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TITLE OF DOCUMENT:

DECLARATION OF CONDOMINIUM PROPERTY REGIME
OF PARK LANE

PARTIES TO DOCUMENT:

Developer: AMX PARTNERS, LLC, a Delaware limited liability company
1288 Ala Moana Boulevard, Suite 208, Honolulu, Hawaii 96814

Fee Owner: GGP ALA MOANA L.L.C., a Delaware limited liability company
c/o General Growth Properties, 110 Wacker Drive, Chicago, Illinois 60606

Tax Map Key No.: (1) 2-3-038-013

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DECLARATION OF CONDOMINIUM PROPERTY REGIME OF PARK LANE

This Declaration of Condominium Property Regime of Park Lane (this “Declaration”) is made this 22nd day of September, 2014, by **AMX PARTNERS, LLC**, a Delaware limited liability company (“Developer”), with its principal place of business and post office address at 1288 Ala Moana Boulevard, Suite 208, Honolulu, Hawaii 96814, and **GGP ALA MOANA L.L.C.**, a Delaware limited liability company, whose address is c/o General Growth Properties, 110 Wacker Drive, Chicago, Illinois 60606 (“Fee Owner”).

RECITALS:

- A. Fee Owner owns the fee simple interest in the real property (the “**Land**”) situate at 1388 Ala Moana Boulevard, Honolulu, Hawaii, more particularly described in **Exhibit A** attached hereto and made a part hereof.
- B. Fee Owner and Developer have entered into that certain Purchase and Sale Agreement of even date herewith, under the terms of which Fee Owner has agreed to sell to Developer and Developer has agreed to purchase from Fee Owner all of the Residential Units and their appurtenant Limited Common Elements and Common Interests in upon the terms and conditions set forth therein;
- C. Developer intends to improve the Land by constructing thereon a commercial parking facility and certain residential buildings and other improvements.
- D. By filing this Declaration in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (the “**Land Court**”), Developer and Fee Owner intend to establish a condominium that consists of the Land and the improvements to be constructed thereon (the “**Improvements**”).
- E. This Declaration, together with Condominium Map 2260 filed concurrently herewith (the “**Condominium Map**”), divides the Land and the Improvements into separately owned “**Units**” and commonly owned “**Common Elements**” which together comprise the condominium project to be known as **PARK LANE** (the “**Project**”). It also establishes the rights of Fee Owner, as Initial Commercial Owner, Developer and the Unit Owners.

In order to create the condominium Project consisting of the Land and the Improvements, the Fee Owner and Developer submit all of their estate, rights, title and interest in the Land and Improvements (collectively, the “**Property**”) to this Declaration and the Bylaws of the Association of Unit Owners of Park Lane (the “**Bylaws**”) filed in the Land Court immediately following this Declaration and to the condominium property regime established by Chapter 514B, Hawaii Revised Statutes (the “**Condominium Property Act**” or the “**Act**”).

Fee Owner and Developer hereby declare and agree that the Project is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the provisions of this Declaration and the Bylaws, as the provisions of this Declaration and the Bylaws may be amended from time to time, in accordance with applicable law and in accordance with the respective provisions of this Declaration and the Bylaws. The provisions of this Declaration and the Bylaws shall constitute covenants running with the land and equitable servitudes, and shall be binding upon and shall inure to the benefit of Initial Commercial Owner, Developer and the Association, their respective 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.

Developer and Fee Owner grant and reserve the easements described in this Declaration. Developer reserves the Developer's Reserved Rights in the Land and the Project. Fee Owner, as Initial Commercial Owner, reserves the Initial Commercial Owner's Reserved Rights. Developer and Fee Owner declare that all Units and their appurtenant Common Interests and all Common Elements (including Limited Common Elements) are subject to the Developer's Reserved Rights, the Initial Commercial Owner's Reserved Rights, and to the easements granted or reserved in this Declaration.

I. USE OF DEFINED TERMS; DEFINED TERMS.

A. USE OF DEFINED TERMS. For purposes of construing and interpreting this Declaration and the Bylaws, all terms, when written with initial capital letters in this Declaration or in the Bylaws, shall have the meaning given such terms in this Declaration, including this section. Such defined terms may be used in the singular or plural or in varying tenses or forms, but such variation shall not affect the meaning of the terms so long as those terms are written in initial capital letters. When such terms are used in this Declaration or in the Bylaws without initial capital letters, such terms shall have the meaning they have in common usage; provided, however, that where legal technical or trade terms are used and the context in which such terms are used indicates that such terms are to be given their legal, technical or trade usage meanings, such terms shall be given such legal, technical or trade usage meanings.

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

1. "Act" means the Condominium Property Act codified in Chapter 514B of the Hawaii Revised Statutes, as the same may be amended from time to time, and any rules and regulations accompanying Chapter 514B of the Hawaii Revised Statutes.

2. "ADA" means the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., as the same may be amended from time to time.

3. "Alternative Allocation" is defined in Section XI.A of this Declaration and more particularly set forth in **Exhibit D** attached hereto.

4. “Approved Lanai Enclosure Plans” are plans for the enclosure or partial enclosure of Individual Limited Common Element lanai areas which have been approved by Initial Commercial Owner and may be provided to Residential Unit Owners by Developer.

5. “Articles of Incorporation” means the articles of incorporation of the Association, and shall include any lawful amendments thereto.

6. “Assessments” means those Special and Regular Assessments paid by the Unit Owners based on the Association budget and other expenses of the Project.

7. “Association” means the Association of Unit Owners of Park Lane.

8. “Attorneys’ Fees” is defined in Section XXX.M of this Declaration.

9. “Board” means the Board of Directors of the Association.

10. “Bylaws” means the Bylaws of the Association filed concurrently herewith, and any lawful amendments thereto.

11. “Capital Upgrades” means any additions, renovations, replacements, alterations or improvements to the Project.

12. “Claim Notice” is defined in Section XXV.A.2 of this Declaration.

13. “Claimant” is defined in Section XXV.A of this Declaration.

14. “Class Common Interest” means the Residential Unit Class Common Interest (with respect to Residential Units) or the Commercial Unit Class Common Interest (with respect to Commercial Units) as set forth in this Declaration and in **Exhibit B** attached hereto.

15. “Commercial Development” means that portion of the Project comprised of the Commercial Unit and any appurtenant Commercial Limited Common Elements.

16. “Commercial Director” means the Director elected by the Commercial Unit Class pursuant to Section III.1 of the Bylaws.

17. “Commercial Limited Common Elements” means those parts of the Limited Common Elements that are reserved for the exclusive use of the Commercial Unit Owner and as are set forth in Section II.C.2.a and as described further in **Exhibit C** attached to this Declaration.

18. “Commercial Management Agreement” means that certain instrument entered into or to be entered into between Initial Commercial Owner and Commercial Managing Agent for the management of the Commercial Development as set forth in Section V.2.D of the Bylaws.

19. “Commercial Managing Agent” is defined in Section VIII of this Declaration.
20. “Commercial Unit” means the Unit described in **Exhibit B** attached hereto and Section II.B herein, and as shown on the Condominium Map, as may be amended from time to time.
21. “Commercial Unit Class” means and includes the Commercial Unit(s).
22. “Commercial Unit Class Common Interest” means the Class Common Interest appurtenant to a Commercial Unit as set forth in **Exhibit B** as may be amended from time to time.
23. “Commercial Unit Class Expense” means those Common Expenses which, pursuant to this Declaration or the Bylaws, are assessed against the Commercial Unit(s) and are payable by each Commercial Unit Owner based on its Class Common Interest.
24. “Commercial Unit Owner” means the Person or Persons who own the fee simple title to a Commercial Unit; provided, however, that any Person who holds such interest solely as security for the performance of an obligation shall not be a Commercial Unit Owner solely by reason of such interest.
25. “Commission” means the Real Estate Commission of the State of Hawaii.
26. “Common Elements” means all portions of the Project that are not designated as a “Unit” and any other interests in real estate for the benefit of Unit Owners that are subject to this Declaration. The description of the Common Elements is set forth in **Exhibit C** attached hereto and made a part hereof by reference. Unless otherwise provided herein, the Common Elements are comprised of the General Common Elements and the Limited Common Elements.
27. “Common Expenses” is defined in Section XI of this Declaration.
28. “Common Interest” means the undivided percentage interest in all of the General Common Elements of the Project set forth in **Exhibit B** and discussed in Section III.A below, which percentage interest is appurtenant to a Unit. The Common Interest appurtenant to a Unit may not be altered or transferred except as expressly set forth in this Declaration.
29. “Community Systems” is defined in Section IV.C.5 of this Declaration.
30. “Completion of Construction” means the issuance of a temporary or final Certificate of Occupancy for the Unit or for the building or portion thereof in which a Unit is located.
31. “Condemnation Trustee” is defined in Section XIV.A of this Declaration.

32. “Condominium Documents” means this Declaration, the Bylaws, House Rules (if any), and the Condominium Map, each as the same may be amended from time to time.

33. “Condominium Map” means the Condominium Map that is referenced in the Recitals above and that is filed in the Land Court, as the same may be duly amended from time to time in accordance with the terms hereof.

34. “County” means the City and County of Honolulu, State of Hawaii.

35. “D&O Policy” is defined in Section XII.E of this Declaration.

36. “Deadlock” is defined in Section XI.D of this Declaration.

37. “Declaration” means this Declaration of Condominium Property Regime of Park Lane, together with any lawful amendments hereto.

38. “Developer” means AMX Partners, LLC, a Delaware limited liability company. If Developer transfers some or all of its rights to another Person, then that Person will become Developer to the extent of the rights transferred.

39. “Developer Control Period” means the period in which Developer shall have the right to appoint and remove the Board and appoint Officers as further discussed in Section XXVIII of this Declaration and in Section 514B-106 of the Act.

40. “Development Period” means the period starting on the date hereof and ending on the date after which Developer records a document declaring the termination of the Development Period but in no event later than sixty (60) days after the Completion of Construction of the last Residential Unit, unless terminated earlier.

41. “Developer’s Reserved Rights” means all rights reserved to Developer under this Declaration and in the Condominium Documents.

42. “Director” means a member of the Board.

43. “DPR” means Dispute Prevention & Resolution, Inc.

44. “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 by the Bylaws.

45. “Excess Proceeds” is defined in Section XIII.E of this Declaration.

46. “Extraordinary Actions” is defined in Section VII.E of this Declaration.

47. “Façade Sign” and collectively, the “Façade Signs” is defined in Section X.N of this Declaration.

48. “First Class 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).

49. “General Common Element Shared Sewer Connection” is more particularly described in **Exhibit C** hereto.

50. “General Common Element Shared Structural Elements” are more particularly described in **Exhibit C** hereto.

51. “General Common Elements” means those Common Elements listed in **Exhibit C** attached hereto. For purposes of this Declaration, the General Common Elements do not include the Limited Common Elements.

52. “General Common Expenses” are defined in Section XI.A of this Declaration.

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

54. “Improvements” means the improvements that exist or will exist on the Land, and shall also include those improvements made by Unit Owners (including Developer and Initial Commercial Owner) and/or the Association from time to time.

55. “Individual Limited Common Elements” means those parts of the Residential Limited Common Elements that are reserved for the exclusive use by the Owners of one (1) Residential Unit and as are set forth in Section II.C.2.c and as described further in **Exhibit C** attached to this Declaration.

56. “Initial Commercial Owner” means GGP Ala Moana L.L.C., a Delaware limited liability company as the initial owner of the Commercial Development. If Initial Commercial Owner transfers some or all of its rights with respect to the Commercial Development to another Person, then that Person will become Initial Commercial Owner to the extent of the rights transferred.

57. “Initial Commercial Owner’s Reserved Rights” means all the rights reserved to the Initial Commercial Owner under this Declaration and in the Condominium Documents. The Initial Commercial Owner’s Reserved Rights constitute developer’s rights under the Act.

58. “Inspection Request” is defined in Section XXV.A.3 of this Declaration.

59. “Insurance Trustee” means the 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 insurance proceeds for the Project.

60. “Interested Person” means any Person who has an interest in the Project or who has a legal right or who has permission to use the Project or a part of it, but shall not include Initial Commercial Owner or any Owner of a Commercial Unit. For example, each Residential Unit Owner, each Lender, and anyone who rents or leases a Residential Unit would be an “Interested Person.”

61. “Land” means the real property described in **Exhibit A** attached hereto.

62. “Land Court” means the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

63. “Land Use Entitlements” means that certain joint development agreement (File No. 2005/CUP 23) and variance (File No. 2005/VAR 31) issued by the County, affecting the development of the Project.

64. “Lender” means the mortgagee of a filed Mortgage on a Unit. It also includes the beneficiary of a deed of trust encumbering a Unit.

65. “Liability Policy” is defined in Section XII.D of this Declaration.

66. “Limited Common Elements” means those Common Elements that are designated in this Declaration as reserved for the exclusive use of one (1) or more Units to the exclusion of other Units. Limited Common Elements include Commercial Limited Common Elements, Residential Limited Common Elements, Individual Limited Common Elements and Potential Individual Limited Common Elements, all as defined herein. The Limited Common Elements are described in **Exhibit C** attached hereto and incorporated herein.

67. “Limited Common Expenses” means that portion of the Common Expenses attributable to the maintenance, operation, inspection, administration, repair or replacement of the Limited Common Elements, which are payable by the Owner(s) of the Unit(s) to which the Limited Common Elements are appurtenant, except as set forth in Sections XI.C and XI.D of this Declaration.

68. “Majority of Unit Owners” means the Owners of Units to which are appurtenant more than fifty percent (50%) of the total Common Interest. Any specific percentage of Owners means Owners of Units to which are appurtenant such percentage of the Common Interest.

69. “Majority of Residential Unit Owners” means the Owners of Residential Units to which are appurtenant more than fifty percent (50%) of the total Residential Unit Class Common Interest. Any specific percentage of Residential Owners means Owners of Residential Units to which are appurtenant such percentage of the Residential Unit Class Common Interest.

70. “Management Agreement” means that certain instrument entered into or to be entered into between the Association and Managing Agent for the management of the Residential Development.

71. “Managing Agent” is defined in Section VIII of this Declaration.

72. “Marketing Materials” means any sales or marketing collateral depicting or describing the Units or the Project utilized during the promotion of the Project.

73. “Member” is defined in Section II.1 of the Bylaws.

74. “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 refers to making a Unit subject to a mortgage or deed of trust.

75. “Neighboring Developments” is defined in Section XXIV.G.4 of this Declaration.

76. “New Improvement” means any improvements that Developer develops, builds or adds from time to time within the Residential Development pursuant to Section XX of this Declaration, or any improvements that Initial Commercial Owner develops, builds or adds from time to time within the Commercial Development pursuant to Section XXI of this Declaration, and does not include the initial improvements made by Developer.

77. “Officer” means an officer of the Association.

78. “Operating Expense” means any Common Expense other than those for Capital Upgrades, and includes expenses for the operation and normal care, upkeep, repair and maintenance of the Project.

79. “Owner” or “Unit 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 or lessee or sublessee of a Unit or interest therein shall be deemed the Owner of such Unit. Where Owner is a guardian, trustee, corporation or partnership, the method for designating a natural person who shall act as and for Owner is as set forth in the Bylaws and, as to land trusts, in Section XVIII herein. For so long as Developer owns unsold Units in the Project (or to the extent that Developer reacquires any Unit(s) in the Project), Developer shall have the rights of a Unit Owner, including the right to vote, and shall assume the duties of a Unit Owner as said rights and duties relate to said Units, subject, however, to the provisions of the Act.

80. “Paramount Mortgage” means a mortgage that secures a loan and other amounts and that is filed prior to the filing of a notice of lien by the Association as described in Section XI.F of this Declaration.

81. “Person” means any natural person or any corporation, partnership, limited partnership, limited liability partnership, joint venture, trust, limited liability company or other legal entity.

82. “Policy” is defined in Section XII.B of this Declaration.

83. “Potential Individual Limited Common Element” is defined in Section II.C.2.d of this Declaration.

84. “Project” means the condominium project established pursuant to this Declaration, including the Land and Improvements. The Project shall include any additional lands and/or improvements annexed to, or exclude any lands and/or improvements withdrawn from, the condominium property regime, in accordance with this Declaration.

85. “Property” means the Land, together with the Improvements and all easements, rights and appurtenances thereto.

86. “Reciprocal Easement Agreement” means that certain Reciprocal Easement Agreement dated June 25, 2014 and filed in the Land Court as Document No. T-8946262 as amended by that certain First Amendment to Reciprocal Easement Agreement dated September 19, 2014 and filed in the Land Court as Document No. T-9027317.

87. “Recreational Amenities” means those recreational amenities available for the use and enjoyment of the Residential Unit Owners located within the Residential Development. The Recreational Amenities are more particularly described in Section VI.D of this Declaration.

88. “Regular Assessments” is defined in Section VI.4.B.1 of the Bylaws.

89. “Representatives” means a Person’s shareholders, directors, officers, members (in the case of a limited liability company), agents, employees and independent contractors.

90. “Reserved Rights Interest” is defined in Section XIV.B of this Declaration.

91. “Residential Development” means that portion of the Project that comprises the Residential Units and, the Residential Limited Common Elements, Individual Limited Common Elements and Potential Individual Limited Common Elements appurtenant thereto.

92. “Residential Guest Parking” means the parking stalls designated as such in **Exhibit C.**

93. “Residential Indemnatee” is defined in Section XXIV.A.3 of this Declaration.

94. “Residential Limited Common Elements” means parts of the Limited Common Elements that are reserved for the exclusive use of all of the Residential Unit Owners and as are set forth in Section II.C.2.b and as described further in **Exhibit C** attached to this Declaration.

95. “Residential Modification” is defined in Section X.O of this Declaration.

96. “Residential Unit” means any one of the Units described in **Exhibit B** and Section II.B of this Declaration and designated as Residential Units on the Condominium Map.

97. “Residential Unit Class” means and includes all of the Residential Units as a group.

98. “Residential Unit Class Common Interest” means the Class Common Interest appurtenant to a Residential Unit as set forth in **Exhibit B**, as may be amended from time to time.

99. “Residential Unit Class Expense” means those expenses which, pursuant to this Declaration or the Bylaws, are assessed against the Residential Units and are payable by each Residential Unit Owner based on its Class Common Interest.

100. “Residential Unit Owner” means the Person or Persons who own a Residential Unit; provided, however, that any Person or Persons holding such interest solely as security for the performance of an obligation shall not be a Residential Unit Owner solely by reason of such interest.

101. “Respondent” is defined in Section XXV.A of this Declaration.

102. “Settlement Conference” is defined in Section XXV.B.2 of this Declaration.

103. “Settlement Statement” is defined in Section XXV.B of this Declaration.

104. “Smoking” is defined in Section VI.B.1 of this Declaration.

105. “Special Assessment” means those Assessments charged by the Association pursuant to Section VI.4.B.2 of the Bylaws.

106. “Time Share” is defined in Section VI.B.5 of this Declaration.

107. “Unit” means a part of the Project, as described in this Declaration and as shown on the Condominium Map, 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** and include the Commercial Unit and the Residential Units.

108. “Unit Class Common Interest” means the percentage share assigned to a Unit within a Unit Class as set forth in this Declaration and in **Exhibit B** attached hereto and incorporated herein by reference.

109. “Unit Class Expense” means those costs and expenses payable by a Unit Class based on the Unit Class Common Interest allocable to the Unit or Units within the Unit Class, if any.

110. “Unit Deed” means the legal, recorded instrument transferring a Unit and an undivided interest in the Common Elements, in fee simple, to an Owner, subject, however, to the encumbrances and reservations identified therein.

