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**DECLARATION OF CONDOMINIUM PROPERTY REGIME OF
ILIMA WARD VILLAGE**

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**DECLARATION OF CONDOMINIUM PROPERTY REGIME OF
ILIMA WARD VILLAGE**

THIS DECLARATION OF CONDOMINIUM PROPERTY REGIME OF ILIMA WARD VILLAGE ("**Declaration**") is made this 6th day of February, 2025 by Block E Ward Village, LLC, a Delaware limited liability company, with its principal place of business and post office address at 1240 Ala Moana Boulevard, Suite 200, Honolulu, Hawaii 96814 ("**Developer**") and HHC WV Block E Member, LLC, a Delaware limited liability company, with its principal place of business and post office address at 1240 Ala Moana Boulevard, Suite 200, Honolulu, Hawaii 96814 ("**Landowner**").

RECITALS:

WHEREAS, Landowner is the owner in fee simple of the real property described in **Exhibit "A"** attached hereto and incorporated herein by reference ("**Land**");

WHEREAS, Developer intends to construct on the Land certain buildings and other improvements ("**Improvements**") and, with the consent and joinder of Landowner, intends to establish a condominium property regime that consists of the Land and the Improvements;

WHEREAS, said Land and Improvements are depicted on Condominium Map No. 6700 ("**Condominium Map**") recorded at the Bureau of Conveyances of the State of Hawaii ("**Bureau**") together with this Declaration, which Condominium Map is incorporated herein by this reference;

WHEREAS, pursuant to that certain Community Covenant for Ward Village dated September 13, 2013 and recorded at said Bureau as Document No. A-50040794, as may be amended or supplemented from time to time ("**Master Declaration**"), the Land is part of an urban, mixed-use master-planned community called "Ward Village" ("**Ward Village**") located in the City and County of Honolulu ("**County**"), State of Hawaii ("**State**"); and

WHEREAS, pursuant to the Fee Owner Joinder executed concurrently herewith, Landowner has joined in this Declaration solely for the purpose of complying with Section 514B-31 of the Hawaii Revised Statutes, as amended.

NOW, THEREFORE, in order to create a condominium property regime consisting of the Land and Improvements to be known as "**ILIMA WARD VILLAGE**" ("**Project**"), Developer and Landowner, by way of this Declaration of Condominium Property Regime of Ilima Ward Village, hereby submit the Land and the Improvements, and all of their respective interests therein, to a condominium property regime established pursuant to Chapter 514B of the Hawaii Revised Statutes, as amended. Developer and Landowner hereby declare that the Project is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved in accordance with applicable law and in accordance with this Declaration and the Bylaws of the Association of Unit Owners of Ilima Ward Village, recorded concurrently herewith at said Bureau ("**Bylaws**"), as the provisions of this Declaration and the Bylaws may be amended from time to time. The provisions of this Declaration and the Bylaws shall constitute covenants running with the Land and equitable servitudes and liens thereon, and shall be binding upon and inure to the benefit of Developer, the Association of Unit Owners of Ilima Ward Village ("**Association**"), their successors and permitted assigns, and all subsequent owners and lessees of all or any part of the Project and their respective successors, successors in trust, heirs, devisees, personal representatives, executors, administrators, and assigns.

I. DEFINED TERMS.

A. USE OF DEFINED TERMS. For purposes of construing and interpreting this Declaration and the Bylaws, all terms, when written with initial capital letters in this Declaration or in the Bylaws, shall have the meaning given to such terms in this Declaration. Such defined terms may be used in the singular or plural or in varying tenses or forms, but such variation shall not affect the meaning of the terms so long as such terms are written in initial capital letters. When such terms are used in this Declaration or the Bylaws without initial capital letters, such terms shall have the meaning they have in common usage; provided, however, that where legal, technical, or trade terms are used and the context in which such terms are used indicates that such terms are to be given their legal, technical, or trade usage meanings, such terms shall be given such legal, technical, or trade usage meanings.

B. **DEFINED TERMS.** When used in this Declaration or the Bylaws, the following terms shall have the following meanings:

1. **"Act"** means the Condominium Property Act codified as Chapter 514B of the Hawaii Revised Statutes, as amended.

2. **"ADA"** means the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., as amended, including any and all rules and regulations promulgated thereunder.

3. **"Agreement of Sale"** means an agreement of sale for the sale of a Unit recorded at said Bureau.

4. **"Aircraft Effects"** mean frequent, loud noise from aircraft operations, sightings of aircraft flying at very low altitudes, fumes, smoke, vibrations, odors, and/or other inconveniences or nuisances associated with the Project's proximity to the Honolulu International Airport.

5. **"AIS"** means that certain Archaeological Inventory Survey submitted to SHPD, covering the Land.

6. **"Alleged Defect"** means a claim, contention, or allegation that any portion of the Project, including, but not limited to, any Unit and/or any Improvement, is defective or that Developer or its agents, consultants, contractors, or subcontractors were negligent in the planning, design, engineering, grading, construction, or other development thereof.

7. **"Alternative Allocation"** means an allocation of the Special Costs (hereinafter defined), if any, among and/or between the Commercial Unit Class, the Residential Unit Class, and the Recreational Unit Class, or certain of them, based on a fair and equitable apportionment in accordance with Section 514B-41 of the Act.

8. **"Articles of Incorporation"** means the articles of incorporation of the Association, if any, and shall include any lawful amendments thereto.

9. **"Assessment"** means the amount paid or to be paid monthly in advance by each Owner based on the budget for Common Expenses, or at any other time, pursuant to the provisions of the Condominium Documents. Assessments shall also include special assessments, regular assessments, and all other amounts that are assessed by and owed to the Association.

10. **"Association"** means the Association of Unit Owners of Ilima Ward Village.

11. **"Authorized Users"** mean and include any person authorized to access and use the Recreational Unit and Recreational Limited Common Elements as may be determined by the Recreational Unit Owner, from time to time.

12. **"Board"** means the Board of Directors of the Association.

13. **"Building Structure"** means the structural framework of the Tower and the Parking Structure, including, without limitation, foundations, floor slabs, columns, girders, beams, supports, and the load-bearing perimeter, partition, and party walls, not otherwise defined as part of a Unit.

14. **"Bureau"** means the Bureau of Conveyances of the State of Hawaii.

15. **"Bylaws"** means the Bylaws of the Association, and shall include any lawful amendments thereto.

16. **"Capital Upgrades"** mean the improvement or restoration of a physical asset that will enhance the value and/or increase the useful life thereof.

17. **"Certificate of Occupancy"** means the temporary certificate of occupancy (or the permanent certificate of occupancy where no temporary certificate of occupancy is issued for the Unit in question) issued by the County Department of Planning and Permitting building official.

18. **"Claimant"** means the Association, Board, or any Owner or Owners claiming, contending, or alleging an Alleged Defect.

19. **"Class Common Expense"** means a cost, expense, or charge payable by a Unit Class based on the Class Common Interest allocable to the Unit or Units within the Unit Class, if any, as more particularly described in this Declaration.

20. **"Class Common Interest"** means the Residential Unit Class Common Interest, Commercial Unit Class Common Interest, and Recreational Unit Class Common Interest.

21. **"Commercial Director"** means the Director elected by the Commercial Unit Class pursuant to Article III, Section 3 of the Bylaws. The Commercial Director shall be the individual appointed by Developer or Developer Affiliate until Developer or Developer Affiliate no longer owns any Commercial Units in the Project.

22. **"Commercial Director Consent Rights"** mean the consent and approval rights of the Commercial Director set forth herein and in the Bylaws. Any consent and approval rights of the Commercial Director granted in this Declaration and the Bylaws shall automatically terminate when (a) Developer or Developer Affiliate no longer owns any Commercial Units in the Project or (b) the Commercial Director terminates all such consent and approval rights in writing, whichever is first to occur. The termination of such rights shall not affect the rights of the Commercial Unit Class to appoint a Commercial Director to represent other Commercial Unit Class rights and interests as the Commercial Director, as set forth in this Declaration and the Bylaws.

23. **"Commercial Limited Common Elements"** mean those Limited Common Elements that are reserved for the exclusive use of all Commercial Unit Owners and are described further in **Article III, Section C.2.b** of this Declaration.

24. **"Commercial Managing Agent"** means the Commercial Unit Owners, if self-managed, or the entity or individual retained by the Commercial Director to perform physical management of the Commercial Limited Common Elements and Commercial Unit Limited Common Elements appurtenant to more than one Commercial Unit at the Project Quality Standard. The Managing Agent may be the Commercial Managing Agent upon the approval of, and agreement by, the Commercial Director.

25. **"Commercial Unit Class"** means and includes all of the Commercial Units together.

26. **"Commercial Unit Class Common Interest"** means the percentage share assigned to a Commercial Unit within the Commercial Unit Class, as set forth in **Exhibit "B"** of this Declaration.

27. **"Commercial Unit Class Expense"** means a Common Expense that, pursuant to this Declaration or the Bylaws, is assessed against the Commercial Units and is payable by each Commercial Unit Owner based on such Owner's Commercial Unit Class Common Interest.

28. **"Commercial Unit Limited Common Elements"** mean those parts of the Limited Common Elements that are reserved for the exclusive use of one or more, but less than all, of the Commercial Unit Owners.

29. **"Commercial Unit Owner"** means the Owner of a Commercial Unit; provided, however, that any Person that is a lessee of a Commercial Unit or who holds such interest solely as security for the performance of an obligation shall not be considered a Commercial Unit Owner solely by reason of such interest.

30. **"Commercial Units"** mean the Units identified as Commercial Units in **Exhibit "B"** of this Declaration and depicted on the Condominium Map.

31. **"Commission"** means the State of Hawaii Real Estate Commission.

32. **"Common Elements"** mean those parts of the Project that are defined in this Declaration as Common Elements, being all areas not designated as a "Unit." Unless otherwise provided herein, the Common Elements are comprised of the General Common Elements and the Limited Common Elements. The description of the Common Elements is set forth in **Article III, Section C** of this Declaration.

33. **"Common Expenses"** mean and include all charges, costs, and expenses whatsoever incurred by the Association for and in connection with the administration, management, and operation of the Project, which may include, without limitation: (a) all charges for taxes (except real property taxes and other such taxes that are or may hereafter be assessed separately on each Unit and the Common Interest in the Common Elements appertaining thereto, or the personal property or any other interest of the Owner); (b) the cost of insurance, including property and other casualty and liability insurance maintained by the Association; (c) any liability whatsoever for loss or damage arising out of or in connection with the Project or any fire, accident, or nuisance thereon; (d) a sum for reserve purposes; (e) wages, accounting, and legal fees of any Association employees, consultants, or vendors; (f) management fees; (g) other necessary expenses to maintain and operate the Project; (h) the cost of all utility services, including water, electricity, gas, garbage disposal, telephone, telecommunications, and any other similar services for the Common Elements and the Units (unless separately metered, assessed, or otherwise separately attributable to each Unit or a group of Units with amounts charged or attributable to each Unit or group of Units, as determined by the Board with the advice of the Managing Agent, an engineer, certified public accountant, or other appropriate consultant); (i) the Master Assessments; and (j) the Commercial Unit Class Expenses, the Residential Unit Class Expenses, and the Recreational Unit Class Expenses, as applicable. The Common Expenses may also include such amounts as the Board may deem proper to make up any deficit in the Common Expenses for any prior year. The Common Expenses may also include such amounts as may be required, by special assessment, for the purchase or lease of any Unit by the Association, as permitted under the Act or the Bylaws.

34. **"Common Interest"** means the undivided percentage interest in all Common Elements of the Project set forth in this Declaration and discussed in **Article IV, Section A** of this Declaration, which percentage interest is appurtenant to a Unit. The Common Interest appurtenant to a Unit may not be altered, conveyed, or transferred, except as expressly set forth in this Declaration.

35. **"Community Systems"** mean central telecommunication receiving and distribution systems and services (e.g., cable television, high-speed data/internet/intranet services, cellular telephone, satellite television, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software.

36. **"Condemnation Trustee"** means that certain bank, escrow, trust company, or other fiduciary designated by the Board and authorized to do business in the State, to which condemnation proceeds are paid.

37. **"Condominium Documents"** mean this Declaration, the Condominium Map, the Bylaws, the House Rules, and the Articles of Incorporation, if any, collectively, as the same may be amended.

38. **"Condominium Management Agreement"** means that certain instrument entered into or to be entered into between the Association and the Managing Agent for fiscal and administrative management of the Project and physical management of the General Common Elements, Residential Limited Common Elements, Residential Unit Limited Common Elements appurtenant to more than one Residential Unit, and property of the Association, if any. The Condominium Management Agreement shall not cover the physical management of the Utility Unit, any Limited Common Elements appurtenant to the Utility Unit, Residential Units, Residential Unit Limited Common Elements appurtenant to only one Residential Unit, Commercial Units, Commercial Limited Common Elements, Commercial Unit Limited Common Elements, Recreational Unit(s), or Recreational Limited Common Elements unless otherwise approved by the Utility Unit Owner, the Commercial Director, or the Recreational Director, as applicable.

39. **"Condominium Map"** means the condominium map prepared in accordance with Section 514B-33 of the Act that is recorded at said Bureau concurrently herewith, as the same may be duly amended from time to time.
40. **"Consolidated Lot"** means a new lot created upon the consolidation of the Land with another parcel(s) of land.
41. **"County"** means the City and County of Honolulu, State of Hawaii.
42. **"D&O Policy"** means the policy insuring, to the extent allowed by law, each person who is or was a Director, Officer, agent, or employee of the Association against all liability in connection with any claim made against such person as a result of such person holding that position, which the Board is required to buy and maintain, as further discussed in **Article XIII, Section E** of this Declaration.
43. **"Declaration"** means this Declaration of Condominium Property Regime of Ilima Ward Village, and shall include any lawful amendments hereto.
44. **"Developer"** means Block E Ward Village, LLC, a Delaware limited liability company, and any of its successors or permitted assigns.
45. **"Developer Affiliate"** means any Person that controls, is controlled by, or is under common control with Developer, and any Person that is owned by or is an owner, a member, a partner, a joint partner, or a shareholder of Developer.
46. **"Developer Control Period"** means the period in which Developer shall have the right to appoint and remove Officers and Directors, as further discussed in **Article XLIV** of this Declaration.
47. **"Developer's Reserved Rights"** mean those rights of Developer enumerated in **Articles XX through XXXVI**, which can be unilaterally exercised by Developer during the Development Period without the consent or joinder of any other party.
48. **"Developer's Rights and Interests"** mean Developer's Reserved Rights and rights to design, develop, build, add, and improve the Land.
49. **"Development Period"** means the period starting on the date this Declaration is recorded and ending upon the earlier of (i) December 31, 2045, or (ii) the date Developer records a document relinquishing all of Developer's Reserved Rights.
50. **"Director"** means a member of the Board and includes the Residential Directors, the Commercial Director, and the Recreational Director.
51. **"Dispute"** means and includes any and all actions, claims, or disputes between or among the Parties with respect to, arising out of, or relating to this Declaration, the Bylaws, or the House Rules, as further discussed in **Article XL, Section A** of this Declaration.
52. **"DOT"** means the State of Hawaii Department of Transportation.
53. **"DPR"** means Dispute Prevention and Resolution, Inc., any successor thereto, or any other entity offering mediation and/or arbitration services that is acceptable to the Parties to a Dispute.
54. **"Eligible Mortgage Holder"** means a first mortgagee of a Unit that is to receive timely written notice of proposed amendments to the Condominium Documents, as provided in the Bylaws.
55. **"Extraordinary Actions"** is defined in **Article VIII, Section E** of this Declaration.

56. **"Façade Sign"** is defined in **Article XI, Section L** of this Declaration.
57. **"FEMA"** means the Federal Emergency Management Agency.
58. **"FHA"** means the Fair Housing Act, 42 U.S.C. §§ 3601, et seq., as amended by the Fair Housing Amendments Act of 1988, and the rules and regulations adopted thereunder, as the same may be amended from time to time.
59. **"General Common Elements"** mean those Common Elements that, for the purposes of this Declaration and the Bylaws, do not include the Limited Common Elements.
60. **"Grant of Easement"** means that certain Grant of Easement executed or to be executed by and between the Association, as grantor, and the Association of Unit Owners of Melia Ward Village, as grantee, over the driveway and drive aisles on level 1 of the Project from Auahi Street to the loading stalls and loading dock of Melia Ward Village, for vehicular ingress, egress, loading, unloading, and turnaround purposes.
61. **"HART"** means the Honolulu Authority for Rapid Transportation, a semi-autonomous local government agency established in 2011 by a charter amendment to plan, design, construct, operate, and maintain the Honolulu Rail Transit Project.
62. **"HCDA"** means the Hawaii Community Development Authority, a body corporate and public instrumentality of the State of Hawaii.
63. **"HCDA Agreements"** mean those agreements described in **Article XXXIX, Section G.12** of this Declaration.
64. **"Honolulu Rail Transit Project"** means the County's automated fixed-guideway rail system being planned, designed, constructed, operated, and maintained by HART.
65. **"House Rules"** mean the administrative rules and regulations promulgated by the Board that govern the operation and use of the Residential Units, Residential Limited Common Elements, Residential Unit Limited Common Elements, and the General Common Elements of the Project, as the same may be amended or supplemented from time to time.
66. **"IGU"** means an insulated glass unit. An insulated glass unit commonly consists of two (sometimes more) panes of glass separated by a spacer material and sealed together at the edge.
67. **"Improvements"** mean improvements that exist or will exist on the Land and shall also include those improvements made by Owners (including Developer) and/or the Association from time to time.
68. **"Insurance Trustee"** means, with respect to property or liability insurance, a bank or trust company authorized to do business in the State and chosen by the Board to have custody and control of the insurance proceeds, who may have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose.
69. **"Interested Person"** means any Person who has any interest in the Project or who has the right to use the Project or any part of it. For example, each Owner, each Lender, anyone who rents or leases a Unit, or has the legal right or permission to use the Project or any part thereof is an "Interested Person."
70. **"Land"** means the real property described in **Exhibit "A"** of this Declaration. The Land is subject to change. The Land shall include any easement right that may be granted in favor of the Land or the Association from time to time.
71. **"Landowner"** means HHC WV Block E Member, LLC, a Delaware limited liability company, the fee simple owner of the Land at the time the Land was submitted to a condominium property regime

pursuant to this Declaration, and includes any successors, successors in trust, and assigns of Landowner, including, without limitation, Developer.

72. **"Launiu Ward Village"** means that certain condominium project in Ward Village known as "The Launiu Ward Village."

73. **"Lender"** means the mortgagee of a recorded Mortgage on a Unit. It also includes the beneficiary of a deed of trust encumbering a Unit.

74. **"Liability Policy"** means the commercial general liability insurance and commercial umbrella insurance the Board is required to buy and maintain, as further discussed in **Article XIII, Section D** of this Declaration.

75. **"Limited Common Element Expense"** means any cost, charge, or expense incurred by the Association directly attributable to one or more designated Units for any Unit Limited Common Element appurtenant thereto.

76. **"Limited Common Elements"** mean those Common Elements that are designated in this Declaration as reserved for the exclusive use of one or more Units to the exclusion of other Units. No amendment of this Declaration materially and adversely affecting the Limited Common Elements appurtenant to a Unit or Units, or in any way limiting the use thereof, shall be effective without the approval of the Owner or Owners of the Unit or Units to which said Limited Common Element is appurtenant, unless such amendment is done pursuant to the exercise of Developer's Reserved Rights set forth herein. Limited Common Elements include Commercial Limited Common Elements, Residential Limited Common Elements, Recreational Limited Common Elements, and Unit Limited Common Elements.

77. **"Majority"** means the Owners to which are appurtenant more than fifty percent (50%) of the Common Interest or Class Common Interest with respect to the Residential Unit Class, Commercial Unit Class, and Recreational Unit Class.

78. **"Managing Agent"** means an entity or individual employed or retained by the Association from time to time pursuant to a Condominium Management Agreement to assist the Association and to perform fiscal and administrative management of the Project and physical management of the General Common Elements, Residential Limited Common Elements, Residential Unit Limited Common Elements appurtenant to more than one Residential Unit, and property of the Association, if any. The Managing Agent may perform physical management of the Commercial Limited Common Elements and Commercial Unit Limited Common Elements appurtenant to more than one Commercial Unit upon the prior written approval of the Commercial Director.

79. **"Master Assessments"** mean the amounts paid by the Association to the Master Association for the Project's share of common expenses in Ward Village, as set forth in the Master Declaration and the Master Bylaws.

80. **"Master Association"** means the Ward Village Owners Association, created and governed by the Master Bylaws.

81. **"Master Bylaws"** means those certain By-Laws of Ward Village Owners Association dated September 13, 2013 and recorded as Exhibit "E" to the Master Declaration, as the same may be amended from time to time, which govern the Master Association's internal affairs, such as voting, elections, meetings, and other matters.

82. **"Master Declaration"** means that certain Community Covenant for Ward Village dated September 13, 2013 and recorded at said Bureau as Document No. A-50040794, as the same may be amended and supplemented from time to time, which imposes certain covenants, conditions, and restrictions on the Project and certain adjoining lands owned by Developer or Developer's Affiliate, and which creates obligations that are binding

upon the Master Association and all present and future owners of properties in Ward Village. If there is a conflict between the Master Declaration and the Condominium Documents, the Master Declaration shall prevail.

83. **"Master Rules"** mean the rules of the Master Association which regulate the use of the property, activities, and conduct within Ward Village. If there is a conflict between the Master Rules and the House Rules, the Master Rules shall prevail.

84. **"Mauka Area Rules"** mean HCDA's Mauka Area Plan, as amended, and HCDA's Mauka Area Rules (Title 15, Chapter 22 of the Hawaii Administrative Rules) in effect on June 13, 2005, collectively.

85. **"Melia Ward Village"** means that certain condominium project known as "Melia Ward Village" that is located next to the Project.

86. **"Mortgage"** when used as a noun, means a recorded mortgage, deed of trust, mortgage deed, or similar instrument encumbering a Unit given as collateral for a loan. When used as a verb, it means making a Unit subject to a mortgage or deed of trust.

87. **"Notice of Alleged Defect"** means a Claimant's notice to Developer of the specific nature of an Alleged Defect.

88. **"Occupancy Restrictions"** mean those limitations on the use and occupancy of the Residential Units.

89. **"Occupant"** means any person other than an Owner occupying a Unit, including, but not limited to, a family member, invitee, guest, tenant, employee, agent, contractor, or customer.

90. **"Office"** means the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

91. **"Officer"** means an officer of the Association.

92. **"Option Units"** mean those certain Developer or Developer Affiliate owned Units that Developer or Developer Affiliate chooses to alter the floor plans of as part of an upgrade or customization; provided that the Common Interest appurtenant to such Units shall not change.

93. **"Owner"** means a person or entity owning severally or as a co-tenant, a Unit and the Common Interest appurtenant thereto, to the extent of the interest so owned; provided that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by the terms of any applicable lease documents, a lessor, lessee, or sublessee of a Unit or interest therein shall be deemed the Owner of such Unit to the extent permitted in such lease. The vendee of a Unit pursuant to an Agreement of Sale shall have the rights of an Owner, including the right to vote; provided that the vendor may retain the right to vote on matters substantially affecting the vendor's security interest in the Unit as provided in Section 514B-124 of the Act. Where the Owner is a guardian, trustee, corporation, partnership, limited liability company, or other entity, the method for designating the natural person who shall act as and for the Owner is as set forth in the Bylaws and, as to land trusts, in **Article XVIII** of this Declaration. For so long as Developer owns unsold Units in the Project (or to the extent that Developer shall reacquire any Units in the Project), Developer shall have the rights of an Owner, including the right to vote, and shall assume the duties of an Owner as said rights and duties relate to said unsold Units (or reacquired Units), subject, however, to the provisions of this Declaration, the Bylaws, and the Act.

94. **"Parking Structure"** means level 1 through level 4 of the Tower, which includes, without limitation, the parking stalls and any storage rooms or storage lockers that serve the Project. The definition of Parking Structure shall not include any Units located on level 1.

95. **"Parties"** mean, for the purposes of **Article XL** of this Declaration, Owners, the Association, the Board, the Managing Agent, Developer, and their respective Representatives.

96. **"PD Permit"** means that certain Planned Development Permit No. KAK 23-038 approved by HCDA for the Project.

97. **"Person"** means any natural person or any corporation, partnership, limited liability partnership, joint venture, trust, limited liability company, or other legal entity.

98. **"Policy"** means the policy of property insurance the Association is required to buy and maintain, as further discussed in **Article XIII, Section B** of this Declaration.

99. **"Prohibited Litigation"** means litigation instituted by a Party prior to observing the procedures set forth in **Article XL, Sections B and C** of this Declaration.

100. **"Project"** means the condominium project established pursuant to this Declaration, including the Land and Improvements, and shall include any lands and/or improvements annexed to the condominium property regime by Developer, and shall exclude any lands and/or improvements withdrawn by Developer in accordance with this Declaration.

101. **"Project Lender"** means the lender or lenders providing Developer with financing for the construction of the Project and includes all successors and assigns of such lender(s).

102. **"Project Quality Standard"** means the standard required to maintain and operate the Project in a condition and at a quality level no less than that which existed at the time that the Project was initially completed (ordinary wear and tear excepted). Upon issuance of the Certificate of Occupancy, the Project at that time shall be deemed to meet the Project Quality Standard. The Project Quality Standard may evolve as development of the Project progresses and industry standards of urban mixed-use destinations evolve. All of the elements of the Project Quality Standard need not be set out in writing since such evaluation may require the exercise of subjective judgment and cannot be reduced to written criteria. This definition may not be amended without the prior written approval of the Commercial Director and the Recreational Director, which approval may be withheld in such Director's sole discretion.

103. **"Property"** means the Land, together with the Improvements.

104. **"Rail Effects"** mean any noise, dust, vibrations, traffic congestion, and/or other inconveniences or nuisances caused by, or associated with, the development, construction, and operation of the Honolulu Rail Transit Project.

105. **"Realignment Area"** means that certain remnant portion of the existing Auahi Street fronting Launiu Ward Village that will be created due to the Realignment Project. The Realignment Area is intended to serve as "open space" to be improved with landscaping, sidewalks, possible sitting areas, bicycle routes, bicycle parking, kiosks, and active play areas for use by the public and/or unit owners. The Realignment Area is currently owned by Victoria Ward, Limited and may be conveyed to one of its affiliated entities or subsidiaries, or to the Master Association, who will be responsible for its maintenance and upkeep.

106. **"Realignment Project"** means the realignment of Auahi Street to connect with Pohukaina Street at Ward Avenue, and to create a new intersection at the entrance of Launiu Ward Village at Auahi Street and Kamani Street.

107. **"Recreational Director"** means the Director elected by the Recreational Unit Class pursuant to Article III, Section 3 of the Bylaws. The Recreational Director shall be the individual appointed by Developer or Developer Affiliate until Developer or Developer Affiliate no longer owns the Recreational Unit.

108. **"Recreational Limited Common Elements"** mean those Limited Common Elements that are reserved for the exclusive use of the Recreational Unit Owner(s) and are described further in **Article III, Section C.2.c** of this Declaration.

109. **"Recreational Member"** means the owner of a Recreational Membership.
110. **"Recreational Membership"** means membership in the recreational operations intended to be managed by the Recreational Operator in the Recreational Unit and Recreational Limited Common Elements.
111. **"Recreational Operator"** means the entity which will manage the Recreational Unit and Recreational Limited Common Elements as recreational operations, and any of its successors or permitted assigns.
112. **"Recreational Unit"** means the Unit(s) identified as Recreational Unit(s) in **Exhibit "B"** of this Declaration and depicted on the Condominium Map.
113. **"Recreational Unit Class"** means and includes the Recreational Unit or the Recreational Units together if there is more than one Recreational Unit.
114. **"Recreational Unit Class Common Interest"** means the percentage share assigned to a Recreational Unit within the Recreational Unit Class, as set forth in **Exhibit "B"** of this Declaration. As of the date of this Declaration, there is a single Recreational Unit, which holds one hundred percent (100%) of the Recreational Unit Class Common Interest. Note this is subject to change if the Recreational Unit is subdivided into multiple Units, in which case the Recreational Unit Class Common Interest shall be recalculated as set forth in **Article XXI** of this Declaration and **Exhibit "B"** of this Declaration.
115. **"Recreational Unit Class Expense"** means a Common Expense that, pursuant to this Declaration or the Bylaws, is assessed against the Recreational Unit(s) and is payable by each Recreational Unit Owner based on such Owner's Recreational Unit Class Common Interest.
116. **"Recreational Unit Owner"** means the Owner of the Recreational Unit; provided, however, that any Person that holds such interest solely as security for the performance of an obligation shall not be considered the Recreational Unit Owner solely by reason of such interest.
117. **"Recreational Use Provision"** is defined in **Article VII, Section D** of this Declaration.
118. **"Representative"** means a Person's shareholders, directors, officers, members (in the case of a limited liability company), agents, employees, and independent contractors.
119. **"Residential Limited Common Elements"** mean those parts of the Limited Common Elements that are reserved for the exclusive use of all Residential Unit Owners, and are described further in **Article III, Section C.2.a** of this Declaration.
120. **"Residential Unit Class"** means and includes all of the Residential Units together.
121. **"Residential Unit Class Common Interest"** means the percentage share assigned to a Residential Unit within the Residential Unit Class, as set forth in **Article IV, Section B** and **Exhibit "B"** of this Declaration.
122. **"Residential Unit Class Expense"** means a Common Expense that, pursuant to this Declaration or the Bylaws, is assessed against the Residential Units and is payable by each Residential Unit Owner based on such Owner's Residential Unit Class Common Interest.
123. **"Residential Unit Limited Common Elements"** mean those parts of the Limited Common Elements that are reserved for the exclusive use of one or more, but less than all, of the Residential Unit Owners.
124. **"Residential Unit Owner"** means the Owner of a Residential Unit; provided, however, that any Person that holds such interest solely as security for the performance of an obligation shall not be considered a Residential Unit Owner solely by reason of such interest.

125. **"Residential Units"** mean the Units identified as Residential Units in **Exhibit "B"** of this Declaration and depicted on the Condominium Map.

126. **"Sea Level Rise Effects"** is defined in **Article XXXIX, Section F** of this Declaration.

127. **"SHPD"** means the State Historic Preservation Division of the Department of Land and Natural Resources, State of Hawaii.

128. **"Site Manager"** means the manager appointed and employed and/or contracted by the Managing Agent or the Board to manage, on-site, the operation of the Project, if any.

129. **"Special Costs"** mean certain costs, if any, that are to be apportioned pursuant to an Alternative Allocation among and/or between the Commercial Unit Class, the Residential Unit Class, and the Recreational Unit Class, or certain of them, based on a fair and equitable apportionment in accordance with Section 514B-41 of the Act.

130. **"State"** means the State of Hawaii.

131. **"Subdivided Lots"** mean those separate parcels of Land created upon the subdivision of the Land.

132. **"Telecommunications Equipment"** means antennas, conduits, chases, cables, wires, and other television, cable, internet, or phone signal distribution and telecommunications equipment, and shall be construed broadly in order to encompass all present and future forms of communications technology.

133. **"Tower"** means the tower building comprised of levels 1 through 33 depicted on the Condominium Map. Floors are designated consecutively as level 1 to and including level 33.

134. **"Unit"** means a part of the Project, as described in this Declaration and as shown on the Condominium Map, intended for a use permitted under the Act and under applicable law, with an exit to a public street or highway, or to a Common Element leading to a public street or highway, and includes the individual Units making up each of the Unit Classes. The Units included in the Project are listed in **Exhibit "B"** and include the Commercial Units, the Residential Units, the Recreational Unit(s), and the Utility Unit.

135. **"Unit Class"** means and refers to the Commercial Unit Class, the Residential Unit Class, and the Recreational Unit Class.

136. **"Unit Class Expense"** means a cost, expense, or charge payable by a Unit Class based on the Class Common Interest allocable to the Unit or Units within the Unit Class, as more particularly described in this Declaration.

137. **"Unit Deed"** means the legal instrument conveying an interest in a Unit and an undivided interest in the Common Elements, in fee simple, to an Owner; subject, however, to the encumbrances and reservations identified therein.

138. **"Unit Limited Common Elements"** mean those parts of the Limited Common Elements that are reserved for the exclusive use of one or more, but less than all, Units in a Unit Class, and are further described in **Article III, Section C.2.d** of this Declaration.

139. **"Utility Unit"** means the Unit identified as U1 in **Exhibit "B"** of this Declaration and depicted on the Condominium Map.

140. **"Utility Unit Owner"** means the Owner of the Utility Unit; provided, however, that any Person that holds such interest solely as security for the performance of an obligation shall not be considered the Utility Unit Owner solely by reason of such interest.

141. **"Victoria Ward, Limited"** means Victoria Ward, Limited, a Delaware corporation, and its successors and assigns. Victoria Ward, Limited is the "Declarant" under the Master Declaration.

142. **"Ward MP Development Agreement"** means the Master Plan Development Agreement for the Ward Neighborhood Master Plan dated December 30, 2010.

143. **"Ward MP Permit"** means the Nunc Pro Tunc Order re Hearing Office Proposed Findings of Fact, Conclusions of Law and Decision and Order for Master Plan Permit, approved by HCDA in File No. PL MASP 13-1-3 on January 14, 2009, as the same may be amended or extended.

144. **"Ward Village"** means that certain master-planned community called "Ward Village," which is further described in **Article II** below.

II. WARD VILLAGE; MASTER-PLANNED COMMUNITY.

The Project is one of multiple high-rise condominium projects anticipated to be developed by Victoria Ward, Limited or its affiliates as part of a master-planned community called "Ward Village." The Project will be part of this urban, mixed-use master development located in central Kaka'ako, City and County of Honolulu, State of Hawaii. Victoria Ward, Limited intends to substantially transform the current landscape surrounding the Project over the next decade or so to create Ward Village. There is no representation made, however, as to the timing of any build-out of improvements.

Being a part of Ward Village, the Project is subject to the Master Declaration, the Master Bylaws, and the Master Rules, all as the same may be amended and/or supplemented from time to time, and all rules and regulations promulgated thereunder, including, without limitation, any assessments, voting rights, design restrictions, and the design review process set forth therein, if applicable. By acquiring an interest in the Project, each Owner agrees to carefully review, observe, and comply with all covenants, conditions, restrictions, and other requirements to which the Project is subject under the Master Declaration and Master Bylaws, including membership in the Master Association, created and governed by the Master Bylaws and the payment of Master Assessments for the Project's share of common expenses for Ward Village. Further, Developer shall have the reserved right, without the approval of any Owners or such Owners' mortgagees, to amend this Declaration and to enter into any agreements and to grant easements and to do all things necessary and convenient to effect and implement the purposes of the Master Declaration, Master Bylaws, and Master Rules, and to execute, record, and deliver any and all documents necessary to effect the same, including, but not limited to, any amendments to this Declaration and the Condominium Map.

Victoria Ward, Limited shall be liable for any Master Assessments on Units it owns; however, during the Declarant Control Period under the Master Declaration, Victoria Ward, Limited may pay assessments on Units it or any of its affiliates owns by paying any shortfall under the Master Association's expense budgets, resulting from events other than failure of others to pay Master Assessments; provided, Victoria Ward, Limited may, but shall not be obligated to, pay amounts budgeted to its or its affiliates' Units for reserves, or fund any shortfall in budgeted contributions to reserves. After termination of the "Declarant Control Period" under the Master Declaration, Victoria Ward, Limited shall pay assessments on any Units it owns in the same manner as any other owner who is liable for such assessments.

For purposes of this **Article II**, capitalized terms not otherwise defined herein shall have the meanings set forth in the Master Declaration. Notwithstanding the above, by signing and accepting a Unit Deed or other conveyance of a Unit or interest therein, Owners acknowledge and accept the following related to living in Ward Village:

A. Any representations of Ward Village received or viewed by Owners over time are not representations and/or warranties that all improvements or amenities and/or services represented in such depictions will exist.

B. There may be ongoing construction, noise and nuisances, traffic, and road congestion in Ward Village until the entire Ward Village development is completed, including the potential for detour roads and pathways for access to the Project.

C. Certain portions of lands outside, abutting, and/or near the Project may be subject to redevelopment, and in the future may or will be developed. Developer makes no representation as to the nature, design, architecture, or size of any future development and/or the impact of such developments on the Project.

D. Ward Village is intended to contain multiple high-rise mixed-use condominium projects along with amenities such as community parks and entertainment facilities. Neither Developer nor Victoria Ward, Limited represent or warrant that any of the Ward Village amenities, including the parks, will be built at all or will be built to the extent represented in any drawing or representation. Owners should anticipate noise from amenities provided within Ward Village.

E. Owners will not become members of the Master Association and, in most instances, will not have direct voting rights in the Master Association. The Association will be the member of the Master Association for the Project. The Association and the Owners shall be responsible for certain shared costs for the maintenance and upkeep of any master community common areas and other services and use areas shared among the projects in Ward Village and described in the Master Declaration and Master Bylaws. To the extent permissible by applicable law, the Master Association has the right to lien a Unit in the event of nonpayment of any Master Assessments by the Association or the Unit's Owner.

F. The Master Declaration sets forth a "Declarant Control Period," which is the period of time during which Victoria Ward, Limited may appoint a majority of the members of the Master Association's board of directors, and a "Development and Sale Period," which is the period during which Victoria Ward, Limited may exercise other development rights under the Master Declaration. Owners are urged to review the Master Declaration for additional information.

G. In addition to any design restrictions and/or regulations or standards in the Condominium Documents, Owners will be subject to the additional design restrictions, design guidelines, and/or regulations or standards promulgated by Victoria Ward, Limited or the Master Association pertaining to Ward Village. The Master Declaration and Master Bylaws set forth sanctions for noncompliance with the provisions in the master documents.

H. The Master Declaration creates and contains rights of Victoria Ward, Limited to create various component areas within Ward Village, which may include all or a portion of the Project. Some of these areas may require easements through portions of the Project, which may grant the Master Association and/or the public access through the Project or use of certain areas within the Project (i.e., access ways, bicycle pathways, park or recreational areas, security systems or services, or parking facilities). Such areas may also be dedicated for use by the public or for public rights of way pursuant to the Master Declaration. In such case, the Master Association may assume responsibility for maintenance of the area and may pay for the costs associated with such areas as a Master Association expense.

I. Victoria Ward, Limited and the Master Association may enter into certain service contracts for services provided by vendors to multiple properties in Ward Village, including, without limitation, the Project, based on overall economic, service, and efficiency benefits to the overall master development.

J. Victoria Ward, Limited has certain reserved rights set forth in the Master Declaration that may impact the Project. Such reserved rights include, but are not limited to:

1. The right to complete or not complete any improvements in Ward Village indicated on the development plans;
2. The right to create, permit the creation of, merge, or permit the merger of condominium property regimes on Parcels in Ward Village;
3. The right to create additional Parcels, Common Areas, and Area of Common Responsibility, including Limited Benefit Areas, and to designate and dedicate roadways within any portion of Ward Village owned by Victoria Ward, Limited, its affiliates, or assigns;
4. The right to subdivide or combine Parcels or convert Parcels or portions of Parcels into Area of Common Responsibility (including Common Areas or Limited Benefit Areas) or roadways;

5. The right to reconfigure property or convert Parcels or portions thereof into Common Areas and to convert Common Areas into Parcels;
6. The right to withdraw from Ward Village any Parcel or portion thereof, subject to the Master Declaration, and to obtain such local government approvals that may be required;
7. The right to reconfigure boundaries of the Area of Common Responsibility and the right to grant easements for use of the sidewalks and streets within Ward Village for adjacent commercial users;
8. The right to maintain sales offices, management offices, and advertising signs on the property subject to the Master Declaration;
9. The right of access over the Area of Common Responsibility for the purpose of making improvements within the property subject to the Master Declaration;
10. The right to close streets and sidewalks within Ward Village to allow their use for special events;
11. The right to appoint and remove any director or officer of the Master Association during the Declarant Control Period as provided in the Master Bylaws;
12. The right to withdraw any Parcel or any portion from the coverage of the Master Declaration;
13. The right to maintain upon portions of Parcels (including the Project), the Common Areas, and other property Victoria Ward, Limited or any of its affiliates owns or has reserved rights in and to, such facilities and activities as, in Victoria Ward, Limited's opinion, may reasonably be required, convenient, or incidental to construction or marketing, leasing, and sale of Parcels or any portion thereof;
14. The right to designate certain areas within Parcels as part of the Area of Common Responsibility, including Limited Benefit Areas;
15. The right to approve any modification of the Village Standard and Master Rules or design guidelines;
16. The right to record additional covenants or restrictions affecting any portion of Ward Village;
17. A perpetual right and easement over all property in Ward Village for Telecommunications Systems and to select contractors for the provision of telecommunication services;
18. The right to access and use, and an easement over and upon, all of the Area of Common Responsibility, including roadways in Ward Village for the exercise of its reserved rights and the right to make, construct, and install improvements in Ward Village, as appropriate;
19. The right to use the Area of Common Responsibility for special events;
20. The right to enter into the Project to utilize the amenities for sales functions and access to and from the Project and the Units for sales and marketing purposes and in the promotion of sales in other Parcels and projects in Ward Village;
21. The right to amend any entitlement documents, permits, or agreements with HCDA in order to complete the developments in Ward Village; and
22. The right to transfer or assign its rights and status as the declarant under the Master Declaration and the Master Bylaws.

The above summary is not exhaustive. Victoria Ward, Limited has other reserved rights and easements pursuant to the Master Declaration and Master Bylaws. Each Owner acknowledges, consents, and agrees that Victoria Ward, Limited shall have the reserved rights and other rights set forth in the Master Declaration, Master Bylaws, and other master documents and hereby delegates and assigns to Victoria Ward, Limited, as such Owner's true and lawful agent and attorney-in-fact, with full power of substitution, the right and authority to exercise such rights and to execute, deliver, and record such documents as may be necessary, in Victoria Ward, Limited's discretion, to carry forth or otherwise accomplish any of Victoria Ward, Limited's rights.

