section II

Declaration of Condominium Property Regime of Kali‘u
(“Declaration”)

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DECLARATION OF CONDOMINIUM PROPERTY REGIME OF

KALIʻU

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DECLARATION OF CONDOMINIUM PROPERTY REGIME OF

KALI'U

THIS DECLARATION OF CONDOMINIUM PROPERTY REGIME OF KALI'U is made this 21st day of August, 2024, by **CORAL ACQUISITION, LLC**, a Hawaii limited liability company ("**Developer**"), with its principal place of business and post office address at 1440 Kapiolani Boulevard, Suite 1406, Honolulu, Hawaii 96814.

WITNESSETH:

WHEREAS, the Trustees of the Estate of Bernice Pauahi Bishop ("**Landowner**") own in fee simple, the real property situate, lying, and being at Kaakaukukui, Kaka'ako, Honolulu, City and County of Honolulu, State of Hawaii, identified as TMK Nos. (1) 2-1-055: 001, 002, 018, 032 through 035, and Lana Lane, 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 (as hereinafter defined) to be constructed by Developer, which Land and Improvements are depicted on Condominium Map No. 6635 recorded at the Bureau of Conveyances of the State of Hawaii ("**Bureau**"), which Condominium Map is incorporated herein by this reference; and

WHEREAS, the development of the Project is subject to the terms and restrictions more particularly set forth in that certain Planned Development Permit No. KAK 22-055, issued by the Hawaii Community Development Authority ("**HCDA**") on November 1, 2023, as the same may be amended or supplemented (the "**Permit**"); and

WHEREAS, pursuant to the Fee Owner Joinder executed concurrently herewith, Landowner has agreed, subject to the terms and conditions hereinafter set forth, to join in this Declaration solely for the purpose of permitting Developer to comply with the requirements relating to creating a condominium property regime pursuant to Section 514B-31 of the Act (hereinafter defined).

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

I. USE OF DEFINED TERMS; DEFINED TERMS.

A. **USE OF DEFINED TERMS**. For purposes of construing and interpreting this Declaration and the Bylaws, all terms, when written with initial capital letters in this Declaration or in the Bylaws, shall have the meanings given such terms in this Declaration, including this Article, and/or the Bylaws. Such defined terms may be used in the singular or plural or in varying tenses or forms, but such variation shall not affect the meaning of the terms so long as those terms are written in initial capital letters. When such terms are used in this Declaration or in the Bylaws without initial capital letters, such terms shall have the 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.** As used in this Declaration and the Bylaws, the following terms shall have the following attributed meanings:

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

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

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

4. **"Alleged Defect"** means a claim, contention, or allegation by a Claimant that any portion of the Project, including, but not limited to, any Unit, is defective, or that Developer or its agents, consultants, contractors, or subcontractors were negligent in the planning, design, engineering, grading, construction, or other development thereof, as further discussed in **Section XLVII.A** of this Declaration.

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

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

7. **"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.

8. **"Association"** means the Association of Unit Owners of Kali'u.

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

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

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

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.B 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 is issued covering the Unit in question) issued by the County Department of Planning and Permitting building official after inspection and prior to occupancy of a building or structure.

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

17. **"Class Common Expense"** means those costs, expenses, and charges payable by a Unit Owner 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 Commercial Unit Class Common Interest and the Residential 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.

20. **"Commercial Limited Common Elements"** means those parts of the Limited Common Elements that are reserved for the exclusive use of all Commercial Unit Owners.

21. **"Commercial Parking Stalls"** mean the Commercial Limited Common Element and Commercial Unit Limited Common Element parking stalls located on the second (2^{nd}) floor of the Parking Structure.

22. **"Commercial Unit"** means any of the Units identified as Commercial Units 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 set forth in **Section III.B** and **Exhibit "B"** of this Declaration. The Commercial Unit Class Common Interest is subject to change if a Commercial Unit is subdivided into multiple Commercial Units, in which case the Commercial Unit Class Common Interest shall be recalculated as set forth in **Section III.B** and **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 all Commercial Unit Owners based on the Class Common Interest assigned to the 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 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 or legal entity or trust that holds such interest solely as security for the performance of an obligation shall not be a Commercial Unit Owner solely by reason of such interest.

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, including the Parking Assessment; (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 as determined by the Board with the advice of the Managing Agent and Parking Manager, as applicable, an engineer, certified public accountant, or other appropriate consultant); (i) the Commercial Unit Class Expenses and the Residential Unit Class Expenses; (j) the Limited

Common Element Expenses; and (k) the Master Assessments and the District-Wide Improvement Assessments described in **Section XLII.H.15.d** of this Declaration. 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 set forth in this Declaration and discussed in **Section III.A** of this Declaration 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 System"** 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. For the avoidance of doubt, "Community System" does not include the Parking Access System, which shall be Commercial Limited Common Elements.

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

34. **"Condominium Manager"** means either the manager that may reside at the Project or the off-site manager appointed and employed and/or contracted by the Managing Agent or the Board, if any.

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

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 and each person who is or was a Representative of Managing Agent 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, which the Board is required to buy and maintain, as further discussed in **Section XII.F** of this Declaration.

39. **"Declaration"** means this Declaration of Condominium Property Regime of Kali'u, together with any lawful amendments hereto.

40. **"Design Guidelines"** means, collectively, (i) the unrecorded Kaiāulu 'o Kaka'ako Architectural Design Guidelines dated March 7, 2011, (ii) the unrecorded 2011 Kaiāulu 'o Kaka'ako Master Plan: Civic Space Design, Design Guidelines for Open Spaces and Streets, and (iii) such other design guidelines, covenants, and other requirements as may be adopted from time to time in accordance therewith and the "Governing Documents" as defined in the Master Charter, each as may be amended from time to time in accordance therewith and the "Governing Documents" as defined in the Master Charter.

41. **"Developer"** means Coral Acquisition, LLC, a Hawaii limited liability company, and shall also include any of its permitted successors and assigns.

42. **"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 XLVIII**.

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

44. **"Development Period"** means the period starting on the date this Declaration is recorded at the Bureau and ending upon the earlier of (a) December 31, 2044, (b) the date Developer no longer owns any interest in the Project, or (c) the date Developer records a document at the Bureau relinquishing all of Developer's Reserved Rights.

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

46. **"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, as further discussed in **Section XLIV.A** of this Declaration.

47. **"Dispute Notice"** means the written notice provided by one party to a Dispute to another party, as discussed in **Section XLIV.B** of this Declaration.

48. **"District-Wide Improvement Assessment"** means any assessment assessed against the Project for the cost of improvements made in the vicinity of the Project pursuant to the HCDA's District-Wide Improvement Assessment Program.

49. **"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.

50. **"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.

51. **"Exterior Commercial Limited Common Elements"** means those certain Commercial Limited Common Elements outside of the Tower, as depicted on the Condominium Map.

52. **"Exterior Residential Limited Common Elements"** means those certain Residential Limited Common Elements outside of the Tower, as depicted on the Condominium Map.

53. **"Facade Sign"** is defined in **Section X.K** of this Declaration.

54. **"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.

55. **"Founder"** means the "Founder" under the Master Charter.

56. **"Guest Suites"** means those Limited Common Elements located on the sixth (6^{th}) floor of the Tower that are appurtenant to the Residential Units and designated as "Guest Suites" on the Condominium Map.

57. **"HCDA"** means the Hawaii Community Development Authority.

58. **"HCDA Agreements"** means those agreements described in **Section XLII.H.15** of this Declaration.

59. **"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.

60. **"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.

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

62. **"Interested Person"** means any person who has any interest in the Project or who has the right to use the Project or any part of it, including each Owner, each Lender, and any Person who has the legal right or permission to use the Project or any part of it.

63. **"Kaiāulu ʻo Kakaʻako"** or **"Community"** means the planned community located in Kaka'ako, developed, managed, and operated in accordance with the KKMP Permit, KKMP Development Agreement, the Kaiāulu ʻo Kakaʻako Master Plan, and the Master Charter.

64. **"Kaiāulu ʻo Kakaʻako Master Plan"** means that certain master plan approved by HCDA for the development of the property located in Kakaʻako and covered by the KKMP Permit and the KKMP Development Agreement.

65. **"Kaliʻu"** 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.

66. **"KKMP Development Agreement"** means the Master Plan Development Agreement for the Kaiāulu ʻo Kakaʻako Master Plan dated October 6, 2009, as supplemented and amended.

67. **"KKMP Permit"** means HCDA's Findings of Fact, Conclusions of Law, and Decision and Order for Master Plan Permit, File No. PL MASP 13.2.8 on September 2, 2009, as may be amended, supplemented, or extended.

68. **"Land"** means the real property described in **Exhibit "A"** attached hereto.

69. **"Landowner"** means the Trustees of the Estate of Bernice Pauahi Bishop and their successors-in-trust and assigns.

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

71. **"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.

72. **"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.

73. **"Limited Common Elements"** means those Common Elements that are designated in this Declaration as reserved for the exclusive use of one or more Units to the exclusion of other Units. No amendment of this Declaration materially and adversely affecting the Limited Common Elements appurtenant to a Unit or Units, or in any way limiting the use thereof, shall be effective without the consent of the Owner or Owners of the Unit or Units to which said Limited Common Element is appurtenant.

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

75. **"Management Agreement"** means that certain instrument entered into or to be entered into between the Association and the Managing Agent for management and administration of the Association, the Common Elements, the Limited Common Elements (except for the physical management of the Shared Parking Facilities and the Commercial Parking Stalls located on the first (1st) through the second (2nd) floors of the Parking Structure managed by the Parking Manager, the Commercial Limited Common Elements, Commercial Unit Limited Common Elements, and Residential Unit Limited Common Elements solely appurtenant to one (1) Residential Unit), and the property of the Association, if any.

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

77. **"Master Assessment"** means the assessments paid by the Association to the Master Association pursuant to the Master Charter and the Master Bylaws.

78. **"Master Association"** means Kaiāulu ʻo Kakaʻako Owners Association, Inc., created and governed by the Master Bylaws.

79. **"Master Bylaws"** means that certain Bylaws of Kaiāulu ʻo Kakaʻako Owners Association recorded as Exhibit "E" to the Master Charter, as may be amended from time to time, which govern the Master Association's internal affairs, such as voting, elections, meetings, etc. If there is a conflict between the Master Bylaws and the Condominium Documents, the Master Bylaws shall prevail.

80. **"Master Charter"** means that certain Community Charter for Kaiāulu ʻo Kakaʻako dated September 16, 2014, and recorded at the Bureau as Document No. A-53740943, as may be amended and supplemented from time to time, which imposes certain covenants, conditions, and restrictions on the Project and creates obligations that are binding upon all present and future Owners. The Land will be annexed into the Master Charter and upon the recordation of such annexation, this Declaration, the Bylaws, and the Condominium Map and the Project shall be subject and subordinated to the Master Charter and Master Bylaws together with such rules and regulations promulgated pursuant thereto. If there is a conflict between the Master Charter and the Condominium Documents, the Master Charter shall prevail.

81. **"Master Rules"** means the rules of the Master Association, which regulate the use of the property, activities, and conduct within the Community. If there is a conflict between the Master Rules and the Condominium Documents, the Master Rules shall prevail.

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

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

84. **"Occupancy Restrictions"** means those limitations on the use and occupancy of the Residential Units, as more particularly described in **Section VI.C.4** of this Declaration.

85. **"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.

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

87. **"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 XVIII** of this Declaration. For so long as Developer owns unsold Units in the Project (or to the extent that Developer shall reacquire any Units in the Project), Developer shall have the rights of an Owner, including the right to vote, and shall assume the duties of an Owner as said rights and duties relate to said unsold Units (or reacquired Units), subject, however, to the provisions of the Act. Landowner shall not be considered an Owner unless Landowner is an Owner of a Unit in the Project.

88. **"Parking Access System"** means the parking access camera/gate system and services for the Parking Structure which shall be Commercial Limited Common Elements to be managed and maintained by the Parking Manager. The Parking Access System shall specifically exclude the residential gate located on level 3 of the Parking Structure as shown on the Condominium Map, which shall be a Residential Limited Common Element.

89. **"Parking Assessment"** means that certain Assessment levied on an Owner to fund certain operational, maintenance, and repair costs for the shared portion of the Parking Structure, which Parking Assessment is a Special Cost and Alternative Allocation.

90. **"Parking Management Agreement"** means that certain instrument entered into or to be entered into between the Commercial Unit Owner(s) and the Parking Manager for management and administration of the Shared Parking Facilities and the Commercial Parking Stalls.

91. **"Parking Manager"** means the corporate entity contracted to operate, repair, manage, and maintain the Shared Parking Facilities and the Commercial Parking Stalls under the Parking Management Agreement.

92. **"Parking Rules"** means the rules and regulations for use of the Shared Parking Facilities and the Commercial Parking Stalls, which rules are adopted and enforced by the Parking Manager. To the extent there is any conflict between the Parking Rules and the House Rules as each pertains specifically to the Shared Parking Facilities and the Commercial Parking Stalls, the Parking Rules shall control.

93. **"Parking Structure"** means the first (1^{st}) through the fifth (5^{th}) floors of the Tower, which includes, without limitation, the parking stalls, loading stalls and areas, storage lockers, storage rooms, ramps, and drive aisles and through areas that serve the Project, but specifically excludes the Commercial Units.

94. **"Parties"** means, for the purposes of **Article XLIV** of this Declaration, Owners, the Association, Board, Managing Agent, Developer, and their respective Representatives.

95. **"Permit"** means that certain Planned Development Permit No. KAK 22-055, issued by HCDA on November 1, 2023, as the same may be amended or supplemented.

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

97. **"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.

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

99. **"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 exclude any lands and/or improvements withdrawn by Developer in accordance with this Declaration.

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

101. **"Project Quality Standard"** means the luxury 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 and cannot be reduced to written criteria.

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

103. **"Rail Effects"** means noise, dust, vibration, traffic congestion, and/or other inconveniences or nuisances associated with the development, construction, and operation of the future rail route by the County.

104. **"Recreational Amenities"** means those recreational amenities located on the Recreational Deck on the sixth (6th) floor of the Tower available for the use and enjoyment of the Residential Unit Owners.

105. **"Recreational Deck"** means the sixth (6th) floor of the Tower, which is comprised of certain Recreational Amenities, as depicted on the Condominium Map.

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

107. **"Resident Manager Unit"** means that certain Residential Unit designated to be used for the Condominium Manager if said Condominium Manager is to reside at the Project; 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.

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

109. **"Residential Limited Common Elements"** means those parts of the Limited Common Elements that are reserved for the exclusive use of all Residential Unit Owners.

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

111. **"Residential Unit Class"** means and includes all Residential Units and their respective Owners.

112. **"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.

113. **"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 Residential Unit Owner based on such Owner's Residential Unit Class Common Interest.

114. **"Residential Unit Limited Common Element"** means those parts of the Limited Common Elements that are reserved for the exclusive use of one or more, but less than all, of the Residential Unit Owners.

115. **"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.

116. **"Shared Parking Facilities"** means: (a) the Common Element drive aisles, through areas and ramps located on the levels 1 and 2 of the Parking Structure utilized by both Residential Units Owners and Commercial Unit Owners; and (b) the interior surfaces of the walls, floors and ceilings of levels 1 and 2 of the Parking Structure and all temporary louvers, screening, paneling, signage, decorative facades, or Improvements attached thereto, but excluding the Commercial Units, Residential Limited Common Elements and Commercial Limited Common Elements located therein. The Shared Parking Facilities shall be managed by the Parking Manager.

117. **"SHPD"** means the State of Hawaii Historic Preservation Division.

118. **"Special Costs"** means certain costs that are to be apportioned pursuant to an Alternative Allocation among and/or 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.

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

120. **"Subdivided Lots"** means those separate parcels of land created upon the subdivision of the Land.

121. **"Subdivided Units"** means those new Units created upon the subdivision of a Unit.

122. **"Tower"** means the thirty-nine (39) story building depicted on the Condominium Map. Floors are designated consecutively as the first (1^{st}) floor to and including the thirty-ninth (39^{th}) floor, which shall include the Parking Structure.

123. **"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.

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

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

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

127. **"Unit Limited Common Element"** 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 Units in a Unit Class.

128. **"Vested Rules"** means the Mauka Area Rules (Title 15, Subtitle 4, Chapter 22 of the Hawaii Administrative Rules), in effect on September 2, 2009, as may be amended.

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 and by law. The Project includes:

1. **COMMERCIAL UNITS.** Two (2) Commercial Units located on the first (1^{st}) floor of the Tower and identified on the Condominium Map and in **Exhibit "B"** as Commercial Units.

2. **RESIDENTIAL UNITS.** Two hundred ninety-five (295) Residential Units comprised of the Unit types set forth in **Exhibit "B,"** attached hereto and incorporated herein by reference.

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

B. **DESCRIPTION OF THE UNITS.** Two hundred ninety-seven (297) freehold estates are hereby designated in the spaces within the perimeter and party walls, windows, doors, floors, and ceilings of each of the Units of the Project, which spaces are designated on the Condominium Map and are described as follows:

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

2. **UNIT AREAS, LAYOUTS, DIMENSIONS, NET LIVING AREAS**. The Unit areas, layouts, dimensions, and net living areas are shown on the Condominium Map and are further described in **Exhibit "B"** attached hereto and incorporated herein by this reference. The Condominium Map is intended only to show: (a) the location of, 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. Such areas may be used for any purpose not prohibited by applicable law.

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

4. **LIMITS OF UNITS**. The respective Units shall be deemed to include: (a) all interior walls, doors, window frames, and partitions that are not load-bearing and that are located within the space bounded by the Unit's perimeter walls but not the perimeter walls themselves, (b) the interior decorated or finished surfaces of all doors, door frames, columns, and window frames of perimeter and party walls, (c) the interior decorated or finished surfaces of all floors and ceilings, (d) all lath, furring, wallboard, plasterboard, plaster, paneling, tile, wallpaper, paint, finished flooring, and any other materials constituting the finished interior decorated surfaces of such walls and columns, interior doors, interior door and window frames, and floors and ceilings, (e) the air space surrounded by such walls, doors, door and window frames, floors, and ceilings, (f) all fixtures (if any) originally installed in the Unit, and (g) 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 <u>not</u> be deemed to include the following: (t) the undecorated and unfinished surfaces of perimeter and party walls and doors, door frames, window frames, and any exterior surfaces thereof, with the exception of the exterior doors, door frames, windows, and window frames of each Commercial Unit, which shall be deemed to be part of such Unit, (u) sliding doors and frames and windows located on the perimeter and party walls, with the exception of the sliding doors and frames and windows located on the perimeter and party walls of each Commercial Unit, which shall be deemed to be part of such Unit, (v) the interior load-bearing walls and columns and their undecorated or unfinished surfaces, (w) any door or window frames located in the interior load-bearing walls and their undecorated or unfinished surfaces, (x) any lanais (if any), or walls, floors, and/or ceilings partially surrounding any lanai (if any), (y) 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 (z) any Common Elements or Limited Common Elements as hereinafter provided. To the extent 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/or square footages of the Units and the descriptions of the perimeter boundaries set forth on the Condominium Map as necessary to correct minor discrepancies and/or errors in the descriptions or areas; provided that Developer shall record an amendment to this Declaration to reflect such modification; and further provided that Developer need not recalculate and readjust Common Interests of the Units impacted for such minor corrections to the areas.

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

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

2. The Building Structure;

3. The driveway entrances from Coral Street leading to the Parking Structure;

4. The driveway entrance from Cooke Street;

5. Certain areas surrounding the Tower, located on the Project grounds, including, without limitation, the pedestrian walkways and landscaping surrounding the Tower, depicted as "Common Element" on the Condominium Map;

6. The utility rooms and areas located on the first (1st) floor of the Tower, including, without limitation, the electrical, fire, and telecommunication rooms, the generator, water tank, and water pump, depicted as "Common Element" on the Condominium Map;

7. The awning located above the exterior Commercial Limited Common Elements;

8. The portions of the stairways servicing the first (1st) and second (2nd) floors of the Tower, depicted as "Common Element" on the Condominium Map;

9. Portions of the drive aisles and through areas and ramps located on the first (1st) through the second (2nd) floors of the Parking Structure, depicted as "Common Element" on the Condominium Map;

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

11. All landscaping, walkways, sidewalks, hallways, stairways, corridors, areas, or rooms, mechanical equipment, maintenance and utility rooms and areas, restrooms, 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 or Limited Common Element herein or on the Condominium Map;

12. The exterior surfaces of the levels 1 and 2 of the Parking Structure, including, without limitation, any louver, trellis, screening, paneling, signage, decorative façade, or Improvement attached thereto; provided that the exterior surfaces of a Commercial Unit and any louver, trellis, screening, paneling, signage, decorative façade, or Improvement attached thereto shall be Commercial Unit Limited Common Elements (but specifically excluding the awning located above the exterior Commercial Limited Common Elements, which shall be a Common Element);

13. The interior surfaces of the walls, floors and ceilings of levels 1 and 2 of the Parking Structure and all temporary louvers, screening, paneling, signage, decorative facades, or Improvements attached thereto, but excluding the Commercial Units, Residential Limited Common Elements and Commercial Limited Common Elements located therein;

14. All of the Limited Common Elements described in **Section II.D** below; and

15. 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 Commercial Limited Common Elements and Commercial Unit Limited Common Elements shall be the responsibility of the Commercial Unit

Owner(s) who owns the Commercial Unit(s) to which such Limited Common Elements are appurtenant. The responsibility to maintain, clean, upkeep, repair, replace, alter, improve and/or add to Residential Limited Common Elements and Residential Unit Limited Common Elements (excepting any Residential Unit Limited Common Element solely appurtenant to one (1) Residential Unit) shall be the responsibility of the Association, as set forth in this Declaration. The costs and expenses of every description pertaining to such Limited Common Element shall be the responsibility of the Owner(s) of Unit(s) to which such Limited Common Element is appurtenant. If there is more than one Unit to which the Limited Common Element is appurtenant, then the cost thereof shall be charged to each Owner in proportion to the Common Interest or Class Common Interest, as applicable, appurtenant to each respective Unit.

1. **COMMERCIAL LIMITED COMMON ELEMENTS.** The Commercial Limited Common Elements include those parts of the Limited Common Elements reserved for the exclusive use of all Commercial Unit Owners, the cost for which is payable by the Commercial Unit Owners pursuant to their Commercial Unit Class Common Interest, and include the following:

a. Areas located on the ground level of the Project, exterior to the Tower, depicted as "Exterior Commercial Limited Common Element" on the Condominium Map;

b. Any loading stalls and areas that service only the Commercial Units or the Limited Common Elements appurtenant thereto, depicted as "Commercial Limited Common Element" on the Condominium Map;

c. The security room, parking control room, and telecommunications room, which service only the Commercial Units or the Limited Common Elements appurtenant thereto, depicted as "Commercial Limited Common Element" on the Condominium Map;

d. The Parking Access System to be maintained by the Parking Manager;

e. Wet trash facilities, which service only the Commercial Units or the Limited Common Elements appurtenant thereto, depicted as "Commercial Limited Common Element" on the Condominium Map;

f. Hallways and restrooms located on the first (1st) floor of the Tower, depicted as "Commercial Limited Common Element" on the Condominium Map;

g. The elevator servicing the first (1st) and second (2nd) floors of the Tower and the escalators servicing the first (1st) and second (2nd) floors of the Tower, depicted as "Commercial Limited Common Element" on the Condominium Map;

h. The unassigned parking stalls and other areas on the second (2nd) floor of the Parking Structure, depicted as "Commercial Limited Common Element" on the Condominium Map;

i. Those portions of any pipes, drains, cables, conduits, chutes, flues, ducts, wires, vents, shafts, other utility or service lines, sewage treatment equipment and facilities (if any), grease traps, supporting apparatus, electrical equipment, electrical closets, communications rooms, pump rooms, ventilation, 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 or the Limited Common Elements appurtenant thereto; and 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;

j. All utility, maintenance, and work rooms, closets and facilities, storage, trash, electrical, mechanical rooms, and telecommunication rooms and areas, fire protection and security rooms, accessory equipment areas, and other support areas, and the equipment therein, and offices, restrooms, hallways, corridors, and stairways that service only the Commercial Units or the Limited Common Elements appurtenant thereto;

k. Any roof area servicing only the Commercial Units and/or the Limited Common Elements solely appurtenant thereto, as may be depicted as "Commercial Limited Common Element" on the Condominium Map;

l. Any mechanical equipment located in the Parking Structure and/or on the Tower rooftop, if any, servicing only the Commercial Units and/or the Limited Common Elements appurtenant thereto, depicted as "Commercial Limited Common Element" on the Condominium Map;

m. The fan rooms located on levels 1 and 2 of the Parking Structure;

n. The elevator overrun area located on level 3 of the Parking Structure; and

o. Any other area described as "Commercial Limited Common Element" or "Exterior Commercial Limited Common Element" herein or on the Condominium Map.

2. **RESIDENTIAL LIMITED COMMON ELEMENTS.** The Residential Limited Common Elements include those parts of the Limited Common Elements that are reserved for the exclusive use of all Residential Unit Owners, the cost for which is payable by the Residential Unit Owners pursuant to their Residential Unit Class Common Interest, and shall include the following:

a. Certain areas located on the ground floor of the Project, including, without limitation, management office(s), employee lounge, bicycle/surfboard storage, lobby, mail room, and parcel area, depicted as "Residential Limited Common Element" on the Condominium Map;

b. Any loading stalls and areas that service only the Residential Units or the Limited Common Elements appurtenant thereto, depicted as "Residential Limited Common Element" on the Condominium Map;

c. Outdoor areas located on the ground floor of the Project, exterior to the Tower, depicted as "Exterior Residential Limited Common Element" on the Condominium Map;

d. The elevators and elevator lobbies on the (1st) through thirty-ninth (39th) floors of the Tower, the portions of the stairways servicing the third (3rd) through thirty-ninth (39th) floors of the Tower, and the hallways and corridors on the first (1st) and sixth (6th) through thirty-ninth (39th) floors of the Tower, all for the exclusive use of the Residential Unit Owners and depicted as "Residential Limited Common Element" on the Condominium Map;

e. The residential gate located on level 3 of the Parking Structure as shown on the Condominium Map.

f. The exterior surfaces of the levels 3 through 5 of the Parking Structure and the third (3rd) through thirty-ninth (39th) floors of the Tower, including, without limitation, any louver, trellis, screening, paneling, signage, decorative façade, or Improvement attached thereto;

g. The interior surfaces of the walls, floors and ceilings of levels 3 through 5 of the Parking Structure and all temporary louvers, screening, paneling, signage, decorative facades, or Improvements attached thereto, but excluding the Residential Unit Limited Common Element parking stalls;

h. Exterior doors, door frames, windows, window frames, roof areas, and sliding doors and frames and windows located on the perimeter and party walls of the Residential Units and the Residential Unit Limited Common Elements;

i. The trash rooms and chutes, utility rooms, and any equipment therein, on the first (1st) through thirty-ninth (39th) of the Tower and serving only the Residential Units or Limited Common Elements appurtenant thereto;

j. The unassigned parking stalls, drive aisles and through areas and ramps on the third (3^{rd}) through fifth (5^{th}) floors of the Parking Structure, depicted as "Residential Limited Common Element" on the Condominium Map;

k. The pool equipment room on the fifth (5^{th}) floor of the Tower, depicted as "Residential Limited Common Element" on the Condominium Map;

l. The Recreational Amenities located on the sixth (6^{th}) floor Recreational Deck, which may include multi-purpose community rooms, a fitness center, a yoga room, a spa room, a theatre, a music room, guest units, public restrooms, a swimming pool, a pickle ball court, pavilions, barbeque grills, a pet park, an open lawn, outdoor seating, and any other Improvements located on the Recreational Deck depicted as "Residential Limited Common Element" on the Condominium Map;

m. Any Limited Common Element louver, trellis, screening, paneling, signage, decorative façade, or Improvement attached to the Recreational Deck;

n. Those portions of any pipes, drains, cables, conduits, chutes, flues, ducts, wires, vents, shafts, other utility or service lines, sewage treatment equipment and facilities (if any), supporting apparatus, electrical equipment, electrical closets, 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 or the Limited Common Elements appurtenant thereto;

o. All utility, maintenance, and work rooms, closets and facilities, equipment rooms, electrical, mechanical, and telecommunication rooms, accessory equipment areas, and other support areas that service only the Residential Units or the Limited Common Elements appurtenant thereto;

p. Any and all decorative elements that may be added by or on behalf of Developer to any Limited Common Element appurtenant to the Residential Units 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;

q. The Tower rooftop and any mechanical equipment areas or stairways thereon, servicing only the Residential Units and/or the Limited Common Elements appurtenant thereto, depicted as "Residential Limited Common Element" on the Condominium Map, but excluding any mechanical equipment located on the Tower rooftop servicing only the Commercial Units and/or the Limited Common Elements appurtenant thereto;

r. The Guest Suites; and

s. Any other areas described as "Residential Limited Common Element" or "Exterior Residential Limited Common Element" herein or on the Condominium Map.