II. DESCRIPTION AND DIVISION OF PROPERTY.

A. DESCRIPTION OF THE PROJECT. The Project is depicted on the Condominium Map and shall consist of a structure and seven (7) buildings. Levels 1, 1M and 2 of the structure contain the Commercial Unit, Commercial Limited Common Element parking stalls, and other Commercial Limited Common Elements, and Level 3 contains a Commercial Limited Common Element elevator overrun and related equipment (collectively, the “**Commercial Development**”). Levels 1, 1M and 2 of the structure also contain residential loading zones, elevator shafts, stairways and other Residential Limited Common Elements. Levels 3 through 8 of the structure contain Individual Limited Common Element parking stalls, Residential Guest Parking stalls, and seven (7) buildings containing two hundred fifteen (215) Residential Units and other Residential Limited Common Elements (collectively, the “**Residential Development**”). Each of the buildings contains the following number of Residential Units: Building B contains 42 Residential Units; Building C contains 30 Residential Units; Building D contains 31 Residential Units; Building E contains 28 Residential Units; Building F contains 28 Residential Units; Building G contains 28 Residential Units; Building H contains 28 Residential Units; and the Commercial Development contains one Commercial Unit. The structure is constructed principally of concrete and steel; the buildings are constructed principally of concrete, steel, wood and glass. The Project shall include the following:

1. Commercial Development.

a. Level 1. Level 1 will include vehicle access driveways to and from Piikoi Street and Ala Moana Boulevard, parking stalls, the Commercial Unit, a vehicle access ramp to Level 1M, vehicle accessways and a ramp to the parking within the adjacent Ala Moana Shopping Center, stairways, an elevator shaft, perimeter landscaping, a trolley stop, a trolley vehicle path including street entrance from Piikoi Street and exit onto Ala Moana Boulevard, retail signage, and storage or utility rooms.

b. Level 1M. Level 1M will include parking stalls, stairways, an elevator shaft and vehicle access ramps to Level 1 and Level 2 parking.

c. **Level 2.** Level 2 will include parking stalls, a vehicle access ramp to Level 1M, vehicle accessways to the parking within the adjacent Ala Moana Shopping Center, a commercial pedestrian accessway to the adjacent Ala Moana Shopping Center, stairways and an elevator shaft.

d. **Level 3.** Level 3 includes an elevator overrun and related equipment.

e. **Encroachment.** Levels 1 and 2 are encumbered by improvements located in an encroachment area within the Commercial Limited Common Elements which is more fully described in that certain Grant of Easement for Encroachment, dated September 19, 2014 and filed in the Land Court as Document No. T-9027318 and as shown on the Condominium Map. Notwithstanding anything contained herein to the contrary, the improvements located in such encroachment area are not part of the Project.

2. Residential Development.

a. **Level 1.** Level 1 will include residential loading and service zones, a rubbish transit area, residential fire stairway access points, elevator shafts, elevator lobbies, a residential vehicle access ramp to Level 3 from Piikoi Street with security gate, landscaping adjacent to the vehicle access ramp, Individual Limited Common Element storage rooms and lockers, utility rooms, and utility ducts and pipelines. Residential Unit Owners have certain limited easement rights across the Commercial Limited Common Elements more fully described in Section IV.A.5 herein.

b. **Level 1M.** Level 1M will include residential fire stairways, elevator shafts, a utility room, utility ducts and pipelines.

c. **Level 2.** Level 2 will include residential fire stairways, elevator shafts, an elevator pit, utility rooms, utility ducts and pipelines, and a residential pedestrian accessway to the adjacent Ala Moana Shopping Center.

d. **Level 3.** Level 3 will include an exclusive vehicle access ramp connection to Piikoi Street and to Level 4, Individual Limited Common Element parking stalls and garages, Residential Guest Parking stalls, Residential Units, Individual Limited Common Element lanais, Individual Limited Common Element pools, Individual Limited Common Element spas, Individual Limited Common Element yard areas, elevator shafts and elevator lobbies, interior hallways, Potential Individual Limited Common Element hallway areas, rubbish and recycling rooms, Individual Limited Common Element storage rooms and lockers, residential fire stairways, utility rooms, utility ducts and pipelines, and Recreational Amenities.

e. **Level 4.** Level 4 will include an exclusive vehicle access ramp connection to Level 3 and to Level 5, Individual Limited Common Element parking stalls and garages, residential manager parking stalls and Residential Guest Parking stalls, Residential Units, Individual Limited Common Element lanais, elevator shafts and elevator lobbies, interior

hallways, Potential Individual Limited Common Element hallway areas, rubbish and recycling rooms, Individual Limited Common Element storage rooms and lockers, residential fire stairways, utility rooms and utility ducts and pipelines.

f. Level 5. Level 5 will include an exclusive vehicle access ramp connection to Level 4, Residential Guest Parking stalls, Residential Units, Individual Limited Common Element lanais, Individual Limited Common Element yard areas, elevator shafts and elevator lobbies, interior hallways, Potential Individual Limited Common Element hallway areas, rubbish and recycling rooms, Individual Limited Common Element storage rooms, fire stairways, utility rooms, utility ducts and pipelines, a mail room, administrative offices and Recreational Amenities.

g. Level 5A. Level 5A will include elevator shafts and elevator lobbies, interior hallways, fire stairways, utility rooms, utility ducts and pipelines, and Recreational Amenities, including men's and women's locker rooms, and other Recreational Amenities.

h. Level 6. Level 6 will include Residential Units, Individual Limited Common Element lanais, elevator shafts and elevator lobbies, interior hallways, Potential Individual Limited Common Element hallway areas, rubbish and recycling rooms, an Individual Limited Common Element storage room, utility rooms, utility ducts and pipelines, and fire stairways.

i. Level 7. Level 7 will include Residential Units, Individual Limited Common Element lanais, elevator shafts and elevator lobbies, interior hallways, Potential Individual Limited Common Element hallway areas, rubbish and recycling rooms, an Individual Limited Common Element storage room, utility rooms, utility ducts and pipelines, and fire stairways.

j. Level 8. Level 8 will include Residential Units, Individual Limited Common Element lanais, elevator shafts and elevator lobbies, interior hallways, Potential Individual Limited Common Element hallway areas, rubbish and recycling rooms, an Individual Limited Common Element storage room, utility rooms, utility ducts and pipelines, and fire stairways.

k. Level 9. Level 9 will include the rooftop and any Improvements installed thereon, including, but not limited to, elevator overruns, utility ducts and pipelines, stairways and Community Systems.

B. DIVISION OF THE PROJECT. The Project is hereby divided into the following separate freehold estates, which spaces are designated on the Condominium Map and are described as follows:

1. Unit Designations and Location. A total of two hundred sixteen (216) freehold estates, comprised of two hundred fifteen (215) Residential Units and one (1) Commercial Unit, shall be designated in the spaces within the perimeter and party walls,

windows, doors, floors and ceilings of each of the Units of the Project. The Unit designations, numbers and locations are generally shown on the Condominium Map and are further identified in **Exhibit B** attached hereto and incorporated herein by this reference.

a. Unit Layouts and Dimensions. The Unit areas and layouts are generally shown on the Condominium Map and are further described in **Exhibit B** attached hereto and incorporated herein by this reference. The Condominium Map is not intended and shall not be deemed to contain or make any representation or warranty whatsoever. The descriptions of various rooms and areas of the Project contained in this Declaration, 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. The approximate net living areas of the Residential Units and the approximate net floor area of the Commercial Unit as set forth in **Exhibit B** are based on measurements taken from the interior surface of all perimeter walls, except that no reduction has been made to account for interior walls, ducts, vents, shafts, stairways and the like located within the perimeter walls. All floor areas set forth in **Exhibit B** are not exact but are approximations based on the floor plans for each type of Unit.

b. Access to Common Elements and Public Streets or Highways. Except as may be limited by the terms of this Declaration, each Unit has access through elevators, stairways, walkways, driveways and other Common Elements of the Project to public streets and to Level 1 of the Project, which also has access to public streets.

c. Residential Unit Boundaries. The Residential Units shall be deemed to include: (i) all interior walls, doors, windows, window frames and partitions that are not load-bearing and that are located within the space bounded by the Unit's perimeter walls but not the perimeter walls themselves, (ii) the interior decorated or finished surfaces of all walls, 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, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated or finished surfaces of such walls, columns, doors, door and window frames, floors and ceilings, (v) the air space surrounded by such walls, doors, door and window frames, floors and ceilings, and (vi) all fixtures (if any) originally installed in the Unit. The Unit shall not be deemed to include the following: (a) the undecorated and unfinished surfaces of perimeter and party walls and doors, door frames, windows and window frames, (b) the interior load-bearing walls and columns and their undecorated or unfinished surfaces, (c) any load-bearing door or window frame located in the interior load-bearing walls and their undecorated or unfinished surfaces, and (d) any pipes, shafts, wires, conduits or other utility or service lines running through such Unit that are utilized for or service more than one Unit; and (e) any Common Elements or Limited Common Elements as hereinafter provided.

d. Commercial Unit Boundaries. The Commercial Unit shall be deemed to include: (i) all interior walls, doors, windows, window frames and partitions that are not load-bearing and that are located within the space bounded by the Unit's perimeter walls but not the perimeter walls themselves, (ii) the interior decorated or finished surfaces of all walls, 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, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated or finished surfaces of such walls, columns, doors, door and window frames, floors and ceilings, (v) the air space surrounded by such walls, doors, door and window frames, floors and ceilings, and (vi) all fixtures (if any) originally installed in the Unit. Each Unit shall not be deemed to include the following: (a) the undecorated and unfinished surfaces of perimeter and party walls and doors, door frames, windows and window frames, (b) the interior load-bearing walls and columns and their undecorated or unfinished surfaces, (c) any load-bearing door or window frame located in the interior load-bearing walls and their undecorated or unfinished surfaces, and (d) any pipes, shafts, wires, conduits or other utility or service lines running through such Unit that are utilized for or service more than one Unit; and (e) any Common Elements or Limited Common Elements as hereinafter provided.

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 include the General Common Elements and the Limited Common Elements.

1. General Common Elements. The General Common Elements, set forth in **Exhibit C** attached hereto.

2. Limited Common Elements. The Limited Common Elements, set forth in **Exhibit C** attached hereto, are hereby designated, set aside and reserved for the exclusive use of certain Units, and such Units shall have appurtenant thereto exclusive easements for the use of such Limited Common Elements as set forth herein. The Project contains the following types of Limited Common Elements:

a. Commercial Limited Common Elements. Commercial Limited Common Elements are those parts of the Limited Common Elements that are reserved for the exclusive use of the Commercial Unit Owner.

b. Residential Limited Common Elements. Residential Limited Common Elements are those parts of the Limited Common Elements that are reserved for the exclusive use of all of the Residential Unit Owners.

c. Individual Limited Common Elements. Individual Limited Common Elements are those parts of the Residential Limited Common Elements that are reserved for the exclusive use by the Owner(s) of one (1) of the Residential Units.

d. Potential Individual Limited Common Elements. Potential Individual Limited Common Elements are those parts of the Residential Limited Common Elements that may be converted to the exclusive use by the Owner(s) of one (1) of the Residential Units in connection with the combination of Units as set forth in Section XX.D below.

Unless otherwise provided herein, the costs and expenses of every description pertaining to the Limited Common Elements, including, but not limited to, the costs of maintenance, repair, replacement, improvement or additions to the Limited Common Elements, shall be charged to the Owner(s) of the Unit(s) to which the Limited Common Element shall be appurtenant as Limited Common Expenses, as set forth in Section XI below. Residential Limited Common Elements shall be managed and maintained by the Association or the Owner(s) of the Unit(s) to which the Residential Limited Common Element shall be appurtenant as set forth in **Exhibit C**. The Commercial Limited Common Elements shall be managed and maintained by the Commercial Unit Owner.

III. DIVISION OF OWNERSHIP.

A. COMMON INTEREST. Each Unit shall have appurtenant thereto an undivided percentage interest in all Common Elements of the Project as shown in **Exhibit B**, herein called the Common Interest, and the same proportionate share in all common 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. The Common Interest shall be subject to adjustment only as provided in this Declaration. Developer shall have the absolute right in its discretion to adjust the Common Interests appurtenant to any Residential Units owned by Developer and to amend the Declaration so that the total percentage of Common Interests appurtenant to the Units in the Project will equal one hundred percent (100%). Nothing herein shall be deemed or construed to allow Developer to change the Common Interest appurtenant to the Commercial Unit.

B. UNIT CLASS COMMON INTEREST. In addition to the Common Interest, each Unit shall have assigned to it, for administrative purposes, a Unit Class Common Interest as set forth in **Exhibit B**, attached hereto and incorporated by reference herein, based upon the Unit Class to which such Unit belongs; that being either the Commercial Unit Class or the Residential Unit Class. All Owners of Units in a Unit Class shall have the right to vote his or her Unit Class Common Interest with respect to matters requiring voting by Unit Class, and each Unit in a Unit Class shall be responsible for its proportionate share of all Unit Class Expenses of the Project, if any. Developer shall have the absolute right to adjust the Unit Class Common Interest appurtenant to any Residential Units owned by Developer and to amend the Declaration so that the total percentage of the Residential Unit Class Interest appurtenant to the Residential Units will equal one hundred percent (100%).

IV. EASEMENTS.

In addition to any easements established as Limited Common Elements and any easements described in **Exhibit C** or elsewhere in the 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 or Initial Commercial Owner may be exercised without the joinder or approval of any Person, Owner or Lender, unless otherwise expressly set forth herein.

Developer grants and reserves the easements described in this Declaration. All Units and their appurtenant Common Interests and all Common Elements (including the Limited Common Elements) are subject to the easements granted or reserved in this Declaration and in the Bylaws.

A. FOR UNIT OWNERS.

1. Easement for Access and Support. Each Unit shall have appurtenant thereto nonexclusive easements in the 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.

2. Easement for Encroachments. If any part of the Common Elements now or hereafter encroaches upon any Unit, 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 of any shifting, settlement or movement of any part of the Project, encroachments of any part of the Common Elements upon the Unit or the Unit upon the Common Elements, due to such 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.

3. Easement for Utilities. There is hereby reserved to the Unit Owners, for the benefit of the Units, perpetual blanket easements and rights of passage on, through, over, under and across all of the Common Elements for ingress, egress, installation, construction, inspection, replacement, repair, removal, maintenance and use of all public and/or private utilities serving and/or benefiting all or any portion of the Units, including, but not limited to, power, water, sewer, gas (if any), light, electric, microwave, drainage, television (including, without limitation, cable and satellite), telephone, internet, broadband, and other communication lines, life safety and security systems, and storm drains, and further including the right to connect to and use any such utilities which may exist or hereafter be located within the Project from time to time. No Unit Owner shall commence physical work in the Commercial Development in the exercise of this right without the prior written consent of Initial Commercial Owner, and such work shall be performed in a manner so as to minimize disruption to the operation of the Commercial Development. The Unit Owner seeking access to such utilities pursuant to this subsection shall be responsible for restoring the areas through which access was obtained to the condition existing immediately prior to such access and shall be responsible for all costs associated with such access and restoration.

4. Easement for Emergency Ingress and Egress. To the extent emergency means of ingress and egress are not otherwise available through the General Common Elements, the Commercial Limited Common Elements and Residential Limited Common Elements shall be subject to an easement for the benefit of the Unit Owners for emergency ingress and egress to and from their respective Units.

5. Easement Through Residential Limited Common Elements and Commercial Limited Common Elements. The Residential Units shall have appurtenant thereto, nonexclusive easements and access throughout all roadways, driveways, parking stalls, Residential Guest Parking stalls, handicapped parking stalls and related areas, access lanes, ramps, loading and service areas, landscaped areas, sidewalks, walkways, hallways and grounds of the Project that are part of the Residential Limited Common Elements or, if there is no other reasonable means of access through the Residential Limited Common Elements, through the Commercial Limited Common Elements as depicted on the Condominium Map, to the extent that such easements are necessary for ingress to and egress from, such Residential Units and to and from any Residential Limited Common Elements appurtenant to such Residential Units, including without limitation access to and use of the Individual Limited Common Element parking stalls or the lobby areas, elevators, and storage rooms. The Residential Units shall have pedestrian and vehicular easements and access through the roadways, driveways and walkways that are part of the Commercial Limited Common Elements to the extent necessary to access the Residential Limited Common Element loading and service zones, pedestrian accessways, fire stairways and rubbish loading areas and any other Residential Limited Common Elements located on Level 1 of the Project. The Residential Units shall also have an easement through the Commercial Limited Common Elements to access pathways and roadways connecting the Project to the adjacent Ala Moana Shopping Center.

B. FOR THE ASSOCIATION, BOARD AND/OR MANAGING AGENT.

1. Easement for Access to Units. The Association shall have the irrevocable right, but not the duty, to be reasonably exercised by the Board and/or 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 (including the Commercial Limited Common Elements and/or Residential Limited Common Elements) from time to time, during reasonable hours and upon twenty-four (24) hours' prior written notice delivered to the subject Unit Owner(s), 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 maintained by the Association, 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 (i) making emergency repairs therein necessary to prevent damage to any Unit or Common Element, (ii) abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity, (iii) protecting the property rights of any Owner, or (iv) preventing death or serious bodily injury to any Owner or other occupant therein; provided, however that, notwithstanding the foregoing, Association access to the Commercial Unit and Commercial Limited Common Elements shall be limited to access for the purpose of making emergency repairs therein necessary to prevent damage to the Residential Development and abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity.

2. Easement Affecting Common Elements. The Association has the right, exercisable by the Board and/or Managing Agent, to designate, grant, lease, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across, or through the Common Elements for any reasonable purpose, which may include, but will not be limited to, (i)

those purposes necessary to the operation, care, upkeep, maintenance or repair of any Unit, the General Common Elements or any Limited Common Element, or (ii) any easements for utilities or for any public purpose including for example, pedestrian walkways, landscaped areas, stairs, ramps, roadways, or other passageways, or the facilities that support the Project. The Association must have the written approval of Initial Commercial Owner before it can exercise this right within any Commercial Limited Common Element.

3. Easement Through Adjacent Lands. The Association has the right, exercisable by the Board, to transfer, cancel, relocate and otherwise deal with any easement or license in favor of the Land or the Project, for any reasonable purpose. The Association's right is subject to the approval of Initial Commercial Owner and any Lender of Initial Commercial Owner; provided that the Board may exercise the right without being subject to any such approval if the 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.

C. FOR DEVELOPER AND/OR INITIAL COMMERCIAL OWNER.

1. Easement to Complete Project. There is hereby reserved to Developer, for its benefit and the benefit of the Units and Limited Common Elements, blanket easements and rights of passage on, through, over, under and across portions of the Property reasonably required and intended for ingress, egress, installation, construction, inspections, replacement, repair, removal, maintenance and use of all public and/or private utilities serving and/or benefiting all or any portion of the Project, including, but not limited to, water, sewer, gas (if any), electric, microwave, drainage, television (including, without limitation, cable and satellite), telephones, telecommunications, internet, storm drains and storm water management and detention facilities and further including the right to connect to and use any such utilities which may exist or may hereafter be located upon the Property from time to time, all subject, however, to any approval rights of Initial Commercial Owner and any Lender of Initial Commercial Owner set forth herein. The rights to complete the Project provided for herein shall terminate upon the termination of the Development Period. Connections to utilities shall be made at the points most convenient or necessary, provided that such connections shall not cause any of the utilities to be burdened beyond their capacity and all such utilities serving the Residential Units or Residential Limited Common Elements shall be separately metered from the Commercial Units and Commercial Limited Common Elements to the extent such separate metering may be installed on a commercially reasonable basis. Developer, when accessing such utilities pursuant to this subsection, shall be responsible for restoring the areas through which access was obtained to the condition existing immediately prior to such access and shall be responsible for all costs associated with such access and restoration.

Any and all work performed in connection with the easements granted by this Section IV.C.1 shall be performed at the sole risk and expense of Developer in a manner that complies with all applicable governmental laws, rules, orders and regulations and that does not unreasonably interfere with the use, enjoyment and development of the Project, the adjacent Ala Moana Shopping Center and that portion of the Property upon which the work is being performed.

