

RECORDATION REQUESTED BY:

AFTER RECORDATION, RETURN TO:

LONG & McONE ESCROW, LTD.

RETURN BY: MAIL () PICKUP (x)

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DECLARATION OF HORIZONTAL PROPERTY REGIME

OF

FOSTER TOWER

(CONDOMINIUM FILE PLAN NO. 208)

WHEREAS, CLORINDA LOW LUCAS, GORDON S. MAY and FIRST HAWAIIAN BANK, a Hawaii corporation, Trustees of the Liliuokalani Trust, herein called "Trustees", own in fee simple certain real property described as follows:

ALL of that certain parcel of land (being a portion of Royal Patent 5588, Land Commission Award 8452, Apana 3, Section 1 to Keohokalole) which includes the whole of Lots 32 to 37, inclusive, of Hamohamo Tract, as shown on the Map thereof recorded in the Bureau of Conveyances of the State of Hawaii as File Plan No. 129, situate on the northeasterly side of Kalakaua Avenue and on the southeast side of Kealohilani Avenue at Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, and thus bounded and described as per survey of Marcellino P. Correa, Surveyor, dated December 7, 1962:

Beginning at the west corner of this parcel of land, being also the east corner of Kalakaua and Kealohilani Avenues and the west corner of Lot 36 of said Tract, and running by azimuths measured clockwise from true south:

1. 237° 04' 320.69 feet along the southeast side of Kealohilani Avenue;
2. 327° 04' 113.90 feet along Lot 31 of said Tract;
3. 54° 38' 30" 337.15 feet to the northeasterly side of Kalakaua Avenue;
4. 154° 15' 129.18 feet along the northeasterly side of Kalakaua Avenue to the point of beginning, and containing an area of 39,734 square feet.

SUBJECT, HOWEVER, to the following:

1. 10 foot Street Setback Line along Kalakaua Avenue and approximately 30 feet from the westerly corner of Kalakaua Avenue along Kealohilani Avenue, as shown on map attached to Boundary Agreement dated December 11, 1962, recorded in said Bureau in Liber 4433, at Page 346;

WHEREAS, KUHIO BEACH HOTEL, LTD., a Hawaii corporation, herein called "Kuhio", is the holder of a lease from said Trustees, dated May 27, 1959, recorded in said Bureau of Conveyances in Liber 3681, at Page 13, as amended by instrument dated December 11, 1962, recorded in said Bureau in Liber 4433, at Page 349, hereinafter referred to as the "Master Lease"; and

WHEREAS, Kuhio, acting in concert with other persons, caused two buildings to be constructed on said premises, the building now known as the Foster Tower and the parking building adjacent thereto, which buildings are described on the plans filed in the Bureau of Conveyances of the State of Hawaii as Condominium File Plan 268, which plan, as the same now is and as it may be amended, is hereby incorporated herein by reference;

WHEREAS, FOSTER ENTERPRISES, LTD., a Delaware corporation, herein called "Foster", holds 111 apartment subleases from Kuhio in and to apartments in said Foster Tower; and

WHEREAS, certain individuals hold a total of 23 subleases from Kuhio in and to 28 apartments in said Foster Tower; and

WHEREAS, Kuhio and Foster, as Seller, and AMFAC FINANCIAL CORP., a Hawaii corporation, herein called "Amfac", and PRIME

PROPERTIES, INC., a Hawaii corporation, herein called "Prime", being the joint venturers in a Hawaii joint venture known as the Foster Tower Joint Venture, as Purchaser, have entered into an Agreement dated December 30, 1970 whereby Purchaser has agreed to purchase certain interests of Kuhio in said Master Lease and all of the right, title and interest of Foster in said 111 apartment subleases; and

WHEREAS, Purchaser desires to submit said real property, including the improvements thereon, to the horizontal property regime, thereby creating condominium apartments; and

WHEREAS, all of said apartment subleases have been cancelled prior hereto or simultaneously herewith;

NOW, THEREFORE, in order to creat a condominium project consisting of said land and improvements (herein called the "project") and to be known as FOSTER TOWER, the parties hereto hereby submit said property to the horizontal property regime established by the Horizontal Property Act, Chapter 514, Hawaii Revised Statutes, as amended, effective as of November 1, 1971, and in furtherance thereof make the following declarations as to divisions, limitations, restrictions, covenants and conditions and hereby declare and agree that said property is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to said declarations, which declarations shall constitute covenants running with the land and shall be binding on and for the benefit of the parties hereto, their

respective successors and assigns, and all subsequent owners and lessees of all or any part of the project and their respective successors, heirs, executors, administrators and assigns for and during a term of years ending at midnight, April 30, 2034.

A. DESCRIPTION OF BUILDING. The improvements consist of a 25-story building without basement and a parking building adjacent thereto, constructed principally of reinforced concrete, steel and glass containing residential and commercial apartments.

