

ASSOCIATION OF APARTMENT OWNERS OF WAILEA EKAHI

APARTMENT ALTERATIONS POLICY

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**ASSOCIATION OF APARTMENT OWNERS OF
WAILEA EKAHI**

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ASSOCIATION OF APARTMENT OWNERS OF WAILEA EKAHI

APARTMENT ALTERATIONS POLICY

SECTION A: INTRODUCTION

This Apartment Alterations Policy (“Policy”) contains rules and regulations regarding the modification, alternation, additions and renovations in units and limited common elements of the Association of Apartment Owners of Wailea Ekahi (the “Association”). This Policy supplements the Restated Declaration of Condominium Property Regime of Wailea Ekahi I and Restated Declaration of Condominium Property Regime of Wailea Ekahi II, as amended (collectively, the “Declarations”), the Second Restated Bylaws of the Association of Apartment Owners of Wailea Ekahi, as amended (“Bylaws”), and the House Rules. To the extent of a conflict between this Policy and the Declarations and/or Bylaws, the Declaration and/or Bylaws are controlling.

This Policy is part of the Rules and Regulations made pursuant to Hawaii Revised Statutes (“HRS”) § 514B-140, Section 10(c) of the Declaration, and the Bylaws at Article III, Section 2(e), Article III, Section 2(h); Article III, Section 2(l); Article III, Section 3; Article V, Section 1(c); Article V, Section 2; Article V, Section 3; Article X, Section 1; and Article X, Section 6.

Many Owners desire to make alterations in order to upgrade their apartments, which the Board of Directors (“Board”) for the Association recognizes may increase property values of the apartments and the project as a whole. The purposes of this Policy include enabling Owners to upgrade their apartments, while maintaining the unique character, reputation and desirability of Wailea Ekahi, protecting the structural integrity of the buildings and common elements at Wailea Ekahi, and protecting occupants from annoyance and nuisance during construction.

The Policy describes the rules and regulations for additions and alterations and a description of the procedures to be followed in order to obtain necessary Board, Building & Site Committee and/or General Manager approval.

All Owners, Tenants, and their contractors, employees, licensees, agents, representatives and invitees are required to adhere to the rules and regulations set forth in this Policy.

Owners have the responsibility of not only adhering to the policies and procedures outlined in this Policy but also for compliance with applicable laws and regulations. Failure to comply with the provisions of this Policy shall be subject to the provisions of Section B, Clause 17.

Owners and their respective successors and assigns assume all future responsibilities relating to their alterations, including any damage related to or caused by such alterations; regardless of the location within an apartment, to the common element, or to any person.

Nothing in this Policy shall be construed as prohibiting the Association and its representatives from making necessary alterations or additions to protect the health and safety of persons and

property, such as in event of an emergency, such as a natural disaster, waste or water leak, or fire.

SECTION B: GENERAL RULES AND REGULATIONS

1. Major Alterations.

1.1. Except for Minor Alterations, which are identified in Section B, Clause 2, any and all additions, modifications, renovations, and/or alterations to a unit, limited common element or common element, require prior written Board approval (“Major Alterations”). Major Alterations include, but are not limited to, scoring, cutting, drilling into, or chiseling into any common element, including modification of interior or exterior load-bearing walls, work that affects or involves the structure or exterior of the building, work that adds to or changes any plumbing, electrical, or other utility line or conduit. This includes any utilities that serve more than one apartment, and/or any work that includes removing, adding or altering anything structurally, other than what is currently installed in the unit or on the lanai or adding or removing floor space.

2. Minor Alterations.

A Minor Alteration means all work performed where there is not any alteration or addition to the building structure, electrical wiring, plumbing pipes or change to the external appearance of the building or to the common area. Minor alterations include, but are not limited to:

- 2.1. Replacement of carpets, drapes, shutters, paint and other wall coverings.
- 2.2. Replacement of electrical light fixtures and appliances and plumbing fixtures, where minor changes to electrical wiring and plumbing pipes are involved, and the only affected wiring and conduits are those serving only that apartment.
- 2.3 Installation or replacement of lanai sunscreens.
- 2.4 Installation or replacement of screen and security doors.
- 2.5 Installation or replacement of interior doors and trim.
- 2.6 Tinting of windows.
- 2.7 Installation or replacement of ceiling fan(s), including enclosed lanai.

Minor Alterations require prior written approval by the General Manager.

3. Prohibited Work.

- 3.1. No unit owner shall do any work that may jeopardize the soundness or safety of the property, reduce the value thereof, detract from the appearance of the project, interfere with or deprive any non-consenting owner of the use or enjoyment of any part of the property, or directly affect any non-consenting owner, as reasonably determined by the Board. Any such work shall first require first the written consent of sixty-seven per cent of the unit owners, the consent of all unit owners whose units or appurtenant limited common elements are directly affected, and the approval of the Board.
- 3.2. No unit owner or his or her contractor shall do any work that is in violation of federal law, State of Hawaii law, County of Maui ordinances and/or building code standards.
- 3.3. Owners are required by Hawaii Asbestos Rules (Title 11, Chapters 501 through 504, Hawaii Administrative Rule) to have a state certified asbestos inspector identify suspect asbestos-containing material prior to the renovation/demolition activities which may disturb them.

4. Approval Process.

- 4.1. To perform any work, whether Minor Alterations or Major Alterations, owners shall first submit to the General Manager an Alteration Application in the form attached hereto as Addendum A. Upon receipt, the General Manager will determine the type of work involved and assist Owners in submitting required applications.
- 4.2. Depending on the type and scope of work, the Association may require the following information from the Owner:
 - a. An executed License Agreement, if Common Element is included in the alteration. A copy of a sample License Agreement is attached hereto as Addendum E.
 - b. A design plan with detailed drawings, photographs and/or specifications and all measurements for the installation of the proposed work, including stamped engineering and/or architectural drawings.
 - c. Copies of any necessary permits required (e.g., County, SMA).
 - d. Verification of current liability insurance in the amount of at least One Million Dollars (\$1,000,000.00) and workers compensation insurance of all installers and sub-contractors performing work on the project.
 - e. Performance and Completion Bond equal to or greater than the total cost of the work.
 - f. Written approval from Wailea Community Association.
 - g. The name of a Hawaii licensed and insured contractor performing the work (company name and license number) and contact information for the contractor and subcontractors.
 - h. Written consent by any directly affected owner.

5. Minor Alteration.

- 5.1.1. The General Manager will review the application, and if complete, sign the approval, notify the Owner, in writing, to proceed and, if appropriate, post the dates of the work at appropriate locations.
- 5.1.2. The approval shall be valid for a six (6) month period. If the Owner does not complete the alteration within such six (6) month period, the approval shall expire, and the Owner shall be required to re-apply for alteration approval, at least one (1) month prior to the expiry date of the original alteration approval. In the event that the Owner does not re-apply for approval and continues with the alteration, the Board may assess fines and/or other penalties identified in this Policy and the Bylaws.
- 5.1.3. All Minor Alterations shall meet the specifications identified in Section C of this Policy, and any other specifications reasonably imposed by the Association.

6. Major Alteration.

- 6.1.1. The General Manager will review the application, and if complete, submit it to the Building & Site Committee (“Committee”) Chairperson for review. The Committee will review and make a recommendation to the Board. The General Manager, Committee and/or Board may require further information as it believes necessary to ascertain whether the proposed work falls within the rules and regulations.
- 6.1.2. The Board may require review and approval of the application by a consultant selected by the Board. The fees for the consultant shall be paid by the Owner.
- 6.1.3. For structural modifications, the owner may be required to submit an engineering report by a licensed structural engineer, at the Owner’s sole expense.
- 6.1.4. The General Manager will notify the Owner of approval or denial by the Board, in writing, to proceed, and if approved, post the dates of the work at appropriate locations, according to this Policy.
- 6.1.5. The approval shall be valid for a one (1) year period. The work shall be performed within one (1) year of the date of the approval. If the Owner does not complete the alteration within such one (1) year period, the approval shall expire, and the Owner shall be required to re-apply for alteration approval, at least one (1) month prior to the expiry date of the original alteration approval. In the event that the Owner does not re-apply for approval and continues with the alteration, the Board may assess fines and/or other penalties identified in this Policy and the Bylaws.
- 6.1.6. All Major Alterations shall meet the specifications identified in Section D of this Policy, and any other specifications reasonably imposed by the Association.

7. Inspection & Completion.

- 7.1.1. When a Minor Alteration is completed, the Owner shall immediately notify the General Manager, and the General Manager or his appointed representative shall inspect the alteration site to ensure that all requirements have been adhered to. Upon satisfactory completion of the approved alteration and inspection, a signed approval will be completed and provided to the Owner, and a record copy filed with the Association's records.
- 7.1.2. When a Major Alteration commences, the Owner shall notify the General Manager, and the General Manager or his appointed representative shall inspect the alteration site, twice during the alteration to ensure that all requirements have been adhered to. In a Major Alteration where the drywall and floorboard are being removed in the bathroom(s) or the kitchen, the Owner shall request that the General Manager inspect and determine if the Owner's original plumbing pipes need to be replaced. If the General Manager deems that the plumbing pipes are defective, it shall be the Owner's responsibility to replace such pipes at their cost. In the event that the common element pipes are exposed, the Owner shall notify the General Manager. If the General Manager determines that the common element pipes require replacement, the Association shall undertake to replace such pipes at its cost. When a Major Alteration is completed, the General Manager shall inspect the alteration site to ensure that all requirements have been adhered to. In its sole discretion, the Association may employ a consultant to perform the inspection, and such cost shall be assessed to the Owner. Upon satisfactory completion of the approved alteration and inspection, a signed approval will be completed and provided to the Owner, and a record copy filed with the Association's records.
- 7.2. **Costs.** The owner shall pay for all expenses, which have been or are likely to be incurred in connection with the application review and work inspections. Subject to change, the Board may require a reasonable deposit towards these fees.
- 7.2.1. **Building Permit Requirements.** It is the responsibility of an Owner to obtain a Maui County Building Permit and submit a copy of the permit to the General Manager, before work begins, for any apartment alteration for which the County requires such permits.

