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**SECOND AMENDMENT TO DECLARATION OF CONDOMINIUM PROPERTY  
REGIME OF ISLANDER ON THE BEACH; JOINDER**

**SECOND AMENDMENT TO DECLARATION OF CONDOMINIUM PROPERTY  
REGIME OF ISLANDER ON THE BEACH; JOINDER**

This Second Amendment To Declaration Of Condominium Property Regime of Islander on the Beach (“Second Amendment”) is made as of \_\_\_\_\_, 2004 by **PULUWAI, LLC**, a Hawaii limited liability company (“**Developer**”), whose mailing address is 75-5801 Alii Drive Suite AU2, Kailua-Kona Hawaii 96740.

RECITALS:

A. The Declaration of Horizontal Property Regime of Islander on the Beach was filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 1095514 (as amended the “Declaration”) and is noted on Transfer Certificate of Title No. \_\_\_\_\_ with Condominium Map No. 469 (as amended the “Condominium Map”), creating the Islander on the Beach condominium project (the “Project”) and was amended by First Amendment of Declaration of Horizontal Property Regime of Islander on the Beach filed as Land Court Document No. 1188203 together with an amendment to the Condominium Map. B.

B. The Developer is the current fee owner of all apartments in the Project and their appurtenant common interests.

C. Inns Investment Company, a Hawaii general partnership (“Inns”) is the holder of the Apartment Sublease of Apartment 23 dated November 9, 1981 filed as Land Court Document No. 1095833.

The Developer as the owner of more than ninety percent (90%) of the common interest in the Project desires to amend the Declaration as set out in this Second Amendment and Inns Investment Company as the only other apartment owner in the Project joins in this Second Amendment to consent to it.

AMENDMENT:

The Declaration is amended as follows:

1. Exhibit “B” to the Declaration is further amended to correct the numbering of certain Apartments and make them consistent with the Condominium Map as follows:

Apartment Number in the First Amendment	Corrected Apartment Number
C122	B322
E339 listed between D338 and E140	E139
E345	F145
G165	G255
Note that E339 listed between E244 and E340 is unchanged.	

2. Paragraph D.2 Limited Common Elements is amended by deleting and substituting the following for paragraph (d) and adding paragraph (e) as follows:

“(d) The following shall be limited common elements appurtenant to and for the exclusive use of Apartment 21:

(i) In Building A the Manager’s Office, the Office and the front desk in front of the Manager’s Office and the Office and marked with a double line on the Condominium Map, at the southern side of Buildings A,

(ii) The linen closets located in Buildings B, C, D, E, F, G and H as shown on the Condominium Map, except that the Association of Apartment Owners, through its authorized representatives or agents, shall have reasonable access onto and within those linen closets that contain water heaters, and their accessories, for the limited purpose of inspection, repair, maintenance, replacement and such similar uses and such water heaters and accessories are excluded from the designation of this limited common element.

(iii) The whole of Building J:

(e) Except for (i) the foregoing, (ii) all roadways, sidewalks, parking spaces, and driveways, and (iii) such of the other common elements as serve or are reasonably for the benefit of Apartment 23, all other common elements including other buildings, the other land and planters, the restrooms in Building A, and the swimming pool shall be appurtenant to and for the exclusive use of all apartments other than Apartment 23.”

3. There is added to paragraph E. Easements the following subparagraphs:

“4. Easements for Sales Activities. Developer and its agents, employees, contractors, and licensees shall have the right and easement to conduct extensive sales activities in the Project, including the Common Elements (but not Limited Common Elements appurtenant to Apartment 23), including the use of model Apartments, sales and management offices, and extensive sales displays and activities, provided that the Developer’s easement shall terminate on

the Sell-Out Date. The Developer shall be responsible for any additional cleaning and repairs caused by its exercise of this easement. The “Sell-Out Date” means the date on which all of the Apartments in the Project have been conveyed to persons other than Developer or Developer’s mortgage lender or the last time-share interest (if any) in the Project has been transferred.