3. **UNIT LIMITED COMMON ELEMENTS.** Unit Limited Common Elements are those parts of the Limited Common Elements that are reserved for the exclusive use of one (1) Unit or more, but less than all, of the Units in a Unit Class.

a. **Commercial Unit Limited Common Elements.** Each Commercial Unit shall have as a Unit Limited Common Element appurtenant thereto the following:

(i) Any doorsteps, stoop, patios, outdoor seating areas, and all exterior doors and windows or other fixtures designed to serve a Commercial Unit located outside the boundaries of, but adjoining and providing access specifically to, the Commercial Unit as may be depicted as "Commercial Unit Limited Common Element" on the Condominium Map;

(ii) The exterior surfaces of a Commercial Unit and any louver, trellis, screening, paneling, signage, decorative façade, or Improvement affixed to the exterior of the Commercial Unit (but specifically excluding the awning located above the exterior Commercial Limited Common Elements, which shall be a Common Element);

(iii) Any chute, drain, flue, duct, wire, conduit, or any other fixture that lies totally within or partially within and partially outside the designated boundaries of a Commercial Unit, any portion thereof serving only such Commercial Unit;

(iv) The parking stalls on the level 2 of the Parking Structure, depicted as "Commercial Unit Limited Common Element" on the Condominium Map;

(v) Each Commercial Unit shall have one (1) assigned mailbox in the mail room on the first (1st) floor of the Tower; and

(vi) Any other area described as a "Commercial Unit Limited Common Element" appurtenant to one (1) or more, but less than all, Commercial Units herein or on the Condominium Map.

b. **Residential Unit Limited Common Elements**. The Residential Units shall have as a Unit Limited Common Element appurtenant thereto the following:

(i) The parking stall(s) on the level 3 through level 5 of the Parking Structure, assigned to a Residential Unit (designated by a number) as set forth in **Exhibit "B"** hereto;

(ii) The storage locker(s) and/or storage room(s) located in the Parking Structure, identified on the Condominium Map as "Residential Unit Limited Common Element" and assigned to a Residential Unit as set forth in **Exhibit "B"** hereto;

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

(iv) Any lanai adjacent to a Residential Unit, as depicted on the Condominium Map, including, without limitation, the decorated or finished interior surfaces of the perimeter or party walls and ceilings and the interior of any perimeter doors, door frames, windows and window frames, the decorated or finished surface of the floors, including all areas within the finished or decorated perimeter interior surfaces of the perimeter walls, ceiling, and floors shall be a Limited Common Element to such Residential Unit;

(v) Any compressors, air conditioning, and/or heating equipment or other mechanical equipment located on a lanai or on the Tower rooftop which compressor or other mechanical equipment services a single Residential Unit shall be a Limited Common Element to such Residential Unit;

(vi) 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 a Limited Common Element appurtenant to said Residential Unit; and

(vii) Any other area described as a "Residential Unit Limited Common Element" appurtenant to one (1) or more, but less than all, Residential Units herein or on the Condominium Map.

III. COMMON INTEREST; CLASS COMMON INTEREST.

A. **COMMON INTEREST**. Each Unit shall have appurtenant thereto an undivided percentage interest in all Common Elements of the Project as shown in **Exhibit "B,"** herein called the Common Interest, and the same proportionate share in all Common Expenses of the Project, and for all other purposes, except as otherwise provided in this Declaration, including, but not limited to, voting; which Common Interest shall be subject to adjustment as otherwise provided in this Declaration. Developer shall have the absolute right to adjust the Common Interest in its discretion in order to assure that the total Common Interest for all Units in the aggregate equals one hundred percent (100%) and may adjust the Common Interest of all or some of the Units in the Project to achieve such result. Developer shall further have the right to adjust the Common Interest in exercising certain Developer's Reserved Rights, as may be set forth herein.

B. **CLASS COMMON INTEREST.** In addition to the Common Interest, each Unit shall have assigned to it, for administrative purposes, a Class Common Interest as set forth in **Exhibit "B,"** based upon the Unit Class to which such Unit belongs; that being the Commercial Unit Class or the Residential Unit Class. All Owners of Units in a Unit Class shall have the right to vote his or her Class Common Interest with respect to matters requiring voting by Unit Class, and each Unit in a Unit Class shall be responsible for its proportionate share of all Class Common Expenses of the Project, if any. Developer shall have the absolute right to adjust the Class Common Interest, at its discretion, in order to ensure that the total Commercial Unit Class Common Interest for the Commercial Units in the aggregate equals one hundred percent (100%) and that the total Residential Unit Class Common Interest for the Residential 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 this Declaration.

B. **EASEMENTS IN CERTAIN LIMITED COMMON ELEMENTS FOR UTILITIES AND SUPPORT.** Wherever sanitary sewer connections, water connections, electricity, gas, telephone, HVAC, security and television lines, drainage facilities, or duct facilities are installed within the Project, the Owners of Units that are served by said connections, lines, or facilities shall have the right, and there are hereby reserved to all other Owners, together with the right to grant and transfer the same, easements and rights to the full extent necessary for the full use and enjoyment of such portions of such connections, lines, or facilities which service such Units, and, upon reasonable prior written notice (except in the case of an emergency), to enter Units owned by others, or to have utility companies enter Units owned by others, in or upon which said connections, lines, or facilities, or any portions thereof, lie, to repair, replace, and generally maintain said connections, lines, or facilities as and when the same may be necessary; provided that such entering Owner or utility company shall repair all damage to any Unit caused by such entry as promptly as possible after completion of work thereon; and provided further, with respect to the Commercial Units, such entering Owner or utility company shall: (1) to the extent reasonably possible, exercise such easement rights at a time that is reasonably convenient to such Commercial Unit Owner or its tenant (and subject to the terms of the applicable lease or occupancy agreement), which may be before or after the customary business hours of the Commercial Unit Owner or its tenant; (2) exercise such easement rights in a commercially reasonable manner so as to minimize inconvenience or disruption to the activities being conducted in a Commercial Unit, the Commercial Limited Common Elements or the Commercial Unit Limited Common Elements; (3) if requested by the Owner or its tenant, be accompanied by the Owner, its tenant, or any other representative; and (4) not enter or access any areas designated as "restricted areas" by written notice from the Owner or its tenant unless a representative of the Owner or its tenant is present or the Owner or its tenant have otherwise consented to such access. Examples of "restricted areas" may include, without limitation, cash handling areas, inventory storage and display areas, and similar areas containing property to which access shall be reasonably limited for purposes of loss prevention, inventory control, confidentiality, or compliance with legal requirements.

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

D. **EASEMENT THROUGH PROJECT GROUNDS AND PARKING STRUCTURE**. To the extent that such easements are necessary for ingress to and egress from such Units and to and from any Limited Common Element areas appurtenant to such Units, the Units shall have appurtenant thereto nonexclusive easements for access throughout the Parking Structure, all roadways, driveways, drive aisles and through areas, access lanes, ramps, landscaped areas, sidewalks, walkways, hallways, and grounds of the Project that is/are part of the Limited Common Elements other than Commercial Limited Common Elements and Commercial Unit Limited Common Elements, as designated herein and/or depicted on the Condominium Map; provided that the Residential Units shall have an easement over the Commercial Limited Common Elements from the exits on the ground floor emergency stairways to access the Common Element sidewalks. The easements set forth herein shall include an easement in favor of the Commercial Units over the Residential Limited Common Element roadways, driveways, drive aisles and through areas, access lanes, ramps, as may be necessary to access the Commercial Limited Common Element elevator overrun located on level 3 of the Parking Structure.

E. **EASEMENT FOR COMMERCIAL UNIT TENANTS, VENDORS, EMPLOYEES, CUSTOMERS, AND GUESTS**. The Commercial Units shall have an appurtenant easement for use by the Unit's Owners, tenants, and each of their representatives, employees, vendors, patrons, licensees, and invitees for purposes of the business conducted in such Commercial Units or their appurtenant Limited Common Elements (subject to a Commercial Unit Owner's right to restrict access to portions of the Commercial Unit and/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 Units or their Limited Common Elements; (3) to go to and from the Commercial Units and their Limited Common Elements, including, without limitation, any portions of the second (2nd) floor of the Parking Structure designated as Commercial Limited Common Element or Commercial Unit Limited Common Element, using the walkways, sidewalks, ramps, stairways and elevators intended for such purposes; (4) for purposes relating to the conduct of the Commercial Unit Owner's business, casual use, recreation, entertainment and other services provided from the Commercial Units or their Limited Common Elements; (5) as otherwise may be reasonably necessary to operate and manage the Shared Parking Facilities; and (6) as otherwise may be reasonably necessary to operate and manage the services from the Commercial Units and their Limited Common Elements. The Limited Common Elements appurtenant to the Commercial Units, including any Commercial Limited Common Element or Commercial Unit Limited Common Element parking stalls shall be for general use by the Commercial Unit Owners, tenants and each of their representatives, employees, vendors, patrons, licensees, and invitees and the general public accessing and patronizing the Commercial Units, and not for use by the Residential Unit Owners.

F. **EASEMENT FOR ACCESS TO UNITS AND LIMITED COMMON ELEMENTS**. The Association shall have the irrevocable right, but not the duty, to be reasonably exercised by the Board and/or the Managing Agent, or any of their successors, assigns, agents, employees, contractors, subcontractors, and other authorized personnel, upon reasonable prior written notice (except in the case of an emergency) to enter each Unit and/or Limited Common Element from time to time during reasonable hours as may be appropriate for the operation or maintenance of the Project or for any other purpose reasonably related to the exercise of the rights and obligations of the Association under this Declaration, or, without notice, at any time for: (1) making emergency repairs therein necessary to prevent damage to any Unit or Limited Common Element; (2) abating any nuisance or any dangerous, unauthorized, prohibited, or unlawful activity; (3) protecting the property rights of any Owner; or (4) preventing death or serious bodily injury to any Owner or other Occupant therein.

Notwithstanding the foregoing, with respect to the Commercial Units, except in emergency situations, the Association shall: (1) to the extent reasonably possible, exercise such easement rights at a time that is reasonably convenient to the Commercial Unit Owners or their tenants (and subject to the terms of the applicable lease or occupancy agreement), which may be before or after the customary business hours of a Commercial Unit Owner or its tenant; (2) exercise such easement rights in a commercially reasonable manner so as to minimize inconvenience or disruption to the activities being conducted in the Commercial Unit, the Commercial Limited Common Elements, or the Commercial Unit Limited Common Elements; (3) if requested by the Owner or its tenant, be accompanied by the Owner, its tenant, or any other representative; and (4) not enter or access any areas designated as "restricted areas" by written notice from the Owner or its tenant unless a representative of the Owner or its tenant is present or the Owner or its tenant have otherwise consented to such access. Examples of "restricted areas" may include, without limitation, cash handling areas, inventory storage and display areas, and similar areas containing property to which access shall be reasonably limited for purposes of loss prevention, inventory control, confidentiality, or compliance with legal requirements.

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

G. **EASEMENT AFFECTING COMMON ELEMENTS.** The Association has the right, exercisable by the Board and/or the Managing Agent, to designate, grant, lease, convey, transfer, cancel, relocate, and otherwise deal with any easements over, under, across, or through the Common Elements for any reasonable purpose, including, without limitation: (1) those purposes necessary to the operation, care, upkeep, maintenance, or repair of any Unit, the Common Elements, or any Limited Common Element; or (2) any easements for utilities or for any public purpose including for example, pedestrian walkways, landscaped areas, stairs, ramps, roadways, or other access to areas designated for public use, or the facilities that support the Project. The Association must have the written approval of the Commercial Director and each affected Commercial Unit Owner before it can exercise this right within any Commercial Limited Common Element or a Commercial Unit Limited Common Element.

H. **EASEMENTS THROUGH OR BENEFITTING ADJACENT LANDS.** The Association has the right, exercisable by the Board, to receive, transfer, cancel, relocate, and otherwise deal with any easement or license through adjoining parcels of land in favor of the 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, 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.

I. **DEVELOPER'S EASEMENT TO COMPLETE IMPROVEMENTS TO THE PROJECT.** To and until December 31, 2044, Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees, and assigns shall have an easement over, under, and upon the Project, including the Common Elements, Limited Common Elements, and any Unit, as may be reasonably necessary or appropriate for the completion of the Improvements of the Project and the correction of defects and other "punchlist" items therein. Each and every Owner or other Person acquiring an interest in the Project waives, releases, and discharges any rights, claims, or actions such party may acquire against Developer, its agents, employees, consultants, contractors, licensees, successors, and assigns, as a result of any noise, dust, vibration, and other nuisances or annoyances arising from the completion of such Improvements. In the event that Project Lender, if any, or any successor to or assignee of Project Lender, shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the Mortgage remedies or by a deed or an assignment in lieu of foreclosure, Project Lender, its successors and assigns, shall have the same rights as Developer to complete Improvements to the Project.

Notwithstanding the foregoing, with respect to the Commercial Units, Developer shall: (1) to the extent reasonably possible, exercise such easement rights at a time that is reasonably convenient to the Commercial Unit Owners or their tenants (and subject to the terms of the applicable lease or occupancy agreement), which may be before or after the customary business hours of a Commercial Unit Owner or its tenant; (2) exercise such easement rights in a commercially reasonable manner, so as to minimize inconvenience or disruption to the activities being conducted in a Commercial Unit, Commercial Limited Common Elements or the Commercial Unit Limited Common Elements; (3) if requested by the Owner or its tenant, be accompanied by the Owner, its tenant, or any other representative; and (4) not enter or access any areas designated as "restricted areas" by written notice from the Owner or its tenant unless a representative of the Owner or its tenant is present or the Owner or its tenant have otherwise consented to such access. Examples of "restricted areas" may include, without limitation, cash handling areas, inventory storage and display areas, and similar areas containing property to which access shall be reasonably limited for purposes of loss prevention, inventory control, confidentiality, or compliance with legal requirements.

J. **DEVELOPER'S EASEMENT FOR NOISE AND DUST.** To and until December 31, 2044, Developer, its agents, employees, consultants, contractors, licensees, successors, and assigns, shall have an easement over, under, and upon the Project or any portion thereof, to create and cause noise, dust, vibration, and other nuisances created by and resulting from any work connected with or incidental to the development, construction, and sale of any Unit or any other Improvements in the Project. Each and every Owner or other Person acquiring any interest in the Project waives, releases, and discharges any rights, claims, or actions such party may acquire against Developer, its agents, employees, consultants, contractors, licensees, successors, and assigns, as a result of any such noise, dust, vibration, and other nuisances or annoyances. In the event that Project Lender, if any, or any successor to or assignee of Project Lender, shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the Mortgage remedies or by a deed or an assignment in lieu of foreclosure, Project Lender, its successors and assigns, shall have the same rights as Developer to create and cause noise, dust, vibration, and other nuisances created by and resulting from any work related or incidental to the development, construction, and sale of any Unit or any other Improvements in the Project.

K. **DEVELOPER'S EASEMENT FOR SALES ACTIVITIES**. Developer, its brokers, sales agents, Representatives, and other related persons shall have the right to conduct extensive sales activities at the Project, including the use of any Unit owned by Developer, the Common Elements, the Residential Limited Common Elements (including the Recreational Deck), and the Residential Unit Limited Common Elements, but excluding any Residential Unit Limited Common Elements appurtenant exclusively to Units not owned by Developer, for model units, tours, sales, leasing, management, construction offices, parking, extensive sales displays, and hosting promotion activities, functions and receptions, the posting and maintenance of signs and other advertisements relating to such sales activities, and to install, maintain, locate, relocate, and reconfigure such structures, displays, advertising signs, billboards, flags, sales desks, kiosks, sales, leasing, management, and/or construction offices, model units, interior design and decorator centers, and parking areas for employees, agents, and prospective buyers, as may be necessary or convenient for the proper development and disposition of Units by sale, resale, lease, or otherwise, and the right, but not the obligation, to provide ongoing maintenance, operation, service, construction, and repairs to individual Units. This easement shall include the right of Developer to temporarily reasonably restrict access to such Common Elements and Limited Common Elements but excluding any Commercial Limited Common Elements and Commercial Unit 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, or any successor to or assignee of Project Lender shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the Mortgage remedies or by a deed or an assignment in lieu of foreclosure, Project Lender, its successors and assigns, shall have the same rights as Developer to conduct such sales activities on the Project.

Each and every party acquiring an interest in the Project or the Land hereby acknowledges that the sales activities may result in noise and nuisances, and consents to such activity by Developer, and further waives, releases, and discharges any rights, claims, or actions such party may acquire against Developer, its brokers, sales agents, Representatives, employees, consultants, attorneys, and Lenders, and their respective successors and assigns, as a result of any such activity or activities.

L. **EASEMENTS FOR COMMUNITY SYSTEMS AND TELECOMMUNICATIONS AND RIGHT TO ENTER INTO UTILITY CONTRACTS**. There is reserved to Developer, its agents, employees, personnel, or licensees and its successors and assigns, a perpetual right and easement over the Project to install and operate, or provide for the installation and operation of 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 purpose, all upon such terms and conditions as Developer may determine in its discretion.

M. **EASEMENTS PURSUANT TO THE MASTER CHARTER**. Developer shall have the reserved right to grant easements through the Common Elements for purposes set forth in the Master Charter, including, without limitation, easements to access certain areas of the Project and easements for use of certain areas of the Project by the Master Association for recreational purposes, use of park space, or pedestrian and/or bicycle access, or other purposes. Portions of such areas may also be dedicated to the public or dedicated for use by the public pursuant to the Master Charter.

N. **DEVELOPER'S ADDITIONAL EASEMENTS AND RIGHTS TO ACCEPT, GRANT, AND MODIFY EASEMENTS, LICENSES, AND RIGHTS OF ENTRY**. To and until December 31, 2044, Developer reserves the right to designate, grant, convey, transfer, cancel, relocate, and otherwise deal with any easements over, under, across, or through the Common Elements as necessary or convenient for any reasonable purpose, which may include, but not be limited to, the repair, care, or upkeep of any Unit or Common Elements, any utility easements or infrastructure to serve the Project or access ways, walkways, or to comply with any government agreement or permit, private covenant, or other easement or access requirements. Developer further reserves the right to negotiate, grant, cancel, relocate, and otherwise deal with any temporary license or right of entry 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 repair, care, or upkeep of any utility infrastructure to serve the Project or access ways, walkways, or vehicular or pedestrian access to comply with any government agreement or permit, private covenant, or other easement or access requirements, or for the reason that any owner of property that is subject to an easement in favor of the Land or the Project uses any right it has to require a change in the location of that easement. Developer must obtain the written approval of each affected Commercial Unit Owner before it can exercise this right within any Commercial Limited Common Element or a Commercial Unit Limited Common Element, which approval shall not be unreasonably withheld.

O. **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).

P. **PARKING MANAGER'S RIGHT OF ENTRY.** The Parking Manager shall have the right, but not the obligation, to enter upon level 1 and level 2 of the Parking Structure for emergency, security, and safety reasons, to perform maintenance pursuant to this Declaration, and to inspect said levels for the purpose of ensuring compliance with this Declaration and the Parking Rules. Except in emergency situations, entry shall only be during reasonable hours and after notice to Commercial Unit Owner(s) to which the Limited Common Element parking stall is appurtenant. This right of entry shall include the right of the Parking Manager to enter upon level 1 and level 2 of the Parking Structure and, if necessary, to remove any vehicle therein in order to cure any condition that may increase the possibility of a fire or other hazard in the event the Owner of the Unit or Units to which the Limited Common Element parking stall is appurtenant fails or refuses to cure the condition within a reasonable time after request by the Parking Manger.

Q. **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.

R. **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. Developer must obtain 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, which approval shall not be unreasonably withheld.

S. **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. Notwithstanding the foregoing, with respect to the Commercial Units, Developer shall: (1) to the extent reasonably possible, exercise such easement rights at a time that is reasonably convenient to the Commercial Unit Owners or their tenants (and subject to the terms of the applicable lease or occupancy agreement), which may be before or after the customary business hours of the Commercial Unit Owner or its tenant; (2) exercise such easement rights in a commercially reasonable manner so as to minimize inconvenience or disruption to the activities being conducted in the Commercial Unit or its Limited Common Elements; (3) if requested by the Owner or its tenant, be accompanied by the Owner, its tenant, or any other representative; and (4) not enter or access any areas designated as "restricted areas" by written notice from the Owner or its tenant unless a representative of the Owner or its tenant is present or the Owner or its tenant have otherwise consented to such access. Examples of "restricted areas" may include, without limitation, cash handling areas, inventory storage and display areas, and similar areas containing property to which access shall be reasonably limited for purposes of loss prevention, inventory control, confidentiality, or compliance with legal requirements.

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 recorded at the Bureau. 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 permitted by law, the Master Charter, 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 ninety (90) 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 (as to the Residential Units), 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 Residential 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 owner-occupant requirements under Part V.B of the Act; and (g) no Unit may be utilized for hotel purposes. Further, no Owner, or any agent of an Owner, 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 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 Residential Unit shall keep the interior of his or her Unit and all appliances, plumbing, electrical, and other fixtures and appurtenances constituting a part of the Unit and the Limited Common Elements appurtenant thereto in a clean and sanitary condition and in good order and repair in accordance with the Project

Quality Standard and in compliance with law, and shall be responsible for any damage or loss caused by his or her failure to do so or his or her improper operation thereof. The Owner of a Commercial Unit shall keep the interior of his or her Unit and all appliances, plumbing, electrical, and other fixtures and appurtenances constituting a part of the Unit and the Limited Common Elements appurtenant thereto in good order and repair in accordance with the Project Quality Standard and in compliance with law, and shall be responsible for any damage or loss caused by his or her failure to do so or his or her 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) impair any easement; (f) increase the rate of insurance applicable to the Units or the contents thereof, or to the Project; (g) violate the House Rules, Parking Rules, or any applicable law, ordinance, statute, rule, or regulation of any local, county, state, or federal government or agency; (h) cause the violation of any conditions, restrictions, covenants, or agreement(s) entered into for the benefit of the Project; and/or (i) 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 Owner shall become a Residential Unit Class Expense, and any increase caused by a Commercial Unit Owner shall be paid by such Commercial Unit Owner. Notwithstanding the foregoing, the Owner of a Commercial Unit shall not be deemed to be in violation of any of the foregoing restrictions based on doing, or suffering or permitting anything to be done or kept on or in his or her Commercial Unit or appurtenant Limited Common Element, that is permitted by the provisions of **Section VI.D** and the Parking Rules.

B. **USE OF PARKING STRUCTURE.** The Parking Structure shall be used for access, parking, and any other purposes permitted by the Condominium Documents. The Association shall be prohibited from reducing the total number of parking stalls, handicap parking stalls, guest stalls, and/or loading stalls or areas located at the Project without the prior written approval of the Commercial Director, which approval shall not be unreasonably withheld or delayed, and Developer during the Development Period. All Owners shall be provided access to the Parking Structure to access and utilize their designated parking stall(s) (if any), guest stalls, patron stalls (if any), Unit and the Limited Common Elements appurtenant thereto, as applicable. Commercial Limited Common Element and Commercial Unit Limited Common Element parking stalls located on level 2 of the Parking Structure (the "**Commercial Parking Stalls**") may be used by the Commercial Unit Owners, their tenants, and each of their representatives, employees, vendors, patrons, licensees, invitees, and the general public pursuant to the Parking Rules adopted by the Parking Manager. Each Commercial Unit Owner may lease or rent the Commercial Unit Limited Common Element parking stalls appurtenant to their Unit to third parties. Residential Unit Owners and their guests will not be permitted to use the Commercial Parking Stalls.

Use of the Commercial Parking Stalls are further restricted as follows:

1. Public parking is permitted (a) in the Commercial Parking Stalls if designated for "public parking" by the Commercial Director and/or the Commercial Unit Owner that the Commercial Parking Stall is appurtenant and (b) in any Unit Limited Common Element parking stall located on level 1 and level 2 of the Parking Structure and appurtenant to a Residential Unit if the Owner of the Unit to which the Unit Limited Common Element parking stall is appurtenant, including Developer, agrees to participate in a parking pool operated and managed by the Parking Manager pursuant to the terms and conditions of a written parking pool agreement to be executed by those parties participating in such parking pool. The parties in such parking pool shall deliver to the Parking Manager and the Managing Agent copies of the original parking pool agreement and any amendments thereto within a reasonable time following execution. Any incremental increases in costs associated with participation in a parking pool shall be included in the Parking Assessment charged to the Owner whose Unit Limited Common Element parking stall is included in the parking pool or be paid by the participants in the parking pool by separate contract with the Parking Manager.

2. Public parking in any Commercial Parking Stall not expressly designated for "public parking" is prohibited.

3. Commercial Unit Owners may lease or rent their Commercial Unit Limited Common Element parking stalls appurtenant to their Units to third parties, provided that such Owner provides the Parking Manager with notice of the lease or rental agreement and the tenant's contact information prior to the commencement date of the lease or rental agreement.

Use of the Commercial Parking Stalls for public parking may result in high levels of vehicular and pedestrian traffic on the lower levels of the Parking Structure.

The Parking Manager shall be responsible for maintaining, managing, and operating the Commercial Parking Stalls, Shared Parking Facilities, and certain Commercial Limited Common Elements in accordance with this Declaration, the Parking Rules, and the Parking Management Agreement. Such management shall include, without limitation, operational items such as the Parking Access Systems and ramps on level 1 and level 2 of the Parking Structure, (excluding mechanical/electrical rooms, stairwells, exhaust fans, storage rooms, and support spaces unless designated as Commercial Limited Common Elements or Commercial Unit Limited Common Elements herein or on the Condominium Map), and the implementation and management of any validation system used for public parking. The Parking Manager shall have the right to request adjustments to the fan exhaust systems with respect to level 1 and level 2 of the Parking Structure that are not maintained, managed, and operated by the Parking Manager, if any, and approval of such requests by the Managing Agent shall not be unreasonably withheld, conditioned, or delayed.

The Managing Agent shall be responsible for maintaining, managing, and operating level 3 through level 5 of the Parking Structure and the mechanical/electrical rooms, stairwells, exhaust fans, storage rooms, and support areas within the Parking Structure (unless designated as Commercial Limited Common Elements or Commercial Unit Common Elements herein or on the Condominium Map).

