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STATE OF HAWAII

BUREAU OF CONVEYANCES

DOCUMENT NO. - Doc A - 69270918A thru A - 69270918C
DATE - TIME - December 19, 2018 3:29 PM

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL () PICK-UP (X)

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Tax Map Key No. (1) 3-9-008:068

Total Pages: 58

**DECLARATION OF CONDOMINIUM PROPERTY REGIME OF
7000 HAWAII KAI DRIVE AND CONDOMINIUM MAP**

THIS DECLARATION is made this 26th day of September, 2018, by **HALE KA LAE, LLC**, a Hawaii limited liability company ("**Developer**"), with its post office address at 800 Bethel Street, Suite 501, Honolulu, Hawaii 96813.

WHEREAS, Developer owns, in fee simple, the real property more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference ("**Land**"); and

WHEREAS, there exists on said Land certain Improvements (hereinafter defined), which Land and Improvements are depicted on Condominium Map No. 5879, filed in the Bureau of Conveyances of the State of Hawaii ("**Bureau**"), and which Condominium Map is incorporated herein by this reference ("**Condominium Map**");

NOW, THEREFORE, in order to create a condominium project consisting of the Land and the Improvements located thereon, to be known as "**7000 Hawaii Kai Drive**", Developer, by this Declaration of Condominium Property Regime of 7000 Hawaii Kai Drive, referred to hereinafter as the "**Declaration**", and the concurrent recordation of the Condominium Map, does hereby submit the Land and Improvements and all of its interests therein to a condominium property regime established pursuant to Chapter 514B of the Hawaii Revised Statutes, as amended (the "**Act**"). Developer hereby declares that the Project is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration and the Bylaws of the Association of Unit Owners of 7000 Hawaii Kai Drive ("**Bylaws**"), recorded concurrently herewith in said 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, 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 meaning they have in common usage; provided, however, that where legal, technical, or trade terms are used and the context in which such terms are used indicates that such terms are to be given their legal, technical, or trade usage meanings, such terms shall be given such legal, technical, or trade usage meanings.

B. DEFINED TERMS. As used in this Declaration and the Bylaws, the following terms shall have the following attributed meanings:

1. **"7000 Hawaii Kai Drive"** 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.

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

3. **"ADA"** means the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, as amended.

4. **"Affordable Rental Units"** means and refers to Units noted as such in the attached Exhibit B.

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

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

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

8. **"Association"** means the Association of Unit Owners of 7000 Hawaii Kai Drive.

9. **"Board"** means the Board of Directors of the Association of 7000 Hawaii Kai Drive.

10. **"Building 1"** means the building depicted and labeled as such in the Condominium Map as "Building 1."

11. **"Building 2"** means the building depicted and labeled as such in the Condominium Map as "Building 2." Note that Building 2 and Building 3 are physically connected.

12. **"Building 3"** means the building depicted and labeled as such in the Condominium Map as "Building 3." Note that Building 2 and Building 3 are physically connected.

13. **"Bureau"** means the Bureau of Conveyances of the State of Hawaii.
14. **"Bylaws"** means the Bylaws of the Association, and shall include any lawful amendments thereto.
15. **"Capital Improvements Reserve Fund"** means that fund established by the Board pursuant to Article VI, Section 1(c) of the Bylaws to provide for specific capital improvements to the Project.
16. **"Claimant"** means the Association, Board, or any Owner or Owners claiming, contending, or alleging an Alleged Defect, as further discussed in **Section XLI.A** of this Declaration.
17. **"Commission"** means the Real Estate Commission of the State of Hawaii.
18. **"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." Unless otherwise provided herein, the Common Elements include the Land in fee simple.
19. **"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; and (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 with amounts charged or attributable to each Unit or group of Units, as determined by the Board with the advice of the Managing Agent, an engineer, certified public accountant, or other appropriate consultant). 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.
20. **"Common Interest"** means the undivided percentage interest in all Common Elements of the Project set forth in this Declaration and discussed in **Article III** below, 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.
21. **"Community System"** means central telecommunication receiving and distribution systems and services (e.g. cable television, high speed data/internet/intranet services, cellular telephone, satellite television, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software.
22. **"Condominium Map"** means the map prepared in accordance with Section 514B-33 of the Act that is filed in said Bureau, as the same may be duly amended from time to time. The Condominium Map sets forth: (a) a site plan for the Project, depicting the location, layout, and access to a public road for 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 (if any) 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.

23. **"County"** means the City and County of Honolulu, State of Hawaii.
24. **"Declaration"** means this Declaration of Condominium Property Regime of 7000 Hawaii Kai Drive and Condominium Map, together with any lawful amendments hereto.
25. **"Developer"** means HALE KA LAE, LLC, a Hawaii limited liability company, and shall also include any of its permitted successors and assigns.
26. **"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 XLII**.
27. **"Developer's Reserved Rights"** means those rights of Developer enumerated in **Articles XVI through XXXV**, which can be unilaterally exercised by Developer during the Development Period without the consent or joinder of any other party.
28. **"Development Period"** means the period starting on the date this Declaration is recorded and ending upon the earlier of (i) December 31, 2038, (ii) the date Developer no longer owns any interest in the Project, or (iii) the date Developer records a document relinquishing all of Developer's Reserved Rights.
29. **"Director"** means a member of the Board.
30. **"Eligible Mortgage Holder"** means a first mortgagee of a Unit that has made a written request to the Association for timely written notice of, or to whom notice is required to be given regarding, proposed amendments to the Project Documents, as provided in the Bylaws.
31. **"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.
32. **"General Operating Reserve"** means that fund established by the Board to provide financial stability for the Project, as is more fully described in Article VI, Section 1(b) of the Bylaws.
33. **"Hale Ka Lae at 7000 Hawaii Kai"** shall be the name of Building 2 and Building 3, collectively, which address shall be 7000 Hawaii Kai Drive, Honolulu, Hawaii.
34. **"Hale Manu"** shall be the name of Building 1, which address shall be 7002 Hawaii Kai Drive, Honolulu, Hawaii.
35. **"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.
36. **"Improvements"** means improvements that exist or will exist on and/or are made to the Land, and shall also include those improvements made by Unit Owners (including Developer) and/or the Association from time to time.
37. **"Land"** means the real property described in **Exhibit "A"** attached hereto. The Land is subject to change.
38. **"Lender"** means the mortgagee of a recorded Mortgage on a Unit. It also includes the beneficiary of a deed of trust encumbering a Unit.
39. **"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; provided that 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 Units or to which said Limited Common Element is appurtenant.

40. **"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, and the property of the Association, if any.

41. **"Managing Agent"** means an entity or individual employed or retained by the Association from time to time pursuant to the Management Agreement to perform fiscal and administrative management of the Project and physical management of the Common Elements.

42. **"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.

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

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

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

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

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

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

49. **"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.

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

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

52. **"Recreational Amenities"** means those amenities of the Project existing from time to time. Said Recreational Amenities are Limited Common Elements of the Project appurtenant to Units in Buildings 2

and 3, as depicted in the Condominium Map; provided that the dog park is a Common Element, and is not a Limited Common Element appurtenant to Units in Buildings 2 and 3. Said Recreational Amenities are subject to change in the discretion of Developer.

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

54. "**Trustee**" means that bank or trust company having a principal place of business in the State of Hawaii that, in the discretion of the Board, may be designated to hold and administer condemnation or insurance proceeds for the Project.

55. "**Unit**" means a part of the Project, as described in this Declaration and as shown in 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. The Units included in the Project are listed in **Exhibit "B,"** attached hereto and incorporated herein by reference.

56. "**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.

II. DESCRIPTION AND DIVISION OF PROPERTY.

A. **DESCRIPTION OF THE PROJECT.** The Project is depicted in the Condominium Map and consists of the following:

1. **Units.** Two hundred sixty-nine (269) Units contained in three (3) ten-story buildings, as depicted in the Condominium Map. Building 1 has fifty-six (56) Units, Building 2 has 97 Units, and Building 3 has one hundred sixteen (116) Units. Note that Buildings 2 and 3 are physically connected but labeled as such for convenience.

2. **Common Elements.** The Common Elements identified below.

B. **DESCRIPTION OF THE UNITS.** Two hundred sixty-nine (269) 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 in the Condominium Map and are described as follows:

1. **Unit Designations, Numbers, and Locations.** The Unit designations, numbers, and locations are generally shown in the Condominium Map and are further identified in **Exhibit "B."**

2. **Unit Areas, Layouts, and Dimensions.** The Unit areas and layouts are generally shown in the Condominium Map and are further described in Exhibit "B." The Condominium Map is intended only to show: (a) the location and layout of the Units, and access to a public road from the buildings, 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 buildings; (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 (if any) 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 or building 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 in 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 purpose for which such rooms and areas may be used. Unless expressly restricted in this Declaration, such areas may be used for any purposes 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 stairways, walkways, and driveways of the Project to public streets and to the grounds of the Project that have access to public streets.

4. **Other Data Identifying and Defining the Units.** Each Unit shall be deemed to include (i) all walls and partitions that are not load-bearing within its perimeter or party walls, (ii) all pipes, shafts, vents, ducts, pumps, conduits, cables, wiring, other utility or service lines running through such Unit or other utility meters that are utilized for and serve only that Unit, (iii) the decorated or finished interior surfaces of all perimeter and party walls and load-bearing walls, floors, and ceilings of each Unit, and the areas within said walls, floors and ceilings, including, but not limited to, the air space and Improvements, (iv) the decorated or finished interior surfaces of any doors, door frames, windows, or window frames, (v) all cranks and other window hardware, (vi) all appliances and fixtures installed in the Unit, and replacements therefor, and (vii) any interior stairway connecting the floors of a Unit (if and as applicable).

The respective Units shall not be deemed to include: (i) the perimeter or party walls surrounding a Unit from the undecorated or unfinished interior surfaces thereof and any Improvements and/or air space located beyond such undecorated or unfinished interior surface of such perimeter or party walls, (ii) the undecorated or unfinished interior surfaces of the floors and ceilings surrounding a Unit and the entire roof of the building in which the Unit is located, and any Improvements and/or air space (if any) located beyond such floors and ceilings, (iii) the decorated or finished exterior surfaces of perimeter doors, door frames, windows, and window frames surrounding a Unit, (iv) any load-bearing walls and columns (if any) located in the building in which the Unit is located and the undecorated or unfinished surfaces thereof, (v) any pipes, shafts, vents, ducts, pumps, conduits, cables, wiring, and other utility or service lines running through each Unit or other utility meters, which are utilized for or serve more than one Unit, and (vi) the Common Elements, including the Limited Common Elements described below.

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

1. The Land in fee simple and any appurtenances thereto as described in **Exhibit "A"**;
2. Regarding the building in which the Unit is located: (i) the perimeter or party walls surrounding a Unit from the undecorated or unfinished interior surfaces thereof, and any Improvements and/or air space located beyond such undecorated or unfinished interior surfaces of such perimeter or party walls, (ii) the undecorated or unfinished interior surfaces of the floors and ceilings surrounding a Unit and the entire roof of the building in which the Unit is located, and any Improvements and/or air space (if any) located beyond such floors and ceilings, (iii) the decorated or finished exterior surfaces of perimeter doors, door frames, windows, and window frames surrounding a Unit, (iv) any load-bearing walls and columns (if any) located in the building and the undecorated or unfinished surfaces thereof, (v) any pipes, shafts, vents, ducts, pumps, conduits, cables, wiring and other utility or service lines running through each Unit or other utility meters, which are utilized for or serve more than one Unit, and (vi) perimeter or party walls, partitions, privacy screens, floors, ceilings from the undecorated or unfinished interior surfaces thereof, and any Improvement and/or air space (if any) located beyond such undecorated or unfinished surfaces, and any railings or fences on the exterior portions of the Project;
3. Any and all other apparatus and installations existing for common use, such as tanks, motors, fans, compressors, and other such installations and apparatus, including, but not limited to the fire pumps, emergency generator and security systems that are shared by all buildings of the Project;
4. The landscaping, including, but not limited to, planters (if any), throughout the Project and refuse facilities (if any) and all landscaped open spaces, the entry roadway and entry courtyard;
5. All roadways, roadside parking areas and stalls, shared driveways, guest and/or handicap parking stalls, parking ramps, access lanes, garage elevators, the group mailbox structure/s, lobbies, storage, electrical, transformer, water pump, emergency generator, fire command center rooms, elevators and stairwells, sidewalks, and walkways of the Project;

6. All lamps, lamp posts, and sitting areas (if any) within the Project;
7. Unimproved areas, maintenance and storage areas, and other similar areas that are not part of a Unit;
8. Any and all open spaces (if any) and other community or recreational facilities operated to serve the residents of the Project, including, without limitation, the Recreational Amenities;
9. Any and all retaining or high screen walls installed by Developer within the Project and/or separating the surrounding properties and the Project and/or the buildings within the Project;
10. All ducts, pipes, valves, sewer lines, drain lines, electrical equipment, cables, chutes, pipes, shafts, wire conduits, wires, or other utility service lines that are utilized to serve some or any of the Common Elements described herein and other central and appurtenant transmission facilities over, under, and across the Project which serve any Common Element for services such as power, light, water, gas, sewer, refuse, telephone, and radio and cable television signal distribution;
11. Any photovoltaic and solar water heating panels and associated pipes, brackets, mountings, and other appurtenances located on the roofs of certain buildings in the Project for the benefit of the Common Elements, including, without limitation, the Recreational Amenities;
12. All of the Limited Common Elements described in **Section II.D** below; and
13. All other areas of the Project that are not described as a Unit or a part thereof and that are necessary or convenient to its existence, maintenance, and safety, or normally in common use.

D. LIMITED COMMON ELEMENTS. The Limited Common Elements are hereby designated, set aside, and reserved for the exclusive use of certain Units, and such Units shall have appurtenant thereto, exclusive easements for the use of such Limited Common Elements, unless otherwise set forth herein. The Limited Common Elements include, but are not limited to, those elements listed below. The responsibility to maintain, clean, upkeep, repair, replace, alter, improve, and/or add to (collectively, "**Maintain**") such Limited Common Elements shall be vested in the Association, as set forth below. The costs and expenses of every description pertaining to such Limited Common Elements, including, but not limited to, the costs to Maintain such Limited Common Elements (collectively, "**Cost**"), 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 to maintain such Limited Common Element shall be charged to each such Unit Owner in the same proportion that the Common Interest appurtenant to each respective Unit bears to the aggregate Common Interest appurtenant to all the Units to which the Limited Common Element is appurtenant.

1. **Lanai.** Each Unit shall have as a Limited Common Element appurtenant thereto the lanai (if any) immediately adjacent to the Unit.

2. **Parking Stall.** Each Unit shall have as a Limited Common Element appurtenant thereto a parking stall or stalls, as depicted in the Condominium Map and as assigned in **Exhibit "B"** attached hereto.

3. **Mailbox.** Each Unit in Buildings 2 and 3 shall have as a Limited Common Element appurtenant thereto the interior of that certain mailbox designated with the same number as the Unit, located within the group mailbox structure located on the first floor of Building 2. Each Unit in Buildings 1 shall have as a Limited Common Element appurtenant thereto the interior of that certain mailbox designated with the same number as the Unit, located within the group mailbox structure located on the first floor of Building 1. The location of the group mailbox structures are subject to change in the sole discretion of Developer.

4. **Recreational Amenities.** The Recreational Amenities and the area designated as "Recreational Area" in the Condominium Map shall be a Limited Common Element appurtenant to the Units in Buildings 2 and 3; provided that the dog park is a Common Element, but not a Limited Common Element appurtenant to Units in Buildings 2 and 3.

5. **Yard Areas – Buildings 2 and 3 First Floor Units.** The yard area immediately adjacent to the first floor Units in Buildings 2 and 3, if any, are designated as Limited Common Elements appurtenant to those respective Units to which such yard areas are adjacent, as depicted and noted in the Condominium Map. The yard areas include the area bounded by the exterior surface of the exterior walls and lanai of the appurtenant Unit and the interior surface of the fence surrounding the appurtenant yard area.

6. **Building 1 Limited Common Elements.** All areas depicted in the Condominium Map as "Building 1 Limited Common Element," including the roof of Building 1, as depicted and noted in the Condominium Map, shall be Limited Common Elements appurtenant to the Units in Building 1. There is no representation or assurance that any of the rooms or spaces will be configured or utilized as the same may be labeled or depicted in the Condominium Map.

7. **Buildings 2 and 3 Limited Common Elements.** All areas depicted in the Condominium Map as "Building 2 & 3 Limited Common Element, " including the roof of Buildings 2 and 3, as depicted and noted in the Condominium Map, shall be Limited Common Elements appurtenant to the Units in Buildings 2 and 3. There is no representation or assurance that any of the rooms or spaces will be configured or utilized as the same may be labeled or depicted in the Condominium Map.

