

**CERTIFICATE OF AMENDMENT OF  
DECLARATION OF HORIZONTAL PROPERTY REGIME OF  
YPAO GARDEN CONDOMINIUM**

**Registration No. 15**

We, the undersigned, the Board of Directors of the Homeowners Association of Ypao Garden Condominium, including the President and Secretary thereof, certify that the following Amendment to the Declaration was unanimously adopted at meetings of the Board of Directors and the Homeowners of the corporation, duly called, noticed on May 30, 1987, and ninety-six percent (96%) of the Homeowners attended and the attached copy is true and correct:

  
\_\_\_\_\_  
ELMORE COTTON

  
\_\_\_\_\_  
HARUKO COTTON

  
\_\_\_\_\_  
CARL DOMINQUEZ

**ATTEST:**

  
\_\_\_\_\_  
Secretary.

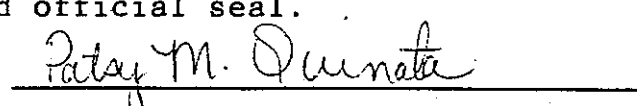
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Agana, Guam)ss.:

BEFORE ME, a Notary Public in and for the Territory of Guam, personally appeared the above signatories, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same of their own free will.

WITNESS my hand and official seal.

)SEAL(

  
\_\_\_\_\_  
NOTARY PUBLIC

In and for the Territory of Guam.  
My commission expires:

PATSY M. QUINATA

NOTARY PUBLIC

In and for the Territory of Guam  
My Commission Expires: August 20, 1991

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AMENDED DECLARATION OF HORIZONTAL PROPERTY REGIME

OF

YPAO GARDEN CONDOMINIUM

Registration No. 15

WHEREAS, MARGARITA H. INOCENTES, a married woman, of 1633 Scenicview Drive, San Leandro, California 94577, ("Lessor"), owns in fee simple certain real property described in Exhibit A, attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Lessor has leased the Property to H. HSIA, ("Lessee"), by that certain lease dated March 13, 1972, and recorded at the office of the Recorder, Territory of Guam, under Instrument No. 110349, ("said lease"); and

WHEREAS, said Lease was then modified by a written amendment thereto, dated February 8, 1973, and recorded at the office of the Recorder, Territory of Guam, under Instrument No. 221496; and

WHEREAS, said lease was then assigned by Lessee to MICRONESIA INDUSTRIAL CORPORATION, a Guam corporation, ("Sublessor"), by assignment dated May 4, 1973, and recorded at the office of the Recorder, Territory of Guam, under Instrument No. 224889; and

WHEREAS, said lease was then again modified by a written amendment thereto, dated September 17, 1974, and recorded at the office of the Recorder, Territory of Guam, under Instrument No. 240817, (all future references herein to the master lease shall mean said lease as modified; and

WHEREAS, Sublessor had undertaken to improve

the Property under the terms of the master lease by constructing thereon three (3) three-storey apartment buildings containing a total of fifty-four (54) two-bedroom and one (1) three-bedroom apartment units and parking area in accordance with plans incorporated herein by reference and recorded herewith as Condominium Map No. 241091 at the office of the Recorder, Territory of Guam;

WHEREAS, the original Declaration was recorded with the Department of Land Management under Document Number 241140.

WHEREAS, the Final Report was recorded with the Department of Land Management under Document Number 242685.

WHEREAS, the First Supplementary Final Report was issued on October 10, 1985 and filed under Document No. 364390.

WHEREAS, the Second Supplementary Final Report was issued on January 30, 1986 and filed under Document No. 368329.

