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Imanaka Asato LLC
745 Fort Street, 17th Floor
Honolulu, Hawaii 96813
(808) 521-9500 (OTI)

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DECLARATION OF CONDOMINIUM PROPERTY REGIME OF
SKY ALA MOANA WEST

**DECLARATION OF CONDOMINIUM PROPERTY REGIME OF
SKY ALA MOANA WEST**

THIS DECLARATION is made this 15th day of March, 2019, by JL AVALON CAPBRIDGE, LLC, a Hawaii limited liability company ("**Developer**"), with its principal place of business and post office address at 800 Bethel Street, Suite 501-A, Honolulu, Hawaii 96813.

WITNESSETH:

WHEREAS, Developer and Lot Owners (as hereinafter defined) own in fee simple the real property identified as Unit 1 in the Sky Ala Moana condominium project (the "**Master Condominium**") and an undivided interest in the common elements of the Master Condominium, more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Spatial Unit**"); and

WHEREAS, Developer has entered into separate agreements with Lot Owners to acquire the fee interest of Lot Owners in the Spatial Unit; and

WHEREAS, there will exist on the Spatial Unit certain Improvements (as hereinafter defined) to be constructed by Developer which Spatial Unit and Improvements are depicted on Condominium Map No. 2438 filed at the Office of the Assistant Registrar of the Land Court of the State of Hawaii (the "**Office**"), which Condominium Map is incorporated herein by this reference; and

WHEREAS, Lot Owners have agreed, subject to the terms and conditions hereinafter set forth, to join in this Declaration for the sole purpose of permitting Developer to comply with the requirements relating to filing of this Declaration, pursuant to Section 514B-31 of the Act, as hereinafter defined; and

WHEREAS, the Project, as hereinafter defined, is being developed pursuant to that certain Interim Planned Development-Transit and Special District Permit No. 2018/SDD-25, as the same may be amended or supplemented ("**Permit**");

NOW, THEREFORE, in order to create a condominium project consisting of the Spatial Unit and the Improvements, to be known as "**Sky Ala Moana West**" (the "**Project**"), Developer and Lot Owners, by this Declaration of Condominium Property Regime of Sky Ala Moana West, referred to hereinafter as the "**Declaration**", do hereby submit the Spatial Unit and the Improvements and all of their interest therein to a condominium property regime established pursuant to Chapter 514B of the Hawaii Revised Statutes, as amended (the "**Act**"). Developer and Lot Owners hereby declare that the Project is held and shall be held, conveyed, Mortgaged, encumbered, leased, rented, used, occupied, and improved, subject to the provisions of this Declaration and the Bylaws of the Association of Unit Owners of Sky Ala Moana West (the "**Bylaws**"), filed concurrently herewith at said Office, as the provisions of this Declaration and the Bylaws may be amended, from time to time, in accordance with applicable law, and in accordance with the respective provisions of this Declaration and the Bylaws. 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 shall inure to the benefit of Developer, Lot Owners, the 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. USE OF DEFINED TERMS; 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 meanings given such terms in this Declaration, including this Article. 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 those terms are written in initial capital letters. When such terms are used in this Declaration or in 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.** As used in this Declaration and the Bylaws, the following terms shall have the following attributed meanings:

1. **"Act"** means the "Condominium Property Act" codified in 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 filed in said Office.

4. **"Alleged Defect"** means a claim, contention, or allegation by a Claimant 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, as further discussed in **Section XLII.A** of this Declaration.

5. **"Alternative Allocation"** means an allocation of the Special Costs (hereinafter defined) between the Commercial Unit Class and the Residential Unit Class based on a fair and equitable apportionment in accordance with Section 514B-41 of the Act.

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

7. **"Assessment"** means the amount paid or to be paid monthly in advance by each Owner based on the budget for Common Expenses. Assessments include special assessments and regular assessments.

8. **"Association"** means the Association of Unit Owners of Sky Ala Moana West.

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

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

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

12. **"Capital Improvements Reserve Fund"** means that fund established by the Board pursuant to Article VI, Section 2 of the Bylaws to provide for specific capital improvements to the Project.

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

14. **"Certificate of Occupancy"** means the temporary certificate of occupancy (or the permanent certificate of occupancy where no temporary certificate of occupancy is issued covering the Unit in question) issued by the County Department of Planning and Permitting building official after inspection and prior to occupancy of a building or structure.

15. **"Claimant"** means the Association, Board, or any Owner or Owners claiming, contending, or alleging an Alleged Defect, as further discussed in **Section XLII.A** of this Declaration.

16. **"Class Common Expense"** means those costs, expenses, and charges payable by a Unit based upon the Class Common Interest allocable to the Unit or Units within the Unit Class, if any, as more particularly described in this Declaration.

17. **"Class Common Interest"** means the Residential Unit Class Common Interest and Commercial Unit Class Common Interest.

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

19. **"Commercial Director Consent Rights"** means 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 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 the Declaration and Bylaws.

20. **"Commercial Unit"** means any of the Units identified as Commercial Units in **Exhibit "B"** of this Declaration and depicted on the Condominium Map.

21. **"Commercial Unit Class"** means and includes all of the Commercial Units and their respective Owners.

22. **"Commercial Unit Class Common Interest"** means the percentage share assigned to a Commercial Unit within the Commercial Unit Class set forth in **Exhibit "B"** of this Declaration. Note that this is subject to change if a Commercial Unit is subdivided into multiple Commercial Units, in which case the Commercial Unit Class Common Interest shall be recalculated as set forth in **Section III.B**, elsewhere in this Declaration, and in **Exhibit "B."**

23. **"Commercial Unit Class Expense"** means those Common Expenses which, pursuant to this Declaration or the Bylaws, are assessed against the Commercial Units and are payable by each Owner of a Commercial Unit based on their Class Common Interest.

24. **"Commercial Unit Owner"** means the Owner of a Commercial Unit; provided, however that any person or legal entity or trust that holds such interest solely as security for the performance of an obligation shall not be a Commercial Unit Owner solely by reason of such interest.

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

26. **"Common Elements"** means those parts of the Project that are defined in this Declaration as Common Elements, being all areas not designated as a "Unit."

27. **"Common Expenses"** means and includes all charges, costs, and expenses whatsoever incurred by the Association for and in connection with the administration, management, and operation of the Project, including but not limited to: (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; (f) management fees and start-up fees; (g) other necessary expenses of the Project; (h) the cost of all utility services, including water, electricity, gas, garbage disposal, telephone, telecommunications, and any other similar services (unless separately metered, assessed, or otherwise separately attributable to each Unit or a group of Units); (i) the Reciprocal Easement Reimbursement; and (j) the Commercial Unit Class Expenses and the Residential Unit Class Expenses (which shall include the Recreational Facilities Reimbursement). 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.

28. **"Common Interest"** means the undivided percentage interest in all Common Elements of the Project set forth in this Declaration and discussed in **Section III.A** of this Declaration, which percentage interest

is appurtenant to a Unit. The Common Interest appurtenant to a Unit may not be altered or transferred, except as expressly set forth in this Declaration.

29. "**Community System**" means 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.

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

31. "**Condominium Management Agreement**" means that certain instrument entered into or to be entered into between the Association and the Managing Agent for management and administration of the Association, the Common Elements, the Limited Common Elements, the Commercial Units, Residential Units, and the property of the Association, if any.

32. "**Condominium Map**" means the Condominium Map that is referenced above and that is filed in said Office, as the same may be duly amended from time to time. The Condominium Map sets forth: (a) a site plan for the Project, depicting the location, layout, and access to a public road of all buildings included or anticipated to be included in the Project, and depicting access for the Units to a public road or to a Common Element leading to a public road; (b) elevations and floor plans of all buildings in the Project; (c) the layout, location, boundaries, unit numbers, and dimensions of the Units; (d) a parking plan for the Project, showing the location, layout, and stall numbers of all parking stalls included in the Project; (e) the layout, location, and other identifying information of the Limited Common Elements; and (f) a description to identify any land area that constitutes a Limited Common Element. The Condominium Map does not constitute a representation or warranty by Developer.

33. "**County**" means the City and County of Honolulu, State of Hawaii.

34. "**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 him or her as a result of his or her holding that position, which the Board is required to buy and maintain, as further discussed in **Section XII.E** of this Declaration.

35. "**Declaration**" means this Declaration of Condominium Property Regime of Sky Ala Moana West, together with any lawful amendments hereto.

36. "**Developer**" means JL Avalon Capbridge, LLC, a Hawaii limited liability company, and shall also include any of its permitted successors and assigns.

37. "**Developer Control Period**" means the period in which Developer shall have the right to appoint and remove Officers and Directors, as further discussed in **Section XLIII**.

38. "**Developer's Reserved Rights**" means those rights of Developer enumerated in **Sections XIX through XXXIV**, which can be unilaterally exercised by Developer without the consent or joinder of any other party.

39. "**Development Period**" means the period starting on the date this Declaration is filed in said Office and ending upon the earlier of (a) December 31, 2039, (b) the date Developer no longer owns any interest in the Project, or (c) the date Developer files a document in said Office relinquishing all of Developer's Reserved Rights.

40. "**Director**" means a member of the Board and includes both Residential Directors and Commercial Directors.

41. "**DPR**" means Dispute Prevention and Resolution, Inc., any successor thereto, or any other entity offering mediation and/or arbitration services that are acceptable to the parties to a dispute.

42. **"Eligible Mortgage Holder"** means a first mortgagee of a Unit that has made a written request to the Association for timely written notice of proposed amendments to the Condominium Documents, as provided in the Bylaws.

43. **"Facade Sign"** is defined in **Section X.I** of this Declaration.

44. **"FEMA"** means the Federal Emergency Management Agency.

45. **"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 may be amended from time to time.

46. **"House Rules"** means the administrative rules and regulations promulgated by the Board that govern the operation and use of the Project, as the same may be amended or supplemented from time to time.

47. **"Improvements"** means improvements that exist or will exist in the Spatial Unit, and shall also include those improvements made by Owners (including Developer) and/or the Association from time to time.

48. **"Insurance Trustee"** means the bank or trust company, doing business in the State of Hawaii, selected by the Board to have custody and control of insurance proceeds, as further discussed in **Section XIII.H**.

49. **"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, including each Owner, each Lender, and any Person who has the legal right or permission to use the Project or any part of it.

50. **"Lender"** means the mortgagee under a filed Mortgage on a Unit. It also includes the beneficiary of a deed of trust encumbering a Unit.

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

52. **"Limited Common Element Expense"** means all costs, charges, and expenses incurred by the Association directly attributable to one or more designated Units for any Limited Common Elements appurtenant thereto.

53. **"Limited Common Elements"** means 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 consent of the Owner or Owners of the Unit or Units to which said Limited Common Element is appurtenant.

54. **"Lot Owners"** means Maruito USA, Inc., a Hawaii corporation and Watumull Enterprises, Ltd., a Hawaii corporation, as fee simple owners of undivided interests in the Spatial Unit, and any appurtenant interests thereto, and shall also include any successors, permitted assigns, and designees of Lot Owners, including, but not limited to, Developer, upon its acquisition of Lot Owners' interests in and to the Spatial Unit.

55. **"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 and Commercial Unit Class.

56. **"Managing Agent"** means an entity or individual employed or retained by the Association from time to time pursuant to the Condominium Management Agreement.

57. **"Master Condominium"** means that condominium property regime created by way of that certain Master Declaration of Condominium Property Regime Establishing Spatial Units for Sky Ala Moana, dated March 15, 2019 and filed at the Office as Document No. T-10668207, as the same may be amended from time to time.

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

59. **"Notice of Alleged Defect"** means a Claimant's notice to Developer of the specific nature of an Alleged Defect as further discussed in **Section XLII.B** of this Declaration.

60. **"Occupancy Restrictions"** means those limitations on the use and occupancy of the Residential Units, as more particularly described in **Section VI.C** of this Declaration.

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

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

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

64. **"Owner"** means a Person 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 **Section XVII** 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 the Act.

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

66. **"Podium"** means the seven (7) story parking structure depicted on the Condominium Map, which includes, without limitation, the parking stalls and Recreational Amenities that serve the Project. The Podium includes certain improvements located in Spatial Unit 2 of the Master Condominium that, subject to certain limitations, Owners will have access to through the Reciprocal Easement Agreement.

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

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

69. **"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). The Project Quality Standard may evolve as development of the Project progresses and industry standards for similar projects in the community 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 that cannot be reduced to written criteria.

70. **"Property"** means the Spatial Unit, together with the Improvements.

71. **"Reciprocal Easement Agreement"** means that certain Declaration of Reciprocal Easements and Licenses entered into between Developer and Lot Owners, as the owners of the Spatial Unit, and Developer and Lot Owners, as owners of Spatial Unit 2 of the Master Condominium dated March 15, 2019, and filed at the Office as Document No. T-10668210. The Reciprocal Easement Agreement provides certain reciprocal access and use rights to Owners and the owners of Spatial Unit 2 of the Master Condominium, to the Podium and the Recreational Amenities.

72. **"Reciprocal Easement Reimbursement"** means the amounts payable to the Master Association under the Reciprocal Easement Agreement by the Association for maintaining, repairing, and replacing the Common Facilities and the Parking Facilities, as such terms are defined in the Reciprocal Easement Agreement.

73. **"Recreational Amenities"** means those recreational amenities located on roof of the Podium, available for the use and enjoyment of the Residential Unit Owners.

74. **"Recreational Facilities Reimbursement"** means amounts payable by the Association to the Sky East Front Desk Unit Owner for the use by Residential Unit Owners of the Sky East Recreational Facilities, as such terms are defined in the Reciprocal Easement Agreement.

75. **"Representative"** means a Person's shareholders, directors, officers, members (in the case of a limited liability company), managers, trustees, agents, employees, and independent contractors.

76. **"Resident Manager"** means the manager that may reside at the Project appointed and employed and/or contracted by the Managing Agent or the Board.

77. **"Resident Manager Unit"** means that certain Residential Unit retained initially by Developer to be used for the Resident Manager, which shall be Unit No. 909.

78. **"Residential Director"** means each Director elected by the Residential Unit Class pursuant to Section III.3 of the Bylaws.

79. **"Residential Unit Class"** means and includes all of the Residential Units.

80. **"Residential Unit Class Common Interest"** means the percentage share assigned to a Residential Unit within the Residential Unit Class, as set forth in **Section III.B** and **Exhibit "B"** of this Declaration.

81. **"Residential Unit Class Expense"** means those Common Expenses that, pursuant to this Declaration or the Bylaws, are assessed against the Residential Units and are payable by each Owner of a Residential Unit based on such Owner's Class Common Interest.

82. **"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 a Residential Unit Owner solely by reason of such interest.

83. **"Residential Unit"** means any of the Units identified as Residential Units in **Exhibit "B"** of this Declaration and depicted on the Condominium Map.

84. **"Sky Ala Moana West"** shall be the name of the Project established by the submission of the Spatial Unit and Improvements to a condominium property regime under the terms and conditions set forth in this Declaration.

85. "**Special Costs**" means certain costs that are to be apportioned pursuant to an Alternative Allocation between the Commercial Unit Class and the Residential Unit Class based on a fair and equitable apportionment in accordance with Section 514B-41 of the Act.

86. "**Subdivided Units**" mean those new Units created upon the subdivision of a Unit.

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

88. "**Tower**" means the forty three (43) story building depicted on the Condominium Map. Floors are designated consecutively as levels one (1) to and including forty three (43).

89. "**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, 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 and the Residential Units.

90. "**Unit Class**" means and refers to the Commercial Unit Class and the Residential Unit Class.

91. "**Unit Class Expense**" means those costs, expenses, and charges payable by a Unit based on the Unit Class Common Interest allocable to the Unit or Units within the Unit Class, as more particularly described in this Declaration.

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

II. DESCRIPTION AND DIVISION OF THE PROJECT.

A. **DESCRIPTION OF THE PROJECT.** The Project is depicted on the Condominium Map and consists of a forty three (43) story building (the "**Tower**"), which shall be used for residential, commercial, recreational, and/or such other purposes permitted under this Declaration, and a seven (7) story building (the "**Podium**"), which shall be used for parking, commercial, recreational, and/or such other purposes permitted under this Declaration. The Project includes:

1. **COMMERCIAL UNITS.** Two (2) Commercial Units located on level 1 of the Tower and identified on the Condominium Map and in **Exhibit "B"** as Commercial Unit Nos. 1 and 3.

2. **RESIDENTIAL UNITS.** Three hundred ninety (390) Residential Units comprised of the Unit types set forth in **Exhibit "B"**, attached hereto and incorporated herein by reference.

3. **COMMON ELEMENTS.** The Common Elements identified in **Section II.C** below.

B. **DESCRIPTION OF THE UNITS.** Three hundred ninety-two (392) freehold estates are hereby designated in the spaces within the perimeter and party walls, windows, doors, floors, and ceilings of each of the Units of the Project, which spaces are designated on the Condominium Map and are described as follows:

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/FLOOR AREAS.** The Unit areas, layouts, 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 location of, layout of, and access to a public road from the Tower and Podium and

access for the Units to a public road or to a Common Element leading to a public road; (b) elevations and floor plans of the Tower and Podium; (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 to identify 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"** 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 the 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 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 of perimeter and party 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 such walls and columns, interior doors, interior door and window frames, and floors and ceilings, (v) the air space surrounded by such 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 Residential Unit shall not be deemed to include the following: (a) the undecorated and unfinished surfaces of perimeter and party walls and doors, sliding doors and frames, door frames, windows and window 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 balconies, or walls, floors, and/or ceilings partially surrounding any balcony, and (e) 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 Unit.

Developer shall have the right to adjust the boundaries and/or square footages of the Units and the descriptions of the perimeter boundaries set forth on the Condominium Map as necessary to correct minor discrepancies and/or errors in the descriptions or areas; provided that Developer shall file an amendment to this Declaration to reflect such modification; and further provided that Developer need not recalculate and readjust Common Interests of the Units impacted for such minor corrections to the areas.

C. **COMMON ELEMENTS.** One freehold estate is hereby designated in all portions of the Project not otherwise defined as a "Unit," herein called the "Common Elements." The Common Elements shall include specifically, but shall not be limited to, the following:

1. The Spatial Unit in fee simple and any other appurtenances thereto described in **Exhibit "A"**; subject, however, to the rights of Developer herein affecting the Spatial Unit;
2. The Building Structure, including the Podium located in the Spatial Unit;
3. The electrical room, emergency generator and fire booster pump room located in the Podium located in the Spatial Unit;
4. The stairway and elevator located in the southwest corner of the Podium;
5. All fans, vents, shafts, sewer lines, water lines, pipes, generators, cables, conduits, ducts, electrical equipment, cooling tower(s), HVAC, wiring and other central and appurtenant transmission facilities and installations on, above, over, under and across the Project to the point of their respective connections to Improvements comprising a part of the Units, which serve the Residential Units and Commercial Units, including,

without limitation, those providing electricity, light, gas (if any), water, air conditioning, sewer, refuse, drainage, irrigation, telephone, security, and radio and television signal distribution (if any), unless designated otherwise herein;

6. All hallways, areas, or rooms, including, without limitation, areas or rooms housing the items described in 5, above, rooms housing fire protection, telecommunications and/or security equipment, storage rooms, equipment, restrooms, trash rooms, areas and receptacles, apparatus, and installations existing for common use by or for the common benefit of both the Residential Units and the Commercial Units, and not designated as a Unit on the Condominium Map;

7. The driveway leading from Kapiolani Boulevard to level 1 of the Podium, and any signage, decorative façade, or Improvement attached to said driveways and/or level 1 of the Podium located in the Spatial Unit;

8. The drive through areas and loading stalls on level 1 of the Podium located in the Spatial Unit;

9. All sidewalks and common walkways on level 1 of the Project;

10. The bicycle rack adjacent to level 1 of the Tower; and

11. The interior surfaces of the walls, ceilings, and floors of the Podium and the exterior surfaces of the Podium and Tower located in the Spatial Unit, including, without limitation, any louver, trellis, screening, paneling, signage, decorative façade, or Improvement attached thereto.

