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TITLE OF DOCUMENT:

DECLARATION OF CONDOMINIUM PROPERTY REGIME
OF ONE ARCHER LANE

PARTIES TO DOCUMENT:

DEVELOPER: MYERS KING STREET PARTNERS
FEE OWNER: P. SCHUBERT PROPERTIES LIMITED PARTNERSHIP
FEE OWNER: MALAMA DEVELOPMENT CORP.

TAX MAP KEY(S): Oahu 2-1-44: 41, 42 & 43

**DECLARATION OF CONDOMINIUM PROPERTY REGIME
OF ONE ARCHER LANE**

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**DECLARATION OF CONDOMINIUM PROPERTY REGIME
OF ONE ARCHER LANE**

THIS DECLARATION is made this First day of February, 1996, by **MYERS KING STREET PARTNERS**, a Hawaii limited partnership, whose address is 745 Fort Street, Suite 1500, Honolulu, Hawaii 96813 (hereinafter referred to as "Developer"), and **P. SCHUBERT PROPERTIES LIMITED PARTNERSHIP**, a Hawaii limited partnership, whose address is P.O. Box 3443, Honolulu, Hawaii 96801, and **MALAMA DEVELOPMENT CORP.**, a Hawaii corporation, whose address is 915 Fort Street Mall, Suite 702, Honolulu, Hawaii (hereinafter referred to, collectively, as "Fee Owners"),

RECITALS

WHEREAS, Fee Owners own the fee simple interest in the real property (hereinafter called "the Land") situated at Kewalo, Honolulu, in the City and County of Honolulu, State of Hawaii, more particularly described in **Exhibit "A"** attached hereto and made a part hereof, and

WHEREAS, Developer is the purchaser of a portion of the Land under that certain Agreement of Sale dated January 31, 1996, by and between Developer and Malama Development Corp. that is recorded the Bureau of Conveyances of the State of Hawaii (hereinafter called "the Bureau") as Document No. 96-014090 and in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (hereinafter called "the Land Court") as Document No. 2287771; and

WHEREAS, by virtue of that certain Assignment and Amendment of Acquisition Agreement dated January 31, 1996, by and between Myers King Street Corporation, as assignor, Developer, as assignee, and P. Schubert Properties Limited Partnership, as Seller, and Title Guaranty Escrow Services, Inc., as Escrow, recorded in the Bureau as Document No. 96-014091 and in the Land Court as Document No. 2287772, Developer is the lessee and purchaser of the remainder of the Land under that certain unrecorded Acquisition Agreement dated September 1, 1994, a short form of which is recorded in the Bureau as Document No. 94-148002 and the Land Court as Document No. 2216365, as amended by that certain unrecorded First Amendment to Acquisition Agreement dated June 1, 1995, a short form of which was recorded in the Land Court as Document No. 2245137; and

WHEREAS, Developer has undertaken to improve the Land by constructing thereon certain improvements (hereinafter called "the Improvements") hereinafter described in accordance with plans incorporated herein by reference and concurrently herewith recorded in the Bureau as Condominium Map No. 2351 and in the Land Court as Condominium Map No. 1129, hereinafter referred to as the "Condominium Map".

NOW, THEREFORE, in order to create a condominium project consisting of said Land and the Improvements thereon (hereinafter called the "Project"), to be known as "One Archer Lane", the Developer and the Fee Owners, by this Declaration of Condominium Property Regime (hereinafter called "the Declaration"), hereby submit the Land and all of their interests therein and all appurtenances thereto to a Condominium Property Regime established pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended, hereinafter sometimes referred to as the "Act", and in furtherance thereof make the following declarations as to divisions, limitations, restrictions, covenants and conditions, and hereby declare and agree that the Land 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 of One Archer Lane (hereinafter referred to as the "By-Laws") recorded in the Bureau and the Land Court concurrently herewith, as the same may be amended from time to time, which declarations, restrictions, and conditions shall constitute covenants running with the Land and shall be binding on and for the benefit of the Developer and the Fee Owners and their successors and assigns, and all subsequent owners, leasees and subleasees of all or any part of the Project and their respective heirs, devisees, personal representatives, successors and assigns:

A. DEFINITIONS AND USE OF DEFINED TERMS

1. Use of Defined Terms. For purposes of construing and interpreting this Declaration and the Bylaws recorded concurrently herewith, the terms defined in the above Introduction and in Section 2 of this Article A, below, when written with initial capital letters in this Declaration or in the Bylaws shall have the meaning given such terms in the Introduction, above, and in Section 2 of this Article A, below. Such defined terms may be used in the singular or plural or in varying tenses or forms, but such variation shall not affect the defined meaning of such terms so long as those terms are written in initial capital letters. When such terms are used in this Declaration or in the Bylaws recorded concurrently herewith, but are written without initial capital letters, such terms shall have the meaning they have in common usage; provided, however, that where legal, technical or trade terms are used and the context in which such terms are used indicates that such terms are to be given their legal, technical or trade meanings, such terms shall be given such legal, technical or trade meanings.