WHEREAS, MOE AND MAE DEVELOPMENT CO., a Guam corporation, hereinafter called "Developer" has purchased the forty-one (41) units which were not sold by MICRONESIA INDUSTRIAL CORPORATION

NOW, THEREFORE, in order to create a condominium project consisting of the Property and improvements, (the "Project"), and to be known as YPAO GARDEN APARTMENT, MOE AND MAE DEVELOPMENT CO. SUBMITS the Property and all of its interest therein to the horizontal property regime established by the Horizontal Property Act, Title VI, Part IV, Division II, Civil Code of Guam, and in furtherance thereof make the following declaration 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 said DECLARATIONS, which declarations shall constitute covenants running with the land and shall be binding on and for the benefit of the parties hereto, their respective successors and assigns, and all subsequent owners and lessees of all or any part of the Project and their respective successors, heirs, executors, administrators, and assigns:

Section 1. Division of Project: The Project is hereby divided into the following separate and freehold estates:

1.1. Apartments: Fifty-five (55) separately designated and described freehold estates consisting of each of the fifty-five (55) apartment units, (and also the concreted lanai area immediately outside of the glass doors appurtenant to each apartment unit on each floor of the Buildings I and II), which spaces, (including the lanai) are defined and referred to herein as "apartments", and are designated on said plans and are described as follows:

1.1.1. Number, Located and Room Numbers: There are fifty-four (54) two-bedroom and one (1) three-bedroom units located in three (3) three-storey reinforced concrete and masonry buildings with no basements. One (1) three-storey building is designated Building I and has twenty-five (25) apartment units, seven (7) on the ground floor and nine (9) on the second and third floors. The second three-storey building is designated Building II and has twenty-four (24) apartment units, eight (8) on

each floor. The third three-storey building is designated Building III and has six (6) apartment units, two (2) on each floor. The apartments in Building I are numbered as follows:

**First (ground) Floor:**

102, 103, 104, 105, 106-107, 108, 109;

**Second Floor:**

201, 202, 203, 204, 205, 206, 207, 208, 209;

**Third Floor:**

301, 302, 303, 304, 305, 306, 307, 308, 309.

The apartments in Building II are numbered as follows:

**First (ground) Floor:**

110, 111, 112, 113, 114, 115, 116, 117;

**Second Floor:**

210, 211, 212, 213, 214, 215, 216, 217;

**Third Floor:**

310, 311, 312, 313, 314, 315, 316, 317.

The apartments in Building III are numbered as follows:

**First (ground) Floor:**

A1, B1;

**Second Floor:**

A2, B2;

**Third Floor:**

A3, B3.

1.1.2. Floor Plans: Each of the apartments contains a number of rooms and approximate gross floor

area according to its respective plan, which plans are designated Plans A, B, C, D, E and F as follows:

Plan A. Two (2) apartments (201 and 301). Each contains six (6) rooms, including one (1) living-dining room, two (2) bedrooms, two (2) bathrooms, one (1) kitchen and one (1) enclosed lanai, and a net floor area (including the lanai) of 793 square feet.

Plan B. Twenty-three (23) apartments (102, 202, 302, 104, 204, 304, 206, 306, 108, 208, 308, 101, 210, 310, 112, 212, 312, 114, 214, 314, 116, 216 and 316 in Buildings I and II). Each contains six (6) rooms, including one living-dining room, two (2) bedrooms, two (2) bathrooms, one (1) kitchen, and one (1) unenclosed lanai, and a net floor area (including the lanai) of 825 square feet.

Plan C. Twenty-three apartments (103, 203, 303, 105, 205, 305, 207, 307, 109, 209, 309, 111, 211, 311, 113, 213, 313, 115, 215, 117, 217 and 317 in Buildings I and II). Each contains six (6) rooms, including one (1) living-dining room, two (2) bedrooms, two (2) bathrooms, one (1) kitchen and one (1) unenclosed lanai, and a net floor area (including the lanai) of 825 square feet.

Plan D. Three (3) apartments (A1, A2, and A3 in Building III). Each contains five (5) rooms,

including one (1) living-dining room, two (2) bedrooms, one (1) bathroom, one (1) kitchen, and a net floor area of 684 square feet.