D. 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, and such Units shall have appurtenant thereto exclusive easements for the use of such Limited Common Elements, unless otherwise set forth herein. The responsibility to maintain, clean, upkeep, repair, replace, alter, improve and/or add to such Limited Common Elements shall be the responsibility of the Association, as set forth below. The costs and expenses of every description pertaining to such Limited Common Element shall be the responsibility of the Owner(s) of Unit(s) to which such Limited Common Element is appurtenant. If there is more than one Unit to which the Limited Common Element is appurtenant, then the Cost thereof shall be charged to each Owner in proportion to the Common Interest appurtenant to each respective Unit.

1. 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 the Residential Unit Class, and shall include the following:

a. The surfboard storage, employee breakroom, offices, and storage located on level 1 of the Podium and shown on the Condominium Map;

b. Stairways 3 and 4 as shown on the Condominium Map;

c. The entranceway and lobby, located on level 1 of the Podium and shown on the Condominium Map;

d. The elevator lobby and elevators providing access to the Tower;

e. The corridors, hallways, and trash chute located on floors 9 through 43 of the Tower servicing the Residential Units; and

f. The Recreational Amenities located on the roof of the Podium.

2. **RESIDENTIAL UNIT LIMITED COMMON ELEMENTS.** The following Limited Common Elements are Limited Common Elements appurtenant to individual Residential Units for the exclusive use thereof:

- a. The parking stall(s) assigned to the Unit located in the Podium;
- b. One (1) assigned mailbox in the mail room located on the first floor of the Podium. Such mailbox shall be identified by the same number as the Residential Unit to which it is a Limited Common Element;
- c. Any chute, flue, duct, wire, conduit, drain, or any other fixture which lies totally within or partially within and partially outside the designated boundaries of a Residential Unit, any portion thereof serving only that Residential Unit shall be appurtenant to said Residential Unit;
- d. Any lanai adjacent to such Residential Unit, as depicted on the Condominium Map, including, without limitation, the decorated or finished interior surfaces of the perimeter or party walls and ceilings and the interior of any perimeter doors, door frames, windows and window frames, the decorated or finished surface of the floors, including all areas within the finished or decorated perimeter interior surfaces of the perimeter walls, ceiling, and floors shall be appurtenant to such Residential Unit; and
- e. Any compressors, air conditioning, and/or heating equipment or other mechanical equipment located on the lanai which compressor or other mechanical equipment exclusively servicing such Residential Unit shall be appurtenant to such Residential Unit;

III. **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,"** herein called the Common Interest, and the same proportionate share in all 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. Developer shall have the absolute right to adjust the Common Interest in its discretion in order to assure that the total Common Interest for all Units in the aggregate equals one hundred percent (100%), and may adjust the Common Interest of all or some of the Units in the Project to achieve such result. 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 Unit shall have assigned to it, for administrative purposes, a 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 or the Residential Unit Class. All Owners of Units in a Unit Class shall have the right to vote his or her 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%) and that the total Commercial Unit Class Common Interest for the Commercial Units in the aggregate equals one hundred percent (100%), and may adjust the Class Common Interest of all or some of the Units in the Project to achieve such result. 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.

IV. **EASEMENTS AND LICENSE.**

In addition to any easements of record, the Units and the Common Elements shall also have, as an appurtenance, or be subject to, as the case may be, the following easements:

A. **EASEMENTS IN THE COMMON ELEMENTS AND OTHER UNITS.** Each Unit shall have appurtenant thereto nonexclusive easements in the Common Elements, including the Limited Common Elements,

and in the Project, designed for such purposes as ingress to, egress from, utility services for, support of, and, as necessary, for the maintenance and repair of such Unit and the Limited Common Elements appurtenant thereto; in the 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 building in which such Unit is located for support; subject to the provisions of Section 514B-38 of the Act.

B. EASEMENTS IN CERTAIN LIMITED COMMON ELEMENTS FOR UTILITIES AND SUPPORT. Wherever sanitary sewer connections, water connections, electricity, gas, telephone, HVAC, security and television lines, 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 other Owners, together with the right to grant and transfer the same, easements and rights to the full extent necessary for the full use and enjoyment of such portions of such connections, lines or facilities which service such Units, and to enter Units owned by others, or to have utility companies enter Units 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 all damage to any Unit 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 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 Common Elements, Units, 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 IN PODIUM LOCATED IN SPATIAL UNIT 2 OF THE MASTER CONDOMINIUM. Each Unit shall have appurtenant thereto nonexclusive easements in the portion of the Podium located in Spatial Unit 2 of the Master Condominium, as more particularly described in the Reciprocal Easement Agreement, designed for such purposes as ingress to, egress from, utility services for, support of, and, as necessary, for the maintenance and repair of such Unit and the Limited Common Elements appurtenant thereto.

E. EASEMENT FOR COMMERCIAL UNIT VENDORS, EMPLOYEES, CUSTOMERS, AND GUESTS. The Commercial Units shall have an appurtenant easement for use by its vendors, licensees, and invitees for purposes of the business conducted in the Commercial Units or their appurtenant 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 using any delivery area and any Common Elements necessary to get from the delivery area to the Commercial Units or their Limited Common Elements, (3) to go to and from the Commercial Units and their Limited Common Elements using the walkways and sidewalks intended for such purposes, (4) for casual use, for recreation, and to enjoy entertainment and other services provided from the Commercial Units or their Limited Common Elements, and (5) as otherwise may be reasonably necessary to operate and manage the services from the Commercial Units and their Limited Common Elements. The Limited Common Elements appurtenant to the Commercial Units are intended for general use by the Commercial Units' vendors, licensees, and invitees, and by the general public accessing and patronizing the Commercial Units.

F. EASEMENT FOR ACCESS TO UNITS AND LIMITED COMMON ELEMENTS. 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 Limited Common Element from time to time during reasonable hours as may be appropriate for the operation or maintenance of the Project or for any other purpose reasonably related to the exercise of the rights and obligations of the Association under this Declaration, or, without notice, at any time for (1) making emergency repairs therein necessary to prevent damage to any Unit or Limited 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.

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.

G. 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, including, without limitation: (1) those purposes necessary to the operation, care, upkeep, maintenance, or repair of any Unit, the Common Elements or any 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 access to areas designated for public use, or the facilities that support the Project. The Association must have the written approval of each affected Commercial Unit Owner before it can exercise this right within any Limited Common Element appurtenant to all Commercial Units or a Limited Common Element solely appurtenant to one (1) Commercial Unit, and the approval of the Commercial Director or after expiration of the Commercial Director Consent Rights, the consent of a Majority of the Commercial Unit Class.

H. 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 Spatial Unit or the Project, including, without limitation, for utility infrastructure, Owners or public access, as necessary for the Project. The Association also has the right, exercisable by the Board, to grant, cancel, relocate, and otherwise deal with any easement or license encumbering the Spatial Unit or the Project that benefits adjacent lands. The Association's rights are subject to the approval of Developer during the Development Period and the consent of the Commercial Director.

I. DEVELOPER'S EASEMENT TO COMPLETE IMPROVEMENTS TO THE PROJECT. To and until December 31, 2039, Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees, and assigns, shall have an easement over, under, and upon the Project, including the Common Elements, Limited Common Elements, and any Unit, as may be reasonably necessary or appropriate for the completion of the Improvements of the Project and the correction of defects and other "punchlist" items therein. Each and every Owner or other Person acquiring an 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 noise, dust, vibration, and other nuisances or annoyances arising from the completion of such Improvements.

J. DEVELOPER'S EASEMENT FOR NOISE AND DUST. To and until December 31, 2039, 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, and 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, and other nuisances or annoyances.

K. DEVELOPER'S EASEMENT FOR SALES ACTIVITIES. 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 and the Common Elements (excluding the Limited Common Elements appurtenant to Units not owned by Developer), for model units, tours, sales, leasing, management, and construction offices, parking, extensive sales displays, and hosting promotion activities, functions and receptions, the posting and maintenance of signs and other advertisements relating to such sales activities, and to install, maintain, locate, relocate, and reconfigure such structures, displays, advertising signs, billboards, flags, sales desks, kiosks, sales, 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 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 Developer's mortgage lender, if any, or any successor to or assignee of Developer's mortgage 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, such mortgage 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 Spatial Unit hereby 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, Representatives, employees, consultants, attorneys, and Lenders, and their respective successors and assigns, as a result of any such activity or activities.

L. 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 and operate, or provide for the installation and operation of, 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 (collectively, "**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 purpose, all upon such terms and conditions as Developer may determine in its discretion.

M. DEVELOPER'S ADDITIONAL EASEMENTS AND RIGHTS TO ACCEPT, GRANT, AND MODIFY EASEMENTS. To and until December 31, 2039, Developer reserves the right to designate, grant, convey, transfer, cancel, relocate, and otherwise deal with any easements over, under, across or through the Common Elements 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 access ways, 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, convey, transfer, cancel, relocate, and otherwise deal with any easement or license over, under, across, or through the Spatial Unit or the Project or adjoining properties in favor of, or encumbering, the Spatial Unit or the Project for any reasonable purpose. Developer also has the right to grant such easements necessary for repair, care, or upkeep of any utility infrastructure to serve the Project or access ways, walkways, or vehicular or pedestrian access 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 Spatial Unit or the Project uses any right it has to require a change in the location of that easement.

N. LICENSE TO OCCUPANTS. Any Person who has a right or permission to occupy a Unit also has the right and license to use the Common Elements and the Limited Common Elements appurtenant to the Unit occupied, to the same extent that the Owner of such Unit would have the right to do so. This right to use 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).

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

P. 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.

Q. DEVELOPER'S EASEMENT TO EXERCISE RESERVED RIGHTS. Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees, and assigns, shall have an easement over, under, upon, and through the Common Elements and any Limited Common Elements and through the Units or any portion thereof as may be reasonably necessary to exercise any of its 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.

V. 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 consent of all of the Owners affected, expressed in an amendment to this Declaration that is duly filed in the Office. The Common Interest shall not be separated from the Unit to which it appertains, and shall be deemed 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 Unit shall be made, nor shall any partition or subdivision of any Unit be made, without the prior written consent of Eligible Mortgage Holders.

VI. USE.

A. PROJECT; IN GENERAL.

1. **STANDARD OF OPERATION.** The Project shall be used only for those purposes that are consistent with a residential and commercial mixed-use development operating pursuant to the Project Quality Standard and are 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 transfer such Units subject to all of the provisions of the Condominium Documents; provided, however, that: (a) all leases shall be in writing, signed by the Owner or Owner's representative and the tenant, (b) as it pertains to the Residential Units, all leases shall have a term of not less than thirty (30) days, (c) all leases and rentals of Units or portions thereof 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 exempt therefrom, (d) without prior written approval of the Board, no leasing of less than an entire 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) as it pertains to the Residential Units, such Owner's right to lease is subject to any owner-occupant requirements under Part V.B of the Act, and (g) no Residential Unit may be utilized for hotel purposes. Further, no Owner of a Residential Unit, or agent of an Owner of a Residential Unit, will engage in a circumvention of this requirement by systematically permitting the cancellation of an authorized lease (e.g., a lease with a term of at least thirty (30) days), thereby effectively permitting the occupancy of an Owner's Residential Unit for less than a thirty (30) day period.

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 his or her 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 his or her 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 or restrictions or covenants, agreement(s) 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 premium increase caused by a Residential Unit shall become a Residential Unit Class Expense and any increase caused by a Commercial Unit shall be paid by the Owner of such Commercial Unit.

B. USE OF PODIUM . The Podium shall be used for access, parking, and any other purposes permitted by the Condominium Documents and the Reciprocal Easement Agreement. During the Development Period, the Association shall be prohibited from reducing the total number of parking stalls, handicap parking stalls, guest stalls, and/or loading stalls or areas located at the Project, without the prior written approval of Developer. All Owners shall be provided access to the Podium to access and utilize their designated parking stall(s) (if any), guest stalls, patron stalls (if any), and Unit and the Limited Common Elements appurtenant thereto, as applicable.

C. RESIDENTIAL UNITS AND 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, except that a home-based business may be maintained within a Residential Unit, provided that (a) such maintenance and use is limited to the person actually residing in the Residential Unit; (b) no employees or staff other than a person actually residing in the Residential Unit are utilized; (c) no clients or customers of such business visit the Residential Unit; (d) the number of persons, other than clients or customers, that shall visit such business and the frequency of such visits shall be kept to a reasonable minimum, as determined in the sole discretion of the Board; (e) such maintenance and use is in strict conformity with the provisions of any applicable law (including zoning laws), ordinance or regulation; (f) the person utilizing such office maintains a principal place of business other than the Residential Unit; (g) such business uses no equipment or process that creates noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable by neighbors and does not cause an increase of Common Expenses that can be solely and directly attributable to the business; (h) such business does not involve the use, storage, or disposal of any materials that the State of Hawaii or any governing body with jurisdiction over the Property designates as hazardous material; and (i) the Owner has provided the Board thirty (30) calendar days prior written notice of his or her intent to operate such home-based business. Notwithstanding the foregoing, the Board shall have the authority, but not the obligation, to permit a home-based business to be maintained within a Residential Unit which does not meet one or more of the requirements set forth above, which permission may be withdrawn at any time in the sole discretion of the Board. Nothing contained in this Section shall be construed to prohibit Developer from the use of any Residential Unit owned by Developer for promotional or display purposes, such as for a model home, 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 limited otherwise by County ordinance or other applicable law, no Residential Unit shall be occupied by more than nine (9) 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 the Owner of a Residential Unit from hosting a larger group of invited guests or visitors in

such Residential Unit for a one (1) 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 upon any balcony. To maintain a uniform and attractive exterior appearance for the Project, Residential Unit Owner-installed window coverings must include a backing of an off-white color 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 that may alter the exterior color, appearance or reflectivity of the windows. 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 AND UTILIZATION OF SHORT-TERM ONLINE RENTAL PLATFORMS.** *Residential Units and their Limited Common Elements, or any portion of either, shall not be the subject of or sold, transferred, conveyed, leased, occupied, rented, or used under a time share plan (as defined in Hawaii Revised Statutes, Chapter 514E, as amended) or similar arrangement or program, whether covered by 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 programs. The Residential Units and their Limited Common Elements, or any portion of either, 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, 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. The Residential Units and their Limited Common Elements, or any portion of either, shall also not be placed in or made available on any short-term online rental platform or any other platform whereby potential occupants are solicited to stay in a Residential Unit for less than a thirty (30) day period of time. Furthermore, the Residential Units and their Limited Common Elements, or any portion of either, shall not be used for transient or hotel purposes, which are defined as (a) rental for any period less than thirty (30) days, or (b) any rental in which the Occupants of the Residential Unit are provided customary hotel or rental services. The foregoing restrictions are collectively referred to as "**Occupancy Restrictions**." The Occupancy Restrictions may be enforced by Developer, the Association, the Resident Manager, 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 Resident Manager, 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.

5. **USE OF RECREATIONAL AMENITIES.** The Recreational Amenities are located on the roof of the Podium and are Limited Common Elements appurtenant to the Residential Unit Class. Except as otherwise provided herein, the Recreational Amenities shall only be used by the Residential Unit Owners, while in residence, their Occupants, and non-residing guests while accompanied by the Owner or Occupant. The Recreational Amenities are to promote recreation and leisure activities and any other purposes permissible by the Condominium Documents; provided that, and subject to any Developer's Reserved Rights, at no time shall there be

any commercial use of the Recreational Amenities to service any Person other than an Owner or Occupant (or Owner's or Occupant's invitees), nor shall Recreational Amenities contain any third party independent commercial operation, provided that a third party independent commercial operation whose business is to provide services exclusively to Owners and their invitees may be permitted in the discretion of the Board. Developer shall have the option, at its sole discretion, to add to, reconfigure, resize, relocate, and/or remove any or all of the Recreational Amenities, which may in turn increase or decrease the Common Expenses and, consequently, affect maintenance fees. This Section shall not be considered a representation and/or warranty of Developer that any or all of the Recreational Amenities will be built and/or offered to Residential Owners.

6. **SALES AND MARKETING; MARKETING MATERIALS.** Except for Residential Units owned by Developer and used for sales and marketing purposes, no "open houses" or similar activity promoting the sale of a Residential Unit shall be permitted at the Project without the prior written consent of Developer. All sales and marketing materials provided to an Owner in connection with the Residential Unit or the Project that are otherwise the property of Developer, including, but not limited to, any imagery, logos, artistic renderings, weblinks, layout depictions, video clips, and other similar marketing materials, may not be used by an Owner or any rental agent in the promotion of any Residential Unit in the Project in any fashion whatsoever without the prior written approval of the Developer, which approval may be withheld in their sole discretion. Any use of such material in any way by Owner or any rental agent without such permission will entitle Developer to immediately enjoin such use and to pursue any and all remedies against the Owner, independently of the obligations set forth in this Declaration. The Owner and/or rental agent will be fully responsible to pay for all costs incurred by the Developer in enforcing its proprietary rights in and to such material, including, but not limited to, any and all attorneys' fees and costs.

D. COMMERCIAL UNITS AND LIMITED COMMON ELEMENTS.

1. **COMMERCIAL USE.** Subject to the limitations below, the Commercial Units shall be used for any commercial purpose permitted by law, including, without limitation, all business or professional license and permit requirements, and the Condominium Documents and shall be consistent with the Project Quality Standard. The Commercial Units may be leased at the discretion of the Commercial Unit Owner, subject to the provisions of the lease. The Owner(s) of any Commercial Unit, in its sole discretion, may contract with various providers of goods and services, such as food and beverage operators, retail stores, and other vendors, to provide goods and services at the Project. The Owner(s) of any Commercial Unit may retain any and all compensation paid to the Owner(s) in return for permitting a vendor to use space within the Commercial Unit or its Limited Common Elements. The commercial uses of any Commercial Unit are subject to change in the sole discretion of the Commercial Unit Owner(s), and subject further to the terms of any lease. No Residential Owner shall be guaranteed access through any Commercial Unit.

2. **LIMITATIONS ON COMMERCIAL USE.** The following uses are not permitted uses within or of the Commercial Units or their Limited Common Elements:

- a. 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 approval by Developer, 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 use in a clean and sanitary manner;
- d. salvage business;
- 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 male or female 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 the Project 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 the Commercial Units or their Limited Common Elements, or limit access to or from the Commercial Units or their Limited Common Elements, shall require and will not be effective without, the prior written approval of the consent of a Majority of the Commercial Unit Class.

E. USE OF COMMON ELEMENTS. Subject to the reserved rights of Developer contained herein, and the express limitations on use set forth herein, each Owner may use the Common Elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other Owners, subject always to the following limitations:

1. **ASSOCIATION'S USE.** Except for any rights to use expressly reserved to Developer, Residential Unit Owner, or Commercial Unit Owner under this Declaration, nothing in this section or otherwise contained in the Declaration is intended to limit or restrict the Association's right to use the 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 the applicable zoning ordinance and by law. Before the Development Period ends, no such lease, use, or change in use may be made without the prior written consent of Developer.

2. **NO RIGHT TO OBSTRUCT THE COMMON ELEMENTS.** Subject to the Developer's Reserved Rights and subject to Developer's ability to obstruct such areas in the exercise of its 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 the Unit or to a storage area that is a Limited Common Element, or storing them on a Limited Common Element balcony appurtenant to the 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; or (b) the Commercial Unit Owners' use of the Limited Common Elements appurtenant to the Commercial Units for commercial activity.

