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**SECOND AMENDMENT TO  
DECLARATION OF CONDOMINIUM PROPERTY REGIME OF  
KEAWE BUSINESS CENTER OFFICES AND  
BYLAWS OF THE ASSOCIATION OF UNIT OWNERS  
OF KEAWE BUSINESS CENTER OFFICES**

THIS SECOND AMENDMENT TO DECLARATION OF CONDOMINIUM PROPERTY REGIME OF KEAWE BUSINESS CENTER OFFICES AND BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF KEAWE BUSINESS CENTER OFFICES (this "Amendment"), is made as of November 22, 2013 (the "Effective Date"), by Keawe Business Center, LLC, a Hawaii limited liability company ("KBC"), the address of which is 2 Henry Adams Street, Suite 450, San Francisco, California 94103.

**RECITALS:**

A. By that certain Declaration of Condominium Property Regime of Keawe Business Center Offices, dated August 27, 2007, recorded in the Bureau of Conveyances of the State of Hawaii (the "Bureau") as Document No. 2007-159588 (the "Original Declaration") and that certain Bylaws of the Association of Unit Owners of Keawe Business Center Offices dated August 27, 2007, recorded in the Bureau as Document No. 2007-159589 (the "Bylaws"), as amended by that certain First Amendment to Declaration of Condominium Property Regime of Keawe Business Center Offices and By-Laws of the Association of Unit Owners of Keawe Business Center Offices, dated April 1, 2009, recorded in the Bureau as Document No. 2009-155062 (the "First Amendment"; together with the Original Declaration, the "Declaration"), and pursuant to Hawaii Revised Statutes Chapter 514B, Lahaina Commercial Center, LLC, a California limited liability company, as "Declarant", submitted certain land and improvements, as described in the Declaration, to a condominium property regime known as Keawe Business

Center Offices (the "Project"), with the plans therefor filed as Condominium Map No. 4509 (the "Condominium Map").

B. By that certain Limited Warranty Apartment Deed, dated May 14, 2013, recorded in the Bureau as Document No. A-48850426 (the "KBC Deed"), fee simple title to the following units in the Project (as well as their respective common interests) was conveyed by Real Estate Delivery 2, Inc., a Hawaii corporation ("RED2"), to KBC: Units 101, 105, 106, 201, 202, 203, 204, 205, 206, 301, 302, 305 and 306 (collectively, "KBC's Units").

C. Contrary to the requirements of Section 4.4 of the Declaration, neither the KBC Deed nor the deed by which RED2 originally took title to KBC's Units (which deed was recorded in the Bureau as Document No. A-44700595) assigned any parking stalls to any of KBC's Units. As such, as of the Effective Date, none of KBC's Units has a parking stall assigned to it.

D. As of the Effective Date, the following parking stalls have been assigned to the following units that are not among KBC's Units: Unit 102 – parking stall no. 10; Unit 103 – parking stall no. 9; Unit 104 – parking stall no. 8; Unit 303 – parking stall no. 1; and Unit 304 – parking stall no. 52. As of the Effective Date, parking stall nos. 13 through 32 comprise the "Customer Stalls" and, thus, are not available for assignment to any of the units in the Project. As of the Effective Date, parking stall nos. 11 and 12 are "handicap accessible" parking stalls, which are to be available for use by guests or employees of the Project on a first-come-first-served basis, and, thus, are not available for assignment to any of the units in the Project. As such, as of the Effective Date, the following parking stalls are unassigned and available for assignment to KBC's Units: parking stall nos. 2 through 7, and 33 through 51.

E. Section 17.1 of the Declaration provides, in relevant part, that "Except as otherwise expressly provided herein or in the Act, this Declaration may be amended only by the affirmative vote or written consent of the owners of units in the Project to which are appurtenant sixty-seven percent (67%) of the common interests, evidenced by an instrument in writing, signed and acknowledged by any two officers of the Association, which amendment shall be effective upon recording; . . . ." Section 10.2 of the Bylaws provides, in relevant part, that "These Bylaws may be amended in any respect consistent with law or the Declaration by affirmative vote of sixty-seven percent (67%) of all unit owners at any meeting of the Association duly called for such purpose or by written consent of sixty-seven percent (67%) of all unit owners, and shall be effective only upon the recording in the Bureau of Conveyances of an instrument setting forth such amendment duly executed by the authorized officers of the Association. . . ."

