

75-3274-UM 396-

RECORDATION REQUESTED BY:

75-3275

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECEIVED FOR RECORD

LIB 10383 R 171  
1975 JAN 16 PM 3:29

Charles Neumann III  
REGISTRAR

AFTER RECORDATION, RETURN TO:

CARLSMITH CARUMITH,  
WICKMAN AND CASE  
Ph - 524-5112

RETURN BY: MAIL ( ) PICKUP (X)

SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

DECLARATION OF HORIZONTAL PROPERTY REGIME

WHEREAS, SAMUEL WOOLSEY LEE, husband of LUCY SILVA LEE, of Wailuku, County of Maui, State of Hawaii under Deed dated June 5, 1951 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 2491 at Page 471 (hereinafter called the "Fee Owner"), is the owner in fee simple of the land described in Exhibit "A" (hereinafter called the "property") attached hereto and made a part hereof;

WHEREAS, Fee Owner has leased the said land to THE KIHEI BEACH JOINT VENTURE, a Hawaii registered joint venture, consisting of REALTY CONSULTANTS OF MAUI, INC., a Hawaii corporation, and AMFAC FINANCIAL CORP., a Hawaii corporation and whose principal place of business is 16th Floor, 700 Bishop Street, Honolulu, City and County of Honolulu, State of Hawaii and whose post office address is P. O. Box 2448, Honolulu aforesaid (herein called the "Developer"), by lease dated May 1, 1974, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 9988, Page 93, which lease was amended by instrument dated September 27, 1974, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 10166, Page 568;

WHEREAS, the Developer intends to develop the property as a condominium project (hereinafter called the

"Project") as more specifically hereinafter described in accordance with the plans recorded in the Bureau of Conveyances of the State of Hawaii as Condominium Map No. 396 (hereinafter called the "condominium map"), incorporated by reference herein;

NOW, THEREFORE, the Fee Owner and the Developer hereby submit the property, and all their interests therein, to the Horizontal Property Regime established by Chapter 514, Hawaii Revised Statutes, as amended, and in furtherance thereof hereby make the following declarations as to divisions, limitations, restrictions, covenants and conditions, and hereby declare and agree that the property is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, restrictions, and conditions set forth herein and in the By-Laws of the Association of Apartment Owners (hereinafter called the "By-Laws") filed herewith and made a part hereof, as the same may from time to time be amended, which declarations, restrictions and conditions shall constitute covenants running with the land and shall be binding on, and shall inure to the benefit of, the parties hereto, their successors and assigns, and all subsequent owners and lessees of all or any part of the property and their successors, heirs, executors, administrators and assigns. The By-Laws attached hereto as Exhibit "C" are hereby adopted as the By-Laws of the Association of Apartment Owners of the Project, and are hereby incorporated by reference herein.

1. The Project. The Horizontal Property Regime established hereby shall be known as THE KEALIA CONDOMINIUM.

2. Description of Building. The Project will consist of one building with six levels, excluding the basement, a swimming pool with deck, and multiple planting areas. It will contain 50 apartments and a resident manager's apartment with parking areas in the basement and ground floor. Each said apartment shall constitute an "apartment", as defined and used in Chapter 514, Hawaii Revised Statutes, and shall constitute a separate estate. The building shall be constructed principally of reinforced concrete floor slabs, concrete block bearing walls, prestressed concrete roof slabs, concrete masonry, concrete tile roof, wood trim, wallboard, steel, glass and allied building materials. Said building is more particularly described in Exhibit "B" attached hereto and made a part hereof.

3. Division of Property. Each of the apartments into which the Project is divided is described more particularly in said Exhibit "B" and on the condominium map.