2. Definitions of Defined Terms. As used in this Declaration and the Bylaws the following terms shall have the meanings set forth below:

- a. "Act" shall have the meaning set forth above in this Declaration.
- b. "Agreement of Sale" means an agreement of sale recorded in the Bureau and the Land Court.
- c. "AAA" means the American Arbitration Association.

d. "Annual Budget" means that budget established by the Board to provide for the operation of the Project as set forth in Article VI, Section 8 of the Bylaws.

e. "Apartment" shall mean a Residential Apartment or the Industrial Apartment, as defined in Sections 2(rr) and 2(dd), respectively, below, any two or more of which may sometimes be referred to collectively as "Apartments."

f. "Apartment Deed" means the legal instrument signed by Developer conveying a fee simple interest in an Apartment and an undivided fee simple interest in the Common Elements to an Owner.

g. "Association" means the Association of Apartment Owners of One Archer Lane.

h. "Board" means the Board of Directors of the Association of Apartment Owners of One Archer Lane.

i. "Bureau" means the Bureau of Conveyances of the State of Hawaii.

j. "Bylaws" means the Bylaws of the Association of Apartment Owners of One Archer Lane recorded concurrently herewith in the Bureau and the Land Court, as amended from time to time.

k. "Capital Improvements Reserve Fund" means that fund established by the Board pursuant to Article VI, Section 3 of the Bylaws to provide for specific capital improvements for the Project.

l. "Common Elements" shall mean those parts of the Project which are defined in Article B, Section 3 of this Declaration as common elements. The term Common Elements includes those portions of the Project designated in this Declaration as Common Elements, as well as those designated as Limited Common Elements.

m. "Common Expenses" means and includes (a) all expenses of the administration, management, and operation of the Project and the maintenance, repair, and replacement of, and the making of any additions and improvements to, the Common Elements, and (b) all expenses authorized to be made by the Association pursuant to this Declaration or the Bylaws or pursuant to the Act as set forth in Article J of this Declaration or Article VI of the Bylaws.

n. "Common Interest" means the undivided percentage interest referred to in Article C and set forth in Exhibit "B" of this Declaration which is appurtenant to an Apartment.

o. "Communications Equipment" means the communications equipment installed by the Owner of the Industrial Apartment as described in Article M, Section 4.

p. "Condominium Map" means the plans of the Project recorded concurrently herewith in the Bureau and the Land Court, as amended from time to time.

q. "Condominium Property Regime" shall have the meaning set forth in the Act.

r. "Connections" means the equipment connecting the Communications Equipment to the Industrial Apartment as described in Article M, Section 4.

s. "Cost of Living Factor" means, for any date, that fraction whose numerator (the "Current Index") is the Consumer Price Index for Urban Consumers ("Consumer Price Index") for the Standard Metropolitan Statistical Area of Honolulu, published by the Bureau of Labor Statistics of the United States Department of Labor in effect on such date and whose denominator (the "Base Index") is the Consumer Price Index in effect on the date of this Declaration; provided, however, that for any date for which the relevant Current Index is less than or equal to the Base Index, the Cost of Living Factor shall be one (1). The Base Index as of the date hereof is 166.9 (1982-1984 = 100). If the Consumer Price Index is discontinued, the Cost of Living Factor shall be calculated based upon that price index published by the Bureau of Labor Statistics which shall be determined by the Board to most closely approximate the purchasing power of all consumers in the City and County of Honolulu. If the Bureau of Labor Statistics shall cease to publish any price index which the Board deems to be comparable, the Cost of Living Factor shall be determined by the Board based on comparable statistics on changes in the purchasing power of the consumer dollar for the applicable period, as published by a responsible and recognized governmental or private authority.

t. "Declaration" means this Declaration of Condominium Property Regime of One Archer Lane, as amended from time to time.

u. "Developer" means the developer of the Project, Myers King Street Partners, a Hawaii limited partnership, its successors and assigns.

v. "Eligible Mortgage Holder" means a first mortgagee of an Apartment that has requested, pursuant to Article VIII, Section 5(e) of the Bylaws, that the Association provide it with written notice of certain matters that may affect the Project or the Apartment in which it has an interest.

w. "Eligible Mortgage Holders' Consent" means the written consent of Eligible Mortgage Holders holding mortgages on Apartments representing at least fifty-one percent (51%) of the Common Interest that is appurtenant to Apartments subject to mortgages held by Eligible Mortgage Holders.

x. "Fee Owners" means the owners of the fee interest in the Land, P. Schubert Properties Limited Partnership and Malama Development Corp., until such time as the Developer acquires the fee interest in the Land, at which time the Developer shall become the Fee Owner.

y. "General Operating Reserve" means that fund established by the Board to provide financial stability for the Project as is more fully described in Article VI, Section 2 of the Bylaws.

z. "Ground Floor Residential Recreation Area" means the area located on the ground level of the Project that is described in Article B, Section 4(b)(1).

aa. "House Rules" means the administrative rules and regulations governing the use and operation of the Project established pursuant to Article X, Section 1 of the Bylaws.

bb. "Improvements" shall mean the improvements now or hereafter existing on, above, or under the Land, including, without limitation, the improvements shown on the Condominium Map.

cc. "Industrial Antenna Areas" shall mean the areas located on the roof of the Project that are described in Article B, Section 4(d)(6).

dd. "Industrial Apartment" shall mean the one industrial Apartment contained in the Project as designated and described in Article B, Section 2 and Exhibit "B" of this Declaration, and as shown on the Condominium Map, provided that if Developer exercises its right to subdivide that Apartment into two or more Apartments pursuant to Article N, Section 3 hereof, that term shall mean each such resulting Apartment.