III. DESCRIPTION AND DIVISION OF THE PROJECT.

A. DESCRIPTION OF THE PROJECT. The Project consists of the Tower comprised of levels 1 through 33, which shall be used for residential, commercial, recreational, and parking uses, and for other purposes permitted under this Declaration. The Project shall contain the following:

1. **RESIDENTIAL UNITS.** A total of one hundred forty-eight (148) Residential Units located on levels 7 through 33 of the Tower, further described in **Exhibit "B"** attached hereto and incorporated herein by reference and depicted on the Condominium Map.
2. **COMMERCIAL UNITS.** A total of three (3) Commercial Units located on level 1 of the Tower, further described in **Exhibit "B"** attached hereto and incorporated herein by reference and depicted on the Condominium Map.
3. **RECREATIONAL UNIT.** One (1) Recreational Unit located on level 1 of the Tower, further described in **Exhibit "B"** attached hereto and incorporated herein by reference and depicted on the Condominium Map.
4. **UTILITY UNIT.** One (1) Utility Unit located on level 1 of the Tower, further described in **Exhibit "B"** attached hereto and incorporated herein by reference and depicted on the Condominium Map.
5. **COMMON ELEMENTS.** The Common Elements identified in **Article III, Section C** below.

B. DESCRIPTION OF THE UNITS. A total of one hundred fifty-three (153) freehold estates consisting of the Residential Units, the Commercial Units, the Recreational Unit, and the Utility Unit described in **Article III, Section A** above are hereby established in the Project and designated in the spaces within the perimeter and party walls, windows, doors, floors, and ceilings of each of the Units in the Project, as designated and shown on the Condominium Map.

1. **UNIT DESIGNATIONS, NUMBERS, AND LOCATIONS.** The Unit types, designations, numbers, and locations are shown on the Condominium Map and are further identified in **Exhibit "B"** attached hereto and incorporated herein by this reference.

2. **UNIT AREAS, LAYOUTS, DIMENSIONS, NET LIVING AREAS AND FLOOR AREAS.** The Unit areas, layouts, dimensions, and net living areas are shown on the Condominium Map and are further described in **Exhibit "B"** attached hereto and incorporated herein by this reference. The Condominium Map is intended only to show: (a) the layout and location of, and access to, a public road from the Tower and access for the Units to a public road or to a Common Element leading to a public road; (b) the elevations and floor plans of the Tower; (c) the layouts, locations, boundaries, Unit numbers, and dimensions of the Units; (d) a parking plan for the Project showing the locations, layouts, and stall numbers of all parking stalls included in the Project; (e) the layouts, locations, and other identifying information of the Limited Common Elements; and (f) a description identifying any Land area that constitutes a Limited Common Element. The Condominium Map is not intended and shall not be deemed to contain or make any representation or warranty whatsoever. The descriptions contained in this Declaration and **Exhibit "B"** attached hereto that describe the various rooms and areas of the Project, and the designations of rooms and areas on the Condominium Map are for identification purposes only and are not intended, and shall not be deemed or construed, to limit or define in any manner the purposes for which such rooms and areas may be used.

Unless expressly restricted in this Declaration, such areas may be used for any purpose not prohibited by applicable law.

3. **ACCESS TO PUBLIC STREETS OR HIGHWAYS.** Except as may be limited by the terms of this Declaration, each Unit has immediate access through elevators, stairways, walkways, and driveways of the Project to public streets and to the grounds of the Project that have access to public streets.

4. **LIMITS OF UNITS.** The respective Units shall be deemed to include: (i) all interior walls, doors, windows, window frames and cranks, and partitions that are not load-bearing and that are located within the space bounded by the Unit's perimeter walls, but not the perimeter walls themselves; (ii) the interior decorated or finished surfaces of all doors, door frames, columns, and window frames that comprise a part of the perimeter walls; (iii) the interior decorated or finished surfaces of all floors and ceilings; (iv) all lath, furring, wallboard, plasterboard, plaster, paneling, tile, wallpaper, paint, finished flooring, and any other materials constituting the finished interior decorated surfaces of perimeter walls and columns, and the interior surfaces of perimeter doors, door and window frames, floors, and ceilings; (v) the air space surrounded by the perimeter walls, doors, door and window frames, floors, and ceilings; (vi) all fixtures (if any) originally installed in the Unit; and (vii) any pipes, shafts, wires, conduits, ducts, or other utility or service lines running through such Unit that are utilized for or service only that Unit. Each Unit shall not be deemed to include the following: (a) the undecorated and unfinished surfaces of perimeter and party walls and doors, glass sliding doors and frames, door frames, Insulated Glass Unit ("IGU") and IGU frames and any exterior surfaces thereof; (b) the interior load bearing walls and columns and their undecorated or unfinished surfaces; (c) any door or window frames located in the interior load bearing walls and their undecorated or unfinished surfaces; (d) any pipes, shafts, wires, conduits, ducts, or other utility or service lines running through such Unit that are utilized for or service more than one (1) Unit; and (e) any General Common Elements or Limited Common Elements as hereinafter provided.

Developer shall have the right to adjust the perimeter boundaries and areas of Units as necessary to correct minor discrepancies and/or errors in the descriptions or areas thereof and to record at said Bureau an amendment to this Declaration and/or the Condominium Map to reflect such modification. Developer shall not be required to recalculate and readjust the Common Interest appurtenant to the Units affected by such minor corrections.

C. **COMMON ELEMENTS.** One freehold estate is hereby designated in all remaining portions of the Project not otherwise defined as a Unit, herein called the "**Common Elements**." The Common Elements shall include, without limitation, the General Common Elements and the Limited Common Elements described in this Section.

1. **GENERAL COMMON ELEMENTS.** The General Common Elements include specifically, but are not limited to, the following:

a. The Land in fee simple and any other appurtenances thereto described in **Exhibit "A"** attached hereto and incorporated by this reference; subject, however, to the rights of Developer set forth herein affecting the Land;

b. The Building Structure;

c. All fans, vents, shafts, sewer lines, water lines, pipes, generators, cables, conduits, ducts, electrical equipment and lines, cooling tower(s), HVAC, and any supporting pumps or equipment, wiring, and other central and appurtenant transmission facilities and installations on, above, over, under, and across the Project that serve all Units and their appurtenant Limited Common Elements, or the General Common Elements, including, without limitation, those providing electricity, light, gas (if any), water, air conditioning, sewer, refuse, drainage, irrigation, telephone, security, internet, radio and television signal distribution (if any), or storing any equipment related to the same, unless designated otherwise herein;

d. The building support equipment, building storage, maintenance, and equipment rooms, hallways, stairways, and corridors for common use by or for the common benefit of all Units and/or the General Common Elements appurtenant to all Units on level 1 and the roof, designated as "GE: General Common Element" on the Condominium Map;

e. The loading dock and any loading stalls located on level 1 of the Project, designated as "GE: General Common Element" on the Condominium Map;

f. The driveway and drive aisle from Auahi Street to the loading stalls and loading dock designated as "GE: General Common Element" on the Condominium Map; subject, however, to the Grant of Easement;

g. Any easements, access rights, licenses, or encroachment rights granted to the Association through any adjoining parcel; and

h. Those other areas designated as "GE: General Common Element" on the Condominium Map.

2. **LIMITED COMMON ELEMENTS.** The Limited Common Elements are hereby designated, set aside, and reserved for the exclusive use of certain Units, or groups of Units, which Units shall have appurtenant thereto exclusive easements for the use of such Limited Common Elements, unless otherwise set forth herein. The Limited Common Elements are as follows:

a. **RESIDENTIAL LIMITED COMMON ELEMENTS.** The Residential Limited Common Elements include those parts of the Limited Common Elements that are reserved for the exclusive use of all Residential Unit Owners, as follows:

(i) The porte cochere (if any) and/or entranceway off of Auahi Street and vehicle ramps going from level 1 to level 4 of the Parking Structure, the drive aisles and areas of the Parking Structure located on level 1 through level 4 (other than the Units, Unit Limited Common Elements, Commercial Limited Common Elements, Recreational Limited Common Elements, or General Common Elements), including the finishes thereon, hallways, elevator landings, and stairs, designated as "LCE-R: Residential Limited Common Element" on the Condominium Map;

(ii) The guest parking stalls located on level 1, designated as "LCE-R: Residential Limited Common Element" on the Condominium Map;

(iii) The interior and exterior surfaces of the walls, ceilings, and floors of level 1 to level 4 of the Parking Structure, including, without limitation, any louver, trellis, screening, paneling, signage, decorative façade, or Improvement attached to the interior surfaces thereof;

(iv) Any security residential gate servicing the residential parking areas, depicted as "LCE-R: Residential Limited Common Element" on the Condominium Map;

(v) The elevators and elevator vestibules, stairs, general storage areas, residential lobby areas, bathrooms, trash rooms or chutes, bike and surfboard storage areas (if any), administrative offices, maintenance rooms, mail room, utility rooms and other back of house corridors, offices, and areas servicing the Residential Units, designated as "LCE-R: Residential Limited Common Element" on the Condominium Map;

(vi) All common walkways, sidewalks, patios, corridors, accessibility ramps, retaining walls, fences, gates, and landscaping, designated as "LCE-R: Residential Limited Common Element" on the Condominium Map;

(vii) The undecorated, unfinished surface of any wall, floor, or ceiling surrounding the lanai or balcony appurtenant to a Residential Unit and the entirety of any glass railing on such lanai or balcony;

(viii) Any "Restricted Lanai," as labeled or depicted on the Condominium Map;

(ix) Any and all decorative elements that may be added by or on behalf of Developer to the Residential Unit Limited Common Elements, the Residential Limited Common Elements, and/or the exterior of the Residential Units, including, without limitation, any louvers, metal panels, signs, glass curtain walls, glass, fixtures, water features, fencing, gates, and landscaping;

(x) Those portions of any pipes, cables, conduits, chutes, flues, ducts, wires, vents, shafts, other utility or service lines, sewage treatment equipment and facilities (if any) and supporting apparatus, electrical equipment and lines, electrical and mechanical closets, communications rooms, pump rooms, systems, HVAC and/or heating equipment, and any appurtenant pipes or ducts, or other central and appurtenant transmission facilities and installations over, under, and across the Residential Limited Common Elements, or any other fixtures, whether located partially within or partially outside the designated boundaries of the Residential Limited Common Elements, which serve more than one Residential Unit or the Residential Limited Common Elements and not the Commercial Units, Commercial Limited Common Elements, Commercial Unit Limited Common Elements, the Recreational Unit(s), the Recreational Limited Common Elements, or the Utility Unit, and are not otherwise designated as General Common Elements;

(xi) The rooftop of the Tower or portion thereof, or mechanical equipment areas thereon servicing only the Residential Units, Residential Limited Common Elements, and/or the Residential Unit Limited Common Elements, designated as "LCE-R: Residential Limited Common Element" on the Condominium Map; and

(xii) Any other areas designated as "LCE-R: Residential Limited Common Element" on the Condominium Map.

b. **COMMERCIAL LIMITED COMMON ELEMENTS.** The Commercial Limited Common Elements include those parts of the Limited Common Elements that are reserved for the exclusive use of all Commercial Unit Owners, as follows:

(i) Any sidewalks, landscaping, pedestrian walkways, patios, accessibility ramps, retaining walls, fences, gates, decorative water feature(s) (if any) and landscaped areas and any louver, trellis, screening, or paneling located in the area, designated as "LCE-C: Commercial Limited Common Element" on the Condominium Map;

(ii) Any signage, decorative façade, or Improvement attached to the interior or exterior surfaces of structures on level 1 describing or relating to the Commercial Units;

(iii) Any building storage areas, entry and receiving areas, maintenance rooms, trash room, and other areas servicing only the Commercial Units, if any, designated as "LCE-C: Commercial Limited Common Element" on the Condominium Map;

(iv) All landscaping, fences, gates, and walls enclosing the Commercial Limited Common Elements, and any patios, terraces, gardens, and grounds located on level 1 of the Tower appurtenant to the Commercial Units, if any, designated as "LCE-C: Commercial Limited Common Element" on the Condominium Map;

(v) Those portions of any pipes, cables, conduits, chutes, flues, ducts, wires, vents, fans, shafts, fire pumps, other utility or service lines, sewage treatment equipment and facilities (if any), HVAC, electrical equipment and lines, electrical closet, equipment or maintenance storage rooms, communications room, HVAC room, or other central and appurtenant transmission facilities and installations over, under, and across the Commercial Limited Common Elements, or any other fixtures, whether located partially within or partially outside the designated boundaries of a Commercial Limited Common Element, which serve the Commercial Units or Commercial Limited Common Elements and not the Residential Units, Residential Unit Limited Common Elements, Residential Limited Common Elements, Recreational Unit(s), the Recreational Limited Common Elements, or the Utility Unit; and

(vi) Any other areas designated as "LCE-C: Commercial Limited Common Element" on the Condominium Map.

c. **RECREATIONAL LIMITED COMMON ELEMENTS.** The Recreational Limited Common Elements include those parts of the Limited Common Elements that are reserved for the exclusive use of the Recreational Unit Owner(s), as follows:

(i) Any signage, decorative façade, or Improvement attached to the interior or exterior surfaces of structures on level 1 describing or relating to the Recreational Unit(s);

(ii) Any building storage areas, including bicycle and surfboard storage areas, entry and receiving areas, maintenance room, trash room, offices, and other back of house areas servicing only the Recreational Unit(s) or Recreational Limited Common Elements, if any, designated as "LCE-REC: Recreational Limited Common Element" on the Condominium Map;

(iii) The facilities and amenities located on levels 5 and 6, which may include, among other items, swimming pools, fitness center, playground areas, saunas and steam rooms, spa facilities, lounge rooms and areas, kitchen and dining areas for food and beverage service or catering, locker rooms, and restrooms, designated as "LCE-REC: Recreational Limited Common Element" on the Condominium Map;

(iv) Those portions of any pipes, cables, conduits, chutes, flues, ducts, wires, vents, fans, shafts, fire pumps, other utility or service lines, sewage treatment equipment and facilities (if any), HVAC, electrical equipment and lines, electrical closet, swimming pool equipment rooms, equipment or maintenance storage rooms, communications room, HVAC room, or other central and appurtenant transmission facilities and installations over, under and across the Recreational Limited Common Elements, or any other fixtures, whether located partially within and partially outside the designated boundaries of a Recreational Limited Common Element, which serves the Recreational Unit(s) or the Recreational Limited Common Elements and not the Residential Units, Residential Unit Limited Common Elements, Residential Limited Common Elements, Commercial Units, Commercial Unit Limited Common Elements, Commercial Limited Common Elements, or the Utility Unit; and

(v) Any other areas designated as "LCE-REC: Recreational Limited Common Element" on the Condominium Map.

d. **UNIT LIMITED COMMON ELEMENTS.** Unit Limited Common Elements include those parts of the Limited Common Elements that are reserved for the exclusive use of one (1) or more, but less than all, of the Owners of a particular Unit Class, as follows:

(i) **RESIDENTIAL UNITS.** Residential Units shall each have appurtenant thereto as a Residential Unit Limited Common Element the following:

(a) One (1) assigned mailbox located within the mail room on level 1 of the Project. Unless otherwise determined by Developer or the Board, such mailbox shall be identified by the same number as the Residential Unit to which it is assigned as a Limited Common Element;

(b) Any parking stall(s) and/or storage locker(s) assigned to a Residential Unit in **Exhibit "B"** or in any amendment to this Declaration;

(c) The lanai or balcony, if any, adjoining the Residential Unit, from the decorated finished surface of all walls, floors, and ceilings of said lanai or balcony (excluding any perimeter glass railings), as depicted on the Condominium Map, the areas of which are described in **Exhibit "B"** but specifically excluding any "Restricted Lanai," as labeled or depicted on the Condominium Map;

(d) Any chute, flue, duct, wire, conduit, or any other fixture that lies totally within or partially within and partially outside the designated boundaries of a Residential Unit, and any portion thereof serving only one or more, but less than all, Residential Units; and

(e) Any other areas on the Condominium Map described as a Unit Limited Common Element appurtenant to a Residential Unit.

(ii) **COMMERCIAL UNITS.** Commercial Units shall each have appurtenant thereto as a Commercial Unit Limited Common Element the following:

(a) One (1) assigned mailbox, located on level 1 of the Project. Unless otherwise determined by Developer or the Board, such mailbox shall be identified by the same number as the Commercial Unit to which it is assigned as a Limited Common Element;

(b) Any doorsteps, stoops, and all exterior doors and windows or IGUs, or other fixtures designed to serve a Commercial Unit located outside the boundaries of, but adjoining, the Commercial Unit;

(c) Any chute, flue, duct, wire, conduit, or any other fixture that lies totally within or partially within and partially outside the designated boundaries of a Commercial Unit, and any portion thereof serving only one or more, but less than all, Commercial Units; and

(d) Any other areas on the Condominium Map described as a Unit Limited Common Element appurtenant to a Commercial Unit.

IV. **COMMON INTEREST; CLASS COMMON INTEREST.**

A. **COMMON INTEREST.** Each Unit shall have appurtenant thereto an undivided percentage interest in all Common Elements of the Project as shown in **Exhibit "B"** attached hereto, herein called the Common Interest, and the same proportionate share in all common profits and Common Expenses of the Project, and for all other purposes, except as otherwise provided in this Declaration, including, but not limited to, voting; which Common Interest shall be subject to adjustment as otherwise provided in this Declaration. Any profits generated from the use of a particular Unit or Limited Common Element shall not be deemed "common profits" subject to distribution in accordance with the Common Interest as set forth above, but shall belong to the Owner of such Unit, or to the Units to which such Limited Common Element is appurtenant. Any profits generated by the Recreational Unit Owner from the use of the General Common Elements pursuant to **Article V, Section H** below shall not be deemed "common profits" subject to distribution in accordance with the Common Interest as set forth above, but shall belong to the Recreational Unit Owner. Developer shall have the absolute right to adjust the Common Interest in its discretion in order to ensure that the total Common Interest for all Units in the aggregate equals one hundred percent (100%); provided that the proportion of each Owner's Common Interest shall remain substantially the same in relation to the other Owners. The Common Interest is calculated as set forth in **Exhibit "B"** attached hereto. Developer shall further have the right to adjust the Common Interest in exercising certain Developer's Reserved Rights, as may be set forth herein.

B. **CLASS COMMON INTEREST.** In addition to the Common Interest, each Commercial Unit, Residential Unit, and Recreational Unit shall have assigned to it, for administrative purposes, the Class Common Interest as set forth in **Exhibit "B"** attached hereto and incorporated by reference herein, based upon the Unit Class to which such Unit belongs; that being either the Commercial Unit Class, the Residential Unit Class, or the Recreational Unit Class. All Owners in a Unit Class shall have the right to vote such Owner's Class Common Interest with respect to matters requiring voting by Unit Class, and each Unit in a Unit Class shall be responsible for its proportionate share of all Class Common Expenses of the Project, if any. Developer shall have the absolute right to adjust the Class Common Interest in its discretion in order to ensure that the total Residential Unit Class Common Interest for the Residential Units in the aggregate equals one hundred percent (100%), that the total Commercial Unit Class Common Interest for the Commercial Units in the aggregate equals one hundred percent (100%), and that the total Recreational Unit Class Common Interest for the Recreational Unit(s) in the aggregate equals one hundred percent (100%); provided that the proportion of each Owner's Class Common Interest shall remain substantially the same in proportion to the other Owners within the Unit Class. Developer shall further have the right to adjust the Class Common Interest in exercising certain Developer's Reserved Rights, as may be set forth herein. For instance, a Commercial Unit may be subdivided into multiple Commercial Units by Developer pursuant to its Developer's Reserved Right. In such event, Developer may determine the allocation of the Class Common Interest among the multiple Commercial Units.

V. EASEMENTS AND LICENSES.

In addition to any easements of record and any easements and reserved rights described in this Declaration and the Master Declaration, the Units and the Common Elements shall also have, as an appurtenance, or be subject to, as the case may be, the following easements, all and any of which in favor of Developer may be exercised without the joinder or consent of any Person, Owner, mortgagee, or Lender. The Association shall not amend, modify, or terminate any easement granted or accepted by Developer without the prior written approval of Developer.

A. EASEMENTS IN THE COMMON ELEMENTS AND OTHER UNITS FOR ACCESS AND SUPPORT. Each Unit shall have appurtenant thereto nonexclusive easements in the Common Elements, including the Limited Common Elements, designed for such purposes as ingress to, egress from, utility services for and support, maintenance, and repair of such Unit; in the other Common Elements for use according to their respective purposes, subject always to the exclusive use of the Limited Common Elements as provided herein; and in the other Units in the Tower for support, subject to the provisions of Section 514B-38 of the Act.

B. EASEMENTS IN CERTAIN LIMITED COMMON ELEMENTS AND OTHER UNITS FOR UTILITIES AND SUPPORT. Wherever sanitary sewer connections, water connections, electricity, gas, telephone, cable, HVAC, security, drainage facilities, or duct facilities are installed within the Project, the Owners of Units that are served by said connections, lines, or facilities shall have the right, and there are hereby reserved to all Owners, together with the right to grant and transfer the same, easements and rights to the extent necessary for the full use and enjoyment of such portions of such connections, lines, or facilities that service such Units, and to enter Units or Limited Common Elements owned by others, or to have utility companies enter Units or Limited Common Elements owned by others, in or upon which said connections, lines, or facilities, or any portions thereof, lie, to repair, replace, and generally maintain said connections, lines, or facilities as and when the same may be necessary; provided that such entering Owner or utility company shall repair any and all damage to any Unit or Limited Common Element caused by such entry as promptly as possible after completion of work thereon.

C. EASEMENT FOR ENCROACHMENTS. If any part of the Common Elements now or hereafter encroaches upon any Unit, General Common Element, or Limited Common Element, or if any Unit encroaches upon the Common Elements or upon any other Unit, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. In the event that a Unit shall be partially or totally destroyed and then rebuilt, or in the event of any shifting, settlement, or movement of any part of the Project, encroachments of any part of the Units, General Common Elements, or Limited Common Elements due to such construction, shifting, settlement, or movement shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist for so long as such encroachment continues.

D. EASEMENT THROUGH PROJECT GROUNDS AND PARKING STRUCTURE. The Units shall have appurtenant thereto, nonexclusive easements for access throughout the Parking Structure, all roadways, driveways, access lanes, ramps, landscaped areas, sidewalks, walkways, hallways, and grounds of the Project that is/are part of the Commercial Limited Common Elements, Residential Limited Common Elements, or Recreational Limited Common Elements, as depicted on the Condominium Map to the extent that such easements are necessary for ingress to and egress from, such Units and to and from any Limited Common Element areas appurtenant to such Units or the Residential Limited Common Elements, Commercial Limited Common Elements, or Recreational Limited Common Elements.

Melia Ward Village shall have an easement through level 1 over the driveway and drive aisles from Auahi Street to the Melia Ward Village loading stalls and loading dock for vehicle ingress, egress, loading, unloading, and turnaround purposes, subject to the Grant of Easement.

E. EASEMENT FOR COMMERCIAL UNIT VENDORS, LICENSEES, AND INVITEES. Each Commercial Unit shall have an appurtenant easement for use by its vendors, licensees, and invitees for purposes of the business conducted within the Commercial Unit or its appurtenant Unit Limited Common Elements or the Commercial Limited Common Elements (1) to come onto the Project areas intended for access to and from any nearby roads, streets, or highways; (2) to make deliveries in the Common Elements and access the Common Elements as necessary to get from the delivery area to the Commercial Unit or its Unit Limited Common Elements; (3) to go to and from the Commercial Unit and its Limited Common Elements using the walkways and sidewalks intended for

such purpose; (4) for casual use, for recreation, and to enjoy entertainment and other services provided from the Commercial Unit or its Unit Limited Common Elements; and (5) as otherwise may be reasonably necessary to operate and manage the services from the Commercial Unit, its Unit Limited Common Elements, and the Commercial Limited Common Elements. The Commercial Limited Common Elements are intended for general use by the Commercial Units' vendors, licensees, and invitees, and by the general public accessing and patronizing a Commercial Unit.

F. EASEMENT FOR RECREATIONAL UNIT VENDORS, EMPLOYEES, RECREATIONAL MEMBERS, AND GUESTS. The Recreational Unit shall have an appurtenant easement for use by its vendors, licensees, invitees, employees, guests, Recreational Members, and Authorized Users for purposes of the business conducted in the Recreational Unit or its appurtenant Recreational Limited Common Elements (1) to come onto the Project areas intended for access to and from any nearby roads, streets, or highways; (2) to access and use the Parking Structure, including any guest stalls; (3) to make deliveries in the Common Elements and access the Common Elements as necessary to get from the delivery area to the Recreational Unit or its Recreational Limited Common Elements; (4) to go to and from the Recreational Unit and its Recreational Limited Common Elements using the walkways, sidewalks, lobbies, and elevators intended for such purpose; (5) for casual use, for recreation, and to enjoy entertainment and other services provided from the Recreational Unit or its Recreational Limited Common Elements; and (6) as otherwise may be reasonably necessary to operate and manage the services from the Recreational Unit and the Recreational Limited Common Elements. The Recreational Unit and its appurtenant Recreational Limited Common Elements are intended for general use by the Recreational Unit's vendors, licensees, invitees, employees, guests, Recreational Members, and Authorized Users accessing and patronizing the Recreational Unit and Recreational Limited Common Elements. Owners may experience increased vehicle and pedestrian traffic in the Project due to the Recreational Unit's vendors, licensees, invitees, employees, guests, Recreational Members, and Authorized Users accessing and patronizing the Recreational Unit and Recreational Limited Common Elements.

G. EASEMENT FOR RECREATIONAL UNIT OWNER. The Recreational Unit Owner, the Recreational Operator, or their respective affiliates intend to sell Memberships in the recreational operations to Recreational Members. Each Membership will allow the Recreational Member and Authorized Users to use the Recreational Unit and Recreational Limited Common Elements, and access over and through the Common Elements of the Project. The Recreational Unit Owner, the Recreational Operator, and their respective affiliates shall have the right and an easement to use the Common Elements of the Project and to allow Recreational Members and Authorized Users to use the Common Elements of the Project. Each Owner and Occupant waives and releases any rights, claims, or actions that the Owner or Occupant may have arising from or with respect to the proper use of this easement now or in the future against the Recreational Unit Owner, the Recreational Operator, or their respective affiliates. At all times when using such easement, the Recreational Unit Owner, the Recreational Operator, or their respective affiliates, as applicable, shall maintain a policy or policies of insurance in an amount which is reasonable for the use of such easement, naming the Association as an additional insured, and shall demonstrate proof of such insurance to the Board upon request.

H. EASEMENT FOR EVENTS. The Recreational Unit Owner, the Recreational Operator, and their respective agents, employees, contractors, and licensees shall each independently have the right and an easement to conduct events in the General Common Elements and Residential Limited Common Elements of the Project. The Recreational Unit Owner and the Recreational Operator may contract with third-parties to operate the events. Each Owner and Occupant waives and releases any rights, claims, or actions that the Owner or Occupant may have arising from or with respect to the proper use of this easement now or in the future against the Recreational Unit Owner, the Recreational Operator, and their respective representatives, licensees, invitees, successors, and assigns. The Recreational Unit Owner and the Recreational Operator, as applicable, shall be responsible for any additional cleaning and repairs caused by their exercise of this easement. At all times when using such easement, the Recreational Unit Owner and the Recreational Operator shall maintain a policy or policies of insurance (including liquor liability insurance if serving alcohol) in an amount which is reasonable for the use of such easement, naming the Association as an additional insured, and shall demonstrate proof of such insurance to the Board upon request.

I. EASEMENT FOR ACCESS TO UNITS AND LIMITED COMMON ELEMENTS. Subject to the limitations with respect to the Recreational Unit described below, the Association shall have the irrevocable right, but not the duty, to be reasonably exercised by the Board and/or the Managing Agent, or any of their successors, assigns, agents, employees, contractors, subcontractors, and other authorized personnel, to enter each Unit and/or its Limited Common Elements from time to time during reasonable hours as may be appropriate for the operation or

maintenance of the Project or for the inspection, repair, painting, resurfacing, maintenance, installation, or replacement of any Common Elements, or for any other purpose reasonably related to the exercise of the rights and obligations under this Declaration, or, without notice, at any time for (1) making emergency repairs therein necessary to prevent damage to any Unit or Common Element, (2) abating any nuisance or any dangerous, unauthorized, prohibited, or unlawful activity, (3) protecting the property rights of any Owner, or (4) preventing death or serious bodily injury to any Owner or other Occupant therein.

The Association's access to the Recreational Unit(s) and the Recreational Limited Common Elements shall be limited to emergency situations. Any exercise of the rights of access in an emergency situation shall be made, if possible, after a prior notice for entry is made, and if reasonably practicable, any such entry shall be made at a time reasonably convenient to the Recreational Unit Owner, its tenants or Occupants (and subject to the terms of any applicable lease or occupancy agreement), which may be before or after the customary business hours of the Recreational Unit Owner, its tenants or licensees, and, if requested by such Owner, in the company of a representative of the Recreational Unit Owner. In all events, any such entry shall be exercised in a commercially reasonable manner so as to minimize inconvenience or disruption to the activities being conducted in the Recreational Unit(s) and the Recreational Limited Common Elements.

For purposes of this Section, an "emergency" is defined as any occurrence or situation where, if immediate remedial action is not undertaken, substantial damage to the Common Elements, to a Unit, or injury or death to individual persons within the Project, is likely to result.

J. EASEMENT AFFECTING COMMON ELEMENTS. The Association has the right, exercisable by the Board and/or the Managing Agent, to designate, grant, lease, convey, transfer, cancel, relocate, and otherwise deal with any easements over, under, across, or through the Common Elements for any reasonable purpose, which may include, but will not be limited to, (1) those purposes necessary for the operation, care, upkeep, maintenance, or repair of any Unit, General Common Element, or Limited Common Element, or (2) any easements for utilities or for any public purpose, including, for example, pedestrian walkways, landscaped areas, stairs, ramps, roadways, or other passageways, or the facilities that support the Project. The Association must have the prior written approval of each affected Commercial Unit Owner before it can exercise this right within any Commercial Limited Common Element or Commercial Unit Limited Common Element and, if within any Commercial Limited Common Element or Commercial Unit Limited Common Element, the exercise of this right shall further be subject to the prior written approval of the Commercial Director until the expiration of the Commercial Director Consent Rights. The Association must have the prior written approval of the Recreational Director before it can exercise this right within the Recreational Limited Common Elements.

K. EASEMENTS THROUGH OR BENEFITTING ADJACENT LANDS. The Association has the right, exercisable by the Board, to receive, transfer, cancel, relocate, and otherwise deal with any easement or license through adjoining parcels of land in favor of the Land or the Project, including, without limitation, for utility infrastructure and pedestrian, vehicular, and public access necessary for the Project. The Association also has the right, exercisable by the Board, to receive, transfer, cancel, relocate, and otherwise deal with any easement or license encumbering the Land or the Project, that benefits adjacent lands. The Association's rights are subject to the approval of Developer during the Development Period and the prior written approval of the Commercial Director and the Recreational Director; provided, however, that no Commercial Director or Recreational Director approval is required for the Grant of Easement.

L. DEVELOPER'S EASEMENT TO COMPLETE IMPROVEMENTS TO THE PROJECT. During the Development Period, Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees, and assigns, shall have an easement over, under, and upon the Project, including the General Common Elements, Limited Common Elements, and any Unit, as may be reasonably necessary or appropriate for the completion of the Improvements of the Project, the correction of defects, and to address "punchlist" items therein. Each and every Owner or other Person acquiring any interest in the Project waives, releases, and discharges any rights, claims, or actions such party may acquire against Developer, its agents, employees, consultants, contractors, licensees, successors, and assigns, as a result of any such noise, dust, vibration, or other nuisances or annoyances arising from the completion of such Improvements.

M. DEVELOPER'S EASEMENT FOR NOISE AND DUST. During the Development Period, Developer, its agents, employees, consultants, contractors, licensees, successors, and assigns, shall have an easement over, under, and upon the Project or any portion thereof, to create and cause noise, dust, vibration, and other nuisances created by and resulting from any work connected with or incidental to the development, construction, or sale of any Unit or any other Improvements in the Project. Each and every Owner or other Person acquiring any interest in the Project waives, releases, and discharges any rights, claims, or actions such party may acquire against Developer, its agents, employees, consultants, contractors, licensees, successors, and assigns, as a result of any such noise, dust, vibration, or other nuisance or annoyance.

N. DEVELOPER'S EASEMENT FOR SALES ACTIVITIES. During the Development Period, Developer, its brokers, sales agents, representatives, and other related Persons shall have the right to conduct extensive sales activities at the Project, including the use of any Unit owned by Developer, Developer Affiliate, or Developer's successors or assigns, its appurtenant Unit Limited Common Elements, and the Limited Common Elements appurtenant to Units owned by Developer, Developer Affiliate, or Developer's successors or assigns (excluding the Limited Common Elements appurtenant to Units not owned by Developer, Developer Affiliate, or Developer's successors or assigns), and the Recreational Limited Common Elements with the prior written approval of the Recreational Unit Owner, for model Units, sales, tours, leasing, management, and construction offices, interior design and decorator centers, parking, extensive sales displays and activities, the hosting of promotional activities, functions, and receptions, the posting and maintenance of signs and other advertisements relating to such sales activities, and for the installation, maintenance, location, relocation, and reconfiguration of such structures, displays, advertising signs, billboards, flags, sales desks, kiosks, sales, tours, leasing, management, and/or construction offices, model Units, interior design and decorator centers, and parking areas for employees, agents, and prospective buyers, as may be necessary or convenient for the proper development and disposition of Units in the Project and in other projects in Ward Village by sale, resale, lease, or otherwise, and the right, but not the obligation, to provide ongoing maintenance, operation, service, construction, and repairs to individual Units. In the event that Project Lender, if any, or any successor to or assignee of Project Lender shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the Mortgage remedies or by a deed or an assignment in lieu of foreclosure, Project Lender, its successors and assigns, shall have the same rights as Developer to conduct such sales activities on the Project. Each and every party acquiring an interest in the Project or the Land hereby acknowledges that such sales activities may result in noise and nuisances, and consents to such activity by Developer, and further waives, releases, and discharges any rights, claims, or actions such party may acquire against Developer, its brokers, sales agents, representatives, employees, consultants, attorneys, and Lenders, and their respective successors and assigns as a result of any such activity or activities.

O. EASEMENTS FOR COMMUNITY SYSTEMS AND TELECOMMUNICATIONS AND RIGHT TO ENTER INTO UTILITY CONTRACTS. There is reserved to Developer, its agents, employees, personnel, or licensees and its successors and assigns, a perpetual right and easement over the Project to install, operate, market, and/or provide for the installation and operation of Community Systems, as Developer, in its discretion, deems appropriate to serve all or any portion of the Project. Such right shall include, without limitation, Developer's right to select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems services in the region, to receive compensation from any source related to the rights set forth in this Section, and to grant easements for such purposes, all upon such terms and conditions as Developer may determine in its discretion. Developer may assign any and all of its rights under this Section to the Association.

P. DEVELOPER'S ADDITIONAL EASEMENTS AND RIGHTS TO ACCEPT, GRANT, AND MODIFY EASEMENTS. During the Development Period, Developer reserves, as an additional Developer's Reserved Right, the right to designate, grant, convey, transfer, cancel, relocate, and otherwise deal with any easements over, under, across, or through the Common Elements as necessary or convenient for any reasonable purpose, which may include, but not be limited to, the repair, care, or upkeep of any Unit or Common Elements, any utility easements or infrastructure to serve the Project, or for the purpose of establishing access ways or walkways, or to comply with any government agreement or permit, private covenant, or other easement or access requirements. Developer further reserves the right to designate, negotiate, accept, grant, receive, convey, transfer, cancel, relocate, and otherwise deal with any easement, license, right of access, or encroachment agreement over, under, across, or through the Land or the Project or adjoining properties in favor of, or encumbering, the Land or the Project for any reasonable purpose. Developer also has the right to grant such easements necessary for the repair, care, or upkeep of any Unit or Common Element, any utility easements or infrastructure to serve the Project, or for the purpose of establishing access ways,

walkways, or vehicular or pedestrian access to any adjoining or neighboring off-site commercial, retail, or parking facilities for customers, invitees, and vendors, and to access such commercial, retail, or parking facilities, or to comply with any government agreement or permit, private covenant, or other easement or access requirements, or for the reason that any owner of property that is subject to an easement in favor of the Land or the Project uses any right it has to require a change in the location of that easement.

Q. EASEMENTS REQUIRED PURSUANT TO THE MASTER DECLARATION. Developer shall have the reserved right to grant easements through the Common Elements of the Project for the purposes set forth in the Master Declaration, including, without limitation, easements to access certain areas of the Project and easements for use of certain areas of the Project by the Master Association or others for recreational purposes, use of park space, or pedestrian and/or bicycle access, or other purposes. Portions of such areas may also be dedicated to the public or dedicated for use by the public pursuant to the Master Declaration; provided that the Master Association shall maintain or shall require the maintenance of the easement and use areas and shall be responsible for any costs associated with the use, maintenance, and upkeep of such areas pursuant to the Master Declaration.

R. LICENSE TO OCCUPANTS. Any Person who has a right or permission from a Residential Unit Owner to occupy a Residential Unit also has the right and license to use the General Common Elements, and the Limited Common Elements appurtenant to the Unit occupied, to the same extent that the Owner of such Residential Unit would have the right to do so. This right and license remains in effect only during the time period when the person has the right to occupy the Unit. This includes, for example anyone who rents or leases a Unit (subject to any limits or additional terms contained in any rental agreement or lease with the Owner). A lessee of a Commercial Unit or the Recreational Unit has the same rights; provided such lessee's rights are not otherwise limited by the terms of any lease agreement.

S. CONSENT OF OTHER PERSONS. Developer may exercise the rights reserved to it in this Article without the consent or joinder of any other Person, except as otherwise specifically provided herein.

T. NO DEDICATION. Developer shall have the right, from time to time, to temporarily close off any portion of the Common Elements open to the general public to prevent a dedication, provided that advance notice of such closure is provided to the Association.

U. DEVELOPER'S EASEMENT TO EXERCISE RESERVED RIGHTS. During the Development Period or as otherwise set forth herein, Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees, and assigns, shall have an easement over, under, upon, and through the General Common Elements, Limited Common Elements, and the Units or any portion thereof as may be necessary to exercise any of its Developer's Reserved Rights, and such easement shall allow Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees, and assigns, to create and cause noise, dust, and other nuisances created by and resulting from any work connected with or incidental to effecting any such exercise; provided that any such work is undertaken with reasonable diligence and shall not unreasonably interfere with the use and enjoyment of the Project by Owners.

VI. ALTERATION AND TRANSFER OF INTEREST.

Except as set forth in this Declaration, the Common Interest appurtenant to each Unit shall have a permanent character and shall not be altered without the approval of all of the Owners affected, expressed in an amendment to this Declaration that is duly recorded at said Bureau. The Common Interest shall not be separated from the Unit to which it appertains and shall be deemed transferred, conveyed, or encumbered with such Unit even if such interest is not expressly mentioned or described in the instrument of conveyance or encumbrance. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an undivided interest in the Common Elements shall be void unless the Unit to which said interest is appurtenant is also transferred. The Common Elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by the Act or by the terms of this Declaration.

Except as set forth in this Declaration, no alteration of the Common Interest or easements appurtenant to any particular Unit shall be made, nor shall any partition or subdivision of any particular Unit be made, without the prior written approval of Eligible Mortgage Holders, if any.

VII. USE.

A. PROJECT; IN GENERAL.

1. **STANDARD OF OPERATION.** The Project shall be occupied and used only for those purposes that are consistent with, and appropriate to, a residential and commercial mixed-use development operating pursuant to the Project Quality Standard, and other uses permitted by law and the Condominium Documents.

2. **RIGHT TO SELL, LEASE, OR RENT.** Subject to those certain prohibitions on uses set forth herein, the Owners of the respective Units shall have the absolute right, without the consent or joinder of any other Owners, to sell, rent, lease, or otherwise convey such Units subject to all of the provisions of the Condominium Documents; provided, however, that as it pertains to the Residential Units: (a) all leases shall be in writing, signed by the Owner or Owner's representative and the tenant; (b) all leases shall have a term of not less than one hundred eighty (180) calendar days or such other period permitted by the Mauka Area Rules; (c) all leases and rentals of Units shall be made in accordance with any applicable zoning ordinances and other applicable laws, including, but not limited to, the Residential Landlord Tenant Code, Chapter 521 of the Hawaii Revised Statutes, unless otherwise exempted therefrom; (d) without prior written approval of the Board, no leasing of less than an entire Residential Unit shall be allowed; (e) Owner gives notice in writing to the Association that such Owner's Unit is being leased and the name of such lessee; (f) such Owner's right to lease is subject to any owner-occupant requirements under Part V.B of the Act and the Mauka Area Rules; and (g) no Residential Unit may be utilized for transient or hotel purposes, as defined in **Article VII, Section B.4** below. In no event shall the Association have the authority to evict or enforce its rights against a Commercial Unit tenant or a Recreational Unit tenant for any violation of the Condominium Documents unless such Unit is owned by the Association. The Association may enforce its rights against a Commercial Unit Owner or Recreational Unit Owner, as applicable, for any violation of the Condominium Documents. In such instance, the respective Commercial Unit Owner or the Recreational Unit Owner, as landlord, may exercise its rights under the lease against such tenant.