III. COMMON INTEREST.

Each Unit shall have appurtenant thereto an undivided percentage interest in all Common Elements of the Project, as shown in said **Exhibit "B"** herein, called the Common Interest, and the same proportionate share in all common profits and Common Expenses of the Project, and for all other purposes, except as otherwise provided in this Declaration, including, but not limited to, voting; which Common Interest shall be subject to adjustment as may be provided in this Declaration. Any profits generated from the use of a particular Unit or Limited Common Element shall not be deemed "common profits" subject to distribution in accordance with the Common Interest, but shall belong to the Owner(s) of such Unit(s) or the Owner(s) of the Unit(s) to which such Limited Common Element is appurtenant. 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 reserved rights, as may be set forth herein.

IV. EASEMENTS AND LICENSES.

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

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

B. **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.

C. EASEMENT FOR ACCESS TO UNITS AND LIMITED COMMON ELEMENTS. The Association shall have the irrevocable right, but not the duty, to be reasonably exercised by the Board and/or the Managing Agent, or any of their successors, assigns, agents, employees, contractors, subcontractors, and other authorized personnel, to enter each Unit 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 the inspection, repair, painting, resurfacing, maintenance, installation, or replacement of any Common Elements, or for any other purpose reasonably related to the exercise of its rights and obligations under this Declaration, or, without notice, at any time to (1) make emergency repairs therein necessary to prevent damage to any Unit or Limited Common Element, (2) abate any nuisance or any dangerous, unauthorized, prohibited, or unlawful activity, (3) protect the property rights of any Owner, or (4) prevent death or serious bodily injury to any Owner or other Occupant therein.

Pursuant to this right, the Association shall also have the right to reasonably enter and have access to Limited Common Elements as necessary to periodically perform cleaning of the exterior portions of the windows and glass sliding doors of Units. The Association shall give any affected Owner at least one (1) week prior written notice of such required access and arrange times during reasonable hours when such access will be required. Owners shall cooperate and grant the Association access when requested unless impracticable and, if so, shall propose to the Association another reasonable date and time within ten (10) business days of the originally requested date.

D. EASEMENT IN COMMON ELEMENTS, CERTAIN LIMITED COMMON ELEMENTS, AND UNITS FOR UTILITIES. Wherever utility lines, connections, and/or facilities are installed within the Project in any Unit, Limited Common Element, and/or Common Element, the Association shall have the right, and there are hereby reserved to the Association, 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, and/or facilities that service the Unit(s), Limited Common Elements, and/or Common Elements, to enter Units owned by others and/or Limited Common Elements appurtenant thereto, or to have utility companies enter Units owned by others and/or Limited Common Elements appurtenant thereto, in or upon which said connections, lines, and/or facilities, or any portions thereof, lie; to repair, replace, and generally maintain said connections, lines, and/or facilities as and when the same may be necessary; provided that the Association or utility company shall repair all damage to any Unit and/or Limited Common Element caused by such entry as promptly as possible after completion of work thereon.

E. EASEMENT AFFECTING COMMON ELEMENTS. The Association has the right, exercisable by the Board and/or the Managing Agent, to designate, grant, lease, convey, transfer, cancel, relocate, and otherwise deal with any easements over, under, across, or through the Common Elements for any reasonable purpose, which may include, but will not be limited to, (i) those purposes necessary to the operation, care, upkeep, maintenance, or repair of any Unit, the Common Elements, or any Limited Common Element, or (ii) any easements for utilities or for any public purpose, including for example, pedestrian walkways, landscaped areas, stairs, ramps, roadways, or other passageways, or the facilities that support the Project.

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

G. DEVELOPER'S EASEMENT TO COMPLETE IMPROVEMENTS TO THE PROJECT. During the Development Period, Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees, and assigns, shall have an easement over, under, and upon the Project, including the Common Elements, Limited Common Elements, and any Unit, as may be reasonably necessary or appropriate for the completion of the Improvements of the Project, the correction of any defects and other "punchlist" items therein, and the repair, renovation, and/or modification of, or other work on, the Common Elements and Units.

H. DEVELOPER'S EASEMENT FOR NOISE AND DUST. During the Development Period, Developer, its agents, employees, consultants, contractors, licensees, successors, and assigns, shall have an easement over, under, and upon the Project, or any portion thereof, to create and cause noise, dust, vibration, and any other nuisance created by and/or resulting from any work connected with or incidental to the development, construction, and/or sale of any Unit or other Improvement in the Project.

I. 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, without limitation, the use of Units owned by Developer and the Common Elements (excluding the Limited Common Elements appurtenant to Units not owned by Developer) as model Units and/or for sales, leasing, management and/or 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, model Units, interior design and decorator centers, and parking areas for employees, agents, and prospective buyers, as may be necessary or convenient for the proper development and disposition of Units by sale, resale, lease, or otherwise; and the right, but not the obligation, to provide ongoing maintenance, operation, service, construction and repairs to individual Units. In the event that Developer's Mortgage lender, if any, or any successor to or assignee of Developer's Mortgage lender shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the Mortgage remedies or by a deed or an assignment in lieu of foreclosure, such Mortgage lender, its successors and assigns, shall have the same rights as Developer to conduct such sales activities on the Project.

J. EASEMENTS FOR COMMUNITY SYSTEMS, PHOTOVOLTAIC SYSTEMS, AND SOLAR WATER HEATING SYSTEMS. There are reserved to Developer, its agents, employees, personnel or licensees and its successors and assigns, perpetual rights and easements over the Project to install and operate, or provide for the installation and operation of, Community Systems, photovoltaic systems, and solar water heating systems as Developer, in its discretion, deems appropriate to serve all or any portion of the Project. Such right shall include, without limitation, Developer's right to select and contract with companies licensed to provide telecommunications, cable television, other Community Systems, photovoltaic systems, and solar water heating systems services in the region, to receive compensation from any source related to the rights set forth in this Section, and to grant easements for such purposes, all upon such terms and conditions as Developer may determine in its discretion.

K. DEVELOPER'S ADDITIONAL EASEMENTS AND RIGHTS TO ACCEPT, GRANT AND MODIFY EASEMENTS. Developer reserves during the Development Period, as an additional Developer's Reserved Right, the right to designate, grant, convey, transfer, cancel, relocate, and otherwise deal with any easements over, under, across, or through the Common Elements as necessary or convenient for any reasonable purpose, which may include, but not be limited to (i) the repair, care, or upkeep of any Unit or Common Element, any utility easement or infrastructure that serves the Project, and/or any access ways or walkways, or (ii) to comply with any government agreements or permits, private covenant, or other easement or access requirements. Developer also reserves the right to negotiate, accept, transfer, cancel, relocate, and otherwise deal with any easement or license over adjoining properties in favor of the Land or the Project for any reasonable purpose which may include, but not be limited to (i) the repair, care, or upkeep of any Unit or Common Element, any utility easement or infrastructure that serves the Project, and/or access ways or walkways, (ii) for vehicular or pedestrian access to any adjoining or neighboring properties, (iii) for landscaping purposes, (iv) to comply with any government agreement or permits, private covenant, or other easement or access requirements, or (v) 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.

L. 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 of the Unit occupied, to the same extent that the Owner 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 contained in any rental agreement or lease with the Owner).

M. DEVELOPER'S EASEMENT FOR THE CONSOLIDATION OF UNITS. During the Development Period, Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees, and assigns, shall have an easement over, under, upon, and through the Common Elements, including any Limited Common Elements, and through the Units, or any portion thereof, as may be reasonably necessary to effect the consolidation of Units, as contemplated by **Article XVII** below, 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/or resulting from any work connected with or incidental to effecting any such consolidation of Units, provided that any such work is undertaken with the exercise of reasonable diligence and shall not unreasonably interfere with the use and enjoyment of the Project by Owners.

N. DEVELOPER'S EASEMENT TO EXERCISE RESERVED RIGHTS. During the Development Period, Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees, and assigns, shall have an easement over, under, upon, and through the Common Elements, including any Limited Common Elements, and through the Units, or any portion thereof, as may be reasonably necessary to exercise any of its reserved rights set forth in **Articles XVI** through **XXXV** herein, 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.

O. CONSENT OF OTHER PERSONS. Developer may exercise the rights reserved to it in this Article without the approval or joinder of anyone else.

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 Unit Owners affected, expressed in an amendment to this Declaration that is duly filed in said 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, if any.

VI. USE.

A. USES OTHER THAN RESIDENTIAL USE OF UNITS PROHIBITED. Except as provided herein, the Units and their appurtenant Limited Common Elements shall be occupied and used by the respective Owners thereof, their tenants, families, domestic servants, and social guests for residential purposes exclusively, except that a home-based business may be maintained within a Unit, provided that (i) such maintenance and use is limited to the person actually residing in the Unit; (ii) no employees or staff other than a person actually residing in the Unit are utilized; (iii) no clients or customers of such business visit the Unit; (iv) 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; (v) such maintenance and use is in strict conformity with the provisions of any applicable law (including zoning law), ordinance, or regulation; (vi) the Person utilizing such office maintains a principal place of business other than the Unit; (vii) such business uses no equipment or process that creates noise, vibration, glare, fumes, odors, 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; (viii) such business does not involve the use, storage, or disposal of any materials that the State of Hawaii or any governing body with jurisdiction over the Property designates as hazardous material; and (ix) the Unit Owner has provided the Board thirty (30) calendar days prior written notice of Owner's intent to operate such home-based

business. Notwithstanding the foregoing, the Board shall have the authority, but not the obligation, to permit a home-based business to be maintained within a Unit which does not meet one or more of the requirements set forth above, which permission may be withdrawn at any time in the sole discretion of the Board. Nothing contained herein shall be construed to prohibit Developer from the use of any 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, subject to any zoning or ordinance.

The term "business" as used in this Section, shall be construed to have its ordinary generally accepted meaning and shall include, without limitation, any work or activity undertaken on an ongoing basis that involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full- or part-time; (ii) such activity is intended to or does generate a profit; and (iii) a license is required therefor.

Furthermore, the Units shall not be used for transient or hotel purposes, which are defined as (i) occupancy of a Unit by any person whose permanent address for legal purposes is not the Unit for any period less than thirty (30) days, or (ii) any rental in which the Occupants of the Unit are provided customary hotel or rental services. Notwithstanding the foregoing, however, if the area in which the Project is located is ever re-zoned by a governmental agency to permit said transient use, the Association, 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, may amend the Project Documents to allow for such transient purposes pursuant to **Section XI.A** herein; provided that any such amendment shall make clear that the Occupancy Restrictions (defined below) remain in full force and effect.

B. AFFORDABLE RENTAL UNITS. The Project is subject to an affordable housing requirement as stated in that certain Unilateral Agreement and Declaration for Conditional Zoning dated July 3, 1986, recorded in the Bureau at Liber 19645 Page 696, as amended by (1) Amendment to Unilateral Agreement and Declaration for Conditional Zoning dated June 23, 2000, recorded in the Bureau as Document No. 2000-112963, (2) Amendment to Unilateral Agreement and Declaration for Conditional Zoning dated November 28, 2000, recorded in the Bureau as Document No. 2000-167451 (collectively, the "Unilateral Agreement"), which Unilateral Agreement was entered into pursuant to Revised Ordinances of the City and County of Honolulu No. 86-88, as amended by Ordinance Nos. 99-54 and 00-70 (collectively, the "Ordinance"). Pursuant to the Unilateral Agreement and Ordinance, the Developer and City entered into that certain Affordable Housing Plan Agreement, dated October 11, 2010, recorded in the Bureau as Document No. 2010-161459. Developer's plan to satisfy the affordable housing requirement was approved by the Department of Planning and Permitting of the City and County of Honolulu as evidenced by those certain letters dated December 10, 2018 and December 14, 2018, recorded in the Bureau on December 19, 2018 as Document Nos. A-69270728A through A-69270728B, wherein the Affordable Rental Units shall be rented as affordable rental units for the period of thirty (30) years to households meeting the income and other eligibility requirements set forth in the Unilateral Agreement.

C. PROHIBITION AGAINST TIME SHARE PROGRAMS AND UTILIZATION OF SHORT-TERM ONLINE RENTAL PLATFORM. Units and/or Limited Common Elements or any portion of either shall not be the subject of or sold, transferred, conveyed, leased, occupied, rented, or used at any time under a time share plan (as defined in Hawaii Revised Statutes, Chapter 514E, as amended) or similar arrangement or program whether covered by Chapter 514E or not, including, but not limited to, any so-called "fractional ownership," "fractional-interest ownership," "rental pool," "vacation license," "travel club membership," "club membership," "membership club," "destination club," "time-interval ownership," or "interval exchange" (whether the exchange is based on direct exchange or occupancy rights, cash payments, reward programs, or other point or accrual systems) as offered and established through a third-party vacation membership service provider who is in the business of providing and managing such programs; and shall not be used as part of any occupancy plan or for similar purposes, which shall include: (i) any joint ownership, whether or not ownership is deeded, of a Unit where unrelated (i.e., non-family) owners share and enjoy use or occupation of the Unit according to a periodic (fixed or floating) schedule based on time intervals, points, or other rotational system; or (ii) any club, the membership of which allows access and use of one or more properties by its members based on availability and reservation priorities, commonly known as destination clubs (equity or non-equity) or vacation clubs. The 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 30-day period of time. The foregoing restrictions are

collectively referred to as "**Occupancy Restrictions**". The Occupancy Restrictions may be enforced by Developer, the Association, or the Managing Agent.

The Occupancy Restrictions set forth above shall be read broadly, and, among other things, shall encompass any type of plan, the nature of which causes 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 the Association or the Managing Agent that a violation of this provision exists shall be binding on the violating Owner, and the Board may promulgate and effectuate additional rules, regulations, procedures, and processes for enforcement of this provision, including but not limited to any surcharge or other charge or assessment that the Board shall solely determine. This Section shall not be terminated or amended without the prior written approval of Developer, to the extent permitted by applicable law.

D. USE OF RECREATIONAL AMENITIES. The Recreational Amenities are Limited Common Elements appurtenant to Units in Buildings 2 and 3, and shall only be used by Unit Owners and Occupants of Units in Buildings 2 and 3. The Recreational Amenities shall only be used for recreation and leisure activities and any other purposes permissible by this Declaration, the Bylaws, and the House Rules; provided that, and subject to any Developer's Reserved Rights, at no time shall there be any commercial use of the Recreational Amenities or any third-party independent commercial operation. Developer shall have the option, in its sole discretion, to add to, reconfigure, resize, and/or relocate any or all of the Recreational Amenities, which may in turn increase or decrease the Common Expenses and, consequently, affect maintenance fees.

E. RIGHT TO SELL, LEASE, OR RENT UNITS. 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 provisions of the Act, this Declaration, the Bylaws, and the House Rules; provided, however, that (i) all leases shall be in writing, signed by the Owner or Owner's Representative and the tenant, (ii) all leases shall have a term of not less than thirty (30) calendar days, (iii) all leases and rentals of Units or portions thereof shall be made in accordance with any applicable zoning ordinances and other applicable laws, including, but not limited to, the Residential Landlord Tenant Code, Chapter 521 of the Hawaii Revised Statutes, unless otherwise exempted therefrom, (iv) the Owner gives notice in writing to the Association that such Owner's Unit is being leased out and the name of such lessee, (v) such Owner's right to lease is subject to any owner-occupant requirements under Part V.B of the Act, and (vi) no Unit shall be utilized for hotel purposes. Further, no Owner, or any agent of an Owner, will engage in a circumvention of the 30-day requirement by systematically permitting the cancellation of an authorized lease (e.g., a lease with a term of at least 30 days), thereby effectively permitting occupancy of an Owner's Unit for less than a 30-day period.

F. 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 as security for repayment of a loan. Any Mortgage shall be subordinate to all of the provisions of the Project Documents and, in the event of foreclosure, the provisions of the Project 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 Project 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.

G. PROHIBITION ON ACTIVITIES THAT MAY JEOPARDIZE THE PROJECT. No Unit Owner shall do or suffer anything, 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: (1) injure the reputation of the Project; (2) jeopardize the safety or soundness of the Project; (3) create a nuisance or interfere with or unreasonably disturb the rights of other Owners and Occupants; (4) reduce the value of the Project; (5) increase the rate of insurance applicable to the Units or the contents thereof, or to the Project; (6) violate any applicable law, ordinance, statute, rule or regulation of any local, county, state, or federal government or agency thereof; (7) cause the violation of any conditions, restrictions, covenants, or agreements entered into for the benefit of the Project; and/or (8) result in the cancellation of insurance applicable to the Project or adversely affect the right of recovery thereunder or result in reputable companies refusing to provide insurance as required or permitted by the Bylaws.

H. OWNERS TO MAINTAIN UNITS AND LIMITED COMMON ELEMENTS IN GOOD ORDER. The Owner of a Unit shall keep the interior of his or her Unit and all appliances, plumbing, electrical, and other fixtures and appurtenances constituting a part of the Unit and the Limited Common Elements appurtenant thereto in good order and repair, and shall be responsible for any damage or loss caused by his or her failure to do so. Decisions on repairs or modifications to the Limited Common Elements shall be made by the Owners of Units to which such Limited Common Elements are appurtenant, subject to the provisions of **Section VI.G** above, and subject to any additional provisions stated in the Bylaws. Unit Owners shall be responsible for any damage or loss caused by such Owner's tenants, guests, or invitees to any of the Common Elements and Limited Common Elements.