ee. "Industrial Recreation Area" means that certain Limited Common Element designated for the exclusive use of the Industrial Apartment as set forth in Article B, Section 4(b)(2) of this Declaration.

ff. "Land" means the land designated above in this Declaration and described in Exhibit "A" to this Declaration, including all easements and other rights appurtenant thereto.

gg. "Land Court" means the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

hh. "Limited Common Elements" means those Common Elements designated in Article B, Section 4 of this Declaration that are reserved for the exclusive use of one or more Apartments to the exclusion of other Apartments.

ii. "Majority of Apartment Owners" means the Owners of Apartments to which are appurtenant more than fifty percent (50%) of the Common Interest.

jj. "Managing Agent" means an entity employed by the Board pursuant to Article III, Section 3 of the Bylaws to manage the operation of the Project.

kk. "Ninth Floor Residential Recreation Area" means the recreation area located on the Ninth Floor of the Project that is described in Article B, Section 4(b)(1) hereof.

ll. "Opinion of Counsel" means a written opinion of an attorney selected by the Board and licensed to practice before the Courts of the State of Hawaii advising the Association regarding the legality of certain action taken or proposed to be taken by the Association.

mm. "Owner" means a person, corporation, partnership, or other entity owning severally or as a co-tenant an Apartment and the Common Interest appertaining thereto; provided that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by the terms of any lease recorded in the Bureau and Land Court, a leasee or sublessee of an Apartment or interest therein shall be deemed to be the Owner of such Apartment to the extent provided in such lease. The vendee of an Apartment pursuant to an Agreement of Sale shall have the rights of an Owner, including the right to vote; provided that the vendor may retain the right to vote on matters substantially affecting such vendor's security interest in the Apartment as provided in Section 514A-83 of the Act. Where the Owner is a corporation or partnership, the method for designating the natural person who shall act as and for the Owner is as set forth in the Bylaws. Prior to the first recordation of an Apartment Deed regarding an Apartment, the Developer shall be deemed to be the Owner of that Apartment and shall have all of the rights and responsibilities of an Owner with respect thereto that are set forth in this Declaration, the Bylaws, and the Act.

nn. "Project" means the condominium project consisting of the Land and the Improvements created by this Declaration.

oo. "Project Architect" means such architect for the Project as the Board may select from time to time.

pp. "Quorum" shall, with respect to the Association, have the meaning set forth in Article II, Section 2 of the Bylaws and shall, with respect to the Board, have the meaning set forth in Article III, Section 13 of the Bylaws.

qq. "Real Estate Commission" means the Real Estate Commission of the State of Hawaii.

rr. "Residential Apartment" means one of the 330 residential apartments in the Project as described in Article B, Section 2 and Exhibit "B" to this Declaration, and as shown on the Condominium Map. Such apartments may sometimes be referred to collectively as "Residential Apartments."

ss. "Residential Recreation Areas" means the recreation areas that are Limited Common Elements appurtenant to the Residential Apartments as set forth in Article B, Section 4(b)(1) of this Declaration.

tt. "Resident Manager" means the person retained by the Board pursuant to Article III, Section 2(j) of the Bylaws to manage the day-to-day operations of the Project.

uu. "Trustee" means that bank or trust company having a principal place of business in the State of Hawaii designated by the Board to hold and administer condemnation or insurance proceeds for the Project.

B. DESCRIPTION OF APARTMENTS AND DIVISION OF PROPERTY

The Project is hereby divided into the freehold estates described and designated below.

1. **Description of the Building.** The Project contains one (1) forty-one story building (without basements) containing a total of 331 Apartments, constructed principally of poured concrete, as shown on the Condominium Map.

2. **Description of the Apartments.** Three hundred thirty one (331) fee simple estates are hereby designated in the spaces within the perimeter walls, floors and ceilings of each of the three hundred thirty one (331) Apartments of the Project, which spaces, together with appurtenant lanais (if any), are designated on the Condominium Map and described as follows:

a. **Apartment Numbers and Locations.** The Apartment numbers and the location of the Apartments are shown on the Condominium Map and are further described in Exhibit "B", which is attached hereto and made a part hereof by this reference.

b. **Layout and Area.** The various Apartment types and their respective areas are more particularly described on Exhibit "C", which is attached hereto and made a part hereof by this reference. Each Apartment shall be deemed to include (i) all the walls and partitions which are not load-bearing within its perimeter walls, (ii) all pipes, shafts, ducts, pumps, conduits, wires and other utility or service lines running through such Apartment which are utilized for and serve only that Apartment, (iii) the inner decorated or finished surfaces of all walls, floors and ceilings, (iv) any doors or panels along the perimeter walls of such Apartment, (v) all cranks, frames and other window or sliding door hardware, (vi) all appliances and fixtures installed therein and replacements thereof, (vii) any adjacent lanai to which such Apartment has direct, exclusive

access, and (viii) any air conditioning equipment or apparatus within the Apartment, including, without limitation, the controls, valves, piping, vents, ducts, compressor, fan, refrigerant coil and piping, condensate drain pan and piping, and filters. The Industrial Apartment also includes (i) the ground level Industrial loading dock located within the Industrial Apartment shown on the Condominium Map, (ii) any emergency electrical generator and other electrical generation or distribution equipment installed therein that serves only the Industrial Apartment, and (iii) any water heating or distribution equipment installed therein that serves only the Industrial Apartment. The respective Apartments shall not be deemed to include: (i) the undecorated or unfinished surfaces of the perimeter (including party) walls, interior load bearing walls, or lanai slabs or railings, (ii) the undecorated or unfinished surface of the floors and ceilings surrounding each Apartment, (iii) any pipes, shafts, ducts, pumps, valves, wires, conduits or other utility or service lines which are utilized for or serve more than one Apartment, or (iv) any exterior windows, the same being deemed Common Elements as hereinafter provided.