C. **RESIDENTIAL UNITS AND LIMITED COMMON ELEMENTS.**

1. **RESIDENTIAL USE**. Except as provided herein, Residential Units and their appurtenant Limited Common Elements shall be used for residential purposes exclusively, except that a home-based business may be maintained within a Residential Unit, provided that: (a) such maintenance and use is limited to the person actually residing in the Residential Unit; (b) no employees or staff other than a person actually residing in the Residential Unit are utilized; (c) no clients or customers of such business visit the Residential Unit; (d) the number of persons, other than clients or customers, that shall visit such business and the frequency of such visits shall be kept to a reasonable minimum, as determined in the sole discretion of the Board; (e) such maintenance and use is in strict conformity with the provisions of any applicable law (including zoning law), 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 or any governing body with jurisdiction over the Property designates as hazardous material; and (i) the Owner has provided the Board thirty (30) calendar days prior written notice of his or her intent to operate such home-based business. Notwithstanding the foregoing, the Board shall have the authority, but not the obligation, to permit a home-based business to be maintained within a Residential Unit that does not meet one or more of the requirements set forth above, which permission may be withdrawn at any time in the sole discretion of the Board. Nothing contained in this Section shall be construed to prohibit Developer from the use of any Residential Unit owned by Developer for promotional or display purposes, such as for a model home, a sales and/or construction office, or for any other lawful purpose for development, construction, and/or marketing and sales of the Units in the Project or the use of the Guest Suites for transient use, subject to any zoning or other ordinance, as applicable.

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

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. To maintain a uniform and attractive exterior appearance for the Project, Residential Unit Owner-installed window coverings must include a backing of an off-white color and must be of a type and general appearance approved by the Board. Residential Unit Owners may not, without the prior written approval of the Board, apply any substance, material, or process to the exterior or interior surfaces of the Residential Unit's windows that may alter the exterior color, appearance, or reflectivity of the windows. The Board, in its sole discretion, may determine whether the portions of a Residential Unit visible from the exterior of the Residential Unit are orderly. The Board may have any objectionable items removed from the portions of a Residential Unit that are visible from the exterior of the Unit so as to restore its orderly appearance, without liability therefor, and charge the Residential Unit Owner for any costs incurred in connection with such removal.

4. **PROHIBITION AGAINST TIME SHARE PROGRAMS AND UTILIZATION OF SHORT-TERM ONLINE RENTAL PLATFORMS.** Residential Units and their Limited Common Elements, or any portion of any, *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 (**"Chapter 514E"**)) 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 shall not be used as part of any occupancy plan or for similar purposes, which shall include (a) any joint ownership, whether or not ownership is deeded, of a Residential Unit where unrelated (i.e., non-family) owners share and enjoy use or occupation of the Residential Unit according to a periodic (fixed or floating) schedule based on time intervals, points or other rotational system; or (b) any club, the membership of which allows access and use of one or more properties by its members based on availability and reservation priorities, commonly known as destination clubs (equity or non-equity) or vacation clubs. Furthermore, the Residential Units and their Limited Common Elements, or any portion of any, shall not be used for transient or hotel purposes, which are defined as (a) rental for any period less than ninety (90) 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 ninety (90) day period. The foregoing restrictions are collectively referred to as **"Occupancy Restrictions."** The Occupancy Restrictions may be enforced by Developer, the Association, the Condominium 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 Condominium 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; RECREATIONAL DECK.** The Recreational Amenities are Residential Limited Common Elements. Except as otherwise provided herein, the Recreational Amenities shall only be used by the Residential Unit Owners while in residence, their Occupants, and non-residing guests while accompanied by the Owner or Occupant. The Recreational Amenities are to promote recreation and leisure activities and any other purposes permissible by the Condominium Documents; provided that, and subject to any Developer's Reserved Rights, at no time shall there be any commercial use of the Recreational Deck or Recreational Amenities to service any Person other than an Owner (or Owner's or Occupant's invitees), nor shall any Owner charge a fee for others to utilize the Recreational Amenities or Recreational Deck or other area in which

Recreational Amenities are located, nor shall the Recreational Deck or other area in which 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. Developer shall have the option, at its sole discretion, to add to, reconfigure, resize, relocate, and/or remove any or all of the Recreational Amenities, which may, in turn, increase or decrease the Common Expenses and, consequently, affect maintenance fees. This Section shall not be considered a representation and/or warranty of Developer that any or all of the Recreational Amenities will be built, located on the Recreational Deck and/or offered to Residential Unit 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, after the expiration or termination of the Development Period, the Board. All sales and marketing materials provided to an Owner in connection with the Residential Unit or the Project that are otherwise the property of Developer, including, but not limited to, any imagery, logos, artistic renderings, weblinks, layout depictions, video clips, and other similar marketing materials may not be used by an Owner or any rental agent in the promotion of any Residential Unit in the Project in any fashion whatsoever without the prior written approval of 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, Commercial Limited Common Elements, including, without limitation, the Exterior Commercial Limited Common Elements, and Commercial Unit Limited Common Elements shall be used for any non-residential purpose permitted by law, including, without limitation, all business or professional license and permit requirements, as permitted by the Vested Rules and applicable zoning ordinances, and consistent with the Project Quality Standard. The Commercial Units may be leased at the discretion of the respective Commercial Unit Owner, subject to the provisions of a written lease. The Owner(s) of a 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. All compensation paid to an Owner, by a vendor of such goods or services in exchange for the vendor's use of such Owner's Commercial Unit or the Limited Common Elements appurtenant to its Unit shall be retained by the Commercial Unit Owner. The commercial uses of a Commercial Unit are subject to change at the sole discretion of the applicable Unit's Owner(s), and subject further to the terms of any applicable lease of such Unit. No Residential Owner shall be guaranteed access through any Commercial Unit, the Commercial Limited Common Elements, or Commercial Unit Limited Common Elements.

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

a. facilities for the sales or service of mobile homes or trailers;

b. junkyards, scrap metal yards, automobile used parts sales facilities, motor vehicle dismantling operations, sanitary landfills, excepting automobile dealerships not to exceed 25,000 square feet that do not provide on-site servicing of automobiles;

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

d. salvage business;

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

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

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

h. mini-warehouses and warehouse/distribution centers;

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

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

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

l. heavy machinery sales and storage facilities;

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

n. any use that would be reasonably determined to be a nuisance which is a source of annoyance to the Owners and Occupants of other Units as further discussed in **Section VI.I**, below.

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

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

1. **ASSOCIATION'S USE**. Except for any rights to use expressly reserved to Developer, a Commercial Unit Owner, a Residential Unit Owner or the Parking Manager under this Declaration, nothing in this Section or otherwise contained in the Declaration is intended to limit or restrict the Association's right to use the Common Elements, any Unit, or any Limited Common Element appurtenant thereto owned or leased by the Association for the benefit of the members of the Association to the full extent permitted by the applicable zoning ordinance and by law. 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 Unit or to a storage locker or storage room that is a

Limited Common Element, or storing them on a Limited Common Element lanai appurtenant to the Owner's Unit in accordance with the House Rules; provided that any such loading, unloading, and transportation must be completed promptly in designated areas and in accordance with the House Rules; or (b) a Commercial Unit Owner's use of the Limited Common Elements appurtenant to the 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 Owners of the Unit(s) to which such Limited Common Element is appurtenant. The Owners of at least sixty-seven percent (67%) of the Common Interest that is appurtenant to Units to which any particular Limited Common Element is appurtenant shall have the right to change the use of a particular Limited Common Element. Subject to the Developer's Reserved Rights set forth herein and the easements granted in **Article IV**, no lease, license, easement, or similar right may be granted over the Residential Limited Common Elements or the Commercial Limited Common Elements without the vote and approval of the Residential Unit Class or the Commercial Unit Class, respectively.

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 a Residential Unit Owner may consolidate Residential Units pursuant to **Section X.C.1** and a Commercial Unit Owner may consolidate Commercial Units pursuant to **Section X.D.9**. 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, storage locker, or storage room 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, the Commercial Limited Common Elements, and the Commercial Unit Limited Common Elements. 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, 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 nuisances shall be allowed in the Units which are a source of annoyance to the Owners or Occupants of other Units, or which interfere with the peaceful possession or proper use of the Units by its Owners or Occupants. Notwithstanding the foregoing, the Commercial Units and their appurtenant Commercial Limited Common Elements and Commercial Unit Limited Common Elements may be used in accordance with **Section VI.D.1** herein, and commercially reasonable standards for noise and light as to such Commercial Units and their appurtenant Commercial Limited Common Elements and Commercial Unit Limited Common Elements will be permitted at the Project; provided, however, that all lighting affixed to or placed in a Commercial Unit, Commercial Limited Common Element, or Commercial Unit Limited Common Element shall be directed downward so as to minimize the impact on the Owners and Occupants of other Units adjacent to or in the vicinity of the Commercial Unit, Commercial Limited Common Element, or Commercial Unit Limited Common Element.

J. **ADVERTISEMENTS; SIGNS**. Subject to Developer's Reserved Rights or easement rights or restrictions set forth herein and any applicable House Rules or Parking Rules, Residential Unit Owners shall not place advertisements, posters, or signs of any kind, including, without limitation, any **"For Sale"** or **"For Rent"** signs, on the exterior of any Residential Unit, in the windows of a Residential Unit, in the exterior portions of the Limited

Common Element lanai appurtenant to the Residential Unit, in the Residential Limited Common Elements, or in any Common Element, unless prior written approval is received from the Board. Each Commercial Unit Owner shall have the right to affix signs to any portion of the Owner's Commercial Unit, the Commercial Limited Common Elements, the Commercial Unit Limited Common Elements appurtenant solely to their respective Unit, and the Shared Parking Facilities, provided the same are consistent with the Project Quality Standard, but may not place any signs or advertisements in any Residential Limited Common Element or Residential Unit Limited Common Element without the prior written approval of the Board. Residential Unit Owners shall not place advertisements, posters, or signs of any kind in the Commercial Limited Common Elements, Commercial Unit Limited Common Elements, or Shared Parking Facilities without the prior written approval of the Commercial Director as to the Shared Parking Facilities and Commercial Limited Common Elements or the Commercial Unit Owner to which the Commercial Unit Limited Common Element is appurtenant to as to the Commercial Unit Limited Common Elements.

K. **ANTENNAS, SATELLITE DISHES**. To the extent permitted by applicable law and the House Rules, antennae, 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, visually impaired persons, hearing impaired persons, and physically and mentally impaired persons, shall be allowed to use the services of a "**service animal**" as such term is defined under the ADA, and an "**emotional support**" animal, as more particularly described in the House Rules.

M. **HOUSE RULES AND PARKING RULES** . Additional use restrictions that are consistent with this Declaration and the Bylaws may be set forth in the House Rules by the Board and the Parking Rules by the Parking Manager, with the approval of the Commercial Director. Any proposed rules and regulations that may affect the Commercial Units, Commercial Limited Common Elements, or Commercial Unit Limited Common Elements shall be subject to the prior written approval of the Commercial Director. With respect to the Parking Structure, the Parking Rules shall govern use of the Shared Parking Facilities and all Commercial Parking Stalls and shall be regulated and enforced by the Parking Manager, and the House Rules, shall govern level 3 through level 5 of the Parking Structure, and shall be regulated and enforced by the Managing Agent.

N. **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.N.2** above, upon obtaining: (a) the approval of the Owners of at least sixty-seven percent (67%) of the Common Interest, including all directly affected Owners, and (b) the approval of all mortgagees of record which hold Mortgages on Units with respect to which Owner approval is required by (a) above, if such lease or use would be in derogation of the interest of such mortgagees;

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

5. The consent of a Majority of the Residential Directors to the exercise of the Board's rights herein shall be required if the exercise of the right directly impacts any Residential Unit Owner's use and operation of the Residential Units and their Limited Common Elements.

The above is subject to the Parking Manager's responsibility to maintain, manage and operate the Shared Parking Facilities and the Commercial Parking Stalls in the Parking Structure as discussed further herein.

O. **SEVERANCE OF COMMON ELEMENTS FROM UNIT**. No Owner shall be entitled to sever his or her Unit, or any portion thereof, from his or her undivided interest in the Common Elements, in any easement interests appurtenant thereto or licenses granted under this Declaration. Neither may such component interests be severally sold, conveyed, leased, encumbered, hypothecated, or otherwise dealt with, and any such attempt to do so in violation of this provision shall be void and of no effect. Developer and its successors, assigns, and grantees, and each Owner, each covenant and agree that the Units and the corresponding undivided interest in the Common Elements and the easements, licenses, and other interests appurtenant thereto, shall not be separated or separately conveyed, and (1) each such undivided interest in the Common Elements and any easements appurtenant to a Unit shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to title to the Unit, and (2) each such Unit shall be deemed to be conveyed or encumbered with its respective undivided interest in the Common Elements and in any easements, licenses or other interests appurtenant thereto even though the description in the instrument of conveyance or encumbrance may refer only to the title to the respective undivided interest. Nothing herein shall limit the right of an Owner to transfer a Limited Common Element parking stall, storage locker, or storage room as provided in **Section XV.A.3** of this Declaration and Section 514B-40 of the Act.

P. **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 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; provided, however, Developer must obtain the prior written approval of each affected Commercial Unit Owner before Developer can exercise this right within any Commercial Unit, Commercial Limited Common Element, or Commercial Unit Limited Common Element, or otherwise affect any Commercial Unit Owner's use of such Owner's Unit or appurtenant Limited Common Elements, which approval shall not be unreasonably withheld.

Q. **DEVELOPER'S RESERVED RIGHTS**. Notwithstanding the requirements of this Article to the contrary, and subject to applicable approvals required by this Declaration, in no event shall Developer be required to obtain Board approval when exercising Developer's Reserved Rights set forth in this Declaration. When exercising Developer's Reserved Rights, Developer shall not limit or interfere with the operation or permitted uses of the Commercial Units or their appurtenant Limited Common Elements, including, without limitation, the Exterior Commercial Limited Common Elements, without the approval of the affected Commercial Unit Owner.

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 the Project Quality Standard at which the Units are operated and managed professionally and efficiently.

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

1. Make, build, maintain, and repair all Common Elements (except for the Commercial Limited Common Elements, Commercial Unit Limited Common Elements, and any Residential Unit Limited Common Elements solely appurtenant to one (1) Residential Unit), including, without limitation, any walls, fences, gates, walkways, sidewalks, utilities, lines, drains, roads, driveways, driveway ramps, curbs, parking areas, and lighting in the Common Elements (except for the Commercial Limited Common Elements, Commercial Unit Limited

Common Elements, and any Residential Unit Limited Common Elements solely appurtenant to one (1) Residential Unit), as well as other improvements not located within the Project but of which the Association has the right to use or to which the Association has access, with the exception of the Shared Parking Facilities and the Commercial Parking Stalls, which shall be maintained, managed, and operated by the Parking Manager.

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

3. Keep all Common Elements (except for the Commercial Limited Common Elements, Commercial Unit Limited Common Elements, and any Residential Unit Limited Common Elements solely appurtenant to one (1) Residential Unit) in a strictly clean and sanitary condition, with all necessary reparations whatsoever, in good order and condition, and repair and make good all defects in the Common Elements (except for any Commercial Limited Common Elements, Commercial Unit Limited Common Elements, and any Residential Unit Limited Common Elements solely appurtenant to one (1) Residential Unit) required to be repaired by the Association 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 and Limited Common Elements are visible to and, in some cases, utilized by the general public, including customers of the Commercial Units, these areas may be maintained by the Commercial Director consistent with the Project Quality Standard, and certain costs arising therefrom shall be shared by the Commercial Unit Class and Residential 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, (c) affect in any way the Commercial Limited Common Elements or Commercial Unit Limited Common Elements, or (d) alter directional signage that may impact the use and operation of the Commercial Units, shall be subject to the consent of the Commercial Director.

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 Elements of the Project except in accordance with plans and specifications prepared by a licensed architect and approved by any other Owners whose approval is required by the Act, and subject to applicable approvals required by this Declaration, including, without limitation, from any governmental agencies. After starting the Improvements, the Association must work diligently to complete them in a timely manner.

6. Before commencing or permitting construction of any Improvement on the Project where the cost thereof exceeds FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($500,000.00), obtain a performance and labor and materials payment bond, naming as obligees the Board, the Association, and collectively all Owners and their respective Lenders of record, as their respective interests may appear, with a responsible corporate surety authorized to do business in the State, guaranteeing the full and faithful performance of the contract for such construction free and clear of any mechanics' and materialmen's liens for such construction, the payment of all subcontractors, laborers, and materialmen, and the discharge of any mechanics' and materialmen's liens for a penal sum of not less than one hundred percent (100%) of the estimated cost of such construction. As an alternative, and under the appropriate circumstances, the Board may approve a written guaranty or other instrument guaranteeing the full and faithful performance of the contract for such construction free and clear of any mechanics' and materialmen's liens for such construction, the payment of all subcontractors, laborers, and materialmen, and the discharge of any mechanics' and materialmen's liens.

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

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

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

B. **DEVELOPER, COMMERCIAL UNIT OWNER, AND RESIDENTIAL UNIT OWNER RIGHTS AND LIMITATIONS.** Except as specifically provided herein, the Association shall have all of the powers set forth in Section 514B-104 of the Act. The Association shall not impose any fees or charges on a Commercial Unit for the use, rental, or operation of any Commercial Limited Common Element or Commercial Unit Limited Common Element. Each Commercial Unit Owner shall pay and be responsible for the operation, care, upkeep, repair, maintenance, and cost of their respective Unit and any Commercial Unit Limited Common Elements appurtenant to their Commercial Unit, except as otherwise set forth herein or in the Bylaws. The Commercial Unit Class shall be responsible for the operation, care, upkeep, repair, and maintenance of the Commercial Limited Common Elements and Commercial Unit Limited Common Elements (except for those Commercial Unit Limited Common Elements solely appurtenant to one (1) Commercial Unit), and the cost shall be borne by the applicable Commercial Unit or the Commercial Unit Class, except as otherwise provided for herein or in the Bylaws.

The Residential Unit Owners shall pay and be responsible for the operation, care, upkeep, repair, maintenance, and cost of their respective Units and any Residential Unit Limited Common Element solely appurtenant to their respective Units. The Association shall be responsible for the operation, care, upkeep, repair, and maintenance of all Residential Limited Common Elements and Residential Unit Limited Common Elements (except for those Residential Unit Limited Common Elements solely appurtenant to one (1) Residential Unit), and the cost shall be borne by the applicable Residential Unit or the Residential Unit Class, except as otherwise provided for herein or in the Bylaws.

All Owners shall pay and be responsible for costs associated with the Association's 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 or Limited Common Elements appurtenant to more than one (1) Unit without the approval of Developer, or the Limited Common Elements appurtenant to a single Unit without the additional approval of the affected Owner, and, if such action is with respect to a Limited Common Element appurtenant to one (1) or more Commercial Units, the approval of the Commercial Director. Notwithstanding the foregoing, the actions described herein may be taken in an "emergency" situation if and only to the extent necessary to prevent bodily injury or substantial property damage.

The Parking Structure may be utilized by the Commercial Unit Owners, their tenants, and each of their representatives, employees, vendors, patrons, licensees, and invitees, and the Residential Unit Owners and Occupants to access their respective parking, storage, and/or loading areas and Units. The interior portions of the Parking Structure designated as Residential Limited Common Elements shall be operated, repaired, and maintained by the Association. The Shared Parking Facilities and the Commercial Parking Stalls, including, without limitation, ramps, directional and other signage (including advertising), shall be operated, repaired, and maintained by the Parking Manager, at the direction of the Commercial Director and as funded by way of the Parking Assessment, pursuant to this Declaration. The Shared Parking Facilities and the Commercial Parking Stalls shall be structured to allow the Parking Manager to participate in any future district-wide parking program. The Parking Manager may adopt the Parking Rules applicable to the Shared Parking Facilities and other portions of the Parking Structure located on level 1 and level 2 as Common Elements, Commercial Limited Common Elements, and Commercial Unit Limited Common Elements. The Parking Manager, Residential Unit Owners, Board, and Association shall cooperate and use their best efforts to maintain and upkeep the Parking Structure uniformly and in accordance with the Project Quality Standard. With respect to the Parking Structure, the Association and the Parking Manager, Managing Agent, and Commercial Director shall consult and establish a coordinated maintenance schedule to promote the safety and efficiency of their maintenance activities within the Project (including, without limitation, window washing, power washing, repainting, erection of scaffolding, lighting maintenance, fan maintenance, etc.).

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, with the consent of a Majority of the Commercial Unit Class and the Commercial Director, the Board shall proceed with such Capital Upgrades and may assess the Owners for the cost thereof as a Common Expense. If such Capital Upgrades, if not made, could reasonably result in a threat to the health or safety of the Owners or a significant risk of damage to the Project, then such actions may be taken without the prior approval of Owners and/or the Commercial Director. Any Capital Upgrades costing less than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year may be made by the Board without approval of the Owners, provided said Owners are given at least ten (10) business days written notice of a special meeting at which actions are approved by an amendment to the budget by the Board. The cost of such Capital Upgrades shall constitute a Common Expense. The foregoing shall not apply to operational expenses, which shall be subject to applicable provisions of the Condominium Documents. This Section shall not apply to any Capital Upgrades made by Developer when exercising the Developer's Reserved Rights. Whenever in the judgment of the Commercial Director, the Shared Parking Facilities and other portions of the Parking Structure located on the level 1 and level 2 designated as Common Elements and managed, operated, and maintained by the Parking Manager shall require Capital Upgrades, the Parking Manager shall proceed with such Capital Upgrades, which shall be funded by the Parking Assessment.

D. **CAPITAL UPGRADES TO LIMITED COMMON ELEMENTS**. Whenever the Residential Limited Common Elements shall require Capital Upgrades, the Residential Unit Class shall proceed with such Capital Upgrades upon Majority vote of the Residential Unit Class at any meeting where a quorum is present. Whenever the Commercial Limited Common Elements shall require Capital Upgrades, the Commercial Unit Class shall proceed with such Capital Upgrades upon the approval of each affected Commercial Unit Owner and the Commercial Director. The cost of the Capital Upgrades shall be a Unit Class Expense for the Unit Class to which the subject Limited Common Elements are appurtenant. If such Capital Upgrades, if not made, could reasonably result in a threat to the health or safety of the Owners or a significant risk of damage to the Project, then such additions, renovations, replacements, alterations, or Improvements may be made by the Board without the prior approval of the Owners. The foregoing shall not apply to operational expenses, which shall be subject to applicable provisions of the Condominium Documents. This Section shall not apply to any Capital Upgrades made by Developer when exercising the Developer's Reserved Rights.

E. **EXTRAORDINARY ACTIONS**. Although the Board shall generally have broad powers to regulate, govern, and manage the Project, the power to approve certain Extraordinary Actions (as defined below) shall remain vested in the Association. Any provision of this Declaration or the Bylaws to the contrary notwithstanding, the Board and the Association shall not be authorized to take any Extraordinary Actions during the Developer Control Period without the affirmative vote of Owners representing not less than eighty percent (80%) of the Residential Unit Class and the approval of the Commercial Director and Developer, and after the end of the Developer Control Period, without the affirmative vote of Owners representing not less than a Majority of the votes of the Residential Unit Class and the approval of the Commercial Director. As used herein, the term "**Extraordinary Actions**" shall mean any and all actions taken by or on behalf of the Association, including, without limitation, amending this Declaration to change the permitted use of the Common Elements, commencing or maintaining any litigation, defending an action, filing a counterclaim, mediation, or similar proceeding (except for routine Common Expense collection matters, or actions required to enforce the restrictions on use of Units, rules or architectural controls) which would reasonably require the expenditure of funds in excess of ONE HUNDRED THOUSAND AND NO/100 DOLLARS ($100,000.00) in the aggregate during any fiscal year of the Association, and any determinations pursuant to Section 514B-41(c) of the Act and that are not prohibited by an express provision of this Declaration. 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. **CONDUCT OF OWNERS AND OCCUPANTS**. Each Owner and Occupant shall comply with all of the Condominium Documents and all laws of the County, the State, and the United States. No Owner or Occupant may act in any way:

1. That causes any danger to any person or property;

2. That is unlawful or disorderly;

3. That would damage or injure the welfare or interests of (a) any other Owner; (b) Developer; (c) the Managing Agent, Condominium Manager, Parking Manager; or (d) the Association;

4. That is in violation of any provision of the Condominium Documents;

5. That would be harmful, harassing, or offensive;

6. That would cause any other nuisance; or

7. That is otherwise inconsistent with the operation of the Project pursuant to the Project Quality Standard.

Each Owner shall be responsible for and shall pay all costs and damages caused by such Owner or such Owner's Occupant's failure to comply with the foregoing, including any fines and/or penalties that may be assessed under the House Rules or Parking Rules. Notwithstanding the foregoing, the Owner of a Commercial Unit shall not be deemed to be in violation of any of the foregoing restrictions based on doing, or suffering or permitting anything to be done or kept on or in his or her Commercial Unit, or appurtenant Limited Common Element, that is permitted by the provisions of **Section VI.D** and the Parking Rules.

VIII. MANAGING AGENT; PARKING MANAGER.

Fiscal and administrative management of the Project and the physical management of the Common Elements (except for the physical management of level 1 and level 2 of the Parking Structure maintained by the Parking Manager discussed below, Commercial Limited Common Elements, Commercial Unit Limited Common Elements, and Residential Unit Limited Common Elements solely appurtenant to one (1) Residential Unit) 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 Management Agreement shall contain a requirement that the Managing Agent operate the Project at the Project Quality Standard and further provide for the right of the Board to terminate the Management Agreement if the Project is not operated or maintained at such standard by the Managing Agent.

The Parking Manager shall manage the Shared Parking Facilities and the Commercial Parking Stalls pursuant to the Parking Management Agreement. The Commercial Director shall notify the Board in writing of a proposed Parking Manager. Unless the Board reasonably disapproves in writing within ten (10) business days after receipt of such written notice from the Commercial Director, the Commercial Unit Owners may engage the proposed Parking Manager. Board approval of any proposed Parking Manager must be given unless sixty-seven percent (67%) or more of the Residential Unit Class disapproves. If the Board disapproves of the proposed Parking Manager in writing in accordance with this paragraph, the Commercial Director must propose an alternate Parking Manager for the Board's approval or disapproval in the manner specified above. The terms and conditions of engagement of the Parking Manager pursuant to the Parking Management Agreement, and the details of the operation of the Shared Parking Facilities and the Commercial Parking Stalls, including, without limitation, the establishment of a means of parking validation and the means by which vehicular ingress and egress will be restricted, and security for the Shared Parking Facilities and Commercial Parking Stalls shall be determined by the Commercial Director; provided, however, that any such details of operation shall not materially and adversely interfere with access to any Limited Common Element parking stalls. The Parking Manager and Managing Agent shall cooperate and work together to provide harmonious and seamless management of the entire Parking Structure and Project.

IX. SERVICE OF LEGAL PROCESS.

The Condominium Manager, if any, shall be authorized to receive service of legal process for and on behalf of the Association and the Board at the address of the Condominium Manager, pursuant to the Act. If no Condominium Manager is appointed, the Managing Agent shall be authorized to receive service of legal process for and on behalf of the Association and the Board at the Project's administrative office, if any, or address of the Managing Agent, pursuant to the Act.