F. **USE OF LIMITED COMMON ELEMENTS.** Subject to the reserved rights of Developer herein, Owners shall have the right to use the Limited Common Elements appurtenant to their Units for any purpose permitted by zoning, 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 consent of the Owners of the Unit(s) to which such Limited Common Element is appurtenant. The Owners of at least sixty-seven percent (67%) of the Common Interest that is appurtenant to Units to which any particular Limited Common Element is appurtenant shall have the right to change the use of a particular Limited Common Element.

G. **SEPARATION, COMBINATION OF UNITS; TRANSFER OF INTEREST.** Subject to the Developer's Reserved Rights set forth herein, no Owner may partition or separate 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 **Section X.B.4**. 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 clause (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 the Condominium Documents. 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, the Project will be constructed in compliance with 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 which is a source of annoyance to the Owners or Occupants of other Units or which interferes with the peaceful possession or proper use of the Units by its Owners or Occupants. Notwithstanding the foregoing, the Commercial Units may be used in accordance with **Section VI.D.1** herein, and commercially reasonable standards for noise and nuisance as to such Commercial Units will be permitted at the Project.

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 approval of the Board. Furthermore, the Owner must ensure that a sound control underlayment system which meets an Impact Insulation Criteria (IIC) acoustic standard of 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 of the violations.

K. **ADVERTISEMENTS; SIGNS.** Subject to Developer's Reserved Rights or easement rights or restrictions set forth herein and any applicable 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 of a Residential Unit, in the exterior portions of the Limited Common Element balcony appurtenant to the Residential Unit, in the Limited Common Elements appurtenant to the Residential Units

and located on level 1 of the Tower, or in any Common Element appurtenant to both the Residential Units and Commercial Units, unless prior written approval is received from the Association. The Commercial Units shall have the right to affix signs to any portion of the Commercial Unit and the Limited Common Elements appurtenant solely thereto provided the same are consistent with the Project Quality Standard, but may not place any signs or advertisements in any Common Element appurtenant to both the Residential Units and the Commercial Units without the prior written approval of the Association.

L. **ANTENNAS, SATELLITE DISHES.** To the extent permitted by applicable law and the House Rules, antenna, satellite dish, or other transmitting or receiving apparatus shall be permitted within those portions of a Residential Unit under the exclusive control of a Residential Unit Owner and that are not visible from the exterior of the Unit.

M. **PETS.** Residential 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, visually impaired persons, hearing impaired persons, and physically and mentally impaired persons, shall be allowed to use the services of a "service animal" as such term is defined under the ADA, and an "emotional support" animal.

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.

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 Common Elements;

2. On behalf of the Association, to lease or otherwise use for the benefit of the Association the 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 Common Elements not falling within **Section VI.O.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 which 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; and

4. The consent of the Commercial Director to the exercise of the Board's rights herein shall be required if the exercise of the right directly impacts any Commercial Unit Owner's use and operation of the Commercial Units and their Limited Common Elements.

P. **SEVERANCE OF COMMON ELEMENTS FROM UNIT.** No Owner shall be entitled to sever his or her Unit, or any portion thereof, from his or her undivided interest in the Common Elements, in any easement interests appurtenant thereto or licenses granted 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, each covenant and agree that the Units and the corresponding undivided interest 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 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 **Section VI** shall not apply to the Units owned by Developer, or their successors and assigns, or the Limited Common Elements appurtenant thereto, or to any Improvements proposed or made by Developer or its successors or assigns or its affiliates in connection with its development, construction, promotion, marketing, sales, or leasing of any Unit or any portion of the Project.

VII. ADMINISTRATION OF THE PROJECT.

Administration of the Project shall be vested in the Association, consisting of all Owners in accordance with the Bylaws. Operation of the Project and 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 at which 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 Common Elements (except for Limited Common Elements appurtenant to the Commercial Units), without limitation, any walls, fences, gates, walkways, sidewalks, utilities, lines, drains, roads, driveways, driveway ramps, curbs, parking areas, storage areas, and lighting in the Common Elements, as well as other Improvements not located within the Project but of which the Association has use or to which the Association has access.

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

3. Keep all Common Elements (except for Limited Common Elements appurtenant to the Commercial Units) in a strictly clean and sanitary condition, with all necessary reparations whatsoever, in good order and condition, and repair and make good all defects in the Common Elements (except for Limited Common Elements appurtenant to the Commercial Units) and observe and do anything required by all laws, ordinances, rules, and regulations that apply from time to time to the Project or the use of it. Because portions of the Common Elements, including the Limited Common Elements, located within the Podium 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, in order to be consistent with the Project Quality Standard, and certain costs arising therefrom shall be shared by the Residential Unit Class and Commercial Unit Class as Common Expenses.

4. In performing the operations set forth in this Section, any actions of the Association to (a) alter the exterior portion of the Podium and/or Tower, (b) alter the appearance of any portion of the Commercial Units, or (c) affect in any way the Limited Common Elements appurtenant to all Commercial Units or the Limited Common Elements solely appurtenant to one (1) Commercial Unit, shall be subject to the Commercial Director's approval, or after the expiration of the Commercial Director Consent Rights, the consent of a Majority of the Commercial Unit Class.

5. Not erect or place on the Project any building or structure, including fences and walls, nor make material additions or 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 other Owners whose approval is required by the Act, and subject to applicable approvals required by this Declaration, including, without limitation, from any governmental agencies. After starting the Improvements, the Association must work diligently to complete them in a timely manner.

6. Before commencing or permitting construction of any Improvement on the Project where the cost thereof exceeds Five Hundred Thousand and No/100 Dollars (\$500,000.00), obtain a performance and 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 of Hawaii, 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.

7. 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 the adjoining lot.

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

9. Subject to **Section IV.F**, make emergency repairs, or install, repair, or replace portions of the Project for which the Association is responsible.

B. DEVELOPER, COMMERCIAL UNIT OWNER, AND RESIDENTIAL 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.

The Commercial Unit Owner(s) shall pay and be responsible for the operation, care, upkeep, repair, maintenance, and cost of their respective Commercial Units, any Limited Common Elements appurtenant to their respective Commercial Units, and the Limited Common Elements appurtenant to all Commercial Units to the exclusion of the Residential Units, except as otherwise set forth herein or in the Bylaws. The Residential Unit Owners shall pay and be responsible for the operation, care, upkeep, repair, maintenance, and cost of their respective Units. The Association shall be responsible for the operation, care, upkeep, repair, and maintenance of any Limited Common Elements appurtenant to a Residential Unit, all Residential Units, or the Residential Unit Class, and the costs shall be borne by the Residential Unit Owners as a Limited Common Element Expense or as a Residential Unit Class Expense, except as otherwise provided for herein or in the Bylaws. All Owners shall pay and be responsible for the operation, care, upkeep, repair, maintenance, and cost of the Common Elements.

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 Common Elements without the approval of Developer, or the Limited Common Elements appurtenant to a single Unit, without the additional approval of the affected Owner, and, if such action is with respect to a Limited Common Element appurtenant to one (1) or more Commercial Units, the approval of the Commercial 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.

C. CAPITAL UPGRADES OF COMMON ELEMENTS. Whenever in the judgment of the Board, the 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 Commercial Director's approval, or after the expiration of the Commercial Director Consent Rights, with the consent 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 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 approval of the Owners, provided said Owners are given at least ten (10) business days written notice of a special meeting at which actions are 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 the Developer's Reserved Rights.

D. CAPITAL UPGRADES OF LIMITED COMMON ELEMENTS. Whenever the Residential Unit Class for the Limited Common Elements appurtenant to the Residential Unit Class and the Commercial Unit Class for the Limited Common Elements appurtenant to the Commercial Unit Class shall require Capital Upgrades to the their respective Limited Common Elements, the Residential Unit Class and the Commercial Unit Class shall proceed with such Capital Upgrades upon Majority vote of each of their respective classes at any meeting where a quorum of the applicable Unit Class is present. The cost of the Capital Upgrades shall be a Residential Unit Class Expense for the Residential Unit Class or a Commercial Unit Class Expense the Commercial Unit Class, 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 the Owners. 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 the Developer's Reserved Rights.

E. EXTRAORDINARY ACTIONS. Although the Board shall generally 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 eighty percent (80%) of the Residential Unit Class and the approval of the Commercial Director and Developer, and after the end of the Developer Control Period, without the affirmative vote of Owners representing not less than a Majority of the votes of the Residential Unit Class and the approval of the Commercial Director. 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 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 use of Units, rules or architectural controls) which would reasonably require the expenditure of funds in excess of One Million Dollars (\$1,00,000.00) 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. Extraordinary Actions shall not 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 Common Elements.

F. MAINTENANCE OF LANDSCAPING. Developer, during the Developer Control Period, and the Association may be required by the County or State to maintain the area between the edge of the pavement along Kapiolani Boulevard to the Project boundary. Such maintenance and any costs associated therewith shall be Common Expenses.

VIII. MANAGING AGENT.

Fiscal and administrative management of the Project and the physical management of the Common Elements (except for Limited Common Elements appurtenant to the Commercial Units) 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 Condominium Management Agreement shall contain a requirement that the Managing Agent operate the Project at a Project Quality Standard and further provide for the right of the Board to terminate the Condominium Management Agreement if the Project is not operated or maintained at such standard by the Managing Agent.

IX. SERVICE OF LEGAL PROCESS.

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

X. ALTERATION OF THE PROJECT.

A. IN GENERAL. This Section applies, except as otherwise provided by the FHA and except as otherwise provided in this Declaration. This Section does not apply to changes made by Developer when exercising the Developer's Reserved Rights. Neither the Association nor any Owner may make any structural changes or additions to the Common Elements, the Limited Common Elements, or the Units 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 with the consent of the Commercial Director. Promptly after the work is completed, the Association, Developer, or the Owner must file the amendment along with any necessary changes to the Condominium Map. This Section does not apply to "**nonmaterial structural additions to the Common Elements**" 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 approval of the Board and the consent of the Commercial Director; (3) authorizes any work or change by the Board that would materially change the exterior of the Podium or Tower without the consent of the Commercial 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.

B. BY RESIDENTIAL UNIT OWNERS. Owners of Residential Units shall not change or cause a change to the exterior of the Units, or the Limited Common Elements appurtenant thereto (including, without limitation, the installation of any type of signage) without the prior written approval of the Board pursuant to **Section X.E** 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 a Limited Common Element appurtenant only to the Owner's Unit, at such Owner's sole cost and expense:

1. To install, maintain, remove, and rearrange non load-bearing partitions and walls from time to time within the perimeter walls of the Unit; provided that the initial enclosed living area of any Unit (as depicted on the Condominium Map) shall not be increased, including, without limitation, through the full or partial enclosure of any balcony or lanai;

2. To finish, change or substitute any plumbing, electrical, or other fixtures attached to the ceilings, floors, or walls, as appropriate, for the use of the Unit or a Limited Common Element appurtenant solely to the Unit;

3. To make such changes, additions, and Improvements to the Unit or Limited Common Element appurtenant solely thereto to facilitate handicapped accessibility within the Unit or Limited Common Element; and

4. To consolidate two (2) or more 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 building, and to install doors and other Improvements in the intervening wall and/or make other reasonable additions. The Owner must ensure that the structural integrity of the Unit, Limited Common Elements, and the

building will not be adversely affected; 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 are restored to substantially the same condition as 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 total of the Common Interest for the original Units and shall not affect the Common Interest appurtenant to any other Unit.

C. BY COMMERCIAL UNIT OWNERS. Owners of Commercial Units shall not change or cause a change to the exterior of the Units, or the Limited Common Elements appurtenant thereto (including, without limitation, the installation of any type of signage) without the prior written approval of the Board pursuant to **Section X.E** 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 Commercial Unit Owner has the right, subject to the terms and provisions in the Condominium Documents, to make any of the following changes, additions, and Improvements solely within the Owner's Unit or within a Limited Common Element appurtenant only to the Owner's Unit, at such Owner's sole cost and expense:

1. To install, maintain, remove, and rearrange non-load bearing walls and partitions within the Unit from time to time;

2. To finish, change, or substitute any plumbing, electrical, or other fixtures attached to the ceilings, floors, or walls as appropriate for the use of the Unit;

3. To decorate, paint, repaint, wallpaper or otherwise change the appearance of any walls, floors, and ceilings of within the Unit;

4. To make such changes, additions, and Improvements to the Unit or Limited Common Elements appurtenant solely thereto to facilitate handicapped accessibility to and within the Unit or Limited Common Elements;

5. To consolidate two (2) 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 in the intervening wall and/or make other commercially reasonable additions. The Owner must ensure that the structural integrity of the Commercial Units, Limited Common Elements appurtenant thereto, and the building will not be adversely affected; the finish of the remaining Common Elements are restored to substantially the same condition as prior to removal; and all construction activity is completed within a reasonable time. The Common Interest of any newly-created Unit shall be the aggregate of the two (2) initially separate Units; and

6. Subject to any zoning or building code requirements, to subdivide any Unit to create two (2) or more Units, designate which Limited Common Elements that were solely appurtenant to the subdivided Unit will be appurtenant to the Units resulting from the subdivision, and convert parts of the existing Unit to Common Element status to facilitate the subdivision. The total of the Common Interest for the newly-created Units must be equal to the Common Interest of the Unit that was subdivided. If an Owner subdivides a Unit, the Owner may decide whether one (1) or more than one (1) resulting Unit will have any special rights or easements that are appurtenant to the original Unit under this Declaration, or such Owner may assign some or all of those rights to either or both of the resulting newly-created Units.

Any material addition or alteration to a Commercial Unit or Limited Common Element appurtenant thereto shall require the approval of the Board only if the proposed addition or alteration, as reasonably determined by a majority of 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. 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 BOARD.** The Board has the right to change the exterior appearance of the Project, without approval of the Association, but with the consent of the Commercial Director; provided that the cost of such change shall not exceed one million dollars (\$1,00,000.00). During the Development Period, however, the Board may not pursue any such change without Developer's prior written approval.

E. **APPROVAL OF THE BOARD; CONDITIONS TO BOARD APPROVAL.** It is intended that the Podium 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) 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 materially and adversely affect the exterior appearance of the Project. Except in connection with proposed modifications to accommodate Owners with disabilities, if the Board or the Commercial Director determines that the proposed modification, change, addition, or alteration will materially and adversely affect the 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 materially and adversely affect the 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 an opportunity to challenge the determination, and, 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 (67%) of the Common Interest. The Board 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 in the Board's sole discretion, including, without limitation the following:

1. The Owner of the Unit provides 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.

3. For modifications, changes, additions, alterations, and other work the estimated cost of which shall exceed one million dollars (\$1,000,000.00), the Owner of the Unit 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 Element. The Board may also consider alternative assurances.

4. The work is done by a licensed architect, engineer, or other construction professional.

5. Changes to the plans and specifications may not be done 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 Element 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.

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

G. **CONTRACTOR PARKING.** The Owner shall require its 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 Resident Manager.

H. **DEVELOPER'S RESERVED RIGHTS.** Notwithstanding the requirements of this Section to the contrary, in no event shall Developer be required to obtain Board approval when exercising the Developer's Reserved Rights set forth in this Declaration.

I. **FACADE SIGNAGE; COMMERCIAL UNIT OWNERS 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 on the exterior facade of the Podium and the Commercial Unit or the Limited Common Elements appurtenant solely thereto (individually, a "Facade Sign" and collectively, the "Facade Signs"), in a size and location as permitted by and subject to any zoning laws or other governmental requirements. The Facade Signs shall be consistent with the Project Quality Standard. Facade Signs shall be subject to any requirements and limitations established by Developer with respect to all aspects of Facade Signs (including, without limitation, the plans, specifications, and method of affixing the Facade Signs to the building and extending electrical service thereto, if applicable). All Facade Signs, to the extent not required to be insured by the Association, shall be insured at the exclusive cost of the Commercial Unit Owner installing such signage, unless insured by the Occupant of a Commercial Unit pursuant to the terms of the lease or other occupancy agreement. Any Commercial Unit Owner who exercises its right to install the Facade Sign pursuant to this Section shall be solely responsible for the lighting, installation, maintenance and replacement, of its Facade Sign, and liable for the costs and repair of any damage to the Project proximately caused by such installation, maintenance, and replacement. Developer or the Commercial Director may establish and administer any comprehensive sign criteria and shall assume all duties relating to Facade Signs, including, without limitation, approval thereof.

J. **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 Section X shall alter the depiction of the particular Unit on the Condominium Map or the description thereof in this Declaration, 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 filing thereof at said Office. The provisions of Section XV 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, consents to and agrees that he or she 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 file all instruments and documents necessary or desirable to effect the amendment of this Declaration and/or the Condominium Map; and appoints such Owner and his or her assigns as his or her attorney-in-fact with full power of substitution to execute, deliver, and file such documents and to do such things on his or her 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.

XI. COMMON EXPENSES; LIMITED COMMON ELEMENT EXPENSES; UNIT CLASS 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 unpaid Assessments shall constitute a lien against the Unit to which such assessment is attributed.

A. **COMMON EXPENSES.** Other than those profits or expenses directly attributable to the Limited Common Elements, and except as otherwise provided herein, the common profits and expenses of the Association shall be distributed among, and the Common Expenses, including, without limitation, all costs of the Resident Manager and, if any, salary expenses of all personnel, and the cost of any Resident Manager Unit, shall be charged to, the Owners. The costs of maintenance, repair, and replacement of the Common Elements, reserves for the Common Elements, and all other Common Expenses of the Common Elements shall be charged to the Owners in proportion to the Common Interest appurtenant to their respective Units, except as otherwise provided herein, in the Act or the Bylaws.

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

C. **UNIT CLASS EXPENSES.** Profits and expenses attributable to the Commercial Unit Class ("**Commercial Unit Class Expense**") and Residential Unit Class ("**Residential Unit Class Expense**") shall be allocated to the appropriate Unit Class based on the Unit Class Common Interest set forth in **Exhibit "B"**. The following specific expenses shall also be Residential Unit Class Expenses: (1) costs to support, maintain, and operate the Limited Common Elements appurtenant to all Residential Units; (2) all costs of maintenance, repair, replacement, including reserves, of any equipment or apparatus servicing only the Limited Common Elements appurtenant to all Residential Units; and (3) the cost of personnel exclusively servicing the Residential Units and their Limited Common Elements, if any. The following specific expenses shall also be Commercial Unit Class Expenses: (i) costs to support, maintain, and operate the Limited Common Elements appurtenant to all Commercial Units; (ii) all costs of maintenance, repair, replacement, including reserves of any equipment or apparatus serving only the Limited Common Elements appurtenant to all Commercial Units; and (iii) the cost of any personnel utilized to serve only the Commercial Units and their Limited Common Elements, if any.

D. **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 Common Elements, Limited Common Elements appurtenant to all Residential Units, and Limited Common Elements appurtenant to all Commercial Units 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 Common Elements, Limited Common Elements appurtenant to all Residential Units, and Limited Common Elements appurtenant to all Commercial Units. If the vendor is unable to or refuses to meter usage or allocate costs, then the Board may unanimously agree to an Alternative Allocation of such Special Costs between the Commercial Unit Class and Residential Unit Class. In arriving at such agreement, the Board may engage the services of a professional engineer or other professional to provide his/her opinion of a fair allocation. If the Board is unable to agree on such allocation (a "**deadlock**"), notwithstanding anything contained in this Declaration to the contrary, the matter will 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.

E. **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, secured by the lien created under this Section pursuant to the provisions of Section 514B-143(d) of the Act.