I. ASSOCIATION'S RIGHT TO MAINTAIN LIMITED COMMON ELEMENTS. In the event that the Association, in its sole discretion, determines (i) that any Limited Common Element is not adequately or properly maintained by the Unit Owner(s) in compliance with this Declaration, the Bylaws, and/or the House Rules, or (ii) that the maintenance of any Limited Common Element should be the responsibility of the Association instead of the Owner(s) of the Unit(s) to which the Limited Common Element is appurtenant, the Association shall provide notice of such determination to said Owner(s) and thereafter maintain, repair, replace, and otherwise keep in good order and condition such Limited Common Element and charge the costs and expenses of such maintenance, repair, and replacement to said Owner(s). Notwithstanding the foregoing, if the Association reasonably determines that the extra cost incurred to separately account for and charge the costs and expenses to maintain, repair, replace and otherwise keep in good order and condition the Limited Common Element is not justified, the Association may adopt a resolution determining that the expenses associated with the certain Limited Common Element will be assessed in accordance with the Common Interest appurtenant to each Unit.

J. USE OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS. Subject to the reserved rights of Developer herein, Unit Owners shall have the right to use the Common Elements, including the Limited Common Elements appurtenant to their Units, in accordance with the purposes for which they were intended without hindering or encroaching upon the lawful rights of the other Unit Owners and limited to the purposes permitted by zoning and other applicable laws, this Declaration, and the House Rules. Subject to the Developer's Reserved Rights and subject to Developer's ability to obstruct such areas during the Development Period in the exercise of its reserved rights, no Owner or Occupant may place, store, or maintain on walkways, roadways, grounds, or other Common Elements any objects of any kind or otherwise obstruct transit through the Common Elements.

Except for any rights to use expressly reserved to Developer or Owners under this Declaration, nothing in this Section or otherwise contained in this Declaration is intended to limit or restrict the Association's right to use the Common Elements, or any Unit owned or leased by the Association or any Limited Common Element appurtenant thereto, for the benefit of the members of the Association to the full extent permitted by the applicable zoning ordinance and by law. No such lease, use, or change in use may be made before the Development Period ends without the written consent of Developer.

Notwithstanding anything provided to the contrary, or from which a contrary intent may be inferred, and except with respect to utilities installed in or on any Limited Common Element for the benefit of or use by a Common Element and/or the Association, 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 a majority of the Owners of the Units to which such Limited Common Element is appurtenant. A Majority of the Owners of the 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 provisions of this Declaration, Bylaws, House Rules and applicable laws.

K. 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, as applicable. 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 title to the respective undivided interest.

L. SEPARATION, COMBINATION OF UNITS; TRANSFER OF INTEREST. Subject to Developer's Reserved Rights set forth herein, no Owner may partition or separate portions of a Unit or the legal rights comprising ownership of a Unit from any other part thereof, nor shall an Owner combine a Unit with any portion of another Unit. No Owner shall sell, assign, convey, transfer, gift, devise, bequeath, hypothecate, or encumber anything other than a single, complete Unit; provided, however, that nothing herein contained shall (1) limit the right of Developer and its successors and assigns to sell or lease Units as contemplated herein, or (2) restrict the manner in which title to a Unit may lawfully be held under Hawaii law (e.g., joint tenants, tenants in common, or the like). Except as provided in clause (1) above, every sale, assignment, conveyance, transfer, gift, devise, bequest, hypothecation, encumbrance, or other disposition of a Unit or any part thereof shall be presumed to be a disposition of the entire Unit, together with all appurtenant rights and interests created by law or by the Project 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.

Notwithstanding the foregoing, Developer shall have the right to (1) relocate the boundaries of Units and/or between two adjoining Units, or (2) physically combine a part of or combination of parts of the space of one Unit with a part of or combination of parts of the space within one or more adjoining Units, provided that the affected Units are owned by Developer or the Owners of the affected Units otherwise consent. Before exercising its rights herein, if required by law, Developer must obtain all necessary approvals from any governmental authority having jurisdiction over the Units. The cost and expense incurred for legal, architectural, and/or engineering fees and all other costs and expenses incurred by the Association in connection with Developer's exercise of rights under this Section shall be borne by Developer. Developer shall be permitted to execute and record any amendment to this Declaration or Condominium Map, or both, effectuating the relocation of boundaries of, combination, or redesignation of Units. If Developer requires, whether for title purposes, governmental approvals, or otherwise, the Board shall ratify the action in connection with effectuating such relocation of boundaries, combination, or redesignation of Units, and take such necessary actions in connection therewith if the requirements in this Section have been satisfied.

M. NUISANCES. No nuisance shall be allowed in a Unit which is a source of annoyance to the Owner(s) or Occupant(s) of another Unit or which interferes with the peaceful possession or proper use of the Units by their Owners or Occupants.

N. SIGNS. Except as may be permitted by Developer under this Declaration, no sign, poster, billboard, advertising device, or other display of any kind shall be displayed without the prior written approval of the Board.

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

P. PETS. Owners are permitted to keep pets in their Units subject to the limitations set forth in the Bylaws and House Rules; provided, however, that notwithstanding this provision, persons with disabilities, as defined in Chapter 515 of the Hawaii Revised Statutes, as may be amended, and/or the ADA, including, without limitation, 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.

Q. UNSIGHTLY ARTICLES. Portions of a Unit and its appurtenant Unit Limited Common Elements that are visible from the exterior of the 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 or within any Unit, Common Element, or any Limited Common Element, such as any driveway, lanai, yard area, fence, private walkway, stairway, landing, or courtyard appurtenant to a Unit, without the prior approval of the Board. To maintain a uniform and attractive exterior appearance for the Project, Unit Owner-installed window coverings must be of a type and general appearance in compliance with the House Rules and/or approved by the Board. Unit Owners may not, without the prior written approval of the Board or otherwise in compliance with the House Rules, apply any substance, material, or process to the exterior or interior surfaces of the 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 Unit visible from the exterior of the Unit are orderly. The Board may have any objectionable items removed from the portions of a Unit that are visible from the exterior of the Unit so as to restore their orderly appearance, without liability therefor, and charge the Unit Owner for any costs incurred in connection with such removal.

R. PROHIBITION AGAINST INCREASING ENCLOSED LIVING AREA. The enclosed living area of any Unit (as such living area is depicted in the Condominium Map on the date the Unit is conveyed to an Owner by Developer) may not be increased except as otherwise provided in **Article XVII** herein. This prohibition includes any partial or full enclosure of any lanai or yard area that is adjacent to the Unit.

S. LANDSCAPING. No Owner, Occupant, or any other person shall disturb, harm, damage, litter in, cut, prune, trim, plant in, dig, uproot, take, remove, or in any way alter any of the landscaping that is part of the Common Elements; or plant, put, place, store, maintain, or affix any plants, planters, statues, water features, or objects of any kind upon or in any portion of said landscaping. No Owner, Occupant, or any other person shall climb or play in any of said landscaping.

T. HOUSE RULES. Additional use restrictions that are consistent with the Declaration and the Bylaws may be set forth in the House Rules by the Board.

U. WASTE. The Association shall not make or suffer any strip or waste or unlawful, improper, or offensive use of the Project.

V. REFUSE COLLECTION SERVICES. The Association shall have the right and authority to enter into arrangements with public or private refuse collection companies to provide refuse collection services for the Project.

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

VII. COMMON EXPENSES.

Other than those expenses directly attributable to Limited Common Elements, the Common Expenses shall be charged to all Unit Owners, including Developer, in proportion to the Common Interest appurtenant to their respective Units, except as otherwise provided herein, in the Act, or the Bylaws. Expenses attributable to the 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 there is more than one Unit to which the Limited Common Element is appurtenant, then the Cost to maintain such Limited Common Element shall be charged to each such Unit Owner in the same proportion that the Common Interest appurtenant to each respective Unit bears to the aggregate Common Interest appurtenant to all the Units to which the Limited Common Element is appurtenant.

The Board, acting on behalf of the Association, shall, from time to time, assess the Common Expenses against all the Units and costs against specific Units, in accordance with the Act, this Declaration, and the Bylaws. The 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 Unit Owner, at the address shown in the records of the Association, a written statement

setting forth the amount of the assessment against the individual Unit. Except as otherwise provided herein or the Act, all sums assessed by the Association but unpaid for the share of the Common Expenses and other costs chargeable to any Unit constitute a lien on the Unit prior to all other liens, except only: (a) liens for taxes and assessments lawfully imposed by a governmental authority against the Unit, and (b) all sums unpaid on Mortgages recorded prior to the filing of a notice of lien by the Association, and costs and expenses including attorneys' fees provided in such Mortgages.

The lien may be foreclosed by action by the Managing Agent or Board, acting on behalf of the Association, in like manner as a Mortgage of real property. In any such foreclosure, the Unit Owner shall be required to pay a reasonable rental for the Unit, and the Association shall be entitled to the appointment of a receiver to collect the same. The Managing Agent or Board, acting on behalf of the Association, may, unless otherwise prohibited in this Declaration, bid on the Unit at the foreclosure sale, and acquire and hold, lease, Mortgage and convey the same. Action to recover a money judgment for unpaid Common Expenses and other assessments shall be maintainable without foreclosing or waiving the lien securing the same.

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

Unless otherwise provided by law, where the mortgagee of a Mortgage of record or other purchaser of a Unit obtains title to the Unit pursuant to the Mortgage or as a result of foreclosure of the Mortgage, or exercise of the remedies provided in the Mortgage, the acquirer of title, his or her successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to the Unit which become due prior to the acquisition of title to the Unit by the acquirer. The unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Unit Owners, including the acquirer, his or her successors or assigns, as applicable.

VIII. INSURANCE.

A. **COMMON ELEMENTS.** Except as provided in this Declaration, and as may be permitted by the Act, the Association shall at all times keep (or cause to be kept) all of the Common Elements, including the Limited Common Elements, and, to the extent reasonably obtainable, the Units, adequately insured against loss or damage as provided in the Bylaws and in accordance with Section 514B-143 of the Act. The policy/policies must cover the perils insured under ISO special causes of loss form (CP 10 30) or equivalent. A "special form policy" usually insures against these risks: 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. The Association must also buy earthquake and/or hurricane insurance, if it is available at a reasonable cost, and to the extent economically feasible, hurricane insurance will be procured equal to one hundred percent (100%) of the replacement cost of the Improvements with an agreed amount endorsement, without application of co-insurance.

The cost of any premium therefor shall be assessed to all Unit Owners as a Common Expense. In every case of loss or damage, all insurance proceeds shall be paid to the Association and used as soon as reasonably possible by the Association for rebuilding, repairing, or otherwise reinstating the same Improvement in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect. In any event that such insurance proceeds shall be insufficient, the Association shall make up the deficiency and shall charge the same to all Unit Owners as a Common Expense, or to specific Unit Owners in the case of Limited Common Elements appurtenant only to specific Units.

Each Owner appoints the Association, or any Trustee, as attorney-in-fact for the collection and appropriate disposition of the proceeds from any insurance policy, the negotiation of losses and execution of releases of liability, and the performance of all other acts necessary to accomplish such things.

B. **UNITS.** Except as provided in this Declaration, each Unit Owner shall at all times keep such Unit, all Improvements in the Unit, and personal property within the Unit insured under a personal home insurance policy of Type HO-6 or an equivalent policy that provides customary coverage for liability. Each Unit Owner may also be required to obtain additional insurance coverage as may be decided by the Board pursuant to the provisions of Section 514B-143(g) of the Act. The cost of any premium therefor shall be borne solely by such Unit Owner. In every case of loss or damage, all insurance proceeds shall be used as soon as reasonably possible by the Owner for rebuilding, repairing, or otherwise reinstating the Unit in a good and substantial manner according to the original plan and elevations thereof or such modified plans conforming to laws and ordinances then in effect. In any event that such insurance proceeds shall be insufficient, the Owner shall make up the deficiency. Each Unit Owner shall provide evidence of such policy required by the terms of this Section to the Board by way of a certificate of insurance, policy of insurance, or other such verification that such policy shall be in effect. In any event that such Owner shall fail to obtain such insurance on the Unit, the Board is hereby authorized to obtain any insurance required by the terms of this Declaration and/or the Bylaws, and charge the expense therefor as an expense to such Unit Owner. Such expense shall be secured by a lien on the Unit and may be foreclosed in a like manner to a Common Expense lien.

IX. **UNINSURED CASUALTY.**

In case at any time or times any Improvements in the Common Elements shall be damaged or destroyed by any casualty not insured against, such Improvements shall be rebuilt, repaired, or restored unless Owners of Units to which are appurtenant at least eighty percent (80%) of the Common Interest, with the consent of their first mortgagees, if such mortgagees require such consent, affirmatively vote against such rebuilding, repairing, or restoration. The Association shall complete any such approved restoration diligently, according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect. The cost thereof shall be assessed to the Association as a Common Expense. Each Unit Owner shall be solely responsible for any restoration of his or her respective Unit and Limited Common Elements so damaged or destroyed according to the original plan and elevation thereof. Unless such restoration is undertaken within a reasonable time after such casualty, the Association shall remove all remains of Improvements so damaged or destroyed and restore the site thereof to good orderly condition and even grade, and the cost of any such removal and restoration shall be a Common Expense.

X. **ALTERATION OF PROJECT.**

A. **GENERAL PROVISIONS.** This Article applies, except as otherwise provided by the FHA and except as otherwise provided in this Declaration. This Article does not apply to changes made by Developer when exercising Developer's Reserved Rights. Neither the Association nor any Unit Owner shall do any work that may jeopardize the soundness and safety of the Project, reduce the value thereof, or impair any easement, as reasonably determined by the Board. Except as otherwise expressly provided in this Declaration, restoration or replacement of the Project or any portion thereof or construction of any additional Improvement or structural alteration or addition to any Improvement, different in any material respect from the Condominium Map of the Project, shall be undertaken by any Unit Owner only pursuant to an amendment of this Declaration in accordance with **Article XI** below, duly executed pursuant to the provisions thereof, accompanied by the written consent of the holders of all Mortgage liens affecting any of the Units involved, and in accordance with complete plans and specifications therefor. Promptly upon completion of such restoration, replacement, or construction, the Owner shall duly record such amendment, together with a complete set of floor plans of the Project as so altered, certified as built by a State of Hawaii registered architect or professional engineer.

B. **APPROVAL OF ADDITIONS OR ALTERATIONS.** No Unit Owner may make or allow any "nonmaterial additions and alterations," as such term is defined in Section 514B-140 of the Act, to his or her Unit or the Limited Common Elements appurtenant thereto, without the approval of the Board, as provided in **Section X.C**, below. No Unit Owner may make or allow any material addition or alteration without first obtaining the written consent of sixty-seven percent (67%) of the Unit Owners, the consent of all Unit Owners whose Units or appurtenant Limited Common Elements are directly affected, and the approval of the Board. The Board may only disapprove a proposed 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 non-consenting Owner of the use and enjoyment of part of the Project.

C. ADDITIONS OR ALTERATIONS TO UNITS. In addition to the foregoing requirements, and to ensure a uniform appearance and consistent level of quality among the Units, no Unit Owner may make any addition, alteration, or Improvement to his or her Unit, including any changes to the exterior of the Unit or the Limited Common Elements thereto, without the prior written consent of the Board. The Board may deny consent where it determines that the addition, alteration, or Improvement would otherwise be inconsistent with the uniform appearance of the Units. Moreover, nothing contained in this paragraph shall authorize any work or alteration that would jeopardize the soundness or safety of any part of the Project, reduce the value thereof, materially adversely affect any other Unit or Limited Common Element, materially alter the uniform external appearance of the Project, materially increase the transfer of sound, noise, air, or smoke to other Units, materially affect or impair any easement or rights of any of the other Unit Owners, or materially interfere with or deprive any non-consenting Owner of the use or enjoyment of any part of the Common Elements. The requirements of this Section do not apply to the Developer in its exercise of any of the Developer's reserved rights herein contained.

Notwithstanding the foregoing, any Unit Owner may submit a written request to the Board to make additions or alterations solely within his or her Unit. Said Owner shall be permitted to, at his or her sole cost and expense, make any of the following alterations within the Unit or Limited Common Element which such Owner controls, subject to any applicable rules and restrictions set forth in the House Rules; provided that said alterations do not jeopardize the soundness or safety of any part of the Project, reduce the value thereof, materially adversely affect any other Unit or Limited Common Element, and/or materially increase the transfer of sound, noise, air, or smoke to other Units; and provided further that any proposed alteration that may structurally impact the Unit and/or any other portion of the Project shall first be reviewed and approved by a structural engineer at the Unit Owner's sole cost and expense: install, maintain, remove, and rearrange partitions (including the party wall between two (2) or more Units owned by the same Owner) and other structures from time to time within such Unit or Limited Common Element, finish, alter, or substitute any plumbing, electrical, or other fixture attached to the ceilings, floors, and walls as shall be appropriate for the utilization of such Unit or Limited Common Element by such Owner, and tile, re-carpet, and do or cause to be done such work on the floors of any Unit or Limited Common Element that does not increase the acoustical transfer from such Unit or Limited Common Element, subject to the restrictions stated above. Recessed or surface mounting of speakers within or on the ceiling of a Unit or within or on the demising walls between Units and/or recessed mounting of lighting and cabinets within the demising walls between units is prohibited.