c. **Access.** Each Apartment has immediate access through Common Element hallways, elevators, stairwells, corridors, lobbies and walkways of the Project to Archer Lane, Edwin Walk, and public streets and to the common areas of the Project.

3. **Common Elements.** One freehold estate is hereby designated in all remaining portions of the Project, herein called the "Common Elements," including specifically but not limited to:

a. The Land, in fee simple, and any and all easements and appurtenances thereto.

b. All unfinished, undecorated portions of all perimeter (including party) walls and interior load-bearing walls, the undecorated or unfinished surfaces of floors and ceilings, all lanai slabs and railings, all structural components, foundations, floor slabs, columns, girders, beams, supports, shafts, ceilings and spaces between the ceiling and the floor slab or roof above, roof, rooftop equipment screen, rooftop residential mechanical room, rooftop elevator machine room, Industrial Antenna Areas, exterior surfaces of the Project, including any paint or coating thereon, and all exterior windows.

c. All yards, grounds planters, trellises and landscaping and all garbage chutes and other refuse facilities, if any, whether within or appurtenant to the Project.

d. All roads, parking areas, driveways, porte cocheres, ramps, loading areas or zones, parking garage security gates and equipment, car wash areas, and walkways which are rationally of common use by Owners of more than one Apartment.

e. All ducts, pumps, valves, sewer lines, drain lines, electrical equipment, cables, wiring, chutes, pipes, shafts, wires, conduits or other utility or service lines which are utilized for or serve more than one Apartment and other central and appurtenant transmission

facilities over, under and across the Project which serve more than one Apartment for services such as power, light, water, gas, sewer, refuse, telephone and radio and television signal distribution.

f. The entirety of the fire sprinkler system including portions thereof installed within the various Apartments.

g. The Resident Manager's residence located on the twelfth floor of the Project, numbered 1210, as described in Exhibit "B" and as shown on the Condominium Map, together with the parking stall designated for such residence in Exhibit "B-1".

h. The lobby, lounge, elevator lobby, janitor closet, mail room, security/manager's office, bathroom, fire control room, trash room, electrical distribution room, emergency generator room, transformers, electrical switch gear, pump room, attic, and Industrial Apartment cooling tower located on the ground floor of the Project.

i. All storage areas, hallways, corridors, stairs (except stairs located within the Industrial Apartment), stairways, elevators, elevator lobbies, mechanical rooms, electrical rooms, communications rooms, and other similar areas which are not part of an Apartment.

j. Three hundred thirty one (331) mailboxes located in the mailroom; one for each Residential Apartment and one for the Resident Manager's residence, and the parcel boxes located near the mailroom.

k. Any air conditioning equipment or apparatus, including cooling towers, condenser water pumps, condenser water risers, condensate drains, and condensate drain risers, not located in an Apartment.

l. The Residential Recreation Areas and the Industrial Recreation Area.

m. Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

4. **Limited Common Elements.** Certain parts of the Common Elements, herein called the "Limited Common Elements," are hereby designated, set aside and reserved 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 set forth herein. Except as specifically provided herein, the costs and expenses of every description pertaining to the Limited Common Elements, including but not limited to the costs of maintenance, repair, replacement, improvement or additions to the Limited Common Elements shall be borne by the Owner of the Apartment to which the Limited Common Element is appurtenant. If a Limited Common Element is appurtenant to more than one Apartment, such costs and expenses shall be apportioned by the

Board among those Apartments in the proportion which each of their Common Interests bears to the total of their Common Interests. Notwithstanding the foregoing, however, all costs and expenses of operating, maintaining, cleaning, repairing, or replacing the following Limited Common Elements, including, without limitation, the costs of repaving or restriping parking stalls, shall be charged to each Owner as a Common Expense of the Project: (i) parking stalls which are Limited Common Elements, (ii) the Industrial Recreation Area, (iii) the Industrial Antenna Areas, and (iv) the Ground Floor Residential Recreation Area. Notwithstanding anything to the contrary contained in this Declaration, no amendment of this Declaration affecting the Limited Common Elements appurtenant to an Apartment or Apartments shall be effective without the consent of the Owner or Owners affected.

a. **Parking.** The parking stalls for the Project are located on floors three (3) through eight (8) of the Project, each of which floors contains two levels designated "A" and "B". The parking stalls located on those floors are allocated as provided in this section and as described in Exhibit "B-1" attached hereto and incorporated by reference, and as shown on the Condominium Map. Upon compliance with Section 514A-14 of the Act, each Owner shall have the right, from time to time, to assign and reassign the parking stall(s) appurtenant to the Owner's Apartment to another Apartment in the Project, provided that: (1) each Apartment shall at all times have at least one parking stall appurtenant to it; (2) no tandem parking stall shall be assigned except in conjunction with an assignment of the stall to which it is tandem; (3) nothing contained herein shall be construed to permit the assignment or reassignment of the residential guest parking stalls described below, and (4) the Association and Managing Agent shall be promptly notified of all assignments and reassignments of parking stalls.

