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STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

DOUBLE SYSTEM

R-612

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

JAN 13, 1999 08:45 AM

Doc No(s) 2513421

on Cert(s) 518,306

/s/ CARL T. WATANABE
ASSISTANT REGISTRAR

JAN 13, 1999 08:45 AM

Doc No(s) 99-005139

/s/ CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

REGULAR SYSTEM

return by mail pickup 10:

CARLSMITH BALL
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TITLE OF DOCUMENT:

UNILATERAL AND IRREVOCABLE DECLARATION OF
PERPETUAL RIGHTS AND USES AND PERPETUAL RESTRICTIONS
(North Beach Public Open Space/Recreation Area)

PARTIES TO DOCUMENT:

GRANTOR: AMFAC PROPERTY INVESTMENT CORP.

TAX MAP KEY(S): TMK: (2) 4-4-14: 5

(This document consists of 12 pages)

UNILATERAL AND IRREVOCABLE DECLARATION OF
PERPETUAL RIGHTS AND USES AND PERPETUAL RESTRICTIONS
(North Beach Public Open Space/Recreation Area)

THIS UNILATERAL AND IRREVOCABLE DECLARATION OF PERPETUAL RIGHTS AND USES AND PERPETUAL RESTRICTIONS is made this 29th day of December, 1998, by AMFAC PROPERTY INVESTMENT CORP. ("APIC"), a Hawaii corporation, whose address is 700 Bishop Street, 20th floor, Honolulu, Hawaii 96813, hereinafter referred to as the "Declarant,"

WITNESSETH:

WHEREAS, APIC is the owner of that certain parcel of land located at Kaanapali, Maui, Hawaii, containing an area of approximately 27 acres, identified for real property tax purposes by Tax Map Key Nos. (II) 4-4-14:5 ("Lot 3") within the North Beach Subdivision (the "Subdivision"), being a portion of the property covered by Transfer Certificate of Title No. 518,306;

WHEREAS, a "Public Open Space/Recreation Area" is hereby created within a portion of Lot 3, which property is shown on the map attached hereto as Exhibit "A" and is described by metes and bounds survey on Exhibit "B" attached hereto, both of which Exhibits are hereby incorporated by reference. The property described in Exhibits "A" and "B" is hereinafter referred to as "the Property";

WHEREAS, APIC and others, and certain intervening residents of Maui County ("Intervenors"), have effected a Settlement Agreement dated September 29, 1998, of contested issues relating to Docket Nos. 88/SM1-023, 88/SSV-002, and SM 970006,

regarding a Special Management Area (“SMA”) permit for the Kaanapali Oceanfront Resort (“KOR”) before the Maui Planning Commission (“MPC”) to, inter alia, permit the public and Native Hawaiians to have and enjoy rights and uses in and over the Property as specified herein;

WHEREAS, by and through this Declaration, it is the intent and purpose of APIC, to the fullest extent allowable by law, (a) to covenant, unilaterally and in perpetuity, that the real property which is the subject of this Declaration shall be open and available to be used and enjoyed by present and future members of the public and/or native Hawaiians for the rights and uses described herein and that this covenant shall be a restriction and condition upon other uses by APIC which may be permissible now or in the future, (b) to dedicate, in perpetuity, the Property which is the subject of this Declaration to present and future members of the public and/or Native Hawaiians to be used as described herein and (c) to grant to or confer upon present and future members of the public and/or Native Hawaiians, as third parties, certain rights, as described herein, with respect to the use of the Property which is the subject of this Declaration, in perpetuity; and

WHEREAS this Declaration does not constitute a grant of a fee simple interest and Declarant remain the fee simple owner of the Property.

NOW, THEREFORE, for good and valuable consideration as evidenced by said Settlement Agreement including without limitation the surrender of certain alleged

claims made by Intervenor in the contested cases, APIC does hereby effectuate this intent by subjecting the Property to the following covenants, conditions and restrictions:

1. Declaration of Perpetual Rights and Uses and Perpetual Restrictions

APIC does hereby dedicate the Public Open Space/Recreation Area, as described in Exhibits "A" and "B" above, to the rights and uses described herein and further covenants that this Property shall be open and available on the same date that an SMA permit is issued for KOR and shall remain open and available thereafter, in perpetuity, to present and future members of the public for parking, open space, and passive recreational uses and to present and future Native Hawaiians for Native Hawaiian traditional and customary gathering.