Each apartment shall include all the walls and partitions within its perimeter walls; all glass windows or panels along the perimeters; the entirety of perimeter non-party walls except for the exterior decorated surfaces; the interior half of perimeter party walls; the inner decorated or finished surfaces of the floors and ceilings; the adjacent lanai to the exterior edge of the concrete floor slabs; the built-in fixtures including the range, refrigerator, garbage disposal, dishwasher, stacked washer/dryer, air conditioning unit, water heater, sinks, bathroom fixtures, carpets and drapes; and all air space encompassed within the

apartment; provided, however, that the portion of each party wall and of each load-bearing wall (whether or not a party wall) which is included in any apartment is a common element (except for the inner decorated surface of said wall within said apartment, which is not a common element) and that the exterior decorated surface of each perimeter non-party wall is a common element; and provided further that any ventilation duct shaft within an apartment as shown on said condominium map is a common element.

4. Common Elements. The common elements will include the common elements described in paragraph 3 above and paragraph 5 below and all other portions of the Project other than the apartments, including specifically, but not limited to:

- (a) Said land in fee simple;
- (b) All foundations, floor slabs, beams, supports, bearing walls (except the inner decorated surface within each unit), roofs, stairways, walkways, and entrances and exits of the building;
- (c) All parking areas, all planted areas, grounds, sprinkling system, mailboxes and refuse facilities;
- (d) The elevator lobby areas, elevator, elevator machine room, wood trellis, planters, stairwells, corridors, and all ducts and central appurtenant installations for common services, including power, light, water, sewer, telephone and refuse disposal;
- (e) The swimming pool, pool equipment with enclosure, walkways, and fence;
- (f) One visitor parking space;

(g) The resident manager's apartment; designated as Unit 106 and located on the ground floor and parking stall No. 50 for the use of the resident manager.

(h) All other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.

5. Limited Common Elements. Certain parts of the common elements, herein designated as "limited common elements", are hereby set aside and reserved for the exclusive use of certain apartments as follows: One parking stall shall be appurtenant to and for the exclusive use of each of the apartments; except where pedestrian access through any parking stall is appropriate or necessary in which case pedestrians shall have the right to cross said stall on foot provided and to the extent that said crossing will not interfere with any vehicle parked in said stall. Each stall shall be allocated to its respective apartment as designated on Exhibit "D" to be attached hereto and incorporated herein by amendment to this Declaration as set forth in paragraph 13 hereof.

6. Other Easements. In addition to the exclusive easements established in the limited common elements, the apartments, limited common elements, and common elements shall also have and be subject to the following easements:

(a) Each apartment shall have appurtenant thereto nonexclusive easements in the common elements designed for such purposes, for ingress to, egress from, utility services for, and support, maintenance and repair of

such apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided herein; and in all other apartments and common elements in the building in which the apartment is located for support.

(b) If any common element now or hereafter encroaches upon any apartment or limited common element, or if any apartment now or hereafter encroaches upon any other apartment or common element, a valid easement for such encroachment and the maintenance thereof, as long as it continues, does and shall exist. If a building or other improvements are partially or totally destroyed and then rebuilt, minor encroachments by any common element upon any apartment or by any apartment upon any other apartment due to construction shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist.

(c) The Association of Owners shall have the right, to be exercised by its Board of Directors or 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 appropriate for the operation of the Project or at any time for making emergency repairs therein which may be necessary to prevent damage to any apartment or common element.

(d) Each apartment owner shall have an easement in common with the owners of all other apartments to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other

apartments or limited common elements and serving his apartment. Each apartment and the limited common elements shall be subject to an easement in favor of the owners of all other apartments to use the pipes, ducts, cables, wires, conduits, public utilities and other common elements serving such other apartments and located in such units.

7. Percentage of Undivided Interest. The percentage of undivided interest in the common elements pertaining to each apartment, for all purposes, including voting, shall be as set forth in said Exhibit "B".

8. Purposes and Restrictions. The apartments shall be occupied and used as permanent or temporary residences. The apartments shall be occupied and used for no other purposes. The apartment owners shall have the absolute right to rent their apartments, subject to the limitations, restrictions, covenants and conditions contained in this Declaration or in the By-Laws. Each 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 on the Project which will (a) jeopardize the soundness of any building or the premises, (b) interfere with or unreasonably disturb the rights of other owners and occupants, (c) obstruct the walkways, corridors or stairways of any building, (d) increase the rate of fire insurance on any building or the contents thereof, (e) reduce the value of the premises.