F. **ASSESSMENT OF EXPENSES.** Assessments shall be levied at such time as the Board adopts the budget for the calendar year in question. 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 the Unit. Except as otherwise provided herein or in the Act, all sums assessed by the Association but unpaid constitute a lien on the Unit prior to all other liens, except only: (1) liens for taxes and assessments lawfully imposed by 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.

G. **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 regular monthly Assessments for Common Expenses against an Owner pursuant to the provisions of Section 514B-146(g) 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 with the unpaid share of Common Expenses and their respective heirs, devisees, personal representatives, successors, and assigns, (2) the unpaid share of Unit Class Expense 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 Expenses 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 by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Owner's Unit.

H. **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 by the Managing Agent or Board, acting on behalf of the Association, in like manner as a Mortgage of real property. In any such foreclosure, the Owner shall be required to pay a reasonable rental for the Unit and the Association shall be entitled to the appointment of a receiver to collect the same. The Managing Agent or Board, acting on behalf of the Association, may, unless otherwise prohibited in this Declaration, bid on the Unit at the foreclosure sale, and acquire and 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, by mailing such notice, 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 older or insurer of a Mortgage of any interest in such Unit.

I. **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 transferred with such Unit even though not expressly mentioned or described in the conveyance thereof. In case the Project shall be terminated or waived, said

capital contributions, custodial fund, or maintenance reserve fund remaining after full payment of all Common Expenses of the Association shall be distributed to all Owners in their respective proportionate shares except for the Owners of any Units then reconstituted as part of a new condominium property regime.

XII. INSURANCE.

A. INSURANCE GENERALLY. The Association shall obtain and maintain the insurance required by this Section with the exception of the insurance coverage to be obtained by the Owners pursuant to **Section XII.B.3** and **Section XII.F** below and provided, however, the terms and conditions of the insurance obtained and maintained by the Association shall comply with but shall not exceed the insurance requirements of Developer's mortgage lender, if any. 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 of Hawaii 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 of Hawaii. 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 Section 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 Section.

4. **SUMMARY OF INSURANCE POLICIES.** Each insurance policy obtained by the Association to provide the coverage required under this Section 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 such decisions align with but, notwithstanding anything to the contrary, do not exceed the insurance requirements of Developer's mortgage 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.

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

a. The Association's policy of property insurance under **Section XII.B** or liability insurance under **Section XII.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 **Section XII.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 **Section XII.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 cost 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 after the time a Certificate of Occupancy is issued for such Commercial Unit. The cost of replacement of such items shall be the sole responsibility and expense of the Owner of such Commercial Unit. The Policy need not cover land, foundation, excavation, and other items normally excluded from such coverage.

3. **OWNER HAZARD COVERAGE REQUIRED.**

a. Each Owner of a Residential Unit 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.

b. Each Owner of a Commercial Unit 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.

c. In addition to the insurance obtained in this **Section XII.B.3**, the Commercial Unit Owner(s) may purchase, for the benefit of the Commercial Unit Owner(s), supplemental all-risk of physical loss insurance coverage insuring the Commercial Unit and its Limited Common Elements, the proceeds of which shall be paid to, and be for the exclusive use of, and administered by, the Commercial Unit Owner(s). Notwithstanding such coverage, the Policy shall remain the primary insurance for those matters required to be insured against pursuant to **Section XII.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 Owners.

d. 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.

e. 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 its 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 Developer's mortgage 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 100% of the projected gross income from operations.

6. **REQUIRED AND PROHIBITED PROVISIONS.** Unless the Board decides the cost is unreasonably high, provided any such Board decision aligns with the insurance requirements of Developer's mortgage lender, if any, 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 Developer's mortgage lender and any Lender whose name has been furnished to the Board and to 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;

(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 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 **Section XIII.A** and **Section XIII.D** of this Declaration. The Policy must also require that the insurance company recognize the insurance trust agreement referred to in **Section XIII.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.** The Project is located in Flood Zone (X) and federal flood insurance is not required for the Project. The Association may buy a policy of flood insurance that complies with the requirements of the National Flood Insurance Program and the Federal Insurance Administration if available at a reasonable cost.

D. **LIABILITY INSURANCE.** The Board shall procure and maintain in effect commercial general liability insurance and, if necessary, commercial umbrella insurance written as follows 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 Owner(s). 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 Owner(s). To the fullest extent permitted by law, any policy obtained pursuant to this **Section XII.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 DOLLARS (\$5,000,000) 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 DOLLARS (\$5,000,000) 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 DOLLARS (\$1,000,000).

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 Developer's mortgage 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.

f. 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, and any other Interested Person who has, in either case, requested a copy of any such notice.

4. **OPTING-OUT.** Notwithstanding anything herein contained, the Commercial Unit Owners (acting unanimously) may elect at any time and from time to time by notice to the Association to obtain on their 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 shall pay for such insurance and the costs and benefits thereof shall not be shared; (b) the Commercial Unit Owners shall provide to the Association upon its request, and in any event, 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 must be substantially equivalent (to provide coverage for the Commercial Unit Owners' exposure) 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 had not made such election; and (d) in the event that the Commercial Unit Owners have elected to obtain on their behalf such insurance, then with respect to such Commercial Unit Owners, the coverages maintained by the Association as set forth in this Section shall be limited to covering the Residential Unit Owners, the Board, the Association, and each of their Representatives and the Commercial Unit Owners shall have no obligation to pay any portion of the cost of such liability insurance coverage maintained by the Association.

E. **DIRECTORS' AND OFFICERS' LIABILITY INSURANCE.** The Board shall procure 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 him or her as a result of his or her holding that position. This is called 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 Developer's mortgage 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. RESIDENTIAL AND COMMERCIAL UNIT LIABILITY AND OTHER INSURANCE. A Residential Unit Owner who operates a home-based business in his or her Unit is also responsible for obtaining a commercial general liability policy with coverage that is customary for operations of its size and character, and the Association and its Representatives shall be named as an additional insured on such policy. The Owner of each Commercial Unit is also 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; and (iii) during any period in which significant construction, alterations, repairs, or reconstruction are being undertaken by such Commercial 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, 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 DOLLARS (\$3,000,000) 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 the Commercial 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 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 XII.F 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 cover the maximum funds (including reserve funds) that will be in the custody of the Association or Managing Agent at any time while the fidelity insurance policy is in force, but must at least equal the sum of three (3) months aggregate Assessments on all Units within the Project plus any reserves or shall otherwise be in form and amounts as required by Developer's mortgage lender, if any. 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 Section XII shall be subject to availability on commercially reasonable terms with reputable insurance companies authorized to do business in the State of Hawaii. 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 Developer's mortgage 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 **Section XII**, prior to the issuance of the first Certificate of Occupancy for a Residential Unit, the insurance requirements specified in this **Section XII** shall not be applicable and insurance coverage shall be maintained as Developer deems appropriate or as otherwise required by Developer's mortgage lender.

J. WAIVER OF THE RIGHT OF 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 **SECTION XII**, EVEN IF DUE TO THE NEGLIGENCE OF A PARTY AND PROVIDED THAT THIS **SECTION XII.J** 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.

XIII. INSURED DAMAGE OR DESTRUCTION.

This Section 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 this Section. In this Section, "**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 the 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, and in compliance with this Declaration.

A. DAMAGE TO A UNIT. Excluding damage insured under **Sections XII.B.3.a** and **XII.B.3.b**, if any Residential Unit, Commercial 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, 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 only one (1) or more of the Commercial Units and/or their appurtenant Limited Common Elements are damaged, the Commercial Director, at his or her 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 **Section XIII.D**.

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. 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.

1. **USE OF PROCEEDS IF UNIT NOT REPAIRED OR REBUILT.** 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:

a. Proceeds will be applied first to pay that Unit's share of the cost of debris removal;

b. 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 **Section XIII**. Payments will be made as and when required by the construction contract and this **Section XIII**. 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 Common Elements and Limited Common Element, 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 Common Element reserve shortfall shall be paid by each Owner according to their Common Interest, any Limited Common Element reserve shortfall shall be paid as a Residential Unit Class Expense or Commercial Unit Class Expense, as applicable, which shall be adjusted as set forth in **Section XIV.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 his or her Unit and/or the Limited Common Elements appurtenant solely to the Unit (but not including any 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 **Section XIII.A**. 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 filed 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, shall be paid by each Owner according to their Common Interest. 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 **Section XIII.D**.

E. EXCESS INSURANCE PROCEEDS. "Excess proceeds" paid under an insurance policy procured and maintained by the Association are proceeds that remain after the cost to rebuild or repair damage has been paid. Any excess proceeds will be paid to the Owners and their Lenders in proportion to their 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 **Section XIII.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 **Section XIII** 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 only (1) pursuant to an amendment to this Declaration, duly executed by or pursuant to the affirmative vote or written consent of Owners of Units to which are appurtenant not less than eighty percent (80%) of the Common Interest 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, (2) by removing the Project from the condominium property regime established hereby, (3) by reconstituting all of the remaining Units and Common Elements to be restored as a new condominium property regime, and (4) by providing for the payment to each Owner of a Unit not to be restored of the agreed value of such Unit and its Common Interest, which payment shall include, without prejudice to the generality of the foregoing, all of the insurance proceeds or condemnation award payable for or on account of such Units and the Owners' proportionate share of any Capital Improvements Reserve Fund and general operating reserve without deduction for the cost of such restoration, except for the Owners' proportionate share of the cost of debris removal.

H. INSURANCE TRUST AGREEMENT. Notwithstanding any provision of this Declaration relating to property or liability insurance, there may be named as an insured, on behalf of the Association, a bank or trust company authorized to do business in the State of Hawaii 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 purpose 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 purpose.

XIV. 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 **Section XIV.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. The Association may only make this decision by the affirmative vote of Owners holding no less than sixty-seven percent (67%) of Common Interests and their respective Lenders. 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 and any Alternative Allocation and Residential Unit Class 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 and any Alternative Allocation and Commercial Unit Class Interest for such Commercial Unit shall be allocated to the remaining Commercial Units 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 Common Elements will be assessed as a Common Expense.

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

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

4. 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.

XV. 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 consent 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 filing thereof in said Office.

1. **"CHANGES MATERIAL IN NATURE."** Except as otherwise provided herein or in the Act, no amendment to the provisions of this Declaration that are material and adverse in nature shall be effective without the written consent 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 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 his or her 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 the 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 filed with the Office, 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, he or she automatically (i) consents to the change; and (ii) agrees that he or she will, if required by law or by the Owner who has changed a Unit, join in, approve, sign, deliver, and file all documents necessary or desirable to make the amendment of the Condominium Documents effective.

3. **REDESIGNATION OF ASSIGNED PARKING STALLS.** Any Owner (including Developer) may redesignate and exchange a Limited Common Element parking stall 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 Unit Owner. The transfer shall be executed and filed as an amendment to this Declaration and the amendment need only be executed by the Owner of the Unit whose Limited Common Element(s) is being transferred and the Owner of the Unit receiving the Limited Common Element(s) and if not the same Owner, subject to any required approval of Lenders or lessors. A copy of the Amendment must be promptly delivered to the Association.

4. **NO IMPAIRMENT OR DIMINISHMENT 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, the prior written approval of Developer will be required before any amendment that would impair or diminish the rights of, or increase the obligations of, Developer. Without limiting the generality of the foregoing, the following actions impairing or diminishing the rights of Developer, shall first be approved in writing by Developer, as applicable:

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 THE 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 granted to Developer set forth herein or any easements set forth herein, granted 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 or received by Developer without the prior written approval of Developer.

B. BY DEVELOPER.

1. **PRIOR TO PROJECT COMMENCEMENT.** 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, the Developer's Reserved Rights include the right of Developer, without the approval of any other Person, to change the Condominium Documents in accordance with the exercise of any of the 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 AND TO MEET REGISTRATION REQUIREMENTS. Notwithstanding any provision of this Declaration to the contrary and notwithstanding the sale of any of the Units, Developer, without the approval 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 reasonably be imposed by any takeout, permanent, secondary market Lender, or any other entity necessary to obtain any construction or take-out loan 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, Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development or the Veterans Administration; (c) to comply with the requirements of FHA; (d) to comply with the requirements of the federal Bureau of Consumer Financial Protection (agency that oversees the Interstate Land Sales Full Disclosure Act); (e) 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; (f) to comply with any state or county entitlements, agreements, or permits; and (g) 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 file 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 his or her attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on his or her 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 Developer's mortgage lender and/or holders or insurers of first Mortgages on Units shall require the approval of Developer's mortgage lender 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 **Section XV**; 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 the notice was delivered by certified or registered mail, with a "return receipt."

C. LIMITATIONS ON AMENDMENTS. Except as provided in **Section XV.B**, notwithstanding 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 any of the Limited Common Elements appurtenant to all Commercial Units shall be effective without the approval of the Owner or Owners of the Unit to which said Limited Common Elements are appurtenant. Until the end of the Developer Control Period, no amendment to the Condominium Documents affecting any of the Limited Common Elements appurtenant to all Residential Units shall be effective without the approval of Developer. This restriction, during the Development Period, may not be amended without the approval of Developer.

2. Any amendment to the Condominium Documents to prohibit or materially restrict the use, operation, or occupancy of, or behavior within a Commercial Unit, Limited Common Element appurtenant to all Commercial Units, or Limited Common Element solely appurtenant to one (1) Commercial Unit, shall be subject to the Commercial Director's approval, or after the expiration of the Commercial Director Consent Rights, the consent of a Majority of the Commercial Unit Class.

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 expiration of the Commercial Director Consent Rights, the consent of a Majority of the Commercial Unit Class.

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 the Commercial Unit or its Limited Common Elements, shall not be effective without the prior written approval of the affected Commercial Unit Owner.

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

This Section XV.C may not be amended without the prior written approval of Developer.

D. **AMENDMENTS BINDING.** Any amendment made pursuant to the provisions of this Section shall be binding upon every Owner and every Unit whether the burdens thereon are increased or decreased, and such amendment shall be effective upon its filing at the Office.

XVI. **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 and all mortgagees of record who may have an interest in the Project.

XVII. **LAND TRUSTS.**

In the event title to any Unit and its appurtenant Common Interest is transferred 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 all other charges, costs, and expenses assessed against such Unit or the Owner thereof pursuant to the Condominium Documents or the Act. No claim for payment of Common Expenses or other charges, costs, or expenses 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 such 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 transfer of beneficial interest under such trust.

XVIII. **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 to the extent Developer 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 and with the House Rules, and with 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, the Resident Manager 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 or injury of 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:

- A. Collecting any delinquent Assessments against any Owner's Unit;
- B. Foreclosing any lien thereon;
- C. Enforcing any provision of the Condominium Documents or the Act; or
- D. Complying with rules and regulations of the Commission

shall be promptly paid on demand to the Association or the Resident Manager by the Owner; provided, that if the claims upon which the Association, or the Resident Manager takes action upon are not substantiated, all costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred by the Owner as a result of the action of the Association or Resident Manager, shall be promptly paid on demand to the Owner by the Association, or the Resident Manager, as applicable.

XIX. RESERVED RIGHT TO GRANT AND RECEIVE EASEMENTS.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2039, Developer shall have the reserved right to delete, cancel, relocate, realign, reserve, designate, grant, and receive any and all easements and rights of way 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, including, but not limited to, easements and/or rights of way for utilities, public purpose (i.e., pedestrian walkways, bus stops, stairs, ramps, paths, 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, and parking areas. Such right also includes easements for operation, upkeep, care and maintenance, or repair of any Unit or any Limited 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 the Developer's Reserved Rights, and other similar purposes; provided that such easements and/or rights of way shall not be located on or within 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; and provided that Developer shall have the right to negotiate and agree to such terms with respect to such easements and rights of way as Developer deems appropriate in its sole discretion. 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 consent of Developer. Developer shall have the right to define any easement right received pursuant to this Section as a Common Element or 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.

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

Notwithstanding anything provided to the contrary, and except as otherwise provided by law, to and until December 31, 2039:

- A. Developer shall have the reserved right to: (1) alter the floor plan of any Unit which it owns at any time, and in any manner Developer deems appropriate, in its absolute discretion, provided that the Common Interest appurtenant to the Unit shall not change; (2) cause the subdivision of any Unit which it owns at any time to create two (2) or more Units provided that the total Common Interest appurtenant to the newly-created Units shall equal the Common Interest appurtenant to the original Unit; (3) cause the consolidation of any Units which it owns at any time; (4) convert certain portions of any existing Unit to Limited Common Element status to facilitate any subdivision or consolidation; and (5) recalculate the Common Interest appurtenant to each Unit upon such subdivision and/or consolidation; provided that the total Common Interest appurtenant to the newly-created 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 Commercial Directors and Residential Directors on the Board.

B. If Developer is the Owner of any two (2) or more Units separated by a party wall, floor, or ceiling, Developer shall have the right to consolidate two (2) or more Units that are so separated, to 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, (2) the finish of any Common Element or Limited Common Element then remaining is restored to a condition substantially compatible with that of the Common Element or Limited Common Element prior to such alteration, and (3) all construction activity necessary to any such alteration or removal shall be completed within a reasonable period of time after the commencement thereof, subject to delays beyond the reasonable 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.

C. Developer, in the process of consolidating Units, shall have the right to convert that area between Units to a Unit (as opposed to the same remaining a Limited Common Element) for so long as such Units 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:

1. If necessary, Developer shall file or cause to be filed 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); (b) in the case of the consolidation of Units by Developer, the Common Interest appurtenant to the newly-formed Unit, which shall be calculated by adding together the Common Interest 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 shall file or cause to be filed an amendment to the Condominium Map for the Unit(s) being altered and/or expanded, subdivided or consolidated to show an amended floor plan, 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, 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 completion of buildings, and that the plans fully and accurately depict the layout, location, Unit numbers, and dimensions of the Units 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 the Declaration and Condominium Map to effect any subdivision or consolidation of Units or alterations to floor plans at any time to and until December 31, 2039, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder or other persons, execute and file amendments to this Declaration and 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 Section shall not be amended without the prior written consent of Developer.

XXI. RESERVED RIGHT TO INSTALL AND MAINTAIN TELECOMMUNICATIONS EQUIPMENT AND TO RECEIVE REVENUE THEREFROM.

To and until December 31, 2039, Developer shall have the reserved right 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 and owned by Developer. The installation of Telecommunications Equipment pursuant to this Section shall not be deemed to alter, impair, or diminish the Common Interest, Common Elements, and easements appurtenant to the Units, or a structural alteration or addition to the Tower constituting a material change, or necessitate an amendment to the

Condominium Map. All profits or expenses directly attributable to the Telecommunications Equipment shall be distributed or charged directly to the Unit to which the Telecommunications Equipment is appurtenant.

XXII. RESERVED RIGHT NOT TO DEVELOP AND/OR CONSTRUCT ALL OF THE RECREATIONAL AMENITIES AND TO MODIFY, RELOCATE, RECONFIGURE, AND REMOVE RECREATIONAL AMENITIES.

To and until December 31, 2039, Developer hereby reserves the right not to construct, and/or not to construct at the same time, all of the Recreational Amenities in the Project, as depicted on the Condominium Map, and to modify, relocate, reconfigure, and remove all or certain of the Recreational Amenities. Nothing in this Declaration shall be construed as a representation or warranty by Developer that the Recreational Amenities or any portion thereof, will be developed or built or that the Recreational Amenities and/or the types of Recreational Amenities offered will not change and/or that the other portions of the Limited Common Elements appurtenant to all Residential Units will be built or completed prior to, concurrently with, or soon after any or all of the Residential Units are conveyed to third parties.