Developer shall have all rights and privileges reasonably necessary to the exercise of such easements granted by or pursuant to this section provided, however, that Developer shall take reasonable steps to minimize any damage to any portion of the Property as a result of its exercise of such rights and privileges. Subject to Section XII below, if there is any material damage or alteration to any portion of the Property as a result of Developer's exercise of the easements established by or pursuant to this section, then Developer shall restore such Property to its condition that existed immediately prior to the exercise of such easements. Developer's exercise of such easements shall occur only during reasonable hours. Subject to Section XII below, Developer on its own behalf and on behalf of its successors and assigns, hereby agrees to defend, indemnify and hold harmless Initial Commercial Owner, the Association, and their respective successors and assigns, from and against any loss, claims, liability, or damage (including attorneys' fees and court costs) arising out of or resulting from Developer's exercise of the easements established pursuant to this Section IV.C.

2. Easement for Noise and Dust. Developer and Initial Commercial Owner and their respective agents, employees, consultants, contractors, licensees, successors and assigns, shall each have an easement over, under, through 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, Common Element or 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 and Initial Commercial Owner and their respective agents, employees, consultants, contractors, licensees, successors and assigns, as a result of any such noise, dust, vibration and other nuisances or annoyances.

3. Easement for Sales Activities. Developer, its brokers, sales agents, representatives and other related persons shall have the right to conduct extensive sales activities at the Project, including the use of any Residential Unit owned by Developer and any Residential Limited Common Elements and Individual Limited Common Elements appurtenant to Residential Units owned by Developer and access for employees, agents, and prospective buyers, as may be necessary or convenient for the proper development and disposition of Residential 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 Residential Units. Developer shall also 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 such sales activities. In the event that Developer's Lender, if any, or any successor to or assignee of such 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 Lender, its successors and assigns, shall have the same rights as Developer to conduct such sales activities on the Project.

4. Easements Through Adjacent Lands. Until the sooner of the termination or expiration of the Developer Control Period, Developer reserves the right to transfer, cancel, relocate and otherwise deal with any easement or license in favor of the Land or the Project for any reasonable purpose which may include, but will not be limited to, any of the same purposes set forth above in Section IV.A.3. Developer's right is subject to the approval of

Initial Commercial Owner and any Lender of Initial Commercial Owner; provided that Developer may exercise this right without being subject to such approval if the owner of property that is subject to an easement in favor of the Land or the Project uses any right it has to change the location of that easement.

5. Easements for Community Systems and Telecommunications. Until the sooner of the termination or expiration of the Developer Control Period, there is reserved to Developer, its agents, employees, personnel or licensees, and its successors and assigns, a right and easement over the Project to install and operate, or provide for the installation and operation of, central telecommunication receiving and distribution systems and services (e.g., cable television, high speed data/Internet/intranet services, cellular telephone, satellite television, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software (collectively, “**Community Systems**”) as Developer, in its discretion, deems appropriate to serve all or any portion of the Residential Development; provided that any such easement that affects the Commercial Development shall be subject to the approval of Initial Commercial Owner and any Lender of Initial Commercial Owner. 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 sole discretion.

6. Easement for Repair and Maintenance. Initial Commercial Owner shall have the irrevocable right, to be reasonably exercised by Initial Commercial Owner, or any of its agents, employees, contractors, subcontractors and other authorized personnel, to enter the Residential Development from time to time during reasonable hours as may be appropriate for the repair and maintenance of (i) the General Common Element Shared Structural Elements, and/or (ii) the elevator overrun and related equipment located on Level 3.

D. CONSENT OF OTHER PERSONS. Developer and Initial Commercial Owner may each exercise the rights reserved to it in this section without the approval or joinder of anyone else, except the approval of Initial Commercial Owner and any Lender of Initial Commercial Owner as required pursuant to Sections IV.C.1, IV.C.4 and IV.C.5 above and further subject to Sections XX and XXI below.

E. NO DEDICATION. Initial Commercial Owner shall have the right, from time to time, to temporarily close off any portion of the Commercial Development open to the general public to the extent required to prevent a dedication to the public of such portion of the Commercial Development, provided that an advance notice of such closure is provided to the Association.

V. ALTERATION AND TRANSFER OF INTEREST.

No Owner shall be entitled to sever his or her Unit, or any portion thereof, from its undivided interest in the Common Elements and the subject Unit Class Common Interest, in any easement interests appurtenant thereto or in licenses granted under this Declaration. Such

component interests may not 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. Each of Developer, Initial Commercial Owner and their respective successors, assigns and grantees and each Owner covenants and agrees that the Units and the corresponding undivided interest in the Common Elements, the subject Unit Class Common Interest, 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 the subject Unit Class Common Interest, and any easements appurtenant to a Unit shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to title to the Unit, and (2) each such Unit shall be deemed to be conveyed or encumbered with its respective undivided interest in the Common Elements and the subject Unit Class Common Interest, 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.

VI. USE.

A. PROJECT; IN GENERAL.

1. Standard of Operation. The Project shall be occupied and used only for purposes that are consistent with, and appropriate to a luxury residential/commercial development operating pursuant to a First Class Standard and other uses permitted by law, this Declaration, the Bylaws and the House Rules.

2. Right to Sell, Lease or Rent. Unit Owners have the absolute right to sell, lease, rent or otherwise transfer their own Units, subject to these restrictions and also subject to all other provisions of the Act, this Declaration, the Bylaws and the House Rules. Subject to those certain prohibitions on uses set forth herein, Unit Owners shall have the absolute right to lease their Units subject to all provisions of this Declaration, the Bylaws and the House Rules; provided, however, that as it pertains to the Residential Units, (i) all leases shall be in writing, signed by Owner or Owner's representative and the tenant, (ii) all leases shall have a term of not less than thirty (30) days, (iii) without prior written approval of the Board, no leasing of less than an entire Residential Unit shall be allowed, (iv) Owner must notify the Association in writing regarding any lease of such Owner's Unit, (v) Owners' right to lease is subject to any owner-occupant requirements under Part V. B of the Act and (vi) no Residential Unit shall be utilized for hotel or Time Share purposes. In no event shall the Association have the authority to evict a tenant of a Commercial Unit or enforce any rights against the tenant of a Commercial Unit for any violation which is also a violation under such tenant's lease. In such instance, the Commercial Unit Owner, as landlord, may have priority to first lawfully exercise its rights under the lease against such tenant. The Association may pursue any action against the Commercial Unit Owner for noncompliance with the Condominium Documents or applicable law.

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, neither the breach of the provisions herein contained nor the enforcement of any lien created pursuant to the provisions hereof shall impair, defeat or render invalid the priority of the lien of any mortgage encumbering a Unit or encumbering Developer's interest in the Project.

4. Maintenance of the Units and Their Limited Common Elements.

Each Residential Unit Owner 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 any Individual Limited Common Elements appurtenant thereto in a clean and sanitary condition and in good order and repair in accordance with the First Class Standard and in compliance with all applicable laws, 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 Individual Residential Limited Common Elements shall be made by the Unit Owners to which such Individual Residential Limited Common Elements are appurtenant and subject to any additional provisions set forth in the Bylaws. Each Unit Owner shall be responsible for any damage or loss to any of the Common Elements caused by such Owner's tenants, guests or invitees.

5. Prohibition on Activities That May Jeopardize the Project. Subject to the Developer's Reserved Rights and the Initial Commercial Owner's Reserved Rights, no Unit Owner shall do or suffer or permit anything to be done or kept on or in any Unit or appurtenant Limited Common Elements or elsewhere in the Project that will: (1) injure the reputation of the Project; (2) jeopardize the safety, soundness or structural integrity of the Improvements in the Project; (3) create a nuisance or interfere with or unreasonably disturb the rights of other Owners and occupants; (4) reduce the value of the Project; (5) increase the rate of insurance applicable to the Units or the contents thereof, or to the Project; (6) violate any applicable law, ordinance, statute, rule or regulation of any local, county, state or federal government or agency thereof; (7) cause the violation of any agreement(s) entered into for the benefit of the Project; or (8) result in the cancellation of insurance applicable to the Project or adversely affect the right of recovery thereunder or result in reputable companies refusing to provide insurance as required or permitted by the Bylaws. Any insurance increase caused by a Residential Unit shall become a Residential Unit Class Expense and any insurance increase caused by a Commercial Unit shall be paid by Commercial Unit Owner.

B. RESIDENTIAL DEVELOPMENT.

1. Residential Use. Residential Units and the Residential Limited Common Elements shall be used for residential purposes exclusively, except that a home-based business may be maintained within a Residential Unit, provided that (i) such use is limited to the person actually residing in the Unit; (ii) no employees or staff other than a person actually residing in the Unit are utilized; (iii) no clients or customers of such business visit the Unit; (iv) the number of persons, other than clients or customers, that shall visit such business and the frequency of such visits shall be kept to a reasonable minimum, as determined in the sole discretion of the Board; (v) such business and use is in strict conformity with the provisions of any applicable law (including zoning law), ordinance or regulation; (vi) 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; (vii) 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 materials; and (viii) the Unit Owner provides the Board thirty (30) days' prior written notice of the intent to operate such home-based business. Notwithstanding the foregoing, the Board shall have the reasonable authority, but not the obligation subject to any consent that may be required under the Reciprocal Easement Agreement, to permit a home-based business which does not meet one or more of the requirements set forth above to be maintained within a Residential Unit, 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's use of any Residential Unit for promotional or display purposes, such as for a model home, a sales and/or construction office, or for any other lawful purpose for development, construction and/or marketing and sales of Residential Units in the Project. In connection with the Residential Development's LEED certification, smoking is prohibited within the Residential Development, including, but not limited to the interior of the Residential Units, and the indoor and outdoor areas of the Residential Limited Common Elements and Individual Limited Common Elements. This smoking prohibition extends to all Persons within the Residential Development at any time, including but not limited to Unit Owners, residents, and their occupants, guests, and invitees. "**Smoking**" means any: (a) use or possession of a cigar, cigarette, or pipe containing tobacco while it is burning, lighted, or ignited, regardless of whether the person using or possessing the product is inhaling or exhaling the smoke from such product; (b) use of an electronic smoking device; and (c) use or possession of a burning, lighted, or ignited non-tobacco product if it is noxious, offensive, unsafe, illegal, unhealthy or irritating to other persons. Each Unit Owner is responsible for communicating the smoking prohibition and for ensuring compliance by all the occupants of the Unit and the Unit Owner's guests. If a Unit Owner or someone in a Unit Owner's household is a smoker, the Unit Owner should carefully consider whether the Unit Owner will be able to abide by the smoking prohibition.

2. Maximum Occupancy. No Residential Unit shall be occupied by more than nine (9) persons and in no event shall occupancy of a Residential Unit exceed two (2) persons per bedroom; provided, however, that this occupancy limitation shall not apply to or restrict the Owner of a Residential Unit from hosting a larger group of invited guests or visitors in such Residential Unit for a one-day function with prior written notice to Managing Agent and subject to the limitations set forth in the House Rules.

3. Unsightly Articles. Portions of a Residential Unit and its appurtenant Individual Residential Limited Common Elements that are visible from the exterior of the Residential Unit must be kept in an orderly condition so as not to detract from the neat appearance of the Project. No items may be stored upon any lanai appurtenant to a Residential Unit without prior approval of the Board except lanai furniture as set forth in the House Rules. To maintain a uniform and attractive exterior appearance for the Project, all window coverings in Residential Units must include a backing of an off-white color and must be of a type and general appearance approved by the Board. Residential Unit Owners may not, without the prior written approval of the Board, apply any substance, material or process to the exterior or interior surfaces of the Residential Unit's windows that may alter the exterior color, appearance or

reflectivity of the windows. The Board, in its sole discretion, may determine whether the portions of a Residential Unit visible from the exterior of the Residential Unit are orderly. The Board may have any objectionable items that are visible from the exterior of the Residential Unit removed from the Unit so as to restore the orderly appearance of the exterior of the Unit, without liability therefor, and charge the Residential Unit Owner for any costs incurred in connection with such removal.

4. Prohibition Against Increasing Enclosed Living Area. The initial enclosed living area of any Residential Unit (as such net living area is depicted on the Condominium Map filed herewith) may not be increased except pursuant to the Approved Lanai Enclosure Plans.

5. Prohibition Against Time Share Programs. No Residential Unit or Residential Limited Common Element, or any portion of either, shall be used for the promotion or sale of, or use as, Time Share interests or interests in any other interval ownership, fractional use or joint ownership plan or program, directly or indirectly or for the operation of a tour or activity desk or any other business that directly or indirectly promotes the sale of Time Share interests, or interests in any other interval ownership, fractional use or joint ownership plan or program, including without limitation any so called "vacation license," "residence club membership," "travel club membership" or "time interval ownership" arrangement. The term "**Time Share**" as used herein shall be deemed to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess a Unit or Units in the Project is available to, or rotates among, various persons (whether or not identified) on a periodically recurring or nonrecurring basis, whether according to a fixed or floating interval or period of time or otherwise, and whether by way of deed, lease, association or club membership, license, rental or use agreement, cotenancy agreement, partnership or otherwise, and whether or not the program or arrangement is registered or required to be registered under Chapter 514E, Hawaii Revised Statutes, as amended, or under any successor law.

C. COMMERCIAL DEVELOPMENT.

1. Commercial Use. Subject to the provisions of Section VI.C.2 below, the Commercial Development shall be operated and used for any uses permitted in BMX-3 business mixed use districts under the Honolulu Land Use Ordinance, as amended from time to time, and in compliance with applicable laws.

2. Limitations on Commercial Use. The following are not permitted uses within or of the Commercial Development:

a. Any noise, litter, odor or other activity that may constitute a public or private nuisance;

b. Any unusual firing, explosive or other damaging or dangerous hazard (but specifically excluding the use of fireworks, firecrackers or similar novelty items in tenant store openings);

c. Any dumping, disposal, incineration or reduction of garbage or refuse other than handling or reducing garbage or refuse if produced on the premises from authorized uses and handled in a reasonably clean and sanitary manner;

d. Any laundromat;

e. Any so-called "flea market";

f. Any manufacture, use or storage of any hazardous substances, except in full compliance with all applicable laws, rules and regulations;

g. Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness, except for normal noise incident to the operation of the Commercial Development as permitted herein.

h. Any dust, dirt or fly ash in excessive quantities, but excepting that caused by or resulting from construction or related activities permitted hereunder; or

i. Any business engaged in automobile body and fender work or manufacturing.

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

D. USE OF RECREATIONAL AMENITIES. The Recreational Amenities for the Residential Units will be located on Level 3, 5 and 5A. Except as otherwise provided herein, the Recreational Amenities shall only be used by the Owners and occupants of the Residential Units and their guests and for recreation and leisure activities and any other purposes expressly permissible by this Declaration, the Bylaws and the House Rules; provided that, at no time shall there be any commercial use of the Recreational Amenities to service any person other than a Residential Unit Owner (or such Owner's guests) nor shall the Recreational Amenities contain any third-party independent commercial operation, other than a business that provides services only to Residential Unit Owners and their invitees. Developer intends, but does not represent, warrant or guarantee, that the following amenities and services may be offered as Recreational Amenities to Residential Unit Owners: swimming pool, spa, movie theater, club room, outdoor and indoor children play areas, fitness center, guest suites, dog park, locker rooms, and indoor and outdoor lounge areas. The Association may enter into such agreements as it deems appropriate to provide the Recreational Amenities and services to Residential Unit Owners. 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 described in this Declaration, which may in turn increase or decrease the Residential Class 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 as shown on the Condominium Map and/or offered to Residential Unit Owners, or that Recreational Amenities will be built at all. This section shall not be terminated or amended without the prior written approval of Developer, to the extent permitted by applicable law.

Developer and its guests shall have the reserved right to utilize the Recreational Amenities in the same manner as a Unit Owner in the Project, subject to terms and provisions of this Declaration and the House Rules for a period of ten (10) years from the execution of this Declaration; provided that 1) no more than twenty (20) persons, as periodically designated by Developer, at its discretion, shall be allowed to exercise this use right at any one time and 2) Developer shall pay the Association an equitable fee of three hundred dollars (\$300.00) per year per person designated that year, with the right of substitution, up to the maximum of twenty (20) designee spots at any one time, for use of the Recreational Amenities. This annual use fee shall not be waived once Developer appoints its designees for that year. In order to exercise this right, Developer need not own any Unit in the Project. This right shall not be altered or amended without the prior written approval of Developer, who shall be considered the "Owner" for enforcement purposes.

E. USE OF PARKING STALLS. The Commercial Limited Common Elements and Residential Limited Common Element parking areas shall be used for access, parking and any other purposes permitted by this Declaration, the Bylaws and House Rules, as applicable. The Individual Limited Common Element parking stalls and Residential Guest Parking stalls may only be used by the Residential Unit Owners and occupants of Residential Units, and their guests, respectively, for parking. Any Commercial Limited Common Element parking stalls may only be used by the Commercial Unit Owner and its guests and invitees. The Commercial Limited Common Element parking stalls shall not be used by Residential Unit Owners or their guests for parking while at the Project.

F. USE OF GENERAL COMMON ELEMENTS; NO RIGHT TO OBSTRUCT GENERAL COMMON ELEMENTS, RESIDENTIAL LIMITED COMMON ELEMENTS, OR COMMERCIAL LIMITED COMMON ELEMENTS. Subject to the Developer's Reserved Rights and the Initial Commercial Owner's Reserved Rights, and the express limitations on use set forth herein, each Unit Owner may use the General Common Elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other Unit Owners. Subject to the Developer's Reserved Rights and the Initial Commercial Owner's Reserved Rights and subject to Developer's ability to obstruct such areas during the Development Period, no Residential Unit Owner or occupant may place, store, or maintain on walkways, roadways, grounds, or other General Common Elements, Residential Limited Common Elements or Commercial Limited Common Elements any furniture, packages, or objects of any kind or otherwise obstruct transit through the General Common Elements, Residential Limited Common Elements or Commercial Limited Common Elements. This does not prohibit the Owners of Units from placing goods and other materials on the General Common Elements, Residential Limited Common Elements or Commercial Limited Common Elements when loading or unloading them, or transporting them to a Residential Unit or to a storage area that is a Limited Common Element, provided that any such loading, unloading, and transportation must be completed promptly, nor does it restrict the

Commercial Unit Owners' use of the Commercial Limited Common Elements for commercial activity.

G. USE OF INDIVIDUAL LIMITED COMMON ELEMENTS AND RESIDENTIAL LIMITED COMMON ELEMENTS. Subject to the Developer's Reserved Rights and the Initial Commercial Owner's Reserved Rights, Residential Unit Owners shall have the right to use the Individual Limited Common Elements and Residential Limited Common Elements appurtenant to their Units for any purpose permitted by this Declaration, the Bylaws and the House Rules. Neither the Board nor the Association shall have any right to change the use of or lease or otherwise use any Individual Limited Common Element without the prior written approval of the Owner of the Unit to which such Individual Limited Common Element is appurtenant. Subject to the Developer's Reserved Rights, no lease, license, easement or similar right may be granted over the Residential Limited Common Elements without the approval of the Residential Unit Class. Subject to the Initial Commercial Owner's Reserved Rights, no lease, license, easement or similar right may be granted over the Commercial Limited Common Elements without the approval of the Commercial Unit Class. Subject to Section VI.F, above, Residential Limited Common Element loading and service zones on Level 1 shall be available for use from time to time by the Residential Unit Owners, subject to reasonable rules and regulations that may be promulgated by Developer, the Association and the Commercial Unit Owner, including, without limitation, the requirement for additional security and maintenance during heavy use periods. In no event shall any party be permitted to utilize any Level 1 Residential Limited Common Elements in a manner that unreasonably or materially interferes with the use or operation of the Commercial Development. The Commercial Unit Owner shall have the right to remove or arrange for the removal of any property left within the Level 1 Residential Limited Common Elements which unreasonably or materially interferes with the use or operation of the Commercial Development in violation of Section VI.F above at the sole risk and expense of the owner of such removed property.