8. Construction Material Requirements.

8.1 All wood, or wood based, construction material, with the exception of redwood (including ends of cut material) used at Wailea Ekahi shall be pressure treated to minimize the potential for termite and other pest infestation.

8.2 All materials installed and used in units and in/on limited common elements shall be termite and fungus free. A mix of materials will be approved only if the materials in the proposed use will complement one another. All wood materials shall be painted, varnished or stained, since raw, untreated wood is more vulnerable to pests.

8.3 In order to protect the project from termites, no building material, improvements or other objects should be rested on the ground.

8.4 As used in this section, construction material includes all posts, beams, headers, girders, studs, sub flooring, plates, joists, rafters, shear walls, siding, roofing plywood, trellis wood, and all wood used within the common element.

9. Licensed Contractor Requirements.

- 9.1. Contractors licensed by the State of Hawaii shall be used for alterations involving changes to the electrical wiring or plumbing piping or as otherwise required by the Maui County Building Code, industry standards, and Hawaii Revised Statutes. The contractor must provide a current copy of their license and certificate of insurance to the General Manager prior to the commencement of any work.
- 9.2. If the General Manager receives a complaint about noise from work being performed, the General Manager shall contact the Contractor, and the General Manager shall work with the complainant and the Contractor, such that noisy work is scheduled for a reasonable time agreeable to the complainant and the Contractor. The complainant shall not unduly prevent the Contractor from conducting their work in a timely manner.
- 9.3. The contractor must abide by the Association Rules and Regulations at all times. It is the owner's responsibility to advise the contractor of these rules and regulations. Owners shall provide a copy of this Policy and the Rules and Regulations of the Association to all persons performing work at or in the Unit.

10. Neighbor Notification.

After approval of an alteration, and approximately 30 days prior to the commencement of the work, if possible, the General Manager will post the work on the website, email owners of the affected building and their agents, and post an advisory notice on the affected building. The notice will contain a brief description of the work and the expected start and completion dates. Depending on the work and in the discretion of the Board, written approval by directly affected owners may also be required prior to commencement of work.

11. Wailea Community Association Requirements.

The Board of Directors may, at its discretion, determine that a proposed alteration should be submitted to the Design Review Committee of the Wailea Community Association for approval.

12. Debris.

- 12.1. Demolition and construction debris must be contained within the unit or sealed within the lanai. The sealing must be removed each night and all debris removed unless prior written approval is obtained from the Board.
- 12.2. The owner and contractor must remove all debris from the premises at their expense. This includes demolition materials, appliances, furniture, and work materials. The Owner/Contractor must keep the walkways and common areas clean at all times. Debris dropped or spilled must be cleaned up immediately.
- 12.3. Any flammable debris must be removed from the unit at the end of each day's work. Hazardous materials must not be left on premises overnight.

12.4. No activity shall be engaged in and no substance be brought into or manufactured within any unit or building which might be in violation of the law or Bylaws of the Association or which might cause a cancellation or increase in the Association's insurance without the approval of the Board.

12.5. All debris must go to the landfill. Contractors are not permitted to use the trash disposal for construction debris. Small amounts of trash may be placed in the Association dumpster only upon prior approval by the General Manager. Any contractor construction trash containers are not to exceed 6 cubic yards in size.

12.6. No paint or toxic fluids may be put in parking lot drain or dumpsters.

12.7. Any testing and/or removal of asbestos shall be performed by a certified Hawaii licensed and insured contractor.

13. Damage to Common Areas.

The owner is responsible for the cost of repairs to any common areas that are damaged by the contractor.

14. Storage of Construction Materials.

Materials used in construction may not be stored on the lanai without written authorization from the General Manager. Any items approved for storage on the lanai must be stored in a neat and orderly manner. If construction occurs on the lanais, construction sheets must be erected to seal the lanai and prevent dust, wood and other debris from escaping.

15. Contractor Work Rules and Obligations.

15.1. No Alcoholic beverages, pets, or radios that can be heard outside of the unit.

15.2. All power tools and equipment are to be operated indoors.

15.3. Do not wash down tools or equipment in parking lots or into storm drains.

15.4. Do not wash any grout down inside drains.

15.5. All courtyards, stairs, landings and parking lots are to be kept clean at all times.

15.6. Use of any materials that have not been treated for pests, including but not limited to termites and beetles, is prohibited.

15.7. Parking is limited. Excess vehicles must park in locations assigned by the General Manager. Noisy work requires at least 30 days prior notice to neighboring apartments and shall be subject to the provisions of Section B, Clause 9.2.

15.8. Working hours are 8 AM to 5 PM Monday through Friday. No work is permitted on federal holidays. Work on weekends and holidays must have prior written approval by the General Manager. Immediate fines may be assessed for non-compliant construction work or noise.

15.9. Contractor or Agent's family and employees are not permitted to use pool or other common area facilities.

15.10. Noise generating equipment should be operated only when doors and windows are in a closed position.

15.11. The General Manager shall have the authority to eject any worker considered to be in violation of House Rules.

16. Use of Association Employees or Equipment.

Contractors may not hire or use the services of Association employees, equipment, tools or facilities in the performance of their work. Contractors must use their own dollies and hand-carts.

17. Compliance.

17.1. Owners and contractors have the responsibility for compliance with this Policy. Failure to comply may result, at the Board of Directors' option, in the removal or reconstruction of an alteration and/or fines. The cost of any such removal or reconstruction is to be borne by the Owner.

17.2. In the event that an Owner commences an alteration without prior approval or not in accordance with the specifications, plans or approval requirements, and/or commences an alteration that violates the law, building code and/or the governing documents, notice shall be given to the Owner, which shall be deemed received, in the case of a letter sent by registered mail to the address of record with the Association, five (5) days after mailing and in the case of e-mail, when the sender receives a confirmed delivery report, and the following shall apply forthwith:

a. There shall be an automatic stoppage of work, which the Board and/or General Manager may extend for a period of up to sixty (60) days from the date the work stoppage notice is given; and

b. At the Board's discretion, the Owner may be fined up to \$1,000.00 per day for proceeding with work after having been ordered to stop. The start date of the fine period shall be the day following the date that notice was deemed received by the Owner.

17.3. In the event that an Owner fails to complete the approved alteration within the time periods as set forth in this Policy and continues with the alteration without having re-applied and having obtained the appropriate approval to continue, notice shall be given to the Owner, which shall be deemed received, in the case of a letter sent by registered mail to the address of record with the Association, five (5) days after mailing and in the case of e-mail, when the sender receives a confirmed delivery report, and the following shall apply forthwith:

a. There shall be an automatic stoppage of work, which the Board may extend for a period of up to sixty (60) days from the date the work stoppage notice is given; and

b. At the Board's discretion, the Owner may be fined up to \$500.00 per day for proceeding with work after having been ordered to stop. The start date of the fine period shall be the day following the date that notice was deemed received by the Owner.

- c. If Work is not completed in a timely manner and creates a hazardous condition or nuisance, the Association has the right, but not the obligation, to take all other legal action available to it, including but not limited to, any remedies under Article X, Section 2 of the Bylaws.

SECTION C: MINOR ALTERATION SPECIFICATIONS

1. Lanai Ceiling Fans.

- 1.1. Ceiling Fan(s) may be installed on the ceiling of an enclosed lanai space.
- 1.2. All visible fan components, including the blades are to be dark brown in color.
- 1.3. If a light is attached, it must only shine down and must not be visible from other apartments.
- 1.4. No swagged electrical wires or chains are allowed
- 1.5. All electrical supply wires and connections must be enclosed inside of apartment walls or inside of approved exterior electrical boxes and conduit as required by code.
- 1.6. Any electrical conduit and switch box installed on an exterior wall must be run in non-obvious locations (in corners) and then painted to match the exterior building color.
- 1.7. Fans are not to be installed on trellises or beyond the inside lanai ceiling area.
- 1.8. Where 2 lanais are adjacent to each other (Model 1-2 B Apartments), 2 ceiling fans may be installed in the combined area.

2. Lanai Sunscreens.

- 2.1 Sunscreens installed on trellis-covered lanais shall be dark brown in color to match the painted surfaces of the trellis and shall be installed on the inside of the trellis posts. Sample color is available in the Ekahi office.
- 2.2 Sunscreens on all other lanais shall be straw color to be compatible with the standard Ekahi stucco color and shall be installed on the inside surface of the stucco frame. Sample color is available in the Ekahi office.
- 2.3 The sunscreens shall be installed to come down no more than 18" above the floor to accommodate air circulation.

3. Screen and Security Doors.

- 3.1 Dark bronze colored screen and security doors similar to those manufactured by Lange (see Addendum B) may be installed at all exterior doors.
- 3.2 Movable glass panels may be used for air circulation provided safety glass is used.
- 3.3 Alternate doors may be allowed, if they have a substantially similar appearance to the Lange door and are approved by the General Manager.
- 3.4 All security doors are to be installed within the indented space on the outside of existing doors. They are not to be installed so that they extend outward beyond the flush exterior wall.
- 3.5

4. Tinting of Windows.

- 4.1 Tinting will not create a “mirror effect” when viewed from the exterior.
- 4.2 Approved color is Medium Grey or Smoke.
- 4.3 Reflective properties are not to exceed 35%.