XXIII. RESERVED RIGHT TO INSTALL DEVELOPER'S SIGNAGE.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2039, Developer hereby reserves the right, for the benefit of the Project, to install, maintain, repair, replace, and approve of (from time to time) directional signage within the street level of the Project, identity signage, and canopy signage, and other signage within the Limited Common Elements appurtenant to all Residential Units; subject to any zoning laws or other governmental requirements. Developer's approval rights shall not extend to any signage installed by the Association within the interior of the Limited Common Elements appurtenant to all Residential Units located in the Podium or within the interior of the Limited Common Elements appurtenant to all Residential Units. 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. Until such time that Developer shall provide notice that all Owners shall be obligated for the payment of Common Expenses as set forth in the Bylaws, Developer shall be responsible for lighting, installation, maintenance, and replacement of such residential signage as well as costs to repair any damage to the Project proximately caused by such installation, maintenance, and replacement of any residential signage and, after such notice, the Board shall be responsible for administering such obligations and assessing the costs thereof as a Residential Unit Class Expense.

XXIV. RESERVED RIGHT TO MODIFY PROJECT AND TO AMEND CONDOMINIUM DOCUMENTS AND/OR THE CONDOMINIUM MAP.

To and until December 31, 2039, Developer shall have the reserved right to effect such modifications to Units and Common Elements in the Project and/or to execute, file, 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 which apply to the Project, including, but not limited to, the Permit, FHA and ADA, and any rules and regulations promulgated thereunder, or as may be required by the Commission, by any title insurance company issuing title insurance on the Project or any of the Units, by any institutional Lender lending funds secured by the Project or any of the Units, or by any 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, to and until December 31, 2039:

A. Developer shall have the reserved right to convert a Limited Common Element solely appurtenant to a Unit or Units owned by Developer into a separate Unit of the Project or to add to the area of a Unit. 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 said Limited Common Element and Unit(s) 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 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 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 Limited Common Elements of the Project as Limited Common Elements solely 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 Limited Common Element into a Unit or Units as provided above shall be effective provided that:

1. Developer shall file or cause to be filed 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 square footage of each individual Unit by the total net square footage of all Units within the Project, including any newly-formed Units. Developer may adjust the Common Interest to assure that the total of all Common Interests equals one hundred percent (100%). If Developer increases the area of an existing Unit by converting a portion of the Limited Common Element solely appurtenant thereto to Unit and connecting it to the Unit, but an additional Unit is not created, then the Common Interest percentage allocated to the Unit shall remain unchanged;

2. Developer shall file or cause to be filed 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 the Declaration and Condominium Map to effect the conversion of any Limited Common Element into a Unit and the alterations to floor plans may occur at any time to and until December 31, 2039, and Developer may, without being required to obtain the consent or joinder of any Owner, lien holder or other persons, execute, deliver, and file amendments to the Declaration and 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 Section shall not be amended without the prior written consent of Developer.

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

To and until December 31, 2039, Developer shall have the reserved right to amend this Declaration to (a) recharacterize all or a portion of certain Limited Common Elements solely appurtenant to a Unit or Units owned by Developer or Limited Common Elements appurtenant to all Residential Units or all Commercial Units, if all Residential Units and Commercial Units, respectively, are owned by Developer, as being 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 Limited Common Elements solely appurtenant to any Unit owned by Developer to another Unit or Units, or as Limited Common Elements appurtenant to all Residential Units or all Commercial Units, as applicable; and/or (c) redesignate a portion of the Limited Common Elements appurtenant to all Residential Units or all Commercial Units, if all Residential and Commercial Units, respectively, are owned by Developer, as Limited Common

Elements solely appurtenant to a Unit or Units owned by Developer. Upon recharacterization of any Limited Common Element to 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 the Declaration to effect such recharacterization or redesignation of any such Limited Common Elements shall occur at any time or times to and until December 31, 2039, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder or other persons, execute, deliver, and file 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 RIGHT TO CONVEY PROPERTY TO THE ASSOCIATION.

Developer shall have the reserved right to and until December 31, 2039, but not the obligation, to convey to the Association, and the Association shall accept, title to any property owned by Developer or Developer's successors, or assigns, together with the responsibility to perform any and all duties associated therewith. Upon conveyance or dedication of such property to the Association, the Association 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. Any property or interest in property transferred to the Association by Developer shall be by way of quitclaim deed, "AS IS," "where is". Developer shall have the further right to redesignate Limited Common Elements appurtenant to Units owned by Developer or Developer's successors and assigns 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, 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 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 harmless from any loss incurred by Developer as a result of any claim made against Developer pursuant to any agreement with a third party arising after such conveyance.

XXVIII. RESERVED RIGHT TO CONDUCT SALES ACTIVITIES.

To and until December 31, 2039, Developer does hereby reserve the right unto itself, its brokers, sales agents, and other related Persons to access and conduct extensive sales activities at the Project, including the use of any Unit owned by Developer or its successors, or assigns, and the Limited Common Elements appurtenant solely to said Unit and use of the Limited Common Elements appurtenant to all Residential Units, for instance, for hosting of receptions and use of the Recreational Amenities for such activities, and use of the Limited Common Elements appurtenant to all Commercial Units for model Units, sales, leasing, management, and construction offices, parking and extensive sales displays and activities, the posting and maintenance of signs and other advertisements relating to such sales activities, and to install, maintain, locate, relocate, and reconfigure such structures, displays, advertising signs, billboards, flags, sales desks, kiosks, sales, 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 disposition of Units 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. In the event that Developer is unable to sell all of the Units by December 31, 2039, Developer shall have the right to conduct sales activities on the Project until the closing of the sale of the last unsold Residential Unit of 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 Developer's mortgage lender, if any, or any successor to or assignee of Developer's mortgage 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, such Mortgage 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 of the Units in the Project have been sold and Unit Deeds therefor filed, 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.

XXIX. RESERVED RIGHT TO LEASE OR TRANSFER COMMERCIAL UNITS AND THEIR LIMITED COMMON ELEMENTS.

To and until December 31, 2039, Developer, as the Owner of a Commercial Unit, shall have the reserved right, but not the obligation, to lease or transfer ownership of any of the Commercial Units owned by Developer to the Association or to a third party, and to redesignate any Limited Common Element solely appurtenant to such Unit to a Unit owned by the Association or a third party, and redesignate Limited Common Elements appurtenant to all Commercial Units as Common Element or Limited Common Element appurtenant to all Residential Units, and to the extent necessary or required, to amend this Declaration and 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 the Commercial Unit is transferred or leased to the Association or 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 Expense in proportion to the percentage common interest set forth in Exhibit "B" attributable to such Commercial Unit. Developer further reserves the right to retain administrative and management control over such areas, unless such right is otherwise delegated to the Association or such third party buyer at the time of such transfer. In the event that any Commercial Unit is ever transferred or leased to the Association or to a third party and the Association or such third party thereafter but prior to and including December 31, 2039, 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 the 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 the 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 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 such Commercial Unit to the Association and for the Association to accept ownership thereof and/or to redesignate Limited Common Elements solely appurtenant to said Commercial Unit or Limited Common Elements appurtenant to all Commercial Units to a Unit owned by the Association or to Limited Common Element appurtenant to all Residential Units or Common Element, and, to the extent necessary, to amend this Declaration to effect the same, shall occur no later than December 31, 2039. Developer, as the Owner of a Commercial Unit, has the right for the duration of its ownership to convey the Unit to third parties, which right shall continue notwithstanding that December 31, 2039 may have passed. Developer may, without being required to obtain the consent or joinder of any Owner, lienholder or other Persons, execute, deliver, and file 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 or privileges.

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

Developer shall have the reserved right to and until December 31, 2039, 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 and/or floors in the Project shall be effective provided that:

A. Developer shall file or cause to be filed an amendment to this Declaration describing (a) the revised description of Units and/or floors that comprise the Project; and (b) the undivided percentage 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 square footage by the net square footage 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 file or cause to be filed 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 completion 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 the Declaration and 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 to and until December 31, 2039, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder or other Persons, execute and file amendments to the Declaration and 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.

XXXI. RESERVED RIGHT TO ENTER INTO AGREEMENTS WITH BICYCLE SHARING ENTITY.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2039, Developer hereby reserves the right, unto itself, its agents, employees, personnel or licensees and its successors and assigns, to select and contract with a City and County of Honolulu bicycle sharing partner or entity for a bike share station to be located on a publicly-accessible portion of the Project in accordance with the Permit. Such right shall include a perpetual right and easement over the Project to install and operate, or provide for the installation and operation of, said bike share station and to grant easements for such purposes, upon such terms and conditions as Developer may determine in its discretion.

XXXII. RESERVED RIGHT TO ADDRESS ARCHAEOLOGICAL ISSUES.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2039, Developer hereby reserves the right to respond to and appropriately deal with any inadvertent finds of human skeletal remains or burial goods, or other historic or archaeological finds during the course of construction of the Project in compliance with applicable Hawaii law, and the determinations with respect thereto made by the SHPD by (a) designating one or more Common Elements, including open spaces and areas beneath structural elements of the Building Structure as burial preserve areas; (b) filing or recording against the Spatial Unit one or more documents related to the preservation or relocation of any burials or artifacts, including but not limited to binding short term and long term measures such as fencing, buffers, landscaping, access easements, plaques, and other identifying measures; (c) relocated or preserving in place at any portion of the Project any remains, burial goods, or artifacts that may be found during the course of site preparation and construction of the Project; (d) making changes to the Building Structure, Common Elements, and Limited Common Elements necessary to accommodate the foregoing; and (e) entering into any agreements and preparing any reports necessary or prudent to document the decisions and requirements of any governmental agency or entity, including but not limited to SHPD, Developer's agreements related to such requirements or decision(s), or of applicable laws, including but not limited to preservation plans, archaeological data recovery plans, mitigation plans, monitoring plans, and in situ burial agreements. The Association shall be subject to and responsible for compliance with all such plans, agreements, and easements,

expenses of which shall be a Common Expense. All persons who are classified as recognized cultural or lineal descendants by SHPD or the Oahu Island Burial Council with relation to the Project shall have a reasonable right of entry and access over, across, and through the ground level Common elements to gain access to and for visitation of any burial preserve area so created, subject to reasonable rules and policies established from time to time by Developer and/or the Board relating to hours of visitation, security procedures for visitation, and parking at the Project; provided, however, that no such rules and policies shall at any time unreasonably hinder, impair, or interfere with the right of the recognized cultural and lineal descendants to visit any burial preserve area.

XXXIII. RESERVED RIGHT TO AMEND THE CONDOMINIUM DOCUMENTS TO REMOVE REFERENCES TO LOT OWNER AFTER ACQUISITION.

This Declaration and the Bylaws shall be deemed automatically amended to remove any references to Lot Owner as fee simple owner of the Spatial Unit effective on the date of filing of the conveyance documents conveying to Developer the Lot Owner's fee simple interests in the Spatial Unit, and upon such date Developer shall have the reserved right, without the consent or joinder of any other person or party, to file an amendment to this Declaration and the Bylaws, as appropriate, to effect the same at the Office.

XXXIV. ASSIGNMENT OF RESERVED RIGHTS.

To and until December 31, 2039, 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 filed in said Office. 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 file 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 his or her attorney-in-fact with full power of substitution to execute, deliver, and file such documents and instruments and to do such things on his 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 transfer of any Unit or any interest therein, whether by deed, Mortgage, or any other instrument of conveyance.

XXXV. CONSENT TO DEVELOPER'S RESERVED RIGHTS; APPOINTMENT OF DEVELOPER AND ASSOCIATION 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 Sections XIX through XXXIV, above, the permitted actions taken by Developer pursuant thereto, and to the filing of any and all documents necessary to effect the same in said Office; agrees to execute, deliver, and file 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 his or her attorney-in-fact with full power of substitution to execute, deliver and file such documents and instruments and to do such things on his or her 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 transfer 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 file 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 respective rights pursuant to the provisions of this Declaration.

XXXVI. INDEMNIFICATION OF LOT OWNERS.

Developer and the Association agree to indemnify, defend, and hold Lot Owners and their respective officers, directors, shareholders, agents, and employees harmless from and against any and all claims, liabilities, and any damage, 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 public report under the Act, created, executed or delivered by Developer in connection with the Project; provided that this indemnity shall not extend to (a) claims caused by the gross negligence or willful misconduct of a Lot Owner, or (b) claims against a Lot Owner other than as a result such Lot Owner permitting Developer to create a condominium property regime on the Spatial Unit or Lot Owner being a signatory to the Declaration and Bylaws. Nothing in the foregoing exception shall be deemed a waiver by Lot Owners or a limitation of any of Lot Owners' rights or remedies, except as set forth in said exception. Developer and, by their acceptance thereof, Owners acknowledge that Lot Owners have no obligation to review this Declaration or any other document prepared by Developer for adequacy or compliance with law, that Lot Owners do not by the execution hereof endorse this Declaration or any such document, and any inadequacy or misrepresentation by Developer hereunder shall not be deemed gross negligence or willful misconduct of Lot Owners.

XXXVII. LIMITED PURPOSE OF JOINDER BY LOT OWNERS; RELEASE AND WAIVER OF CLAIMS.

Lot Owners have joined the Declaration for the sole purpose of permitting Developer to comply with the requirements relating to the submission of the Spatial Unit to a condominium property regime pursuant to the Act, has not reviewed this Declaration for adequacy or compliance with law, and expressly disclaim 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 public report issued 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 Lot Owners have 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 Lot Owners, and to have released Lot Owners, 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 either Lot Owner, unless such action is expressly authorized or approved by such Lot Owner in writing in each instance. Notwithstanding anything provided to the contrary, under no circumstances will Lot Owners have any liability for expenses under this Declaration except to the extent that a Lot Owner is a Unit Owner. In the event any Lot Owner is found to be liable in any claim relating to this Declaration, any recovery shall be limited to the assets of such Lot Owner, and shall not extend to the individual officers, directors, or shareholders thereof. No officer, director, or shareholder of a Lot Owner shall, by reason of being an officer, director, or shareholder of a Lot Owner, have any personal liability under the terms of this Declaration.

XXXVIII. DISCLOSURES AND LIMITATIONS ON LIABILITIES.

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 of Hawaii to the fullest extent provided by such laws. Members of the Board are not personally liable to the victims of crimes occurring on 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 him or her for his or her losses or claims, and undertake all costs of defense, unless and until it is proven that he or she acted with willful or wanton misfeasance or with gross negligence. After such proof the Association is not

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 the individual who so acted. Punitive damages may not be recovered against the Association, but may be recovered from persons whose activity gave rise to the 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 RESIDENT MANAGER.** Notwithstanding anything to the contrary contained herein, all Owners agree to defend, indemnify, and hold harmless the Resident Manager 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 such Owner.

B. **SECURITY DISCLAIMER.** The Association and/or the Resident Manager 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 Resident Manager, nor Developer shall in any way be considered insurers or guarantors of security within the Project, and neither the Association, the Resident Manager, 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 any Unit, as applicable, acknowledge that the Association, the Board, the Resident Manager, Developer or any successor Developer, do not represent or warrant that any fire protection system or other security system designed or installed according to the guidelines established by Developer or the Association may not be compromised or circumvented, that any fire protection or burglar alarm systems or other security systems will prevent loss by fire, smoke, burglary, theft, hold-up, terrorism, or otherwise, nor that fire protection or burglar alarm systems or other security systems 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 Resident Manager, the Association, its Board and committees, Developer, and any other successor to Developer is not an insurer, 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 Resident Manager, the Association, its Board and committees, Developer, or any successor Developer have made no representations or warranties nor has any Owner or the Occupants of a Unit relied upon any representation or warranty, expressed or implied, including any warranty of merchantability as to the fitness of any alarm systems or other security systems recommended or installed, or any security measure undertaken within the Project.

C. **NONLIABILITY FOR SQUARE FOOTAGE CALCULATION.** Each Owner, by acceptance of a deed or other conveyance of a Unit, understands and agrees that there are various methods for calculating the square footage of a Unit, and that depending on the method of calculation, the quoted square footage 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, actual square footage of the Unit may also be affected. By accepting title to the Unit, the applicable Owner(s) shall be deemed to have conclusively agreed to accept the size and dimensions of the Unit, regardless of any reasonable variances in the square footage 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 the Section, Developer does not make any representation or warranty as to the actual size, dimensions (including ceiling heights) or square footage 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 square footage and the actual square footage 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 the presence of mold spores 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 molds, mildew and/or microscopic spores at the Project, unless caused by the sole gross negligence or willful misconduct of Developer.

E. **FLOOD ZONE (X); TSUNAMI EVACUATION ZONE.** The Project is located in Flood Zone (X) and federal flood insurance is not required for the Project. The Project is, however, located within the extreme tsunami evacuation zone.

F. **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, and shopping areas, with attendant limitations on solitude and privacy. Walls, floors, and ceilings have been designed to meet applicable building codes. Owners will hear 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 such items as vacuum cleaners, stereos or televisions, or from people running, walking, exercising, socializing, or enjoying the Recreational Amenities. Finally, Owners can expect to hear substantial levels of sound, music, noise, odors, vibrations, and other nuisances from retail and commercial establishments in the Project, and/or in the vicinity of the Project. Owners may also experience light entering the Units from commercial lighting in the vicinity and from street lights located in close proximity to the windows and doors of the Units.

2. **NOISE; TRAFFIC.** Being located in a central shopping, entertainment, and commuter district, noise, dust, vibration, and/or pedestrian and vehicular traffic are higher than average in the vicinity of the Project. Each Owner and every other Person who has any interest in the Project or who has the right to use the Project or any part of it 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 such noise, dust, vibrations, and/or additional traffic, including, without limitation, construction and operation of the County's planned elevated rail transit project, if constructed, which may 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 (a) transient noise and guest or pedestrian traffic from the street or the Limited Common Elements appurtenant to the Commercial Units or neighboring properties; (b) opening and closing of doors; (c) loud music from restaurants or other outlets, concert events, or performances; (d) vehicular traffic from the street; (e) voices of people talking outside retail and/or food and beverage establishments; and (f) noises from special events taking place near the Project. Such noise 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. Furthermore, normal construction activities shall not be considered a "nuisance". By accepting a deed to a Unit, an Owner acknowledges that the Project is adjacent to high-traffic roads, businesses, and retail/entertainment facilities, and that noise, lights, 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 deed or other conveyance of his or her Unit, hereby acknowledges and agrees that sound transmission in a high-rise building such as the Tower is very difficult to control. Developer does not make any representation or warranty as to the level of sound transmission at the Project, and each Owner hereby waives and expressly releases any claim for loss or damage resulting from such sound transmission.

3. **VIEWS.** Each Owner acknowledges that there are no protected views in the Project, and the Units are not assured the existence or unobstructed continuation of any particular view. Any view from the Unit is not intended as part of the value of the Unit, and is not guaranteed, and Developer makes no representation or warranty regarding whether a Unit will continue to have the same view, or any

view; the effect of the view or the lack thereof on the value of the Unit. The views from the Unit or Project will likely change as a result of, be affected by, or be 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 planned elevated 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.

4. **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 Property may occur from time to time.

5. **USE CHANGES.** 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.

6. **MARKETING MATERIALS.** Any marketing materials used by Developer in the promotion and sales 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 or the types of amenities provided in the Project. The marketing materials are intended to give a purchaser a general idea of the standard and quality of the Project, and are not intended to represent the precise décor, coloring, furnishing, fixtures, or amenities that will be included in the Project.

7. **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 in the Unit, doors, and fixtures. The layout and areas of the Units with typical depictions are intended to be consistent.

8. **WARRANTIES.** Developer is developing the Project but it 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.

