

L-188 STATE OF HAWAII
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/s/ CARL T. MATANABE
ASSISTANT REGISTRAR

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DECLARATION OF DEVELOPMENT COVENANTS FOR
SYMPHONY PARK PROJECT

THIS DECLARATION OF DEVELOPMENT COVENANTS dated as of February 16, 1995 (this "Declaration") is made by MYERS/DAIICHI MIDTOWN PARTNERS, a Hawaii joint venture ("M/DMP"), and THEODAVIES KUROKAWA, LTD., a Hawaii corporation ("TheoDavies").

R E C I T A L S:

A. Pursuant to the terms of that certain unrecorded Agreement for Purchase and Sale of Real Estate dated February 14, 1995 (the "Purchase Agreement") executed by the parties, TheoDavies has acquired from M/DMP the real property which is more particularly described in Exhibit "A" attached hereto (the "TheoDavies Property").

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SYMPHONY PARK
THEODAVIES
February 13, 1995

B. M/DMP owns the real property adjacent to the TheoDavies Property which is more particularly described in Exhibit "B" attached hereto (the "M/DMP Property").

C. TheoDavies intends to develop on the TheoDavies Property a car dealership facility (which will include office facilities) (the "Car Dealership"), and M/DMP intends to develop on the M/DMP Property and on adjacent parcels also owned by M/DMP, a residential condominium development known as "Symphony Park" (the "Residential Development"). The Car Dealership and the Residential Development are together called the "Project." Based on the parties' development timetable, the Car Dealership will comprise Phase I of the Project and the Residential Development will comprise Phase II of the Project.

D. M/DMP desires to use the Car Dealership to satisfy the industrial component requirement of the Hawaii Community Development Authority ("HCDA") for the Project and to utilize any excess density (i.e., any density achievable through the joint and planned development of the Project but not used by TheoDavies for the Car Dealership) to increase the density of the Residential Development.

E. Pursuant to the Purchase Agreement, TheoDavies has agreed for the benefit of M/DMP to certain restrictions on the TheoDavies Property with respect to the development of the Car Dealership. These restrictions include, without limitation, (a) TheoDavies' agreement to develop the Car Dealership as Phase I of the Project which satisfies the classification of a permitted "industrial and/or relocated commercial use" under the HCDA rules applicable to base zone development; (b) TheoDavies' agreement to limit the floor area of the Car Dealership building to 57,000 square feet or such lesser amount as shown in the permit issued by HCDA for the Car Dealership, and to include at least 43,813 square feet of "industrial and/or relocated commercial use" and less than 6,000 square feet of office space; (c) TheoDavies' agreement to provide M/DMP with certain approval rights relating to the external features and finishes of the Car Dealership improvements; and (d) TheoDavies' agreement to join M/DMP in filing an application to HCDA for a planned development permit covering the TheoDavies Property, the M/DMP Property and adjacent parcels also owned by M/DMP as soon as M/DMP has completed its plans for the Residential Development.

F. M/DMP has executed this Declaration to document certain obligations relating to the development of the Car Dealership as covenants running with the title to the M/DMP Property.

NOW THEREFORE, subject to TheoDavies' observance of its restrictions with respect to the development of the Car Dealership as set forth in the Purchase Agreement, M/DMP hereby makes the following declarations for the benefit of TheoDavies:

1. Lot 34. M/DMP shall provide area for the open space which would otherwise be required to be provided by TheoDavies in connection with development of the Car Dealership on the TheoDavies Property. This obligation shall be satisfied by M/DMP on the M/DMP Property and/or the adjacent parcels also owned by M/DMP. However, initially the area for open space requirement for the Car Dealership shall be satisfied by M/DMP's dedication for that purpose of a portion of Lot 34 more particularly described in Exhibit B attached hereto ("Lot 34"). Contemporaneously herewith, M/DMP is granting in favor of the TheoDavies Property (i) a nonexclusive easement over all of Lot 34 for side and rear yard setback requirements so that the building to be constructed on the TheoDavies Property may have openings in the walls on the side and rear boundaries of the TheoDavies Property, (ii) a nonexclusive easement for roadway purposes over all of Lot 34, (iii) a nonexclusive easement for utility purposes, and (iv) permission to use a portion of Lot 34 to satisfy the open space requirement under the base zone development rules of HCDA. TheoDavies hereby agrees and acknowledges that no queuing or parking shall be allowed on Lot 34.