H. LAND USE ENTITLEMENTS. The Project is subject to certain restrictions and conditions set forth in the Land Use Entitlements as the same may be amended from time to time. Initial Commercial Owner shall have the right to amend such Land Use Entitlements and related permits without the approval or joinder of any Unit Owner or any other person or entity in accordance with Initial Commercial Owner's Reserved Rights as provided in Sections XXI.C and XXI.D.

I. SEPARATION, COMBINATION OF UNITS; TRANSFER OF INTEREST. Subject to the Developer's Reserved Rights and the Initial Commercial Owner's Reserved Rights, no Residential Owner may partition or separate portions of a Unit or the legal rights comprising ownership of a Residential Unit from any other part thereof, nor shall a Residential Owner combine a Residential Unit with any portion of another Residential Unit; provided that the Owner may consolidate Residential Units pursuant to Section X.B.5. No Residential Owner shall sell, assign, convey, transfer, gift, devise, bequeath, hypothecate or encumber anything other than a single, complete Residential Unit; provided, however, that nothing herein contained shall (1) limit the right of Developer and its successors and assigns to sell Residential Units as contemplated herein, or (2) restrict the manner in which title to Residential Unit may lawfully be held under Hawaii law (e.g., joint tenants, tenants in common, or the like). Every sale,

assignment, conveyance, transfer, gift, devise, bequest, hypothecation, encumbrance or other disposition of a Residential 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 or transfer.

J. ADA COMPLIANCE. To the extent required by law, the Project will be constructed in compliance with Americans with Disabilities Act (42 U.S.C. §§ 12101 et seq.) (“ADA”). All areas required to be ADA compliant, as well as all improvements therein, must at all times comply with ADA, as well as all other laws, ordinances, building codes, rules, regulations, orders and directives of any governmental authority having jurisdiction now or in the future applicable to such ADA areas.

K. NUISANCES. No nuisance shall be allowed which is a source of annoyance to the occupants of Units or which interferes with the peaceful possession or proper use of the Units by its residents or occupants.

L. WEIGHT RESTRICTION. Hard and/or heavy surface floor coverings, including, but not limited to, tile, marble, wood or the like, may not be installed in any part of a Residential Unit without the prior written approval of the Board. Furthermore, the Residential Unit Owner must ensure that a sound control underlayment system which meets a Sound Transmission Coefficient (STC) acoustic standard of 55 or better and an Impact Insulation Criteria (IIC) acoustic standard of 95 or better and which has been approved by the Association is used. The installation of the foregoing insulation materials shall be performed in a manner that provides proper isolation of the flooring materials from any rigid part of the building structure, whether of the concrete subfloor (vertical transmission) or adjacent walls and fittings (horizontal transmission). The Association may require a structural engineer to review certain proposed improvements, with such review to be at the Residential Owner’s sole expense. Residential 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.

M. OPEN HOUSES; ADVERTISEMENTS; SIGNS. Subject to the Developer’s Reserved Rights or other Developer rights set forth herein or Developer’s easement rights set forth in Section IV.C.3, Residential Unit Owners shall not conduct open houses in connection with the sale or leasing of their Residential Units, place advertisements, posters or signs of any kind on the exterior of any Residential Unit, in the windows of a Residential Unit or in the exterior portions of the Individual Residential Limited Common Elements or on any part of the Residential Limited Common Elements, including, without limitation, any “For Sale” or “For Rent” signs. The Commercial Unit shall have the right to affix signs to any portion of the Commercial Unit or Commercial Limited Common Elements provided the same are consistent with first class regional shopping center standards and the First Class Standard. Residential Unit Owners may not place signs on the Commercial Limited Common Elements without the approval of the Commercial Unit Owner.

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

O. PETS. Residential Owners are permitted to keep pets in their Residential Units subject to the limitations set forth in the House Rules; provided, however, that notwithstanding this provision, visually impaired persons, hearing impaired persons and physically and mentally impaired persons shall be allowed to use the services of a “guide dog,” “signal dog,” or “service animal,” as such terms are defined in Chapter 515 of the Hawaii Revised Statutes.

P. HOUSE RULES. Additional use restrictions that are consistent with the Declaration and Bylaws may be set forth in the House Rules; provided that in no event shall the House Rules regulate the use by or behavior of the Commercial Unit Owner or its guests within the Commercial Development, and the House Rules may only regulate use by or behavior of Residential Owners, occupants and guests, in Residential Units and Individual Limited Common Elements appurtenant thereto, the Residential Limited Common Elements, and the Commercial Limited Common Elements to the extent such areas are utilized by Residential Owners. Any such rules and regulations affecting the Commercial Limited Common Elements shall be subject to the approval of the Initial Commercial Owner.

VII. ADMINISTRATION OF PROJECT.

Administration of the Project shall be vested in the Association, consisting of all Unit Owners, in accordance with the Bylaws. Operation of the Project and maintenance, repair, replacement and restoration of the Common Elements, and any additions and alterations thereto, shall be in accordance with the provisions of the Act, this Declaration and the Bylaws including all requirements and limitations set forth in this Declaration and the Bylaws regarding the Residential Units, Commercial Units and the Common Elements. The Project is intended to be 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 First Class Standard, generally perform the following:

1. Make, build, maintain and repair the General Common Elements as set forth in Section XI.A and all Residential Limited Common Elements and Individual Limited Common Elements, including, without limitation, any fences, gates, sewer lines, water lines, utilities, drains, roads, driveways, driveway ramps, curbs, sidewalks, parking areas, landscape areas, and lighting in the Residential Limited Common Elements.

2. Ensure that the expenses for the Residential Limited Common Elements and any General Common Elements are allocated as set forth herein.

3. Keep all Residential Limited Common Elements in a strictly clean and sanitary condition and keep all Residential Limited Common Elements, with all necessary repairs whatsoever, in good order and condition, and repair and make good all defects in the Residential Limited Common Elements herein 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. Not erect or place on the Project any building or structure, including fences and walls, or make material additions or structural alterations to or exterior changes 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 or the Declaration, including, without limitation, the applicable approvals required by Section X.O and Section XII of this Declaration. After starting the improvements or any work thereon, the Association must work diligently to complete them in a timely manner.

5. Before commencing or permitting construction of any improvement on the Project where the cost thereof exceeds five hundred thousand dollars (\$500,000.00), obtain a performance and labor and materials payment bond naming as obligees the Association 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.

6. Observe any setback lines 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.

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

8. Have the right to be exercised by the Board or Managing Agent to enter into any Residential Unit or Residential Limited Common Element appurtenant thereto from time-to-time during reasonable hours as may be necessary for the operation of the Residential Development or at any time for making emergency repairs therein required to prevent damage to any General Common Elements, Units or Residential Limited Common Elements or for the installation, repair or replacement of any portions of the Project for which the Association is responsible.

B. DEVELOPER AND COMMERCIAL UNIT OWNER RIGHTS AND LIMITATIONS. Except as specifically provided herein, the Association shall have all of the powers set forth in Section 514B-104 of the Act; provided, however, that the Association may not impose any fees or charges for the use, rental or operation of the Commercial Limited Common Elements or amend the Declaration in any way that directly or adversely affects the Commercial Unit or the Commercial Limited Common Elements.

The Commercial Unit Owner shall pay and be responsible for the operation, care, upkeep, repair and maintenance of the Commercial Unit and the Commercial Limited Common Elements and the General Common Elements as set forth in Section XI.A, unless otherwise set forth herein or in the Bylaws. The Residential Unit Owners shall pay and be responsible for the operation, care, upkeep, repair and maintenance of their respective Residential Units, the Residential Limited Common Elements and the Individual Limited Common Elements appurtenant to their respective Residential Units, unless otherwise set forth herein or in the Bylaws.

In no event may the Board or the Association regulate or take any action with respect to Capital Upgrades or the operation, care, upkeep, repair or maintenance of the Commercial Limited Common Elements or General Common Elements under the Commercial Unit Owner's care without the approval of the Commercial Unit Owner. 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 Residential Limited Common Elements without the approval of Developer, or the Individual Limited Common Elements without the approval of the affected Residential Unit Owner. Notwithstanding the foregoing, the actions described above may be taken in an emergency situation if and only to the extent necessary to prevent bodily injury or property damage.

The interior and exterior of the Commercial Development shall be operated, repaired and maintained by Commercial Unit Owner, as a Commercial Unit Class Expense, and the Residential Development shall be operated, repaired and maintained by the Association as a Residential Class Expense.

C. CAPITAL UPGRADES OF GENERAL COMMON ELEMENTS. For any instance when maintenance of the General Common Elements is the obligation of the Association and not Initial Commercial Owner under Section XI.A below, whenever in the judgment of the Board such General 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 (i) approved by a Majority of Unit Owners, and (ii) approved by Initial Commercial Owner, the Board shall proceed with such Capital Upgrades and may assess the Owners for the cost thereof as a General Common Expense as set forth in Section XI.A and **Exhibit D**. 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 Unit 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) days' written notice of a special meeting at which actions are approved by an amendment to the budget by the Board, but shall still require

the approval of Initial Commercial Owner. The cost of such Capital Upgrades shall constitute a General Common Expense. The foregoing shall not apply to Operating Expenses, which shall be subject to applicable provisions of the Condominium Documents. This section shall not apply to any Capital Upgrades made by Developer when exercising the Developer's Reserved Rights or by Initial Commercial Owner when exercising the Initial Commercial Owner's Reserved Rights.

D. CAPITAL UPGRADES OF RESIDENTIAL AND COMMERCIAL LIMITED COMMON ELEMENTS. Whenever the Residential Unit Class for the Residential Limited Common Elements and the Commercial Unit Class for the Commercial Limited Common Elements shall require Capital Upgrades to the Residential Limited Common Elements and the Commercial Limited Common Elements, respectively, the Residential Unit Class and the Commercial Unit class shall each proceed with such Capital Upgrades upon majority vote of its class. The cost of the Capital Upgrades shall be a Residential Limited Common Expense or Commercial Limited Common Expense, as applicable. If such Capital Upgrades, if not made, could reasonably result in a threat to the health or safety of the Owners or a significant risk of damage to the Project, then such additions, renovations, replacements, alterations or improvements may be made by the Board without the prior approval of the Unit Owners. The foregoing shall not apply to Operating Expenses which shall be subject to applicable provisions of the Condominium Documents. This section shall not apply to any Capital Upgrades by Developer when exercising the Developer's Reserved Rights or by Initial Commercial Owner when exercising the Initial Commercial Owner's Reserved Rights.

E. EXTRAORDINARY ACTIONS. Although the Board shall generally have broad powers to regulate, govern and manage the Residential Development, 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 not less than eighty percent (80%) of the Residential Unit Owners and the approval of Developer and Initial Commercial Owner, and after the end of the Developer Control Period, without the affirmative vote of not less than a majority of the Residential Owners and the approval of Initial Commercial Owner. 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 Residential Limited Common Elements, commencing or maintaining any litigation, defending an action, filing a counterclaim, mediation or similar proceeding (except for routine Common Expense collection matters, or actions required to enforce the restrictions on use of Units, rules or architectural controls) which would reasonably require the expenditure of funds in excess of two hundred thousand dollars (\$200,000.00) in the aggregate during any fiscal year of the Association and any determinations pursuant to Section 514B-41(c) of the Act and not prohibited by an express provision of this Declaration. However, Extraordinary Actions shall not be deemed to include Capital Upgrades or actions by the Association in connection with Operating Expenses, including the establishment and utilization of reserves for the repair or replacement of General Common Elements.

VIII. MANAGING AGENT.

Fiscal, administrative and physical management of the Residential Development shall be conducted for the Association by a qualified, corporate managing agent who shall be appointed by the Association in accordance with the Bylaws (“**Managing Agent**”). Commercial Unit Owner may appoint a qualified, corporate commercial managing agent or be self managed (in either case, “**Commercial Managing Agent**”) to perform fiscal, administrative, and physical management of the Commercial Development. Commercial Managing Agent and Managing Agent shall cooperate and work together to provide harmonious and seamless management of the entire Project. The Management Agreement shall contain a requirement that Managing Agent operate the Residential Development at a First Class Standard and further provide for the right of the Board to terminate the Management Agreement if the Residential Development is not operated or maintained at such standard by Managing Agent.

IX. SERVICE OF LEGAL PROCESS.

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 Managing Agent, pursuant to the Act.

X. ALTERATION OF THE PROJECT.

A. IN GENERAL. This section applies to the alteration of the Project, except as otherwise provided by the federal Fair Housing Act (42 U.S.C. Sec. 3601 et seq.), as amended by the Fair Housing Amendments Act of 1988, and the rules and regulations adopted under it, as either of them may be amended from time to time and except as otherwise provided in this Declaration. This section does not apply to changes made by Developer when exercising the Developer’s Reserved Rights or to Initial Commercial Owner when exercising the Initial Commercial Owner’s Reserved Rights. Neither the Association nor any Owner may make any structural change or addition to the Common Elements, the Units, or the Limited Common Elements that is 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 Unit Owner must record the amendment along with any necessary changes to the Condominium Map. This section does not apply to “nonmaterial additions and alterations” as that term is used in Section 514B-140 of the Act. Nothing in this section 1) authorizes any work or change by a Residential Unit Owner that would materially change the uniform external appearance of the Project without the approval of the Board; 2) authorizes any work or change by the Board that would materially change the exterior skin of the Project without the approval of Initial Commercial Owner and, during the Developer Control Period, Developer; or 3) prohibits the Board from making or requiring that an Owner make changes within any Unit, Commercial Limited Common Element, Residential Limited Common Element or Individual Limited Common Element as needed to comply with the fire code and all other laws that apply to the Project.

B. BY RESIDENTIAL UNIT OWNERS OR DEVELOPER. Owners of Residential Units are not allowed to change or cause a change to the exterior skin of the Residential Units, or the Residential Limited Common Elements, or Individual Limited Common Elements without the prior written approval of the Board pursuant to Section X.H below. The Association's and the Board's approval of any such change to the exterior skin of any Residential Unit, Residential Limited Common Element or Individual Limited Common Element shall be subject to Initial Commercial Owner's approval as provided in Section X.O below. Developer's exercise of the Developer's Reserved Rights shall not require the approval of the Board.

Each Residential Unit Owner has the right, subject to the terms and provisions in the Condominium Documents and Board approval, which shall not be unreasonably withheld or delayed, to make any of the following changes, additions and improvements solely within the Owner's Residential Unit or within Individual Limited Common Elements that are appurtenant to such Residential Units at the Owner's sole cost and expense:

1. To install, maintain, remove and rearrange non load-bearing partitions and walls from time to time within the perimeter walls of the Residential 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 Residential Unit or Individual Limited Common Element;
3. To make such changes, additions and improvements to the Residential Unit or appurtenant Individual Limited Common Element to facilitate handicapped accessibility within the Residential Unit or Individual Limited Common Element;
4. To enclose the Unit's Individual Limited Common Element lanai area; provided, however, that such enclosure shall only be done pursuant to the Approved Lanai Enclosure Plans; or
5. To consolidate two (2) Residential Units owned by the same Owner, provided that any intervening walls removed are not load-bearing or structural walls, to install doors and other improvements in the intervening wall, to enclose adjacent Potential Individual Limited Common Elements and/or make other reasonable additions. The Residential Unit Owner must ensure that the structural integrity of the Residential Unit, Residential Limited Common Elements, Individual Limited Common Elements and the building will not be adversely affected; the finishes of the remaining Residential Limited Common Element improvements shared with other Unit Owners are restored to substantially the same condition as prior to removal; and all construction activity is completed within a reasonable time.

C. BY COMMERCIAL UNIT OWNER OR INITIAL COMMERCIAL OWNER. In addition to any Initial Commercial Owner Reserved Rights set forth herein and except as set forth below, an Owner of a Commercial Unit and/or Initial Commercial Owner shall have the right to change the exterior appearance of the Commercial Unit, its Commercial

Limited Common Elements and the non load-bearing walls and partitions within the Commercial Unit to change the configuration, size and appearance of entrances and windows, façade and storefronts of the Commercial Unit and its appurtenant Commercial Limited Common Elements without the approval of the Board as follows, provided that the Residential Unit Owners shall retain a right and easement in a location reasonably determined by Initial Commercial Owner and in accordance with the limitations described in Section IV.A.5 to access those portions of the Residential Limited Common Elements located on Level 1, Level 1M, Level 2 and Level 3 of the Project:

1. To install, maintain, remove and rearrange partitions and other walls from time-to-time;
2. To finish, change or substitute any plumbing, electrical or other fixtures attached to the ceilings, floors or walls as appropriate for the use of the Commercial Unit or Commercial Limited Common Elements;
3. To decorate, paint, repaint, wallpaper or otherwise change the appearance of any walls, floors and ceilings of the Commercial Unit or Commercial Limited Common Elements and to add, modify or replace storefronts of any Commercial Unit;
4. To make such changes, additions and improvements to the Commercial Unit or Commercial Limited Common Elements to facilitate handicapped accessibility within the Commercial Unit or Commercial Limited Common Elements; and
5. To make “nonmaterial additions and alterations” as that term is used in Section 514B-140 of the Act. The Initial Commercial Owner’s Reserved Rights include the right to do any or all of these things with respect to any Commercial Unit that Initial Commercial Owner owns or the Commercial Limited Common Elements.

In no event shall any action taken by Initial Commercial Owner pursuant to the Initial Commercial Owner’s Reserved Rights require the approval of the Board when exercising the Initial Commercial Owner’s Reserved Rights.

D. MATERIAL CHANGES TO COMMERCIAL DEVELOPMENT. No material addition or alteration to a Commercial Unit or Commercial Limited Common Element shall require the approval of the Board unless the proposed addition or alteration, as reasonably determined by a majority of the Board, could jeopardize the soundness or safety of the Property, or impair any easement, or directly, substantially and adversely affects the use of an Owner's Unit or appurtenant Limited Common Elements. The Commercial Unit Owner shall provide the Board with written notice of any proposed material additions or alterations to its Commercial Unit or its Commercial Limited Common Elements, together with plans and specifications depicting or showing the proposed addition or alteration. If the Board shall fail to notify the Commercial Unit Owner within thirty (30) days of receipt of such submittal that the approval of the Board is required for such addition or alteration pursuant to this Section X.D, then the proposed additions and alterations will be deemed to have been approved automatically by the Board. If the Board notifies the Commercial Unit Owner within such thirty (30) day period that

the approval of the Board is required for such addition or alteration pursuant to this Section X.D, then the Board shall advise the Commercial Unit Owner (i) of the basis for its determination, and (ii) whether the Board (a) approves of the proposed addition or alteration, (b) disapproves of the proposed addition or alteration, or (c) issues a conditional approval which requires changes to the proposed addition or alteration.

E. SUBDIVISION OF COMMERCIAL UNITS. The Commercial Unit Owner has the right to subdivide the Commercial Unit to create two (2) or more Units, designate which Limited Common Elements of the subdivided Unit will be appurtenant to the Units resulting from the subdivision, and convert parts of the existing Commercial Unit to Commercial Limited Common Element status to facilitate the subdivision. The total of the Common Interest for the newly-created Commercial Units must be equal to the Common Interest of the Commercial Unit that was subdivided. If the Commercial Unit Owner subdivides the Commercial Unit, the Commercial Unit Owner can decide whether one or more than one resulting Commercial Unit will have any special rights or easements of the original Commercial Unit under this Declaration, or it can divide some or all of those rights among the resulting Commercial Units.

