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(Bureau of Conveyances)**

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**DECLARATION OF CONDOMINIUM PROPERTY REGIME OF  
MUSE HONOLULU**

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**DECLARATION OF CONDOMINIUM PROPERTY REGIME OF  
MUSE HONOLULU**

**THIS DECLARATION** is made this 6<sup>th</sup> day of January, 2025 by **1538 KAPIOLANI LLC**, a Hawaii limited liability company, with its principal place of business and post office address at 1388 Kapiolani Boulevard, Comm 1, Honolulu, Hawaii 96814 ("**Developer**").

**WHEREAS**, Developer owns in fee simple the real property identified as TMK No. (1) 2-3-021: 006, more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Land**"); and

**WHEREAS**, there will exist on the Land certain Improvements to be constructed by Developer which Land and Improvements are depicted on Condominium Map No. 2614 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, which Condominium Map is incorporated herein by this reference; and

**NOW, THEREFORE**, in order to create a condominium project consisting of the Land and the Improvements, to be known as "Muse Honolulu" (the "**Project**"), Developer, by this Declaration of Condominium Property Regime of Muse Honolulu, referred to hereinafter as the "**Declaration**," does hereby submit the Land and the Improvements and all of its interest therein to a condominium property regime established pursuant to Chapter 514B of the Hawaii Revised Statutes, as amended (the "**Act**"). Developer hereby declares that the Project is held and shall be held, conveyed, Mortgaged, encumbered, leased, rented, used, occupied, and improved in accordance with applicable law and this Declaration and the Bylaws of the Association of Unit Owners of Muse Honolulu (the "**Bylaws**"), filed concurrently herewith at said Office, as the provisions of this Declaration and the Bylaws may be amended, from time to time. The provisions of this Declaration and the Bylaws shall constitute covenants running with the land and equitable servitudes and liens thereon and shall be binding upon and inure to the benefit of Developer, the Association, 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 to such terms in this Declaration and/or the Bylaws. Such defined terms may be used in the singular or plural or in varying tenses or forms, but such variations shall not affect the meanings of the terms so long as those terms are written in initial capital letters. When such terms are used in this Declaration or the Bylaws without initial capital letters, such terms shall have the meanings they have in common usage; provided, however, that where legal, technical, or trade terms are used and the context in which such terms are used indicates that such terms are to be given their legal, technical, or trade usage meanings, such terms shall be given such legal, technical, or trade usage meanings.

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

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

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

3. "**Agreement of Sale**" means an agreement of sale for the sale of a Unit filed in said Office.

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

5. **"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 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 **Article XLV** of this Declaration.

6. **"Alternative Allocation"** means an allocation of the Special Costs 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.

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

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

9. **"Association"** means the Association of Unit Owners of Muse Honolulu.

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

11. **"Building Structure"** means the structural framework of the Parking 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.

12. **"Bylaws"** means the Bylaws of the Association, together with any lawful amendments thereto.

13. **"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.

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

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

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

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

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

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

20. **"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 this Declaration and the Bylaws.

21. **"Commercial Limited Common Elements"** means those Limited Common Elements that are reserved for the exclusive use of the Commercial Unit Class.

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

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

24. **"Commercial Unit Class Common Interest"** means the percentage share assigned to a Commercial Unit within the Commercial Unit Class discussed in **Section III.B** and set forth in **Exhibit "B"** of this Declaration.

25. **"Commercial Unit Class Expense"** means those Common Expenses that, 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 the Class Common Interest assigned to such Owner's Commercial Unit.

26. **"Commercial Unit Limited Common Elements"** means those parts of the Limited Common Elements that are reserved for the exclusive use of one (1) or more, but less than all, of the Commercial Unit Owners.

27. **"Commercial Unit Owner"** means the Owner of a Commercial Unit; provided, however that any Person 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.

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

29. **"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."

30. **"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); and (i) the Commercial Unit Class Expenses and the Residential Unit Class Expenses. 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.

31. **"Common Interest"** means the undivided percentage interest in all Common Elements of the Project discussed in **Section III.A** and set forth in **Exhibit "B"** 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.

32. **"Community Systems"** means photovoltaic systems and 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, and shall be construed broadly to encompass all present and future forms of photovoltaic and communication technology.

33. **"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.

34. **"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, Common Elements, Limited Common Elements, Commercial Units, Residential Units, and the property of the Association, if any.

35. **"Condominium Map"** means the condominium map for the Project that is prepared in accordance with Section 514B-33 of the Act and filed in the Office concurrently herewith, as the same may be duly amended from time to time. The Condominium Map does not constitute a representation or warranty by Developer.

36. **"Consolidated Lot"** means the parcel of land created upon the consolidation of the Land with another (or other) parcel(s) of land.

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

38. **"D&O Policy"** means the policy insuring, to the extent allowed by law, each person who is or was a Director, Officer, agent, or employee of the Association against all liability in connection with any claim made against such person as a result of such person holding that position, including, without limitation, any claim that would be covered under employment practices liability insurance, which the Board is required to buy and maintain, as further discussed in **Section XII.E** of this Declaration.

39. **"Declaration"** means this Declaration of Condominium Property Regime of Muse Honolulu, together with any lawful amendments hereto.

40. **"Developer"** means 1538 Kapiolani LLC, a Hawaii limited liability company, and any of its successors or permitted assigns.

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

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

43. **"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, 2045, (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.

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

45. **"Dispute"** means and includes any and all actions, claims, or disputes between or among the Parties with respect to, arising out of, or relating to this Declaration, the Bylaws, or the House Rules, as further discussed on **Section XLII.A** of this Declaration.

46. **"Dispute Notice"** means the written notice provided by one (1) Party to a Dispute to another Party, as discussed in **Section XLII.B** of this Declaration.

47. **"DPR"** means Dispute Prevention and Resolution, Inc., any successor thereto, or any other entity offering mediation and/or arbitration services that is acceptable to the Parties to a Dispute.

48. **"Eligible Mortgage Holder"** means a first mortgagee of a Unit that is to receive timely written notice of proposed amendments to the Condominium Documents, as provided in the Bylaws.
49. **"Facade Sign"** is defined in **Section X.J** of this Declaration.
50. **"FHA"** means the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*, as amended by the Fair Housing Amendments Act of 1988, and the rules and regulations adopted thereunder, as the same may be amended from time to time.
51. **"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.
52. **"Improvements"** means improvements that exist or will exist on the Land, and shall also include those improvements made by Owners (including Developer) and/or the Association from time to time.
53. **"Insurance Trustee"** means the bank or trust company, authorized to do 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** of this Declaration.
54. **"Interested Person"** means any Person that has any interest in the Project or that has the right to use the Project or any part of it, including each Owner, each Lender, and any Person that has the legal right or permission to use the Project or any part of it.
55. **"Land"** means the real property described in **Exhibit "A"** attached hereto.
56. **"Lender"** means the mortgagee under a filed Mortgage on a Unit. It also includes the beneficiary of a deed of trust encumbering a Unit.
57. **"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.
58. **"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.
59. **"Limited Common Elements"** means those Common Elements that are designated in this Declaration as reserved for the exclusive use of one (1) or more Units to the exclusion of other Units.
60. **"Majority"** means the Owners to which are appurtenant more than fifty percent (50%) of the Common Interest or Class Common Interest with respect to each Unit Class, or when referring to Directors, more than fifty percent (50%) of the Directors entitled to vote on, take action, or otherwise decide the matter in question.
61. **"Managing Agent"** means an entity or individual employed or retained by the Association from time to time pursuant to the Condominium Management Agreement.
62. **"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 used as a verb, it means making a Unit subject to a mortgage or deed of trust.
63. **"Muse Honolulu"** shall be the name of the Project established by the submission of the Land and Improvements to a condominium property regime under the terms and conditions set forth in this Declaration.
64. **"Notice of Alleged Defect"** means a Claimant's notice to Developer of the specific nature of an Alleged Defect as further discussed in **Section XLV.B** of this Declaration.

65. **"Occupancy Restrictions"** means those limitations on the use and occupancy of the Residential Units, as more particularly described in **Section VI.C.2** of this Declaration.

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

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

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

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

70. **"Parking Podium"** means levels 1 through level 7 of the Tower, which includes, without limitation, the parking stalls and Recreational Amenities thereon that serve the Project but specifically excludes any and all Units on said levels.

71. **"Party"** means, for purposes of **Article XLII** of this Declaration, Owners, the Association, the Board, the Managing Agent, Developer, and their respective Representatives.

72. **"Permit"** means the Interim Planned Development-Transit and Special District Permit to be issued for the Project.

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

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

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

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

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

78. **"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.

79. **"Property"** means the Land, together with the Improvements.
80. **"Rail Effects"** means noise, dust, vibration, traffic congestion, and/or other inconveniences or nuisances caused by or associated with the development, construction, and operation of the future rail route by the County.
81. **"Recreational Amenities"** means those recreational amenities located on levels 7 and 8 and the rooftop of the Tower available for the use and enjoyment of the Residential Unit Owners.
82. **"Representative"** means a Person's shareholders, directors, officers, members (in the case of a limited liability company), managers, trustees, agents, employees, and independent contractors.
83. **"Resident Manager"** means the manager that may reside at the Project appointed and employed and/or contracted by the Managing Agent or the Board, if any.
84. **"Resident Manager Unit"** means that certain Residential Unit designated for use by the Resident Manager, if any; provided that nothing in this Declaration shall obligate Developer to provide or maintain a Resident Manager Unit, and provided, further, that should Developer elect to provide a Resident Manager Unit, nothing in this Declaration shall prevent Developer from transferring such Unit in the future.
85. **"Residential Director"** means each Director elected by the Residential Unit Class pursuant to Article III, Section 3 of the Bylaws.
86. **"Residential Limited Common Elements"** means those parts of the Limited Common Elements that are reserved for the exclusive use of the Residential Unit Class.
87. **"Residential Unit"** means any Unit identified as a Residential Unit in **Exhibit "B"** of this Declaration and depicted on the Condominium Map.
88. **"Residential Unit Class"** means and includes all of the Residential Units and their respective Owners.
89. **"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.
90. **"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 the Class Common Interest assigned to such Owner's Residential Unit.
91. **"Residential Unit Limited Common Elements"** means those parts of the Limited Common Elements that are reserved for the exclusive use of one (1) or more, but less than all, of the Residential Unit Owners.
92. **"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.
93. **"Residential Units"** means any of the Units identified as a Residential Unit in **Exhibit "B"** of this Declaration and depicted on the Condominium Map.
94. **"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, if any.
95. **"Subdivided Lots"** mean those separate parcels of land created upon the subdivision of the Land.
96. **"Subdivided Units"** mean those new Units created upon the subdivision of a Unit.

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

98. **"Tower"** means the thirty-nine (39) story building depicted on the Condominium Map. Floors are designated consecutively as levels one (1) to and including thirty-nine (39).

99. **"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.

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

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

102. **"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 thirty-nine (39) story building, which may be used for residential, commercial, office, parking, 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 as Commercial Unit 1 and Commercial Unit 2 on the Condominium Map and in **Exhibit "B,"** attached hereto and incorporated herein by reference.

2. **RESIDENTIAL UNITS.** Three hundred fifteen (315) Residential Units comprised of the Unit types set forth in **Exhibit "B."**

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

B. **DESCRIPTION OF THE UNITS.** Three hundred seventeen (317) freehold estates are hereby designated in the spaces within the perimeter and party walls, windows, doors, floors, and ceilings of each of the Units in 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."**

2. **UNIT AREAS, LAYOUTS, DIMENSIONS, NET LIVING AREAS/FLOOR AREAS.** The Unit areas, layouts, dimensions, and net living areas are shown on the Condominium Map and are further described in **Exhibit "B."** The Condominium Map is intended only to show: (a) the location and layout of, and access to a public road from, the Tower and access for the Units to a public road or to a Common Element leading to a public road; (b) elevations and floor plans of the Tower; (c) the layouts, locations, boundaries, Unit numbers, and dimensions of the Units; (d) a parking plan for the Project showing the locations, layouts, and stall numbers of all parking stalls included in the Project; (e) the layouts, locations, and other identifying information of the Limited Common Elements, and (f) a description 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 Units shall be deemed to include: (i) all interior walls, floors, ceilings, doors and door frames, windows and window frames, and partitions that are not load-bearing and that are located within the space bounded by the Unit's perimeter walls, floors, and ceilings, but not the perimeter walls, floors, and ceilings themselves; (ii) the interior decorated or finished surfaces of all doors, door frames, columns, and window frames that comprise a part of the perimeter walls; (iii) the interior decorated or finished surfaces of all floors and ceilings; (iv) all lath, furring, wallboard, plasterboard, plaster, paneling, tile, wallpaper, paint, and any other materials constituting the finished interior decorated surfaces of perimeter walls and columns; (v) the air space surrounded by the perimeter walls, doors, windows, floors, and ceilings; (vi) all fixtures (if any) originally installed in the Unit; and (vii) any pipes, shafts, wires, conduits, ducts, or other utility or service lines running through such Unit that are utilized for or service only that Unit. Each Unit shall not be deemed to include the following: (a) the undecorated and unfinished surfaces of perimeter walls, doors, 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 lanai or balcony, and the walls, floors, and/or ceilings partially surrounding such lanai or balcony; (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; and (f) any Common Elements or Limited Common Elements as hereinafter provided. To the extent that there is a conflict between this Section and **Sections II.C** and **II.D**, below, the inclusions and exclusions of the Unit as provided for in this Section shall control.

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

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 Land in fee simple and any other appurtenances thereto described in **Exhibit "A"**; subject, however, to the rights of Developer set forth herein affecting the Land;

2. The Building Structure;

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

4. All hallways, stairways, corridors, areas, or rooms, including, without limitation, areas or rooms housing the items described in **Section II.C.3** above, mechanical equipment, maintenance and utility rooms and areas, storage rooms, trash rooms, areas and receptacles, apparatus, and installations existing for common use by or for the common benefit of all Units and/or the Common Elements appurtenant to all Units, and not otherwise designated as a Unit herein or on the Condominium Map;

5. The driveways leading from Kapiolani Boulevard and Makaloa Street to level 1 of the Parking Podium, and any signage, decorative façade, or Improvement attached to said driveways;

6. Any signage, decorative façade, or Improvement attached to level 1 of the Parking Podium;
7. The loading stalls and area on level 1 of the Parking Podium and designated as "**CE: Common Element**" on the Condominium Map;
8. The vehicular ramp leading from level 1 to level 2 of the Parking Podium;
9. All sidewalks and common walkways on level 1 of the Project;
10. The interior surfaces of the walls, ceilings, and floors of level 1 of the Parking Podium and the exterior surfaces of the Parking Podium and Tower, including, without limitation, any louver, trellis, screening, paneling, signage, decorative façade, or Improvement attached thereto; excluding the Recreational Amenities on level 7 of the Parking Podium and any louver, trellis, screening, paneling, signage, decorative façade, or Improvement attached thereto;
11. Any easements, access rights, licenses, or encroachment rights through an adjoining parcel granted to the Association;
12. All areas specifically designated as "**CE: Common Element**" on the Condominium Map;
13. All of the Limited Common Elements described in **Section II.D** below; and
14. All other areas of the Project that are not described as a Unit or a part thereof.