2. Clean-up of Hazardous Materials.

a. Initial Remedial Action. Pursuant to the Purchase Agreement, M/DMP and TheoDavies have reached an agreement with respect to the clean-up of certain Hazardous Materials (as defined in the Purchase Agreement) from the TheoDavies Property. M/DMP shall complete the "Initial Remedial Action" (as described in the Purchase Agreement) with due diligence in accordance with applicable governmental orders and/or Environmental Laws (as defined in the Purchase Agreement) in order to assure that the TheoDavies Property shall meet the agreed upon "Standard of Cleanliness" (as defined in the Purchase Agreement). M/DMP shall, at its sole expense, complete the Initial Remedial Action no later than the date (the "Initial Remedial Action Completion Deadline") which is the earlier to occur of (i) July 1, 1995 or (ii) fourteen (14) days prior to TheoDavies' commencement of construction of the Car Dealership improvements (provided, however, that TheoDavies shall have given M/DMP no less than sixty (60) days written notice of TheoDavies' intention to commence such construction).

b. Subsequent Remedial Action. M/DMP shall also take responsibility for any environmental investigation and response (the "Subsequent Remedial Action") regarding any

Existing Hazardous Materials (as defined below) required during the Response Period (as defined below) by any governmental authority having jurisdiction or as may be required to meet the Standard of Cleanliness regarding any Existing Hazardous Materials discovered or identified during the Response Period. As used herein "Existing Hazardous Materials" means any Hazardous Materials present at, in, on, under or about the TheoDavies Property (including the groundwater under the TheoDavies Property) on or before the date on which TheoDavies acquired title to the TheoDavies Property (the "Acquisition Date"). As used herein "Response Period" means the period from the date hereof, through the date which is one year after the later to occur of (i) completion of construction of the Car Dealership, or (ii) completion of construction of the Residential Development on the M/DMP Property and adjoining parcels owned by M/DMP. M/DMP shall pay all costs in connection with such Initial Remedial Action and any Subsequent Remedial Action (collectively, the "Remedial Action"), including without limitation, all installation, operation, maintenance, testing and monitoring costs, all power and utility costs, and any and all pumping taxes or fees that may be applicable to M/DMP's activities under this Paragraph 2. M/DMP shall perform all such work in a good, safe and workmanlike manner, in compliance with all applicable laws and regulations, and shall diligently pursue such Remedial Action until M/DMP achieves the Standard of Cleanliness or, in the case of any Subsequent Remedial Action for which there is no Standard of Cleanliness, receives a "no further action letter" to be issued with respect to the TheoDavies Property by the Department of Health of the State of Hawaii or its successor or such comparable letter issued by any other governmental authority having jurisdiction. Any Remedial Action after the Initial Remedial Action Completion Deadline shall be conducted so as not to interfere unreasonably with TheoDavies' or any tenant's use of the TheoDavies Property. M/DMP shall promptly provide TheoDavies with copies of testing results and reports that are generated in connection with M/DMP's activities pursuant to this Paragraph 2 and that are submitted to any governmental authority. M/DMP's transfer of the TheoDavies Property to TheoDavies has not relieved or released M/DMP of any legal liability and responsibility which M/DMP would otherwise have had as the prior owner of the TheoDavies Property whether by way of damages, penalties, remedial actions or otherwise for any adverse effects or consequences resulting at any time from any Hazardous Materials existing at, in, on, under or about the TheoDavies Property, including the ground water under the TheoDavies Property, as of the Acquisition Date.

c. Liens. M/DMP shall not cause or suffer any lien to be recorded against the TheoDavies Property as a consequence of, or in any way related to, the presence, remediation or

disposal of Hazardous Materials at, in, on, under or about the TheoDavies Property, or related in any way to M/DMP's activities pursuant to this Paragraph 2, including any mechanics' liens and any so-called state, federal or local "Superfund" lien relating to such matters, which lien shall not be set aside, dissolved, bonded off or otherwise eliminated within thirty (30) days of its occurrence; provided, however, that in the event of the sufferance of any such "Superfund" lien, TheoDavies' sole remedies shall be limited to the remedies described in Paragraph 15.b of the Purchase Agreement.