(1) **Apartment Parking.** Each Apartment shall have appurtenant to it as a Limited Common Element, one (1) or more parking stall(s), as designated in Exhibit "B-1" hereto and as shown on the Condominium Map.

(2) **Residential Guest Parking.** The Residential Apartments, collectively, shall have appurtenant to them as Limited Common Elements the parking stalls shown on the Condominium Map that are designated in Exhibit "B-1" hereto as "Guest Stalls", which shall be available for use by the guests, visitors and invitees of the Residential Apartment Owners. These guest parking stalls shall also be available for use by the Association for the management and operation of the Project.

b. **Recreation Areas.**

(1) **Residential Recreation Areas:** The residential recreation area located on the ninth floor of the Project (the "Ninth Floor Residential Recreation Area") and the residential recreation area located on the ground floor of the Project (the "Ground Floor Residential Recreation Area"), each as shown on the Condominium Map, shall be Limited Common Elements appurtenant to the Residential Apartments, collectively, and each Residential Apartment shall have appurtenant to it a nonexclusive easement for the use and enjoyment

thereof. The Ninth Floor Residential Recreation Area is dedicated to the use of Residential Apartment Owners and their guests and consists of (i) an outdoor recreation deck, including a raised pedestal deck, with an area of approximately 17,600 square feet and (ii) an adjoining, interior multi-purpose room, including partial kitchen facilities, restrooms and a storage area, with an area of 828 square feet all as shown on the Condominium Map. The outdoor recreation deck includes the following amenities: a swimming pool and spa, and all equipment involved in the operation thereof, outdoor barbecue areas, a paved and landscaped garden area and a sun deck. The Ground Floor Residential Recreation Area is dedicated to the use of Residential Apartment Owners and their guests and consists of a paved and landscaped garden area with an area of approximately 605 square feet.

(2) Industrial Recreation Area. The approximately 890 square foot recreation area (the "Industrial Recreation Area") consisting of a paved and landscaped garden area located at grade and accessible from both levels of the Industrial Apartment, as shown on the Condominium Map, shall be a Limited Common Element appurtenant to the Industrial Apartment, and the Industrial Apartment shall have appurtenant thereto an exclusive easement to use and enjoy the Industrial Recreation Area.

c. Residential Facilities. The following facilities shall be Limited Common Elements appurtenant to the Residential Apartments, collectively, and each of the Residential Apartments shall have appurtenant to it a nonexclusive easement in common with all of the other Residential Apartments to use them:

- (1) the ground floor lobby, lounge, elevator lobby, elevator corridor, attic, mail boxes, parcel boxes and mail room;
- (2) elevators 1, 2, and 3, as shown on the Condominium Map that serve the floors on which the Residential Apartments are located, together with all appurtenant equipment and fixtures, including, without limitation, elevator motors, rails, and cables;
- (3) the elevator lobbies adjacent to such elevators, and the adjacent hallways and corridors of each floor of the Project from the third through penthouse floors;
- (4) the trash chute serving the ninth through penthouse floors of the Project;
- (5) stairs 1 and 2 as shown on the Condominium Map;
- (6) all exterior windows of the Residential Apartments;
- (7) the railings and slabs of the Residential Apartment lanais;

(8) the pool equipment room located on the eighth floor of the Project and the pumps and other pool equipment located therein;

(9) the rooftop cooling towers and condenser water pumps, condenser water risers, condensate drains, condensate drain risers, pipes, ducts, valves, wiring, controls, and other equipment located in any part of the Project outside of the Residential Apartments that are connected with the air conditioning equipment located within the Residential Apartments or exclusively used for the operation and maintenance thereof;

(10) the emergency electrical generator located on the ground floor of the Project in the emergency generator room located next to the Industrial Apartment loading dock;

(11) the rooftop and ground floor water heaters, water pumps, pipes, valves, wiring, insulation, controls, and other equipment located in any part of the Project outside of the Residential Apartments that are exclusively used to provide heated water to the Residential Apartments; and

(12) any air conditioning equipment or apparatus, including, without limitation, controls, valves, piping, vents, ducts, compressors, fans, refrigerant coils, piping, condensate drain pans and piping, and filters, used exclusively in connection with the air conditioning of the lobbies, hallways, corridors and other parts of the Project that are Limited Common Elements appurtenant to the Residential Apartments, collectively.

d. **Industrial Facilities.** The following facilities shall be Limited Common Elements appurtenant to the Industrial Apartment, which shall have appurtenant to it exclusive easements for their use and enjoyment, as well as the exclusive right in the nature of an easement to repair, maintain and replace them:

(1) elevator 4 serving the Industrial Apartment, as shown on the Condominium Map, together with all appurtenant equipment, fixtures, rails, and cables;

(2) stair 6, as shown on the Condominium Map;

(3) the Industrial Apartment air conditioning cooling tower(s) located on the ground floor of the Project, as shown on the Condominium Map, together with any and all condenser water pumps, pipes, lines, conduits, wiring, cables, ducts, valves, risers, drains and other equipment located in any part of the Project outside of the Industrial Apartment which connect that cooling tower to the Industrial Apartment or are exclusively used for the operation or maintenance of the Industrial Apartment's air conditioning system;