**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 the 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 or Class Common Interest, as applicable, 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 vehicular ramp leading from level 2 to level 6 of the Parking Podium, including the interior walls, ceilings, and floors thereof and any signage, decorative façade, or Improvement attached thereto, the interior surfaces of levels 2 through 6 of the Parking Podium and any Improvements attached thereto, the drive through areas in the Parking Podium located on levels 2 through 6, and level 7 of the Parking Podium and any louver, trellis, screening, paneling, signage, decorative façade, or Improvement attached thereto, all depicted as "**LCE-R: Residential Limited Common Element**" on the Condominium Map;
- b. The porte cochere and lobby located on level 1 of the Tower and depicted as "**LCE-R: Residential Limited Common Element**" on the Condominium Map;
- c. The mail room located on level 1 of the Tower and depicted as "**LCE-R: Residential Limited Common Element**" on the Condominium Map;
- d. The office(s), restrooms, and back of house areas located on level 1 of the Tower and depicted as "**LCE-R: Residential Limited Common Element**" on the Condominium Map;
- e. Any telecommunications, fire control, mechanical, electrical, security, service, janitorial, storage, and trash rooms located on level 1 of the Tower, and the equipment therein, all depicted as

**"LCE-R: Residential Limited Common Element"** on the Condominium Map, and all other utility, maintenance, work, storage, electrical, mechanical, and telecommunication rooms, closets, and facilities, accessory equipment areas, and other support areas that service only the Residential Units or the Limited Common Elements appurtenant thereto;

f. The elevators, elevator vestibules, and elevator lobbies located in the Tower and the hallways and stairways located in the Tower and Parking Podium, all for the exclusive use of the Owners of the Residential Units and depicted as **"LCE-R: Residential Limited Common Element"** on the Condominium Map;

g. Any trash rooms and chutes, telecommunications equipment and rooms housing the same, and electrical equipment and rooms housing the same, located on levels 7 through 39 of the Tower, depicted as **"LCE-R: Residential Limited Common Element"** on the Condominium Map;

h. The common hallways or corridors located on levels 7 through 39 of the Tower, depicted as **"LCE-R: Residential Limited Common Element"** on the Condominium Map.

i. The loading stall located on level 1 of the Parking Podium and designated as **"LCE-R: Residential Limited Common Element"** on the Condominium Map;

j. The guest parking stalls located on level 2 of the Parking Podium, depicted as **"LCE-R: Residential Limited Common Element"** on the Condominium Map and the electric vehicle parking stalls and charging stations installed therein (if any) located on level 2 of the Parking Podium;

k. The bicycle storage located on levels 1 through 5 of the Parking Podium, depicted as **"LCE-R: Residential Limited Common Element"** on the Condominium Map;

l. Those portions of any pipes, cables, conduits, drain, chutes, flues, ducts, wires, vents, shafts, other utility or service lines, sewage treatment equipment and facilities (if any), supporting apparatus, electrical equipment and lines, electrical and mechanical closets, storage rooms, communications rooms, pump rooms, HVAC, air conditioning and/or heating equipment and any appurtenant pipes or ducts, or other central and appurtenant transmission facilities and installations over, under, and across the Limited Common Elements appurtenant only to the Residential Units; any other fixtures that serve more than one Residential Unit or the Limited Common Elements appurtenant to the Residential Units and serve none of the Commercial Units or Limited Common Elements appurtenant thereto, and are not otherwise designated as Common Elements;

m. The Recreational Amenities located on levels 7 and 8 and the rooftop of the Tower, which may include cabanas, lounges, barbeques, a pool, fitness facilities, a viewing deck, and other amenities, and any louver, trellis, screening, paneling, signage, decorative façade, or Improvement that is a part thereof;

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

o. Any portion of the Tower rooftop, mechanical equipment areas or stairways thereon, servicing only the Residential Units and/or the Limited Common Elements appurtenant thereto; and

p. Any other areas described as **"LCE-R: Residential Limited Common Element"** appurtenant to the Residential Units on the Condominium Map.

2. **COMMERCIAL LIMITED COMMON ELEMENTS.** The Commercial Limited Common Elements include those parts of the Limited Common Elements that are reserved for the exclusive use of the Commercial Unit Class, and shall include the following:

a. Those portions of any pipes, cables, conduits, drain, chutes, flues, ducts, wires, vents, fans, shafts, fire pumps, other utility or service lines, sewage treatment equipment and facilities (if any), supporting apparatus, electrical equipment and lines, electrical closets, storage rooms, communications rooms, pump



rooms, systems and apparatus, HVAC, air conditioning and/or heating equipment and any appurtenant pipes or ducts, or other central and appurtenant transmission facilities and installations over, under, and across the Limited Common Elements appurtenant only to the Commercial Units; any other fixtures that serve the Commercial Units or the Limited Common Elements appurtenant to the Commercial Units and serve none of the Residential Units or Limited Common Elements appurtenant thereto, and are not otherwise designated as Common Elements;

b. All utility, maintenance and work rooms, closets and facilities, storage rooms and areas, accessory equipment areas, and other support areas that service only the Commercial Units or the Limited Common Elements appurtenant thereto;

c. All telecommunications, fire control, mechanical, electrical, security, and service rooms and areas, and the equipment therein, that service only the Commercial Units or the Limited Common Elements appurtenant thereto;

d. The parking stalls located on levels 1 and 2 of the Parking Podium, depicted as **"LCE-C: Commercial Limited Common Element"** on the Condominium Map;

e. All trash rooms and areas for the exclusive use of the Owners of the Commercial Units and depicted as **"LCE-C: Commercial Limited Common Element"** on the Condominium Map; and

f. The bicycle storage located on level 1 of the Parking Podium, depicted as **"LCE-C: Commercial Limited Common Element"** on the Condominium Map; and

g. Any other areas described as **"LCE-C: Commercial Limited Common Element"** appurtenant to the Commercial Units on the Condominium Map.

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

a. 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;

b. Each Residential Unit shall have one (1) assigned mailbox, located in the mail room on level 1 of the Tower. Such mailbox shall be identified by the same number as the Residential Unit to which it is a Limited Common Element;

c. Any lanai and/or balcony affixed to a Residential Unit, as depicted on the Condominium Map, including, without limitation, the decorated or finished interior surfaces of the perimeter 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;

d. Any compressor, air conditioning, and or heating equipment or other mechanical equipment located on the lanai and/or balcony affixed to a Residential Unit, which equipment exclusively services the Residential Unit, shall be appurtenant to such Residential Unit;

e. The parking stall(s) located on level(s) 2, 3, 4, 5, and/or 6 of the Parking Podium, depicted as **"LCE-RU: Residential Unit Limited Common Element"** on the Condominium Map and assigned to a Residential Unit in **Exhibit "B"** hereto;

f. The motorcycle parking stall(s) located on level 6 of the Parking Podium, depicted as **"LCE-RU: Residential Unit Limited Common Element"** on the Condominium Map and assigned to a Residential Unit(s) in **Exhibit "B"** hereto;

g. The Resident Manager Unit shall have as a Limited Common Element each of the parking stall(s) located on levels 2 through 6 of the Parking Podium and motorcycle parking stall(s) located on

level 6 of the Parking Podium, depicted as "**LCE-RU: Residential Unit Limited Common Element**" on the Condominium Map that are not specifically assigned to another Unit in **Exhibit "B,"** or any subsequent amendment to this Declaration;

h. Any other area described as "**LCE-RU: Residential Unit Limited Common Element**" on the Condominium Map and appurtenant to a Residential Unit.

4. **COMMERCIAL UNIT LIMITED COMMON ELEMENT.** The following Limited Common Elements are Limited Common Elements appurtenant to individual Commercial Units for the exclusive use thereof:

a. 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 Commercial Unit, any portion thereof serving only that Commercial Unit shall be appurtenant to said Commercial Unit;

b. Any doorsteps (if any), stoop (if any), patios (if any), and all exterior doors and windows or other fixtures designed to serve the Commercial Unit located outside the boundaries of, but adjoining and providing access specifically to, the Commercial Unit;

c. Any louver, trellis, screening, paneling, signage, decorative façade, or Improvement affixed to the exterior of the Commercial Unit; and

d. Any other area described as "**LCE-CU: Commercial Unit Limited Common Element**" on the Condominium Map and appurtenant to a Commercial 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 ensure 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,"** 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 such Owner's Class Common Interest with respect to matters requiring voting by Unit Class, and each Owner 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 LICENSES.**

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, on, over, and across the Common Elements, including the Limited

Common Elements, as applicable, for purposes of 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; all subject to the provisions of Section 514B-38 of the Act and the terms of the Declaration.

**B. EASEMENTS IN CERTAIN LIMITED COMMON ELEMENTS AND OTHER UNITS FOR UTILITIES AND SUPPORT.** Wherever sanitary sewer connections, water connections, electricity, gas, telephone, cable, HVAC, and security 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 that service such Units, and, upon reasonable prior written notice (except in the case of an emergency), to enter Units owned by others or the Limited Common Elements appurtenant thereto, or to have utility companies enter Units owned by others or the Limited Common Elements appurtenant thereto, 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 or Limited Common Element caused by such entry as promptly as possible after completion of work thereon.

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

**D. EASEMENT FOR COMMERCIAL UNIT VENDORS, LICENSEES, AND INVITEES.** Each Commercial Unit shall have an appurtenant easement for use by its vendors, licensees, and invitees for purposes of the business conducted in the Commercial Unit or its 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 Unit or its Limited Common Elements, (3) to go to and from the Commercial Unit and its Limited Common Elements using the walkways and sidewalks intended for such purpose, (4) for casual use, for recreation, and to enjoy entertainment and other services provided within the Commercial Unit or its Limited Common Elements, and (5) as otherwise may be reasonably necessary to operate and manage the services from the Commercial Unit and its 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.

**E. 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, upon reasonable prior written notice (except in the case of an emergency), to enter each Unit and/or its Limited Common Elements from time to time during reasonable hours as may be appropriate for the operation or maintenance of the Project or for 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.

**F. 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 for 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 Commercial Limited Common Element or Commercial Unit Limited Common Element, 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.

**G. EASEMENTS THROUGH OR BENEFITTING ADJACENT LANDS.** The Association has the right, exercisable by the Board, to receive, transfer, cancel, relocate, and otherwise deal with any easement or license through adjoining parcels of land in favor of the Land or the Project, including, without limitation, for utility infrastructure, or Owners' or public access, as necessary for the Project. The Association also has the right, exercisable by the Board, to grant, receive, transfer, cancel, relocate, and otherwise deal with any easement or license encumbering the Land or the Project that benefits adjacent lands. The Association's rights are subject to the approval of Developer during the Development Period and the consent of the Commercial Director.

**H. DEVELOPER'S EASEMENT TO COMPLETE IMPROVEMENTS TO THE PROJECT.** To and until December 31, 2045, 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, or other nuisances or annoyances arising from the completion of such Improvements. In the event that Project Lender, if any, shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the Mortgage remedies or by a deed or an assignment in lieu of foreclosure, Project Lender shall have the same rights as Developer to complete Improvements to the Project.

**I. DEVELOPER'S EASEMENT FOR NOISE AND DUST.** To and until December 31, 2045, Developer, its agents, employees, consultants, contractors, licensees, successors, and assigns, shall have an easement over, under, and upon the Project or any portion thereof, to create and cause noise, dust, vibration, and other nuisances created by and resulting from any work connected with or incidental to the development, construction, or sale of any Unit or any other Improvements in the Project. Each and every Owner or other Person acquiring any interest in the Project waives, releases, and discharges any rights, claims, or actions such party may acquire against Developer, its agents, employees, consultants, contractors, licensees, successors and assigns, as a result of any such noise, dust, vibration, or other nuisances or annoyances. In the event that Project Lender, if any, shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the Mortgage remedies or by a deed or an assignment in lieu of foreclosure, Project Lender shall have the same rights as Developer 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.

**J. 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 exclusively appurtenant to Units not owned by Developer), for model units, tours, sales, leasing, management, and construction offices, interior design and decorator centers, 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. This easement shall include the right of Developer to temporarily reasonably restrict access to such Common Elements and Limited Common Elements, and Owners shall have no redress against Developer for the temporary loss of use of such areas. In the event that Project Lender, if any, shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the Mortgage remedies or by a deed or an assignment in lieu of foreclosure, Project Lender shall have the same rights as Developer to conduct such sales activities on the Project.

Each and every party acquiring an interest in the Project or the Land hereby acknowledges that 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.

**K. 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 to provide for the installation and operation of, Community Systems as Developer, in its discretion, deems appropriate to serve all or any portion of the Project. Such right shall include, without limitation, Developer's right to select and contract with companies licensed to provide photovoltaic, telecommunications, cable television, and other Community Systems services in the region, to receive compensation from any source related to the rights set forth in this Section, and to grant easements for such purposes, all upon such terms and conditions as Developer may determine in its discretion.

**L. DEVELOPER'S ADDITIONAL EASEMENTS AND RIGHTS TO ACCEPT, GRANT, AND MODIFY EASEMENTS, LICENSES, AND RIGHTS OF ENTRY.** To and until December 31, 2045, 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 for the purpose of establishing access ways or walkways, or to comply with any government agreement or permit, private covenant, or other easement or access requirements. Developer further reserves the right to designate, negotiate, accept, grant, convey, transfer, cancel, relocate, and otherwise deal with any easement, license, right of access, or encroachment agreement over, under, across, or through the Land or the Project or adjoining properties in favor of, or encumbering, the Land or the Project for any reasonable purpose, which may include, but not be limited to, temporary rights of entry or other similar licenses and agreements to accommodate the construction and development of neighboring properties such as the use of airspace for the assembly, disassembly, and operation of tower cranes, and related construction and development activities. Developer also has the right to grant such easements necessary for the repair, care, or upkeep of any Unit or Common Element, and utility infrastructure to serve the Project, or the purpose of establishing 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 Land or the Project uses any right it has to require a change in the location of that easement.

**M. 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).

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

**O. 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.

**P. 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, or such longer minimum period required by applicable law, (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) an Owner shall give 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 applicable owner-occupant requirements under 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, shall engage in a circumvention of the foregoing requirements by systematically permitting the cancellation of an authorized lease, thereby effectively permitting occupancy of an Owner's Residential Unit for less than the minimum permitted time 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 such Owner's Unit and all appliances, plumbing, electrical, and other fixtures and appurtenances constituting a part of the Unit and the Limited Common Elements appurtenant thereto in a clean and sanitary condition and in good order and repair in accordance with the Project Quality Standard and in compliance with law, and shall be responsible for any damage or loss caused by such Owner's failure to do so or such Owner's improper operation thereof. 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. An Owner shall be responsible for any damage or loss to the Common Elements or other Units caused by such Owner's tenants, guests, or invitees.

**5. PROHIBITION ON ACTIVITIES THAT MAY JEOPARDIZE THE PROJECT.** No Owner shall do or suffer or permit anything to be done or kept on or in any Unit or appurtenant Limited Common Element or elsewhere on the Project that will: (a) injure the reputation of the Project; (b) jeopardize the safety, soundness, or structural integrity of the Improvements in the Project; (c) create a nuisance, interfere with, or unreasonably disturb the rights of other Owners and Occupants; (d) reduce the value of the Project; (e) increase the rate of insurance applicable to the Units or the contents thereof, or to the Project; (f) violate the House Rules or any applicable law, ordinance, statute, rule, or regulation of any local, county, state, or federal government or agency; (g) cause the violation of any conditions, restrictions, covenants, or agreements entered into for the benefit of the Project and/or (h) result in the cancellation of insurance applicable to the Project, adversely affect the right of recovery thereunder, or result in reputable companies refusing to provide insurance as required or permitted by the Bylaws. Any insurance 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 PARKING PODIUM.** The Parking Podium shall be used for access, parking, storage, and any other purposes permitted by the Condominium Documents. During the Development Period, the Association shall be prohibited from reducing the total number of parking stalls, accessible parking stalls, 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 Parking 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 persons 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 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 such Owner's 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 unit, a sales and/or

construction office, or for any other lawful purpose for development, construction, and/or marketing and sales of the Units in the Project.

2. **MAXIMUM OCCUPANCY.** Unless 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 lanai or balcony. To maintain a uniform and attractive exterior appearance for the Project, window coverings installed by a Residential Unit Owner 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 appurtenant 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 appurtenant 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 to such Owners or ownership is held by an entity owned by such Owners, of a Residential Unit where unrelated (i.e., non-family) owners share and enjoy use or occupation of the Residential Unit according to a periodic (fixed or floating) schedule based on time intervals, points or other rotational system; or (b) any club, the membership of which allows access and use of one or more properties by its members based on availability and reservation priorities, commonly known as destination clubs (equity or non-equity) or vacation clubs. Furthermore, the Residential Units and their appurtenant Limited Common Elements, or any portion of either, shall not be used for transient or hotel purposes, which are defined as (a) 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 resort services. The Residential Units 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 Unit for less than a thirty (30) day period. 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 levels 7 and 8 and the rooftop of the Tower 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 available 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 any Owner or Occupant charge a fee for others to utilize the Recreational Amenities, nor shall the area in which the Recreational Amenities are located 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. As provided for in this Declaration, 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 by Developer that any or all of the Recreational Amenities will be built, located as initially depicted, 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 during the Development Period and, thereafter, of the Board. All sales and marketing materials provided to an Owner in connection with a Residential Unit or the Project that are 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 any fashion whatsoever without the prior written approval of Developer, which approval may be withheld in Developer's sole discretion. Any use of such material in any way by an 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 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 and their appurtenant Limited Common Elements 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 appurtenant 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 the lease for such Unit. 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 a Commercial Unit or its appurtenant 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 uses 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 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;

m. fast food restaurants;

n. convenience stores; and

o. any use that would cause or threaten the cancellation of any insurance maintained by the Association, or which would materially 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 appurtenant Limited Common Elements, or limit access to or from the Commercial Units or their appurtenant Limited Common Elements, shall require and will not be effective without, the prior written approval 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, the Common Elements may be used 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 expressly reserved to Developer, Residential Unit Owners, or Commercial Unit Owners under this Declaration, nothing in this Section or otherwise contained in this Declaration is intended to limit or restrict the Association's right to use the Common Elements, any Unit, or any Limited Common Element appurtenant thereto owned or leased by the Association for the benefit of the members of the Association to the full extent permitted by applicable zoning ordinances and by law. Prior to the

expiration or termination of the Development Period, 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 Owner's Unit or to a storage area that is a Unit Limited Common Element appurtenant to such Owner's Unit, in accordance with the House Rules; provided that any such loading, unloading, and transportation must be completed promptly in designated areas and in accordance with the House Rules; or (b) a Commercial Unit Owner's use of the Limited Common Elements appurtenant to such Owner's Commercial Unit for commercial activity.