Plan E. Three (3) apartments (B1, B2 and B3 in Building III). Each contains five (5) rooms, including one (1) living-dining room, two (2) bedrooms, one (1) bathroom, one (1) kitchen, and a net floor area of 684 square feet.

Plan F. One (1) apartment (106-107 in Building I). It contains twelve (12) rooms, including one (1) living-dining room, one (1) family room, one (1) kitchen, one (1) laundry room, three (3) bedrooms, three (3) bathrooms, and two (2) unenclosed lanais, and a net floor area (including the lanais) of 1651 square feet.

The immediate common elements to which the apartments have access are: (i) The concrete walkways running across the faces of the buildings and connected to the stairways and elevator structure in the case of apartments on the upper floors of Buildings I and II; and (ii) the concrete walkway running along the faces of the buildings and the grounds next to the lanais in the case of the ground floor apartments of Buildings I and II.

1.1.3 Access: Each of the apartments in Buildings I and II has immediate access to the corridors and entrances of the respective buildings, the staircases and elevator connecting the three (3) floors of said buildings and the walkways connecting said buildings with the parking areas

and street entrances adjacent to the Property. Each of the apartments in Building III has immediate access to the corridor and entrance of the buildings, the staircase connecting the three (3) floors, and the walkways connecting said building with the parking area and street entrances adjacent to the property.

1.1.4 Included Within Apartments: The respective apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls or interior load-bearing walls, the floors and ceilings surrounding each apartment, or any pipes, wires, conduits, or other utility lines running through each apartment which are utilized for or serve more than one (1) apartment, the same being deemed common elements as hereinafter provided. Each apartment shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter walls, the inner decorated or finished surfaces of all walls, floors, and ceilings, and the built-in used fixtures including, without limitation, ranges, garbage disposal units, range hoods and refrigerators.

1.2 Common Elements: A leasehold estate consisting of all remaining portions of the Property being described and referred to herein as "common elements", which definition includes the apartment buildings, and the land in the Property on which they are located and all elements mentioned in the Horizontal Property Act which are actually constructed on the Property, and specifically includes, but is not limited to:



1.2.2 Parking Stalls: Twenty-six (26) separately designated and described parking stalls, as such stalls are hereinafter described in §1.3.1, infra, for the use of guests and visitors to the Project.

1.2.3. Building Elements: All foundations, floor slabs, columns, supports, load-bearing walls, roofs, driveways, entries, stairways, walkways, entrances and exits of the buildings;

1.2.4. Grounds and Facilities: All yards, grounds, landscaping walls, mail boxes and refuse facilities;

1.2.5. Fixtures: All pipes, cables, conduits, ducts, electrical equipment, wiring, fan-coiled air conditioning system, water heating system, and other central and appurtenant installations over, under and in the Project which serve more than one (1) apartment for services such as and including power, light, water, gas, sewer, telephone and television signal transmission, if any;

1.2.6. Offices: The lobby and manager's office in Building I designated as unit 101;

1.2.7. Laundry: The laundry and utility building;

1.2.8. Tennis Courts: The tennis courts and appurtenant installations and apparatus;

1.2.9. Elevators: The one elevator, elevator shaft and well, and appurtenant installations and apparatus;

1.2.10 Swimming Pool: The swimming pool and surrounding recreation area;

1.2.11. Other Personal Property: All articles of personal property acquired for common use in the operation

or maintenance of the common elements; and

1.2.12. Other Parts of Property: All other parts of the Property existing for the common use or necessary to the existence, maintenance, and safety of the buildings, or normally in common use.

1.3. Limited Common Elements: Certain parts of the common elements, herein called and designated "limited common elements", are hereby set aside and reserved for the exclusive use of certain apartments, and such apartments shall have appurtenant thereto an exclusive easement for the use of such limited common elements. The limited common elements so set aside and reserved are those which are rationally related only to a single building as against the other buildings on the Property, or are rationally related only to Building I as against Buildings II and II and vice versa, to the extent of such rational relationship. In addition, two (2) parking stalls are appurtenant to the apartments as assigned, and are further described:

1.3.1. Parking Stalls: One Hundred Ten (110) separately designated and described parking stalls, which maybe marked with the apartment number of the apartment to which it is assigned and appurtenant, and the air spaces above them, for the parking of motor vehicles;

1.3.2. Lockers: Some units of buildings I and II have storage lockers marked with the apartment number to which they are assigned.