APIC shall, at its own cost, provide and maintain in perpetuity a parking area (cement pavers which allow grass to grow through the pavers, or some other pervious material, will be utilized for the parking area) containing 100 parking stalls within the mauka portion of the Property, an access road to the parking area from a public roadway and landscaping (APIC will clear and level the existing sugar cane cultivation areas within the Public Open Space/Recreation Area and replant the same with grass or ground cover). APIC may plant the Public Open Space/Recreation Area (excepting that part thereof within the 150-foot Shoreline Setback Area which will be governed by

the Shoreline Zone Plan, when and as approved by the MPC) with grass and ground cover of available varieties, and with trees and shrubs of indigenous varieties; provided, however, that none of such plantings shall prevent or limit the full use and enjoyment of this area by the public and Native Hawaiians of the rights set forth above. Should any such plantings occur, APIC or its assignee shall thereafter maintain these plantings.

The Public Open Space/Recreation Area shall not be used by anyone for commercial activity. APIC shall erect and maintain signs on the access to and within the parking area prohibiting commercial activity. APIC shall prohibit their employees and contractors from parking in the Public Open Space/Recreation Area during their employment. APIC shall make reasonable efforts to prevent guests and owners of developments on Lots 1 (TMK No. (II) 4-4-14:3), 2 (TMK No. (II) 4-4-14:4) or 3 from using the parking lot while they are in occupancy at said developments.

The Public Open Space/Recreation Area shall be kept free of structures, except for: (1) vehicular access improvements to and from the Public Open Space/Recreation Area from a public roadway and parking on the mauka portion of the Public Open Space/Recreation Area; (2) minor structures not larger in size and scope than picnic tables and barbecue pits; (3) one mauka-makai sidewalk and one north-south sidewalk; (4) underground utilities; (5) drainage swales, so long as they do not interfere with the use and enjoyment of the public Open Space/Recreation Area; and (6) within that

portion of the 150-foot setback area which lies within the Public Open Space/Recreation Area, structures will be governed by the Shoreline Zone Plan, when and as approved by the MPC.

Nothing in this Declaration shall prevent APIC from taking reasonable and lawful steps to insure the peace, safety and welfare of the public and of Native Hawaiians within the Public Open Space/Recreation Area, and of persons or other properties in the Subdivision.

2. Enforcement by present and future members of the public and present and future Native Hawaiians

It is understood and acknowledged by APIC that these Declarations dedicate this Property for the use of present and future members of the public and present and future Native Hawaiians, that present and future members of the public and present and future Native Hawaiians are intended to benefit from these rights and restrictions and that, therefore, the rights set forth in this Declaration may be enforced in law or in equity against APIC, or its successors and assigns, at any time necessary, by any present or future member of the public and/or by any present or future Native Hawaiian.

3. These Rights and Restrictions are Irrevocable and Run with the Land

The Property, and all parts thereof, is and shall be held subject to the covenants, conditions and restrictions contained herein and (a) all of such covenants, conditions

and restrictions shall be fully effective as to the Property from and after the recording of this Declaration with the Bureau of Conveyances or Land Court of the State of Hawaii, as the case may be (without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by the Declarant, or any heir, devisee, executor, administrator, personal representative, successor and assign, as the case may be, of the Declarant), (b) the acquisition of any right, title or interest in or with respect to the Property by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Declaration by such person or persons, entity or entities, and (c) upon any transfer of any right, title or interest in or with respect to the Property the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform, all of the covenants, conditions and restrictions of this Declaration.

4. These Rights and Restrictions are Covenants which Run with the Land

This Declaration and all of the covenants, conditions and restrictions contained herein shall continue to be effective and to run with the land in perpetuity.

5. Restrictions upon Declarant

The Declarant agrees to use and develop the Property in conformity with this Declaration.