B. DIVISION OF PROPERTY. The project is divided as follows:

1. Residential Apartments. One hundred forty-one (141) estates are hereby designated as residential apartments in the spaces within the perimeter walls or boundary lines, floors and ceilings of each of the 141 apartments contained in the 24 floors above the ground level floor of the Foster Tower as shown on said Condominium File Plan. Said residential apartments are further described as follows:

(a) On each of the first 23 floors above said ground level floor, the floors being numbered 2 through 12 and 14 through 25 in ascending order, there are 6 apartments designated by numbers 01 through 06 preceded by the number of the respective floor and on the floor above the twenty-fifth floor, there are three apartments designated as Penthouse 1, Penthouse 2 and Penthouse 3.

(b) Each residential apartment contains the number of rooms and approximate area as set forth in Exhibit "A"

attached hereto and made a part hereof or as shown on said plan.

(c) Each residential apartment has immediate access to the hallways, stairways, elevators, lobby, entrances, walkways and driveways permitting ingress and egress to and from the public streets.

(d) Except as specifically otherwise provided, the respective residential apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls or interior load-bearing walls or doors separating two adjacent apartments, the unfinished surfaces of the floors and ceilings surrounding each apartment or any pipes, wires, conduits or other utility or service lines running through such apartment which are utilized for or serve more than one apartment, the same being deemed common elements as hereinafter provided. 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 all fixtures and appliances installed therein. All doors (except as provided above), windows and glass walls shall be included within the apartment.

(e) The spaces within the perimeter walls, floors and ceilings of the closets as shown on said plan adjoining and between each of Apartments 206, 306, 406, 706, 806 and 2506 and the hallway adjoining each such apartment shall be included as a part of the respective adjoining apartment.

(f) The spaces within the perimeter walls, floors

and ceilings of the closets which are shown on said plan and designated as Storage PH-1, Storage PH-2 and Storage PH-3 shall be included as a part of Penthouse 1, Penthouse 2 and Penthouse 3, respectively.

(g) Penthouse 1 and Penthouse 3 shall include the areas within the perimeters of the decks which are shown on said plan and designated as Deck PH-1 and Deck PH-3, respectively.

2. Commercial Apartment. One (1) estate is hereby designated as a commercial apartment in the space within that portion of the ground floor of the Foster Tower building which is shown on said plan and designated as Apartment 1, containing approximately 11,277 square feet.

(a) Said commercial apartment contains one general room which may be partitioned into several rooms.

(b) Apartment 1 has immediate access to the lobby, entrances, walkways and driveways permitting ingress and egress to the adjacent public streets.

(c) Except as specifically or otherwise provided, said commercial apartment shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls or interior load-bearing walls, the unfinished surfaces of the floors and ceilings surrounding such apartment, any pipes, wires, conduits or other utility or service lines running through such apartment which are utilized for or serve more than one apartment or the areas designated on said plan as the lobby and entrances, the same being deemed common elements as hereinafter provided. Said apartment shall be deemed to include

all walls and partitions which are not load-bearing within its perimeter walls, the interior decorated or finished surfaces of all walls, floors and ceilings and all fixtures and equipment installed therein. All doors, windows and glass walls shall be included within the apartment.

3. Common Elements. The remaining portions of the project are hereby designated as and herein called the "common elements", including specifically but not limited to:

- (a) The land described above.
- (b) The foundations, columns, girders, beams, supports, load-bearing walls not exclusively serving a particular apartment, roofs, common halls, corridors, lobbies, stairs, stairways and fire escapes, and entrances and exits of the Foster Tower building and the parking building.
- (c) The yards and grounds and the swimming pool, deck and attendant equipment located on the roof of the parking building.
- (d) Central facilities and appurtenant installations for services such as power, light, gas, hot and cold water, heating, refrigeration and incinerators.
- (e) The elevators, tanks, pumps, motors, fans, compressors, ducts and, in general, all other apparatus and installations existing for common use.
- (f) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

C. LIMITED COMMON ELEMENTS. Certain parts of the common

elements, herein called the "limited common elements", are hereby designated and set aside for the exclusive use of certain apartments, and such apartments shall have appurtenant thereto exclusive easements for the use of such limited common elements, as follows:

(a) The recreational facilities, including the swimming pool, deck and attendant equipment located on the roof of the parking building, are for the exclusive use of the residential apartments.

(b) The bridge connecting the parking building to the fourth floor of the Foster Tower is for the exclusive use of the residential apartments.

(c) The driveways on the Diamond Head and mauka sides of the parking building are for the exclusive use of Apartment 1 for the parking of motor vehicles.

(d) The parking building shall be for the exclusive use of the owners of the residential apartments, their tenants, families, domestic servants and social guests and the owners, lessees, clients and customers of the businesses located in Apartment 1 from time to time and in the apartments listed in Exhibit "B", attached hereto and made a part hereof; and, said building shall be subject to grants of exclusive easements for parking purposes as set forth in paragraph F of this Declaration and to the uses permitted in paragraph G of this Declaration.

