, 1977) re-designated Chapter 514 as Chapter 514A, Hawaii Revised Statutes, and Act 65 (SLH, 1988) redesignated the Horizontal Property Act as the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes ("HRS"). Therefore, throughout this Restatement, references to the previous usage have been amended to reflect present terminology.
2. Paragraph 2 on page 6 of this Restatement was amended by the "Amendment of Declaration of Horizontal Property Regime" dated September 6, 1973, and recorded in the Bureau of Conveyances, State of Hawaii in Liber 9488 at Page 422.
3. The By-Laws were originally attached to the Declaration as Exhibit A but are now recorded separately, in compliance with Section 514A-81, HRS.
4. Section G.8 is no longer applicable in some situations. Section 514A-11(11) of the condominium law now provides that the Declaration may be amended by the vote or written consent of 75 percent of the owners, with some exceptions. Section 514A-21 of the condominium law now allows a condominium project to be terminated upon the approval of 80 percent of the apartment owners and holders of all liens.
5. Paragraph H has been amended to incorporate the requirements of Section 514A-90(a), HRS, which now provides that a mortgage does not take priority over an association's lien for unpaid assessments unless the mortgage was recorded prior to the association's notice of lien. The authority granted by Section 514A-82(b)(13) to conduct nonjudicial foreclosures has also been included in Paragraph H because the By-Laws do not deal with that issue.
6. There was no Paragraph N in the original Declaration.
7. The Declaration was so amended to comply with Section 514A-12, HRS, by referring to the architect's certification that the building was completed in accordance with plans and specifications shown in Condominium Map 244.