(4) the exterior windows of the Industrial Apartment;

(5) the space within the recessed, exterior alcove/entrance to the Industrial Apartment located on the ground floor of the Project and facing South King Street;

(6) the portions of the roof of the Project designated as Industrial Antenna Areas, as shown on the Condominium Map; and

(7) the cables, wiring, pipes, drains, conduits, vents, pumps, ducts, valves, insulation, controls, and other equipment located in any part of the Project outside of the Industrial Apartment that are used exclusively in connection with any of the following equipment located in the Industrial Apartment: electrical generation or distribution equipment; water heating or distribution equipment; or broadcast, communications and other related equipment.

C. COMMON INTEREST

Each Apartment shall have appurtenant thereto an undivided percentage interest in all Common Elements of the Project as shown on Exhibit "B" hereto, called the Common Interest, and the same proportionate share in all common profits and Common Expenses of the Project and for all other purposes including voting. The percentage interest appurtenant to each Apartment was determined by calculating the proportion which the net square footage of each Apartment bears to the total net square footage of all of the Apartments in the Project, and then adjusting the resulting percentages to take into account the fact that the Industrial Apartment bears sole responsibility for significant components of the Project and generally does not have any right to use the Limited Common Elements appurtenant to the Residential Apartments. The Common Interest appurtenant to each Apartment shall be permanent in character and not subject to alteration without the consent of all Owners affected. The Common Interest shall not be separated from the Apartment to which it appertains and shall be deemed to be conveyed or encumbered with the Apartment, although not expressly mentioned or described in the document of conveyance or encumbrance.

D. EASEMENTS

In addition to any easements of record, the Apartments and the Common Elements shall also have, or be subject to as the case may be, the following easements:

1. Easement of Ingress and Egress. Each Apartment shall have appurtenant thereto nonexclusive easements in the Common Elements designed for such purposes as ingress to, egress from, utility services for and support of such Apartment for such purposes; 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 for support; and subject to any changes with respect to the Common Elements pursuant to the provisions of Section 514A-13(d) of the Act.

2. Easement for Encroachments. If any part of the Common Elements now or hereafter encroaches upon any Apartment or Limited Common Element, or if any Apartment encroaches upon the Common Elements or upon any other Apartment or appurtenant Limited Common Element, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. In the event that the improvements in the Project shall be partially or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Project, minor encroachments (as determined by the Board) of any parts of the Common Elements, Apartments, or Limited Common Elements due to such construction, shifting, settlement or movement shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist.

3. Easement for Access to Common Elements Located in Apartments. Each Apartment and Limited Common Element shall be subject to an easement in favor of the Owners of all other Apartments, exercisable by the Board of Directors and its Managing Agent, without liability to any Owner for trespass or other consequential damage, during reasonable hours, for access to any Common Elements located in such Apartment or Limited Common Element.

4. Easement for Access Through Apartments to Common Elements for Emergency Repairs. The Association shall have the right, to be exercised by its Board or the Managing Agent, without liability to any Owner for trespass or other consequential damage, to enter each Apartment or Limited Common Element 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 damages to any Apartment, Common Element, or Limited Common Element.

5. Power of Association to Grant Certain Easements. To the extent permitted by law, the Association shall have the right, to be exercised by its Board, upon the condition that prior to taking such action the Board obtain an Opinion of Counsel stating that the Association may legally undertake such action, to grant within the Common Elements (other than the Limited Common Elements), easements and rights-of-way over, across, and under the Common Elements (other than the Limited Common Elements) for utilities, sanitary and storm sewers, cable television, and other public services and to relocate, realign or cancel the same provided that such easements, their use, relocation, realignment or cancellation shall not materially impair or interfere with the use of any Apartment.

6. Developer's Easement to Complete Project. Developer, its agents, employees, contractors, licensees, successors, mortgagees and assigns shall have an easement over and upon the Project as may be reasonably necessary for the completion of the Improvements of the Project, and the correction of defects therein, which may be exercised without liability for trespass or other consequential damage.

E. ALTERATION AND TRANSFER OF THE COMMON INTEREST

The Common Interest and easements appurtenant to each Apartment shall have a permanent character and shall not be altered without the consent of all of the Apartment Owners affected, expressed in an amendment to this Declaration duly recorded or except as otherwise set forth in this Declaration. The Common Interest and easements shall not be separated from the Apartment to which they appertain, and shall be deemed to be conveyed, leased or encumbered with such Apartment even though such interest or easements are not expressly mentioned or described in the conveyance or other instrument. The Common Elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by the Act.

F. USE

1. Residential Apartments: Uses Other Than Residential Use Prohibited. 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 and for no other purpose. The Residential Apartments shall not be used as retail or wholesale stores, service shops, light industrial shops nor for any other commercial purposes. The Residential Apartments shall also not be used for timesharing, as such term is defined in Hawaii Revised Statutes, Chapter 514E, nor shall the Residential Apartments be rented or used for transient or hotel purposes, which are defined as (a) rental for any period less than thirty (30) days, or (b) any rental in which the occupants of the Residential Apartment are provided customary hotel services such as room service for food and beverages, maid service, laundry and linen or bellboy service. Subject to the foregoing limitations regarding residential use and to the prohibitions on timesharing and transient or hotel uses, the Owners of the respective Residential Apartments shall have the absolute right to lease such Residential Apartments subject to all provisions of this Declaration, the Bylaws, and the House Rules; provided, however, that all leases shall be in writing, signed by the Owner or Owner's representative and the tenant.