(e) Doors separating two adjacent apartments owned by the same owner or owners shall be for the exclusive use of said owner or owners and shall be subject to the provisions

twenty-fifth floor storage room for storage purposes.

(i) The common area on the fourth floor of the Foster Tower, designated as such on said plan, shall be for the exclusive use of the residential apartments.

(j) The storage rooms located in the parking building below the swimming pool and deck designated as Storage 1 and Storage 2 on said plan are for the exclusive use of the residential apartments.

D. COMMON INTEREST. Each apartment shall have appurtenant thereto an undivided percentage interest in all common elements of the project (herein called the "common interest"), and the same proportionate share in the common expenses of the project and for all other purposes including voting, as is set forth in said Exhibit "A" attached hereto and made a part hereof.

E. EASEMENTS. In addition to any easements herein designated in the limited common elements, the apartments and common elements shall have and be subject to the following easements:

1. Each apartment shall have appurtenant thereto non-exclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for and support of such apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive or limited use of the limited common elements as herein provided; and in all other apartments of the building for support.

2. If any part of the common elements encroaches upon any apartment or limited common element, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall and does exist. If any portion of the project shall be partially or totally destroyed and then rebuilt, minor encroachments of any parts of the common elements due to construction shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist.

3. The Association of Apartment Owners of the project

shall have the right, to be exercised by its Board of Directors or Managing Agent, to enter any apartment and limited common element from time to time during reasonable hours as may be necessary for the operation of the project or for making emergency repairs therein required to prevent damage to any apartments or common element or for the installation, repair or replacement of any common element.

4. Each residential apartment in the project shall have a non-exclusive easement for pedestrian ingress and egress through the Foster Tower and the parking building by the most direct path to reach the swimming pool on the roof of the parking building.

5. Each residential apartment shall have appurtenant thereto an exclusive easement to use the parking space or spaces designated as appurtenant to said apartment in the lease covering said apartment.

6. Each residential apartment having a parking space appurtenant thereto shall have a non-exclusive easement for vehicular and pedestrian ingress and egress through the Foster Tower and the parking building by the most direct means necessary to reach said parking space.

F. ALTERATION AND TRANSFER OF INTERESTS. The common interest, elements, and easements appurtenant to each apartment shall have a permanent character, shall not be altered without the consent of all owners of apartments affected thereby as expressed in an amendment to this Declaration duly recorded, shall not be separated from such apartment and shall

be deemed to be conveyed or encumbered with such apartment even though not expressly mentioned or described in the conveyance or other instrument; excepting, however, the exclusive easements for the use of parking spaces. Any such exclusive easement for the use of a parking space may be conveyed separately from the apartment to which it is appurtenant but only if made appurtenant to another apartment in the project to which the easement shall thenceforth be appurtenant as provided hereunder, and, unless the conveyance states to which apartment the easement shall become appurtenant, is recorded in the Bureau of Conveyances of the State of Hawaii and a copy of said conveyance is given to the Association within 15 days of the recordation thereof, the conveyance shall not be effective and the easement shall remain appurtenant to the apartment to which it was appurtenant prior to the conveyance. The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by said Horizontal Property Act.

G. USE. The apartments shall be occupied and used only as follows:

1. The residential apartments shall be occupied and used only as private dwellings by the respective owners thereof, their tenants, families, domestic servants and social guests; provided, however, that the apartments listed in Exhibit "B" attached hereto and made a part hereof, being presently used by the owners or lessees thereof for various commercial uses, as indicated in said Exhibit "B", may be occupied and used

only by said owners or lessees for said existing uses until the termination of said leases or uses or ownership by the present owners thereof and thereafter said existing uses shall not be enlarged, increased or extended as to area, time or persons nor shall said uses be changed except to use of said apartments as private dwellings in accordance with this Declaration; provided, further, that as to Apartment 204, the right is reserved to the Purchaser to allow said apartment to be occupied and used as a private dwelling or to be used as a facility for recreational or other purposes by the residential apartment owners.

2. The commercial apartment shall be occupied and used only for general commercial purposes and may include any lawful commercial enterprise therein.

3. Notwithstanding any provision in this Paragraph G to the contrary, the right is reserved to the Purchaser above-named, upon issuance to Purchaser of the original condominium apartment leases to the apartments in the first three floors above the ground floor level of the Foster Tower building, to use any of said apartments for offices or other business purposes until such time as any of said apartments are sold, at which time the use of any apartment sold shall be restricted to use as a private dwelling as provided in subparagraph 1 of this Paragraph G, but, if any such apartment is listed in said Exhibit "B", such apartment may nevertheless be sold subject to the conditions set forth in said subparagraph 1.

4. Except for the above expressed restrictions, the

owners of the respective apartments shall have the absolute right to lease such apartments subject to all provisions of this Declaration.

5. The various areas of the parking building shall be used and occupied for the purposes for which such areas are designed and intended, being for parking, recreation and storage, subject, however, to the reservation contained in paragraph 6 of this Declaration relating to the ground floor of the parking building.