X. ALTERATION OF THE PROJECT.

A. **IN GENERAL.** This Section applies, except as otherwise provided by the FHA and except as otherwise provided in this Declaration. This Section does not apply to changes made by Developer when exercising Developer's Reserved Rights; provided that when exercising Developer's Reserved Rights, Developer shall not limit or interfere with the operation or permitted uses of the Commercial Units or their appurtenant Limited Common Elements, including, without limitation, the Exterior Commercial Limited Common Elements, without the approval of the affected Commercial Unit Owner(s). Neither the Association nor any Owner may make any structural changes or additions to the Common Elements, the Limited Common Elements, or the Units that are different in any material respect from the Condominium Map, except pursuant to any requisite vote by the Association and amendment of this Declaration, or as otherwise set forth herein or in the Bylaws. Any such restoration, replacement, construction, alteration, or addition must be made in accordance with complete plans and specifications that are first approved by the Board in writing, and with the consent of the Commercial Director. Promptly after the work is completed, the Association, Developer, or Owner must record the amendment along with any necessary changes to the Condominium Map. This Section does not apply to "**nonmaterial additions and alterations**" as that term is used in Section 514B-140 of the Act. Except as provided in **Section X.D** below, 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 uniform external appearance of the Project without the consent of the Commercial Director; (4) prohibits the Board from making or requiring that an Owner make changes within any Unit or Limited Common Element appurtenant thereto as needed to comply with the fire code and all other laws that apply to the Project; and (5) prohibits Developer from completing the initial Project construction and Improvements.

B. **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.G** 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.

1. **PERMITTED ALTERATIONS**. Each Residential Unit Owner has the right, subject to the terms and provisions in the Condominium Documents and the approval of the Board pursuant to **Section X.G**, which approvals shall not be unreasonably withheld or delayed, to make any of the "nonmaterial additions and alterations" as such term is defined in Section 514B-140 of the Act, which include the following changes, additions, and Improvements solely within the Owner's Unit or within a Limited Common Element appurtenant only to the Owner's Unit, at such Owner's sole cost and expense:

a. 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;

b. 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);

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

d. To make such changes, additions, and Improvements to the Unit or Limited Common Element appurtenant solely thereto to facilitate handicapped accessibility within the Unit or Limited Common Element , including, without limitation, the installation of a ramp to facilitate disability access between the Unit and its appurtenant Limited Common Element lanai; and

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

f. 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.

2. **NOISE RESTRICTIONS ON UNIT FLOOR COVERINGS**. As a condition to the installation, repair, alteration, or replacement of any surface floor coverings in a Residential Unit, 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 the foregoing insulation materials shall be performed in a manner that provides proper mechanical isolation of the flooring materials from any rigid part of the Tower, whether of the concrete subfloor (vertical transmission) or adjacent walls and fittings (horizontal transmission). 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 shall be removed at the Owner's expense.

D. **BY COMMERCIAL UNIT OWNERS**. Each Commercial Unit Owner has the right, subject to the terms and provisions in the Condominium Documents, to make any of the following changes, additions, and Improvements to the Owner's Unit or within a Limited Common Element appurtenant only to the Owner's Unit, at such Owner's sole cost and expense, without the consent of the Association or Board, except as herein provided:

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

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

3. To install and/or extend outdoor seating areas or lounge areas within the Commercial Unit Limited Common Elements;

4. 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 and/or its Commercial Unit Limited Common Elements and to tie into utility lines connecting to the Unit;

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

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

7. To change the exterior appearance of the Owner's Unit or the Limited Common Elements appurtenant solely thereto, including the configuration, size, and appearance of entrances and windows, facades, and storefronts as allowed by applicable zoning laws and other governmental requirements;

8. To install temporary or permanent improvements or fixtures within the Exterior Commercial Limited Common Elements as allowed by applicable zoning laws or other governmental requirements;

9. 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 Common Interest and Commercial 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;

10. 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 original Unit will be appurtenant to the Subdivided Units, convert parts of the existing Unit to Common Element status to facilitate the subdivision, and create a sub-association or similar mechanism for the resulting Units. The Owner must ensure that the structural integrity of the Commercial Units, Limited Common Elements appurtenant thereto, and the Building Structure will not be adversely affected. The total of the Common Interest and Class Common Interest for the Subdivided 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; and

11. To install an electric vehicle charging station in any Commercial Parking Stall; 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 Commercial Unit to which the Commercial 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 Commercial Parking Stall, such Owner shall be responsible for the removal and remediation of the area.

Any material addition or alteration to a Commercial Unit or Limited Common Element appurtenant thereto, or excavation of an additional basement or cellar, shall require the approval of the Board, which shall not unreasonably withhold such approval; 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, or impair any easement. A request for Board approval will be deemed approved unless the Board rejects the request within thirty (30) days of the Board's receipt of such request; provided that the request for approval must include verification from a structural engineer or other appropriate licensed professional that the proposed alteration will not adversely affect the structural integrity of the Project. 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.

If a dispute arises between or amongst Commercial Unit Owners as a result of any change or modification made solely within an Owner's Unit or within the Limited Common Elements appurtenant only to an Owner's Unit pursuant to this Section, it shall be resolved solely by the disputing Commercial Unit Owners and the Commercial Director.

E. **BY THE PARKING MANAGER.** The Parking Manager has the right, subject to the direction of the Commercial Director and/or the applicable Commercial Unit Owner and subject to the terms and provisions in the Condominium Documents, to construct, install, or erect Improvements within the Shared Parking Facilities and the Commercial Parking Stalls (including, but not limited to, electrical vehicle charging stations); provided that such construction, installation, or erection of Improvements shall not, in any manner, materially and adversely affect access to the Residential Limited Common Elements in the Parking Structure by the Residential Unit Owners and their Occupants, affect the structural integrity of the Project, and otherwise violate any applicable laws. Any alteration or addition to the Shared Parking Facilities or Commercial Parking Stall portions of the Parking Structure that would affect the structural integrity of the Project shall require the approval of the Board, which shall not unreasonably withhold such approval. A request for Board approval will be deemed approved unless the Board rejects the request within thirty (30) days of the Board's receipt of such request; provided that the request for approval must include verification from a structural engineer or other appropriate licensed professional that the proposed alteration will not adversely affect the structural integrity of the Project. The issuance of a building permit by the County for the material addition or alteration shall be conclusive evidence that the addition or alteration would not jeopardize the soundness, safety, or structural integrity of the Project.

F. **BY THE BOARD**. The Board has the right to change the exterior appearance of the Project, without approval of the Association; provided that the cost of such change shall not exceed FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($500,000.00). During the Development Period, however, the Board may not pursue any such change without Developer's prior written approval. If the Board's proposed change may (i) alter or affect any portion of a Commercial Unit or its appurtenant Commercial Unit Limited Common Elements, or (ii) affect the improvements to, operation, repair or maintenance of a Commercial Unit or the Commercial Unit Limited Common Element appurtenant to such Commercial Unit, the Board must obtain the prior written consent of the applicable Commercial Unit Owner, which consent shall not be unreasonably conditioned, withheld, or delayed. The Board must obtain the prior written consent of the Commercial Director if the Board's proposed change will alter or affect any Commercial Limited Common Element, or any portion of the Common Elements located within one or more Commercial Units.

G. **APPROVAL OF THE BOARD; CONDITIONS TO BOARD APPROVAL**. It is intended that the Tower presents a uniform and attractive appearance in accordance with the Project Quality Standard and that any addition or alteration made by an Owner shall not jeopardize the safety or soundness of the Project, impair any easement, or interfere with or deprive any nonconsenting Owner of the use and enjoyment of his or her Unit or any other part of the Project.

1. **APPROVAL OF BOARD FOR CHANGES AFFECTING EXTERIOR APPEARANCE OF PROJECT**. Except for changes to the Commercial Units, the Commercial Limited Common Elements or Commercial Unit Limited Common Elements discussed in **Section X.D**, above, whenever any proposed modification, change, addition to, or alteration of any Unit or Limited Common Element appurtenant thereto will impact such appearance of the Tower:

a. The Owner(s) must submit a written request for Board approval, which request must include plans and specifications depicting or showing the proposed modification, change, addition, or alteration.

b. The Board must respond to a request for approval within forty-five (45) calendar days after it receives such a request.

c. The request will be deemed approved unless, within the forty-five (45) day period, the Board (i) disapproves the request, (ii) asks the Owner to make changes, or (iii) notifies the Owner that other Owners have challenged the request.

The Board shall base its decision to grant or deny approval at least in part upon considerations of whether (and to what extent) the proposed modification, change, addition, or alteration will adversely affect the exterior appearance of the Project. Except in connection with proposed modifications to accommodate Owners with disabilities, if the Board or the Commercial Director determines that the proposed modification, change, addition, or alteration will adversely affect the appearance of the exterior of the Project or is not consistent with the Project Quality Standard, the Board shall not grant approval. If the Board decides that a proposed modification, change, addition, or alteration will not adversely affect the appearance of the exterior of the Project and decides to permit the modification, change, addition, or alteration as consistent with the Project Quality Standard, the Board shall first provide all Owners with written notice, and the proposed modification, change, addition, or alteration shall not be implemented until the Owners shall have an opportunity to challenge the determination, and, if challenged by any Owner, then the proposed modification, change, addition, or alteration will require the approval of Owners of Units holding no less than sixty-seven percent (67%) of the Common Interests.

2. **APPROVAL OF BOARD FOR PERMITTED ALTERATIONS TO RESIDENTIAL UNITS**. The Board shall review any proposed nonmaterial addition or alteration to a Residential Unit:

a. The Owner(s) must submit a written request for Board approval, which request must include plans and specifications depicting or showing the proposed modification, change, addition, or alteration.

b. The Board must respond to a request for approval within forty-five (45) calendar days after it receives such a request.

c. 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 may only disapprove a nonmaterial addition or alteration where the Board reasonably believes that the addition or alteration could jeopardize the soundness of the Project or impair any easement or interfere with or deprive any nonconsenting Owner of the use and enjoyment of part of the Project.

3. **CONDITIONS TO BOARD APPROVAL**. The Board may impose reasonable conditions upon the Board's approval of any modification, change, addition, or alteration over which it has approval authority under this Section in the Board's sole discretion, including, without limitation, the following:

a. 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.

b. 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.

c. For modifications, changes, additions, alterations, and other work the estimated cost of which shall exceed FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($500,000.00), 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.

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

e. Changes to the plans and specifications may not be done without Board approval.

f. 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.

g. 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.

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

I. **CONTRACTOR PARKING**. The Owner shall require its contractors, subcontractors, and anyone else performing the work, and their agents and independent contractors, to park offsite, unless otherwise permitted in the House Rules, the Parking Rules, and/or by the Condominium Manager, if any, or Managing Agent or Parking Manager.

J. **DEVELOPER'S RESERVED RIGHTS**. Notwithstanding the requirements of this Section to the contrary, in no event shall Developer be required to obtain Board approval when exercising the Developer's Reserved Rights set forth in this Declaration. When exercising Developer's Reserved Rights herein, Developer shall not limit or interfere with the operation or permitted uses of the Commercial Units or their appurtenant Limited Common Elements, including, without limitation, the Exterior Commercial Limited Common Elements, without the approval of the affected Commercial Unit Owner.

K. **FACADE SIGNAGE; COMMERCIAL UNIT OWNERS AND DEVELOPER.**

1. In connection with the Parking Structure, Developer will install initial way-finding directional signage throughout the Parking Structure, including on level 1 and level 2 thereof. Thereafter, the Parking Manager, at the direction, or otherwise with the approval, of the Commercial Director, shall have the exclusive right to install directional signage and advertisements within the Shared Parking Facilities, Commercial Parking Stalls, and any other portions of the Common Elements located within level 1 and level 2 of the Parking Structure in its sole discretion and without obtaining the approval of any Person with an interest in the Project; provided, however, that any such signs and advertisements shall not include any of the following prohibited subjects: drugs or other items illegal to use, possess, or sell in the County or State, pornography, alcohol, tobacco, firearms, political content, content disparaging of any particular culture (such as the culture of native peoples), and casinos and gaming-related activities. The Owners of the Commercial Units shall be entitled to any and all revenues generated by such advertisements. The Parking Manager shall also have the right to install, maintain, repair, and replace, at their sole expense, signage on the exterior of the Parking Structure advertising the public parking garage, provided that such exterior signage is coordinated with the overall signage concept for the Project. Decisions concerning such exterior signage shall be made by a Majority of the Commercial Unit Owners and are subject to the Board's approval, which approval shall not be unreasonably withheld, conditioned, or delayed. The Parking Manager, with the approval of the Commercial Director, shall also have the right to construct, install, or erect Improvements within the Shared Parking Facilities, Commercial Parking Stalls, and any other portions of the Common Elements located within level 1 and level 2 of the Parking Structure, including, without limitation, the installation of additional lighting fixtures or equipment, additional striping, and parking pay stations to service the public parking operation; provided, however that any such Improvement that would materially interfere with access to any Limited Common Element parking stall shall require the consent of the affected Owner(s).

2. The Association, by and through the Managing Agent, shall have the exclusive right to manage all decisions pertaining to the placement of all signage within level 3 through level 5 of the Parking Structure. This includes, without limitation, the right, in its sole discretion, to install standard directional and instructional signage within any Residential Limited Common Element located within the Parking Structure as necessary.

3. Each Commercial Unit Owner shall have the exclusive right for the benefit of its Commercial Unit, without the approval or consent of the Association, Board, or any other Person, to install, maintain, repair, and replace (from time to time) signs and other displays on the exterior facade of the Owner's Commercial Unit or the Limited Common Elements appurtenant solely thereto and directional signage affixed to the exterior façade of the Parking Structure (individually, a "**Facade Sign**" and collectively, the "**Facade Signs**"), in sizes and locations as permitted by and subject to any zoning laws or other governmental requirements. The Facade Signs shall be consistent with the Project Quality Standard. 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 the Commercial Unit pursuant to the terms of a lease or other occupancy agreement. Any Commercial Unit Owner who exercises its right to install a 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, or replacement. 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.

L. **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 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 recordation thereof at the Bureau. 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 record 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 record 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 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, shall be charged to, the Unit Classes and Owners in a fair and equitable manner. 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. No expense shall be apportioned and charged to the Owners in proportion to the Common Interest appurtenant to their respective Units if such expense is fairly and equitably chargeable to a particular Unit Class. If any Common Expense is incurred where the respective direct allocation of such expense to a Unit Class is fair and equitable, the Board shall fairly and equitably allocate such respective Common Expense among the appropriate Unit Class.

Notwithstanding anything in this Declaration to the contrary, the Commercial Unit Owners shall be responsible for only the following Common Expenses:

1. A pro rata share based on Common Interest of Common Expenses related to the Land;

2. A pro rata share based on Common Interest of Common Expenses related to the sidewalks and exterior common walkways on the first (1st) floor of the Project, including any landscaping surrounding the Tower, as depicted on the Condominium Map;

3. A pro rata share based on Common Interest of any other Common Expense related to any Common Elements (exclusive of Limited Common Elements) or service directly used by the Commercial Unit Owners and/or their lessees and invitees (e.g. certain building structures, common pipes, utility services etc.).

4. The Commercial Unit Class Expenses;

5. The Limited Common Element Expenses attributable to the Commercial Limited Common Elements and the Commercial Unit Limited Common Elements; and

6. The portion of the Parking Assessment allocated to the Commercial Unit Owners as further discussed below..

The provisions of this Section pertaining to Common Expenses to be charged to the Commercial Units may not be amended without the consent of the affected Commercial Unit Owners.

B. **PARKING ASSESSMENT**.

1. **DETERMINATION OF PARKING ASSESSMENT**. The Parking Assessment consists of the total amount of all costs for maintenance, operation, and repair of the Shared Parking Facilities that would be required if the Parking Structure were operated in its entirety as a parking facility for a residential for-sale condominium project in Kaka'ako, Honolulu, Hawaii. The Parking Manager, or its designee, shall prepare and present to the Board, at least sixty (60) calendar days prior to the end of the calendar year, a budget detailing the estimated Parking Assessment for the ensuing calendar year. Upon receipt, the Board shall have fifteen (15) calendar days to review and approve the proposed Parking Assessment, which approval shall not be unreasonably withheld. If the Board has any objections to the proposed Parking Assessment, the Board shall notify the Parking Manager in writing, which writing shall specify the objections. Within a reasonable period after receipt of such written notice, which period shall not exceed thirty (30) calendar days, one or more representatives of the Board (which must include the Commercial Director) and a representative of the Parking Manager shall meet at a mutually acceptable place within or near the Project to discuss the objections of the Board, and shall negotiate in good faith to resolve such objections. In the event the Board and the Parking Manager are unable to resolve the objections, the parties agree to submit the matter to alternative dispute resolution as provided in **Article XLV** of this Declaration; provided, however, that until such dispute is resolved, the amount of the Parking Assessment for the prior year shall continue in effect, subject to an annual increase in an amount determined by the Parking Manager that does not exceed twenty percent (20%) per year. Each Owner acknowledges that the Parking Manager is and will enter into contracts with vendors and other contractors to maintain, operate, and repair of the Shared Parking Areas. Accordingly, notwithstanding any dispute regarding the proposed Parking Assessment, the Association shall pay to the Parking Manager the Parking Assessment for the previous calendar year (as increased by undisputed items and any increase in the cost of insurance, utilities, taxes, emergency expenditures, and expenditures necessary to meet life safety requirements) pending the resolution of any dispute, and the Parking Manager may disburse such amounts so collected to any third-party vendor or contractor without liability to the Association for amounts paid. Additionally, the Parking Manager shall be granted broad discretion in determining the level of maintenance necessary to maintain the Shared Parking Areas, and its determination shall not be disputed unless there is an abuse of such discretion.

2. **ALLOCATION.** All Owners of a Unit to which a Unit Limited Common Element parking stall is appurtenant, the Residential Unit Owners for the Residential Limited Common Element parking stalls, and the Commercial Unit Owners for the Commercial Limited Common Element Parking Stalls shall be assessed a portion of the Parking Assessment. Each Owner shall pay a proportionate share of such Parking Assessment costs, which shall be comprised of the following:

a. **Unit Limited Common Element Parking Stalls**. Each Owner with a Unit with one or more Unit Limited Common Element parking stalls shall pay a proportion of the total Parking Assessment based on the number of Unit Limited Common Element parking stalls divided by the total number of parking stalls in the Parking Structure.

b. **Residential Limited Common Element Parking Stalls**. In addition to amounts paid for Unit Limited Common Element parking stalls, the Residential Unit Class shall pay a proportion of the total Parking Assessment based on the total number of Residential Limited Common Element parking stalls divided by the total number of parking stalls in the Parking Structure. Such amount shall be divided among the Residential Unit Owners based on their respective Residential Unit Class Common Interest.

c. **Commercial Limited Common Element Parking Stalls**. In addition to amounts paid for Unit Limited Common Element parking stalls, the Commercial Unit Class shall pay a proportion of the total Parking Assessment based on the total number of Commercial Limited Common Element parking stalls divided by the total number of parking stalls in the Parking Structure. Such amount shall be divided among the Commercial Unit Owners based on their respective Commercial Unit Class Common Interest.

All Assessments set forth in this Section shall be considered Common Expenses and/or Class Common Expenses payable in accordance with the terms of this Declaration and for which the Association may lien a Unit for nonpayment. The payment of their respective share of the Parking Assessment by Owners shall be in addition to the payment by Owners of non-duplicative Assessments of Common Expenses by the Association to the Managing Agent under the Condominium Documents.

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

D. **UNIT CLASS EXPENSES**. Profits and expenses attributable to the Commercial Unit Class and Residential Unit Class shall be allocated to the appropriate Unit Class based on the Unit Class Common Interest set forth in **Exhibit "B."**

1. The following specific expenses shall also be Residential Unit Class Expenses: (a) costs to support, maintain, and operate the Residential Limited Common Elements, including, without limitation, any parking stalls designated as Residential Limited Common Elements; (b) that portion of the Parking Assessment attributable to the Residential Limited Common Element parking stalls; (c) all costs of maintenance, repair, replacement, including reserves, of any equipment or apparatus servicing only the Residential Limited Common Elements; and (d) the cost of personnel exclusively servicing the Residential Units and their Limited Common Elements.

2. The following specific expenses shall also be Commercial Unit Class Expenses: (a) costs to support, maintain, and operate the Commercial Limited Common Elements, including, without limitation, the areas on level 2 of the Parking Structure designated as Commercial Limited Common Elements on the Condominium Map; (b) that portion of the Parking Assessment attributable to the Commercial Limited Common Element parking stalls; (c) all costs of maintenance, repair, and replacement, including reserves of any equipment or apparatus serving only the Commercial Limited Common Elements; and (d) the cost of any personnel utilized to serve only the Commercial Units, their appurtenant Limited Common Elements, if any, and the Commercial Limited Common Elements. Developer must consult with and obtain the approval of the Commercial Unit Owners before taking any action that may have a material impact on the use of Commercial Limited Common Elements and/or the Commercial Unit Class Expenses.

If any Unit Class Expense is incurred where the allocation of such expense to another Unit Class is fair and equitable, the Board shall fairly and equitably allocate such expense among the appropriate Unit Classes; provided, however, that any reallocation of Residential Unit Class Expenses to Commercial Unit Class Expenses shall be subject to the prior written approval of the Commercial Director.

E. **CERTAIN VENDOR COSTS; SEPARATE METERS**. If any services are provided to, or if any costs are incurred for, any Common Element where the respective direct allocation of such costs between Common Elements and/or Limited Common Elements appurtenant to a Unit Class 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 or amongst the Common Elements and/or Limited Common Elements appurtenant to a Unit Class. 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 or amongst 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.

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

The Association shall have the power to levy special assessments against any Owner as follows:

1. To cover the costs, including overhead and administrative costs, of providing benefits, items, or services to a Unit Limited Common Element parking stall, or the user thereof, upon request of the Owner who owns the Unit to which such Unit Limited Common Element parking stall is appurtenant pursuant to a menu of special services that the Board may from time to time authorize to be offered to Owners, which may include, without limitation, restriping, cleaning and removal of oil residue, etc., and which Assessments may be levied in advance of the provision of the requested benefit, item, or service as a deposit against charges to be incurred by the Owner; and

2. To cover the costs incurred by the Parking Manager to bring the Commercial Parking Stalls or Residential Unit Limited Common Element parking stall located on level 1 and level 2 of the Parking Structure into compliance with the terms of this Declaration, any applicable law, or the Parking Rules, or the costs incurred as a consequence of the misconduct of the Owner or user of a Commercial Parking Stall, their agents, contractors, employees, licensees, invitees, or guests. After delivering to the Owner written notice of the violation and no less than ten (10) business days to cure (except in the event of an emergency, in which case notice and an opportunity to cure shall not be required), the Association or the Parking Manager may, but shall not be obligated to, take such actions as are reasonably necessary to bring the subject Parking Stall Unit or Unit Limited Common Element parking stall into compliance with the terms of this Declaration, the law, or the Parking Rules. At the request of the Parking Manager, or upon the Association's election, the Association shall levy a special assessment for such costs against the Owner of the Commercial Unit or Residential Unit to which the subject parking stall is appurtenant and shall remit such amount to the Parking Manager or as otherwise directed by the Commercial Director.

G. **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.

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

I. **ASSESSMENT LIEN.** All unpaid Assessments shall constitute a lien against the Unit to which such Assessment is attributed. The lien may be foreclosed by action or nonjudicial power of sale foreclosure by the Managing Agent or Board, acting on behalf of the Association and in the name of the Association, in accordance with the Act and Chapter 667 of the Hawaii Revised Statutes (**"Chapter 667"**). 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 plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the same. The Managing Agent or Board, acting on behalf of and in the name 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 not less than thirty (30) calendar days prior written notice of its intention to foreclose, unless a different notice period is otherwise provided for by Chapter 667. Such notice shall be mailed, postage prepaid, to the last known address of all Persons having an interest in such Unit as shown in a title report pertaining to the Unit, which title report shall be dated not more than sixty (60) calendar days prior to the date of any such notice, including, but not limited to, any holder or insurer of a Mortgage of any interest in such Unit.

J. **INTEREST IN COMMON EXPENSE FUNDS NOT SEPARATELY ASSIGNABLE.** The proportionate interest of each Owner in any capital contributions, custodial fund, or maintenance reserve fund cannot be withdrawn or separately assigned but shall be deemed to be 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. **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 **Sections XII.B.3** and **XII.F** below and provided, however, 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 INSURANCE.** The Association shall buy the insurance.

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

3. **ADDITIONAL INSURANCE.** The Board has the right and power to increase coverage or to obtain better terms than those stated in this Article 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 XII.A.8** by first-class mail and as soon as reasonably possible.

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

1. **WHO IS INSURED.** The Policy must name the Association, as trustee for all Owners, 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 cost shall be evaluated and updated, at a minimum, annually and at the time of each renewal. The Policy shall not cover any Improvements and betterments or personal property in a 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 Residential Unit Owner is solely responsible, at such Owner's sole expense, for obtaining and maintaining a personal home insurance policy of Type HO-6 or an equivalent policy that provides customary coverage for liability and for such Owner's personal property, Improvements and betterments, and other portions of the Residential Unit that are not covered under the Policy.

b. Each Commercial Unit Owner 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 in this **Section XII.B.3**, each Commercial Unit Owner may purchase, for the benefit of the Owner's Unit, supplemental all-risk of physical loss insurance coverage insuring the Owner's 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 applicable Commercial Unit Owner. Notwithstanding such coverage, the Policy shall remain the primary insurance for those matters required to be insured against pursuant to **Section XIIB.2** above. The liability of carriers issuing the Policy shall not be affected or diminished by reason of any such supplemental insurance obtained by the Commercial Unit Owners.

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

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

4. **FORM OF POLICY.** The Policy must 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 **Sections XIII.A** and **XIII.E** of this Declaration. The Policy must also require that the insurance company recognize the insurance trust agreement referred to in **Section XIII.I** 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 AE and flood insurance may be required for the Project. Developer intends to raise the elevation of the Project and apply for a letter of map revision from the Federal Emergency Management Agency to exempt it from the requirement for flood insurance. Notwithstanding such application, Developer cannot guaranty that it will receive the letter of map revision. A flood insurance policy purchased by the Association, if any, shall comply with the requirements of the National Flood Insurance Program and the Federal Insurance and Mitigation Administration.

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 Owners. During such time that Developer is an Owner, the liability policy must name as additional insureds Developer, and such additional insureds as Developer shall direct from time to time and the Representatives of all of the foregoing. To the extent commercially reasonably available, the certificate shall also provide that not less than thirty (30) calendar days' notice of cancellation or decrease in coverage shall be given to the Commercial Unit Owners. 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 AND NO/100 DOLLARS ($5,000,000.00) in the aggregate (which limits must be dedicated to the Project and can be provided by any combination of primary and umbrella coverage), and FIVE MILLION AND NO/100 DOLLARS ($5,000,000.00) per occurrence; provided that the limits may be evaluated annually by the Board based 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, independent contractors, blanket contractual liability for insured contracts and also bodily injury (including death) and property damage that results from the operation, maintenance, or use of the Common Elements and, if applicable, commercial vehicle liability (owned, hired, and non-owned vehicles). The Board must also provide workers' compensation with statutory limits and employer's liability insurance with limits of not less than ONE MILLION AND NO/100 DOLLARS ($1,000,000.00).

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

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

b. The Liability Policy must not relieve the insurance company from liability because of any unintentional act or neglect of the Association, the Managing Agent, the Parking Manager, 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, the Parking Manager, 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, the Parking Manager, and, during the Development Period, Developer and, and any other Interested Person who has, in either case, requested a copy of any such notice.

