

LAND COURT SYSTEM

REGULAR SYSTEM

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TITLE OF DOCUMENT:

UNILATERAL AND IRREVOCABLE DECLARATION OF  
PERPETUAL RIGHTS AND USES AND PERPETUAL RESTRICTIONS  
(North Beach Shoreline Setback Area)

PARTIES TO DOCUMENT:

GRANTOR: AMFAC PROPERTY INVESTMENT CORP.

TAX MAP KEY(S): TMK: (2) 4-4-14: 2, 3, 4, 5, 6, 7, 8, and 10  
(This document consists of 19 pages)

UNILATERAL AND IRREVOCABLE DECLARATION OF  
PERPETUAL RIGHTS AND USES AND PERPETUAL RESTRICTIONS  
(North Beach Shoreline Setback 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,”

WITNESETH:

WHEREAS, APIC is the owner of those certain parcels of land located at Kaanapali, Maui, Hawaii, containing an area of approximately 96 acres, identified for real property tax purposes by Tax Map Key Nos. (II) 4-4-14:2, 3, 4, 5, 6, 7, 8, and 10, and known as the North Beach Subdivision (the “Subdivision”), being the property covered by Transfer Certificates of Title Nos. 518,306 and 518,307;

WHEREAS, a portion of each of the properties above-described lies between the shoreline and a 150 foot line which is set back from the shoreline and comprises the “Shoreline Setback Area,” 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;

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 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 real 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 remains 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 Intervenors 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 Perpetual Restrictions

APIC does hereby dedicate the Shoreline Setback Area throughout the Subdivision, 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 open space, recreational access and passive recreational uses and to present and future Native Hawaiians for Native Hawaiian traditional and customary uses of the shoreline and near shore ocean waters, as follows: fishing, diving, hookupu ceremonies (ritual prayers on the shoreline) and gathering.

Portions of the Shoreline Setback Area may be landscaped or left in a relatively natural state, as the case may be, in accordance with the provisions of the Shoreline Zone Plan when and as approved by the MPC.

Sugar cane is currently being cultivated within the Shoreline Setback Area within Lots 3 (TMK No. (II) 4-4-14:5) and 4 (TMK No. (II) 4-4-14:6, 7 and 8). The

APIC shall clear and level the sugar cane in said areas and replant these areas with grass or ground cover on or by December 31, 1998, subject to the Shoreline Zone Plan.

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 Shoreline Setback Area, and of persons or other properties in the Subdivision. The rights and uses referenced herein are non-exclusive.

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.

IN WITNESS HEREOF, the undersigned has executed this Declaration the day and year first above written.

AMFAC PROPERTY INVESTMENT CORP. (APIC)

By [Signature]  
(Signature)

Scott Nuhokawa  
(Printed Name)

Its President  
(Title)

STATE OF HAWAII )  
) SS.  
COUNTY OF MAUI )

Scott Nuhokawa <sup>M/P</sup> On this 29<sup>th</sup> day of DECEMBER, 1998, before me appeared Scott Nuhokawa, satisfactorily proven to me, who, being by me duly sworn, did say that he is the PRESIDENT of AMFAC PROPERTY INVESTMENT CORP., (APIC) a Hawaii corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

L.S.

[Signature]  
Notary Public, State of Hawaii  
FAYE-MARIE NAKAMURA

My commission expires: APR 26 1999





Kaanapali North Beach Subdivision

SHORELINE EASEMENT 1

Being a portion of Lot A of the Kaanapali North Beach Subdivision, being also a portion of Lot 87 (Map 74) of Land Court Application 1744.

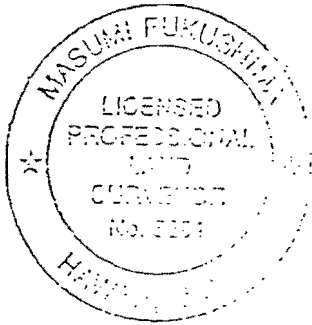
Situate at Honokowai, Kaanapali, Lahaina, Maui, Hawaii.

Beginning at the Northwest corner of this easement, being also the Southwest corner of Lot B of the Kaanapali North Beach Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MANINI" being 3,620.22 feet North and 14,849.03 feet West thence running by azimuths measured clockwise from true South:

- |    |             |        |   |
|----|-------------|--------|---|
| 1. | 274° - 00'  | 150.00 | feet along Lot B of the Kaanapali North Beach Subdivision;  |
| 2. | 3° 10' 30"  | 65.00  | feet along the remainder of Lot A of the Kaanapali North Beach Subdivision'   |
| 3. | 1° 56'      | 372.40 | feet along same;  |
| 4. | 354° 51'    | 23.06  | feet along same;  |
| 5. | 5° 40'      | 79.00  | feet along same;  |
| 6. | 348° 06'    | 59.00  | feet along same;  |
| 7. | 96° 10' 15" | 150.00 | feet along Lot 86 (Map 73) of Land Court Application 1744; Thence along the seashore (vegetation line) for the next six (6) courses, the direct azimuths and distances between points on said seashore being: |
| 8. | 168° 06'    | 33.69  | feet;   |
| 9. | 185° 40'    | 88.52  | feet;   |



- |     |              |   |
|-----|--------------|---|
| 10. | 174° 51' 30" | 99.09 feet;   |
| 11. | 181° 56' 30" | 294.99 feet;  |
| 12. | 183° 10' 30" | 10.27 feet;   |
| 13. | 184° 59'     | 66.17 feet to the point of beginning<br>and containing an area of 2.04<br>acres more or less. |



AUSTIN, TSUTSUMI & ASSOCIATES, INC.