H. ADMINISTRATION OF PROJECT. Administration of the project shall be vested in its Association of Apartment Owners, herein called the "Association", consisting of all apartment owners of the project in accordance with the By-Laws of the Association attached hereto as Exhibit "C" and made a part hereof. Operation of the project and maintenance, repair, replacement and restoration of the common elements, and any additions and alterations thereof, shall be in accordance with the provisions of said Horizontal Property Act, this Declaration and the By-Laws, and specifically but without limitation the Association shall:

1. Make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the project or any part thereof.

2. Keep all common elements of the project in a strictly clean and sanitary condition, and observe and perform all laws,

ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the project or the use thereof.

3. Well and substantially repair, maintain, amend and keep all common elements of the project, including without limitation the buildings thereof, with all necessary reparations and amendments whatsoever in good order and condition, except as otherwise provided herein, and maintain and keep said land and all adjacent land between any street boundary of the project and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass thereon in good cultivation and replant the same as may be necessary, and repair and make good all defects in the common elements of the project herein required to be repaired by the Association, of which notice shall be given to any owner or his agent, within 30 days after the giving of such notice.

4. Before commencing or permitting construction of any improvement on the project, obtain and deposit with the Trustees a bond or certificate thereof naming as obligees the Trustees and mortgagees of record and collectively all apartment owners as their interests may appear, in a penal sum not less than one-half of the cost of such construction and with a corporate surety authorized to do business in Hawaii, guaranteeing completion of such construction free and clear of all mechanics' and materialmen's liens.

5. Observe any setback lines affecting the project and not erect, place or maintain any building or structure whatsoever

except approved fences or walls between any street boundary of the project and the setback line along such boundary.

6. Not erect or place on the project any building or structure including fences and walls, nor make additions or structural alterations to or exterior changes of any common elements of the project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with plans and specifications including detailed plot plan, prepared by a licensed architect, if so required by the Trustees, first approved in writing by the Trustees and also approved by a majority of apartment owners (or such larger percentage as required by law or this Declaration) including all owners of apartments thereby directly affected, and complete any such improvements diligently after the commencement thereof; provided, however, that this paragraph shall not apply to the commercial apartment and the common elements immediately adjacent and appurtenant thereto.

7. Not make or suffer any strip or waste except as permitted by this Declaration, nor make or suffer any unlawful, improper or offensive use of the project.

I. MANAGING AGENT. Operation of the project shall be conducted for the Association by a Managing Agent which shall be a responsible Hawaii corporation appointed by the Association in accordance with the By-Laws, subject to written approval by the Trustees, which approval shall not be unreasonably withheld. The Managing Agent is hereby authorized to receive service of legal process in all cases provided in said Horizontal

Property Act. The Managing Agent, in addition to its other duties as set forth in this Declaration or in the By-Laws, shall collect all rents, taxes, assessments and other charges payable by the apartment owners under their apartment leases to the Lessor thereunder and shall pay the same to the Lessor. Until the Managing Agent is appointed, service may be made upon either joint venturer of the Foster Tower Joint Venture: Upon Amfac Financial Corp., 700 Bishop Street, Honolulu, Hawaii, or upon Prime Properties, Inc., Suite 410, 333 Queen Street, Honolulu, Hawaii.

J. COMMON EXPENSES. All charges, costs and expenses whatsoever incurred for or in connection with the administration of the project, including without limitation the operation thereof, any maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto, any labor, services, materials, supplies and equipment therefor, any liability whatsoever for loss or damage arising out of or in connection with the common elements or any accident, fire or nuisance thereon, any premiums for hazard and liability insurance herein required with respect to the project, and all costs for utility services, including water, electricity and gas, trash removal, air conditioning and other similar services for Apartment 1, excluding however, (i) such portion of such charges, costs and expenses fairly attributable to Apartment 1 which are in excess of \$16,000.00 in any year but not due to any rate increase for utility services, and (ii) the costs of maintenance, repair, replacement and restoration of and additions and alterations to the common elements immediately surrounding said Apartment 1 which are not attributable to normal wear and tear and usage or any accident, fire or nuisance, shall constitute common expenses of the project and the residential apartment owners shall be severally liable for such common expenses

in the same proportion as their percentage share in the common interests. All charges, costs and expenses excluded in (i) and (ii) above shall not constitute common expenses of the project and shall be borne exclusively by Apartment 1. The Board of Directors of the Association (herein called the "Board") shall from time to time assess such charges, costs and expenses against the apartments according to their respective obligations therefor and the unpaid amount of such assessments against any apartment shall constitute a lien against such apartment which may be foreclosed by the Board or Managing Agent as provided by said Horizontal Property Act, provided that 30 days' prior written notice of intention to foreclose shall be mailed, postage prepaid, to the Trustees and all other persons having any interest in such apartment as shown in the Association's record of ownership. The allocation of charges, costs and expenses between the residential apartments and Apartment 1 shall be in accordance with fair and equitable methods as determined by Peat, Marwick, Mitchell & Co., Certified Public Accountants, or such other certified public accountant as shall be selected by the Board.