SECTION D: MAJOR ALTERATION SPECIFICATIONS

1. Air Conditioning Systems.

- 1.1. Apartment Owners have the option to provide air conditioning of their apartment.
- 1.2. Existing air conditioning systems may be retained, unless an affected Owner files a noise complaint with the State of Hawaii Department of Health, and it is determined by the State that the noise level exceeds State of Hawaii requirements. Removal or alteration to comply with State requirements will be at Owner's expense.
- 1.3. Replacement of existing systems or installation of new systems is generally permitted as long as the Owner is confident that the replacement system or new system complies with the State of Hawaii noise level requirements and agrees, in writing, that he or she will immediately remove the machine, if a complaint is filed, and the State determines that the system does not meet State noise level requirements. Removal or alteration to comply with State requirements will be at Owner's expense.
- 1.4. Installation of new or replacement “Package-in-Wall Units” or “Packaged Terminal AC” “PTAC” that comply with guidelines must be installed with no more than 4” extending outward beyond the face of the exterior wall surface.
- 1.5. Installation of "Split Ductless Systems" and Central Air Conditioning Systems that comply with the specifications as either a replacement of an existing system or a new installation may be permitted, depending on the location of the equipment.
- 1.6. An external location is required for the condenser of Split Ductless and Central Air Conditioning systems. To mitigate noise and vibration problems:
 - 1.6.1. For ground level (downstairs) apartments, condensers should generally be located on the owned portion of the apartment’s lanai. These Owners may also request locations on the ground (common element) adjacent to their unit.
 - 1.6.2. For upstairs apartments, these condensers should generally be located on the ground (common element) adjacent to the unit below the upstairs unit installing the air conditioning. For smaller single stage condensers only, Owners may request locations on their upstairs lanai.

The Board may deny certain placement of the equipment if it interferes with the reasonable use and enjoyment of another unit owner’s property.

- 1.7. A plan of the proposed condensing unit location and lattice enclosure for the condenser shall be submitted to the Building & Site Committee for approval prior to the installation of the Air Conditioning System. It must be in compliance with the provisions of Section D, Clause 1.9.4 and the drawing in Addendum C attached hereto.

- 1.8. Owners are responsible for ensuring that the noise level and installation of any and all parts of their air conditioning systems meets all State of Hawaii requirements. Any Owner requesting State testing of air conditioning noise levels is responsible for the scheduling and costs of tests. The General Manager is to be present during all such tests. All costs for the removal or alteration of any air conditioning system that is found to be non-compliant with State requirements are the responsibility of the Owner of said system.
- 1.9. No electric lines, coolant pipes, condensation drainage pipes, or other related components are to be run across the exterior of any building unless approved by the Board. Such components must be installed per Maui County Building Codes and manufacturer specifications on the inside of the apartment and:
 - 1.9.1. All apartment coolant pipes and electrical lines may exit the exterior wall within 2' of the ground grade level – when possible they are to be hidden behind their condensing units. All exit areas are to be weatherproofed.
 - 1.9.2. For first floor apartments that rest directly on ground level concrete slabs – these components must be installed within the apartment interior, or running vertically, inside of the exterior wall. Access to any stud wall cavity shall be from the inside of the apartment unit and not from the building exterior
 - 1.9.3. For all other apartments – these components must be installed inside of the apartment or in a vertical exterior chase per the following specifications:
 - 1.9.3.1. The chase, or pipe and line channel, shall be built on the outside exterior wall of the building and shall run vertically from the topmost wooden eve trim to 6" above ground grade.
 - 1.9.3.2. The top of the chase shall laterally follow the slope of the eve trim (if any) and be beveled downward away from the building, at the top, a minimum of 45 degrees.
 - 1.9.3.3. The chase shall be between 12" and 16" wide and approximately 5" deep.
 - 1.9.3.4. It will be constructed with 2" x 4" steel stud material at the sides, bottom, and near the top.
 - 1.9.3.5. It will be covered with waterproof plywood, plaster and stucco per standard construction practice.
 - 1.9.3.6. There will be a 4" x 4" pull box that has a removable waterproof service cover within 2' of the ground grade.
 - 1.9.3.7. It will be painted to match the building color.
 - 1.9.3.8. The Building & Site Committee may approve an alternate chase assembly for locations that are hidden from common view, on a case-by-case basis. This assembly shall be approximately no less than 5 ½" wide by 3" deep, with square-edged corners, with a radius no greater than ¼". The assembly must be textured and painted to match Ekahi exterior paint color and texture.

1.9.3.9. Access to any stud wall cavity shall be from the interior side of the apartment unit and not from the building exterior. Piping and electrical runs through walls or joists shall meet Maui County Building Codes.

1.9.4. Any condenser or other components that are to be installed outside the apartment (including those on lanais) are to be enclosed within a removable lattice enclosure, fabricated from minimum 3/8" wood lattice or 1/4" plastic lattice material that provides a minimum of 50% open space within the lattice area and follows the requirements set forth below. The Building & Site Committee may, on a case-by-case basis, waive the enclosure requirement for condensers at locations that are generally hidden from common view. The enclosure requirements are as follows:

1.9.4.1. The enclosure must provide a minimum of 4" clearance from the condensing unit on all dimensions. If the manufacturer's instructions require more than 4 inches of clearance in front of the condenser fan, see Section D, Clause 1.9.4.3 below.

1.9.4.2. The back of the enclosure (facing the building wall) should be fully open. The distance from the back of the condenser to exterior walls shall be consistent with the manufacturer's installation requirements.

1.9.4.3. The front of the enclosure (facing outward) may be cut out and framed in the center section of the front to provide for fan airflow with no more than 60% of the front removed. The cutout is to be a square or rectangle configurations. See the drawing in Addendum B attached hereto.

1.9.4.4. The enclosure is to be painted to match Ekahi's stucco color.

1.9.4.5. For units located on the ground, the enclosure is to sit completely on a concrete or the A/C manufacturer-approved isolation pad located beneath the AC condensing unit. A 2' x 4' or larger pad will probably be required.

1.9.4.6. For units located on upstairs lanais, when permitted, vibration isolation mounts are required.

1.9.4.7. If the front of the enclosure is cut out, the front face (only) of the condensing unit is to be painted to match Ekahi's stucco color if approved by the A/C manufacturer.

1.9.4.8. A waterproof, electrical disconnect switch is to be installed near the condenser that is accessible from the exterior of the apartment per State requirements. This switch may be mounted on the exterior wall of the building in a location that is immediately adjacent to the condensing unit.

2. Attic Storage Space.

2.1 Maui Building Code strictly prohibits the use of Attic Storage Space, for habitation or livable floor area.

2.2 Use of Attic Storage Space is strictly limited to storage of non-flammable goods not exceeding 20 pounds per square foot of floor area.

2.3 Access to the attic storage space shall be by a pull-down stairway. A permanent stair is not permitted.

2.4 A licensed electrical contractor shall perform all electrical work.

2.5 Design Load: Live load: 20 lbs./ft. – Dead load: 10 lbs./ft.

3. Lanai Enclosures.

3.1 Only the enclosure of Model 1-2A and 2-2 (side bedroom near living room only) bedroom lanais is permitted and will be considered by the Board. Enclosure of bedroom lanai areas of Model 1-2B, 1-1, and Townhouse apartments is not permitted.

3.2 Enclosure of any living room lanai area is not permitted.

3.3 Plans showing details of the proposed build-out shall be submitted with the Alteration Request, including specifications for any slab footings, electrical changes, window and door placements and all other visible exterior changes.

3.4 An exterior dark framed sliding door/window is required that mimics the original and is the same width as a window already installed in a built-out upstairs/downstairs unit. If no built-out door/window exists upstairs or downstairs, its width must not be less than the upstairs/downstairs matching door/window, and not more than the width of the upstairs/downstairs lanai opening. Both 3 and 4 sectioned panel windows are approved.

3.5 The new door/window cannot be larger than the lanai exterior opening framed by the original side columns and upper header. It must also be a full height sliding door/window.

3.6 For downstairs units, the large sliding exterior door/window must be installed within a setback of at least 2" (not flush) from the exterior, to provide a shadow appearance of the original lanai opening. This also provides a space for any future installation of a sliding security screen door.

3.7 For upstairs units, the large sliding exterior door/window must be installed inside of the original lanai guardrail that must remain in place. Also, the original bull nose terra cotta colored lanai floor tile edging that is viewable from the exterior must remain on both the front and the end(s) of the original lanai area.

3.8 If an end panel wooden lattice or guardrail exists in the original design, it must be retained and built into a 2" to 6" recessed area that matches the original and the upstairs/downstairs unit. If no wooden lattice exists in the original design, a 2" recessed area that matches the original opening and the upstairs/downstairs unit is required (See Apartment 38D). An exterior dark framed window may be substituted for the wooden lattice or installed within the recessed area. The width must match any window or lattice installed upstairs/downstairs. The height may vary but must match any window already installed upstairs/downstairs. (See Section 12 on Windows).

4. First Floor Trellises.

4.1 Trellises shall be designed so they do not interfere with ingress or egress to and from the apartment.

4.2 New trellises shall be built to match original Ekahi trellis design and color.

- 4.3 New trellises should be designed reduce the potential for falling objects from above from reaching the lanai space below.
- 4.4 Pressure treated 4" x 6" Douglas fir shall be used for posts.
- 4.5 Posts shall be attached 6" above ground to pier blocks that are set in concrete or designed as part of the lanai foundation.
- 4.6 Pressure treated Douglas fir shall be used for all support beams.
- 4.7 Pressure treated 2" x 6" Douglas fir, on 6" centers, shall be used for framing.
- 4.8 Appropriate post and beam spacing is required to insure proper support.

5. Lanai Areas and Surfaces.

- 5.1. Installation of tile on new lanai surfaces or replacement of existing lanai tile or other coverings is to be made with one of the pre-approved tile selections that are available for viewing in the Association office. Alternatively, Owners may submit tiles for approval that fall within the earth toned color spectrum (tans, beiges, browns) and complement exterior building colors. In all cases, original Ekahi terra cotta bullnose edging on the building exterior is to be retained on lanais and at all lanai enclosures of upstairs or elevated downstairs apartments.
- 5.2. Tiling or otherwise covering or extending lanai areas not part of the deeded property (extension onto the common element or limited common element) is not permitted.
- 5.3. Plans showing details of proposed concrete footings and slab dimensions shall be submitted for all lanai alterations. At minimum, all new or replacement ground level lanai slabs shall be steel reinforced concrete: 3-1/2" deep with 6" perimeter footings.
- 5.4. If common area plantings exist nearby, care should be taken not to damage the plant's stock or root zone. Lanai slab and tile may be constructed to encompass the concrete trellis pier supports assuming the supports are not deteriorated. If the trellis support foundation piers are deteriorated, new supports are to be incorporated into the replacement lanai slab. The slab and any finish shall not be in direct contact with trellis wood support members. The new lanai slab shall not extend past the original Ekahi lanai design. The slab's outer edge shall be no more than 1 foot from the building side edge of the trellis support post (to the outside edge of the new slab) Per B&S 2-18.
- 5.5. All costs incurred by the Association to remove or alter the irrigation or landscaping shall be charged to the Owner.
- 5.6. Artificial turf or carpeting is not allowed on lanais or front entry walkways. Existing installations of these products cannot be replaced in kind when they deteriorate and must be removed. Front walkways must be restored to their original condition.