F. **USE OF LIMITED COMMON ELEMENTS.** Subject to the terms of this Declaration and 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 Owner(s) 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.C.5**. 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, (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), (3) limit the right of an Owner to transfer a Limited Common Element parking stall and/or storage locker, if any, as provided in **Section XV.A.3** and Section 514B-40 of the Act, or (4) prevent the lease, sublease, or rental of portions of a Commercial Unit or its appurtenant Limited Common Element(s). Except as provided in clauses (1) and (4) 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 by law, the Project will be constructed in compliance with the 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 nuisance shall be allowed in the Units or their appurtenant Limited Common Elements that is a source of annoyance to the Owners or Occupants of other Units or that interferes with the peaceful possession or proper use of the Units or their appurtenant Limited Common Elements by their Owners or Occupants. Notwithstanding the foregoing, the Commercial Units and their appurtenant Limited Common Elements may be used in accordance with **Section VI.D.1** above; provided, however, that noise emanating from business operations of the Commercial Units and their appurtenant Limited Common Elements shall comply with all applicable statutes, rules, regulations, and ordinances.

J. **ADVERTISEMENTS; SIGNS.** Subject to Developer's Reserved Rights, Developer's easement rights, or any 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 any Unit Limited Common Element appurtenant to a Residential Unit, in any Residential Limited Common Element, or in any Common Element appurtenant to both the Residential Units and Commercial Units, unless prior written approval is received from the Board. A Commercial Unit Owner shall have the right to affix signs to any portion of such Owner's 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 Board.

K. **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.

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

M. **SMOKING.** Smoking shall not be permitted within the Residential Units, any Common Element, Residential Limited Common Element, or Residential Unit Limited Common Element.

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 that hold Mortgages on Units with respect to which Owner approval is required by (a) above, if such lease or use would be in derogation of the interest of such mortgagees; and

4. The prior written 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 a Commercial Unit Owner's use and operation of such owner's Unit and/or its appurtenant Limited Common Elements.

P. **SEVERANCE OF COMMON ELEMENTS FROM UNIT.** No Owner shall be entitled to sever such Owner's Unit, or any portion thereof, from that Unit's undivided interest in (1) the Common Elements, (2) any easement interests in rights of ways appurtenant to that Unit; and (3) any licenses granted to that Unit under this Declaration. Neither may such component interests be severally sold, conveyed, leased, encumbered, hypothecated, or otherwise dealt with, and any such attempt to do so in violation of this provision shall be void and of no effect. Developer and its successors, assigns, and grantees, and each Owner, by acquiring a Unit, covenants and agrees that the Units and their corresponding undivided 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 the title to the Unit, and (2) each such Unit shall be deemed to be conveyed or encumbered with its respective undivided interest in the Common Elements and in any easements, licenses or other interests appurtenant thereto even though the description in the instrument of conveyance or encumbrance may refer only to the title to the respective undivided interest. Nothing herein shall limit the right of an Owner to transfer a Limited Common Element parking stall or storage locker, if any, as provided in **Section XV.A.3** of this Declaration and Section 514B-40 of the Act.

**Q. NON-APPLICABILITY TO DEVELOPER.** Notwithstanding anything provided herein to the contrary, as long as there are unsold Units in the Project, the provisions of this **Article VI** shall not apply to the Units owned by Developer, or its 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 such that the Units are operated and managed professionally and efficiently.

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

1. Make, build, maintain, and repair all Common Elements (except for Commercial Limited Common Elements and Commercial Unit Limited Common Elements), including, without limitation, any hallways, corridors, walls, fences, gates, walkways, sidewalks, utilities, lines, drains, roads, driveways, driveway ramps, curbs, parking areas, offices, storage areas, and lighting in the 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 and used as set forth in this Declaration.

3. Keep all Common Elements (except for Commercial Limited Common Elements and Commercial Unit Limited Common Elements) in a strictly clean and sanitary condition, with all necessary repairs whatsoever, in good order and condition, and repair and make good all defects in the Common Elements (except for Commercial Limited Common Elements and Commercial Unit Limited Common Elements) 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 Parking 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 Tower, (b) alter the appearance of any portion of a Commercial Unit, or (c) affect in any way a Commercial Limited Common Element or a Commercial Unit Limited Common Element shall be subject to the Commercial Director's 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, structural alterations, or exterior changes to any Common Element of the Project except in accordance with plans and specifications prepared by a licensed architect and approved by any Owner whose approval is required by the Act, and subject to applicable approvals required by this Declaration, including,

without limitation, approvals from any governmental agencies. After starting the Improvements, the Association must work diligently to complete them in a timely manner.

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, abuse, make, or suffer any strip or waste or unlawful, improper or offensive use of the Project.

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

**B. 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, and maintenance of their respective Commercial Units, any Commercial Unit Limited Common Element appurtenant to their respective Commercial Units, and the Commercial Limited Common Elements, 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, and maintenance of their respective Residential Units. The Association shall be responsible for the operation, care, upkeep, repair, and maintenance of all Residential Unit Limited Common Elements and Residential Limited Common Elements, and the costs shall be borne by the Residential Unit Owners as a Limited Common Element Expense or as a Residential Unit Class Expense, as applicable, except as otherwise provided for herein or in the Bylaws. All Owners shall pay, and be responsible, for the operation, care, upkeep, repair, and maintenance 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, without 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 TO 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 the approval of the Owners, provided said Owners are given at least ten (10) business days written notice of a special meeting at which such actions may be approved by an amendment to the budget by the Board. The cost of such Capital Upgrades shall constitute a Common Expense. The foregoing shall not apply to operational expenses, which shall be subject to applicable provisions of the Condominium Documents. This Section shall not apply to any Capital Upgrades made by Developer when exercising the Developer's Reserved Rights.

**D. CAPITAL UPGRADES TO LIMITED COMMON ELEMENTS.** Whenever the Residential Unit Class for the Residential Limited Common Elements or the Commercial Unit Class for the Commercial Limited Common Elements shall require Capital Upgrades to their respective Limited Common Elements, the Residential Unit Class or the Commercial Unit Class, as applicable, shall proceed with such Capital Upgrades upon a Majority vote 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 or a Commercial Unit Class Expense, as applicable. If such Capital Upgrades, if not made, could reasonably result in a threat to the health or safety of the Owners or a significant risk of damage to the Project, then such additions, renovations, replacements, alterations or Improvements may be made by the Board without the prior approval of such Owners. The 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 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 the use of Units, rules or architectural controls), which would reasonably require the expenditure of funds in excess of One Million and No/100 Dollars (\$1,000,000.00) in the aggregate during any fiscal year of the Association and any determinations pursuant to Section 514B-41(c) of the Act 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 the Commercial Limited Common Elements and Commercial Unit Limited Common Elements) 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 Article applies, except as otherwise provided by the FHA and except as otherwise provided in this Declaration. This Article 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. Promptly after the work is completed, the Association, Developer, or Owner must file the amendment along with any necessary changes to the Condominium Map. This Article does not apply to "**nonmaterial additions and alterations**" as that term is used in Section 514B-140 of the Act. Nothing in this Article (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 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 or alterations required to address a claimed or potential defect.

B. **PROTECTION OF POST-TENSION CONCRETE SYSTEM.** Concrete components of the Project will be built using a post-tension concrete system that involves placing steel cables under high tension in the concrete slab foundation forming floors and ceilings. No Owner shall alter, pierce, or otherwise tamper with the concrete slabs above and below the Unit, which could result in serious damage to the integrity of the post-tension concrete system and/or cause serious injury or damage to persons and property. Without limiting the foregoing, window coverings may not be attached or anchored to such slabs. By accepting a Unit Deed, each Owner will further acknowledge and accept (1) that one of the effects of using a post-tension concrete system is that concrete surfaces may experience non-structural, cosmetic cracking that may be visible to Owners and require cosmetic repairs, and (2) that it is an inherent part of a post-tension concrete system that floors will not be level beyond the permitted construction tolerances and thus installation of certain floor coverings such as wood or other hard surface floor covering may require some leveling prior to installation.

C. **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.F** herein, and the prior written approval of Developer during the Development Period. Any change or modification that is made by Developer, in the exercise of its Developer's Reserved Rights, shall not require the approval of the Board.

Each Residential Unit Owner has the right, subject to the terms and provisions in the Condominium Documents and the approvals required above, which approvals shall not be unreasonably withheld or delayed, to make any of the following changes, additions, and Improvements solely within the Owner's Unit or within a Unit 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, walls, and structures 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 lanai or balcony;



2. To paint, paper, panel, plaster, tile, finish, and do or cause to be done such other work on the interior surfaces of ceilings, floors, and walls within the Unit (excluding exterior windows);

3. 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 Unit Limited Common Element appurtenant solely to the Unit;

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

5. 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 Tower, 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 Tower 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 and Class Common Interest for the original Units and shall not affect the Common Interest or Class Common Interest appurtenant to any other Unit;

6. To install an electric vehicle charging station in the Unit Limited Common Element parking stall that is designated by Developer as electric vehicle ready; provided, however, that all utilities necessary to operate the station are separately provided to said station and metered, such installation does not unreasonably interfere with the use and enjoyment of the Project by any other Owner or Person with the right to such use and enjoyment, and that the Owner of the Residential Unit to which the Unit Limited Common Element parking stall is appurtenant is responsible for all costs associated with installing, operating, and maintaining the electric vehicle charging station. If an Owner wishes to remove any electric vehicle charging station from its Unit Limited Common Element parking stall, such Owner shall be responsible for the removal and remediation of the area; and

7. To install, repair, alter, or replace any surface floor coverings in a Residential Unit; provided that the Owner shall provide the Board with written evidence that, as installed, the sound control underlayment of the new floor covering will mitigate sound transmission with a minimum Sound Transmission Coefficient (STC) Acoustic Standard of STC-55 and an Impact Isolation Class (IIC) rating of IIC 55 or such other rating as the Board shall have determined is required to prevent unreasonable sound transmission through the type of flooring that will be installed. The installation of 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). Following installation of such approved hard floor covering and sound control underlayment, the Owner will provide the Board with written confirmation from the installer that the material specified in the Board's written approval was duly installed and that as installed, such flooring meets the minimum standards set forth above. The Board shall have the right to require that any hard surface floor covering installed without the Board's prior written approval or not in conformity with the minimum standards in this Section be removed at the Owner's expense.

**D. BY COMMERCIAL UNIT OWNERS.** Except as otherwise provided in this Declaration, 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.F** herein, and the prior written approval of Developer during the Development Period. Any change or modification that is made by Developer, in the exercise of its Developer's Reserved Rights, shall not require the approval of the Board.

Each Commercial Unit Owner has the right, subject to the terms and provisions in the Condominium Documents, to make the following changes, additions, and Improvements solely within the Owner's Unit or within a Unit 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, partitions, and structures 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 within the Unit;
4. To make such changes, additions, and Improvements to the Unit or Unit Limited Common Elements appurtenant solely thereto to facilitate handicapped accessibility to and within the Unit or its Unit 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 is restored to substantially the same condition as prior to removal; and all construction activity is completed within a reasonable time. The Common Interest and Class Common Interest of any newly-created Unit shall be the aggregate of the two (2) initially separate Units and shall not affect the Common Interest or Class Common Interest appurtenant to any other Unit; 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 and Class Common Interest for the newly-created Units must be equal to the Common Interest and Class 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.

E. **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 (\$1,000,000.00). During the Development Period, however, the Board may not pursue any such change without Developer's prior written approval.

F. **APPROVAL OF THE BOARD; CONDITIONS TO BOARD APPROVAL.** It is intended that the Tower present a uniform and attractive appearance in accordance with the Project Quality Standard. Accordingly, whenever any proposed modification, change, addition to, or alteration of any Unit or Limited Common Element appurtenant thereto will impact such appearance, the Owner(s) proposing such modification, change, addition, or alteration must submit a written request for Board approval, which request must include plans and specifications depicting or showing the proposed modification, change, addition, or alteration. The Board must respond to a request for approval within forty-five (45) calendar days after it receives such a request. The request will be deemed approved unless, within the forty-five (45) day period, the Board (i) disapproves the request, (ii) asks the Owner to make changes, or (iii) notifies the Owner that other Owners have challenged the request. The Board shall base its decision to grant or deny approval at least in part upon considerations of whether (and to what extent) the proposed modification, change, addition, or alteration will materially and adversely affect the exterior appearance of the Project. Except in connection with proposed modifications to accommodate Owners with disabilities or to comply with applicable law, if the Board or the Commercial Director determines that the proposed

modification, change, addition, or alteration will materially and adversely affect the uniform and attractive appearance of the exterior of the Project or is not consistent with the Project Quality Standard, the Board shall not grant approval. If the Board decides that a proposed modification, change, addition, or alteration will not materially and adversely affect the uniform and attractive appearance of the exterior of the Project and decides to permit the modification, change, addition, or alteration as consistent with the Project Quality Standard, the Board shall first provide all Owners with written notice, and the proposed modification, change, addition, or alteration shall not be implemented until the Owners shall have had an opportunity to challenge the determination. If challenged by any Owner, then the proposed modification, change, addition, or alteration will require the approval of Owners of Units holding no less than sixty seven percent (67%) of the Common Interest. The Board, in its sole discretion, may impose reasonable conditions upon the Board's approval of any modification, change, addition, or alteration over which it has approval authority under this Article, 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 for the work.

3. For modifications, changes, additions, alterations, and other work, the estimated cost of which shall exceed One Million and No/100 Dollars (\$1,000,000.00), the Owner of the Unit provides 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 Hawaii-licensed architect, engineer, or other construction professional.

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

6. That the Owner's contractor shall not be permitted to use the Association's trash containers or receptacles for disposal of any construction trash or debris, and that no accumulation of trash or other debris from any construction activity within the Unit or Limited Common 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.

**G. 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. The Board may require the removal or correction of any work (i) not authorized by the Board, or (ii) that may materially and adversely affect the Common Elements, the exterior of the Project, or the rights of any other Owner.

**H. CONTRACTOR PARKING.** The Owner shall require such Owner's 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.

**I. DEVELOPER'S RESERVED RIGHTS.** Notwithstanding the requirements of this Article 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.

**J. 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 Parking Podium and the Commercial Unit or the Unit 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.

**K. OWNERS TO EXECUTE AMENDMENT DOCUMENTS IN CERTAIN CASES.** In the event that any change or alteration of a Unit pursuant to and in compliance with this **Article 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 in said Office. The provisions of **Article 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 a fair and equitable manner, and 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 Residential Unit Limited Common Element parking stalls and/or storage lockers, if any, as a Residential Unit Class Expense. If there are certain Limited

Common Elements that the Association is responsible for maintaining, the Owners of the Units to which such Limited Common Elements are appurtenant 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 Residential Limited Common Elements; (2) all costs of maintenance, repair, replacement, including reserves, of any equipment or apparatus servicing only the Residential Limited Common Elements; 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 Commercial Limited Common Elements; (ii) all costs of maintenance, repair, replacement, including reserves of any equipment or apparatus serving only the Commercial Limited Common Elements; 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, Residential Limited Common Elements, and Commercial Limited Common Elements are not readily determinable by separate meters or separate billing by vendors, the Board shall request the vendor of the services to segregate the billings as between the Common Elements, Residential Limited Common Elements, and Commercial Limited Common Elements. 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 Article 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 a governmental authority against the Unit, and (2) all sums unpaid on Mortgages filed prior to the filing of a notice of lien by the Association, and costs and expenses, including attorneys' fees, provided for in such Mortgages.

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 during the pendency of such action, 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 an attorney retained by the Board, or Managing Agent shall provide thirty (30) calendar days prior written notice of its intention to foreclose, unless a different notice period is otherwise provided for by Chapter 667 of the Hawaii Revised Statutes, 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 holder 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 Article 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, that the terms and conditions of the insurance obtained and maintained by the Association shall comply with the insurance requirements of Project Lender, if any. Each policy may be separate, or the Association may purchase 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 purchase 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 Article if the Board decides that it is necessary or is in the best interests of the Association. The Board may also buy other kinds of insurance even if they are not described in this Article.

4. **SUMMARY OF INSURANCE POLICIES.** Each insurance policy obtained by the Association to provide the coverage required under this Article shall be summarized in writing, in layman's terms, at the inception and renewal 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, are not less than the insurance requirements of Project Lender, if any. The Board must report in writing its conclusions and the action taken after its review.

6. **LIABILITY FOR INSURANCE DECISIONS.** The Board will not be liable for any decision it makes regarding insurance unless it was grossly negligent or guilty of intentional misconduct. Likewise, neither Developer, 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, Project Lender, if any, and Lenders 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 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, Project Lender, if any, 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 costs shall be evaluated and updated, at a minimum, annually and at the time of each renewal. The Policy shall not cover any Improvements and betterments or personal property in a Unit after the time a Certificate of Occupancy is issued for such Unit. The cost of replacement of such items shall be the sole responsibility and expense of the Owner of such Unit. Additionally, the Policy shall not cover any loss of use or loss of rent involving any Unit. This will be the sole responsibility and expense of the Owner of such 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 such Owner's sole expense, for obtaining and maintaining 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 under this Section, a 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 Owner(s).