Description Prepared By:

*Masumi Fukushima*

MASUMI FUKUSHIMA  
Licensed Professional Land Surveyor  
Certificate No. 5291

Honolulu, Hawaii  
October 7, 1998

TMK: (2) 4-4-14:3

2:140251757005199-43212-1



Kaanapali North Beach Subdivision

SHORELINE EASEMENT 2

Being a portion of Lot B of the Kaanapali North Beach Subdivision, being also a portion of Lot 88 (Map 74) of Land Court Application 1744.

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

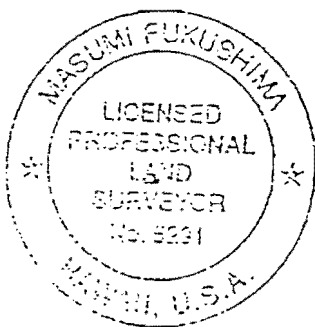
Beginning at the Northwest corner of this easement, being also the Southwest corner of Lot C of the Kaanapali North Beach Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MANINI" being 4,197.41 feet North and 14,778.43 feet West thence running by azimuths measured clockwise from true South:

1. 272° 43' 29" 139.51 feet along Lot C of the Kaanapali North Beach Subdivision;  
Thence along same on a curve to the right with a radius of 150.00 feet the chord azimuth and distance being:
2. 274° 44' 21" 10.55 feet;
3. 6° 04' 18.15 feet along remainder of Lot B of the Kaanapali North Beach Subdivision;
4. 11° 19' 168.00 feet along same;
5. 5° 37' 117.00 feet;
6. 4° 59' 282.00 feet;
7. 94° 00' 150.00 feet along Lot A of the Kaanapali North Beach Subdivision;



Thence along the seashore (vegetation line) for the next four (4) courses the direct azimuths and distances between points on said seashore being:

- |     |              |  |
|-----|--------------|--|
| 8.  | 184° 59'     | 285.43 feet;   |
| 9.  | 185° 37'     | 125.50 feet;   |
| 10. | 191° 19'     | 170.10 feet;   |
| 11. | 187° 23' 20" | 1.16 feet to the point of beginning and containing an area of 2.01 acres more or less. |



AUSTIN, TSUTSUMI & ASSOCIATES, INC.

Description Prepared By:

*Masumi Fukushima*

MASUMI FUKUSHIMA  
Licensed Professional Land Surveyor  
Certificate No. 5291

Honolulu, Hawaii  
October 7, 1998

TMK: (2) 4-4-14:4

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Kaanapali North Beach Subdivision

SHORELINE EASEMENT 3

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

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

Beginning at the Northwest corner of this easement, being also the Southwest corner of Lot D of the Kaanapali North Beach Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MANINI" being 5,386.68 feet North and 14,666.89 feet West thence running by azimuths measured clockwise from true South:

- |    |          |        |   |
|----|----------|--------|---|
| 1. | 271° 07' | 152.80 | feet along Lot D of the Kaanapali North Beach Subdivision;    |
| 2. | 348° 50' | 12.46  | feet along remainder of Lot C of the North Beach Subdivision; |
| 3. | 359° 43' | 132.00 | feet along same;  |
| 4. | 5° 52'   | 214.00 | feet along same;  |
| 5. | 23° 27'  | 83.00  | feet along same;  |
| 6. | 7° 55'   | 70.00  | feet along same;  |
| 7. | 5° 00'   | 334.00 | feet along same;  |
| 8. | 0° 09'   | 178.00 | feet along same;  |
| 9. | 7° 23'   | 182.00 | feet along same;  |

Thence along Lot B of the Kaanapali North Beach Subdivision on a curve to the left with a radius of 150.00



feet the chord azimuth and distance being:

10. 94° 44' 21" 10.55 feet;

11. 92° 43' 29" 139.51 feet along same;

Thence along the seashore (vegetation line) for the next eight (8) courses the direct azimuths and distances between points on said seashore being:

12. 187° 23' 20" 185.34 feet;

13. 180° 09' 174.98 feet;

14. 184° 56' 344.17 feet;

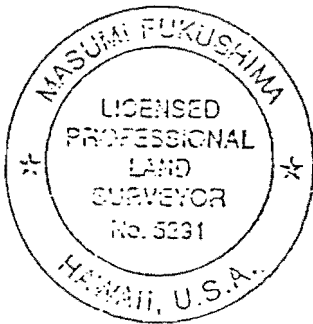
15. 187° 55' 95.26 feet;

16. 203° 27' 30" 80.74 feet;

17. 185° 52' 30" 182.30 feet;


18. 179° 43' 109.54 feet;

19. 168° 32' 30" 28.87 feet to the point of beginning and containing an area of 4.14 acres more or less.