D. UNIT 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 **Section X.C** above shall alter the depiction of the particular Unit in the Condominium Map or the description thereof in this Declaration, then the Owner of such Unit shall amend this Declaration and/or the Condominium Map to set forth such approved change or alteration, which amendment(s) may be executed by the Owner of the affected Unit or Units and by no other party, and shall become effective upon the filing thereof in said Bureau. The provisions of **Article XI** 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 Unit 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. AMENDMENT OF DECLARATION.

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

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

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

2. **No Impairment or Diminishment of Developer Rights or Increase of Developer 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 **Article XI**, the prior written approval of Developer will be required before any amendment that would impair or diminish the rights, or increase the obligations, of Developer. Without limiting the generality of the foregoing, the following actions impairing or diminishing the rights of Developer, before being undertaken by the Association, shall first be approved in writing by Developer:

- a. Mortgagee Approval. Any amendment or action requiring the approval of mortgagees pursuant to this Declaration;
- b. Assessments. Alteration in the method of fixing and collecting assessments or any increase in assessments beyond the amounts permitted under the Bylaws;

c. Enforcement of the Declaration. Alteration in the method of enforcing the provisions of this Declaration; or

d. Reserved Rights of Developer. Any modification of the rights reserved and granted to Developer herein, including those rights set forth in Articles XVI through XXXV.

Notwithstanding the foregoing, the Owner of any Unit who makes a change or alteration to his or her Unit pursuant to and in compliance with **Section X.C** above shall record an amendment to this Declaration and/or Condominium Map setting forth such approved change or alteration, without the consent or joinder of any other Owner, person or entity, and shall notify the Board of such change or alteration as soon as practicable.

No amendments hereto shall negate or adversely impact any of the rights reserved or granted to Developer without the prior written consent 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 Unit provided that any amendment authorized by this Section shall be evidenced by an instrument in writing, signed and acknowledged by Developer.

2. **Amendment to Record "As-Built" Statement.** Notwithstanding any provision of this Declaration to the contrary and notwithstanding the sale of any of the Units, Developer acting alone, without the consent or joinder of any Owner, lienholder, or other Person, may amend this Declaration (a) to record 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 recorded fully and accurately depict the layout, location, Unit numbers, and dimensions of the Units as built, or, so long as any plans recorded therewith involve only immaterial changes to the layout, location, Unit numbers, or dimensions of the Units substantially as built; or (b) to bring the Project and the Project Documents into compliance with the laws and rules of any state or country in which Developer intends to market or sell Units.

3. **Compliance with Laws; Lender Requirements and Correction of Errors.** Notwithstanding any provision of this Declaration to the contrary and notwithstanding the sale of any of the Units, Developer acting alone, without the consent or joinder of any Owner, lienholder, or other Person, may amend this Declaration in order (a) to bring the Project and the Project 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, including, without limitation, any institutional Mortgage lender or any governmental or quasi-governmental agency including, without limitation, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development, or the Veterans Administration; and (c) 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.

4. **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 holders or insurers of first Mortgages on Units shall require the approval of 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, together with such other approvals as may be required in this **Article XI**; provided, however, that any Eligible Mortgage Holder shall be deemed to have consented to any proposed amendment to this Declaration where said Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within sixty (60) calendar days after it receives written notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt."

5. **Amendments Pursuant to Exercise of Reserved Rights.** Notwithstanding any provision of this Declaration to the contrary, Developer acting alone, may amend this Declaration pursuant to any of its reserved rights to do so as may be set forth in **Articles XVI through XXXV** herein.

C. **AMENDMENTS BINDING.** Any amendment made pursuant to the provisions of this **Article XI** shall be binding upon every Owner and every Unit whether the burdens thereon are increased or decreased, and such amendment shall be effective upon its filing in said Bureau.

XII. PARTIAL RESTORATION.

Restoration of the Project with less than all of the Units after casualty or condemnation may be undertaken by the Association only (a) pursuant to an amendment to this Declaration, duly executed by or pursuant to the affirmative vote or written consent of Owners of Units to which are appurtenant not less than eighty percent (80%) of the Common Interest and consented to in writing by all holders of first Mortgage liens affecting any of the Units of the Unit Owners executing or voting for such amendment to this Declaration, (b) by removing the Project from the condominium property regime established hereby, (c) by reconstituting all of the remaining Units and Common Elements to be restored as a new condominium property regime, and (d) 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 Unit and the Unit Owner's proportionate share of any Capital Improvements Reserve Fund and General Operating Reserve without deduction for the cost of such restoration, except for the Unit Owner's proportionate share of the cost of debris removal.

XIII. 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 all mortgagees of record who may have an interest in the Project.

XIV. 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 Project 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.

XV. COMPLIANCE BY OWNERS.

All Unit Owners, tenants of such Owners, employees of Owners, guests, and any other Persons who may in any manner use the Project or any part thereof submitted to the condominium property regime (including Developer to the extent Developer retains an ownership interest in any Unit(s)) 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 Unit Owner shall comply strictly with the Bylaws and 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 Unit Owner.

In the event any Unit 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 Board's 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 any nuisance or any dangerous, unauthorized, prohibited, or unlawful activity; (c) protect the property rights of any Owner; or (d) prevent the death or injury of any Owner or other person at the Project.

All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for:

- A. Collecting any delinquent assessments against any Unit;
- B. Foreclosing any lien on a Unit;
- C. Enforcing any provision of the Project Documents or the Act; or
- D. Complying with rules and regulations of the Commission

shall be promptly paid on demand to the Association or the resident manager by the Unit Owner; provided, that if the claims upon which the Association or the resident manager takes action upon are not substantiated, all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Unit Owner as a result of the action of the Association or the resident manager shall be promptly paid on demand to the Unit Owner by the Association or the resident manager, as applicable.

XVI. RESERVED RIGHT TO GRANT AND RECEIVE EASEMENTS.

Notwithstanding anything herein provided to the contrary, Developer does hereby reserve the right unto itself, its successors and assigns, during the Development Period, to delete, cancel, relocate, realign, reserve, designate, grant, and receive any and all easements and rights of way over, under, through, across, and upon the Common Elements (including, without limitation, the Limited Common Elements) or adjacent parcels of land, deemed necessary or desirable in Developer's sole discretion, including, but not limited to, easements and/or rights of way for utilities, landscaping, maintenance, any public-type facility (e.g. for mail delivery), fire lane access, sanitary and storm sewers, retention ponds, cable television, refuse disposal, access to adjacent parcels of land, public or other access to open space or any private park area, and other similar purposes; provided that such easements and/or rights of way shall not be located on or within any existing structure of the Project and shall not be exercised so as to unreasonably disturb, impair, or interfere with the normal use and enjoyment of the Project by the Unit Owners; and provided that Developer shall have the right to negotiate and agree to such terms with respect to such easements and rights of way as Developer deems appropriate in its sole discretion. In the event that Developer assigns to the Association any rights or obligations it acquires, through exercise of this reserved right, whether the same constitute easement rights or otherwise, the Association shall assume such rights or obligations.

XVII. RESERVED RIGHT TO ALTER AND CONSOLIDATE UNITS.

Notwithstanding anything provided to the contrary, and except as otherwise provided by law, during the Development Period:

A. Developer shall have the reserved right, without obtaining the approval of any party with an interest in the Project, including any other Owner and/or mortgagee, 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, and (2) recalculate the Common Interest appurtenant to each Unit upon consolidation of adjacent Units as described below; provided that the total Common Interest appurtenant to the newly-created Unit(s) shall equal the Common Interest appurtenant to the original Units.

B. If Developer is the owner of any two (2) or more Units separated by a party wall, 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 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 Elements impacted is restored to a condition substantially comparable with that of the Common Element prior to such alteration, and (3) all construction activity necessary to complete 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 Common Element) for so long as such Units shall remain consolidated or shall continue to be commonly used or owned.

Any such alteration or consolidation of 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) in the case of the consolidation of Units by Developer, the undivided percentage interest appurtenant to the newly-formed Unit, which shall be calculated by adding together the undivided percentage interests for the Units to be consolidated;

2. Developer shall record or cause to be recorded an amendment to the Condominium Map for the Unit(s) being altered and/or expanded 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 aforesaid Declaration and Condominium Map to effect any consolidation of Units or alterations to floor plans at any time or times during the Development Period, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder, or other Persons, execute and record amendments to this Declaration and 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 XVII** shall not be amended without the prior written consent of Developer.

XVIII. RESERVED RIGHT TO INSTALL PHOTOVOLTAIC AND SOLAR WATER HEATING SYSTEMS.

During the Development Period, Developer shall have the reserved right to contract with a company licensed to install and cause the installation of photovoltaic systems for the benefit of the Units and/or photovoltaic and/or solar water heating systems for the benefit of the Common Elements or Units, including, without limitation, the Recreational Amenities, at its sole cost and expense. The installation of such photovoltaic and/or solar water heating systems pursuant to this Article shall not be deemed to alter, impair, or diminish the Common Interest, Common Elements, and easements appurtenant to Units, nor shall the same be considered a structural alteration or addition to the structure on which it is installed that constitutes a material change, or necessitate an amendment to the Condominium Map. Said company may charge the Association or individual Unit Owners, as the case may be, for the electricity consumed beyond that supplied by the photovoltaic and/or solar water heating systems pursuant to a contract entered into by and between Developer, on behalf of the Association, and said company; provided that any such contract shall not have a term that exceeds twenty (20) years.

XIX. RESERVED RIGHT OF DEVELOPER TO MODIFY, RELOCATE, AND RECONFIGURE RECREATIONAL AMENITIES.

During the Development Period, all of the Recreational Amenities in the Project, as depicted in the Condominium Map, may not all be constructed at the same time and may be modified, relocated, and/or reconfigured. Nothing in this Declaration shall be construed as a representation or warranty by Developer that the Recreational Amenities, or any portion thereof, and/or the types of Recreational Amenities offered will not change and/or that the other portions of the Common Elements will be built or completed prior to, concurrently with, or soon after any or all of the Units are conveyed to third parties.

XX. RESERVED RIGHT TO INSTALL DEVELOPER'S SIGNAGE.

Notwithstanding anything herein provided to the contrary, during the Development Period, Developer hereby reserves the right unto itself, its successors, and assigns, for the benefit of the Project, to install, maintain, repair, and replace (from time to time) within the Project directional signage, identity signage, and canopy signage (if applicable), all of which shall be in a size and location as permitted; subject to any zoning laws or other governmental requirements. Until such time that Developer shall provide notice that all Unit 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 signage as well as the costs to repair any damage to the Project proximately caused by such installation, maintenance, and replacement, and after such notice, the Board shall be responsible for administering such obligations and assessing the costs thereof as a Common Expense.

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

Notwithstanding anything provided to the contrary, and except as otherwise provided by law during the Development Period:

A. Developer shall have the right without obtaining the approval of any other party with an interest in the Project, including any other Owner and/or mortgagee, to convert a Limited Common Element appurtenant to such Unit or Units owned by Developer or Developer's successors, assigns, or affiliates, or any portion thereof, 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 the 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 for 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 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 Unit(s) and existing Unit(s), which shall be calculated and/or recalculated by dividing the total approximate net area of each individual Unit by the total approximate net area 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 an existing Unit by

connecting a portion of the Limited Common Element to part of the Unit, but an additional Unit is not created, 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 completion 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 aforesaid 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 during the Development Period, 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.

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

Developer shall have the reserved right to amend this Declaration to (1) recharacterize all or a portion of certain Limited Common Elements as may be appurtenant to a Unit owned by Developer as being Common Elements of the Project, thus giving up or waiving the exclusive use of any such area or areas; or (2) redesignate all or a portion of certain Limited Common Elements as may be appurtenant to any Unit owned by Developer to another Unit or Units. Upon recharacterization of any Limited Common Element to a Common Element of the Project, the Association shall be required to maintain such area at its expense for the benefit of all Unit Owners, and the cost of maintaining such area shall be assessed to all Unit Owners as a Common Expense.

The right to amend the Declaration to effect such recharacterization or redesignation of any Limited Common Element appurtenant to a Unit may occur at any time or times during the Development Period, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder, or other Persons, execute, 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.

XXIII. RESERVED RIGHT TO MODIFY PROJECT AND TO AMEND PROJECT DOCUMENTS.

Developer shall have the reserved right, during the Development Period, to effect such modifications to Units and Common Elements in the Project and/or to execute, record, and deliver any amendments to this Declaration and/or the Condominium Map as well as the Bylaws and/or the House Rules promulgated hereunder, as may be necessary or required by Developer in its sole and absolute discretion provided that the net living area of Units that have been conveyed to Persons other than Developer and their respective appurtenant Common Interests are not changed; or to effect compliance by the Project, the Association, or Developer with laws that apply to the Project, including, without limitation, the FHA and ADA.

XXIV. RESERVED RIGHT TO CONSTRUCT DRIVEWAYS AND CONSTRUCT AND MAINTAIN GROUP MAILBOX STRUCTURES.

Developer shall have the reserved right, during the Development Period, to construct driveways and group mailbox structures anywhere within the Project, including without limitation, within any Limited Common Element

area of the Project; provided that the construction of driveways and the group mailbox structure shall not adversely impact or impair the net living area of any Unit of the Project.

XXV. RESERVED RIGHT TO CONSTRUCT WALKWAYS THROUGH COMMON ELEMENTS AND TO ADD PARKING STALLS.

Developer shall have the reserved right, during the Development Period, to construct walkways throughout the Common Elements in the Project, including, without limitation, a walkway to connect Buildings 1 and 2. Such walkways shall be for the use and enjoyment of the Owners. The Association shall be responsible for maintenance, repair, and replacement of such walkways and for any accessories to such walkways (e.g. lamp posts and benches) and for any costs incurred therefor or associated therewith.

Developer shall also have the reserved right to (i) add additional parking stalls to the Project, as designated in the Condominium Map, including stalls in Building 1 and in the entry courtyard area depicted in the Condominium Map, and (ii) assign such stalls to Units in the Project and designate such stalls as Limited Common Elements appurtenant to specific Units in the Project, and (iii) amend the Declaration to effect such creation, designation and assignment.

XXVI. RESERVED RIGHT TO ALTER THE NUMBER OF, OR NOT CONSTRUCT, UNITS AND/OR BUILDINGS IN THE PROJECT.

Developer shall have the reserved right, during the Development Period, to reduce or increase the number of Units and/or buildings in the Project notwithstanding anything provided herein to the contrary, and except as otherwise provided by law. Any such alteration to the number of Units and/or buildings 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 buildings 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 Units. The Common Interest appurtenant to each Unit shall be calculated by dividing the Unit's total approximate net area by the total of the approximate net area of all Units in the Project; provided, however, that Developer shall have the right, in its sole and absolute discretion, to round the result of such calculations so that the sum of the percentages equals exactly one hundred percent (100%);

B. Developer shall record or cause to be recorded an amendment to the Condominium Map to reflect the revised layout incorporating the change in the number of Units and/or buildings, 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 the portions of the plans of the altered Unit(s) as recorded with the County officer having jurisdiction over the issuance of permits for the completion of buildings; and

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

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

XXVII. RESERVED RIGHT TO ADDRESS ENVIRONMENTAL AND/OR ARCHEOLOGICAL DISCLOSURES.

Developer reserves the right during the Development Period to respond to and appropriately address any inadvertent finds of such things as contaminants in the soil, human skeletal remains, burial goods, or other historic or archeological finds during the course of construction of the Project in compliance with applicable law and any other determinations made by applicable governmental agencies. The Association shall be subject to and responsible for compliance with any plans, agreements, and easements, expenses of which shall be a Common Expense.