F. As of the Effective Date, KBC owns all of KBC's Units, appurtenant to which are, collectively, 77.7217% of the Project's common interests.

G. Pursuant to Section 17.1 of the Declaration and Section 10.2 of the Bylaws, KBC, by its signature below, hereby gives its written consent to amend the Declaration and the Bylaws as more particularly enumerated and set forth in this Amendment.

H. By their respective signatures below, two of the officers of The Association of Unit Owners of Keawe Business Center Offices hereby acknowledge KBC's right and authority to amend the Declaration and the Bylaws as set forth in this Amendment.

I. Unless otherwise defined in this Amendment, all capitalized terms (other than those at the beginning of sentences) shall have the definitions given to them in the Declaration or the Bylaws, as applicable.

**AMENDMENT TO THE DECLARATION:**

NOW, THEREFORE, in consideration of the Recitals, the Declaration is hereby amended as follows:

1. **Definition of Association.** Section 1.2 of the Declaration is amended by replacing the name of the Association with the following:

“Association of Unit Owners of Keawe Business Center.”

2. **Definition of Project.** Section 1.17 of the Declaration is amended in its entirety by replacing it with the following:

“The Project means Keawe Business Center.”

3. **Project Name.** Section 3 of the Declaration is amended in its entirety by replacing it with the following:

“The Condominium Property Regime established hereby shall be known as ‘Keawe Business Center’.”

4. **Adjacent Units.** The second full paragraph of Section 4.3(a) is hereby amended in its entirety to read as follows:

“If two abutting units are owned by the same person or entity (or they are owned by separate owners under an appropriate written agreement), the dividing wall between said units may be removed (or not installed in the first instance) subject to compliance with Section 8.3(f), including providing notice to and obtaining prior written approval of the board, and the boundary between the units shall in that case consist of an imaginary plane located where the centerline of the dividing wall would have been if the dividing wall had been constructed. If a dividing wall is subsequently constructed, the boundary will thereafter be located on a centerline.”

5. **Restrooms.** Section 4.3(e) is amended by adding a new paragraph at the end of that section to read as follows:

“The following shall apply to Units 101, 106, 201, 202, 203, 204, 205, 206, 301, 302, 305 and 306 (each referred to herein as a “Restroom-Required Unit”): Notwithstanding anything to the contrary contained in this Declaration, prior to the use or occupancy of a Restroom-Required Unit as a business or other commercial use and subject to availability of the then remaining water fixture units (FUs) allocated to the Project by the County of Maui (as determined by the board), a private restroom shall be installed and operational within the Restroom-Required Unit, unless the board, in its sole discretion, grants an exemption to a Restroom-Required Unit from this requirement. Proposed plans for such installation, including drainage, shall be subject to board approval pursuant to

Section 8.3(f) below. Without limiting the generality of the foregoing exemption, an example of a board-authorized exemption may be when multiple, adjacent Restroom-Required Units will be operated as a single business, the board may approve the installation of one restroom that will serve such a business occupying multiple adjacent Restroom-Required Units; provided that, if such multiple Restroom-Required Units are no longer operated as a single business, then a private restroom would have to be installed within each Restroom-Required Unit prior to occupancy or use of such Restroom-Required Unit, subject to water fixture units (FUs) then available within the Project (as determined by the board)."