5. Developer’s Easement for Repair and Renovation. Until the Sell-Out Date, Developer, its agents, employees, contractors and licensees shall have an easement over, under and upon the Project, or any portion of the Project as may be necessary or useful in the opinion of Developer for the completion of repairs and renovations to the Project, except Apartment 23 and its Limited Common Elements.

6. Developer’s Easement to Create Noise etc. Developer, its agents, employees, contractors and licensees shall have an easement over, under and upon the Project or any portion of the Project, to create and cause noise vibration, dust and other nuisances created by or resulting from any work connected with or incidental to the renovation, repair or sale of any Apartment or other improvements in the Project, and each Apartment owner, lessee, mortgagee, lien holder or other person with an interest in the Project waives any right, claim or action which such person may have or acquire against Developer, its agents, employees, contractors, licensees, successors and assigns as a result of such activity or activities.

7. Developer’s Rights to Grant Easements. Developer reserves the right to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across, or through the Common Elements (including the Limited Common Elements but excluding Apartment 23 and its Limited Common Elements) for any purpose Developer considers necessary or appropriate in Developer’s sole discretion, which may include those purposes which are necessary to the operation, care, upkeep, maintenance or repair of any Apartment or the Common Elements, or any easements for utilities benefiting the Project or any adjacent property, or for any public purpose, including the grant of designated easements over, under, across and through the Land for the pipeline transmission of water and other utilities, and other designated easements; provided, however, that in exercising its rights under this Section 7. Developer shall not do anything or permit anything to be done which shall unreasonably interfere with the use of the affected Common or Limited Common Element for its originally intended purpose, unless such action is required to ensure the public health, safety or welfare or to comply with any governmental rule, regulation, law or ordinance. The rights set out in this Section 7. shall continue for a period of twenty-four (24) months following the Sell-Out Date. Developer, by a recorded instrument, may transfer some or all of the rights under this Section 7. to the Association, to be exercised as determined by the Board.

8. Compliance with Laws. If the Project is found not to be in compliance with any federal, state or local law in effect at the time of completion of the Project, Developer shall have the right, at its election, at any time afterwards, to enter the Project (except Apartment 23 and its Limited Common Elements) and make such modifications to the Common Elements as are necessary, in Developer’s judgment, to bring the Project into compliance with the applicable laws. For example, the Developer can restripe the parking stalls that are not Limited Common Elements to provide accessible parking stalls. This right shall include the right to cause noise, dust, vibrations, and other disturbances and nuisances incidental to modifying the

Common Elements as required; provided, however, that Developer or any party performing such work on behalf of Developer shall make reasonable efforts to minimize such disturbances and nuisances.

9. Power of Attorney. To the extent that the joinder or consent of any Owner may be required in order to confirm, effectuate or exercise any easements or rights granted or reserved to Developer, or to validate any act or thing done in accordance with such easements, rights and reservations of Developer, such joinder or consent may be executed and given by Developer as the attorney-in-fact for, and in the name and stead and on behalf of, such Owner. Each Owner, by acquiring or accepting the ownership of an Apartment or any other interest in the Project or any Apartment (i) appoints Developer as such Owner's attorney-in-fact as aforesaid, such appointment being coupled with an interest and being irrevocable, and (ii) agrees that such Owner shall, promptly upon Developer's request and for no further consideration, execute, acknowledge and deliver to Developer such instruments as Developer may reasonably require to evidence or confirm such joinder or consent."