9. Service of Process. Realty Consultants of Maui, Inc., Joseph G. Kealoha, Jr., President, is hereby

designated as the person to receive service of process in all cases provided in said Horizontal Property Act until such time as the Board of Directors of the Association of Apartment Owners of the Project is elected upon completion of the Project, after which time process may be served upon any member of said Board.

10. Percentage of Votes Required for Rebuilding.

In the event of damage or destruction of all or part of the Project, the Project shall be rebuilt, repaired or restored unless the owners of at least 75% of the interests in the common elements execute an instrument expressing their decision not to rebuild, repair or restore.

11. Invalidity. The invalidity of any provision of this Declaration shall not impair or affect the remainder of this Declaration, and in such event, all other provisions of this Declaration shall continue in full force and effect as if such invalid provision had not been included herein.

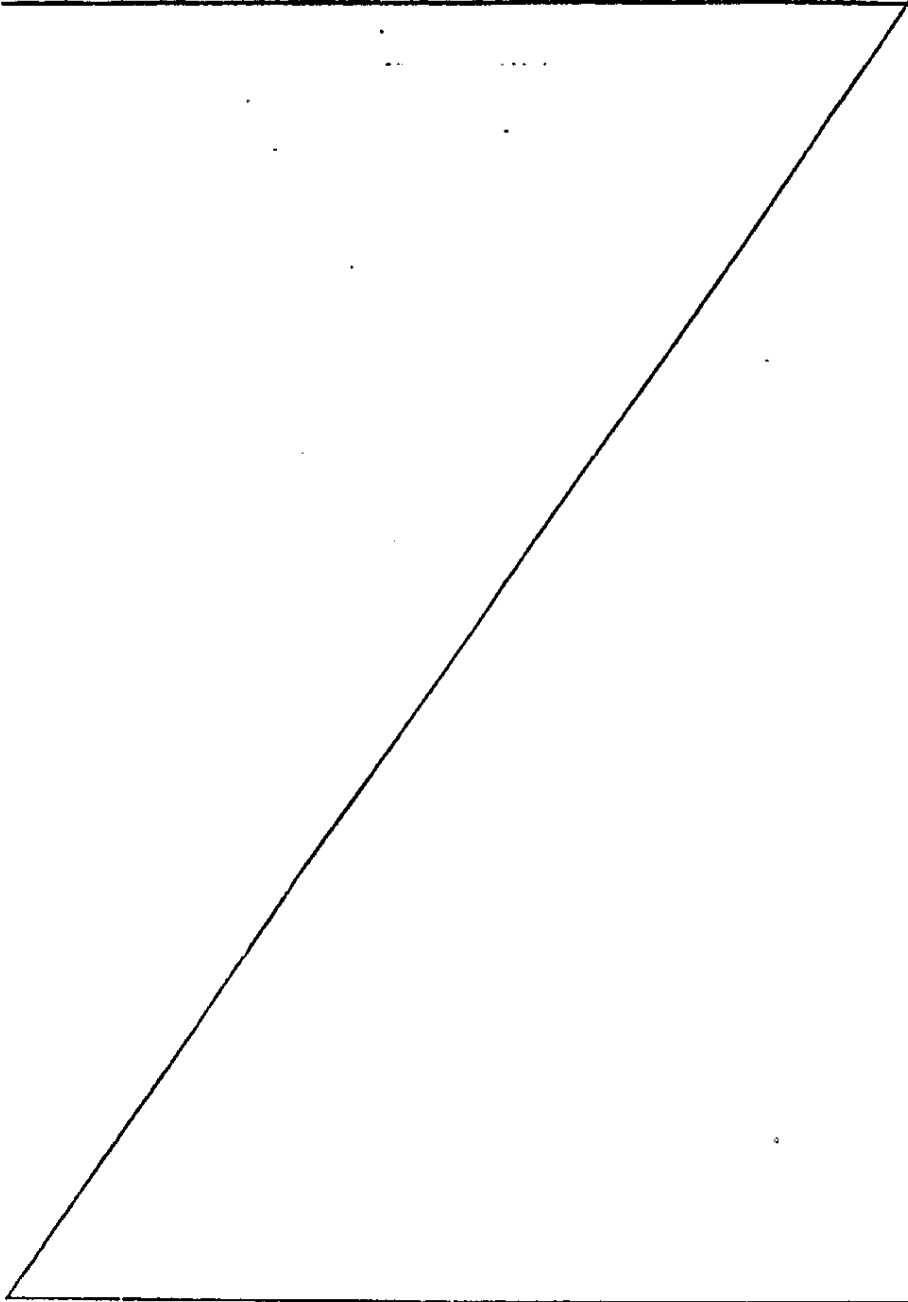
12. Operation of the Project. The operation of the Project shall be governed by this Declaration, the By-Laws and the Apartment Leases demising the apartments. Each apartment owner shall comply strictly with this Declaration, the By-Laws and his Apartment Lease.