F. CONSOLIDATION OF TWO COMMERCIAL UNITS. The Commercial Unit Owner shall have the right to consolidate two (2) Commercial Units owned by the same Commercial Unit Owner, provided that any intervening walls removed are not load-bearing or structural walls, and to install doors, stairways and other improvements in the intervening wall and/or make other commercially reasonable additions. The Commercial Unit Owner must ensure that the structural integrity of the Commercial Unit, Commercial Limited Common Elements and the structure and/or building will not be adversely affected. The finishes of the remaining Commercial Limited Common Element improvements and the structure and/or building, if affected, are restored to substantially the same condition as prior to removal; and all construction activity is completed within a reasonable time. The Common Interest of any newly-created Commercial Unit shall be the aggregate of the two (2) initially separate Commercial Units.

G. BY THE BOARD. Subject to the prior written approval of the Initial Commercial Owner under Section X.Q, which approval shall not be unreasonably withheld, delayed or conditioned, the Board has the right to change the exterior appearance of the Residential Development; provided that the estimated cost of such change shall not exceed two hundred thousand dollars (\$200,000.00). All requests for approval pursuant to this section that are not denied, approved or conditioned within thirty (30) days shall be deemed approved. All requests for such approval must include complete plans and specifications depicting or showing the proposed alteration, addition or improvement. Under no circumstances shall the Board have the right to change the exterior appearance of the Commercial Development.

H. BY OWNERS UPON APPROVAL OF THE BOARD; CONDITIONS TO BOARD APPROVAL. It is intended that the exterior of the Residential Development shall present a uniform and attractive appearance in accordance with the First Class Standard. Accordingly, whenever Board approval is required for any proposed modification, change, addition to or alteration of any Residential Unit or Individual Limited Common Element or Residential Limited Common Element, the Owner must submit a written request for Board

approval, which request must include plans and specifications depicting or showing the proposed alteration, addition or improvement and, in the case of exterior modifications, shall be subject to Initial Commercial Owner approval as set forth in Section X.O below. The Board shall evaluate the plans at a scheduled meeting and decision-making on the request shall be clearly described on the meeting agenda. The Board must respond to a request for approval within forty-five (45) days after it receives the request. The request will be deemed approved unless, within the forty-five (45) day period, the Board either (i) disapproves the request, or (ii) asks the Owner to make changes. 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 appearance of 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, the Board shall not grant its approval. No proposed modification shall be implemented until this approval, notice, challenge and voting procedure is completed. The Board may impose certain conditions upon the Board's approval of any alteration, addition, change, removal or consolidation over which it has approval authority under this section at the Board's sole discretion, including, without limitation the following:

1. The Unit Owner provides evidence satisfactory to the Board that the Owner has sufficient funds in cash or by means of committed financing to fully pay the estimated costs of construction for the contemplated alterations, additions, or consolidation.
2. The Unit Owner provides a copy of the building permit covering the proposed improvement work duly issued by the County and the construction contract.
3. For additions, alterations, and other work the estimated cost of which shall exceed \$500,000.00, the Unit Owner provides a performance bond and a labor and materials payment bond in a face amount equal to one hundred percent (100%) of the estimated cost of the construction, naming the Board on behalf of the Association, the other Unit 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 Unit Owner agrees to indemnify and save harmless the Association, the other Unit 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 Residential Limited Common Element or Individual Limited Common Element.
4. The work is done by a Hawaii licensed architect, engineer, or contractor.
5. Changes to the plans and specifications.
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 shall be allowed or

permitted to remain at the Project 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 alteration, addition 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.

I. UNAUTHORIZED WORK. The Board may inspect the work from time to time. It may require the removal or correction of any work (i) not authorized by the Board, or (ii) that may adversely affect the Residential Limited Common Elements, the Commercial Development, the exterior of the Project, or the rights of any other Unit Owner.

J. CONTRACTOR PARKING. The Owner shall require its contractors, subcontractors and anyone else performing the work, and their agents and independent contractors to park only in the Residential Guest Parking spaces.

K. DEVELOPER'S RESERVED RIGHTS. Notwithstanding the requirements of this section to the contrary, Developer is not required to obtain Board approval when exercising the Developer's Reserved Rights.

L. INITIAL COMMERCIAL OWNER'S RESERVED RIGHTS. Notwithstanding the requirements of this section to the contrary, Initial Commercial Owner is not required to obtain Board approval when exercising the Initial Commercial Owner's Reserved Rights.

M. COMMERCIAL UNITS. Notwithstanding anything in this section, improvements and changes by or on behalf of Initial Commercial Owner shall not be subject to Section VII.4 of the Bylaws.

N. FAÇADE SIGNAGE; COMMERCIAL UNIT OWNERS AND INITIAL COMMERCIAL OWNER. Subject to the approval of the Initial Commercial Owner, the Commercial Unit Owner shall have the exclusive right for the benefit of its Commercial Unit, to install, maintain, repair and replace (from time to time) signs and other displays on the exterior façade of the Commercial Development (individually, a "**Façade Sign**" and collectively, the "**Façade Signs**"), in a size and location as permitted by and subject to any zoning laws and other governmental requirements. The Façade Signs shall be consistent with the First Class Standard and first class regional shopping center standards. Any Commercial Unit Owner who exercises its right to install a Façade Sign pursuant to this section shall be solely responsible for the lighting, installation, maintenance and replacement of its Façade Sign, and liable for the costs and repair of any damage to the Project proximately caused by such installation, maintenance and replacement. At such time that Initial Commercial Owner shall assign such duty in writing to the Commercial Managing Agent, the Commercial Managing Agent may establish and administer any comprehensive sign criteria and shall assume all duties of Initial Commercial Owner relating to Façade Signs, including, without limitation, approval thereof.

O. EXTERIOR MODIFICATIONS. No change or alteration of any nature to the Residential Development which changes the appearance of the design, color treatment and exterior materials used in the construction or reconstruction of the exterior skin of the Residential Development (a “**Residential Modification**”) may be made without the express written approval of the Initial Commercial Owner; provided, however, that such approval shall not be unreasonably withheld, conditioned or delayed. This shall apply to any party (including, but not limited to, Developer, the Association, any Unit Owner or the Board) seeking to commence a Residential Modification. Prior to commencing a Residential Modification, the party seeking to do so shall provide Initial Commercial Owner with detailed plans showing the site layout, exterior elevations, materials and other features of the Residential Modification, as applicable. Any failure by Initial Commercial Owner to approve, disapprove or provide a detailed conditional response within thirty (30) days of its receipt of such plans shall be deemed an approval. Initial Commercial Owner may consider the visual impact, harmony and consistency of external design in the Project and with surrounding structures including, without limitation, Ala Moana Shopping Center, and whether such Residential Modification would interfere with the use or operation of the Ala Moana Shopping Center or any rights granted by easement for the benefit of the owner of the Ala Moana Shopping Center, its tenants and their respective employees, licensees or invitees to use any parking facilities within the Commercial Limited Common Elements.

XI. COMMON EXPENSES; GENERAL COMMON EXPENSES; ALTERNATIVE ALLOCATION; UNIT CLASS EXPENSES; INDIVIDUAL LIMITED COMMON EXPENSES; OTHER COSTS AND EXPENSES.

The Board, acting on behalf of the Association, shall, from time to time, assess the General Common Expenses, if any, against the Commercial Unit and/or all of the Residential Units in accordance with the Alternative Allocations set forth in **Exhibit D**; Unit Class Expenses against all Units in a Unit Class; and all other Limited Common Expenses against the Units to which the Limited Common Elements appertain, in accordance with the Act, this Declaration and the Bylaws. The General Common Expenses, Unit Class Expenses and Limited Common Expenses may be collectively referred to herein as “**Common Expenses**” and include expenditures made by, or financial liabilities of, the Association and/or the Commercial Unit Owner for the operation of the Project and shall also include any allocations to Reserves.

A. GENERAL COMMON EXPENSES AND ALTERNATIVE ALLOCATION. Profits and expenses attributable to the General Common Elements (“**General Common Expenses**”) shall be allocated between the Commercial Unit Class and the Residential Unit Class in accordance with the Alternative Allocations set forth in **Exhibit D**, which allocations are based on a fair and equitable apportionment in accordance with Section 514B-41 of the Act. In determining an equitable and fair allocation of costs, one Unit Class may pay the entirety of a cost for a service shared by both Unit Classes, and in return, the other Unit Class may pay the entirety of a different cost for a different service shared by both Unit Classes, in equity. The General Common Expenses are allocated to each Unit Class in accordance with its respective Alternative Allocation, and to each Unit Owner based on the Unit Class Common Interest set forth in **Exhibit B**. Except as otherwise provided herein, the Unit and its Alternative Allocation shall not be severed from the Unit Class. The Alternative Allocations set forth in **Exhibit D**

shall not be amended without the consent of Developer and Initial Commercial Owner until the end of the Development Period, and, following the termination of the Development Period, the Alternative Allocations shall not be amended without the consent of the Association and Initial Commercial Owner, which consent of the parties shall not be unreasonably withheld or delayed.

Initial Commercial Owner shall be solely responsible for the repair and maintenance of (i) the General Common Element Shared Sewer Connection, and (ii) the General Common Element Shared Structural Elements. The costs and expenses of repairing and maintaining these General Common Elements shall be allocated as described in the Alternative Allocation set forth in **Exhibit D** attached hereto; provided, however, that Initial Commercial Owner shall have no liability whatsoever to any Residential Unit Owner or the Association or other Interested Person for claims or damages: (i) arising from the General Common Element Shared Sewer Connection, including the failure thereof; or (ii) arising from the General Common Element Shared Structural Elements, except if such claims or damages arise out of the gross negligence or intentional misconduct of Initial Commercial Owner in failing to maintain or repair such General Common Element Shared Structural Elements. Initial Commercial Owner shall have the right to transfer to the Association all of its right, title and interest in the General Common Element Shared Sewer Connection, including, but not limited to all rights to use the same, and the Association shall be obligated to accept such transfer. Upon such transfer, the Association shall thereafter be solely responsible for the maintenance and repair of such Shared Sewer Connection.

B. UNIT CLASS EXPENSES. Profits and expenses attributable to the Commercial Limited Common Elements and Residential Limited Common Elements shall be allocated to the appropriate Unit Class based on the Unit Class Common Interest set forth in **Exhibit B** and shall include the General Common Expenses allocated to the Unit Class based on the Alternative Allocation. In addition to the allocated General Common Expenses set forth in **Exhibit D**, Residential Unit Class Expenses shall include all expenses of operation and maintenance of the Residential Development, including reserves, all costs including salary expenses of the Managing Agent and all personnel servicing the Residential Development, and the cost of any Unit used by the resident manager. In addition to the allocated General Common Expenses set forth in **Exhibit D**, Commercial Unit Class Expenses, as determined by the Commercial Unit Owner, shall include all expenses of operation and maintenance of the Commercial Development, including reserves, if any, and the cost of any personnel or Commercial Managing Agent utilized to serve the Commercial Development.

C. INDIVIDUAL LIMITED COMMON EXPENSES. Profits and expenses attributable to Individual Limited Common Elements shall be distributed or charged to the Owner(s) of the Unit(s) to which such Individual Limited Common Elements are appurtenant; provided that the Managing Agent may (a) assess the costs of maintenance and upkeep of certain types of Individual Limited Common Elements (i.e. Individual Limited Common Element parking stalls) as a Residential Unit Class Expense, or (b) may combine the costs of maintenance and upkeep of types of Individual Limited Common Elements and assess such costs equally among the Units to which such Individual Limited Common Elements are appurtenant.

D. CERTAIN VENDOR COSTS; SEPARATE METERS. If any services are provided to or if any costs are incurred for any portion of the Residential Development where the respective direct allocations of such costs between Residential Limited Common Elements and Individual Limited Common Elements are not readily determinable by separate meters or separate billing by vendors, the Board shall request the vendor of the services to segregate the billings as between the Residential Limited Common Elements and Individual Limited Common Elements. If the vendor is unable or refuses or is willing to do so only at a cost not acceptable to the Board, then the allocation between Residential Limited Common Elements and Individual Limited Common Elements shall be assessed based upon an allocation agreed upon by the unanimous approval of the Board. In arriving at such agreement, the Board may engage the services of a professional engineer or other professional to provide its opinion of a fair allocation. If the Board shall not be able to agree on such allocation (a “**Deadlock**”), the matter will be submitted to mediation unless a majority of the Board otherwise agrees. In the event of a Deadlock, any Board member may initiate mediation to resolve the Deadlock by providing written notice of such desire to each Board member. The Board member and the other Board members shall have a period of twenty (20) calendar days following the date notice is given to agree on a single mediator who shall be a professional engineer or other professional to resolve the Deadlock, and if they fail to reach an agreement within said twenty (20) day period, then the parties to the Deadlock may proceed to litigation. The costs of the mediation shall be a Residential Class Common Expense. Each party to the litigation shall bear its own costs of litigation.

E. OTHER EXPENSES. All charges, costs and expenses incurred by the Association which are necessitated by the negligence, misuse or neglect of any Unit Owner or occupant or any person under either of them, including without limitation, any deductibles under any Association insurance policy payable in connection with any insurance claim made by the Association to cover any resulting losses or damages, may be charged to such Unit Owner or the Owner of the Unit of such occupant, as a Special Assessment. No Unit Owner shall be exempted from liability for the Owner’s contribution toward the General Common Expenses or any applicable Limited Common Expenses by waiver of the use or enjoyment of any of the General Common Elements or the Limited Common Elements appurtenant to the Owner’s Unit or by abandonment of the Owner’s Unit.

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

G. COLLECTION OF ASSESSMENTS. Except as provided herein, when the Lender or other purchaser of any Unit acquires title to such Unit as a result of the remedies provided in a Paramount Mortgage, foreclosure of the Paramount 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 General Common Expenses, Unit Class 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 specified in Section 514B-146(g) of the Act against a mortgagee or other purchaser who purchased a Unit in a judicial or nonjudicial power of sale foreclosure: (i) the unpaid share of General Common Expenses shall be deemed General Common Expenses collectible from all of the Unit Owners, including such Lender or such other purchasers of a Unit and their respective heirs, devisees, personal representatives, successors and assigns, (ii) the unpaid share of Unit Class Expenses shall be deemed collectible from all of the Unit Owners in the particular Unit Class, including the purchasing Lender or other purchasers of a Unit within such Unit Class and their respective heirs, devisees, personal representatives, successors and assigns, and (iii) the unpaid share of all other Limited Common Expenses shall be deemed collectible from all of the Unit Owners to which such Limited Common Expenses are applicable, including the purchasing Lender or other purchasers of a Unit to which such Limited Common Expenses are applicable and their respective heirs, devisees, personal representatives, successors and assigns.

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

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

I. INTEREST IN COMMON EXPENSE FUNDS NOT SEPARATELY ASSIGNABLE. The proportionate interest of each Unit 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 the Owner's Unit even though not expressly mentioned or described in the conveyance thereof. In case the condominium property regime hereby created shall be terminated or waived, the capital contributions, custodial fund or maintenance reserve fund with respect to the Residential Development remaining after full payment of all Common Expenses of the Residential Unit Owners shall be distributed to all Residential Unit Owners in

accordance with their respective Unit Class Common Interest, and custodial fund or maintenance reserve fund with respect to the Commercial Development remaining after full payment of all Common Expenses of the Commercial Unit Owner shall be distributed to the Commercial Unit Owner in accordance with its Unit Class Common Interest, except to the extent any Units are reconstituted as part of a new condominium property regime.

XII. INSURANCE.

A. INSURANCE GENERALLY. The Association shall obtain and maintain the insurance covering the Residential Development required by this section with the exception of the insurance coverage to be obtained by the Unit Owners pursuant to Section XII.B.3 and Section XII.F below. The Initial Commercial Owner shall obtain and maintain (i) the property insurance for the General Common Element Shared Structural Elements, (ii) The General Common Element Shared Sewer Connection (until such time as the responsibility for maintaining the same is transferred to the Association pursuant to Section XI.A above, at which time the Association shall assume responsibility for insuring such General Common Element Shared Sewer Connection), and (iii) such other insurance as it deems commercially reasonable covering the Commercial Development. The cost of the property insurance for the General Common Element Shared Structural Elements shall be assessed in accordance with the Alternative Allocation provided in **Exhibit D** attached hereto.

Each policy required hereunder for the Residential Development may be separate, or the Association can buy one or more commercial package policies. 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 covering the Residential Development.

2. Qualified Insurance Companies. All insurance required for the Residential Development by this Declaration, except for (i) federal flood insurance and other government insurance programs, and (ii) insurance which is not available, or not available at a reasonable price, from a company licensed in Hawaii, must be provided by insurance companies licensed to do business in the State of Hawaii. Each insurance company must have a financial rating of A-VII or better according to Best's Insurance Report. If the insurance cannot be obtained from a company having that rating, or if the Board decides that the cost is too high, then the Association may buy the insurance from any financially sound company of recognized responsibility.

3. Additional Insurance. The Board has the right and power to increase coverage or to obtain better terms than those stated in this section if the Board decides that it is necessary or is in the best interests of the Association. The Board may also buy other kinds of insurance even if they are not described in this Section 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, the amount of the 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. 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. 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 was guilty of intentional misconduct. Likewise, none of Developer, Commercial Unit Owner or Managing Agent will be liable except for their gross negligence or intentional misconduct regarding any decisions regarding insurance.

7. Inspection and Copies of Insurance Policies. Any Residential Unit Owner (and anyone having executed a contract to buy a Residential Unit) may inspect copies of the Association's insurance policies at the office of 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. The Board shall provide a copy of any policy to the Commercial Unit Owner free of charge.

8. Notice of Changes in Insurance. The Association must send notice to the Owners if:

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

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

The Association must send any notice required by this section by first-class mail and it must do so as soon as reasonably possible.

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

1. Who is Insured. The Policy must name the Association, as trustee for all Residential Unit Owners, and any Lenders of Residential Unit Owners, as the insured. Developer must also be named as an insured during the Development Period.

2. Required Coverage. Except for those items set forth in Section XII.B.3 below which are required to be covered by a Unit Owner, the Policy must insure all elements of the Residential Development and all common personal property belonging to the Association. The Policy must be in a total amount not less than the full replacement cost of the insured property with no co-insurance, less deductibles in amounts that are commercially reasonable for property similar in size and quality to the Residential Development, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date. Replacement cost shall be evaluated and updated, at a minimum, annually and at the time of each renewal. The Policy shall not cover any improvements and betterments or personal property in the Commercial Development, the cost of replacement of which shall be the sole responsibility and expense of Commercial Unit Owner. The Policy does not have to cover land, foundation, excavation and other items normally excluded from such coverage.

3. Unit Owner Hazard Coverage Required.

a. Each Residential Unit Owner is solely responsible, at its sole expense, for obtaining and maintaining a personal home insurance policy of Type HO-6 or an equivalent policy that provides customary coverage for liability and for such Unit Owner's personal property, improvements and betterments, and other portions of the Residential Unit that are not covered under the Policy.

b. Commercial Unit Owner is responsible, at its sole expense, for obtaining and maintaining insurance coverage for personal property, improvements and betterments, and other items within such Commercial Unit and such insurance policy may include business interruption coverage for loss of rents, as applicable.

c. In addition to the insurance obtained in this Section XII.B.3, the Commercial Unit Owner may purchase, for its benefit, supplemental all-risk of physical loss insurance coverage insuring the Commercial Unit and the Commercial Limited Common Elements, the proceeds of which shall be paid to, for the exclusive use of, and administered by the Commercial Unit Owner. Notwithstanding such coverage, the Policy shall remain the primary insurance for those matters required to be insured pursuant to Section XII.B.2 above and the liability of carriers issuing the Policy shall not be affected or diminished by reason of any such insurance obtained by Commercial Unit Owner.

