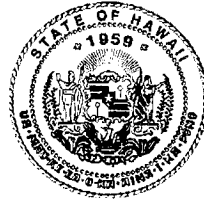


106 ePR  
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STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

October 28, 2019 8:01 AM

Doc No(s) A-72400470A thru A-72400470D



/s/ LESLIE T. KOBATA  
REGISTRAR

1 1/2 JJB  
B-33409547

LAND COURT SYSTEM

REGULAR SYSTEM

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

RS/1

VICTORIA PLACE, LLC (NTS/CMI)  
1240 Ala Moana Boulevard, Suite 200  
Honolulu, Hawaii 96814

TG: 513524P

Tax Map Key Nos. (1) 2-3-001: 129, 130 & 131

Total Pages: 85

**DECLARATION OF CONDOMINIUM PROPERTY REGIME OF**

**1100 ALA MOANA**

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**DECLARATION OF CONDOMINIUM PROPERTY REGIME OF  
1100 ALA MOANA**

**THIS DECLARATION OF CONDOMINIUM PROPERTY REGIME OF 1100 ALA MOANA ("Declaration")** is made this 2nd day of October, 2019 by VICTORIA PLACE, LLC, a Delaware limited liability company, with its principal place of business and post office address at 1240 Ala Moana Boulevard, Suite 200, Honolulu, Hawaii 96814 ("**Developer**").

R E C I T A L S:

**WHEREAS**, Victoria Ward, Limited, a Delaware corporation, with its principal place of business and post office address at 13355 Noel Road, 22<sup>nd</sup> Floor, Dallas, Texas 75240 ("**Landowner**"), is the owner in fee simple of the real property identified by Tax Map Key Nos. (1)2-3-001-129 and -130, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "**VWL Parcel**"), and pursuant to the Fee Owner Joinder executed concurrently herewith, Landowner joins in this Declaration solely for the purpose of complying with Section 514B-31 of the Hawaii Revised Statutes, as amended;

**WHEREAS**, Developer is the owner in fee simple of the real property identified by Tax Map Key No. (1)2-3-001-131, and more particularly described in said Exhibit "A" attached hereto ("**Developer Parcel**"; the VWL Parcel and the Developer Parcel, together, shall be referred to as the "**Land**");

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

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

**WHEREAS**, said portion of the Land and Improvements are depicted on Condominium Map No. 0022 ("**Condominium Map**") recorded in the Bureau together with this Declaration, which Condominium Map is incorporated herein by this reference;

**NOW, THEREFORE**, in order to create a condominium property regime consisting of the portion of the Land and Improvements to be known as "**1100 ALA MOANA**" (the "**Project**"), Developer and Landowner, by this Declaration of Condominium Property Regime of 1100 Ala Moana, do hereby submit the Land and the Improvements, and all of their respective interests therein, to a condominium property regime established pursuant to Chapter 514B of the Hawaii Revised Statutes, as amended. Developer and Landowner hereby declare that the Project is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved in accordance with applicable law and in accordance with this Declaration and the Bylaws of the Association of Unit Owners of 1100 Ala Moana, recorded concurrently herewith in said Bureau ("**Bylaws**"), as the provisions of the Declaration and Bylaws may be amended from time to time. The provisions of this Declaration and the Bylaws shall constitute covenants running with the Land and equitable servitudes and liens thereon, and shall be binding upon and inure to the benefit of Developer, the Association of Unit Owners of 1100 Ala Moana ("**Association**"), their successors and permitted assigns, and all subsequent owners and lessees of all or any part of the Project and their respective successors, successors in trust, heirs, devisees, personal representatives, executors, administrators and assigns.

**I. DEFINED TERMS.**

**A. USE OF DEFINED TERMS.** For purposes of construing and interpreting this Declaration and the Bylaws, all terms, when written with initial capital letters in this Declaration or in the Bylaws, shall have the meaning given to such terms in this Declaration. Such defined terms may be used in the singular or plural or in varying tenses or forms, but such variation shall not affect the meaning of the terms so long as such terms are written in initial capital letters. When such terms are used in this Declaration or in the Bylaws with initial capital letters, such terms shall have

the meaning they have in common usage; provided, however, that where legal, technical or trade terms are used and the context in which such terms are used indicates that such terms are to be given their legal, technical or trade usage meanings, such terms shall be given such legal, technical or trade usage meanings.

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

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

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

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

4. **"Amenity Deck"** means the portions of Level 5 of the Tower, which is comprised of certain Recreational Amenities located thereon.

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

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

7. **"Association"** means the Association of Unit Owners of 1100 Ala Moana.

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

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

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

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

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

13. **"CFD" or "Community Facilities District"** means financing districts required by the County or permitted under Hawaii Revised Statutes §46-80.1 and Revised Ordinances of Honolulu, Chapter 34, each as amended.

14. **"CFD Improvement"** means the infrastructure built in the community facilities district in Ward Village pursuant to Chapter 34 of the Revised Ordinances of Honolulu and Hawaii Revised Statutes §46-80.1.

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

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

17. "**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 are comprised of the Land in fee simple and includes the Limited Common Elements. The description of the Common Elements is set forth in Article III, Section C herein.

18. "**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, which may include, without limitation: (a) all charges for taxes (except real property taxes and other such taxes that are or may hereafter be assessed separately on each Unit and the Common Interest in the Common Elements appertaining thereto, or the personal property or any other interest of the Owner); (b) the cost of insurance, including property and other casualty and liability insurance maintained by the Association; (c) any liability whatsoever for loss or damage arising out of or in connection with the Project or any fire, accident, or nuisance thereon; (d) a sum for reserve purposes; (e) wages, accounting, and legal fees of any Association employees or consultants or vendors; (f) management fees and start-up fees; (g) other necessary expenses to maintain and operate the Project; (h) the cost of all utility services, including water, electricity, gas, garbage disposal, telephone, telecommunications, and any other similar services for the Common Elements and the Units (unless separately metered, assessed, or otherwise separately attributable to each Unit or a group of Units with amounts charged or attributable to each Unit or group of Units, as determined by the Board with the advice of the Managing Agent, an engineer, certified public accountant, or other appropriate consultant); and (i) the Master Assessments. 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.

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

20. "**Community Systems**" 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.

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

22. "**Condominium Management Agreement**" means that certain instrument entered into or to be entered into between the Association and the Managing Agent generally for management and administration of the Association and physical management and maintenance of the Common Elements, and the property of the Association, if any.

23. "**Condominium Map**" means the map prepared in accordance with Section 514B-33 of the Act that is recorded in said Bureau concurrently herewith, as the same may be duly amended from time to time.

24. "**Consolidated Lot**" means that new lot created upon the consolidation of the Land with another parcel(s) of land.

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

26. "**D&O Policy**" means the policy insuring, to the extent allowed by law, each person who is or was a Director, Officer, agent, or employee of the Association against all liability in connection with any claim made against him or her as a result of his or her holding that position, which the Board is required to buy and maintain, as further discussed in Article XII, Section E of this Declaration.

27. "**Declaration**" means this Declaration of Condominium Property Regime of 1100 Ala Moana, together with any lawful amendments hereto.

28. "**Developer**" means Victoria Place, LLC, a Delaware limited liability company, and any of its successors or permitted assigns.

29. "**Developer Affiliate**" means any Person that controls, is controlled by, or is under common control with Developer, and any Person that is owned by, or is an owner, a member, a partner, a joint partner, or a shareholder of Developer.

30. "**Developer Control Period**" means the period in which Developer shall have the right to appoint and remove Officers and Directors.

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

32. "**Development Period**" means the period starting on the date this Declaration is recorded in the Bureau and ending upon the earlier of (i) December 31, 2042, or (ii) the date Developer records a document in the Bureau relinquishing all of the Developer's Reserved Rights.

33. "**Director**" means a member of the Board.

34. "**Dispute**" means any controversy or claim arising out of, or related to, this Declaration or to any alleged construction or design defects pertaining to the Improvements.

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

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

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

38. "**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.

39. "**HART**" is a semi-autonomous local government agency established in 2011 by a charter amendment to plan, design, construct and operate and maintain Honolulu's high-capacity, fixed guided rapid transit system.

40. "**HCDA**" means the Hawaii Community Development Authority, a body corporate and public instrumentality of the State of Hawaii.

41. "**HCDA Agreements**" means those agreements described in Article XXXVI, Section F.12 of this Declaration.

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

43. "**Improvements**" means improvements that exist or will exist on the Land and shall also include those improvements made by Owners (including Developer) and/or the Association from time to time.

44. **"Insurance Trustee"** means, with respect to property or liability insurance, a bank or trust company authorized to do business in the State of Hawaii and chosen by the Board to have custody and control of the insurance proceeds, who may have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose.

45. **"Interested Person"** means any person who has any interest in the Project or who has the right to use the Project or any part of it. For example, each Owner, each Lender, and anyone who rents or leases a Unit would be an "Interested Person." It would also include anyone who has the legal right or who has permission to use the Project or any part of it.

46. **"Land"** means the real property described in Exhibit "A" attached hereto. The Land is subject to change.

47. **"Landowner"** means Victoria Ward, Limited, a Delaware corporation, the fee simple owner of the Land at the time the Land was submitted to a condominium property regime pursuant to this Declaration, and includes any successors, successors in trust, and assigns of Landowner, including, without limitation, Developer.

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

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

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

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

52. **"Majority"** means the Owners to which are appurtenant more than fifty percent (50%) of the Common Interest.

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

54. **"Master Assessments"** means the amounts paid by the Association to the Master Association for the Project's share of common expenses for the master development, as set forth in the Master Declaration and Master Bylaws.

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

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

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

58. **"Master Declaration"** means that certain Community Covenant for Ward Village dated September 13, 2013 and recorded in said Bureau as Document No. A-50040794, as may be amended and supplemented from time to time, which imposes certain covenants, conditions and restrictions on the Project and certain adjoining lands owned by Developer or Developer Affiliate, and which creates obligations that are binding upon the Master Association and all present and future Owners of properties in Ward Village. If there is a conflict between the Master Declaration and the Condominium Documents, the Master Declaration shall prevail.

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

60. **"Mauka Area Rules"** means HCDA's Mauka Area Plans and HCDA's Mauka Area Rules (Title 15, Chapter 22 of the Hawaii Administrative Rules), collectively, as the same may be amended.

61. **"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.

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

63. **"Occupancy Restrictions"** means those limitations on the use and occupancy of the Units.

64. **"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.

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

66. **"Owner"** means a person or entity owning severally or as a co-tenant, a Unit and the Common Interest appurtenant thereto, to the extent of the interest so owned; provided that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by the terms of any applicable lease documents, a lessor, lessee, or sublessee of a Unit or interest therein shall be deemed the Owner of such Unit to the extent permitted in such lease. The vendee of a Unit pursuant to an Agreement of Sale shall have the rights of an Owner, including the right to vote; provided that the vendor may retain the right to vote on matters substantially affecting the vendor's security interest in the Unit as provided in Section 514B-124 of the Act. Where the Owner is a guardian, trustee, corporation, partnership, limited liability company, or other entity, the method for designating the natural person who shall act as and for the Owner is as set forth in the Bylaws and, as to land trusts, in Article XVII of this Declaration. For so long as Developer owns unsold Units in the Project (or to the extent that Developer shall reacquire any Units in the Project), Developer shall have the rights of an Owner, including the right to vote, and shall assume the duties of an Owner as said rights and duties relate to said unsold Units (or reacquired Units), subject, however, to the provisions of this Declaration, the Bylaws and the Act. Landowner shall not be considered an Owner unless Landowner subsequently takes title to an individual Unit or Units in the Project.

67. **"Parking Structure"** means Level 1 through Level 4 of the Tower, which includes, without limitation, the parking stalls and any storage rooms that serve the Project.

68. **"PD Permit"** means that certain Planned Development Permit No. KAK 19-069 issued by HCDA on October 2, 2019.

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

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

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

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

73. "**Project Quality Standard**" means the standard required to maintain and operate the Project in a condition and at a quality level no less than that which existed at the time that the Project was initially completed (ordinary wear and tear excepted). Upon issuance of the Certificate of Occupancy, the Project at that time shall be deemed to meet the Project Quality Standard. The Project Quality Standard may evolve as development of the Project progresses and industry standards of urban mixed-use destinations evolve. All of the elements of the Project Quality Standard need not be set out in writing since such evaluation may require the exercise of subjective judgment and cannot be reduced to written criteria.

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

75. "**Recreational Amenities**" means those recreational amenities located on Levels 1 and 5 of the Tower, which are available for the use and enjoyment of the Owners. The Recreational Amenities are Common Elements.

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

77. "**Special Tax**" means the annual tax which may be levied on Owners of Units in the Project to help finance infrastructure within the CFD.

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

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

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

81. "**Tower**" means the forty (40) story building (Level 1 through Level 40) depicted on the Condominium Map. Floors are designated consecutively as Level 1 to and including Level 40.

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

83. "**Unit**" means a part of the Project, as described in this Declaration and as shown on the Condominium Map, intended for a use permitted under the Act and under applicable law, with an exit to a public street or highway, or to a Common Element leading to a public street or highway. The Units included in the Project are listed in Exhibit "B" of this Declaration.

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

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

## II. WARD VILLAGE; MASTER PLANNED COMMUNITY.

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

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

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

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

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

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

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

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

E. Owners will not become members of the Master Association and, in most instances, will not have direct voting rights in the Master Association. The Association will be the member of the Master Association for the



Project. The Association and the Owners shall be responsible for certain shared costs for the maintenance and upkeep of any master community common areas and other services and use areas shared among the projects in Ward Village and described in the Master Declaration and Master Bylaws. To the extent permissible by applicable law, the Master Association has the right to lien a Unit in the event of nonpayment of any Master Assessments by the Association or the Unit's Owner.

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

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

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

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

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

1. The right to complete or not complete any improvements in Ward Village indicated on the development plans;

2. The right to create, permit the creation of, merge, or permit the merger of condominium property regimes on Parcels in Ward Village;

3. The right to create additional Parcels, Common Areas, Areas of Common Responsibility, including Limited Benefit Areas, and to designate and dedicate roadways, within any portion of Ward Village owned by Master Declarant, its affiliates, or assigns;

4. The right to subdivide or combine Parcels or convert Parcels or portions of Parcels into the Area of Common Responsibility (including Common Areas or Limited Benefit Areas) or roadways;

5. The right to reconfigure property or convert Parcels or portions thereof into Common Areas, and to convert Common Areas into Parcels;

6. The right to withdraw from Ward Village any Parcel or portion thereof, subject to the Master Declaration, and to obtain such local government approvals that may be required;

7. The right to reconfigure boundaries of the Area of Common Responsibility and the right to grant easements for use of the sidewalks and streets within Ward Village for adjacent commercial users;

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

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

### III. DESCRIPTION AND DIVISION OF THE PROJECT.

A. **DESCRIPTION OF THE PROJECT.** The Project consists of a single forty (40) story building (Level 1 through Level 40), which shall be used as a residential condominium and parking garage, and for other such purposes permitted under this Declaration (the "*Tower*"). The Project shall contain the following:

1. **UNITS.** Three hundred fifty (350) total Units, consisting of the Unit types set forth in Exhibit "B" attached hereto and incorporated herein by reference.

2. **COMMON ELEMENTS.** The Common Elements identified in Article III, Section C below.

B. **DESCRIPTION OF THE UNITS.** A total of three hundred fifty (350) freehold estates consisting of the Units described in Article III, Section A.1 above are hereby established in the Project and designated in the spaces within the perimeter and party walls, windows, doors, floors and ceilings of each of the Units in the Project, as designated and shown on the Condominium Map.

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

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

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

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

more than one (1) Unit; and (e) any Common Elements, including any Limited Common Elements as hereinafter provided.

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

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

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

b. The entire Tower beyond the Unit boundaries, including, without limitation, the Parking Structure;

c. All fans, vents, shafts, sewer lines, water lines, pipes, generators, cables, conduits, ducts, electrical equipment, cooling tower(s), HVAC and any supporting pumps or equipment, wiring and other central and appurtenant transmission facilities and installations on, above, over, under, through and across the Project to the point of their respective connections to Improvements comprising a part of the Units or the Limited Common Elements;

d. All elevators, elevator shafts, stairways and stairwells in the Tower;

e. The perimeter sidewalk and landscaped areas on the Land surrounding the Tower; and the Recreational Amenities, including those on Level 1 and the Amenity Deck located on Level 5 of the Tower, as depicted on the Condominium Map;

f. The rooftop of the Tower and any Improvements and mechanical equipment areas thereon;

g. All guest suites, if any;

h. The Limited Common Elements designated in Article III, Section D below; and

i. Those other areas that are not part of the Unit, as designated on the Condominium Map.