d. Condition of TheoDavies Property. Promptly upon M/DMP's complete performance and satisfaction of any Remedial Action required hereunder, M/DMP shall permanently seal or cap all monitoring wells and test holes to industry standards in compliance with applicable federal, state and local laws and regulations, remove all associated equipment and restore the TheoDavies Property to clean grade reasonably satisfactory to the TheoDavies for development of the TheoDavies Property, to the maximum extent possible, which shall include, without limitation, the repair of any surface damage caused by M/DMP's activities hereunder.

e. Damages for Failure to Complete Initial Remedial Action on Time. If M/DMP fails to complete the Initial Remedial Action to the Standard of Cleanliness by the Initial Remedial Action Completion Deadline, then in addition to any other remedies provided herein, TheoDavies shall be entitled to provable damages related to such delay, including the amounts specified in Paragraph 2.g (vi) of the Purchase Agreement.

3. HCDA Public Facilities Requirements.

Notwithstanding anything to the contrary that may be contained in this Declaration, in the Purchase Agreement or any document contemplated therein, including, without limitation, that certain unrecorded Assignment and Assumption of Permit of even date herewith, M/DMP has agreed (a) that TheoDavies shall not be required to dedicate any land for public facilities or to pay fees in lieu of any dedication of land in connection with the development of the Car Dealership under the HCDA rules for base zone development and planned development and (b) that the obligation to dedicate public facilities (or to pay any fees in lieu of any dedication of land) which would otherwise be required by HCDA with respect to Phase I of the Project shall be the obligation of M/DMP to be satisfied as and when required by HCDA and shall be an encumbrance upon the M/DMP Property, it being M/DMP's intention that all HCDA public facilities requirements for the Project shall, if permitted by HCDA, be satisfied in connection with M/DMP's development of Phase II of the Project. In connection with HCDA's issuance of a base zone development permit for the Car Dealership or a planned development permit for the Project, M/DMP shall execute for the

benefit of HCDA a recordable agreement, in a form satisfactory to TheoDavies and HCDA, to confirm M/DMP's obligation to satisfy any public facilities requirement that would otherwise be required by HCDA for Phase I of the Project. In the event M/DMP fails to satisfy such public facilities requirements as and when required by HCDA for the Car Dealership and/or the Project, then TheoDavies shall have the right to satisfy the same by payment to HCDA of the required fees, or otherwise, whereupon M/DMP shall immediately reimburse TheoDavies for such amounts paid, together with interest thereon from the date of payment by TheoDavies until repayment in full, at the rate of 15% per annum. Notwithstanding anything to the contrary in this Declaration or the Purchase Agreement, M/DMP shall have the right to substitute other collateral acceptable to HCDA in lieu of the M/DMP Property to secure M/DMP's obligations regarding public facilities for the entire Project.

4. Additional Facilities. If solely as a consequence of TheoDavies' participation in the planned development of the Project, TheoDavies is required to construct as part of the Car Dealership any additional facilities (including the oversizing of facilities such as sewer and water facilities) for the Residential Development, M/DMP shall promptly reimburse TheoDavies for all costs which are reasonably attributable to such additional facilities which would otherwise not be borne by TheoDavies but for TheoDavies' participation in the planned development of the Project.

5. Drainage Easement. M/DMP and TheoDavies understand that there is no storm drainage system in Kapiolani Boulevard fronting the TheoDavies Property. If a governmental authority having jurisdiction does not allow the surface, subsurface and storm water from the TheoDavies Property to flow onto Kapiolani Boulevard but rather requires that the drainage for the TheoDavies Property be connected to the storm drainage system in Ward Avenue, M/DMP agrees to grant a perpetual, nonexclusive easement (the "Drainage Easement") appurtenant to and for the benefit of the TheoDavies Property for purposes of installing pipes to connect the surface, subsurface and/or storm water drainage from the TheoDavies Property to the storm drainage system in Ward Avenue, encumbering such portion of the M/DMP Property and other property owned by M/DMP between the TheoDavies Property and Ward Avenue as may reasonably be required for such purposes, in a location which shall cause minimal interference with M/DMP's use and development of such property. (Such portion of the M/DMP Property and such other property shall hereafter be called the "Required Easement Area".) M/DMP also agrees to obtain a consent and subordination agreement executed by the holder of any mortgage on the Required Easement Area for the purpose of establishing the priority of the Drainage Easement over such mortgage. If

TheoDavies is required by the governmental authority to install pipes to connect the drainage system for the TheoDavies Property to the storm drainage system in Ward Avenue by passing through Kapiolani Boulevard or other property other than the Required Easement Area and if M/DMP fails to grant the Drainage Easement and to obtain such consent and subordination, then M/DMP shall promptly reimburse TheoDavies for all additional costs in excess of \$21,000.00 which are reasonably attributable to the installation of such pipes in Kapiolani Boulevard or such other property and which would not be borne by TheoDavies if the pipes had been located in the Required Easement Area.