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

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” usually insures against these risks: fire, lightning, windstorm, hail, smoke, explosion, civil commotion, riot and riot attending strike, aircraft and vehicle damage, vandalism, sprinkler leakage, sinkhole collapse, volcanic action, breakage of glass, falling objects, water damage, collapse of structure and direct physical loss. If the Project’s location is in an area prone to earthquakes or hurricanes, the Association must also buy earthquake and/or hurricane insurance if it is available at a reasonable cost.

5. Additional Coverage. The Policy must contain an agreed amount endorsement or waive any co-insurance requirement.

6. Required and Prohibited Provisions. Unless the Board decides the cost is unreasonably high, the Policy 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, 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) days in advance. The insurance company must send the notice to the Board and 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, Managing Agent, Developer, 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 Unit 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 Unit 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 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 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 occupant will not release the insurance company from its duties to the Lender;

(iv) Provide that the insurance company waives:

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

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

(c) any right to contribution from the Lender.

h. The Policy must provide that if there is a loss to the Project and a single payment by the insurance company exceeds two hundred thousand dollars (\$200,000.00), then the money must be paid to the Insurance Trustee. The Insurance Trustee shall be required to make the proceeds of the Policy available pursuant to the provisions of Section XIII.A and Section XIII.D. The Policy must also require that the insurance company recognize the insurance trust agreement referred to in Section XIII.H. Whenever insurance proceeds are deposited with an Insurance Trustee, the Association must promptly notify each Lender listed in the Association’s record of ownership.

C. FLOOD INSURANCE. If the Project is located in a special flood hazard area as delineated on flood maps issued by the Federal Emergency Management Agency, then 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. The amount of coverage under the policy must be equal to the lesser of eighty percent (80%) of current replacement cost or two hundred fifty thousand dollars (\$250,000.00) per Unit.

D. LIABILITY INSURANCE. The Board must buy and keep in effect commercial general liability insurance and, if necessary, commercial umbrella 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 Residential Unit Owners, the Board, the Association, Managing Agent and, during the Development Period, Developer and its Representatives against claims for personal injury, bodily injury, death and property damage. The Liability Policy must name Residential Unit Owners and their Representatives as additional insureds and the policy must contain a waiver of subrogation against the Unit Owners and their Representatives. To evidence compliance with this requirement, the Board will obtain a certificate of insurance and provide a copy to the Commercial Unit Owner. During such time that Developer is a Unit Owner, the liability policy must name as additional insureds Developer and such additional insureds as Developer shall direct from time to time and the Representatives of all of the foregoing. To the extent commercially reasonably available, the certificate shall also provide that not less than thirty (30) days' notice of cancellation or decrease in coverage shall be given to the Commercial Unit Owner.

2. Required Coverages. The Liability Policy limits must not be less than ten million dollars (\$10,000,000.00) (which can be provided by any combination of primary and umbrella coverage) for personal injury, bodily injury, and death, and two million dollars (\$2,000,000.00) for property damage. The Liability Policy shall have deductibles in amounts that are commercially reasonable for property similar in size and quality to the Residential Development. The Liability Policy should provide coverage for bodily injury (including death) and property damage that results from the operation, maintenance or use of the Residential Limited Common Elements and, if applicable, commercial vehicle liability (owned and non-owned exposure) with the limits set forth in this Section XII.D.2.

3. Required and Prohibited Provisions. Unless the Board decides the cost is unreasonably high, the Liability policy must provide as follows:

a. The Liability Policy must not limit or prohibit any Unit 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, Managing Agent, Developer, the Board, Unit 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 against the Association, the Board, Managing Agent, Developer, Owners and any of their Representatives.

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

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

f. The Liability Policy must not permit the insurance company to cancel or substantially change the Liability Policy or the coverage (whether or not asked by the Board) unless the insurance company gives written notice of the cancellation or change at least thirty (30) days in advance. The insurance company must send the notice to the Board (Association). The Board will send a copy to every Lender, Managing Agent, and, during the Development Period, Developer 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 called the "**D&O Policy**." The Board will choose the D&O Policy limits from time to time. 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 pay for any expense actually and reasonably incurred. This includes, but is not limited to, attorneys' fees, court costs, and payment of any judgments, fines and settlements. The Board may decide to buy insurance to cover circumstances where direct reimbursement is not required by law.

F. RESIDENTIAL UNIT LIABILITY AND OTHER INSURANCE. A Residential Unit Owner who operates a home-based business in the 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 shall be named as an additional insured on such policy. Commercial Unit Owner is also responsible for obtaining (i) a commercial general liability policy with coverage that is customary for operations of its size and character; (ii) worker's compensation insurance covering all personnel employed by such Commercial Unit Owner as may be required by applicable law; and (iii) during any period in which significant construction, alteration, repairs or reconstruction are being undertaken by Commercial Unit Owner, builder's risk insurance covering the total completed value including any "soft costs" with respect to the improvements being constructed, altered, repaired or reconstructed (on a completed value, non-reporting basis) by Commercial Unit Owner, replacement cost of work performed and equipment, supplies and material furnished in connection with such construction or repair of improvements or equipment, together with such "soft cost" endorsements and such other endorsements as the Board may reasonably determine, and commercial general liability, workers' compensation and automobile liability insurance with respect to the services provided by the contractor. The Association shall be named as an additional insured on all such policies and the Commercial Unit Owner shall, promptly upon request, provide the Board with a certificate evidencing the required coverage. The Association shall be entitled to receive at least thirty (30) days' prior notice before the termination or material change of any such policy. **FAILURE TO REQUEST OR VERIFY INSURANCE DOES NOT RELIEVE ANY UNIT OWNER OF THESE INSURANCE REQUIREMENTS.**

G. FIDELITY INSURANCE. To the extent reasonably available, blanket fidelity 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 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 Managing Agent obtains for its personnel, all other fidelity insurance policies shall name the Association as the insured and should have their premiums paid as a Residential Unit Class Expense. Fidelity insurance obtained by Managing Agent shall name the Association as an additional insured. The total amount of fidelity coverage required shall be sufficient to cover the maximum funds (including reserve funds) that will be in the custody of the Association or Managing Agent at any time while the fidelity insurance policy is in force, but must at least equal the sum of three (3) months' aggregate Assessments on all Residential Units within the Residential Development plus any reserves. 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 cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association, any Insurance Trustee and all Eligible Mortgage Holders.

H. SUBSTITUTE INSURANCE COVERAGE. Any insurance coverage specified in this Section XII for the Residential Development 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, the Board shall substitute such other insurance coverage as is acceptable to institutional lenders for units in projects similar in construction, location and use.

I. INSURANCE PRIOR TO FIRST USE AND OCCUPANCY PERMIT. Notwithstanding anything in this Section XII, prior to the issuance of the first use and occupancy permit for a Residential Unit, the insurance requirements specified in this Section XII shall not be applicable and insurance coverage shall be reasonably determined by Developer.

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

NEGLIGENCE, SUBJECT TO ANY LIABILITY UNDER SECTION 514B-143(D) OF THE ACT.

XIII. INSURED DAMAGE OR DESTRUCTION.

This Section 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 Section XIII. In this Section 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 (i) the Board and any Lender holding a Mortgage in a Residential Unit directly affected thereby and in compliance with Section XXI of this Declaration, as to the Residential Development, and (ii) Initial Commercial Owner and any Lender of Initial Commercial Owner as to the Commercial Development.

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

B. DAMAGE TO RESIDENTIAL LIMITED COMMON ELEMENTS. The Board shall hire one or more contractors to repair or rebuild all damaged Residential Limited Common Elements. The Residential Limited Common Elements shall be rebuilt or repaired 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 Residential Limited 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, the Association as required by the Condominium documents and any Lender having a Mortgage on any Residential Limited Common Element that is directly affected.

1. Use of Proceeds if Unit Not Repaired or Rebuilt. It is possible that the modified plans and specifications will not provide for rebuilding or repairing a particular Residential Unit or its Residential Limited Common Elements. Also, if applicable law or this

Declaration allows it, the Association may decide not to rebuild or repair a particular Residential Unit or its Residential Limited Common Elements. In either case the Association or the Insurance Trustee will use the insurance proceeds as follows:

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

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

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

D. DISBURSEMENT OF INSURANCE PROCEEDS. The Association or the Insurance Trustee will pay the cost of the work (as estimated by the Board) from time to time or at the direction of the Board as the work progresses. If the Board designates an Insurance Trustee, then the Insurance Trustee will make payment only if these conditions are met:

1. A Hawaii-licensed architect or engineer (who may be an employee of the Board) must be in charge of the work.

2. Each request for payment must be given to the Insurance Trustee at least seven (7) 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 for payments by the Board or Developer to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons providing services or materials for the work (giving a brief description of those services or materials), and

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

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

a. Be satisfactory to the Insurance Trustee, and

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

4. Each request must include a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Insurance Trustee, that any mechanic's or materialman's lien filed in the First Circuit Court of the State of Hawaii with respect to any part of the work has been discharged of record or will 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 Residential Unit.

6. The fees and expenses of the Insurance Trustee, as agreed by the Board and the Insurance Trustee, are a Residential Unit Class Expense to be paid by each Unit Owner according to its Residential Unit Class Common Interest. The Insurance Trustee may pay these fees and expenses from any proceeds it holds from time to time.

7. The Insurance Trustee may establish any other reasonable conditions to payment that are not inconsistent with the conditions listed in this Section XIII.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 Residential Unit Owners and their Lenders in proportion to their Residential Class 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 Developer, Managing Agent, the Association, or any of their respective Representatives or against Initial Commercial Owner or any Unit Owner (except for any Special Assessment charged under Section XIII.C) or any person under any of them. To the extent that any loss, damage or

destruction to the property of any Unit Owner or anyone under the Unit 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, Managing Agent, Initial Commercial Owner, or any other Unit Owner, or any person under any of them, or any of their respective Representatives.

G. RESTORATION. In the event of an insured casualty or loss of all or any part of the Project, the Project or such portion thereof will be repaired, rebuilt and restored as provided in this Section XIII and no percentage of the Common Interest is required to approve the rebuilding, repairing or restoring the Project.

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

XIV. CONDEMNATION.

A. CONDEMNATION TRUSTEE AND CONDEMNATION PROCEEDINGS. In case at any time or times the Project, or any part thereof, shall be taken or condemned by any authority having the power of eminent domain, or shall be sold to such authority under threat of condemnation, all compensation and damages for or on account of any Common Elements of the Project shall be payable to such bank or trust company (the “**Condemnation Trustee**”) authorized to do business in Hawaii as the Board shall designate as trustee for Developer, Initial Commercial Owner, as their interests may appear and all Unit Owners and Lenders according to the loss or damage to their respective Units and appurtenant Common Interests. Each Residential Unit Owner shall be represented in any condemnation proceedings by the Association, including settlement negotiations and decisions and shall be deemed to give the Association a power of attorney to represent the interests of the Residential Units and their Owners in such proceedings and settlements. Developer and Initial Commercial Owner may elect to be represented by the Association with respect to the Units owned by them or to represent themselves in the condemnation proceedings and settlement negotiations. Developer or Initial Commercial Owner may each also elect to represent itself with respect to its Reserved Rights Interest (defined in Section XIV.B below) in the condemnation proceedings and settlement negotiations.

B. ALLOCATION OF CONDEMNATION PROCEEDS. In the event all or any of the Units are taken and there is no final judicial determination of the amount of condemnation proceeds allocable to each Unit so taken and allocable to Developer's Reserved Rights or Initial Commercial Owner's Reserved Rights (each a "**Reserved Rights Interest**"), then the amount of the condemnation proceeds allocable to the respective Reserved Rights Interests and each Unit (including the Unit's appurtenant interest in the Common Elements) shall be determined by the real estate appraiser or appraisers who shall have acted on behalf of Developer or Initial Commercial Owner, respectively, and/or the Unit Owners in the condemnation proceedings and the determination by such single appraiser or a majority of such appraisers if more than one shall determine the amount of condemnation proceeds allocable to each Unit and to the respective Reserved Rights Interests. If Developer or Initial Commercial Owner elected to have the Association represent them in the condemnation proceedings, then for purposes of deciding the allocations pursuant to this section, the Association shall be entitled to appoint two appraisers and Initial Commercial Owner and Developer shall each be entitled to appoint a single appraiser and the amount of condemnation proceeds allocable for each Unit taken and the Reserved Rights Interest shall be determined not counting the highest and lowest appraisal allocations for each Unit taken and the Reserved Rights Interests and averaging the remaining allocated amounts.

C. CONDEMNATION OF ENTIRE PROJECT. If the entire Project is taken, the Condemnation Trustee shall pay each Unit Owner and Lender, as their interests may appear, the portion of the condemnation proceeds determined in the above manner.

D. PARTIAL TAKING. In the event of a partial taking of the Project in which (i) any Unit is physically eliminated, or (ii) a portion thereof is eliminated and the remaining portion cannot be repaired or rebuilt in a manner satisfactory to the affected Unit Owner, then such Unit shall be removed from the Project and the Condemnation Trustee shall disburse to the Unit Owner and any Lender of such Unit, as their interests may appear, in full satisfaction of their interest in the Unit, the portion of the proceeds of such award allocable to such eliminated or removed Unit after deducting the proportionate share of such Unit in the cost of debris removal, and the Unit Owners shall amend this Declaration to reflect the removal of said Unit(s) and to adjust the Common Interests appurtenant to the remaining Units by assigning to each remaining Unit, pro rata based upon Common Interest, the Common Interests originally assigned to the removed Unit(s) so that the aggregate percentage interests of all remaining Units equals 100%. In the event that such an assignment of Common Interests to each Unit is not possible or will not equal 100% in the aggregate, minor adjustment(s) to the Common Interests appurtenant to one or more Units shall be equitably made so that the aggregate Common Interests equal 100%.

In the event of any partial taking of any of the Common Elements of the Project, the Board (as to the Residential Development) or the Initial Commercial Owner, with the consent of any Lender of Initial Commercial Owner (as to the Commercial Development) shall arrange for any necessary repair and restoration of the Improvements remaining after the taking in accordance with the design thereof immediately prior to such condemnation or, if repair and restoration in accordance with such design are not permissible under applicable laws and regulations then in force, in accordance with such modified plan as shall be first approved by the Board (as to the Residential Development) or the Initial Commercial Owner (as to the

Commercial Development), and the Lender of record of each Unit in the Project remaining after such taking. If the sums held by the Condemnation Trustee are insufficient to pay the cost for such repair and restoration, then (i) as to the Residential Development, the Board shall pay such excess as a Residential Unit Class Expense, and if necessary shall levy a Special Assessment against the Residential Unit Owners; (ii) as to the Commercial Development, the Initial Commercial Owner shall pay such excess.

If the sums received as a result of a partial condemnation exceed the total of any amounts payable to the Owner and Lender of a removed Unit and the amount of costs for debris removal and for repair and restoration of the remaining buildings and improvements, such excess shall be divided among the Unit Owners including the Owners of any eliminated Units in accordance with the allocation of condemnation proceeds set forth in Section XIV.B above.

Unless restoration or replacement is undertaken within a reasonable time after such taking, condemnation or sale, the Association as a Common Expense shall remove all remains of such improvements on the remaining land and restore the site thereof to good orderly condition and even grade.

E. ADJUSTMENT OF UNIT CLASS INTERESTS. If a Residential Unit is not rebuilt, the Common Interest and any Alternative Allocation and Unit Class Interest for such Residential Unit shall be allocated pro rata in accordance with Section XV.B to the remaining Residential Units. If a Commercial Unit is not rebuilt, the Common Interest and any Alternative Allocation and Unit Class Interest for such Commercial Unit shall be allocated pro rata in accordance with Section XV.B to the remaining Commercial Units.

XV. UNINSURED DAMAGE; DECISION NOT TO REPAIR.

In the event of an uninsured casualty or loss of all or any part of the Project, the percentage of the Common Interest required to approve or disapprove the rebuilding, repairing or restoring of the Project is as follows. Unless the Association decides pursuant to Section XV.A below, not to repair, rebuild or restore, then the Project shall be repaired, rebuilt or restored as provided below. Notwithstanding the foregoing, if the Project is to be repaired, rebuilt or restored pursuant to the provisions of this Section XV, in the event of a material casualty or loss to the Commercial Development, the Initial Commercial Owner, with the consent of any Lender of Initial Commercial Owner, shall have the right to elect not to rebuild the Commercial Development, in which event: (i) notwithstanding Section XV.C.3 below, the Initial Commercial Owner (and any subsequent Commercial Unit Owner) will not have any obligation to pay any of the cost to rebuild, repair or otherwise restore the Project; and (ii) all of the rights of the Initial Commercial Owner (and any subsequent Commercial Unit Owner) in the Project under this Declaration shall terminate at that time and be of no further force and effect.

A. DECISION NOT TO REBUILD. The Association may decide at a meeting duly held not to repair, rebuild or restore the improvements. The Association may only make this decision by the affirmative vote of Unit Owners holding no less than sixty-seven percent (67%) of the Common Interests and their respective Lenders and the approval of Initial

Commercial Owner. The meeting must be held within ninety (90) days after the damage or destruction occurs.

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

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 General Common Elements, if any, will be assessed as a Common Expense among the Residential Units and the Commercial Unit in accordance with the Alternative Allocation set forth in **Exhibit D**, or in the alternative, in accordance with their Common Interests if no Alternative Allocation is set forth.

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

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

4. Any restoration or repair of the Project shall be performed substantially in accordance with 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, as to the Residential Development, and by Initial Commercial Owner, as to the Commercial Development, and by Developer during the Development Period, and any Lender holding a Mortgage on a Unit directly affected thereby, and in compliance with Section XXI of this Declaration.

XVI. AMENDMENT OF DECLARATION.

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

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 in nature shall be effective without the written approval of Owners of Residential Units that are subject to mortgages held by Eligible Mortgage Holders and to which are appurtenant no less than fifty-one percent (51%) of the Residential Unit Class Common Interest and, if such change materially affects the Commercial Development, the written approval of (i) Owners of Commercial Units that are subject to mortgages held by Eligible Mortgage Holders and to which are appurtenant no less than fifty-one percent (51%) of the Commercial Unit Class Common Interest and (ii) their 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 Residential Limited Common Elements;
- d.** responsibility for maintenance and repairs;
- e.** reallocation of interests in the Common Elements and/or Limited Common Elements, or rights to their use;
- f.** redefinition of any Residential Unit boundaries;
- g.** convertibility of Residential Units to Residential Limited Common Elements or Residential Limited Common Elements to Residential 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 Residential Units;
- k.** imposition of any restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Unit;
- l.** a decision by the Association to establish self-management if professional management had been required previously by the Condominium Documents or by an Eligible Mortgage Holder;
- m.** restoration or repair of the Project (after damage or partial condemnation) in a manner other than specified in the Condominium Documents; or

n. any provisions that expressly benefit mortgage holders, insurers, or guarantors.

2. Alteration of a Unit. If any change to a Unit materially changes the depiction of a particular Unit or Units on the Condominium Map or the description of it in the Declaration, then the Owner or Owners of the Unit(s) must amend this Declaration and/or the Condominium Map to reflect the change. The amendment will take effect when it is filed in the Land Court, subject to the following:

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

3. Redesignation of Assigned Parking Stalls, Storage Rooms and/or Storage Lockers Between Residential Unit Owners. Any Residential Unit Owner (including Developer) may redesignate and/or exchange an Individual Limited Common Element parking stall, storage room or storage locker that is assigned to such Unit Owner's Unit to another Residential Unit owned by the same Residential Unit Owner or to another Residential Unit Owner with the approval of the other Residential Unit Owner. The transfer shall be executed and filed in the Land Court as an amendment to this Declaration and the amendment need only be executed by the Owner of the Unit whose Individual Limited Common Element is being transferred and the Owner of the Unit receiving the Individual Limited Common Element, if not the same Owner, subject to any required approval of Lenders or lessors. The transferring Owner(s) must promptly deliver to the Association a copy of the filed amendment.