13. Amendment of Declaration. Except as otherwise provided herein or in said Horizontal Property Act, this Declaration may be amended by a vote of the owners of 75% of the interests in the common elements 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, provided, however, that at any time prior to the issuance of the Final Public Report, the Developer, with Fee Owner's prior written consent, may amend this Declaration and the By-Laws in any manner. Except as provided below this Declaration and the By-Laws shall not be amended without the prior written consent of the Fee Owner; otherwise any such amendment shall be null and void; and attempted amendment in violation of this covenant shall entitle Fee Owner to recover, in addition to his other available legal remedies, all costs and expenses (including reasonable attorney's fees) incurred in enforcing this covenant. Notwithstanding the foregoing and notwithstanding the lease of any of the apartments the Developer acting alone may amend this Declaration as follows: (a) to file the "as built" verified statement (with plans, if applicable) required by Section 514-13, Hawaii Revised Statutes, so long as (i) such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as built, and (ii) any plans filed therewith involve only immaterial changes to the layout, location, apartment numbers, or dimensions of the apartments as built; and (b) to assign individual parking spaces to individual apartments, in accordance with a schedule in the form of Exhibit "D", to be added to this Declaration and made a part hereof. In 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.

14. Owner. The term "owner" as used in this Declaration and the By-Laws means the Fee Owner, except insofar as the voting and other rights of ownership are assigned to the apartment lessees..



15. Dower. By joining herein, LUCY SILVA LEE, wife of SAMUEL WOOLSEY LEE, hereby agrees that whatever right, title or interest she has in the land described in Exhibit "A", by way of dower or otherwise, is subject in all respects to this Declaration of Horizontal Property Regime.

IN WITNESS WHEREOF the Fee Owner and Developer have executed this instrument this 15<sup>th</sup> day of January, 1975.

THE KIHEI BEACH JOINT VENTURE

By Amfac Financial Corp., as a Venturer in and on behalf of The Kihei Beach Joint Venture

By [Signature]  
Its Senior Vice President

By [Signature]  
Its Vice President

[Signature]  
SAMUEL WOOLSEY LEE  
Fee Owner

[Signature]  
LUCY SILVA LEE

By Realty Consultants of Maui, Inc. as a Venturer in and on behalf of The Kihei Beach Joint Venture

By [Signature]  
Its President

By \_\_\_\_\_  
Its \_\_\_\_\_

Developer

STATE OF HAWAII  
COUNTY OF MAUI

)  
) SS:  
)

On this 15<sup>th</sup> day of January, 1974<sup>5</sup>, before me  
me personally appeared SAMUEL WOOLSEY LEE and LUCY SILVA LEE,  
to me known to be the persons described in and who executed  
the foregoing instrument and acknowledged to me that they  
executed the same as their free act and deed.