4. Paragraph G. Use is amended to read as follows:

"G. USE. Each of the apartment units shall be used only in accordance with the uses permitted under the applicable laws and ordinances, unless such uses are prohibited by the Association, in accordance with the terms of this Declaration, the By-Laws of the Association of Apartment Owners, and the House Rules or any Apartment Deed as they may exist or as they may be amended from time to time and each owner shall observe, comply with, and perform all rules and regulations, ordinances, and laws made or adopted by the various governmental agencies. To the extent that such uses may not be prohibited by such laws and ordinances, the apartment units may be used for hotel, transient vacation rentals, resort, apartment, or related resort uses. Type 1 and Type 2 apartments shall not be converted in dwelling units and no cooking device shall be installed in any Type 1 or Type 2 apartment. The apartment units MAY BE USED FOR TIME SHARING PURPOSES as defined in, and in conformance with the applicable provisions of Chapter 514E, Hawaii Revised Statutes, as amended, BUT ONLY WITH THE PRIOR WRITTEN APPROVAL OF THE DEVELOPER which approval must be filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii and which approval may be withheld for any reason or granted on such terms and conditions as are satisfactory to the Owner. All non—living units may be used for commercial and related uses. The front desk area next to the Manager's Office, that is a limited common element appurtenant to Apartment 21, shall always be maintained as a front desk and reception area. In no event shall the uses of the apartment units or common areas be inconsistent with a resort type use. Notwithstanding the foregoing or any other provision in this Declaration, the By-Laws, or the House Rules, and notwithstanding any action which may be taken by the Association or its Board of Directors, Apartment 23 may be used for any commercial and related uses permitted under applicable governmental laws and ordinances so long as any change in use does not materially reduce the value of the project. The owner of Apartment 23 may upon obtaining the prior consent of the Board of Directors and no others make any lawful structural alterations and/or additions to Apartment 23, and any alterations and/or additions to the exterior of the structures within Apartment 23 or to any other portion or portions of the limited common elements appertaining to Apartment 23 and the Board of Directors and the Owner will grant such consent so long as such alterations or additional are consistent with the general architectural design of the Project."

5. New Paragraphs X and Y are added as follows:

“X. Alterations to the Project. The following rights are reserved to Developer with respect to Apartments owned by Developer.

1. Within an Apartment. Any alterations or additions within an Apartment or a Limited Common Element appurtenant to an Apartment, which do not affect the structural integrity of the Building or the soundness or safety of the Project, or reduce the value of the Project or impair any easement, shall not require the approval of the Board or any other person.

2. Adjacent Apartments. Developer, if owning two or more Apartments, which Apartments are separated only by Common Elements which are walls or doors, may alter or remove all or portions of the intervening walls or doors if the Developer satisfies the following conditions:

(a) The structural integrity of the Building or the soundness and safety of the Project are not affected, the value of the Project is not reduced, and no easement or hereditament of the Project is impaired;

(b) The remainder of the Common Element is restored to a finish substantially comparable to the finish of that Common Element prior to the work; and

(c) On the termination of the common ownership of such adjacent Apartments, if the intervening walls or door shall have been altered or removed in accordance with this Section X.2 each of the Owners of such Apartments shall be obligated to restore the intervening walls or doors to substantially the condition in which they existed before the alteration or removal.

If the adjacent Apartments remain in common ownership, the owner of the adjacent Apartments which have been altered or removed in accordance with this Section 2. may, at any time, restore the intervening walls or doors to substantially the condition in which they existed before the alteration or removal.”

Y. Amendments by Developer.

1. Before First Conveyance. At any time prior to the first recording of a conveyance or transfer (other than for security) of an Apartment, other than Apartment 23, to a person other than Developer, Developer may amend this Declaration (including all Exhibits), the Bylaws and the Condominium Map in any manner, without the consent or joinder of any Apartment purchaser or any other party; provided however that no amendment using this Section 1. shall adversely affect the rights of Apartment 23 or its Limited Common Elements without the consent or joinder of the Apartment Owner of Apartment 23.