9. **FUTURE RAIL ROUTE.** The Project may be in the vicinity of the proposed future light rail route by the County, which may cause noise, dust, vibrations, traffic congestion, and/or other inconveniences or nuisances associated with the development, construction, and operation of such light rail transit system ("**Rail Effects**"). By signing and accepting a deed to a Unit, the 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 and enjoyment of the Unit or the Project, or from any inconvenience, property damage or personal injury arising directly or indirectly from the Rail Effects.

10. **ACKNOWLEDGEMENT AND ACCEPTANCE OF CERTAIN CONDITIONS.** By signing and accepting a deed to a Unit, the 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 and enjoyment of the Unit

or the Project, or from any inconvenience, property damage, or personal injury arising directly or indirectly from 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 the Recreational Amenities.** Certain of the Residential Units located near the eighth (8th) level of the Tower are located in close proximity to the Recreational Amenities, which is located on the roof of the Podium. These Residential Units may be exposed to greater noise and other nuisances than the Residential Units located on other levels of the Tower.

c. **Countertops.** Natural stone countertops ("Countertops") may be installed in the Units, including in the bathrooms and kitchens. If such material is used, due to the mineral composition and crystalline structure of the Countertops, small pits may be visible on the polished surface. The pitting as well as natural fissures shall not be considered flaws, as they do not impair the function or durability of the material. Although the Countertops will be finished, due to the porous nature of stone, the Countertops will still be susceptible to discoloration, staining, fracturing, and chipping. The Countertops have special maintenance, care, and upkeep requirements that will need to be complied with by each of the Owners in the Project in order to maximize the enjoyment and useful life of the originally installed Countertops. 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.

d. **Engineered Wood Flooring and Wood Veneer Cabinets in Units.** The Units may have engineered wood flooring installed in a portion of each Unit. Such floors tend to scratch easily. Further, wood flooring has special maintenance, care, and upkeep requirements as compared to carpeting that will need to be complied with by each of the Owners in the Project in order to maximize the enjoyment and useful life of the 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 the Deed to a Unit, will be 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 may also have cabinets made from natural wood veneer, which is subject to color, texture, and surface variations and aging. The failure to comply with special maintenance, care, and upkeep requirements will result in additional costs to the Owner and detract from the Owner's enjoyment of the Unit.

XXXIX. DISPUTE RESOLUTION.

A. **DISPUTES.** The purpose of this Section is to provide the Owners, Association, Board, Managing Agent, Developer and their respective Representatives (collectively, for purposes of this Section, the "**Parties**") with a mechanism to resolve Disputes (as defined below).

1. 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. A Dispute shall not include: (a) claims for construction defects governed by the Contractor Repair Act, Chapter 672E of the Hawaii Revised Statutes; (b) actions seeking equitable relief involving threatened property damage or the health or safety of Owners or any other persons; (c) actions to collect assessments; (d) personal injury claims; or (e) actions against the Association, the Board, or any Director, Officer, agent, employee, or other persons for amounts in excess of THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$3,500.00) if insurance coverage under a policy of insurance procured by the Association or the Board would be unavailable for defense or judgment because mediation was pursued.

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 effort to resolve the Dispute.

C. **MEDIATION.** If the Parties cannot resolve such Dispute by discussion pursuant to **Section XXXIX.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 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.

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. Each Party shall bear its own attorneys' fees and costs in connection with such mediation.

4. **No Judicial Intervention.** If a Party institutes litigation prior to observing the procedures set forth in **Sections XXXIX.B** and **XXXIX.C** ("**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 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 **Sections XXXIX.B** and **XXXIX.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. **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 **Sections XXXIX.B** and **XXXIX.C** above.

F. **UNENFORCEABILITY.** If any part of this Article 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. **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 the 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 consent to 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.

XLI. COMPLIANCE WITH COUNTY ZONING AND BUILDING LAWS.

Developer declares, pursuant to Section 514B-32(a)(13) of the Act, and subject to the penalties set forth in Section 514B-69 of the Act, that the Project is in compliance with all zoning and building ordinances and codes, and all other permitting requirements Pursuant to Section 514B-5 of the Act and Hawaii Revised Statutes Chapter 205.

XLII. 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 be 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, 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.

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. 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

2. Developer has either
 - a. rejected Claimant's claim or

- either
- b. within thirty (30) calendar days after its receipt of a Notice of Alleged Defect,
 - (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 Section 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 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 filed by Developer with said Office.

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, and 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 Section 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 Section conflicts with any applicable portion of Hawaii Revised Statutes Chapter 672E, the Contractor Repair Act, the provisions of said statute, as amended, shall apply.

XLIII. RIGHT TO APPOINT AND REMOVE THE 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; (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, files 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 filed instrument executed by Developer, be approved by Developer before they become effective.

XLIV. RESIDENT MANAGER UNIT.

Developer is the Owner of the Resident Manager Unit set forth in **Exhibit "B"**, which is initially intended to be used as the Resident Manager Unit. Developer may sell, pledge, lease, assign, convey, Mortgage, and/or transfer Resident Manager Unit to a third party, including, without limitation, the Association, in its sole discretion. Upon such conveyance, Developer does not guaranty, warrant or represent that the Resident Manager Unit will continue to be used as such, or be utilized to serve the Project or its Owners.

XLV. GENERAL PROVISIONS.

A. WAIVER OF CERTAIN RIGHTS.

1. **WAIVER OF CERTAIN DAMAGES.** WITH RESPECT TO ALL DISPUTES, 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, EXEMPLARY, TREBLE, OR OTHER MULTIPLE DAMAGES.

2. **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.

3. **WAIVER OF CLASS ACTION.** 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.

B. **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.

C. **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.

D. **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.

E. **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.

F. **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.

G. **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.

H. **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.

I. **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.

J. **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.

K. **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.

L. **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.

M. **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 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.

N. **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 filed by Developer from time to time with any governmental authority.

O. **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).

P. **COUNTERPARTS.** The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterpart. For all purposes, including, without limitation, recordation, filing, and delivery of this instrument, duplicate, unexecuted, and unacknowledged pages of the counterparts may be discarded, and the remaining pages assembled as one document.


XLVI. 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, the undersigned have executed these presents on the date above first written.

JL AVALON CAPBRIDGE, LLC
a Hawaii limited liability company

By: 
Name: Christine H. H. Camp
Its: Authorized Representative

"Developer"

MARUITO USA, INC.
a Hawaii corporation

By: 
Name: Steven Sombrey
Its: Authorized Representative

WATUMULL ENTERPRISES, LTD.
a Hawaii corporation

By: _____
Name: _____
Its: _____

"Lot Owners"

IN WITNESS WHEREOF, the undersigned have executed these presents on the date above first written.

JL AVALON CAPBRIDGE, LLC
a Hawaii limited liability company

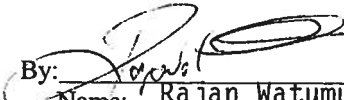
By: _____
Name: _____
Its: _____

"Developer"

MARUITO USA, INC.
a Hawaii corporation

By: _____
Name: _____
Its: _____

WATUMULL ENTERPRISES, LTD.
a Hawaii corporation

By:  _____
Name: Rajan Watumull
Its: President

"Lot Owners"

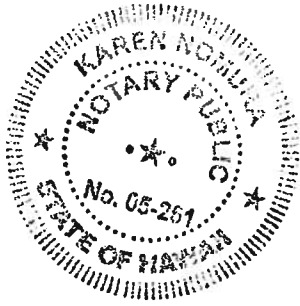
STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

H.H. K.N.P.

On this 13th day of March, 2019, before me appeared Christine Camp, 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.



Karen Nomura

Print Name: Karen Nomura
Notary Public, in and for said State

My commission expires: 5/1/2021

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **DECLARATION OF CONDOMINIUM
PROPERTY REGIME OF SKY ALA MOANA WEST**

Document Date: undated or Undated at time of notarization.

No. of Pages: 90 Jurisdiction: First Circuit
(in which notarial act is performed)

Karen Nomura
Signature of Notary

3/13/2019
Date of Notarization and
Certification Statement

Karen Nomura
Printed Name of Notary



(Official Stamp or Seal)

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 15th day of March, 2019, before me appeared Steno K. Sombere, 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.



Karen Nomura

Print Name: Karen Nomura
Notary Public, in and for said State

My commission expires: 5/1/2021

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **DECLARATION OF CONDOMINIUM
PROPERTY REGIME OF SKY ALA MOANA WEST**

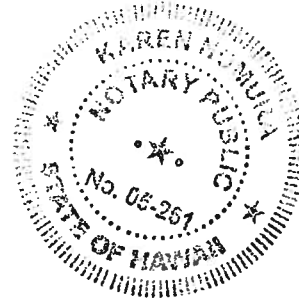
Document Date: undated or Undated at time of notarization.

No. of Pages: 90 Jurisdiction: First Circuit
(in which notarial act is performed)

Karen Nomura
Signature of Notary

3/15/2019
Date of Notarization and
Certification Statement

Karen Nomura
Printed Name of Notary



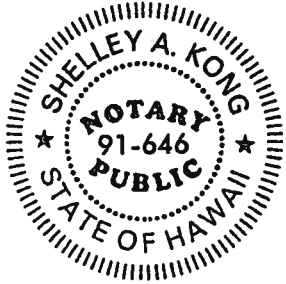
(Official Stamp or Seal)

STATE OF HAWAII

SS:

CITY AND COUNTY OF HONOLULU

On this 12th day of March, 2019, before me appeared Rajan Watumull, 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.



[Handwritten Signature]

Print Name: Shelley A. Kong
Notary Public, in and for said State

My commission expires: 09/05/2019

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **DECLARATION OF CONDOMINIUM
PROPERTY REGIME OF SKY ALA MOANA WEST**

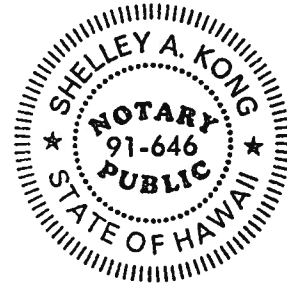
Document Date: undated or Undated at time of notarization.

No. of Pages: 89 Jurisdiction: First Circuit
(in which notarial act is performed)

[Handwritten Signature]
Signature of Notary

March 12, 2019
Date of Notarization and
Certification Statement

Shelley A. Kong
Printed Name of Notary



(Official Stamp or Seal)

EXHIBIT "A"

PROPERTY DESCRIPTION

Those certain premises comprising a portion of that certain condominium project known as "SKY ALA MOANA" ("Project"), which Project consists of those certain parcels of land described herein and in that certain Declaration of Condominium Property Regime of Sky Ala Moana dated March 15, 2019, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. T-10668207, as the same may be amended from time to time ("Declaration"), and the improvements and appurtenances thereof, as described in and established by the Declaration, and as shown on the plans of the Project filed in said Office as Condominium Map No. 2437, as the same may be amended from time to time ("Condominium Map"), described as follows:

-FIRST:-

Spatial Unit No. 1 ("Unit") located in the Project, established by the Declaration, and shown on the Condominium Map.

TOGETHER WITH those easements appurtenant to the Unit as set forth in the Declaration, which may include the following:

(a) The exclusive right to use those certain Limited Common Elements of the Project that are described in the Declaration as being appurtenant to the Unit.

(b) Nonexclusive easements in the Common Elements, including the Limited Common Elements, designed for such purposes as necessary, for the maintenance and repair of such Unit and the Limited Common Elements appurtenant thereto; in the Common Elements for use according to their respective purposes, subject always to the exclusive use of the Limited Common Elements as provided in the Declaration; and in the other units for support; subject to the provisions of Section 514B-38 of the Act.

(c) The right, together with the right to grant and transfer, easements and rights to the full extent necessary for the full use and enjoyment of such portions of sanitary sewer connections, water connections, electricity, gas, telephone, HVAC, security and television lines, drainage facilities, or duct facilities which service the Unit, and to enter the unit owned by others, or to have utility companies enter the unit 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 all damage to any unit caused by such entry as promptly as possible after completion of work thereon.

(d) If any part of the Common Elements now or hereafter encroaches upon any unit 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 Common Elements, units, 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.

EXCEPTING AND RESERVING AND SUBJECT TO all easements as provided in the Declaration, including, but not limited to, (i) easements for encroachments appurtenant to other units or the Common Elements as they arise in the manner set forth above, now or hereafter existing thereon; (ii) easements for access to the Unit or any Limited Common Element appurtenant thereto from time to time during reasonable hours as may be appropriate for the operation or maintenance of the Project and, without notice, at any time for (a) making emergency repairs therein necessary to prevent damage to any unit or Limited Common Element, (b) abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity, (c) protecting the property rights of any Owner, or (d) preventing death or serious bodily injury to any Owner or Occupant therein; (iii) easements necessary to complete the Project, for noise and dust, to conduct sales activities upon the Project; and (iv) easements necessary pursuant to the exercise of any reserved rights set forth in the Declaration, all as provided in the Declaration.

-SECOND:-

An undivided 51% interest appurtenant to the Unit, in all Common Elements of the Project, as established for the Unit by the Declaration, or such other fractional or percentage interest as hereafter established for the Unit by any amendment of the Declaration, as tenant in common with all other owners and tenants thereof.

ALL TOGETHER WITH AND SUBJECT TO as to FIRST and SECOND above, the covenants, agreements, easements, obligations, conditions, exceptions, reservations and other matters and provisions of the Declaration and the Bylaws, all of which are incorporated herein by this reference and which constitute and shall constitute covenants running with the land, equitable servitudes and liens to the extent set forth therein and provided by law, and which are hereby accepted by the Grantee as binding and to be binding on the Grantee, and Grantee's successors and assigns.

The lands upon which the Project is located are described as follows:

ITEM I:

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

LOTS: 35, area 5,000 square feet,
 36, area 5,000 square feet, and
 37, area 5,000 square feet, more or less,

as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation 45 of Hawaiian Land Company, Limited.

Being land(s) described in Transfer Certificate of Title No. 1,014,665 issued to MARUITO USA, INC., a Hawaii corporation.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : A & B PROPERTIES, INC., a Hawaii corporation

GRANTEE : MARUITO USA, INC., a Hawaii corporation

DATED : as of March 1, 2011

FILED : Land Court Document No. 4053051

ITEM II:

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

LOTS: 27, area 5,000 square feet,
 28, area 5,000 square feet,
 29, area 5,000 square feet,
 30, area 5,000 square feet,
 31, area 5,000 square feet,
 32, area 5,000 square feet,
 33, area 5,000 square feet, and
 34, area 5,000 square feet, more or less,

as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation 45 of Hawaiian Land Company, Limited.

BEING THE PREMISES ACQUIRED BY JL AVALON CAPBRIDGE, LLC, a Hawaii limited liability company, by LIMITED WARRANTY DEEDS of LYK KENROCK, LLC, a Hawaii limited liability company, as follows:

-AS TO LOT 27:-

DEED dated February 22, 2017, filed as Land Court Document No. T-9914121, issuing Transfer Certificate of Title No. 1,131,851.

-AS TO LOT 28:-

DEED dated February 22, 2017, filed as Land Court Document No. T-9914122, issuing Transfer Certificate of Title No. 1,131,852.

-AS TO LOT 29:-

DEED dated February 22, 2017, filed as Land Court Document No. T-9914123, issuing Transfer Certificate of Title No. 1,131,853.

-AS TO LOT 30:-

DEED dated February 22, 2017, filed as Land Court Document No. T-9914124, issuing Transfer Certificate of Title No. 1,131,854.

-AS TO LOT 31:-

DEED dated February 22, 2017, filed as Land Court Document No. T-9914125, issuing Transfer Certificate of Title No. 1,131,855.

-AS TO LOT 32:-

DEED dated February 22, 2017, filed as Land Court Document No. T-9914126, issuing Transfer Certificate of Title No. 1,131,856.

-AS TO LOT 33:-

DEED dated February 22, 2017, filed as Land Court Document No. T-9914127, issuing Transfer Certificate of Title No. 1,131,857.

-AS TO LOT 34:-

DEED dated February 22, 2017, filed as Land Court Document No. T-9914128, issuing Transfer Certificate of Title No. 1,131,858.

ITEM III:

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

LOTS: 24, area 5,000 square feet,
 25, area 5,000 square feet, and
 26, area 5,000 square feet, more or less,

as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 45 of Hawaiian Land Company, Limited.

Being land(s) described in Transfer Certificate of Title No. 250,348 issued to WATUMULL ENTERPRISES, LTD., a Hawaii corporation.

BEING THE PREMISES ACQUIRED BY QUITCLAIM DEED

GRANTOR : ALA MOANA HAWAII PROPERTIES, a Hawaii registered limited partnership
GRANTEE : WATUMULL ENTERPRISES, LTD., a Hawaii corporation
DATED : June 30, 1983
FILED : Land Court Document No. 1177779

EXHIBIT "A"

EXHIBIT "B"

Unit Numbers, Unit Types, Parking Stall No(s), Number of Bedrooms And Bathrooms, Approximate Net Living Areas, Approximate Net Lanai Areas, Total Approximate Net Area, Common Interest; Class Common Interest

I. Unit Numbers, Unit Types, Parking Stall No(s), Number of Bedrooms and Bathrooms, Approximate Net Living Areas, Approximate Net Lanai Areas, Total Approximate Net Area, Common Interest

Unit Number	Unit Type	Parking Stall No(s)	Bedrooms/Bathrooms	Approx. Net Living Area (square feet)	Approx. Net Lanai Area (square feet)	Total Approx. Net Area (square feet)	Common Interest
806	R-06	7030, 7031	2/2	809	121	930	0.287819%
808	R-08	6024, 6025	2/2	813	211	1,024	0.289243%
809	R-09	4082, 4157	2/2	848	320	1,168	0.301695%
810	R-10	4094	1/1	519	130	649	0.184646%
811	R-11	4155, 4156	2/2	801	520	1,321	0.284973%
901	R-01	6097, 6098	2/2	901	91	992	0.320550%
902	R-02	7037, 7038	2/2	822	91	913	0.292444%
903	R-03	7116	1/1	574	75	649	0.204213%
904	R-04	7122	1/1	521	98	619	0.185357%
905	R-05	7133	1/1	567	73	640	0.201723%
906	R-06	7076, 7077	2/2	809	99	908	0.287819%
907	R-07	6113	1/1	556	99	655	0.197809%
908	R-08	7063, 7064	2/2	813	96	909	0.289243%
909*	R-09	4141, 4142	2/2	848	84	932	0.301695%
910	R-10	7139	1/1	519	100	619	0.184646%
911	R-11	6151, 6152	2/2	801	82	883	0.284973%
1001	R-01	6095, 6096	2/2	901	91	992	0.320550%
1002	R-02	7055, 7056	2/2	822	91	913	0.292444%
1003	R-03	7142	1/1	574	75	649	0.204213%
1004	R-04	7121	1/1	521	98	619	0.185357%
1005	R-05	7044	1/1	567	73	640	0.201723%
1006	R-06	7045, 7046	2/2	809	99	908	0.287819%
1007	R-07	6084	1/1	556	99	655	0.197809%
1008	R-08	7057, 7058	2/2	813	96	909	0.289243%
1009	R-09	7123, 7124	2/2	848	84	932	0.301695%
1010	R-10	6126	1/1	519	100	619	0.184646%
1011	R-11	7039, 7040	2/2	801	82	883	0.284973%
1101	R-01	6093, 6094	2/2	901	91	992	0.320550%
1102	R-02	7033, 7034	2/2	822	91	913	0.292444%
1103	R-03	5115	1/1	574	75	649	0.204213%
1104	R-04	7109	1/1	521	98	619	0.185357%
1105	R-05	7036	1/1	567	73	640	0.201723%
1106	R-06	7042, 7043	2/2	809	99	908	0.287819%
1107	R-07	4097	1/1	556	99	655	0.197809%
1108	R-08	7049, 7050	2/2	813	96	909	0.289243%
1109	R-09	7078, 7079	2/2	848	84	932	0.301695%
1110	R-10	6112	1/1	519	100	619	0.184646%
1111	R-11	6082, 6083	2/2	801	82	883	0.284973%
1201	R-01	6020, 6021	2/2	901	91	992	0.320550%
1202	R-02	7113, 7114	2/2	822	91	913	0.292444%