6. Parking Stalls for KBC's Units. Section 4.4 of the Declaration is amended by adding a new paragraph to that section to read as follows:

"The following units shall have the following parking stalls assigned to them as limited common elements for the exclusive of such units:

<u>Unit No.</u>	<u>Parking Stall No(s).</u>
Unit 101	42 and 43
Unit 102	10
Unit 103	9
Unit 104	8
Unit 105	38 and 39
Unit 106	40 and 41
Unit 201	46 and 47
Unit 202	6 and 7
Unit 203	5
Unit 204	4
Unit 205	36 and 37
Unit 206	44 and 45
Unit 301	50 and 51
Unit 302	2
Unit 303	1
Unit 304	52
Unit 305	3, 33, 34 and 35
Unit 306	48 and 49

As set forth in Section 5.2(a), parking stall assignments are subject to change by agreement among unit owners."

7. Common Expenses, etc. Section 5.3 is amended as follows:

a. Section 5.3(b) is amended by adding a new sentence at the end of that section to read as follows:

"Notwithstanding anything in this Section 5.3(b) to the contrary in this Declaration or in the Bylaws, the Association shall enter into a maintenance contract for maintenance and repair of all air conditioning units installed in each unit in the Project, with the costs for routine

maintenance of such air conditioning units to be charged to such unit owners as a common expense; provided that the Association delegates such responsibility to the board and hereby authorizes the board, acting in its sole discretion: (a) to negotiate and enter into such maintenance contract on such terms and conditions that are acceptable to the board, in its sole discretion; (b) to allocate any costs incurred by the Association for extraordinary repairs to the common areas of the Project, including but not limited to, the drainage system, or the repair and replacement of an air conditioning unit, to an individual unit owner; and (c) to determine requirements such as size, type and capacity, that will apply to all air conditioning units installed in the Project in order to conform with the Building specifications and maintain a uniform exterior of the Project and which shall be compatible with the air conditioning maintenance contract then entered into by the board."

b. Section 5.3(c) is amended by adding a new sentence to that section to read as follows:

"Notwithstanding anything in this Section 5.3(c) to the contrary, the cost of water service in a restroom within each unit (e.g., for a sink and toilet) shall be charged to all unit owners as a common expense."

8. Common Elements. Section 8(d) is hereby amended in its entirety to read as follows:

"The common elements shall be used only for the purposes for which they are designed and intended; provided that, nonmaterial additions to or alterations of the common elements for the benefit of individual units are permitted, subject to subsection 514B-140(c) of the Act and Section 8.3 of this Declaration."

9. Additions or Alterations Solely Within a Unit or Limited Common Element. Section 8.3(f) is amended in its entirety to read as follows:

"(f) Additions or Alterations Solely Within a Unit or Limited Common Element. Notwithstanding anything to the contrary contained herein, each owner of a unit shall have the right at any time and from time to time at such owner's sole cost and expense, and without the necessity of the consent or joinder of any other unit owner, but with notice to and the prior written approval of the board, which may be withheld in the board's sole discretion, to make any of the following alterations solely within the unit: to install, maintain, remove and rearrange partitions (including the unit dividing wall between two units owned by the same owner or separate owners under mutual agreement, subject to compliance with this Section 8.3(f)) and other structures from time to time within such unit to finish, alter or substitute any plumbing (including but not limited to, the installation of any grease trap or interceptor as may be required by the County of Maui based upon the use of such unit), electrical or other fixtures serving only said unit attached to the ceilings, floors and walls as shall be appropriate for the utilization of such

unit and to tile (subject to acoustical transfer considerations), re-carpet, do or cause to be done such work on the floors of any unit, to replace exterior and interior windows and doors of a unit and related modifications to the door jamb and door way of such unit, if applicable, and to make any other non-material additions or alterations as may be permitted by the Act; provided, however, that nothing contained in this paragraph shall authorize any work or alteration which would, in the reasonable judgment of the board, jeopardize the soundness or safety of any part of the Project, reduce the value thereof, impair any easement, materially adversely affect any other unit or limited common element, materially alter the uniform external appearance of the Project, materially increase the transfer of sounds, noise, odors, air or smoke to other units or common elements, materially affect or impair any easement or rights of any of the other unit owners, or materially interfere with or deprive any non-consenting owner of the use or enjoyment of any part of the common elements. Further, nothing in this paragraph shall prohibit the board from effecting such changes within a unit or limited common element, or to require same, in order that the buildings of the Project may continue to comply with applicable law, including any fire code requirements.