Section 2. Common Interest: Each apartment shall have appurtenant thereto an undivided percentage

interest in all common elements of the Project (herein called the "common interest"). The common interest shall be as follows:

1.7509% common interest in the common elements for each apartment in Plan A;

1.8216% common interest in the common elements for each apartment in Plan B;

1.8216% common interest in the common elements for each apartment in Plan C;

1.5102% common interest in the common elements for each apartment in Plan D;

1.5102% common interest in the common elements for each apartment in Plan E;

3.6453% common interest in the common elements for the apartment in Plan F.

The common interest and the proportionate shares in the profits and common expenses of the Project shall be allocated on the basis of the foregoing percentages. As to the proportionate representation for voting purposes in the Association of Apartment Owners of the Project, the voting shall also be in the foregoing percentages. No change in the common interest shall be valid or effective unless all holders of first mortgage liens on the apartments affected thereby shall have given their written consent.

Section 3. Easements: In addition to any exclusive easements hereby established in the limited common elements in the Project the apartments and common elements shall also have and be subject to the following easements:

3.1 Common Elements Easements: Each apartment shall have appurtenant thereto non-exclusive easements in the common elements designated 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 limited common elements of its building or structure for support.

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

3.3 Right of Association to Enter: The Association of Apartment Owners shall have the right, to be exercised by its Board of Directors or the Managing Agent, to enter each apartment and the limited common elements from time to time during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs therein necessary to prevent damage to any apartments or common elements.

Section 4. Alteration and Transfer of Interests:

The common interest and easements appurtenant to each apartment shall have a permanent character except as otherwise stated herein and shall not be altered without the consent of all the apartment owners affected, expressed in an amendment to this Declaration duly recorded. 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.

Section 5. Partition: The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided as said Horizontal Property Act.

Section 6. Use: The apartments may be occupied and used as private dwellings by the respective owners thereof, their tenants, families, domestic servants and social guests. The apartments may also be sold or leased for time sharing as allowed by the applicable laws and regulations of the Government of Guam and any incidental use related to time sharing including hotel use. The owners of the respective apartments shall have the absolute right to lease such apartments, subject to all provisions of this Declaration.

Section 7. Association of Apartments Owners: Administration of the Project shall be vested in its

Association of Apartment Owners, (the "Association"), consisting of all apartment owners of the Project in accordance with the Bylaws of the Association and the House Rules. The owner of any apartment upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership in the Association shall automatically cease, provide, however, that to such extent and for such purposes, including the exercise of voting rights, as may be provided by lease of any apartment filed with the Board of Directors of the Association, (the "Board"), the lessee of such apartment shall be deemed to be the owner thereof.

Section 8. Administration of the Project:

8.1 Operation of Project: Operation of the Project and maintenance, repair, replacement, and restoration of the common elements, and any additions and alterations thereto, shall be in accordance with the provisions of said Horizontal Property Act, this Declaration, and the Bylaws of the Association, and, specifically, but without limitation, the Association shall:

8.1.1. Maintenance of Fences, etc.: Make, build, maintain, and repair all fences, sewers, drains, roads, curbs, sidewalks, and parking areas which may be required upon or adjoining or in connection with or for the use of the Project or any party thereof.

8.1.2. Sanitary Condition: 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 an governmental authority for the time being applicable to the Project or the use thereof.

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

8.1.4. Performance Bond: Before commencing or permitting construction of any improvement on the Project, obtain and deposit with Developer a bond or certificate thereof naming as obligees Lessor and Developer and collectively all other apartment owners as their interest may appear, in a penal sum not less than one-half of the cost of such construction, and with a corporate surety satisfaction to Developer, which would guarantee completion of such construction free and clear of all mechanics' and

materialmen's liens.