XXVIII. RESERVED RIGHT TO CONSOLIDATE, SUBDIVIDE, REZONE, AND WITHDRAW LAND.

Developer shall have the reserved right during the Development Period, to consolidate and/or subdivide the Property and to create separate parcels of land ("**Subdivided Lots**"), to rezone any portion of the Property, to withdraw said portions of the Property from the operation of this Declaration, and to convey said withdrawn land to itself, or to a third-party as it deems appropriate. With regard to the area being consolidated, subdivided, rezoned, and/or withdrawn, such portion shall not have been improved with any of the Units or the Recreational Amenities or other Improvements described in this Declaration or shown in the Condominium Map. In connection with such right, Developer shall have the further reserved right to enter and go upon the Property to do all things necessary or proper to effectuate such consolidation, subdivision, and/or rezoning of the Property and/or withdrawal and conveyance of said portions of the Property, including, without limitation, making surveys to undertake a reasonable realignment of boundaries of the Property to define said Subdivided Lots (it being understood that Developer shall have the reserved right to effect any such realignment), filing and recording the necessary consolidation and/or subdivision map and related documentation and to facilitate 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 and roadways, pedestrian access, and of 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 consolidate, subdivide, rezone, 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 Property, if any, in the event the same shall be withdrawn from the operation of this Declaration. Said consolidation, subdivision, rezoning, withdrawal, and/or conveyance shall be subject to, and Developer shall, at its own expense, comply with, all of the then-applicable governmental laws and 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; (iii) negotiate, execute, and accept any licenses, easements, or rights of way over adjacent properties which may benefit or support the Project; and (iv) relocate or realign any existing easements and rights-of-way over, across, and under the Project, as appropriate, including, without limitation, any existing utilities, sanitary and storm sewerlines, and cable television and telecommunications systems lines and connect the same over, across, and under the Project; provided that such easements and such relocations and connections of lines shall not materially impair or interfere with the use of any Units in the Project as then constituted; and provided further that Developer specifically reserves the right, whether or not in connection with its rights reserved hereunder, to grant an easement for access, driveway, and parking purposes over the Project in favor of the withdrawn portion(s) of the Property in the event the same shall be withdrawn from the operation of this Declaration. Developer in its discretion shall have the right to set the compensation to the Association for the grant of any easement pursuant to the terms hereof, provided that such compensation shall be reasonable under the circumstances.

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 Unit Owner or lienholder, execute and record in said 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 filing of the amendment to this Declaration and the Condominium Map shall effectuate the withdrawal, without any further consent or joinder of any party. Developer shall have the right, as grantor, to execute, deliver, and file, or the right to cause the execution, delivery, and filing of, a deed of any subdivided and withdrawn area upon filing of the amendments aforesaid.

The exercise by Developer of the right to consolidate, subdivide, rezone, withdraw, and convey as provided in this Section, 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.

XXIX. RESERVED RIGHTS REGARDING ENTITLEMENTS AND PERMITS.

Developer shall have the reserved right, during the Development Period: (1) to amend the Project Documents, including, without limitation, this Declaration, (2) to enter into any agreements, including without limitation, to declare and subject the Land and Improvements to restrictive covenants, (3) to designate and grant easements, (4) to secure any other governmental permits, and (5) to do all things necessary and convenient to satisfy the requirements of any land use or other permit pertaining to the Project, as the same may be amended or modified, and to execute, deliver, and record any and all documents necessary to effect the same, including, but not limited to, any amendments to this Declaration and to the Condominium Map.

XXX. RESERVED RIGHT TO CONDUCT SALES ACTIVITIES.

Developer does hereby reserve the right unto itself, its brokers, sales agents, and other related Persons, to conduct extensive sales activities at the Project, including, without limitation, the use of any Unit owned by Developer and its appurtenant Limited Common Elements as model Units and/or for sales, leasing, management, and/or 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, 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, until the earlier to occur of (a) the end of the Development Period, or (b) the closing of the sale of the last unsold Unit in the Project. In the event that Developer is unable to sell all of the Units on or before the end of the Development Period, Developer shall have the right to conduct sales activities on the Project until the closing of the sale of the last unsold 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 Unit Owners. Such sales activities may include the initial sale and resale of Units. In the event that Developer's Mortgage lender, if any, or any successor to or assignee of Developer's Mortgage lender shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the Mortgage remedies or by a deed or an assignment in lieu of foreclosure, such Mortgage lender, its successors, and assigns, shall have the right to conduct such extensive sales activities on the Project until at least ninety-five percent (95%) of all of the Units in the Project have been sold and Unit Deeds therefor 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, 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.

XXXI. RESERVED RIGHT TO REMOVE ENCUMBRANCES AFFECTING THE PROJECT.

Developer shall have the reserved right, during the Development Period, without notice to, or approval, consent, or joinder of any other party, to execute and record in said Bureau an instrument cancelling or removing any encumbrance against the Project or any portion thereof (including the Units whether or not such Units have been conveyed to an Owner), and may amend this Declaration to reflect an updated title description of the Land. Every Owner of a Unit in the Project, 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, agrees to execute, deliver, and record such documents and instruments and do such other things as may be necessary or convenient to effectuate Developer's exercise of this reserved right; and appoints Developer and its assigns as 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 upon, any transfer of any Unit or any interest therein, whether by deed, Mortgage, or any other instrument of conveyance.

XXXII. RESERVED RIGHT TO CHANGE THE PLANS.

Notwithstanding anything to the contrary herein, during the Development Period, Developer shall have the reserved right to change the timing of construction, mix, type, use, style, number, size, and materials of the Units, as well as the features, amenities, and other components of the Project, all as may be described herein and/or in the Condominium Map, as well as in other illustrative and descriptive materials which may from time to time be used in connection with the development and sale of the Units. Plans for the development of the Project are subject to change in Developer's sole discretion, and Developer makes no guarantees regarding the construction schedule or whether any or all of the components and amenities of the Project as described herein and/or in said materials and as depicted in the Condominium Map will in fact be constructed or incorporated into the Project.

XXXIII. RESERVED RIGHT TO INSTALL PAID GUEST STALL AUTOMATED MACHINES.

Developer shall have the reserved right to install a parking system or systems that may require the payment of a parking fee for use of certain stalls in the Project that the Developer either owns or controls. Any revenue generated from such stalls will belong to the Developer. The right to implement and install such parking system and the right to the revenues therefrom may be assigned to the Association by Developer, in its sole discretion. Developer will have an easement over the Project to install, remove, maintain, alter and otherwise utilize such parking system, as it deems appropriate, in its sole discretion.

XXXIV. RESERVED RIGHT TO NAME BUILDINGS AND PROVIDE DIFFERENT ADDRESSES.

Developer has the reserved right to give Buildings 1, 2 and 3 different names and identities, and separate addresses, and need not identify all of such buildings by the same name, or have all of such buildings have the same address. Initially, Building 1 will be named "Hale Manu" with an address at 7002 Hawaii Kai Drive, and Buildings 2 and 3 will be named "Hale Ka Lae at 7000 Hawaii Kai" with an address at 7000 Hawaii Kai Drive.

XXXV. DEVELOPER'S RESERVED RIGHT TO PERMIT USE BY UNITS IN BUILDING 1 OF LIMITED COMMON ELEMENTS APPURTENANT TO UNITS IN BUILDINGS 2 AND 3.

Developer will have the reserved right, during the Development Period, to make some or all of the Limited Common Elements that are appurtenant to Buildings 2 and 3 Limited Common Elements to some or all of the Units in Building 1. If this occurs, an amendment to the Declaration will be recorded to reflect such change, and the Developer shall have the reserved right to record any such amendment.

XXXVI. ASSIGNMENT OF RESERVED RIGHTS.

Notwithstanding anything stated herein to the contrary, the rights reserved to Developer in this Declaration shall be fully and freely assignable by Developer in whole or in part to any other Person. Any assignment of the rights reserved to Developer shall be in writing, executed by both Developer and the assignee of Developer's rights, and shall be filed in said Bureau. Every Owner of a Unit in the Project, all holders of liens affecting any of the Units, and each and every other party acquiring an interest in the Project, or any part thereof, by acquiring such Unit, lien, or other interest, consents to any such assignment by Developer, and, to the extent designated by Developer, agrees to recognize any assignee as the "Developer" under this Declaration; agrees to execute, deliver, and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints Developer and its assigns as 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, and to receive or send any legal notices, and to receive service of process (legal papers) as to legal proceedings, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest upon, any transfer of any Unit or any interest therein, whether by deed, Mortgage, or any other instrument of conveyance.

XXXVII. CONSENT TO DEVELOPER RESERVED RIGHTS; APPOINTMENT OF DEVELOPER AND ASSOCIATION AS ATTORNEY-IN-FACT.

Each and every party acquiring an interest in the Project, by such acquisition, consents to all of the rights reserved unto Developer as set forth in this Declaration, including, but not limited to those rights as set forth in **Articles XVI through XXXV**, above, the permitted actions taken by Developer pursuant thereto, and to the filing of any and all documents necessary to effect the same in said 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, the Association, and/or their assigns as 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, and to receive or send any legal notices, and to receive service of process (legal papers), 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 Project Documents, any easement instrument, any deed, any amendment to a Unit Deed, assignment of rights or interest, or such other document, instrument, or agreement that may be necessary or appropriate to permit Developer to exercise its rights pursuant to the provisions of this Declaration.

XXXVIII. DISCLOSURES AND LIMITATIONS ON LIABILITIES.

A. NONLIABILITY AND INDEMNIFICATION.

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

2. **Indemnification by Association.** When liability is sought to be imposed on a Director, an Officer, committee member, employee, or agent of the Association, the Association shall indemnify him or her for his or her losses or claims, and undertake all costs of defense, unless and until it is proved that he or she acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the cost of defense due to the willful or wanton misfeasance or gross negligence of such person indemnified by the Association, the Association may recover indemnification costs expended from the individual who so acted. Punitive damages may not be recovered against the Association but may be recovered from persons whose activity gave rise to the damages. This Section XXXVIII.A.2 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.

B. SECURITY DISCLAIMER. The Association and/or the Managing Agent may, but shall not be obligated, to maintain or support certain activities within the Project designed to make the Project safer than it might otherwise be.

Neither the Association, the Managing Agent, nor Developer shall in any way be considered an insurer or guarantor of security within the Project, and neither the Association, the Managing Agent, 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, tenants, guests, and invitees of any Owner, as applicable, acknowledge that the Association, the Board, the Managing Agent, and Developer or any successor developer do not represent or warrant that any fire protection system or other security system designed or installed according to the guidelines established by Developer or the Association may not be compromised or circumvented, that any fire protection or burglar alarm systems or other security systems will prevent loss by fire, smoke, burglary, theft, hold-up, terrorism, or otherwise, nor that fire protection or burglar alarm systems or other security systems will in all cases provide the detection or protection for which the system was designed or intended. Each Owner, his or her family, agents, guests, or other Occupants of any Unit, as applicable, acknowledges and understands that the Managing Agent, the Association, its Board and committees, Developer, and any other successor to Developer are not insurers, and that each Owner, his or her family, agents, guests, or other 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, the Association, its Board and committees, Developer, and any successor developer have made no representations or warranties nor has any Owner, his or her family, agents, guests, long-term guests, or other 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 NET LIVING AREA 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 net living area of a Unit, and depending on the method of calculation, the quoted net area of the Unit is approximate and may vary by more than a nominal amount. Additionally, as a result of field construction, other permitted changes to the Unit, and settling and shifting of Improvements, actual net living area of the Unit may also be affected. By accepting title to the Unit, the applicable Unit 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 net living area from that which may have been disclosed at or 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 net living area of any Unit.

D. 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 the Owner's tenants, employees, family members, guests, and other invitees, shall conclusively be deemed to understand, have acknowledged, and agreed to, and their rights shall be subject to, all of the following:

1. **Condominium Living.** Living in a multi-plex condominium project entails living in very close proximity to other persons, with attendant limitations on solitude and privacy. Walls, floors, and ceilings have been designed to meet applicable building codes. Owners will hear noise from adjacent Units within the Project, however, including, but not limited to, noise from showers, bathtubs, sinks, toilets, or other sources of running water, and/or plumbing fixtures. Also, Owners may hear noise from such items as the pool, vacuum cleaners, stereos, or televisions, or from people running, walking, exercising or socializing or enjoying the Recreational Amenities.

2. **Noise.** The Association and Developer, other than through meeting applicable building codes, have no control over the transmission of noise, light, or odors within the Project, and the potential effect of such noise, light, or odors on Units within the Project.

3. **Views.** Each Owner acknowledges that (a) there are no protected views in the Project, and the Units are not assured the existence or unobstructed continuation of any particular view, (b) any view from a Unit is not intended as part of the value of the Unit, and is not guaranteed, and Developer makes no representation or warranty regarding the effect of the view on the value of the Unit, and (c) any future development, construction,

landscaping, growth of trees, or other installation of Improvements by Developer, other Owners, or owners of other property in the vicinity of the Project, may impair the view from a Unit, and each Owner consents to such view impairment.

4. **Neighboring Developments.** Certain portions of land outside, abutting, and/or near the Project (collectively the "**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 future Neighboring Developments, and, accordingly, there is no representation as to the nature, use, or architecture of any future development or improvements on Neighboring Developments. Any such use, development, and/or construction on Neighboring Developments may result in noise, dust, vibration, and other nuisances, disturbances, or hazards to the Project or Owners, and each Unit Owner acknowledges the same.

5. **Marketing Materials.** Any marketing materials used by Developer in the promotion and sales of the Units and of the Project shall not be a representation or warranty by Developer of the Unit layout, décor, coloring, furnishings, or fixtures 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.

All sales and marketing materials provided to an Owner in connection with the 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 in the promotion of any Unit in the Project in any fashion whatsoever without the prior written approval of Developer, which approval may be withheld by Developer in its sole discretion. Any use of such material in any way by Owner without such permission will entitle Developer to immediately enjoin such use and to pursue any and all remedies against the Owner that Developer may have, independently of the obligations set forth in this Declaration. The Owner 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.

6. **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 of structures, fixtures, and any other item in the Units. The layout and areas of the Units with typical depictions are intended to be consistent.

XXXIX. EXEMPTIONS FOR PERSONS WITH DISABILITIES.

Notwithstanding anything to the contrary contained in the Project Documents, Owners with disabilities shall be allowed reasonable exemptions from the Project 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.

XL. COMPLIANCE WITH COUNTY ZONING AND BUILDING LAWS.

The Project is in compliance with all zoning and building ordinances and codes of the County, and all other County permitting requirements applicable to the Project pursuant to Section 514B-5 and Chapter 205 of the Act. There have been no variances granted to achieve compliance, and the Project does not contain any legal nonconforming conditions, uses or structures.

XLI. 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. 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 development thereof (collectively, an "Alleged Defect"), Developer hereby reserves the right 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 a reasonable time after the receipt by Developer of a Notice of Alleged Defect or 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) 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) 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) days following any such proposal, failed to inspect the Alleged Defect, provided that Claimant permitted sufficient access; or

(iii) failed, within fourteen (14) 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 filed by Developer in said Bureau.

F. **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.

XLII. RIGHT TO APPOINT AND REMOVE THE OFFICERS AND MEMBERS OF THE BOARD; 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 members of the Board for a certain period of time (the "**Developer Control Period**"). The Developer Control Period shall terminate no later than the earlier of the following: (a) sixty (60) calendar days after the conveyance of seventy-five percent (75%) of the Common Interest appurtenant to Units that may be created to Unit Owners other than Developer or an affiliate of 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 Unit 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 members of the Board 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.

XLIII. GENERAL PROVISIONS.

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

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

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

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

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

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

deemed to incorporate the provisions of this Declaration, whether or not such instrument makes reference to this Declaration.

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

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

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

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

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

L. OWNERS' RIGHT TO INCORPORATE. The Unit Owners may form a non-profit Hawaii corporation to serve as the Association. If so formed, the corporation will have all of the rights, powers, obligations, and duties of the Association as stated in the Project 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.

M. 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 Windsor).

N. COMPLIANCE WITH ZONING AND BUILDING ORDINANCES. Pursuant to HRS Section 514B-5, the Project is in compliance with all county and building ordinances and codes, Hawaii Revised Statutes Chapter 205, and all other county permitting requirements applicable to the Project. The variances have been granted to achieve compliance, and there are no legal nonconforming conditions, uses or structures.

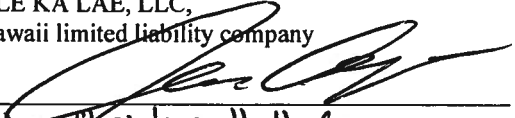
XLIV. INVALIDITY AND CHANGES IN LAW.

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 Project Documents.

IN WITNESS WHEREOF, the undersigned have executed these presents this 26th day of September, 20 18.

HALE KA LAE, LLC,
a Hawaii limited liability company

By 
Name Christine H. H. Camp
Its Authorized Agent

"Developer"

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 26th day of September, 2018, before me appeared Christine H.H. Camp, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

KAREN NOMURA
Name: Karen Nomura
Notary Public of and for such State
My commission expires: 5/1/2021

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **DECLARATION OF CONDOMINIUM PROPERTY REGIME OF 7000 HAWAII KAI DRIVE**

Document Date: _____ or Undated at time of notarization.