3. **SEPARATE MORTGAGES.** Each Owner shall have the right to Mortgage or to otherwise encumber all, but not less than all, of such Owner's Unit. Any Mortgage shall be subordinate to all of the provisions of the Condominium Documents and, in the event of foreclosure, the provisions of the Condominium Documents shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise. Notwithstanding any other provision of the Condominium Documents, no breach of the provisions herein contained, nor the enforcement of any lien created pursuant to the provisions hereof, shall impair, defeat, or render invalid the priority of the lien of any Mortgage encumbering a Unit or encumbering Developer's interest in the Project.

4. **MAINTENANCE OF THE UNITS AND THEIR LIMITED COMMON ELEMENTS.** The Owner of a Unit shall keep the interior of such Owner's Unit and all appliances, plumbing, electrical, and other fixtures and appurtenances constituting a part of the Unit and the Limited Common Elements appurtenant thereto in a clean and sanitary condition and in good order and repair in accordance with the Project Quality Standard and in compliance with law, and shall be responsible for any damage or loss caused by such Owner's failure to do so. Decisions on repairs or modifications to the Limited Common Elements shall be made by the Owners of Units to which such Limited Common Elements are appurtenant and shall be subject to any additional provisions stated in the Condominium Documents. Owners shall be responsible for any damage or loss to the Common Elements or other Units caused by such Owner's tenants, guests, or invitees.

5. **PROHIBITION ON ACTIVITIES THAT MAY JEOPARDIZE THE PROJECT.** No Owner shall do or suffer or permit anything to be done or kept on or in any Unit or appurtenant Limited Common Element or elsewhere on the Project that will: (a) injure the reputation of the Project; (b) jeopardize the safety, soundness, or structural integrity of the Improvements in the Project; (c) create a nuisance, interfere with, or unreasonably disturb the rights of other Owners and Occupants; (d) reduce the value of the Project; (e) increase the rate of insurance applicable to the Units or the contents thereof, or to the Project; (f) violate the House Rules or any applicable law, ordinance, statute, rule, or regulation of any local, County, State, or federal government or agency; (g) cause the violation of any conditions, restrictions, covenants, or agreements entered into for the benefit of the Project; and/or (h) result in the cancellation of insurance applicable to the Project, adversely affect the right of recovery thereunder, or result in reputable companies refusing to provide insurance as required or permitted by the Bylaws.

Any insurance increase caused by a Residential Unit shall become a Residential Unit Class Expense and any increase caused by a Commercial Unit, the Recreational Unit, or the Utility Unit shall be paid by the Owner of such Unit, as applicable.

6. **USE OF PARKING STRUCTURE.** The Parking Structure shall be used for access, parking, storage, and any other purposes permitted by the Condominium Documents. During the Development Period, the Association shall be prohibited from reducing the total number of parking stalls, accessible parking stalls, storage lockers, guest stalls, or other areas located within the Parking Structure, without the prior written approval of Developer. The Parking Structure contains General Common Elements, Residential Limited Common Elements, Recreational Limited Common Elements, and Unit Limited Common Elements. All Owners shall be provided access to the Parking Structure to access and utilize their designated parking stall (if any), guest stalls, storage lockers, and their Unit and Limited Common Elements appurtenant thereto, as applicable. A Residential Unit Owner or the Utility Unit Owner may permit the Recreational Unit Owner to utilize the Unit Limited Common Element parking stall(s) appurtenant to such Owner's Unit, for use by the Recreational Unit Owner, its agents, employees, contractors, licensees, Recreational Members, and Authorized Users pursuant to a written agreement between the Residential Unit Owner or the Utility Unit Owner, as applicable, and the Recreational Unit Owner.

B. RESIDENTIAL UNITS, RESIDENTIAL LIMITED COMMON ELEMENTS, AND RESIDENTIAL UNIT LIMITED COMMON ELEMENTS.

1. **RESIDENTIAL USE.** Except as provided herein, Residential Units and their appurtenant Limited Common Elements shall be used for residential purposes exclusively. Nothing contained in this Section shall be construed to prohibit Developer or Developer Affiliate from the use of any Residential Unit owned by Developer or Developer Affiliate for promotional or display purposes, such as for a model Unit, a sales and/or construction office, or for any other lawful purpose for development, construction, and/or marketing and sales of the Units in the Project.

2. **MAXIMUM OCCUPANCY.** Unless otherwise limited by County ordinance, the Mauka Area Rules, or other applicable law, no Residential Unit shall be occupied by more than fifteen (15) persons, and in no event shall occupancy of a Residential Unit exceed three (3) persons per bedroom; provided, however, that this occupancy limitation shall not apply to or restrict a Residential Unit Owner from hosting a larger group of invited guests or visitors in such Residential Unit for a one-day function with prior written notice to the Managing Agent and subject to the limitations set forth in the House Rules.

3. **UNSIGHTLY ARTICLES.** Portions of a Residential Unit and its appurtenant Limited Common Elements that are visible from the exterior of the Residential Unit must be kept in an orderly condition so as not to detract from the neat appearance of the Project. Other than as permitted in the House Rules, no items may be stored outside the Unit, except in the Unit's Limited Common Element storage locker, if any. To maintain a uniform and attractive exterior appearance for the Project, window or IGU coverings and backings installed by a Residential Unit Owner must be light, earth tone shades and must be of a type and general appearance approved by the Board. Residential Unit Owners may not, without the prior written approval of the Board, apply any substance, material, or process to the exterior or interior surfaces of the Residential Unit's windows or IGU that may alter the exterior color, appearance, or reflectivity of the windows or IGU. The Board, in its sole discretion, may determine whether the portions of a Residential Unit visible from the exterior of the Residential Unit are orderly. The Board may have any objectionable items removed from the portions of a Residential Unit that are visible from the exterior of the Unit so as to restore its orderly appearance, without liability therefor, and charge the Residential Unit Owner for any costs incurred in connection with such removal.

4. **PROHIBITION AGAINST TIME SHARE PROGRAMS.** Residential Units or their appurtenant Limited Common Elements, or any portion of either, shall not be the subject of or sold, transferred, conveyed, leased, occupied, rented, or used at any time under a time share plan (as defined in Hawaii Revised Statutes, Chapter 514E, as amended) or similar arrangement or program whether covered by Hawaii Revised Statutes, Chapter 514E or not, including, but not limited to, any so-called "fractional ownership," "vacation license," "travel club membership," "club membership," "membership club," "destination club," "time-interval ownership," "interval exchange" (whether the exchange is based on direct exchange or occupancy rights, cash payments, reward programs, or other point or accrual systems) or "interval ownership" as offered and established through a third-party vacation membership service provider who is in the business of providing and managing such program; and further shall not

be used as part of any occupancy plan or for similar purposes, which shall include: (a) any joint ownership, whether or not ownership is deeded to such Owners or ownership is held by an entity owned by such Owners, of a Residential Unit where unrelated (i.e., non-family) owners share and enjoy use or occupation of the Residential Unit according to a periodic (fixed or floating) schedule based on time intervals, points, or other rotational system; or (b) any club, the membership of which allows access and use of one or more properties by its members based on availability and reservation priorities, commonly known as destination clubs (equity or non-equity) or vacation clubs. Furthermore, the Residential Units and their appurtenant Limited Common Elements, or any portion of either, shall not be used for transient or hotel purposes, which are defined as (a) a rental for any period less than one hundred eighty (180) calendar days, (b) any rental in which the Occupant(s) of the Residential Unit is (are) provided customary hotel or rental services, or (c) any rental which is transacted using a short-term rental platform similar to Airbnb, VRBO®, and HomeAway™. The foregoing restrictions are collectively referred to as "**Occupancy Restrictions**." The Occupancy Restrictions may be enforced by Developer, the Association, the Site Manager, if any, the Master Association, or the Managing Agent.

The restrictions set forth above shall be read broadly, and, among other things, shall encompass any type of plan, the nature of which causes Residential Units to be utilized by persons who have either joined a plan or program as a member or whose use is derivative of someone who has joined a plan or program as a member. Determination by Developer, the Association, the Site Manager, if any, the Master Association, or the Managing Agent that a violation of this provision exists shall be binding on the violating Owner, and the Board may promulgate and effectuate additional rules, regulations, procedures, and processes for enforcement of this provision, including, but not limited to, any surcharge or other charge or Assessment that the Board shall solely determine. This Section shall not be terminated or amended without the prior written approval of Developer, to the extent permitted by applicable law.

C. COMMERCIAL UNITS, COMMERCIAL LIMITED COMMON ELEMENTS, AND COMMERCIAL UNIT LIMITED COMMON ELEMENTS.

1. **COMMERCIAL USE.** The Commercial Units shall be used and operated only for commercial purposes or uses, as set forth in the Mauka Area Rules and as otherwise permitted by law. In addition, all uses within the Commercial Units shall be consistent with the Project Quality Standard. Each Commercial Unit may be leased at the discretion of the Unit's Owner, subject to the provisions of the lease. A Commercial Unit Owner, in its sole discretion, may contract with various providers of goods and services, such as food and beverage operators, retail stores, and other vendors. Each Commercial Unit Owner may retain any and all compensation paid to said Owner in return for permitting a vendor to use space within the Owner's Commercial Unit or its appurtenant Limited Common Elements. The commercial uses of the Commercial Units are subject to change at the sole discretion of the respective Commercial Unit Owners, and subject further to the terms of the lease for such Unit. Neither the Residential Unit Owners, the Recreational Unit Owner, nor the Utility Unit Owner shall be guaranteed access into or through a Commercial Unit.

2. **LIMITATIONS ON COMMERCIAL USE.** The following uses are not permitted uses within or of a Commercial Unit or its appurtenant Limited Common Elements:

a. trailer courts, mobile home parks, recreation vehicle campgrounds, and facilities for the sales or service of mobile homes or trailers;

b. junkyards, scrap metal yards, automobile used parts sales facilities, motor vehicle dismantling operations, sanitary landfills, except that auto specialty stores or boutiques (with any one store or boutique not to exceed 10,000 square feet) that display only a limited number of automobiles on-site at any particular time may be permitted upon prior written approval by Developer, or Victoria Ward, Limited during the Development and Sale Period (as such term is defined in the Master Declaration), and, thereafter, by the Board;

c. dumping, storage, disposal, incineration, treatment, processing, or reduction of garbage, or refuse of any nature, other than handling or reducing waste produced on the premises from authorized uses in a clean and sanitary manner;

d. salvage business; provided periodic Association sponsored or sanctioned events or activities on the Area of Common Responsibility, defined in the Master Declaration, (such as, without limitation, craft fairs, arts festivals, or farmers markets) shall be permitted;

e. truck terminals and truck stop-type facilities, including truck parking lots (except as may be incidental to a use that is not prohibited);

f. tanning parlors, massage parlors, or any establishment which offers entertainment or service by nude or partially dressed persons, except that this provision shall not preclude tanning and massage services offered by fully clothed, trained personnel as part of a legitimate fitness or health facility, or a day spa operation that also offers beauty, body care, skin care, or similar services;

g. "adult entertainment uses," which shall include, for the purposes of this Section, any theater or other establishment which shows, previews, or prominently displays, advertises, or conspicuously promotes for sale or rental: (i) movies, films, videos, magazines, books, or other medium (whether now or hereafter developed) that are rated "X" by the movie production industry (or any successor rating established by the movie production industry) or are otherwise of a pornographic or obscene nature (but not including the sale or rental of movies, films, or videos for private viewing); or (ii) sexually explicit games, toys, devices, or similar merchandise;

h. mini-warehouses, and warehouse/distribution centers;

i. any facility for the dyeing and finishing of textiles, the production of fabricated metal products, or the storage and refining of petroleum;

j. dry cleaning plants; provided that facilities for drop-off or pick-up of items dry cleaned outside of Ward Village are permitted;

k. engine and motor repair facilities (except in connection with any permitted automobile service station);

l. heavy machinery sales and storage facilities; and

m. any use that would cause or threaten the cancellation of any insurance maintained by the Association, or which would measurably increase insurance rates for any insurance maintained by the Association or Owners above the rates that would apply in the absence of such use.

Any amendment to this Declaration that would directly limit or interfere in any way with or change the use of a Commercial Unit or its appurtenant Limited Common Elements, or limit access to or from a Commercial Unit or its appurtenant Limited Common Elements, shall require, and will not be effective without, the prior written approval of a Majority of the Commercial Unit Class.

D. RECREATIONAL UNIT AND RECREATIONAL LIMITED COMMON ELEMENTS. The Recreational Unit and the Recreational Limited Common Elements, including, but not limited to, any swimming pools, fitness center, playground areas, saunas and steam rooms, spa facilities, lounge rooms and areas, kitchen and dining areas, locker rooms, and restrooms, may be occupied and used as facilities for recreational operations, including, but not limited to, for recreational, food and beverage service, catering, and dining purposes ("**Recreational Use Provision**"). The uses of the Recreational Unit, however, are subject to change at the sole discretion of the Recreational Unit Owner. The Recreational Unit Owner shall have the absolute right to enter into one or more access agreements or other arrangements as to all or part of the Recreational Unit and Recreational Limited Common Elements, subject to all applicable provisions of this Declaration and the Bylaws. Notwithstanding the foregoing, in the event Developer conveys the Recreational Unit to the Association, as described in this Section, and during such time as the Association is the Recreational Unit Owner, the Recreational Unit and the Recreational Limited Common Elements shall only be occupied and used as recreational operations in accordance with the Recreational Use Provision pursuant to one or more access agreements or other arrangements entered into by the Association and the Recreational Operator, unless such recreational operations are terminated by the Recreational Operator.

Developer or Developer Affiliate, as the Recreational Unit Owner, may in its sole discretion, convey the Recreational Unit and the Recreational Limited Common Elements to the Association subject to the Recreational Use Provision, as described above; provided, however, the conveyance of the Recreational Unit and the Recreational Limited Common Elements shall not be subject to the Recreational Use Provision if the recreational operations are terminated prior to such conveyance. In the event the Recreational Unit is conveyed to the Association subject to the Recreational Use Provision, the Association shall enter into one or more access agreements or other arrangements with the Recreational Operator to operate and maintain the Recreational Unit and the Recreational Limited Common Elements for a fee paid to the Association, subject to the Recreational Operator paying all costs associated with the operation of the Recreational Unit and the Recreational Limited Common Elements. The Board shall have the right to determine the terms and conditions of any such access agreement or other arrangement with the Recreational Operator, consistent herewith, in its sole discretion, without the need for approval or consent of any Person, Owners, or their mortgagees other than any mortgagee of the Recreational Unit. Such terms may include, without limitation, granting the Recreational Operator an option to purchase the Recreational Unit. Provided that the conditions for purchase set forth in any such access agreement or other arrangement are met, the Board, on behalf of the Association, shall convey the Recreational Unit to the Recreational Operator under such terms as may be determined by the Board in its sole discretion, without the need for approval or consent of any Person, Owner, or mortgagee other than any mortgagee of the Recreational Unit. During the period of the Association's ownership of the Recreational Unit: (1) any and all costs relating to the Recreational Unit and Recreational Limited Common Elements, including any Common Expenses assessed to the Recreational Unit, shall be paid by the Recreational Operator pursuant to the terms of any access agreement or other arrangement with the Association; and (2) in the event of a termination of any access agreement or other arrangement with the Recreational Operator prior to a conveyance of the Recreational Unit to the Recreational Operator or an unremedied default by the Recreational Operator for the failure to pay such costs under any access agreement or other arrangement with the Association, such costs relating to the Recreational Unit and Recreational Limited Common Elements shall become Common Expenses. During the period of the Association's ownership of the Recreational Unit and during the term of any access agreement or other arrangement with the Recreational Operator: (1) any provision of this Declaration restricting the Association's ability to deal with the Recreational Unit and Recreational Limited Common Elements shall not apply; and (2) the Recreational Operator shall be deemed the Recreational Unit Owner. Upon conveyance of the Recreational Unit to the Recreational Operator by the Association, the costs relating to the Recreational Unit and Recreational Limited Common Elements shall be borne solely by the Recreational Operator as the Recreational Unit Owner, and any provisions of this Declaration restricting the Association's ability to deal with the Recreational Unit and Recreational Limited Common Elements shall become applicable.

Although the Association may own the Recreational Unit, the purchase of a Residential Unit, Commercial Unit, or Utility Unit does not entitle a Residential Unit Owner, Commercial Unit Owner, or Utility Unit Owner to use the Recreational Unit or the Recreational Limited Common Elements or the facilities and amenities of the recreational operations (which facilities and amenities may include among other items, swimming pools, fitness center, playground areas, saunas and steam rooms, spa facilities, lounge rooms and areas, kitchen and dining areas for food and beverage service or catering, locker rooms, and restrooms), the use of which will be reserved for Recreational Members and Authorized Users. Owners will need to be invited to apply for Recreational Membership, apply for Recreational Membership, and be accepted as a Recreational Member in order to be able to use the Recreational Unit, the Recreational Limited Common Elements, and the facilities and amenities of the recreational operations. Developer has no obligation whatsoever to arrange for any Recreational Membership on behalf of Owners. Recreational Membership will be subject to the terms of the membership documents of the Recreational Operator.

Unless the Recreational Unit and the Recreational Limited Common Elements are redesignated pursuant to **Article XXVI** of this Declaration, the amenities contained within the Recreational Unit and the Recreational Limited Common Elements are not General Common Elements of the Project or Limited Common Elements appurtenant to any Units (other than the Recreational Unit), and such amenities are not "amenities of the Project" available for the use of Owners and Occupants (other than the Recreational Unit Owner, Recreational Members, and Authorized Users). As such, no change to any of the Improvements or amenities of the recreational operations, even a change that may directly, substantially, and/or adversely affect the use or value of such Improvement or amenity, including, but not limited to, the timing of construction and/or the availability or nonavailability of use thereof, shall be considered a "material change" as that term is defined in Section 514B-3 of the Act.

The Recreational Unit Owner may, without the approval or consent of the Board or any other Owner, provided the same is permitted by applicable law and the Master Declaration, the Master Bylaws, and the Master Rules, (1) place or permit the installation, construction, attachment, hanging, projection, or protrusion of any non-structural improvement, equipment, object, or materials of any kind from the roofs, exterior walls, windows, or doors of the Recreational Unit and Recreational Limited Common Elements; (2) place any other decoration within or outside the Recreational Unit and Recreational Limited Common Elements that may be visible from the exterior of the Project, in any way; or (3) modify the exterior color or façade of the Recreational Unit and Recreational Limited Common Elements.

Notwithstanding anything to the contrary in this Article or elsewhere in this Declaration, the Recreational Unit Owner may: (1) perform such activities within the Recreational Unit and Recreational Limited Common Elements as are common to or necessary for the conduct of recreational operations for its Recreational Members, and any lights, sounds, and odors which result from such activities shall not violate the terms of this Article; (2) apply for and obtain land use and other permits and licenses that are necessary or appropriate for the conduct of the permitted activities in the Recreational Unit and Recreational Limited Common Elements without obtaining the approval of the Board or any other Owner; (3) use gas or charcoal grills or wood burning stoves in connection with kitchen operations; (4) erect and attach signs, banners, window boxes, decorations, and other similar items on the exterior of the Recreational Unit and Recreational Limited Common Elements or projections from the exterior of the Recreational Unit, on the condition that such signs, banners, window boxes, decorations, and other similar items and their locations comply with the Master Declaration, Master Bylaws, Master Rules, and all applicable laws, ordinances, rules, and regulations; and (5) utilize the Recreational Unit and Recreational Limited Common Elements for all purposes as may be permitted by zoning and other applicable laws and the Condominium Documents.

Any amendment to this Declaration that would limit or interfere in any way with or change the use of the Recreational Unit or its Recreational Limited Common Elements, or limit access to or from the Recreational Unit or the Recreational Limited Common Elements, shall require, and will not be effective without, the prior written approval of Developer during the Development Period, the Recreational Unit Owner, and any mortgagee of the Recreational Unit.

E. USE OF COMMON ELEMENTS. Subject to Developer's Reserved Rights contained herein, and the express limitations on use set forth herein, the Common Elements may be used in accordance with the purpose for which they were intended, subject always to the following limitations:

1. **ASSOCIATION'S USE.** Except for any rights expressly reserved to Developer, the Residential Unit Owners, Commercial Unit Owners, the Recreational Unit Owner, or the Utility Unit Owner under this Declaration, nothing in this Section or otherwise contained in this Declaration is intended to limit or restrict the Association's right to use the General Common Elements, any Unit, or any Limited Common Element appurtenant thereto owned or leased by the Association for the benefit of the members of the Association to the full extent permitted by applicable zoning ordinances and by law. Before the Development Period ends, no change in use may be made without the prior written approval of Developer.

2. **NO RIGHT TO OBSTRUCT THE COMMON ELEMENTS.** Subject to Developer's ability to obstruct such areas during the Development Period in the exercise of Developer's Reserved Rights, no Owner or Occupant may place, store, or maintain on walkways, roadways, grounds, or other Common Elements any furniture, packages, or objects of any kind or otherwise obstruct transit through the Common Elements. This does not prohibit: (a) an Owner from placing goods and other materials on the Common Elements when loading or unloading them, or transporting them to such Owner's Unit or a storage locker that is a Unit Limited Common Element appurtenant to such Owner's Unit, in accordance with the House Rules; provided that any such loading, unloading, and transportation must be completed promptly in designated areas and in accordance with the House Rules; (b) a Commercial Unit Owner's use of the Limited Common Elements appurtenant to the Owner's Commercial Unit for commercial activity; or (c) the Recreational Unit Owner's use of the Recreational Limited Common Elements.

3. **NO RIGHT TO OBSTRUCT OWNERS' USE.** The Common Elements shall not be used to hinder or encroach upon the lawful rights of the other Owners.

F. **USE OF LIMITED COMMON ELEMENTS.** Subject to Developer's Reserved Rights contained herein, Owners shall have the right to use the Limited Common Elements appurtenant to their Units for any purpose permitted by zoning and other applicable laws and the Condominium Documents. Notwithstanding anything provided to the contrary, or from which a contrary intent may be inferred, neither the Board nor the Association shall have any right to change the use of or lease or otherwise use any Limited Common Element without the prior written approval of the Owner(s) of the Unit(s) to which such Limited Common Element is appurtenant. Subject to any approvals required herein, the Residential Unit Owners of at least sixty-seven percent (67%) of the Residential Unit Class Common Interest shall have the right to change the use of the Residential Limited Common Elements. The Commercial Unit Owners of at least sixty-seven percent (67%) of the Commercial Unit Class Common Interest shall have the right to change the use of the Commercial Limited Common Elements. The Recreational Unit Owner(s) of at least sixty-seven percent (67%) of the Recreational Unit Class Common Interest shall have the right to change the use of the Recreational Limited Common Elements. Subject to Developer's Reserved Rights set forth herein and the easements granted in **Article V** herein, no lease, license, easement, or similar right may be granted over the Residential Limited Common Elements, the Commercial Limited Common Elements, or the Recreational Limited Common Elements without the vote and approval of a Majority of the Residential Unit Class, the Commercial Unit Class, or the Recreational Unit Class, respectively.

G. **SEPARATION, COMBINATION OF UNITS; TRANSFER OF INTEREST.** Subject to Developer's Reserved Rights set forth herein, no Owner may partition or separate portions of a Unit or the legal rights comprising ownership of a Unit from any other part thereof, nor shall an Owner combine a Unit with any portion of another Unit; provided that an Owner may consolidate Units pursuant to **Article XI, Section B.4** herein. No Owner shall sell, assign, convey, transfer, gift, devise, bequeath, hypothecate, or encumber anything other than a single, complete Unit; provided, however, that nothing herein contained shall (1) limit the right of Developer and its successors and assigns to sell or lease Units as contemplated herein, or (2) restrict the manner in which title to a Unit may lawfully be held under Hawaii law (e.g., joint tenants, tenants in common, or the like). Except as provided in (1) above, every sale, assignment, conveyance, transfer, gift, devise, bequest, hypothecation, encumbrance, or other disposition of a Unit, or any part thereof, shall be presumed to be a disposition of the entire Unit, together with all appurtenant rights and interests created by law or by this Declaration or any other Condominium Document. The transfer of any Unit shall operate to transfer to the new Owner of the Unit the interest of the prior Owner in all funds held by the Association even though not expressly mentioned or described in the instrument of transfer, and without any further instrument or transfer.

H. **ADA COMPLIANCE.** To the extent required by law, the Project will be constructed to be accessible and adaptable if and as required under the Americans with Disabilities Act (42 U.S.C. §§ 12101 et seq.), as amended ("ADA"). All such areas required to be ADA compliant, as well as all Improvements therein, must at all times comply with the ADA, as well as all other laws, ordinances, building codes, rules, regulations, orders, and directives of any governmental authority having jurisdiction now or in the future applicable to such ADA areas.

I. **NUISANCES.** No nuisances shall be allowed in the Units that are a source of annoyance to the Owners or Occupants of other Units or which interfere with the peaceful possession or proper use of the Units by its Owners or Occupants. Notwithstanding the foregoing, the Commercial Units and the Recreational Unit and their appurtenant Limited Common Elements may be used in accordance with **Article VII, Sections C and D** respectively; provided, however, noise emanating from the business operations of the Commercial Units and Recreational Unit and their appurtenant Limited Common Elements shall comply with all applicable statutes, rules, regulations, and ordinances, including, without limitation Chapter 342F of the Hawaii Revised Statutes and Title 11, Chapter 46 of the Hawaii Administrative Rules.

J. **WEIGHT RESTRICTION.** Hard and/or heavy surface floor coverings, including, but not limited to, tile, marble, wood, or the like, may not be installed in any part of a Residential Unit without the prior written approval of the Board. Furthermore, the Owner must ensure that a sound control underlayment system that meets an Impact Insulation Criteria (IIC) acoustic standard of fifty-four (54) or better is used, which system must be approved by the Association. The installation of the foregoing insulation materials shall be performed in a manner that provides proper mechanical isolation of the flooring materials from any rigid part of the Tower, whether of the concrete subfloor (vertical transmission) or adjacent walls and fittings (horizontal transmission) and must be installed prior to the Unit being occupied. The Association may require a structural or acoustical engineer to review certain proposed Improvements, with such review to be at the Owner's sole expense. Owners will be held strictly liable for violations

of these restrictions and for all damages resulting therefrom, and the Association has the right to require immediate removal or correction of such violations.

K. ADVERTISEMENTS; SIGNS. Subject to Developer's Reserved Rights, Developer's easement rights, or any restrictions set forth herein, and any applicable regulations set forth in the Master Rules and/or House Rules, Residential Unit Owners shall not place advertisements, posters, or signs of any kind, including, without limitation, any "For Sale" or "For Rent" signs, on the exterior of any Residential Unit, in the windows or on the IGU of a Residential Unit, in the exterior portions of the Unit Limited Common Elements or on any part of the Residential Limited Common Elements, unless prior written approval is received from the Board. A Commercial Unit Owner shall have the right to affix signs to any portion of the Owner's Unit, the Commercial Limited Common Elements, or the Commercial Unit Limited Common Elements appurtenant to the Owner's Unit, provided that such signs are consistent with the Project Quality Standard. The Recreational Unit Owner shall have the right to affix signs to any portion of its Recreational Unit or Recreational Limited Common Elements, provided that such signs are consistent with the Project Quality Standard. Notwithstanding the foregoing, Residential Unit Owners may not place signs in the Commercial Limited Common Elements without the prior written approval of the Commercial Director, or in the Recreational Limited Common Elements without the prior written approval of the Recreational Director.

L. ANTENNAS AND SATELLITE DISHES. To the extent permitted by applicable law and the House Rules, no Owner may install any antenna, satellite dish, or other transmitting or receiving apparatus in or upon said Owner's Unit (and/or Limited Common Elements appurtenant thereto) without submitting prior written notice to the Board of such installation. The Board shall review the notice, and the Board may, in its reasonable discretion, request to review copies of any applicable installation and/or design plans. The Board may establish reasonable rules and restrictions on such installation, in accordance with applicable law. As used in this Section, "*antenna, satellite dish, or other transmitting or receiving apparatus*" means and includes (i) dish antennas one meter or less in diameter that are designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, including a hub or relay antenna used to receive or transmit fixed wireless services that are not classified as telecommunications services; (ii) antennas that are one meter or less in diameter and are designed to receive video programming services via broadband radio service (wireless cable), or to receive or transmit fixed wireless signals other than via satellite, including a hub or relay antenna used to receive or transmit fixed wireless services that are not classified as telecommunications services; or (iii) antennas that are designed to receive local television broadcast signals. If a covered antenna is being used as a hub or relay antenna, it may receive or transmit fixed wireless signals for the distribution of fixed wireless services to multiple customer locations as long as the antenna serves a customer on whose premises it is located.

M. PETS. Residential Unit Owners are permitted to keep pets in their Residential Unit subject to the limitations set forth in the House Rules; provided, however, that notwithstanding this provision, qualified physically and/or mentally impaired persons shall be allowed to use the assistance of a certified "service animal," as such term is defined under the ADA, or an "assistance animal," as such term is defined under the FHA, in accordance with the House Rules and all applicable laws, ordinances, rules, and regulations.

N. HOUSE RULES. Additional use restrictions that are consistent with this Declaration and the Bylaws may be set forth in the House Rules by the Board; provided, however, that the House Rules shall not regulate the use of or behavior within a Commercial Unit, the Recreational Unit, the Utility Unit, Commercial Limited Common Elements, Commercial Unit Limited Common Elements, or Recreational Limited Common Elements. Any proposed rules and regulations that may affect a Commercial Unit, Commercial Limited Common Element, or Commercial Unit Limited Common Element shall be subject to the prior written approval of the Commercial Director, and any proposed rules and regulations which may affect the Recreational Unit or Recreational Limited Common Elements shall be subject to the prior written approval of the Recreational Director.

O. RIGHTS OF THE BOARD. Except as may otherwise be provided herein, and not by way of limitation, the Board shall have the following authority and power:

1. Upon the approval of the Owners of at least sixty-seven percent (67%) of the Common Interest, to change the use of the General Common Elements;

2. On behalf of the Association, to lease or otherwise use for the benefit of the Association the General Common Elements not actually used by any of the Owners for an originally intended special purpose, as determined by the Board; provided that, unless the approval of the Owners of at least sixty-seven percent (67%) of the Common Interest is obtained, any such lease shall not have a term exceeding five (5) years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty (60) calendar days written notice;

3. To lease or otherwise use for the benefit of the Association those General Common Elements not falling within **Article VII, Section 0.2** above, upon obtaining: (a) the approval of the Owners of at least sixty-seven percent (67%) of the Common Interest, including all directly affected Owners, and (b) the approval of all mortgagees of record that hold Mortgages on Units with respect to which Owner approval is required by (a) above, if such lease or use would be in derogation of the interest of such mortgagees;

4. The prior written approval of the Commercial Director to the exercise of the Board's rights herein shall be required if the exercise of the right directly impacts a Commercial Unit Owner's use and operation of such Owner's Unit, the Commercial Limited Common Elements, or the Commercial Unit Limited Common Elements appurtenant to such Unit; and

5. The prior written approval of the Recreational Director to the exercise of the Board's rights herein shall be required if the exercise of the right directly impacts the Recreational Unit Owner's use and operation of the Recreational Unit or the Recreational Limited Common Elements.

P. SEVERANCE OF COMMON ELEMENTS FROM UNIT. No Owner shall be entitled to sever such Owner's Unit, or any portion thereof, from that Unit's undivided interest in (1) the Common Elements, (2) any easement interests in rights of ways appurtenant to that Unit; and (3) any licenses granted to that Unit under this Declaration. Neither may such component interests be severally sold, conveyed, leased, encumbered, hypothecated, or otherwise dealt with, and any such attempt to do so in violation of this provision shall be void and of no effect. Developer and its successors, assigns, and grantees and each Owner by acquiring a Unit, covenants and agrees that the Units and their corresponding undivided interests in the Common Elements and the easements, licenses, and other interests appurtenant thereto, shall not be separated or separately conveyed, and (1) each such undivided interest in the Common Elements and any easements appurtenant to a Unit shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the title to the Unit, and (2) each such Unit shall be deemed to be conveyed or encumbered with its respective undivided interest in the Common Elements and in any easements, licenses, or other interests appurtenant thereto even though the description in the instrument of conveyance or encumbrance may refer only to the title to the respective undivided interest.

Q. NON-APPLICABILITY TO DEVELOPER. Notwithstanding anything provided herein to the contrary, as long as there are unsold Units in the Project, the provisions of this **Article VII** shall not apply to the Units owned by Developer, Developer Affiliate, or their successors and assigns, the Limited Common Elements appurtenant thereto, or any Improvements proposed or made by Developer, Developer Affiliate, or their successors or assigns in connection with its development, construction, promotion, marketing, sales, or leasing of any Unit or any portion of the Project, including the Commercial Units and the Recreational Unit.

VIII. ADMINISTRATION OF PROJECT.

Administration of the Project shall be vested in the Association, consisting of all Owners in accordance with the Bylaws. Except as specifically provided herein, the Association shall have all of the powers set forth in Section 514B-104 of the Act. Operation of the Project and the maintenance, repair, replacement, and restoration of the Common Elements, and any additions and alterations thereto, shall be in accordance with the provisions of the Act, this Declaration, and the Bylaws including all requirements and limitations set forth in this Declaration and the Bylaws regarding the Units and the Common Elements. The Project is intended to be operated and administered at a Project Quality Standard such that the Units are operated and managed professionally and efficiently.

A. OPERATION. Except as otherwise provided in this Section or otherwise in this Declaration, the Association shall, in accordance with the Project Quality Standard, perform the following:

1. Make, build, maintain, and repair all General Common Elements, Residential Limited Common Elements, and Residential Unit Limited Common Elements appurtenant to more than one (1) Unit, including, without limitation, any hallways, corridors, walls, fences, gates, walkways, sidewalks, utilities, lines, drains, roads, driveways, driveway ramps, curbs, parking areas, offices, storage areas, and lighting in the General Common Elements and Residential Limited Common Elements, together with other Improvements not located within the Project, but of which the Association has use of or access to.

2. Ensure the expenses for the General Common Elements and Limited Common Elements are allocated and used as set forth in this Declaration.

3. Keep all General Common Elements, Residential Limited Common Elements, and Residential Unit Limited Common Elements appurtenant to more than one (1) Unit in a strictly clean and sanitary condition with all necessary repairs whatsoever in good order and condition, and repair and make good all defects in the General Common Elements, Residential Limited Common Elements, and Residential Unit Limited Common Elements required to be repaired by the Association. Because portions of the General Common Elements and Limited Common Elements are visible to and, in some cases, utilized by the general public, including customers of the Commercial Units, these areas may be maintained by the Commercial Director or Commercial Managing Agent, if any, in order to be consistent with the Project Quality Standard, and certain costs arising therefrom shall be shared between the Residential Unit Class, the Commercial Unit Class, and the Recreational Unit Class, as set forth in **Article XII, Section A** herein.

4. Maintain and upkeep the rooftop of the Tower and pay for the cost of the maintenance and upkeep of such area.

5. In performing the operations set forth in this Section, any actions of the Association to (a) alter the exterior portion of the Parking Structure and/or Tower, (b) alter the appearance of any portion of a Commercial Unit, or (c) affect in any way a Commercial Limited Common Element or a Commercial Unit Limited Common Element, shall be subject to the Commercial Director's prior written approval, or after the expiration of the Commercial Director Consent Rights, the approval of a Majority of the Commercial Unit Class.

6. In performing the operations set forth in this Section, any actions of the Association to (a) alter the exterior portion of the Parking Structure and/or Tower, (b) alter the appearance of any portion of the Recreational Unit, or (c) affect in any way a Recreational Limited Common Elements, shall be subject to the Recreational Director's approval.

7. Not erect or place on the Project any building or structure, including fences and walls, nor make material additions, structural alterations, or exterior changes to any Common Elements of the Project except in accordance with plans and specifications prepared by a licensed architect and approved by any Owners whose approval is required by the Act, and subject to applicable approvals required by this Declaration, including, without limitation, approvals from any governmental agencies. After starting the Improvements, the Association must work diligently to complete them in a timely manner.

8. Before commencing or permitting construction of any Improvement on the Project where the cost thereof exceeds One Million and No/100 Dollars (\$1,000,000.00), obtain a performance bond and a labor and materials payment bond, naming as obligees the Board, the Association, and collectively all Owners and their respective Lenders of record, as their respective interests may appear, with a responsible corporate surety authorized to do business in the State, guaranteeing the full and faithful performance of the contract for such construction free and clear of any mechanics' and materialmen's liens for such construction, the payment of all subcontractors, laborers, and materialmen, and the discharge of any mechanics' and materialmen's liens for a penal sum of not less than one hundred percent (100%) of the estimated cost of such construction. As an alternative, and under the appropriate circumstances, the Board may approve a written guaranty or other instrument guaranteeing the full and faithful performance of the contract for such construction free and clear of any mechanics' and materialmen's liens for such construction, the payment of all subcontractors, laborers, and materialmen, and the discharge of any mechanics' and materialmen's liens.

9. Observe any setback lines or boundaries affecting the Project and not erect, place, or maintain any building or structure whatsoever except approved fences or walls between any street boundary of the Project and the setback line along such boundary or the Project and an adjoining lot.

10. Not neglect, abuse, make, or suffer any strip or waste or unlawful, improper, or offensive use of the Project.

11. Observe and do anything required by all laws, ordinances, rules, and regulations that apply from time to time to the Project or the use and operation of the Project.

12. Subject to **Article V, Section G** herein, make emergency repairs, or install, repair, or replace portions of the Project for which the Association is responsible.

B. COMMERCIAL UNIT OWNER, RESIDENTIAL UNIT OWNER, RECREATIONAL UNIT OWNER, AND UTILITY UNIT OWNER RIGHTS AND LIMITATIONS. Except as specifically provided herein, the Association shall have all of the powers set forth in Section 514B-104 of the Act; provided, however, the Association may not impose any fees or charges for the use, rental, or operation of the Commercial Limited Common Elements without the prior written approval of the Commercial Director, or the use, rental, or operation of the Recreational Limited Common Elements without the prior written approval of the Recreational Director; nor shall the Association amend this Declaration in any way that directly and adversely affects a Commercial Unit, a Commercial Limited Common Element, a Commercial Unit Limited Common Element, the Recreational Unit, or a Recreational Limited Common Element.

The Owners shall pay and be responsible for the operation, care, upkeep, repair, and maintenance of their respective Units, and the Limited Common Elements appurtenant to their respective Units, except as otherwise provided for herein or in the Bylaws.

Subject to **Article XII, Section A**, the Commercial Unit Owners shall pay and be responsible for the operation, care, upkeep, repair, and maintenance of their respective Commercial Units, the Commercial Unit Limited Common Elements appurtenant to their respective Units, and the Commercial Limited Common Elements, unless otherwise set forth herein or in the Bylaws. The Residential Unit Owners shall pay and be responsible for the operation, care, upkeep, repair, and maintenance of their respective Residential Units, the Residential Unit Limited Common Elements appurtenant to their respective Residential Units, and the Residential Limited Common Elements, unless otherwise set forth herein or in the Bylaws. The Recreational Unit Owner shall pay and be responsible for the operation, care, upkeep, repair, and maintenance of the Recreational Unit and the Recreational Limited Common Elements, unless otherwise set forth herein or in the Bylaws. The Utility Unit Owner shall pay and be responsible for the operation, care, upkeep, repair, and maintenance of the Utility Unit and any Limited Common Elements appurtenant thereto, unless otherwise set forth herein or in the Bylaws.

In no event during the Developer Control Period may the Board or the Association regulate or take any action with respect to Capital Upgrades or the operation, care, upkeep, repair, and maintenance of the General Common Elements or Limited Common Elements appurtenant to more than one (1) Unit without the prior written approval of Developer, or the Limited Common Elements without the additional prior written approval of the affected Owner(s); and if such action is with respect to a Commercial Limited Common Element or a Commercial Unit Limited Common Element, without the prior written approval of the Commercial Director; and if such action is with respect to a Recreational Limited Common Element, without the prior written approval of the Recreational Director. Notwithstanding the foregoing, the actions described herein may be taken in an emergency situation if and only to the extent necessary to prevent bodily injury or substantial property damage.

The Parking Structure may be utilized by the Owners to access their respective parking and/or loading areas, Units, and appurtenant Limited Common Elements. The exterior and interior of the Parking Structure shall be operated, repaired, and maintained by the Association. The Utility Unit Owner, Recreational Unit Owner, Residential Unit Owners, the Board, and the Association shall cooperate and use their best efforts to maintain and upkeep the Parking Structure uniformly and in accordance with the Project Quality Standard. The Association shall consult and establish a coordinated maintenance schedule to promote the safety and efficiency of their maintenance activities

within the Project, including, without limitation, window washing, power washing, erection of scaffolding, and other matters.

C. CAPITAL UPGRADES OF GENERAL COMMON ELEMENTS. Whenever in the judgment of the Board, the General Common Elements shall require Capital Upgrades costing in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, and the making of such Capital Upgrades shall have been approved by a Majority of Owners, then, subject to the Recreational Director's prior written approval and the Commercial Director's prior written approval, or after the expiration of the Commercial Director Consent Rights, with the approval of a Majority of the Commercial Unit Class, the Board shall proceed with such Capital Upgrades and may assess the Owners for the cost thereof as a Common Expense. If such Capital Upgrades, if not made, could reasonably result in a threat to the health or safety of the Owners or a significant risk of damage to the Project, then such actions may be taken without the prior approval of Owners, the Recreational Director, and/or the Commercial Director. Any Capital Upgrades costing less than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year may be made by the Board without the approval of the Owners, provided said Owners are given at least ten (10) business days written notice of a special meeting at which such actions may be approved by an amendment to the budget by the Board. The cost of such Capital Upgrades shall constitute a Common Expense. The foregoing shall not apply to operational expenses which shall be subject to applicable provisions of the Condominium Documents. This Section shall not apply to any Capital Upgrades made by Developer when exercising Developer's Reserved Rights.