8.1.5. Setback Lines: 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 boundary of the Project.

8.1.6. Plans Required: Not erect or place on the Property any building or structure, including fences and walls, nor make additions or structural alterations to, or exterior changes of, any common elements of the Project, nor place or maintain thereon any signs or bills visible outside of the Project, except in accordance with plans and specifications, including detailed plot plan, prepared by a licensed architect or registered engineer, if so required by Developer, first approved in writing by Developer and also approved by a majority of apartment owners (or such larger percentage required by law or this Declaration), including all owners of apartments thereby directly affected, and complete any such improvements diligently after the commencement thereof.

8.1.7. No Waste: Not make or suffer any stripping or waste or unlawful, improper, or offensive use of the Project.

8.1.8. Elevator Contract: Keep in full force and effect at all times an elevator contract covering the maintenance and replacement of parts for the elevator and its related equipment, or if such contract is allowed to expire, accrue to the maintenance reserve fund such additional amount as shall be sufficient to provide for



deferred maintenance and future replacement of such elevator parts and related equipment.

8.1.9 No Outside Antennas: Not erect, place or maintain any television or other antennas on the Project visible from any point outside of the Project, except for a master television antenna for the benefit of the entire Project.

Section 9. Managing Agent: Operation of the Project shall be conducted for the Association by a responsible corporate Managing Agent who shall be appointed by the Association in accordance with the Bylaws. The Managing Agent is hereby authorized to receive service of legal process in all cases provided in said Horizontal Property Act. The initial Managing Agent shall be REALTY MANAGEMENT who is authorized to receive service of legal process in all cases provided in said Horizontal Property Act prior to appointment of a Managing Agent by the Association.

Section 10. Common Expenses: All charges, costs, and expenses whatsoever incurred by the Association for or in connection with the administration of the Project, including, without limitation thereof, operation of the Project and maintenance, repair, replacement, and restoration of the common elements, any additions and alterations thereto, all labor, services, materials, supplies, and equipment therefor, all liability whatsoever for loss or damage arising out of or in connection with the common elements, or any accident or fire on the common elements

or any nuisance thereon, and all premiums for hazard and liability insurance herein required with respect to the Project, shall constitute common expense of the Project, for their respective proportionate shares of which the apartment owners shall be severally liable. Rent, special assessments and real property taxes referred to in Section 1292 of the Horizontal Property Act, shall not be common expenses of the horizontal property regime hereby created and no payments thereof shall be payments of such common expenses. The Board shall from time to time assess the common expenses against all the apartments in their respective proportionate shares.

Section 11. Waiver of Use of Common Elements:

No apartment owner may except himself from liability for his contribution to the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his apartment.

Section 12. Compliance with Declaration, Bylaws and Decisions: All apartment owners, their tenants, families, servants and guests, and any other persons who may in any manner use the Project or any part thereof, shall be bound by, and shall comply strictly with the provisions of this Declaration, the Bylaws of the Association 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 Managing Agent or

Board on behalf of the Association, or, in a proper case, by an aggrieved apartment owner. In addition, the Association shall send written notification to the mortgagee of an apartment or of an apartment lease demising the same of any default by the mortgagor of such apartment in the performance of such mortgagor's obligations hereunder, which is not cured with thirty (30) days.

Section 13. Unpaid Common Expenses Constitute Lien: All sums assessed by the Association but unpaid for the share of the common expenses chargeable by any apartment shall constitute a lien on such apartment prior to all other liens except only (i) all sums secured by mortgages of record.. Such lien may be foreclosed by suit by the Association or Managing Agent, acting on its behalf, in like manner as a mortgage of real property, providing that thirty (30) days' prior written notice of the intention to foreclose shall be mailed, postage prepaid, to Lessor, Sublessor, and all persons having an interest in such apartment as shown in the Association's record of ownership. The Managing Agent, acting on behalf of the Association pursuant to directions of its Board and Sublessor, shall have the power to bid in such apartment at foreclosure sale and to acquire, hold, lease, mortgage, and conveyed such apartment. Suit to recover a money judgment for unpaid common expenses, shall be maintainable without foreclosing or waiving the lien securing the same. In any such suit, the prevailing party shall be entitled to attorney's fees and costs.