6. Archaeological Requirement. Notwithstanding anything to the contrary that may be contained in this Declaration, in the Purchase Agreement or any document contemplated therein, including without limitation, that certain Assignment and Assumption of Permit of even date herewith, M/DMP has agreed that M/DMP shall, at its cost, satisfy and comply with any requirements of the State of Hawaii, Department of Land and Natural Resources, State Historic Preservation Division, regarding archaeological and historic investigation and report of the TheoDavies Property and Lot 34, as set out in the Division's letter dated December 29, 1994, attached to the Project Eligibility Permit No. PE 3-94 dated January 23, 1995. In the event M/DMP fails to satisfy such requirement, then TheoDavies shall have the right to satisfy the same, whereupon M/DMP shall immediately reimburse TheoDavies for any amounts reasonably expended by TheoDavies to satisfy the same, together with interest thereon from the date of expenditure until repayment in full, at the rate of 15% per annum. Any future archaeological and historical requirements imposed in connection with TheoDavies' development of the Car Dealership shall be TheoDavies' responsibility.

7. Partial Releases. In order to facilitate sales of apartments in the Residential Development and to comply with the requirements of Section 514A-18 of the Hawaii Revised Statutes, TheoDavies hereby agrees that, at the time of each conveyance or lease of an apartment in the Residential Development to a bona fide purchaser or lessee which is not an affiliate of M/DMP or any of its general partners nor any lender to M/DMP or any of its general partners, the apartment being conveyed or leased and its common interest in the Residential Development shall be released from this Declaration by partial release duly recorded. TheoDavies hereby agrees to enter into any and all such partial releases without delay and without compensation. Any such partial release shall not in any way release or impair the covenants and agreements of M/DMP under this Declaration, unless and until all obligations under this Declaration have been satisfied in full.

8. General Indemnity. Each party shall indemnify and hold the other party harmless from any and all claims, losses, demands, liabilities, suits, costs and damages, including consequential damages and attorneys' fees and other costs of defense, incurred, arising against or suffered by the other party as a direct or indirect consequence of a breach by the indemnifying party of its covenants under this Declaration.

9. Miscellaneous Provisions.

a. Covenants Running with the Land. M/DMP's obligations under this Declaration shall be covenants running with the title of the M/DMP Property in favor of TheoDavies and its successors and assigns (including any subsequent owner of the TheoDavies Property), and shall be expressly binding upon all owners, mortgagees and other persons acquiring any interest in M/DMP Property, unless and until all obligations under this Declaration have been satisfied in full.

b. Termination, Amendments and Waivers. Neither this Declaration nor any provision hereof may be amended, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the amendment, waiver, discharge or termination is sought. TheoDavies hereby agrees that, upon satisfaction of all of M/DMP's post closing covenants and obligations under the Purchase Agreement, or upon substitution of collateral reasonably acceptable to TheoDavies as security for such postclosing covenants and obligations of M/DMP then unsatisfied, TheoDavies will execute and deliver to M/DMP a termination of this Declaration in recordable form, without delay and without compensation.

c. Invalidity. Invalidation of any one or more of the provisions of this Declaration shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

d. Captions. The captions or headings of this Declaration are for convenience and reference only, and in no way define, describe, extend or limit the scope or intent of this Declaration or the meaning or intent of any provisions hereof.

e. Parties. The terms "M/DMP" and "TheoDavies", as and when used in this Declaration, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective heirs, personal representatives, successors, successors in trust and successor entity holding the right,

title and interest in and to the TheoDavies Property and the M/DMP Property as the case may be.

f. No Third-Party Beneficiaries. This Declaration is not intended, and shall not be deemed or construed, to confer any rights, power or privileges on any person, firm, partnership, corporation or other entity not a party hereto, except as otherwise provided in this Declaration.