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

1. One (1) assigned mailbox on Level 1 of the Tower;

2. Any parking stall(s) and/or storage room(s) (if any) assigned to a Unit as a Limited Common Element in Exhibit "B" attached hereto, or as later assigned pursuant to an amendment to this Declaration;

3. Unit No. 609 shall have assigned to it as Limited Common Elements those storage rooms and parking stalls depicted on the Condominium Map not otherwise assigned to another Unit as a Limited Common Element in Exhibit "B", attached hereto and incorporated herein by reference;

4. Any other areas on the Condominium Map described as a Limited Common Element appurtenant to a Unit.

E. **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" attached hereto, herein called the "**Common Interest**", and the same proportionate share in all common profits and Common Expenses of the Project, and for all other purposes, except as otherwise provided in this Declaration, including, but not limited to, voting; which Common Interest shall be subject to adjustment as otherwise provided in this Declaration. Any profits generated from the use of a particular Unit or Limited Common Element shall not be deemed "common profits" subject to distribution in accordance with the Common Interest as set forth above, but shall belong to the Owner of such Unit, or to the Units to which such Limited Common Element is appurtenant. 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%), provided that the proportion of each Owner's Common Interest shall remain substantially the same in relation to the other Owners. The Common Interest is calculated as set forth in Exhibit "B" attached hereto. Developer shall further have the right to adjust the Common Interest in exercising certain Developer's Reserved Rights, as may be set forth herein.

#### IV. **EASEMENTS AND LICENSES.**

In addition to any easements of record and any easements and reserved rights described in this Declaration and the Master Declaration, the Units and the Common Elements shall also have, as an appurtenance, or be subject to, as the case may be, the following easements, all and any of which in favor of Developer may be exercised without the joinder or 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. **EASEMENTS IN CERTAIN LIMITED COMMON ELEMENTS FOR UTILITIES AND SUPPORT.** Wherever sanitary sewer connections, water connections, electricity, gas, telephone, HVAC, security and television lines, drainage facilities, or duct facilities are installed within the Project, the Owners of Units that are served by said connections, lines or facilities shall have the right, and there are hereby reserved to all other Owners, together with the right to grant and transfer the same, easements and rights the extent necessary for the full use and enjoyment of such portions of such connections, lines or facilities that service such Units, and to enter Units owned by others, or to have utility companies enter Units owned by others, in or upon which said connections, lines or facilities, or any portions thereof, lie, to repair, replace and generally maintain said connections, lines or facilities as and when the same may be necessary; provided that such entering Owner or utility company shall repair any and all damage to any Unit caused by such entry as promptly as possible after completion of work thereon.

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

D. **EASEMENTS THROUGH NEIGHBORING PROJECT.** The Owners and the Association shall have appurtenant thereto, nonexclusive easements for access through the ground floor of the neighboring 1118 Ala Moana condominium project for emergency pedestrian access to Ala Moana Boulevard; construction and maintenance purposes; and vehicle ingress, egress, loading, unloading and turnaround purposes, pursuant to that certain Grant of Easements dated May 24, 2016 and recorded in said Bureau as Document No. A-59910926, as may be amended from time to time.

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

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

**F. EASEMENT AFFECTING COMMON ELEMENTS.** The Association has the right, exercisable by the Board and/or the Managing Agent, to designate, grant, lease, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across, or through the Common Elements for any reasonable purpose, which may include, but will not be limited to, (1) those purposes necessary for the operation, care, upkeep, maintenance or repair of any Unit, the Common Elements or any Limited Common Element, or (2) any easements for utilities or for any public purpose, including, for example, pedestrian walkways (on street level or elevated), landscaped areas, stairs, ramps, roadways, or other passageways, or the facilities that support the Project.

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

**H. DEVELOPER'S EASEMENT TO COMPLETE IMPROVEMENTS TO 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 defects and to address "punchlist" items therein. Each and every Owner or other Person acquiring any interest in the Project waives, releases, and discharges any rights, claims, or actions such party may acquire against Developer, its agents, employees, consultants, contractors, licensees, successors and assigns, as a result of any such noise, dust, vibration, and other nuisances or annoyances arising from the completion of such Improvements.

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

**J. DEVELOPER'S EASEMENT FOR SALES ACTIVITIES.** During the Development Period, Developer, its brokers, sales agents, representatives, and other related persons shall have the right to conduct extensive sales activities at the Project, including the use of any Unit owned by Developer or Developer's successors, assigns or affiliates and the Common Elements (excluding the Limited Common Elements appurtenant to Units not owned by Developer), for model units, sales, tours, leasing, management, and construction offices, parking, extensive sales displays, hosting promotion activities, functions and receptions, the posting and maintenance of signs and other

advertisements relating to such sales activities, and to install, maintain, locate, relocate, and reconfigure such structures, displays, advertising signs, billboards, flags, sales desks, kiosks, sales, leasing, management and/or construction offices, model units, interior design and decorator centers, and parking areas for employees, agents, and prospective buyers, as may be necessary or convenient for the proper development and disposition of Units in the Project and in other condominium projects in Ward Village by sale, resale, lease, or otherwise, and the right, but not the obligation, to provide ongoing maintenance, operation, service, construction, and repairs to individual Units. In the event that Developer's mortgage lender, if any, or any successor to or assignee of Developer's mortgage lender shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the Mortgage remedies or by a deed or an assignment in lieu of foreclosure, such mortgage lender, its successors and assigns, shall have the same rights as Developer to conduct such sales activities on the Project. Each and every party acquiring an interest in the Project or the Land hereby acknowledges that such sales activities may result in noise and nuisances, and consents to such activity by Developer, and further waives, releases, and discharges any rights, claims, or actions such party may acquire against Developer, its brokers, sales agents, representatives, employees, consultants, attorneys, and Lenders, and their respective successors and assigns as a result of any such activity or activities.

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

**L. DEVELOPER'S ADDITIONAL EASEMENTS AND RIGHTS TO ACCEPT, GRANT, AND MODIFY EASEMENTS.** During the Development Period, Developer reserves, as an additional Developer's Reserved Right, the right to designate, grant, convey, transfer, cancel, relocate, and otherwise deal with any easements over, under, across or through the Common Elements as necessary or convenient for any reasonable purpose, which may include, but not be limited to the repair, care or upkeep of any Unit or Common Elements, any utility easements or infrastructure to serve the Project or for the purpose of establishing access ways or walkways, or to comply with any government agreement or permit, private covenant, or other easement or access requirements. Developer further reserves the right to designate, negotiate, accept, grant, convey, transfer, cancel, relocate, and otherwise deal with any easement or license over, under, across, or through the Land or the Project or adjoining properties in favor of, or encumbering, the Land or the Project for any reasonable purpose. Developer also has the right to grant such easements necessary for the repair, care or upkeep of any Unit or Common Element, any utility easements or infrastructure to serve the Project, or for the purpose of establishing access ways or walkways, or vehicular or pedestrian access to any adjoining or neighboring off-site commercial, retail, or parking facilities for customers, invitees, and vendors, and to access such commercial, retail or parking facilities, or to comply with any government agreement or permits, private covenant or other easement or access requirements, or for the reason that any owner of property that is subject to an easement in favor of the Land or the Project uses any right it has to require a change in the location of that easement.

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

**N. LICENSE TO OCCUPANTS.** Any Person who has a right or permission to occupy a Unit also has the right and license to use the Common Elements and the Limited Common Elements appurtenant to the Unit occupied, to the same extent that the Owner of such Unit would have the right to do so. This right to use and license remains in effect only during the time period when the person has the right to occupy the Unit. This includes, for

example, anyone who rents or leases a Unit (subject to any limits or additional terms contained in any rental agreement or lease with the Owner).

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

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

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

V. **ALTERATION AND TRANSFER OF INTEREST.**

Except as set forth in this Declaration, the Common Interest appurtenant to each Unit shall have a permanent character and shall not be altered without the consent of all of the Owners affected, expressed in an amendment to this Declaration that is duly recorded 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 particular Unit shall be made, nor shall any partition or subdivision of any particular Unit be made, without the prior written consent of any Eligible Mortgage Holders, if any.

VI. **USE.**

A. **PROJECT; IN GENERAL.**

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

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



the Act and the Mauka Area Rules; and (g) no Unit may be utilized for transient or hotel purposes, as defined in Article VI, Section C.4 below.

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

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

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

B. **USE OF PARKING STRUCTURE.** The Parking Structure shall be used for access, parking, storage and any other purposes permitted by the Condominium Documents. The Association shall be prohibited from reducing the total number of parking stalls, storage rooms, accessible parking stalls, guest stalls, and/or loading stalls in the Project, without the prior written approval of Developer during the Development Period. All Owners shall be provided access to the Parking Structure to access and utilize their designated parking stall(S) (if any) and their storage room(S),

C. **USE OF UNITS AND LIMITED COMMON ELEMENTS.**

1. **USE.** Except as provided herein, Units and their appurtenant Limited Common Elements shall be used for residential purposes exclusively, except that a home-based business may be maintained within a Unit, provided that (a) such maintenance and use is limited to the person actually residing in the Unit; (b) no employees or staff other than a person actually residing in the Unit are utilized; (c) no clients or customers of such business visit the Unit; (d) the number of persons, other than clients or customers, that visit such business and the frequency of such visits shall be kept to a reasonable minimum, as determined in the sole discretion of the Board and the occupancy limitation in Article VI.C.4 below is observed; (e) such maintenance and use is in strict conformity with the provisions of any applicable law (including zoning laws), ordinance or regulation; (f) the person utilizing such office maintains a principal place of business other than the Unit; (g) such business uses no equipment or process that creates noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable by neighbors and does not cause an increase of Common Expenses that can be solely and directly attributable to the business; (h) such business does not involve the use, storage or disposal of any materials that the State of Hawaii or any governing body with jurisdiction over the Property designates as hazardous material; and (i) the Owner has provided the Board thirty (30) calendar days prior written notice of his or her intent to operate such home-based business. Notwithstanding the foregoing, the

Board shall have the authority, but not the obligation, to permit a home-based business to be maintained within a Unit which does not meet one or more of the requirements set forth above, which permission may be withdrawn at any time in the sole discretion of the Board. Nothing contained in this Section shall be construed to prohibit Developer from the use of any Unit owned by Developer for promotional or display purposes, such as for a model unit, a sales and/or construction office, or for any other lawful purpose for development, construction and/or marketing and sales of the Units in the Project.

2. **MAXIMUM OCCUPANCY.** Unless otherwise limited by County ordinance, the Mauka Area Rules, or other applicable law, no Unit shall be occupied by more than nine (9) persons, and in no event shall occupancy of a Unit exceed three (3) persons per bedroom; provided, however, that this occupancy limitation shall not apply to or restrict the Owner of a Unit from hosting a larger group of invited guests or visitors in such Unit for a one-day function with prior written notice to the Managing Agent and subject to the limitations set forth in the House Rules.

3. **UNSIGHTLY ARTICLES.** Portions of a Unit and its appurtenant 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 outside the Unit, except in the Unit's Limited Common Element storage room. To maintain a uniform and attractive exterior appearance for the Project, window coverings and backing installed by a Unit Owner must be off-white and must be of a type and general appearance approved by the Board. Owners may not, without the prior written approval of the Board, apply any substance, material or process to the exterior or interior surfaces of the 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 its orderly appearance, without liability therefor, and charge the Owner for any costs incurred in connection with such removal.

4. **PROHIBITION AGAINST TIME SHARE PROGRAMS.** Units or their appurtenant Limited Common Elements, or any portion of either, shall not be the subject of or sold, transferred, conveyed, leased, occupied, rented, or used at any time under a time share plan (as defined in Hawaii Revised Statutes, Chapter 514E, as amended) or similar arrangement or program whether covered by Chapter 514E or not, including, but not limited to, any so-called "fractional ownership," "vacation license," "travel club membership," "club membership," "membership club," "destination club," "time-interval ownership," "interval exchange" (whether the exchange is based on direct exchange or occupancy rights, cash payments, reward programs or other point or accrual systems) or "interval ownership" as offered and established through a third-party vacation membership service provider who is in the business of providing and managing such programs; and further, shall not be used as part of any occupancy plan or for similar purposes, which shall include: (a) any joint ownership, whether or not ownership is deeded, 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 (b) any club, the membership of which allows access and use of one or more properties by its members based on availability and reservation priorities, commonly known as destination clubs (equity or non-equity) or vacation clubs. Furthermore, the Units and their appurtenant Limited Common Elements, or any portion of either, shall not be used for transient or hotel purposes, which are defined as (a) rental for any period less than thirty (30) calendar days, or (b) any rental in which the Occupant(s) of the Unit is (are) provided customary hotel or rental services, or (c) any rental which is transacted using a short-term rental similar to Airbnb, VRBO®, and HomeAway™. The foregoing restrictions are collectively referred to as "**Occupancy Restrictions.**" The Occupancy Restrictions may be enforced by Developer, the Association, the Resident Manager or Site Manager, the Master Association or the Managing Agent.

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

5. **USE OF RECREATIONAL AMENITIES.** Except as otherwise provided herein, the Recreational Amenities shall only be used by the Owners and, while in residence, their Occupants and non-residing guests while accompanied by the Occupant. The Recreational Amenities are available to promote recreation and leisure activities and for any other purposes permissible by the Condominium Documents; provided that, and subject to any Developer's Reserved Rights, at no time shall there be any commercial use of the Recreational Amenities, including the Amenity Deck, nor shall the Recreational Amenities, or any area therein, contain any third-party independent commercial operation; provided that, a third-party independent commercial operation whose business is to provide services exclusively to Owners and their invitees may be permitted on the Amenity Deck in the discretion of the Board. Developer shall have the option, at its sole discretion, to add to, reconfigure, resize, relocate, and/or remove any or all of the Recreational Amenities, which may in turn increase or decrease the Common Expenses and, consequently, affect maintenance fees. This Section shall not be considered a representation and/or warranty by Developer that any or all of the Recreational Amenities will be built or will be located as initially depicted on the Condominium Map.

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

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

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

E. **USE OF LIMITED COMMON ELEMENTS.** Subject to Developer's Reserved Rights contained herein, Owners shall have the right to use the Limited Common Elements appurtenant to their Units for any purpose permitted by zoning and other applicable laws and the Condominium Documents. Notwithstanding anything provided to the contrary, or from which a contrary intent may be inferred, neither the Board nor the Association shall have any right to change the use of or lease or otherwise use any Limited Common Element without the prior written approval of the Owner(s) of the Unit(s) to which such Limited Common Element is appurtenant.

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

G. **ADA COMPLIANCE.** To the extent required by law, the Project will be constructed to be accessible and adaptable if and as required under the Americans with Disabilities Act (42 U.S.C. §§ 12101 et seq.), as amended ("**ADA**").

H. **NUISANCES.** No nuisances shall be allowed in the Units which are a source of annoyance to the Owners or Occupants of other Units or which interfere with the peaceful possession or proper use of the Units by its Owners or Occupants.

I. **WEIGHT RESTRICTION.** Hard and/or heavy surface floor coverings, including, but not limited to, tile, marble, wood, or the like, may not be installed in any part of a Unit without the prior approval of the Board. Furthermore, the Owner must ensure that a sound control underlayment system which meets an Impact Insulation Criteria (IIC) acoustic standard of fifty-five (55) or better is used, which system must be approved by the Association. The installation of the foregoing insulation materials shall be performed in a manner that provides proper mechanical isolation of the flooring materials from any rigid part of the Tower, whether of the concrete subfloor (vertical transmission) or adjacent walls and fittings (horizontal transmission) and must be installed prior to the Unit being occupied. The Association may require a structural or acoustical engineer to review certain proposed improvements, with such review to be at the Owner's sole expense. Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom, and the Association has the right to require immediate removal of the violations.

J. **ADVERTISEMENTS; SIGNS.** Subject to Developer's Reserved Right contained herein, Developer's easement rights, or any restrictions set forth herein, and any applicable regulations set forth in the Master Rules and/or House Rules, Owners shall not place advertisements, posters, or signs of any kind, including, without limitation, any "**For Sale**" or "**For Rent**" signs, on the exterior of any Unit, in the windows of a Unit, and/or in the exterior portions of the Limited Common Elements, unless prior approval is received from the Association.