Samuel M. Souza  
Notary Public, Second Circuit,  
State of Hawaii

My commission expires: 5-9-75

STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU )

On this 16th day of January, 1975,

before me appeared Walter P. Yim and  
TENEY K. TAKAHASHI, to me personally known,  
who, being by me duly sworn, did say that they are the  
SENIOR VICE PRESIDENT and Vice President

respectively, of AMPAC FINANCIAL CORP., 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 said Walter P. Yim  
and TENEY K. TAKAHASHI severally acknowledged said  
instrument to be the free act and deed of said corporation.

Patricia J. H.  
Notary Public, First Circuit,  
State of Hawaii

My commission expires: JUNE 19, 1971

STATE OF HAWAII )  
COUNTY OF MAUI ) SS:

On this 15<sup>th</sup> day of January, 1974, <sup>n.p.</sup> <sub>com</sub>  
before me appeared Joseph H. Keelaka, Jr. and

\_\_\_\_\_, to me personally known,  
who, being by me duly sworn, did say that <sup>he is</sup> ~~they are~~ the <sup>n.p.</sup> <sub>com</sub>

n.p.  
com

President and \_\_\_\_\_

respectively, of REALTY CONSULTANTS OF MAUI, INC., 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 said Joseph H. Keelaka, Jr.  
and \_\_\_\_\_ severally acknowledged said  
instrument to be the free act and deed of said corporation.

Carol M. Jorgensen  
Notary Public, Second Circuit,  
State of Hawaii

My commission expires: 5-9-75

All of that certain parcel of land (being a portion of Royal Patent Grant 3152 to Henry Cornwell) situate at Waikapu, Wailuku, Island and County of Maui, State of Hawaii, being Lot Number One (1) of the "Kihei Beach Lots Subdivision", as shown on the map entitled "Kihei Beach Lots" and dated July 5, 1950, and on file in the office of The East Maui Irrigation Company, Ltd. at Paia, Island and County of Maui, State of Hawaii, and thus bounded and described as follows:

Beginning at a 3/4 inch pipe at the northeasterly corner of this lot, on the southwesterly boundary of the Maalaea-Kihei Gov't Road, the coordinates of which point of beginning being 20,157.00 feet North, 27,780.88 feet West referred to U.S.C. & G.S. Trig. Station "Puu o Kali" and running by azimuths measured clockwise from true South:

1. 34° 02' 255.19 feet along Lot 2 of the Kihei Beach Lots Subdivision to a 3/4 inch pipe at the highwater mark on the seashore;
2. 145° 30' 161.18 feet to a 3/4 inch pipe;
3. 214° 02' 196.20 feet along the remaining portion of Grant 3152, along land owned by Hawaiian Commercial & Sugar Co., Ltd. to a 3/4 inch pipe on the southwesterly boundary of the Maalaea-Kihei Gov't Road;
4. 304° 02' 150.00 feet along the southwesterly boundary of said Maalaea-Kihei Gov't Road to the point of beginning and containing an area of 33,854 square feet;

Being all of the land conveyed to Samuel Woolsey Lee, husband of Lucy Silva Lee; as Grantee from Kahului Development Company, Limited, a Hawaii Corporation, as Grantor, by a deed dated June 5, 1951 and recorded in the Office of the Registrar of the Bureau of Conveyances of the State of Hawaii in Liber 2491, Page 471;

SUBJECT, HOWEVER, to the following encumbrances:

1. The reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. The location of the seaward boundary in accordance with the law of the State of Hawaii.

EXHIBIT "B"  
DESCRIPTION OF THE PROJECT

The building shall consist of two wings, connected together in the shape of a "T" with the west wing at the top of the "T" extended from south to north and the east wing extended from west to east, approximately parallel with the beach.

The building will be surrounded on the south side by the swimming pool, continuous planting areas and the beach, on the north side by the ground floor parking area and Kihei Road, on the east side by continuous planting areas and on the west side by continuous planting areas, which at the commencement of the Project shall extend over onto the adjacent land, not subject to the Declaration of Horizontal Property Regime, but subject to a Tenancy at Will Agreement by which the said adjacent land will be rented as additional land for the Project with the landscaping costs, the rental cost and all other costs and expenses pertaining to the said adjacent land, being a part of the common expenses of the Project incurred by the Association of Apartment Owners.