4. **OPTING-OUT**. Notwithstanding anything herein contained, the Commercial Unit Owners (acting unanimously) may elect at any time and from time to time by notice to the Association to obtain on their behalf (and not on a shared basis with the Association) commercial general liability insurance and the commercial umbrella insurance set forth above, in which event: (a) the Commercial Unit Owners shall pay for such insurance and the costs and benefits thereof shall not be shared with the Residential Unit Owners; (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. **PARKING STRUCTURE INSURANCE OBLIGATIONS.**

1. **ASSOCIATION INSURANCE OBLIGATIONS.** The Board shall cause the Liability Policy to include, or separately procure and maintain in effect, commercial general liability insurance coverage for level 3 through level 5 of the Parking Structure in an amount no less than ONE MILLION DOLLARS ($1,000,000) per occurrence and TWO MILLION DOLLARS ($2,000,000) in the aggregate, which coverage shall be primary and non-contributory to any insurance provided by the Commercial Director or Parking Manager and name the Parking Manager as an additional insured. Premiums for such insurance for level 3 through level 5 of the Parking Structure shall be deemed a cost included in the Residential Class Common Expenses.

2. **PARKING MANAGER INSURANCE OBLIGATIONS**. The Commercial Director shall procure, or cause the Parking Manager to procure, commercial general liability insurance coverage for level 1 and level 2 of the Parking Structure on a primary, non-contributory basis to any insurance provided by the Association, naming Developer and the Association as an additional insured, in the amount of ONE MILLION DOLLARS ($1,000,000) per occurrence and TWO MILLION DOLLARS ($2,000,000) in the aggregate. The Commercial Director shall procure or cause the Parking Manager to procure Garage Keepers Legal Liability insurance coverage, if applicable, in the amount of THREE MILLION DOLLARS ($3,000,000) per occurrence, which coverage shall be primary and non-contributory to any insurance provided by the Association and name Developer and the Association as additional insureds. Should the Parking Manager engage in activities that would require specific Garage Liability insurance coverage, then coverage in the amount of ONE MILLION DOLLARS ($1,000,000) per occurrence shall be required, with coverage to be provided on a primary, non-contributory basis to any insurance provided by the Association, and shall name Developer and the Association as additional insureds. The premiums for the commercial general liability insurance required under this Section shall be included in the Parking Assessment.

The Parking Manager shall provide evidence of statutory Worker's Compensation insurance coverage and provide a waiver of subrogation in favor of the Association.

It is intended that the Parking Structure be operated as an unattended parking garage. The Parking Manager and Managing Agent shall have no liability for any personal injury, death, or loss of or damage to property that may be sustained by any Owner, tenant, invitee, or licensee in or about the Parking Structure, except to the extent caused by the Parking Manager's and/or Managing Agent's gross negligence or intentional misconduct, and such person's or entity's liability for negligence shall not exceed the limits of the applicable commercial liability insurance required to be maintain under this Declaration. Each Owner, for himself/herself/itself, and for such Owner's tenants, invitees, and licensees, forever releases, holds harmless, indemnifies, and discharges the Parking Manager and Managing Agent from any and all liability of whatsoever nature for any and all personal injuries, death, and loss of or damage to property that may be sustained in or about the Parking Structure in excess of the applicable commercial liability insurance required to be maintained under this Declaration, except to the extent caused by the Parking Manager's and/or Managing Agent's gross negligence or intentional misconduct.

F. **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 and each person who is or was a Representative of Managing Agent 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 align with but shall not exceed the insurance requirements of Project Lender, if any. If it can be obtained at a reasonable cost, the D&O Policy must provide coverage to the extent permitted by law for any proceeding whether it is civil or criminal, administrative, or investigative. The D&O Policy must cover any expense actually and reasonably incurred. This includes, but is not limited to, attorneys' fees, court costs, and payment of any judgments, fines, and settlements. The Board may decide to buy insurance to cover circumstances where direct reimbursement is not required by law.

G. **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, to the extent obtainable at commercially reasonable costs in the market, shall have limits of not less than THREE MILLION DOLLARS ($3,000,000.00) per occurrence including any combination of primary and umbrella policy limits. The Association, the Board, and each of their Representatives shall be named as an additional insured on all such policies, and the Commercial Unit Owner shall, promptly upon request, provide the Board with a certificate evidencing the required coverage. The Association shall be entitled to receive at least thirty (30) calendar days prior notice before the termination or material change of any such policy. To the fullest extent permitted by law, any policy obtained pursuant to this Section 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, the Parking Manager, 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.

H. **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.

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

J. **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; provided that the Board shall give a Commercial Unit Owner thirty (30) calendar days to purchase such insurance for the Unit prior to exercising its rights under this section. 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.

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

L. **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, 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 the Declaration and the original plans and specifications, or if reconstruction in accordance with said plans and specifications is not permissible under the laws then in force, in accordance with such modified plans and specifications as shall be approved by the Board and any Lender holding a Mortgage in a Unit directly affected thereby, and in compliance with this Declaration. 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 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 shall be subject to the design review process under the Master Charter and must also 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.E**.

B. **DAMAGE TO COMMON ELEMENTS**. The Board shall hire one (1) or more contractors to repair or rebuild all damaged Common Elements. The Common Elements shall be rebuilt according to their design just before the damage. If the Board cannot repair such damaged areas according to their design just before the damage occurred (for example, if changes in the law prevent it), then the Association will rebuild or repair the Common Elements according to a new design. The new design must comply with all laws then in effect. Any modified plans and specifications shall be subject to the design review process under the Master Charter and 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.

C. **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; provided that any decision not to rebuild or repair a Commercial Unit or its Limited Common Elements shall be subject to the approval of the Commercial Director. In either case, the Association or the Insurance Trustee will use the insurance proceeds as follows:

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

2. The part of the insurance proceeds allocable to that Unit and/or its Limited Common Elements will be paid to the Owner of the Unit and to any Lender having a Mortgage on that Unit, as their interests may appear.

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

E. **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 recorded with respect to the Property any mechanics' or other lien or instrument for the retention of title with respect to any part of the work not discharged of record or that will not be discharged of record by payment with a recordable release of lien exchanged for such payment.

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

6. The fees and expenses of the Insurance Trustee, as agreed by the Board and the Insurance Trustee, 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.

F. **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.

G. **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.D**) 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, Parking Manager, Managing Agent, or any other Owner, or any Person under any of them, or any of their Representatives.

H. **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 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.

I. **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 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 Interests and their respective Lenders and the Commercial Director. 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 such removal shall be a Common Expense.

B. **ADJUSTMENT OF COMMON INTEREST**. If a Residential Unit is not rebuilt, the Common Interest 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 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.

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

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 recordation thereof at the Bureau.

1. **"CHANGES MATERIAL IN NATURE."** Except as otherwise provided herein or in the Act, and specifically excepting any amendments made pursuant to any of Developer's Reserved Rights (but nevertheless subject to the limitations set forth in **Section XV.C**), 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 his or her Unit;

l. a decision by the Association to establish self-management if professional management had been required previously by the Condominium Documents or by an Eligible Mortgage Holder;

m. restoration or repair of the Project (after damage or partial condemnation) in a manner other than specified in the 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 the Declaration, then the Owner or Owners of the Unit(s) must amend this Declaration and/or the Condominium Map to reflect the change. The amendment will take effect when it is recorded at the Bureau, subject to the following:

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

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

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

4. **NO IMPAIRMENT OR DIMINISHMENT OF DEVELOPER'S RIGHTS OR INCREASE OF OBLIGATIONS**. Notwithstanding any provision of this Declaration to the contrary, notwithstanding the sale of any of the Units, and in addition to such other approval requirements as are set forth in this Section, the prior written approval of Developer will be required before any amendment that would impair or diminish the rights of, or increase the obligations of, Developer. Without limiting the generality of the foregoing, the following actions impairing or diminishing the rights of Developer, shall first be approved in writing by Developer, as applicable:

a. **Lender Approval**. Any amendment or action requiring the approval of 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 The Declaration**. Alteration in the method of enforcing the provisions of this Declaration.

e. **Reserved Rights Of And Easements Granted To Developer**. Any modification of the rights reserved and granted to Developer set forth herein or any easements set forth herein, granted or received by Developer. No amendments hereto shall negate or adversely impact any of the rights reserved or granted to Developer or any easements set forth herein, granted or received by Developer without the prior written approval of Developer.

B. **BY DEVELOPER.**

1. **PRIOR TO PROJECT COMMENCEMENT**. This Declaration may be amended by Developer at any time prior to the closing of the sale of the first Residential Unit in the Project; provided, however, any amendment that materially and adversely affects a Commercial Unit, its appurtenant Limited Common Elements, or the Commercial Limited Common Elements, shall be subject to the consent of the Commercial Director.

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, except when such Reserved Rights may limit or interfere with the operation or permitted uses of the Commercial Units or their appurtenant Limited Common Elements, including, without limitation, the Exterior Commercial Limited Common Elements, which exercise shall require the approval of the affected Commercial Unit Owner.

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

4. **COMPLIANCE WITH LAWS, LENDER REQUIREMENTS, CORRECTION OF ERRORS AND TO MEET REGISTRATION REQUIREMENTS**. Notwithstanding any provision of this Declaration to the contrary and notwithstanding the sale of any of the Units, Developer, without the approval or joinder of any Owner, lienholder, or other Person, may amend this Declaration in order: (a) to bring the Project and the Condominium Documents into compliance with the laws and rules of any jurisdiction in which Developer intends to market or sell Units; (b) to comply with any requirements that may reasonably be imposed by any takeout, permanent, or secondary market Lender, or any other entity necessary to obtain any construction loan 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 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 record such documents and instruments and do such other things as may be necessary or convenient to effect the same and appoints Developer and its assigns as his or her attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties.

5. **AMENDMENTS AFFECTING FIRST MORTGAGES**. Notwithstanding any provision of this Declaration to the contrary, any amendment affecting any provision of this Declaration which is for the express benefit of 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; provided, however, that Project Lender, if any, and any Mortgage holder shall be deemed to have approved any proposed amendment to this Declaration where said 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 of the Limited Common Elements appurtenant to Units or Units, or in any way limiting the use thereof, shall be effective without the approval of the Owner or Owners of the Unit or Units to which said Limited Common Elements are appurtenant. Until the end of the Developer Control Period, no amendment to the Condominium Documents affecting any of the Residential Limited Common Elements shall be effective without the approval of Developer. This restriction, during the Development Period, may not be amended without the approval of Developer.

2. Any amendment to the Condominium Documents to prohibit or materially affect the use, including, without limitation, restaurant, bar, and alcohol use, operation, including, without limitation, the hours of operation of a Commercial Unit or its Limited Common Elements, occupancy of or behavior within a Commercial Unit, Commercial Limited Common Element, or Commercial Unit Limited Common Element, access to or from the Commercial Unit, Commercial Limited Common Elements, Commercial Unit Limited Common Elements, Commercial Unit Class Expenses, or the hours during which the Commercial Unit Owners and their Occupants may access the Parking Structure, shall not be effective without the prior written approval of the Commercial Director and the affected Commercial Unit Owners.

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 approval 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 and a Majority of the Commercial Unit Class.

5. Any amendment to the Condominium Documents that would limit or interfere with the use of those of the Commercial Limited Common Elements which, pursuant to this Declaration, are available or contemplated for use by the general public shall require the written approval of the Commercial Director and the consent of any affected Commercial Unit Owners.

This **Section XV.C** may not be amended without the prior written approval of Developer, and, with regard to **Sections XV.C.2, 4**, and **5**, without the prior written approval of the Commercial Director and/or the affected Commercial Unit Owners.

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 recording at the Bureau.

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. COMPLIANCE BY OWNERS.

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

XVIII. 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.

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, 2044, Developer hereby reserves the right to negotiate, designate, grant, convey, transfer, cancel, relocate, and otherwise deal with any and all easements and rights of way 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, bus stops, stairs, ramps, paths, trails, bikeways, or other passageways), any public-type facility (e.g. for mail delivery), fire lane access, sanitary and storm sewers, retention ponds, cable television, refuse disposal, driveways, and parking areas. Developer further reserves the right, to and until December 31, 2044, 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 be located on or within any existing structure of the Project and shall not be exercised so as to unreasonably disturb, impair, or interfere with the normal use and enjoyment of the Project by the Owners; and provided that Developer shall have the right to negotiate and agree to such terms with respect to such easements, licenses, rights of entry, and rights of way, as Developer deems appropriate in its sole discretion. Any easements, 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 REGARDING LICENSES AND PERMITS.

Notwithstanding anything provided to the contrary, and except as otherwise provided by law, to and until December 31, 2044, Developer hereby reserves the right to: (1) amend any of the Project Documents, including, without limitation, this Declaration; (2) enter into any agreements, including, without limitation, to declare the Land and/or Improvements subject to restrictive covenants; (3) secure any governmental permits; and (4) do all things necessary and convenient to satisfy, alter, or amend the requirements of any land use or other permits affecting the Project, including, but not limited to, building permits, conditional use permits, and special district permits issued by the County; provided that the exercise of such rights do not adversely affect the use of any Unit in the Project without the consent of the Owner of such Unit. Developer shall further have the reserved right to execute, file, and deliver any and all documents necessary to effect the same, including, but not limited to, any amendments to this Declaration and the Condominium Map.

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

Notwithstanding anything provided to the contrary, and except as otherwise provided by law, to and until December 31, 2044:

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 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 or 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 record or cause to be recorded an amendment to this Declaration describing the Unit(s) in question and setting forth at least: (a) a description of the newly-formed Unit(s); (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 record or cause to be recorded an amendment to the Condominium Map for the Unit(s) being altered and/or expanded, subdivided or consolidated to show an amended floor plan, as necessary, together with a verified statement of registered architect or professional engineer, in the manner required by Section 514B-34 of the Act, that said Condominium Map, as so amended, is an accurate copy of portions of the plans of the altered and/or expanded Unit(s) as recorded with and approved by the County officer having jurisdiction over the issuance of permits for the completion of buildings, and that the plans fully and accurately depict the layout, location, Unit numbers, and dimensions of the Units substantially as built; and

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

Developer expressly reserves the right to amend the Declaration and Condominium Map to effect any subdivision or consolidation of Units or alterations to floor plans at any time to and until December 31, 2044, 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 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.

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

Notwithstanding anything herein provided to the contrary, to and until December 31, 2044, Developer hereby reserves the right to install or cause the installation of Community Systems on the Common Elements, including the Tower rooftop, 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, be deemed a structural alteration or addition to the Tower 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 directly attributable to the Community Systems shall be distributed directly to the Unit to which the Community Systems are appurtenant.

XXIII. 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, 2044, Developer hereby reserves the right not to construct, and/or not to construct at the same time, all of the Recreational Amenities in the Project, as depicted on the Condominium Map, and to modify, relocate, reconfigure, and remove all or certain of the Recreational Amenities. Nothing in this Declaration shall be construed as a representation or warranty by Developer that the Recreational Amenities or any portion thereof, will be developed or built or that the Recreational Amenities and/or the types of Recreational Amenities offered will not change and/or that the other portions of the 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.

XXIV. RESERVED RIGHT TO INSTALL DEVELOPER'S SIGNAGE.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2044, Developer hereby reserves the right, for the benefit of the Project, to install, maintain, repair, replace, and approve of (from time to time) directional signage within the street level of the Project, identity signage, and canopy signage, and other signage within the Residential Limited Common Elements; subject to any zoning laws or other governmental requirements. With respect to all aspects of the signage, including, without limitation, the method of affixing the signage and extension of electrical service thereto, if applicable, such signage shall comply with the Project Quality Standard. Until such time that Developer shall provide notice that all Owners shall be obligated for the payment of Common Expenses as set forth in the Bylaws, Developer shall be responsible for lighting, installation, maintenance, and replacement of such residential signage as well as costs to repair any damage to the Project proximately caused by such installation, maintenance, and replacement of any residential signage and, after such notice, the Board shall be responsible for administering such obligations and assessing the costs thereof as a Residential Unit Class Expense.

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

Notwithstanding anything herein provided to the contrary, to and until December 31, 2044, Developer hereby reserves the right to effect such modifications to Units and Common Elements in the Project and/or to execute, record, and deliver any amendments to the Condominium Documents promulgated hereunder, as may be necessary or appropriate to effect compliance by the Project, the Association, or Developer, with laws which apply to the Project, including, but not limited to, the Permit, FHA, and ADA, and any rules and regulations promulgated thereunder, or as may be required by the Commission, any title insurance company issuing title insurance on the Project or any of the Units, any institutional Lender lending funds secured by the Project or any of the Units, or by any governmental agency, including, without limitation, modifications to the Exterior Commercial Limited Common Elements where such revision is required by a governmental entity in connection with any easement, permit, or other approval of such governmental entity. The Commercial Unit Owners agree to join in any such amendment of the Condominium Documents necessary for Developer to exercise its reserved right to modify the Exterior Commercial Limited Common Elements as described above; provided that if such modification would reduce the size or modify the physical configuration of an Exterior Commercial Limited Common Element or otherwise have a material impact on the use of an Exterior Commercial Limited Common Element, the Commercial Unit Owners' prior written approval is required, which approval shall not be unreasonably conditioned, withheld, or delayed.

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, 2044:

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 record or cause to be recorded an amendment to this Declaration describing the Unit(s) in question and setting forth at least: (a) a description of the newly-formed Unit(s), and (b) the Common Interest appurtenant to the newly-formed Units and existing Units, which shall be calculated and/or recalculated by dividing the approximate net 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 record or cause to be recorded an amendment to the Condominium Map to show the floor plans and elevations for the newly-created Unit, as necessary, together with a verified statement of registered architect or professional engineer, in the manner required by Section 514B-34 of the Act, that said Condominium Map, as so amended, contains an accurate copy of portions of the plans of the newly-created Unit(s) as recorded with and approved by the County officer having jurisdiction over the issuance of permits for the construction of buildings, and that the plans fully and accurately depict the layout, location, Unit number(s), and dimensions of the Unit(s) substantially as built; and

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

The right to amend the Declaration and Condominium Map to effect the conversion of any Limited Common Element into a Unit and the alterations to floor plans may occur at any time to and until December 31, 2044, and Developer may, without being required to obtain the consent or joinder of any Owner, lien holder, or other persons, execute, deliver, and record amendments to the Declaration and Condominium Map and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers, or privileges. To the extent permitted by applicable law, this 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, 2044, Developer hereby reserves the right to amend this Declaration to: (a) recharacterize all or a portion of certain Limited Common Elements solely appurtenant to a Unit or Units owned by Developer or Residential Limited Common Elements, if all Residential 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 Limited Common Elements solely appurtenant to any Unit owned by Developer to another Unit or Units, or as Residential Limited Common Elements or Commercial Limited Common Elements, as applicable; provided that any Limited Common Element redesignation to Commercial Limited Common Element or Commercial Unit Limited Common Element shall be subject to the approval of the Commercial Unit Owner whose Unit to which the Commercial Unit Limited Common Element is being redesignated, or the Commercial Unit Owners if a Commercial Limited Common Element is being redesignated; (c) redesignate a portion of the Residential Limited Common Elements, if all Residential Units 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 recharacterization of any Limited Common Element to Common Element of the Project, the Association shall be required to maintain such areas at its expense for the benefit of all Owners, and the cost of maintaining such areas shall be assessed to all Owners as a Common Expense.

The right to amend the Declaration to effect such recharacterization or redesignation of any such Limited Common Elements shall occur at any time or times to and until December 31, 2044, 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 record any deed and/or amendments to this Declaration or to the Condominium Map, and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers, or privileges.

XXVIII. RESERVED RIGHT TO CONVEY PROPERTY TO THE ASSOCIATION.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2044, 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, 2044, 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 on the Recreational Deck and use of the Recreational Amenities for such activities, 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 easement shall include the right of Developer to temporarily reasonably restrict access to such Common Elements and Limited Common Elements but excluding any Commercial Limited Common Elements and Commercial Unit 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, 2044, 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 recorded, notwithstanding the foregoing. Each and every party acquiring an interest in the Project, by such acquisition, acknowledges that the sales activities may result in noise and nuisances, and consents to such activity by Developer, and further waives, releases, and discharges any rights, claims, or actions such party may acquire against Developer, its brokers, sales agents, employees, and Lenders, and their respective successors and assigns, as a result of any such activity or activities.

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

Notwithstanding anything herein provided to the contrary, to and until December 31, 2044, 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) 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) 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 the Recreational Amenities 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 record at the Bureau, 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 and any Improvements thereon; (ii) describing the realigned boundaries of the Land upon which the Units then constituting the Project are located; and (iii) where applicable and appropriate, granting, reserving, or relocating easements over, under, and on the Common Elements, as permitted above. The recording 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 recording 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 ALTER THE NUMBER OF FLOORS AND/OR UNITS IN THE PROJECT.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2044, 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; provided, however, that any change to the Commercial Units, Commercial Limited Common Elements, or Commercial Unit Limited Common Elements shall require the prior approval of the Commercial Director. Any such alteration to the number of floors and/or Units in the Project shall be effective provided that:

A. Developer shall record or cause to be recorded an amendment to this Declaration describing: (a) the revised description of Units and/or floors that comprise the Project; and (b) the undivided 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 record or cause to be recorded an amendment to the Condominium Map to reflect the revised layout incorporating the change in the number of Units and/or floors, together with a verified statement of registered architect or professional engineer, in the manner required by Section 514B-34 of the Act, certifying that said Condominium Map, as so amended, is an accurate copy of portions of the plans of the altered Unit(s) as filed with the County officer having jurisdiction over the issuance of permits for the 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 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, 2044, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder, or other Persons, except as aforesaid, execute, and record 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.

XXXII. RESERVED RIGHT TO ENTER INTO AGREEMENTS WITH BICYCLE-SHARING ENTITY.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2044, Developer hereby reserves the right, unto itself, its agents, employees, personnel, licensees, successors, and assigns, to select and contract with a County bicycle sharing partner or entity for a bike share station to be located on a publicly-accessible portion of the Project in accordance with the Permit. Such right shall include a perpetual right and easement over the Project to install and operate, or provide for the installation and operation of, said bike share station and to grant easements for such purposes, upon such terms and conditions as Developer may determine in its discretion.

XXXIII. RESERVED RIGHT TO ADDRESS ARCHAEOLOGICAL ISSUES.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2044, 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.

XXXIV. RESERVED RIGHT TO INSTALL UTILITIES WITHIN THE COMMERCIAL LIMITED COMMON ELEMENTS.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2044, Developer hereby reserves the right to install or cause the installation of underground utilities within the Common Elements, including, without limitation, grease traps or ventilation (for purposes of this Article, the **"Underground Utilities"**), at its sole cost and expense. Subject to the prior approval of the Commercial Director, upon such installation, the same shall become Commercial Limited Common Elements. So long as the installation of the Underground Utilities does not interfere with or impair the Project Quality Standard, the installation of Underground Utilities 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 be deemed a structural alteration or addition to the Tower constituting a material change or necessitating an amendment to the Condominium Map.

XXXV. RESERVED RIGHTS REGARDING STATE, COUNTY, AND HCDA REQUIREMENTS, PERMITS, AND DEVELOPMENT AGREEMENTS AND TO SUBDIVIDE, WITHDRAW, AND DEDICATE A PORTION OF THE LAND FOR ROAD WIDENING.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2044, 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 or HCDA Agreements, 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) maintain a road widening setback along the northern side of Ala Moana Boulevard; (vi) subdivide and withdraw from the Project a portion of the Land and dedicate it to the State to fulfill County and State road widening requirements; (vii) revise the budget and/or Common Expenses and implement fees for the landscaping, maintenance, and upkeep of the dedicated portion until the State performs any actual road widening to include the dedicated portion and affirmatively accepts responsibility for maintaining the dedicated portion; and (viii) 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, or to comply with any agreements with, or covenants imposed by, HCDA, as the same may be amended or modified, and to execute, record, and deliver any and all documents necessary to effect the same, including, but not limited to, any necessary amendments to this Declaration and the Condominium Map.

XXXVI. RESERVED RIGHT TO ANNEX LAND INTO THE KAIĀULU ʻO KAKAʻAKO MASTER PLAN AND CHARTER AND SUBORDINATE CONDOMINIUM DECLARATION, BYLAWS, AND CONDOMINIUM MAP.

Developer reserves the right, during the Development Period, to effect the right of Landowner and its successors and assigns (which right is also hereby reserved), as the "Founder" under the Master Charter, to annex and submit the Land to the Master Charter. Upon the recordation of such annexation at the Bureau, this Declaration, the Bylaws, and the Condominium Map shall be subordinated to the Master Charter and the Master Bylaws.

Developer expressly reserves the right to amend this Declaration and the Condominium Map to effect the right of Landowner to annex the Land into the Master Charter and Master Bylaws during the Development Period, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder, or other Persons, execute and record amendments to this Declaration, the Bylaws, 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.

XXXVII. RESERVED RIGHT TO INSTALL RESIDENTIAL LANAI DISABILITY ACCESS RAMP.

Notwithstanding anything herein provided to the contrary, during the Developer Control Period, Developer shall have the right to install, at its sole cost and expense, a ramp to facilitate disability access between a Residential Unit and its appurtenant Limited Common Element lanai. Any such alteration shall not require an amendment to the Condominium Documents, including, without limitation, the Condominium Map.

XXXVIII. ASSIGNMENT OF RESERVED RIGHTS.

To and until December 31, 2044, 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 recorded at the Bureau. Every Owner of a Unit in the Project and all holders of liens affecting any of the Units and each and every other party acquiring an interest in the Project, or any part thereof, by acquiring such Unit, lien, or other interest, consents to any such assignment by Developer, and, to the extent designated by Developer, agrees to recognize any assignee as the "Developer" under this Declaration; agrees to execute, deliver, and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints Developer and its assigns his or her attorney-in-fact with full power of substitution to execute, deliver, and record such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest to, such party upon any transfer of any Unit or any interest therein, whether by deed, Mortgage, or any other instrument of conveyance.

XXXIX. CONSENT TO DEVELOPER'S RESERVED RIGHTS; APPOINTMENT OF DEVELOPER AND ASSOCIATION AS ATTORNEY-IN-FACT; LIMITATION ON THE EXERCISE OF DEVELOPER'S RESERVED RIGHTS.

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

B. Notwithstanding anything in this Declaration to the contrary, any exercise 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 **XXXVII**, above, that would limit or interfere in any way with (i) 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, or with (ii) use of those portions of the Common Elements which, pursuant to this Declaration, are available or contemplated for use by the general public shall require the written consent of the Commercial Director and any affected Commercial Unit Owners.

XL. INDEMNIFICATION OF LANDOWNER.

Developer and the Association agree to indemnify, defend, and hold Landowner and its trustees, officers, directors, partners, affiliates, subsidiaries, successors in trust, assigns, agents, and employees harmless from and against any and all claims, liabilities, and any damage, including reasonable attorneys' fees, any of which arise, directly or indirectly, as a result of, or directly or indirectly in connection with, this Declaration or any other document, including, but not limited to, any public report under the Act, created, executed, or delivered by Developer in connection with the Project. Developer and, by their acceptance thereof, Owners, acknowledge that Landowner has no obligation to review this Declaration or any other document prepared by Developer for adequacy or compliance with law, that Landowner does not, by the execution of the Fee Owner Joinder, attached hereto, endorse this Declaration or any such document, and any inadequacy or misrepresentation by Developer hereunder shall not be deemed gross negligence or willful misconduct of Landowner.