2. Industrial Apartment: Use. The Industrial Apartment shall be occupied and used only for the following uses: vocational, technical, industrial, trade and language schools; radio and television broadcasting facilities, excluding broadcasting towers but including Communications Equipment permitted under Article M, Section 4 below; motion picture recording and sound studios; printing, lithographing, publishing, photographic processing, or similar uses; miscellaneous business services, limited to duplicating, blueprinting, linen supply, services to dwellings, typewriter repair, armature rewinding, and general fixit shop; miscellaneous services limited to electrical repair shop, reupholstery and furniture repair, and data processing; wholesaling, without stock, of drugs, dry goods and apparel, groceries and related products, electrical goods, hardware, and supply; and personal services establishments, limited to shoe repair shops, and facilities for cleaning, pressing, tailoring, and repairing garments or dressmaking. The Owner(s) of the Industrial Apartment shall have the absolute right to lease all or part of the Industrial Apartment, subject to all provisions of this Declaration and the Bylaws.

3. Owners' Right to Sell. The Owners of the respective Apartments shall have the absolute right to sell or otherwise transfer such Apartments subject to all provisions of the Act, this Declaration, and the Bylaws attached hereto.

4. Prohibition of Activities Which Jeopardize the Project. No Owner shall do or suffer or permit to be done anything to any Apartment or appurtenant Limited Common Element or elsewhere on the Project which will (a) jeopardize the safety or soundness of the Project, or (b) create a nuisance or interfere with or unreasonably disturb the rights of other Owners and occupants, or (c) result in the cancellation of any insurance required for the Project by the Bylaws, provided that nothing in this Section shall prohibit the use of the Industrial Apartment for any of the uses permitted by Article F, Section 2.

5. Prohibition of Unauthorized Alteration or Decoration to the Exterior and Common Areas of the Project. No Owner of an Apartment shall, without the written approval and consent of the Board, place or permit the attachment, hanging, projection or protrusion of any object, garments or materials of any kind from the roofs, exterior walls, windows, lanais, or doors of the Apartments, or the placement of any other matter or decoration within or without the Apartment which shall be visible from the exterior of the Project, nor shall any Owner change or alter any of the exterior glass windows, in any way, nor shall any Owner change the exterior appearance of the Project in any manner; provided, that the Owner of the Industrial Apartment may, without the consent of the Board or Association, but subject to all applicable laws and governmental approval, (a) place and maintain exterior signs on the portions of the King Street, Archer Lane, and Diamond Head facades of the Project that are immediately adjacent to the Industrial Apartment, (b) place and maintain signs in the Industrial Apartment that are visible from the exterior of the Project, (c) make any other change to the exterior appearance of the Project that is permitted by this Declaration or the Bylaws, or (d) otherwise conduct its business operations (even though such operations may be visible from the exterior of the Project) as permitted by this Declaration or the Bylaws.

6. Lanais. No Residential Apartment Owner shall place any object (other than appropriate plants or outdoor lanai furniture as determined by the Board) on any lanai, without first having received the approval of the Board and the Project Architect. Residential Apartment Owners may paint, plaster, tile, finish, or otherwise decorate the exterior surfaces of the walls, railings, floors or ceilings of any lanai only in accordance with uniform standards therefor adopted by the Board and only if such Owner shall first receive Board approval therefor. Any repairs to the lanai railings shall be administered by the Association through the contractor or contractors selected by the Board for such purpose. Repair or replacement of the lanai, lanai railings, or lanai slabs resulting from intentional or negligent misuse of the lanai area shall be at the Owner's expense. All other lanai railing and slab replacements or repairs shall be assessed to the Owners of all Residential Apartments in accordance with Article VI, Section 1(b) of the Bylaws. Notwithstanding any other provision in this Declaration, Owners are strictly prohibited from enclosing any lanai appurtenant to any Apartment; no such enclosure shall be permitted under any circumstances.

7. Owners to Maintain Apartments in Good Order. The Owner of an Apartment shall keep the interior of such Apartment and all plumbing, electrical, air conditioning and other fixtures and appurtenances in good order and repair and shall be responsible for any damage or loss caused by failure to do so. The Association shall have the right from time to time, but not the duty, to enter Residential Apartments to inspect the air conditioning equipment located therein, including, without limitation, the controls, valves, piping, vents, ducts, compressor, fan, refrigerant coil and piping, condensate drain pan and piping, and filters, and to perform, at the Apartment Owner's expense, any required maintenance or repair of that equipment.

G. ADMINISTRATION OF PROJECT

Administration of the Project shall be vested in the Association, consisting of all Owners of the Project in accordance with this Declaration and the Bylaws. The administration, fiscal management and operation of the Project, and the maintenance, repair, replacement and restoration of the Common Elements, and any additions and alterations thereto, and perpetual maintenance of the open areas and private roadways and utilities of the Project, shall be in accordance with the provisions of the Act, this Declaration and the Bylaws and specifically, but without limitation, the Association shall:

1. Improvements Required by Law. Make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks, street lights, parking areas and other improvements 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 Common Elements or any part thereof.