K. COMPLIANCE WITH DECLARATION AND BY-LAWS. All apartment owners, their tenants, families, employees, personal and social guests, and any other persons who may in any manner

use the project, shall be bound by and comply strictly with the provisions of this Declaration, the By-Laws of the Association and all agreements, decisions and determinations of the Association duly and lawfully made or amended from time to time, and 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 or Managing Agent on behalf of the Association or, in a proper case, by an aggrieved apartment owner.

L. INSURANCE. The Board on behalf of the Association at its common expense shall at all times keep all project improvements insured against loss or damage by fire with extended coverage in an insurance company authorized to do business in Hawaii in an amount as near as practicable to the full replacement cost thereof without deduction for depreciation, in the name of the Board as trustee for all apartment owners and mortgagees according to the loss or damage to their respective apartments and appurtenant common interests and payable in case of loss to such bank or trust company authorized to do business in Hawaii as the Board shall designate for the custody and disposition as herein provided of all proceeds of such insurance, and from time to time upon receipt thereof cause to be deposited promptly with the Trustees true copies of such insurance policies or current certificates thereof, without prejudice to the right of each apartment owner to insure his apartment for his own benefit. 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 same buildings in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as shall be first approved as herein provided, and the Association at its common expense shall make up any deficiency in such insurance proceeds.

Every such policy of insurance shall:

1. Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration or contribution by reason of, any other insurance obtained by or for any apartment owner;
2. Contain no provision relieving the insurer from liability for loss occurring while the hazard to such buildings is increased, whether or not within the knowledge or control of the Board, or because of any breach or warranty or condition or any other act or neglect by the Board or any apartment owner or any other persons under either of them;
3. Provide that such policy may not be cancelled (whether or not requested by the Board) except by the insurer giving at least 30 days' prior written notice thereof to the Board, the Trustees and every other person in interest who shall have requested such notice of the insurer;
4. Contain a waiver by the insurer of any right of subrogation to any right of the Board, the Trustees or apartment owners against any of them or any other persons

under them; and

5. Contain a standard mortgagee clause which shall:

(a) Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any apartment or apartment lease or sub-lease of the project, in their respective order and preference, whether or not named therein;

(b) Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board, the Trustees or apartment owners or any persons under any of them;

(c) Waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause; and

(d) Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said Bank or trust company designated by the Board.

The Board on behalf of the Association at its common expense shall also effect and maintain at all times comprehensive general liability insurance, covering all apartment owners, the Board and its employees with respect to the project and naming the Trustees as additional assureds, in an insurance company authorized to do business in Hawaii with minimum limits of not less than \$300,000 for injury to one person and \$1,000,000

for injury to more than one person in any one accident or occurrence and \$100,000 for property damage, and from time to time upon receipt thereof deposit promptly with the Trustees current certificates of such insurance, without prejudice to the right of any apartment owners to maintain additional liability insurance for their respective apartments.

M. CONDEMNATION. In case at any time or times the project or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for or on account of any land shall be payable to and be the sole property of the Trustees, and all compensation and damages for or on account of any improvements of the project shall be payable to such bank or trust company authorized to do business in Hawaii as the Board shall designate as trustee for all apartment owners and mortgagees according to the loss or damage to their respective apartments and appurtenant common interests and shall be used promptly by the Association to the extent necessary for restoring or replacing such improvements on the remaining land according to plans therefor first approved as herein provided unless such restoration or replacement is impractical in the circumstances. Unless such restoration or replacement is undertaken within a reasonable time after such condemnation the Association at its common expense shall remove all remains of such improvements so taken or condemned and restore the site thereof to good orderly condition and even grade.

N. UNINSURED CASUALTY. In case at any time or times any

improvements of the project shall be substantially damaged or destroyed by any casualty not herein required to be insured against, whether to rebuild, repair or restore such improvements shall be determined by vote of seventy-five per cent (75%) of the apartment owners. Any such approved restoration of the common elements shall be completed diligently by the Association, with the costs thereof being allocated as a common expense, and the affected apartment owners shall be solely responsible for any restoration of their respective apartments so damaged or destroyed. Unless such restoration is undertaken within a reasonable time after such casualty the Association shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good orderly condition and even grade, with the costs thereof being allocated as a common expense.