Section 14. Acquisition by Foreclosure: Where the mortgagee of a mortgage of record or other purchaser

of any apartment obtains title to such apartment or any interest therein, pursuant to the remedies provided in the mortgage, or by its foreclosure, or lease or assignment in lieu of foreclosure, such acquirer of title, his heirs, legal representatives, successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such apartment which became due prior to the acquisition of title to such apartment by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners including such acquirer, his heirs, legal representatives, successors, and assigns.

Section 15. Insurance:-

15.1. Casualty Insurance: The Board, on behalf of the Association, at its common expense shall at all times keep all buildings of the Project insured against all loss or damage by fire and typhoon with extended coverage in an insurance company which has a financial rating by Best's Insurance Reports of BBB+ or better, and is authorized to do business in Guam in an amount as near as practicable to the full replacement cost thereof without deduction for depreciation, in the name of the Board as Trustee for all apartment owners and mortgagees according to the loss or damage to their respective apartments and appurtenant common interests, as their interests may appear, and payable in case of loss or such bank or trust company authorized to do business in Guam as the Board shall designate for

the custody and disposition as herein provided for all proceeds of such insurance, and from time to time caused to be deposited promptly with the Developer true copies of such insurance policies or current certificates thereof, without prejudice to the right of each apartment owner to insure his apartment for his own benefit. In every case of such loss or damage all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as shall be first approved as herein provided, and the Association at its common expense shall make up any deficiency in such insurance proceeds. Every such policy of insurance shall:

15.1.1. No Contribution: Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration or contribution by reason of any other insurance obtained by or for any apartment owner;

15.1.2. Increase in Hazard: Contain no provision relieving the insurer from liability for loss occurring while the hazards to such buildings or any of them are increased, whether or not such buildings or any of them are increased, whether or not within the knowledge or control of the Board, or because of any breach of warranty or

condition or any other act or neglect by the Board or any apartment owner or any other persons under either of them;

15.1.3. No Cancellation: Provide that such policy may not be cancelled (whether or not requested by the Board) except by the insurer giving at least thirty (30) days' prior written notice thereof to the Board, Developer and every other person in interest who shall have requested such notice of the insurer;

15.1.4. Waiver of Subrogation: Contain a waiver by the insurer of any right of subrogation to any right of the Board, Developer or apartment owners against any of them or any other persons under them; and

15.1.5. Mortgage Clause: Contain a standard mortgage clause which shall:

15.1.5.1. Mortgages: Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any apartment or apartment lease of the Project, in their respective order and preference, whether or not named therein;

15.1.5.2. Mortgagee's Interest not Cancellable: Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board, Developer or apartment owners or any persons under any of them;

15.1.5.3. Waiver of Defaults: Waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause; and

15.1.5.4. Proceeds Payable to Bank: Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by the Board.

15.2. Liability Insurance: The Board on behalf of the Association at its common expense shall also effect and maintain at all times comprehensive general liability insurance, covering all apartment owners with respect to the Project and naming Lessor and Developer as additional insured, in an insurance company which has a financial rating by Best's Insurance Reports of BBB+ or better and is authorized to do business in Guam, with minimum limits of not less than \$300,000 for injury to one person, and \$1,000,000 for injury to more than one (1) person in any one (1) accident or occurrence, and \$50,000 for property damage, and from time to time upon receipt thereof deposit promptly with Developer current certificates of such insurance, without prejudice to the right of any apartment owners to maintain additional liability insurance for their respective apartments.