Unit Number	Unit Type	Parking Stall No(s)	Bedrooms/ Bathrooms	Approx. Net Living Area (square feet)	Approx. Net Lanai Area (square feet)	Total Approx. Net Area (square feet)	Common Interest
1203	R-03	7097	1/1	574	75	649	0.204213%
1204	R-04	7108	1/1	521	98	619	0.185357%
1205	R-05	7035	1/1	567	73	640	0.201723%
1206	R-06	7065, 7066	2/2	809	99	908	0.287819%
1207	R-07	5119	1/1	556	99	655	0.197809%
1208	R-08	7110, 7111	2/2	813	96	909	0.289243%
1209	R-09	7129, 7130	2/2	848	84	932	0.301695%
1210	R-10	6048	1/1	519	100	619	0.184646%
1211	R-11	7061, 7062	2/2	801	82	883	0.284973%
1301	R-01	6103, 6104	2/2	901	91	992	0.320550%
1302	R-02	7026, 7027	2/2	822	91	913	0.292444%
1303	R-03	7099	1/1	574	75	649	0.204213%
1304	R-04	7047	1/1	521	98	619	0.185357%
1305	R-05	7105	1/1	567	73	640	0.201723%
1306	R-06	7002, 7003	2/2	809	99	908	0.287819%
1307	R-07	5105	1/1	556	99	655	0.197809%
1308	R-08	7106, 7107	2/2	813	96	909	0.289243%
1309	R-09	7131, 7132	2/2	848	84	932	0.301695%
1310	R-10	6001	1/1	519	100	619	0.184646%
1311	R-11	7052, 7053	2/2	801	82	883	0.284973%
1401	R-01	6013, 6014	2/2	901	91	992	0.320550%
1402	R-02	7083, 7084	2/2	822	91	913	0.292444%
1403	R-03	7088	1/1	574	75	649	0.204213%
1404	R-04	7080	1/1	521	98	619	0.185357%
1405	R-05	7112	1/1	567	73	640	0.201723%
1406	R-06	6153, 6154	2/2	809	99	908	0.287819%
1407	R-07	5048	1/1	556	99	655	0.197809%
1408	R-08	7095, 7096	2/2	813	96	909	0.289243%
1409	R-09	7135, 7136	2/2	848	84	932	0.301695%
1410	R-10	5118	1/1	519	100	619	0.184646%
1411	R-11	7119, 7120	2/2	801	82	883	0.284973%
1501	R-01	5024, 5025	2/2	901	91	992	0.320550%
1502	R-02	7081, 7082	2/2	822	91	913	0.292444%
1503	R-03	6122	1/1	574	75	649	0.204213%
1504	R-04	7001	1/1	521	98	619	0.185357%
1505	R-05	7022	1/1	567	73	640	0.201723%
1506	R-06	6144, 6145	2/2	809	99	908	0.287819%
1507	R-07	7127	1/1	556	99	655	0.197809%
1508	R-08	7093, 7094	2/2	813	96	909	0.289243%
1509	R-09	7137, 7138	2/2	848	84	932	0.301695%
1510	R-10	5047	1/1	519	100	619	0.184646%
1511	R-11	7103, 7104	2/2	801	82	883	0.284973%
1601	R-01	5080, 5081	2/2	901	91	992	0.320550%
1602	R-02	7008, 7009	2/2	822	91	913	0.292444%
1603	R-03	6116	1/1	574	75	649	0.204213%
1604	R-04	7048	1/1	521	98	619	0.185357%
1605	R-05	7085	1/1	567	73	640	0.201723%
1606	R-06	6127, 6128	2/2	809	99	908	0.287819%

Unit Number	Unit Type	Parking Stall No(s)	Bedrooms/ Bathrooms	Approx. Net Living Area (square feet)	Approx. Net Lanai Area (square feet)	Total Approx. Net Area (square feet)	Common Interest
1607	R-07	7134	1/1	556	99	655	0.197809%
1608	R-08	7091, 7092	2/2	813	96	909	0.289243%
1609	R-09	7140, 7141	2/2	848	84	932	0.301695%
1610	R-10	5001	1/1	519	100	619	0.184646%
1611	R-11	7024, 7025	2/2	801	82	883	0.284973%
1701	R-01	5086, 5087	2/2	901	91	992	0.320550%
1702	R-02	7011, 7012	2/2	822	91	913	0.292444%
1703	R-03	6022	1/1	574	75	649	0.204213%
1704	R-04	7010	1/1	521	98	619	0.185357%
1705	R-05	7098	1/1	567	73	640	0.201723%
1706	R-06	6132, 6133	2/2	809	99	908	0.287819%
1707	R-07	7041	1/1	556	99	655	0.197809%
1708	R-08	7089, 7090	2/2	813	96	909	0.289243%
1709	R-09	7070, 7071	2/2	848	84	932	0.301695%
1710	R-10	4006	1/1	519	100	619	0.184646%
1711	R-11	6079, 6080	2/2	801	82	883	0.284973%
1801	R-01	5078, 5079	2/2	901	91	992	0.320550%
1802	R-02	7013, 7014	2/2	822	91	913	0.292444%
1803	R-03	6120	1/1	574	75	649	0.204213%
1804	R-04	7007	1/1	521	98	619	0.185357%
1805	R-05	7100	1/1	567	73	640	0.201723%
1806	R-06	6138, 6139	2/2	809	99	908	0.287819%
1807	R-07	7075	1/1	556	99	655	0.197809%
1808	R-08	7020, 7021	2/2	813	96	909	0.289243%
1809	R-09	7067, 7068	2/2	848	84	932	0.301695%
1810	R-10	7125	1/1	519	100	619	0.184646%
1811	R-11	6077, 6078	2/2	801	82	883	0.284973%
1901	R-01	5149, 5150	2/2	901	91	992	0.320550%
1902	R-02	7015, 7016	2/2	822	91	913	0.292444%
1903	R-03	6099	1/1	574	75	649	0.204213%
1904	R-04	7072	1/1	521	98	619	0.185357%
1905	R-05	7087	1/1	567	73	640	0.201723%
1906	R-06	7028, 7029	2/2	809	99	908	0.287819%
1907	R-07	7059	1/1	556	99	655	0.197809%
1908	R-08	7017, 7018	2/2	813	96	909	0.289243%
1909	R-09	7073, 7074	2/2	848	84	932	0.301695%
1910	R-10	7126	1/1	519	100	619	0.184646%
1911	R-11	6073, 6074	2/2	801	82	883	0.284973%
2001	R-01	5013, 5014	2/2	901	91	992	0.320550%
2002	R-02	6042, 6043	2/2	822	91	913	0.292444%
2003	R-03	6089	1/1	574	75	649	0.204213%
2004	R-04	6125	1/1	521	98	619	0.185357%
2005	R-05	6038	1/1	567	73	640	0.201723%
2006	R-06	6067, 6068	2/2	809	99	908	0.287819%
2007	R-07	6150	1/1	556	99	655	0.197809%
2008	R-08	6156, 6157	2/2	813	96	909	0.289243%
2009	R-09	6146, 6147	2/2	848	84	932	0.301695%
2010	R-10	7128	1/1	519	100	619	0.184646%

Unit Number	Unit Type	Parking Stall No(s)	Bedrooms/ Bathrooms	Approx. Net Living Area (square feet)	Approx. Net Lanai Area (square feet)	Total Approx. Net Area (square feet)	Common Interest
2011	R-11	6071, 6072	2/2	801	82	883	0.284973%
2101	R-01	5083, 5084	2/2	901	91	992	0.320550%
2102	R-02	6034, 6035	2/2	822	91	913	0.292444%
2103	R-03	6102	1/1	574	75	649	0.204213%
2104	R-04	6047	1/1	521	98	619	0.185357%
2105	R-05	6054	1/1	567	73	640	0.201723%
2106	R-06	5122, 5123	2/2	809	99	908	0.287819%
2107	R-07	7118	1/1	556	99	655	0.197809%
2108	R-08	6045, 6046	2/2	813	96	909	0.289243%
2109	R-09	7004, 7005	2/2	848	84	932	0.301695%
2110	R-10	7069	1/1	519	100	619	0.184646%
2111	R-11	6063, 6064	2/2	801	82	883	0.284973%
2201	R-01	5017, 5018	2/2	901	91	992	0.320550%
2202	R-02	6028, 6029	2/2	822	91	913	0.292444%
2203	R-03	6092	1/1	574	75	649	0.204213%
2204	R-04	6007	1/1	521	98	619	0.185357%
2205	R-05	6033	1/1	567	73	640	0.201723%
2206	R-06	5131, 5132	2/2	809	99	908	0.287819%
2207	R-07	7032	1/1	556	99	655	0.197809%
2208	R-08	6039, 6040	2/2	813	96	909	0.289243%
2209	R-09	6148, 6149	2/2	848	84	932	0.301695%
2210	R-10	7060	1/1	519	100	619	0.184646%
2211	R-11	6061, 6062	2/2	801	82	883	0.284973%
2301	R-01	5011, 5012	2/2	901	91	992	0.320550%
2302	R-02	6026, 6027	2/2	822	91	913	0.292444%
2303	R-03	6018	1/1	574	75	649	0.204213%
2304	R-04	6010	1/1	521	98	619	0.185357%
2305	R-05	6032	1/1	567	73	640	0.201723%
2306	R-06	5137, 5138	2/2	809	99	908	0.287819%
2307	R-07	6134	1/1	556	99	655	0.197809%
2308	R-08	6036, 6037	2/2	813	96	909	0.289243%
2309	R-09	6142, 6143	2/2	848	84	932	0.301695%
2310	R-10	4048	1/1	519	100	619	0.184646%
2311	R-11	6057, 6058	2/2	801	82	883	0.284973%
2401	R-01	5008, 5009	2/2	901	91	992	0.320550%
2402	R-02	6110, 6111	2/2	822	91	913	0.292444%
2403	R-03	6158	1/1	574	75	649	0.204213%
2404	R-04	5106	1/1	521	98	619	0.185357%
2405	R-05	6023	1/1	567	73	640	0.201723%
2406	R-06	5144, 5145	2/2	809	99	908	0.287819%
2407	R-07	7054	1/1	556	99	655	0.197809%
2408	R-08	6030, 6031	2/2	813	96	909	0.289243%
2409	R-09	6129, 6130	2/2	848	84	932	0.301695%
2410	R-10	7051	1/1	519	100	619	0.184646%
2411	R-11	6055, 6056	2/2	801	82	883	0.284973%
2501	R-01	5098, 5099	2/2	901	91	992	0.320550%
2502	R-02	6123, 6124	2/2	822	91	913	0.292444%
2503	R-03	6019	1/1	574	75	649	0.204213%

Unit Number	Unit Type	Parking Stall No(s)	Bedrooms/ Bathrooms	Approx. Net Living Area (square feet)	Approx. Net Lanai Area (square feet)	Total Approx. Net Area (square feet)	Common Interest
2504	R-04	5077	1/1	521	98	619	0.185357%
2505	R-05	7019	1/1	567	73	640	0.201723%
2506	R-06	6065, 6066	2/2	809	99	908	0.287819%
2507	R-07	6141	1/1	556	99	655	0.197809%
2508	R-08	6107, 6108	2/2	813	96	909	0.289243%
2509	R-09	6136, 6137	2/2	848	84	932	0.301695%
2510	R-10	4001	1/1	519	100	619	0.184646%
2511	R-11	6051, 6052	2/2	801	82	883	0.284973%
2601	R-01	4081, 4082	2/2	901	91	992	0.320550%
2602	R-02	6087, 6088	2/2	822	91	913	0.292444%
2603	R-03	5113	1/1	574	75	649	0.204213%
2604	R-04	5010	1/1	521	98	619	0.185357%
2605	R-05	6164	1/1	567	73	640	0.201723%
2606	R-06	4004, 4005	2/2	809	99	908	0.287819%
2607	R-07	6081	1/1	556	99	655	0.197809%
2608	R-08	6117, 6118	2/2	813	96	909	0.289243%
2609	R-09	6002, 6003	2/2	848	84	932	0.301695%
2610	R-10	6155	1/1	519	100	619	0.184646%
2611	R-11	6049, 6050	2/2	801	82	883	0.284973%
2701	R-01	4078, 4079	2/2	901	91	992	0.320550%
2702	R-02	5039, 5040	2/2	822	91	913	0.292444%
2703	R-03	5082	1/1	574	75	649	0.204213%
2704	R-04	5007	1/1	521	98	619	0.185357%
2705	R-05	6100	1/1	567	73	640	0.201723%
2706	R-06	5002, 5003	2/2	809	99	908	0.287819%
2707	R-07	6076	1/1	556	99	655	0.197809%
2708	R-08	6114, 6115	2/2	813	96	909	0.289243%
2709	R-09	6004, 6005	2/2	848	84	932	0.301695%
2710	R-10	6135	1/1	519	100	619	0.184646%
2711	R-11	5075, 5076	2/2	801	82	883	0.284973%
2801	R-01	4013, 4014	2/2	901	91	992	0.320550%
2802	R-02	5116, 5117	2/2	822	91	913	0.292444%
2803	R-03	5023	1/1	574	75	649	0.204213%
2804	R-04	4119	1/1	521	98	619	0.185357%
2805	R-05	6101	1/1	567	73	640	0.201723%
2806	R-06	5004, 5005	2/2	809	99	908	0.287819%
2807	R-07	6044	1/1	556	99	655	0.197809%
2808	R-08	6162, 6163	2/2	813	96	909	0.289243%
2809	R-09	5120, 5121	2/2	848	84	932	0.301695%
2810	R-10	7023	1/1	519	100	619	0.184646%
2811	R-11	5072, 5073	2/2	801	82	883	0.284973%
2901	R-01	4098, 4099	2/2	901	91	992	0.320550%
2902	R-02	5030, 5031	2/2	822	91	913	0.292444%
2903	R-03	5019	1/1	574	75	649	0.204213%
2904	R-04	4118	1/1	521	98	619	0.185357%
2905	R-05	6017	1/1	567	73	640	0.201723%
2906	R-06	5063, 5064	2/2	809	99	908	0.287819%
2907	R-07	6069	1/1	556	99	655	0.197809%

Unit Number	Unit Type	Parking Stall No(s)	Bedrooms/ Bathrooms	Approx. Net Living Area (square feet)	Approx. Net Lanai Area (square feet)	Total Approx. Net Area (square feet)	Common Interest
2908	R-08	6160, 6161	2/2	813	96	909	0.289243%
2909	R-09	5129, 5130	2/2	848	84	932	0.301695%
2910	R-10	6006	1/1	519	100	619	0.184646%
2911	R-11	5069, 5070	2/2	801	82	883	0.284973%
3001	R-01	4015, 4016	2/2	901	91	992	0.320550%
3002	R-02	5103, 5104	2/2	822	91	913	0.292444%
3003	R-03	5022	1/1	574	75	649	0.204213%
3004	R-04	4077	1/1	521	98	619	0.185357%
3005	R-05	5044	1/1	567	73	640	0.201723%
3006	R-06	4063, 4064	2/2	809	99	908	0.287819%
3007	R-07	6060	1/1	556	99	655	0.197809%
3008	R-08	5055, 5056	2/2	813	96	909	0.289243%
3009	R-09	5135, 5136	2/2	848	84	932	0.301695%
3010	R-10	5143	1/1	519	100	619	0.184646%
3011	R-11	5067, 5068	2/2	801	82	883	0.284973%
3101	R-01	4103, 4104	2/2	901	91	992	0.320550%
3102	R-02	5026, 5027	2/2	822	91	913	0.292444%
3103	R-03	5095	1/1	574	75	649	0.204213%
3104	R-04	4047	1/1	521	98	619	0.185357%
3105	R-05	5109	1/1	567	73	640	0.201723%
3106	R-06	4061, 4062	2/2	809	99	908	0.287819%
3107	R-07	6109	1/1	556	99	655	0.197809%
3108	R-08	5037, 5038	2/2	813	96	909	0.289243%
3109	R-09	5146, 5147	2/2	848	84	932	0.301695%
3110	R-10	6075	1/1	519	100	619	0.184646%
3111	R-11	5045, 5046	2/2	801	82	883	0.284973%
3201	R-01	4107, 4108	2/2	901	91	992	0.320550%
3202	R-02	6011, 6012	2/2	822	91	913	0.292444%
3203	R-03	5094	1/1	574	75	649	0.204213%
3204	R-04	4105	1/1	521	98	619	0.185357%
3205	R-05	5102	1/1	567	73	640	0.201723%
3206	R-06	4129, 4130	2/2	809	99	908	0.287819%
3207	R-07	5074	1/1	556	99	655	0.197809%
3208	R-08	5100, 5101	2/2	813	96	909	0.289243%
3209	R-09	5141, 5142	2/2	848	84	932	0.301695%
3210	R-10	6070	1/1	519	100	619	0.184646%
3211	R-11	5042, 5043	2/2	801	82	883	0.284973%
3301	R-01	4020, 4021	2/2	901	91	992	0.320550%
3302	R-02	6090, 6091	2/2	822	91	913	0.292444%
3303	R-03	5085	1/1	574	75	649	0.204213%
3304	R-04	4106	1/1	521	98	619	0.185357%
3305	R-05	5032	1/1	567	73	640	0.201723%
3306	R-06	4137, 4138	2/2	809	99	908	0.287819%
3307	R-07	5066	1/1	556	99	655	0.197809%
3308	R-08	5110, 5111	2/2	813	96	909	0.289243%
3309	R-09	5125, 5126	2/2	848	84	932	0.301695%
3310	R-10	6041	1/1	519	100	619	0.184646%
3311	R-11	5057, 5058	2/2	801	82	883	0.284973%