O. ALTERATION OF PROJECT. Restoration or replacement of the project or any portion thereof or construction of any additional building or structural alteration or addition to any building, different in any material respect from said condominium file plan of the project, shall be undertaken by the Association or any apartment owner only pursuant to an amendment of this Declaration, duly executed pursuant to the provisions hereof, accompanied by the written consent of the holders of all liens affecting any of the apartments involved, and in accordance with complete plans and specifications therefor first approved in writing by the Trustees and the Board, and promptly upon completion of such restoration,

replacement or construction the Association shall duly record or file of record such amendment together with a complete set of floor plans of the project as so altered, certified as built by a registered architect or professional engineer; provided, however, that with Board approval only, the owner of any two apartments separated only by a common element which is a wall or a door may alter or remove all or portions of the intervening wall or door, if the structural integrity of the building is not thereby affected and if the finish of the common element then remaining is restored to a condition substantially comparable to that of the common element prior to such alteration; and, upon the termination of the common ownership of such adjacent apartments, if the intervening wall or door shall have been altered or removed pursuant to the foregoing provisions, each of the owners of such apartments shall be obligated to restore such intervening wall or door to substantially the condition in which the same existed prior to such alteration or removal.

It is further provided that Apartments 301 and 306 may be used as one apartment as long as each such apartment shall have the same owner, but, if at any time the owner of each such apartment shall no longer be identical, each of the owners of each such apartment shall be obligated to build, and shall build, after approval by the Board, which approval shall not be unreasonably withheld, between the respective apartments, a wall which shall upon completion be deemed a common element and which shall be substantially in the same relative position

as the wall separating Apartments 501 and 506, as shown on said plan, so as to create two completely separate apartments, one facing makai with an approximate area of 1,250 square feet, inclusive of a lanai with 147 square feet, and the other facing toward Diamond Head with an approximate area of 441 square feet, with no lanai; and, these same terms shall also apply to Apartments 201 and 206, 401 and 406, 601 and 606, 701 and 706 and 801 and 806, except that in the case of 701 and 706, the apartment facing makai shall have an approximate area of 1,331 square feet, inclusive of a lanai of 147 square feet, and in the case of 201 and 206, the apartment facing makai shall have an approximate area of 2,250 square feet, inclusive of a lanai of 1,147 square feet.

The right is hereby granted and reserved to the Association to terminate the use of the space within the perimeter walls, floors and ceilings of the ground floor of the parking building as a parking area and to convert said space to commercial uses or to a commercial apartment or apartments in accordance with plans and specifications approved by eighty-five per cent (85%) of the apartment owners, pursuant to an amendment to this Declaration, duly executed by or pursuant to the affirmative vote of eighty-five per cent (85%) of the apartment owners and accompanied by the written consent of the holders of all liens affecting any apartment and the written consent of all of the apartment owners of apartments having appurtenant thereto an easement to use a parking space or spaces in said ground floor of the parking building, and

promptly upon completion of such construction the Association shall duly record said amendment, together with a complete set of floor plans of the project as so altered, certified as built by a registered architect or professional engineer; provided, however, that the exercise of said right shall, in addition, be subject to the consent of the Trustees as to the plans and specifications therefor and the uses of such commercial space, which consent shall not be unreasonably withheld; provided, further, that in any event, the Trustees shall receive twenty-five per cent (25%) of the rentals received in each calendar year from such commercial space, said "rentals" being defined as the gross receipts from the rental of any commercial space in the rental areas created, less (i) any sales, use or excise tax imposed by any governmental authority on any such receipts; (ii) any security deposits or similar deposits which have not been applied as rent; (iii) any real estate commissions paid in connection with the leasing of any such commercial spaces; and (iv) any sums paid to Lessee in the nature of reimbursements. In addition the Trustees' right to said rentals shall be subject to the following provisions:

(1) By the last day of February and August in each and every calendar year commencing with the first year following the completion of such conversion and ending at midnight, April 30, 2034, the Association shall submit to the Trustees a statement in writing, certified as correct by the Association, which shall set forth the total rentals of the Association

from the premises for the last six-months' period (or portion thereof) just concluded. While the Trustees' share of such rentals is to be calculated and adjusted on a calendar year basis, it shall be paid semi-annually. Accordingly, each such statement shall be accompanied with payment of the Trustees' share of rentals computed in accordance with the provisions hereof on the total rentals for the period shown in the statement.

(2) On or before the last day of April in each and every calendar year, commencing with the first year following the completion of such conversion, the Association shall submit to the Trustees a statement in writing, certified as correct by the Association, which shall set forth by calendar month the total rentals of the Association from the premises during the preceding calendar year (or portion thereof). At that time the Association shall pay to the Trustees the amount by which the payment of rentals by the Association during said calendar period to the Trustees fell short of the Trustees' share of rentals for said period; and the Trustees shall repay to the Association any payments received in excess of the Trustees' share of rentals for said period.

(3) The statements provided under paragraph (2) hereof shall cover periods on a calendar year basis, so that the end of the period covered by each such statement will be the last day of December and in the final year of such commercial use, it will be the termination date of such use.

(4) The Association shall at all times keep and maintain

in accordance with standard accounting procedures, full, complete and appropriate books, records and accounts of total rentals from the premises.