15.3. Separate Account for Premiums: All premiums for insurance herein required to be obtained by the Board on behalf of the Association shall be a common expense to be paid by monthly assessments thereof, and such payments shall be held in a separate escrow amount of the Association and used solely for the payment of such premiums as the same become due.

Section 16. Condemnation. In any case at any time or times the Project or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for or on account of any land shall be payable to and be the sole property of Lessor, and all compensation and damages for or on account of any improvements of the Project shall be payable to such bank or trust company authorized to do business in Guam as the Board shall designate as trustee for all apartment owners and mortgagees according to the loss or damage to their respective apartments and appurtenant common interests and shall be used promptly by the Association to the extent necessary for restoring or replacing such improvements on the remaining Property according to plans therefore first approved as herein provided, unless such restoration or replacement is impracticable in the circumstances. Unless such restoration or replacement is undertaken within a reasonable time after such condemnation the Association at its common expense shall remove all remains of such improvement so taken or condemned and restore the site thereof to good orderly condition and even grade.

Section 17. Uninsured Casualty: In case at any time or times any improvements of the Project shall be substantially damaged or destroyed by any casualty not herein required to be insured against such improvement shall be rebuilt, repaired or restored unless seventy-five percent or more of the apartment owners vote to the contrary.



Any such approved restoration of the common elements shall be completed diligently by the Association at its common expense, and the apartment owners shall be solely responsible for any restoration of their respective apartments so damaged or destroyed, according to the original plans and elevation thereof, or such other plan first approved as provided herein. Unless such restoration is undertaken within a reasonable time after such casualty, the Association at its common expense shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good orderly condition and even grade.

Section 18. Alteration of Project: Restoration or replacement of the Project or any building thereof or construction of any additional building thereof or construction of any additional building or structural alteration or addition to any building, different in any material respect from the condominium file plan of the Project, shall be undertaken by the Association or any apartment owners only pursuant to an amendment of this Declaration, duly executed by or pursuant to vote of all the apartment owners and accompanied by the written consent of the holders of all liens affecting any of the apartments, and in accordance with complete plans and specifications therefor first approved in writing by Developer, and the Board, and promptly upon completion of such restoration, replacement, or construction, the Association shall duly record such amendment in the office of the Recorder, Territory of Guam, together with a complete set of floor

plans of the Project as so altered, certified as built by a registered architect or professional engineer.

Section 19. Certain Work Prohibited: No apartment owner shall do any work which would jeopardize the soundness or safety of the Project, reduce the value thereof, or impair any easement or hereditament, nor may any apartment owner add any material structure or excavate any additional basement or cellar, without in every such case the unanimous consent of all the other apartment owners being first obtained; provided, however, that additions to or alterations of an apartment made within such apartment or within a limited common element appurtenant to and for the exclusive use of the apartment shall require approval only by the Board.

Section 20. Maintenance Reserve Fund: The Board shall establish and maintain a maintenance reserve fund by the assessment of and payment by all the apartment owners in equal monthly installments of their respective proportionate shares of such reasonable annual amount as the Board may estimate as adequate to cover each apartment owner's obligations to provide for utilities, insurance, maintenance and repair of the common elements, and other expenses of administration of the Project, which shall be deemed conclusively to be a common expense of the Project. The Board may include reserves for contingencies in such assessment, and such assessment may from time to time be increased or reduced at the discretion of the Board. The proportionate interest of each apartment owner in said

fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with such apartment even though not expressly mentioned or described in the conveyance thereof. In case the horizontal property regime hereby created shall be terminated or waived, said fund remaining after full payment of all common expenses of the Association shall be distributed to all apartment owners in their respective proportionate shares except for the owners of any apartments then reconstituted as a new horizontal property regime.