D. CAPITAL UPGRADES OF RESIDENTIAL, RECREATIONAL, AND COMMERCIAL LIMITED COMMON ELEMENTS. Whenever the Residential Unit Class for the Residential Limited Common Elements, the Commercial Unit Class for the Commercial Limited Common Elements, and the Recreational Unit Class for the Recreational Limited Common Elements shall propose Capital Upgrades to the Residential Limited Common Elements, the Commercial Limited Common Elements, and the Recreational Limited Common Elements, respectively, the Residential Unit Class, the Commercial Unit Class, and the Recreational Unit Class shall proceed with such Capital Upgrades upon Majority vote of each of their respective Unit Classes. The cost of the Capital Upgrades shall be a Residential Unit Class Expense, a Commercial Unit Class Expense, or a Recreational Unit Class Expense, as applicable. If such Capital Upgrades, if not made, could reasonably result in a threat to the health or safety of the Owners or a significant risk of damage to the Project, then such additions, renovations, replacements, alterations, or Improvements may be made by the Board without the prior approval of such Owners. The appropriate Unit Class shall then reimburse the Board, as necessary, for the cost and expense of addressing the risk or threat. The foregoing shall not apply to operational expenses, which shall be subject to applicable provisions of the Condominium Documents. This Section shall not apply to any Capital Upgrades made by Developer when exercising Developer's Reserved Rights.

E. EXTRAORDINARY ACTIONS. Although the Board shall have broad powers to regulate, govern, and manage the Project, the power to approve certain Extraordinary Actions (as defined below) shall remain vested in the Association. Any provision of this Declaration or the Bylaws to the contrary notwithstanding, the Board and the Association shall not be authorized to take any Extraordinary Actions during the Developer Control Period without the affirmative vote of Owners representing not less than sixty-seven percent (67%) of the Residential Unit Class and the prior written approval of the Commercial Director, the Recreational Director, the Utility Unit Owner, and Developer, and, after the end of the Developer Control Period, without the affirmative vote of Owners representing not less than sixty-seven percent (67%) of the Residential Unit Class and the prior written approval of the Commercial Director, the Recreational Director, and the Utility Unit Owner. As used herein, the term "*Extraordinary Actions*" shall mean any and all actions taken by or on behalf of the Association, including, without limitation, amending this Declaration to change the permitted use of the General Common Elements, commencing or maintaining any litigation, defending an action, filing a counterclaim, mediation, or similar proceeding (except for routine Common Expense collection matters, or actions required to enforce the restrictions on the use of Units, rules, or architectural controls) which would reasonably require the expenditure of funds in excess of One Hundred Thousand and No/100 Dollars (\$100,000.00) in the aggregate during any fiscal year of the Association and any determinations pursuant to Section 514B-41(c) of the Act and that are not prohibited by an express provision of this Declaration; provided that such prior written approval shall not be required from the Commercial Director, the Recreational Director, or the Utility Unit Owner, as applicable, in order to commence or maintain any litigation, defend any action, or file a counterclaim, mediation, or similar proceeding against a Commercial Unit Owner, Recreational Unit Owner, or Utility Unit Owner. Extraordinary Actions shall not, however, be deemed to include Capital Upgrades or actions by the Association in

connection with operational expenses, including the establishment and utilization of reserves for the repair or replacement of the General Common Elements.

F. MAINTENANCE OF LANDSCAPING IN COUNTY OR STATE RIGHT OF WAYS AND COUNTY OR STATE ROADS. Developer may be required to enter into a landscaping maintenance agreement or similar agreement with the County or the State, which may require Developer to maintain all the landscaping, sidewalks, walkways, and roadways outside, but directly adjacent to and surrounding the Project. Developer intends to assign such responsibility to the Master Association pursuant to the Master Declaration; however, in the event the Master Association is unable to assume such responsibility for some reason, the Association shall be responsible for such maintenance and any attendant costs. If the Association is responsible for such maintenance, then the attendant costs shall be Special Costs, allocated in accordance with **Exhibit "C."**

IX. MANAGING AGENT.

Fiscal and administrative management of the Project and the physical management of the General Common Elements, Residential Limited Common Elements, Residential Unit Limited Common Elements appurtenant to more than one Residential Unit, and property of the Association, if any, shall be conducted for the Association by a qualified, corporate Managing Agent who shall be appointed by the Association, in accordance with the Bylaws. The Commercial Director may appoint a qualified, corporate commercial managing agent to perform physical management of the Commercial Limited Common Elements and Commercial Unit Limited Common Elements appurtenant to more than one Commercial Unit or self-manage at the Project Quality Standard (in either case, referred to as the "**Commercial Managing Agent**"). The Commercial Managing Agent and Managing Agent shall cooperate and work together to provide harmonious and seamless management of the entire Project.

X. SERVICE OF LEGAL PROCESS.

The Managing Agent shall be authorized to receive service of legal process for and on behalf of the Association and the Board at the address of the Managing Agent, pursuant to the Act.

XI. ALTERATION OF PROJECT.

A. IN GENERAL. This Section applies, except as otherwise provided by the FHA and elsewhere in this Declaration. This Section does not apply to changes made by Developer when exercising Developer's Reserved Rights. Neither the Association nor any Owner may make any structural changes or additions to the Units, General Common Elements, or Limited Common Elements, that are different in any material respect from the Condominium Map, except pursuant to any requisite vote by the Association and amendment of this Declaration, or as otherwise set forth herein or in the Bylaws. Any such restoration, replacement, construction, alteration, or addition must be made in accordance with complete plans and specifications that are first approved by the Board in writing, and, if such restoration, replacement, construction, alteration, or addition affects the exterior appearance of the Tower, the Commercial Unit Owners, the Commercial Units, Commercial Limited Common Elements, Commercial Unit Limited Common Elements, the Recreational Unit Owner(s), the Recreational Unit(s), or Recreational Limited Common Elements, then with the prior written approval of the Commercial Director and the Recreational Unit Owner, as applicable, shall also be required. Promptly after the work is completed, the Association, Developer, or the Owner must record the amendment to the Declaration along with any necessary changes to the Condominium Map. This Section does not apply to "nonmaterial additions and alterations" as that term is used in Section 514B-140 of the Act. Nothing in this Section (1) authorizes any work or change that would jeopardize the soundness, safety, or structural integrity of any part of the Project; (2) authorizes any work or change by an Owner that would materially change the uniform external appearance of the Project without the prior written approval of the Board and the prior written approval of the Commercial Director and the Recreational Director; (3) authorizes any work or change by the Board that would materially change the exterior of the Parking Structure or Tower without the prior written approval of the Commercial Director and the Recreational Director; (4) prohibits the Board from making or requiring that an Owner make changes within any Unit or Limited Common Element appurtenant thereto as needed to comply with the fire code and all other laws that apply to the Project; and (5) prohibits Developer from completing the initial Project construction and Improvements or alterations required to address a claimed or potential defect.

B. BY RESIDENTIAL UNIT OWNERS. Residential Unit Owners shall not change or cause a change to the exterior of the Residential Units or the Limited Common Elements appurtenant thereto, including the Residential Limited Common Elements and Residential Unit Limited Common Elements (including, without limitation, the installation of any type of signage), without the prior written approval of the Board pursuant to **Article XI, Section F** herein, and the prior written approval of Developer during the Development Period. Any change or modification that is made by Developer, in the exercise of its Developer's Reserved Rights, shall not require the approval of the Board.

Each Residential Unit Owner has the right, subject to the terms and provisions in the Condominium Documents and the approvals required above, which approvals shall not be unreasonably withheld or delayed, to make any of the following changes, additions, and improvements solely within the Owner's Unit or within the Unit Limited Common Elements appurtenant to such Unit, at such Owner's sole cost and expense, provided it does not affect any other Unit or Common Element:

1. To install, maintain, remove, and rearrange non-load-bearing partitions and walls from time to time within the perimeter walls of the Residential Unit; provided that the initial enclosed living area of any Residential Unit (as depicted on the Condominium Map) shall not be increased;

2. To finish, change, or substitute any plumbing, electrical, or other fixtures that may be attached to the ceilings, floors, or walls, as appropriate, for the use of the Residential Unit or the Residential Unit Limited Common Elements appurtenant solely to such Unit;

3. To make such changes, additions, and Improvements to the Residential Unit or an appurtenant Residential Unit Limited Common Element to facilitate handicapped accessibility within the Residential Unit or its Residential Unit Limited Common Elements; and

4. To consolidate two (2) or more Residential Units owned by the same Owner; provided that any intervening walls removed are not load-bearing or structural walls and/or do not support any other Unit of the Tower, and to install doors and other Improvements in the intervening wall and/or make other reasonable additions. The Residential Unit Owner must ensure that the structural integrity of the Residential Units, Common Elements, and the Tower will not be adversely affected; that any plumbing or other lines that may run behind any non-load-bearing walls are not adversely affected; the finish of the remaining Common Elements and Improvements are restored to substantially the same condition as existed prior to removal; and all construction activity is completed within a reasonable time. The Common Interest and Residential Unit Class Common Interest appurtenant to the single consolidated Unit shall equal the combined total of the Common Interest and Residential Unit Class Common Interest, respectively, of the original Units, and shall not affect the Common Interest or Class Common Interest appurtenant to any other Unit.

C. BY COMMERCIAL UNIT OWNERS. Each Commercial Unit Owner shall have the right to change the exterior appearance of the Owner's Commercial Unit and the Commercial Unit Limited Common Elements appurtenant thereto, and add, modify, or eliminate the non-load-bearing walls and partitions within the Commercial Unit, and change the configuration, size, and appearance of entrances and windows, IGUs, façades, and storefronts of the Commercial Unit and its appurtenant Commercial Unit Limited Common Elements, at such Owner's sole cost and expense, without the approval of the Board. Each Commercial Unit Owner also has the right, subject to the terms and provisions of the Condominium Documents and any applicable laws, ordinances, statutes, rules, or regulations of any local, County, State, or federal government or agency, to make any of the following changes, additions, or Improvements solely within the Owner's Unit or within a Unit Limited Common Element appurtenant only to such Owner's Unit:

1. To install, maintain, remove, and rearrange partitions within the Commercial Unit and other walls from time to time and/or to extend outside sitting areas or lounge areas for patrons within a Commercial Limited Common Element directly adjacent to such Commercial Unit;

2. To finish, change, or substitute any plumbing, electrical, or other fixtures that may be attached to the ceilings, floors, or walls as appropriate, for the use of the Commercial Unit or the Commercial Unit Limited Common Elements appurtenant solely to such Unit;

3. To decorate, paint, repaint, wallpaper, or otherwise change the appearance of any walls, floors, and ceilings within the Commercial Unit or its Commercial Unit Limited Common Element, and to add, modify, reconfigure, resize, or replace the storefront or Improvements within the Commercial Unit or its Commercial Unit Limited Common Elements;

4. To make such changes, additions, and Improvements to the Commercial Unit or an appurtenant Commercial Unit Limited Common Element to facilitate handicapped accessibility within the Commercial Unit or its Commercial Unit Limited Common Elements;

5. To make "nonmaterial additions and alterations" as such term is used in Section 514B-140 of the Act;

6. Subject to any zoning or building code requirements, to subdivide the Commercial Unit to create two (2) or more Units, designate which Unit Limited Common Elements of the subdivided Unit will be appurtenant to the newly-created Units resulting from the subdivision, and convert parts of the existing Commercial Unit to Common Elements to facilitate the subdivision. The sum of the Common Interest for the newly-created Commercial Units must be equal to the total Common Interest of the Commercial Unit that was subdivided. If a Commercial Unit Owner subdivides its Commercial Unit, the Commercial Unit Owner may decide whether one or more than one resulting Commercial Unit will have any special rights or easements that are appurtenant to the original Commercial Unit under this Declaration, and such Owner may assign some or all of those rights to either or both of the newly-created Commercial Units; and

7. To consolidate two (2) or more Commercial Units owned by the same Owner; provided that any intervening walls removed are not load-bearing or structural walls, and to install doors, stairways, and other Improvements and/or make other commercially reasonable additions. The Commercial Unit Owner must ensure that the structural integrity of the Commercial Units, the Common Elements, and the Tower will not be adversely affected; the finish of the remaining Common Elements and Improvements are restored to substantially the same condition as existed prior to removal; and all construction activity is completed within a reasonable time. The Common Interest and Commercial Unit Class Common Interest appurtenant to the single consolidated or newly-created Commercial Unit(s) shall equal the combined total of the Common Interest and Commercial Unit Class Common Interest, respectively, of the original Commercial Units that have been combined and shall not affect the Common Interest or Class Common Interest appurtenant to any other Units.

Any material addition or alteration to a Commercial Unit or Limited Common Element appurtenant thereto shall require the approval of a Majority of the Board only if the proposed addition or alteration, as reasonably determined by the Board, could jeopardize the soundness or safety of the Project, impair any easement, or interfere with or deprive any non-consenting Owner of the use or enjoyment, or structural integrity, of any part of the Common Elements or such Owner's Unit. The issuance of a building permit by the County for the material addition or alteration shall be conclusive evidence that the addition or alteration would not jeopardize the soundness, safety, or structural integrity of the Project.

D. BY THE RECREATIONAL UNIT OWNER. Notwithstanding anything to the contrary contained in this Declaration, the Recreational Unit Owner shall have the right, from time to time, at the Recreational Unit Owner's sole cost and expense, without the prior written approval of the Board, and without the necessity of the consent or joinder of any other Owner, to (1) alter that portion of the Recreational Unit's façade that serves as the boundary of such Recreational Unit and other General Common Elements and Recreational Limited Common Elements located immediately adjacent to the Recreational Unit (including, without limitation, the creation, removal, and relocation of entrances, exits, windows, window boxes, signage, and other architectural features); and (2) construct and install nonmaterial structural additions, alterations, and other Improvements within the Recreational Unit and Recreational Limited Common Elements, all of which shall be deemed to be nonmaterial additions under the Act.

Upon completion of construction of such additions or alterations, the Recreational Unit Owner shall within a reasonable time prepare and record at said Bureau an amendment to the Condominium Map via an amendment to this Declaration showing the layout, location, and dimensions of the Recreational Unit or Recreational Limited Common Elements "as built." Any additions or alterations constructed by the Recreational Unit Owner within the

Recreational Unit pursuant to this Section shall be deemed to be part of the Unit. Any Improvements constructed by the Recreational Unit Owner pursuant to this Section other than additions or alterations designated as part of the Recreational Unit shall be deemed to be Recreational Limited Common Elements.

E. BY THE UTILITY UNIT OWNER. The Utility Unit Owner shall have the right, subject to the terms and provisions of the Condominium Documents and any applicable laws, ordinances, statutes, rules, or regulations of any local, County, State, or federal government or agency, to make any of the following changes, additions, or Improvements solely within the Owner's Unit or within a Unit Limited Common Element appurtenant only to such Owner's Unit:

1. To finish, change, or substitute any plumbing, electrical, or other fixtures that may be attached to the ceilings, floors, or walls as appropriate, for the use of the Utility Unit;
2. To decorate, paint, repaint, wallpaper, or otherwise change the appearance of any walls, floors, and ceilings within the Utility Unit, and to add, modify, reconfigure, resize, or replace the Improvements within the Utility Unit;
3. To make such changes, additions, and Improvements to the Utility Unit to facilitate handicapped accessibility within the Utility Unit;
4. To make "nonmaterial additions and alterations" as such term is used in Section 514B-140 of the Act;

Any material addition or alteration to a Utility Unit shall require the approval of a Majority of the Board only if the proposed addition or alteration, as reasonably determined by the Board, could jeopardize the soundness or safety of the Project, impair any easement, or interfere with or deprive any non-consenting Owner of the use or enjoyment, or structural integrity, of any part of the Common Elements or such Owner's Unit. The issuance of a building permit by the County for the material addition or alteration shall be conclusive evidence that the addition or alteration would not jeopardize the soundness, safety, or structural integrity of the Project.

F. BY THE BOARD. The Board has the right to change the exterior appearance of the Project, without a vote taken by the Owners, but with the prior written approval of the Commercial Director and the Recreational Director; provided that the cost of such change shall not exceed One Million and No/100 Dollars (\$1,000,000.00). During the Development Period, however, the Board may not pursue any such change without Developer's prior written approval.

G. APPROVAL OF THE BOARD; CONDITIONS TO BOARD APPROVAL. It is intended that the Parking Structure and the Tower present a uniform and attractive appearance in accordance with the Project Quality Standard. Accordingly, whenever any proposed modification, change, addition to, or alteration of any Unit or Limited Common Element appurtenant thereto will impact such appearance, the Owner(s) proposing such modification, change, addition, or alteration must submit a written request for Board approval, which request must include plans and specifications depicting or showing the proposed modification, change, addition, or alteration. The Board must respond to a request for approval within forty-five (45) calendar days after it receives such a request. The request will be deemed approved unless, within the forty-five (45) day period, the Board (i) disapproves the request, (ii) asks the Owner to make changes, or (iii) notifies the Owner that other Owners have challenged the request. The Board shall base its decision to grant or deny approval at least in part upon considerations of whether (and to what extent) the proposed modification, change, addition, or alteration will adversely affect the exterior appearance of the Project. Except in connection with proposed modifications to accommodate Owners with disabilities or to comply with applicable law, if the Board or the Commercial Director or the Recreational Director determines that the proposed modification, change, addition, or alteration will adversely affect the uniform and attractive appearance of the exterior of the Project, or is not consistent with the Project Quality Standard, the Board shall not grant approval. If the Board decides that a proposed modification, change, addition, or alteration will not adversely affect the uniform and attractive appearance of the exterior of the Project and decides to permit the modification, change, addition, or alteration as consistent with the Project Quality Standard, the Board shall first provide all Owners with written notice, and the proposed modification, change, addition, or alteration shall not be implemented until the Owners shall have had an

opportunity to challenge the determination. If challenged by any Owner, then the proposed modification, change, addition, or alteration will require the approval of Owners of Units holding no less than sixty-seven percent (67%) of the Common Interest. The Board, in its sole discretion, may impose reasonable conditions upon the Board's approval of any modification, change, addition, or alteration over which it has approval authority under this Section, including, without limitation the following:

1. The Owner of the Unit shall provide evidence satisfactory to the Board that the Owner has sufficient funds in cash or by means of committed financing to fully pay the estimated costs of construction for the contemplated modification, change, addition, or alteration.

2. The Owner of the Unit provides a copy of the building permit covering the proposed Improvement work duly issued by the County, and the construction contract for the work.

3. For modifications, changes, additions, alterations, and other work the estimated cost of which shall exceed One Million and No/100 Dollars (\$1,000,000.00), the Owner shall provide a performance bond and a labor and materials payment bond in a face amount equal to one hundred percent (100%) of the estimated cost of the construction, naming the Board on behalf of the Association, the Owners, and their Lenders, as their respective interests may appear, as additional obligees. As an alternative, and under the appropriate circumstances, the Board may approve a written indemnity, in form and content acceptable to the Association, under which the Owner of the Unit agrees to indemnify and save harmless the Association, the Owners, and their Lenders, as their respective interests may appear, from and against any claims, demands, or liability arising out of any failure by the Owner to pay all costs and expenses for any and all labor, materials, or supplies for any work performed in or to the Unit or appurtenant Limited Common Elements.

4. The work shall be done by a Hawaii-licensed architect, engineer, or other acceptable construction professional.

5. Changes to the plans and specifications may not be made without Board approval.

6. That the Owner's contractor shall not be permitted to use the Association's trash containers or receptacles for disposal of any construction trash or debris, and that no accumulation of trash or other debris from any construction activity within the Unit or Limited Common Elements appurtenant thereto shall be allowed or permitted to remain on the Common Elements, but shall be removed on a daily basis by the Owner's contractor.

7. That upon completion of the work, the Owner shall provide to the Association a copy of the notice of completion covering the modification, change, addition, alteration, or Improvement, duly published, and the affidavit of publication regarding such notice of completion, duly filed, in accordance with Section 507-43 of the Hawaii Revised Statutes, as amended.

H. UNAUTHORIZED WORK. The Board, the Managing Agent, or their respective representatives, shall be allowed access to inspect any work being done on a Unit or Limited Common Element appurtenant thereto from time to time. The Board may require the removal or correction of any work (i) not authorized by the Board, or (ii) that may materially and adversely affect the Common Elements, the exterior of the Project, or the rights of any other Owner.

I. CONTRACTOR PARKING. Owners shall require their contractors, subcontractors, and anyone else performing the work, and their agents and independent contractors to park offsite, unless otherwise permitted in the House Rules and/or by the Managing Agent.

J. DEVELOPER'S RIGHTS. In no event shall Developer be required to obtain Board approval when exercising Developer's Reserved Rights set forth in this Declaration or while completing the initial Project construction and Improvements, or alterations required to address a claimed or potential defect. Developer and Developer Affiliate, as the Owner of a Unit, shall further be exempt from the restrictions and approval requirements in this Article and shall have the right to make any changes within a Unit owned by Developer or Developer Affiliate

without the Board's approval or consent, provided that such work does not jeopardize the safety, soundness, or structural integrity of the Improvements in the Project.

K. **COMMERCIAL UNITS AND RECREATIONAL UNIT.** Notwithstanding anything in this **Article XI** to the contrary, Improvements and changes by or on behalf of a Commercial Unit Owner or the Recreational Unit Owner shall not be subject to **Article XI, Section G** above or **Article VII, Section 4** of the Bylaws.

L. **FAÇADE SIGNAGE; COMMERCIAL UNIT OWNERS, RECREATIONAL UNIT OWNER, AND DEVELOPER.** Each Commercial Unit Owner shall have the exclusive right for the benefit of its Commercial Unit, to install, maintain, repair, and replace (from time to time) signs and other displays (individually, a "**Façade Sign**" and collectively, the "**Façade Signs**") on the exterior façade of the Commercial Unit or within the Unit Limited Common Elements appurtenant solely to such Unit, in a size and location as permitted by and subject to any zoning or signage laws or other governmental requirements and subject to any restrictions set forth in the Master Declaration. The Recreational Unit Owner shall have the right, for the benefit of its Recreational Unit and appurtenant Limited Common Elements, to install, maintain, repair, and replace (from time to time) Façade Signs on the exterior of the Parking Structure and the Recreational Unit or the Recreational Limited Common Elements. The Façade Signs shall be consistent with the Project Quality Standard. All Façade Signs, to the extent not required to be insured by the Association, shall be insured at the exclusive cost of the Commercial Unit Owner or the Recreational Unit Owner installing such signage or its Occupant. The Commercial Unit Owner or the Recreational Unit Owner exercising its right to install the Façade Sign pursuant to this Section shall be solely responsible for the lighting, installation, maintenance, and replacement of its Façade Sign, and liable for the costs and repair of any damage to the Project proximately caused by such installation, maintenance, and replacement. Developer, the Commercial Director, and the Recreational Director, acting together, may establish and administer any comprehensive sign criteria.

M. **OWNERS TO EXECUTE AMENDMENT DOCUMENTS IN CERTAIN CASES.** In the event that any change or alteration of a Unit pursuant to and in compliance with this **Article XI** shall alter the depiction of the particular Unit or Common Element on the Condominium Map or the description thereof in this Declaration, then the Owner of such Unit shall amend this Declaration and/or the Condominium Map to set forth such approved change or alteration, which amendment(s) may be executed by the Owner of the affected Unit or Units and by no other party, and shall become effective upon the recordation thereof at said Bureau. The provisions of **Article XVI** below notwithstanding, such amendment shall not require the consent or joinder of the Owner of any other Unit or any other Person, other than any mortgagee of such Unit or Units which are changed or altered (if the mortgagee requires such consent or joinder). Every Owner and all holders of liens affecting any of the Units of the Project and each and every other party acquiring an interest in the Project or any part thereof, by acquiring such Unit, lien, or other interest therein, consent to and agree that they shall, if required by law or by any such Owner who shall have changed or altered a Unit as aforesaid, join in, consent to, execute, deliver, and record all instruments and documents necessary or desirable to effect the amendment of this Declaration and/or the Condominium Map; and appoint such Owner and such Owner's assigns as their attorney-in-fact with full power of substitution to execute, deliver, and record such documents and to do such things on their behalf, which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of any such party.

XII. COMMON EXPENSES; LIMITED COMMON EXPENSES; UNIT CLASS EXPENSES; SPECIAL COSTS; ALTERNATIVE ALLOCATION; OTHER COSTS AND EXPENSES; LIEN.

The Board, acting on behalf of the Association, shall, from time to time, assess the Common Expenses against all the Units, Unit Class Expenses against all Units in a Unit Class, and costs against specific Units in accordance with the Act, this Declaration, and the Bylaws. All Assessments shall constitute a lien against the Unit to which such Assessment is attributed.

A. **SPECIAL COSTS AND ALTERNATIVE ALLOCATION.** The "**Special Costs**" and "**Alternative Allocation**" are set forth in **Exhibit "C"** attached hereto and incorporated herein by reference. In determining an equitable and fair allocation of costs, a Unit Class may pay and manage the entirety of a cost for a service and manage such service shared by the Unit Classes, and in return, the other Unit Class may pay the entirety of a different service shared by the Unit Classes, in equity, or a Unit Class may reimburse the other Unit Class a reasonable portion of the costs, in equity, or they may allocate the cost in accordance with **Exhibit "C."** The Special Costs and Alternative Allocation are allocated to each Owner based on their Unit's Class Common Interest set forth

in **Exhibit "B."** Except as otherwise provided herein, a Unit and its Alternative Allocation shall not be severed from the Unit Class or the Unit. The Special Costs and Alternative Allocations set forth in **Exhibit "C"** shall not be amended without the prior written approval of Developer until the end of the Development Period. Thereafter, the prior approval of a Majority of the Residential Unit Class, a Majority of the Commercial Unit Class, and a Majority of the Recreational Unit Class, as applicable, will be necessary to effect any amendment.

B. COMMON EXPENSES. Except as otherwise provided herein, the Common Expenses shall be allocated among Owners by Common Interest, which is set forth in **Exhibit "B"** attached hereto. The Common Expenses may include costs, such as cable, internet, or Master Assessments (and other items), that may be allocated as a flat rate equally to each Owner.

C. LIMITED COMMON ELEMENT EXPENSES. Profits and expenses attributable to Unit Limited Common Elements shall be distributed or charged to the Owner(s) of the Unit(s) to which such Unit Limited Common Elements are appurtenant. If a Limited Common Element is appurtenant to more than one (1) Unit, then such Units shall share the cost in proportion to their relative Common Interests, as set forth in **Exhibit "B"** attached hereto. Notwithstanding that parking stalls and storage lockers for the Residential Units are Limited Common Elements appurtenant to specific Units, the Association may assess the costs of maintenance and upkeep of Limited Common Element parking stalls and/or storage lockers for the Residential Units as a Residential Unit Class Expense. If there are certain Limited Common Elements that the Association is responsible to maintain (i.e., individual parking stalls), the Owners of said Units shall be responsible to reimburse the Association for any costs associated with such maintenance.

D. UNIT CLASS EXPENSES. The Commercial Unit Class Expenses, the Residential Unit Class Expenses, and the Recreational Unit Class Expenses shall be allocated to the appropriate Unit based on the Class Common Interest set forth in **Exhibit "B"** and shall include the Special Costs allocated to each Unit Class based on the Alternative Allocation. In addition to those costs set forth in **Exhibit "C,"** the following specific expenses shall also be Residential Unit Class Expenses: (1) costs to support, maintain, and operate the Residential Limited Common Elements; (2) all costs of maintenance, repair, replacement, including reserves, of any equipment or apparatus servicing only the Residential Limited Common Elements; (3) all costs of the Managing Agent and Site Manager, if any, including salary expenses of all personnel; and (4) the cost of personnel exclusively servicing the Residential Units and Residential Limited Common Elements. In addition to those costs set forth in **Exhibit "C,"** the following specific expenses shall also be Commercial Unit Class Expenses: (i) costs to support, maintain, and operate the Commercial Limited Common Elements; (ii) all costs of maintenance, repair, replacement, including reserves, of any equipment or apparatus serving only the Commercial Limited Common Elements; (iii) all costs of the Commercial Managing Agent, if any, servicing the Commercial Units and the appurtenant Commercial Limited Common Elements and Commercial Unit Limited Common Elements; and (iv) the cost of any personnel utilized to serve only the Commercial Units, Commercial Limited Common Elements, and Commercial Unit Limited Common Elements appurtenant to more than one Commercial Unit. In addition to those costs set forth in **Exhibit "C,"** the following specific expenses shall also be Recreational Unit Class Expenses: (a) costs to support, maintain, and operate the Recreational Limited Common Elements; (b) all costs of maintenance, repair, replacement, including reserves, of any equipment or apparatus serving only the Recreational Unit(s); and (c) the cost of any personnel utilized to serve only the Recreational Unit(s) and Recreational Limited Common Elements.

E. CERTAIN VENDOR COSTS; SEPARATE METERS. If any services are provided to, or if any costs are incurred for, any Common Element where the respective direct allocation of such costs between General Common Elements, Residential Limited Common Elements, Commercial Limited Common Elements, and Recreational Limited Common Elements are not readily determinable by separate meters or separate billing by vendors, the Board shall request the vendor of the services to segregate the billings as between the General Common Elements, Residential Limited Common Elements, Commercial Limited Common Elements, and Recreational Limited Common Elements. If the vendor is unable to or refuses to meter usage or allocate costs, then the Board must unanimously agree to an Alternative Allocation of such Special Costs between the Commercial Unit Class, the Residential Unit Class, and the Recreational Unit Class. In arriving at such agreement, the Board may engage the services of a professional engineer or other professional to provide their opinion of a fair allocation. If the Board members are not able to agree on such allocation (a "**deadlock**"), notwithstanding anything contained in this Declaration to the contrary, the matter shall be submitted to binding arbitration unless the Board unanimously agrees otherwise. In the event of a deadlock, any Board member may initiate arbitration to resolve the deadlock by providing

written notice of such desire to each Board member. The Board shall have a period of twenty (20) calendar days following the date notice is given to agree by a majority of the Board on a single arbitrator who shall be a professional engineer or other professional to resolve the deadlock, and if the Board fails to do so, then the arbitrator shall be determined by application to DPR (or similar alternative dispute resolution services if DPR ceases to exist), in which event the arbitration shall be administered by DPR pursuant to its Protocols for Arbitration of Disputes (or the arbitration rules and proceedings of such similar dispute resolution service if DPR ceases to exist). The costs of the arbitration shall be a Common Expense. The decision of the arbitrator shall be final and binding on the Board and the Owners, and a judgment on the arbitrator's decision may be entered by any court having jurisdiction.

F. OTHER EXPENSES. All charges, costs, and expenses incurred by the Association which are necessitated by the negligence, misuse, or neglect of any Owner or Occupant or any Person under either of them to the extent not covered by insurance may be charged to such Owner or the Owner of the Unit of such Occupant, as a special assessment, which is secured by the lien created under this **Article XII** pursuant to the provisions of Section 514B-143(d) of the Act.

G. ASSESSMENT OF EXPENSES. Assessments shall be levied at such time as the Board shall determine, but no less than monthly. The Board shall mail to each Owner, at the address shown in the records of the Association, a written statement setting forth the amount of the Assessment against each Unit. Except as otherwise provided herein or in the Act, all unpaid Assessments shall constitute a lien on the Unit prior to all other liens, except only: (1) liens for taxes and assessments lawfully imposed by a governmental authority against the Unit, and (2) all sums unpaid on Mortgages filed prior to the filing of a notice of lien by the Association, and costs and expenses, including attorneys' fees, provided for in such Mortgages.

H. COLLECTION OF ASSESSMENTS. When the Lender or other purchaser of any Unit acquires title to such Unit as a result of the remedies provided in the Mortgage, foreclosure of the Mortgage, or a private sale or deed in lieu of foreclosure, such Lender or such other purchaser, as the case may be, and their respective heirs, devisees, personal representatives, successors, and assigns, shall not be liable for the share of the Common Expenses or Assessments chargeable to such Unit which became due prior to such acquisition of title. Subject to the right of the Board to specially assess the amount of the unpaid Assessments, including Common Expenses, against an Owner pursuant to the provisions of Section 514B-146(j) of the Act (other than purchasers who hold a first Mortgage filed prior to the filing of a notice of lien): (1) the unpaid share of Common Expenses shall be deemed Common Expenses collectible from all of the Owners, including such Lender or such other purchaser of a Unit and their respective heirs, devisees, personal representatives, successors, and assigns, (2) the unpaid share of Unit Class Expenses shall be deemed collectible from all of the Owners in the particular Unit Class, including the purchasing Lender or purchaser of the Unit with the unpaid share of such Unit Class Expense and their respective heirs, devisees, personal representatives, successors, and assigns, (3) the unpaid share of Special Costs shall be deemed collectible from all of the Owners to which such Special Costs are applicable, including the purchasing Lender or purchaser of the Unit with the unpaid share of such Special Costs and their respective heirs, devisees, personal representatives, successors, and assigns, and (4) the unpaid share of Limited Common Expenses shall be deemed collectible from all of the Owners to which such Limited Common Expenses are applicable, including the purchasing Lender or purchaser of the Unit with the unpaid share of such Limited Common Expenses and their respective heirs, devisees, personal representatives, successors, and assigns.

No Owner shall be exempt from liability for the Owner's contribution toward the Common Expenses or from Assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Owner's Unit.

I. ASSESSMENT LIEN. All unpaid Assessments shall constitute a lien against the Unit to which such Assessment is attributed. The lien may be foreclosed by action or by nonjudicial or power of sale foreclosure by the Managing Agent or Board, acting on behalf of the Association and in the name of the Association, in accordance with the Act and Chapter 667 of the Hawaii Revised Statutes. **EACH OWNER, BY ACQUIRING A UNIT IN THE PROJECT, GRANTS TO THE ASSOCIATION A POWER OF SALE IN CONNECTION WITH THE LIEN AND FURTHER UNDERSTANDS AND AGREES THAT THE ASSOCIATION, IN THE EXERCISE OF SAID POWER OF SALE, MAY SELL THE UNIT AT A PUBLIC SALE WITHOUT FILING A LAWSUIT, AND THAT THE ASSOCIATION OR ANY OTHER PERSON MAY ACQUIRE THE UNIT AT THE PUBLIC SALE.** In any such foreclosure, the Owner shall be required to pay a reasonable rental for the Unit and the plaintiff in the foreclosure shall

be entitled to the appointment of a receiver to collect the same. The Managing Agent or Board, acting on behalf of the Association and in the name of the Association, may, unless otherwise prohibited in this Declaration, bid on the Unit at the foreclosure sale, and acquire, hold, lease, mortgage, and convey the same. Action to recover a money judgment for unpaid Common Expenses and other Assessments shall be maintainable without foreclosing or waiving the lien securing the same.

Prior to foreclosing upon such lien, the Board or Managing Agent shall provide thirty (30) calendar days prior written notice of its intention to foreclose, unless a different notice period is otherwise provided for by Chapter 667 of the Hawaii Revised Statutes. Such notice shall be mailed, postage prepaid, to the last known address of all Persons having an interest in such Unit as shown in a title report pertaining to the Unit, which title report shall be dated not more than sixty (60) calendar days prior to the date of any such notice, including, but not limited to, any holder or insurer of a Mortgage of any interest in such Unit.

J. **INTEREST IN COMMON EXPENSE FUNDS NOT SEPARATELY ASSIGNABLE.** The proportionate interest of each Owner in any capital contributions, custodial fund, or maintenance reserve fund cannot be withdrawn or separately assigned but shall be deemed to be conveyed with such Unit even though not expressly mentioned or described in the conveyance thereof. In case the Project shall be terminated, said capital contributions, custodial fund, or maintenance reserve fund remaining after full payment of all Common Expenses and other obligations of the Association shall be distributed among all Owners in their respective proportionate shares except for the Owners of any Units then reconstituted as part of a new condominium property regime.

XIII. INSURANCE.

A. **INSURANCE GENERALLY.** The Association shall obtain and maintain the insurance required by this **Article XIII** with the exception of the insurance coverage to be obtained by the Owners pursuant to **Article XIII, Sections B.3 and F** below. The cost of insurance obtained by the Association shall be a Special Cost assessed in accordance with **Exhibit "C."** Each policy may be separate, or the Association can buy one or more commercial package policies provided such package policy allocates the amount of coverage from time to time required hereunder or shall otherwise provide the same protection as would a separate policy insuring only the Project. Until the end of the Developer Control Period, Developer shall have the rights of the Association and/or the Insurance Trustee provided herein.

1. **SOURCE OF THE INSURANCE.** The Association shall buy the insurance.

2. **QUALIFIED INSURANCE COMPANIES.** Each insurance company must be licensed to do business in the State except for (a) federal flood insurance and other government insurance programs, and (b) insurance not available, or not available at a reasonable price from a company licensed in the State. Each insurance company must have a financial rating of A-VII or better according to Best's Insurance Report. If the insurance cannot be obtained from a company having that rating, or if the Board decides that the cost is too high, then the Association may buy the insurance from any financially sound company of recognized responsibility.

3. **ADDITIONAL INSURANCE.** The Board has the right and power to increase coverage or to obtain better terms than those stated in this **Article XIII** if the Board decides that it is necessary or is in the best interests of the Association. The Board may also buy other kinds of insurance even if they are not described in this **Article XIII**.

4. **SUMMARY OF INSURANCE POLICIES.** Each insurance policy obtained by the Association to provide the coverage required under this **Article XIII** shall be summarized in writing, in layman's terms, at the inception of the insurance policy. The summary shall include the type of insurance policy, a description of the coverage and the limits thereof, amount of annual premium, and renewal dates. The Board shall provide this information to each Owner.

5. **YEARLY REVIEW OF INSURANCE PROGRAMS.** The Board must review the adequacy of its entire insurance program at least yearly. The Managing Agent must furnish an analysis of (a) the insurance needs of the Association and the Owners; and (b) the adequacy of the existing insurance policies to meet those needs. The Board shall review this analysis and then make any changes in the insurance program that it deems

necessary or appropriate. All Board decisions are final, provided that such decisions align with, but notwithstanding anything to the contrary, do not exceed the insurance requirements of Project Lender, if any. The Board must report in writing its conclusions and the action taken after its review.

6. **LIABILITY FOR INSURANCE DECISIONS.** The Board will not be liable for any decision it makes regarding insurance unless it was grossly negligent or guilty of intentional misconduct. Likewise, neither Developer nor the Managing Agent nor the Representative of any of the foregoing will be liable except for their gross negligence or intentional misconduct regarding any decisions pertaining to insurance.

7. **INSPECTION AND COPIES OF INSURANCE POLICIES.** Any Owner (and anyone having executed a contract to buy a Unit) may inspect copies of the Association's insurance policies at the office of the Managing Agent. If asked to do so, the Board will furnish a copy of any policy, or a current certificate of insurance, to any Lender that has a first Mortgage on a Unit. The Lender must pay a reasonable fee for the copy. Upon request, the Board shall provide a copy of any policy to the requesting Commercial Unit Owner, Recreational Unit Owner, or Utility Unit Owner free of charge.

8. **NOTICE OF CHANGES IN INSURANCE.** The Association will send notice to the Owners if:

a. The Association's policy of property insurance under **Article XIII, Section B** or liability insurance under **Article XIII, Section D** has lapsed, has been canceled, or will not be renewed unless replacement coverage will be in effect before the policies lapse or are canceled; or

b. There is a significant adverse change in the coverage of those policies (for example, a significant reduction in the policy limits or a substantial increase in the deductible).

c. The Association must send any notice required by this **Article XIII, Section A.8** by first-class mail and as soon as reasonably possible.

B. PROPERTY INSURANCE. The Association must buy and keep in effect at all times a policy of property insurance. This is referred to as the "**Policy**" in this Section.

1. **WHO IS INSURED.** The Policy must name the Association, as trustee for all Owners and any Lenders, as the insured. Developer must also be named as an insured during the Development Period.

2. **REQUIRED COVERAGE.** Except for those items set forth in **Article XIII, Section B.3** below which are required to be covered by an Owner, the Policy must insure all Units, Common Elements, and all common personal property belonging to the Association. The Policy must be in a total amount not less than the full insurable replacement cost of the insured property with no co-insurance, less commercially reasonable deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date. Replacement costs shall be evaluated and updated, at a minimum, annually and at the time of each renewal. The Policy shall not cover any Improvements and betterments or personal property in a Commercial Unit or the Recreational Unit after the time a Certificate of Occupancy is issued for such Commercial Unit and the Recreational Unit. The cost of replacement of such items shall be the sole responsibility and expense of the Owner of such Commercial Unit and the Recreational Unit. The Policy also shall not cover any loss of use or loss of rent involving any Unit. The Policy need not cover land, foundation, excavation, and other items normally excluded from such coverage.