K. **ANTENNAS, SATELLITE DISHES.** To the extent permitted by applicable law and the House Rules, no Owner may install any antenna, satellite dish or other transmitting or receiving apparatus in or upon said Owner's Unit (and/or Limited Common Elements appurtenant thereto) without submitting prior written notice to the Board of such installation. The Board shall review the notice, and the Board may, in its reasonable discretion, request to review copies of any applicable installation and/or design plans. The Board shall not unreasonably withhold or delay their review of such notice and plans.

L. **PETS.** Unit Owners are permitted to keep pets in their Units subject to the limitations set forth in the House Rules; provided, however, that notwithstanding this provision, qualified physically and/or mentally impaired persons shall be allowed to use the services of a certified "service animal" or certified "emotional support" animal, as defined under the ADA in accordance with the House Rules.

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

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

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

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

3. To lease or otherwise use for the benefit of the Association those Common Elements not falling within Article VI, Section N.2. above, upon obtaining: (a) the approval of the Owners of at least sixty-seven percent (67%) of the Common Interest, including all directly affected Owners, and (b) the approval of all mortgagees of record which hold Mortgages on Units with respect to which Owners' approval is required by (a) above, if such lease or use would be in derogation of the interest of such mortgagees.

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

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

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

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

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

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

3. Keep all Common Elements in good order and condition, and repair and make good all defects in the Common Elements, required to be repaired by the Association and observe and do anything required by all laws, ordinances, rules and regulations that apply from time to time to the Project or the use of it.

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

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

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

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

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

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

#### **B. DEVELOPER AND UNIT OWNER RIGHTS AND LIMITATIONS.**

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

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

The Parking Structure may be utilized by Owners to access their respective parking and/or loading areas and Units. The exterior and interior of the Parking Structure shall be operated, repaired, and maintained by the Association. The Association shall use its best efforts to maintain and upkeep the Parking Structure uniformly and in accordance with the Project Quality Standard. The Association shall consult and establish a coordinated maintenance schedule to promote the safety and efficiency of their maintenance activities within the Project, including without limitation, the Parking Structure.

**C. CAPITAL UPGRADES OF COMMON ELEMENTS.** Whenever in the judgment of the Board the Common Elements shall require Capital Upgrades costing in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, and the making of such Capital Upgrades shall have been approved by a Majority of Owners, then, the Board shall proceed with such Capital Upgrades and may assess the Owners for the cost thereof as a Common Expense. If such Capital Upgrades, if not made, could reasonably result in a threat to the health or safety of the Owners or a significant risk of damage to the Project, then such actions may be taken without

the prior approval of the Owners. Any Capital Upgrades costing less than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year may be made by the Board without approval of the Owners, provided said Owners are given at least ten (10) business days' written notice of a special meeting at which actions are approved by an amendment to the budget by the Board. The cost of such Capital Upgrades shall constitute a Common Expense. The foregoing shall not apply to operational expenses which shall be subject to applicable provisions of the Condominium Documents. This Section shall not apply to any Capital Upgrades made by Developer when exercising Developer's Reserved Rights.

**D. EXTRAORDINARY ACTIONS.** Although the Board shall generally have broad powers to regulate, govern and manage the Project, the power to approve certain Extraordinary Actions (as defined below) shall remain vested in the Association. Any provision of this Declaration or the Bylaws to the contrary notwithstanding, the Board and the Association shall not be authorized to take any Extraordinary Actions during the Developer Control Period without the affirmative vote of Owners representing not less than eighty percent (80%) of the Owners and the consent of the Developer, and, after the end of the Developer Control Period, without the affirmative vote of Owners representing not less than sixty-seven percent (67%) of the votes of the Owners. As used herein, the term "**Extraordinary Actions**" shall mean any and all actions taken by or on behalf of the Association, including, without limitation, amending this Declaration to change the permitted use of the Common Elements, potentially commencing or maintaining any litigation, defending an action, filing a counterclaim, mediation or similar proceeding (except for routine Common Expense collection matters, or actions required to enforce the restrictions on use of Units, rules or architectural controls) which would reasonably require the expenditure of funds in excess of Twenty Five Thousand Dollars (\$25,000.00) in the aggregate during any fiscal year of the Association and any determinations pursuant to Section 514B-41(c) of the Act and that are not prohibited by an express provision of this Declaration. Extraordinary Actions shall not, however, be deemed to include Capital Upgrades or actions by the Association in connection with operational expenses, including the establishment and utilization of reserves for the repair or replacement of Common Elements.

**E. MAINTENANCE OF LANDSCAPING IN COUNTY OR STATE RIGHT OF WAYS AND COUNTY OR STATE ROADS.** Developer may be required to enter into a landscaping maintenance agreement or similar arrangement with the County or the State, which may require Developer to maintain all the landscaping, sidewalks and walkways, and roadways surrounding the Project. Developer intends to assign such responsibility to the Master Association of Ward Village pursuant to the Master Declaration; however, in the event the Master Association is unable to assume such responsibility for some reason, the Association shall be responsible for such maintenance and any affiliated cost.

#### **VIII. MANAGING AGENT.**

Physical, fiscal and administrative management of the Project shall be conducted for the Association by a qualified, corporate Managing Agent who shall be appointed by the Association, in accordance with the Bylaws. The Condominium Management Agreement shall contain a requirement that the Managing Agent operate the Project at the Project Quality Standard and further provide for the right of the Board to terminate the Condominium Management Agreement if the Project is not operated or maintained at such standard by the Managing Agent.

#### **IX. SERVICE OF LEGAL PROCESS.**

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

#### **X. ALTERATION OF PROJECT.**

**A. IN GENERAL.** This Section applies, except as otherwise provided by the FHA and elsewhere in this Declaration. This Section does not apply to changes made by Developer when exercising Developer's Reserved Rights. Neither the Association nor any Owner may make any structural changes or additions to the Common Elements, Limited Common Elements, or the Units that are different in any material respect from the Condominium Map, except pursuant to any requisite vote by the Association and amendment of this Declaration, or as otherwise set forth herein or in the Bylaws. Any such restoration, replacement, construction, alteration, or addition must be made in accordance with complete plans and specifications that are first approved by the Board in writing. Promptly after

the work is completed, the Association, Developer, or the Owner must record the amendment of this Declaration along with any necessary changes to the Condominium Map. This Section does not apply to "nonmaterial structural additions to the Common Elements" as that term is used in Section 514B-140 of the Act. Nothing in this Section (1) authorizes any work or change that would jeopardize the soundness, safety or structural integrity of any part of the Project; (2) authorizes any work or change by an Owner that would materially change the uniform external appearance of the Project without the approval of the Board; (3) authorizes any work or change by the Board that would materially change the exterior of the Parking Structure or Tower; (4) prohibits the Board from making or requiring that an Owner make changes within any Unit or Limited Common Element appurtenant thereto as needed to comply with the fire code and all other laws that apply to the Project; and (5) prohibits Developer from completing the initial Project construction and Improvements or alterations required to amend a claimed or potential defect.

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

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

1. To install, maintain, remove, and rearrange non-load-bearing partitions and walls from time to time within the perimeter walls of the Unit;
2. To finish, change or substitute any plumbing, electrical or other fixtures attached to the ceilings, floors or walls, as appropriate, for the use of the Unit or the Limited Common Elements appurtenant solely to such Unit;
3. To make such changes, additions and Improvements to the Unit or appurtenant Limited Common Elements to facilitate handicapped accessibility within the Unit or Limited Common Elements; and
4. To consolidate two (2) or more Units owned by the same Owner, provided that any intervening walls removed are not load-bearing or structural walls and/or do not support any other Unit of the building, and to install doors and other Improvements in the intervening wall and/or make other reasonable additions. The Owner must ensure that the structural integrity of the Unit, Limited Common Elements and the building will not be adversely affected; that any plumbing or other lines that may run behind any non-load bearing walls are not adversely affected; the finish of the remaining Common Elements are restored to substantially the same condition as prior to removal; and all construction activity is completed within a reasonable time. The Common Interest appurtenant to the single consolidated Unit shall equal the total of the Common Interests for the original Units, despite any change in the area of the Unit and shall not affect the Common Interest appurtenant to any other Unit.

**C. BY THE BOARD.** The Board has the right to change the exterior appearance of the Project, without approval of the Association; provided that the cost of such change shall not exceed Five Hundred Thousand and No/100 dollars (\$500,000.00). During the Development Period, however, the Board may not pursue any such change without Developer's prior written approval.

**D. APPROVAL OF THE BOARD; CONDITIONS TO BOARD APPROVAL.** It is intended that the Parking Structure and the Tower present a uniform and attractive appearance in accordance with the Project Quality Standard. Accordingly, whenever any proposed modification, change, addition to, or alteration of any Unit or Limited Common Elements appurtenant thereto will impact such appearance, the Owner(s) must submit a written request for Board approval, which request must include plans and specifications depicting or showing the proposed modification, change, addition, or alteration. The Board must respond to a request for approval within forty-five (45) calendar days after it receives such a request. The request will be deemed approved unless, within the forty-five (45) day period, the Board (i) disapproves the request, (ii) asks the Owner to make changes, or (iii) notifies the Owner that other Owners have challenged the request. The Board shall base its decision to grant or deny approval at least in part upon



considerations of whether (and to what extent) the proposed modification, change, addition, or alteration will adversely affect the exterior appearance of the Project. Except in connection with proposed modifications to accommodate Owners with disabilities, if the Board determines that the proposed modification, change, addition, or alteration will adversely affect the appearance of the exterior of the Project or is not consistent with the Project Quality Standard, the Board shall not grant approval. If the Board decides that a proposed modification, change, addition, or alteration will not adversely affect the appearance of the exterior of the Project and decides to permit the modification, change, addition, or alteration as consistent with the Project Quality Standard, the Board shall first provide all Owners with written notice, and the proposed modification, change, addition, or alteration shall not be implemented until the Owners shall have had an opportunity to challenge the determination, and, if challenged by any Owner, then the proposed modification, change, addition, or alteration will require the approval of Owners of Units holding no less than sixty-seven percent (67%) of the Common Interests. The Board, in its sole discretion, may impose reasonable conditions upon the Board's approval of any modification, change, addition, or alteration over which it has approval authority under this Section, including, without limitation the following:

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

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

3. For modifications, changes, additions, alterations, and other work estimated cost of which shall exceed Five Hundred Thousand Dollars and No/100 dollars (\$500,000.00), the Owner of the Unit shall provide a performance bond and a labor and materials payment bond in a face amount equal to one hundred percent (100%) of the estimated cost of the construction, naming the Board on behalf of the Association, the Owners and their Lenders, as their respective interests may appear, as additional obligees. As an alternative, and under the appropriate circumstances, the Board may approve a written indemnity, in form and content acceptable to the Association, under which the Owner of the Unit agrees to indemnify and save harmless the Association, the Owners, and their Lenders, as their respective interests may appear, from and against any claims, demands or liability arising out of any failure by the Owner to pay all costs and expenses for any and all labor, materials or supplies for any work performed in or to the Unit or appurtenant Limited Common Elements.

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

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

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

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

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

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

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

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

**XI. COMMON EXPENSES; LIMITED COMMON EXPENSES; OTHER COSTS AND EXPENSES; LIEN.**

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

A. **COMMON EXPENSES.** Other than those profits or expenses directly attributable to the Limited Common Elements, and except as otherwise provided herein, the common profits and expenses of the Association shall be distributed among, and the Common Expenses shall be charged to, the Owners. The Common Expenses and any profits of the Association shall be allocated to the Owner based on a Unit's Common Interest.

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

C. **CERTAIN VENDOR COSTS; SEPARATE METERS.** If any services are provided to or if any costs are incurred for any Common Element where the respective direct allocation of such costs between Common Elements and Limited Common Elements are not readily determinable by separate meters or separate billing by vendors, the Board shall request the vendor of the services to segregate the billings. If the vendor is unable to or refuses to meter usage or allocate costs, then the Board may unanimously agree to an alternative, fair and equitable allocation of costs among the participating Units. In arriving at such agreement, the Board may engage the services of a professional engineer or other professional to provide his/her opinion of a fair allocation. If the Board is not able to agree on such allocation (a "*deadlock*"), notwithstanding anything contained in this Declaration to the contrary, the matter shall be submitted to binding arbitration unless the Board unanimously agrees otherwise. In the event of a deadlock, any Board member may initiate arbitration to resolve the deadlock by providing written notice of such desire to each Board member. The Board shall have a period of twenty (20) calendar days following the date notice is given to agree by a majority of the Board on a single arbitrator who shall be a professional engineer or other professional to resolve the deadlock, and if the Board fails to do so, then the arbitrator shall be determined by application to DPR (or similar alternative dispute resolution services if DPR ceases to exist), in which event the arbitration shall be administered by DPR pursuant to its Protocols for Arbitration of Disputes (or the arbitration rules and proceedings of

such similar dispute resolution service if DPR ceases to exist). The costs of the arbitration shall be a Common Expense. The decision of the arbitrator shall be final and binding on the Board and the Owners, and a judgment on the arbitrator's decision may be entered by any court having jurisdiction.

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

E. **ASSESSMENT OF EXPENSES.** Assessments shall be levied at such time as the Board adopts the budget for the calendar year in question. The Board shall mail to each Owner, at the address shown in the records of the Association, a written statement setting forth the amount of the assessment against each Unit. Except as otherwise provided herein or in the Act, all sums assessed by the Association but unpaid for the share of the Common Expenses or costs chargeable to any Unit, shall constitute a lien on the Unit prior to all other liens, except only: (1) liens for taxes and assessments lawfully imposed by a governmental authority against the Unit, and (2) all sums unpaid on Mortgages filed prior to the filing of a notice of lien by the Association, and costs and expenses, including attorneys' fees, provided in such Mortgages.

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

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

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

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

H. **INTEREST IN COMMON EXPENSE FUNDS NOT SEPARATELY ASSIGNABLE.** The proportionate interest of each Owner in any capital contributions, custodial fund or maintenance reserve fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with such Unit even though not expressly mentioned or described in the conveyance thereof. In case the Project shall be terminated or waived, said capital

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

## **XII. INSURANCE.**

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

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

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

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

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

5. **YEARLY REVIEW OF INSURANCE PROGRAMS.** The Board must review the adequacy of its entire insurance program at least yearly. The Managing Agent must furnish an analysis of (a) the insurance needs of the Association and the Owners; and (b) the adequacy of the existing insurance policies to meet those needs. The Board shall review this analysis and then make any changes in the insurance program that it deems necessary or appropriate. All Board decisions are final, provided that such decisions align with, the insurance requirements of Developer's mortgage lender, if any. The Board must report in writing its conclusions and the action taken after its review.

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

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

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

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

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

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

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

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

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

3. **OWNER HAZARD COVERAGE REQUIRED.**

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

b. The HO-6 policy shall provide at minimum the following coverages: (1) Dwelling coverage for the replacement value of any permanent improvements made to the Unit beyond what the Developer delivered in accordance to the as built plans and specifications; (2) Personal Property coverage of \$50,000; (3) Loss of Use coverage of \$20,000; (4) Liability coverage of \$500,000; (5) Medical Payments of \$5,000; and (6) Loss Assessment of \$10,000. All HO-6 policies must have "Special Perils" coverage.

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

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

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

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

5. **ADDITIONAL COVERAGE.** The Policy must contain an agreed amount endorsement or waive any co-insurance requirement. The policy must cover terrorism, ordinance or law and machinery/equipment breakdown.

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

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

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

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

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

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

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

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

(i) Name as an insured Developer's mortgage lender and any Lender whose name has been furnished to the Board and to the insurance company;

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

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

(iv) Provide that the insurance company waives:

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

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

3. any right to contribution from the Lender.

h. The Policy must provide that if there is a loss to the Project and a single payment by the insurance company exceeds Two Hundred Thousand Dollars (\$200,000.00), then the proceeds must be paid to the Insurance Trustee. The Insurance Trustee shall be required to make the proceeds of the Policy available pursuant to the provisions of Article XII, Section A and Section D of this Declaration. The Policy must also require that the insurance company recognize the insurance trust agreement referred to in Article XIII, Section H of this Declaration. Whenever insurance proceeds are deposited with an Insurance Trustee, the Association must promptly notify each Lender listed in the Association's records of ownership.