2. Amendments Required by Law etc. No matter what else this Declaration says, until the Sell-Out Date, Developer shall have the right (but not the obligation) to amend this Declaration and the Bylaws (and the Condominium Map, if appropriate) without the consent or

joinder of any Apartment owner, lienholder or other person or entity, for the purpose of meeting any requirement imposed by (i) any applicable law, (ii) the Real Estate Commission of the State of Hawaii, (iii) any title insurance company issuing a title insurance policy on the Project or any of the Apartments, (iv) any institutional lender lending funds on the security of the Project or any of the Apartments, or (v) any other governmental or quasi-governmental agency, including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development and the Veterans Administration. However, no amendment which would change the common interest appurtenant to an Apartment or materially change the design, location or size of an Apartment shall be made without the consent of all persons having an interest in such Apartment .

3. Subdivision And Consolidation Of Apartments.

(a) Subdivision.

(i) With respect to Apartments owned by Developer, Developer can amend the Declaration and Condominium Map without the joinder of any other Owner to do any or all of the following:

(1) Subdivide the Apartment to create two or more Apartments;

(2) Designate which Limited Common Elements of the subdivided Apartment will be appurtenant to the Apartments resulting from the subdivision;

(3) Change parts of the existing Apartment to Common Elements or to Limited Common Elements appurtenant to one or more of the Apartments resulting from the subdivision; and

(4) Change parts of the Limited Common Elements appurtenant only to the subdivided Apartment into parts of one or more of the Apartments resulting from the subdivision.

(ii) The common interest that was appurtenant to the subdivided Apartment will be divided among the Apartments resulting from the subdivision according to the ratio of their net living areas. The total of the common interests for the newly created Apartments must be equal to the common interest of the subdivided Apartment.

(b) Consolidation.

(i) With respect to Apartments owned by Developer, Developer can amend the Declaration and Condominium Map without the joinder of any other Owner to do any or all of the following:

(1) Consolidate the apartments into a single Apartment; and

(2) Make any Common Element walls between the Apartments part of the Apartment or its Limited Common Elements. This does not apply, however, to load-bearing walls.

(ii) The common interest of the newly created Apartment will be equal to the sum of the common interests of the Apartments being consolidated.

(c) Consolidation and Resubdivision. With respect to Apartments owned by Developer, Developer can amend the Declaration and Condominium Map without the joinder of any other Owner to consolidate and resubdivide the Apartments in a single amendment using the rights provided in Sections (a) and (b).

4. As Built Amendment. Notwithstanding the lease, sale or conveyance of any of the Apartments, if Developer exercises its rights to alter the Project, Developer may amend this Declaration (and when applicable, any Exhibits to this Declaration) and the Condominium Map to file the “as-built” verified statement required by Section 514A-12 of the Act (i) so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans previously filed fully and accurately depict the layout, location, Apartment numbers, and the dimensions of the Apartments as built, or (ii) so long as the plans filed with the verified statement involve only minor changes to the layout, location, or dimensions of the Apartments as built or any change in the Apartment number.”

Except as specifically set out in this Second Amendment the Declaration remains unmodified and in full force and effect.

IN WITNESS WHEREOF the Developer has executed this Second Amendment.

PULUWAI, LLC

By \_\_\_\_\_  
Brian A. Anderson  
Its Manager

**JOINDER:**

Inns Investment Company, a Hawaii general partnership, the holder of the Apartment Sublease dated 23 November 9, 1981 filed as Land Court Document No. 1095833 joins in the foregoing Second Amendment to consent to it.

INNS INVESTMENT COMPANY

By \_\_\_\_\_

Its General Partner

By \_\_\_\_\_

Its General Partner

STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_ day of July, 2004, before me personally appeared Brian A. Anderson, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

STATE OF HAWAII )  
 )  
CITY AND COUNTY OF HONOLULU ) SS:

On this \_\_\_\_ day of July, 2004, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

STATE OF HAWAII )  
 )  
CITY AND COUNTY OF HONOLULU ) SS:

On this \_\_\_\_ day of July, 2004, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_