Unit Number	Unit Type	Parking Stall No(s)	Bedrooms/ Bathrooms	Approx. Net Living Area (square feet)	Approx. Net Lanai Area (square feet)	Total Approx. Net Area (square feet)	Common Interest
3401	R-01	4086, 4087	2/2	901	91	992	0.320550%
3402	R-02	5107, 5108	2/2	822	91	913	0.292444%
3403	R-03	5157	1/1	574	75	649	0.204213%
3404	R-04	4010	1/1	521	98	619	0.185357%
3405	R-05	4143	1/1	567	73	640	0.201723%
3406	R-06	4131, 4132	2/2	809	99	908	0.287819%
3407	R-07	5065	1/1	556	99	655	0.197809%
3408	R-08	5028, 5029	2/2	813	96	909	0.289243%
3409	R-09	5139, 5140	2/2	848	84	932	0.301695%
3410	R-10	6059	1/1	519	100	619	0.184646%
3411	R-11	5051, 5052	2/2	801	82	883	0.284973%
3501	R-01	4088, 4089	2/2	901	91	992	0.320550%
3502	R-02	6008, 6009	2/2	822	91	913	0.292444%
3503	R-03	4115	1/1	574	75	649	0.204213%
3504	R-04	4007	1/1	521	98	619	0.185357%
3505	R-05	4069	1/1	567	73	640	0.201723%
3506	R-06	4144, 4145	2/2	809	99	908	0.287819%
3507	R-07	5041	1/1	556	99	655	0.197809%
3508	R-08	4035, 4036	2/2	813	96	909	0.289243%
3509	R-09	4146, 4147	2/2	848	84	932	0.301695%
3510	R-10	6053	1/1	519	100	619	0.184646%
3511	R-11	5049, 5050	2/2	801	82	883	0.284973%
3601	R-01	4090, 4091	2/2	901	91	992	0.320550%
3602	R-02	5092, 5093	2/2	822	91	913	0.292444%
3603	R-03	5151	1/1	574	75	649	0.204213%
3604	R-04	6131	1/1	521	98	619	0.185357%
3605	R-05	4066	1/1	567	73	640	0.201723%
3606	R-06	4002, 4003	2/2	809	99	908	0.287819%
3607	R-07	5036	1/1	556	99	655	0.197809%
3608	R-08	4037, 4038	2/2	813	96	909	0.289243%
3609	R-09	4133, 4134	2/2	848	84	932	0.301695%
3610	R-10	5128	1/1	519	100	619	0.184646%
3611	R-11	4067, 4068	2/2	801	82	883	0.284973%
3701	R-01	4092, 4093	2/2	901	91	992	0.320550%
3702	R-02	5090, 5091	2/2	822	91	913	0.292444%
3703	R-03	4054	1/1	574	75	649	0.204213%
3704	R-04	7006	1/1	521	98	619	0.185357%
3705	R-05	4065	1/1	567	73	640	0.201723%
3706	R-06	4125, 4126	2/2	809	99	908	0.287819%
3707	R-07	5060	1/1	556	99	655	0.197809%
3708	R-08	6085, 6086	2/2	813	96	909	0.289243%
3709	R-09	5061, 5062	2/2	848	84	932	0.301695%
3710	R-10	5134	1/1	519	100	619	0.184646%
3711	R-11	4059, 4060	2/2	801	82	883	0.284973%
3801	R-01	4095, 4096	2/2	901	91	992	0.320550%
3802	R-02	5155, 5156	2/2	822	91	913	0.292444%
3803	R-03	4023	1/1	574	75	649	0.204213%
3804	R-04	6140	1/1	521	98	619	0.185357%

Unit Number	Unit Type	Parking Stall No(s)	Bedrooms/ Bathrooms	Approx. Net Living Area (square feet)	Approx. Net Lanai Area (square feet)	Total Approx. Net Area (square feet)	Common Interest
3805	R-05	4044	1/1	567	73	640	0.201723%
3806	R-06	4075, 4076	2/2	809	99	908	0.287819%
3807	R-07	5059	1/1	556	99	655	0.197809%
3808	R-08	4045, 4046	2/2	813	96	909	0.289243%
3809	R-09	4122, 4123	2/2	848	84	932	0.301695%
3810	R-10	5071	1/1	519	100	619	0.184646%
3811	R-11	4057, 4058	2/2	801	82	883	0.284973%
3901	R-01	4011, 4012	2/2	901	91	992	0.320550%
3902	R-02	5153, 5154	2/2	822	91	913	0.292444%
3903	R-03	4024	1/1	574	75	649	0.204213%
3904	R-04	5148	1/1	521	98	619	0.185357%
3905	R-05	4041	1/1	567	73	640	0.201723%
3906	R-06	5034, 5035	2/2	809	99	908	0.287819%
3907	R-07	5054	1/1	556	99	655	0.197809%
3908	R-08	4039, 4040	2/2	813	96	909	0.289243%
3909	R-09	4120, 4121	2/2	848	84	932	0.301695%
3910	R-10	5006	1/1	519	100	619	0.184646%
3911	R-11	6015, 6016	2/2	801	82	883	0.284973%
4001	R-01	4008, 4009	2/2	901	91	992	0.320550%
4002	R-02	5096, 5097	2/2	822	91	913	0.292444%
4003	R-03	4019	1/1	574	75	649	0.204213%
4004	R-04	5124	1/1	521	98	619	0.185357%
4005	R-05	4032	1/1	567	73	640	0.201723%
4006	R-06	4042, 4043	2/2	809	99	908	0.287819%
4007	R-07	5053	1/1	556	99	655	0.197809%
4008	R-08	4049, 4050	2/2	813	96	909	0.289243%
4009	R-09	4135, 4136	2/2	848	84	932	0.301695%
4010	R-10	4124	1/1	519	100	619	0.184646%
4011	R-11	4055, 4056	2/2	801	82	883	0.284973%
4101	R-01	4083, 4084	2/2	901	91	992	0.320550%
4102	R-02	5015, 5016	2/2	822	91	913	0.292444%
4103	R-03	4022	1/1	574	75	649	0.204213%
4104	R-04	5127	1/1	521	98	619	0.185357%
4105	R-05	4053	1/1	567	73	640	0.201723%
4106	R-06	4070, 4071	2/2	809	99	908	0.287819%
4107	R-07	5033	1/1	556	99	655	0.197809%
4108	R-08	4033, 4034	2/2	813	96	909	0.289243%
4109	R-09	4139, 4140	2/2	848	84	932	0.301695%
4110	R-10	4127	1/1	519	100	619	0.184646%
4111	R-11	4051, 4052	2/2	801	82	883	0.284973%
4201	R-01	4149, 4150	2/2	901	91	992	0.320550%
4202	R-02	4030, 4031	2/2	822	91	913	0.292444%
4203	R-03	4113	1/1	574	75	649	0.204213%
4204	R-04	5133	1/1	521	98	619	0.185357%
4205	R-05	4102	1/1	567	73	640	0.201723%
4206	R-06	4100, 4101	2/2	809	99	908	0.287819%
4207	R-07	4074	1/1	556	99	655	0.197809%
4208	R-08	5020, 5021	2/2	813	96	909	0.289243%

Unit Number	Unit Type	Parking Stall No(s)	Bedrooms/ Bathrooms	Approx. Net Living Area (square feet)	Approx. Net Lanai Area (square feet)	Total Approx. Net Area (square feet)	Common Interest
4209	R-09	4072, 4073	2/2	848	84	932	0.301695%
4210	R-10	4128	1/1	519	100	619	0.184646%
4211	R-11	5088, 5089	2/2	801	82	883	0.284973%
4301	R-01	4153, 4144	2/2	901	91	992	0.320559%
4302	R-02	4017, 4018	2/2	822	91	913	0.292444%
4303	R-03	4151	1/1	574	75	649	0.204213%
4304	R-04	4148	1/1	521	98	619	0.185357%
4305	R-05	4085	1/1	567	73	640	0.201723%
4306	R-06	4028, 4029	2/2	809	99	908	0.287819%
4307	R-07	4109	1/1	556	99	655	0.197809%
4308	R-08	4026, 4027	2/2	813	96	909	0.289243%
4309	R-09	4110, 4111	2/2	848	84	932	0.301695%
4310	R-10	4023	1/1	519	100	619	0.184646%
4311	R-11	4116, 4117	2/2	801	82	883	0.284973%
Commercial Unit 1	Commercial			5,612		5,612	1.996592%
Commercial Unit 3	Commercial			1,092		1,092	0.388503%
TOTAL				281,079	35,882	316,961	100.000000%

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.

* Resident Manager's Unit.

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 in 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 approximate based on the floor plans of each type of Unit.

C. **Common Interest.** The Common Interest for each of the three hundred ninety-two (392) Units (the Commercial Units and the Residential Units) in the Project is calculated by dividing the approximate net living area of the Unit by the total net living area of all the Units in the Project. In order to permit the Common Interest to equal one hundred percent (100%), the Common Interest attributable to Unit 4301 was increased by 0.000009%.

D. **Parking Stalls.** The Condominium Map depicts the location, type and number of parking stalls in the Project. The Residential Unit parking stalls are located on levels 4 to 7 of the Podium. Parking stalls not otherwise assigned to Residential Units within levels 4 to 7 of the Podium are currently assigned to Residential Unit No. 909. Developer has the reserved right to redesignate and reassign parking stalls currently designated as Limited Common Elements appurtenant to the Residential Units to individual Residential Units in the Project as Limited Common Elements appurtenant to such Residential Units.

II. Class Common Interest.

A. **Residential Units Class Common Interest.** The following listed units are "Residential Units" for purposes of this Declaration.

Unit No.	Approximate Net Living Area	Class Common Interest
806	809	0.294852%
808	813	0.296310%
809	848	0.309066%
810	519	0.189157%
811	801	0.291936%
901	901	0.328383%
902	822	0.299590%
903	574	0.209203%
904	521	0.189886%
905	567	0.206651%
906	809	0.294852%
907	556	0.202642%
908	813	0.296310%
909	848	0.309066%
910	519	0.189157%
911	801	0.291936%
1001	901	0.328383%
1002	822	0.299590%
1003	574	0.209203%
1004	521	0.189886%
1005	567	0.206651%
1006	809	0.294852%
1007	556	0.202642%
1008	813	0.296310%
1009	848	0.309066%
1010	519	0.189157%
1011	801	0.291936%
1101	901	0.328383%
1102	822	0.299590%
1103	574	0.209203%
1104	521	0.189886%
1105	567	0.206651%
1106	809	0.294852%
1107	556	0.202642%
1108	813	0.296310%
1109	848	0.309066%
1110	519	0.189157%
1111	801	0.291936%
1201	901	0.328383%
1202	822	0.299590%
1203	574	0.209203%
1204	521	0.189886%
1205	567	0.206651%
1206	809	0.294852%
1207	556	0.202642%
1208	813	0.296310%
1209	848	0.309066%
1210	519	0.189157%
1211	801	0.291936%
1301	901	0.328383%
1302	822	0.299590%

Unit No.	Approximate Net Living Area	Class Common Interest
1303	574	0.209203%
1304	521	0.189886%
1305	567	0.206651%
1306	809	0.294852%
1307	556	0.202642%
1308	813	0.296310%
1309	848	0.309066%
1310	519	0.189157%
1311	801	0.291936%
1401	901	0.328383%
1402	822	0.299590%
1403	574	0.209203%
1404	521	0.189886%
1405	567	0.206651%
1406	809	0.294852%
1407	556	0.202642%
1408	813	0.296310%
1409	848	0.309066%
1410	519	0.189157%
1411	801	0.291936%
1501	901	0.328383%
1502	822	0.299590%
1503	574	0.209203%
1504	521	0.189886%
1505	567	0.206651%
1506	809	0.294852%
1507	556	0.202642%
1508	813	0.296310%
1509	848	0.309066%
1510	519	0.189157%
1511	801	0.291936%
1601	901	0.328383%
1602	822	0.299590%
1603	574	0.209203%
1604	521	0.189886%
1605	567	0.206651%
1606	809	0.294852%
1607	556	0.202642%
1608	813	0.296310%
1609	848	0.309066%
1610	519	0.189157%
1611	801	0.291936%
1701	901	0.328383%
1702	822	0.299590%
1703	574	0.209203%
1704	521	0.189886%
1705	567	0.206651%
1706	809	0.294852%
1707	556	0.202642%
1708	813	0.296310%
1709	848	0.309066%
1710	519	0.189157%

Unit No.	Approximate Net Living Area	Class Common Interest
1711	801	0.291936%
1801	901	0.328383%
1802	822	0.299590%
1803	574	0.209203%
1804	521	0.189886%
1805	567	0.206651%
1806	809	0.294852%
1807	556	0.202642%
1808	813	0.296310%
1809	848	0.309066%
1810	519	0.189157%
1811	801	0.291936%
1901	901	0.328383%
1902	822	0.299590%
1903	574	0.209203%
1904	521	0.189886%
1905	567	0.206651%
1906	809	0.294852%
1907	556	0.202642%
1908	813	0.296310%
1909	848	0.309066%
1910	519	0.189157%
1911	801	0.291936%
2001	901	0.328383%
2002	822	0.299590%
2003	574	0.209203%
2004	521	0.189886%
2005	567	0.206651%
2006	809	0.294852%
2007	556	0.202642%
2008	813	0.296310%
2009	848	0.309066%
2010	519	0.189157%
2011	801	0.291936%
2101	901	0.328383%
2102	822	0.299590%
2103	574	0.209203%
2104	521	0.189886%
2105	567	0.206651%
2106	809	0.294852%
2107	556	0.202642%
2108	813	0.296310%
2109	848	0.309066%
2110	519	0.189157%
2111	801	0.291936%
2201	901	0.328383%
2202	822	0.299590%
2203	574	0.209203%
2204	521	0.189886%
2205	567	0.206651%
2206	809	0.294852%
2207	556	0.202642%

Unit No.	Approximate Net Living Area	Class Common Interest
2208	813	0.296310%
2209	848	0.309066%
2210	519	0.189157%
2211	801	0.291936%
2301	901	0.328383%
2302	822	0.299590%
2303	574	0.209203%
2304	521	0.189886%
2305	567	0.206651%
2306	809	0.294852%
2307	556	0.202642%
2308	813	0.296310%
2309	848	0.309066%
2310	519	0.189157%
2311	801	0.291936%
2401	901	0.328383%
2402	822	0.299590%
2403	574	0.209203%
2404	521	0.189886%
2405	567	0.206651%
2406	809	0.294852%
2407	556	0.202642%
2408	813	0.296310%
2409	848	0.309066%
2410	519	0.189157%
2411	801	0.291936%
2501	901	0.328383%
2502	822	0.299590%
2503	574	0.209203%
2504	521	0.189886%
2505	567	0.206651%
2506	809	0.294852%
2507	556	0.202642%
2508	813	0.296310%
2509	848	0.309066%
2510	519	0.189157%
2511	801	0.291936%
2601	901	0.328383%
2602	822	0.299590%
2603	574	0.209203%
2604	521	0.189886%
2605	567	0.206651%
2606	809	0.294852%
2607	556	0.202642%
2608	813	0.296310%
2609	848	0.309066%
2610	519	0.189157%
2611	801	0.291936%
2701	901	0.328383%
2702	822	0.299590%
2703	574	0.209203%
2704	521	0.189886%

Unit No.	Approximate Net Living Area	Class Common Interest
2705	567	0.206651%
2706	809	0.294852%
2707	556	0.202642%
2708	813	0.296310%
2709	848	0.309066%
2710	519	0.189157%
2711	801	0.291936%
2801	901	0.328383%
2802	822	0.299590%
2803	574	0.209203%
2804	521	0.189886%
2805	567	0.206651%
2806	809	0.294852%
2807	556	0.202642%
2808	813	0.296310%
2809	848	0.309066%
2810	519	0.189157%
2811	801	0.291936%
2901	901	0.328383%
2902	822	0.299590%
2903	574	0.209203%
2904	521	0.189886%
2905	567	0.206651%
2906	809	0.294852%
2907	556	0.202642%
2908	813	0.296310%
2909	848	0.309066%
2910	519	0.189157%
2911	801	0.291936%
3001	901	0.328383%
3002	822	0.299590%
3003	574	0.209203%
3004	521	0.189886%
3005	567	0.206651%
3006	809	0.294852%
3007	556	0.202642%
3008	813	0.296310%
3009	848	0.309066%
3010	519	0.189157%
3011	801	0.291936%
3101	901	0.328383%
3102	822	0.299590%
3103	574	0.209203%
3104	521	0.189886%
3105	567	0.206651%
3106	809	0.294852%
3107	556	0.202642%
3108	813	0.296310%
3109	848	0.309066%
3110	519	0.189157%
3111	801	0.291936%
3201	901	0.328383%

Unit No.	Approximate Net Living Area	Class Common Interest
3202	822	0.299590%
3203	574	0.209203%
3204	521	0.189886%
3205	567	0.206651%
3206	809	0.294852%
3207	556	0.202642%
3208	813	0.296310%
3209	848	0.309066%
3210	519	0.189157%
3211	801	0.291936%
3301	901	0.328383%
3302	822	0.299590%
3303	574	0.209203%
3304	521	0.189886%
3305	567	0.206651%
3306	809	0.294852%
3307	556	0.202642%
3308	813	0.296310%
3309	848	0.309066%
3310	519	0.189157%
3311	801	0.291936%
3401	901	0.328383%
3402	822	0.299590%
3403	574	0.209203%
3404	521	0.189886%
3405	567	0.206651%
3406	809	0.294852%
3407	556	0.202642%
3408	813	0.296310%
3409	848	0.309066%
3410	519	0.189157%
3411	801	0.291936%
3501	901	0.328383%
3502	822	0.299590%
3503	574	0.209203%
3504	521	0.189886%
3505	567	0.206651%
3506	809	0.294852%
3507	556	0.202642%
3508	813	0.296310%
3509	848	0.309066%
3510	519	0.189157%
3511	801	0.291936%
3601	901	0.328383%
3602	822	0.299590%
3603	574	0.209203%
3604	521	0.189886%
3605	567	0.206651%
3606	809	0.294852%
3607	556	0.202642%
3608	813	0.296310%
3609	848	0.309066%

Unit No.	Approximate Net Living Area	Class Common Interest
3610	519	0.189157%
3611	801	0.291936%
3701	901	0.328383%
3702	822	0.299590%
3703	574	0.209203%
3704	521	0.189886%
3705	567	0.206651%
3706	809	0.294852%
3707	556	0.202642%
3708	813	0.296310%
3709	848	0.309066%
3710	519	0.189157%
3711	801	0.291936%
3801	901	0.328383%
3802	822	0.299590%
3803	574	0.209203%
3804	521	0.189886%
3805	567	0.206651%
3806	809	0.294852%
3807	556	0.202642%
3808	813	0.296310%
3809	848	0.309066%
3810	519	0.189157%
3811	801	0.291936%
3901	901	0.328383%
3902	822	0.299590%
3903	574	0.209203%
3904	521	0.189886%
3905	567	0.206651%
3906	809	0.294852%
3907	556	0.202642%
3908	813	0.296310%
3909	848	0.309066%
3910	519	0.189157%
3911	801	0.291936%
4001	901	0.328383%
4002	822	0.299590%
4003	574	0.209203%
4004	521	0.189886%
4005	567	0.206651%
4006	809	0.294852%
4007	556	0.202642%
4008	813	0.296310%
4009	848	0.309066%
4010	519	0.189157%
4011	801	0.291936%
4101	901	0.328383%
4102	822	0.299590%
4103	574	0.209203%
4104	521	0.189886%
4105	567	0.206651%
4106	809	0.294852%

Unit No.	Approximate Net Living Area	Class Common Interest
4107	556	0.202642%
4108	813	0.296310%
4109	848	0.309066%
4110	519	0.189157%
4111	801	0.291936%
4201	901	0.328383%
4202	822	0.299590%
4203	574	0.209203%
4204	521	0.189886%
4205	567	0.206651%
4206	809	0.294852%
4207	556	0.202642%
4208	813	0.296310%
4209	848	0.309066%
4210	519	0.189157%
4211	801	0.291936%
4301	901	0.328402%
4302	822	0.299590%
4303	574	0.209203%
4304	521	0.189886%
4305	567	0.206651%
4306	809	0.294852%
4307	556	0.202642%
4308	813	0.296310%
4309	848	0.309066%
4310	519	0.189157%
4311	801	0.291936%
TOTAL	274,375	100.000000%

B. **Commercial Unit Class Common Interest.** The following listed units are "Commercial Units" for purposes of this Declaration.

Unit No.	Approximate Net Living Area	Class Common Interest
Commercial Unit 1	5,612	83.711217%
Commercial Unit 3	1,092	16.288783%
TOTAL	6,704	100.000000%

C. **COMMERCIAL UNIT CLASS COMMON INTEREST AND RESIDENTIAL UNIT CLASS COMMON INTEREST.** The Commercial Unit Class Common Interest is calculated based on dividing the approximate net living area of the Commercial Unit by the total approximate 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 Unit 4301 was increased by 0.000019%.

END OF EXHIBIT "B"