6. Interpretation and, if necessary, Reformation

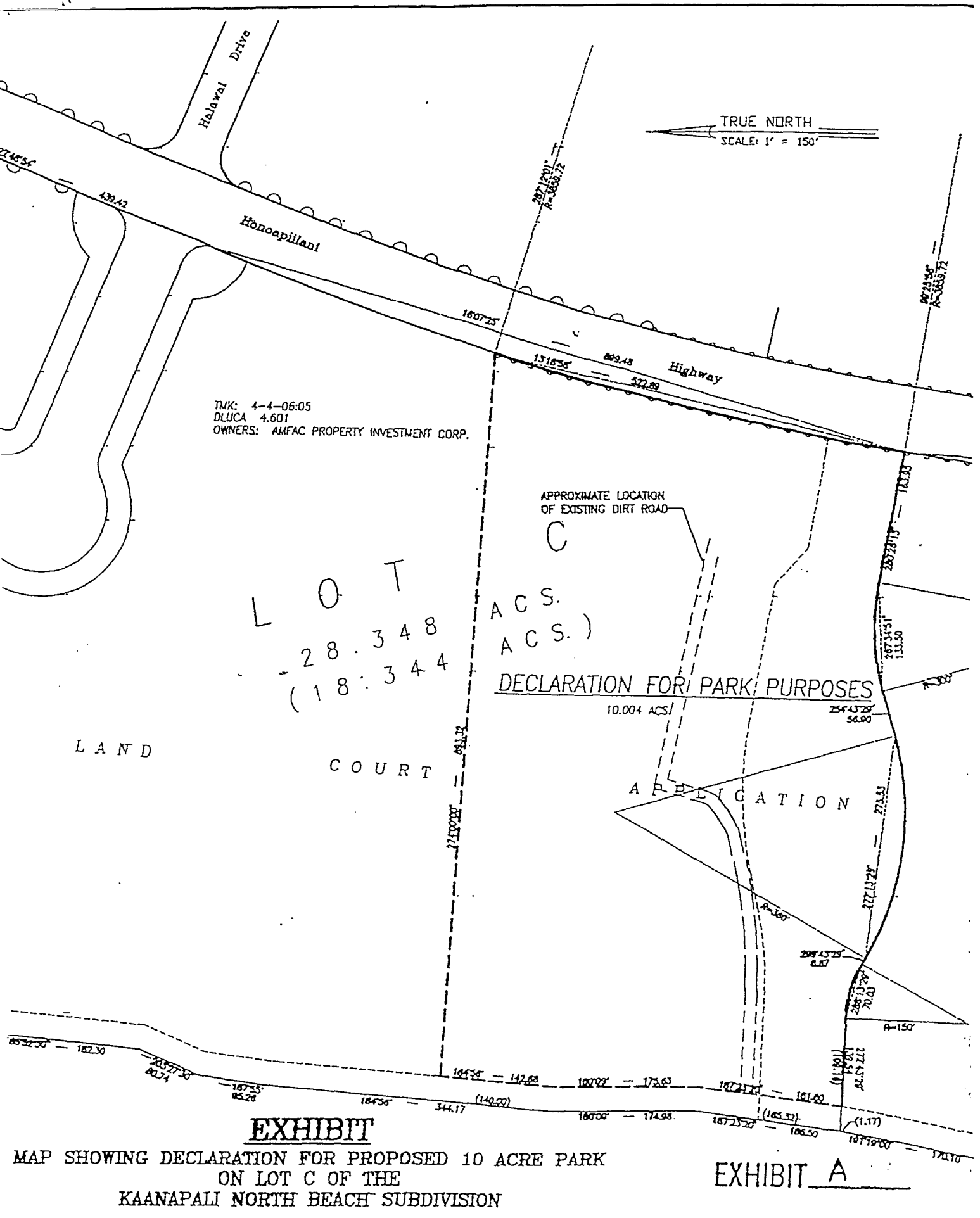
Any general rule of construction to the contrary notwithstanding, this Declaration shall be liberally construed in favor of the Declaration to effect its intent and purposes, as expressed in the fourth “Whereas” clause above. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the intent of this Declaration that would render the provision valid shall be favored over any interpretation that would render it invalid. Should any portion of this Declaration be determined invalid, APIC agrees to reform this document in a manner which is consistent with the intent expressed in the fourth “Whereas” clause above to assure that the Property shall be available, in perpetuity, to members of the public and/or Native Hawaiians for the uses described above and that present and future members of the public and/or Native Hawaiians shall have the power and authority to enforce the rights to use and enjoy the Property as described above.

7. Effective Date

This Declaration shall be effective as of December 14, 1998.