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

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

1. **WHO IS INSURED.** The Liability Policy must cover all Owners, the Board, the Association, the Managing Agent and, during the Development Period, Developer and each of their Representatives against claims for personal injury, bodily injury, death, and property damage. The Liability Policy must name Owners and their Representatives as additional insureds and the policy must include coverage for terrorism. During such time that Developer is an Owner, the liability policy must name as additional insureds Developer, and such additional insureds as Developer shall direct from time to time and the Representatives of all of the foregoing. To the fullest extent permitted by law, any policy obtained pursuant to this Article XII, Section D must provide that the insurance company waives any right of subrogation to any right of the Persons insured by the Policy as against the Association, the Board, the Managing Agent, Developer, the Owners and the Representatives of each of the foregoing.

2. **REQUIRED COVERAGES.** The Liability Policy must include coverage provided by a broad form comprehensive general liability endorsement and coverage against claims for personal injury, bodily injury, and death or property damage occurring upon, in or about the Property, provided on an "occurrence" form. The combined limits must not be less than FIVE MILLION DOLLARS (\$5,000,000) in the aggregate (which limits must be dedicated to the Project and can be provided by any combination of primary and umbrella coverage), and FIVE MILLION DOLLARS (\$5,000,000) per occurrence. The Liability Policy should provide coverage for premises and operations, products and completed operations, if any, independent contractors, blanket contractual liability for insured contracts and also bodily injury (including death) and property damage that results from the operation, maintenance, or use of the Common Elements and, if applicable, commercial vehicle liability (owned, hired and non-owned vehicles). The Board must also provide workers' compensation with statutory limits and employer's liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000).

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

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

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

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

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

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

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

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

**F. UNIT LIABILITY INSURANCE AND OTHER INSURANCE.** A Unit Owner who operates a home-based business in his or her Unit is also responsible for obtaining a commercial general liability policy with coverage that is customary for operations of its size and character, and the Association and its Representatives shall be named as an additional insured on such policy.

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

**H. SUBSTITUTE INSURANCE COVERAGE.** Any insurance coverage specified in this Article XII shall be subject to availability on commercially reasonable terms with reputable insurance companies authorized to do business in the State of Hawaii. Where such coverage is not available, or is not available on commercially



reasonable terms, then the Board shall substitute such other insurance coverage as is acceptable to Developer's mortgage lender, if any, or to institutional Lenders for Units in projects similar in construction, location, and use.

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

J. **WAIVER OF THE RIGHT TO SUBROGATION.** NOTWITHSTANDING ANYTHING PROVIDED IN THIS DECLARATION, EACH OWNER, THE ASSOCIATION, THE BOARD, DEVELOPER AND EACH OF THEIR REPRESENTATIVES, HEREBY RELEASE (FOR THEMSELVES AND, TO THE EXTENT LEGALLY POSSIBLE TO DO SO ON BEHALF OF THEIR INSURERS AND THEIR RESPECTIVE REPRESENTATIVES) EACH OTHER AND THEIR REPRESENTATIVES, FROM ANY LOSS, DAMAGE OR LIABILITY FOR ANY CLAIMS WITH RESPECT TO OR ARISING FROM PERSONAL INJURY, BODILY INJURY, DEATH AND PROPERTY DAMAGE WHICH LOSS, DAMAGE OR LIABILITY IS CAUSED BY A RISK OF THE TYPE GENERALLY COVERED BY POLICIES OF INSURANCE OF THE TYPE REFERRED TO AND REQUIRED TO BE OBTAINED PURSUANT TO THIS ARTICLE, EVEN IF DUE TO THE NEGLIGENCE OF A PARTY AND PROVIDED THAT THIS SECTION REMAINS SUBJECT TO THE BOARD'S RIGHTS UNDER SECTION 514B-143(D) OF THE ACT WITH RESPECT TO THE ASSESSMENT AND PAYMENT OF THE DEDUCTIBLE. THIS SECTION RELEASES A PARTY FROM THE CONSEQUENCES OF ITS OWN NEGLIGENCE, SUBJECT TO ANY LIABILITY UNDER SECTION 514B-143(D) OF THE ACT.

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

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

A. **DAMAGE TO A UNIT.** Excluding damage insured under Article XII, Sections B.3.a and B.3.b, if any Unit and/or its appurtenant Limited Common Elements are damaged, the Board shall hire one (1) or more contractors to rebuild or repair such damaged areas according to their design just before the damage occurred. The repairs will include those items covered by the Policy. If the Board cannot repair such damaged areas according to their design just before the damage occurred (for example, if changes in the law prevent it) then the Association will rebuild or repair the Unit and its appurtenant Limited Common Elements according to a new design. The new design must comply with this Declaration and with all laws then in effect. Any modified plans and specifications must first be approved by the Board, the Owner of the affected Unit and by any Lender holding a Mortgage on such Unit.

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

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

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

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

C. **SHORTFALL OF INSURANCE PROCEEDS.** The Association or the Insurance Trustee will use insurance proceeds to pay any contractor hired pursuant to this Article XIII. Payments will be made as and when required by the construction contract and this Article XIII. If there are not enough insurance proceeds to pay the full cost to repair and/or rebuild the Common Elements, then the Board is expressly authorized to pay the shortfall from the applicable replacement reserve fund for the Common Elements and Limited Common Elements, as the case may be. If a replacement reserve fund is not adequate, the Board must (1) determine the amount of the remaining shortfall attributable to such reserve fund, and (2) charge a special assessment to each Unit required to contribute to such reserve fund except for Units that are not being rebuilt or repaired. The Association will also charge a special assessment to the Owner of any Unit for any costs in excess of the insurance proceeds for rebuilding or repairing such Owner's Unit and/or its appurtenant Limited Common Elements (but not including any Common Elements within such Owner's Unit).

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

1. An architect or engineer (who may be an employee of the Board) experienced in managing this type of work must be in charge of the work.

2. Each request for payment must be given to the Insurance Trustee at least seven (7) calendar days in advance. It must include a certificate signed by the architect or engineer. The certificate must state that:

a. All of the work completed complies with the approved plans and specifications;

b. The amount requested is justly required to reimburse the Board or Developer (based on construction of the Project) for payments by the Board or Developer to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other Persons providing services or materials for the work (giving a brief description of those services or materials); and

c. When the amount requested is added to all sums previously paid by the Insurance Trustee, the total does not exceed the value of the work done as of the date of the certificate.

3. Each request must include releases of liens. The releases must:

a. Be satisfactory to the Insurance Trustee, and

b. Cover the work for which payment or reimbursement is being requested.

4. Each request must include a search prepared by a title company or licensed abstractor or other evidence satisfactory to the Insurance Trustee, that nobody has recorded with respect to the Property any mechanics' or other lien or instrument for the retention of title with respect to any part of the work not discharged of record or that will not be discharged of record by payment with a recordable release of lien exchanged for such payment.

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

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

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

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

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

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

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

#### XIV. **UNINSURED CASUALTY; DECISION NOT TO REPAIR.**

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

A. **DECISION NOT TO REBUILD.** The Association may decide not to repair, rebuild, or restore the Improvements pursuant to the required vote of the Unit Owners pursuant to the Act and consented to in writing by all holders of first Mortgage liens affecting any of the Units of the Owners executing or voting for such amendment to

this Declaration. Substantial damage or destruction to the Common Elements shall be handled in accordance with Section 514B-47 of the Act.

B. **ADJUSTMENT OF COMMON INTEREST.** If a Unit is not rebuilt, then the Common Interest attributable to that Unit shall be allocated to the remaining Units, pro rata, based upon each Unit's Common Interest.

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

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

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

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

#### XV. **AMENDMENT OF DECLARATION.**

A. **BY OWNERS.** Except as otherwise provided herein or in the Act, this Declaration may be amended by the affirmative vote or written consent of Owners of Units to which are appurtenant at least sixty-seven percent (67%) of the Common Interest, evidenced by an instrument in writing, signed and acknowledged by any two (2) officers of the Association, which amendment shall become effective upon the recordation thereof 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 Condominium Documents or by an Eligible Mortgage Holder;
- m. restoration or repair of the Project (after damage or partial condemnation) in a manner other than specified in the documents; or
- n. any provisions that expressly benefit Mortgage holders, insurers, or guarantors.

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

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

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

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

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

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

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

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

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

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

**B. BY DEVELOPER.**

1. **PRIOR TO PROJECT COMMENCEMENT.** This Declaration may be amended by Developer at any time prior to the closing of the sale of the first Unit in the Project.

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

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

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

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

C. **LIMITATIONS ON AMENDMENTS.** Except as provided in Article XV, Section B above and anything stated to the contrary in the Condominium Documents, the following shall be subject to the approval of the Developer during the Development Period:

1. Any amendment to the Condominium Documents affecting any of the Limited Common Elements.

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

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

D. **AMENDMENTS BINDING.** Any amendment made pursuant to the provisions of this Article 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 recordation with said Bureau.

#### XVI. **TERMINATION.**

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

#### XVII. **LAND TRUSTS.**

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

#### XVIII. **COMPLIANCE BY OWNERS.**

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

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

Notwithstanding the foregoing, no notice shall be necessary where immediate action is necessary to: (a) prevent damage to any Unit or Limited Common Element; (b) abate a nuisance or any dangerous, unauthorized,

prohibited, or unlawful activity; (c) protect the property rights of any Owner; or (d) prevent the death or injury of any Owner or other person at the Project.

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

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

Notwithstanding anything herein provided to the contrary, Developer does hereby reserve the right unto itself, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, during the Development Period, to delete, cancel, relocate, realign, reserve, designate, grant, and receive any and all easements and rights of way over, under, through, across, and upon the Project, or involving adjacent or neighboring parcels of land or adjacent or neighboring condominium projects, deemed necessary or desirable in Developer's sole discretion, or as may be required by a governmental entity or agency, including, but not limited to, easements and/or rights of way for utilities, public purpose (i.e., pedestrian walkways, bus stops, stairs, ramps, paths, trails, bikeways, or other passageways), any public-type facility (e.g. for mail delivery), fire lane access, sanitary and storm sewers, retention ponds, cable television, mechanical systems, electrical systems, cooling systems, equipment space, refuse disposal, driveways, and parking areas. Such right also includes easements for operation, upkeep, care and maintenance, or repair of any Unit or any Limited Common Element or to complete any Improvements and correct construction defects or other punchlist items in the Common Elements or Units, or to exercise any of the Developer's Reserved Rights, and other similar purposes; provided that such easements and/or rights of way shall not materially and adversely impact any existing structure of the Project, and shall not be exercised so as to unreasonably disturb, impair, or interfere with the normal use and enjoyment of the Project by the Owners. Any easement granted and/or received by Developer pursuant to the exercise of this reserved right shall not be amended, modified, or terminated by the Association without the consent of Developer. As a part of its reserved right, the Developer shall have the right to negotiate and agree to the terms with respect to such easements and rights of way as Developer deems appropriate in its sole discretion, and define any easement right received pursuant to this Section as a Common Element or Limited Common Element. In the event that Developer assigns to the Association any rights it acquires, whether the same constitute easement rights or otherwise, the Association shall assume such rights.

**XX. RESERVED RIGHT TO ALTER, SUBDIVIDE AND CONSOLIDATE UNITS IN GENERAL AND TO CREATE "COMBO UNITS".**

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

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

B. Developer shall have the reserved right to consolidate Units it owns and create a "Combo Unit" as depicted in the Condominium Map, which is the consolidation of certain designated adjoining Units owned by Developer at Developer's expense, provided that: (1) the structural integrity of the Project is not thereby affected, (2) the finish of any Common Element(s) or Limited Common Element(S) then remaining is restored to a condition substantially compatible with that of the corresponding Common Element(s) or Limited Common Element(s) prior



to such alteration, and (3) all construction activity necessary to any such alteration or removal shall be completed within a reasonable period of time after the commencement thereof, subject to delays beyond the reasonable control of Developer or its contractors, whether caused by strikes, the unavailability of construction materials or otherwise, in which case any such construction activity shall be completed in such additional time as may be reasonably necessary in the exercise of due diligence.

C. Developer, in the process of creating the "Combo Unit" shall have the right to convert the Common Element "Combo Entry" depicted in the Condominium Map to a part of the Combo Unit, and to convert that area between or adjoining the Units to a part of a Unit (as opposed to the same remaining a Common Element or Limited Common Element) for so long as the Combo Unit shall remain consolidated or shall continue to be commonly used or owned.

Any such alteration, subdivision or consolidation of Unit(s) as provided herein shall be effective provided that:

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

2. Developer records or causes to be recorded in said Bureau an amendment to the Condominium Map for the Unit(s) being altered and/or expanded, subdivided or consolidated to show an amended floor plan, if necessary, together with a verified statement of registered architect or professional engineer, in the manner required by Section 514B-34 of the Act, that said Condominium Map, as so amended, is an accurate copy of portions of the plans of the altered and/or expanded Unit(s) as recorded with and approved by the County officer having jurisdiction over the issuance of permits for the 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 shall comply in all respects with all applicable governmental codes, statutes, ordinances and rules and regulations, or with all variances granted therefrom.

Developer expressly reserves the right to amend the Declaration and Condominium Map to effect any subdivision or consolidation of Units or alterations to floor plans at any time 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 shall not be amended without the prior written consent of Developer.

## **XXI. RESERVED RIGHTS REGARDING TELECOMMUNICATIONS EQUIPMENT AND TO RECEIVE REVENUE THEREFROM.**

During the Development Period, Developer shall have the reserved right, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, to install or cause the installation of Telecommunications Equipment upon the Common Elements, at its sole cost and expense. The installation of Telecommunications Equipment pursuant to this Article shall not be deemed to alter, impair, or diminish the Common Interest, Common Elements and easements appurtenant to the Units, or be a structural alteration or addition to the Tower constituting a material change, or necessitate an amendment to the Condominium Map. All expenses directly attributable to the Telecommunications Equipment shall be distributed or charged as a Common Element, or directly to the Unit to which the Telecommunications Equipment is appurtenant. In connection with Developer's reserved right described in this Article, Developer shall further have the reserved right, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, to enter into any agreements, including, but not limited to, a bulk service agreement or an exclusive marketing agreement, to sell and market certain telecommunications services to Unit Owners in the

Project, and to grant easements for such purpose, all upon such terms and conditions as Developer may determine in its discretion. In the event the Developer received any rebate or reimbursement for the cost of installation of the Telecommunications Equipment, the Developer shall be entitled to keep any such rebate or reimbursement. Developer may assign any and all of its rights under this Article to the Association or to any other Person of Developer's choice.

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

During the Development Period, Developer shall have the reserved right, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, not to construct, and/or not to construct at the same time, all of the Recreational Amenities in the Project, as depicted on the Condominium Map, and to modify, relocate, reconfigure, and remove all or certain Recreational Amenities and/or change the type of Recreational Amenities provided. Nothing in this Declaration shall be construed as a representation or warranty by Developer that the Recreational Amenities or any portion thereof, will be developed or built or that the Recreational Amenities and/or the types of Recreational Amenities offered will not change and/or that the other portions of the Limited Common Elements will be built or completed prior to, concurrently with, or soon after any or all of the Units are conveyed to third parties.

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

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

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

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

**XXV. RESERVED RIGHT TO RECHARACTERIZE AND REDESIGNATE LIMITED COMMON ELEMENTS.**

During the Development Period, Developer shall have the reserved right, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, to amend this Declaration to (a) recharacterize all or a portion of certain Limited Common Elements as may be appurtenant to a Unit or Units owned by Developer as Common Elements of the Project, thus giving up or waiving the exclusive use of such area or areas; and/or (b) redesignate all or a portion of certain Limited Common Elements as may be appurtenant to any Unit owned by Developer or Developer's successors, assigns or Developer Affiliate, to another Unit or to Units owned by Developer. Upon recharacterization of any Limited Common Element to a Common Element of the Project, the Association shall be

required to maintain such areas at its expense for the benefit of all Owners, and the cost of maintaining such areas shall be assessed to all Owners as a Common Expense.

The right to amend the Declaration to effect such recharacterization or redesignation of any such Limited Common Elements shall occur at any time or times 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.

**XXVI. RESERVED RIGHTS REGARDING COUNTY AND HCDA PERMITS AND DEVELOPMENT AGREEMENTS; HART CONDEMNATION.**

Developer shall have the reserved right, until the end of the Development Period, to (a) perform road-widening activities to fulfill a County road-widening requirement, if any; (b) amend the Condominium Documents, including, but not limited to, this Declaration, to satisfy all County permits and/or HCDA Agreements and accommodate the Honolulu Authority for Rapid Transportation ("**HART**") rail condemnation; (c) enter into any agreements, including, but not limited to, declaring and subjecting the Land and Improvements to restrictive covenants; (d) designate and grant access or utility easements; (e) secure any other governmental permits and approvals or amend or supplement any existing government permits, approvals or agreements; (f) revise the budget and Common Expenses, and implement fees; (g) do all things necessary and convenient, to satisfy the requirements of any land use or other permits pertaining to the Project issued by the County, or to comply with any agreements with or covenants imposed by HCDA, as the same may be amended, or modified, and to execute, record and deliver any and all documents necessary to effect the same, including, but not limited to, any necessary amendments to this Declaration and to the Condominium Map.