4. Alteration of the Commercial Development. The Commercial Unit Owner shall have the right to amend this Declaration to alter the Commercial Development in the exercise of its rights set forth in this Declaration without the consent or joinder of Developer, the Association or any of the Residential Unit Owners; provided, however, that in no event shall any such alteration affect the Common Interest allocation as between the Residential Units and the Commercial Unit or impair the structural integrity of the Project or be inconsistent with the First Class Standard.

5. No Impairment or Diminishment of Developer or Initial Commercial Owner Rights or Increase of Obligations. Notwithstanding any provision of this Declaration to the contrary, notwithstanding the sale of any Units, and in addition to such other approval requirements as are set forth in this section, the prior written approval of Developer or Initial Commercial Owner, respectively, (with the consent of any Lender of Initial Commercial Owner as to Initial Commercial Owner rights or obligations), will be required before any amendment that would impair or diminish the rights of, or increase the obligations of, Developer or Initial Commercial

Owner, respectively. Without limiting the generality of the foregoing, the following actions impairing or diminishing the rights of Developer or Initial Commercial Owner shall first be approved in writing by Developer or Initial Commercial Owner, respectively, (with the consent of any Lender of Initial Commercial Owner as to Initial Commercial Owner rights or obligations):

a. Lender Approval. Any amendment or action requiring the approval of Lenders pursuant to this Declaration;

b. Reduction 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 Residential Unit Owners;

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

e. Reserved Rights of Developer. Any modification of the rights reserved and granted to Developer set forth herein. No amendment to this Declaration shall negate or adversely impact any of the rights reserved or granted to Developer without the prior written approval of Developer.

f. Reserved Rights of Initial Commercial Owner. Any modification of the rights reserved and granted to Initial Commercial Owner set forth herein. No amendment to this Declaration shall negate or adversely impact any of the rights reserved or granted to Initial Commercial Owner without the prior written approval of Initial Commercial Owner and the consent of any Lender of Initial Commercial Owner.

B. BY DEVELOPER.

1. Prior to Project Commencement. This Declaration may be amended by Developer at any time prior to the closing of the sale of the first Residential Unit in the Project, provided that any amendment authorized by this section shall be evidenced by an instrument in writing, signed and acknowledged by Developer and Initial Commercial Owner, unless otherwise set forth in this Declaration.

2. Exercise of Reserved Rights. Notwithstanding anything in this section to the contrary, the Developer's Reserved Rights includes the right of Developer, without the approval of any other Person, to change the Condominium Documents.

3. Amendment to File "As-Built" Statement. Notwithstanding any provision of this Declaration to the contrary and notwithstanding the sale of any of the Units, Developer, without the approval of any Owner, lienholder or other person, may amend this Declaration to file the "as-built" verified statement (with plans, if applicable) required by Section 514B-34 of the Act, so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed fully and

accurately depict the layout, location, Unit numbers and dimensions of the Units substantially as built, or, so long as 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 and Lender Requirements and Correction of Errors. Notwithstanding any provision of this Declaration to the contrary and notwithstanding the sale of any of the Units, Developer, 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 state or country in which Developer intends to market or sell Units; (b) to comply with any requirements that may reasonably be imposed by any takeout, permanent or secondary market lender, including, but not limited to, any institutional mortgage 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 Fair Housing Amendments Act of 1988, as amended; (d) to comply with the requirements of the Federal Consumer Financial Protection Bureau (agency that oversees the Interstate Land Sales Full Disclosure Act); and (e) 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 this Section XVI.B.4 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 holders or insurers of first mortgages on Units shall require the written approval of Eligible Mortgage Holders with respect to Residential Units to which at least fifty one percent (51%) of the Residential Unit Class Common Interest are appurtenant and with respect to Commercial Units to which at least fifty one percent (51%) of the Commercial Unit Class Common Interest are appurtenant, together with such other approvals as may be required in this Section XVI; provided, however, that any mortgage holder shall be deemed to approve any proposed amendment to this Declaration where said Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives written notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt."

C. AMENDMENTS BINDING. Any amendment made pursuant to the provisions of this Section XVI shall be binding upon every Owner and every Unit whether the burdens thereon are increased or decreased, and such amendment shall be effective upon its filing in the Land Court.

D. LIMITATIONS ON AMENDMENTS. Notwithstanding anything stated to the contrary in the Condominium Documents, all amendments to the Condominium Documents shall be subject to the following:

1. No amendment to the Condominium Documents affecting any of the Commercial Limited Common Elements or the Residential Limited Common Elements shall be effective without the approval of the Owner or Owners of the Unit or Units to which the Commercial Limited Common Elements or the Residential Limited Common Elements, respectively, are appurtenant, and the consent of any Lender of Commercial Unit Owner with regard to amendments affecting the Commercial Limited Common Elements. This restriction shall not be amended without the approval of Developer, as to Residential Limited Common Elements, or of Initial Commercial Owner and any Lender of Initial Commercial Owner, as to Commercial Limited Common Elements. Until the end of the Developer Control Period, no amendment to the Condominium Documents affecting any of the Residential Limited Common Elements shall be effective without the written approval of Developer.

2. Any amendment to the Condominium Documents to prohibit or materially restrict the use or occupancy of, or behavior within a Commercial Unit or Commercial Limited Common Element shall be subject to the approval of the Commercial Unit Owner and any Lender of the Commercial Unit Owner.

3. No Amendment to the Condominium Documents may remove, revoke, modify or amend any of the rights, reservations, easements, interests, exemptions privileges or powers uniquely, expressly and specifically provided to the Commercial Unit Owner under the Condominium Documents without the prior written approval of the Commercial Unit Owner and any Lender of the Commercial Unit Owner.

This Section XVI.D may not be amended without the prior written approval of (i) Developer, during the Developer Control Period, (ii) Initial Commercial Owner and (iii) any affected Lenders.

XVII. TERMINATION.

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 (i) Developer, during the Developer Control Period, (ii) Initial Commercial Owner, (iii) the percentage of Owners required under the Act and (iv) all Lenders who may have an interest in the Project.

XVIII. LAND TRUSTS.

In the event title to any Unit and its appurtenant Limited 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 this Declaration, the Bylaws, the House Rules 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.

XIX. COMPLIANCE BY OWNERS.

All Unit 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 submitted to the condominium property regime (including Developer to the extent Developer retains an ownership interest in any Unit) are subject to, and shall strictly comply with, the provisions of the Act and to the provisions of this Declaration, the Bylaws, House Rules and to all agreements, decisions and determinations lawfully made by the Association in accordance with the voting percentages established under the Act, this Declaration, the Bylaws and House Rules; provided, however, that the Commercial Unit and its appurtenant Commercial Limited Common Elements shall not be subject to the terms of the House Rules. 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 Managing Agent or the Board on behalf of the Association or, in a proper case, by an aggrieved Unit Owner.

In the event any Unit Owner fails to comply fully with any of the foregoing within thirty (30) days after written demand therefore by the Association, the Association or Managing Agent shall have sixty (60) 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 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 or Managing Agent for:

- A.** Collecting any delinquent assessments against any Owner's Unit;
- B.** Foreclosing any lien thereon;
- C.** Enforcing any provision of this Declaration, the Bylaws, the House Rules or the Act; or
- D.** Complying with rules and regulations of the Commission

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

XX. DEVELOPER'S RESERVED RIGHTS.

A. RESERVED RIGHT TO GRANT AND RECEIVE EASEMENTS.

Notwithstanding anything herein provided to the contrary, Developer hereby reserves the right unto itself, its successors and assigns, to delete, cancel, relocate, realign, reserve, designate, grant and receive any and all easements and rights of way over, under, through, across and upon the Common Elements, or involving adjacent parcels of land, deemed necessary or desirable in Developer's sole discretion, including, but not limited to, easements and/or rights of way for utilities, public purpose (i.e., pedestrian walkways and sidewalks, bus stops, stairs, ramps, paths, trails, bikeways or other passageways), any public-type facility (e.g. for mail delivery), fire lane access, sanitary and storm sewers, retention ponds, cable television, refuse disposal, driveways, parking areas, including public parking areas, restrooms, driveways, roadways, sidewalks, access rights to adjacent parcels of land, public or other access to parking and/or sidewalk easement, operation and upkeep and care and maintenance or repair of any Residential Unit or any Residential Limited Common Element or to complete any improvements and correct construction defects or other punch list items in the Common Elements, the Limited Common Elements or Units, or to exercise any Developer's Reserved Rights, and other similar purposes, and Developer shall have the right to negotiate and agree to such terms with respect to such easements and rights of way as Developer deems appropriate in its sole discretion; provided that such easements and/or rights of way shall not be exercised so as to unreasonably disturb, impair or interfere with the normal use and enjoyment of the Project by the Unit Owners.

B. RESERVED RIGHT TO DESIGN, DEVELOP, BUILD, ADD TO AND COMPLETE NEW IMPROVEMENTS ON THE LAND.

Notwithstanding anything herein provided to the contrary, Developer hereby reserves the right unto itself, its successors and assigns, to design, develop, build, add, reconfigure, and complete New Improvements within the Residential Development and reserves unto Initial Commercial Owner, its successors and assigns, the right to design, develop, build, add, reconfigure, and complete New Improvements within the Commercial Development. The initial improvements proposed by Developer and described in the original Condominium Documents shall not be considered New Improvements for purposes of this section. The Developer's Reserved Rights and Initial Commercial Owner's Reserved Rights are subject to the following terms and conditions:

1. Plans and Specifications. A licensed architect or engineer must prepare plans and specifications for any New Improvements having an estimated value of five hundred thousand dollars (\$500,000.00) or more, and any such plans and specifications must be approved by the City and County of Honolulu. The plans and specifications must be designed so that the

New Improvements will be substantially consistent with the existing Improvements of the Project in terms of quality of construction and finish, as determined by Developer (for so long as Developer owns a Residential Unit) and by Initial Commercial Owner. The New Improvements must be built substantially in accordance with the plans and specifications.

2. Changes to Existing Improvements. The plans and specifications cannot require any material change to, or the demolition of any existing Residential Unit not owned by Developer or Individual Limited Common Element appurtenant to such Residential Unit, provided that:

a. Developer shall have right to connect to, use, relocate, realign existing, and/or develop additional central and appurtenant installations for services to the New Improvements to provide electricity, hot and cold water, air conditioning and other applicable utilities and services, and when applicable, to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the Common Elements and Residential Limited Common Elements as necessary and desirable in connection therewith and over, under, across or through the Commercial Limited Common Elements, subject to the reasonable approval of the Commercial Unit Owner, which approval shall not be unreasonably withheld, delayed or conditioned. Developer must do this in a way that does not cause any interruption, other than a temporary interruption, in the service of utilities to any other part of the Project. In the exercise of the foregoing rights, Developer with respect to its New Improvements, shall provide for separate metering in order to separately account for the cost of services to such additional and central installations and if separate metering is not provided, must provide a fair and equitable allocation of the cost of such services as between the Residential Unit Class and the Commercial Unit Class.

b. Developer can change or demolish all or any part of an existing Residential Unit that it may own or where the Unit Owner consents to the change or demolition in writing.

c. Developer can change or demolish all or any part of an existing Limited Common Element appurtenant to any Residential Unit that it may own or when the Residential Unit Owner to which the Limited Common Element is appurtenant consents to the change or demolition in writing. If the Limited Common Element is appurtenant to more than one Residential Unit then the approval of the Owners of all of those Units is necessary.

d. Developer can relocate or replace any utility locations and installations and the like so long as the plans and specifications provide for replacements that provide comparable services and so long as the applicable approvals have been obtained. Such relocation or replacement must be done in a way that does not cause any interruption, other than a temporary interruption, in the service of utilities to any other part of the Project.

e. Developer has the right to remove or change Residential Limited Common Element or Individual Limited Common Element parking stalls and Initial Commercial Owner has the right to remove or change Commercial Limited Common Element parking stalls, provided that in no event shall the number of parking stalls in the Residential Development be

less than required by the Reciprocal Easement Agreement and by applicable codes and ordinances and, provided further that:

(i) At all times, each conveyed Residential Unit must have at least one (1) parking stall as an Individual Limited Common Element and the number of Residential Guest Parking stalls set forth in **Exhibit C** hereto must be provided as part of the Residential Limited Common Elements at all times;

(ii) Developer cannot materially reduce the size of a parking stall that is an Individual Limited Common Element appurtenant to a Residential Unit not owned by Developer, unless such Residential Unit Owner consents in writing.

(iii) Developer cannot remove a parking stall that is an Individual Limited Common Element appurtenant to a Residential Unit not owned by Developer unless a replacement parking stall is provided that is reasonably acceptable to the affected Unit Owner.

(iv) All changes to Limited Common Element parking stalls shall be executed and recorded as an amendment to this Declaration.

f. Developer or Initial Commercial Owner, respectively, shall have the right to install electric or other utility facilities and equipment, and in connection therewith to change or alter any portion of the Project to designate any of the Residential Limited Common Element parking or Commercial Limited Common Element parking stalls as exclusively for electric vehicles.

3. Cost and Time for Completion. Developer or Initial Commercial Owner, as applicable, must pay all its own costs and expenses for the design, development and construction of the New Improvements that it plans. Neither Developer nor Initial Commercial Unit Owner makes any promise as to if or when construction of any New Improvements will commence and/or be completed. Each of Developer and Initial Commercial Owner must finish building any New Improvements within a reasonable time after starting to build them. If there is a delay for reasons beyond the reasonable control of Developer or Initial Commercial Owner or their respective contractors and subcontractors, the construction must be completed in the additional time reasonably needed to complete such construction.

4. Expenses. Subject to Section XII, Developer or Initial Commercial Owner, as applicable, must, at its sole expense, repair any damage to the Project caused by its respective construction contractors.

5. Insurance. Developer and Initial Commercial Owner, each with respect to any New Improvements it undertakes, shall arrange and pay for builder's risk insurance and Developer or Initial Commercial Owner, as applicable, must deposit evidence of the insurance with the Board and Managing Agent. The insurance must stay in effect during the entire course of construction and must cover no less than one hundred percent (100%) of the estimated cost of construction. After the first sale of a Residential Unit by Developer, if the builder's risk policy is

still in effect, the insurance policy must name the Association and Managing Agent as additional insureds.

6. Encumbrance of Units. Each of Developer and Initial Commercial Owner can Mortgage or assign its interest in any Units it may own as security for a loan, even before any construction of the New Improvements is complete.

7. Nature of Reserved Rights. The Developer's Reserved Rights and the Initial Commercial Owner's Reserved Rights in this section include the right to do anything necessary or convenient to design, develop, build, add, and complete New Improvements on the Land, including the right of Developer or Initial Commercial Owner to amend the Declaration and Condominium Map as necessary or convenient to describe the New Improvements.

8. Owners' Obligations. During the construction period, each Unit Owner must: (a) remain outside of any fenced construction area; and (b) not directly or indirectly do or attempt to do anything that would or could affect or interfere with the development, construction and completion of the New Improvements in the manner determined by Developer or Initial Commercial Owner each in its sole discretion.

C. RESERVED RIGHT OF DEVELOPER NOT TO DEVELOP AND/OR CONSTRUCT ALL OF THE RECREATIONAL AMENITIES.

The Recreational Amenities in the Project, as depicted on the Condominium Map, may not all be constructed, may not be constructed as depicted, or may not all be constructed at the same time. 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 other portions of the Residential Limited Common Elements will be built or completed prior to, concurrently with or soon after any or all of the Residential Units are conveyed to third parties.

D. RESERVED RIGHT TO ALTER, SUBDIVIDE AND CONSOLIDATE UNITS.

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

1. Each of Developer and Initial Commercial Owner shall have the reserved right, without obtaining the approval of any party with an interest in the Project, including any other Owner and/or Lender, to: (1) alter the floor plan of any Unit that it owns at any time, and in any manner Developer or Initial Commercial Owner deems appropriate, in its absolute discretion, provided that the Common Interest appurtenant to the Unit shall not change; (2) cause the subdivision of any Unit that it owns at any time to create two or more Units, provided that the total Common Interest appurtenant to the subdivided Units shall equal the Common Interest appurtenant to the original Unit; (3) convert certain portions of any existing Unit to Limited Common Element status to facilitate any subdivision; (4) consolidate any two adjacent Units owned by Developer or Initial Commercial Owner, respectively, provided that the Common

Interest appurtenant to the new consolidated Unit shall equal the total Common Interest appurtenant to the two previously separate Units; and (5) recalculate the Common Interest appurtenant to each Unit upon such subdivision and/or consolidation, provided that the total Common Interest appurtenant to the newly created Units shall equal the Common Interest appurtenant to the original Unit.

2. If Developer owns any two (2) or more Residential Units separated by a party wall, floor or ceiling, Developer shall have the right, without obtaining the approval of any party with an interest in the Project, including any other Owner and/or Lender, to consolidate two or more Units that are so separated, to later subdivide such Units once consolidated and to alter, remove or restore all or portions of the intervening wall, floor or ceiling at Developer's expense, provided that: (1) the structural integrity of the Project is not thereby affected, (2) the finish of the Limited Common Element then remaining is restored to a condition substantially compatible with that of the Limited Common Element prior to such alteration, and (3) all construction activity necessary to any such alteration or removal shall be completed within a reasonable period of time after the commencement thereof, subject to delays beyond the reasonable control of Developer or its contractors, whether caused by strikes, the unavailability of construction materials or otherwise, in which case any such construction activity shall be completed in such additional time as may be reasonably necessary in the exercise of due diligence.

3. Developer, in the process of consolidating Units, shall have the right to: (i) convert that area between Units to a Unit (as opposed to the same remaining a Limited Common Element) and (ii) convert any adjacent Potential Individual Limited Common Element to an Individual Limited Common Element appurtenant to the combined Units, for so long as such Units shall remain consolidated or shall continue to be commonly used or owned.

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

a. Developer or Initial Commercial Owner, as applicable, shall file or cause to be filed an amendment to this Declaration describing the Unit(s) in question and setting forth at least: (a) description of the newly-formed Unit(s); (b) in the case of consolidation of Units, the Common Interest appurtenant to the newly-formed Unit, which shall be calculated by adding together the Common Interests of the Units to be consolidated; or (c) in the case of the subdivision of a Unit, the Common Interest appurtenant to each of the newly-formed Units, the total of which shall be equal to the Common Interest appurtenant to the original Unit.

b. Developer or Initial Commercial Owner, as applicable, shall file or cause to be filed an amendment to the Condominium Map for the Unit(s) being altered and/or expanded, subdivided or consolidated to show an amended floor plan, as necessary, together with a verified statement of registered architect or professional engineer, in the manner required by Section 514B-34 of the Act, stating 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 filed with and approved by the County officer having jurisdiction over the issuance of permits for the completion of

buildings, and that the plans fully and accurately depict the layout, location, Unit numbers, and dimensions of the Units substantially as built.

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.

To the extent permitted by applicable law, this section shall not be amended without the prior written approval of Developer and Initial Commercial Owner.

E. RESERVED RIGHT TO INSTALL DEVELOPER SIGNAGE.

Notwithstanding anything herein provided to the contrary, Developer hereby reserves the right unto itself, its successors and assigns, for the benefit of the Residential Development to install, maintain, repair and replace (from time to time) monument signage within Level 1 of the Project, which shall be in a size and location as permitted, subject to the approval of Initial Commercial Owner, and other signage within the Residential Limited Common Elements, subject to any zoning laws or other governmental requirements. Such signage shall comply with the First Class Standard and first class regional shopping center standards including all commercially reasonable requirements, and be consistent with any Initial Commercial Owner signage, including, without limitation, the method of affixing the signage and extension of electrical service thereto, if applicable. Initial Commercial Owner's approval rights shall not extend to any signage installed by Developer or the Association within the Residential Development in a location not visible from the exterior of the Residential Development. Until such time that Developer provides notice that all Unit Owners shall be obligated for the payment of the Common Expenses as set forth in Section VI.3.A of the Bylaws, Developer shall be responsible for lighting, installation, maintenance and replacement of such residential signage as well as costs to repair any damage to the Project proximately caused by such installation, maintenance and replacement. After such notice, the Association shall be responsible for administering the obligations and assessing the costs thereof as a Residential Unit Class Expense.