3. **OWNER HAZARD COVERAGE REQUIRED.**

a. Each Residential Unit Owner is solely responsible, at such Owner's sole expense, for obtaining and maintaining a personal home insurance policy of Type HO-6 or an equivalent policy that provides customary coverage for liability and for such Owner's personal property, Improvements and betterments, and other portions of the Residential Unit that are not covered under the Policy. Property outside the Unit boundaries described in **Article III, Section B.4** herein are not required to be covered by the HO-6. Developer and Developer Affiliate

shall not be required to obtain personal home insurance for any Residential Unit inventory still held by Developer or Developer Affiliate during the course of sales.

b. The HO-6 policy shall provide, at minimum, the following coverages: (1) Dwelling coverage for the replacement value of any permanent improvements made to the Unit beyond what Developer delivered in accordance with the as-built plans and specifications; (2) Personal Property coverage of Fifty Thousand and No/100 Dollars (\$50,000.00); (3) Loss of Use coverage of Twenty Thousand and No/100 Dollars (\$20,000.00); (4) Liability coverage of Five Hundred Thousand and No/100 Dollars (\$500,000.00); (5) Medical Payments of Five Thousand and No/100 Dollars (\$5,000.00); and (6) Loss Assessment of Ten Thousand and No/100 Dollars (\$10,000.00). All HO-6 policies must have "Special Perils" coverage.

c. Each Residential Unit Owner shall be responsible for the deductible of the Owner's policy, the Association's insurance deductible that may be available for the damage claimed through the Association's policy, and other repairs (i.e., decorating, painting, wall and floor coverings, trim, appliances, equipment). The Board will collect the deductible from the Owner as a special assessment pursuant to this Declaration and the Bylaws.

d. Each Commercial Unit Owner is responsible, at its sole expense, for obtaining insurance coverage for personal property, Improvements and betterments, and other items within such Commercial Unit to the extent that such items or personal property are not covered under the Policy and such insurance policy may include business interruption coverage for loss of rents, as applicable.

e. The Recreational Unit Owner is responsible, at its sole expense, for obtaining insurance coverage for personal property, Improvements and betterments, and other items within such Recreational Unit to the extent that such items or personal property are not covered under the Policy and such insurance policy may include business interruption coverage for loss of rents, as applicable.

f. The Utility Unit Owner is responsible, at its sole expense, for obtaining insurance coverage for personal property, Improvements and betterments, and other items within the Utility Unit to the extent that such items or personal property are not covered under the Policy.

g. In addition to the insurance obtained under this **Article XIII, Section B.3**, a Commercial Unit Owner(s) and the Recreational Unit Owner may purchase, for the benefit of the Commercial Unit Owner(s) or the Recreational Unit Owner, as applicable, supplemental all-risk of physical loss insurance coverage insuring the Commercial Unit, the Recreational Unit, and their appurtenant Unit Limited Common Elements, the proceeds of which shall be paid to, and be for the exclusive use of, and administered by, the respective Commercial Unit Owner(s) and the Recreational Unit Owner. Notwithstanding such coverage, the Policy shall remain the primary insurance for those matters required to be insured against pursuant to **Article XIII, Section B.2** above. The liability of carriers issuing the Policy shall not be affected or diminished by reason of any such supplemental insurance obtained by the Commercial Unit Owner(s) or the Recreational Unit Owner.

h. Each Owner may also be required, at such Owner's own expense, to obtain additional insurance coverage as may be determined pursuant to the provisions of Section 514B-143(g) of the Act.

i. To the fullest extent permitted by law and provided such waiver is available in the commercial marketplace, any policy obtained pursuant to this Section must provide that the insurance company waives any right of subrogation to any right of the Persons insured by the Policy as against the Association, the Board, the Managing Agent, Developer, the Owners, and the Representatives of each of the foregoing.

4. **FORM OF POLICY.** The Policy must cover the perils insured under ISO special causes of loss form (CP 10 30) or equivalent. A "special form policy" typically insures against the following: fire, lightning, windstorm, hail, smoke, explosion, civil commotion, riot and riot attending strike, aircraft and vehicle damage, vandalism, sprinkler leakage, sinkhole collapse, volcanic action, breakage of glass, falling objects, water damage, collapse of structure, and direct physical loss. If the Project is located in an area prone to earthquakes, tsunamis, flood,

windstorm, named storms, storm surge, or hurricanes, the Association must also buy insurance for such risks available at a reasonable cost or in form and amounts as required by Project Lender, if any.

5. **ADDITIONAL COVERAGE.** The Policy must contain an agreed amount endorsement or waive any co-insurance requirement. The Policy must cover terrorism, ordinance or law, boiler and machinery/equipment breakdown and must provide rental loss and/or business income interruption insurance with, as respects loss of income, an endorsement or provision containing an extended period of indemnity of not less than eighteen (18) months and, as respects rental insurance, in an amount equal to one hundred percent (100%) of the projected gross income from operations.

6. **REQUIRED AND PROHIBITED PROVISIONS.** Unless the Board decides the cost is unreasonably high, the Policy, at minimum, must provide as follows:

a. The Policy must not relieve the insurance company from liability because of any increased hazard on any part of the Project, not within the control or knowledge of the Association, the Board, Developer, the Managing Agent, any Owner, or any Persons under any of them.

b. The Policy must not permit the insurance company to cancel or substantially change the Policy or the coverage (whether or not asked by the Board) unless the insurance company gives written notice of the cancellation or change at least thirty (30) calendar days in advance. The insurance company must send the notice to the Board and the Managing Agent. The Board will send a copy to each Lender and any other Interested Person who has, in either case, requested a copy of any such notice and has provided the Board with an address for such notice.

c. The Policy must provide that the insurance company waives any right of subrogation to any right of the Persons insured by the Policy as against the Association, the Board, the Managing Agent, Developer, the Owners, and the Representatives of each of the foregoing.

d. The Policy must provide that the insurance company waives any right to deny liability because any Unit or Units are vacant.

e. The Policy must not limit or prohibit any Owner from buying other insurance for the Owner's own benefit. It must also provide that the liability of the insurance company will be primary and will not be affected by any such other insurance, and that the insurance company cannot claim any right of set off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Owner.

f. The Policy must provide that any loss will be settled by (i) the insurance company, (ii) the Board, and (iii) any Lender having a Mortgage on the Project or on a Unit directly affected by the loss.

g. The Policy must contain a standard "mortgagee clause." This protects the rights of Lenders. Unless it cannot be reasonably obtained, the mortgagee clause must:

(i) Name as an insured Project Lender, if any, and any Lender whose name has been furnished to the Board and the insurance company;

(ii) Provide that any reference to a Lender in the policy includes all Lenders, in their order of priority, named in the Policy;

(iii) Provide that any act or neglect of the Association, the Board, or any Owner or Occupant will not release the insurance company from its duties to the Lender; and

(iv) Provide that the insurance company waives:

(a) any right to deny coverage for the Lender's benefit because the Lender unknowingly fails to notify the insurance company of any hazardous use,

(b) any requirement that the Lender pay any policy premium (provided, however, the Lender may pay any premium due if the Association fails to do so on time), and

(c) any right to contribution from the Lender.

h. The Policy must provide that if there is a loss to the Project and a single payment by the insurance company exceeds Two Hundred Thousand and No/100 Dollars (\$200,000.00), then the proceeds must be paid to the Insurance Trustee. The Insurance Trustee shall be required to make the proceeds of the Policy available pursuant to the provisions of **Article XIV, Sections A and D** of this Declaration. The Policy must also require that the insurance company recognize the insurance trust agreement referred to in **Article XIV, Section H** of this Declaration. Whenever insurance proceeds are deposited with an Insurance Trustee, the Association must promptly notify each Lender listed in the Association's records of ownership.

C. **FLOOD INSURANCE.** If the Project is located in a special flood hazard area as delineated on flood maps issued by the County, the Association must buy a policy of flood insurance that complies with the requirements of the National Flood Insurance Program and the Federal Insurance and Mitigation Administration unless the Project has obtained an exemption certificate from the Federal Emergency Management Agency ("**FEMA**") or a special rate consideration.

D. **LIABILITY INSURANCE.** The Board must buy and keep in effect commercial general liability insurance and, if necessary, commercial umbrella insurance written as follow form or alternatively with a form that provides coverage that is at least as broad as the primary insurance policies, commercial vehicle insurance, workers' compensation, and employer's liability insurance. In this Section, the commercial general liability insurance and commercial umbrella insurance are together called the "**Liability Policy**."

1. **WHO IS INSURED.** The Liability Policy must cover all Owners, the Board, the Association, the Managing Agent and, during the Development Period, Developer, and each of their Representatives against claims for personal injury, bodily injury, death, and property damage. The Liability Policy must name Owners and their Representatives as additional insureds and the policy must include coverage for terrorism. To evidence compliance with this requirement, the Board will obtain a certificate of insurance and provide a copy to the Commercial Unit Owners and the Recreational Unit Owner. During such time that Developer is an Owner, the liability policy must name as additional insureds Developer, and such additional insureds as Developer shall direct from time to time and the Representatives of all of the foregoing. To the extent commercially reasonably available, the certificate shall also provide that not less than thirty (30) calendar days notice of cancellation or decrease in coverage shall be given to the Commercial Unit Owners and the Recreational Unit Owner. To the fullest extent permitted by law, any policy obtained pursuant to this **Article XIII, Section D** must provide that the insurance company waives any right of subrogation to any right of the Persons insured by the Policy as against the Association, the Board, the Managing Agent, Developer, the Owners, and the Representatives of each of the foregoing.

2. **REQUIRED COVERAGES.** The Liability Policy must include coverage provided by a broad form comprehensive general liability endorsement and coverage against claims for personal injury, bodily injury, and death or property damage occurring upon, in, or about the Property, provided on an "occurrence" form. The combined limits must not be less than Five Million and No/100 Dollars (\$5,000,000.00) in the aggregate (which limits must be dedicated to the Project and can be provided by any combination of primary and umbrella coverage), and Five Million and No/100 Dollars (\$5,000,000.00) per occurrence. The Liability Policy should provide coverage for premises and operations, products and completed operations, if any, independent contractors, blanket contractual liability for insured contracts and also bodily injury (including death) and property damage that results from the operation, maintenance, or use of the Common Elements and, if applicable, commercial vehicle liability (owned, hired and non-owned vehicles). The Board must also provide workers' compensation with statutory limits and employer's liability insurance with limits of not less than One Million and No/100 Dollars (\$1,000,000.00).

3. **REQUIRED AND PROHIBITED PROVISIONS.** Unless the Board decides the cost is unreasonably high, provided any such Board decision aligns with the insurance requirements of Project Lender, if any, the Liability Policy, at minimum, must provide as follows:

a. The Liability Policy must not limit or prohibit any Owner from buying other liability insurance for the Owner's own benefit.

b. The Liability Policy must not relieve the insurance company from liability because of any unintentional act or neglect of the Association, the Managing Agent, Developer, the Board, the Owners and Occupants, or any Person under any of them.

c. The Liability Policy must provide that the insurance company waives any right of subrogation to any right of the Persons insured by the Liability Policy as against the Association, the Board, the Managing Agent, Developer, the Owners, and any of their Representatives.

d. The Liability Policy must contain a "cross-liability" endorsement.

e. The Liability Policy must contain a "severability of interest" provision.

The Liability Policy must not permit the insurance company to cancel or substantially change the Liability Policy or the coverage (whether or not asked by the Board) unless the insurance company gives written notice of the cancellation or change at least thirty (30) calendar days in advance. The insurance company must send the notice to the Board (Association). The Board will send a copy to every Lender, the Managing Agent, and, during the Development Period, Developer and any other Interested Person who has, in either case, requested a copy of any such notice and has provided the Board with an address for such notice.

4. **OPTING-OUT.** Notwithstanding anything herein contained, the Commercial Unit Owners (acting unanimously if more than one) and/or the Recreational Unit Owner may elect at any time and from time to time by notice to the Association to obtain on its or their own behalf (and not on a shared basis with the Association) commercial general liability insurance and the commercial umbrella insurance set forth above, in which event (a) the Commercial Unit Owners or the Recreational Unit Owner, as applicable, shall pay for such insurance and the costs and benefits thereof shall not be shared; (b) the Commercial Unit Owners or the Recreational Unit Owner, as applicable, shall provide to the Association upon its request, and in all events not less than once every twelve (12) months, with reasonably satisfactory evidence of such coverage; (c) the insurance coverage provided by the separate policies maintained by the Commercial Unit Owners or the Recreational Unit Owner must be substantially equivalent (to provide coverage for the Commercial Unit Owners' or the Recreational Unit Owner's exposure, as applicable) to the coverage that would have been required to be maintained by the Association for the benefit of all Owners if the Commercial Unit Owners or the Recreational Unit Owner had not made such election; and (d) in the event that the Commercial Unit Owners or the Recreational Unit Owner have elected to obtain on its or their own behalf such insurance, then with respect to such Commercial Unit Owners and the Recreational Unit Owner, the coverages maintained by the Association as set forth in this Section shall be limited to covering the other Owners, the Board, the Association, and each of their Representatives and the Commercial Unit Owners or the Recreational Unit Owner, as applicable, shall have no obligation to pay any portion of the cost of such liability insurance coverage maintained by the Association and with respect to such costs. This provision shall take precedence over the Alternative Allocation of the Special Cost for insurance provided in **Exhibit "C."**

E. **DIRECTORS' AND OFFICERS' LIABILITY INSURANCE.** The Board must buy and maintain a policy insuring, to the extent allowed by law, each person who is or was a Director, Officer, agent, or employee of the Association against all liability in connection with any claim made against such person as a result of such person holding that position. This is referred to as the "**D&O Policy**" in this Section. The D&O Policy must also cover anyone who serves, at the request of the Association, as a Director, Officer, employee, or agent. The Board will determine the D&O Policy coverages and limits from time to time provided any such determination shall align with but shall not exceed the insurance requirements of Project Lender, if any. If it can be obtained at a reasonable cost, the D&O Policy must provide coverage to the extent permitted by law for any proceeding whether it is civil or criminal, administrative, or investigative. The D&O Policy must cover any expense actually and reasonably incurred. This includes, but is not limited to, attorneys' fees, court costs, and payment of any judgments, fines, and settlements. The Board may decide to buy insurance to cover circumstances where direct reimbursement is not required by law.

F. **COMMERCIAL AND RECREATIONAL UNIT LIABILITY INSURANCE AND OTHER INSURANCE.** A Commercial Unit Owner and the Recreational Unit Owner are responsible for obtaining (i) a

commercial general liability policy with coverage that is customary for operations of its size and character; (ii) worker's compensation insurance and employer's liability insurance covering all personnel employed by such Commercial Unit Owner or the Recreational Unit Owner; and (iii) during any period in which significant construction, alterations, repairs, or reconstruction are being undertaken by such Commercial Unit Owner or the Recreational Unit Owner, builder's risk insurance covering the total completed value including any "soft costs" with respect to the Improvements being constructed, altered, repaired, or reconstructed (on a completed value, non-reporting basis) by such Commercial Unit Owner or the Recreational Unit Owner, replacement cost of work performed and equipment, supplies, and materials furnished in connection with such construction or repair of improvements or equipment, together with such "soft cost" endorsements and such other endorsements as the Board may reasonably determine, and commercial general liability, workers' compensation, and automobile liability insurance with respect to the services provided by the contractor and all such policies, except builder's risk, shall have limits of not less than Three Million and No/100 Dollars (\$3,000,000.00) per occurrence including any combination of primary and umbrella policy limits. The Association, the Board, and each of their Representatives shall be named as an additional insured on all such policies, and each Commercial Unit Owner and the Recreational Unit Owner shall, promptly upon request, provide the Board with a certificate evidencing the required coverage. The Association shall be entitled to receive at least thirty (30) calendar days prior written notice before the termination or material change of any such policy. To the fullest extent permitted by law, any policy obtained pursuant to this Section must provide that the insurance company waives any right of subrogation to any right of the Persons insured by the Policy as against the Association, the Board, the Managing Agent, Developer, and the Representatives of each of the foregoing. **FAILURE OF THE BOARD TO REQUEST OR VERIFY INSURANCE DOES NOT RELIEVE THE OWNER OF THESE INSURANCE REQUIREMENTS.**

G. FIDELITY INSURANCE. To the extent reasonably available, blanket fidelity bond or crime insurance shall be required to be maintained by the Board for all Officers, Directors, managers, trustees, employees, and volunteers of the Association and all other persons handling or responsible for funds held or administered by the Association, whether or not they receive compensation for their services. Where the Board has delegated some or all of the responsibility for the handling of funds to the Managing Agent, such Managing Agent shall be covered by its own fidelity insurance policy which must provide the same coverage as fidelity insurance maintained by the Board. Except for fidelity insurance that a Managing Agent obtains for its personnel, all other fidelity insurance policies shall name the Association as the insured and premiums will be a Common Expense. Fidelity insurance obtained by the Managing Agent shall name the Association as an additional insured. The total amount of fidelity coverage required shall be sufficient to satisfy the requirements set forth in Section 514B-143(a)(3)(A) of the Act. Fidelity insurance policies shall contain waivers by the insurers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. The fidelity insurance policies shall provide that they cannot be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) business days prior written notice to the Association, any Insurance Trustee, and all Eligible Mortgage Holders.

H. SUBSTITUTE INSURANCE COVERAGE. Any insurance coverage specified in this **Article XIII** shall be subject to availability on commercially reasonable terms with reputable insurance companies authorized to do business in the State. Where such coverage is not available, or is not available on commercially reasonable terms, then the Board shall substitute such other insurance coverage as is acceptable to Project Lender, if any, or to institutional Lenders for Units in projects similar in construction, location, and use.

I. INSURANCE PRIOR TO FIRST CERTIFICATE OF OCCUPANCY. Notwithstanding anything in this **Article XIII** to the contrary, prior to the issuance of the first Certificate of Occupancy for a Residential Unit, the insurance requirements specified in this **Article XIII** shall not be applicable and insurance coverage shall be maintained as Developer deems appropriate or as otherwise required by Project Lender, if any.

J. WAIVER OF THE RIGHT TO SUBROGATION. NOTWITHSTANDING ANYTHING PROVIDED IN THIS DECLARATION, EACH OWNER, THE ASSOCIATION, THE BOARD, DEVELOPER, AND EACH OF THEIR REPRESENTATIVES, HEREBY RELEASE (FOR THEMSELVES AND, TO THE EXTENT LEGALLY POSSIBLE TO DO SO, ON BEHALF OF THEIR INSURERS AND THEIR RESPECTIVE REPRESENTATIVES) EACH OTHER AND THEIR REPRESENTATIVES, FROM ANY LOSS, DAMAGE, OR LIABILITY FOR ANY CLAIMS WITH RESPECT TO OR ARISING FROM PERSONAL INJURY, BODILY INJURY, DEATH, AND PROPERTY DAMAGE WHICH LOSS, DAMAGE, OR LIABILITY IS CAUSED BY A

RISK OF THE TYPE GENERALLY COVERED BY POLICIES OF INSURANCE OF THE TYPE REFERRED TO AND REQUIRED TO BE OBTAINED PURSUANT TO THIS **ARTICLE XIII**, EVEN IF DUE TO THE NEGLIGENCE OF A PARTY AND PROVIDED THAT THIS SECTION REMAINS SUBJECT TO THE BOARD'S RIGHTS UNDER SECTION 514B-143(D) OF THE ACT WITH RESPECT TO THE ASSESSMENT AND PAYMENT OF THE DEDUCTIBLE. THIS SECTION RELEASES A PARTY FROM THE CONSEQUENCES OF ITS OWN NEGLIGENCE, SUBJECT TO ANY LIABILITY UNDER SECTION 514B-143(D) OF THE ACT.

XIV. INSURED DAMAGE OR DESTRUCTION.

This **Article XIV** applies if all or any part of the Project is damaged or destroyed and if the damage or destruction is covered by insurance procured by the Association. If this happens, then the Association or the Insurance Trustee will use the insurance proceeds as provided in **Article XIV, Section A**. In this **Article XIV**, "*proceeds*" means any money paid by an insurance company for a loss under an insurance policy paid for by the Association. Any restoration or repair of the Project shall be performed substantially in accordance with this Declaration and the original plans and specifications, or if reconstruction in accordance with said plans and specifications is not permissible under the laws then in force, in accordance with such modified plans and specifications as shall be approved by the Board and any Lender holding a Mortgage in a Unit directly affected thereby.

A. DAMAGE TO A UNIT. Excluding damage insured under **Article XIII, Sections B.3.a, B.3.d, B.3.e, and B.3.f** above, if any Residential Unit, Commercial Unit, the Recreational Unit, the Utility Unit, and/or their appurtenant Limited Common Elements are damaged, the Board shall hire one (1) or more contractors to rebuild or repair such damaged areas according to their design just before the damage occurred. The repairs will include those items covered by the Policy. If the Board cannot repair such damaged areas according to their design just before the damage occurred (for example, if changes in the law prevent it) then the Association will rebuild or repair the Residential Unit, Commercial Unit, Recreational Unit, Utility Unit, and/or their appurtenant Limited Common Elements according to a new design. The new design must comply with this Declaration and with all laws then in effect. Any modified plans and specifications must first be approved by the Board, the Owner, and by any Lender holding a Mortgage on that Unit. If a Commercial Unit and/or its appurtenant Limited Common Elements is damaged, the Commercial Director, at its election, may cause the same to be rebuilt in accordance with the requirements of this Declaration, in which event the Association or the Insurance Trustee shall make the proceeds of the Policy available for such purposes subject to the requirements of **Article XIV, Section D** below. If the Recreational Unit and/or its appurtenant Limited Common Elements is damaged, the Recreational Director, at its election, may cause the same to be rebuilt in accordance with the requirements of this Declaration, in which event the Association or the Insurance Trustee shall make the proceeds of the Policy available for such purposes subject to the requirements of **Article XIV, Section D** below.

B. DAMAGE TO COMMON ELEMENTS. The Board shall hire one (1) or more contractors to repair or rebuild all damaged Common Elements. The Common Elements shall be rebuilt according to their design just before the damage occurred. If the Board cannot repair such damaged areas according to their design just before the damage occurred (for example, if changes in the law prevent it) then the Association will rebuild or repair the Common Elements according to a new design. The new design must comply with all laws then in effect. Any modified plans and specifications must first be approved by the Board, as required by the Condominium Documents and any Lender having a Mortgage on any Unit that is directly affected and is also subject to any review process set forth in the Master Declaration.

It is possible that the modified plans and specifications will not provide for rebuilding or repairing a particular Unit or its Limited Common Elements. Also, if applicable law and this Declaration allow it, the Association may decide not to rebuild or repair a particular Unit or its Limited Common Elements. In either case the Association or the Insurance Trustee will use the insurance proceeds as follows:

1. Proceeds will be applied first to pay that Unit's share of the cost of debris removal;
2. The part of the insurance proceeds allocable to that Unit and/or its Limited Common Elements will be paid to the Owner of the Unit and to any Lender having a Mortgage on that Unit, as their interests may appear.

C. **SHORTFALL OF INSURANCE PROCEEDS.** The Association or the Insurance Trustee will use insurance proceeds to pay any contractor hired pursuant to this **Article XIV**. Payments will be made as and when required by the construction contract and this **Article XIV**. If there are not enough insurance proceeds to pay the full cost to repair and/or rebuild the Common Elements, then the Board is expressly authorized to pay the shortfall from the applicable replacement reserve fund for the General Common Elements and Limited Common Elements, as the case may be. If a replacement reserve fund is not adequate, the Board must (1) determine the amount of the remaining shortfall attributable to such reserve fund, and (2) charge a special assessment to each Unit required to contribute to such reserve fund except for Units that are not being rebuilt or repaired. Any special assessment for a General Common Element reserve shortfall shall be paid by each Owner according to their Common Interest, any Residential Limited Common Element reserve shortfall shall be paid as a Residential Unit Class Expense, any Commercial Limited Common Element reserve shortfall shall be paid as a Commercial Unit Class Expense, and any Recreational Limited Common Element reserve shortfall shall be paid as a Recreational Unit Class Expense, which shall be adjusted as set forth in **Article XV, Section B** below where necessary to account for any Units that are not being rebuilt or repaired. The Association will also charge a special assessment to the Owner of any Unit for any costs in excess of the insurance proceeds for rebuilding or repairing such Owner's Unit and/or its appurtenant Limited Common Elements (but not including any General Common Elements within any Unit).

D. **DISBURSEMENT OF INSURANCE PROCEEDS.** The Association or the Insurance Trustee will pay the cost of the work (as estimated by the Board) from time to time or at the direction of the Board as the work progresses. All insurance proceeds shall be applied first to rebuild, repair, and/or replace any insured damage before the payment of any legal fees by the Association or the Insurance Trustee. Notwithstanding the foregoing, the Association or the Insurance Trustee shall make the proceeds of the Policy available to Developer pursuant to the provisions of **Article XIV, Section A** above. If an Insurance Trust is required, then the Insurance Trustee will make payment only if these conditions are met:

1. An architect or engineer (who may be an employee of the Board) experienced in managing this type of work must be in charge of the work.
2. Each request for payment must be given to the Insurance Trustee at least seven (7) calendar days in advance. It must include a certificate signed by the architect or engineer. The certificate must state that:
 - a. All of the work completed complies with the approved plans and specifications;
 - b. The amount requested is justly required to reimburse the Board or Developer (based on construction of the Project) for payments by the Board or Developer to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects, or other Persons providing services or materials for the work (giving a brief description of those services or materials), and
 - c. When the amount requested is added to all sums previously paid by the Insurance Trustee, the total does not exceed the value of the work done as of the date of the certificate.
3. Each request must include releases of liens. The releases must:
 - a. Be satisfactory to the Insurance Trustee, and
 - b. Cover the work for which payment or reimbursement is being requested.
4. Each request must include a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Insurance Trustee, that nobody has recorded with respect to the Property any mechanics' or other lien or instrument for the retention of title with respect to any part of the work not discharged of record or that will not be discharged of record by payment with a recordable release of lien exchanged for such payment.

5. If the work is finished, then the request for any payment must include a copy of any certificate or certificates required by law to make it legal to occupy the Property. This includes, for example, a Certificate of Occupancy in the case of any Unit.

6. The fees and expenses of the Insurance Trustee, as agreed by the Board and the Insurance Trustee, are a Special Cost to be paid by each Owner according to their Alternative Allocation for insurance costs. The Insurance Trustee may pay these fees and expenses from any proceeds it holds from time to time.

7. The Insurance Trustee may establish any other reasonable conditions to payment if they are not inconsistent with the conditions listed in this **Article XIV, Section D**.

E. **EXCESS INSURANCE PROCEEDS.** "*Excess proceeds*" paid under an insurance policy obtained and paid for by the Association are proceeds remaining after paying the cost to rebuild or repair any damage. Any excess proceeds will be paid to the Owners in proportion to each Owner's Common Interest.

F. **RELEASE OF CLAIMS.** To the extent that the Association's insurance covers any loss, damage, or destruction to any part of the Project, the Association and the Owners will have no claim or cause of action for that loss, damage, or destruction against the Managing Agent, the Association, or any of their Representatives or against any Owner (except for any special assessment charged under **Article XIV, Section C**) or any person under any of them. To the extent that any loss, damage, or destruction to the property of any Owner or anyone under the Owner is covered by insurance purchased by that Owner, the Owner will have no claim or cause of action for that loss, damage, or destruction against the Association, Developer, the Managing Agent, or any other Owner, or any Person under any of them, or any of their Representatives.

G. **RESTORATION.** In the event of an insured casualty or loss of all or any part of the Project, the Project or such portion thereof will be repaired, rebuilt, and restored as provided in this **Article XIV** and except as provided herein, no vote of the Owners is required to approve the rebuilding, repairing, or restoring of the Project. Restoration of the Project with less than all of the Units after casualty or condemnation may be undertaken by the Association pursuant to an amendment to this Declaration, duly executed by or pursuant to the required vote of the Owners pursuant to the Act and consented to in writing by all holders of first Mortgage liens affecting any of the Units of the Owners executing or voting for such amendment to this Declaration.

H. **INSURANCE TRUST AGREEMENT.** Notwithstanding any provision of this Declaration relating to property or liability insurance contained herein to the contrary, there may be named as an insured, on behalf of the Association, a bank or trust company authorized to do business in the State and chosen by the Board to have custody and control of the insurance proceeds (the "*Insurance Trustee*"), who may have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. The insurance policy(ies) covering the Project obtained by the Association shall provide that any insurance trust agreement will be recognized. Except to the extent inconsistent with applicable law, each Owner is deemed to appoint the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as attorney-in-fact for the purposes of purchasing and maintaining such insurance, including: (1) the collection and appropriate disposition of the proceeds thereof; (2) the negotiation of losses and execution of releases of liability; and (3) the execution of all documents and the performance of all other acts necessary to accomplish such purposes.

XV. UNINSURED CASUALTY; DECISION NOT TO REPAIR.

In the event of an uninsured casualty or loss of all or any part of the Project, then the percentage of the Common Interest required to approve or disapprove the rebuilding, repairing, or restoring of the Project is as follows. Unless the Association decides, pursuant to **Article XV, Section A** below, not to repair, rebuild, or restore, then the Project shall be repaired, rebuilt, or restored as provided below.

A. **DECISION NOT TO REBUILD.** The Association may decide at a meeting duly held not to repair, rebuild, or restore the Improvements pursuant to the affirmative vote or written approval of Owners holding no less than sixty-seven percent (67%) of the Common Interest and approved in writing by all holders of first Mortgage liens affecting any of the Units of the Owners executing or voting for such amendment to this Declaration. Substantial

damage or destruction to the Common Elements shall be handled in accordance with Section 514B-47 of the Act. The meeting must be held within ninety (90) calendar days after the damage or destruction occurs.

B. ADJUSTMENT OF COMMON INTEREST. If a Residential Unit is not rebuilt, the Common Interest, any Alternative Allocation, and Residential Unit Class Common Interest for such Residential Unit shall be allocated to the remaining Residential Units pro-rata based upon Common Interest. If a Commercial Unit is not rebuilt, the Common Interest, any Alternative Allocation, and Commercial Unit Class Common Interest for such Commercial Unit shall be allocated to the remaining Commercial Units pro-rata based upon Common Interest. If a Recreational Unit is not rebuilt, the Common Interest, any Alternative Allocation, and Recreational Unit Class Common Interest for the Recreational Unit shall be allocated to the remaining Recreational Unit(s) pro-rata based upon Common Interest, or if there is only one Recreational Unit, then the Common Interest and any Alternative Allocation for such Recreational Unit shall be allocated to the remaining Residential Units, Commercial Units, and Utility Unit pro-rata based upon Common Interest. If the Utility Unit is not rebuilt, the Common Interest for the Utility Unit shall be allocated to the remaining Residential Units, Commercial Units, and Recreational Unit(s) pro-rata based upon Common Interest.

C. REBUILDING. If the Project will be repaired, rebuilt, and restored by the Association, the uninsured costs will be allocated as follows:

1. The uninsured costs to repair, rebuild, and restore the General Common Elements will be assessed as a Common Expense, with the exception of the Association's deductible amount, which may be assessed pursuant to Sections 514B-143(d)(2) and (3) of the Act.

2. Each Residential Unit Owner will be assessed the cost to repair, rebuild, and restore the Owner's Residential Unit and any appurtenant Residential Unit Limited Common Elements. In addition, all Residential Unit Owners will be assessed, as a Residential Unit Class Expense, the cost to repair, rebuild, and restore the Residential Limited Common Elements other than the Residential Unit Limited Common Elements.

3. Each Commercial Unit Owner will be assessed the cost to repair, rebuild, and restore the Owner's Commercial Unit and any appurtenant Commercial Unit Limited Common Elements. In addition, all Commercial Unit Owners will be assessed, as a Commercial Unit Class Expense, the cost to repair, rebuild, and restore the Commercial Limited Common Elements other than the Commercial Unit Limited Common Elements.

4. The Recreational Unit Owner will be assessed the cost to repair, rebuild, and restore the Owner's Recreational Unit. In addition, all Recreational Unit Owner(s) will be assessed, as a Recreational Unit Class Expense, the cost to repair, rebuild, and restore the Recreational Limited Common Elements.

5. The Utility Unit Owner will be assessed the cost to repair, rebuild, and restore the Owner's Utility Unit and any Unit Limited Common Elements.

Any restoration or repair of the Project shall be performed substantially in accordance with this Declaration and the original plans and specifications, or if reconstruction in accordance with said plans and specifications is not permissible under the laws then in force, in accordance with such modified plans and specifications as shall be approved by the Board and any Lender holding a Mortgage on a Unit directly affected thereby and by Developer during the Development Period.

D. CONDEMNATION. This Section shall apply in the event of a condemnation of all or any portion of the Project, pursuant to the exercise of the power of eminent domain by a government or quasi-governmental agency. As used in this Section, anyone having the power of eminent domain is called a "*condemning agency*."

1. **REPRESENTATION IN CONDEMNATION MATTERS.** Each Owner gives the Association a special power of attorney to represent the Owner in any proceedings, negotiations, settlements, or agreements related to any actual or threatened condemnation of the Project or any part of it. The Association must pay the condemnation proceeds it receives to a bank, escrow, trust company, or other fiduciary ("*Condemnation Trustee*") designated by the Board and authorized to do business in the State. The Condemnation Trustee will hold the condemnation proceeds on behalf of Developer, the Association, and Owners until Developer, the Association,

and any impacted Owners agree, if they have not already agreed, on the distribution of the proceeds from such actual or threatened condemnation. If the parties cannot agree, then the Condemnation Trustee will distribute the proceeds per the property interest valuation process set forth below in **Article XV, Sections D.3.e and D.3.f** below.

2. **TAKING OF THE ENTIRE PROJECT.** If the whole Project is taken or so much of it is taken that the Association decides to terminate the condominium property regime, then the Condemnation Trustee must (i) pay to Developer and to Project Lender, if any, Developer's share of the proceeds for Developer's Rights and Interests required by **Article XV, Section D.3.e** below, and (ii) pay to each Owner and to the Owner's Lender, as based on each Unit's Common Interest, the share of the proceeds for the Owner's Unit as provided in **Article XV, Section D.3.c** below.

3. **PARTIAL TAKING CONDEMNATION PROCEEDS; ALLOCATION.** If all or any part of the Project is condemned or is sold under threat of condemnation before the end of the Development Period, then the proceeds of the condemnation or forced sale must first be divided between Developer and the Association or the Owners in the following manner:

a. Developer will be entitled to receive all proceeds payable for or on account of the loss of Developer's Reserved Rights and rights to design, develop, build, add, and improve the Land (collectively, "*Developer's Rights and Interests*") and any additional severance damages sought by Developer. Developer will also be entitled to receive any part of those proceeds paid on account of any Units owned by Developer or any Land that is owned by Developer.

b. The Association will be entitled to receive just compensation for the value of the portion of the Land taken.

c. The Owners will be entitled to receive just compensation for the value of any portion of their Units taken.

d. If the condemnation is litigated, Developer, the Association, and/or the Owners shall receive the proceeds, in the amounts set forth in the judgment or verdict. If the judgment or verdict is silent as to the split between Developer, the Association, and/or Owners, the Condemnation Trustee shall take custody of the proceeds apportioned by the court to the lands belonging to Developer, the Association, and/or Owners.

e. In all other cases, the Condemnation Trustee must pay to Developer a share of proceeds equal to the value of Developer's Rights and Interests. The balance of the just compensation shall be paid to the record title owner of the property, whether Developer, the Association, or Owner. The Condemnation Trustee shall follow the property interest valuation process set forth in **Article XV, Section D.3.f** below.

f. The property interest valuation process shall be:

(i) a Hawaii-licensed real estate appraiser will determine the value of Developer's Rights and Interests. To be qualified, the appraiser must be a member of the American Institute of Real Estate Appraisers, or of a successor organization;

(ii) if the condemnation was litigated, the appraiser used by Developer and the Association as their expert witness will provide such appraiser's opinion as to the value of the property interests;

(iii) if Developer and the Association had different expert witnesses, then they will be appointed as appraisal arbitrators and the two (2) arbitrators will appoint a third neutral arbitrator who will review Developer's appraiser's opinion and the Association's appraiser's opinion and will issue their opinion as to the value of the property interests of Developer, the Association, and Owners (if any);

(iv) upon receipt of the appraiser's decision, or the decision of the arbitrators, the Condemnation Trustee shall make the necessary payments to Developer, the Association, and/or Owners; and

(v) Developer and the Association will each pay one-half (1/2) of the cost and expenses of the appraisers.

XVI. AMENDMENT OF DECLARATION.

A. **BY OWNERS.** Except as otherwise provided herein or in the Act, this Declaration may be amended by the affirmative vote or written approval of Owners of Units to which are appurtenant at least sixty-seven percent (67%) of the Common Interest, evidenced by an instrument in writing, signed and acknowledged by any two (2) Officers of the Association, which amendment shall become effective upon the recordation thereof at said Bureau.

1. **CHANGES MATERIAL IN NATURE.** Except as otherwise provided herein or in the Act, no amendment to those provisions of this Declaration that are material and adverse in nature shall be effective without the written approval of no less than fifty-one percent (51%) of the votes of Units of the Project that are subject to Mortgages held by Eligible Mortgage Holders. A change of any of the following would be considered "material in nature":

- a. voting rights;
- b. increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens, or the priority of Assessment liens;
- c. reduction in reserves for maintenance, repair, and replacement of the Common Elements;
- d. responsibility for maintenance and repairs;
- e. reallocation of interests in the General Common Elements or Limited Common Elements, or rights to their use;
- f. redefinition of any Unit boundaries;
- g. convertibility of Units to Common Elements or Common Elements to Units;
- h. expansion or contraction of the Project, or the addition, annexation of property to, or withdrawal of property from the Project;
- i. hazard or fidelity insurance requirements;
- j. imposition of any restrictions on the leasing of Units;
- k. imposition of any restriction on the right of an Owner to sell, transfer, or otherwise convey such Owner's Unit;
- l. a decision by the Association to establish self-management if professional management had been required previously by the Condominium Documents or by an Eligible Mortgage Holder;
- m. restoration or repair of the Project (after damage or partial condemnation) in a manner other than specified in the documents; or
- n. any provisions that expressly benefit Mortgage holders, insurers, or guarantors.

2. **ALTERATION OF A UNIT.** If any change to a Unit materially changes the depiction of a particular Unit or Units on the Condominium Map or the description of it in this Declaration, then the Owner or Owners of the Unit(s) must amend this Declaration and/or the Condominium Map to reflect the change. The amendment will take effect when it is recorded at said Bureau, subject to the following:

a. The Owner of the changed Unit or Units must sign the amendment. Notwithstanding anything set forth in this Section to the contrary, it is not necessary for any other party to vote for, approve, or sign the amendment, except for any Lender who has a Mortgage on the Unit or Units that are changed or altered.

b. When any Interested Person acquires a Unit or any other interest in the Project, such Interested Person automatically (i) consents to the change; and (ii) agrees that they will, if required by law or by the Owner who has changed a Unit, join in, approve, sign, deliver, and record all documents necessary or desirable to make the amendment of the Condominium Documents effective.

3. **REASSIGNMENT OF ASSIGNED PARKING STALLS AND/OR STORAGE LOCKERS.** Any Owner (including Developer) may reassign and exchange a Unit Limited Common Element parking stall or storage locker that is assigned to such Owner's Unit to another Unit owned by the same Owner, or to another Unit with the approval of the other Owner; provided that if the Unit Limited Common Element parking stall or storage locker being reassigned adjoins a Unit Limited Common Element parking stall and/or storage locker appurtenant to the same Unit, the Owner may only reassign the Unit Limited Common Element parking stall or storage locker together with any other adjoining Unit Limited Common Element parking stall and/or storage locker. The transfer shall be executed and recorded as an amendment to this Declaration and the amendment need only be executed by the Owner of the Unit whose Unit Limited Common Element(s) is being transferred and the Owner of the Unit receiving the Unit Limited Common Element(s) and will be subject to any required approval of Lenders. A copy of the Amendment must be promptly delivered to the Association.

4. **NO IMPAIRMENT OR DIMINUTION OF DEVELOPER'S RIGHTS OR INCREASE OF OBLIGATIONS.** Notwithstanding any provision of this Declaration to the contrary, notwithstanding the sale of any of the Units, and in addition to such other approval requirements as are set forth in this Section and in this Declaration, during the Development Period, the prior written approval of Developer will be required prior to the execution, delivery, and recordation of any amendment that would impair or diminish the rights of, or increase the obligations of, Developer, and any such amendment without the prior written approval of Developer shall be void. Without limiting the generality of the foregoing, during the Development Period, the following actions shall require the prior written approval of Developer:

a. **LENDER APPROVAL.** Any amendment or action requiring the approval of mortgagees pursuant to this Declaration.

b. **REDUCTION IN SERVICES.** Subject to any restrictions contained in the Bylaws regarding limitations on general Assessment increases, any significant reduction in the services to be provided to the Association and Owners.

c. **ASSESSMENTS.** Alteration in the method of fixing and collecting Assessments, or any increase in Assessments beyond the amounts permitted under the Bylaws.

d. **ENFORCEMENT OF THIS DECLARATION.** Alteration in the method of enforcing the provisions of this Declaration.

e. **RESERVED RIGHTS OF AND EASEMENTS GRANTED TO DEVELOPER.** Any modification of the rights reserved and/or granted to Developer set forth herein, or any easements set forth herein, granted to or received by Developer. No amendments hereto shall negate or adversely impact any of the rights reserved or granted to Developer or any easements set forth herein, granted to or received by Developer, without the prior written approval of Developer.

f. **AMENDMENTS.** Any amendment to this Article XVI, Section A.4.

B. BY DEVELOPER.

1. **PRIOR TO PROJECT COMMENCEMENT.** In addition to other rights that Developer has to amend this Declaration, this Declaration may be amended by Developer at any time prior to the closing of the sale of the first Residential Unit in the Project.

2. **EXERCISE OF DEVELOPER'S RESERVED RIGHTS.** Notwithstanding anything in this Section to the contrary, Developer's Reserved Rights include the right of Developer, without the approval of any other Person, to change, amend, and implement the Condominium Documents in accordance with the exercise of any Developer's Reserved Rights.

3. **AMENDMENT TO FILE "AS-BUILT" STATEMENT.** Notwithstanding any provision of this Declaration to the contrary and notwithstanding the sale of any of the Units, Developer, any Owner, lienholder, or other Person, may amend this Declaration to file the "as built" verified statement (with plans, if applicable) required by Section 514B-34 of the Act, so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed fully and accurately depict the layout, location, Unit numbers, and dimensions of the Units substantially as built, and such statement may also state that any plans filed therewith involve only immaterial changes to the layout, location, Unit numbers, or dimensions of the Units, as built.