6. Lanai Partition & Door Removal on Model 1-2B Apartments.

- 6.1. Removal of the partition wall and door that divides the lanais of the Model 1-2B apartments may be permitted.

- 6.2. Following any approval to remove the partition and door, the floor, walls and ceiling affected by such removal must be repaired and restored to match the existing adjacent surfaces. For tiled lanais this may require replacing all lanai tiles.

7. Lanai Storage Cabinet.

- 7.1. Installation of one storage cabinet on an owner's lanai may be permitted.
- 7.2. The storage cabinet shall be painted Ekahi Spice to match the exterior color of the apartment.
- 7.3. Design and specifications shall follow the details of the approved drawing dated, June 10, 2002, which is included in this Policy in Addendum C.
- 7.4. Cabinet shall be of exterior grade, pressure treated plywood, without grooves.
- 7.5. Cabinet top may be hinged in lieu of doors at cabinet front.
- 7.6. Hinges shall be hidden from view and door handles are at the option of the apartment Owner.
- 7.7. Cabinet should be located against a solid wall, but the Board of Directors reserves the right to approve the exact location of such cabinet.

8. Leaf Screens.

- 8.1. The frame of the leaf screen shall be constructed of pressure treated 2" x 2" Douglas fir lumber.
- 8.2. The frame shall be painted dark brown to match the trellis.
- 8.3. The screen material shall be dark brown to match the trellis and frame.
- 8.4. The frame shall be installed on the underside of the trellis in such a fashion that it can be easily removed for cleaning and maintenance of the trellis.
- 8.5. The Owner shall paint and maintain the leaf screen in good order. The Owner shall clean the leaf screen to prevent excess leaf buildup or possible fire hazard.
- 8.6. Owners are responsible for ensuring that screens are periodically cleaned to remove accumulated debris.

9. All Exterior Lighting on Apartments.

- 9.1 Ekahi's standard fixture is an off-white, down only, cylindrical can light. Only Ekahi Board approved lighting fixtures are allowed at the entrance areas or at the lanai of Ekahi apartments. The General Manager can provide pictures or samples of alternate approved fixtures available for owners to view.
- 9.2 All non-standard fixtures become an owner's responsibility for purchase cost, installation expense, fixture maintenance and any future liabilities.
- 9.3 All approved lighting fixtures must, at minimum, meet the following requirements:
 - 9.3.1 No outdoor lighting may emit light directly up into the sky, directly outward, or in such a manner that light trespasses into another apartment, or its lanai. An exception is motion detector security lights that light for less than one minute, which may be used in locations approved by the Board.

9.3.2 Light fixtures with built-in LED light sources shall meet the efficiency requirements in Clause 12 below, "Efficiency and Color Standards for Lighting".

9.3.3 All light fixtures with no built-in LED light source must have sockets that accept Ekahi provided bulbs, which will be supplied by Ekahi, or meet the standards in Clause 12 below, "Efficiency and Color Standards for Lighting". Owners whose entrances are in very low light areas may request installation of Ekahi-supplied, brighter bulbs.

9.3.4 All lighting must be damp- or wet-label UL listed per code, or have an equivalent rating by other nationally recognized testing labs accepted by the authority having jurisdiction, if mounted on the lanai wall.

9.3.5 All outdoor entry lights must comply with Maui County ordinances and rules, and be damp- or wet-label UL listed per code, or have an equivalent rating by other nationally recognized testing labs accepted by the authority having jurisdiction.

9.3.6 All lighting must comply with Maui County ordinances and rules.

9.4 The Association may remove or change any Owner selected lighting back to standard Ekahi lighting, if existing lighting is functioning improperly or is out of compliance with this Policy.

9.5 The use of a dimmer switch for all non-original lighting fixtures is strongly recommended, when possible. Dimmers shall be compatible with installed light source (LED or CFL), so they operate smoothly and without flicker.

10. Entrance Lighting

10.1 All outdoor entry light fixtures must meet the requirements for all exterior lighting in Clause 9 above, "All Exterior Lighting on Apartments", and generally avoid out and up-lighting, with one exception. Extremely limited decorative light emissions, such as very small pinhole design accents, may be permitted.

11. Lanai Lighting

11.1 All Apartment Owners are asked to be considerate of their neighbors and the environment when using or seeking to add lanai lighting.

11.2 All lanai lighting must, at minimum, meet the requirements for all lighting in Clause 9 above, "All Exterior Lighting on Apartments", and in addition, meet the following requirements:

11.2.1 If the lighting contains a fan, the requirements pertaining to Lanai Ceiling Fans in this Policy also apply.

11.2.2 No outdoor lanai lighting is allowed within the limited or regular common area located adjacent to any lanai.

12 Efficiency and Color Standards for Lighting

12.2 All light sources should be energy efficient, with a minimum efficacy of 45 lumens/watt, whether it is a built-in (integrated) LED source, or a replacement lamp screwed into the fixture. Most fixtures using LEDs or CFLs meet this requirement. LEDs can easily achieve 80 lumens per watt. LEDs are almost twice as efficient as CFLs and do not contain mercury. LEDs also have a longer life.

12.3 For consistency of appearance, sources should produce white light, and color temperature should be 3000K or lower.

- 12.4 Distribution of the light shall be primarily downward and should cover the area of the lanai fairly evenly. This means that light fixtures that project light directly from the face of the fixture is prohibited. Minor amounts of decorative, pinhole perforations through the opaque front and side of the fixture are allowed if installed under a roof or ceiling.
- 12.5 Target light levels depend on surrounding brightness, but are likely to be around 5 foot-candles at the ground (per approximate recommended IES illuminance value for residential entry). To achieve this over an area of about 100 square feet (size of average lanai), a fixture should deliver about 500-800 lumens (after losses); or, approximately 5 lumens per square foot. Two examples of compliant fixtures are: an LED fixture using approximately 10-12 watts, or a CFL fixture using 20-32W (with losses).
- 12.6 Additional lights may be needed for large or irregular-shaped lanais or to light grade changes or obstructions, or other potential hazards.
- 12.7 Over lighting is discouraged. Installations that significantly exceed these recommendations may be required to be reviewed by the Board and may require modifications.

13. Floor Surface Treatments for Second Floor Apartments.

- 13.1. The use of tile or other hard surface flooring material on upstairs apartment floors is strictly limited to those areas of tile, or hard surfaces in place when the apartment originally built or as illustrated in the floor plans in Addendum D, Exhibits I to IV. This means that hard surface flooring, (any flooring other than carpet), is only permitted in bathrooms, kitchens, foyers, laundry and dressing areas as illustrated in orange and yellow colors on floor plans in Addendum D, Exhibits I to IV. No hard surface flooring material is permitted in living, dining or bedroom areas of second floor apartments.
 - 13.1.1. Any flooring material other than carpet is considered a hard surface flooring material. This includes but is not limited to tile, wood, laminate, vinyl, and composite materials.
- 13.2. Orange color illustrates areas of original hard surface flooring. Yellow color illustrates additional areas where hard surface flooring has been permitted since 2012.
 - 13.2.1. Town House units are exempt from this policy.
- 13.3. Carpet padding in all second-floor apartments shall be 8 pound rated, and constructed of Re-bond Chipped Foam or equivalent.
- 13.4. In the areas where hard surfaces are permitted, sound deadening/control underlayment is to be installed, in accordance with the manufacturer's instructions. Such sound reduction materials shall be installed with laminate flooring, hardwood and/or ceramic flooring. Examples of sound reduction products include: Laticrete 125 sound control tile adhesive and sound control mat products like Regupol SC, Laticrete 170, Keene QQ StepSoft and like materials.
- 13.5. All hard surface flooring must be held back a minimum ¼" from all existing building materials and filled with a pliable sealant (ASTM C920 class 25 or acoustical sealant appropriate for in-door use).
- 13.6. If baseboard is installed, a 1/8" gap between the bottom of the baseboard and top of the tile shall be maintained and be filled with a pliable sealant.
- 13.7. No grout shall contact walls, framing materials, trim, vanities or butt up against plumbing fixtures.

- 13.8. Upon completion of each installation phase, the next phase shall not be started, until inspected and certified by General Manager or his designee that the prior work was done properly.
- 13.9. In hard surface areas, Owners agree to apply and maintain legs of furniture with felt pads.