(5) The Trustees shall be entitled at any time within one year after the close of each rental period covered by a statement given under paragraph (2) above to question the sufficiency of rentals paid for such year and the accuracy of any statement furnished by the Association to justify the same and in such event the Trustees shall have the right at any reasonable time at the Trustees' expense to inspect said books, records and accounts described in paragraph (4). The Association and the Trustees shall promptly adjust any underpayment or overpayment of rentals. After the expiration of said one-year period, the acceptance by the Trustees of any such rentals shall be deemed an admission of the sufficiency thereof and of the accuracy of any statement furnished by the Association.

Additions to or alterations of an apartment made within such apartment or within a limited common element appurtenant to and for the exclusive use of such apartment shall be permitted with the approval of the Board, provided that no work shall be done which would jeopardize the soundness or safety of the project, reduce the value thereof, violate the uniform external appearance of the apartment, or impair any easement, without in every such case the prior consent of all other apartment owners directly affected thereby.

Notwithstanding the foregoing or any other provisions of

this Declaration, the right is reserved to the Purchaser to make additions to or alterations within any of the apartments, or within a limited common element appurtenant to and for the exclusive use of any of such apartments, located on the second, third or fourth floors as to which original condominium apartment leases to such apartments have been issued to the Purchaser, without the prior approval of the Board, the Trustees or any lien holder; provided, however, that promptly upon completion of the same, and, in any event, prior to any assignment of the apartment lease covering any such apartment, Purchaser shall duly record as an amendment to this Declaration, a written instrument, accompanied by plans if necessary, describing the project as so altered, certified as built by a registered architect or professional engineer. Such right shall terminate, as to any such apartment, at the time that such apartment is sold by the Purchaser and the apartment lease assigned to the first subsequent purchaser.

P. MAINTENANCE RESERVE FUND. The Board shall establish and maintain a Maintenance Reserve Fund by the assessment of and payment by all the apartment owners in equal monthly installments of their respective shares of such reasonable annual amount as the Board may estimate as adequate to cover each apartment owner's obligations to the Association. The Board may include reserves for contingencies in such assessment, and such assessment may from time to time be increased or reduced in the discretion of the Board. The interest of each apartment owner in said Fund cannot be withdrawn or separately assigned but shall

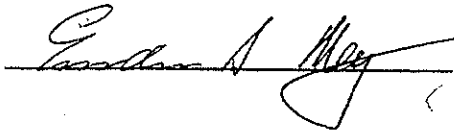
be deemed to be transferred with such apartment even though not expressly mentioned or described in the conveyance thereof. In case the horizontal property regime hereby created shall be terminated, said Fund remaining after full payment of all common expenses of the Association shall be distributed to all apartment owners as their interests may appear, except for the interests of owners of any apartments then reconstituted as a new horizontal property regime.

Q. AMENDMENT OF DECLARATION. Except as otherwise provided herein or in said Horizontal Property Act this Declaration may be amended by vote of seventy-five per cent (75%) of the apartment owners effective only upon the recording of an instrument setting forth such amendment and vote, duly executed by such owners or by the proper officers of the Association, except that a vote of eighty-five per cent (85%) of the apartment owners shall be required to amend any right granted and reserved to the Association in paragraph O hereof. In the case of a modification or amendment to the By-Laws, this Declaration may be amended to set forth such modification or amendment pursuant to such percentage vote as is required by the By-Laws to render the modification or amendment thereof effective.

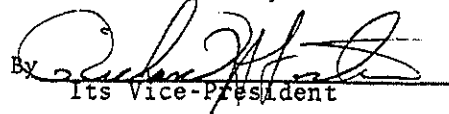
R. DEFINITIONS. The terms "majority" or "majority of apartment owners" herein means the owners of apartments to which are appurtenant more than fifty per cent (50%) of the common interests as established by the Declaration, and any other specified percentage of the apartment owners means the owners of apartments to which are appurtenant said specified

percentage of the common interests as established by the Declaration.

IN WITNESS WHEREOF, the undersigned have executed these presents this 30th day of September, 1971.



KUHIO BEACH HOTEL, LTD.

By 
Its Vice-President

FIRST HAWAIIAN BANK

By 
Its Vice-President

FOSTER ENTERPRISES, LTD.

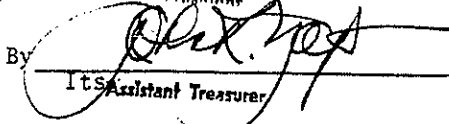
By 
Its Vice-President

By _____
Its

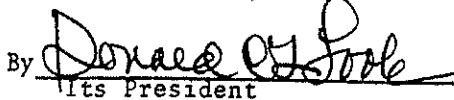
Trustees of the Liliuokalani Trust

AMFAC FINANCIAL CORP.

By 
Its Vice-President

By 
Its Assistant Treasurer

PRIME PROPERTIES, INC.