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 comply with all requirements of Project Lender, if any, and 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 Project Lender, if any.

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

6. **REQUIRED AND PROHIBITED PROVISIONS.** Unless the Board decides the cost is unreasonably high, provided any such Board decision aligns with the insurance requirements of Project 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 Project Lender, if any, and each Lender and any other Interested Person who has, in either case, requested a copy of any such notice and has provided the Board with an address for such notice.

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

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

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

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

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

i. Name as an insured Project Lender 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; and

iv. Provide that the insurance company waives:

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

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

(c) any right to contribution from the Lender.

h. The Policy must provide that if there is a loss to the Project and a single payment by the insurance company exceeds Two Hundred Thousand and No/100 Dollars (\$200,000.00), then the proceeds must be paid to the Insurance Trustee. The Insurance Trustee shall be required to make the proceeds of the Policy available pursuant to the provisions of **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), being a low to moderate risk area. Accordingly, flood insurance is not federally required for the Project. The Association may buy a policy of flood insurance 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 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; provided that the limits may be evaluated annually by the Board based on upon industry standards for similar projects in the County. The Liability Policy should provide coverage for premises and operations, products and completed operations, if any, and, if available, independent contractors, blanket contractual liability for insured contracts and also bodily injury (including death) and property damage that results from the operation, maintenance, or use of the Common Elements and, if applicable, commercial vehicle liability (owned, hired and non-owned vehicles). The Board must also provide workers' compensation with statutory limits and employer's liability insurance with limits of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000).

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

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

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

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

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

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

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 and provided the Board with a mailing address.

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, including, without limitation, any claim that would be covered under employment practices liability insurance. 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 not be less than the insurance requirements of Project Lender, if any. If it can be obtained at a reasonable cost, the D&O Policy must provide coverage to the extent permitted by law for any proceeding whether it is civil or criminal, administrative or investigative. The D&O Policy must cover any expense actually and reasonably incurred. This includes, but is not limited to, attorneys' fees, court costs, and payment of any judgments, fines, and settlements. The Board may decide to buy insurance to cover circumstances where direct reimbursement is not required by law.

F. **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 written notice before the termination or material change of any such policy. To the fullest extent permitted by law,

any policy obtained pursuant to this Section must provide that the insurance company waives any right of subrogation to any right of the Persons insured by the Policy as against the Association, the Board, the Managing Agent, Developer, Lenders, Project Lender, if any, 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, agents, 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 Project 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 **Article 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 Project Lender, if any, or if there is no Project Lender, to institutional lenders for units in projects similar in construction, location, and use to the Project. The Board may accept deductibles, uninsured retention, and co-insurance as it chooses in its business judgment. Any amount paid on account of any deductible uninsured retention, or co-insurance will be a Common Expense; provided that if a loss results from the negligence or willful misconduct of an Owner, then the Association may charge the amount to the Owner as provided in the Bylaws; provided further that, in the case of an opt-out pursuant to **Section XII.D.4**, then the Commercial Unit Owners or shall have no obligation to pay any portion of the cost of such amount paid on account of any deductible uninsured retention or co-insurance.

I. **FAILURE OF UNIT OWNER TO OBTAIN INSURANCE.** If an Owner shall fail to obtain insurance for his or her Unit as may be required by this Declaration and the Bylaws, the Board is hereby authorized to obtain such insurance for the Unit, the expense of which shall be charged to the Owner. Such expense shall be secured by a lien on the Unit and may be foreclosed in a like manner to a lien for Common Expenses.

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

K. **WAIVER OF THE RIGHT OF SUBROGATION.** NOTWITHSTANDING ANYTHING PROVIDED IN THIS DECLARATION, EACH OWNER, THE ASSOCIATION, THE BOARD, DEVELOPER, LENDERS, PROJECT LENDER, IF ANY, AND EACH OF THEIR REPRESENTATIVES, HEREBY RELEASE (FOR THEMSELVES AND, TO THE EXTENT LEGALLY POSSIBLE TO DO SO ON BEHALF OF THEIR INSURERS AND THEIR RESPECTIVE REPRESENTATIVES) EACH OTHER AND THEIR REPRESENTATIVES, FROM ANY LOSS, DAMAGE OR LIABILITY FOR ANY CLAIMS WITH RESPECT TO OR ARISING FROM PERSONAL INJURY, BODILY INJURY, DEATH AND PROPERTY DAMAGE WHICH LOSS, DAMAGE, OR LIABILITY IS CAUSED BY A RISK OF THE TYPE GENERALLY COVERED BY POLICIES OF INSURANCE OF THE TYPE REFERRED TO AND REQUIRED TO BE OBTAINED PURSUANT TO THIS **ARTICLE XII**, EVEN IF DUE TO THE NEGLIGENCE OF A PARTY AND PROVIDED

THAT THIS SECTION REMAINS SUBJECT TO THE BOARD'S RIGHTS UNDER SECTION 514B-143(d) OF THE ACT WITH RESPECT TO THE ASSESSMENT AND PAYMENT OF THE DEDUCTIBLE. THIS SECTION RELEASES A PARTY FROM THE CONSEQUENCES OF ITS OWN NEGLIGENCE, SUBJECT TO ANY LIABILITY UNDER SECTION 514B-143(d) OF THE ACT.

### **XIII. INSURED DAMAGE OR DESTRUCTION.**

This Article 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 Article. In this Article, "**proceeds**" means any money paid by an insurance company for a loss under an insurance policy paid for by the Association. Any restoration or repair of the Project shall be performed substantially in accordance with this Declaration and the original plans and specifications, or if reconstruction in accordance with said plans and specifications is not permissible under the laws then in force, in accordance with such modified plans and specifications as shall be approved by the Board and any Lender holding a Mortgage on a Unit directly affected thereby, and in compliance with this Declaration. Notwithstanding anything contained in this Declaration to the contrary, this Declaration and the Bylaws shall not give an Owner or any other party priority over any rights of Lenders pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards.

**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, Project Lender, if any, and by any Lender holding a Mortgage on any Unit that is directly affected. 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 occurred. If the Board cannot repair such damaged areas according to their design just before the damage occurred (for example, if changes in the law prevent it), then the Association will rebuild or repair the Common Elements according to a new design. The new design must comply with all laws then in effect. Any modified plans and specifications must also be approved by the Board, as required by the Condominium Documents, Project Lender, if any, 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 **Article XIII**. Payments will be made as and when required by the construction contract and this **Article 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 Elements, as the case may be. If a replacement reserve fund is not adequate, the Board must (1) determine the amount of the remaining shortfall attributable to such reserve fund, and (2) charge a special assessment to each Unit required to contribute to such reserve fund except for Units that are not being rebuilt or repaired. Any special assessment for a 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 such Owner's Unit and/or the Unit 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.

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 **Article 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 Project Lender, if any, and 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**") (provided that Project Lender, if any, or its designee shall act as the Insurance Trustee should the construction loan to Developer remain outstanding), 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. Notwithstanding anything contained in this Declaration to the contrary, this Declaration and the Bylaws shall not give an Owner or any other party priority over any rights of Lenders pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards.

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 the Common Interest and their respective Lenders. The meeting must be held within ninety (90) calendar days after the damage or destruction occurs. Unless such restoration is undertaken within a reasonable time after such casualty, the Association shall remove all remains and Improvements so damaged or destroyed and restore the site thereof to good orderly condition and even grade, and the cost of any such removal shall be a Common Expense.

B. **ADJUSTMENT OF COMMON INTEREST.** If a Residential Unit is not rebuilt, the Common Interest and any Alternative Allocation and Residential Unit Class Common Interest for such Residential Unit shall be allocated to the remaining Residential Units pro rata based upon Common Interest. If a Commercial Unit is not rebuilt, the Common Interest and any Alternative Allocation and Commercial Unit Class Common Interest for such Commercial Unit shall be allocated to the remaining Commercial Units pro-rata based upon Common Interest.

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, with the exception of the Association's deductible amount, which may be assessed pursuant to Sections 514B-143(d)(2) and (3) of the Act.

2. Each Residential Unit Owner will be assessed the cost to repair, rebuild, and restore the Owner's Residential Unit and any Unit 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 Residential Limited Common Elements.

3. Each Commercial Unit Owner will be assessed the cost to repair, rebuild, and restore the Owner's Commercial Unit and any Unit 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 Commercial Limited Common Elements.

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.

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

1. **REPRESENTATION IN CONDEMNATION MATTERS.** Each Owner gives the Association a special power of attorney to represent the Owner in any proceedings, negotiations, settlements or agreements related to any actual or threatened condemnation of the Project or any part of it. The Association must pay the condemnation proceeds it receives to a bank, escrow, trust company or other fiduciary ("**Condemnation Trustee**") designated by the Board and authorized to do business in the State. The Condemnation Trustee will hold the condemnation proceeds on behalf of Developer, the Association, and Owners until Developer, the Association, and any impacted Owners agree, if they have not already agreed, on the distribution of the proceeds from such actual or threatened condemnation. If the parties cannot agree, then the Condemnation Trustee will distribute the proceeds per the property interest valuation process set forth below in **Sections XIV.D.3.e and XIV.D.3.f** below.

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



each Unit's Common Interest, the share of the proceeds for the Owner's Unit as provided in **Section XIV.D.3.c** below.

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

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

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

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

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

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

f. The property interest valuation process shall be:

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

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

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

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

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

## **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 Project Lender, if any, and mortgagees that represent at least fifty-one percent (51%) of the votes of Units that are subject to Mortgages. 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 such Owner's Unit;
- l. a decision by the Association to establish self-management if professional management had been required previously by the Condominium Documents or by an Eligible Mortgage Holder;
- m. restoration or repair of the Project (after damage or partial condemnation) in a manner other than specified in the Condominium Documents; or
- n. any provisions that expressly benefit Project Lender, if any, Lenders, insurers, or guarantors.

2. **ALTERATION OF A UNIT.** If any change to a Unit materially changes the depiction of a particular Unit or Units on the Condominium Map or the description of it in this Declaration, then the Owner or Owners of the Unit(s) must amend this Declaration and/or the Condominium Map to reflect the change. The amendment will take effect when it is 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, such Interested Person automatically (i) consents to the change; and (ii) agrees that such Interested Person 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 AND/OR STORAGE LOCKERS.** Any Owner (including Developer) may redesignate and exchange a Limited Common Element parking stall or storage locker, if any, 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 the filing of any amendment to this Declaration 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 Lenders pursuant to this Declaration.

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

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

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

e. **RESERVED RIGHTS OF AND EASEMENTS GRANTED TO DEVELOPER.** Any modification of the rights reserved and 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 Declaration 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, without the approval or joinder of 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, boundaries, 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 OR REGULATORY 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, or secondary market Lender, or any other entity necessary to obtain any construction or takeout 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 or ADA; (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 of Hawaii or County entitlements, agreements, or permits; (g) to comply with the requirements of the Commission, and (h) 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 such person's attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on such person's behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties.

5. **AMENDMENTS AFFECTING FIRST MORTGAGES.** Notwithstanding any provision of this Declaration to the contrary, any amendment affecting any provision of this Declaration which is for the express benefit of Project Lender, if any, and/or holders or insurers of first Mortgages on Units shall require the approval of Project Lender, if any, and/or Eligible Mortgage Holders on Units to which at least fifty one percent (51%) of the votes of Units subject to Mortgages held by such Eligible Mortgage Holders are allocated, as applicable, together with such other approvals as may be required in this **Article XV**; provided, however, that Project Lender, if any, and any Mortgage holder shall be deemed to have approved any proposed amendment to this Declaration where Project Lender, and/or 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 materially and adversely affecting any Commercial Limited Common Element shall be effective without the approval of the Commercial Unit Owners. Until the end of the Developer Control Period, no amendment to the Condominium Documents affecting any Residential Limited Common Element shall be effective without the approval of Developer. During the Development Period, this restriction 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, Commercial Limited Common Element, or Commercial Unit Limited Common Element shall be subject to the consent of the Commercial Director, or after the expiration of the Commercial Director Consent Rights, the consent of a Majority of the Commercial Unit Class.

3. Any amendment to the Condominium Documents to prohibit or materially restrict the use, operation, or occupancy of, or behavior within, a Residential Unit, Residential Limited Common Element, or Residential Unit Limited Common Element shall be subject to the consent of the Residential Directors.

4. 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.

5. 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.

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

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

D. **AMENDMENTS BINDING.** Any amendment made pursuant to the provisions of this Article 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, 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, 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 by the Owner; provided, that if the claims upon which the Association takes action upon are not substantiated, all costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred by the Owner as a result of the action of the Association, shall be promptly paid on demand to the Owner by the Association.

**XIX. RESERVED RIGHT TO GRANT AND RECEIVE EASEMENTS.**

Notwithstanding anything herein provided to the contrary, to and until December 31, 2045, Developer hereby reserves the right to designate, grant, receive, convey, transfer, delete, cancel, relocate, realign, reserve, and otherwise deal with any and all easements, licenses, rights of way, restrictive covenants, encroachments, and the like under, over, across, or through 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, vehicle paths, sidewalks, 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, maintenance of improvements or landscaping, access to or for preservation of any burial sites on the Land (in the form of an easement or covenant to run with the Land), and parking areas. Developer further reserves the right, to and until December 31, 2045, to negotiate, grant, cancel, relocate, and otherwise deal with any and all temporary licenses and rights of entry under, across, or through the Project, deemed necessary or desirable in Developer's sole discretion, or as may be required by a neighboring property owner or governmental entity, including, but not limited to, temporary rights of entry or other similar licenses and agreements to accommodate the construction and development of neighboring properties such as the use of airspace for the assembly, disassembly, and operation of tower cranes, and related construction and development activities. 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, licenses, rights of entry, and/or rights of way shall not materially and adversely impact any existing structure of the Project and shall not be exercised so as to unreasonably disturb, impair, or interfere with the normal use and enjoyment of the Project by the Owners; and provided further that Developer shall have the right to negotiate and agree to such terms with respect to such easements, licenses, rights of entry, and rights of way as Developer deems appropriate in its sole discretion. Any easement, license, right of entry, and/or right of way 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 Article 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 APPURTENANT LIMITED COMMON ELEMENTS.**

Notwithstanding anything provided to the contrary, and except as otherwise provided by law, to and until December 31, 2045:

- A. Developer hereby reserves the 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 or from Limited Common Element status to Unit area 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, boundaries, 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 this Declaration and the Condominium Map to effect any subdivision or consolidation of Units or alterations to floor plans at any time to and until December 31, 2045, 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 Article shall not be amended without the prior written consent of Developer.

**XXI. RESERVED RIGHT TO INSTALL AND MAINTAIN COMMUNITY SYSTEMS AND TO RECEIVE REVENUE THEREFROM.**

Notwithstanding anything herein to the contrary, to and until December 31, 2045, Developer hereby reserves the right to install or cause the installation of Community Systems on the Common Elements, including the rooftop of the Tower, 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. So long as the installation of the Community Systems does not interfere with or impair the Project Quality Standard, the installation of Community Systems pursuant to this Article 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 Project constituting a material change, or necessitate an amendment to the Condominium Map. Developer shall have the reserved right to charge the Association for any costs and expenses associated with the Association's use of any Community Systems appurtenant to a Unit owned by Developer. All profits or expenses directly attributable to the Community Systems shall be distributed or charged directly to the Unit to which the Community Systems are appurtenant. In connection with Developer's reserved right described in this Article, Developer reserves the right to enter into agreements, including, but not limited to, a bulk service agreement, or an exclusive marketing agreement, to sell and market certain telecommunications services to Owners in the Project, and to grant easements for such purpose, all upon such terms and conditions as Developer may determine in its sole discretion. In the event Developer receives any rebate or reimbursement for the cost of installation of the Community Systems, Developer shall be entitled to keep any such rebate or reimbursement. Developer may assign any and all of its rights under this Article to the Association or any third-party provider.

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

Notwithstanding anything herein provided to the contrary, to and until December 31, 2045, Developer hereby reserves the right not to construct, and/or not to construct at the same time, 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 Residential Limited Common Elements 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 CREATE, INSTALL, MODIFY, RELOCATE, AND RECONFIGURE RESIDENTIAL UNIT LIMITED COMMON ELEMENT STORAGE LOCKERS.**

Notwithstanding anything herein provided to the contrary, to and until December 31, 2045, Developer hereby reserves the right to (a) create and install Limited Common Element storage lockers within the Residential Limited Common Elements and designate such storage lockers as Residential Unit Limited Common Elements and (b) modify, relocate, and reconfigure all or certain Residential Unit Limited Common Element storage lockers appurtenant to Residential Units owned by Developer. Nothing in this Declaration shall be construed as a representation or warranty by Developer that the Residential Unit Limited Common Element storage lockers will not change and or that they will be built or completed prior to, concurrently with, or soon after any or all of the Units owned by Developer are conveyed to third parties.