8. Declarant

The term “Declarant” and any pronoun in reference thereto, wherever used herein, shall be construed to mean the singular or the plural, the masculine or the feminine or the neuter, and vice versa, and shall include any corporation, and shall be held to mean and include the “Declarant” and Declarant’s successors and assigns.



TRUE NORTH

SCALE: 1" = 150'

TWK: 4-4-06:05
 DLUCA 4.601
 OWNERS: AMFAC PROPERTY INVESTMENT CORP.

APPROXIMATE LOCATION
 OF EXISTING DIRT ROAD

LOT C
 ACS.
 (28.348)
 ACS.)
 (18.344)

DECLARATION FOR PARK PURPOSES

10.004 ACS

254.572
 56.80

APPLICATION

LAND

COURT

EXHIBIT

MAP SHOWING DECLARATION FOR PROPOSED 10 ACRE PARK
 ON LOT C OF THE
 KAA NAPALI NORTH BEACH SUBDIVISION

EXHIBIT A



AUSTIN, TSUTSUMI & ASSOCIATES, INC. CML ENGINEERS • SURVEYORS

1871 WILI PA LOOP SUITE A • WAILUKU, MAUI, HAWAII 96793

DECLARATION FOR PARK PURPOSES

Being a portion of Lot C of the North Beach Subdivision,
being also a portion of Lot 89 (Map 75)
of Land Court Application 1744.

Situated at Honokowai, Kaanapali, Lahaina, Maui, Hawaii.

Beginning at the Southeast corner of this parcel of land, on the West side of Honoapiilani Highway, (F.A.S.P. S-0030-1), the coordinates of said point of beginning referred to Government Survey Triangulation Station "MANINI" being 4,123.10 feet North and 13,941.25 feet West, thence running by azimuths measured clockwise from true South:

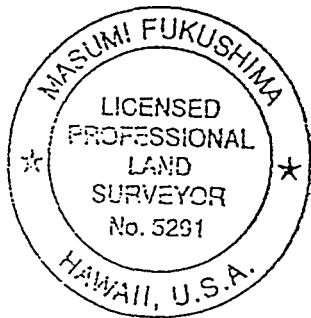
1. 100° 26' 13" 163.95 feet along Lot 88 (Map 74) of Land Court Application 1744,
Thence, along same on a curve to the left with a radius of 300.00 feet, the chord azimuth and distance being:
2. 87° 34' 51" 133.50 feet;
3. 74° 43' 29" 56.90 feet along Lot 88 (Map 74) of Land Court Application 1744;
Thence, along same on a curve to the right with a radius of 360.00 feet, the chord azimuth and distance being:
4. 97° 13' 29' 275.53 feet;
5. 119° 43' 29" 8.87 feet along Lot 88 (Map 74) of Land Court Application 1744;
Thence, along same on a curve to the left with a radius of 150.00 feet, the chord azimuth and distance being:
6. 106° 13' 29" 70.03 feet;



- | | | | |
|-----|--------------|--------|---|
| 7. | 92° 43' 29" | 109.16 | feet along Lot 88 (Map 74) of Land Court Application 1744; |
| 8. | 187° 23' 20" | 181.80 | feet along remainder of Lot C of the North Beach Subdivision; |
| 9. | 180° 09' | 175.63 | feet along same; |
| 10. | 184° 56' | 142.88 | feet along same; |
| 11. | 274° 00' | 893.32 | feet along same; |

Thence, along the West side of Honoapiilani, Federal Aid Project S-Q300(1) on a curve to the left with a radius of 3,859.72 feet, the chord azimuth and distance being:

- | | | | |
|-----|----------------|--------|---|
| 12. | 13° 18' 58.42" | 522.89 | feet to the point of beginning and containing an area of 10.004 acres or 435,778 square feet. |
|-----|----------------|--------|---|



AUSTIN, TSUTSUMI & ASSOCIATES, INC.

Description Prepared By:

Masumi Fukushima

MASUMI FUKUSHIMA
Licensed Professional Land Surveyor
Certificate No. 5291

Honolulu, Hawaii
September 23, 1998

TMK: 2nd Division
4-4-14:Por. 5

Z:98-539\DESCRIPTION3

NOTE: At such time as the foregoing area described becomes duly designated by action of the Land Court, this declaration may be amended to reflect such property description.



AUSTIN, TSUTSUMI & ASSOCIATES, INC.

CIVIL ENGINEERS • SURVEYORS