4. **COMPLIANCE WITH LAWS, LENDER REQUIREMENTS, CORRECTION OF ERRORS TO MEET REGISTRATION OR REGULATORY REQUIREMENTS.** Notwithstanding any provision of this Declaration to the contrary and notwithstanding the sale of any of the Units, Developer, without the consent or joinder of any Owner, lienholder, or other Person, may amend this Declaration in order (a) to bring the Project and the Condominium Documents into compliance with the laws and rules of any jurisdiction in which Developer intends to market or sell Units; (b) to comply with any requirements that may be imposed by any construction takeout, permanent, or secondary market Lender, or any other Lender, including, but not limited to, any institutional Lender or any governmental or quasi-governmental agency including, but not limited to, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development, or the U.S. Department of Veteran's Affairs; (c) to comply with the requirements of the FHA and/or the ADA; (d) to comply with any requirements by another jurisdiction in order to obtain any registration, report, or license to offer to sell or sell and market the Project in such other jurisdiction; (e) to comply with the HCDA Agreements (described in **Article XXXIX, Section G.12**) or State or County entitlements, agreements, or permits or the Master Declaration; and (f) to correct typographical or technical errors. Each and every party acquiring an interest in the Project, by such acquisition, consents to such amendments as described in the preceding sentence and agrees to execute, deliver, and record such documents and instruments and do such other things as may be necessary or convenient to effect the same, and appoints Developer and its assigns as such person's attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on such person's behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties.

5. **AMENDMENTS AFFECTING FIRST MORTGAGES.** Notwithstanding any provision of this Declaration to the contrary, any amendment affecting any provision of this Declaration which is for the express benefit of Project Lender and/or holders or insurers of first Mortgages on Units shall require the prior written approval of Project Lender, if any, and/or Eligible Mortgage Holders on Units to which at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by such Eligible Mortgage Holders are allocated, as applicable, together with such other approvals as may be required in this **Article XVI**; provided, however, that any Mortgage holder shall be deemed to have approved any proposed amendment to this Declaration where said Mortgage holder fails to submit a response to any written proposal for an amendment within sixty (60) days after it receives written notice of the proposal, provided that the notice was delivered by certified or registered mail, with a return receipt.

C. LIMITATIONS ON AMENDMENTS. Except as provided in **Article XVI, Section B** above and anything stated to the contrary in the Condominium Documents, all amendments to the Condominium Documents shall be subject to the following:

1. No amendment to the Condominium Documents affecting a Commercial Unit, Commercial Limited Common Element, or Commercial Unit Limited Common Element shall be effective without the prior written approval of the Owner(s) of the Units and/or of the Units to which the Commercial Limited Common Element or Commercial Unit Limited Common Element is appurtenant, as applicable. No amendment to the Condominium Documents affecting the Recreational Unit or a Recreational Limited Common Element shall be effective without the prior written approval of the Recreational Unit Owner. No amendment to the Condominium Documents affecting the Utility Unit or any Limited Common Elements appurtenant thereto shall be effective without the prior written approval of the Utility Unit Owner. Until the end of the Development Period, no amendment to the Condominium Documents affecting any of the Residential Limited Common Elements shall be effective without the prior written approval of Developer. This restriction, during the Development Period, may not be amended without the prior written approval of Developer.

2. Any amendment to the Condominium Documents to prohibit or materially restrict the use, operation, or occupancy of, or behavior within, any Commercial Unit, Commercial Limited Common Element, or Commercial Unit Limited Common Element, shall be subject to the Commercial Director's approval, or after the expiration of the Commercial Director Consent Rights, the approval of a Majority of the Commercial Unit Class. Any amendment to the Condominium Documents to prohibit or materially restrict the use, operation, or occupancy of, or behavior within, the Recreational Unit or Recreational Limited Common Element shall be subject to the Recreational Unit Owner's approval.

3. No amendment to the Condominium Documents may remove, revoke, modify, or amend any of the rights, reservations, easements, interests, exemptions, privileges, or powers uniquely, expressly, and specifically provided to the Commercial Unit Owners under the Condominium Documents without the prior written approval of the Commercial Director, or after the expiration of the Commercial Director Consent Rights, the approval of a Majority of the Commercial Unit Class. No amendment to the Condominium Documents may remove, revoke, modify, or amend any of the rights, reservations, easements, interests, exemptions, privileges, or power uniquely, expressly, and specifically provided to the Recreational Unit Owner under the Condominium Documents without the prior written approval of the Recreational Unit Owner.

4. Any amendment to the Condominium Documents that would limit or interfere in any way with the use or operation of a Commercial Unit or its Limited Common Elements or with access to or from a Commercial Unit or its Limited Common Elements, shall not be effective without the prior written approval of the affected Commercial Unit Owner and the Commercial Director; or, after the expiration of the Commercial Director Consent Rights, the approval of a Majority of the Commercial Unit Class. Any amendment to the Condominium Documents that would limit or interfere in any way with the use or operation of the Recreational Unit or Recreational Limited Common Elements, or with access to or from the Recreational Unit or the Recreational Limited Common Elements, shall not be effective without the prior written approval of the Recreational Unit Owner.

5. During the Development Period, any amendment to the Condominium Documents that would limit or interfere with the use of those of the Common Elements which, pursuant to this Declaration, are available for use by the general public shall require the prior written approval of Developer.

During the Development Period, this **Article XVI, Section C** may not be amended without the prior written approval of Developer.

D. AMENDMENTS BINDING. Any amendment made pursuant to the provisions of this **Article XVI** shall be binding upon every Owner and every other Interested Person, and every Unit whether the burdens thereon are increased or decreased, and such amendment shall be effective upon its recordation at said Bureau.

XVII. TERMINATION.

Except as provided in Section 514B-47 of the Act, the Project shall not be abandoned, terminated, or removed from the condominium property regime created by this Declaration and the Act without the prior written approval of the Commercial Director, the Recreational Director, and all mortgagees of record who may have an interest in the Project.

XVIII. LAND TRUSTS.

In the event title to any Unit and its appurtenant Common Interest is conveyed to a trustee under a land title holding trust under which substantially all powers of management, operation, and control of the Unit remain vested in the trust beneficiary or beneficiaries, the trust estate and the beneficiaries thereunder from time to time shall be liable for and shall pay all Common Expenses and Assessments against such Unit or the Owner thereof pursuant to the Condominium Documents or the Act. No claim for payment of Common Expenses or Assessments shall be made against any such trustee personally, and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any lien or Assessment, but the amount thereof shall constitute a lien on the Unit as provided in this Declaration, the Bylaws, and the Act, notwithstanding any conveyance of the beneficial interest under such trust.

XIX. COMPLIANCE BY OWNERS.

All Owners, tenants of such Owners, employees of Owners and guests, and any other persons who may in any manner use the Project or any part thereof (including Developer and Developer Affiliate to the extent Developer or Developer Affiliate retains an ownership interest in any Unit) are subject to the provisions of the Act and to the provisions of this Declaration, the Bylaws, and to all agreements, decisions, and determinations lawfully made by the Association in accordance with the voting percentages established under the Act, this Declaration, and the Bylaws. Each Owner shall comply strictly with the Bylaws, House Rules, and the covenants, conditions, and restrictions set forth in this Declaration. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or both, maintainable by the Managing Agent or Board on behalf of the Association or, in a proper case, by an aggrieved Owner.

In the event any Owner fails to comply fully with any of the foregoing within thirty (30) calendar days after written demand therefor by the Association, the Managing Agent or the Association shall have sixty (60) calendar days to give written notice of such Owner's failure to the holder, insurer, or guarantor of any Mortgage of such Unit, as shown in the Association's record of ownership or to any party who has given the Board notice of its interest through the Secretary or the Managing Agent.

Notwithstanding the foregoing, no notice shall be necessary where immediate action is necessary to: (a) prevent damage to any Unit or Limited Common Element; (b) abate a nuisance or any dangerous, unauthorized, prohibited, or unlawful activity; (c) protect the property rights of any Owner; or (d) prevent the death of or injury to any Owner or other person at the Project.

All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for: (i) collecting any delinquent Assessments against any Owner's Unit; (ii) foreclosing any lien thereon; (iii) enforcing any provision of the Condominium Documents or the Act; or (iv) complying with rules and regulations of the Commission shall be promptly paid on demand to the Association by the Owner; provided, that if the claims upon which the Association takes action upon are not substantiated, all costs and expenses, including, but not limited to, reasonable attorneys' fees and costs, incurred by the Owner as a result of the action of the Association, shall be promptly paid on demand to the Owner by the Association, as applicable.

XX. RESERVED RIGHT TO GRANT AND RECEIVE RIGHTS OF ACCESS, EASEMENTS, RIGHTS OF WAY, AND LICENSES.

Notwithstanding anything herein provided to the contrary, Developer does hereby reserve the right unto itself, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, during the Development Period, to delete, cancel, relocate, realign, reserve, designate, grant, and receive any and all easements and rights of way, licenses, or encroachments over, under, through, across, and upon the Project, or involving adjacent or neighboring parcels of land or adjacent or neighboring condominium projects, deemed necessary or desirable in Developer's sole discretion, or as may be required by a governmental entity or agency, including, but not limited to, easements and/or rights of way for utilities, pedestrian or vehicular access (i.e., pedestrian walkways, vehicle paths, sidewalks, bus stops, stairs, ramps, trails, bikeways, or other passageways), any public-type facility (e.g. for mail delivery), fire lane access, sanitary and storm sewers, retention ponds, cable television, refuse disposal, driveways,

maintenance of improvements or landscaping, access to or for preservation of any burial sites on the Land (in the form of an easement or covenant to run with the land) and parking areas.

Such right also includes easements for operation, upkeep, care, maintenance, and/or repair of any Unit or Common Element, or to complete any Improvements and correct construction defects or other punchlist items in the Common Elements or Units, or to exercise any of Developer's Reserved Rights, and other similar purposes; provided that such easements and/or rights of way shall not materially and adversely impact any existing structure of the Project, and shall not be exercised so as to unreasonably disturb, impair, or interfere with the normal use and enjoyment of the Project by the Owners. Any easement granted and/or received by Developer pursuant to the exercise of this reserved right shall not be amended, modified, or terminated by the Association without the prior written approval of Developer. As a part of its reserved right, Developer shall have the right to negotiate and agree to the terms with respect to such easements and rights of way as Developer deems appropriate in its sole discretion, and define any easement right received pursuant to this **Article XX** as a General Common Element, Residential Limited Common Element, Commercial Limited Common Element, or Recreational Limited Common Element. In the event that Developer assigns to the Association any rights it acquires, whether the same constitute easement rights or otherwise, the Association shall assume such rights.

XXI. RESERVED RIGHT TO ALTER, SUBDIVIDE, AND CONSOLIDATE UNITS IN GENERAL AND/OR CONSTRUCT IMPROVEMENTS WITHIN SAID UNITS AND THEIR APPURTENANT LIMITED COMMON ELEMENTS.

Notwithstanding anything provided to the contrary, and except as otherwise provided by law, during the Development Period and without joinder or consent of any Person, the Board, or any Owners or their mortgagees:

A. Developer shall have the reserved right to: (1) alter the floor plan of any Unit which Developer or Developer Affiliate owns at any time, and in any manner Developer deems appropriate, in its sole discretion, provided that the Common Interest appurtenant to the Unit shall not change, including the right to create the "*Option Units*," depicted in the Condominium Map; (2) cause the consolidation and/or subdivision of any Units which Developer or Developer Affiliate owns at any time to create more or fewer Units; (3) convert certain portions of any existing Unit which Developer or Developer Affiliate owns to General Common Element or Limited Common Element or a part of another adjoining Unit to facilitate any subdivision or consolidation; and (4) recalculate the Common Interest appurtenant to each resulting Unit upon such subdivision and/or consolidation; provided that the total Common Interest appurtenant to the resulting Unit(s) shall equal the Common Interest appurtenant to the original Unit(s). The subdivision or consolidation of Units by Developer or any other Owner shall not affect the number of Directors on the Board.

B. If Developer and/or Developer Affiliate is/are the Owner of any two or more Units separated by a party wall, floor, or ceiling, Developer shall have the right to consolidate two or more Units that are so separated, and/or later subdivide such Units once consolidated, and to alter, remove, or restore all or portions of the intervening wall, floor, or ceiling at Developer's expense; provided that: (1) the structural integrity of the Project is not thereby affected and (2) the finish of any General Common Element(s) or Limited Common Element(s) then remaining is restored to a condition substantially compatible with that of the corresponding General Common Element(s) or Limited Common Element(s) prior to such alteration.

C. Developer, in the process of combining Units shall have the right to convert any Common Element portion of the hallway to part of the combined Unit and to convert areas between or adjoining the Units to part of the combined Unit (as opposed to the same remaining a General Common Element or Limited Common Element) for so long as the combined Unit shall remain consolidated or shall continue to be commonly used or owned.

Any such alteration, subdivision, or consolidation of Unit(s) as provided above shall be effective provided that, other than for the creation of any Option Units:

I. Developer records or causes to be recorded at said Bureau an amendment to this Declaration depicting the Unit(s) in question and setting forth at least: (a) a description of the newly-formed Unit(s); (b) in the case of the consolidation of Units by Developer, although the Units may still be considered and treated as two Units, the Common Interest appurtenant to the newly-formed consolidated Unit(s), which shall be calculated by adding together the Common Interests for the Units to be consolidated; or (c) in the case of the subdivision of a Unit

by Developer, the Common Interest appurtenant to each of the newly-formed Units, which shall in the aggregate equal the total of the Common Interest appurtenant to the original Unit;

2. Developer records or causes to be recorded at said Bureau an amendment to the Condominium Map for the Unit(s) being altered and/or expanded, subdivided, or consolidated to show an amended floor plan, if necessary, together with a verified statement of registered architect or professional engineer, in the manner required by Section 514B-34 of the Act, that said Condominium Map, as so amended, is an accurate copy of portions of the plans of the altered and/or expanded Unit(s) as recorded with and approved by the County officer having jurisdiction over the issuance of permits for the construction of buildings, and that the plans fully and accurately depict the layout, location, Unit number(s), and dimensions of the Unit(s) substantially as built; and

3. Any such alteration shall comply in all respects with all applicable governmental codes, statutes, ordinances, and rules and regulations, or with all variances granted therefrom.

Developer expressly reserves the right to amend this Declaration and the Condominium Map to effect any subdivision or consolidation of Units or alterations to floor plans at any time or times during the Development Period, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder, or other Persons, execute and record amendments to this Declaration and the Condominium Map and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the rights, powers, or privileges herein reserved to Developer. To the extent permitted by applicable law, this **Article XXI** shall not be amended without the prior written approval of Developer.

XXII. RESERVED RIGHTS REGARDING TELECOMMUNICATIONS EQUIPMENT AND TO RECEIVE REVENUE THEREFROM.

During the Development Period, Developer shall have the reserved right, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, to install or cause the installation of Telecommunications Equipment upon the Common Elements, at its sole cost and expense, and upon such installation the same shall become a Limited Common Element appurtenant to a Unit designated by Developer. The installation of Telecommunications Equipment pursuant to this **Article XXII** shall not be deemed to alter, impair, or diminish the Common Interest, Common Elements, and easements appurtenant to the Units, be a structural alteration or addition to the Tower constituting a material change, or necessitate an amendment to the Condominium Map. All expenses directly attributable to the Telecommunications Equipment shall be distributed or charged as a Common Expense, or directly to the Unit or Units to which the Telecommunications Equipment is serving. In connection with Developer's Reserved Right described in this **Article XXII**, Developer shall further have the reserved right, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, to enter into any agreements, including, but not limited to, a bulk service agreement, or an exclusive marketing agreement, to sell and market certain telecommunications services to Owners in the Project, and to grant easements for such purpose, all upon such terms and conditions as Developer may determine in its sole discretion. In the event Developer receives any rebate or reimbursement for the cost of installation of the Telecommunications Equipment, Developer shall be entitled to keep any such rebate or reimbursement. Developer may assign any and all of its rights under this **Article XXII** to the Association, the Master Association, or any other third-party provider.

XXIII. RESERVED RIGHT TO INSTALL DEVELOPER'S SIGNAGE.

Notwithstanding anything herein provided to the contrary, during the Development Period, Developer shall have the reserved right, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, for the benefit of the Project, to install, maintain, repair, replace, and approve of (from time to time) directional signage, identity signage, and canopy signage, and other signage within the Residential Limited Common Elements of the Project; subject to any zoning or signage laws or other governmental requirements. Developer's approval rights shall not extend to any signage installed by the Association within the interior of the Residential Limited Common Elements in the Parking Structure or within the interior of the Residential Limited Common Elements that are not in public view from the street. With respect to all aspects of the signage, including, without limitation, the method of affixing the signage and extension of electrical service thereto, if applicable, such signage shall comply with the Project Quality Standard. The Board shall be responsible for lighting, installation, maintenance, and replacement of any signage installed by Developer and the Association, as well as costs to repair any damage to the Project proximately caused

by such installation, maintenance, and replacement of any signage, and the costs thereof, as a Residential Unit Class Expense. Developer may assign, in writing, all or any portion of the duties under this Article to the Association, who may establish and administer any sign criteria for signage installed in the Residential Limited Common Elements and shall assume all duties of Developer relating to signage including, without limitation, approval thereof.

XXIV. RESERVED RIGHT TO MODIFY PROJECT AND TO AMEND CONDOMINIUM DOCUMENTS.

During the Development Period, Developer shall have the reserved right, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, to effect such modifications to Units and Common Elements in the Project and/or to execute, record, and deliver any amendments to the Condominium Documents promulgated hereunder, as may be necessary or appropriate to effect compliance by the Project, the Association, or Developer, with laws that apply to the Project, including, but not limited to, the FHA and ADA, and any rules and regulations promulgated thereunder, or as may be required by the Commission, any title insurance company issuing title insurance on the Project or any of the Units, any institutional Lender lending funds secured by the Project, or any of the Units, including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the U.S. Department of Veteran's Affairs, or any local, State, or federal governmental agency.

XXV. RESERVED RIGHT TO CONVERT LIMITED COMMON ELEMENTS TO UNITS.

Notwithstanding anything provided to the contrary, and except as otherwise provided by law, during the Development Period, and without joinder or consent of any Person, the Board, or any Owners or their mortgagees:

A. Developer shall have the reserved right to convert a Unit Limited Common Element appurtenant to such Unit or Units owned by Developer, Developer Affiliate, or Developer's successors or assigns, or any portion thereof, into a separate Unit in the Project, or to expand the area of an adjoining Unit owned by Developer or Developer Affiliate. In addition, notwithstanding anything provided to the contrary, so long as Developer or Developer Affiliate is the Recreational Unit Owner, Developer or Developer Affiliate shall have the reserved right to convert the Recreational Limited Common Elements appurtenant to the Recreational Unit, or any portion thereof, into a separate Unit in the Project. In such event, Developer shall have the right, without obtaining the approval of any party with an interest in the Project, including any other Owner and/or mortgagee, to alter the physical aspects of the Unit Limited Common Element, Recreational Limited Common Elements, and Unit(s), as applicable, at Developer's expense in connection with such conversion, including building such structures as may be necessary or appropriate, provided that: (1) the structural integrity of the Project is not thereby affected, (2) the finish of the Unit is consistent with the quality of other Units in the Project and any remaining portion of the Unit Limited Common Element or Recreational Limited Common Element not converted to a Unit, if any, is restored, to the extent feasible, to a condition substantially compatible with that of the Unit Limited Common Element or Recreational Limited Common Element prior to such conversion, and (3) all construction activity necessary to any such conversion shall be completed within a reasonable period of time after the commencement thereof, subject to delays beyond the control of Developer or its contractors, whether caused by strikes, the unavailability of construction materials, or otherwise, 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.

B. Developer shall have the reserved right to designate certain Unit Limited Common Elements of the Project as Unit Limited Common Elements appurtenant to the newly-created Unit; provided that there is no material adverse effect on the remainder of the Project.

Any such conversion of a Unit Limited Common Element or Recreational Limited Common Element into a Unit or Units as provided above shall be effective provided that:

1. Developer shall record or cause to be recorded an amendment to this Declaration describing the Unit(s) in question and setting forth at least: (a) a description of the newly-formed Unit(s), and (b) the Common Interest appurtenant to the newly-formed Units and existing Units, which shall be calculated and/or recalculated by dividing the approximate net living area of each individual Unit by the total net living area of all Units within the Project, including any newly-formed Units. Developer may adjust the Common Interest to ensure that the total of all Common Interests equals one hundred percent (100%). If Developer increases the area of an existing Unit by connecting a portion of a Unit Limited Common Element to the Unit, and if an additional Unit is not created, then the Common Interest percentage allocated to the Unit shall remain unchanged.

2. Developer shall record or cause to be recorded an amendment to the Condominium Map to show the floor plans and elevations for the newly-created Unit, as necessary, together with a verified statement of registered architect or professional engineer, in the manner required by Section 514B-34 of the Act, that said Condominium Map, as so amended, contains an accurate copy of portions of the plans of the newly-created Unit(s) as recorded with and approved by the County officer having jurisdiction over the issuance of permits for the construction of buildings, and that the plans fully and accurately depict the layout, location, Unit number(s), and dimensions of the Unit(s) substantially as built; and

3. Any such alteration associated with such conversion shall comply in all respects with all applicable governmental codes, statutes, ordinances, and rules and regulations.

The right to amend this Declaration and the Condominium Map to effect the conversion of any Unit Limited Common Element into a Unit and the alterations to floor plans may occur at any time during the Development Period, and the right to amend this Declaration and the Condominium Map to effect the conversion of the Recreational Limited Common Elements into a Unit and the alterations to floor plans may occur at any time while Developer or Developer Affiliate owns the Recreational Unit, and Developer may, without being required to obtain the consent or joinder of any Owner, lien holder, or other Persons, execute, deliver, and record amendments to this Declaration and the Condominium Map and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers, or privileges. To the extent permitted by applicable law, this Article shall not be amended without the prior written approval of Developer.

XXVI. RESERVED RIGHT TO RECHARACTERIZE AND REDESIGNATE LIMITED COMMON ELEMENTS.

During the Development Period, Developer shall have the reserved right, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, to amend this Declaration to (a) recharacterize all or a portion of certain Unit Limited Common Elements as may be appurtenant to a Unit or Units owned by Developer or Developer Affiliate, or Residential Limited Common Elements, Commercial Limited Common Elements, or Recreational Limited Common Elements, if all Residential Units, Commercial Units, and Recreational Unit(s), respectively, are owned by Developer or Developer Affiliate, as being General Common Elements of the Project, thus giving up or waiving the exclusive use of such area or areas; and/or (b) redesignate all or a portion of certain Unit Limited Common Elements as may be appurtenant to any Unit owned by Developer, Developer's successors and assigns, or Developer Affiliate, to another Unit or Units owned by Developer or Developer Affiliate, or as Residential Limited Common Elements, Commercial Limited Common Elements, or Recreational Limited Common Element, as applicable; and/or (c) redesignate a portion of the Residential Limited Common Elements and/or Commercial Limited Common Elements and/or Recreational Limited Common Elements if all Residential Units, Commercial Units, and Recreational Unit(s), respectively, are owned by Developer or Developer Affiliate, as Unit Limited Common Elements appurtenant to a Unit or Units owned by Developer or Developer Affiliate, or to another Unit with the approval of the other Owner; and/or (d) redesignate all or a portion of the Commercial Limited Common Elements, if the Commercial Units are owned by Developer or Developer Affiliate, as being Residential Limited Common Elements appurtenant to Residential Units owned by Developer or Developer Affiliate or as being Recreational Limited Common Element appurtenant to Recreational Unit(s) owned by Developer or Developer Affiliate, or redesignate all or a portion of the Residential Limited Common Elements, if the Residential Units are owned by Developer or Developer Affiliate, as being Commercial Limited Common Elements appurtenant to Commercial Units owned by Developer or Developer Affiliate or as being Recreational Limited Common Element appurtenant to Recreational Unit(s) owned by Developer or Developer Affiliate, or redesignate all or a portion of the Recreational Limited Common Elements, if all Recreational Unit(s) is/are owned by Developer or Developer Affiliate, as being Commercial Limited Common Elements appurtenant to Commercial Units owned by Developer or Developer Affiliate or as being Residential Limited Common Elements. Upon recharacterization of any Limited Common Element to a General Common Element of the Project, the Association shall be required to maintain such areas at its expense for the benefit of all Owners, and the cost of maintaining such areas shall be assessed to all Owners as a Common Expense.

The right to amend this Declaration to effect such recharacterization or redesignation of any such Limited Common Elements shall occur at any time or times during the Development Period; provided, however, Developer's Reserved Right to redesignate all or a portion of the Recreational Limited Common Elements as being Commercial Limited Common Elements or Residential Limited Common Elements may occur at any time while Developer or

Developer Affiliate owns the Recreational Unit. Developer may, without being required to obtain the consent or joinder of any Owner, lienholder, or other Persons, execute, deliver, and record any deed and/or amendments to this Declaration or to the Condominium Map, and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers, or privileges.

XXVII. RESERVED RIGHTS REGARDING STATE, COUNTY AND HCDA REQUIREMENTS, PERMITS AND DEVELOPMENT AGREEMENTS; DOT'S RIGHT TO WIDEN ALA MOANA BOULEVARD; HART CONDEMNATION.

Developer shall have the reserved right, until the end of the Development Period, to (a) amend the Condominium Documents, including, but not limited to, this Declaration, to satisfy all County permits and/or HCDA Agreements and accommodate the Honolulu Authority for Rapid Transportation ("**HART**") rail condemnation; (b) enter into any agreements or licenses or easements, including, but not limited to, declaring and subjecting the Land and Improvements to restrictive covenants; (c) designate and grant access or utility easements; (d) secure any other governmental permits and approvals or amend or supplement any existing government permits, approvals, or agreements; (e) revise the budget and Common Expenses, and implement fees; (f) maintain a road widening setback along the northern side of Ala Moana Boulevard for the State Department of Transportation's ("**DOT**") use for road widening or other improvements; and (g) do all things necessary and convenient, to satisfy the requirements of any land use or other permits pertaining to the Project issued by the State or County, or to comply with any agreements with or covenants imposed by HCDA, as the same may be amended, or modified, and to execute, record, and deliver any and all documents necessary to effect the same, including, but not limited to, any necessary amendments to this Declaration and to the Condominium Map. Upon the expiration of the Development Period, Developer will no longer have the right or authority under this Declaration to maintain the road widening setback area discussed in subsection (f) above, or to comply with any request by DOT to facilitate the use of such setback area for road widening or other improvements, and therefore, Developer expressly disclaims any and all obligations or responsibilities with respect thereto after the expiration of the Development Period. Accordingly, if the Development Period expires and DOT has not yet elected to utilize the setback area for road widening or other improvements, the Association shall do all things necessary and convenient to maintain the road widening setback area and comply with any request by DOT to utilize the setback area for road widening or other improvements.

The government and certain other agencies have the authority to condemn properties in the State. Particularly in Kaka'ako, HART has the authority to condemn lands in Ward Village for the Honolulu Rail Transit Project. Developer has long anticipated this threat of condemnation and had to accordingly incorporate the Honolulu Rail Transit Project into the Ward Village development plans and various condominium project developments through its efficient and strategic design, project budgeting and pricing, and reserves for numerous condemnation court hearings. Although as of the date of this Declaration, Developer has not actually received an indication that HART will take any portion of the Land, if all or any portion of the Project is "taken" or sold under the threat of condemnation by HART before the end of the Development Period, Developer shall have the reserved right to and until the end of the Development Period to receive all the proceeds payable for or on the account of the condemnation of any portion of the Land. Every Owner of a Unit in the Project and all holders of liens affecting any of the Units and each and every other party acquiring an interest in the Project, or any part thereof, by acquiring such Unit, lien, or other interest, appoints Developer and its assigns as such person's attorney-in-fact with full power of substitution to execute, deliver, and record such documents and instruments and to collect any proceeds and do such things on such person's behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest upon any conveyance of any Unit or any interest therein, whether by deed, Mortgage, or any other instrument of conveyance.

XXVIII. RESERVED RIGHT TO CONVEY PROPERTY TO THE ASSOCIATION.

Developer shall have the reserved right during the Development Period, but not the obligation, without the joinder or consent of any Person, the Board, or any Owners or their mortgagees, to convey or cause the conveyance to the Association, and the Association shall accept, title to any property owned by Developer, Developer's successors and assigns, or Developer Affiliate, together with the responsibility to perform any and all duties associated therewith. Such right shall include Developer's right to convey in fee simple or assign its interest in any easements, licenses, or rights of way. Except for the Recreational Unit (which, if conveyed to the Association, shall be operated and

maintained by the Recreational Operator in accordance with one or more access agreements or other arrangements with the Recreational Operator, as provided for in **Article VII, Section D** and **Article XXIX** of this Declaration), upon conveyance, dedication, or assignment of such property or any of Developer's or Developer Affiliate's interest therein to the Association or Master Association, the Association or Master Association, as applicable, shall maintain such property at its expense for the benefit of the Owners, and the cost of maintaining such areas, including any maintenance fees associated with such areas, shall be assessed to all Owners as a Common Expense or Master Assessment. Any property or interest in property conveyed to the Association by Developer or Developer Affiliate shall be by way of quitclaim deed or assignment, as appropriate, "AS IS" and "where is." Developer shall have the further right to redesignate Limited Common Elements appurtenant to Units owned by Developer, Developer's successors and assigns, or Developer Affiliate as Limited Common Elements appurtenant to Units owned by the Association, if any, and to the extent necessary or required, to amend this Declaration and the Condominium Map to effect the same.

Notwithstanding the foregoing, the conveyance of any such property to the Association may be subject to the terms and conditions of any license, lease, or other agreement made by and between Developer or Developer Affiliate, as owner of such property, and any third-party to utilize, manage, operate, or otherwise deal with the property and/or the Limited Common Elements appurtenant thereto; provided, that the Association shall not be liable for any obligations of Developer or Developer Affiliate under any such agreement(s) arising prior to such conveyance to the Association. The Association shall accept and assume such title, rights, and obligations, and shall indemnify, defend, and hold Developer and Developer Affiliate harmless from any loss incurred by Developer or Developer Affiliate as a result of any claim made against Developer or Developer Affiliate pursuant to any agreement with a third-party arising after such conveyance.

XXIX. RESERVED RIGHT TO CONVEY RECREATIONAL UNIT.

Developer shall have the reserved right, but not the obligation, without joinder or consent of any Person, the Board, or any Owner, or mortgagee other than any mortgagee of the Recreational Unit, to convey to the Association, and the Association shall accept, title to the Recreational Unit, subject to the Recreational Use Provision, as further discussed in **Article VII, Section D** of this Declaration.

Developer and the Association do not guarantee, warrant, or represent that the Recreational Unit will continue to be used as such, or will be utilized to serve the Project or Owners.

XXX. RESERVED RIGHT TO CONDUCT SALES ACTIVITIES.

During the Development Period, Developer reserves the right unto itself, its brokers, sales agents, and other related Persons, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, to access and conduct extensive sales activities at the Project, including the use of any Unit owned by Developer, Developer Affiliate, or Developer's successors or assigns, its appurtenant Unit Limited Common Elements, and the Limited Common Elements appurtenant to Units owned by Developer, Developer Affiliate, or Developer's successors or assigns (excluding the Limited Common Elements appurtenant to Units not owned by Developer), for model Units, sales, tours, leasing, management, and construction offices, interior design and decorator centers, parking, extensive sales displays and activities, the hosting of promotional activities, functions, and receptions, the posting and maintenance of signs and other advertisements relating to such sales activities, and the installation, maintenance, location, relocation, and reconfiguration of such structures, displays, advertising signs, billboards, flags, sales desks, kiosks, sales, tours, leasing, management and/or construction offices, interior design and decorator centers, and parking areas for employees, agents, and prospective buyers, as may be necessary or convenient for the proper development and initial disposition of Units or Memberships by sale, resale, lease, or otherwise, and the right, but not the obligation, to provide ongoing maintenance, operation, service, construction, and repairs to individual Units in the Project and in other projects in Ward Village. In the event that Developer is unable to sell all of the Units within the Development Period, Developer shall have the right to conduct sales activities on the Project until the closing of the sale of the last unsold Residential Unit in the Project; provided that such sales are conducted in an unobtrusive manner which will not unreasonably interfere with the use, possession, and aesthetic enjoyment of the Project by the Owners. Such sales activities may include the initial sale and resale of Units. In the event that Project Lender, if any, or its successor or assignee shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the Mortgage remedies or by a deed or an assignment in lieu of foreclosure, such Project Lender,

its successor and assigns, shall have the right to conduct such extensive sales activities on the Project until at least ninety-five percent (95%) of all Units in the Project have been sold and Unit Deeds therefor recorded, notwithstanding the foregoing. Each and every party acquiring an interest in the Project, by such acquisition, acknowledges that the sales activities may result in noise and nuisances, and consents to such activity by Developer, and further waives, releases, and discharges any rights, claims, or actions such party may acquire against Developer, its brokers, sales agents, employees, and Lenders, and their respective successors and assigns, as a result of any such activity or activities. Victoria Ward, Limited has reserved rights to perform sales activities as described in **Article II, Section J** above and as set forth in the Master Declaration.

XXXI. RESERVED RIGHT TO LEASE OR CONVEY COMMERCIAL UNITS AND/OR APPURTENANT LIMITED COMMON ELEMENTS.

During the Development Period, Developer, its successors and assigns, or Developer Affiliate, as the Commercial Unit Owner, shall have the reserved right, but not the obligation, without the joinder or consent of any Person, the Board, or any Owners or their mortgagees, to lease or convey ownership of a Commercial Unit owned by Developer, its successors and assigns, or Developer Affiliate to the Association or to a third-party, and to redesignate the Commercial Unit Limited Common Elements appurtenant to such Commercial Unit to a Unit owned by the Association or a third-party, and/or to redesignate Commercial Limited Common Elements, or portions thereof, as General Common Elements, Residential Limited Common Elements, or Recreational Limited Common Elements and, to the extent necessary or required, to amend this Declaration and the Condominium Map to effect the same. Upon transfer to the Association, the Association shall accept ownership of such Commercial Unit together with any appurtenant Limited Common Element(s) "AS IS" by way of a quitclaim deed. In the event a Commercial Unit is leased or conveyed to the Association or to a third-party, at such time, the Association or such third-party shall assume the cost of maintenance of all such Limited Common Element areas and the Common Expenses in proportion to the Common Interest set forth in **Exhibit "B"** attached hereto attributable to such Commercial Unit. Developer may require, in its reasonable discretion, that such transferee or lessee, as the case may be, enter into an administrative and/or management agreement with Developer allowing Developer to retain administrative and management control over such areas, unless such right is otherwise delegated to the Association or such third-party buyer or lessee at the time of such conveyance.

In the event a Commercial Unit is conveyed or leased to the Association or to a third-party, and the Association or such third-party thereafter, but prior to the expiration of the Development Period, desires to offer such Commercial Unit for sale or lease, Developer shall be given the first right of refusal to reacquire or to lease such Commercial Unit under the same terms and conditions (including financing terms) as may be offered to or by such bona fide third-party. Accordingly, the Association or such third-party Owner desiring to sell or lease its Commercial Unit must first notify Developer in writing of its intent to list, sell, or lease the Commercial Unit. The Association's, or such third-party Owner's written notice to Developer must include the proposed listing, offer price or rental rate, and general terms of the proposed listing, sale, or lease. Upon receipt of such written notice, Developer shall have fifteen (15) calendar days within which to notify the Association or such third-party Owner in writing as to whether Developer elects to exercise its right of first refusal set forth herein. If Developer elects to exercise its right of first refusal, closing shall occur no later than sixty (60) calendar days after Developer notifies the Association or such third-party Owner in writing (within such fifteen (15) calendar day period) of its decision to purchase or lease such Commercial Unit. If Developer elects not to exercise its right of first refusal or fails to notify the Association or such third-party Owner in writing of Developer's election to exercise its right of first refusal within such fifteen (15) calendar day period, the Association or such third-party Owner shall be entitled, for a period of seven (7) months thereafter, to list the Commercial Unit with a real estate broker or sell or lease the Commercial Unit to a third-party for a price equal to or greater than the price offered to Developer without further notice to Developer.

The right to convey a Commercial Unit to the Association and for the Association to accept ownership thereof and/or to redesignate Unit Limited Common Elements or Commercial Limited Common Elements appurtenant thereto as being appurtenant to a Unit owned by the Association or as a Residential Limited Common Element, Recreational Limited Common Element, or General Common Element, and, to the extent necessary, to amend this Declaration to effect the same, shall occur during the Development Period. Developer or Developer Affiliate, as the Commercial Unit Owner, has the right for the duration of its ownership to convey a Commercial Unit to third-parties, which right shall continue notwithstanding the expiration of the Development Period. Developer may, without being required to obtain the consent or joinder of any Owner, lienholder, or other Persons, execute, deliver, and record any deed and/or

amendments to this Declaration and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers, and privileges.

XXXII. RESERVED RIGHT TO ALTER THE NUMBER OF FLOORS AND/OR UNITS IN THE PROJECT.

During the Development Period, Developer shall have the reserved right, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, to reduce or increase the number of floors and/or Units in the Project notwithstanding anything provided to the contrary, and except as otherwise provided by law. Any such alteration to the number of floors and/or Units in the Project shall be effective provided that:

A. Developer shall record or cause to be recorded an amendment to this Declaration describing (a) the revised description of Units and/or floors that comprise the Project; and (b) the undivided Common Interest appurtenant to the Units as a result of the reduction or increase in the total number of floors and/or Units. The Common Interest appurtenant to each Unit shall be calculated by dividing the Unit's net living area by the net living area of all Units in the Project; provided, however, that Developer shall have the right, in its sole and absolute discretion, to round the result of such calculations so that the sum of the percentages equals exactly one hundred percent (100%);

B. Developer shall record or cause to be recorded an amendment to the Condominium Map to reflect the revised layout incorporating the change in the number of Units and/or floors, together with a verified statement of registered architect or professional engineer, in the manner required by Section 514B-34 of the Act, certifying that said Condominium Map, as so amended, is an accurate copy of portions of the plans of the altered Unit(s) as filed with the County officer having jurisdiction over the issuance of permits for the construction of buildings; and

C. Any such alteration shall comply in all respects with all applicable governmental codes, statutes, ordinances, and rules and regulations, or with all variances granted therefrom.

Developer expressly reserves the right to amend this Declaration and the Condominium Map to effect any increase or decrease in the number of floors and/or Units or alterations to the floor plans at any time or times during the Development Period, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder, or other Persons, execute and record amendments to this Declaration and the Condominium Map and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the rights, powers, or privileges herein reserved to Developer.

XXXIII. RESERVED RIGHT TO GRANT EASEMENTS AND TO DEDICATE LIMITED COMMON ELEMENTS TO THE PUBLIC OR MASTER ASSOCIATION.

During the Development Period, to the extent set forth in the Master Declaration, Developer shall have the reserved right, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, to (a) grant easements through the Common Elements, including the Residential Limited Common Elements, the Recreational Limited Common Elements, and the Commercial Limited Common Elements, located on level 1 of the Project; and (b) dedicate any "open space" areas to be used for public parks or any burial preservation areas for public access and use purposes or the purposes set forth in the Master Declaration, including, without limitation, easements to access certain areas of the Project and easements for use of certain areas of the Project by the public or the Master Association, for recreational use, use for park space, sidewalks, as required by a government agency or by law, or pedestrian and/or bicycle access, or to preserve any burial or archaeological sites and provide access to ancestors, or for other purposes. Such areas or portions thereof may also be dedicated to the public or dedicated for use by the public pursuant to the Master Declaration. If dedicated to the Master Association, then the Master Association shall maintain the easement and use areas and shall be responsible for any costs associated with the use, maintenance, and upkeep of such areas pursuant to the Master Declaration. Developer may, without being required to obtain the consent or joinder of any Owner, lienholder, or other Persons, execute, deliver, and record any easement, deed, and/or amendment to this Declaration and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers, or privileges.

XXXIV. RESERVED RIGHT TO CONSOLIDATE, SUBDIVIDE, AND WITHDRAW LAND.

Developer shall have the reserved right during the Development Period, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, to (i) consolidate the Land with another parcel(s) of land to

create a Consolidated Lot, which shall then be the Land, (ii) subdivide the Land to create separate parcels of Subdivided Lots, and/or (iii) withdraw certain Subdivided Lots from the operation of this Declaration, and convey or cause the conveyance of said withdrawn Subdivided Lots to itself or to a third-party, as it deems appropriate. This right to subdivide and withdraw shall include, without limitation, the right to subdivide and withdraw from this Project certain portions of the Land, as depicted on the Condominium Map.

In connection with the right to consolidate, Developer shall have the further reserved right to enter and go upon the Land to do all things necessary, proper, or convenient to effectuate such consolidation of the Land with another parcel, including, without limitation, the following: (i) making surveys to undertake a reasonable realignment of boundaries of the Land to define said Consolidated Lot (it being understood that Developer shall have the reserved right to effect any such realignment), (ii) filing and recording the necessary consolidation map and related documentation, (iii) facilitating the granting, reserving, adding, deleting, receiving, realigning, and/or relocating of easements and/or rights of ways for utilities, cesspools, sanitary and storm sewers, cable television, telecommunication systems, refuse disposal, driveways, parking areas, roadways, and pedestrian access, and (iv) granting or receiving all other required easements and/or rights of way. Said consolidation shall be subject to, and Developer shall, at its own expense, comply with, all of the then-applicable governmental laws, rules, and regulations.