**XXIV. RESERVED RIGHT TO INSTALL DEVELOPER'S SIGNAGE.**

Notwithstanding anything herein provided to the contrary, to and until December 31, 2045, Developer hereby reserves the right, for the benefit of the Project, to install, maintain, repair, replace, and approve of (from time to time) directional and wayfinding signage within the street level of the Project, and identity, canopy, and other signage within the Residential Limited Common Elements; subject and/or pursuant 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 Residential Limited Common Elements. 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 Residential Unit Class Expenses.

**XXV. RESERVED RIGHT TO MODIFY PROJECT AND TO AMEND CONDOMINIUM DOCUMENTS.**

Notwithstanding anything herein provided to the contrary, to and until December 31, 2045, Developer hereby reserves the 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 that 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 Project Lender, if any, any institutional Lender lending funds secured by the Project or any of the Units, or by any governmental agency.

**XXVI. 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, 2045:

A. Developer hereby reserves the 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), boundaries, and dimensions of the Unit(s) substantially as built; and

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

The right to amend this Declaration and the Condominium Map to effect the conversion of any Limited Common Element into a Unit and the alterations to floor plans may occur at any time to and until December 31, 2045, 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 this Declaration and the Condominium Map and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers, or privileges. To the extent permitted by applicable law, this Article shall not be amended without the prior written consent of Developer.

#### **XXVII. RESERVED RIGHT TO RECHARACTERIZE AND REDESIGNATE LIMITED COMMON ELEMENTS AND/OR CHANGE THE USE THEREOF.**

Notwithstanding anything herein provided to the contrary, to and until December 31, 2045, Developer hereby reserves the right to amend this Declaration to: (a) recharacterize all or a portion of certain Unit Limited Common Elements solely appurtenant to a Unit or Units owned by Developer, or Residential Limited Common Elements if all Residential Units are owned by Developer, or Commercial Limited Common Elements if all Commercial Units are owned by Developer, as being Common Elements of the Project, thus giving up or waiving the exclusive use of such area or areas; (b) redesignate all or a portion of certain Unit Limited Common Elements solely appurtenant to any Unit owned by Developer to another Unit or Units, or as Residential Limited Common Elements, or as Commercial Limited Common Elements; (c) redesignate a portion of the Residential Limited Common Elements or Commercial Limited Common Elements, if all Residential Units or Commercial Units, respectively, are owned by Developer, as Unit Limited Common Elements solely appurtenant to a Unit or Units owned by Developer; and/or (d) change the use of any Limited Common Element solely appurtenant to any Unit owned by Developer. Upon the 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 this Declaration to effect such recharacterization, redesignation, or change in use of any such Limited Common Elements shall occur at any time or times to and until December 31, 2045, and, except as provided in this Article, 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.

#### **XXVIII. RESERVED RIGHT TO CONVEY PROPERTY TO THE ASSOCIATION.**

Notwithstanding anything herein provided to the contrary, to and until December 31, 2045, Developer hereby reserves the right, 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, including, but not limited to, the Resident Manager Unit, 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.

#### **XXIX. RESERVED RIGHT TO CONDUCT SALES ACTIVITIES.**

Notwithstanding anything herein provided to the contrary, to and until December 31, 2045, Developer hereby reserves 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 Residential Limited Common Elements, for instance, for hosting of receptions and use of the Recreational Amenities for such activities, and use of the Commercial Limited Common Elements 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. This right shall include the right of Developer to temporarily reasonably restrict access to such Common Elements and Limited Common Elements, and Owners shall have no redress against Developer for the temporary loss of use of such areas. In the event that Developer is unable to sell all of the Units by December 31, 2045, Developer shall have the right to conduct sales activities at 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 Project Lender, if any, or any successor to or assignee of Project Lender shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the Mortgage remedies or by a deed or an assignment in lieu of foreclosure, Project Lender, its successor and assigns, shall have the right to conduct such extensive sales activities at the Project until at least ninety-five percent (95%) of all of the Units owned by Developer 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.

#### **XXX. RESERVED RIGHT TO CONSOLIDATE, SUBDIVIDE, AND WITHDRAW LAND.**

Notwithstanding anything herein provided to the contrary, to and until December 31, 2045, Developer hereby reserves the right to (i) consolidate the Land with another parcel(s) of land ("**Consolidated Lot**"), (ii) subdivide the Land to create separate parcels of land ("**Subdivided Lots**"), and/or (iii) withdraw certain Subdivided Lots from the operation of this Declaration, and convey or cause the conveyance of said withdrawn Subdivided Lots to itself or to a third party as it deems appropriate.

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

required easements and/or rights of way. Said consolidation shall be subject to, and Developer shall, at its own expense, comply with, all of the then-applicable governmental laws, rules, and regulations.

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

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

Upon the exercise of said reserved rights, Developer shall, at Developer's expense and without being required to obtain the consent or joinder of any Owner or lienholder, execute and file in said Office, the subdivision map (and, to the extent deemed necessary or approved by Developer, for designation of easements), and an amendment to the Declaration and the Condominium Map: (i) describing the withdrawn land; (ii) describing the realigned boundaries of the Land upon which the Units then constituting the Project are located; and (iii) where applicable and appropriate, granting, reserving, or relocating easements over, under, and on the Common Elements, as permitted above. The filing of the amendment to this Declaration and the Condominium Map shall effectuate the withdrawal, without any further consent or joinder of any party. Developer shall have the right, as grantor, to execute, deliver, and record a deed of any subdivided and withdrawn area upon filing of the amendments aforesaid.

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

#### **XXXI. RESERVED RIGHT TO LEASE OR TRANSFER COMMERCIAL UNITS AND THEIR LIMITED COMMON ELEMENTS.**

To and until December 31, 2045, 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, 2045, 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, 2045. 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, 2045 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.

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

Notwithstanding anything herein provided to the contrary, to and until December 31, 2045, Developer hereby reserves the right to reduce or increase the number of floors and/or Units in the Project, except as otherwise provided by law. Any such alteration to the number of floors and/or Units in the Project shall be effective provided that:

A. Developer shall 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 this Declaration and the Condominium Map to effect any increase or decrease in the number of floors and/or Units or alterations to the floor plans at any time or times to and until December 31, 2045, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder or other Persons, except as aforesaid, execute and file amendments to this Declaration and the Condominium Map and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the rights, powers, or privileges herein reserved to Developer.

**XXXIII. RESERVED RIGHT TO ENTER INTO AGREEMENTS WITH BICYCLE SHARING AND/OR CAR SHARING ENTITY.**

Notwithstanding anything herein provided to the contrary, to and until December 31, 2045, Developer hereby reserves the right, unto itself, its agents, employees, personnel, licensees, successors, and assigns, to select and contract with a County-approved car sharing and/or bicycle sharing partner or entity for a car share and/or bike share station to be located on a publicly accessible portion of the Project in accordance with applicable State of Hawaii and/or County requirements. 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 car share and/or bike share station and to grant easements for such purposes, upon such terms and conditions as Developer may determine in its discretion.

**XXXIV. RESERVED RIGHT TO ALTER UNIT AND/OR COMMON ELEMENT AREA FOR MINOR DESIGN AND CONSTRUCTION ADJUSTMENTS.**

Notwithstanding anything herein provided to the contrary, to and until December 31, 2045, Developer hereby reserves the right to alter the areas of Units and Common Elements, including Limited Common Elements, to accommodate minor design and construction adjustments, to comply with the Condominium Map, to improve efficiency in the use of the Units and/or the operation and use of the Common Elements, including the Limited Common Elements, and/or to comply with law, permits, and/or other government approvals. Developer shall record or cause to be recorded an amendment to this Declaration and the Condominium Map, as necessary, describing (a) the revised areas, and (b) any recalculation of the Common Interest and/or Class Common Interest appurtenant to the Units as a result of any increase or decrease in Unit area(s). Developer shall have the right, in its sole and absolute discretion, not to recalculate and revise the Common Interest and/or Class Common Interest if the net living area of a Unit increases or decreases by less than two percent (2%). In the event that Common Interest and/or Class Common Interest are/is recalculated, Developer shall have the right to adjust such Common Interest and/or Class Common Interest in its discretion in order to ensure the sum of the percentages equals exactly one hundred percent (100%).

Developer expressly reserves the right to amend this Declaration and/or the Condominium Map to effect any change in a Unit's area or alteration of the Common Elements, including the Limited Common Elements, at any time or times to and until December 31, 2045, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder or other Persons, execute and record amendments to this Declaration and the Condominium Map and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the rights, powers, and/or privileges herein reserved to Developer.

**XXXV. RESERVED RIGHT TO ADDRESS ARCHAEOLOGICAL ISSUES.**

Notwithstanding anything herein provided to the contrary, to and until December 31, 2045, 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 the Master Charter and applicable State law, and the determinations with respect thereto made by the State Historic Preservation Division ("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) recording against the Land 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) relocating 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. Any action that adversely affects a Commercial Unit or its Limited Common Elements shall be subject to the prior written approval of the affected Commercial Unit Owner, which approval shall not be unreasonably withheld. 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.

#### **XXXVI. RESERVED RIGHT TO ADDRESS SOIL.**

Developer reserves the right, to and until December 31, 2045, to respond to and appropriately deal with any inadvertent finds of contaminants in the soil during the course of construction of the Project in compliance with applicable law and any other determinations made by the applicable government agencies by (a) digging, relocating or filling any soil contaminated areas; (b) making changes to any Improvements, Common Elements and Limited Common Elements necessary to accommodate the foregoing; (c) entering into any agreements and preparing any reports necessary or prudent to document the decisions and requirements of any governmental agency, Developer's agreements or applicable laws including, without limitation, environmental reports, mitigation plans, and monitoring plans. The Association shall be subject to and responsible for compliance with all such plans, agreements and easements, the expense of which shall be a Common Expense.

#### **XXXVII. RESERVED RIGHTS REGARDING STATE AND COUNTY REQUIREMENTS, PERMIT AND DEVELOPMENT AGREEMENTS.**

Notwithstanding anything herein provided to the contrary, to and until December 31, 2045, Developer hereby reserves the right to: (i) amend the Condominium Documents, including, but not limited to, this Declaration, to satisfy all State and County requirements, permits, and/or entitlements; (ii) secure any other governmental permits, approvals, or agreements or amend or supplement any existing governmental permits, approvals, or agreements; (iii) enter into any agreements, including, but not limited to, declaring and subjecting the Land and Improvements to restrictive covenants; (iv) designate and grant easements; (v) subdivide and withdraw from the Project a portion of the Land and dedicate it to the County or State to fulfill road widening requirements; (vi) revise the budget and/or Common Expenses and implement fees for the landscaping, maintenance, and upkeep of the dedicated portion until the County or State performs any actual road widening to include the dedicated portion and affirmatively accepts responsibility for maintaining the dedicated portion; and (vii) do all things necessary or convenient to satisfy the requirements of any land use approvals or other permits pertaining to the Project issued by the State or County, as the same may be amended or modified, and to execute, record, and deliver any and all documents necessary to effect the same, including, but not limited to, any necessary amendments to this Declaration and the Condominium Map.

#### **XXXVIII. RESERVED RIGHT TO DEREGISTER THE LAND AND THE PROJECT FROM THE LAND COURT OF THE STATE OF HAWAII.**

Notwithstanding anything herein provided to the contrary, to and until December 31, 2045, Developer hereby reserves the right to file a voluntary request for deregistration with the Assistant Registrar of the Land Court of the State of Hawaii pursuant to Section 501-261.5 of the Hawaii Revised Statutes, as amended. In connection therewith, Developer shall have the right, as necessary, to amend the Condominium Documents, including, but not limited to, this Declaration, to revise the legal description of the Land underlying the Project, and to make other changes as may be required to reflect the deregistration of the Land and the Project.

#### **XXXIX. ASSIGNMENT OF RESERVED RIGHTS.**

To and until December 31, 2045, notwithstanding anything stated herein to the contrary, the rights reserved to Developer in this Declaration shall be fully and freely assignable (including assignments, mortgages, and pledges for security purposes) 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 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, such party upon any transfer of any Unit or any interest therein, whether by deed, Mortgage, or any other instrument of conveyance.

#### **XL. 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 **Articles XIX through XXXVIII**, 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 as such person's attorney-in-fact with full power of substitution to execute, deliver and file such documents and instruments and to do such things on such person's behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any 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.

#### **XLI. DISCLOSURES AND LIMITATIONS ON LIABILITIES.**

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

##### **A. NONLIABILITY AND INDEMNIFICATION.**

1. **GENERAL LIMITATION.** Except as specifically provided in the Condominium Documents or as required by law, no right, power, or responsibility conferred on the Board by the Condominium Documents shall be construed as a duty, obligation, or disability charged upon Developer or any of its agents, employees, the Board, any Director or any other Officer, employee, agent, or committee member of the Association. The Association, its members, Directors, Officers, agents and committee members, and the Board are subject to the insulation from liability provided for directors of corporations by the laws of the State 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, 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 such loss or claim is not covered by insurance and it is proven that he or she acted fraudulently, with willful misconduct, or with gross negligence. After such proof, and provided the loss or claim is not covered by insurance, the Association is no longer liable for the cost of defense due to the fraud, willful misconduct, or gross negligence of such person indemnified by the Association, and 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, except as otherwise set forth in this Declaration. 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, if any, from and against, and properly reimburse it for, any and all liability, cost, damages, expense or deficiency resulting from, arising out of, or in connection with the negligent acts of such Owner.

B. **SECURITY DISCLAIMER.** The Association, Managing Agent, 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.

The Association, Managing Agent, Resident Manager, and Developer shall not in any way be considered insurers or guarantors of security within the Project, and neither the Association, Managing Agent, 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, Board, Managing Agent, Resident Manager, Developer and any successor Developer, do not represent or warrant that any fire protection, burglar alarm, 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, burglar alarm, or other security system, if any, 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 Managing Agent, Resident Manager, Association, its Board and committees, Developer, and any other successor to Developer are not insurers or guarantors, and that 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 Managing Agent, 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 fire protection, burglar alarm, or other security system 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 this Section, Developer does not make any representation or warranty as to the actual size, configuration, 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. 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 mold, mildew and/or microscopic spores at the Project, unless caused solely by the gross negligence or willful misconduct of Developer.

E. **NONLIABILITY FOR CORROSION DEVELOPMENT.** Being located in the State of Hawaii, generally, and in close proximity to the Pacific Ocean along Oahu's south shore, the Project is exposed to corrosive elements, including, but not limited to, wind, rain, salt air, and volcanic smog (also known as vog) (collectively, "**Corrosive Elements**"). Affirmative steps taken by Owners and the Association to maintain the portions of the Project susceptible to corrosion can reduce the effects of this corrosive atmosphere on the Project.

The Board shall develop and implement a reasonable maintenance plan to reduce the impact of the Corrosive Elements on the Project, the cost of which shall be a Common Expense. The plan shall include the regular inspection, preventative maintenance, and repair of the components of the Project that can reasonably be accessed for such inspection, maintenance, and repair. The Board shall keep a record of all corrosion maintenance efforts. 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, arising from the occurrence of corrosion at the Project, unless caused solely by the gross negligence or willful misconduct of Developer.

F. **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. Owners should consult with appropriate insurance professionals regarding the effect of these designations. Additionally, the Land may later be identified as located in a higher risk flood zone because of events related to, among other climate-related changes, sea level rise. By signing and accepting a Unit Deed or other conveyance of a Unit, an Owner waives, releases, and discharges any rights, claims, or actions that such Owner may have, now or in the future, against Developer and its Representatives, licensees, successors, and assigns arising directly or indirectly from any such increase in flooding, including flooding resulting from sea level rise.

G. **SEA LEVEL RISE.** Sea levels are rising globally and locally. Sea level rise causes gradual changes to the environment and may have certain significant impacts on real property, including the Land. Sea level rise may cause rising groundwater tables below the Land's surface, drainage issues, increased flooding, saturated and weakened soil beneath the Land's surface, accelerated erosion of the Land, and/or other inconveniences or nuisances resulting from sea level rise ("**Sea Level Rise Effects**"). Developer cannot ensure that the Land will not later be identified as located in a Sea Level Rise Exposure Area, nor that the Project will not be impacted by Sea Level Rise Effects. By signing and accepting a Unit Deed or other conveyance of a Unit, an Owner accepts the Sea Level Rise Effects and waives any claims or rights of action or suits against Developer and its Representatives, licensees, successors, and assigns arising from any impairment of the Owner's use and enjoyment of the Unit or the Project, or any inconvenience, property damage, or personal injury arising directly or indirectly from the Sea Level Rise Effects.