By 
Its President

doing business as Foster Tower Joint Venture, a Hawaii joint venture

EXHIBIT "A"

<u>Apartment Number</u>	<u>Approximate Area (including Lanai if any)</u>	<u>Number of Rooms</u>	<u>Common Interest</u>
201	2,250	6	1.559
301, 401, 601, 801	1,250	4	.866 (5.464) ✓
501	1,331	6	.922
701	1,331	4	.922
(15) 901, 1001, 1101, 1201, 1401, 1501, 1601, 1701, 1801, 1901, 2001, 2101, 2201, 2301, 2401	1,329	6	.921 (12.815)
2501	1,246	5	.863
202	1,185	4	.821
302	1,062	5	.736
402, 602, 702, 802	1,062	4	.736 (2.944)
502	981	4	.680
902, 1002, 1102, 1202, 1402	992	4	.687 (2.435)
1502, 1602, 1702, 1802, 1902, 2002, 2102, 2202, 2302, 2402	998	4	.691 (6.910)
2502	1,081	4	.749
203	1,021	4	.707
303	915	7	.634
403, 503, 603, 703, 803	915	4	.634 (2.170)
903, 1003, 1103, 1203, 1403	918	4	.636 (2.180)
1503, 1603, 1703, 1803, 1903, 2003, 2103, 2203, 2303, 2403, 2503	927	4	.642 (7.062)
204	1,768	1	1.225
304, 504, 704, 804	1,233	6	.854 (2.416)
			<u>57.214</u>

42.786

EXHIBIT "B"

<u>Apartment Number</u>	<u>Use</u>	<u>Owner or Lessee Using Premises</u>
201	General Offices	Foster Enterprises, Ltd
202	General Offices	First Hawaiian Bank, Trustee
203	General Offices	Foster Enterprises, Ltd.
204	General Offices & Maintenance Room	Foster Enterprises, Ltd.
205	General Offices	Foster Enterprises, Ltd.
206	General Offices	Foster Enterprises, Ltd.
301	General Offices	Foster Enterprises, Ltd.
302	Doctor's Offices	Kenneth E. & Mildred M. Little
303	Doctor's Offices	Kenneth E. & Mildred M. Little
304	General Offices	Foster Enterprises, Ltd.
305	General Offices	Foster Enterprises, Ltd.
306	General Offices	Foster Enterprises, Ltd.
403	General Offices	Foster Enterprises, Ltd.
404	General Offices	Foster Enterprises, Ltd.
405	General Offices	Foster Enterprises, Ltd.

On this 22nd day of October, 1971, before me personally appeared GORDON S. MAY
as Trustee of the Liliuokalani Trust, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed as Co-Trustee as aforesaid.

And on this 22nd day of October, 1971, before me appeared
C. H. DOLE, to me personally
known, who, being by me duly sworn, did say that he is the
Vice President of FIRST HAWAIIAN BANK, a
Hawaii corporation, which is one of the Trustees of the
LILIUOKALANI TRUST; 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 corpo-
ration by authority of its Board of Directors, and said officer
acknowledged said instrument to be the free act and deed of
said corporation as Co-Trustee as aforesaid.

James P. Huggins
Notary Public, First Judicial
Circuit, State of Hawaii

My commission expires: April 21, 1972

STATE OF HAWAII
CITY AND COUNTY OF HONOLULU } SS.

On this 19th day of October, 1971, before
me appeared PETER S. SMITH and

JOHN R. YAP, to me personally
known, who, being by me duly sworn, did say that they are the
Vice-President and Assistant Treasurer
respectively, of AMFAC FINANCIAL CORP., 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 officers acknowledged
said instrument to be the free act and deed of said corporation.

Grace Phung
Notary Public, First Judicial
Circuit, State of Hawaii

My commission expires: APRIL 21, 1972

STATE OF HAWAII
CITY AND COUNTY OF HONOLULU } SS.

On this 19th day of October, 1971, before me
appeared DONALD C. G. LOOK, to me personally known, who, being
by me duly sworn, did say that he is the President of PRIME
PROPERTIES, 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 DONALD C. G. LOOK acknowledged said
instrument to be the free act and deed of said corporation.

Grace Phung
Notary Public, First Judicial
Circuit, State of Hawaii

My commission expires: APRIL 21, 1972

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

} SS.

On this 30th day of September, 1971, before me appeared RICHARD H. FOSTER, to me personally known, who, being by me duly sworn, did say that he is the Vice President of KUHIO BEACH HOTEL, LTD., 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 RICHARD H. FOSTER acknowledged said instrument to be the free act and deed of said corporation.

Lesell H. Oh
Notary Public, First Judicial
Circuit, State of Hawaii

My Commission expires: MAR 11 1973

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

} SS.

On this 30th day of September, 1971, before me appeared RICHARD H. FOSTER, to me personally known, who, being by me duly sworn, did say that he is the Vice President of FOSTER ENTERPRISES, LTD., a Delaware 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 RICHARD H. FOSTER acknowledged said instrument to be the free act and deed of said corporation.

Lesell H. Oh
Notary Public, First Judicial
Circuit, State of Hawaii

My Commission expires: MAR 11 1973