In connection with the right to subdivide, Developer shall have the further reserved right to enter and go upon the Land to do all things necessary, proper, or convenient to effectuate such subdivision of the Land and withdrawal and conveyance of certain Subdivided Lots, including, without limitation, the following: (i) making surveys to undertake a reasonable realignment of boundaries of the Land to define said Subdivided Lots (it being understood that Developer shall have the reserved right to effect any such realignment), (ii) filing and recording the necessary subdivision map and related documentation, (iii) facilitating the granting, reserving, adding, deleting, receiving, realigning, and/or relocating of easements and/or rights of ways for utilities, cesspools, sanitary and storm sewers, cable television, telecommunication systems, refuse disposal, driveways, parking areas, roadways, and pedestrian access, and (iv) granting or receiving all other required easements and/or rights of way; and provided further that Developer specifically reserves the right, whether or not in connection with its right to subdivide, withdraw, and convey hereunder, to grant easements for access, driveway, and parking purposes over the Project in favor of the withdrawn portion(s) of the Land. With regard to the Subdivided Lot(s) being withdrawn, such withdrawn portion(s) shall not have been improved with any of the Units or other Improvements described in this Declaration or shown on the Condominium Map. Said subdivision, withdrawal, and conveyance shall be subject to, and Developer shall, at its own expense, comply with, all of the then-applicable governmental laws, rules, and regulations, including subdivision requirements.

In connection with the exercise of its rights reserved hereunder, Developer hereby further reserves the right, at its expense, to: (i) grant, reserve, add, delete, receive, realign, and/or relocate over, across, and under the Project, as appropriate, easements and/or rights of ways for utilities, including, without limitation, cesspools, sanitary and storm sewers, cable television, telecommunications systems, refuse disposal, access, shared driveways, parking areas, roadways, and walkways; (ii) enter into and execute any license and/or agreements, as appropriate, to facilitate the use of any areas located outside the Project that will be used to benefit Owners or of areas within the Project to be used by third-parties; and (iii) negotiate, execute, and accept any licenses, easements, or rights of way over adjacent properties which may benefit or support the Project.

Upon the exercise of said reserved rights, Developer shall, at Developer's expense and without being required to obtain the consent or joinder of any Owner or lienholder, record at said Bureau the subdivision map, and an amendment to this Declaration and the Condominium Map: (i) describing the withdrawn land and any Improvements thereon; (ii) describing the realigned boundaries of the Land upon which the Units then constituting the Project are located; and (iii) where applicable and appropriate, describing any grant, reservation, or relocation of easements over, under, and on the Common Elements, as permitted above. The recording of an amendment to this Declaration and the Condominium Map shall effectuate the withdrawal of the Subdivided Lot, without any further consent or joinder of any party. Developer shall have the right, as grantor, to execute, deliver, and record a deed of any withdrawn Subdivided Lot upon recording of the amendments described above.

The exercise by Developer of the right to consolidate and/or subdivide, withdraw, and convey as provided in this **Article XXXIV**, shall not in any way limit or be deemed to limit Developer's full use of areas remaining in the Project pursuant to any of the rights reserved to it in this Declaration.

XXXV. RESERVED RIGHT TO ALTER UNIT AREA FOR MINOR DESIGN AND CONSTRUCTION ADJUSTMENTS.

Developer shall have the reserved right, to and until the end of the Development Period, to alter the areas of Units and the Common Elements in order to accommodate minor design and construction adjustments as necessary to comply with the Condominium Map, to improve efficiency in the use of the Units and/or the operation and use of the Common Elements, or to comply with law, government approvals, and/or permits. Developer shall record or cause to be recorded an amendment to this Declaration and the Condominium Map describing (a) the revised Unit areas and (b) the undivided Common Interest and/or Class Common Interest appurtenant to the Units as a result of the reduction or increase in the Unit area(s). Developer shall have the right, in its sole and absolute discretion, to not recalculate and revise the Common Interest and/or Class Common Interest if the net living area of the Unit increases or decreases by less than two percent (2%). Developer has the right to round the result of such calculations so that the sum of the percentages equals exactly one hundred percent (100%) in the event the Common Interest or Class Common Interest is altered.

Developer expressly reserves the right to amend this Declaration and the Condominium Map to effect any change in a Unit's area or alteration of the Common Elements at any time or times during the Development Period, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder, or other Persons, execute and record amendments to this Declaration and the Condominium Map and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the rights, powers, or privileges herein reserved to Developer.

XXXVI. RESERVED RIGHT TO AMEND THE CONDOMINIUM DOCUMENTS TO REMOVE REFERENCES TO LANDOWNER.

This Declaration and the Bylaws shall be deemed automatically amended to remove any references to Landowner as the fee simple owner of the Land effective on the date of recording of the documents conveying to Developer Landowner's fee simple interest in the Land, and, upon such date, Developer shall have the reserved right, to and until the end of the Development Period, to amend the Condominium Documents to remove any references to Landowner as the fee simple owner of the Land and to record all documents necessary to effect the same at said Bureau without being required to obtain the consent or joinder of Landowner and/or any Owner, lienholder, or other Person.

XXXVII. ASSIGNMENT OF RESERVED RIGHTS.

During the Development Period, notwithstanding anything stated herein to the contrary, the rights reserved to Developer in this Declaration shall be fully and freely assignable by Developer in whole or in part. Any assignment of the rights reserved to Developer shall be in writing, executed by both Developer and the assignee of Developer's rights, and shall be recorded at said Bureau. Every Owner of a Unit in the Project and all holders of liens affecting any of the Units and each and every other party acquiring an interest in the Project, or any part thereof, by acquiring such Unit, lien, or other interest, consents to any such assignment by Developer, and, to the extent designated by Developer, agrees to recognize any assignee as the "*Developer*" under this Declaration; agrees to execute, deliver, and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints Developer and its assigns as such person's attorney-in-fact with full power of substitution to execute, deliver, and record such documents and instruments and to do such things on such person's behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest upon any conveyance of any Unit or any interest therein, whether by deed, Mortgage, or any other instrument of conveyance.

XXXVIII. CONSENT TO DEVELOPER'S RESERVED RIGHTS; APPOINTMENT OF DEVELOPER AS ATTORNEY IN-FACT.

Each and every party acquiring an interest in the Project, by such acquisition, consents to all of the rights reserved unto Developer, as set forth in this Declaration, including, but not limited to, those rights as set forth in **Articles XX through XXXVI**, above, the permitted actions taken by Developer pursuant thereto, and to the recording

of any and all documents necessary to effect the same at said Bureau; agrees to execute, deliver, and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints Developer and its assigns as such person's attorney-in-fact with full power of substitution to execute, deliver, and record such documents and instruments and to do such things on such person's behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any conveyance of any Unit or any interest therein, whether by deed, Mortgage, or any other instrument of conveyance. Without limitation to the generality of the rights reserved unto Developer hereunder and as permitted by law, Developer will have the right to execute, deliver, and record any amendment to the Condominium Documents, any easement instrument, any deed, any amendment to a Unit Deed, assignment of rights or interest, or such other document, instrument, or agreement that may be necessary or appropriate to permit Developer to exercise its rights pursuant to the provisions of this Declaration.

XXXIX. DISCLOSURES AND LIMITATIONS ON LIABILITY.

Owners accept the agreements, obligations, disclaimers, findings, and limitations on liability set forth below, and to the extent permitted by law, waive any claims or rights of action or suits against Developer or Developer's successors and assigns arising from any impairment of Owner's use and enjoyment of the Unit or the value thereof, or the Project, or from any inconvenience, arising directly or indirectly therefrom.

A. NONLIABILITY AND INDEMNIFICATION.

1. **GENERAL LIMITATION.** Except as specifically provided in the Condominium Documents or as required by law, no right, power, or responsibility conferred on the Board by the Condominium Documents shall be construed as a duty, obligation, or disability charged upon Developer or any of its agents, employees, the Board, any Director or any other Officer, employee, agent, or committee member of the Association. The Association, its members, Directors, Officers, agents and committee members, and the Board are subject to the insulation from liability provided for directors of corporations by the laws of the State to the fullest extent provided by such laws. Members of the Board are not personally liable to the victims of crimes occurring in or at the Project.

2. **INDEMNIFICATION OF ASSOCIATION.** When liability is sought to be imposed on a Director, an Officer, committee member, employee, or agent of the Association, the Association shall indemnify such person for such person's losses or claims, and undertake all costs of defense, unless and until it is proven that such person acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the cost of defense due to the willful or wanton misfeasance or gross negligence of such person indemnified by the Association; the Association may recover indemnification costs expended from any such individual. Punitive damages may not be recovered against the Association but may be recovered from any person whose willful or wanton misfeasance or gross negligence gave rise to such damages. This Section shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees or any person entitled to such indemnification.

3. **INDEMNIFICATION OF SITE MANAGER.** Notwithstanding anything to the contrary contained herein, the Association shall defend, indemnify, and hold harmless the Site Manager, if any, from and against, and properly reimburse it for, any and all liability, cost, damages, expense, or deficiency resulting from, arising out of, or in connection with the negligent acts of the Association or any Owner; provided that the Site Manager was not also grossly negligent or performed intentional, willful misconduct.

B. **SECURITY DISCLAIMER.** The Association and/or the Site Manager, if any, may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it might otherwise be. Neither the Association, the Site Manager, if any, nor Developer shall in any way be considered insurers or guarantors of security within the Project, and neither the Association, the Site Manager, if any, Developer, nor any successor Developer shall be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of security measures undertaken. All Owners and Occupants of a Unit, as applicable, acknowledge that the Association, the Board, the Site Manager, if any, Developer or any successor Developer, do not represent or

warrant that any fire protection, burglar alarm, or other security system designated or installed according to the guidelines established by Developer or the Association may not be compromised or circumvented, that any fire protection, burglar alarm, or other security system will prevent loss by fire, smoke, burglary, theft, hold-up, terrorism, or otherwise, nor that fire protection, burglar alarm, or other security system will in all cases provide the detection or protection for which the system was designed or intended. Each Owner and the Occupants of a Unit acknowledge and understand that the Site Manager, if any, the Association, the Board and its committees, Developer, and any other successor to Developer are not insurers or guarantors, and each Owner and the Occupants of a Unit assume all risks for loss or damage to persons, Units and the contents of Units, and further acknowledges that the Site Manager, if any, the Association, the Board and its committees, Developer, or any successor Developer have made no representations or warranties, nor has any Owner or Occupant relied upon any representation or warranty, expressed or implied, including any warranty of merchantability as to the fitness of any fire protection, burglar alarm, or other security system recommended or installed, or any security measure undertaken, within the Project.

C. NONLIABILITY FOR NET LIVING AREA CALCULATION. Each Owner, by acceptance of a Unit Deed or other conveyance of a Unit, understands and agrees that there are various methods for calculating the net living area of a Unit, and that depending on the method of calculation, the stated net living area of the Unit is approximate and may vary by more than a nominal amount. Additionally, as a result of field construction, other permitted changes to the Unit, and settling and shifting of Improvements, the actual net living area of the Unit may also be affected. By accepting title to the Unit, each Owner shall be deemed to have conclusively agreed to accept the size and dimensions of the Unit, regardless of any reasonable variances in the net living area from that which may have been disclosed at any time prior to closing, whether included as part of Developer's promotional materials or otherwise. Without limiting the generality of this Section, Developer does not make any representation or warranty as to the actual size, configuration, dimensions (including ceiling heights), or net living area of any Unit, and each Owner shall be deemed to have fully waived and released any such warranty and claims for losses or damages resulting from any reasonable variances between any represented or otherwise disclosed net living area and the actual net living area of Units.

D. NONLIABILITY FOR MOLD DEVELOPMENT. Mold and mold spores are present throughout the environment and residential condominium construction cannot practicably be designed to exclude the introduction of mold spores. All molds are not necessarily harmful, but certain strains of mold have been found to have adverse health effects on susceptible persons. Moisture is the primary mold growth factor that must be addressed. Affirmative steps taken by Owners and the Association to minimize or control moisture can minimize or eliminate mold growth in the Project. The Owners and the Association should take steps to reduce or eliminate the occurrence of mold growth and thereby minimize any possible adverse health effects that may be caused by mold. Developer cannot ensure that mold and mold spores will not be present in the Project. The failure of an Owner or the Association to take steps to minimize mold growth may increase the risk of mold growth and mold spores being present in the Project. Developer shall not be liable for any actual, special, incidental, or consequential damages based on any legal theory whatsoever, including, but not limited to, strict liability, breach of express or implied warranty, negligence, or any other legal theory, with respect to the presence and/or existence of mold, mildew, and/or microscopic spores at the Project, unless caused solely by the gross negligence or willful misconduct of Developer.

E. FLOOD ZONE; TSUNAMI EVACUATION ZONE. The Project is located in a Flood Zone (Zone AE) per the FEMA Digital Flood Insurance Rate Maps, and as such, federal flood insurance may be required for the Project and/or the individual Units in the Project. Location in a flood zone exposes the Project to a greater risk of flood damage. Developer may obtain a special rate consideration from FEMA as a result of all occupied spaces on the ground level of the Tower exceeding the minimum flood elevation applicable to the Land, but Developer cannot ensure that it will be able to obtain such special rate consideration. If Developer does not obtain the special rate consideration, then federal flood insurance, without any reduced rate, may be required. The Project is also located in the Tsunami Evacuation Zone. In the event of a tsunami warning, Owners and Occupants will be asked to evacuate the Project.

F. SEA LEVEL RISE. Sea levels are rising globally and locally. Sea level rise causes gradual changes to the environment and may have certain significant impacts on real property, including the Land. Sea level rise may cause rising groundwater tables below the Land's surface, drainage issues, increased flooding, saturated and weakened soil beneath the Land's surface, accelerated erosion of the Land, and/or other inconveniences or nuisances resulting from sea level rise ("*Sea Level Rise Effects*"). Portions of the Land are currently identified as within a 3.2

foot "Sea Level Rise Exposure Area" as that term is defined by the Hawaii Climate Change Mitigation and Adaptation Commission. By signing and accepting a Unit Deed or other conveyance of a Unit, an Owner accepts the Sea Level Rise Effects and waives any claims or rights of action or suits against Developer and its Representatives, licensees, successors, and assigns arising from any impairment of the Owner's use, value, or enjoyment of the Unit or the Project, or any inconvenience, property damage, or personal injury arising directly or indirectly from the Sea Level Rise Effects.

G. **ADDITIONAL DISCLOSURES.** Without limiting any other provision in this Declaration, the Association and, by acquiring title to a Unit, or by possession or occupancy of a Unit, each Owner for itself and for its Occupants, shall conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following:

1. **CONDOMINIUM LIVING; RESIDENTIAL-COMMERCIAL MIXED-USE RETAIL AREA.** Living in a multi-story, mixed-use, high-rise condominium building entails living in very close proximity to other persons, businesses, restaurants, parks, open areas, and shopping areas, with attendant limitations on solitude and privacy. Walls, floors, and ceilings have been designed to meet applicable building codes. Owners should still anticipate hearing noise from adjacent Units within the Project, however, including, but not limited to, noise from showers, bathtubs, sinks, toilets, washing machines, or other sources of running water and/or plumbing fixtures. Also, Owners may hear noise from vacuum cleaners, stereos or televisions, or from people running, walking, exercising, or socializing. Finally, Owners can expect to experience substantial levels of sound, music, noise, odor, vibration, and other nuisances from retail and commercial establishments in the Project, including the Commercial Units, the Recreational Unit, and the Recreational Limited Common Elements, and/or in Ward Village, and/or establishments located in close proximity to the Project, including, without limitation, Ward Entertainment Center and Ka Lei Park, which may experience heavy pedestrian traffic. Owners may also experience noise and heavy pedestrian traffic from nearby farmers markets and community gatherings, light entering the Units from commercial lighting in the vicinity, Ka Lei Park, or streetlights located in close proximity to the windows and doors of the Units. Owners on lower floors within the Project located directly above such commercial establishments (i.e., levels which are directly above the Commercial Units) and close to the street, the Commercial Units, the Recreational Unit and Recreational Limited Common Elements, neighboring lot activities (i.e., farmers markets), and Ka Lei Park will likely experience the highest level of sound, music, noise, odor, and vibrations from such commercial activity.

2. **WARD VILLAGE AND KA LEI PARK.** The Project is also located near Ka Lei Park in Ward Village. Owners may expect to experience (a) loud music from restaurants or other outlets in Ward Village; (b) noise from concert events or performances at restaurants, farmers markets, retail outlets, or within Ka Lei Park; (c) voices of people picnicking or relaxing in Ka Lei Park and talking outside of retail and/or food and beverage establishments in Ward Village; and (d) noises and lighting from special events taking place near the Project on the street, in Ward Village, at neighboring farmers markets, or on nearby properties, including, without limitation, Ka Lei Park. Such noises shall not be deemed a "nuisance," as such noises and/or uses are deemed to be common and accepted occurrences in a centrally located high-rise condominium mixed-use setting like Ward Village.

3. **NOISE; TRAFFIC; CONSTRUCTION.** Being located in a central shopping, entertainment, and commuter district like Ward Village means noise, dust, vibration, and/or pedestrian and vehicular traffic are higher than average. Each Owner and every other Interested Person waives, releases, and discharges any rights, claims, or actions that such Owner or Interested Person may have, now or in the future, against Developer, and its Representatives, licensees, successors, and assigns, and arising directly or indirectly out of or from such noise, dust, vibration, and/or additional traffic, including, without limitation, the construction and operation of the Honolulu Rail Transit Project, if constructed, which could be constructed in close proximity to the Project. Traffic, noises, and uses which are typically encountered in a high-rise condominium commercial-residential mixed-use setting, include, but are not limited to, transient noise and guest or pedestrian traffic from the street, the Commercial Units, Commercial Limited Common Elements, the Recreational Unit, Recreational Limited Common Elements, the opening/closing of car doors, and motor sounds. Owners may also expect increased traffic throughout the Common Elements from Recreational Members, Authorized Users, and guests of the recreational operations. Furthermore, normal construction activities shall not be considered a "nuisance." Development is anticipated to continue in Ward Village for many more years, which means Owners may experience heavy vehicle and equipment noise, drilling, dredging, and other potentially loud construction noises, dust, roadblocks, and roadway detours. By accepting a Unit Deed or other conveyance of a Unit, each Owner acknowledges that the Project is adjacent to high-traffic roads, businesses, Ka Lei

Park, and retail/entertainment facilities, and neighboring developments, and that noise, lights, pedestrian and vehicular traffic, dust, and odors common to such activities and related commercial activities as well as construction activities, may exist on or near the Project, at any time and from time to time. Each Owner, by acceptance of a Unit Deed or other conveyance of a Unit or interest therein, hereby acknowledges and agrees to the above disclosures. Developer does not make any representation or warranty as to the level of sound transmission at the Project or the level of traffic or construction activities, and each Owner and every other Interested Person hereby waives and expressly releases any claim for loss or damage resulting from such activities.

4. **VIEWS.** Each Owner acknowledges that there are no protected views in the Project, and the Units are not ensured of the existence or continuation of any particular view or that any neighboring development will be aesthetically comparable to the Project. Any view from a Unit is not intended to be a part of the value of the Unit, is not guaranteed, and Developer makes no representation or warranty regarding whether a Unit will continue to have the same view, or any view. Developer makes no representation as to the effect of the view, or the lack thereof, on the value of a Unit. The views from a Unit or the Project will likely change or be affected or obstructed by (i) construction or installation of buildings, improvements, structures, walls, and/or landscaping by Developer or owners of property outside the Project; and/or (ii) the growth of trees, landscaping, and/or vegetation within or outside the Project; and/or (iii) the Honolulu Rail Transit Project described above, which may be located in the vicinity of the Project. Each Owner and every other Interested Person waives, releases, and discharges any rights, claims, or actions that such Person may have, now or in the future, against Developer and its Representatives, licensees, successors, and assigns, and arising directly or indirectly out of or from any such change or obstruction of views by reason of such further development.

5. **CONTINUING ACTIVITIES.** Each Owner understands and agrees that Developer is engaged in a sales and development program and that certain elements of the Project may not be completed, and completion of the Improvement of such items may be deferred by Developer at its sole and absolute option; provided normal access and parking facilities are provided for the Units conveyed to Owners. As an integrated structure consisting of a variety of uses that may be changed from time to time, alterations, construction, remodeling, repair, and changes of uses within portions of the Project may occur from time to time.

6. **USE CHANGES; NEIGHBORING DEVELOPMENTS.** Except as expressly set forth in the Condominium Documents, Developer makes no representations or warranties with respect to the (a) nature of any Improvements to be initially or subsequently contained in the Project, (b) the initial or subsequent uses of any portion of the Project, or (c) the services and amenities (and the costs of such services or amenities) which may be provided to Owners. Certain portions of land outside, abutting, and/or near the Project may be subject to redevelopment, and, in the future, may or will be developed by third-parties over whom Developer has no control. The Association and Developer have no jurisdiction over such neighboring developments and, accordingly, there is no representation as to the nature, use, or architecture of any future development or improvement on such neighboring development. Any use, development, and/or construction on such neighboring developments may result in noise, dust, and/or other nuisances to the Project or Owners, and Owners acknowledge the same.

7. **MARKETING MATERIALS.** Any marketing materials used by Developer in the promotion and sale of the Residential Units and of the Project shall not be a representation or warranty by Developer of the Residential Unit layout, décor, coloring, furnishings, or fixtures provided with the Unit. The marketing materials are intended to give purchasers a general idea of the standard and quality of the Project, and are not intended to represent the precise layout, décor, coloring, furnishing, or fixtures in a Unit, or the amenities that will be included in the Project.

8. **CONDOMINIUM MAP.** Nothing in the Condominium Map is intended to be or is a representation or warranty by Developer. Typical type floor plans may have slight deviations as to the location and type of columns, doors, and fixtures in a Unit. The layout and areas of the Units with typical depictions are intended to be consistent.

9. **WARRANTIES.** Developer is developing the Project and is not the general contractor or an affiliate of the general contractor who is building the Project. Developer makes no warranties, express or implied, about the Units or the Project, or about consumer products or anything else installed or contained in the Units or the Project. This includes, but is not limited to, warranties of merchantability, habitability, workmanlike construction,

fitness for a particular purpose, or sufficiency of design. Each Owner and every other Interested Person gives up (in legal terms, "waives and releases") any and all rights and claims such Person may have, now or in the future, against Developer, its Representatives, successors, and assigns for (i) any defects in the Units or the Project or any consumer products or anything else installed or contained in the Units or the Project, and (ii) for injury to Persons or property arising from any such defects. This means that Developer will not have to pay for any injury or damage to people or things as a result of any defect.

10. **FUTURE RAIL ROUTE.** The Project is in close proximity to the proposed future Honolulu Rail Transit Project being developed by the County, which may cause noise, dust, vibration, traffic congestion, and/or other inconveniences or nuisances associated with the development, construction, and operation of such Honolulu Rail Transit Project ("**Rail Effects**"). Each Owner accepts the Rail Effects and waives any claims or rights of action or suits against Developer or Developer's successors and assigns arising from any impairment of the Owner's use, value, or enjoyment of the Unit or the Project, or from any inconvenience, property damage, or personal injury arising directly or indirectly from the Rail Effects.

11. **ACKNOWLEDGEMENT AND ACCEPTANCE OF CERTAIN CONDITIONS.** Each Owner accepts and waives any claims or rights of action or suits against Developer or Developer's successors and assigns arising from any impairment of the use, value, or enjoyment of the Owner's Unit or the Project, or from any inconvenience, property damage, or personal injury arising directly or indirectly from any of the following:

a. **ELEVATORS.** The design of the Tower provides for multiple passenger elevators to provide access to the residential floors in the Project. The Units located in the immediate vicinity of the elevator lobby on each level of the Tower may be prone to greater noise and other nuisances associated with the normal operation of the elevators than Units located further away from the elevator lobby. Also, during certain hours of the day there may be delays in the elevator servicing each residential floor as a result of high traffic loads and/or in the event of servicing and/or repairs to one or more of the elevators in the Project.

b. **LOCATION OF UNITS NEAR RECREATIONAL LIMITED COMMON ELEMENTS.** Certain Residential Units on level 7 are located directly above the Recreational Limited Common Elements that are intended to be used for recreational operations on level 5 and level 6 of the Tower. As a result, such Residential Units may be exposed to greater noise and other nuisances than the Residential Units located on other floors of the Project.

c. **ENGINEERED WOOD FLOORING, WOOD VENEER CABINETS, AND STONE IN KITCHEN AND BATHROOM SURFACES.** The Units may have engineered wood flooring installed in a portion of each Unit. Such flooring has the potential to scratch easily. Further, wood flooring has special maintenance, care, and upkeep requirements, as compared to carpeting, that Owners in the Project must comply with in order to maximize the enjoyment and useful life of any originally installed engineered wood flooring in the Unit. The failure to comply with these special maintenance, care, and upkeep requirements will result in additional costs to the Owner and detract from the Owner's enjoyment of the Unit. The potential sound transmission through an engineered wood floor, when compared to carpeting, is greater, and each Owner, by accepting a Unit Deed or other conveyance to a Unit, is deemed to have acknowledged and accepted that this condition may result in greater noise being heard from the Units above and adjacent to the Owner's Unit. Owners shall at all times comply with the requirements and provisions of the House Rules, as may be established from time to time by the Board, to minimize and soften the level of sound transmission through the engineered wood floor of each Unit. Certain kitchens and bathrooms may also have cabinets made from natural wood veneer, which is subject to color, texture, and surface variations and aging. Some of the shower walls, floors, and countertops in the bathrooms and backsplashes in the kitchens will be stone. Stone is naturally porous and tends to absorb liquid that can penetrate deeper into the material quickly and may be hard to remove. Stone can and should be sealed when installed and again every few years to minimize staining. However, if it is not done properly or often enough, staining can still occur. Cutting or dropping objects directly on stone can also scratch, chip, and crack the surface.

d. **LANAIS.** Some Residential Units will have lanais with visible glass railings, which lanais will be fully exposed to views by the public, neighboring condominiums, and neighboring Units in the Project. Accordingly, activities conducted, and persons and items located within such lanais, and also within Units if

lanai doors are left open or unobstructed, may be fully exposed and visible to the public, neighboring condominiums, and neighboring Units in the Project.

e. **MECHANICAL EQUIPMENT ON ROOFTOP.** The design of the Tower provides for mechanical equipment to be located on the rooftop. The existence of the same may cause noise and vibrations even in the course of normal operations, which may be evident to the Units on the floors immediately below the rooftop.

12. **KAKA'AKO COMMUNITY DEVELOPMENT DISTRICT MAUKA AREA PLAN AND RULES; PLANNED DEVELOPMENT PERMIT, PLANNED DEVELOPMENT AGREEMENT AND DISTRICT-WIDE IMPROVEMENT ASSESSMENT PROGRAM.** The Project is located within the Kaka'ako Community Development District and is subject to the jurisdiction of the HCDA. The Project will be developed subject to and in compliance with the terms of various permits and agreements by and/or between Victoria Ward, Limited, Developer, or Developer's predecessors in interest, and HCDA (collectively, "*HCDA Agreements*"), including (but not limited to) the following:

a. The development and use of the Project are subject to the terms and provisions of the Nunc Pro Tunc Order re: Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit, approved by the Hawaii Community Development Authority in File No. PL MASP 13-1-3 on January 14, 2009 ("*Ward MP Permit*"), a memorandum of which was recorded on June 17, 2009 in said Office as Document No. 3869623 and at said Bureau as Document No. 2009-093051. Pursuant to the Ward MP Permit, the development and use of the Project are subject to the terms and provisions of the Vested Rules. The Ward MP Permit has an effective period of fifteen (15) years, which ended on January 14, 2024.

b. A Master Plan Development Agreement for the Ward Neighborhood Master Plan was executed on December 30, 2010, a memorandum of which was recorded on January 7, 2011 in said Office as Document No. 4036891 and at said Bureau as Document No. 2011-004171 ("*Ward MP Development Agreement*"), which imposes the terms and conditions of the Ward MP Permit on the Land and shall run with the Land and shall bind and constitute notice to all subsequent lessees, grantees, assignees, mortgagees, lienors, and any other persons who shall claim an interest in the Land. HCDA shall have the right to enforce the Ward MP Development Agreement by appropriate action at law or suit in equity against all such persons. The Ward MP Development Agreement confirms the application of the Vested Rules to the Ward MP Permit area and describes generally the timing and process for phasing, reserved housing credits, and public facilities within Ward Village.

c. Declaratory Order Re: Applicability of Condition No. 4 of Nunc Pro Tunc Order Re: Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit, issued January 14, 2009, issued October 10, 2012, in File No. PL MASP 13-1-3 by HCDA, which confirms and declares that certain amendments required by Condition No. 4 of the Ward MP Permit are inapplicable and no longer required. It also defines zoning for the Property.

d. The PD Permit, which authorizes the Project and sets forth requirements regarding reserved housing and burial conditions, among other requirements, subject to the terms and conditions contained therein.

e. Joint Development Agreement dated May 5, 2023, recorded on May 8, 2023 at said Bureau as Document No. A-85280828, which requires that the Land be developed in accordance with the Ward MP Permit, said Joint Development Agreement, all applicable development permit approvals, and any amendments thereto, and all applicable vested zoning regulations, such that the land subject to said Joint Development Agreement, including, without limitation, the Land, constitutes one "development lot" under HCDA's Mauka Area Rules.

f. A Public Facilities Agreement was executed on June 14, 2023, which identifies the public facilities requirements for the Project and describes how those requirements will be fulfilled.

g. The Project may also be subject to the HCDA's district-wide improvement assessment program and may be assessed for the cost of improvements made in the vicinity of the Project. If any such

assessments are made, the Owners shall be responsible for and shall pay their respective prorated share of any such assessments as part of such Owners' share of the Master Assessments.

There may be other agreements and permits with HCDA that are required in order to complete Ward Village and the Project, which may not be mentioned or described herein. Developer has the reserved right, without the consent or joinder of any other Person or entity, to negotiate, sign, and record (if appropriate) any permits, agreements, or instruments (including, but not limited to, amendments of this Declaration, the Bylaws, or the Condominium Map) and to enter into such permits, agreements, or instruments and do all things that may be reasonably necessary to obtain such further permits, agreements, or instruments, or any amendments thereto, as may be required by the HCDA, the Ward MP Permit, the Ward MP Development Agreement, any other agreements or instruments or permits, or the Vested Rules, and to comply with all applicable permits, laws, rules, ordinances, and other governmental requirements that pertain to the Project or Ward Village.

13. **ARCHAEOLOGICAL AND BURIAL DISCLOSURES.** Cultural consultation for Ward Village has been ongoing since 2012. Cultural Surveys Hawai'i, Inc. conducted extensive archaeological work and related consultation for the Project and neighboring parcels, including coordinating and participating in meetings with recognized cultural descendants, preparing an archaeological inventory survey ("**AIS**") plan, conducting AIS fieldwork, and submitting a draft archaeological monitoring plan pursuant to Hawaii Administrative Rules, Chapter 13-279-3, as amended, to the State Historic Preservation Division of the Department of Land and Natural Resource ("**SHPD**"). One previously identified and one newly identified historic property were documented during the AIS, which include pre- and post-contact cultural deposits with associated features, including human burials (identified within adjacent project areas); and subsurface historical buried surfaces and structural remnants. In a letter dated April 24, 2023, SHPD indicated that it had no objection to HCDA proceeding with the permitting process for the Project, subject to certain stipulations set forth in such letter. Developer will continue to comply with any and all applicable laws, ordinances, statutes, rules, or regulations of any local, County, State, or federal government or agency pertaining to archaeological or burial conditions.

14. **AUAHI STREET REALIGNMENT PROJECT & REALIGNMENT AREA.** In accordance with HCDA's Mauka Area Rules and the Ward MP Permit, Victoria Ward, Limited will realign Auahi Street to connect with Pohukaina Street at Ward Avenue and to create a new intersection at the entrance of Launiu Ward Village at Auahi Street and Kamani Street ("**Realignment Project**"). The Realignment Project will result in a portion of the existing Auahi Street becoming a vacated, remnant street area fronting Launiu Ward Village ("**Realignment Area**"). The Realignment Area is intended to serve as "open space" to be improved with and to be landscaped and maintained as sidewalks, possible sitting areas, bicycle routes, bicycle parking, kiosks, and active play areas for use by the public. The Realignment Area is currently owned by Victoria Ward, Limited and may be conveyed to one of its designated affiliates, subsidiaries, or to the Master Association. If the Realignment Area is ultimately transferred to and owned by the Master Association, the Master Association will have the right to improve, maintain, and upkeep the Realignment Area as part of Ward Village as an Area of Common Responsibility (as defined in the Master Declaration), which means that such improvement, maintenance, and upkeep responsibilities and any of the costs associated therewith will be passed to the Master Association. Owners should not rely on the Realignment Area being developed, or the realignment of Auahi Street, as part of the decision to own or purchase a Unit in the Project.

15. **POTENTIAL ROAD WIDENING BY DOT.** DOT has the right to use a portion of the setback along the northern side of Ala Moana Boulevard for road widening and other improvements. If DOT exercises its right to utilize the setback area for road widening or other improvements, the building setback for the Tower may be reduced in size, which may, in turn, affect the appearance of the Tower and/or Project. Any construction necessary to effectuate any such road widening or improvements may result in construction noise, increased traffic along Ala Moana Boulevard, and related inconveniences to Owners.

16. **HONOLULU INTERNATIONAL AIRPORT.** The Project's proximity to the Honolulu International Airport, as well as the existence on Oahu of several military bases, may cause frequent, loud noise from aircraft operations, sightings of aircraft flying at very low altitudes, and fumes, smoke, vibrations, odors, and other nuisances resulting from aircraft flight operations over or near the Project ("**Aircraft Effects**"). By signing and accepting a Unit Deed, Owners accept the Aircraft Effects and waive any claims or rights of action or suits against Developer or Developer's successors and assigns arising from any impairment of Owners' use and enjoyment of their

Units or the Project, or from any inconvenience, property damage, or personal injury arising directly or indirectly from the Aircraft Effects.

17. **NO REPRESENTATION REGARDING RENTALS.** Each Residential Unit Owner acknowledges and agrees that neither Developer, the Managing Agent, nor any of their respective agents or Representatives have made any representations, warranties, guarantees, or other claims of any kind regarding any rental activity or rental programs that may be available from time to time to Residential Unit Owners. Developer and the Managing Agent expressly disclaim any representations, warranties, guarantees, or other claims of any kind regarding rental programs.

XL. DISPUTE RESOLUTION.

A. **DISPUTES.** The purpose of this **Article XL** is to provide Owners, the Association, the Board, Managing Agent, Developer (in its capacity as an Owner or Board member, or as otherwise set forth in Section 514B-161 of the Act, as amended) and their respective Representatives (collectively, for purposes of this **Article XL**, the "**Parties**") with a mechanism to resolve Disputes (defined herein). A "**Dispute**" means and includes any and all actions, claims, or disputes between or among the Parties with respect to, arising out of, or relating to this Declaration, the Bylaws, or the House Rules. A Dispute shall not include: (a) claims for construction defects governed by the Contractor Repair Act, Chapter 672E of the Hawaii Revised Statutes; (b) incidents of threatened property damage or the health or safety of Owners or any other persons; (c) Assessments; (d) personal injury claims; or (e) matters that would affect the availability of any coverage pursuant to an insurance policy obtained by or on behalf of the Association.

B. **DISCUSSION.** Any Party with a Dispute shall notify the Party to whom the Dispute is directed in writing of the Dispute, which writing shall describe the nature of the Dispute and any proposed remedy (the "**Dispute Notice**"). Within a reasonable period of time after receipt of the Dispute Notice, which period shall not exceed twenty-one (21) calendar days, the Parties to the Dispute shall meet at a mutually acceptable location within or near the Project to discuss the Dispute. The Parties to the Dispute shall negotiate in good faith in an effort to resolve the Dispute.

C. **MEDIATION.** If the Parties cannot resolve such Dispute by discussion pursuant to **Article XL, Section B** above within thirty (30) calendar days after the commencement of such discussion, the matter shall be submitted to mediation by and pursuant to the protocols and procedures adopted by Dispute Prevention and Resolution, Inc. ("**DPR**") in Honolulu, Hawaii, or to any successor entity thereto, or to any other entity offering mediation services that is acceptable to the Parties. In addition, an Owner or the Association who is a Party may apply to the First Circuit Court of the State of Hawaii for an order compelling mediation as set forth in Section 514B-161 of the Act.

1. **PARTIES PERMITTED AT SESSIONS.** Persons other than the Parties, their authorized representatives, and the mediator may attend the mediation sessions only with the consent of the mediator; provided, however, such permission and consent shall not be required to allow participation of such Parties' liability insurers in the mediation to the extent required under such Parties' liability insurance policy.

2. **RECORD.** There shall be no stenographic record of the mediation process.

3. **EXPENSES.** The expenses of witnesses shall be paid by the Party producing such witnesses. All other expenses of the mediation including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses, or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties unless they agree otherwise, or otherwise set forth in Section 514B-161 of the Act. Each Party shall bear its own attorneys' fees and costs in connection with such mediation unless otherwise required under Section 514B-161 of the Act.

4. **NO JUDICIAL INTERVENTION.** If a Party institutes litigation prior to observing the procedures set forth in **Article XL, Sections B and C** above ("**Prohibited Litigation**"), such Party shall be responsible for all reasonable expenses and fees (including attorneys' fees) incurred by the other Party in obtaining a stay or dismissal of the Prohibited Litigation.

5. **CONFIDENTIALITY.** All negotiations, mediation proceedings, and any discovery conducted pursuant to these procedures and ordered to be confidential by the mediator are confidential. All proceedings conducted pursuant to these procedures shall be treated for all purposes as compromise and settlement negotiations within the meaning of Rule 408 of the Federal Rules of Evidence and Rule 408 of the Hawaii Rules of Evidence.

D. **FURTHER RESOLUTION.** If the Parties are unable to resolve a Dispute pursuant to the procedures described in **Article XL, Sections B and C** above, each Party shall have the right to pursue all rights and remedies available to such Party at law or in equity. If a Dispute proceeds in court, such action shall be brought exclusively in the federal or state courts located in Honolulu, Hawaii. The Parties hereby agree that the court shall apply Hawaii substantive law and applicable statutes of limitations and will honor claims of privilege recognized by law.

E. **USE OF PROCEEDS.** Any monetary damage or award paid to a Claimant in connection with a dispute arising out of an Alleged Defect shall first be applied towards the payment of the cost to repair the Alleged Defect, prior to the payment of any legal or consulting fees incurred by the Claimant in connection with such dispute.

F. **STATUTES OF LIMITATION.** The applicable statute of limitations shall not be tolled by anything contained in these procedures. Notwithstanding the prohibition on litigation, a Party may commence an action solely for the purpose of tolling the statutes of limitation, provided such Party immediately stays the action to resolve the Dispute pursuant to the procedures described in **Article XL, Sections B and C** above.

G. **UNENFORCEABILITY.** If any part of this **Article XL** is held to be unenforceable, it shall be severed and shall not affect either the duties to mediate hereunder or any other part of this **Article XL**.

XLI. EXEMPTIONS FOR PERSONS WITH DISABILITIES.

Notwithstanding anything to the contrary contained in the Condominium Documents, Owners with disabilities shall be allowed reasonable exemptions from the Condominium Documents, when necessary and as appropriate to enable them to use and enjoy their Units, and their appurtenant Limited Common Elements, provided that any Owner with a disability desiring such an exemption shall make such request, in writing, to the Board. That request shall set forth, with specificity and in detail, the nature of the request and the reason that the requesting party needs to be granted such an exemption. The Board shall not unreasonably withhold or delay its approval of such request, and any such request shall be deemed to be granted if not denied in writing, within forty-five (45) calendar days of the Board's receipt thereof, or within forty-five (45) calendar days of the Board's receipt of additional information reasonably required by the Board in order to consider such request, whichever shall last occur.

XLII. COMPLIANCE WITH COUNTY ZONING AND BUILDING LAWS.

The Project is in compliance with all zoning and building ordinances and codes of the County, as applicable, and all other County permitting requirements, as applicable, to the Project pursuant to Chapter 205 of the Hawaii Revised Statutes and Section 514B-5 and Section 514B-32(a)(13) of the Act, subject to the provisions of the HCDA Agreements.

XLIII. DEVELOPER'S RIGHT TO CURE ALLEGED DEFECTS.

It is Developer's intent that all Improvements constructed or made by Developer in the Project be built or made in compliance with all applicable building codes and ordinances and that such Improvements are of a quality that is consistent with the Project Quality Standard. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Developer's responsibility therefor. It is Developer's intent to resolve all disputes and claims regarding Alleged Defects (as defined below) amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association, Board, and all Owners shall be bound by the following claim resolution procedure.

A. **DEVELOPER'S RIGHT TO CURE.** In the event that the Association, Board, or any Owner (collectively, "*Claimant*") claims, contends, or alleges that any portion of the Project, including, but not limited to,

any Unit and/or any Improvements, is defective or that Developer or its agents, consultants, contractors, or subcontractors were negligent in the planning, design, engineering, grading, construction, or other development thereof (collectively, an "***Alleged Defect***"), Developer hereby reserves the right, but is not obligated, to inspect, repair, and/or replace such Alleged Defect as set forth herein.

B. **NOTICE TO DEVELOPER.** In the event that a Claimant discovers any Alleged Defect, Claimant shall, within a reasonable time after discovery, notify Developer in writing, at the address specified at the beginning of this Declaration, or such other address at which Developer maintains its principal place of business, of the specific nature of such Alleged Defect ("***Notice of Alleged Defect***").

C. **RIGHT TO ENTER, INSPECT, REPAIR, AND/OR REPLACE.** Within the timeframe described below, or a reasonable time after the independent discovery of any Alleged Defect by Developer, as part of Developer's reservation of right, Developer shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, any Unit, the Limited Common Elements, and/or any Improvements or other portion of the Project for the purposes of inspecting and, if deemed necessary by Developer, repairing and/or replacing such Alleged Defect. In conducting such inspection, repairs, and/or replacement, Developer shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances to address any Alleged Defect without the consent or approval of the Board or the Association.