The government and certain other agencies have authority to condemn properties in the State. Particularly in Kaka'ako, HART, a semi-autonomous local government agency established in 2011 by a charter amendment to plan, design, construct and operate and maintain Honolulu's high-capacity, fixed guided rapid transit system, has the authority to condemn lands in Ward Village for the rapid transit system lines and stations. The Developer has long anticipated this threat for condemnation and had to accordingly incorporated the rail transit project into the master Ward Village development plans and various condominium project developments through its efficient and strategic design, project budgeting and pricing, and reserves for numerous condemnation court hearings. Although as of the date of this Declaration the Developer has not actually received an indication that HART will take any portion of the Land, if all or any portion of the Project is "taken" or sold under the threat of condemnation by HART before the end of the Development Period, the Developer shall have the reserved right to and until the end of the Development Period to receive all the proceeds payable for or on the account of the condemnation of any portion of the Land. Every Owner of a Unit in the Project and all holders of liens affecting any of the Units and each and every other party acquiring an interest in the Project, or any part thereof, by acquiring such Unit, lien, or other interest, appoints Developer and its assigns his or her attorney-in-fact with full power of substitution to execute, deliver, and record such documents and instruments and to collect any proceeds and do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest upon any transfer of any Unit or any interest therein, whether by deed, Mortgage, or any other instrument of conveyance.

**XXVII. RESERVED RIGHT TO CONVEY PROPERTY TO THE ASSOCIATION.**

Developer shall have the reserved right, but not the obligation, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, to convey to the Association, and the Association shall accept, title to any property owned by Developer or Developer's successors, assigns or Developer Affiliates, together with the responsibility to perform any and all duties associated therewith during the Development Period. Upon conveyance or dedication of such property to the Association, the Association shall maintain such property at its expense for the benefit of the Owners, and the cost of maintaining such areas, including any maintenance fees associated with such areas, shall be assessed to all Owners as a Common Expense. Any property or interest in property transferred to the Association by Developer shall be by way of quitclaim deed, "AS IS," "where is". Developer shall have the further right to redesignate Limited Common Elements appurtenant to Units owned by Developer or Developer's successors,

assigns, or Developer Affiliate as Limited Common Elements appurtenant to Units owned by the Association, if any, and to the extent necessary or required, to amend this Declaration and the Condominium Map to affect the same.

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

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

During the Development Period, Developer reserves the right unto itself, its brokers, sales agents, and other related Persons, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, to access and conduct extensive sales activities at the Project, including the use of any Unit owned by Developer or its successors, assigns, or Developer Affiliates and its appurtenant Limited Common Elements and the Common Elements, for instance, for hosting of receptions on the Amenity Deck and use of the Recreational Amenities for sales activities, parking and extensive sales displays and activities, the posting and maintenance of signs and other advertisements relating to such sales activities, and to install, maintain, locate, relocate, and reconfigure such structures, displays, advertising signs, billboards, flags, sales desks, kiosks, sales, leasing, management and/or construction offices, interior design and decorator centers, and parking areas for employees, agents, and prospective buyers, as may be necessary or convenient for the proper development and disposition of Units by sale, resale, lease, or otherwise, and the right, but not the obligation, to provide ongoing maintenance, operation, service, construction, and repairs to individual Units in the Project and for other projects in Ward Village. In the event that Developer is unable to sell all of the Units within the Development Period, Developer shall have the right to conduct sales activities on the Project until the closing of the sale of the last unsold Unit of the Project; provided that such sales are conducted in an unobtrusive manner which will not unreasonably interfere with the use, possession and aesthetic enjoyment of the Project by the Owners. Such sales activities may include the initial sale and resale of Units. In the event that Developer's mortgage lender, if any, or any successor to or assignee of Developer's mortgage lender shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the Mortgage remedies or by a deed or an assignment in lieu of foreclosure, such Mortgage Lender, its successor and assigns, shall have the right to conduct such extensive sales activities on the Project until at least ninety-five percent (95%) of all of the Units in the Project have been sold and Unit Deeds therefor recorded, notwithstanding the foregoing. Each and every party acquiring an interest in the Project, by such acquisition, acknowledges that the sales activities may result in noise and nuisances, and consents to such activity by Developer, and further waives, releases and discharges any rights, claims, or actions such party may acquire against Developer, its brokers, sales agents, employees, and Lenders, and their respective successors and assigns, as a result of any such activity or activities. The Master Declarant has reserved rights to perform sales activities as described in Article II, Section J of the Master Declaration.

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

Developer shall have the reserved right during the Development Period, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, to (i) consolidate the Land with another parcel(s) of land to create a Consolidated Lot, (ii) subdivide the Land to create separate parcels of Subdivided Lots, and/or (iii) withdraw certain Subdivided Lots from the operation of this Declaration, and convey or cause the conveyance of said withdrawn Subdivided Lots to itself, Landowner, or to a third party, as it deems appropriate. This right to subdivide and withdraw shall include, without limitation, the right to subdivide and withdraw from this Project certain portions of the Land, as depicted on the Condominium Map.

In connection with the right to consolidate, Developer shall have the further reserved right to enter and go upon the Land to do all things necessary, proper, or convenient to effectuate such subdivision and/or consolidation of the Land, including, without limitation, the following: (i) making surveys to undertake a reasonable realignment of boundaries of the Land to define said any reconfigured Consolidated Lot or Subdivided Lot (it being understood that Developer shall have the reserved right to effect any such realignment), (ii) filing and recording the necessary

consolidation map and related documentation, (iii) facilitating the granting, reserving, adding, deleting, receiving, realigning, and/or relocating of easements and/or rights of ways for utilities, cesspools, sanitary and storm sewers, cable television, telecommunication systems, refuse disposal, driveways, parking areas, roadways, and pedestrian access, and (iv) and granting or receiving all other required easements and/or rights of way. Said consolidation shall be subject to, and Developer shall, at its own expense, comply with, all of the then-applicable governmental laws, rules, and regulations.

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

Upon the exercise of said reserved rights, Developer shall, at Developer's expense and without being required to obtain the consent or joinder of any Owner or lienholder, execute and record 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, grants, reserves or relocates easements over, under, and on the Common Elements, as permitted above. The filing of the amendment to this Declaration and the Condominium Map shall effectuate the withdrawal, without any further consent or joinder of any party. Developer shall have the right, as grantor, to execute, deliver, and record a deed of any subdivided and withdrawn area upon filing of the amendments aforesaid.

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

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

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

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

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

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

Developer expressly reserves the right to amend the Declaration and Condominium Map to effect any increase or decrease in the number of floors and/or Units or alterations to the floor plans at any time or times 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.

**XXXI. RESERVED RIGHT TO GRANT EASEMENTS AND TO DEDICATE LIMITED COMMON ELEMENTS TO THE MASTER ASSOCIATION.**

During the Development Period, to the extent set forth in the Master Declaration, Developer shall have the reserved right, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, to grant easements through the Common Elements of the Project for purposes set forth in the Master Declaration, including, without limitation, easements to access certain areas of the Project and easements for use of certain areas of the Project by the Master Association, for recreational use, use for park space, or pedestrian and/or bicycle access or other purposes. Such areas or portions thereof may also be dedicated to the public or dedicated for use by the public pursuant to the Master Declaration; provided that the Master Association shall maintain the easement and use areas and shall be responsible for any costs associated with the use, maintenance, and upkeep of such areas pursuant to the Master Declaration. Developer may, without being required to obtain the consent or joinder of any Owner, lienholder or other Persons, execute, deliver and record any deed and/or amendments to this Declaration and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers or privileges.

**XXXII. RESERVED RIGHTS REGARDING THE ESTABLISHMENT OF PUBLIC FINANCING DISTRICTS FOR WARD VILLAGE.**

During the Development Period, Developer shall have the reserved right, but not the obligation, without the joinder or consent of any Person, the Board, or any Owners or their mortgagees, to establish a community facilities district(s) ("CFD") pursuant to Chapter 34 of the Revised Ordinances of Honolulu and Hawaii Revised Statutes §46-80.1 to finance the cost of certain infrastructure for Ward Village ("CFD Improvements"). In the event that a CFD is established for Ward Village, an annual special tax ("Special Tax") may be levied on Owners of Units in the Project to finance the CFD Improvements and to pay the debt service on any bonds issued to finance the CFD Improvements. The amount of the Special Tax may be no more than thirty (30) percent (30%) of the annual real property tax assessed to each Unit and may be assessed as an additional amount owed on each Owner's annual real property tax assessment. Owners shall be responsible for paying the Special Tax in addition to the real property tax levied on each Unit, as well as the monthly maintenance fees assessed for each Owner's share of the Common Expenses in the Project and any Master Assessments due under the Master Declaration and Master Bylaws. The County has the authority to lien property that is a part of the CFD for nonpayment of the Special Tax.

During the Development Period, Developer further reserves the right, but not the obligation, without joinder or consent of any Person, the Board, or any Owners or their mortgagees, to establish any other type of financing district(s) available to Developer to finance the cost of certain infrastructure projects in Ward Village.

Developer further reserves the right to do all things necessary or convenient to establish a CFD and/or other financing district, which shall include, without limitation, the ability to (a) enter into agreements with any governmental agency, including the County, or third party to implement redevelopment plans or community development plans, as the case may be, (b) comply with said agreements or any covenants imposed by the County, as the same may be amended or modified, and (c) execute, record, and deliver any and all documents necessary to effect the same, including, but not limited to, any necessary amendments to this Declaration and to the Condominium Map.

**XXXIII. RESERVED RIGHT TO AMEND THE CONDOMINIUM DOCUMENTS TO REMOVE REFERENCES TO LANDOWNER.**

Developer shall have the reserved right, to and until the end of the Development Period, to amend this Declaration, the Bylaws, the House Rules, the Condominium Map, and any other applicable Condominium Documents to remove any references to Landowner as the fee simple owner of a portion of the Land upon Developer's acquisition

of the VWL Parcel and to record all documents necessary to effect the same in said Bureau without being required to obtain the consent or joinder of Landowner and/or any Owner, lienholder, or other Person.

**XXXIV. ASSIGNMENT OF RESERVED RIGHTS.**

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

**XXXV. CONSENT TO DEVELOPER'S RESERVED RIGHTS; APPOINTMENT OF DEVELOPER AND ASSOCIATION AS ATTORNEY IN-FACT.**

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

**XXXVI. DISCLOSURES AND LIMITATIONS ON LIABILITY.**

To the extent permitted by law, Owners accept the below findings and limitations on liability and waives any claims or rights of action or suits against the Developer or Developer's successors and assigns arising from any impairment of Owner's use and enjoyment of the Unit or the Project, or from any inconvenience, arising directly or indirectly from the existence of the findings,

**A. NONLIABILITY AND INDEMNIFICATION.**

1. **GENERAL LIMITATION.** Except as specifically provided in the Condominium Documents or as required by law, no right, power, or responsibility conferred on the Board by the Condominium Documents shall be construed as a duty, obligation, or disability charged upon Developer or any of its agents, employees, the Board, any Director or any other Officer, employee, agent, or committee member of the Association. The Association, its members, Directors, Officers, agents and committee members, and the Board are subject to the insulation from liability provided for directors of corporations by the laws of the State of Hawaii to the fullest extent

provided by such laws. Members of the Board are not personally liable to the victims of crimes occurring on the Project.

2. **INDEMNIFICATION OF ASSOCIATION.** When liability is sought to be imposed on a Director, an Officer, committee member, employee or agent of the Association, the Association shall indemnify him or her for his or her losses or claims, and undertake all costs of defense, unless and until it is proven that he or she acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is 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 shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees or any person entitled to such indemnification.

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

B. **SECURITY DISCLAIMER.** The Association and/or the Resident or Site Manager may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it might otherwise be. Neither the Association, the Resident or Site Manager, nor Developer shall in any way be considered insurers or guarantors of security within the Project, and neither the Association, the Resident or Site Manager, Developer, nor any successor Developer shall be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of security measures undertaken. All Owners and Occupants of any Unit, as applicable, acknowledge that the Association the Board, the Resident or Site Manager, Developer or any successor Developer, do not represent or warrant that any fire protection system or other security system designated or installed according to the guidelines established by Developer or the Association may not be compromised or circumvented, that any fire protection or burglar alarm systems or other security systems will prevent loss by fire, smoke, burglary, theft, hold-up, terrorism, or otherwise, nor that fire protection or burglar alarm systems or other security systems will in all cases provide the detection or protection for which the system was designed or intended. Each Owner and the Occupants of a Unit acknowledge and understand that the Resident or Site Manager, the Association, its Board and committees, Developer, and any other successor to Developer is not an insurer, and each Owner and the Occupants of a Unit assume all risks for loss or damage to persons, Units and the contents of Units, and further acknowledges that the Resident or Site Manager, the Association, its Board and committees, Developer, or any successor Developer have made no representations or warranties nor has any Owner or the Occupants of a Unit relied upon any representation or warranty, expressed or implied, including any warranty of merchantability as to the fitness of any alarm systems or other security systems recommended or installed, or any security measure undertaken within the Project.

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



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

E. **FLOOD ZONE.** The Project is located in a Flood Zone (Zone AE) per the County and as such, federal flood insurance may be required for the Project and/or the individual Units in the Project. Location in a flood zone exposes the Project to a greater risk of flood damage. Developer may obtain a special rate consideration from FEMA as a result of all occupied space on the ground level of the Tower exceeding the minimum flood elevation applicable to the Land, but Developer cannot assure that it will be able to obtain such special rate consideration. If Developer does not obtain the special rate consideration, then the federal flood insurance, without any reduced rate, may be required.

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

1. **CONDOMINIUM LIVING.** Living in a multi-story, high-rise condominium building entails living in very close proximity to other persons, businesses, restaurants, and shopping areas, with attendant limitations on solitude and privacy. Walls, floors, and ceilings have been designed to meet applicable building codes. Owners should still anticipate hearing noise from adjacent Units within the Project, however, including, but not limited to, noise from showers, bathtubs, sinks, toilets, washing machines, or other sources of running water and/or plumbing fixtures. Also, Owners may hear noise from such items: vacuum cleaners, stereos or televisions, or from people socializing, or enjoying the Recreational Amenities. Finally, Owners may experience substantial levels of sound, music, noise, odors, vibrations, and other nuisances from retail and commercial establishments in the Project, the master planned community, and/or in close vicinity of the Project, including, without limitation, the Ward Entertainment Center and the Victoria Ward Park. Owners may also experience light entering the Units from commercial lighting in the vicinity, Victoria Ward Park and from street lights located in close proximity to the windows and doors for the Units.

2. **WARD VILLAGE AND VICTORIA WARD PARK.** The Project is also directly adjoining a planned open space park area called "Victoria Ward Park", the largest community park in Ward Village, the master development. Owner may experience (a) hearing loud music from restaurants or other outlets in Ward Village, (b) higher vehicle and pedestrian traffic and noise levels from concert events or performances at restaurants, outlets or in Victoria Ward Park; (c) hearing voices and conversations of people picnicking or relaxing in Victoria Ward Park and talking outside retail and/or food and beverage establishments in Ward Village; and (f) noises from special events taking place near the Project on the street, in Ward Village in general and in Victoria Ward Park. Such noises shall not be deemed a "nuisance," as such noises and/or uses are deemed to be common and accepted occurrences in a centrally located high-rise condominium mixed-use setting like Ward Village.