14. Windows.

- 14.1. Window modifications and additions may be permitted if the windows are architecturally compatible and meet the requirement that there is no adverse change to the appearance of the building as a result of the installation.
- 14.2. Installation of new or replacement windows with soundproofing properties is generally permitted.
- 14.3. Installation of new or replacement windows that reduce the effect of the heat rays of the sun is generally permitted, except that such windows may not result in a "mirror effect" when viewed from the exterior and shall be of a color matching the majority of window glass present in Ekahi.
- 14.4. Keep all windows and doors closed while operating equipment.
- 14.5. Installation of solid windows in replacement of jalousie type windows is not permitted except:
 - 14.5.1. The jalousie window located directly adjacent to a front entry door may be replaced with solid clear or obscure glass windows of the same dimensions. No etched or art-work windows are allowed.
 - 14.5.2. Lower kitchen door jalousie windows may be replaced with solid clear or obscure glass of the same dimensions, a solid wooden panel, or the entire door may be replaced with the lower window eliminated.
 - 14.5.3. The combined jalousie/solid pane kitchen sink area window may be replaced with a single or multi pane window of the same dimensions.
- 14.6. Replacement jalousie windows may be plastic or composite framed windows manufactured by Coastal Windows, or equivalent, with dark brown frames.
- 14.7. Picture window additions shall be installed in non-shear walls only. Window sizing shall be architecturally compatible with its location and compatible with adjacent window units. The width shall be a minimum of 4' and a maximum of 8'. The height shall be a minimum of 3 feet and a maximum of 5'. Sill height shall be a minimum of 30" above the finished floor.
- 14.8. All new wood framing shall be pressure treated Douglas fir lumber.
- 14.9. Glass shall be either fixed or louvered to match existing Ekahi jalousie windows and must be non-reflective type glass.
- 14.10. Dark bronze or black aluminum shall be used for metal framing.
- 14.11. When installing new or replacement windows, cut existing walls and patch, repair and paint to match existing Ekahi surfaces. All window or other installations in exterior walls are to be in accordance with ASTM E 2112, current edition: "Standard Practice for the installation of Windows, Doors and Skylights".
- 14.12. Temporarily shore up existing joist and rafters prior to cutting new wall openings. Remove drywall full height from floor to ceiling to permit proper placement and top and bottom nailing of new wall studs. New connections shall be nailed securely to carry live and dead loads. Roof design live load: 20 PSF. Floor design live load: 40 PSF.

14.13. When modifying windows, the Owner shall provide temporary dust control protection.

14.14. Any leaks and damage caused by window additions and alterations are the Owner's sole responsibility and cost.

14.15. New Header Schedule:

Header nominal depth of 6" for maximum horizontal length of 4'.

Header nominal depth of 8" for maximum horizontal length of 5'.

Header nominal depth of 10" for maximum horizontal length of 6' 6".

Header nominal depth of 12" for maximum horizontal length of 8'.

Or engineered by a licensed structural engineer

15. Lanai Lattice Privacy Screens

13.1 Proposals for lanai lattice privacy screens may be permitted on a case-by-case basis.

ADDENDUM A
Owner Alteration Application

Please complete all information and submit the application to the General Manager.

Apartment Number: _____

Apartment Owner Name: _____

Telephone: _____ Fax: _____ Email _____

DETAILED DESCRIPTION OF REMODEL WORK (SUBMIT PLANS AS APPLICABLE AND
PLEASE ATTACH ADDITIONAL SHEETS OF PAPER IF NECESSARY)

Electrical: _____

Plumbing: _____

Structural: _____

Will there be any drilling, cutting, chiseling, or other alteration of any concrete wall, ceiling, floor or other common element? Yes _____ No _____. If Yes, describe:

Demolition: _____

Other: _____

Permits: _____

CONTRACTOR: _____

ADDRESS: _____

LICENSE(S) #s: _____

PHONE: _____

EMAIL: _____

CONTRACTOR: _____

ADDRESS: _____

LICENSE(S) #s: _____

PHONE: _____

EMAIL: _____

CONTRACTOR: _____

ADDRESS: _____

LICENSE(S) #s: _____

PHONE: _____

EMAIL: _____

Proposed start date _____ Proposed Completion Date _____

Please initial each line.

I UNDERSTAND, ACKNOWLEDGE AND AGREE:

_____ I have read, understand and agree to abide by the rules and regulations of the Association, including the rules and regulations of the Apartment Alteration Policy.

_____ I have provided all contractors a copy of the Apartment Alteration Policy.

_____ I am subject to claims for expense, review, repair, consultant, legal and other costs incurred by the Association as a result of any violation of the Declaration, Bylaws, House Rules and the Apartment Alteration Policy.

_____ I agree to indemnify, hold harmless, and defend the Association and the Association's agents, directors and representatives against all liability, judgments, expense (including costs and attorneys' fees), or claims by third parties for any injury to any person or damage to property of any kind whatsoever caused by the work and/or alterations in my apartment.

_____ I shall be liable for any damage or injury whatsoever caused by the work and shall pay the damaged and/or injured party for any and all costs incurred by the damaged and/or injured party as a result of damage or injury caused by the work.

_____ I verify that submitted with this application are true and correct copies of the plans/specifications/drawings.

_____ I understand, acknowledge and agree that any approval granted by the Association is only for the work identified in this application. I will immediately notify the General Manager in writing of any changes to the work proposed in this application.

_____ I understand Major Alterations may require approval by the AOA selected Consultant, and I agree to pay the fee for the consultant, which typically range from \$150 to \$600 per application.

_____ I understand that I must provide a Certificate of Liability at the onset of this project and that Wailea Ekahi is to be added on this insurance policy as "insured by". Any fees applicable to this are the responsibility of the owner or contractor.

Date _____

Apartment Owner's Signature: _____

Print Apartment Owner Name: _____

The proposed alteration is a: Minor Alteration _____, Major Alteration _____.

FOR COMPLETION BY GENERAL MANAGER:

The Board of Directors has approved the application on _____. The approval is valid for _____ months from the date of approval of this application.

Date of Approval

General Manager

ADDENDUM B

Keyed Lock Screen Door

MODEL – SS103 Keyed Locking Screen Door

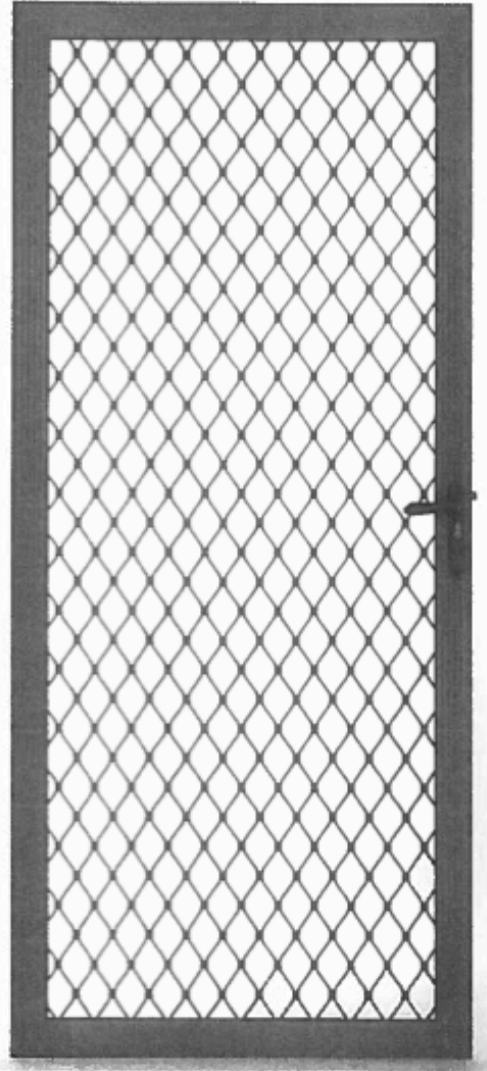
FINISH – Dark Bronze or Black

GRILLE – Heavy Duty ¼" Extruded
Aluminum Amplimesh

SIZES – Large or Custom made to order

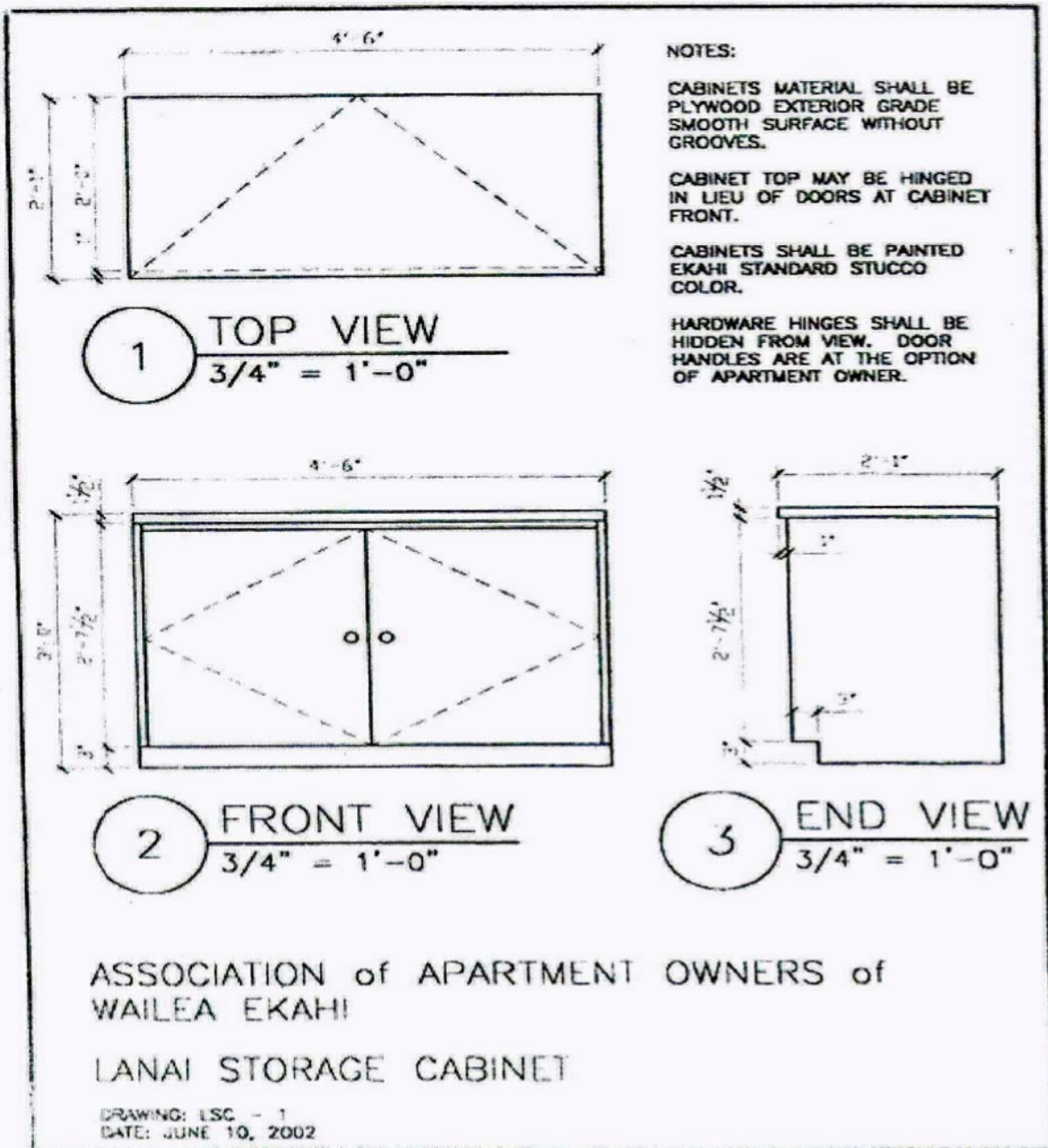
SPECIFICATIONS:

- ½" X 3-1/16" X .060 extruded Frame
- Extruded aluminum spur corners
- .050 door interlock and .062 stationary Mounted interlock with a choice of 2 offsets, 3/8" and 3/16" or outside post kit and bug seal
- Flush mortise keyed latch
- Steel rollers top and bottom
- Choice of screening – (fiberglass 18x16 gray or charcoal is standard)



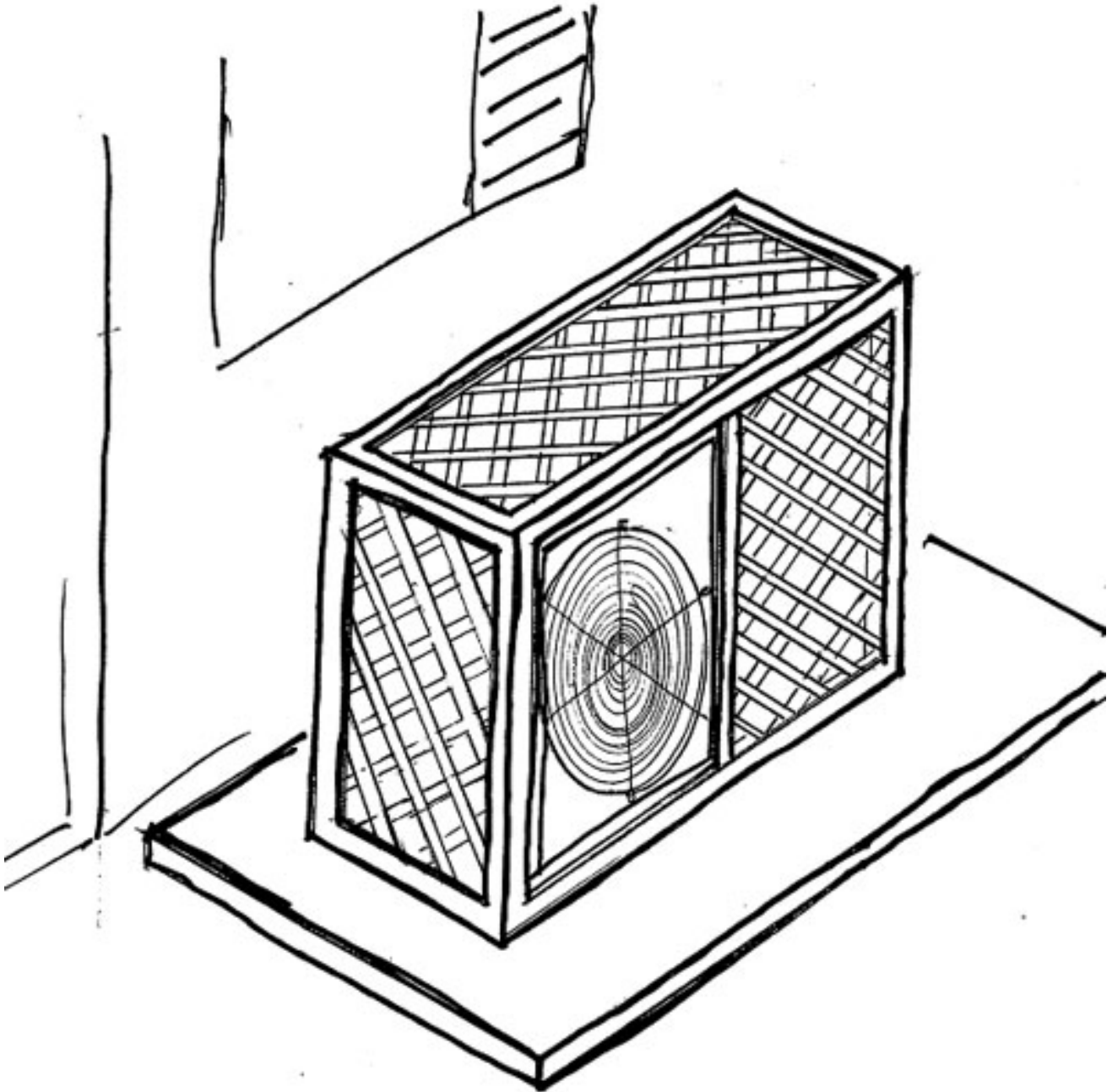
ADDENDUM C
Drawings and Specifications

1. Lanai Storage Cabinet Drawing



ADDENDUM C

1. Sample AC Enclosure



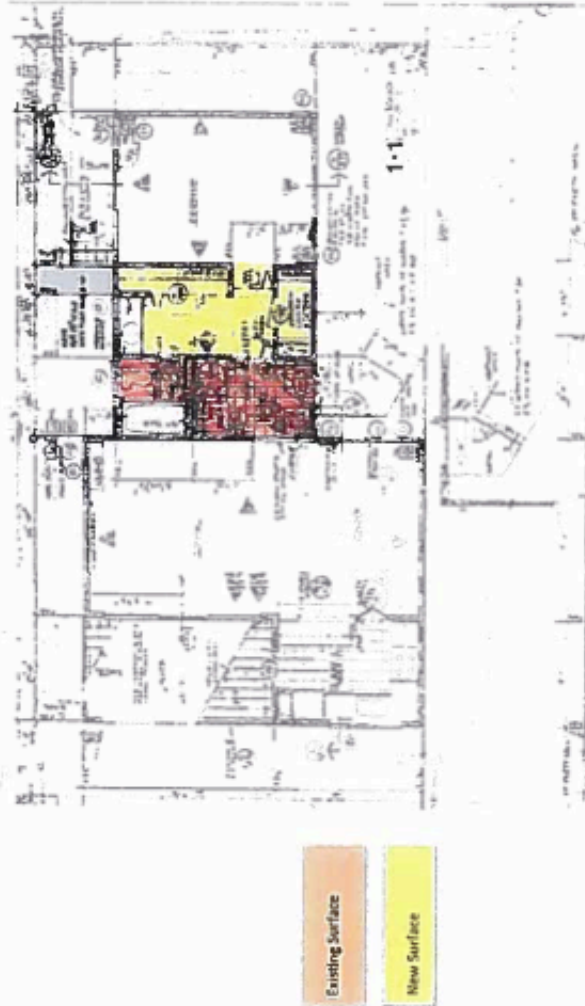
NOT TO SCALE

ADDENDUM D

**Floor plans for Ekahi One Bed, One Bath, Ekahi One Bed, Two Bath 1-2 A
Ekahi One Bed, Two Bath and Two Bed, Two Bath, Alternate #1**

ADDENDUM D EXHIBIT I

Ekahi One Bed One Bath

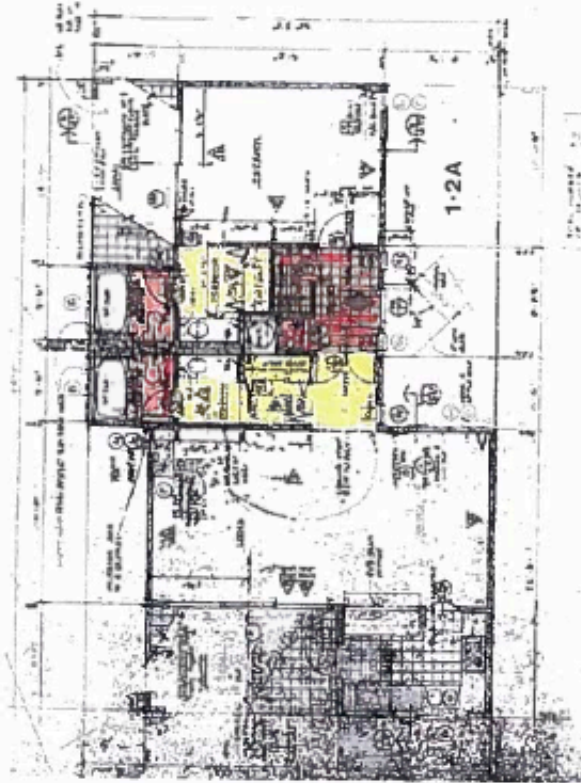


Allow 3 ft. of hard surface (H.S.) in front of vanity to meet wall

ADDENDUM D

EXHIBIT II

Ekahi 1 Bed, 2 Bath 1-2 A

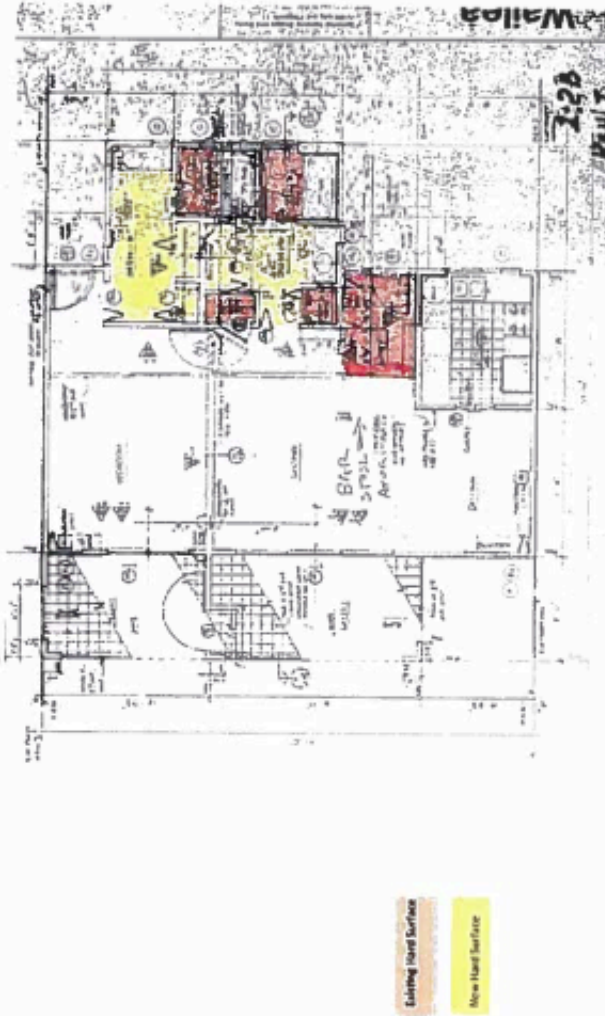


Allow 4 feet of H.S. in front of guest vanity.
Master, allow H.S. in vanity area (5'-4" ft + closet). This prevents having to seam bedroom carpet at bath doorway.