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

2. **CONDOMINIUM LIVING; RESIDENTIAL-COMMERCIAL MIXED-USE RETAIL AREA.** Living in a multi-story, mixed-use, high-rise condominium project 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. However, Owners will hear noise from adjacent Units within the Project, including, but not limited to, noise from showers, bathtubs, sinks, toilets, washing machines, or other sources of running water and/or plumbing fixtures, and will smell odors from adjacent Units within the Project, including, but not limited to, cooking odors. Also, Owners may hear noise from such items as the swimming pool, 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, and other noise, and can expect to experience substantial 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. Owners on lower floors of the Project, located closer to the commercial establishments and close to the street will likely experience the most sound, noise, odor, and vibrations from such commercial activity. Each Owner and every other Person who has an 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 each Owner of a Commercial Unit and their respective Representatives, tenants, licensees, successors, and assigns, and arising directly or indirectly out of or from such noise, odors, vibrations, and light. By accepting a Unit Deed or other conveyance of a Unit, an Owner acknowledges and agrees that sound, odor, vibration, and light transmission in a residential-commercial mixed-use condominium project are common and difficult to control. Developer does not make any representation or warranty as to the level of such transmission at the Project, and each Owner hereby waives and expressly releases any claim for loss or damage resulting from such transmission.

3. **NOISE; TRAFFIC.** Being located in a business, residential, retail, entertainment, and commuter district, noise, dust, vibration, and/or pedestrian and vehicular traffic are higher than average in the vicinity of the Project. A Honolulu Fire Department fire station and a Hawaiian Electric Company substation are also 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 the Association, 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, the Commercial Units and/or their appurtenant Limited Common elements, or neighboring properties; (b) opening and closing of doors, landscaping maintenance, trash collection, and freight loading/unloading activities at or nearby the Project; (c) loud music from restaurants or other outlets, concert events, or performances; (d) vehicular traffic from the street or Parking Podium; (e) voices of people talking outside retail and/or food and beverage establishments; and (f) noises from special events taking place at or 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." The Commercial Units may be used for retail, restaurant, or other commercial business purposes, as permitted by law and this Declaration, which may cause noise typically associated with the operation and management of those types of establishments (e.g. high vehicular and pedestrian traffic caused by patrons, delivery trucks, and unloading and loading activities and noise and traffic caused by heavy machinery for stocking and operation of the Units and their surroundings). By accepting a Unit Deed or other conveyance of 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 Unit Deed or other conveyance of his or her Unit, 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.

4. **HONOLULU INTERNATIONAL AIRPORT.** The Project's proximity to the Honolulu International Airport may cause frequent, loud noise from aircraft operations, sightings of aircraft flying at very low altitudes, and fumes, smoke, vibrations, odors, and other nuisances resulting from aircraft flight operations over or near the Project ("**Aircraft Effects**"). By signing and accepting a Unit Deed, Owners accept the Aircraft Effects and waive any claims or rights of action or suits against Developer or Developer's successors and assigns arising from any impairment of Unit Owners' use and enjoyment of a Unit or the Project, or from any inconvenience, property damage, or personal injury arising directly or indirectly from the Aircraft Effects.

5. **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 or that any neighboring development will be aesthetically comparable to the Project. 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; and 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 adjacent to or near the Project; (ii) the proposed elevated rail transit line; (iii) the Hawaiian Electric Company substation located in the vicinity of the Project, and/or (iv) the growth of trees, landscaping, and/or vegetation within or outside 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 or growth.

6. **NEIGHBORING DEVELOPMENTS.** Certain portions of land outside, abutting, and/or near the Project ("**Neighboring Developments**") may be subject to redevelopment, and, in the future, may or will be developed by third parties over whom Developer has no control. The Association and Developer have no jurisdiction over Neighboring Developments, and, accordingly, there is no representation as to the nature, use, or architecture of any future development or improvement on Neighboring Developments. Any use, development, and/or construction on Neighboring Developments may result in noise, dust, and/or other nuisances to the Project and/or Owners, and Owners acknowledge and accept the same.

7. **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.

8. **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.

9. **MARKETING MATERIALS.** Any marketing materials used by Developer in the promotion and sales of the Units and/or the Project shall not be a representation or warranty by Developer of the layout, décor, coloring, or furnishings of a Unit, the fixtures provided with a 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 layout, décor, coloring, furnishing, or fixtures in a unit, or amenities that will be included in the Project.

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

11. **WARRANTIES.** Developer is developing the Project but it is not the general contractor or an affiliate of the general contractor that 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.

12. **PROPOSED RAIL ROUTE.** The Project may be in the vicinity of the proposed rail route of the County, which may cause noise, dust, vibrations, traffic congestion, view impairments, and/or other inconveniences or nuisances associated with the development, construction, and operation of such rail transit system ("**Rail Effects**"). By signing and accepting a Unit Deed or other conveyance of a Unit, each Owner accepts the Rail Effects and waives any claims or rights of action or suits against Developer or Developer's successors and assigns arising from any impairment of the Owner's use and enjoyment of the Unit or the Project or the values thereof, or from any inconvenience, property damage or personal injury arising directly or indirectly from the Rail Effects.

13. **ARCHAEOLOGICAL AND BURIAL DISCLOSURES.** In connection with the development of the Project, Developer will conduct an archaeological inventory survey ("**AIS**"). The AIS may be followed by an Archaeological Preservation Plan and an Archaeological Monitoring Plan.

The Association shall be subject to and responsible for compliance with all such plans, agreements, and easements, the 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 of 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.

Notwithstanding any effort made or action taken by Developer to comply or cooperate with or fulfill the mitigation commitments set forth above, by acquiring a Unit in the Project, Unit Owners will be deemed to have acknowledged, understood, and agreed to the foregoing, and 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 existence of such conditions on the Land and changes made to the Project to address any such condition.

14. **SOIL DISCLOSURES.** In connection with the development of the Project, Developer will conduct a site investigation. Such investigation may uncover contaminants in the groundwater and the soil on the Land. If contaminants are found, Developer will work with the State of Hawaii Department of Health to identify and evaluate remedial alternatives. Developer may evaluate remedial alternatives such as complete or partial in situ soil and groundwater treatment, complete or partial ex situ soil and groundwater treatment or disposal, institutional and engineering controls, or other remedies. remedial action may be taken to address the contaminants through the removal and off-site disposal of contaminated soil, onsite soil treatment, onsite capping of contaminated soil, or a combination thereof.

Institutional controls are administrative and legal measures such as management plans, rules, permits, requirements and warnings that prevent and control exposure to contaminants. Engineering controls are measures that physically prevent exposure to contaminants such as barriers, caps and containment walls. An example of an institutional control is an Environmental Hazard Management Plan ("**EHMP**"). The purpose of an EHMP is to provide procedures and guidelines for controlling the potential hazards posed by contaminated media remaining at a site. The EHMP may include appropriate cap maintenance/reporting requirements, restrict activities that may compromise the integrity of the engineering controls, specify appropriate soil and groundwater handling and worker protection requirements should disturbance of the contaminated soils and groundwater be unavoidable, and also specify appropriate mitigation measures if a portion of cap(s) are breached. The Association shall be subject to and responsible for compliance with any such EHMP, the expenses of which shall be a Common Expense.

Notwithstanding any effort made or action taken by Developer to comply or cooperate with or fulfill the remediation set forth above, by acquiring a Unit in the Project, Unit Owners will be deemed to have acknowledged, understood, and agreed to the foregoing, and 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 existence of such conditions on the Land and changes made to the Project to address any such condition.

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

a. **Mechanical Equipment on Rooftop.** Developer reserves the right to install cooling towers, compressors, and other equipment on the rooftop of the Tower in its sole discretion to service Common Elements including, but not limited to, common hallways, the lobby, and the Recreational Amenities. Should cooling towers, compressors, and other equipment be installed on the rooftop, they may cause noise and vibrations even in the course of normal operation, which may be evident to the Units on the floors immediately below the rooftop, including those located on the top levels of the Tower.

b. **Elevators.** The design of the Tower provides for multiple passenger elevators to provide access to the various floors of 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 farther away from the elevator lobbies. Also, during certain hours of the day there may be delays in the elevators servicing each 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.

c. **Location of Units Near the Recreational Amenities and/or Parking Podium.** Certain of the Units located on or near the seventh (7<sup>th</sup>), eighth (8<sup>th</sup>), and thirty-ninth (39<sup>th</sup>) levels of the Tower are located in close proximity to the Recreational Amenities. These Units may be exposed to greater noise and other nuisances than the Units located in other areas of the Project. Certain Units located in close proximity to the Parking Podium may be exposed to greater noise, traffic, and other nuisances than Units located on other areas of the Project.

d. **Stone.** Natural stone countertops and backsplashes (collectively, "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. Some of the shower walls and floors may also be stone. Again, stone is naturally porous and tends to absorb liquid that can penetrate deeper into the material quickly and may be hard to remove. Stone can and should be sealed when installed and again every few years to minimize staining. However, if it is not done properly or often enough, staining can still occur. Cutting or dropping objects directly on stone can also scratch, chip and crack the surface. The failure to comply with these special maintenance, care, and upkeep requirements may result in additional costs to the Owner and detract from the Owner's enjoyment of the Unit.

e. **Engineered Wood Flooring and Wood Veneer Cabinets in Units.** Engineered wood flooring may be installed in a portion of each Unit. Engineered wood flooring is prone to scratching, and has special maintenance, care, and upkeep requirements as compared to carpeting, with which each Owner must comply 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 may result in additional costs to an Owner and detract from an 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 signing and accepting the Unit 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 amended, for the purpose of minimizing and softening the level of sound transmission through the engineered wood floor of each Unit. Certain kitchens and bathrooms may also have cabinets made from natural wood veneer, which is subject to color, texture, and surface variations and aging. The failure to comply with special maintenance, care, and upkeep requirements may result in additional costs to the Owner and detract from the Owner's enjoyment of the Unit.

f. **Exposed Concrete Walls, Columns and Ceilings.** Some Residential Units will have exposed concrete walls, columns and/or ceilings. The appearance of these concrete elements will emulate the formwork which will vary from location to location and unit to unit. The surface finish of these concrete elements will be controlled by construction tolerances but may have minor imperfections such as formwork "seam", small "void" and patches. These minor imperfections do not impair the durability of the material. It is also common for concrete to develop hairline fissures during the curing process. Such fissures are anticipated and addressed by concrete tolerances. These shall not be considered flaws as they do not impair the function or durability of the material. Like drywall, exposed concrete walls, columns and ceilings are also susceptible to impact damage, slight discoloration and staining.

g. **Lanais and Balconies.** Some Residential Units will have lanais and/or balconies with glass railings, which leaves such lanais and balconies exposed to public view.

## **XLII. DISPUTE RESOLUTION.**

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

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

C. **MEDIATION.** If the Parties cannot resolve such Dispute by discussion pursuant to **Section XLII.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 DPR in the County. A Party may apply to the First Circuit Court of the State of Hawaii for an order compelling mediation as set forth in Section 514B-161 of the Act, as amended.

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

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

3. **Expenses.** The expenses of witnesses shall be paid by the Party producing such witnesses. All other expenses of the mediation including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses, or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties unless they agree otherwise, or otherwise set forth in Section

514B-161 of the Act, as amended. Each Party shall bear its own attorneys' fees and costs in connection with such mediation unless otherwise required under Section 514B-161 of the Act, as amended.

4. **No Judicial Intervention.** If a Party institutes litigation prior to observing the procedures set forth in **Sections XLII.B and XLII.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 XLII.B and XLII.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 the County. The Parties hereby agree that the court shall apply Hawaii substantive law and applicable statutes of limitations and will honor claims of privilege recognized by law.

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

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

G. **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.

#### **XLIII. 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.

#### **XLIV. COMPLIANCE WITH COUNTY ZONING AND BUILDING LAWS.**

In accordance with Section 514B-32(a)(13) of the Act, Developer declares, 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.

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

E. **NO ADDITIONAL OBLIGATIONS; IRREVOCABILITY AND WAIVER OF RIGHT.** Nothing set forth in this Article 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 inspect, repair, or replace 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 in 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, or the Association for, any design or construction defects (whether known or unknown) relating to the Project, including latent defects.

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

#### **XLVI. DEVELOPER'S RIGHT TO APPOINT AND REMOVE OFFICERS AND DIRECTORS; DEVELOPER CONTROL PERIOD.**

Notwithstanding anything contained in this Declaration or the Bylaws to the contrary, Developer shall have the right to appoint and remove Officers and Directors for a certain period of time (the "**Developer Control Period**"). The Developer Control Period shall terminate no later than the earlier of the following: (a) sixty (60) calendar days after the conveyance of seventy-five percent (75%) of the Common Interest appurtenant to Units that may be created to Owners other than Developer; (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.

#### **XLVII. RESIDENT MANAGER UNIT.**

Developer is the Owner of the Resident Manager Unit set forth in **Exhibit "B"**, if any, which is initially intended to be used as the Resident Manager Unit; provided that nothing in this Declaration shall obligate Developer to provide or maintain a Resident Manager Unit. Developer may sell, pledge, lease, assign, convey, Mortgage, and/or transfer the 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.

#### **XLVIII. GENERAL PROVISIONS.**

##### **A. WAIVER OF CERTAIN RIGHTS.**

1. **WAIVER OF CERTAIN DAMAGES.** WITH RESPECT TO ALL DISPUTES, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OWNER, THE ASSOCIATION, THE BOARD, MANAGING AGENT, DEVELOPER AND EACH OF THEIR REPRESENTATIVES WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO RECOVER PUNITIVE, 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.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OWNER, THE ASSOCIATION, THE BOARD, MANAGING AGENT, DEVELOPER AND EACH OF THEIR REPRESENTATIVES UNCONDITIONALLY WAIVE ANY RIGHT TO PARTICIPATE IN A

REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLASS PERTAINING TO ANY DISPUTE. THE PARTIES UNCONDITIONALLY AGREE THAT ANY DISPUTE WILL BE ADJUDICATED ON AN INDIVIDUAL BASIS. ALL PARTIES TO THE LITIGATION MUST BE INDIVIDUALLY NAMED. THERE WILL BE NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE LITIGATED ON A CLASS ACTION OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC OR OTHER PERSONS SIMILARLY SITUATED, AND THE PARTIES ARE SPECIFICALLY BARRED FROM DOING SO.

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 hereof.

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 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 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 the Bylaws of the corporation will be subordinate to this Declaration. If the corporation takes any action that violates all or any part of this Declaration or the Bylaws, the action will be void.

**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).

#### **XLIX. INVALIDITY AND CHANGES IN LAW.**

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

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

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IN WITNESS WHEREOF, the undersigned has executed these presents this 9th day of  
December, 20 24.

1538 KAPIOLANI LLC,  
a Hawaii limited liability company

By 

Name Timothy Lee  
Its Manager

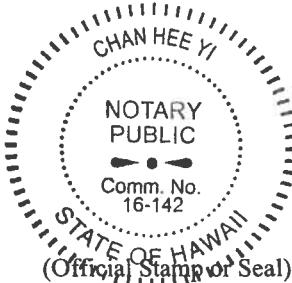
"Developer"

STATE OF HAWAII

SS:

CITY AND COUNTY OF HONOLULU

On this 9<sup>th</sup> day of December, 2024, before me appeared Timothy Lee, 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.



Chan Hee Yi  
Print Name: Chan Hee Yi  
Notary Public, in and for said State  
My commission expires: 04-10-2028

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: DECLARATION OF CONDOMINIUM  
PROPERTY REGIME OF MUSE HONOLULU

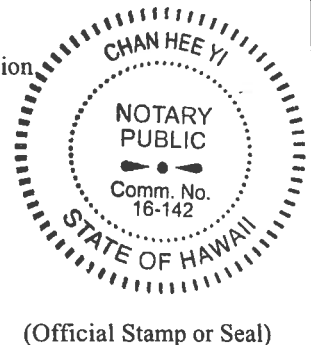
☐ Document Date: — or ☒ Undated at time of notarization.

No. of Pages: 101 Jurisdiction: First Circuit  
(in which notarial act is performed)

Chan Hee Yi 12-09-2024  
Signature of Notary Date of Notarization and  
Certification Statement

Printed Name of Notary Chan Hee Yi

My commission expires: 04-10-2028



**EXHIBIT "A"**

**PROPERTY DESCRIPTION**

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

Lot 55, area 40,166 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. 83 of Kapiolani Boulevard Lands, Inc.