No. of Pages: 51 Jurisdiction: First Circuit
(in which notarial act is performed)

KAREN NOMURA 9/26/2018
Signature of Notary Date of Notarization and Certification Statement

Karen Nomura
Printed Name of Notary

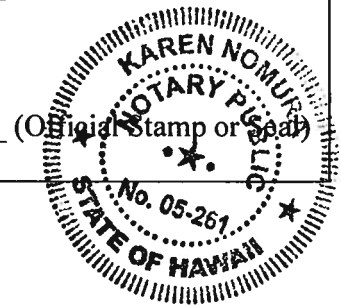


EXHIBIT "A"

LAND

-ITEM I:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 4475, Land Commission Award Number 7713, Apana 30 to Victoria Kamamalu) situate, lying and being at Maunaloa, Honolulu, City and County of Honolulu, State of Hawaii, being LOT H, same being a portion of Lot A of Kaluanui Park (File Plan 2073) and Lot 1-B, and thus bounded and described as per survey dated March 21, 2007, to-wit:

Beginning at the southwest corner of this parcel of land, being also the southeast corner of Lot J and on the northerly side of Hawaii Kai Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KOKOHEAD 3" being 8,679.91 feet north and 3.32 feet east and running by azimuths measured clockwise from true South:

1. 179° 01' 39" 256.99 feet along Lot J. along remainder of R.P.4475, L.C. Aw. 7713, Apana 30 to V. Kamamalu;
2. 89° 01' 39" 413.83 feet along Lot J, along remainder of R.P. 4475, L.C. Aw. 7713, Apana 30 to V. Kamamalu;
3. 199° 57' 207.00 feet along Lot G, along remainder of R.P. 4475, L.C. Aw. 7713, Apana 30 to V. Kamamalu;
4. 269° 01' 39" 356.91 feet along Lot 1-A-1, along remainder of R.P. 4475, L.C. Aw. 7713, Apana 30 to V. Kamamalu;
5. 359° 01' 39" 325.35 feet along Lot 1-F-1 and 1-F-2, along remainder of R.P. 4475, L.C. Aw. 7713, Apana 30 to V. Kamamalu;
6. 352° 29' 61.42 along Lot 1-F-2, along remainder of R.P. 4475, L.C. Aw. 7713, Apana 30 to V. Kamamalu;

7. 359° 01' 39" 63.25 feet along Lot 1-F-2, along remainder of R.P. 4475, L.C. Aw. 7713, Apana 30 to V. Kamamalu;

8. Thence along the northerly side of Hawaii Kai Drive, on a curve to the right with a radius of 462.00 feet, the chord azimuth and distance being:

87° 17' 40" 24.01 feet to the point of beginning and containing an area of 81,179 square feet or 1.864 acres, more or less.

TOGETHER WITH a non-exclusive appurtenant easement for access and utility purposes, over Easements "A" and "B", as granted by GRANT OF EASEMENT (ACCESS AND UTILITY), dated December 19, 2000, recorded as Document No. 2000-177626, said easements being more particularly described therein; and subject to the terms and provisions contained therein.

TOGETHER ALSO WITH a non-exclusive easement over Lots J-1 and J-2 for purposes of ingress and egress of pedestrians and vehicles, including fire trucks and other emergency vehicles, as granted by GRANT OF ACCESS EASEMENT, dated October 16, 2007, recorded as Document No. 2007-185640; and subject to the terms and provisions contained therein. CONSENTS TO EASEMENT dated March 21, 2008, dated March 24, 2008, and March 31, 2008, recorded as Document Nos. 2008-051726, 2008-051727, and 2008-081728, respectively.

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR : WESTERN PACIFIC DEVELOPMENT, LLC, a Hawaii limited liability company

GRANTEE : HALE ALI'I DEVELOPMENT, LLC, a Hawaii limited liability company

DATED : as of September 18, 2008

RECORDED : Document No. 2008-146418

TOGETHER ALSO WITH a nonexclusive airspace easement for the limited purposes of operating an overhead construction crane, and such other overhead equipment with such airspace as HALE KA LAE, LLC, a Hawaii limited liability company, requires for the construction of the condominium project on the Hale Ka Lae Parcels more particularly defined therein, over, across, and through LOT 1-E (being portion(s) of the land(s) described in and covered by Royal Patent Number 4475, Land Commission Award

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Number 7713, Apana 30 to V. Kamamalu), identified as Tax Map Key No. (1) 3-9-008: 046, being more particularly described in and granted by GRANT OF TEMPORARY AIRSPACE EASEMENT made and effective as of March 23, 2011, recorded as Document No. 2011-048176; and subject to the terms and provisions contained therein. The foregoing easement terminates automatically on the date that a temporary certificate of occupancy is issued for said condominium project, and the term of the foregoing easement shall not exceed seven (7) years, unless otherwise agreed in writing by KALUANUI SENIOR APARTMENTS, L.P., a Hawaii limited partnership ("Grantor"), and HALE KA LAE, LLC, a Hawaii limited liability company ("Grantee").

Together with an exclusive access, landscape, drainage and utility easement on, over, under, and across portion of Lot G, as granted by AMENDED AND RESTATED GRANT OF ACCESS, LANDSCAPE, DRAINAGE AND UTILITY EASEMENT AND RESERVATION OF RIGHTS, dated January 16, 2014, recorded as Document No. A-51580353, said easement being 21,069 square feet, described therein; subject to the terms and provisions contained therein. The foregoing restates the original Grant dated October 16, 2007, recorded as Document No. 2007-185638.

Together with use area for drainage, flowage and utility purposes, as described in DECLARATION OF RESTRICTIVE COVENANTS (DRAINAGE, FLOWAGE AND UTILITY) dated January 23, 2014, recorded as Document No. A-51580354; subject to terms and provisions contained therein. The foregoing amends and restates Grant of Underground Drainage and Utility Easement and Flowage Rights (Lot H), recorded as Document No. 2005-245537.

Together with right to use Access Easement, Landscape Area and Use Area, as described therein and granted by the DECLARATION OF RESTRICTIVE COVENANTS (STEWARDSHIP DECLARATION) dated January 28, 2014, recorded as Document No. A-51580355; subject to terms and provisions contained therein.

Together with right to use Easement "OS-1" for construction and other purposes, being described in and granted by GRANT OF OPEN SPACE EASEMENT AND RESERVATION OF RIGHTS (CONSTRUCTION AND USE) dated January 28, 2014, recorded as Document No. A-51580359, subject to the terms and provisions therein.

- ITEM II:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 4475, Land Commission Award Number 7713, Apana 30 to V. Kamamalu) situate, lying and being at Maunalua, Honolulu, City and County of Honolulu, State of Hawaii, being LOT J-1, same being a portion of the subdivision of Lot J, and thus bounded and described as per survey dated March 2, 2006, to-wit:

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Beginning at the southeast corner of this parcel of land, the same being the southwest corner of Lot H and on the north side of Hawaii Kai Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KOKO HEAD 3" being 8,679.91 feet north and 3.32 feet east, and thence running by azimuths measured clockwise from true South:

Along the north side of Hawaii Kai Drive on a curve to the right with a radius of 462.00 feet, the chord azimuth and distance being

- | | | | |
|----|---------------|--------|--|
| 1. | 88° 54' 19.5" | 1.97 | feet; |
| 2. | 89° 01' 39" | 20.03 | feet along the north side of Hawaii Kai Drive; |
| 3. | 179° 01' 39" | 63.98 | feet along Lot 1-E, along the remainder of R. P. 4475, L. C. Aw. 7713, Ap. 30 to V. Kamamalu; |
| 4. | 185° 34' 18" | 61.42 | feet along Lot 1-E, along the remainder of R. P. 4475, L. C. Aw 7713, Ap. 30 to V. Kamamalu; |
| 5. | 179° 01' 39" | 52.00 | feet along Lot 1-E, along the remainder of R. P. 4475, L. C. Aw. 7713, Ap. 30 to V. Kamamalu; |
| 6. | 89° 01' 39" | 155.02 | feet along Lot 1-E, along the remainder of R. P. 4475, L. C. Aw. 7713, Ap. 30 to V. Kamamalu; |
| 7. | 179° 01' 39" | 80.00 | feet along Lot J-2, along the remainder of R. P. 4475, L. C. Aw. 7713, Ap. 30 to V. Kamamalu; |
| 8. | 269° 01' 39" | 170.02 | along Lot H, along the remainder of R. P. 4475, L. C. Aw. 7713, Ap. 30 to V. Kamamalu; |
| 9. | 359° 01' 30" | 256.99 | feet along Lot H, along the remainder of R. P. 4475, L. C. Aw. 7713, Ap. 30 to V. Kamamalu and containing an |

area of 16,917 square feet,
more or less.

TOGETHER WITH a perpetual non-exclusive appurtenant easement for access and utility purposes (without limitation, electric, cable television, telephone, sewer, drain, security and water purposes) on, over, under and across Easement "A" (for utility purposes) and Easement "B" (for access and utility purposes), as granted by GRANT OF EASEMENT (ACCESS AND UTILITY) dated December 19, 2000, recorded as Document No. 2000-177626, said Easements A" and "B" being more particularly described therein; and subject to the terms and provisions contained therein.

TOGETHER ALSO WITH a perpetual non-exclusive easement appurtenant to and for the benefit of the Benefited Property more particularly described therein, on, over and across the Easement Area more particularly described therein, for purposes of ingress and egress between Hawaii Kai Drive and the Benefited Property of pedestrians and vehicles, including fire trucks and other emergency vehicles, as granted by GRANT OF EASEMENT dated October 16, 2007, recorded as Document No. 2007-185639; and subject to the terms and provisions contained therein.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : HANWHA MARINA TOWER LLC, a Delaware limited liability company

GRANTEE : HALE ALI'I MARINA TOWER, LLC, a Hawaii limited liability company

DATED : December 16, 2009

RECORDED : Document No. 2009-192355

TOGETHER ALSO WITH a nonexclusive airspace easement for the limited purposes of operating an overhead construction crane, and such other overhead equipment with such airspace as HALE KA LAE, LLC, a Hawaii limited liability company, requires for the construction of the condominium project on the Hale Ka Lae Parcels more particularly defined therein, over, across, and through LOT 1-E (being portion(s) of the land(s) described in and covered by Royal Patent Number 4475, Land Commission Award Number 7713, Apana 30 to V. Kamamalu), identified as Tax Map Key No. (1) 3-9-008: 046, being more particularly described in and granted by GRANT OF TEMPORARY AIRSPACE EASEMENT made and effective as of March 23, 2011, recorded as Document No. 2011-048176; and subject to the terms and provisions contained therein. The foregoing easement terminates automatically on the date that a temporary certificate of occupancy is issued for said condominium project, and the term of the foregoing easement shall not exceed seven (7) years, unless otherwise

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agreed in writing by KALUANUI SENIOR APARTMENTS, L.P., a Hawaii limited partnership ("Grantor"), and HALE KA LAE, LLC, a Hawaii limited liability company ("Grantee").

Together with an exclusive access, landscape, drainage and utility easement on, over, under, and across portion of Lot G, as granted by AMENDED AND RESTATED GRANT OF ACCESS, LANDSCAPE, DRAINAGE AND UTILITY EASEMENT AND RESERVATION OF RIGHTS, dated January 16, 2014, recorded as Document No. A-51580353, said easement being 21,069 square feet, described therein; subject to the terms and provisions contained therein. The foregoing restates the original Grant dated October 16, 2007, recorded as Document No. 2007-185638.

Together with use area for drainage, flowage and utility purposes, as described in DECLARATION OF RESTRICTIVE COVENANTS (DRAINAGE, FLOWAGE AND UTILITY) dated January 23, 2014, recorded as Document No. A-51580354; subject to terms and provisions contained therein. The foregoing amends and restates Grant of Underground Drainage and Utility Easement and Flowage Rights (Lot H), recorded as Document No. 2005-245537.

Together with right to use Access Easement, Landscape Area and Use Area, as described therein and granted by the DECLARATION OF RESTRICTIVE COVENANTS (STEWARDSHIP DECLARATION) dated January 28, 2014, recorded as Document No. A-51580355; subject to terms and provisions contained therein.

Together with right to exclusively use Easement "OS-1" for construction and other purposes, being described in and granted by GRANT OF OPEN SPACE EASEMENT AND RESERVATION OF RIGHTS (CONSTRUCTION AND USE) dated January 28, 2014, recorded as Document No. A-51580359, subject to the terms and provisions therein.

- ITEM III:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 4475, Land Commission Award Number 7713, Apana 30 to V. Kamamalu) situate, lying and being at Maunaloa, Honolulu, City and County of Honolulu, State of Hawaii, being LOT 1-D, being a portion of Lot 1 of "Kaluanui 2 and 3", and thus bounded and described as per survey dated November 11, 1999, to wit:

Beginning at the southeast corner of this parcel of land, being also the southwest corner of Lot 1-E and on the northerly side of Hawaii Kai Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KOKO HEAD 3" being 8,676.75 feet north and 182.65 feet east, and running by azimuths measured clockwise from true South:

1. 89° 01' 39" 80.09 feet along the northerly side of Hawaii Kai Drive;
2. Thence along same, on a curve to the right with a radius of 462.00 feet, the chord azimuth and distance being 96° 25' 14.5" 118.90 feet;
3. 193° 48' 50" 167.24 feet along Lot A of Kaluanui Park (File Plan 2073);
4. 269° 01' 39" 155.32 feet along Lot 1-C, along remainder of R. P. 4475, L. C. Aw. 7713, Apana 30 of V. Kamamalu;
5. 359° 01' 39" 177.00 feet along Lot 1-E, along remainder of R. P. 4475, L. C. Aw. 7713, Apana 30 to V. Kamamalu to the point of beginning and containing an area of 30,998 square feet or 0.712 acre, more or less.

TOGETHER WITH a perpetual non-exclusive appurtenant easement for access and utility purposes (without limitation, electric, cable television, telephone, sewer, drain, security and water purposes) on, over, under and across Easement "A" (for utility purposes) and Easement "B" (for access and utility purposes), as granted by GRANT OF EASEMENT (ACCESS AND UTILITY) dated December 19, 2000, recorded as Document No. 2000-177626, said Easements A" and "B" being more particularly described therein; and subject to the terms and provisions contained therein.

TOGETHER ALSO WITH a perpetual non-exclusive easement appurtenant to and for the benefit of the Benefited Property more particularly described therein, on, over and across the Easement Area more particularly described therein, for purposes of ingress and egress between Hawaii Kai Drive and the Benefited Property of pedestrians and vehicles, including fire trucks and other emergency vehicles, as granted by GRANT OF EASEMENT dated October 16, 2007, recorded as Document No. 2007-185639; and subject to the terms and provisions contained therein.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : HALE ALII CD, LLC, a Delaware limited liability company

GRANTEE : HALE ALI'I MARINA TOWER, LLC, a Hawaii limited liability company

EXHIBIT "A"

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DATED : December 16, 2009
RECORDED : Document No. 2009-192354

TOGETHER ALSO WITH a nonexclusive airspace easement for the limited purposes of operating an overhead construction crane, and such other overhead equipment with such airspace as HALE KA LAE, LLC, a Hawaii limited liability company, requires for the construction of the condominium project on the Hale Ka Lae Parcels more particularly defined therein, over, across, and through LOT 1-E (being portion(s) of the land(s) described in and covered by Royal Patent Number 4475, Land Commission Award Number 7713, Apana 30 to V. Kamamalu), identified as Tax Map Key No. (1) 3-9-008: 046, being more particularly described in and granted by GRANT OF TEMPORARY AIRSPACE EASEMENT made and effective as of March 23, 2011, recorded as Document No. 2011-048176; and subject to the terms and provisions contained therein. The foregoing easement terminates automatically on the date that a temporary certificate of occupancy is issued for said condominium project, and the term of the foregoing easement shall not exceed seven (7) years, unless otherwise agreed in writing by KALUANUI SENIOR APARTMENTS, L.P., a Hawaii limited partnership ("Grantor"), and HALE KA LAE, LLC, a Hawaii limited liability company ("Grantee").

Together with an exclusive access, landscape, drainage and utility easement on, over, under, and across portion of Lot G, as granted by AMENDED AND RESTATED GRANT OF ACCESS, LANDSCAPE, DRAINAGE AND UTILITY EASEMENT AND RESERVATION OF RIGHTS, dated January 16, 2014, recorded as Document No. A-51580353, said easement being 21,069 square feet, described therein; subject to the terms and provisions contained therein. The foregoing restates the original Grant dated October 16, 2007, recorded as Document No. 2007-185638.

Together with use area for drainage, flowage and utility purposes, as described in DECLARATION OF RESTRICTIVE COVENANTS (DRAINAGE, FLOWAGE AND UTILITY) dated January 23, 2014, recorded as Document No. A-51580354; subject to terms and provisions contained therein. The foregoing amends and restates Grant of Underground Drainage and Utility Easement and Flowage Rights (Lot H), recorded as Document No. 2005-245537.

Together with right to use Access Easement, Landscape Area and Use Area, as described therein and granted by the DECLARATION OF RESTRICTIVE COVENANTS (STEWARDSHIP DECLARATION) dated January 28, 2014, recorded as Document No. A-51580355; subject to terms and provisions contained therein.

Together with right to use Easement "OS-1" for construction and other purposes, being described in and granted by GRANT OF OPEN SPACE EASEMENT AND RESERVATION OF RIGHTS (CONSTRUCTION AND USE)

dated January 28, 2014, recorded as Document No. A-51580359, subject to the terms and provisions therein.