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

Landowner has joined in this Declaration for the sole purpose of permitting Developer to comply with the requirements relating to the submission of the Land to a condominium property regime pursuant to the Act. Landowner is not the developer of the Project and has no responsibility whatsoever for any aspect of the Project, including, without limitation, construction of any Improvements constituting any part of the Project. Landowner has not reviewed this Declaration for adequacy or compliance with law, and expressly disclaims any responsibility for this Declaration, the matters set forth herein, and/or any other documents or agreements relating to the Project, including, but not limited to, the Bylaws and any public report issued under the Act relating to the Project. Developer, the Association, all Owners, Lenders, vendors and vendees under Agreements of Sale, tenants and Occupants of Units, and their employees, business invitees, and any other person who may use any part of the Project do so with the understanding that Landowner has no liability hereunder, and each and every one of the foregoing shall be deemed to the fullest extent permitted by law to have waived as against Landowner, and to have released Landowner, as to any claim relating to the Project. No action taken by Developer or any other person pursuant to this Declaration shall be deemed to be the act of Landowner. Notwithstanding anything provided to the contrary, under no circumstances will Landowner have any liability for expenses under this Declaration except to the extent that Landowner is a Unit Owner. In the event that Landowner is found to be liable in any claim relating to this Declaration, any recovery shall be limited to the assets of Landowner and shall not extend to the trustees thereof. No trustee, officer, director, partner, affiliate, subsidiary, successor in trust, assign, agent, or employee of Landowner shall, by reason of being a trustee, officer, director, partner, affiliate, subsidiary, successor in trust, assign, agent, or employee of Landowner, have any personal liability under the terms of this Declaration.

Developer has not yet acquired the fee simple interest in the Land but intends to own the Land in fee prior to the sale of any Residential Units to the public. Landowner is the current fee owner of the Land. Landowner shall not be subject to the obligations and liabilities of Developer under any purchase agreement for the sale of a Unit in the Project. Developer reserves the right to purchase the fee simple interest in the Land and enter into agreements with Landowner with respect to the purchase of the Land and development of the Project. The purchase of the fee simple interest in the Land by Developer, the recordation of the deed conveying title to the Land of the Project and entering into agreements with Landowner shall not constitute a material change in the Project.

In the event that the agreement with Landowner for the purchase of the Land is terminated for whatever reason prior to the conveyance of the Land to Developer by way of a deed (**"Land Closing"**), then any purchase agreements for Units in the Project shall be terminated and Developer shall promptly refund any monies paid to Developer by purchasers, plus any interest earned thereon. Except for refunds to purchasers as provided above, Developer shall not disburse any deposits for the reservation or purchase of Residential Units in the Project prior to the Land Closing.

XLII. DISCLOSURES AND LIMITATIONS ON LIABILITIES.

A. NONLIABILITY AND INDEMNIFICATION.

1. **GENERAL LIMITATION**. Except as specifically provided in the Condominium Documents or as required by law, no right, power, or responsibility conferred on the Board by the Condominium Documents shall be construed as a duty, obligation, or disability charged upon Developer or any of its agents, employees, the Board, any Director or any other Officer, employee, agent, or committee member of the Association. The Association, its members, Directors, Officers, agents and committee members, and the Board are subject to the insulation from liability provided for directors of corporations by the laws of the State 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 BY ASSOCIATION**. When liability is sought to be imposed on a Director, Officer, committee member, employee, or agent of the Association or a Representative of the Managing Agent, 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 MANAGING AGENT, PARKING MANAGER, AND/OR CONDOMINIUM MANAGER**. Notwithstanding anything to the contrary contained herein, all Owners agree to defend, indemnify, and hold harmless the Managing Agent, Parking Manager, and/or Condominium 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, Parking Manager, and/or the Condominium Manager may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it might otherwise be.

Neither the Association, Managing Agent, Parking Manager, Condominium Manager nor Developer shall in any way be considered insurers or guarantors of security within the Project, and neither the Association, Managing Agent, Parking Manager, Condominium Manager, Developer, nor any successor Developer shall be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of security measures undertaken. All Owners and Occupants of any Unit, as applicable, acknowledge that the Association, the Board, the Managing Agent, the Parking Manager, the Condominium Manager, Developer, or any successor Developer, do not represent or warrant that any fire protection system or other security system designed or installed according to the guidelines established by Developer or the Association may not be compromised or circumvented, that any fire protection or burglar alarm systems or other security systems, 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, Parking Manager, Condominium Manager, Association, its Board and committees, Developer, and any other successor to Developer are not insurers, and each Owner and the Occupants of a Unit assume all risks for loss or damage to persons, Units and the contents of Units, and further acknowledges that the Managing Agent, Parking Manager, Condominium Manager, Association, its Board and committees, Developer, or any successor Developer have made no representations or warranties nor has any Owner or the Occupants of a Unit relied upon any representation or warranty, expressed or implied, including any warranty of merchantability as to the fitness of any alarm systems or other security systems recommended or installed, or any security measure undertaken within the Project.

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

D. **NONLIABILITY FOR MOLD DEVELOPMENT**. Mold and mold spores are present throughout the environment and residential condominium construction cannot practicably be designed to exclude the introduction of mold spores. All molds are not necessarily harmful, but certain strains of mold have been found to have adverse health effects on susceptible persons. Moisture is the primary mold growth factor that must be addressed. Affirmative steps taken by Owners and the Association to minimize or control moisture can minimize or eliminate mold growth in the Project. Owners and the Association should take steps to reduce or eliminate the occurrence of mold growth and thereby minimize any possible adverse health effects that may be caused by mold. Developer cannot ensure that mold and mold spores will not be present in the Project. The failure of an Owner or the Association to take steps to minimize mold growth may increase the risk of mold growth and the presence of mold spores in the Project. Developer shall not be liable for any actual, special, incidental, or consequential damages based on any legal theory whatsoever, including, but not limited to, strict liability, breach of express or implied warranty, negligence, or any other legal theory, with respect to the presence and/or existence of molds, mildew and/or microscopic spores at the Project, unless caused 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 AE; TSUNAMI EVACUATION ZONE**. The Project is located in Flood Zone AE and federal flood insurance may be required for the Project and/or the individual Units in the Project. Developer intends to raise the elevation of the Project and apply for a letter of map revision from the Federal Emergency

Management Agency to exempt the Project from the requirement for flood insurance. Notwithstanding such application, Developer cannot guaranty that it will receive the letter of map revision. Location in a flood zone exposes the Project to a greater risk of flood damage. The Project is located within the "Extreme Tsunami Evacuation Zone" according to the State of Hawaii's Emergency Management Agency. Owners should consult with appropriate insurance professionals regarding the effect of these designations.

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 ("**Sea Level Rise Effects**"). The Land is not currently identified as a "Sea Level Rise Exposure Area" as that term is defined by the Hawaii Climate Change Mitigation and Adaptation Commission. 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, each 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. **CONDOMINIUM LIVING; RESIDENTIAL-COMMERCIAL MIXED-USE RETAIL AREA.** Living in a multi-story, mixed-use, high-rise condominium building entails living in very close proximity to other persons, businesses, restaurants, and shopping areas, with attendant limitations on solitude and privacy. Walls, floors, and ceilings have been designed to meet applicable building codes. 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, including, without limitation, the pickle ball court. Finally, Owners can expect to hear substantial levels of sound, music, and other noise, and can expect to experience 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 streetlights located in close proximity to the windows and doors of the Units. Owners on lower floors of the Project, located closer to such 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.

2. **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. Each Owner and every other Person who has any interest in the Project or who has the right to use the Project or any part of it waives, releases, and discharges any rights, claims, or actions that such Person may have, now or in the future, against Developer, and its Representatives, licensees, successors, and assigns, and arising directly or indirectly out of or from such noise, dust, vibrations, and/or additional traffic, including, without limitation, construction and operation of the County's planned elevated rail transit project, if constructed, which may be constructed in close proximity to the Project. Traffic, noises, and uses which are typically encountered in a high-rise

condominium commercial-residential mixed-use setting, include, but are not limited to: (a) transient noise and guest or pedestrian traffic from the street, the Commercial Units, or the Limited Common Elements appurtenant to a Commercial Unit 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; (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 in the Project may be used for retail, restaurant, or other commercial business purposes, 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 a Commercial Unit and the surrounding areas). By accepting a Unit Deed or other conveyance of a Unit, each 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, hereby acknowledges and agrees that sound transmission in a high-rise building such as the Tower is very difficult to control. Developer does not make any representation or warranty as to the level of sound transmission at the Project, and each Owner hereby waives and expressly releases any claim for loss or damage resulting from such sound transmission.

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

4. **VIEWS. Each Owner acknowledges that there are no protected views in the Project, and the Units are not assured the existence or unobstructed continuation of any particular view. Any view from the Unit is not intended as part of the value of the Unit, and is not guaranteed, and Developer makes no representation or warranty regarding whether a Unit will continue to have the same view, or any view, 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: (a) construction or installation of buildings, improvements, structures, walls, and/or landscaping by Developer or owners of property adjacent to or near the Project; (b) the future elevated rail transit line; and/or (c) 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.

5. **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 nuisance to the Project or owners, and Unit Owners acknowledge the same.

6. **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.

7. **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.

8. **MARKETING MATERIALS**. Any marketing materials used by Developer in the promotion and/or sales of the Commercial Units, the Residential 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 décor, coloring, furnishing, fixtures, or amenities that will be included in the Project.

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

10. **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 Unit, the Project, or the 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 (a) 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 (b) 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.

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

12. **ARCHAEOLOGICAL AND BURIAL DISCLOSURES**. An archaeological inventory survey ("**AIS**") was conducted for the Project and accepted by SHPD on February 24, 2023. The AIS was followed by an Archaeological Preservation Plan and an Archaeological Monitoring Plan, which were accepted by SHPD on March 29, 2023. Five (5) historic properties were documented within the Project and consist of subsurface cultural deposits, features, infrastructure remnants, historic salt works, and/or dredged marine sediment used as fill associated with previous uses and development of the area. The approved mitigation measures for the Project include: (a) preservation in the form of interpretation, and (b) archaeological monitoring for the entire Project.

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 or Landowner 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 neither Developer nor Landowner shall 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.

13. **PEX PIPE**. Cross-linked polyethylene (PEX) piping, which involves flexible tubing and a fitting joining method, has been used in portions of the Project's plumbing and irrigation systems. PEX piping that meets applicable standards and is installed in accordance with the manufacturer's instructions is approved for use under the Hawaii State Plumbing Code, Revised Ordinances of Honolulu Chapter 19.

14. **ACKNOWLEDGEMENT AND ACCEPTANCE OF CERTAIN CONDITIONS**. By signing and accepting a deed to 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 and enjoyment of the Unit or the Project, or from any inconvenience, property damage, or personal injury arising directly or indirectly from the following:

a. **RECLAIMED WATER**. Developer reserves the right to utilize treated wastewater and collected rainwater for various purposes at the Project, including but not limited to toilets, irrigation of landscaping, and cooling towers. If such water is used, it shall be treated to the R-1 water category, which indicates a significant reduction in viral and bacterial pathogens through oxidation, filtration, and disinfection. R-1 water is not safe for drinking but is safe to handle for other non-drinking uses. Should reclaimed water be utilized at the Project, Owners may experience a chlorine odor emanating from such water.

b. **MECHANICAL EQUIPMENT ON ROOFTOP**. Developer reserves the right to install such cooling towers, compressors, and other equipment on the rooftop in its sole discretion to service Common Elements including, but not limited to, common hallways, the lobby, and the Recreational Deck. 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.

c. **ELEVATORS**. The design of the Tower provides for multiple passenger elevators to provide access to the floors and/or certain Units in the Project. The Units located in the immediate vicinity of the elevator lobby on each level of the Tower may be prone to greater noise and other nuisances associated with the normal operation of the elevators than Units located farther away from the elevator lobby. Also, during certain hours of the day, there may be delays in the elevator servicing each floor or certain Units 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.

d. **LOCATION OF UNITS NEAR THE RECREATIONAL DECK AND/OR NEAR THE PARKING STRUCTURE**. Certain of the Residential Units located near the sixth (6th) floor of the Tower are in close proximity to the Recreational Amenities on the Recreational Deck, including, without limitation, the pickle ball court. These Units may be exposed to greater noise and other nuisances than the Units located on other floors of the Tower. Certain Residential Units located in close proximity to the Parking Structure may be exposed to greater noise, traffic, and other nuisances than units on other floors of the Project.

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

f. **ENGINEERED WOOD FLOORING AND WOOD VENEER CABINETS IN UNITS**. The Units may have engineered wood flooring installed. Engineered wood flooring is prone to scratching, and has special maintenance, care, and upkeep requirements, as compared to carpeting, which will need to be complied with by Owners in order to maximize the enjoyment and useful life of the originally installed engineered wood flooring. Failure to comply with these special maintenance, care and upkeep requirements will result in additional costs to the Owner and detract from the Owner's enjoyment of his/her Unit. The potential sound transmission through an engineered wood floor, when compared to carpeting, is greater, and each Owner, by signing and accepting a Unit Deed, will thereby be deemed to acknowledge and accept that this condition may result in greater noise being heard from the Units above and adjacent to such 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. Kitchens may also have cabinets made from natural wood veneer, which is subject to color, texture, and surface variations and aging. The failure to comply with special maintenance, care, and upkeep requirements may result in additional costs to the Owner and detract from the Owner's enjoyment of the Unit.

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

a. The terms and provisions of HCDA's Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit, File No. PL MASP 13.2.8 on September 2, 2009 ("**KKMP Permit**"), a memorandum of which was recorded at the Bureau as Document No. 2010-012595, as amended by those certain Findings of Fact, Conclusions of Law, and Decision and Order amending the Master Plan Permit dated August 8, 2012, as further amended by those certain Findings of Fact, Conclusions of Law, and Decision and Order amending the Master Plan Permit dated June 2, 2021, as may be further amended or supplemented. Pursuant to the KKMP Permit, the development and use of the Project are subject to the terms and provisions of the HCDA's Mauka Area Plan and the HCDA's Mauka Area Rules (Title 15, Subtitle 4, Chapter 22, of the Hawaii Administrative Rules) in effect on September 2, 2009 (together the "**Vested Rules**"). The KKMP Permit was extended by a period of ten (10) years beyond the original expiration date of September 1, 2024, and shall be valid until September 1, 2034.

b. A Master Plan Development Agreement for the Kaiāulu 'o Kaka'ako Master Plan effective October 6, 2009, a memorandum of which was recorded at the Bureau as Document No. 2010-012596, as supplemented by that certain Supplement No. 1 to Master Plan Development Agreement, dated June 20, 2011 (as may be supplemented or amended, "**KKMP Development Agreement**"), which imposes the terms and conditions of the KKMP Permit on the Land and shall run with the Land and shall bind and constitute notice to all subsequent lessees, grantees, assignees, mortgagees, lienors, and any other persons who shall claim an interest in the Land. HCDA shall have the right to enforce the KKMP Development Agreement by appropriate action at law or suit in equity against all such persons. The KKMP Development Agreement confirms the application of the Vested Rules to the KKMP Permit area and generally describes the timing and process for phasing, reserved housing credits, and public facilities within the master-planned community.

c. The Planned Development Permit No. KAK 22-055 issued by HCDA on November 1, 2023 ("**Permit**"), which authorizes the Project.

d. The Project may be assessed for the cost of improvements made in the vicinity of the Project. If any such assessments are made, the Owners shall be responsible for and shall pay their respective prorated share of any such District-Wide Improvement Assessment as part of such Owner's share of the Master Assessments.

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

XLIII. KAIĀULU ʻO KAKAʻAKO MASTER PLAN AND CHARTER.

Upon annexation of the Land to the Master Charter, the Land will be a part of an urban planned community called "Kaiāulu ʻo Kakaʻako." Upon the recordation of such annexation, this Declaration, the Bylaws, the Condominium Map and the Project shall be subordinated and subject to the Master Charter and Master Bylaws, together with such rules and regulations promulgated pursuant thereto.

The Project will be one of multiple projects located in the Community. The Master Charter, the Master Bylaws and the other "Governing Documents" as defined in the Master Charter (**"Master Governing Documents"**), as the same may be amended and/or supplemented from time to time, create rules and regulations for operation and being a part of the Community, including, without limitation, any assessments, voting rights, design restrictions, and the design review process set forth therein, if applicable. By acquiring an interest in the Project, each Owner agrees to carefully review, observe, and comply with all covenants, conditions, restrictions, and other requirements to which the Project is subject under the Master Charter, Master Bylaws, and other Master Governing Documents, including payment of such sums as may be assessed pursuant to such Master Charter or Master Bylaws (**"Master Assessments"**). Further, Developer shall have the reserved right, without the consent of any Owner or such Owners' Lenders, to amend this Declaration and to enter into any agreements and to grant easements and do all things necessary and convenient to effect and implement the purposes of the Master Charter, Master Bylaws, and other Master Governing Documents and to execute, record, and deliver any and all documents necessary to effect the same, including, but not limited to, any amendments to this Declaration and to the Condominium Map. In the event of a conflict between this Declaration and the Master Charter, Master Bylaws, and/or the other Master Governing Documents, the Master Charter, Master Bylaws, and/or other Master Governing Documents, as applicable, shall control.

Notwithstanding the above, by signing and accepting a Unit Deed or other conveyance of a Unit, Owners acknowledge and accept the following related to living in the Community:

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

B. Individual Unit Owners will not become members of the Master Association and, in most instances, will not have direct voting rights in the Master Association. The Association will be a member of the Master Association for the Project. The Association and the Owners shall be responsible for certain shared costs for the maintenance and upkeep of any Community common areas and other services and use areas shared among the projects in the Community and described in the Master Charter and the Master Bylaws. The Master Association has the right to lien a Unit in the event of nonpayment of any Master Assessment by the Association or the Unit Owner.

C. The Master Charter sets forth a "Founder Control Period," which is the period of time during which the Founder may appoint a majority of the members of the Master Association's board of directors, and a "Development and Sale Period," which is the period during which the Founder may exercise other development rights under the Master Charter.

D. In addition to any design restrictions and/or regulations or standards in the Condominium Documents, Owners will be subject to the additional design restrictions, design guidelines, and/or regulations or standards promulgated by the Founder or the Master Association pertaining to the Community. The Master Charter and the Master Bylaws set forth sanctions for noncompliance with the provisions in the Master Governing Documents.

E. The Founder and the Master Association may enter into certain service contracts for service provided by vendors to multiple properties in the Community, including, without limitation, the Project, based on overall economic, service, and efficiency benefits to the overall master development. The Association may also do the same with adjacent properties for the maintenance and operation of mutually beneficial properties or facilities or the provision of mutually beneficial services.

F. The Founder has certain reserved rights set forth in the Master Charter, which may be exercised while the Owners are residing in the Project. Such reserved rights may directly impact an Owner's use of the Project.

To ensure that the Project, as constructed, is maintained as intended by the Kaiāulu 'o Kaka'ako Master Plan and Master Governing Documents, Developer (and after the Development Period, the Association, by and through the Board) covenants that:

a. No additional floor area (as calculated for purposes of determining the floor area ratio for the Project under the Vested Rules) shall be added to the Project;

b. No additional Units or fractional ownership interests shall be created in the Project;

c. The Project shall comply with any items that affect multiple blocks within the Community, including the Land, and that require continuity of application among the affected blocks to maintain the intent and function of such item;

d. The Project shall be maintained, including the public sidewalks adjacent to the Project, any open space, the Recreational Amenities, and pedestrian and vehicular traffic patterns;

e. The Project shall comply with the Master Governing Documents;

f. Landowner has the right (but not the obligation) to cause the construction of any median, non-standard crosswalk or raised intersection improvements that fall between the center-line of the Cooke Street and Auahi Street rights-of-way to the property lines of parcels identified by Tax Map Key Nos. (1) 2-1-054: 001, (1) 2-1-053:032, (1) 2-1-056:003 & 004, and the Land; excluding, however, such sidewalk and roadway improvements as required by any governmental authorities in connection with any and all permits, approvals and entitlements required for the development of the Project by HCDA or the County or otherwise in connection with the development of the Land and the Project, which improvements shall be included as part of the Project; and

g. Landowner has the right (but not obligation) to submit the Land to a joint development agreement with the adjacent property commonly referred to as "Land Block F" and identified by Tax Map Key Nos. (1) 2-1-055: 006, 026, 038, 048, 049, 050, and 051 and Lana Lane.

By accepting a Unit Deed or other conveyance of a Unit, an Owner acknowledges and agrees to the foregoing.

XLIV. DISPUTE RESOLUTION.

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

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

C. **MEDIATION**. If the Parties cannot resolve such Dispute by discussion pursuant to **Section XLIV.B** above within thirty (30) calendar days after the commencement of such discussion, the matter shall be submitted to mediation by and pursuant to the protocols and procedures adopted by DPR in the County.

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

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

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

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

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

D. **FURTHER RESOLUTION**. If the Parties are unable to resolve a Dispute pursuant to the procedures described in **Sections XLIV.B and XLIV.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. **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 XLIV.B and XLIV.C** above.

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

XLV. 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.

XLVI. COMPLIANCE WITH COUNTY ZONING AND BUILDING LAWS.

The Project is in compliance with all zoning and building ordinances and codes of the County, as applicable, and all other County permitting requirements, as applicable, to the Project pursuant to Section 514B-5 of the Act.

XLVII. 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 delivered to Developer a Notice of Alleged Defect not later than ninety (90) calendar days before the filing of any such cause of action, proceeding, reference, or arbitration against Developer and

2. Developer has either

a. rejected Claimant's claim or

b. within thirty (30) calendar days after its receipt of a Notice of Alleged Defect, either:

(i) failed to offer to settle without inspecting the Alleged Defect;

(ii) failed to propose to inspect the Alleged Defect and within thirty (30) calendar days following any such proposal, failed to inspect the Alleged Defect, provided that Claimant permitted sufficient access; or

(iii) failed, within fourteen (14) calendar days after any inspection, to serve Claimant with a written statement offering to fully or partially remedy the Alleged Defect at no cost to Claimant, offering to settle the Alleged Defect by monetary payment, offering a combination of the foregoing, or explaining that Developer will not proceed further to remedy the Alleged Defect.

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

F. **WAIVER.** Notwithstanding anything to the contrary in this Declaration, Developer hereby disclaims any representations and warranties in respect of, and shall have no continuing liability to any Owner, the Board, and the Association for, any design or construction defects (whether known or unknown) relating to the Project, including latent defects.

G. **SEVERABILITY AND APPLICABILITY.** If any provision of this 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.

XLVIII. RIGHT TO APPOINT AND REMOVE THE OFFICERS AND DIRECTORS; DEVELOPER CONTROL PERIOD.

Notwithstanding anything contained in this Declaration or the Bylaws to the contrary, Developer shall have the right to appoint and remove Officers and Directors, except for the Commercial Director who shall be appointed and removed by the Commercial Unit Class, for a certain period of time (the "**Developer Control Period**") as set forth in this Article. 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, records an instrument voluntarily surrendering all rights to control the activities of the Association. Developer may voluntarily surrender the right to appoint and remove Officers and Directors before the termination of the Developer Control Period, but in that event, Developer may require, for the duration of the Developer Control Period, that specified actions of the Association or Board, as described in a recorded instrument executed by Developer, be approved by Developer before they become effective.

XLIX. 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 guarantee, 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.

L. GENERAL PROVISIONS.

A. WAIVER OF CERTAIN RIGHTS.

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

2. **WAIVER OF NO-INJURY CLAIMS.** WITH RESPECT TO CONSTRUCTION MATERIALS, EACH OWNER, THE ASSOCIATION, THE BOARD, MANAGING AGENT, DEVELOPER, AND EACH OF THEIR REPRESENTATIVES WAIVE ANY AND ALL: (A) NO-INJURY CLAIMS WITH RESPECT

TO THE MATERIALS USED FOR CONSTRUCTION WHERE THERE IS NO PERSONAL INJURY OR PROPERTY DAMAGE RESULTING THEREFROM; AND (B) ANTICIPATORY CLAIMS BASED ON THE EXPECTATION THAT SUCH MATERIALS WILL BE DEFECTIVE IN THE FUTURE.

3. **WAIVER OF JURY TRIAL.** EACH OWNER, THE ASSOCIATION, THE BOARD, MANAGING AGENT, PARKING MANAGER, 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.

4. **WAIVER OF CLASS ACTION.** EACH OWNER, THE ASSOCIATION, THE BOARD, MANAGING AGENT, PARKING MANAGER, 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 without giving effect to the principles of conflict of laws thereof.

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

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

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

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

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

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

Q. **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 on the date first above written.

CORAL ACQUISITION, LLC,
a Hawaii limited liability company

By ______________________________
Name: Richard B. Stack, Jr.
Title: Vice President

"Developer"

STATE OF HAWAII

SS:

CITY AND COUNTY OF HONOLULU

On this 19th day of August, 2024, before me appeared RICHARD B. STACK, JR., 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.

CHARMAINE ROSS NOTARY PUBLIC No. 17-308 STATE OF HAWAII

(Official Stamp or Seal)

Charmaine Ross

Print Name: Charmaine Ross
Notary Public, in and for said State

My commission expires: 7/25/25

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: DECLARATION OF CONDOMINIUM PROPERTY REGIME OF KALIʻU

Document Date: Undated or Undated at time of notarization.

No. of Pages: 124 Jurisdiction: First Circuit
(in which notarial act is performed)

Charmaine Ross

Signature of Notary

8/16/24
Date of Notarization and Certification Statement

Charmaine Ross
Printed Name of Notary

My Commission Expires: 7/25/25

CHARMAINE ROSS NOTARY PUBLIC No. 17-308 STATE OF HAWAII

(Official Stamp or Seal)

FEE OWNER JOINDER

The Trustees of the Estate of Bernice Pauahi Bishop, with full powers to sell, mortgage, lease, or otherwise deal with the Land ("**Fee Owner**"), whose address is c/o Kamehameha Schools, Commercial Real Estate Division, Kawaiaha'o Plaza, Suite 200, 567 South King Street, Honolulu, Hawai'i 96813, as the fee simple owner of the property described in the foregoing Declaration of Condominium Property Regime of Kali'u (the "**Declaration**"), DO HEREBY join in the Declaration pursuant to Section 514B-31 of the Act, solely for the purpose of submitting all of their fee simple interest in the Land described in the Declaration to the condominium property regime established by the Declaration. In connection with the submission of its fee simple interest in the Land to said condominium property regime, Fee Owner does hereby release all easements, rights, privileges, reservations, and interests, if any, that Fee Owner may hold, personally in gross or appurtenant to the Land or any other property, in that portion of the Land commonly known as Lana Lane or for the use of said Lana Lane for access or any other purpose.

Fee Owner, however, is not the developer of the Project and Fee Owner's joinder shall not, in any way or for any purpose, be construed to mean that Fee Owner is the developer of the Project or a partner with Developer in the conduct of its business, or otherwise, or a joint venturer or a member of a joint enterprise with Developer. Fee Owner makes no representations or warranties of any kind, express or implied, with respect to any aspect of the Project. The statements set forth in the Declaration are solely those of Developer and are not, and should not be construed as, statements made by, or representations of, Fee Owner. Developer, and not Fee Owner, shall be solely responsible for all aspects of the Project, including, without limitation, the development and construction of the Project and the marketing and sales of the Residential Units and Commercial Units. Fee Owner shall not be liable for the statements or the conduct of Developer relating to the sale and conveyance of the Residential Units or the Commercial Units or the development of the Project. Fee Owner is not assuming any such liability in any way by its execution of this joinder.