Being land(s) described in Transfer Certificate of Title No. 1,158,579 issued to 1538 KAPIOLANI LLC, a Hawaii limited liability company

**BEING THE PREMISES ACQUIRED BY WARRANTY DEED**

GRANTOR	:	DONNA J. WALDEN, as Trustee under that unrecorded Donna J. Walden Revocable Living Trust, dated September 14, 1988, with full powers to sell, mortgage, lease or otherwise deal with the land, and GIAMPAOLO BOSCHETTI, unmarried
GRANTEE	:	1538 KAPIOLANI LLC, a Hawaii limited liability company
DATED	:	June 20, 2018
FILED	:	Land Court Document No. T-10397128

**END OF EXHIBIT "A"**

**EXHIBIT "B"**

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

**I. Unit Numbers, Unit Types, Number of Bedrooms and Bathrooms, Parking Stalls, Storage Lockers, Approximate Net Living Areas, Approximate Net Lanai Areas, Total Approximate Net Areas, Common Interest**

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
701	TH2A1	2/2.5	364, 382		1,124	200	1,324	0.380605%
702	TH1A1	1/1.5	462		947	481	1,428	0.320670%
703	TH1A2	1/1.5	463		812	252	1,064	0.274957%
704	TH1A3	1/1.5	439		822	252	1,074	0.278343%
705	TH1A4	1/1.5	440		709	252	961	0.240079%
706	TH3A1	3/2	261, 262		1,452	410	1,862	0.491672%
901	L2B3	2/2	537T, 538T		1,048	89	1,137	0.354870%
902	L3B1	3/3	673, 674		1,435	111	1,546	0.485915%
903	L1B5	1/1	623		668	0	668	0.226196%
904	L1B1	1/1	626		724	0	724	0.245159%
905	L1B6	1/1	652		604	0	604	0.204525%
906	L1B2	1/1	624		684	0	684	0.231614%
907	L2B1	2/2	495T, 496T		1,204	124	1,328	0.407695%
908	L2B2	2/2	341HC		1,055	0	1,055	0.357241%
909	L1B3	1/1	627		733	0	733	0.248206%
910	L1B4	1/1	543		747	0	747	0.252947%
911	L1B7	1/1	651		572	0	572	0.193689%
912	L0B5	0/1	494		492	0	492	0.166600%
1001	L2B3	2/2	535T, 536T		1,048	89	1,137	0.354870%
1002	L3B1	3/3	679, 680		1,435	111	1,546	0.485915%
1003	L1B5	1/1	649		668	0	668	0.226196%



Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
1004	L1B1	1/1	634		724	0	724	0.245159%
1005	L1B6	1/1	665		604	0	604	0.204525%
1006	L1B2	1/1	640		684	0	684	0.231614%
1007	L2B1	2/2	630T, 631T		1,204	124	1,328	0.407695%
1008	L2B2	2/2	691T, 692T		1,055	0	1,055	0.357241%
1009	L1B3	1/1	633		733	0	733	0.248206%
1010	L1B4	1/1	530		747	0	747	0.252947%
1011	L1B7	1/1	622		572	0	572	0.193689%
1012	L0B5	0/1	451		492	0	492	0.166600%
1101	L2B3	2/2	435T, 436T		1,048	89	1,137	0.354870%
1102	L3B1	3/3	610, 611		1,435	111	1,546	0.485915%
1103	L1B5	1/1	666		668	0	668	0.226196%
1104	L1B1	1/1	546		724	0	724	0.245159%
1105	L1B6	1/1	641		604	0	604	0.204525%
1106	L1B2	1/1	629		684	0	684	0.231614%
1107	L2B1	2/2	533T, 534T		1,204	124	1,328	0.407695%
1108	L2B2	2/2	687T, 688T		1,055	0	1,055	0.357241%
1109	L1B3	1/1	547		733	0	733	0.248206%
1110	L1B4	1/1	467		747	0	747	0.252947%
1111	L1B7	1/1	664		572	0	572	0.193689%
1112	L0B5	0/1	422		492	0	492	0.166600%
1201	L2B3	2/2	332T, 333T		1,048	89	1,137	0.354870%
1202	L3B1	3/3	612, 613		1,435	111	1,546	0.485915%
1203	L1B5	1/1	636		668	0	668	0.226196%
1204	L1B1	1/1	548		724	0	724	0.245159%
1205	L1B6	1/1	639		604	0	604	0.204525%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
1206	L1B2	1/1	554		684	0	684	0.231614%
1207	L2B1	2/2	433T, 434T		1,204	124	1,328	0.407695%
1208	L2B2	2/2	689T, 690T		1,055	0	1,055	0.357241%
1209	L1B3	1/1	556		733	0	733	0.248206%
1210	L1B4	1/1	468		747	0	747	0.252947%
1211	L1B7	1/1	661		572	0	572	0.193689%
1212	L0B5	0/1	393		492	0	492	0.166600%
1301	L2B3	2/2	336T, 337T		1,048	89	1,137	0.354870%
1302	L3B1	3/3	565, 582		1,435	111	1,546	0.485915%
1303	L1B5	1/1	654		668	0	668	0.226196%
1304	L1B1	1/1	539		724	0	724	0.245159%
1305	L1B6	1/1	642		604	0	604	0.204525%
1306	L1B2	1/1	429		684	0	684	0.231614%
1307	L2B1	2/2	437T, 438T		1,204	124	1,328	0.407695%
1308	L2B2	2/2	595T, 596T		1,055	0	1,055	0.357241%
1309	L1B3	1/1	570		733	0	733	0.248206%
1310	L1B4	1/1	563		747	0	747	0.252947%
1311	L1B7	1/1	660		572	0	572	0.193689%
1312	L0B5	0/1	351		492	0	492	0.166600%
1401	L2B3	2/2	224T, 225T		1,048	89	1,137	0.354870%
1402	L3B1	3/3	566, 583		1,435	111	1,546	0.485915%
1403	L1B5	1/1	655		668	0	668	0.226196%
1404	L1B1	1/1	561		724	0	724	0.245159%
1405	L1B6	1/1	638		604	0	604	0.204525%
1406	L1B2	1/1	559		684	0	684	0.231614%
1407	L2B1	2/2	334T, 335T		1,204	124	1,328	0.407695%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
1408	L2B2	2/2	394T, 395T		1,055	0	1,055	0.357241%
1409	L1B3	1/1	541		733	0	733	0.248206%
1410	L1B4	1/1	562		747	0	747	0.252947%
1411	L1B7	1/1	662		572	0	572	0.193689%
1412	L0B5	0/1	350		492	0	492	0.166600%
1501*	T2C4	2/2	628HC, 677		1,168	62	1,230	0.395505%
1502	T3C1	3/3	406, 407		1,410	352	1,762	0.477450%
1503	T1C1	1/1	540		623	188	811	0.210958%
1504	T0C2	0/1	686		424	45	469	0.143574%
1505	T1C2	1/1	456		756	34	790	0.255994%
1506	T1C3	1/1	569		725	0	725	0.245497%
1507	T1C4	1/1	663		627	0	627	0.212313%
1508	T2C2	2/2	249		916	0	916	0.310173%
1509	T2C3	2/2	578, 579		926	387	1,313	0.313559%
1510	T1D5	1/1	523		619	54	673	0.209604%
1511	T0C3	0/1	594		530	41	571	0.179467%
1601	T2D4	2/2	278T, 279T		1,169	68	1,237	0.395843%
1602	T3C1	3/3	402, 403		1,411	212	1,623	0.477788%
1603	T1D1	1/1	558		623	38	661	0.210958%
1604	T0D2	0/1	601		430	0	430	0.145605%
1605	T1D2	1/1	461		755	38	793	0.255656%
1606	T1D3a	1/1	571		725	39	764	0.245497%
1607	T1D4	1/1	637		636	0	636	0.215360%
1608	T2D2	2/2	326		904	0	904	0.306110%
1609	T2D3	2/2	342		935	78	1,013	0.316607%
1610	T1D5	1/1	555		619	37	656	0.209604%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
1611	T0D3a	0/1	551		530	37	567	0.179467%
1701	T2D4	2/2	226T, 227T		1,169	68	1,237	0.395843%
1702	T3C1	3/3	508, 509		1,411	179	1,590	0.477788%
1703	T1D1	1/1	549		623	38	661	0.210958%
1704	T0D2	0/1	645		430	0	430	0.145605%
1705	T1D2	1/1	459		755	38	793	0.255656%
1706	T1D3a	1/1	545		725	39	764	0.245497%
1707	T1D4	1/1	653		636	0	636	0.215360%
1708	T2D2	2/2	369		904	0	904	0.306110%
1709	T2D3	2/2	359		935	78	1,013	0.316607%
1710	T1D5	1/1	557		619	37	656	0.209604%
1711	T0D3a	0/1	647		530	37	567	0.179467%
1801	T2D4	2/2	228T, 229T		1,169	68	1,237	0.395843%
1802	T3C1	3/3	586, 587		1,411	134	1,545	0.477788%
1803	T1D1	1/1	572		623	38	661	0.210958%
1804	T0D2	0/1	644		430	0	430	0.145605%
1805	T1D2	1/1	460		755	38	793	0.255656%
1806	T1D3a	1/1	544		725	39	764	0.245497%
1807	T1D4	1/1	646		636	0	636	0.215360%
1808	T2D2	2/2	346		904	0	904	0.306110%
1809	T2D3	2/2	360		935	78	1,013	0.316607%
1810	T1D5	1/1	625		619	37	656	0.209604%
1811	T0D3a	0/1	648		530	37	567	0.179467%
1901	T2D4	2/2	246T, 247T		1,169	68	1,237	0.395843%
1902	T3C1	3/3	580, 581		1,411	99	1,510	0.477788%
1903	T1D1	1/1	527		623	38	661	0.210958%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
1904	T0D2	0/1	667		430	0	430	0.145605%
1905	T1D2	1/1	449		755	38	793	0.255656%
1906	T1D3a	1/1	525		725	39	764	0.245497%
1907	T1D4	1/1	643		636	0	636	0.215360%
1908	T2D2	2/2	365		904	0	904	0.306110%
1909	T2D3	2/2	338		935	78	1,013	0.316607%
1910	T1D5	1/1	430		619	37	656	0.209604%
1911	T0D3a	0/1	650		530	37	567	0.179467%
2001	T2D4	2/2	618, 632		1,169	68	1,237	0.395843%
2002	T3C1	3/3	519, 520		1,411	71	1,482	0.477788%
2003	T1D1	1/1	472		623	38	661	0.210958%
2004	T0D2	0/1	668		430	0	430	0.145605%
2005	T1D2	1/1	448		755	38	793	0.255656%
2006	T1D3a	1/1	550		725	39	764	0.245497%
2007	T1D4	1/1	567		636	0	636	0.215360%
2008	T2D2	2/2	329		904	0	904	0.306110%
2009	T2D3	2/2	251		935	78	1,013	0.316607%
2010	T1D5	1/1	573		619	37	656	0.209604%
2011	T0D3a	0/1	574		530	37	567	0.179467%
2101	T2D4	2/2	606, 607		1,169	68	1,237	0.395843%
2102	T3C1	3/3	517, 518		1,411	66	1,477	0.477788%
2103	T1D1	1/1	471		623	38	661	0.210958%
2104	T0D2	0/1	501		430	0	430	0.145605%
2105	T1D2	1/1	446		755	38	793	0.255656%
2106	T1D3a	1/1	553		725	39	764	0.245497%
2107	T1D4	1/1	568		636	0	636	0.215360%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
2108	T2D2	2/2	236		904	0	904	0.306110%
2109	T2D3	2/2	255		935	78	1,013	0.316607%
2110	T1D5	1/1	528		619	37	656	0.209604%
2111	T0D3a	0/1	522		530	37	567	0.179467%
2201	T2D4	2/2	608, 609		1,169	68	1,237	0.395843%
2202	T3C1	3/3	514, 515		1,411	67	1,478	0.477788%
2203	T1D1	1/1	469		623	38	661	0.210958%
2204	T0D2	0/1	401		430	0	430	0.145605%
2205	T1D2	1/1	445		755	38	793	0.255656%
2206	T1D3a	1/1	526		725	39	764	0.245497%
2207	T1D4	1/1	524		636	0	636	0.215360%
2208	T2D2	2/2	252		904	0	904	0.306110%
2209	T2D3	2/2	256		935	78	1,013	0.316607%
2210	T1D5	1/1	529		619	37	656	0.209604%
2211	T0D3a	0/1	575		530	37	567	0.179467%
2301	T2D4	2/2	659, 676		1,169	68	1,237	0.395843%
2302	T3C1	3/3	512, 513		1,411	70	1,481	0.477788%
2303	T1D1	1/1	470		623	38	661	0.210958%
2304	T0D2	0/1	301		430	0	430	0.145605%
2305	T1D2	1/1	443		755	38	793	0.255656%
2306	T1D3a	1/1	560		725	39	764	0.245497%
2307	T1D4	1/1	454		636	0	636	0.215360%
2308	T2D2	2/2	254		904	0	904	0.306110%
2309	T2D3	2/2	239		935	78	1,013	0.316607%
2310	T1D5	1/1	458		619	37	656	0.209604%
2311	T0D3a	0/1	452		530	37	567	0.179467%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
2401	T2D4	2/2	502, 503		1,169	68	1,237	0.395843%
2402	T3C1	3/3	510, 511		1,411	72	1,483	0.477788%
2403	T1D1	1/1	453		623	38	661	0.210958%
2404	T0D2	0/1	552		430	0	430	0.145605%
2405	T1D2	1/1	441		755	38	793	0.255656%
2406	T1D3a	1/1	444		725	39	764	0.245497%
2407	T1D4	1/1	455		636	0	636	0.215360%
2408	T2D2	2/2	253		904	0	904	0.306110%
2409	T2D3	2/2	361		935	78	1,013	0.316607%
2410	T1D5	1/1	457		619	37	656	0.209604%
2411	T0D3a	0/1	474		530	37	567	0.179467%
2501	T2E4	2/2	432, 484		1,168	68	1,236	0.395505%
2502	T3E1	3/3	486, 487		1,398	85	1,483	0.473386%
2503	T1E1	1/1	368		706	38	744	0.239064%
2504	T2E1	2/2	681, 682		1,151	38	1,189	0.389748%
2505	T1D3b	1/1	425		726	39	765	0.245836%
2506	T2E2	2/2	604, 605		1,384	43	1,427	0.468646%
2507	T2E3	2/2	684, 685		1,153	105	1,258	0.390425%
2508	T1D5	1/1	325		619	37	656	0.209604%
2509	T0D3b	0/1	322		531	37	568	0.179806%
2601	T2E4	2/2	464, 485		1,168	68	1,236	0.395505%
2602	T3E1	3/3	419, 420		1,398	90	1,488	0.473386%
2603	T1E1	1/1	355		706	38	744	0.239064%
2604	T2E1	2/2	619, 620		1,151	38	1,189	0.389748%
2605	T1D3b	1/1	427		726	39	765	0.245836%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
2606	T2E2	2/2	602, 603		1,384	47	1,431	0.468646%
2607	T2E3	2/2	590C, 591		1,153	105	1,258	0.390425%
2608	T1D5	1/1	424		619	37	656	0.209604%
2609	T0D3b	0/1	373		531	37	568	0.179806%
2701	T2E4	2/2	465, 482		1,168	68	1,236	0.395505%
2702	T3E1	3/3	416, 417		1,398	96	1,494	0.473386%
2703	T1E1	1/1	358		706	38	744	0.239064%
2704	T2E1	2/2	616, 617		1,151	38	1,189	0.389748%
2705	T1D3b	1/1	426		726	39	765	0.245836%
2706	T2E2	2/2	656, 683		1,384	51	1,435	0.468646%
2707	T2E3	2/2	621, 635HC		1,153	117	1,270	0.390425%
2708	T1D5	1/1	450		619	37	656	0.209604%
2709	T0D3b	0/1	331		531	37	568	0.179806%
2801	T2E4	2/2	466, 483		1,168	68	1,236	0.395505%
2802	T3E1	3/3	414, 415		1,398	118	1,516	0.473386%
2803	T1E1	1/1	348		706	38	744	0.239064%
2804	T2E1	2/2	614, 615		1,151	38	1,189	0.389748%
2805	T1D3b	1/1	428		726	39	765	0.245836%
2806	T2E2	2/2	504, 505		1,384	55	1,439	0.468646%
2807	T2E3	2/2	657, 678		1,153	128	1,281	0.390425%
2808	T1D5	1/1	447		619	37	656	0.209604%
2809	T0D3b	0/1	328		531	37	568	0.179806%
2901	T2E4	2/2	404, 405		1,168	68	1,236	0.395505%
2902	T3E1	3/3	412, 413		1,398	126	1,524	0.473386%
2903	T1E1	1/1	347		706	38	744	0.239064%



Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
2904	T2E1	2/2	658, 675		1,151	38	1,189	0.389748%
2905	T1D3b	1/1	371		726	39	765	0.245836%
2906	T2E2	2/2	506, 507		1,384	59	1,443	0.468646%
2907	T2E3	2/2	592, 593		1,153	138	1,291	0.390425%
2908	T1D5	1/1	423		619	37	656	0.209604%
2909	T0D3b	0/1	277		531	37	568	0.179806%
3001	T2E4	2/2	490, 491		1,168	68	1,236	0.395505%
3002	T3E1	3/3	408, 409		1,398	149	1,547	0.473386%
3003	T1E1	1/1	352		706	38	744	0.239064%
3004	T2E1	2/2	669, 670		1,151	38	1,189	0.389748%
3005	T1D3b	1/1	370		726	39	765	0.245836%
3006	T2E2	2/2	473, 475		1,384	63	1,447	0.468646%
3007	T2E3	2/2	521, 542HC		1,153	149	1,302	0.390425%
3008	T1D5	1/1	353		619	37	656	0.209604%
3009	T0D3b	0/1	237		531	37	568	0.179806%
3101	T2E4	2/2	488, 489		1,168	68	1,236	0.395505%
3102	T3E1	3/3	410, 411		1,398	158	1,556	0.473386%
3103	T1E1	1/1	349		706	38	744	0.239064%
3104	T2E1	2/2	671, 672		1,151	38	1,189	0.389748%
3105	T1D3b	1/1	345		726	39	765	0.245836%
3106	T2E2	2/2	421, 442HC		1,384	67	1,451	0.468646%
3107	T2E3	2/2	516, 531HC		1,153	159	1,312	0.390425%
3108	T1D5	1/1	354		619	37	656	0.209604%
3109	T0D3b	0/1	238		531	37	568	0.179806%
3201	T2E4	2/2	480, 481		1,168	68	1,236	0.395505%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
3202	T3E1	3/3	319, 320		1,398	184	1,582	0.473386%
3203	T1E1	1/1	323		706	38	744	0.239064%
3204	T2E1	2/2	532, 584		1,151	38	1,189	0.389748%
3205	T1D3b	1/1	367		726	39	765	0.245836%
3206	T2E2	2/2	418, 431HC		1,384	71	1,455	0.468646%
3207	T2E3	2/2	576, 577		1,153	170	1,323	0.390425%
3208	T1D5	1/1	356		619	37	656	0.209604%
3209	T0D3b	0/1	257		531	37	568	0.179806%
3301	T2E4	2/2	478, 479		1,168	68	1,236	0.395505%
3302	T3E1	3/3	316, 317		1,398	196	1,594	0.473386%
3303	T1E1	1/1	344		706	38	744	0.239064%
3304	T2E1	2/2	564, 585		1,151	38	1,189	0.389748%
3305	T1D3b	1/1	366		726	39	765	0.245836%
3306	T2E2	2/2	476, 477		1,384	75	1,459	0.468646%
3307	T2E3	2/2	588, 589		1,153	180	1,333	0.390425%
3308	T1D5	1/1	357		619	37	656	0.209604%
3309	T0D3b	0/1	258		531	37	568	0.179806%
3401	T2F4	2/2	306, 307		1,122	129	1,251	0.379928%
3402	T3F1	3/3	377, 378		1,572	86	1,658	0.532306%
3403	T1F1	1/1	232		809	0	809	0.273941%
3404	T2F1	2/2	372, 374		1,169	51	1,220	0.395843%
3405	T1D3c	1/1	235		726	39	765	0.245836%
3406	T2F2	2/2	363, 386		1,205	284	1,489	0.408033%
3407	T2F3	2/2	492, 493		1,207	140	1,347	0.408711%
3408	T1D5	1/1	327		619	37	656	0.209604%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
3409	T0F1	0/1	240		547	0	547	0.185223%
3501	T2F4	2/2	391, 392		1,122	62	1,184	0.379928%
3502	T3F1	3/3	379, 380		1,572	86	1,658	0.532306%
3503	T1F1	1/1	230		809	0	809	0.273941%
3504	T2F1	2/2	321, 330HC		1,169	51	1,220	0.395843%
3505	T1D3c	1/1	234		726	39	765	0.245836%
3506	T2F2	2/2	302, 303		1,205	284	1,489	0.408033%
3507	T2F3	2/2	339, 383		1,207	138	1,345	0.408711%
3508	T1D5	1/1	343		619	37	656	0.209604%
3509	T0F1	0/1	241		547	0	547	0.185223%
3601	T2F4	2/2	389, 390		1,122	62	1,184	0.379928%
3602	T3F1	3/3	314, 315		1,572	86	1,658	0.532306%
3603	T1F1	1/1	231		809	0	809	0.273941%
3604	T2F1	2/2	318, 340		1,169	51	1,220	0.395843%
3605	T1D3c	1/1	233		726	39	765	0.245836%
3606	T2F2	2/2	304, 305		1,205	284	1,489	0.408033%
3607	T2F3	2/2	362, 381		1,207	137	1,344	0.408711%
3608	T1D5	1/1	324		619	37	656	0.209604%
3609	T0F1	0/1	280		547	0	547	0.185223%
3701	T2G1	2/2	387, 388		1,122	62	1,184	0.379928%
3702	T3F1	3/3	384, 385		1,572	86	1,658	0.532306%
3703	T1F1	1/1	245		809	0	809	0.273941%
3704	T2F1	2/2	250, 265		1,169	51	1,220	0.395843%
3705	T1D3c	1/1	242		726	39	765	0.245836%
3706	T2F2	2/2	248, 270		1,205	284	1,489	0.408033%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
3707	T2F3	2/2	375, 376		1,207	134	1,341	0.408711%
3708	T1G1	1/1	244		616	37	653	0.208588%
3709	T0G1	0/1	243		548	0	548	0.185562%
3801	P3H2	3/3.5	268, 269		2,631	62	2,693	0.890901%
3802	P3H1	3/3.5	271, 272		2,199	89	2,288	0.744619%
3803	P2H1	2/2.5	312, 313		1,514	56	1,570	0.512666%
3804	P2H2	2/2.5	275, 276		1,618	301	1,919	0.547882%
3805	P2H3	2/2	308, 309		1,208	135	1,343	0.409049%
3901	P3H2	3/3.5	263, 264		2,631	62	2,693	0.890901%
3902	P3H1	3/3.5	266, 267		2,199	89	2,288	0.744619%
3903	P2H1	2/2.5	273, 274		1,514	60	1,574	0.512666%
3904	P2H2	2/2.5	259, 260		1,618	301	1,919	0.547882%
3905	P2H3	2/2	310, 311		1,208	142	1,350	0.409049%
Commercial Unit 1	Commercial				6,939	1,070	8,009	2.349652%
Commercial Unit 2	Commercial				1,595	135	1,730	0.540094%
<b>TOTAL</b>					<b>295,319</b>			<b>100.000000%</b>

"\*" indicates the Resident Manager Unit  
 "HC" indicates handicapped parking stalls  
 "T" indicates tandem parking stalls  
 "C" indicates compact parking stalls

NOTE: DUE TO STRUCTURAL VARIATIONS, NOT ALL UNITS OF THE SAME UNIT TYPE ARE IDENTICAL, AND ACCORDINGLY, THE APPROXIMATE NET LIVING AREA AND APPROXIMATE NET LANAI AREA MAY VARY AMONG UNITS OF THE SAME UNIT TYPE. ADDITIONALLY, UNITS OF THE SAME UNIT TYPE MAY HAVE DIFFERENT LANAI DESIGNS AS MORE PARTICULARLY SHOWN ON THE CONDOMINIUM MAP.

A. **Layout and Floor Plans of Units.** Each Residential Unit has the number of bedrooms ("Bed") and bathrooms ("Bath") noted above. The layouts and floor plans of each Unit are depicted 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 seventeen (317) Units (including 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 Commercial Unit 1 was decreased by 0.000011%.

D. **Parking Stalls and Storage Lockers.** The Condominium Map depicts the location, type, and number of parking stalls and storage lockers in the Project. Numbered parking stalls and storage lockers designated on the Condominium Map as "LCE-RU - Residential Unit Limited Common Elements" not otherwise identified above as a Limited Common Element to a specific Unit are Limited Common Elements appurtenant to Unit 1501. Developer has the reserved right to redesignate and reassign parking stalls and storage lockers currently designated as Limited Common Elements appurtenant to Unit 1501, to other Residential Units in the Project as Limited Common Elements appurtenant to such Residential Units.

## II. Class Common Interest.

### A. Residential Unit Class Common Interest.

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
701	1,124	0.391931%
702	947	0.330213%
703	812	0.283139%
704	822	0.286626%
705	709	0.247224%
706	1,452	0.506303%
901	1,048	0.365431%
902	1,435	0.500375%
903	668	0.232927%
904	724	0.252454%
905	604	0.210611%
906	684	0.238506%
907	1,204	0.419827%
908	1,055	0.367871%
909	733	0.255592%
910	747	0.260474%
911	572	0.199453%
912	492	0.171557%
1001	1,048	0.365431%
1002	1,435	0.500375%
1003	668	0.232927%
1004	724	0.252454%
1005	604	0.210611%
1006	684	0.238506%
1007	1,204	0.419827%

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
1008	1,055	0.367871%
1009	733	0.255592%
1010	747	0.260474%
1011	572	0.199453%
1012	492	0.171557%
1101	1,048	0.365431%
1102	1,435	0.500375%
1103	668	0.232927%
1104	724	0.252454%
1105	604	0.210611%
1106	684	0.238506%
1107	1,204	0.419827%
1108	1,055	0.367871%
1109	733	0.255592%
1110	747	0.260474%
1111	572	0.199453%
1112	492	0.171557%
1201	1,048	0.365431%
1202	1,435	0.500375%
1203	668	0.232927%
1204	724	0.252454%
1205	604	0.210611%
1206	684	0.238506%
1207	1,204	0.419827%
1208	1,055	0.367871%
1209	733	0.255592%
1210	747	0.260474%
1211	572	0.199453%
1212	492	0.171557%
1301	1,048	0.365431%
1302	1,435	0.500375%
1303	668	0.232927%
1304	724	0.252454%
1305	604	0.210611%
1306	684	0.238506%
1307	1,204	0.419827%
1308	1,055	0.367871%
1309	733	0.255592%

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
1310	747	0.260474%
1311	572	0.199453%
1312	492	0.171557%
1401	1,048	0.365431%
1402	1,435	0.500375%
1403	668	0.232927%
1404	724	0.252454%
1405	604	0.210611%
1406	684	0.238506%
1407	1,204	0.419827%
1408	1,055	0.367871%
1409	733	0.255592%
1410	747	0.260474%
1411	572	0.199453%
1412	492	0.171557%
1501	1,168	0.407294%
1502	1,410	0.491658%
1503	623	0.217236%
1504	424	0.147846%
1505	756	0.263612%
1506	725	0.252803%
1507	627	0.218631%
1508	916	0.319403%
1509	926	0.322890%
1510	619	0.215841%
1511	530	0.184807%
1601	1,169	0.407622%
1602	1,411	0.492006%
1603	623	0.217236%
1604	430	0.149938%
1605	755	0.263263%
1606	725	0.252803%
1607	636	0.221769%
1608	904	0.315219%
1609	935	0.326028%
1610	619	0.215841%
1611	530	0.184807%
1701	1,169	0.407622%

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
1702	1,411	0.492006%
1703	623	0.217236%
1704	430	0.149938%
1705	755	0.263263%
1706	725	0.252803%
1707	636	0.221769%
1708	904	0.315219%
1709	935	0.326028%
1710	619	0.215841%
1711	530	0.184807%
1801	1,169	0.407622%
1802	1,411	0.492006%
1803	623	0.217236%
1804	430	0.149938%
1805	755	0.263263%
1806	725	0.252803%
1807	636	0.221769%
1808	904	0.315219%
1809	935	0.326028%
1810	619	0.215841%
1811	530	0.184807%
1901	1,169	0.407622%
1902	1,411	0.492006%
1903	623	0.217236%
1904	430	0.149938%
1905	755	0.263263%
1906	725	0.252803%
1907	636	0.221769%
1908	904	0.315219%
1909	935	0.326028%
1910	619	0.215841%
1911	530	0.184807%
2001	1,169	0.407622%
2002	1,411	0.492006%
2003	623	0.217236%
2004	430	0.149938%
2005	755	0.263263%
2006	725	0.252803%



Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
2007	636	0.221769%
2008	904	0.315219%
2009	935	0.326028%
2010	619	0.215841%
2011	530	0.184807%
2101	1,169	0.407622%
2102	1,411	0.492006%
2103	623	0.217236%
2104	430	0.149938%
2105	755	0.263263%
2106	725	0.252803%
2107	636	0.221769%
2108	904	0.315219%
2109	935	0.326028%
2110	619	0.215841%
2111	530	0.184807%
2201	1,169	0.407622%
2202	1,411	0.492006%
2203	623	0.217236%
2204	430	0.149938%
2205	755	0.263263%
2206	725	0.252803%
2207	636	0.221769%
2208	904	0.315219%
2209	935	0.326028%
2210	619	0.215841%
2211	530	0.184807%
2301	1,169	0.407622%
2302	1,411	0.492006%
2303	623	0.217236%
2304	430	0.149938%
2305	755	0.263263%
2306	725	0.252803%
2307	636	0.221769%
2308	904	0.315219%
2309	935	0.326028%
2310	619	0.215841%
2311	530	0.184807%

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
2401	1,169	0.407622%
2402	1,411	0.492006%
2403	623	0.217236%
2404	430	0.149938%
2405	755	0.263263%
2406	725	0.252803%
2407	636	0.221769%
2408	904	0.315219%
2409	935	0.326028%
2410	619	0.215841%
2411	530	0.184807%
2501	1,168	0.407274%
2502	1,398	0.487473%
2503	706	0.246177%
2504	1,151	0.401346%
2505	726	0.253151%
2506	1,384	0.482591%
2507	1,153	0.402043%
2508	619	0.215841%
2509	531	0.185156%
2601	1,168	0.407274%
2602	1,398	0.487473%
2603	706	0.246177%
2604	1,151	0.401346%
2605	726	0.253151%
2606	1,384	0.482591%
2607	1,153	0.402043%
2608	619	0.215841%
2609	531	0.185156%
2701	1,168	0.407274%
2702	1,398	0.487473%
2703	706	0.246177%
2704	1,151	0.401346%
2705	726	0.253151%
2706	1,384	0.482591%
2707	1,153	0.402043%
2708	619	0.215841%
2709	531	0.185156%

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
2801	1,168	0.407274%
2802	1,398	0.487473%
2803	706	0.246177%
2804	1,151	0.401346%
2805	726	0.253151%
2806	1,384	0.482591%
2807	1,153	0.402043%
2808	619	0.215841%
2809	531	0.185156%
2901	1,168	0.407274%
2902	1,398	0.487473%
2903	706	0.246177%
2904	1,151	0.401346%
2905	726	0.253151%
2906	1,384	0.482591%
2907	1,153	0.402043%
2908	619	0.215841%
2909	531	0.185156%
3001	1,168	0.407274%
3002	1,398	0.487473%
3003	706	0.246177%
3004	1,151	0.401346%
3005	726	0.253151%
3006	1,384	0.482591%
3007	1,153	0.402043%
3008	619	0.215841%
3009	531	0.185156%
3101	1,168	0.407274%
3102	1,398	0.487473%
3103	706	0.246177%
3104	1,151	0.401346%
3105	726	0.253151%
3106	1,384	0.482591%
3107	1,153	0.402043%
3108	619	0.215841%
3109	531	0.185156%
3201	1,168	0.407274%
3202	1,398	0.487473%

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
3203	706	0.246177%
3204	1,151	0.401346%
3205	726	0.253151%
3206	1,384	0.482591%
3207	1,153	0.402043%
3208	619	0.215841%
3209	531	0.185156%
3301	1,168	0.407274%
3302	1,398	0.487473%
3303	706	0.246177%
3304	1,151	0.401346%
3305	726	0.253151%
3306	1,384	0.482591%
3307	1,153	0.402043%
3308	619	0.215841%
3309	531	0.185156%
3401	1,122	0.391234%
3402	1,572	0.548146%
3403	809	0.282093%
3404	1,169	0.407622%
3405	726	0.253151%
3406	1,205	0.420175%
3407	1,207	0.420873%
3408	619	0.215841%
3409	547	0.190735%
3501	1,122	0.391234%
3502	1,572	0.548146%
3503	809	0.282093%
3504	1,169	0.407622%
3505	726	0.253151%
3506	1,205	0.420175%
3507	1,207	0.420873%
3508	619	0.215841%
3509	547	0.190735%
3601	1,122	0.391234%
3602	1,572	0.548146%
3603	809	0.282093%
3604	1,169	0.407622%

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
3605	726	0.253151%
3606	1,205	0.420175%
3607	1,207	0.420873%
3608	619	0.215841%
3609	547	0.190735%
3701	1,122	0.391234%
3702	1,572	0.548146%
3703	809	0.282093%
3704	1,169	0.407622%
3705	726	0.253151%
3706	1,205	0.420175%
3707	1,207	0.420873%
3708	616	0.214795%
3709	548	0.191084%
3801	2,631	0.917412%
3802	2,199	0.766777%
3803	1,514	0.527922%
3804	1,618	0.564186%
3805	1,208	0.421221%
3901	2,631	0.917412%
3902	2,199	0.766777%
3903	1,514	0.527922%
3904	1,618	0.564186%
3905	1,208	0.421221%
<b>Total</b>	<b>286,785</b>	<b>100.000000%</b>

**B. Commercial Unit Class Common Interest.**

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
Commercial Unit 1	6,939	81.310054%
Commercial Unit 2	1,595	18.689946%
<b>Total</b>	<b>8,534</b>	<b>100.000000%</b>

**C. Commercial Unit Class Common Interest and Residential Unit Class Common Interest.**

The Commercial Unit Class Common Interest is calculated by dividing the approximate net living area of a Commercial Unit by the total approximate net living area of all Commercial Units in the Project. The Residential Unit Class Common Interest is calculated by 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 1501 was increased by 0.000020%.