An owner who owns any two adjacent units that are separated by a common element that is a wall, floor or a ceiling, shall have the right, at any time and from time to time at such owner's sole cost and expense, and with the written consent of the board (which consent shall not be unreasonably withheld) and the satisfaction of all conditions that may be imposed by the board, and with all requisite permits and approvals issued by the appropriate governmental agencies to the extent applicable, and with the written consent of all other owners directly affected (as determined by the board), to alter or remove all or portions of the intervening dividing wall, floor, and/or ceiling, if (i) the structural integrity of the building is not thereby adversely affected, and (ii) the finish of the common element then remaining is restored to a condition substantially comparable to that of the common element prior to such alterations, and (iii) all construction activity necessary to any such alteration or removal shall be completed within a reasonable period of time after the commencement thereof, subject to extension for delays beyond the control of the owner or its contractors, in which case any such construction activity shall be completed in such additional time as may be reasonably necessary in the exercise of due diligence (as determined by the board). The owner may install a door or doors to such opening or openings in the intervening common element, may install a stairway between such units, including within the intervening common element, may seal hallways, and may make other reasonable alterations as approved by the board and applicable governmental authorities. The owner shall prepare an amendment to this Declaration and the Condominium Map to reflect such modifications pursuant to Section 17.4. Before the termination of the common ownership of any such

connected units, the owner of the units shall be obligated to remove all such improvements, including but not limited to, doors and/or stairways, and restore such intervening wall, floor, ceiling and or hallway entries to substantially the same condition that they existed prior to such alteration or removal. Notwithstanding the connection or combination of such units and the conversion of such intervening common element into a limited common element appurtenant to each unit, the total number of units in the Project shall not be reduced, nor shall there be any change in the common interest of each affected unit or the parking stalls assigned to each affected unit."

10. Uses Requiring Increased Parking. Section 8(i) is amended by replacing the last sentence of such section with the following:

"The Association shall be authorized to lease off-site parking of up to twelve (12) parking stalls, which shall be designated and used as common area of the Project for the term of such lease, and all rental fees and charges due under such off-site parking lease shall be paid by the Association and treated as a common expense of the Project; provided that the Association delegates such authority to the board and hereby authorizes the board, acting in sole discretion: (a) to negotiate and enter into a parking lease for such off-site parking of up to twelve (12) parking stalls on such terms and conditions that are acceptable to the board, in its sole discretion; and (b) subject to the terms and conditions of any such parking lease and subject to availability, to rent such off-site parking stalls to unit owners for employee parking or for parking in connection with the use of an office space on a first-come, first-served basis, and all such rental revenue shall be paid to the Association. Any proposed new use of a unit or any change of use of a unit in the Project that would require the availability of parking in addition to the current number of parking stalls at the Project pursuant to applicable laws, rules or regulations shall not be permitted unless such required additional off-site parking is first leased by the Association as permitted hereinabove."

11. Miscellaneous. A new Section 28 is added, which reads as follows:

"28. MISCELLANEOUS. Notwithstanding anything to the contrary contained in this Declaration, the following provisions shall apply to the Project and to all the units:

(a) Subject to applicable provisions of the Act and other applicable laws, the installation within any unit of any water fixtures in addition to a toilet and sink for restroom facility shall be subject to the prior written approval of the board, which approval may be withheld in its sole discretion.

(b) Tenants and other occupants of units shall have the right of access to, and use of, the mop sink located in the janitor/utility room located on the ground floor, which is a part of the common area of the Project.

(c) Subject to applicable provisions of the Bylaws, the board shall have the right and authority to install drinking fountains within the common areas of the building.