D. **LEGAL ACTIONS.** No Claimant shall initiate any legal action, cause of action, proceeding, reference, or arbitration against Developer alleging damages (1) for the costs of repairing or the replacement of any Alleged Defect, (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, unless and until:

1. **Article XLIII, Sections A, B, and C** have been complied with;
2. Claimant has delivered to Developer a Notice of Alleged Defect not later than ninety (90) calendar days before the filing of any such cause of action, proceeding, reference, or arbitration against Developer and
3. Developer has either
 - a. rejected Claimant's claim, or;
 - b. within thirty (30) calendar days after its receipt of a Notice of Alleged Defect, either
 - (i) failed to offer to settle without inspecting the Alleged Defect;
 - (ii) failed to propose to inspect the Alleged Defect and within thirty (30) calendar days following any such proposal, failed to inspect the Alleged Defect, provided that Claimant permitted sufficient access; or
 - (iii) failed, within fourteen (14) calendar days after any inspection, to serve Claimant with a written statement offering to fully or partially remedy the Alleged Defect at no cost to Claimant, offering to settle the Alleged Defect by monetary payment, offering a combination of the foregoing, or explaining that Developer will not proceed further to remedy the Alleged Defect.

E. **NO ADDITIONAL OBLIGATIONS; IRREVOCABILITY AND WAIVER OF RIGHT.** Nothing set forth in this **Article XLIII** shall be construed to impose any obligation on Developer to inspect, repair, or replace any item or Alleged Defect for which Developer is not otherwise obligated to do so under applicable law. The right of Developer to enter, inspect, repair, and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by Developer at said Bureau.

F. **WAIVER.** Notwithstanding anything to the contrary in this Declaration, Developer hereby disclaims any representations and warranties in respect of, and shall have no continuing liability to any Owner, the

Board, or the Association for any design or construction defects (whether known or unknown) relating to the Project, including latent defects.

G. **SEVERABILITY AND APPLICABILITY.** If any provision of this **Article XLIII** is held to be invalid, such a determination shall not affect the other provisions hereof, which shall remain in full force and effect. Notwithstanding anything to the contrary herein, if any provision in this **Article XLIII** conflicts with any applicable portion of Hawaii Revised Statutes Chapter 672E, the Contractor Repair Act, the provisions of said statute, as amended, shall apply.

XLIV. DEVELOPER'S RIGHT TO APPOINT AND REMOVE OFFICERS AND DIRECTORS; DEVELOPER CONTROL PERIOD.

Notwithstanding anything contained in this Declaration or the Bylaws to the contrary, Developer shall have the right to appoint and remove Officers and Directors for a certain period of time (the "**Developer Control Period**"). The Developer Control Period shall terminate no later than the earlier of the following: (a) sixty (60) calendar days after the conveyance of seventy-five percent (75%) of the Common Interest appurtenant to Units that may be created to Owners other than Developer or Developer Affiliate; (b) two (2) years after Developer has ceased to offer Units for sale in the ordinary course of business; (c) two (2) years after any right to add Units was last exercised; or (d) the day Developer, after giving written notice to Owners, records an instrument voluntarily surrendering all rights to control the activities of the Association. Developer may voluntarily surrender the right to appoint and remove Officers and Directors before the termination of the Developer Control Period, but in that event, Developer may require, for the duration of the Developer Control Period, that specified actions of the Association or Board, as described in a recorded instrument executed by Developer, be approved by Developer before they become effective.

XLV. WAIVER OF CERTAIN RIGHTS.

A. **WAIVER OF CERTAIN DAMAGES.** WITH RESPECT TO ALL DISPUTES AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OWNER, THE ASSOCIATION, THE BOARD, MANAGING AGENT, DEVELOPER, AND EACH OF THEIR REPRESENTATIVES WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO RECOVER PUNITIVE, CONSEQUENTIAL, EXEMPLARY, TREBLE, OR OTHER MULTIPLE DAMAGES.

B. **WAIVER OF JURY TRIAL.** EACH OWNER, THE ASSOCIATION, THE BOARD, MANAGING AGENT, DEVELOPER, AND EACH OF THEIR REPRESENTATIVES UNCONDITIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY CLAIM, CAUSE OF ACTION, OR DISPUTE. THE PARTIES AGREE THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN COURT SHALL BE DECIDED BY A JUDGE AND NOT BY A JURY.

C. **WAIVER OF CLASS ACTION.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OWNER, THE ASSOCIATION, THE BOARD, MANAGING AGENT, DEVELOPER, AND EACH OF THEIR REPRESENTATIVES UNCONDITIONALLY WAIVE ANY RIGHT TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLASS PERTAINING TO ANY DISPUTE. THE PARTIES UNCONDITIONALLY AGREE THAT ANY DISPUTE WILL BE ADJUDICATED ON AN INDIVIDUAL BASIS. ALL PARTIES TO THE LITIGATION MUST BE INDIVIDUALLY NAMED. THERE WILL BE NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE LITIGATED ON A CLASS ACTION OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC OR OTHER PERSONS SIMILARLY SITUATED, AND THE PARTIES ARE SPECIFICALLY BARRED FROM DOING SO.

XLVI. INDEMNIFICATION OF LANDOWNER.

Developer and the Association agree to indemnify, defend, and hold Landowner and its officers, directors, shareholders, agents, and employees harmless from and against any and all claims, liabilities, and any damages, including attorneys' fees, any of which arise, directly or indirectly, as a result of, or directly or indirectly in connection with, this Declaration or any other document, including, but not limited to, any Developer's public report under the Act, created, executed, or delivered by Developer in connection with the Project; including, without limitation, claims

against Landowner as a result of Landowner permitting Developer to create a condominium property regime on the Land or Landowner being a signatory to this Declaration and/or the Bylaws. Nothing in the foregoing exception shall be deemed a waiver by Landowner or a limitation of any of Landowner's rights or remedies, except as set forth in said exception. Developer and, by acquiring an interest in the Project, Owners, acknowledge that Landowner has no obligation to review this Declaration, or any other document prepared by Developer for adequacy or compliance with law, that Landowner does not by the execution hereof endorse this Declaration or any such document, and any inadequacy or misrepresentation by Developer hereunder shall not be deemed negligence, gross negligence, or reckless or willful misconduct of Landowner.

XLVII. LIMITED PURPOSE OF JOINDER BY LANDOWNER; RELEASE AND WAIVER OF CLAIMS.

Landowner has joined this Declaration for the sole purpose of permitting Developer to comply with the requirements relating to the submission of the Land to a condominium property regime pursuant to the Act, has not reviewed this Declaration for adequacy or compliance with law, and expressly disclaims any responsibility for this Declaration, the matters set forth herein, and/or any other documents or agreements relating to the Project, including, but not limited to, the Bylaws and any Developer's public report with an effective date issued by the Commission under the Act relating to the Project. Developer, the Association, all Owners, mortgagees, vendors and vendees under Agreements of Sale, tenants and Occupants of Units and their employees, business invitees, and any other Persons who may use any part of the Project do so with the understanding that Landowner has no liability hereunder, and each and every one of the foregoing shall be deemed to the fullest extent permitted by law to have waived as against Landowner, and to have released Landowner as to, any claim relating to the Project. No action taken by Developer or any other Person pursuant to this Declaration shall be deemed to be the act of Landowner. Notwithstanding anything provided to the contrary, under no circumstances will Landowner have any liability for expenses under this Declaration except to the extent that Landowner is an Owner. In the event that Landowner is found to be liable in any claim relating to this Declaration, any recovery shall be limited to the assets of Landowner, and shall not extend to the individual employees, partners, officers, directors, or shareholders thereof. No employee, partner, officer, director, or shareholder of Landowner shall, by reason of being an employee, partner, officer, director, or shareholder of Landowner, have any personal liability under the terms of this Declaration.

XLVIII. GENERAL PROVISIONS.

A. **NO WAIVER.** Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce that provision or any other provision of this Declaration.

B. **SEVERABILITY.** The provisions of this Declaration shall be deemed independent and severable, and if any term stated in this instrument is subsequently determined to be invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability of the remaining terms stated in this instrument unless that is made impossible by the absence of the omitted term.

C. **CAPTIONS.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of this Declaration or the intent of any provisions thereof.

D. **GENDER.** The use of any gender in this Declaration shall be deemed to include either or both genders and the use of the singular shall be deemed to include the plural whenever the context so requires.

E. **INTERPRETATION.** The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform condominium property regime whereby the Owners of Units shall carry out and pay for the operation and maintenance of the Project as a mutually beneficial and efficient establishment.

F. **CONSTRUCTIVE NOTICE AND ACCEPTANCE; INCORPORATION OF DECLARATION INTO DEEDS.** Every Person or entity who now or hereafter owns or acquires any right, title, or interest in or to any portion of the Project is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction, and provision contained in this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such Person acquired an interest in the Project. Any deed or other instrument by which all or any portion of the Project is conveyed, whether by fee, easement, leasehold interest, or

otherwise shall be subject to the provisions of this Declaration and any instrument of conveyance shall be deemed to incorporate the provisions of this Declaration, whether or not such instrument makes reference to this Declaration.

G. CUMULATIVE REMEDIES. Each remedy provided for in this Declaration shall be cumulative and not exclusive. The failure to exercise any remedy provided for in this Declaration or any other document shall not constitute a waiver of such remedy or of any other remedy provided herein or therein.

H. NO PUBLIC DEDICATION. Nothing herein contained shall be deemed a gift or dedication of any portion of the Project or portion thereof to the general public, or for the general public, or for any public use or purpose whatsoever; it being the intention and understanding of the parties hereto that this Declaration shall be limited to and for the purposes herein expressed solely for the benefit of the Owners.

I. GOVERNING LAW. This Declaration shall be governed by the laws of the State of Hawaii without giving effect to the principles of conflict of laws thereof.

J. PROVISIONS RUN WITH LAND. The provisions of this Declaration are intended to run with the land. When any interest in real property in the Project is conveyed, the interest shall be burdened by the provisions of this Declaration for the benefit of the remaining portions of the Project and the interest conveyed shall be entitled to the benefit of this Declaration.

K. CONFLICT OF PROVISIONS. In the event of any conflict between this Declaration and any of the Condominium Documents (other than this Declaration) this Declaration shall control. In the event of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control. In the event of any conflict between the Bylaws and the House Rules, the Bylaws shall control.

L. OWNERS' RIGHT TO INCORPORATE. The Owners may form a non-profit Hawaii corporation to serve as the Association. If so, the corporation will have all of the rights, powers, obligations, and duties of the Association as stated in the Condominium Documents or the Act. The fact that a corporation is formed to be the Association does not change any of the covenants, conditions, or restrictions contained in this Declaration or in the Bylaws. The corporation must adopt the Bylaws as the bylaws of the corporation. The Articles of Incorporation and the Bylaws of the corporation will be subordinate to this Declaration. If the corporation takes any action that violates all or any part of this Declaration or the Bylaws, the action will be void.

M. NO REPRESENTATIONS OR WARRANTIES. No representations or warranties of any kind, express or implied, have been given or made by Developer or its agents or employees in connection with the Project or any portion thereof, or any Improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes, or regulation thereof as a condominium property regime, except as specifically and expressly set forth in this Declaration and except as may be recorded by Developer from time to time with any governmental authority.

N. RULE AGAINST PERPETUITIES. If any provision of the covenants, conditions, restrictions, or other provisions of this Declaration, shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Queen Elizabeth II (Elizabeth Alexandra Mary).


XLIX. INVALIDITY AND CHANGES IN LAW.

The invalidity of any provision of this Declaration for any reason shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration, and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such provision had never been included herein.

In the event of a change in statutory law applicable to this Project occurring after the filing of this Declaration or the Bylaws, such change in law shall control over the provisions of this Declaration or the Bylaws only to the extent the legislative body enacting such change in law expressly provides that the provisions of such change in law shall control over provisions to the contrary in preexisting Condominium Documents.

IN WITNESS WHEREOF, Developer has executed this Declaration of Condominium Property Regime of Ilima Ward Village as of the date first above written.

BLOCK E WARD VILLAGE, LLC,
a Delaware limited liability company

By 
Name: David J. Schindler
Its Vice President

"Developer"

STATE OF HAWAII

SS:

CITY AND COUNTY OF HONOLULU

On this 04th day of February, 2025, before me appeared Dany Transtine, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Tracey K. Morsucci
Print Name: Tracey K. Morsucci
Notary Public, in and for said State of Hawaii

My commission expires: 9/14/2026

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

DECLARATION OF CONDOMINIUM PROPERTY REGIME OF ILIMA WARD VILLAGE

Document Date: _____ or ☒ Undated at time of notarization.

No. of Pages: 91 Jurisdiction: First Circuit
(in which notarial act is performed)

Tracey K. Morsucci 2.6.25
Signature of Notary Date of Notarization and
Certification Statement

Tracey K. Morsucci
Printed Name of Notary

My commission expires 9/14/2026



(Official Stamp or Seal)

**FEE OWNER JOINDER TO THE DECLARATION OF CONDOMINIUM PROPERTY REGIME OF
ILIMA WARD VILLAGE**

HHC WV Block E Member, LLC, a Delaware limited liability company, as owner of the fee simple interest in the Land described in Exhibit "A" to this Declaration ("**Landowner**"), hereby joins in this Declaration and pursuant to Section 514B-31 of the Act submits all of its interest in the Land to the condominium property regime created by this Declaration.

Landowner has joined this Declaration for the sole purpose of permitting Developer to comply with the requirements relating to the submission of the Land to a condominium property regime pursuant to the Act. Landowner has not reviewed this Declaration for adequacy or compliance with law, and expressly disclaims any responsibility for this Declaration, the matters set forth herein, and/or any other documents or agreements relating to the Project, including, but not limited to, the Bylaws and any Developer's public report with an effective date issued by the Commission under the Act relating to the Project. Developer, the Association, all Owners, mortgagees, vendors and vendees under Agreements of Sale, tenants and Occupants of Units and their employees, business invitees, and any other Persons who may use any part of the Project do so with the understanding that Landowner has no liability hereunder, and each and every one of the foregoing shall be deemed to the fullest extent permitted by law to have waived as against Landowner, and to have released Landowner as to, any claim relating to the Project. No action taken by Developer or any other Person pursuant to this Declaration shall be deemed to be the act of Landowner. Notwithstanding anything provided to the contrary, under no circumstances will Landowner have any liability for expenses under this Declaration except to the extent that Landowner is an Owner of a Unit in the Project. No officer, director, or employee of Landowner shall, by reason of being an officer, director, or employee of Landowner, have any personal liability under the terms of this Declaration.

HHC WV BLOCK E MEMBER, LLC,
a Delaware limited liability company

By 

Name: David Major

Its: Assistant Secretary

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 6th day of February, 2025, before me appeared David Mager, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



(Official Stamp or Seal)

Tracey K. Morisugi
Print Name: Tracey K. Morisugi
Notary Public, in and for said State of Hawaii
My commission expires: 9/14/2026

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: FEE OWNER JOINDER TO THE DECLARATION OF CONDOMINIUM PROPERTY REGIME OF ILIMA WARD VILLAGE

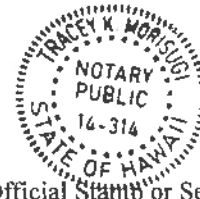
Document Date: _____ or ☒ Undated at time of notarization.

No. of Pages: 91 Jurisdiction: First Circuit
(in which notarial act is performed)

Tracey K. Morisugi 2.6.25
Signature of Notary Date of Notarization and
Certification Statement

Tracey K. Morisugi
Printed Name of Notary

My commission expires 9/14/2026



(Official Stamp or Seal)

EXHIBIT "A"
LAND DESCRIPTION

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 1944 to E. W. Clark on Land Commission Award Number 387 to the American Board of Commissioners for Foreign Missions) situate, lying and being at Kaakaukui, Kewalo and Kukuluaeo, City and County of Honolulu, Island of Oahu, State of Hawaii, being LOT E, Subdivision File Number 2023/SUB-64, and thus bounded and described:

Beginning at the northwest corner of this parcel, and being also the northeast corner of Lot 7, as shown on Map 2 of Land Court Consolidation 53, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 7,075.51 feet south and 734.16 feet west, and running by azimuths measured clockwise from true South:

1. 6° 25' 22" 250.00 feet along Lot 7 as shown on Map 2 of Land Court Consolidation 53;
2. Thence, along north side of Ala Moana Boulevard on a curve to the right with a radius of 1,350.63 feet, the chord azimuth and distance being:

 103° 54' 17" 351.74 feet;
3. 201° 23' 12" 250.00 feet along Lot D as shown on DPP File No. 2023/SUB-64, being a portion of R. P. 1944 to E. W. Clark on L. C. Aw. 387 to the American Board of Commissioners for Foreign Missions;
4. Thence, along south side of Auahi Street on a curve to the left with a radius of 1,100.63 feet, the chord azimuth and distance being:

 283° 54' 17" 286.63 feet, to the point of beginning and containing an area of 80,024 square feet, more or less.

(End of Exhibit A)

EXHIBIT "B"

UNIT NUMBERS, UNIT TYPES, NUMBER OF BEDROOMS AND BATHROOMS, APPROXIMATE NET LIVING AREAS, APPROXIMATE NET LANAI AREAS, COMMON INTEREST, CLASS COMMON INTEREST, PARKING STALLS, AND STORAGE LOCKERS

RESIDENTIAL UNITS

Unit Number	Unit Type	Bed/Bath	Approx. Net Living Area (Square Feet)	Approx. Net Lanai Area (Square Feet)	Residential Class Common Interest %	Common Interest %	LCE Parking Stall Nos.
700	3A	3/3.5	2,656	258	0.788%	0.775%	P2-084-S / P2-085-S
701	3B	3/3.5	2,532	350	0.751%	0.739%	P2-076-S / P2-077-S
702	2A	2/2.5	1,900	62	0.563%	0.554%	P3-017-S / P3-018-S
703	2D	2/2.5	1,916	N/A	0.568%	0.559%	P4-099-S / P4-100-S
704	2B	2/2.5	1,985	12	0.589%	0.579%	P4-039-S / P4-040-S
705	2C	2/2.5	1,823	N/A	0.541%	0.532%	P4-125-S / P4-126-S
800	3A	3/3.5	2,656	258	0.788%	0.775%	P3-026-S / P3-025-S
801	3B	3/3.5	2,532	386	0.751%	0.739%	P2-074-S / P2-075-S
802	2A	2/2.5	1,900	62	0.563%	0.554%	P3-015-S / P3-016-S
803	2D	2/2.5	1,916	N/A	0.568%	0.559%	P4-095-S / P4-096-S
804	2B	2/2.5	1,985	12	0.589%	0.579%	P4-068-S / P4-067-S
805	2C-1	2/2.5	1,784	N/A	0.529%	0.521%	P4-123-S / P4-124-S
900	3A	3/3.5	2,656	258	0.788%	0.775%	P3-030-S / P3-029-S
901	3B	3/3.5	2,532	383	0.751%	0.739%	P2-072-S / P2-073-S
902	2A	2/2.5	1,900	50	0.563%	0.554%	P3-013-S / P3-014-S
903	2D	2/2.5	1,916	N/A	0.568%	0.559%	P4-091-S / P4-092-S
904	2B	2/2.5	1,985	N/A	0.589%	0.579%	P4-074-S / P4-073-S
905	2C-1	2/2.5	1,784	N/A	0.529%	0.521%	P4-121-S / P4-122-S
1000	3A	3/3.5	2,656	258	0.788%	0.775%	P3-034-S / P3-033-S
1001	3B	3/3.5	2,532	383	0.751%	0.739%	P2-070-S / P2-071-S
1002	2A	2/2.5	1,900	50	0.563%	0.554%	P3-011-S / P3-012-S
1003	2D	2/2.5	1,916	N/A	0.568%	0.559%	P4-087-S / P4-088-S
1004	2B	2/2.5	1,985	N/A	0.589%	0.579%	P4-053-S / P4-052-S
1005	2C-1	2/2.5	1,784	N/A	0.529%	0.521%	P4-119-S / P4-120-S
1100	3A	3/3.5	2,656	257	0.788%	0.775%	P3-038-S / P3-037-S
1101	3B	3/3.5	2,532	391	0.751%	0.739%	P2-068-S / P2-069-S
1102	2A	2/2.5	1,900	62	0.563%	0.554%	P3-009-S / P3-010-S
1103	2D	2/2.5	1,916	N/A	0.568%	0.559%	P4-081-S / P4-082-S
1104	2B	2/2.5	1,985	12	0.589%	0.579%	P4-063-S / P4-064-S
1105	2C-1	2/2.5	1,784	N/A	0.529%	0.521%	P4-117-S / P4-118-S
1200	3A	3/3.5	2,656	257	0.788%	0.775%	P3-042-S / P3-041-S
1201	3B	3/3.5	2,532	286	0.751%	0.739%	P2-066-S / P2-067-S
1202	2A	2/2.5	1,900	62	0.563%	0.554%	P4-021-S / P4-020-S
1203	2D	2/2.5	1,916	N/A	0.568%	0.559%	P4-079-S / P4-080-S

EXHIBIT "B"

(Page 1 of 6)

Unit Number	Unit Type	Bed/Bath	Approx. Net Living Area (Square Feet)	Approx. Net Lanai Area (Square Feet)	Residential Class Common Interest %	Common Interest %	LCE Parking Stall Nos.
1204	2B	2/2.5	1,985	12	0.589%	0.579%	P4-055-S / P4-054-S
1205	2C-1	2/2.5	1,784	N/A	0.529%	0.521%	P4-115-S / P4-116-S
1300	3A	3/3.5	2,656	257	0.788%	0.775%	P3-055-S / P3-056-S
1301	3B-1	3/3.5	2,533	326	0.751%	0.739%	P2-010-S / P2-011-S
1302	2A-1	2/2.5	1,899	62	0.563%	0.554%	P4-023-S / P4-022-S
1303	2D-1	2/2.5	1,915	N/A	0.568%	0.559%	P4-077-S / P4-078-S
1304	2B-1	2/2.5	1,979	12	0.587%	0.577%	P4-061-S / P4-062-S
1305	2C-2	2/2.5	1,782	N/A	0.528%	0.520%	P4-112-S / P4-113-S
1400	3A	3/3.5	2,656	257	0.788%	0.775%	P3-053-S / P3-054-S
1401	3B-1	3/3.5	2,533	311	0.751%	0.739%	P2-008-S / P2-009-S
1402	2A-1	2/2.5	1,899	62	0.563%	0.554%	P4-025-S / P4-024-S
1403	2D-1	2/2.5	1,915	N/A	0.568%	0.559%	P3-136-S / P3-137-S
1404	2B-1	2/2.5	1,979	12	0.587%	0.577%	P4-057-S / P4-056-S
1405	2C-2	2/2.5	1,782	N/A	0.528%	0.520%	P4-110-S / P4-111-S
1500	3A	3/3.5	2,656	257	0.788%	0.775%	P3-051-S / P3-052-S
1501	3B-1	3/3.5	2,533	311	0.751%	0.739%	P2-006-S / P2-007-S
1502	2A-1	2/2.5	1,899	62	0.563%	0.554%	P4-027-S / P4-026-S
1503	2D-1	2/2.5	1,915	N/A	0.568%	0.559%	P3-134-S / P3-135-S
1504	2B-1	2/2.5	1,979	12	0.587%	0.577%	P4-059-S / P4-060-S
1505	2C-2	2/2.5	1,782	N/A	0.528%	0.520%	P4-108-S / P4-109-S
1600	3A	3/3.5	2,656	257	0.788%	0.775%	P3-046-S / P3-047-S
1601	3B-1	3/3.5	2,533	326	0.751%	0.739%	P2-004-S / P2-005-S
1602	2A-1	2/2.5	1,899	62	0.563%	0.554%	P4-029-S / P4-028-S
1603	2D-1	2/2.5	1,915	N/A	0.568%	0.559%	P3-132-S / P3-133-S
1604	2B-1	2/2.5	1,979	12	0.587%	0.577%	P3-115-S / P3-116-S
1605	2C-2	2/2.5	1,782	N/A	0.528%	0.520%	P4-018-S / P4-019-S
1700	3A	3/3.5	2,656	257	0.788%	0.775%	P3-044-S / P3-045-S
1701	3B-1	3/3.5	2,533	311	0.751%	0.739%	P2-002-S / P2-003-S
1702	2A-1	2/2.5	1,899	62	0.563%	0.554%	P4-031-S / P4-030-S
1703	2D-1	2/2.5	1,915	N/A	0.568%	0.559%	P3-130-S / P3-131-S
1704	2B-1	2/2.5	1,979	12	0.587%	0.577%	P3-113-S / P3-114-S
1705	2C-2	2/2.5	1,782	N/A	0.528%	0.520%	P4-016-S / P4-017-S
1800	3A	3/3.5	2,656	257	0.788%	0.775%	P3-073-S / P3-072-S
1801	3B-1	3/3.5	2,533	311	0.751%	0.739%	P2-013-S / P2-012-S
1802	2A-1	2/2.5	1,899	62	0.563%	0.554%	P4-033-S / P4-032-S
1803	2D-1	2/2.5	1,915	N/A	0.568%	0.559%	P3-128-S / P3-129-S
1804	2B-1	2/2.5	1,979	12	0.587%	0.577%	P3-111-S / P3-112-S
1805	2C-2	2/2.5	1,782	N/A	0.528%	0.520%	P4-014-S / P4-015-S
1900	3A	3/3.5	2,656	257	0.788%	0.775%	P3-075-S / P3-074-S
1901	3B-1	3/3.5	2,533	326	0.751%	0.739%	P2-015-S / P2-014-S
1902	2A-1	2/2.5	1,899	62	0.563%	0.554%	P4-035-S / P4-034-S

EXHIBIT "B"

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Unit Number	Unit Type	Bed/Bath	Approx. Net Living Area (Square Feet)	Approx. Net Lanai Area (Square Feet)	Residential Class Common Interest %	Common Interest %	LCE Parking Stall Nos.
1903	2D-1	2/2.5	1,915	N/A	0.568%	0.559%	P3-126-S / P3-127-S
1904	2B-1	2/2.5	1,979	12	0.587%	0.577%	P3-109-S / P3-110-S
1905	2C-2	2/2.5	1,782	N/A	0.528%	0.520%	P4-012-S / P4-013-S
2000	3A	3/3.5	2,656	257	0.788%	0.775%	P3-079-S / P3-078-S
2001	3B-1	3/3.5	2,533	311	0.751%	0.739%	P2-017-S / P2-016-S
2002	2A-1	2/2.5	1,899	62	0.563%	0.554%	P4-037-S / P4-036-S
2003	2D-1	2/2.5	1,915	N/A	0.568%	0.559%	P3-124-S / P3-125-S
2004	2B-1	2/2.5	1,979	12	0.587%	0.577%	P3-107-S / P3-108-S
2005	2C-2	2/2.5	1,782	N/A	0.528%	0.520%	P4-010-S / P4-011-S
2100	3A	3/3.5	2,656	257	0.788%	0.775%	P3-081-S / P3-080-S
2101	3B-1	3/3.5	2,533	311	0.751%	0.739%	P2-019-S / P2-018-S
2102	2A-1	2/2.5	1,899	62	0.563%	0.554%	P4-049-S / P4-050-S
2103	2D-1	2/2.5	1,915	N/A	0.568%	0.559%	P3-122-S / P3-123-S
2104	2B-1	2/2.5	1,979	12	0.587%	0.577%	P3-105-S / P3-106-S
2105	2C-2	2/2.5	1,782	N/A	0.528%	0.520%	P4-008-S / P4-009-S
2200	3A	3/3.5	2,656	257	0.788%	0.775%	P3-059-S / P3-058-S
2201	3B-1	3/3.5	2,533	326	0.751%	0.739%	P2-021-S / P2-020-S
2202	2A-1	2/2.5	1,899	62	0.563%	0.554%	P4-047-S / P4-048-S
2203	2D-1	2/2.5	1,915	N/A	0.568%	0.559%	P3-120-S / P3-121-S
2204	2B-1	2/2.5	1,979	12	0.587%	0.577%	P3-103-S / P3-104-S
2205	2C-2	2/2.5	1,782	N/A	0.528%	0.520%	P4-006-S / P4-007-S
2300	3A	3/3.5	2,656	257	0.788%	0.775%	P3-061-S / P3-060-S
2301	3B-1	3/3.5	2,533	311	0.751%	0.739%	P2-086-S / P2-087-S
2302	2A-1	2/2.5	1,899	62	0.563%	0.554%	P4-045-S / P4-046-S
2303	2D-1	2/2.5	1,915	N/A	0.568%	0.559%	P3-003-S / P3-002-S
2304	2B-1	2/2.5	1,979	12	0.587%	0.577%	P3-101-S / P3-102-S
2305	2C-2	2/2.5	1,782	N/A	0.528%	0.520%	P4-004-S / P4-005-S
2400	3A	3/3.5	2,656	257	0.788%	0.775%	P3-070-S / P3-071-S
2401	3B-1	3/3.5	2,533	311	0.751%	0.739%	P2-082-S / P2-083-S
2402	2A-1	2/2.5	1,899	62	0.563%	0.554%	P4-043-S / P4-044-S
2403	2D-1	2/2.5	1,915	N/A	0.568%	0.559%	P3-005-S / P3-004-S
2404	2B-1	2/2.5	1,979	12	0.587%	0.577%	P3-099-S / P3-100-S
2405	2C-2	2/2.5	1,782	N/A	0.528%	0.520%	P4-101-S / P4-102-S
2500	3A	3/3.5	2,656	257	0.788%	0.775%	P3-063-S / P3-062-S
2501	3B-1	3/3.5	2,533	326	0.751%	0.739%	P3-028-S / P3-027-S
2502	2A-1	2/2.5	1,899	62	0.563%	0.554%	P4-041-S / P4-042-S
2503	2D-1	2/2.5	1,915	N/A	0.568%	0.559%	P3-007-S / P3-006-S
2504	2B-1	2/2.5	1,979	12	0.587%	0.577%	P3-095-S / P3-096-S
2505	2C-2	2/2.5	1,782	N/A	0.528%	0.520%	P4-097-S / P4-098-S
2600	3A	3/3.5	2,656	257	0.788%	0.775%	P3-068-S / P3-069-S
2601	3B-1	3/3.5	2,533	311	0.751%	0.739%	P3-032-S / P3-031-S

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Unit Number	Unit Type	Bed/Bath	Approx. Net Living Area (Square Feet)	Approx. Net Lanai Area (Square Feet)	Residential Class Common Interest %	Common Interest %	LCE Parking Stall Nos.
2602	2A-1	2/2.5	1,899	62	0.563%	0.554%	P4-066-S / P4-065-S
2603	2D-1	2/2.5	1,915	N/A	0.568%	0.559%	P3-023-S / P3-024-S
2604	2B-1	2/2.5	1,979	12	0.587%	0.577%	P3-093-S / P3-094-S
2605	2C-2	2/2.5	1,782	N/A	0.528%	0.520%	P4-093-S / P4-094-S
2700	3A	3/3.5	2,656	258	0.788%	0.775%	P3-065-S / P3-064-S
2701	3B-1	3/3.5	2,533	311	0.751%	0.739%	P3-036-S / P3-035-S
2702	2A-1	2/2.5	1,899	50	0.563%	0.554%	P4-072-S / P4-071-S
2703	2D-1	2/2.5	1,915	N/A	0.568%	0.559%	P3-021-S / P3-022-S
2704	2B-1	2/2.5	1,979	N/A	0.587%	0.577%	P3-091-S / P3-092-S
2705	2C-2	2/2.5	1,782	N/A	0.528%	0.520%	P4-089-S / P4-090-S
2800	3A	3/3.5	2,656	258	0.788%	0.775%	P3-066-S / P3-067-S
2801	3B-1	3/3.5	2,533	338	0.751%	0.739%	P3-040-S / P3-039-S
2802	2A-2	2/2.5	1,897	50	0.563%	0.553%	P4-076-S / P4-075-S
2803	2D-2	2/2.5	1,912	N/A	0.567%	0.558%	P3-019-S / P3-020-S
2804	2B-2	2/2.5	1,973	N/A	0.585%	0.576%	P3-089-S / P3-090-S
2805	2C-3	2/2.5	1,821	N/A	0.540%	0.531%	P4-085-S / P4-086-S
PH 2900	3A-1	3/3.5	2,655	257	0.787%	0.775%	P2-024-S / P2-023-S / P2-022-S
PH 2901	3B-1	3/3.5	2,533	285	0.751%	0.739%	P3-048-S / P3-049-S / P3-050-S
PH 2902	4A	4/4.5	4,396	660	1.304%	1.283%	P2-037-S / P2-036-S / P2-035-S / P2-034-S
PH 2903	3C	3/3.5	2,483	N/A	0.736%	0.724%	P2-027-S / P2-026-S / P2-025-S
PH 3000	6A	6/7	5,252	547	1.552%	1.532%	P2-058-S / P2-059-S / P2-060-S / P2-061-S
PH 3001	2E	2/2.5	2,197	253	0.651%	0.641%	P3-085-S / P3-086-S
PH 3002	4A-1	4/4.5	4,396	322	1.304%	1.283%	P2-044-S / P2-045-S / P2-046-S / P2-047-S
PH 3100	5A	5/6.5	4,819	392	1.429%	1.406%	P2-057-S / P2-056-S / P2-055-S / P2-054-S
PH 3101	2E-1	2/2.5	2,199	24	0.652%	0.642%	P3-087-S / P3-088-S
PH 3102	4A-2	4/4.5	4,405	213	1.306%	1.285%	P2-040-S / P2-041-S / P2-042-S / P2-043-S
PH 3200	4B	4/4.5	4,286	440	1.271%	1.251%	P2-062-S / P2-063-S / P2-064-S / P2-065-S
PH 3201	2E-2	2/2.5	2,206	12	0.654%	0.644%	P2-080-S / P2-081-S
PH 3202	4A-3	4/4.5	4,408	139	1.307%	1.286%	P2-053-S / P2-052-S / P2-051-S / P2-050-S
PH 3300	3D	3/4	4,038	619	1.197%	1.178%	P2-033-S / P2-032-S / P2-031-S
PH 3301	2E-2	2/2.5	2,206	12	0.654%	0.644%	P2-078-S / P2-079-S
PH 3302	3E	3/3.5	3,830	570	1.136%	1.117%	P2-030-S / P2-029-S / P2-028-S
Total			337,238		100.000%	98.395%	

COMMERCIAL UNITS

Unit Number	Unit Type	Approx. Net Area (Square Feet)	Commercial Class Common Interest %	Common Interest %
C1	Commercial	2,284	45.210%	0.666%
C2	Commercial	1,817	35.966%	0.530%
C3	Commercial	951	18.824%	0.277%
Total		5,052	100.000%	1.473%

RECREATIONAL UNIT

Unit Number	Unit Type	Approx. Net Area (Square Feet)	Recreational Class Common Interest %	Common Interest %
R1	Recreational	376	100.000%	0.112%
Total		376	100.000%	0.112%

UTILITY UNIT

Unit Number	Unit Type	Approx. Net Area (Square Feet)	Utility Class Common Interest %	Common Interest %
U1	Utility	68	100.000%	0.020%
Total		68	100.000%	0.020%

PROJECT TOTAL

Unit Type	Approx. Net Area (Square Feet)	Common Interest %
Residential Unit Total	337,238	98.395%
Commercial Unit Total	5,052	1.473%
Recreational Unit Total	376	0.112%
Utility Unit Total	68	0.020%
PROJECT TOTAL	342,734	100.000%

NOTE: DUE TO STRUCTURAL VARIATIONS, NOT ALL UNITS OF THE SAME UNIT TYPE ARE IDENTICAL, AND ACCORDINGLY, THE APPROXIMATE NET LIVING AREA AND APPROXIMATE NET LANAI AREA MAY VARY AMONG UNITS OF THE SAME UNIT TYPE. ADDITIONALLY, UNITS OF THE

SAME UNIT TYPE MAY HAVE DIFFERENT LANAI DESIGNS AS MORE PARTICULARLY SHOWN ON THE CONDOMINIUM MAP.

A. LAYOUT AND FLOOR PLANS OF UNITS. Each Residential Unit has the number of bedrooms ("*Bed*") and bathrooms ("*Bath*") noted above. The layouts and floor plans of each Unit are depicted on the Condominium Map. None of the Units contain a basement.

B. APPROXIMATE NET LIVING AREAS. The approximate net living areas of the Units were determined by measuring the area between the interior finished surfaces of all perimeter and party walls at the floor for each Unit and includes the area occupied by load bearing and nonloadbearing interior walls, columns, ducts, vents, shafts, stairways and the like located within the Unit's perimeter walls. All areas are not exact and are estimates based on the floor plans of each type of Unit.

C. COMMON INTEREST. The Common Interest for each of the total one hundred fifty-three (153) Units (including the Commercial Units, Residential Units, the Recreational Unit, and the Utility Unit) in the Project is calculated based on dividing the approximate net living area of the Unit, as applicable, by the total net living area of all the Units in the Project. In order to permit the Common Interest for all Units in the Project to equal exactly one hundred percent (100%), the Common Interest attributable to Recreational Unit No. R1 was increased by 0.002%.

D. COMMERCIAL UNIT CLASS COMMON INTEREST, RESIDENTIAL UNIT CLASS COMMON INTEREST, AND RECREATIONAL UNIT CLASS COMMON INTEREST. The Commercial Unit Class Common Interest is calculated for each Commercial Unit based on dividing the approximate net living area of the Commercial Unit by the total net living area of all Commercial Units in the Project. The Residential Unit Class Common Interest is calculated based on dividing the approximate net living area of the Residential Unit by the total net living area of all Residential Units in the Project. In order to permit the Residential Unit Class Common Interest to equal one hundred percent (100%), the Residential Unit Class Common Interest attributable to Residential Unit No. PH 3000 was decreased by 0.005%. The Recreational Unit Class Common Interest is calculated for each Recreational Unit based on dividing the approximate net living area of the Recreational Unit by the total net living area of all Recreational Units in the Project.

E. PARKING STALLS AND STORAGE LOCKERS. The Condominium Map depicts the location, type, and number of parking stalls and storage lockers in the Project. All parking stalls and storage lockers not otherwise identified above as a Unit Limited Common Element to a specific Unit are Unit Limited Common Elements appurtenant to Utility Unit No. U1. Developer has the reserved right to redesignate such parking stalls and storage lockers currently designated as Unit Limited Common Elements appurtenant to Utility Unit No. U1, to other Units in the Project as Unit Limited Common Elements appurtenant to such Units.

(End of Exhibit B)

EXHIBIT "C"

TABLE OF SPECIAL COSTS AND ALTERNATIVE ALLOCATIONS

Special Cost Item	Alternative Allocation
Electricity – Parking Structure	Level 1 based on Common Interest. Levels 2-4 will be paid 100% by Residential Unit Class.
Electricity – Level 1 Exterior Lighting	Will be on sub-metered off of the residential electric meter. Paid based on Common Interest.
Water – Parking Structure	Residential Unit Class pays 100%.
Fire Alarm and Smoke Detector inspection, service, and maintenance – Parking Structure	Based on Common Interest.
Fire Extinguisher inspection, service, and maintenance – Parking Structure	Based on Common Interest.
Fire Sprinkler and Fire Hose Pump inspection, service, and maintenance – Parking Structure	Based on Common Interest.
Wet/Dry standpipe inspection, service, and maintenance – Parking Structure	Based on Common Interest.
Oil Water Separator – Parking Structure	Based on Common Interest.
Pest Control – Parking Structure	Based on Common Interest.
Expenses related to the ordinary course operation and normal care, upkeep, repair, and maintenance of the parking garage, other than Capital Upgrades – Parking Structure	Level 1 based on Common Interest. Levels 2-4 will be paid 100% by Residential Unit Class.
Non-structural Capital Upgrades – Parking Structure	Level 1 based on Common Interest. Levels 2-4 will be paid 100% by Residential Unit Class.
Structural Capital Upgrades, including foundations, floor slabs, columns, girders, beams, supports, perimeter, party and load-bearing walls and partitions (excluding the finishes thereon) – Parking Structure	Based on Common Interest.
Signage – Parking Structure	Level 1 based on Common Interest. Levels 2-4 will be paid 100% by Residential Unit Class.
Landscape and Irrigation on ground floor in Commercial Limited Common Element area	Based on Common Interest.
Security – Parking Structure	Level 1 based on Common Interest. Levels 2-4 will be paid 100% by Residential Unit Class.
Managing Agent for Project	Based on Common Interest.
Commercial Managing Agent for the Commercial Units (if any)	Commercial Unit Class pays 100%
Exterior IGU/Window Washing	Commercial Unit Class will contract separately and pay 100% of all Commercial Unit fronting windows/IGU.

	<p>Residential Unit Class will contract separately and pay 100% of all Residential Unit windows/IGU.</p> <p>Recreational Unit Class will contract separately and pay 100% of all Recreational Unit fronting windows/IGU</p>
Sewer Maintenance Obligation in connection with the Sewer Upgrade Easement (if any)	Based on Common Interest.
<p>Insurance:</p> <p>Premiums and deductibles for insurance policies obtained by the Association pursuant to Article XIII, Section B and costs of Insurance Trustee pursuant to Article XIII, Section D relating to the Project to the extent the premiums for such insurance are not attributed to and based upon the value of the Parking Structure in such insurance policy.</p> <p>Premiums and deductibles for insurance policies obtained by the Association pursuant to Article XIII, Section A which are not allocated elsewhere in this Exhibit "C".</p> <p>Flood Insurance</p>	<p>Residential Unit Class, Commercial Unit Class, and Recreational Unit Class will each pay their share of insurance premium as allocated by the insurance carrier and as approved by the Board.</p> <p>In the event that separate residential, commercial, and recreational allocations cannot be provided, the insurance premium will be allocated based on Common Interest.</p>
Other Common Expenses – incurred in connection with the Common Elements unless allocated elsewhere in this Exhibit "C"	Based on Common Interest.
Costs associated with any landscape, sidewalk, or roadway maintenance for areas in County or State rights of way fronting the Project.	Based on Common Interest.

Notes:

Capitalized terms used herein not defined in this Declaration are accordingly labeled on the Condominium Map.

(End of Exhibit C)