ADDENDUM D

EXHIBIT III

Ekahi 1 Bed, 2 Bath



Allow 4 feet of H.S. in front of master vanity to meet wall.
 Allow new H.S. in front of washer dryer and guest vanity.

ADDENDUM D

EXHIBIT IV

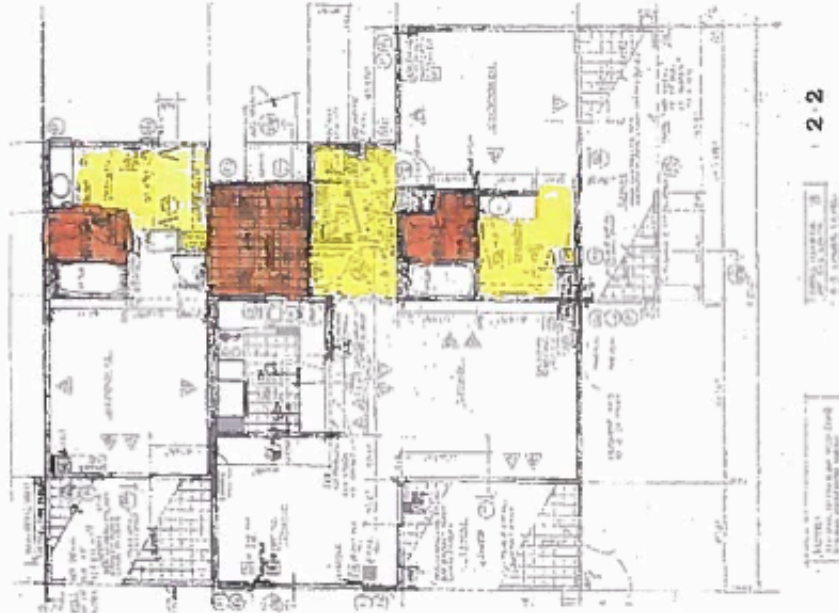
Ekahi 2 Bed, 2 Bath, Alternate #1



Allow 3 feet H.S. in front of bed room #2 vanity to meet wall.

Allow H.S. in front of washer dryer.

Master, allow H.S. in vanity area (4 ft + closet). This prevents having to seam bed room carpet at bath doorway.



ADDENDUM E

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL ☒ PICK-UP ☐:

McKeon Sheldon Mehling LLLC
c/o Shannon Sheldon
2145 Kaohu Street, Suite 203
Wailuku, Hawaii 96793

TMK No. _____

Total pages: _____

LICENSE AGREEMENT

This License Agreement ("Agreement") is made as of this ____ day of _____, 20____ ("Effective Date"), by _____, with a mailing address of _____, as a unit owner ("Owner") and the Association of Apartment Owners of Wailea Ekahi (the "Association"), acting on behalf of the owners of Wailea Ekahi condominium project ("Project").

RECITALS

WHEREAS, the Project was created by that certain Declaration of Condominium Property Regime of Wailea Ekahi (the "Declaration"), as amended;

WHEREAS, pursuant to the Declaration and Bylaws of Association of Apartment Owners of Wailea Ekahi, the Association is vested with the right and obligation to administer the common elements and certain limited common elements with respect to the Project;

WHEREAS, Owner is the fee simple owner of that certain unit No. _____ ("Unit"), located in the Project, and which is more particularly described in the Declaration;

WHEREAS, Owner desires to alter certain common elements in the matter described in Exhibit "A" attached hereto and incorporated herein by reference ("Altered Area") in accordance with the provisions set forth in the Declaration, Bylaws and rules and regulations of the Project;

WHEREAS, the Association is currently responsible for the maintenance and cost of such maintenance within the Altered Area as set forth in the Declaration, and allocates the cost of such maintenance among the various unit owners in the Project in accordance with the provisions in the Declaration and Bylaws;

WHEREAS, Owner, in consideration for the approval to install and/or alter such structures or elements in the Altered Area and to relieve the Association of the costs and maintenance responsibilities that pertain to the Altered Area has agreed to indemnify, defend and hold harmless the Association from and against any and all claims, damages, liabilities, losses, costs or expenses that may arise from the construction of, addition to, and maintenance of any structures or elements in the Altered Areas;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and Association hereby agree as follows:

1. Indemnification. Owner hereby agrees to indemnify, pay, protect, defend and hold Association and its directors, officers, owners, employees, agents and representatives, harmless from and against any and all claims, liabilities, damages, losses, costs and expenses, including attorneys' fees and costs, caused by (directly or indirectly) or otherwise arising from the development, use, construction and maintenance at or of the Altered Area by Owner or any licensee, invitee, guest of Owner or person acting on behalf of Owner. This indemnification is to be interpreted broadly to protect the Association from claims that may arise from the work or use that Owner wishes to accomplish at the Altered Area.

2. Delegation of Rights and Obligations. Commencing on the date first written above, Association hereby agrees to temporarily delegate its rights and obligations pertaining to the Altered Area, including but not limited to the maintenance and cost of maintenance in such Altered Area, as set forth in the Declaration, to Owner. Upon the Effective Date of this Agreement, Association shall temporarily delegate and Owner shall assume the Association's rights and obligations pertaining to the Altered Area, which shall include the following obligations:

a. Owner shall be solely responsible for the maintenance, repair, replacement and removal of any and all structures, additions, or elements developed, built or placed in the Altered Area, which must conform with the standard of maintenance practiced by the Association on the common element and shall be done periodically and in a timely fashion to ensure such conformity; provided that Association shall have the right to periodically inspect the Altered Area and all improvements, structures, additions and elements on or at the Altered Area;

b. Owner shall be solely responsible for all costs and expenses relating to or arising from Owner's use of the Altered Area, including any and all damages to any units, limited common elements or common elements at the Project;

c. Owner shall be solely responsible for obtaining the necessary permits and for paying the necessary fees for such permits as required by the laws of the State of Hawaii or the County of Maui; and

d. Owner shall observe, comply and perform all laws, ordinances, rules and regulations, now or hereafter made by any governmental authority applicable to the exercise of Owner's reserved rights described hereinabove.

The Association, in its sole and absolute discretion, shall have the right to withdraw its temporary delegation to the Owner of the rights and responsibilities set forth in this Section and reassume such rights and responsibilities as to such Altered Area as set forth in the Declaration upon ten (10) calendar days' notice to the Owner.

3. License; Reservation of Association's Rights.

a. License. The Association hereby grants to Owner an exclusive license ("License") to enter upon the Altered Area and to use, seven (7) days a week, twenty-four hours per day, the Altered Area for the purposes of designing, installing, maintaining, operating, repairing and improving the Altered Area for the purpose identified in Exhibit "A" hereto, and for no other business or purpose and shall not be modified as to use without the express prior written consent of Association. The License commences upon the Effective Date and terminates upon the end of the Term as herein defined. The Association also grants Owner the right to temporarily use additional space within the project as a staging area during the installation, maintenance, repair, replacement, and improvement at the Altered Area, provided that prior to using such space as a staging area, Owner shall submit plans for such use to the Association, for the Board of Director's prior written approval. The exact location and size of such space shall be determined by mutual agreement between the Parties. In connection with the foregoing license and uses, Owner agrees that it shall not commit

or suffer to be committed any strip or waste in or upon the Altered Area nor any unlawful, improper or offensive use of the Altered Area, nor shall Owner maintain any public or private nuisance or do any other action which may interfere with or disturb the quiet enjoyment of the Association and other occupants at the project or which may be deemed by the Association in its sole discretion to be disreputable or hazardous. Owner shall not permit the imposition of a lien or any other encumbrance on the Altered Area or any interest therein.

b. **Sublicense.** Owner is prohibited from granting any sublicenses under this Agreement without written prior consent of the Association. Any sublicensee shall acknowledge the receipt of this Agreement and agree to the conditions herein.

c. **Reservation of Rights of Association.** Notwithstanding anything contained in paragraph 3(a), the Association shall retain the rights to: (i) use any portion of the Altered Area, whether common or limited rights for any purpose, provided such use does not interfere with Owner's rights under this Agreement; (ii) grant easements to, and enter into any lease and/or license agreements with, third persons, provided that such third persons do not interfere with any of Owner's rights under this Agreement; (iii) place and maintain such equipment and fixtures relating to the Association's operations, including air-conditioning and HVAC units, equipment, vents, and such other infrastructure as may be reasonably located within the Altered Area, provided that it does not interfere with any of Owner's rights under this Agreement; and (iv) permit persons to enter the Altered Area for the purpose of inspecting, maintaining, repairing, removing, replacing, supplementing, and adding to the Altered Area, from time to time, without the necessity of prior notice to Owner.