Developer and each Owner acknowledges and agrees that Fee Owner 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 terms and provisions of the Declaration, the submission of the Land to a condominium property regime pursuant to the Declaration, the Project, or any acts or omissions of Developer. Developer, on behalf of itself and its successors and assigns, and each Owner, on behalf of itself and its family members, tenants, invitees, licensees, and mortgagees, hereby release Fee Owner and its trustees, officers, directors, partners, affiliates, subsidiaries, successors in trust, and assigns from and against any and all claims, actions, damages, causes of action, liabilities, and expenses (including, without limitation, attorneys' fees and costs of enforcing this release) for any damages, costs, expenses, or losses whatsoever, relating to the terms and provisions of the Declaration, the submission of the Land to a condominium property regime pursuant to the Declaration, the Project, or any acts or omissions of Developer.

Capitalized terms used herein shall have the meaning set forth in the Declaration.

This instrument has been executed by or on behalf of the Trustees of the Estate of Bernice Pauahi Bishop in their fiduciary capacities as said Trustees, and not in their individual capacities. No personal liability or obligation under this instrument shall be imposed or assessed against said Trustees in their individual capacities.

(The remainder of this page has been intentionally left blank.)

IN WITNESS WHEREOF, the undersigned have executed this Fee Owner Joinder as of the 21st day of August, 2024.

Approved as to Content, Authority, and Compliance with KS Policy:

Signed by:

Walter Thoemmes

Manager

T. Kā'eo Duarte

Vice President/ Director

Approved as to Form:

Legal Group

Retained Counsel Cades Schutte LLP

TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP, AS AFORESAID

By____________________

Name: LEANNE NIKAIDO, Director

Their Attorney-in-Fact

By____________________

Name: CONNIE CHOW, Senior Counsel

Their Attorney-in-Fact

STATE OF HAWAIʻI)
) SS.
CITY AND COUNTY OF HONOLULU)

On AUG 21 2024 before me personally appeared LEANNE NIKAIDO, Director and CONNIE CHOW, Senior Counsel, to me personally known, who being by me duly sworn, did say that they are two of the attorneys-in-fact for ELLIOT K. MILLS, CRYSTAL KAUILANI ROSE, JENNIFER NOELANI GOODYEAR-KAʻŌPUA, MICHELLE M. KAUHANE, and ROBERT K.W.H. NOBRIGA, as Trustees of the Estate of Bernice Pauahi Bishop, duly appointed under Limited Power of Attorney effective as of July 1, 2024, recorded in the Bureau of Conveyances of the State of Hawaiʻi as Document No. A-89450434, and in the Office of the Assistant Registrar of the Land Court of the State of Hawaiʻi as Document No. T-12597191, and that the foregoing instrument was executed in the name and on behalf of ELLIOT K. MILLS, CRYSTAL KAUILANI ROSE, JENNIFER NOELANI GOODYEAR-KAʻŌPUA, MICHELLE M. KAUHANE, and ROBERT K.W.H. NOBRIGA, as Trustees of the Estate of Bernice Pauahi Bishop, by such persons in their capacities as attorneys-in-fact; and they acknowledged the instrument to be the free act and deed of the Trustees of the Estate of Bernice Pauahi Bishop, as aforesaid.

I further certify the following with regard to the foregoing instrument:

Fee Owner Joinder to Declaration of Condominium Property Regime of Kaliʻu

Doc. Date: ________________ or ☑ Undated at time of notarization No. of Pages: 123

Document Identification or Description: Declaration of Condominium Property Regime of Kali'u

Signature of Notary: [signature]

Name: ______________________
Notary Public, State of Hawaiʻi

My commission expires: ________________

Jurisdiction in which notarial act is performed: First Circuit, State of Hawaiʻi

MAHEA UESHIRO NOTARY 19-155 PUBLIC STATE OF HAWAII

(Official Stamp or Seal)

MAHEA UESHIRO
Notary Public, State of Hawaii
My commission expires: 4/21/2027

EXHIBIT "A"

PROPERTY DESCRIPTION

-PARCEL I:-

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 4483, Land Commission Award Number 7712, Apana 6, No. 1 to M. Kekuanaoa no V. Kamamalu) situate, lying and being on the north corner of the intersection of Ala Moana Boulevard and Cooke Street, at Kaakaukukui, Kakaako, Honolulu, City and County of Honolulu, State of Hawaii, being LOT 1-A, same being a portion of LOT 1, BLOCK 14, of the "KAAKAUKUKUI TRACT", and thus bounded and described:

Beginning at an existing concrete nail in concrete pavement at the south corner of this parcel of land and on the north corner of the intersection of Ala Moana Boulevard and Cooke Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 5,622.37 feet south and 3,982.75 feet west, thence running by azimuths measured clockwise from true South:

1.	138°	38'	142.07	feet along the northeasterly side of Ala Moana Boulevard to a 3/4" pipe;
2.	230°	30'	109.63	feet along the southeasterly side of Lana Lane to an existing spike;
3.	320°	30'	142.00	feet along the remainder of Royal Patent 4483, Land Commission Award 7712, Apana 6, No. 1 to M. Kekuanaoa no V. Kamamalu to an existing spike;
4.	50°	30'	105.00	feet along the northwesterly side of Cooke Street to the point of beginning and containing an area of 15,239 square feet, more or less.

Excepting and reserving therefrom, all that portion thereof conveyed to the HAWAII COMMUNITY DEVELOPMENT AUTHORITY, STATE OF HAWAII, by DEED dated October 6, 1988, recorded in Liber 22834 at Page 25, more particularly described as follows:

KAKAAKO COMMUNITY DEVELOPMENT DISTRICT
IMPROVEMENT DISTRICT 2

PARCEL 9
BISHOP ESTATE – OWNER

LAND SITUATED ON THE SOUTHEAST SIDE OF COOKE STREET
AND NORTHEAST OF ALA MOANA BOULEVARD

AT KAAKAUKUKUI, KAKAAKO, HONOLULU, OAHU, HAWAII

BEING A PORTION OF ROYAL PATENT 4483, LAND COMMISSION AWARD 7712,
APANA 6, NO. 1 TO M. KEKUANAOA FOR V. KAMAMALU
AND ALSO BEING PORTION OF LOT 1A, BLOCK 14, KAKAAKO SUBDIVISION
(AS SHOWN ON PARCEL MAP 4)

Beginning at the north corner of this parcel of land, on the boundary of Lot 18, Block 14 of the Kakaako Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 5,553.68 feet south and 6,903.10 feet west, and running by azimuths measured clockwise from true South:

1.	320°	30'	1.00	feet along Lot 1B;
2.	50°	30'	105.00	feet along the northwest side of Cooke Street to Ala Moana Boulevard;

3.	138°	38'	20.36	feet along the northeast side of Ala Moana Boulevard;

4. Thence along the remainder of Lot 1A, Block 14 of the Kakaako Subdivision, on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:

	274°	34'	27.02	feet;
5.	230°	30'	85.67	feet along the remainder of Lot 1A, Block 14 of the Kakaako Subdivision, to the point of beginning and containing an area of 185 square feet, more or less

Said parcel(s) of land having been acquired by the TRUSTEES UNDER THE WILL AND OF THE ESTATE OF BERNICE PAUAHI BISHOP, DECEASED, by testate succession had in the matter of the estate of BERNICE PAUAHI BISHOP, deceased, in Probate Number 2425, Circuit Court of the First Circuit, State of Hawaii.

-PARCEL II:-

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 4483, Land Commission Award Number 7712, Apana 6, No. 1 to M. Kekuanaoa no V. Kamamalu) situate, lying and being between Cooke Street and Lana Lane, at Kaakaukukui, Kakaako, Honolulu, City and County of Honolulu, State of Hawaii, being LOT 1-B, same being a portion of LOT 1, BLOCK 14, of the "KAAKAUKUKUI TRACT", and thus bounded and described:

Beginning at an existing spike at the south corner of this parcel of land and on the northwesterly side of Cooke Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 5,555.58 feet south and 3,901.73 feet west, thence running by azimuths measured clockwise from true South:

1.	140°	30'	142.00	feet along the remainder of Royal patent 4483, Land Commission Award 7712, Apana 6, No. 1 to M. Kekuanaoa no V. Kamamalu to an existing spike;
2.	230°	30'	60.67	feet along the southeasterly side of Lana Lane to an existing spike;
3.	320°	30'	142.00	feet along the remainder of Royal Patent 4483, Land Commission Award 7712, Apana 6, No. 1 to M. Kekuanaoa no V. Kamamalu to a 1/2"pipe;
4.	50°	30'	60.67	feet along the northwesterly side of Cooke Street to the point of beginning and containing an area of 8,615 square feet, more or less.

Excepting and reserving therefrom, all that portion thereof conveyed to the HAWAII COMMUNITY DEVELOPMENT AUTHORITY, STATE OF HAWAII, by DEED dated October 6, 1988, recorded in Liber 22834 at Page 60, more particularly described as follows:

KAKAAKO COMMUNITY DEVELOPMENT DISTRICT
IMPROVEMENT DISTRICT 2

PARCEL 10
BISHOP ESTATE - OWNER

LAND SITUATED ON THE NORTHWEST SIDE OF COOKE STREET
AND 140 FEET NORTHEAST OF ALA MOANA BOULEVARD
AT KAAKAUKUKUI, KAKAAKO, HONOLULU, OAHU, HAWAII

BEING A PORTION OF ROYAL PATENT 4483, LAND COMMISSION AWARD 7712,
APANA 6, NO. 1 TO M. KEKUANAOA FOR V. KAMAMALU
AND ALSO BEING PORTION OF LOT 1B, BLOCK 14, KAKAAKO SUBDIVISION
(AS SHOWN ON PARCEL MAP 4)

Beginning at the west corner of this parcel of land, on the boundary of Lot 1A, Block 14, of the Kakaako Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 5,553.68 feet south and 6,903.10 feet west, and running by azimuths measured clockwise from true South:

1.	230°	30'	60.67	feet along remainder of Lot 1B, Block 14 of the Kakaako Subdivision;
2.	320°	30'	1.00	feet along Lot 1C, Block 14 of the Kakaako Subdivision, to Cooke Street;
3.	50°	30'	60.67	feet along the northwest side of Cooke Street;
4.	140°	30'	1.00	feet along Lot 1A, Block 14 of the Kakaako Subdivision, to the point of beginning and containing an area of 61 square feet, more or less.

Said parcel(s) of land having been acquired by the TRUSTEES UNDER THE WILL AND OF THE ESTATE OF BERNICE PAUAHI BISHOP, DECEASED, by testate succession had in the matter of the estate of BERNICE PAUAHI BISHOP, deceased, in Probate Number 2425, Circuit Court of the First Circuit, State of Hawaii.

-PARCEL III:-

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 4483, Land Commission Award Number 7712, Apana 6, No. 1 to M. Kekuanaoa no V. Kamamalu) situate, lying and being between Cooke Street and Lana Lane, at Kaakaukukui, Kakaako, Honolulu, City and County of Honolulu, State of Hawaii, being LOT 1-C, same being a portion of LOT 1, BLOCK 14, of the "KAAKAUKUKUI TRACT", and thus bounded and described:

Beginning at a 1/2" pipe at the south corner of this parcel of land and on the northwesterly side of Cooke Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 5,516.99 feet south and 3,854.92 feet west, thence running by azimuths measured clockwise from true South:

1.	140°	30'	142.00	feet along the remainder of Royal Patent 4483, Land Commission Award 7712, Apana 6, No. 1 to M. Kekuanaoa no V. Kamamalu to an existing spike;
2.	230°	30'	51.53	feet along the southeasterly side of Lana Lane to a spike;
3.	320°	30'	142.00	feet along the remainder of Royal Patent 4483, Land Commission Award 7712, Apana 6, No. 1 to M. Kekuanaoa no V. Kamamalu to a 1/2" pipe;

4.	50°	30'	51.33	feet along the northwesterly side of Cooke Street to the point of beginning and containing an area of 7,289 square feet, more or less.

Excepting and reserving therefrom, all that portion thereof conveyed to the HAWAII COMMUNITY DEVELOPMENT AUTHORITY, STATE OF HAWAII, by DEED dated October 6, 1988, recorded in Liber 22834 at Page 44, more particularly described as follows:

KAKAAKO COMMUNITY DEVELOPMENT DISTRICT
IMPROVEMENT DISTRICT 2

PARCEL 11
BISHOP ESTATE - OWNER

LAND SITUATED ON THE NORTHWEST SIDE OF COOKE STREET
AND 200 FEET NORTHEAST OF ALA MOANA BOULEVARD

AT KAAKAUKUKUI, KAKAAKO, HONOLULU, OAHU, HAWAII

BEING A PORTION OF ROYAL PATENT 4483, LAND COMMISSION AWARD 7712,
APANA 6, NO. 1 TO M. KEKUANAOA FOR V. KAMAMALU
AND ALSO BEING PORTION OF LOT 1C, BLOCK 14, KAKAAKO SUBDIVISION
(AS SHOWN ON PARCEL MAP 4)

Beginning at the north corner of this parcel of land, on the boundary of Lot 1D, Block 14 of the Kakaako Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 5,482.44 feet south and 3,816.67 feet west, and running by azimuths measured clockwise from true South:

1.	320°	30'	1.00	feet along Lot 1D, Block 14 of the Kakaako Subdivision to Cooke Street;
2.	50°	30'	51.33	feet along the northwest side of Cooke Street;
3.	140°	30'	1.00	feet along Lot 1B, Block 14 of the Kakaako Subdivision;
4.	230°	30'	51.33	feet along the remainder Lot 1C, Block 14 of the Kakaako Subdivision, to the point of beginning and containing an area of 51 square feet, more or less

Said parcel(s) of land having been acquired by the TRUSTEES UNDER THE WILL AND OF THE ESTATE OF BERNICE PAUAHI BISHOP, DECEASED, by testate succession had in the matter of the estate of BERNICE PAUAHI BISHOP, deceased, in Probate Number 2425, Circuit Court of the First Circuit, State of Hawaii.

-PARCEL IV:-

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 4483, Land Commission Award Number 7712, Apana 6, No. 1 to M. Kekuanaoa no V. Kamamalu) situate, lying and being between Cooke Street and Lana Lane, at Kaakaukukui, Kakaako, Honolulu, City and County of Honolulu, State of Hawaii, being LOT 1-D, same being a portion of LOT 1, BLOCK 14, of the "KAAKAUKUKUI TRACT", and thus bounded and described:

Beginning at a 1/2" pipe at the south corner of this parcel of land and on the northwesterly side of Cooke Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 5,484.34 feet south and 3,815.31 feet west, thence running by azimuths measured clockwise from true South:

1.	140°	30'	142.00	feet along the remainder of Royal Patent 4483, Land Commission Award 7712, Apana 6, No. 1 to M. Kekuanaoa no V. Kamamalu to a spike;

2.	230°	30'	70.00	feet along the southeasterly side of Lana Lane to an existing spike;
3.	320°	30'	142.00	feet along the remainder of Royal Patent 4483, Land Commission Award 7712, Apana 6, No. 1 to M. Kekuanaoa no V. Kamamalu to a 3/4" pipe;
4.	50°	30'	70.00	feet along the northwesterly side of Cooke Street to the point of beginning and containing an area of 9,940 square feet, more or less.

Excepting and reserving therefrom, all that portion thereof conveyed to the HAWAII COMMUNITY DEVELOPMENT AUTHORITY, STATE OF HAWAII, by DEED dated October 6, 1988, recorded in Liber 22834 at Page 49, more particularly described as follows:

KAKAAKO COMMUNITY DEVELOPMENT DISTRICT
IMPROVEMENT DISTRICT 2

PARCEL 12
BISHOP ESTATE - OWNER

LAND SITUATED ON THE NORTHWEST SIDE OF COOKE STREET
AND 260 FEET NORTHEAST OF ALA MOANA BOULEVARD

AT KAAKAUKUKUI, KAKAAKO, HONOLULU, OAHU, HAWAII

BEING A PORTION OF ROYAL PATENT 4483, LAND COMMISSION AWARD 7712,
APANA 6, NO. 1 TO M. KEKUANAOA FOR V. KAMAMALU
AND ALSO BEING PORTION OF LOT 1D, BLOCK 14, KAKAAKO SUBDIVISION
(AS SHOWN ON PARCEL MAP 4)

Beginning at the west corner of this parcel of land, on the boundary of Lot 1C, Block 14 of the Kakaako Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 5,482.44 feet south and 3,816.67 feet west, and running by azimuths measured clockwise from true South:

1.	230°	30'	70.00	feet along remainder of Lot 1D, Block 14 of the Kakaako Subdivision;
2.	320°	30'	1.00	feet along Lot 1E, Block 14 of the Kakaako Subdivision to Cooke Street;
3.	50°	30'	70.00	feet along the northwest side of Cooke Street;
4.	140°	30'	1.00	feet along Lot 1C, Block 14 of the Kakaako Subdivision, to the point of beginning and containing an area of 70 square feet, more or less.

Said parcel(s) of land having been acquired by the TRUSTEES UNDER THE WILL AND OF THE ESTATE OF BERNICE PAUAHI BISHOP, DECEASED, by testate succession had in the matter of the estate of BERNICE PAUAHI BISHOP, deceased, in Probate Number 2425, Circuit Court of the First Circuit, State of Hawaii.

-PARCEL V:-

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 4483, Land Commission Award Number 7712, Apana 6, No. 1 to M. Kekuanaoa no V. Kamamalu) situate, lying and being on the southwesterly side of Auahi Street between Cooke Street and Lana Lane, at Kaakaukukui, Kakaako, Honolulu, City and County of Honolulu, State of Hawaii, being LOT 1-E, same being a portion of LOT 1, BLOCK 14, of the "KAAKAUKUKUI TRACT", and thus bounded and described:

Beginning at an existing 3/4" pipe at the east corner of this parcel of land and on the west corner of the intersection of Cooke Street and Auahi Street, the coordinates of said point of beginning referred to Government Survey Triangulation

Station "PUNCHBOWL" being 5,402.54 feet south and 3,716.08 feet west, thence running by azimuths measured clockwise from true South:

1. 50° 30' 58.60 feet along the northwesterly side of Cooke Street to an existing 3/4" pipe;

2. 140° 30' 142.00 feet along the remainder of Royal patent 4483, Land Commission Award 7712, Apana 6, No. 1 to M. Kekuanaoa no V. Kamamalu to an existing spike;

3. 230° 30' 58.60 feet along the southeasterly side of Lana Lane to an existing spike;

4. 320° 30' 142.00 feet along the southeasterly side of Auahi Street to the point of beginning and containing an area of 8,321 square feet, more or less.

Excepting and reserving therefrom, all that portion thereof conveyed to the HAWAII COMMUNITY DEVELOPMENT AUTHORITY, STATE OF HAWAII, by DEED dated October 6, 1988, recorded in Liber 22834 at Page 54, more particularly described as follows:

KAKAAKO COMMUNITY DEVELOPMENT DISTRICT
IMPROVEMENT DISTRICT 2

PARCEL 13
BISHOP ESTATE - OWNER

LAND SITUATED ON THE NORTHWEST SIDE OF COOKE STREET
AND WEST OF THE INTERSECTION OF COOKE STREET AND AUAHI STREET

AT KAAKAUKUKUI, KAKAAKO, HONOLULU, OAHU, HAWAII

BEING A PORTION OF ROYAL PATENT 4483, LAND COMMISSION AWARD 7712,
APANA 6, NO. 1 TO M. KEKUANAOA FOR V. KAMAMALU
AND ALSO BEING PORTION OF LOT 1E, BLOCK 14, KAKAAKO SUBDIVISION
(AS SHOWN ON PARCEL MAP 4)

Beginning at the north corner of this parcel of land, on the southwest side of Auahi Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 5,385.20 feet south and 3,730.67 feet west, and running by azimuths measured clockwise from true South:

1. 320° 30' 21.00 feet along the southwest side of Auahi Street, to Cooke Street;

2. 50° 30' 58.60 feet along the northwest side of Cooke Street;

3. 140° 30' 1.00 feet along Lot 1D, Block 14 of the Kakaako Subdivision;

4. 230° 30' 38.60 feet along remainder of Lot 1E, Block 14 of the Kakaako Subdivision;

5. Thence along the remainder of Lot 1E, Block 14 of the Kakaako Subdivision, on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:

   185° 30' 28.28 feet to the point of beginning and containing an area of 145 square feet, more or less.

Said parcel(s) of land having been acquired by the TRUSTEES UNDER THE WILL AND OF THE ESTATE OF BERNICE PAUAHI BISHOP, DECEASED, by testate succession had in the matter of the estate of BERNICE PAUAHI BISHOP, deceased, in Probate Number 2425, Circuit Court of the First Circuit, State of Hawaii.

-PARCEL VI:-

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 4483, Land Commission Award Number 7712, Apana 6, Part I to M. Kekuanaoa for V. Kamamalu) situate, lying and being at Kaakaukukui, Kakaako, City and County of Honolulu, State of Hawaii, being LOT "D", BLOCK 14, of the "KAKAAKO SUBDIVISION", as delineated on Bishop Estate Map 1045 filed in the Office of Lessors, and thus bounded and described:

Beginning at the south corner of this lot, at the intersection of Ala Moana and Lana Lane, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 5486.30 feet south and 4099.96 feet west, and running thence by azimuths measured clockwise from true South:

1.	138°	38'	121.41	feet along the northeast side of Ala Moana;

Thence on a curve to the right with a radius of 20.00 feet along the intersection of Ala Moana and Coral Street, the chord azimuth and distance being:

2.	184°	34'	28.74	feet;
3.	230°	30'	248.62	feet along the southeast side of Coral Street;
4.	320°	04'	142.00	feet along Lot C;
5.	50°	30'	265.72	feet along the northwest side of Lana Lane to the point of beginning and containing an area of 37,892 square feet, more or less.

Said parcel(s) of land having been acquired by the TRUSTEES UNDER THE WILL AND OF THE ESTATE OF BERNICE PAUAHI BISHOP, DECEASED, by testate succession had in the matter of the estate of BERNICE PAUAHI BISHOP, deceased, in Probate Number 2425, Circuit Court of the First Circuit, State of Hawaii.

-PARCEL VII:-

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 4483, Land Commission Award Number 7712, Apana 6, Part I to M. Kekuanaoa for V. Kamamalu) situate, lying and being at Kaakaukukui, Kakaako, Honolulu, City and county of Honolulu, State of Hawaii, being LOT C, BLOCK 14, of the "KAKAAKO SUBDIVISION", as delineated on Bishop Estate Map 1045A & B filed in the Office of the Lessors and on the sketch attached thereto and made a part thereof, and thus bounded and described:

Beginning at the west corner of this lot and on the southeast side of Coral Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 5,224.16 feet south and 3,972.29 feet west, and running by azimuths measured clockwise from true South:

1.	230°	30'	86.10	feet along the southeast side of Coral Street;
2.	320°	30'	142.00	feet along the southwest side of Auahi Street;
3.	50°	30'	85.03	feet along the northwest side of Lana Lane;
4.	140°	04'	142.00	feet along Lot D to the point of beginning and containing an area of 12,150 square feet, more or less.

Said parcel(s) of land having been acquired by the TRUSTEES UNDER THE WILL AND OF THE ESTATE OF BERNICE PAUAHI BISHOP, DECEASED, by testate succession had in the matter of the estate of BERNICE PAUAHI BISHOP, deceased, in Probate Number 2425, Circuit Court of the First Circuit, State of Hawaii.

-PARCEL VIII:-

All of the certain parcel of land (being portion of the land described in Royal Patent Number 4483, Land Commission Award Number 7712, Apana 6, No. 1 to M. Kekuanaoa for V. Kananalu) situate at Kakaako, Honolulu, Oahu, being portion of LANA LANE, and hatch marked on Exhibit "1" attached hereto.