3. **NOISE; TRAFFIC; CONSTRUCTION.** Being in a central shopping, entertainment, and commuter district like Ward Village means noise, dust, vibration, and/or pedestrian and vehicular traffic are higher than average. Each Owner and every other Person who has any interest in the Project or who has the right to use the Project or any part of it waives, releases, and discharges any rights, claims, or actions that such Owner or Person may have, now or in the future, against Developer, and their Representatives, licensees, successors, and assigns, and arising directly or indirectly out of or from such noise, dust, vibrations, and/or additional traffic, including, without limitation,

construction and operation of the County's planned elevated rail transit project, if constructed, which could be constructed in close proximity to the Project. Traffic, noises and uses which are typically encountered in a high-rise condominium and commercial-mixed use destination, include, but are not limited to transient noise and guest or pedestrian traffic from the street and opening and closing of car doors. Furthermore, normal construction activities shall not be considered a "nuisance." Development of Ward Village will continue for many more years, which means Owners may experience heavy vehicle and equipment noise, drilling, dredging and other potentially loud construction noises, dust and road blocks. By accepting a Unit Deed to a Unit, an Owner acknowledges that the Project is adjacent to high-traffic roads, businesses, Victoria Ward Park and retail/entertainment facilities, and that noise, lights, pedestrian and vehicular traffic, dust and odors common to such activities and related commercial activities as well as construction activities, may exist on or near the Project, at any time and from time to time. Each Owner, by acceptance of a Unit Deed or other conveyance of his or her Unit, hereby acknowledges and agrees to the above disclosures. Developer does not make any representation or warranty as to the level of sound transmission at the Project, traffic or construction activities and each Owner hereby waives and expressly releases any claim for loss or damage resulting from such activities.

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

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

6. **USE CHANGES.** Except as expressly set forth in the Condominium Documents, the Developer makes no representations or warranties with respect to the (a) nature of any Improvements to be initially or subsequently contained in the Project, (b) the initial or subsequent uses of any portion of the Project, or (c) the services and amenities (and the costs of such services or amenities) which may be provided to Owners.

7. **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 provided with the Unit or the types of amenities provided in the Project. The marketing materials are intended to give a purchaser a general idea of the standard and quality of the Project, and are not intended to represent the precise décor, coloring, furnishing, fixtures or amenities that will be included in the Project.

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

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

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

10. **WARD VILLAGE PLANS.** The Project is currently a part of the Ward Village master community development. The plans for the master development are subject to change and Owners should not rely on proposed plans, depictions or designs depicting certain amenities (i.e., parks) and the description of having any specific types of tenants, vendors or entertainment establishments in the master community. Such plans are not guarantees, representations or warranties to what will be built or offered as part of the community. Owners waive any claims or rights of action or suits against the master developer, Developer or Developer's successors and assigns arising from changes in plans within Ward Village or any impairment of the Owner's use and enjoyment of the Unit or the Project, or from any inconvenience, property damage or personal injury arising directly or indirectly from such revised plans.

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

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

b. **Location of Certain Units Near Parking Structure and Recreation Amenities.** Certain Units located on the Levels 6 of the Tower are located above the Amenity Deck and the Parking Structure. As a result, such Units may be exposed to greater noise and other nuisances than the Units located on higher floors in the Project.

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

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

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

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

c. Declaratory Order Re: Applicability of Condition No. 4 of Nunc Pro Tunc Order Re: Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit, issued January 14, 2009, issued October 10, 2012 in File No. PL MASP 13-1-3 by HCDA for Land Block 2, which confirms and declares that certain amendments required by Condition No. 4 of the Ward MP Permit are inapplicable and no longer required. It also defines zoning for the Property.

d. The PD Permit, which authorizes the Project and the reserved housing requirement, subject to the terms and conditions contained therein.

e. Joint Development Agreement dated February 26, 2014, recorded on March 18, 2015 with said Bureau as Document No. A-51900683 ("**JDA**"), which requires that the Land be developed in accordance with the Ward MP Permit, said Joint Development Agreement, all applicable development permit approvals, and any amendments thereto, and all applicable vested zoning regulations, such that the land subject to said Joint Development Agreement for Land Block 2 (as defined in the JDA), including, without limitation, the Land, constitutes one "development lot" under HCDA's Mauka Area Rules.

f. A Public Facilities Agreement was executed on May 20, 2014, which identifies the public facilities requirements for the Project and describes how those requirements will be fulfilled.

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

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

13. **SOIL, ARCHEOLOGICAL AND BURIAL DISCLOSURES.** Since 2014, multiple historic preservation studies and archeological studies, including Archeological Inventory Surveys ("**AIS**"), have been conducted for the lands in the Ward Village Properties, including the Land and surrounding parcels, all of which have

been accepted by the State Historic Preservation Division of the Department of Land and Natural Resource ("**SHPD**"). Such studies identified a number of historic properties, including, without limitation, various Native Hawaiian human burial sites and skeletal remains located within, or in the immediate vicinity of or close proximity to, the Land boundaries. There is a risk that after the commencement of construction there may be burials or archaeologically significant items on the Project Land. Based on this past historic preservation and archeological review, Developer, in consultation with the SHPD, the Oahu Island Burial Council and cultural descendants, has developed mitigation commitments and preservation plans for Ward Village. In order to continue to facilitate the identification and treatment of any burials or human skeletal remains that might be discovered during subsurface disturbance and mitigate the development's effect on any non-burial archaeological deposits that might be uncovered, Cultural Surveys Hawai'i, Inc., on behalf of Victoria Ward, Limited and The Howard Hughes Corporation, drafted and submitted an Archaeological Monitoring Plan, pursuant to Hawaii Administrative Rules, Chapter 13-279-3, as amended ("**Monitoring Plan**"). Pursuant to the Monitoring Plan, Developer is required to retain an on-call or on-site archaeologist, as determined by SHPD, to be present during Project construction that has the authority to stop work immediately to perform archaeological sampling and recording if any historic properties, including human remains, are encountered during construction.

Developer's environmental consultant prepared a Construction Environment Hazard Management Plan ("**C-EHMP**") for TMK Nos. -128, -129, -130, -131 to summarize potential environmental hazards, identify chemicals of potential concern, and outline steps to proper handling and disposal of contaminated soil during construction.

Based on the C-EHMP, the site contains organochlorine pesticides Heptachlor, Dieldrin, and Technical Chlordane, which are suspected to have been applied beneath the building slabs of the former retail complex and parking as a means of termite prevention. Developer intends to encapsulate impacted soil in accordance with Hawaii Department of Health Technical Guidance Manual.

Notwithstanding any remediation efforts and any "no further action" determination, by acquiring a Unit in the Project, each Owner will be deemed to acknowledge each Owner's understanding of these disclosures, and Developer and Landowner shall not be liable for any actual, special, incidental or consequential damages based on any legal theory or whatsoever, including, but not limited to, strict liability, breach of express or implied warranty, negligence or any other legal theory, with respect to the prior existence of such conditions on the Land.

#### XXXVII. **DISPUTE RESOLUTION.**

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

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

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

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

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

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

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

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

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

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

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

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

#### XXXVIII. **EXEMPTIONS FOR PERSONS WITH DISABILITIES.**

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

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

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

**XL. DEVELOPER'S RIGHT TO CURE ALLEGED DEFECTS.**

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

A. **DEVELOPER'S RIGHT TO CURE.** In the event that the Association, Board or any Owner (collectively, "*Claimant*") claims, contends or alleges that any portion of the Project, including, but not limited to, any Unit, and/or any Improvements, is defective or that Developer or its agents, consultants, contractors or subcontractors were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "*Alleged Defect*"), Developer hereby reserves the right, but is not obligated, to inspect, repair and/or replace such Alleged Defect as set forth herein.

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

C. **RIGHT TO ENTER, INSPECT, REPAIR, AND/OR REPLACE.** Within the timeframe described below, or a reasonable time after the independent discovery of any Alleged Defect by Developer, as part of Developer's reservation of right, Developer shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Element, or 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 to address any Alleged Defect without the consent or approval of the Board or the Association.

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

1. Section XXXVII.A., B. and C. have been complied with;
2. Claimant has delivered to Developer a Notice of Alleged Defect not later than one hundred twenty (120) calendar days before the filing of any such cause of action, proceeding, reference or arbitration against Developer; and
3. Developer has either
  - a. rejected Claimant's claim, or;
  - b. within sixty (60) calendar days after its receipt of a Notice of Alleged Defect,
    - (i) failed to offer to settle without inspecting the Alleged Defect;

either

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

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

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

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

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

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

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

**XLII. INDEMNIFICATION OF LANDOWNER.**

Developer and the Association agree to indemnify, defend, and hold Landowner and its officers, directors, shareholders, agents, and employees harmless from and against any and all claims, liabilities, and any damages, including attorneys' fees, which arise, directly or indirectly, as a result of, or directly or indirectly in connection with, this Declaration or any other document, including, but not limited to, any developer's public report under the Act, created, executed or delivered by Developer in connection with the Project; including without limitation, claims against Landowner as a result of Landowner permitting Developer to create a condominium property regime on the Land or Landowner being a signatory of any joinder to this Declaration and/or the Bylaws. Nothing in the foregoing exception shall be deemed a waiver by Landowner or a limitation of any of Landowner's rights or remedies. Developer and, by acquiring an interest in the Project, Owners, acknowledge that Landowner has no obligation to review this Declaration or any other document prepared by Developer for adequacy or compliance with law, that Landowner does not by the execution of any joinder to this Declaration or any such document, and any inadequacy or misrepresentation by Developer hereunder shall not be deemed negligence, gross negligence or reckless or willful misconduct of Landowner.



**XLIII. LIMITED PURPOSE OF JOINDER BY LANDOWNER; RELEASE AND WAIVER OF CLAIMS; LIMITED LIABILITY OF LANDOWNER.**

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

**XLIV. WAIVER OF CERTAIN RIGHTS.**

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

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

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

**XLV. GENERAL PROVISIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

O. **INVALIDITY AND CHANGES IN LAW.**

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

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

(The remainder of this page has been intentionally left blank. Signature page(s) to follow.)

**IN WITNESS WHEREOF**, Developer has executed this Declaration of Condominium Property Regime of 1100 Ala Moana as of the date first above written.

**Developer:**

**VICTORIA PLACE, LLC,**  
a Delaware limited liability company

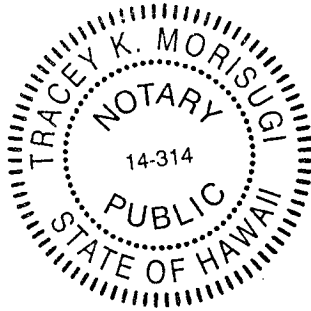
By   
Its VICE PRESIDENT

X

STATE OF HAWAII  
CITY AND COUNTY OF HONOLULU

SS:

On this 2<sup>nd</sup> day of October, 2019, before me appeared Doug Johnstone, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



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

My commission expires: 9/14/2022

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

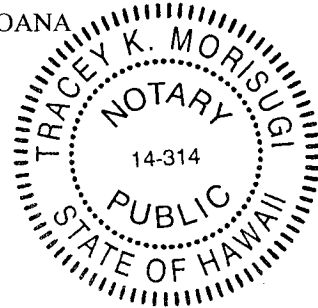
DECLARATION OF CONDOMINIUM PROPERTY REGIME OF 1100 ALA MOANA

Document Date: \_\_\_\_\_ or  Undated at time of notarization.

No. of Pages: 82 Jurisdiction: First Circuit  
(in which notarial act is performed)

Tracey K. Morisugi 10.2.19  
Signature of Notary Date of Notarization and  
Certification Statement

Tracey K. Morisugi  
Printed Name of Notary



(Official Stamp or Seal)

**EXHIBIT "A"**  
**LAND DESCRIPTION**

**-ITEM I:-**

All of that certain parcel of land situate at Kaakaukui, Kewalo and Kukuluaeo, Honolulu, City and County of Honolulu, State of Hawaii, being LOT 39-B, area 80,034 square feet, more or less, as shown on Subdivision Map approved by Department of Planning and Permitting, City and County of Honolulu, on March 13, 2015, File No. 2014/SUB-79, same being a portion of Lot 39, Block 1 of Land Court Consolidation No. 53 of Victoria Ward, Limited, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-46240638, said Lot 39-B is described in Affidavit of Chad T. Kodama recorded as Document No. A-56050802 and is further described as follows:

Beginning at the west corner of this parcel, also being the south corner of Lot 39-A, and the north side of Ala Moana Boulevard, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 6,383.01 feet south and 2,530.70 feet west, and running by azimuths measured clockwise from true South:

1. 212° 55' 266.21 feet along Lot 39-A, being portion of R.P. 1944 to E. W. Clark on L.C. Aw. 387 to the American Board of Commissioners for Foreign Missions;
2. 296° 24' 20.62 feet along the south side of Auahi Street;
3. Thence, along same, on a curve to the right with a radius of 1962.00 feet, the chord azimuth and distance being:  
299° 39' 30" 223.03 feet;
4. 302° 55' 116.15 feet along same;
5. 51° 52' 178.70 feet along Lot 39-C, being portion of R.P. 1944 to E. W. Clark on L.C. Aw. 387 to the American Board of Commissioners for Foreign Missions;
6. Thence, along same, on a curve to the right with a radius of 42.50 feet, the chord azimuth and distance being:  
92° 01' 79.00 feet;
7. 70° 22' 18.25 feet along same;
8. 32° 55' 30.50 feet along same;
9. 116° 05' 223.98 feet along the north side of Ala Moana Boulevard; to the point of beginning and containing an area of 80,034 square feet, more or less.

**-ITEM II:-**

All of that certain parcel of land situate at Kaakaukui, Kewalo and Kukuluaeo, Honolulu, City and County of Honolulu, State of Hawaii, being LOT 39-C, area 34,371 square feet, more or less, as shown on Subdivision Map approved by Department of Planning and Permitting,

City and County of Honolulu, on March 13, 2015, File No. 2014/SUB-79, same being a portion of Lot 39, Block 1 of Land Court Consolidation No. 53 of Victoria Ward, Limited, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-46240638, said Lot 39-C is described in Affidavit of Chad T. Kodama recorded as Document No. A-56050802 and is further described as follows:

Beginning at the west corner of this parcel, also being the south corner of Lot 39-B, and the north side of Ala Moana Boulevard, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 6,481.49 feet south and 2,329.53 feet west, and running by azimuths measured clockwise from true South:

1. 212° 55' 30.50 feet along Lot 39-B, being portion of R.P. 1944 to E. W. Clark on L.C. Aw. 387 to the American Board of Commissioners for Foreign Missions, also being a portion of R.P. 8237, L.C. Aw. 1903, Ap. 2 to Lolohi;
2. 250° 22' 18.25 feet along same;
3. Thence, along same, on a curve to the left with a radius of 42.50 feet, the chord azimuth and distance being:  
272° 01' 79.00 feet;
4. 231° 52' 178.70 feet along same;
5. 302° 55' 150.20 feet along the south side of Auahi Street;
6. Thence, along Lot 39-D, being portion of R.P. 1944 to E. W. Clark on L.C. Aw. 387 to the American Board of Commissioners for Foreign Missions, on a curve to the right with a radius of 25.50 feet, the chord azimuth and distance being:  
86° 12' 45" 29.40 feet;
7. Thence, along same, on a curve to the left with a radius of 34.00 feet, the chord azimuth and distance being:  
76° 42' 30" 47.84 feet;
8. 56° 10' 20.00 feet along the same;
9. Thence, along same, on a curve to the left with a radius of 38.00 feet, the chord azimuth and distance being:  
32° 57' 30" 71.21 feet;
10. 32° 55' 108.30 feet along same;
11. 122° 55' 184.20 feet along the north side of Ala Moana Boulevard;
12. 116° 05' 38.57 feet along same; to the point of beginning and containing an area of 34,371 square feet, more or less.

-AS TO ITEMS I AND II (LOTS 39-B AND 39-C):-

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : FIRST HAWAIIAN BANK, a Hawaii corporation, Trustee under that certain unrecorded Land Trust Agreement No. FHB-TRES 200601, dated September 20, 2006

GRANTEE : VICTORIA WARD LIMITED, a Delaware corporation

DATED : May 6, 2015

RECORDED : Document No. A-56040916

-ITEM III:-

All of that certain parcel of land situate at Kaakaukui, Kewalo and Kukuluaeo, City and County of Honolulu, State of Hawaii, being LOT 39-D, area 77,686 square feet, more or less, as shown on Subdivision Map approved by the Department of Planning and Permitting, City and County of Honolulu, on March 13, 2015, File No. 2014/SUB-79, same being a portion of Lot 39, Block 1 of Land Court Consolidation No. 53 of Victoria Ward, Limited, said Lot 39 having been deregistered pursuant to Hawaii Revised Statutes Section 501-261 and described in deregistered Transfer Certificate of Title No. 825,276 recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-46240638, said Lot 39-D having been described in Affidavit of Chad T. Kodama recorded as Document No. A-56050802, and being more particularly described as follows:

Beginning at the west corner of this parcel, also being the south corner of Lot 39-C, and the north side of Ala Moana Boulevard, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 6,598.54 feet south and 2,140.26 feet west, and running by azimuths measured clockwise from true south:

1. 212° 55' 108.30 feet along Lot 39-C, being a portion of R.P. 1944 to E.W. Clark on L.C. Aw. 387 to the American Board of Commissioners for Foreign Missions;
2. Thence, along the same, on a curve to the right with a radius of 38.00 feet, the chord azimuth and distance being:  
212° 57' 30" 71.21 feet;
3. 236° 10' 20.00 feet along same;
4. Thence, along same, on a curve to the right with a radius of 34.00 feet, the chord azimuth and distance being:  
256° 42' 30" 47.84 feet;
5. Thence, along same, on a curve to the left with a radius of 25.50 feet, the chord azimuth and distance being:  
266° 12' 45" 29.40 feet;
6. 302° 55' 247.40 feet along the south side of Auahi Street;
7. 32° 55' 250.00 feet along Lot 32, being portion of R.P. 1944 to E.