2. Observance of Laws Concerning Maintenance of the Project. 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 during the period that they are applicable to the Project or the use thereof.

3. Association to Maintain Project in Good Order. Well and substantially repair, maintain and keep all Common Elements of the Project in good order and condition except as otherwise provided herein, and maintain and keep the Land in a neat and attractive condition and maintain and keep all trees, shrubs and landscaping in the Project in good cultivation and replant the same as may be necessary. In the event that any Owner shall give written notice of an alleged defect in the repair or maintenance of any Common Element, the Board, consistent with generally accepted standards of practice and sound business judgment, shall review the claim of the alleged defect; if the Board determines that the defect is one which the Association should remedy, the Board shall, if practicable, commence appropriate repairs or maintenance with respect to such defect within not less than thirty (30) days of the receipt of such notice and shall thereafter proceed with due diligence to complete the repair and to make good such defect.

4. Construction of Improvements Bonding. Before commencing or permitting construction of any improvement on the Project costing in excess of Fifty Thousand and No/100

Dollars (\$50,000.00), obtain, or cause the construction contractor to obtain, performance and payment bond(s) or certificate(s) thereof naming as obligees collectively all Owners and their respective mortgagees as their interests may appear, in a penal sum not less than one hundred percent (100%) of the cost of such construction and with a corporate surety authorized to do business in Hawaii, guaranteeing performance of such construction free and clear of any mechanics' and materialmen's liens or any liens in lieu of mechanics' and materialmen's liens, provided that the Fifty Thousand and No/100 Dollars (\$50,000.00) limit shall be adjusted from time to time by the Board by multiplying such dollar limit by the Cost of Living Factor.

5. Association Not to Permit Waste or Improper Use. Not make or suffer any strip or waste or unlawful, improper or offensive use of the Project.

6. Observance of Setbacks. 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 lines along such boundary.

7. Plans and Specifications for Improvements, Diligent Completion of Construction Projects. 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 whatsoever, except in accordance with plans and specifications including detailed plot plans, prepared by a licensed architect, if so required by the Board, and approved by the Board and by the percentage of Apartment Owners as required by law and this Declaration, and complete any such improvements diligently after the commencement thereof.

8. Compliance with Laws and Restrictions. Observe and comply with the provisions of any restrictions pertaining to the Land.

9. Compliance with Agreements. Observe and comply with all the terms and conditions of:

(a) the One Archer Lane (King Street Place) Joint Development Agreement Pursuant to Planned Development Permit (PD 1-94) dated September 19, 1995, by Myers King Street Corporation, a Hawaii corporation, P. Schubert Properties Limited Partnership, a Hawaii limited partnership, Malama Development Corp., a Hawaii corporation, and Roman Catholic Church in the State of Hawaii, a Hawaii nonprofit corporation, as declarants, and recorded in the Bureau as Document No. 95-122482 and in the Land Court as Document No. 2261873;

(b) the Agreement dated January 29, 1996, by the Hawaii Community Development Authority and Myers King Street Corporation recorded in the Bureau as Document No. 96-013125 and in the Land Court as Document No. 2287377; and

(c) the Letter Agreement dated October 2, 1995, by and between the City and County of Honolulu Department of Public Works and Myers King Street Corporation regarding "Variance – Nonstandard Sidewalk Finish, etc.".

No amendment of this Declaration or the Bylaws purporting to affect the Association's obligations, as successor to Developer, under the agreements set forth in this Section 9 shall be effective without the written consent of the other party or parties to such agreement except as otherwise expressly provided for in such agreements.

H. MANAGING AGENT: SERVICE OF PROCESS

Operation of the Project shall be conducted for the Association by a responsible corporate Managing Agent duly registered with the Real Estate Commission who shall be appointed by the Association in accordance with the Bylaws and the Act. The Managing Agent is hereby authorized to receive service of legal process in all cases provided in the Act. The initial Managing Agent shall be Chaney, Brooks & Company, whose post office address is P.O. Box 212, Honolulu, Hawaii 96810, and whose principal place of business is located at 606 Coral Street, Honolulu, Hawaii 96813.

I. COMPLIANCE WITH DECLARATION AND BYLAWS

All Owners, and their respective employees, tenants, families, agents, servants and 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 conditions and restrictions set forth herein, with the Bylaws and with the House Rules adopted pursuant thereto and all agreements, decisions and determinations of the Association as 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 on behalf of the Association, or, in a proper case, by any aggrieved Apartment Owner. Each Apartment Owner shall have standing to maintain an action to enforce the terms and conditions of this Declaration, the Bylaws and the House Rules; provided, however that (a) no Owner may bring an action on behalf of the Association or on behalf of more than one (1) Owner, except in accordance with the provisions of the Act with respect to derivative actions and (b) any judgment, award or other recovery on behalf of an Association shall be payable only to the Association as a realization of the Association.

J. COMMON EXPENSES

All charges, costs and expenses incurred or to be incurred by the Association pursuant to this Declaration, the Bylaws or the Act for or in connection with the administration, management and operation of the Project and the maintenance, repair, replacement of or the making of any additions or improvements to the Common Elements, inclusive of any reserves for future charges, costs or expenditures, and any District-Wide Improvement Program assessments