(d) Subject to the applicable provisions of this Declaration and the Bylaws, including Paragraph 1 of Exhibit C to the Declaration, use and operation of a restaurant test kitchen within Unit 305 is specifically authorized; provided, however, that (i) no food made at such test kitchen shall be sold for consumption in the premises, (ii) such test kitchen shall not be considered, used or allowed to be considered or used as a restaurant, (iii) such test kitchen does not require any additional parking by the County of Maui; (iv) the installation of a hood exhaust system and grease trap shall be subject to board approval; and (v) in order to mitigate the potential impacts of the use and operation of the test kitchen, the owner of Unit 305 shall promptly respond to any complaints from other owners in the Project and/or the Association and shall use commercially reasonable efforts to operate such test kitchen so as to minimize and mitigate the generation of odor, smoke and grease by implementing and complying with best practices in the use, operation, repair and maintenance of such test kitchen, including but not limited to, daily grease removal, regular hood and equipment cleaning and degreasing, grease trap maintenance and such other measures that shall be provided in detail by the owner of Unit 305 to the board, including copies of contracts for such services as may be requested by the board, for approval by the board, and which practices and measures shall be subject to change as the board may reasonably request from time to time as may be necessary or desirable to further mitigate the impacts of such test kitchen use on the Project. Any modifications to the common elements of the Project, including but not limited to, the roof of the building to accommodate or support the installation of a hood exhaust system, and the installation of a concrete pad, propane tank and gas lines to serve Unit 305, shall be subject to this Declaration, the Act, applicable laws and the approval of the board, in its sole discretion, and, if approved, shall be conducted at the sole cost and expense of the owner of Unit 305. In the event that use of the test kitchen in Unit 305 is discontinued, the board may require that the owner of Unit 305 remove all such improvements and restore the common elements to substantially the same condition as that existing prior to such modifications made by the owner of Unit 305. The foregoing notwithstanding, restaurants serving the general public are not permitted in the Project."

12. Prohibited Uses. Exhibit "C" is amended as follows:

a. Paragraph 2 is amended to read as follows:

"2. Any use which increases the cost of insurance to the Association; provided, however, the use and operation of a test kitchen in Unit 305 shall be permitted notwithstanding any increase in the cost of insurance to the Association, subject to compliance by the owner of Unit 305 with applicable laws, the requirements of Section 28(d) of the Declaration and any requirements that may be imposed by the board pursuant to Section 28(d)."

b. New Paragraphs 23, 24, 25 and 26 shall be added to read as follows:

"23. pawn shop;  
24. bail bonds;



25. sales of paraphernalia commonly used in the smoking or use of drugs;  
and
26. thrift shop selling donated goods."

**AMENDMENT TO THE BYLAWS:**

1. The Bylaws is hereby amended by replacing the name of the Project as referenced in the second whereas clause on page 1 of the Bylaws with the following:

"Keawe Business Center."

2. Definition of Association. Section 1.2 of the Bylaws is amended by replacing the name of the Association with the following:

"The Association of Unit Owners of Keawe Business Center."

3. Section 8.3(a) of the Bylaws is hereby amended by adding the following at the end of such sentence:

"Subject to the applicable provisions of the Declaration, the board, in its sole discretion, shall determine whether a Restroom-Required Unit (as defined in Section 4.3(e) of the Declaration) shall be exempt from the requirement that a private restroom must be installed and operational within the Restroom-Required Unit. Without limiting the generality of the foregoing exemption, an example of a board-authorized exemption may be when multiple, adjacent Restroom-Required Units will be operated as a single business, the board may approve the installation of one restroom that will serve such a business occupying multiple adjacent Restroom-Required Units; provided that, if such multiple Restroom-Required Units are no longer operated as a single business, then a private restroom would have to be installed within each Restroom-Required Unit prior to occupancy or use of such Restroom-Required Unit."

Counterparts. This instrument may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. All counterparts shall be construed together and shall constitute one (1) instrument.

Except as amended by this Amendment and by any other previously recorded amendments, the Declaration and Bylaws shall continue in full force and effect as first written.

[signatures on the next page]

This Amendment shall be effective upon its recording in the Bureau.

KBC has signed this Amendment as of the Effective Date.