The building shall have six levels, plus a basement. The first level has been designated as the ground floor. Thereafter the levels have been given designations as floors 2 through 6 in ascending order. Access to the upper floors is by elevator and by three stairways. The elevator is located at the junction of the two wings. Stairway No. 1 is located immediately to the south of the elevator. Stairway No. 2 is located at the eastern end of the east wing. Stairway No. 3 is located at the northern end of the west wing.



The basement is essentially a parking level with 26 parking stalls, designated 1 through 26. There is also a trash room and an elevator lobby in the basement. The area immediately adjacent to the elevator lobby is a "no parking" area providing access to the trash containers and the elevator. The ground floor has one 2-bedroom apartment and five 1-bedroom apartments, an elevator lobby, a walkway on each of the two wings, providing access to the apartments, the elevator, the three stairways, a fourth stairway leading down from the parking area to a concrete walkway which provides access from Kihei Road (said walkway being on a level above the basement but below the ground floor), the swimming pool, and the parking area with 25 parking stalls, designated 27 through 51 and a guest parking stall designated 52. The second through sixth floor inclusive each have one 2-bedroom apartment, seven 1-bedroom apartments and one studio apartment, a walkway on each of the two wings, providing access to the apartments, the elevator, an electric room, and the three stairways. There are wooden trellises on the second floor covering portions of the ground floor parking area. There is an elevator machine room on the roof.

Each apartment has been given a three digit numerical designation by which its location in the building can be determined. The first numeral of the designation corresponds with the floor number, with the ground floor being floor number 1. The ending two digits of the designation indicate the location of the apartment on a floor. The easternmost apartment on each level, which is the apartment at the east end of the east wing, is given a designation

ending in 01. The designation numerically increases for each subsequent apartment on the east wing, in ascending order westward, until the apartment designation ending with the numerals 03. The southernmost apartment on each level, which is the apartment at the southern end of the west wing, is given a designation ending in 04. The designation then numerically increases for each subsequent apartment on the west wing, in ascending order northward towards Kihei Road, until the apartment designation ending with the numerals 06 for the ground floor and 09 for the second through sixth floors inclusive.

Each apartment has also been given a designation indicating what type of apartment it is. There are four types of apartments, Types "A", "B", "C", and "D":

(a) Type "A" includes a living-dining room, kitchen, bedroom, dressing room, bath and lanai. It includes a floor area of approximately 621 square feet (including 65 of lanai).

(b) Type "B" includes a living-dining room, kitchen, bedroom, bath and lanai. It includes a floor area of 610 square feet (including 60 of lanai).

(c) Type "C" includes a living-dining room, kitchen, two bedrooms, bath and lanai. It includes a floor area of 800 square feet (including 70 of lanai).

(d) Type "D" includes a living-sleeping room, kitchen-dining room, dressing room, bath and lanai. It includes a floor area of 469 square feet (including 49 of lanai).

The foregoing areas for apartments are computed from the outside faces of exterior walls and the center lines of party walls.

Each apartment within each of the foregoing types is the same as all others within its type, except that (1) the Type "A" apartments with numerical designations ending in 06 will have cupboards in place of the kitchen window found in all other Type "A" apartments; (2) the Type "A" apartments with numerical designations ending in 05 will have ventilation duct shafts located within the wardrobe closet in the bedroom; and (3) the lanais on all ground floor apartments have no railings.

All apartments with numerical designations ending in 01 are Type "B". All apartments with numerical designations ending in 02, 03, 05, 06, 07, and 08 are Type "A". All apartments with numerical designations ending in 04 are Type "C" and all apartments with numerical designations ending in 09 are Type "D".

The undivided percentage interest ownership in the common elements ("common interest") appertaining to each apartment and its owner for all purposes including voting is as follows:

- (a) Each of the 33 Type "A" apartments: 2.0%
- (b) Each of the 6 Type "B" apartments: 1.9%
- (c) Each of the 6 Type "C" apartments: 2.6%
- (d) Each of the 5 Type "D" apartments: 1.4%