AUSTIN, TSUTSUMI & ASSOCIATES, INC.

Description Prepared By:

  
MASUMI FUKUSHIMA  
Licensed Professional Land Surveyor  
Certificate No. 5291

- Honolulu, Hawaii  
October 7, 1998

TMK: (2) 4-4-14:5

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Kaanapali North Beach Subdivision

SHORELINE EASEMENT 4

Being a portion of Lot D of the Kaanapali North Beach Subdivision, being also a portion of Lot 90 (Map 75) of Land Court Application 1744 and all of Lot 10-B-2-B (Map 15) of Land Court Application 485.

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

Beginning at the Northwest corner of this easement, being also the Southwest corner of Lot 8 of the Kaanapali North Beach Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MANINI" being 6,071.65 feet North and 14,697.83 feet West thence running by azimuths measured clockwise from true South:

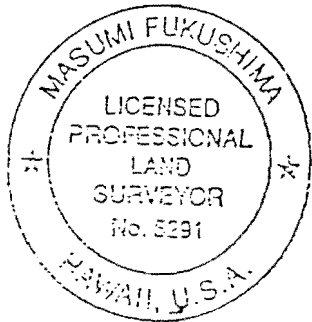
- |    |              |        |   |
|----|--------------|--------|---|
| 1. | 250° 11' 30" | 150.87 | feet along Lot 8 of the Kaanapali North Beach Subdivision;                  |
| 2. | 352° 22'     | 39.58  | feet along the remainder of Lot D of the Kaanapali North Beach Subdivision; |
| 3. | 0° 18'       | 134.00 | feet along same;  |
| 4. | 5° 28'       | 161.00 | feet along same;  |
| 5. | 357° 00'     | 190.00 | feet along same;  |
| 6. | 348° 50'     | 220.00 | feet along same;  |
| 7. | 91° 07'      | 152.80 | feet along Lot C of the Kaanapali North Beach Subdivision;                  |

Thence along the seashore (vegetation line) for the next five (5) courses, the direct azimuths and distances between points on said seashore being:





- |     |              |  |
|-----|--------------|--|
| 8.  | 168° 32' 30" | 162.94 feet;   |
| 9.  | 172° 00'     | 28.95 feet;  |
| 10. | 177° 00'     | 208.37 feet;   |
| 11. | 185° 28'     | 166.11 feet;   |
| 12. | 180° 15'     | 123.17 feet to the point of beginning<br>and containing an area of 2.43<br>acres more or less. |



AUSTIN, TSUTSUMI & ASSOCIATES, INC.

Description Prepared By:

*Masumi Fukushima*  
 \_\_\_\_\_  
 MASUMI FUKUSHIMA  
 Licensed Professional Land Surveyor  
 Certificate No. 5291

Honolulu, Hawaii  
 October 7, 1998

TMK: (2) 4-4-14:6, 7 and 10

2:140615EVERYONE198-63715-4



Kaanapali North Beach Subdivision

SHORELINE EASEMENT 5

Being a portion of Lot 8 of the Kaanapali North Beach Subdivision, being also Lot 85 (Map 71) of Land Court Application 1744 and Lot 10-B-2-A (Map 15) of Land Court Application 485.

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

Beginning at the Southwest corner of this easement, being also the Northwest corner of Lot D of the Kaanapali North Beach Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MANINI" being 6,071.59 feet North and 14,697.84 feet West thence running by azimuths measured clockwise from true South:

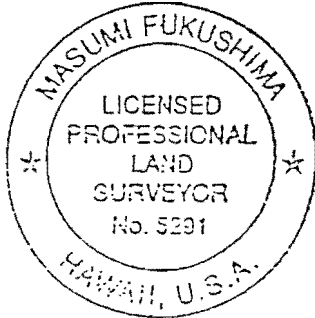
Along the seashore (vegetation line) for the next two (2) courses the direct azimuths and distances between points on said seashore being:

- |    |              |   |
|----|--------------|---|
| 1. | 180° 15'     | 18.29 feet;   |
| 2. | 189° 17'     | 46.77 feet;   |
| 3. | 234° 51' 20" | 135.62 feet along Lot 46-B (Map 18) and Lot 10-B-1 (Map 6) of Land Court Application 485; |
| 4. | 222° 40'     | 14.39 feet along remainder of Lot 8 of the Kaanapali North Beach Subdivision;             |
| 5. | 352° 22'     | 102.89 feet along same;   |



6. 70° 11' 30"

150.87 feet along Lot D of the  
Kaanapali North Beach  
Subdivision to the point of  
beginning and containing an  
area of 0.25 acre more or  
less.



AUSTIN, TSUTSUMI & ASSOCIATES, INC.

Description Prepared By:

A handwritten signature in cursive script that reads "Masumi Fukushima".

MASUMI FUKUSHIMA

Licensed Professional Land Surveyor  
Certificate No. 5291

Honolulu, Hawaii  
October 7, 1998

TMK: (2) 4-4-14:8

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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.