W. Clark on L.C. Aw. 387 to the American Board  
of Commissioners for Foreign Missions;

8. 122° 55' 312.01 feet along the north side of Ala Moana Boulevard;  
to the point of beginning and containing an area of  
77,686 square feet, more or less.

**BEING THE PREMISES ACQUIRED BY DEED WITH RESERVATION OF EASEMENTS  
AND OTHER RIGHTS**

GRANTOR : VICTORIA WARD LIMITED, a Delaware corporation

GRANTEE : 1100 ALA MOANA, LLC, a Delaware limited liability company

DATED : May 14, 2015

RECORDED : Document No. A-56120597

-NOTE:- The change of name of 1100 ALA MOANA, LLC to VICTORIA PLACE,  
LLC, in the State of Delaware on June 19, 2019.

Together with a non-exclusive right and easement on, over, and across the land of the 1118 Project, including the Emergency Pedestrian Easement Area, being more particularly described in Exhibit "A" attached thereto, for construction and maintenance purposes, and for non-exclusive use of said Emergency Pedestrian Easement Area as an emergency egress path for pedestrians to access Ala Moana Boulevard from the 1100 Project; (ii) a non-exclusive easement on, over and across the land of the 1118 Project, including the Loading Access Easement Area, being more particularly described in Exhibit "B" attached thereto, for non-exclusive use of said area by vehicles for ingress, egress, loading, unloading, and turnaround purposes, being more particularly described in that GRANT OF EASEMENTS, dated May 24, 2016, recorded as Document No. A-59910926, subject to the terms and provisions contained therein.

**END OF EXHIBIT "A"**

**EXHIBIT "B"**

**UNIT NUMBERS, UNIT TYPES, NUMBER OF BEDROOMS AND BATHROOMS, APPROXIMATE NET LIVING AREAS, COMMON INTEREST PERCENTAGE, PARKING STALLS AND STORAGE ROOMS**

Unit Number	Unit Type	Bed/Bath	Approx. Net Living Area (Square Feet)	Common Interest %	LCE Parking Stall No. 1	LCE Parking Stall No. 2	LCE Storage Room No(s).
600	3B-1	3/3	1846	0.453%	P2-116	P2-117	
601	3B-2	3/3	1758	0.431%	P3-035	P3-036	
602	2B-1	2/2	1287	0.316%	P4-158	P4-159	S4-033
603	2B-2	2/2	1114	0.273%	P3-007	P3-008	
605	1B-1	1/1	749	0.184%	P4-041		
606	1B-2	1/1	892	0.219%	P4-122		
607	1B-3	1/1	796	0.195%	P4-069		
608	1B-4	1/1	946	0.232%	P4-121		
609	2B-3	2/2	1084	0.306%	P4-009	P4-010	
610	2B-4	2/2	1169	0.287%	P3-005	P3-006	
700	3B-1	3/3	1846	0.453%	P2-004	P2-005	
701	3B-2	3/3	1758	0.431%	P3-019	P3-021	
702	2B-1	2/2	1287	0.316%	P2-032	P2-033	
703	2B-2	2/2	1114	0.273%	P2-113	P2-118	
705	1B-1	1/1	749	0.184%	P4-068		
706	1B-2	1/1	892	0.219%	P4-120		
707	1B-3	1/1	796	0.195%	P4-071		
708	1B-4	1/1	946	0.232%	P4-118		
709	2B-3	2/2	1084	0.266%	P4-007	P4-008	
710	2B-4	2/2	1169	0.287%	P2-111	P2-120	
800	3B-1	3/3	1846	0.453%	P2-038	P2-039	
801	3B-2	3/3	1758	0.431%	P3-033	P3-034	
802	2B-1	2/2	1287	0.316%	P1-082	P1-083	
803	2B-2	2/2	1114	0.273%	P4-103	P4-104	
805	1B-1	1/1	749	0.184%	P4-070		
806	1B-2	1/1	892	0.219%	P4-116		
807	1B-3	1/1	796	0.195%	P4-074		
808	1B-4	1/1	946	0.232%	P4-112		
809	2B-3	2/2	1084	0.266%	P4-005	P4-006	
810	2B-4	2/2	1169	0.287%	P4-019	P4-021	
900	3B-1	3/3	1846	0.453%	P2-042	P2-043	
901	3B-2	3/3	1758	0.431%	P3-031	P3-032	
902	2B-1	2/2	1287	0.316%	P1-089	P1-090	
903	2B-2	2/2	1114	0.273%	P4-132	P4-133	
905	1B-1	1/1	749	0.184%	P4-072		

Unit Number	Unit Type	Bed/Bath	Approx. Net Living Area (Square Feet)	Common Interest %	LCE Parking Stall No. 1	LCE Parking Stall No. 2	LCE Storage Room No(s).
906	1B-2	1/1	892	0.219%	P4-114		
907	1B-3	1/1	796	0.195%	P4-076		
908	1B-4	1/1	946	0.232%	P4-109		
909	2B-3	2/2	1084	0.266%	P4-013	P4-014	
910	2B-4	2/2	1169	0.287%	P4-134	P4-135	
1000	3B-1	3/3	1846	0.453%	P2-074	P2-075	
1001	3B-2	3/3	1758	0.431%	P3-029	P3-030	
1002	2B-1	2/2	1287	0.316%	P1-074	P1-075	
1003	2B-2	2/2	1114	0.273%	P4-136	P4-137	
1005	1B-1	1/1	749	0.184%	P4-073		
1006	1B-2	1/1	892	0.219%	P4-111		
1007	1B-3	1/1	796	0.195%	P4-078		
1008	1B-4	1/1	946	0.232%	P3-069		
1009	2B-3	2/2	1084	0.266%	P4-011	P4-012	
1010	2B-4	2/2	1169	0.287%	P4-138	P4-139	
1100	3B-1	3/3	1846	0.453%	P2-096	P2-097	
1101	3B-2	3/3	1758	0.431%	P3-020	P3-022	
1102	2B-1	2/2	1287	0.316%	P1-072	P1-073	
1103	2B-2	2/2	1114	0.273%	P4-140	P4-141	
1105	1B-1	1/1	749	0.184%	P4-075		
1106	1B-2	1/1	892	0.219%	P3-068		
1107	1B-3	1/1	796	0.195%	P4-083		
1108	1B-4	1/1	946	0.232%	P3-071		
1109	2B-3	2/2	1084	0.266%	P3-011	P3-012	
1110	2B-4	2/2	1169	0.287%	P4-094	P4-095	
1200	3B-1	3/3	1846	0.453%	P2-092	P2-093	
1201	3B-2	3/3	1758	0.431%	P3-026	P3-027	
1202	2B-1	2/2	1287	0.316%	P1-052	P1-053	
1203	2B-2	2/2	1114	0.273%	P4-096	P4-097	
1205	1B-1	1/1	749	0.184%	P4-077		
1206	1B-2	1/1	892	0.219%	P3-070		
1207	1B-3	1/1	796	0.195%	P4-062		
1208	1B-4	1/1	946	0.232%	P3-040		
1209	2B-3	2/2	1084	0.266%	P3-009	P3-010	
1210	2B-4	2/2	1169	0.287%	P4-098	P4-099	
1300	3B-1	3/3	1846	0.453%	P2-084	P2-085	
1301	3B-2	3/3	1758	0.431%	P2-006	P2-007	
1302	2B-1	2/2	1287	0.316%	P1-097	P1-098	
1303	2B-2	2/2	1114	0.273%	P4-154	P4-155	

Unit Number	Unit Type	Bed/Bath	Approx. Net Living Area (Square Feet)	Common Interest %	LCE Parking Stall No. 1	LCE Parking Stall No. 2	LCE Storage Room No(s).
1305	1B-1	1/1	749	0.184%	P4-079		
1306	1B-2	1/1	892	0.219%	P3-110		
1307	1B-3	1/1	796	0.195%	P4-047		
1308	1B-4	1/1	946	0.232%	P3-122		
1309	2B-3	2/2	1084	0.266%	P3-017	P3-018	
1310	2B-4	2/2	1169	0.287%	P4-148	P4-149	
1400	3B-1	3/3	1846	0.453%	P2-086	P2-087	
1401	3B-2	3/3	1758	0.431%	P2-002	P2-003	
1402	2B-1	2/2	1287	0.316%	P3-126	P3-127	
1403	2B-2	2/2	1114	0.273%	P4-161	P4-162	
1405	1B-1	1/1	749	0.184%	P4-080		
1406	1B-2	1/1	892	0.219%	P3-042		
1407	1B-3	1/1	796	0.195%	P4-049		
1408	1B-4	1/1	946	0.232%	P3-120		
1409	2B-3	2/2	1084	0.266%	P3-015	P3-016	
1410	2B-4	2/2	1169	0.287%	P4-144	P4-145	
1500	3B-1	3/3	1846	0.453%	P1-023	P1-025	
1501	3B-2	3/3	1758	0.431%	P2-114	P2-115	
1502	2B-1	2/2	1287	0.316%	P3-128	P3-129	
1503	2B-2	2/2	1114	0.273%	P4-152	P4-153	
1505	1B-1	1/1	749	0.184%	P4-081		
1506	1B-2	1/1	892	0.219%	P3-041		
1507	1B-3	1/1	796	0.195%	P4-051		
1508	1B-4	1/1	946	0.232%	P3-118		
1509	2B-3	2/2	1084	0.266%	P3-013	P3-014	
1510	2B-4	2/2	1169	0.287%	P4-033	P4-034	
1600	3B-1	3/3	1846	0.453%	P1-019	P1-021	
1601	3B-2	3/3	1758	0.431%	P2-040	P2-041	
1602	2B-1	2/2	1287	0.316%	P3-132	P3-133	
1603	2B-2	2/2	1114	0.273%	P4-150	P4-151	
1605	1B-1	1/1	749	0.184%	P4-082		
1606	1B-2	1/1	892	0.219%	P3-039		
1607	1B-3	1/1	796	0.195%	P4-053		
1608	1B-4	1/1	946	0.232%	P3-116		
1609	2B-3	2/2	1084	0.266%	P2-145	P2-146	
1610	2B-4	2/2	1169	0.287%	P4-020	P4-022	
1700	3B-1	3/3	1846	0.453%	P1-024	P1-026	
1701	3B-2	3/3	1758	0.431%	P2-054	P2-055	

Unit Number	Unit Type	Bed/Bath	Approx. Net Living Area (Square Feet)	Common Interest %	LCE Parking Stall No. 1	LCE Parking Stall No. 2	LCE Storage Room No(s).
1702	2B-1	2/2	1287	0.316%	P3-134	P3-135	
1703	2B-2	2/2	1114	0.273%	P4-146	P4-147	
1705	1B-1	1/1	749	0.184%	P4-084		
1706	1B-2	1/1	892	0.219%	P3-038		
1707	1B-3	1/1	796	0.195%	P4-085		
1708	1B-4	1/1	946	0.232%	P3-114		
1709	2B-3	2/2	1084	0.266%	P2-144	P2-147	
1710	2B-4	2/2	1169	0.287%	P3-047	P3-048	
1800	3B-1	3/3	1846	0.453%	P1-020	P1-022	
1801	3B-2	3/3	1758	0.431%	P2-052	P2-053	
1802	2B-1	2/2	1287	0.316%	P3-136	P3-137	
1803	2B-2	2/2	1114	0.273%	P4-142	P4-143	
1805	1B-1	1/1	749	0.184%	P4-055		
1806	1B-2	1/1	892	0.219%	P3-112		
1807	1B-3	1/1	796	0.195%	P4-087		
1808	1B-4	1/1	946	0.232%	P3-108		
1809	2B-3	2/2	1084	0.266%	P2-112	P2-119	
1810	2B-4	2/2	1169	0.287%	P3-043	P3-044	
1900	3B-1	3/3	1846	0.453%	P1-070	P1-071	
1901	3B-2	3/3	1758	0.431%	P2-044	P2-045	
1902	2B-1	2/2	1287	0.316%	P3-138	P3-139	
1903	2B-2	2/2	1114	0.273%	P4-029	P4-030	
1905	1B-1	1/1	749	0.184%	P4-056		
1906	1B-2	1/1	892	0.219%	P3-067		S3-021
1907	1B-3	1/1	796	0.195%	P4-088		
1908	1B-4	1/1	946	0.232%	P3-084		
1909	2B-3	2/2	1084	0.266%	P2-107	P2-124	
1910	2B-4	2/2	1169	0.287%	P2-020	P2-021	
2000	3B-1	3/3	1846	0.453%	P1-066	P1-067	
2001	3B-2	3/3	1758	0.431%	P2-046	P2-047	
2002	2B-1	2/2	1287	0.316%	P3-106	P3-107	
2003	2B-2	2/2	1114	0.273%	P4-026	P4-027	
2005	1B-1	1/1	749	0.184%	P4-057		
2006	1B-2	1/1	892	0.219%	P3-111		
2007	1B-3	1/1	796	0.195%	P4-089		
2008	1B-4	1/1	946	0.232%	P3-086		
2009	2B-3	2/2	1084	0.266%	P2-109	P2-122	
2010	2B-4	2/2	1169	0.287%	P2-016	P2-017	
2100	3B-1	3/3	1846	0.453%	P1-064	P1-065	

Unit Number	Unit Type	Bed/Bath	Approx. Net Living Area (Square Feet)	Common Interest %	LCE Parking Stall No. 1	LCE Parking Stall No. 2	LCE Storage Room No(s).
2101	3B-2	3/3	1758	0.431%	P2-048	P2-049	
2102	2B-1	2/2	1287	0.316%	P3-104	P3-105	
2103	2B-2	2/2	1114	0.273%	P3-045	P3-046	
2105	1B-1	1/1	749	0.184%	P4-058		
2106	1B-2	1/1	892	0.219%	P3-125		
2107	1B-3	1/1	796	0.195%	P4-090		
2108	1B-4	1/1	946	0.232%	P3-066		
2109	2B-3	2/2	1084	0.266%	P2-110	P2-121	
2110	2B-4	2/2	1169	0.287%	P2-026	P2-027	
2200	3B-1	3/3	1846	0.453%	P1-062	P1-063	
2201	3B-2	3/3	1758	0.431%	P2-050	P2-051	
2202	2B-1	2/2	1287	0.316%	P3-102	P3-103	
2203	2B-2	2/2	1114	0.273%	P2-022	P2-023	
2205	1B-1	1/1	749	0.184%	P4-059		
2206	1B-2	1/1	892	0.219%	P3-124		
2207	1B-3	1/1	796	0.195%	P4-091		
2208	1B-4	1/1	946	0.232%	P3-064		
2209	2B-3	2/2	1084	0.266%	P2-108	P2-123	
2210	2B-4	2/2	1169	0.287%	P2-158	P2-159	
2300	3B-1	3/3	1846	0.453%	P1-060	P1-061	
2301	3B-2	3/3	1758	0.431%	P2-078	P2-079	
2302	2B-1	2/2	1287	0.316%	P3-023	P3-024	
2303	2B-2	2/2	1114	0.273%	P2-018	P2-019	
2305	1B-1	1/1	749	0.184%	P4-060		
2306	1B-2	1/1	892	0.219%	P3-123		
2307	1B-3	1/1	796	0.195%	P4-067		S4-021
2308	1B-4	1/1	946	0.232%	P3-062		
2309	2B-3	2/2	1084	0.266%	P3-049	P3-050	
2310	2B-4	2/2	1169	0.287%	P2-152	P2-153	
2400	3B-1	3/3	1846	0.453%	P1-058	P1-059	
2401	3B-2	3/3	1758	0.431%	P2-076	P2-077	
2402	2B-1	2/2	1287	0.316%	P3-161	P3-162	
2403	2B-2	2/2	1114	0.273%	P2-014	P2-015	
2405	1B-1	1/1	749	0.184%	P4-061		
2406	1B-2	1/1	892	0.219%	P3-121		
2407	1B-3	1/1	796	0.195%	P4-040		
2408	1B-4	1/1	946	0.232%	P3-060		
2409	2B-3	2/2	1084	0.266%	P3-051	P3-052	
2410	2B-4	2/2	1169	0.287%	P2-148	P2-149	