KEAWE BUSINESS CENTER, LLC,  
a Hawaii limited liability company

  
By Bill R. Poland  
Its Manager

KBC

Pursuant to Section 17.1 of the Declaration and Section 10.2 of the Bylaws, the undersigned, as two of the officers of The Association of Unit Owners of Keawe Business Center Offices, hereby acknowledge KBC's right (as the owner of units in the Project to which are appurtenant at least sixty-seven percent (67%) of the common interests) to amend the Declaration and Bylaws as set forth in this Amendment.

By \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

By \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

This Amendment shall be effective upon its recording in the Bureau.

KBC has signed this Amendment as of the Effective Date.

KEAWE BUSINESS CENTER, LLC,  
a Hawaii limited liability company

\_\_\_\_\_  
By Bill R. Poland  
Its Manager

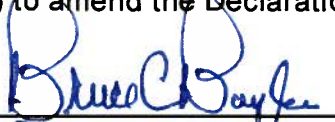
KBC

Pursuant to Section 17.1 of the Declaration and Section 10.2 of the Bylaws, the undersigned, as two of the officers of The Association of Unit Owners of Keawe Business Center Offices, hereby acknowledge KBC's right (as the owner of units in the Project to which are appurtenant at least sixty-seven percent (67%) of the common interests) to amend the Declaration and Bylaws as set forth in this Amendment.

By

Name:

Title:

  
BRUCE C. BAYLESS  
SECRETARY

Date:

11/21/2013

By

Name:

Title:

Date:

This Amendment shall be effective upon its recording in the Bureau.

KBC has signed this Amendment as of the Effective Date.

KEAWE BUSINESS CENTER, LLC,  
a Hawaii limited liability company

\_\_\_\_\_  
By Bill R. Poland  
Its Manager

KBC

Pursuant to Section 17.1 of the Declaration and Section 10.2 of the Bylaws, the undersigned, as two of the officers of The Association of Unit Owners of Keawe Business Center Offices, hereby acknowledge KBC's right (as the owner of units in the Project to which are appurtenant at least sixty-seven percent (67%) of the common interests) to amend the Declaration and Bylaws as set forth in this Amendment.

By \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

By Mario Cardone  
Name: MARIO CARDONE  
Title: TREASURER

Date: 11/22/2013

STATE OF CALIFORNIA

COUNTY OF San Francisco

)  
) ss.  
)

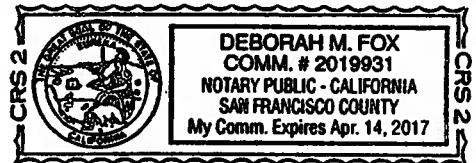
On November 21, 2013 before me, Deborah Fox Notary Public, personally appeared Bruce E. Poland, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Deborah Fox

(seal)



STATE OF CALIFORNIA  
COUNTY OF ORANGE

)  
) ss.  
)

On November 21, 2013 before me, Linda Hoshaw Notary Public, personally appeared Bruce C. Bayless, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

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

*Linda Hoshaw*

(seal)



STATE OF HAWAII                     )  
  ) ss.  
COUNTY OF MAUI                    )

On 11-22-2013, 2013, before me personally appeared Mario Cardona, 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 capacities shown, having been duly authorized to execute such instrument in such capacities.

Further, I certify, as of this date, as follows:

☐ Date of Document: 11-22-2013      ☐ undated at time of notarization  
Number of Pages: 13 (if counterpart signature pages are subsequently attached, the document may have a different number of pages)  
Document Description: SECOND AMENDMENT TO DECLARATION OF CONDOMINIUM PROPERTY REGIME OF KEAWE BUSINESS CENTER OFFICES AND BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF KEAWE BUSINESS CENTER OFFICES  
Jurisdiction/Judicial Circuit Where Signed: Second



Besse Y. Arakawa  
Print Name: Besse Y. Arakawa  
Date: 11-22-2013  
Notary Public, State of Hawaii  
My commission expires: 2-24-2014

Doc. Date: 11-22-13 # Pages: 13  
Besse Y. Arakawa      Second Circuit  
Doc. Description Amendment

Besse Y. Arakawa      11-22-13  
Notary Signature      Date

NOTARY CERTIFICATION