END OF EXHIBIT "A"

EXHIBIT "B"

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

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Storage Room(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
701	A	3/3	3167, 3168	380L		1,891	108	1,999	0.568158%
702	B	2/2.5	4042, 4043	473L		1,143	92	1,235	0.343419%
703	C	2/2	5155, 5156	561L		992	0	992	0.298050%
705	E	2/2	5152, 5153	560L		950	0	950	0.285431%
706	G	1/1.5	3019			877	0	877	0.263498%
707	H	1/1	5109			778	0	778	0.233753%
708	I	1/1	5036			768	0	768	0.230748%
709	F	1/1	5052			685	0	685	0.205811%
710	D	2/2	5043, 5044	565L		957	0	957	0.287534%
801	A	3/3	3070, 3071	382L		1,891	108	1,999	0.568158%
802	B	2/2.5	4170, 4171	474L		1,143	92	1,235	0.343419%
803	C	2/2	5123, 5124	562L		992	0	992	0.298050%
805	E	2/2	5098, 5099	528L		950	0	950	0.285431%
806	G	1/1.5	3020			877	0	877	0.263498%
807	H	1/1	5144			778	0	778	0.233753%
808	I	1/1	5038			768	0	768	0.230748%
809	F	1/1	5053			685	0	685	0.205811%
810	D	2/2	5069, 5070	567L		957	0	957	0.287534%
901	A	3/3	3079, 3080	3103L		1,891	108	1,999	0.568158%
902	B	2/2.5	4136, 4137	475L		1,143	92	1,235	0.343419%
903	C	2/2	4021, 4022	4109L		992	0	992	0.298050%
905	E	2/2	5094, 5095	548L		950	0	950	0.285431%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Storage Room(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
906	G	1/1.5	3021			877	0	877	0.263498%
907	H	1/1	5103			778	0	778	0.233753%
908	I	1/1	5001			768	0	768	0.230748%
909	F	1/1	5030			685	0	685	0.205811%
910	D	2/2	5071, 5072	547L		957	0	957	0.287534%
1001	A	3/3	3077, 3078	3101L		1,891	108	1,999	0.568158%
1002	B	2/2.5	4085, 4086	476L		1,143	92	1,235	0.343419%
1003	C	2/2	4017, 4018	4131L		992	0	992	0.298050%
1005	E	2/2	5089, 5090	550L		950	0	950	0.285431%
1006	G	1/1.5	5065			877	0	877	0.263498%
1007	H	1/1	5111			778	0	778	0.233753%
1008	I	1/1	5004			768	0	768	0.230748%
1009	F	1/1	5031			685	0	685	0.205811%
1010	D	2/2	5073, 5074	549L		957	0	957	0.287534%
1101	A	3/3	3075, 3076	399L		1,891	108	1,999	0.568158%
1102	B	2/2.5	4083, 4084	495L		1,143	92	1,235	0.343419%
1103	C	2/2	4005, 4006	4129L		992	0	992	0.298050%
1105	E	2/2	5085, 5086	530L		950	0	950	0.285431%
1106	G	1/1.5	5039			877	0	877	0.263498%
1107	H	1/1	5114			778	0	778	0.233753%
1108	I	1/1	5006			768	0	768	0.230748%
1109	F	1/1	5032			685	0	685	0.205811%
1110	D	2/2	5075, 5076	551L		957	0	957	0.287534%
1201	A	3/3	3072, 3073	397L		1,891	108	1,999	0.568158%
1202	B	2/2.5	4081, 4082	497L		1,143	92	1,235	0.343419%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Storage Room(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
1203	C	2/2	4011, 4012	4127L		992	0	992	0.298050%
1205	E	2/2	5079, 5080	532L		950	0	950	0.285431%
1206	G	1/1.5	5041			877	0	877	0.263498%
1207	H	1/1	5140			778	0	778	0.233753%
1208	I	1/1	5007			768	0	768	0.230748%
1209	F	1/1	5054			685	0	685	0.205811%
1210	D	2/2	5116, 5117	559L		957	0	957	0.287534%
1301	A	3/3	3110, 3111	395L		1,891	108	1,999	0.568158%
1302	B	2/2.5	4079, 4080	499L		1,143	92	1,235	0.343419%
1303	C	2/2	3161, 3162	4125L		992	0	992	0.298050%
1305	E	2/2	5081, 5082	563L		950	0	950	0.285431%
1306	G	1/1.5	5115			877	0	877	0.263498%
1307	H	1/1	5139			778	0	778	0.233753%
1308	I	1/1	5009			768	0	768	0.230748%
1309	F	1/1	5055			685	0	685	0.205811%
1310	D	2/2	5136, 5137	557L		957	0	957	0.287534%
1401	A	3/3	3112, 3113	394L		1,891	108	1,999	0.568158%
1402	B	2/2.5	4123, 4124	4101L		1,143	92	1,235	0.343419%
1403	C	2/2	3174, 3175	4124L		992	0	992	0.298050%
1405	E	2/2	5133, 5134	564L		950	0	950	0.285431%
1406	G	1/1.5	5068			877	0	877	0.263498%
1407	H	1/1	5149			778	0	778	0.233753%
1408	I	1/1	5147			768	0	768	0.230748%
1409	F	1/1	5056			685	0	685	0.205811%
1410	D	2/2	5150, 5151	555L		957	0	957	0.287534%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Storage Room(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
1501	A	3/3	3147, 3148	393L		1,891	108	1,999	0.568158%
1502	B	2/2.5	3090, 3091	340L		1,143	92	1,235	0.343419%
1503	C	2/2	4105, 4106	4123L		992	0	992	0.298050%
1505	E	2/2	4023, 4024	455L		950	0	950	0.285431%
1506	G	1/1.5	3176			877	0	877	0.263498%
1507	H	1/1	4167			778	0	778	0.233753%
1508	I	1/1	5105			768	0	768	0.230748%
1509	F	1/1	5057			685	0	685	0.205811%
1510	D	2/2	5096, 5097	553L		957	0	957	0.287534%
1601	A	3/3	3132, 3133	392L		1,891	108	1,999	0.568158%
1602	B	2/2.5	3100, 3101	342L		1,143	92	1,235	0.343419%
1603	C	2/2	4109, 4110	4122L		992	0	992	0.298050%
1605	E	2/2	4019, 4020	457L		950	0	950	0.285431%
1606	G	1/1.5	4027			877	0	877	0.263498%
1607	H	1/1	4166			778	0	778	0.233753%
1608	I	1/1	5145			768	0	768	0.230748%
1609	F	1/1	5033			685	0	685	0.205811%
1610	D	2/2	5092, 5093	545L		957	0	957	0.287534%
1701	A	3/3	3130, 3131	377L		1,891	108	1,999	0.568158%
1702	B	2/2.5	3096, 3097	344L		1,143	92	1,235	0.343419%
1703	C	2/2	4044, 4045	4121L		992	0	992	0.298050%
1705	E	2/2	4015, 4016	459L		950	0	950	0.285431%
1706	G	1/1.5	4033			877	0	877	0.263498%
1707	H	1/1	4163			778	0	778	0.233753%
1708	I	1/1	5104			768	0	768	0.230748%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Storage Room(s)	Approx. Net Living Area (sq. ft,)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
1709	F	1/1	5034			685	0	685	0.205811%
1710	D	2/2	5087, 5088	543L		957	0	957	0.287534%
1801	A	3/3	3028, 3029	376L		1,891	108	1,999	0.568158%
1802	B	2/2.5	3098, 3099	346L		1,143	92	1,235	0.343419%
1803	C	2/2	4028, 4029	484L		992	0	992	0.298050%
1805	E	2/2	4013, 4014	488L		950	0	950	0.285431%
1806	G	1/1.5	4062			877	0	877	0.263498%
1807	H	1/1	4159			778	0	778	0.233753%
1808	I	1/1	5101			768	0	768	0.230748%
1809	F	1/1	5035			685	0	685	0.205811%
1810	D	2/2	5077, 5078	525L		957	0	957	0.287534%
1901	A	3/3	3165, 3166	375L		1,891	108	1,999	0.568158%
1902	B	2/2.5	3022, 3023	341L		1,143	92	1,235	0.343419%
1903	C	2/2	4051, 4052	483L		992	0	992	0.298050%
1905	E	2/2	4007, 4008	452L		950	0	950	0.285431%
1906	G	1/1.5	4066			877	0	877	0.263498%
1907	H	1/1	4161			778	0	778	0.233753%
1908	I	1/1	5113			768	0	768	0.230748%
1909	F	1/1	5058			685	0	685	0.205811%
1910	D	2/2	5083, 5084	527L		957	0	957	0.287534%
2001	A	3/3	3114, 3115	374L		1,891	108	1,999	0.568158%
2002	B	2/2.5	3040, 3041	343L		1,143	92	1,235	0.343419%
2003	C	2/2	4055, 4056	482L		992	0	992	0.298050%
2005	E	2/2	3180, 3181	3120L		950	0	950	0.285431%
2006	G	1/1.5	4063			877	0	877	0.263498%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Storage Room(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
2007	H	1/1	4160			778	0	778	0.233753%
2008	I	1/1	5141			768	0	768	0.230748%
2009	F	1/1	5059			685	0	685	0.205811%
2010	D	2/2	5119, 5120	529L		957	0	957	0.287534%
2101	A	3/3	3128, 3129	349L		1,891	108	1,999	0.568158%
2102	B	2/2.5	3024, 3025	345L		1,143	92	1,235	0.343419%
2103	C	2/2	4058, 4059	481L		992	0	992	0.298050%
2105	E	2/2	4107, 4108	4112L		950	0	950	0.285431%
2106	G	1/1.5	4172			877	0	877	0.263498%
2107	H	1/1	5067			778	0	778	0.233753%
2108	I	1/1	4184			768	0	768	0.230748%
2109	F	1/1	5060			685	0	685	0.205811%
2110	D	2/2	5121, 5122	531L		957	0	957	0.287534%
2201	A	3/3	3150, 3151	351L		1,891	108	1,999	0.568158%
2202	B	2/2.5	3088, 3089	347L		1,143	92	1,235	0.343419%
2203	C	2/2	4090, 4091	480L		992	0	992	0.298050%
2205	E	2/2	4143, 4144	4110L		950	0	950	0.285431%
2206	G	1/1.5	4115			877	0	877	0.263498%
2207	H	1/1	5064			778	0	778	0.233753%
2208	I	1/1	4183			768	0	768	0.230748%
2209	F	1/1	5037			685	0	685	0.205811%
2210	D	2/2	5131, 5132	533L		957	0	957	0.287534%
2301	A	3/3	3116, 3117	353L		1,891	108	1,999	0.568158%
2302	B	2/2.5	3086, 3087	3102L		1,143	92	1,235	0.343419%
2303	C	2/2	4094, 4095	479L		992	0	992	0.298050%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Storage Room(s)	Approx. Net Living Area (sq. ft,)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
2305	E	2/2	4049, 4050	4132L		950	0	950	0.285431%
2306	G	1/1.5	4138			877	0	877	0.263498%
2307	H	1/1	5062			778	0	778	0.233753%
2308	I	1/1	4182			768	0	768	0.230748%
2309	F	1/1	5002			685	0	685	0.205811%
2310	D	2/2	5129, 5130	534L		957	0	957	0.287534%
2401	A	3/3	3118, 3119	355L		1,891	108	1,999	0.568158%
2402	B	2/2.5	3084, 3085	398L		1,143	92	1,235	0.343419%
2403	C	2/2	4036, 4037	478L		992	0	992	0.298050%
2405	E	2/2	4099, 4100	4130L		950	0	950	0.285431%
2406	G	1/1.5	4151			877	0	877	0.263498%
2407	H	1/1	5042			778	0	778	0.233753%
2408	I	1/1	4181			768	0	768	0.230748%
2409	F	1/1	5003			685	0	685	0.205811%
2410	D	2/2	4001, 4002	458L		957	0	957	0.287534%
2501	A	3/3	3126, 3127	3116L		1,891	108	1,999	0.568158%
2502	B	2/2.5	3082, 3083	396L		1,143	92	1,235	0.343419%
2503	C	2/2	4174, 4175	477L		992	0	992	0.298050%
2505	E	2/2	4053, 4054	4128L		950	0	950	0.285431%
2506	G	1/1.5	4118			877	0	877	0.263498%
2507	H	1/1	5138			778	0	778	0.233753%
2508	I	1/1	4180			768	0	768	0.230748%
2509	F	1/1	5005			685	0	685	0.205811%
2510	D	2/2	4003, 4004	539L		957	0	957	0.287534%
2601	A	3/3	3124, 3125	359L		1,891	108	1,999	0.568158%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Storage Room(s)	Approx. Net Living Area (sq. ft,)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
2602	B	2/2.5	3102, 3103	348L		1,143	92	1,235	0.343419%
2603	C	2/2	4152, 4153	461L		992	0	992	0.298050%
2605	E	2/2	4147, 4148	4126L		950	0	950	0.285431%
2606	G	1/1.5	4135			877	0	877	0.263498%
2607	H	1/1	5100			778	0	778	0.233753%
2608	I	1/1	4179			768	0	768	0.230748%
2609	F	1/1	5008			685	0	685	0.205811%
2610	D	2/2	4009, 4010	4111L		957	0	957	0.287534%
2701	A	3/3	3030, 3031	361L		1,891	108	1,999	0.568158%
2702	B	2/2.5	3104, 3105	350L		1,143	92	1,235	0.343419%
2703	C	2/2	4069, 4070	463L		992	0	992	0.298050%
2705	E	2/2	4111, 4112	460L		950	0	950	0.285431%
2706	G	1/1.5	4154			877	0	877	0.263498%
2707	H	1/1	5135			778	0	778	0.233753%
2708	I	1/1	4178			768	0	768	0.230748%
2709	F	1/1	5010			685	0	685	0.205811%
2710	D	2/2	3177, 3178	3122L		957	0	957	0.287534%
2801	A	3/3	3163, 3164	363L		1,891	108	1,999	0.568158%
2802	B	2/2.5	3140, 3141	352L		1,143	92	1,235	0.343419%
2803	C	2/2	4075, 4076	465L		992	0	992	0.298050%
2805	E	2/2	4141, 4142	462L		950	0	950	0.285431%
2806	G	1/1.5	3042			877	0	877	0.263498%
2807	H	1/1	3179			778	0	778	0.233753%
2808	I	1/1	4177			768	0	768	0.230748%
2809	F	1/1	5146			685	0	685	0.205811%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Storage Room(s)	Approx. Net Living Area (sq. ft,)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
2810	D	2/2	3156, 3157	3113L		957	0	957	0.287534%
2901	A	3/3	3068, 3069	365L		1,891	108	1,999	0.568158%
2902	B	2/2.5	3138, 3139	354L		1,143	92	1,235	0.343419%
2903	C	2/2	4077, 4078	467L		992	0	992	0.298050%
2905	E	2/2	4149, 4150	464L		950	0	950	0.285431%
2906	G	1/1.5	3408			877	0	877	0.263498%
2907	H	1/1	3158			778	0	778	0.233753%
2908	I	1/1	4176			768	0	768	0.230748%
2909	F	1/1	5107			685	0	685	0.205811%
2910	D	2/2	3171, 3172	3121L		957	0	957	0.287534%
3001	A	3/3	3050, 3051	367L		1,891	108	1,999	0.568158%
3002	B	2/2.5	3142, 3143	3118L		1,143	92	1,235	0.343419%
3003	C	2/2	4119, 4120	489L		992	0	992	0.298050%
3005	E	2/2	4060, 4061	466L		950	0	950	0.285431%
3006	G	1/1.5	3047			877	0	877	0.263498%
3007	H	1/1	3173			778	0	778	0.233753%
3008	I	1/1	4159			768	0	768	0.230748%
3009	F	1/1	5106			685	0	685	0.205811%
3010	D	2/2	3154, 3155	3115L		957	0	957	0.287534%
3101	A	3/3	3066, 3067	369L		1,891	108	1,999	0.568158%
3102	B	2/2.5	3043, 3044	358L		1,143	92	1,235	0.343419%
3103	C	2/2	4121, 4122	491L		992	0	992	0.298050%
3105	E	2/2	4096, 4097	490L		950	0	950	0.285431%
3106	G	1/1.5	3049			877	0	877	0.263498%
3107	H	1/1	4030			778	0	778	0.233753%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Storage Room(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
3108	I	1/1	3035			768	0	768	0.230748%
3109	F	1/1	5108			685	0	685	0.205811%
3110	D	2/2	4103, 4104	4108L		957	0	957	0.287534%
3201	A	3/3	3052, 3053	371L		1,891	108	1,999	0.568158%
3202	B	2/2.5	3106, 3107	360L		1,143	92	1,235	0.343419%
3203	C	2/2	4131, 4132	493L		992	0	992	0.298050%
3205	E	2/2	4092, 4093	492L		950	0	950	0.285431%
3206	G	1/1.5	3045			877	0	877	0.263498%
3207	H	1/1	4057			778	0	778	0.233753%
3208	I	1/1	3036			768	0	768	0.230748%
3209	F	1/1	5110			685	0	685	0.205811%
3210	D	2/2	4145, 4146	4106L		957	0	957	0.287534%
3301	A	3/3	3064, 3065	373L		1,891	108	1,999	0.568158%
3302	B	2/2.5	3108, 3109	362L		1,143	92	1,235	0.343419%
3303	C	2/2	4129, 4130	468L		992	0	992	0.298050%
3305	E	2/2	4040, 4041	494L		950	0	950	0.285431%
3306	G	1/1.5	3046			877	0	877	0.263498%
3307	H	1/1	4064			778	0	778	0.233753%
3308	I	1/1	3037			768	0	768	0.230748%
3309	F	1/1	5143			685	0	685	0.205811%
3310	D	2/2	4025, 4026	4104L		957	0	957	0.287534%
3401	A	3/3	3054, 3055	379L		1,891	108	1,999	0.568158%
3402	B	2/2.5	3136, 3137	364L		1,143	92	1,235	0.343419%
3403	C	2/2	4155, 4156	469L		992	0	992	0.298050%
3405	E	2/2	4157, 4158	496L		950	0	950	0.285431%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Storage Room(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
3406	G	1/1.5	3027			877	0	877	0.263498%
3407	H	1/1	4062			778	0	778	0.233753%
3408	I	1/1	5066			768	0	768	0.230748%
3409	F	1/1	5102			685	0	685	0.205811%
3410	D	2/2	4101, 4102	4107L		957	0	957	0.287534%
3501	A	3/3	3062, 3063	381L		1,891	108	1,999	0.568158%
3502	B	2/2.5	3134, 3135	366L		1,143	92	1,235	0.343419%
3503	C	2/2	4168, 4169	470L		992	0	992	0.298050%
3505	E	2/2	4116, 4117	498L		950	0	950	0.285431%
3506	G	1/1.5	3026			877	0	877	0.263498%
3507	H	1/1	4039			778	0	778	0.233753%
3508	I	1/1	5063			768	0	768	0.230748%
3509	F	1/1	5112			685	0	685	0.205811%
3510	D	2/2	4031, 4032	4105L		957	0	957	0.287534%
3601	A	3/3	3056, 3057	383L		1,891	108	1,999	0.568158%
3602	B	2/2.5	3144, 3145	368L		1,143	92	1,235	0.343419%
3603	C	2/2	3092, 3093	3119L		992	0	992	0.298050%
3605	E	2/2	4067, 4068	4100L		950	0	950	0.285431%
3606	G	1/1.5	3081			877	0	877	0.263498%
3607	H	1/1	4038			778	0	778	0.233753%
3608	I	1/1	5040			768	0	768	0.230748%
3609	F	1/1	5142			685	0	685	0.205811%
3610	D	2/2	4034, 4035	4103L		957	0	957	0.287534%
3701	A	3/3	3120, 3121	384L, 385L		1,891	108	1,999	0.568158%
3702	B	2/2.5	3169, 3170	370L		1,143	92	1,235	0.343419%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Storage Room(s)	Approx. Net Living Area (sq. ft,)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
3703	C	2/2	3094, 3095	3117L		992	0	992	0.298050%
3705	E	2/2	4071, 4072	4102L		950	0	950	0.285431%
3706	G	1/1.5	3074			877	0	877	0.263498%
3707	H	1/1	4089			778	0	778	0.233753%
3708	I	1/1	5091			768	0	768	0.230748%
3709	F	1/1	5148			685	0	685	0.205811%
3710	D	2/2	4113, 4114	536L		957	0	957	0.287534%
3801	J	3/3.5	3122, 3123	386L, 387L		3,180	92	3,272	0.955443%
3803	C	2/2	3038, 3039	372L		992	0	992	0.298050%
3805	E	2/2	4073, 4074	454L		950	0	950	0.285431%
3806	G	1/1.5	3146			877	0	877	0.263498%
3807	H	1/1	4089			778	0	778	0.233753%
3808	I	1/1	5118			768	0	768	0.230748%
3809	F	1/1	4186			685	0	685	0.205811%
3810	D	2/2	4139, 4140	535L		957	0	957	0.287534%
3901	K	0	3058, 3059, 3060, 3061	388L, 389L, 390L, 391L		2,744	463	3,207	0.824445%
3903	C	2/2	3152, 3153	378L		992	0	922	0.298050%
3905	E	2/2	4133, 4134	456L		950	0	950	0.285431%
3906	G	1/1.5	3149			877	0	877	0.263498%
3907	H	1/1	4173			778	0	778	0.233753%
3908	I	1/1	5154			768	0	768	0.230748%
3909	F	1/1	4185			685	0	685	0.205811%
3910	D	2/2	4087, 4088	472L		957	0	957	0.287534%
C-1	C-1	0				23,746	0	23,746	7.134566%

Unit Number	Unit Type	Bed/Bath	Parking Stall(s)	Storage Locker(s)	Storage Room(s)	Approx. Net Living Area (sq. ft.)	Approx. Net Lanai Area (sq. ft.)	Total Approx. Net Area (sq. ft.)	Common Interest (%)
C-2	C-2	0				10,875	0	10,875	3.267434%
TOTAL						332,830			100.000000%

A. RESIDENTIAL UNIT CLASS COMMON INTEREST

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
701	1,891	0.634119%
702	1,143	0.383288%
703	992	0.332653%
705	950	0.318569%
706	877	0.294089%
707	778	0.260891%
708	768	0.257537%
709	685	0.229705%
710	957	0.320916%
801	1,891	0.634119%
802	1,143	0.383288%
803	992	0.332653%
805	950	0.318569%
806	877	0.294089%
807	778	0.260891%
808	768	0.257537%
809	685	0.229705%
810	957	0.320916%
901	1,891	0.634119%
902	1,143	0.383288%
903	992	0.332653%
905	950	0.318569%
906	877	0.294089%
907	778	0.260891%
908	768	0.257537%
909	685	0.229705%
910	957	0.320916%
1001	1,891	0.634119%
1002	1,143	0.383288%

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
1003	992	0.332653%
1005	950	0.318569%
1006	877	0.294089%
1007	778	0.260891%
1008	768	0.257537%
1009	685	0.229705%
1010	957	0.320916%
1101	1,891	0.634119%
1102	1,143	0.383288%
1103	992	0.332653%
1105	950	0.318569%
1106	877	0.294089%
1107	778	0.260891%
1108	768	0.257537%
1109	685	0.229705%
1110	957	0.320916%
1201	1,891	0.634119%
1202	1,143	0.383288%
1203	992	0.332653%
1205	950	0.318569%
1206	877	0.294089%
1207	778	0.260891%
1208	768	0.257537%
1209	685	0.229705%
1210	957	0.320916%
1301	1,891	0.634119%
1302	1,143	0.383288%
1303	992	0.332653%
1305	950	0.318569%
1306	877	0.294089%
1307	778	0.260891%
1308	768	0.257537%
1309	685	0.229705%
1310	957	0.320916%
1401	1,891	0.634119%
1402	1,143	0.383288%
1403	992	0.332653%
1405	950	0.318569%

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
1406	877	0.294089%
1407	778	0.260891%
1408	768	0.257537%
1409	685	0.229705%
1410	957	0.320916%
1501	1,891	0.634119%
1502	1,143	0.383288%
1503	992	0.332653%
1505	950	0.318569%
1506	877	0.294089%
1507	778	0.260891%
1508	768	0.257537%
1509	685	0.229705%
1510	957	0.320916%
1601	1,891	0.634119%
1602	1,143	0.383288%
1603	992	0.332653%
1605	950	0.318569%
1606	877	0.294089%
1607	778	0.260891%
1608	768	0.257537%
1609	685	0.229705%
1610	957	0.320916%
1701	1,891	0.634119%
1702	1,143	0.383288%
1703	992	0.332653%
1705	950	0.318569%
1706	877	0.294089%
1707	778	0.260891%
1708	768	0.257537%
1709	685	0.229705%
1710	957	0.320916%
1801	1,891	0.634119%
1802	1,143	0.383288%
1803	992	0.332653%
1805	950	0.318569%
1806	877	0.294089%
1807	778	0.260891%

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
1808	768	0.257537%
1809	685	0.229705%
1810	957	0.320916%
1901	1,891	0.634119%
1902	1,143	0.383288%
1903	992	0.332653%
1905	950	0.318569%
1906	877	0.294089%
1907	778	0.260891%
1908	768	0.257537%
1909	685	0.229705%
1910	957	0.320916%
2001	1,891	0.634119%
2002	1,143	0.383288%
2003	992	0.332653%
2005	950	0.318569%
2006	877	0.294089%
2007	778	0.260891%
2008	768	0.257537%
2009	685	0.229705%
2010	957	0.320916%
2101	1,891	0.634119%
2102	1,143	0.383288%
2103	992	0.332653%
2105	950	0.318569%
2106	877	0.294089%
2107	778	0.260891%
2108	768	0.257537%
2109	685	0.229705%
2110	957	0.320916%
2201	1,891	0.634119%
2202	1,143	0.383288%
2203	992	0.332653%
2205	950	0.318569%
2206	877	0.294089%
2207	778	0.260891%
2208	768	0.257537%
2209	685	0.229705%

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
2210	957	0.320916%
2301	1,891	0.634119%
2302	1,143	0.383288%
2303	992	0.332653%
2305	950	0.318569%
2306	877	0.294089%
2307	778	0.260891%
2308	768	0.257537%
2309	685	0.229705%
2310	957	0.320916%
2401	1,891	0.634119%
2402	1,143	0.383288%
2403	992	0.332653%
2405	950	0.318569%
2406	877	0.294089%
2407	778	0.260891%
2408	768	0.257537%
2409	685	0.229705%
2410	957	0.320916%
2501	1,891	0.634119%
2502	1,143	0.383288%
2503	992	0.332653%
2505	950	0.318569%
2506	877	0.294089%
2507	778	0.260891%
2508	768	0.257537%
2509	685	0.229705%
2510	957	0.320916%
2601	1,891	0.634119%
2602	1,143	0.383288%
2603	992	0.332653%
2605	950	0.318569%
2606	877	0.294089%
2607	778	0.260891%
2608	768	0.257537%
2609	685	0.229705%
2610	957	0.320916%
2701	1,891	0.634119%

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
2702	1,143	0.383288%
2703	992	0.332653%
2705	950	0.318569%
2706	877	0.294089%
2707	778	0.260891%
2708	768	0.257537%
2709	685	0.229705%
2710	957	0.320916%
2801	1,891	0.634119%
2802	1,143	0.383288%
2803	992	0.332653%
2805	950	0.318569%
2806	877	0.294089%
2807	778	0.260891%
2808	768	0.257537%
2809	685	0.229705%
2810	957	0.320916%
2901	1,891	0.634119%
2902	1,143	0.383288%
2903	992	0.332653%
2905	950	0.318569%
2906	877	0.294089%
2907	778	0.260891%
2908	768	0.257537%
2909	685	0.229705%
2910	957	0.320916%
3001	1,891	0.634119%
3002	1,143	0.383288%
3003	992	0.332653%
3005	950	0.318569%
3006	877	0.294089%
3007	778	0.260891%
3008	768	0.257537%
3009	685	0.229705%
3010	957	0.320916%
3101	1,891	0.634119%
3102	1,143	0.383288%
3103	992	0.332653%

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
3105	950	0.318569%
3106	877	0.294089%
3107	778	0.260891%
3108	768	0.257537%
3109	685	0.229705%
3110	957	0.320916%
3201	1,891	0.634119%
3202	1,143	0.383288%
3203	992	0.332653%
3205	950	0.318569%
3206	877	0.294089%
3207	778	0.260891%
3208	768	0.257537%
3209	685	0.229705%
3210	957	0.320916%
3301	1,891	0.634119%
3302	1,143	0.383288%
3303	992	0.332653%
3305	950	0.318569%
3306	877	0.294089%
3307	778	0.260891%
3308	768	0.257537%
3309	685	0.229705%
3310	957	0.320916%
3401	1,891	0.634119%
3402	1,143	0.383288%
3403	992	0.332653%
3405	950	0.318569%
3406	877	0.294089%
3407	778	0.260891%
3408	768	0.257537%
3409	685	0.229705%
3410	957	0.320916%
3501	1,891	0.634119%
3502	1,143	0.383288%
3503	992	0.332653%
3505	950	0.318569%
3506	877	0.294089%

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
3507	778	0.260891%
3508	768	0.257537%
3509	685	0.229705%
3510	957	0.320916%
3601	1,891	0.634119%
3602	1,143	0.383288%
3603	992	0.332653%
3605	950	0.318569%
3606	877	0.294089%
3607	778	0.260891%
3608	768	0.257537%
3609	685	0.229705%
3610	957	0.320916%
3701	1,891	0.634119%
3702	1,143	0.383288%
3703	992	0.332653%
3705	950	0.318569%
3706	877	0.294089%
3707	778	0.260891%
3708	768	0.257537%
3709	685	0.229705%
3710	957	0.320916%
3801	3,180	1.066366%
3803	992	0.332653%
3805	950	0.318569%
3806	877	0.294089%
3807	778	0.260891%
3808	768	0.257537%
3809	685	0.229705%
3810	957	0.320916%
3901	2,744	0.920137%
3903	992	0.332653%
3905	950	0.318569%
3906	877	0.294089%
3907	778	0.260891%
3908	768	0.257537%
3909	685	0.229705%
3910	957	0.320916%

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
Total	**298,209**	**100.000000%**

B. COMMERCIAL UNIT CLASS COMMON INTEREST

Unit Number	Approx. Net Living Area (sq. ft.)	Class Common Interest (%)
C-1	23,746	68.588429%
C-2	10,875	31.411571%
Total	**34,621**	**100.000000%**

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

B. **APPROXIMATE NET LIVING AREAS.** The approximate net living areas of the Commercial Units and the Residential Units were determined by measuring the area between the interior finished surfaces of all perimeter and party walls at the floor of each Unit and includes the areas occupied by load-bearing and nonloadbearing interior walls, columns, ducts, vents, shafts, 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 two hundred ninety-seven (297) 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 Unit C-1 was decreased by 0.000007%.

D. **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 3901 was decreased by 0.000023%.

E. **PARKING STALLS, STORAGE LOCKERS, AND STORAGE ROOMS.** The Condominium Map depicts the location, type, and number of parking stalls, storage lockers, and storage rooms in the Project. Numbered parking stalls, storage lockers, and storage rooms designated on the Condominium Map as "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 3801. Developer has the reserved right to redesignate and reassign parking stalls, storage lockers, and storage rooms currently designated as Limited Common Elements appurtenant to Unit 3801, to other Residential Units in the Project as Limited Common Elements appurtenant to such Residential Units.

END OF EXHIBIT "B"