Unit Number	Unit Type	Bed/Bath	Approx. Net Living Area (Square Feet)	Common Interest %	LCE Parking Stall No. 1	LCE Parking Stall No. 2	LCE Storage Room No(s).
2500	3B-1	3/3	1846	0.453%	P1-056	P1-057	
2501	3B-2	3/3	1758	0.431%	P2-072	P2-073	
2502	2B-1	2/2	1287	0.316%	P3-146	P3-147	
2503	2B-2	2/2	1114	0.273%	P2-030	P2-031	
2505	1B-1	1/1	749	0.184%	P4-063		
2506	1B-2	1/1	892	0.219%	P3-119		
2507	1B-3	1/1	796	0.195%	P4-039		
2508	1B-4	1/1	946	0.232%	P3-058		
2509	2B-3	2/2	1084	0.266%	P3-053	P3-054	
2510	2B-4	2/2	1169	0.287%	P2-012	P2-013	
2600	3B-1	3/3	1846	0.453%	P1-054	P1-055	
2601	3B-2	3/3	1758	0.431%	P2-070	P2-071	
2602	2B-1	2/2	1287	0.316%	P3-144	P3-145	
2603	2B-2	2/2	1114	0.273%	P2-156	P2-157	
2605	1B-1	1/1	749	0.184%	P4-064		
2606	1B-2	1/1	892	0.219%	P3-117		
2607	1B-3	1/1	796	0.195%	P4-038		
2608	1B-4	1/1	946	0.232%	P3-056		
2609	2B-3	2/2	1084	0.266%	P3-088	P3-089	
2610	2B-4	2/2	1169	0.287%	P2-132	P2-133	
2700	3B-1	3/3	1846	0.453%	P1-030	P1-031	
2701	3B-2	3/3	1758	0.431%	P2-129	P2-130	
2702	2B-1	2/2	1287	0.316%	P3-142	P3-143	
2703	2B-2	2/2	1114	0.273%	P2-150	P2-151	
2705	1B-1	1/1	749	0.184%	P4-065		
2706	1B-2	1/1	892	0.219%	P3-115		
2707	1B-3	1/1	796	0.195%	P4-037		
2708	1B-4	1/1	946	0.232%	P3-072		
2709	2B-3	2/2	1084	0.266%	P3-090	P3-091	
2710	2B-4	2/2	1169	0.287%	P2-138	P2-139	
2800	3B-1	3/3	1846	0.453%	P1-032	P1-033	
2801	3B-2	3/3	1758	0.431%	P2-127	P2-128	
2802	2B-1	2/2	1287	0.316%	P3-150	P3-151	
2803	2B-2	2/2	1114	0.273%	P2-024	P2-025	
2805	1B-1	1/1	749	0.184%	P4-066		
2806	1B-2	1/1	892	0.219%	P3-113		
2807	1B-3	1/1	796	0.195%	P4-036		
2808	1B-4	1/1	946	0.232%	P3-073		
2809	2B-3	2/2	1084	0.266%	P4-003	P4-004	

Unit Number	Unit Type	Bed/Bath	Approx. Net Living Area (Square Feet)	Common Interest %	LCE Parking Stall No. 1	LCE Parking Stall No. 2	LCE Storage Room No(s).
2810	2B-4	2/2	1169	0.287%	P2-142	P2-143	
2900	3B-1	3/3	1846	0.453%	P1-050	P1-051	
2901	3B-2	3/3	1758	0.431%	P2-125	P2-126	
2902	2B-1	2/2	1287	0.316%	P3-148	P3-149	
2903	2B-2	2/2	1114	0.273%	P2-131	P2-160	
2905	1B-1	1/1	749	0.184%	P4-043		
2906	1B-2	1/1	892	0.219%	P3-083		
2907	1B-3	1/1	796	0.195%	P4-035		
2908	1B-4	1/1	946	0.232%	P3-074		
2909	2B-3	2/2	1084	0.266%	P4-001	P4-002	
2910	2B-4	2/2	1169	0.287%	P2-010	P2-011	
3000	3B-1	3/3	1846	0.453%	P1-038	P1-039	
3001	3B-2	3/3	1758	0.431%	P2-101	P2-102	
3002	2B-1	2/2	1287	0.316%	P3-003	P3-004	
3003	2B-2	2/2	1114	0.273%	P2-134	P2-135	
3005	1B-1	1/1	749	0.184%	P4-044		
3006	1B-2	1/1	892	0.219%	P3-085		
3007	1B-3	1/1	796	0.195%	P4-028		
3008	1B-4	1/1	946	0.232%	P3-075		
3009	2B-3	2/2	1084	0.266%	P4-100	P4-101	S4-024
3010	2B-4	2/2	1169	0.287%	P2-034	P2-035	
3100	3B-1	3/3	1846	0.453%	P1-034	P1-035	
3101	3B-2	3/3	1758	0.431%	P2-103	P2-104	
3102	2B-1	2/2	1287	0.316%	P3-092	P3-093	
3103	2B-2	2/2	1114	0.273%	P2-140	P2-141	
3105	1B-1	1/1	749	0.184%	P4-045		
3106	1B-2	1/1	892	0.219%	P3-087		
3107	1B-3	1/1	796	0.195%	P4-160		
3108	1B-4	1/1	946	0.232%	P3-076		
3109	2B-3	2/2	1084	0.266%	P4-105	P4-106	
3110	2B-4	2/2	1169	0.287%	P2-056	P2-057	
3200	3B-1	3/3	1846	0.453%	P1-048	P1-049	
3201	3B-2	3/3	1758	0.431%	P2-105	P2-106	
3202	2B-1	2/2	1287	0.316%	P3-094	P3-095	
3203	2B-2	2/2	1114	0.273%	P2-028	P2-029	S2-023
3205	1B-1	1/1	749	0.184%	P4-046		
3206	1B-2	1/1	892	0.219%	P3-065		
3207	1B-3	1/1	796	0.195%	P4-102		
3208	1B-4	1/1	946	0.232%	P3-077		



Unit Number	Unit Type	Bed/Bath	Approx. Net Living Area (Square Feet)	Common Interest %	LCE Parking Stall No. 1	LCE Parking Stall No. 2	LCE Storage Room No(s).
3209	2B-3	2/2	1084	0.266%	P4-092	P4-093	
3210	2B-4	2/2	1169	0.287%	P2-064	P2-065	
3300	3B-1	3/3	1846	0.453%	P1-046	P1-047	
3301	3B-2	3/3	1758	0.431%	P2-098	P2-099	
3302	2B-1	2/2	1287	0.316%	P3-096	P3-097	
3303	2B-2	2/2	1114	0.273%	P2-008	P2-009	
3305	1B-1	1/1	749	0.184%	P4-048		
3306	1B-2	1/1	892	0.219%	P3-063		
3307	1B-3	1/1	796	0.195%	P4-107		
3308	1B-4	1/1	946	0.232%	P3-078		
3309	2B-3	2/2	1084	0.266%	P4-023	P4-024	
3310	2B-4	2/2	1169	0.287%	P1-084	P1-085	
3400	3B-1	3/3	1846	0.453%	P1-044	P1-045	
3401	3B-2	3/3	1758	0.431%	P2-094	P2-095	
3402	2B-1	2/2	1287	0.316%	P3-098	P3-099	
3403	2B-2	2/2	1114	0.273%	P2-036	P2-037	
3405	1B-1	1/1	749	0.184%	P4-050		
3406	1B-2	1/1	892	0.219%	P3-061		
3407	1B-3	1/1	796	0.195%	P4-108		
3408	1B-4	1/1	946	0.232%	P3-079		
3409	2B-3	2/2	1084	0.266%	P4-156	P4-157	
3410	2B-4	2/2	1169	0.287%	P1-078	P1-079	
3500	3B-1	3/3	1846	0.453%	P1-099	P1-100	
3501	3B-2	3/3	1758	0.431%	P2-080	P2-081	
3502	2B-1	2/2	1287	0.316%	P3-001	P3-002	
3503	2B-2	2/2	1114	0.273%	P2-062	P2-063	
3505	1B-1	1/1	749	0.184%	P4-052		
3506	1B-2	1/1	892	0.219%	P3-059		
3507	1B-3	1/1	796	0.195%	P4-125		
3508	1B-4	1/1	946	0.232%	P3-080		
3509	2B-3	2/2	1084	0.266%	P4-126	P4-127	
3510	2B-4	2/2	1169	0.287%	P1-076	P1-077	
3600	3B-1	3/3	1846	0.453%	P1-101	P1-102	
3601	3B-2	3/3	1758	0.431%	P2-082	P2-083	
3602	2B-1	2/2	1287	0.316%	P3-100	P3-101	S3-024
3603	2B-2	2/2	1114	0.273%	P1-086	P1-087	
3605	1B-1	1/1	749	0.184%	P4-054		
3606	1B-2	1/1	892	0.219%	P3-057		
3607	1B-3	1/1	796	0.195%	P4-124		

Unit Number	Unit Type	Bed/Bath	Approx. Net Living Area (Square Feet)	Common Interest %	LCE Parking Stall No. 1	LCE Parking Stall No. 2	LCE Storage Room No(s).
3608	1B-4	1/1	946	0.232%	P3-081		
3609	2B-3	2/2	1084	0.266%	P4-128	P4-129	
3610	2B-4	2/2	1169	0.287%	P1-093	P1-094	
3700	3B-1	3/3	1846	0.453%	P1-103	P1-104	
3701	3B-2	3/3	1758	0.431%	P2-088	P2-089	
3702	2B-1	2/2	1287	0.316%	P3-158	P3-159	S3-033
3703	2B-2	2/2	1114	0.273%	P1-080	P1-081	
3705	1B-1	1/1	749	0.184%	P4-086		
3706	1B-2	1/1	892	0.219%	P3-055		
3707	1B-3	1/1	796	0.195%	P4-123		
3708	1B-4	1/1	946	0.232%	P3-082		
3709	2B-3	2/2	1084	0.266%	P4-130	P4-131	
3710	2B-4	2/2	1169	0.287%	P1-091	P1-092	
PH 3800	3B-1	3/3	1846	0.453%	P1-105	P1-106	
PH 3801	3B-2	3/3	1758	0.431%	P1-068	P1-069	
PH 3802	2B-1	2/2	1287	0.316%	P2-060	P2-061	S2-029
PH 3803	2B-2	2/2	1114	0.273%	P1-095	P1-096	
PH 3805	1B-1	1/1	749	0.184%	P4-119		
PH 3806	1B-2	1/1	892	0.219%	P3-160		
PH 3807	1B-3	1/1	796	0.195%	P4-113		
PH 3808	1B-4	1/1	946	0.232%	P3-028		
PH 3809	2B-3	2/2	1084	0.266%	P4-031	P4-032	
PH 3810	2B-4	2/2	1169	0.287%	P3-130	P3-131	
PH 3900	3B-1	3/3	1846	0.453%	P1-107	P1-108	
PH 3901	3B-2	3/3	1758	0.431%	P1-028	P1-029	
PH 3902	2B-1	2/2	1287	0.316%	P2-058	P2-059	S2-027, S2-028
PH 3903	2B-2	2/2	1114	0.273%	P3-140	P3-141	
PH 3905	1B-1	1/1	749	0.184%	P4-117		
PH 3906	1B-2	1/1	892	0.219%	P3-037		
PH 3907	1B-3	1/1	796	0.195%	P4-110		
PH 3908	1B-4	1/1	946	0.232%	P1-088		
PH 3909	2B-3	2/2	1084	0.266%	P2-154	P2-155	
PH 3910	2B-4	2/2	1169	0.287%	P3-156	P3-157	
PH 4000	3B-1	3/3	1846	0.453%	P1-001	P1-002	
PH 4001	3B-2	3/3	1758	0.431%	P1-040	P1-041	
PH 4002	2B-1	2/2	1287	0.316%	P2-066	P2-067	S2-030, S2-031
PH 4003	2B-2	2/2	1114	0.273%	P3-154	P3-155	
PH 4005	1B-1	1/1	749	0.184%	P4-115		
PH 4006	1B-2	1/1	892	0.219%	P2-001		

Unit Number	Unit Type	Bed/Bath	Approx. Net Living Area (Square Feet)	Common Interest %	LCE Parking Stall No. 1	LCE Parking Stall No. 2	LCE Storage Room No(s).
PH 4007	1B-3	1/1	796	0.195%	P3-109		
PH 4008	1B-4	1/1	946	0.232%	P1-037		
PH 4009	2B-3	2/2	1084	0.266%	P2-136	P2-137	
PH 4010	2B-4	2/2	1169	0.287%	P3-152	P3-153	

*\*See below and Section III.D for other Limited Common Elements.*

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

**B. APPROXIMATE NET LIVING AREAS.** The approximate net living areas of the Units are measured from the interior finished surface of the demising, perimeter walls of the Unit and includes the interior party walls, columns and shafts within the Unit, but excludes areas for shafts, columns, and plumbing walls that are attached to the demising, perimeter walls. All areas are not exact and are approximates based on the floor plans of each type of Unit.

**C. COMMON INTEREST.** The Common Interest for each of the Units in the Project is calculated based on dividing the approximate net living area of the Unit, as applicable, by the total net area of all the Units in the Project. In order to permit the Common Interest for all Units in the Project to equal exactly one hundred percent (100%), the Common Interest attributable to Unit No. 609 was increased by .040%.

**D. PARKING STALLS AND STORAGE ROOMS.** Each Unit shall have as a Limited Common Element appurtenant thereto, the parking stall(s) designated above. The Condominium Map depicts the location, type and number of parking stalls and storage rooms in the Project. There are twenty (20) guest stalls in the Project, which are Limited Common Elements to Unit No. 609. All parking stalls not otherwise identified above as a Limited Common Element to a specific Unit, shall be Limited Common Elements to Unit No. 609 of the Project. All storage rooms are Limited Common Elements and are identified with "S" on the Condominium Map. Some storage rooms are Limited Common Elements to the Units noted above. All remaining storage rooms shall be Limited Common Elements to Unit No. 609. Developer has the reserved right to re-designate such parking stalls and storage rooms from Unit No. 609 to other Units in the Project as Limited Common Elements appurtenant to specific Units.


**END OF EXHIBIT "B"**

**FEE OWNER JOINDER**

Victoria Ward, Limited, a Delaware corporation, as owner of the fee simple interest in a portion of the Land described in Exhibit A to this Declaration ("Landowner"), hereby joins in this Declaration and pursuant to Section 514B-31 of the Act submits all of its interest in the Land to the condominium property regime created by this Declaration.

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

**VICTORIA WARD, LIMITED**, a Delaware corporation

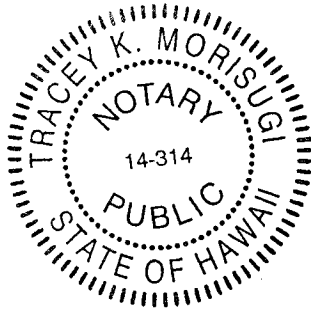
By   
Its VICE PRESIDENT

**"Landowner"**

STATE OF HAWAII  
CITY AND COUNTY OF HONOLULU

SS:

On this 2nd day of October, 2019, before me appeared Dang Johnson, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Tracey K. Morisugi  
Print Name: Tracey K. Morisugi  
Notary Public, in and for said State of Hawaii  
My commission expires: 9/14/2022

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

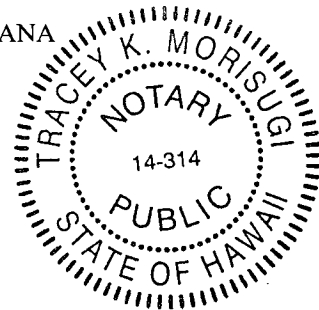
DECLARATION OF CONDOMINIUM PROPERTY REGIME OF 1100 ALA MOANA

Document Date: \_\_\_\_\_ or  Undated at time of notarization.

No. of Pages: 2 Jurisdiction: First Circuit  
(in which notarial act is performed)

Tracey K. Morisugi 10.2.19  
Signature of Notary Date of Notarization and  
Certification Statement

Tracey K. Morisugi  
Printed Name of Notary



(Official Stamp or Seal)