g. No Partnership or Joint Venture. This Declaration evidences no intention on the part of M/DMP and TheoDavies to form a partnership or joint venture between the parties with respect to the development of the Car Dealership or the Residential Development.

h. Time is of the Essence. Time is specifically declared to be of the essence in this Declaration, and of acts required to be done and performed by the parties hereto.

i. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Hawaii.

j. Additional Documents. M/DMP and TheoDavies hereby agree to execute such additional documents as are reasonably required to accomplish the intents of this Declaration and the Purchase Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Declaration as of the date written above.

THEODAVIES EUROMOTORS, LTD.

By 
Name: Martin Maskot
Its: V. P.
Vice President

By _____
Name:
Its:

"THEODAVIES"

MYERS/DAIICHI MIDTOWN PARTNERS

By MYERS MIDTOWN CORPORATION
Its Managing General Partner

By 
Jack E. Myers
Its President

By DAIICHI MIDTOWN CORPORATION
Its General partner

By 
Name: NOBUO KUNIYUKI
Its: PRESIDENT
President

"M/DMP"

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 14th day of February, 1995, before me personally appeared Martin J. Pelt, 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.

Heidi M. Cameron
Notary Public, State of Hawaii
My commission expires: 10/3/96

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this ___ day of _____, 1995, 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.

Notary Public, State of Hawaii
My commission expires:

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 12th day of February, 1995, before me personally appeared Jack E. Myers, 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.

J.S.

John A. Kenevino
Notary Public, State of Hawaii

My commission expires: 3/8/96

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 13th day of February, 1995, before me personally appeared Nohia Kunuku, 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.

L.S.

Sammy M. Graham
Notary Public, State of Hawaii

My commission expires: 9-22-96

EXHIBIT "A"
THEODAVIES PROPERTY

All of those certain parcels of land situate at Kewalo, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

FIRST:

Lot 30, area 9,000.0 square feet, as shown on Map 16, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 781 (amended) of Honolulu Construction and Draying Company, Limited.

SECOND:

Lot 31, area 6,000.00 square feet, as shown on Map 16, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 781 (amended) of Honolulu Construction and Draying Company, Limited;

THIRD:

Lot 32, area 8,229.0 square feet, as shown on Map 16, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 781 (amended) of Honolulu Construction and Draying Company, Limited;

FOURTH:

Lot 28, area 18,366.00 square feet, as shown on Map 16, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 781 (amended) of Honolulu Construction and Draying Company, Limited.

-AS TO PARCELS FIRST THROUGH FOURTH:-

Being the land described in Certificate of Title No. 452,762 issued to THEODAVIES EUROMOTORS, LTD., a Hawaii corporation.

EXHIBIT "B"
M/DMP PROPERTY

-FIRST:

All of those certain parcels of land situate on Kapiolani Boulevard, at Kewalo, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOTS: 8, area 6,000.0 square feet, and
9, area 6,874.0 square feet, as shown on Map 12, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 781 (amended) of Honolulu Construction and Draying Company, Limited;

-SECOND:

All of that certain parcel of land situate on Kapiolani Boulevard, at Kewalo, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT 10, area 6,226.0 square feet, as shown on Map 13, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 781 (amended) of Honolulu Construction and Draying Company, Limited;

-THIRD:

All of those certain parcels of land situate on Kapiolani Boulevard, at Kewalo, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOTS: 11, area 4,716.0 square feet, and
12, area 4,716.0 square feet, as shown on Map 13, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 781 (amended) of Honolulu Construction and Draying Company, Limited;

-FOURTH:

All of that certain parcel of land situate on Kapiolani Boulevard, at Kewalo, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT 13, area 4,716.0 square feet, as shown on Map 13, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 781 (amended) of Honolulu Construction and Draying Company, Limited;

-FIFTH:

All of that certain parcel of land situate at Kewalo, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT 34, area 20,145 square feet, as shown on Map 17, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 781 (amended) of Honolulu Construction and Draying Company, Limited;

-AS TO PARCELS FIRST THROUGH FIFTH:-

Being a portion of the lands described in Certificate of Title No. 387,078 issued to MYERS/DAIICHI MIDTOWN PARTNERS, a Hawaii joint venture.