-ITEM IV:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 4475, Land Commission Award Number 7713, Apana 30 to V. Kamamalu) situate, lying and being at Maunaloa, Honolulu, City and County of Honolulu, State of Hawaii, being LOT J-2, a portion of Lot J as shown on DPP File No. 2004/SUB-273, and thus bounded and described as per survey dated March 21, 2007, to-wit:

Beginning at the southwest corner of this parcel of land, the same being the south corner of Lot G and on the north side of Hawaii Kai Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KOKO HEAD 3" being 8,729.45 feet north and 487.56 feet west and thence running by azimuths measured clockwise from true South:

1. 199° 57' 213.19 feet along Lot G, along the remainder of R.P. 4475, L.C. Aw. 7713, Ap. 30 to V. Kamamalu;
 2. 269° 01' 39" 243.81 feet along Lot H, along the remainder of R.P. 4475, L.C. Aw. 7713, Ap. 30 to V. Kamamalu;
 3. 359° 01' 39" 80.00 feet along Lot J-1, along the remainder of R.P. 4475, L.C. Aw. 7713, Ap. 30 to V. Kamamalu;
 4. 89° 01' 39" 171.30 feet along Lot 1-D, along the remainder of R.P. 4475, L.C. Aw. 7713, Ap. 30 to V. Kamamalu;
 5. 13° 48' 50" 167.24 feet along Lot 1-D, along the remainder of R.P. 4475, L.C. Aw. 7713, Ap. 30 to V. Kamamalu;
- Thence along the north side of Hawaii Kai Drive on a curve to the right with a radius of 462.00 feet, the chord azimuth and distance being
6. 110° 54' 47.5" 114.20 feet to the point of beginning and containing an area of

36,618 square feet, more or less.

TOGETHER WITH a perpetual non-exclusive appurtenant easement for access and utility purposes (without limitation, electric, cable television, telephone, sewer, drain, security and water purposes) on, over, under and across Easement "A" (for utility purposes) and Easement "B" (for access and utility purposes), as granted by GRANT OF EASEMENT (ACCESS AND UTILITY) dated December 19, 2000, recorded as Document No. 2000-177626, said Easements A" and "B" being more particularly described therein; and subject to the terms and provisions contained therein.

TOGETHER ALSO WITH a perpetual non-exclusive easement appurtenant to and for the benefit of the Benefited Property more particularly described therein, on, over and across the Easement Area more particularly described therein, for purposes of ingress and egress between Hawaii Kai Drive and the Benefited Property of pedestrians and vehicles, including fire trucks and other emergency vehicles, as granted by GRANT OF EASEMENT dated October 16, 2007, recorded as Document No. 2007-185639; and subject to the terms and provisions contained therein.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : HALE ALII CD, LLC, a Delaware limited liability company

GRANTEE : HALE ALI'I MARINA TOWER, LLC, a Hawaii limited liability company

DATED : December 16, 2009

RECORDED : Document No. 2009-192357

TOGETHER ALSO WITH a nonexclusive airspace easement for the limited purposes of operating an overhead construction crane, and such other overhead equipment with such airspace as HALE KA LAE, LLC, a Hawaii limited liability company, requires for the construction of the condominium project on the Hale Ka Lae Parcels more particularly defined therein, over, across, and through LOT 1-E (being portion(s) of the land(s) described in and covered by Royal Patent Number 4475, Land Commission Award Number 7713, Apana 30 to V. Kamamalu), identified as Tax Map Key No. (1) 3-9-008: 046, being more particularly described in and granted by GRANT OF TEMPORARY AIRSPACE EASEMENT made and effective as of March 23, 2011, recorded as Document No. 2011-048176; and subject to the terms and provisions contained therein. The foregoing easement terminates automatically on the date that a temporary certificate of occupancy is issued for said condominium project, and the term of the foregoing easement shall not exceed seven (7) years, unless otherwise

agreed in writing by KALUANUI SENIOR APARTMENTS, L.P., a Hawaii limited partnership ("Grantor"), and HALE KA LAE, LLC, a Hawaii limited liability company ("Grantee").

Together with an exclusive access, landscape, drainage and utility easement on, over, under, and across portion of Lot G, as granted by AMENDED AND RESTATED GRANT OF ACCESS, LANDSCAPE, DRAINAGE AND UTILITY EASEMENT AND RESERVATION OF RIGHTS, dated January 16, 2014, recorded as Document No. A-51580353, said easement being 21,069 square feet, described therein; subject to the terms and provisions contained therein. The foregoing restates the original Grant dated October 16, 2007, recorded as Document No. 2007-185638.

Together with use area for drainage, flowage and utility purposes, as described in DECLARATION OF RESTRICTIVE COVENANTS (DRAINAGE, FLOWAGE AND UTILITY) dated January 23, 2014, recorded as Document No. A-51580354; subject to terms and provisions contained therein. The foregoing amends and restates Grant of Underground Drainage and Utility Easement and Flowage Rights (Lot H), recorded as Document No. 2005-245537.

Together with right to use Access Easement, Landscape Area and Use Area, as described therein and granted by the DECLARATION OF RESTRICTIVE COVENANTS (STEWARDSHIP DECLARATION) dated January 28, 2014, recorded as Document No. A-51580355; subject to terms and provisions contained therein.

Together with right to use Easement "OS-1" for construction and other purposes, being described in and granted by GRANT OF OPEN SPACE EASEMENT AND RESERVATION OF RIGHTS (CONSTRUCTION AND USE) dated January 28, 2014, recorded as Document No. A-51580359, subject to the terms and provisions therein.

END OF EXHIBIT "A"

EXHIBIT "B"

UNIT NUMBERS, UNIT TYPES, BUILDINGS, AFFORDABLE RENTAL UNIT, APPROXIMATE NET YARD AREAS, PARKING STALL(S), BED/DEN/BATH, APPROXIMATE NET LIVING AREAS, APPROXIMATE NET LANAI AREAS, TOTAL APPROXIMATE NET AREA, COMMON INTEREST

| Unit Number | Unit Type | Building | Affordable Rental Unit | Approx. Net Yard Area (square feet) | Parking Stall(s) | Bed/Den/Bath | Approx. Net Living Area (square feet) | Approx. Net Lanai Area (square feet) | Total Approx. Net Area (square feet) | Common Interest |
|-------------|-----------|----------|------------------------|-------------------------------------|------------------|--------------|---------------------------------------|--------------------------------------|--------------------------------------|-----------------|
| 1700 | C3-L | 1 | X | | | 3/0/2 | 1,042 | 0 | 1,042 | 0.388538% |
| 1701 | C7-L | 1 | X | | | 3/0/2 | 1,147 | 0 | 1,147 | 0.427690% |
| 1704 | A-3 | 1 | X | | | 1/1/2 | 769 | 0 | 769 | 0.286742% |
| 1705 | A-7 | 1 | X | | | 1/1/2 | 792 | 0 | 792 | 0.295319% |
| 1706 | A-8 | 1 | X | | | 1/1/2 | 748 | 0 | 748 | 0.278912% |
| 1708 | A-4 | 1 | X | | | 1/1/2 | 774 | 0 | 774 | 0.288607% |
| 1709 | C6-L | 1 | X | | | 2/1/2 | 1,198 | 0 | 1,198 | 0.446707% |
| 1710 | A-5 | 1 | X | | | 1/1/2 | 726 | 0 | 726 | 0.270709% |
| 1711 | C6-L-R | 1 | X | | | 2/1/2 | 1,197 | 0 | 1,197 | 0.446334% |
| 1712 | A-9 | 1 | X | | | 1/1/2 | 791 | 0 | 791 | 0.294946% |
| 1714 | A-6 | 1 | X | | | 1/1/2 | 786 | 0 | 786 | 0.293081% |
| 1717 | C6-L | 1 | X | | | 2/1/2 | 1,198 | 0 | 1,198 | 0.446707% |
| 1718 | C4-L | 1 | X | | | 3/0/2 | 1,125 | 0 | 1,125 | 0.419487% |
| 1719 | C5-L | 1 | X | | | 3/0/2 | 1,243 | 0 | 1,243 | 0.463486% |
| 1800 | C3-L | 1 | X | | | 3/0/2 | 1,042 | 0 | 1,042 | 0.388538% |
| 1801 | C7-L | 1 | X | | | 3/0/2 | 1,147 | 0 | 1,147 | 0.427690% |
| 1804 | A-3 | 1 | X | | | 1/1/2 | 769 | 0 | 769 | 0.286742% |
| 1805 | A-7 | 1 | X | | | 1/1/2 | 792 | 0 | 792 | 0.295319% |
| 1806 | A-8 | 1 | X | | | 1/1/2 | 748 | 0 | 748 | 0.278912% |
| 1808 | A-4 | 1 | X | | | 1/1/2 | 774 | 0 | 774 | 0.288607% |
| 1809 | C6-L | 1 | X | | | 2/1/2 | 1,198 | 0 | 1,198 | 0.446707% |
| 1810 | A-5 | 1 | X | | | 1/1/2 | 726 | 0 | 726 | 0.270709% |
| 1811 | C6-L-R | 1 | X | | | 2/1/2 | 1,197 | 0 | 1,197 | 0.446334% |
| 1812 | A-9 | 1 | X | | | 1/1/2 | 791 | 0 | 791 | 0.294946% |
| 1814 | A-6 | 1 | X | | | 1/1/2 | 786 | 0 | 786 | 0.293081% |
| 1817 | C6-L | 1 | X | | | 2/1/2 | 1,198 | 0 | 1,198 | 0.446707% |
| 1818 | C4-L | 1 | X | | | 3/0/2 | 1,125 | 0 | 1,125 | 0.419487% |
| 1819 | C5-L | 1 | X | | | 3/0/2 | 1,243 | 0 | 1,243 | 0.463486% |
| 1900 | C3-L | 1 | X | | | 3/0/2 | 1,042 | 0 | 1,042 | 0.388538% |
| 1901 | C7-L | 1 | X | | | 3/0/2 | 1,147 | 0 | 1,147 | 0.427690% |
| 1904 | A-3 | 1 | X | | | 1/1/2 | 769 | 0 | 769 | 0.286742% |
| 1905 | A-7 | 1 | X | | | 1/1/2 | 792 | 0 | 792 | 0.295319% |
| 1906 | A-8 | 1 | X | | | 1/1/2 | 748 | 0 | 748 | 0.278912% |
| 1908 | A-4 | 1 | X | | | 1/1/2 | 774 | 0 | 774 | 0.288607% |
| 1909 | C6-L | 1 | X | | | 2/1/2 | 1,198 | 0 | 1,198 | 0.446707% |

| Unit Number | Unit Type | Building | Affordable Rental Unit | Approx. Net Yard Area (square feet) | Parking Stall(s) | Bed/Den/Bath | Approx. Net Living Area (square feet) | Approx. Net Lanai Area (square feet) | Total Approx. Net Area (square feet) | Common Interest |
|-------------|-----------|----------|------------------------|-------------------------------------|------------------|--------------|---------------------------------------|--------------------------------------|--------------------------------------|-----------------|
| 1910 | A-5 | 1 | X | | | 1/1/2 | 726 | 0 | 726 | 0.270709% |
| 1911 | C6-L-R | 1 | X | | | 2/1/2 | 1,197 | 0 | 1,197 | 0.446334% |
| 1912 | A-9 | 1 | X | | | 1/1/2 | 791 | 0 | 791 | 0.294946% |
| 1914 | A-6 | 1 | X | | | 1/1/2 | 786 | 0 | 786 | 0.293081% |
| 1917 | C6-L | 1 | X | | | 2/1/2 | 1,198 | 0 | 1,198 | 0.446707% |
| 1918 | C4-L | 1 | X | | | 3/0/2 | 1,125 | 0 | 1,125 | 0.419487% |
| 1919 | C5-L | 1 | X | | | 3/0/2 | 1,243 | 0 | 1,243 | 0.463486% |
| PH 100 | C3-L | 1 | X | | | 3/0/2 | 1,042 | 0 | 1,042 | 0.388538% |
| PH 101 | C7-L | 1 | X | | | 3/0/2 | 1,147 | 0 | 1,147 | 0.427690% |
| PH 104 | A-3 | 1 | X | | | 1/1/2 | 769 | 0 | 769 | 0.286742% |
| PH 105 | A-7 | 1 | X | | | 1/1/2 | 792 | 0 | 792 | 0.295319% |
| PH 106 | A-8 | 1 | X | | | 1/1/2 | 748 | 0 | 748 | 0.278912% |
| PH 108 | A-4 | 1 | X | | | 1/1/2 | 774 | 0 | 774 | 0.288607% |
| PH 109 | C6-L | 1 | X | | | 2/1/2 | 1,198 | 0 | 1,198 | 0.446707% |
| PH 110 | A-5 | 1 | X | | | 1/1/2 | 726 | 0 | 726 | 0.270709% |
| PH 111 | C6-L-R | 1 | X | | | 2/1/2 | 1,197 | 0 | 1,197 | 0.446334% |
| PH 112 | A-9 | 1 | | | | 1/1/2 | 791 | 0 | 791 | 0.294946% |
| PH 114 | A-6 | 1 | X | | | 1/1/2 | 786 | 0 | 786 | 0.293081% |
| PH 117 | C6-L | 1 | X | | | 2/1/2 | 1,198 | 0 | 1,198 | 0.446707% |
| PH 118 | C4-L | 1 | X | | | 3/0/2 | 1,125 | 0 | 1,125 | 0.419487% |
| PH 119 | C5-L | 1 | X | | | 3/0/2 | 1,243 | 0 | 1,243 | 0.463486% |
| 2106 | 1-A2 | 2 | | 439 | | 1/1/2 | 793 | 62 | 855 | 0.318810% |
| 2108 | 1-A | 2 | | 408 | | 1/1/2 | 725 | 62 | 787 | 0.293454% |
| 2109 | 1-J | 2 | | 496 | | 4/1/4 | 2,292 | 124 | 2,416 | 0.900860% |
| 2110 | 1-C-L | 2 | | 631 | | 2/1/2 | 1,145 | 63 | 1,208 | 0.450435% |
| 2111 | 1-C-L-R | 2 | | 248 | | 2/1/2 | 1,145 | 63 | 1,208 | 0.450435% |
| 2116 | 1-C2-L-R | 2 | | 936 | | 3/0/2 | 1,097 | 62 | 1,159 | 0.432164% |
| 2117 | 1-C1-L | 2 | | 248 | | 3/0/2 | 1,089 | 63 | 1,152 | 0.429554% |
| 2200 | H | 2 | | | | 2/0/2 | 732 | 0 | 732 | 0.272946% |
| 2201 | A-R | 2 | | | | 1/1/2 | 730 | 0 | 730 | 0.272200% |
| 2202 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2203 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2208 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2209 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2210 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2211 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2216 | C1-L-R | 2 | | | | 3/0/2 | 1,113 | 0 | 1,113 | 0.415012% |
| 2217 | C1-L | 2 | | | | 3/0/2 | 1,089 | 0 | 1,089 | 0.406063% |
| 2300 | H | 2 | | | | 2/0/2 | 732 | 0 | 732 | 0.272946% |
| 2301 | A-R | 2 | | | | 1/1/2 | 730 | 0 | 730 | 0.272200% |

| Unit Number | Unit Type | Building | Affordable Rental Unit | Approx. Net Yard Area (square feet) | Parking Stall(s) | Bed/Den/Bath | Approx. Net Living Area (square feet) | Approx. Net Lanai Area (square feet) | Total Approx. Net Area (square feet) | Common Interest |
|-------------|-----------|----------|------------------------|-------------------------------------|------------------|--------------|---------------------------------------|--------------------------------------|--------------------------------------|-----------------|
| 2302 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2303 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2308 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2309 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2310 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2311 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2316 | C1-L-R | 2 | | | | 3/0/2 | 1,113 | 0 | 1,113 | 0.415012% |
| 2317 | C1-L | 2 | | | | 3/0/2 | 1,089 | 0 | 1,089 | 0.406063% |
| 2400 | H | 2 | | | | 2/0/2 | 732 | 0 | 732 | 0.272946% |
| 2401 | A-R | 2 | | | | 1/1/2 | 730 | 0 | 730 | 0.272200% |
| 2402 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2403 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2408 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2409 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2410 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2411 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2416 | C1-L-R | 2 | | | | 3/0/2 | 1,113 | 0 | 1,113 | 0.415012% |
| 2417 | C1-L | 2 | | | | 3/0/2 | 1,089 | 0 | 1,089 | 0.406063% |
| 2500 | H | 2 | | | | 2/0/2 | 732 | 0 | 732 | 0.272946% |
| 2501 | A-R | 2 | | | | 1/1/2 | 730 | 0 | 730 | 0.272200% |
| 2502 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2503 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2508 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2509 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2510 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2511 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2516 | C1-L-R | 2 | | | | 3/0/2 | 1,113 | 0 | 1,113 | 0.415012% |
| 2517 | C1-L | 2 | | | | 3/0/2 | 1,089 | 0 | 1,089 | 0.406063% |
| 2600 | H | 2 | | | | 2/0/2 | 732 | 0 | 732 | 0.272946% |
| 2601 | A-R | 2 | | | | 1/1/2 | 730 | 0 | 730 | 0.272200% |
| 2602 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2603 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2608 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2609 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2610 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2611 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2616 | C1-L-R | 2 | | | | 3/0/2 | 1,113 | 0 | 1,113 | 0.415012% |
| 2617 | C1-L | 2 | | | | 3/0/2 | 1,089 | 0 | 1,089 | 0.406063% |
| 2700 | H | 2 | | | | 2/0/2 | 732 | 0 | 732 | 0.272946% |
| 2701 | A-R | 2 | | | | 1/1/2 | 730 | 0 | 730 | 0.272200% |
| 2702 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2703 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |

| Unit Number | Unit Type | Building | Affordable Rental Unit | Approx. Net Yard Area (square feet) | Parking Stall(s) | Bed/Den/Bath | Approx. Net Living Area (square feet) | Approx. Net Lanai Area (square feet) | Total Approx. Net Area (square feet) | Common Interest |
|-------------|-----------|----------|------------------------|-------------------------------------|------------------|--------------|---------------------------------------|--------------------------------------|--------------------------------------|-----------------|
| 2708 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2709 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2710 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2711 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2716 | C1-L-R | 2 | | | | 3/0/2 | 1,113 | 0 | 1,113 | 0.415012% |
| 2717 | C1-L | 2 | | | | 3/0/2 | 1,089 | 0 | 1,089 | 0.406063% |
| 2800 | H | 2 | | | | 2/0/2 | 732 | 0 | 732 | 0.272946% |
| 2801 | A-R | 2 | | | | 1/1/2 | 730 | 0 | 730 | 0.272200% |
| 2802 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2803 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2808 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2809 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2810 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2811 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2816 | C1-L-R | 2 | | | | 3/0/2 | 1,113 | 0 | 1,113 | 0.415012% |
| 2817 | C1-L | 2 | | | | 3/0/2 | 1,089 | 0 | 1,089 | 0.406063% |
| 2900 | H | 2 | | | | 2/0/2 | 732 | 0 | 732 | 0.272946% |
| 2901 | A-R | 2 | | | | 1/1/2 | 730 | 0 | 730 | 0.272200% |
| 2902 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2903 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2908 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2909 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2910 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2911 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 2916 | C1-L-R | 2 | | | | 3/0/2 | 1,113 | 0 | 1,113 | 0.415012% |
| 2917 | C1-L | 2 | | | | 3/0/2 | 1,089 | 0 | 1,089 | 0.406063% |
| PH 200 | H | 2 | | | | 2/0/2 | 732 | 0 | 732 | 0.272946% |
| PH 201 | A-R | 2 | | | | 1/1/2 | 730 | 0 | 730 | 0.272200% |
| PH 202 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| PH 203 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| PH 208 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| PH 209 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| PH 210 | C-L | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| PH 211 | C-L-R | 2 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| PH 216 | C1-L-R | 2 | | | | 3/0/2 | 1,113 | 0 | 1,113 | 0.415012% |
| PH 217 | C1-L | 2 | | | | 3/0/2 | 1,089 | 0 | 1,089 | 0.406063% |
| 3102 | 1-A-10 | 3 | | 265 | | 1/1/2 | 719 | 62 | 781 | 0.291217% |
| 3104 | 1-A | 3 | | 318 | | 1/1/2 | 725 | 62 | 787 | 0.293454% |
| 3106 | 1-A-R | 3 | | 318 | | 1/1/2 | 730 | 62 | 792 | 0.295319% |
| 3108 | 1-C-L-R | 3 | | 461 | | 2/1/2 | 1,145 | 63 | 1,208 | 0.450435% |
| 3111 | D | 3 | | | | 3/0/2 | 1,023 | 0 | 1,023 | 0.381453% |
| 3114 | 1-C-L | 3 | | 491 | | 2/1/2 | 1,145 | 63 | 1,208 | 0.450435% |

EXHIBIT "B"

| Unit Number | Unit Type | Building | Affordable Rental Unit | Approx. Net Yard Area (square feet) | Parking Stall(s) | Bed/Den/Bath | Approx. Net Living Area (square feet) | Approx. Net Lanai Area (square feet) | Total Approx. Net Area (square feet) | Common Interest |
|-------------|-----------|----------|------------------------|-------------------------------------|------------------|--------------|---------------------------------------|--------------------------------------|--------------------------------------|-----------------|
| 3115 | D-R | 3 | | | | 3/0/2 | 1,024 | 0 | 1,024 | 0.381826% |
| 3117 | E | 3 | | | | 3/0/2 | 1,098 | 0 | 1,098 | 0.409419% |
| 3118 | 1-C2-L | 3 | | 412 | | 3/0/2 | 1,109 | 62 | 1,171 | 0.436639% |
| 3201 | B | 3 | | | | 4/0/2 | 1,154 | 0 | 1,154 | 0.430300% |
| 3202 | A-10 | 3 | | | | 1/1/2 | 719 | 0 | 719 | 0.268099% |
| 3203 | F | 3 | | | | 2/0/2 | 691 | 0 | 691 | 0.257658% |
| 3204 | A | 3 | | | | 1/1/2 | 725 | 0 | 725 | 0.270336% |
| 3206 | A-R | 3 | | | | 1/1/2 | 730 | 0 | 730 | 0.272200% |
| 3208 | C-L-R | 3 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 3211 | D | 3 | | | | 3/0/2 | 1,023 | 0 | 1,023 | 0.381453% |
| 3214 | C-L | 3 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 3215 | D-R | 3 | | | | 3/0/2 | 1,024 | 0 | 1,024 | 0.381826% |
| 3217 | E | 3 | | | | 3/0/2 | 1,098 | 0 | 1,098 | 0.409419% |
| 3218 | C8-L | 3 | | | | 3/0/2 | 1,112 | 0 | 1,112 | 0.414639% |
| 3301 | B | 3 | | | | 4/0/2 | 1,154 | 0 | 1,154 | 0.430300% |
| 3302 | A-10 | 3 | | | | 1/1/2 | 719 | 0 | 719 | 0.268099% |
| 3303 | F | 3 | | | | 2/0/2 | 691 | 0 | 691 | 0.257658% |
| 3304 | A | 3 | | | | 1/1/2 | 725 | 0 | 725 | 0.270336% |
| 3305 | G | 3 | | | | 2/0/2 | 783 | 0 | 783 | 0.291963% |
| 3306 | A-R | 3 | | | | 1/1/2 | 730 | 0 | 730 | 0.272200% |
| 3308 | C-L-R | 3 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 3311 | D | 3 | | | | 3/0/2 | 1,023 | 0 | 1,023 | 0.381453% |
| 3314 | C-L | 3 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 3315 | D-R | 3 | | | | 3/0/2 | 1,024 | 0 | 1,024 | 0.381826% |
| 3317 | E | 3 | | | | 3/0/2 | 1,098 | 0 | 1,098 | 0.409419% |
| 3318 | C8-L | 3 | | | | 3/0/2 | 1,112 | 0 | 1,112 | 0.414639% |
| 3401 | B | 3 | | | | 4/0/2 | 1,154 | 0 | 1,154 | 0.430300% |
| 3402 | A-10 | 3 | | | | 1/1/2 | 719 | 0 | 719 | 0.268099% |
| 3403 | F | 3 | | | | 2/0/2 | 691 | 0 | 691 | 0.257658% |
| 3404 | A | 3 | | | | 1/1/2 | 725 | 0 | 725 | 0.270336% |
| 3405 | G | 3 | | | | 2/0/2 | 783 | 0 | 783 | 0.291963% |
| 3406 | A-R | 3 | | | | 1/1/2 | 730 | 0 | 730 | 0.272200% |
| 3408 | C-L-R | 3 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 3411 | D | 3 | | | | 3/0/2 | 1,023 | 0 | 1,023 | 0.381453% |
| 3414 | C-L | 3 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 3415 | D-R | 3 | | | | 3/0/2 | 1,024 | 0 | 1,024 | 0.381826% |
| 3417 | E | 3 | | | | 3/0/2 | 1,098 | 0 | 1,098 | 0.409419% |
| 3418 | C8-L | 3 | | | | 3/0/2 | 1,112 | 0 | 1,112 | 0.414639% |
| 3501 | B | 3 | | | | 4/0/2 | 1,154 | 0 | 1,154 | 0.430300% |
| 3502 | A-10 | 3 | | | | 1/1/2 | 719 | 0 | 719 | 0.268099% |
| 3503 | F | 3 | | | | 2/0/2 | 691 | 0 | 691 | 0.257658% |
| 3504 | A | 3 | | | | 1/1/2 | 725 | 0 | 725 | 0.270336% |

| Unit Number | Unit Type | Building | Affordable Rental Unit | Approx. Net Yard Area (square feet) | Parking Stall(s) | Bed/Den/Bath | Approx. Net Living Area (square feet) | Approx. Net Lanai Area (square feet) | Total Approx. Net Area (square feet) | Common Interest |
|-------------|-----------|----------|------------------------|-------------------------------------|------------------|--------------|---------------------------------------|--------------------------------------|--------------------------------------|-----------------|
| 3505 | G | 3 | | | | 2/0/2 | 783 | 0 | 783 | 0.291963% |
| 3506 | A-R | 3 | | | | 1/1/2 | 730 | 0 | 730 | 0.272200% |
| 3508 | C-L-R | 3 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 3511 | D | 3 | | | | 3/0/2 | 1,023 | 0 | 1,023 | 0.381453% |
| 3514 | C-L | 3 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 3515 | D-R | 3 | | | | 3/0/2 | 1,024 | 0 | 1,024 | 0.381826% |
| 3517 | E | 3 | | | | 3/0/2 | 1,098 | 0 | 1,098 | 0.409419% |
| 3518 | C8-L | 3 | | | | 3/0/2 | 1,112 | 0 | 1,112 | 0.414639% |
| 3601 | B | 3 | | | | 4/0/2 | 1,154 | 0 | 1,154 | 0.430300% |
| 3602 | A-10 | 3 | | | | 1/1/2 | 719 | 0 | 719 | 0.268099% |
| 3603 | F | 3 | | | | 2/0/2 | 691 | 0 | 691 | 0.257658% |
| 3604 | A | 3 | | | | 1/1/2 | 725 | 0 | 725 | 0.270336% |
| 3605 | G | 3 | | | | 2/0/2 | 783 | 0 | 783 | 0.291963% |
| 3606 | A-R | 3 | | | | 1/1/2 | 730 | 0 | 730 | 0.272200% |
| 3608 | C-L-R | 3 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 3611 | D | 3 | | | | 3/0/2 | 1,023 | 0 | 1,023 | 0.381453% |
| 3614 | C-L | 3 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 3615 | D-R | 3 | | | | 3/0/2 | 1,024 | 0 | 1,024 | 0.381826% |
| 3617 | E | 3 | | | | 3/0/2 | 1,098 | 0 | 1,098 | 0.409419% |
| 3618 | C8-L | 3 | | | | 3/0/2 | 1,112 | 0 | 1,112 | 0.414639% |
| 3701 | B | 3 | | | | 4/0/2 | 1,154 | 0 | 1,154 | 0.430300% |
| 3702 | A-10 | 3 | | | | 1/1/2 | 719 | 0 | 719 | 0.268099% |
| 3703 | F | 3 | | | | 2/0/2 | 691 | 0 | 691 | 0.257658% |
| 3704 | A | 3 | | | | 1/1/2 | 725 | 0 | 725 | 0.270336% |
| 3705 | G | 3 | | | | 2/0/2 | 783 | 0 | 783 | 0.291963% |
| 3706 | A-R | 3 | | | | 1/1/2 | 730 | 0 | 730 | 0.272200% |
| 3708 | C-L-R | 3 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 3711 | D | 3 | | | | 3/0/2 | 1,023 | 0 | 1,023 | 0.381453% |
| 3714 | C-L | 3 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 3715 | D-R | 3 | | | | 3/0/2 | 1,024 | 0 | 1,024 | 0.381826% |
| 3717 | E | 3 | | | | 3/0/2 | 1,098 | 0 | 1,098 | 0.409419% |
| 3718 | C8-L | 3 | | | | 3/0/2 | 1,112 | 0 | 1,112 | 0.414639% |
| 3801 | B | 3 | | | | 4/0/2 | 1,154 | 0 | 1,154 | 0.430300% |
| 3802 | A-10 | 3 | | | | 1/1/2 | 719 | 0 | 719 | 0.268099% |
| 3803 | F | 3 | | | | 2/0/2 | 691 | 0 | 691 | 0.257658% |
| 3804 | A | 3 | | | | 1/1/2 | 725 | 0 | 725 | 0.270336% |
| 3805 | G | 3 | | | | 2/0/2 | 783 | 0 | 783 | 0.291963% |
| 3806 | A-R | 3 | | | | 1/1/2 | 730 | 0 | 730 | 0.272200% |
| 3808 | C-L-R | 3 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 3811 | D | 3 | | | | 3/0/2 | 1,023 | 0 | 1,023 | 0.381453% |
| 3814 | C-L | 3 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 3815 | D-R | 3 | | | | 3/0/2 | 1,024 | 0 | 1,024 | 0.381826% |

| Unit Number | Unit Type | Building | Affordable Rental Unit | Approx. Net Yard Area (square feet) | Parking Stall(s) | Bed/Den/Bath | Approx. Net Living Area (square feet) | Approx. Net Lanai Area (square feet) | Total Approx. Net Area (square feet) | Common Interest |
|--------------|-----------|----------|------------------------|-------------------------------------|------------------|--------------|---------------------------------------|--------------------------------------|--------------------------------------|--------------------|
| 3817 | E | 3 | | | | 3/0/2 | 1,098 | 0 | 1,098 | 0.409419% |
| 3818 | C8-L | 3 | | | | 3/0/2 | 1,112 | 0 | 1,112 | 0.414639% |
| 3901 | B | 3 | | | | 4/0/2 | 1,154 | 0 | 1,154 | 0.430300% |
| 3902 | A-10 | 3 | | | | 1/1/2 | 719 | 0 | 719 | 0.268099% |
| 3903 | F | 3 | | | | 2/0/2 | 691 | 0 | 691 | 0.257658% |
| 3904 | A | 3 | | | | 1/1/2 | 725 | 0 | 725 | 0.270336% |
| 3905 | G | 3 | | | | 2/0/2 | 783 | 0 | 783 | 0.291963% |
| 3906 | A-R | 3 | | | | 1/1/2 | 730 | 0 | 730 | 0.272200% |
| 3908 | C-L-R | 3 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 3911 | D | 3 | | | | 3/0/2 | 1,023 | 0 | 1,023 | 0.381453% |
| 3914 | C-L | 3 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| 3915 | D-R | 3 | | | | 3/0/2 | 1,024 | 0 | 1,024 | 0.381826% |
| 3917 | E | 3 | | | | 3/0/2 | 1,098 | 0 | 1,098 | 0.409419% |
| 3918 | C8-L | 3 | | | | 3/0/2 | 1,112 | 0 | 1,112 | 0.414639% |
| PH 301 | B | 3 | | | | 4/0/2 | 1,154 | 0 | 1,154 | 0.430300% |
| PH 302 | A-10 | 3 | | | | 1/1/2 | 719 | 0 | 719 | 0.268099% |
| PH 303 | F | 3 | | | | 2/0/2 | 691 | 0 | 691 | 0.257658% |
| PH 304 | A | 3 | | | | 1/1/2 | 725 | 0 | 725 | 0.270336% |
| PH 305 | G | 3 | | | | 2/0/2 | 783 | 0 | 783 | 0.291963% |
| PH 306 | A-R | 3 | | | | 1/1/2 | 730 | 0 | 730 | 0.272200% |
| PH 308 | C-L-R | 3 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| PH 311 | D | 3 | | | | 3/0/2 | 1,023 | 0 | 1,023 | 0.381453% |
| PH 314 | C-L | 3 | | | | 2/1/2 | 1,145 | 0 | 1,145 | 0.426944% |
| PH 315 | D-R | 3 | | | | 3/0/2 | 1,024 | 0 | 1,024 | 0.381826% |
| PH 317 | E | 3 | | | | 3/0/2 | 1,098 | 0 | 1,098 | 0.409419% |
| PH 318 | C8-L | 3 | | | | 3/0/2 | 1,112 | 0 | 1,112 | 0.414639% |
| TOTAL | | | | | | | 267,312 | 873 | 268,185 | 100.000000% |

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

A. LAYOUT AND FLOOR PLANS OF UNITS. The layouts and floor plans of each Unit are depicted in the Condominium Map. None of the Units contain a basement.

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

C. COMMON INTEREST. The Common Interest for each of the two hundred sixty-nine (269) Units in the Project is calculated based on dividing the total approximate net area of the Unit by the total approximate net area of all the Units in the Project. The total approximate net area is comprised of the net living

area plus the net lanai area. In order to permit the Common Interest to equal one hundred percent (100%), the Common Interest attributable to Unit 2109 was decreased by 0.000011%.

E. PARKING STALLS. The Condominium Map depicts the location, type and number of parking stalls in the Project. All numbered parking stalls are Limited Common Elements appurtenant to Unit 2109. Developer has the reserved right to redesignate and reassign such parking stalls currently designated as Limited Common Elements appurtenant to Unit 2109 to other Units in the Project as Limited Common Elements appurtenant to such Units. Each Unit will have at least one parking stall assigned to it as a Limited Common Element.

END OF EXHIBIT "B"