Section 21. Amendment of Declaration: Except as otherwise provided herein or in said Horizontal Property Act, this Declaration may be amended by a vote or seventy-five percent (75%) of the common interest 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 Developer and Sublessor reserves the right to amend this Declaration without the consent or joinder of persons then owning or leasing the apartments by filing an amendment to this Declaration pursuant to the provisions of Section 1282 of the Horizontal Property Act, after completion of the buildings described herein by attaching to such amendment a verified statement of a registered architect or professional engineer certifying that the final plans therefore filed or being filed simultaneously with such amendment fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built.

Notwithstanding the foregoing provisions of the paragraph, the owners of the respective apartments, with the consent of Sublessor, shall have the right to change the designation of the parking spaces which are appurtenant to their respective apartment leases involved and an amendment to this Declaration, such amendment shall be effective only upon the recordation of the same in the office of the Recorder, Territory of Guam; and provided, further, that at all times at least one (1) parking space shall be appurtenant to each apartment in the Project.

Section 22. Definitions: The terms "majority" or "majority of apartment owners" herein means the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interest, and "any specified percentage of the apartment owners means the owners of apartment to which are appurtenant such percentages of the common interest.

Section 23. Warranties: The buildings constituting this condominium are over ten (10) years old. The Developer is making no changes in the building and no new construction or other physical improvements are part of this condominium development. Therefore, the Developer makes no warranties, including warranties of merchantability and fitness for a particular use, as to the premises. The structure and premises including plumbing, elevator, electrical fixtures, equipment, swimming pool, tennis courts, and appliances are sold AS IS.

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Section 24. Sold Units: As of the filing of this Amended Declaration, the following units have been sold: 103, 105, 110, 111, 112, 115, 201, 202, 203, 204, 205, 206, 208, 209, 211, 212, 213, 215, 303, 304, 305, 306, 307, 308 and 316. Unit 101 has been set aside as the Project office.

IN WITNESS WHEREOF, the Developer has executed these presents this 15 day of June, 1987.

YPAO GARDEN CONDOMINIUM  
HOMEOWNER'S ASSOCIATION

MOE AND MAE DEVELOPMENT CO.  
DEVELOPER

By:   
ELMORE A. COTTON  
President

By:   
ELMORE A. COTTON  
President

TERRITORY OF GUAM)  
(ss.:  
CITY OF AGANA )

On this 15 - day of June, 1987, before me, a Notary Public in and for the Territory of Guam, personally appeared ELMORE A. COTTON, President of MOE AND MAE DEVELOPMENT CO., and President of YPAO GARDEN CONDOMINIUM HOMEOWNER'S ASSOCIATION, personally known to me and he acknowledged to me that he executed the foregoing Amended Declaration on behalf of the corporation and homeowner's association.

WITNESS my hand and official seal.

)Seal(

  
NOTARY PUBLIC

LADD A. BAUMANN  
NOTARY PUBLIC

In and for the Territory of Guam  
My Commission expires: Oct. 18, 1988

LAB/pms  
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#1YPD

EXHIBIT A

*Description of Property:*

Lot No. 2143-R5, Saucio, Dededo, Guam, Estate No. 2427, Suburban, as said lot is marked and designated on Drawing No. SDCO-02-969, dated October 7, 1969, and recorded in the office of the Recorder, territory of Guam, on October 28, 1969 under Instrument No. 92196, (the "Drawing"), containing an area of 13,037 + square meters.

SUBJECT to an easement and right-of-way 30 feet in width for the proposed Ypao Road on the western boundary of said lot as delineated on the Drawing.

SUBJECT, in addition, to an easement for utility purposes on the western boundary of said lot as delineated on the Drawing.

**TERRITORY OF GUAM, DEPARTMENT OF LAND MANAGEMENT  
OFFICE OF THE RECORDER**

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**INSTRUMENT NUMBER**

This instrument was filed for record on

\_\_\_\_\_ at \_\_\_\_\_ A.M.

\_\_\_\_\_ Day of \_\_\_\_\_

\_\_\_\_\_ We duly recorded in Book \_\_\_\_\_

Recording Fee - Voucher No. \_\_\_\_\_

Department of Land Management

*[Handwritten signatures and scribbles]*