4. Insurance.

a. Owner shall obtain insurance coverage from an insurance carrier approved by the Association with a minimum limit of \$300,000 for liability coverage conveying the loss to any structures or elements in the Altered Area and covering general liability as to the Altered Area, to the extent required by the Association. Such insurance shall also be written in a company or companies lawfully authorized to do business in the State of Hawaii. All insurance policies and renewals thereof shall be in form acceptable to Association and shall specifically be endorsed to name Association as an additional insured. Owner shall procure any other insurance covering the improvements on the premises, any such policy or policies shall likewise be specifically endorsed to name the Association as an additional insured, and will be claimable by Association for application in accordance with this section, and whether or not so made payable may be recovered by Association by any appropriate proceeding.

b. Owner shall provide Association with copies of each and every notice and certificates of insurance concerning the termination or renewal of any policy of insurance obtained in compliance with this Agreement within fourteen (14) calendar days that such notice is issued. Coverage shall not be canceled or materially reduced without at least thirty (30) days prior written notice to Association.

5. Waiver. Owner waives Owner's rights to bring any claim or cause of action against Association in the future relating to Owner's development, construction or use in the Altered Area, except for those causes or claims related to Association's own gross negligence or willful misconduct.

6. Unconditional Obligation. Owner hereby agrees that its obligations hereunder shall be continuing, absolute and unconditional under any and all circumstances, and shall not be subject to any reduction, limitation, impairment, termination, defense, set-off, or counterclaim in recoupment whatsoever (all of which are hereby expressly waived by Owner), whether by reason of any claim of character whatsoever, including, without limitation, any claim of waiver, release, surrender, alteration or compromise, or by reason of any liability at any time of any person to Owner or otherwise, whether based on any agreement, instrument or document.

7. Duty to Defend, Attorneys' Fees and Costs. Upon written request by Association, Owner shall, in accordance with its obligations herein, defend Association by attorneys and other professionals that have been approved by Association. Notwithstanding the foregoing, Association may, in its sole discretion, engage its own attorneys and other professionals to defend or assist it at the Owner's expense if Association has reason to believe that its interests are not being adequately represented or diverge from other interests being represented by such counsel, and at the option of Association, its attorneys shall control the resolution of any claim or proceeding. Upon demand, Owner shall pay or in

the sole discretion of Association, shall reimburse Association for the payment of reasonable fees and disbursements of attorneys, and other professionals in connection therewith. Nothing contained herein shall prevent Association from employing separate counsel in any such action at any time and participating in the defense thereof at its own expense.

All costs incurred through enforcement of this Agreement shall be immediately reimbursable to Association when and as incurred, and in the event of any litigation, claim or other proceeding, without any requirement of waiting for the ultimate outcome of such litigation, claim or proceeding, and Owner shall pay to Association any and all costs within ten (10) days after written notice from Association has been made which notice shall itemize the amounts thereof incurred to the date of such notice. In addition to any other remedy available for the failure of Owner periodically to pay such costs, such costs, if not paid within said ten-day period, shall bear interest at a rate of one percent (1%) per month from the end of such ten (10) day period; provided, however that if such interest rate shall exceed the maximum rate allowed by law, then such costs shall bear interest at the maximum rate allowed by applicable law. All costs which remain unpaid for a period of more than thirty (30) days from the end of such ten (10) day period, shall constitute a lien against the Unit, which shall be effectuated in the manner set forth in the declaration and Bylaws for default in payment of assessments.

8. Term.

a. Initial Period. The initial term of this Agreement is five (5) years from the Effective Date ("Initial Period") unless sooner terminated as provided herein.

b. Renewal Period. Provided that the Owners is not in default, and requisite owner approval is obtained, the Agreement shall renew and shall continue until terminated by one of the parties or until Owner conveys, sells, or otherwise transfers the Unit. The Initial Period and Renewal Period are collectively referred to as the "Term".

9. Termination.

a. It is understood and agreed that termination of the Agreement by either party on any ground shall be without prejudice to any other rights or remedies which either party may have.

b. Either party may cancel and terminate the Agreement for no cause by giving sixty (60) days' written notice of such termination to Association.

c. In the event of the failure by Owner to perform or observe any material term or covenant or agreement contained in this Agreement, the Association may terminate the Agreement and the other rights granted to Owner under this Agreement by giving notice of termination to Owner (a "Notice of Termination"), which termination shall become effective automatically unless Owner completely cures the breach within thirty (30) calendar days of the giving of the Notice of Termination.

d. The Association may elect, by written notice to Owner, to terminate the Agreement effective upon twenty (20) calendar days prior written notice for the following:

- i. Any required consent by an adjacent owner of the Project is withdrawn in writing;
- ii. Owner institutes bankruptcy proceedings;
- iii. Owner fails to pay regular maintenance fees and/or special assessments for common expenses and does not cure the delinquency within sixty (60) days;
- iv. Owner assigns, attempts to assign, sublicense, attempts to sublicense, or otherwise transfers or attempts to transfer any of its rights or obligations hereunder without the prior written consent of the Association, any such approval by the Association is not to be unreasonably withheld. Any such attempted or completed assignment, sublicense or transfer, whether voluntary or by operation of law, directly or indirectly, will be void and of no force or effect; or

v. A final judgment is entered against Owner, or the occurrence of any other event, which individually or in aggregate, would have a materially adverse effect on the financial condition or otherwise, operations, performance, properties or prospects of Owner or its ability to perform timely its obligations under this Agreement.

e. Upon the expiration or termination of the Agreement for any reason whatsoever, all of the rights of Owner under this Agreement shall forthwith terminate and immediately revert to the Association, and Owner shall forthwith discontinue all use of the Altered Area, and at Owner's sole cost and expense, Owner shall remove any alterations, obstructions or barriers at the Altered Area and restore the Altered Area to the condition existing prior to Owner's alterations.

10. Owners' Obligations.

a. Owner covenants that Owner has obtained written consent, if necessary, from directly affected unit owners to alter the common elements, and Owner acknowledges and agrees that this Agreement may be terminated if such written consent is withdrawn at the sole discretion of the owner of the affected unit.

b. Owner shall repair any damage to the common elements or damage at his or her unit or any other units, which arise from or are in connection with Owner's use of the Altered Area. Owner shall repair and/or replace all damages at Owner's sole expense within thirty (30) calendar days of notification by the Association or its representatives.

11. Remedies. This Agreement shall be voidable by Association upon failure of Owner to fulfill any of the obligations to exercise any of the rights set forth in this Agreement up to the standards as determined by the Board, in its sole discretion. In addition, the Association shall have the option to offer Owner the right to cure the noncompliance within thirty (30) days after notice to the Owner of such noncompliance. In the event Owner does not take corrective action once directed to do so by Association, the Association may revoke its temporary delegation of rights and maintenance obligations and shall relieve Association of such rights and obligations pertaining to the Altered Area. The Association may then correct and amend the noncompliance or damage in the Altered Area and charge the expense of remedying such noncompliance or damage to the Owner. All sums charged to Owner, which remain unpaid for a period of more than thirty (30) days from the day Owner receives a bill for such charges shall constitute a lien against the Unit. Such lien shall be effectuated in accordance with the procedures set forth in the Hawaii Revised Statutes, Declaration and Bylaws for default in payment of Assessments.

12. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of successors, assignees, personal representatives, heirs and legatees of all of the respective parties hereto.

13. Governing Law; Venue. This Agreement shall be governed by, interpreted under, and construed and enforceable in accordance with the laws of the State of Hawaii. Any action to enforce this Agreement shall be venued in the Second Circuit Court on the Island of Maui.

14. No Warranty. Owner accepts the Altered Area "as is", "where is" and "with all faults"; the Association makes no representations or warranties with respect to the condition of the Altered Area or its suitability for Owner's purposes, nor has the Association made any commitments to make any improvements or additions to the Altered Area.

15. Amendment. No provisions of this Agreement may be changed, waived, discharged or terminated orally or by any other means except by an instrument in writing signed by both parties.

16. Assignment. Owner shall not assign this Agreement without first obtaining the prior written consent of Association. Any consent thereto given by Association shall be deemed a consent to only that specific assignment and shall not be deemed a consent to all future assignments.

17. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and said counterparts shall together constitute one and the same document.

18. Electronic/Facsimile Signatures. A signature sent via facsimile, electronic mail attachment or similar electronic means shall be the equivalent of and shall have the same force and effect as an original signature.

19. No Party Shall Be Deemed The Drafter Of This Agreement. In entering into this Agreement, the Parties represent that they have read this Agreement and that the terms are fully understood and voluntarily accepted by them. The Parties are represented by counsel and their counsel have reviewed and revised, or have had full opportunity to review and revise this Agreement, and it is understood and agreed that the rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendment of it.

20. Headings. In this Agreement, the captions or headings of paragraphs and subparagraphs are inserted for convenience, reference, and identification purposes only, and shall neither control, define, limit nor affect any provisions of this Agreement.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Agreement as of the day and year first written above.

“Owner”

By _____

Printed Name: _____

By _____

Printed Name: _____

“Association”

ASSOCIATION OF APARTMENT OWNERS OF WAILEA
EKAHI

By _____

Printed Name: _____

Its: President

EXHIBIT "A"

ALTERED AREA

1. The Altered Area shall consist of the area of approximately _____ square feet located in/at _____.
2. The purpose for the use of the Altered Area is for _____.

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 20__ before me personally appeared _____, to me personally known, who, being by me duly sworn, did say that he is the President of the Association of Apartment Owners of Wailea Ekahi and the said instrument was signed on behalf of said association by authority of its board of directors, and said officer acknowledged said instrument to be the free act and deed of said Association. Said Association has no seal.

Signature:

Print Name:
Notary Public, State of Hawaii
My commission expires: _____

Doc. Date: _____	# Pages: ____
Notary Name: _____	_____ Circuit
Doc. Description: LICENSE AGREEMENT	
_____ Notary Signature	_____ Date
NOTARY CERTIFICATION	(Stamp or Seal)

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 20____ before me personally appeared _____, to
me known to be the person described in and who executed the foregoing instrument and acknowledged that ____ executed the
same as ____ free act and deed.

Signature: _____

Print Name:

Notary Public, State of Hawaii

My commission expires: _____

Doc. Date: _____ # Pages: ____

Notary Name: _____ Circuit

Doc. Description: LICENSE AGREEMENT

Notary Signature

Date

NOTARY CERTIFICATION

(Stamp or Seal)