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

Developer shall have the reserved right to effect such modifications to Units and Common Elements in the Project and/or to execute, file and deliver any amendments to this Declaration, the Condominium Map, the Bylaws and House Rules promulgated hereunder, as may be necessary or allowed to effect compliance by the Project, the Association or by Developer, with laws which apply to the Project, including, but not limited to, the Fair Housing Act, as amended, 42 U.S.C. §§3601 et seq., including any and all rules and regulations promulgated thereunder, and the ADA, or as may be required by the Commission, by any title insurance company issuing title insurance on the Project or any of the Units, by any institutional lender lending funds on the security of the Project or any of the Units, or by any governmental agency (including the VA, HUD, FNMA and/or FHLMC).

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

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

1. Each of Developer and Initial Commercial Owner shall have the right, without obtaining the approval of any party with an interest in the Project, including any other Owner and/or Lender, to convert a Limited Common Element appurtenant to such Residential Unit(s) or Commercial Unit(s) owned by Developer or Initial Commercial Owner, respectively, or any portion thereof, into a separate Residential Unit or Commercial Unit of the Project. In such event, Developer or Initial Commercial Owner, as applicable, shall have the right, without obtaining the approval of any party with an interest in the Project, including any other Owner and/or mortgagee, to alter the physical aspects of the Limited Common Element at its own expense in connection with such conversion, including building such structures as may be necessary or appropriate, provided that: (1) the structural integrity of the Project is not thereby affected, (2) the finish of the Unit is consistent with the quality of other Units in the Project and any remaining portion of the Limited Common Element not converted to a Unit is restored, to the extent feasible, to a condition substantially compatible with that of the Limited Common Element prior to such conversion, and (3) all construction activity necessary to any such conversion shall be completed within a reasonable period of time after the commencement thereof, subject to delays beyond the control of Developer or Initial Commercial Owner or their 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.

2. Developer or Initial Commercial Owner, as applicable, shall have the reserved right to designate certain Residential Limited Common Elements and Individual Limited Common Elements or Commercial Limited Common Elements as Limited Common Elements appurtenant to the newly-created Unit, as applicable; provided that any easement rights of Residential Unit Owners within the Commercial Limited Common Elements are not unreasonably impeded.

Any such conversion of a Limited Common Element into a Unit or Units as provided above shall be effective provided that:

a. Developer or Initial Commercial Owner, as applicable, shall file or cause to be filed in the Land Court an amendment to this Declaration describing the Unit(s) in question and setting forth at least: (a) a description of the newly formed Unit(s), and (b) the Common Interest appurtenant to the newly-formed Units and existing Units, which shall be calculated to not affect the remaining Common Interests in the Project, other than, in the case of Developer, the unsold Residential Units. Developer may adjust the Common Interest only among the Units owned by Developer to assure that the total of all Common Interests equals one hundred percent (100%) and the total of all Unit Class Common Interests equals one hundred percent (100%).

b. Developer or Initial Commercial Owner, as applicable, shall record or cause to be recorded an amendment to the Condominium Map to show the floor plans and elevations for the newly-created Unit(s), as necessary, together with a verified statement of registered architect or professional engineer, in the manner required by Section 514B-34 of the Act, stating that said Condominium Map, as so amended, contains an accurate copy of portions of the plans of the newly-created Unit(s) as filed 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.

c. Developer or Initial Commercial Owner, as applicable, shall obtain the prior approval of any Owner whose share of the Common Expenses and/or Common Interest is negatively impacted by such conversion.

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

H. RESERVED RIGHT TO RECHARACTERIZE LIMITED COMMON ELEMENTS.

Developer shall have the reserved right to amend this Declaration to (a) recharacterize all or a portion of certain Individual Limited Common Elements, as may be appurtenant to a Residential Unit owned by Developer, as being Residential Limited Common Elements, thus giving up or waiving the exclusive use of such area or areas; or (b) redesignate all or a portion of certain Individual Limited Common Elements, as may be appurtenant to any Residential Unit owned by Developer to another Residential Unit; or (c) to convert those certain Residential Limited Common Elements set forth in the Condominium Map as Potential Individual Limited Common Elements to Individual Limited Common Elements should the Owner of the Residential Units adjoining such Potential Individual Limited Common Element areas consolidate the Residential Units pursuant to Section X.B.5. If Developer exercises its reserved right in (c) above, it shall only be for the conversion of the Potential Individual Limited Common Element to an Individual Limited Common Element appurtenant to the consolidated Residential Units. Developer may assign this right to the Residential Unit Owners of the Residential Units to which the Potential Individual Limited Common Element adjoins. The reserved rights herein further include the right of Developer to redesignate Individual Limited Common Element parking stalls or storage lockers or storage rooms that may be appurtenant to Residential Units owned by Developer to other Residential Units owned by Developer. Upon recharacterization of any Individual Limited Common Element to a Residential Limited Common Element appurtenant to all Residential Units of the Project, the Association shall be required to maintain such areas at its expense for the benefit of all Residential Unit Owners, and the cost of maintaining such areas shall be assessed to all Residential Unit Owners as a Residential Unit Class Expense.

I. RESERVED RIGHT OF DEVELOPER TO COMPLETE THE RESIDENTIAL DEVELOPMENT IMPROVEMENTS.

Notwithstanding anything herein provided to the contrary and up to and until the end of the Development Period, Developer hereby reserves the right unto itself, its successors and assigns, to complete the improvements in the Residential Development. In conjunction with the exercise of this reserved right, Developer shall have the right to create Residential Units, Residential Limited Common Elements, Individual Limited Common Elements, Potential Individual Limited Common Elements and Common Elements, to convert Residential Units into Residential Limited Common Elements and vice versa; and to construct any other necessary improvements within any area of the Residential Development.

J. RESERVED RIGHT TO CONDUCT SALES ACTIVITIES.

Developer hereby reserves the right unto itself, its brokers, sales agents and other related persons, to conduct extensive sales activities at the Project, including the use of any Residential Unit owned by Developer and its appurtenant Limited Common Elements for model Residential Units, sales, leasing, management and construction offices and extensive sales displays and activities, the posting and maintenance of signs and other advertisements relating to such sales activities, and to install, maintain, locate, relocate, and reconfigure such structures, displays, advertising signs, billboards, flags, sales desks, kiosks, sales, leasing, management and/or construction offices, model Units, interior design and decorator centers, and parking areas for employees, agents, and prospective buyers, as may be necessary or convenient for the proper development and disposition of Units by sale, resale, lease, or otherwise, and the right, but not the obligation, to provide ongoing maintenance, operation, service, construction and repairs to individual Units, until the earlier to occur of (a) December 31, 2039, or (b) the closing of the sale of the last unsold Unit in the Project. In the event that Developer is unable to sell all of the Units on or before December 31, 2039, Developer shall have the right to conduct sales activities on the Project until the closing of the sale of the last unsold 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 Residential Unit Owners, and any sales activity is consistent with the First Class Standard and first class regional shopping center standard. In connection with Developer's sales activities at the Project, Developer shall have the right, but not the obligation, to lease such area of the Residential Limited Common Elements as Developer deems necessary from the Association for use as a sales office at such lease rent as Developer determines, in its sole discretion for a term of up to five (5) years. Such sales activities by the Residential Developer may include the initial sale and resale and leasing of Units. In the event that Developer's Lender, if any or any successor to or assignee of Developer's 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 Lender, its successor and assigns, shall have the right to conduct the sales activities described in this Section XX.J 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 have been filed in the Land Court. 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.

In furtherance of the rights granted to Developer in this section, no act or omission shall be taken by any Residential Unit Owner, or the Association, or Initial Commercial Owner, which, in the reasonable discretion of Developer, would infringe upon Developer's ability to sell or rent Residential Units, including, without limitation, altering the design, location or appearance of any of the Common Elements, failing to maintain any portion of the Project in accordance with sound property management standards or a First Class Standard, or otherwise detracting from the aesthetic nature of the Project. No reasonable exercise of the Initial Commercial Owner's Reserved Rights by Initial Commercial Owner shall be deemed to be an infringement upon Developer's ability to sell or rent Residential Units.

XXI. INITIAL COMMERCIAL OWNER'S RESERVED RIGHTS.

A. Notwithstanding anything herein provided to the contrary, Initial Commercial Owner is hereby granted the right, for the benefit of the Commercial Development to perform those development rights defined in Section 514B-3 of the Act and as set forth herein; provided Initial Commercial Owner shall not have the reserved right to annex additional land, merge the Project with another Project or withdraw any portion of the Land from the Project.

B. In addition to Initial Commercial Owner's other rights set forth in this Declaration, Initial Commercial Owner shall also have the same rights of Developer expressly set forth in Sections XX.A, XX.B, XX.D, XX.F and XX.G above, including, without limitation, the right to change or remove any roads, driveways, parking structures, consolidate and subdivide Commercial Units, convert Commercial Limited Common Elements and Commercial Units and the like within the Commercial Development; provided that the Residential Development shall remain substantially unaffected by these actions.

C. Initial Commercial Owner shall have the reserved right, without the consent of any other Unit Owner, to do all things necessary and convenient to satisfy the requirements of any land use or other permits pertaining to the Project, including but not limited to, the Land Use Entitlements, 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 amendments to this Declaration and to the Condominium Map; provided that during the Development Period any exercise of this right which negatively impacts the share of the Common Expenses or Common Interest of the Residential Development shall require the approval of Developer, which approval shall not be unreasonably withheld or delayed.

D. Initial Commercial Owner reserves and may exercise all rights, including, without limitation, rights related to use and density, under the Land Use Entitlements for the purpose of developing and/or redeveloping, without the consent of the Developer or any Unit Owner, the Ala Moana Shopping Center or any portion of the land covered by the Land Use Entitlements, except for the portion of the Land appurtenant to the Residential Development. Neither Developer nor any Unit Owner shall have any rights, including, without limitation, rights related to use and density, under the Land Use Entitlements in connection with the development or

redevelopment of the Ala Moana Shopping Center or the land covered by the Land Use Entitlements, except for the portion of the Land appurtenant to the Residential Development, and Initial Commercial Owner reserves all rights to execute, file and deliver to any government agency or third party any and all documents necessary to effect the exercise of these reserved rights, including, but not limited to, any amendments to the Land Use Entitlements which affect in any way the Ala Moana Shopping Center and the land covered by the Land Use Entitlements, except for the portion of the Land appurtenant to the Residential Development

XXII. ASSIGNMENT OF RESERVED RIGHTS.

Notwithstanding anything stated herein to the contrary, the rights reserved to Developer or Initial Commercial Owner in this Declaration shall be fully and freely assignable by Developer or Initial Commercial Owner, with the consent of any Lender of Initial Commercial Owner (as to the Initial Commercial Owner Reserved Rights), respectively, in whole or in part. Developer may assign the Developer's Reserved Rights and approval rights herein to the Association, in which event, the Association shall assume such rights. Developer may assign the Developer's Reserved Right regarding the conversion of Potential Individual Limited Common Elements to the Owners of the Residential Units which the Potential Individual Limited Common Elements adjoin. Each of Developer and Initial Commercial Owner may transfer a security interest in its respective reserved rights, and the transferee shall have the rights provided in Section 514B-136 of the Act. Any assignment of the Developer's Reserved Rights or the Initial Commercial Owner's Reserved Rights shall be in writing, executed by Developer or Initial Commercial Owner, respectively, and the assignee of its rights and shall be filed in the Land Court. 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 or Initial Commercial Owner, and to the extent designated by Developer or Initial Commercial Owner, agrees to recognize any assignee as the pertinent "Developer" or "Initial Commercial Owner," as applicable, under this Declaration.

XXIII. APPROVAL OF DEVELOPER'S RESERVED RIGHTS AND INITIAL COMMERCIAL OWNER'S RESERVED RIGHTS; APPOINTMENT OF DEVELOPER AND INITIAL COMMERCIAL OWNER AS ATTORNEY-IN-FACT; NATURE OF RESERVED RIGHTS.

Each and every party acquiring an interest in the Project, by such acquisition, consents to all of the rights reserved unto Developer and Initial Commercial Owner as set forth in this Declaration, the permitted actions taken by Developer and Initial Commercial Owner pursuant thereto, and to the filing of any and all documents necessary to effect the same in the Land Court; agrees to execute, deliver and file such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints Developer and/or Initial Commercial Owner, as applicable, and its assigns as his/or her attorney-in-fact with full power of substitution to execute, deliver and file such documents and instruments and to do such things on his or her behalf, and to receive or send any legal notices required by Chapter 501 of the Hawaii Revised Statutes, and to receive service process (legal papers) as to legal proceedings in the Land Court, 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 and Initial Commercial Owner hereunder, Developer and Initial Commercial Owner will have the right to execute, deliver and file in the Land Court any amendment to this Declaration or to the Condominium Map, Bylaws and/or House Rules, any easement instrument, any Unit Deed or amendment thereto, certificate of merger, assignment of rights or interest, or such other document or instrument that may be necessary or appropriate to permit Developer and/or Initial Commercial Owner to exercise its rights pursuant to the provisions of this Declaration.

Developer and Initial Commercial Owner each have the sole discretion to exercise the Developer's Reserved Rights or the Initial Commercial Owner's Reserved Rights, respectively, from time to time partially, independently of one another (unless the other party has explicit approval rights set forth herein to the other's exercise of the Developer's Reserved Rights or the Initial Commercial Owner's Reserved Rights, respectively) or in combination. Developer and Initial Commercial Owner, respectively, are not obligated to exercise any of the Developer's Reserved Rights or the Initial Commercial Owner's Reserved Rights, unless otherwise provided in this Declaration, and may exercise the Developer's Reserved Rights or the Initial Commercial Owner's Reserved Rights unilaterally without the joinder, approval or consent of the Board, or any other Owner or entity subject only to the Board's rights under §514B-140 of the Act. Any person or entity that acquires any interest in any portion of the Project, whether by lien or ownership, acquires such interest subject in all respects to this Declaration including without limitation all of the Developer's Reserved Rights or the Initial Commercial Owner's Reserved Rights, their exercise and assignment of such reserved rights if any. Developer may transfer the Developer's Reserved Rights and Initial Commercial Owner may transfer the Initial Commercial Owner's Reserved Rights by complying with the requirements of §514B-136 of the Act. Developer and Initial Commercial Owner may transfer security interests in the Developer's Reserved Rights or the Initial Commercial Owner's Reserved Rights, respectively, and the transferee shall have the rights provided in §514B-136 of the Act. Without the express written consent of Developer and Initial Commercial Owner, respectively, the Developer's Reserved Rights and the Initial Commercial Owner's Reserved Rights may not be invalidated by any amendment to this Declaration. The costs and expenses associated with the exercise of the Developer's Reserved Rights or the Initial Commercial Owner's Reserved Rights shall be the responsibility of Developer or Initial Commercial Owner, respectively, and this provision shall take precedence over any and all provisions of this Declaration and the Bylaws to the contrary. When a Unit Owner or any other Interested Person acquires a Unit or any other interest in the Project, he or she automatically agrees, promptly after being asked to do so, to join in, consent to, sign (and have notarized if asked), deliver, and file all documents and do all other things that Developer and Initial Commercial Owner in their sole discretion determine to be convenient to the exercise of the Developer's Reserved Rights or the Initial Commercial Owner's Reserved Rights or to accomplish the purposes for which those rights were reserved as determined by Developer or Initial Commercial Owner. In all events such joinder and consent shall not be

required and in each instance shall be given by such third parties for the convenience of Developer and Initial Commercial Owner only.

XXIV. LIMITATIONS ON LIABILITIES AND INDEMNIFICATIONS; DISCLOSURES.

A. NONLIABILITY AND INDEMNIFICATION.

1. By Developer. Subject to Section XII.J, Developer shall defend (with counsel reasonably acceptable to Initial Commercial Owner), indemnify and hold harmless, at its expense, Initial Commercial Owner, its Representatives and any Lender of Initial Commercial Owner against and from all claims, demands, liabilities, penalties, damages, actions, suits, losses, expenses and judgments, including court costs and reasonable attorneys' fees, distribution and costs (including those incurred through appeals), which may be imposed upon or incurred by or asserted against Initial Commercial Owner, its Representatives and/or any Lender of Initial Commercial Owner, to the extent arising out of the use of the Residential Development and development, construction, repair, failure to repair or renovation of any Residential Unit, its appurtenant Limited Common Elements and any other improvements within the Residential Development by Developer or any tenant, subtenant, licensee, employee, contractor or agent of Developer. The foregoing indemnification obligation shall only be applicable to the extent that the claim, demand, liability, penalty, damage, action, suit, expense, loss or judgment results in a loss which exceeds the liability insurance coverage maintained by Developer.

Initial Commercial Owner shall not assume or be responsible for, and Developer shall further defend, indemnify and hold harmless Initial Commercial Owner, its Representatives and any Lender of Initial Commercial Owner from, any and all liability, cost and expense arising out of or associated with, and each purchaser of a Residential Unit or subsequent owner thereof, by taking title thereto acknowledges and agrees that Initial Commercial Owner has no responsibility for and shall be deemed to have waived any and all claims against Initial Commercial Owner arising out of or associated with, (a) Developer's status as developer under the Declaration and the Act, or (b) Developer's development, sale, leasing, marketing or operation of the Project, including, but not limited to, any acts, omissions, liabilities, obligations, or other matters concerning any Residential Units, their appurtenant Limited Common Elements or other Improvements sold, operated or leased by or on behalf of Developer. Each purchaser of a Residential Unit or subsequent owner thereof, by taking title thereto acknowledges and agrees that Initial Commercial Owner has no responsibility for and shall be deemed to have waived any and all claims against Initial Commercial Owner arising out of or associated with the improvements made by Developer, including without limitation, their construction and sales.

The foregoing indemnification obligation shall only be applicable to the extent that the claim, demand, liability, penalty, damage, action, suit, expense, loss or judgment results in a loss which exceeds the liability insurance coverage maintained by Developer.

2. By Association. Subject to Section XII.J, the Association shall defend (with counsel reasonably acceptable to Initial Commercial Owner), indemnify and hold harmless, at its expense, Initial Commercial Owner and its Representatives against and from all

claims, demands, liabilities, penalties, damages, actions, suits, losses, expenses and judgments, including court costs and reasonable attorneys' fees, distribution and costs (including those incurred through appeals), which may be imposed upon or incurred by or asserted against Initial Commercial Owner and its Representatives, to the extent arising out of the development, construction, repair, failure to repair, or renovation by the Association, or any tenant, subtenant, licensee, employee, contractor and agent of the Association, of any Residential Unit, Residential Limited Common Elements or Common Elements or the use of the Residential Development. The foregoing indemnification obligation shall only be applicable to the extent that the claim, demand, liability, penalty, damage, action, suit, expense, loss or judgment results in a loss which exceeds the liability insurance coverage maintained by the Association.

3. By Commercial Unit Owner. Subject to Section XII.J, the Commercial Unit Owner shall defend (with counsel reasonably acceptable to the Residential Indemnatee), indemnify and hold harmless, at its expense, Developer and its Representatives and the Association (individually and collectively the "**Residential Indemnatee**") against and from all claims, demands, liabilities, penalties, damages, actions, suits, losses, expenses and judgments, including court costs and reasonable attorneys' fees, distribution and costs (including those incurred through appeals), which may be imposed upon or incurred by or asserted against any Residential Indemnatee, to the extent arising out of the use of the Commercial Development and development, construction, repair, failure to repair or renovation of any Commercial Unit, its appurtenant Limited Common Elements and any other improvements within the Commercial Development by Commercial Unit Owner or any tenant, subtenant, licensee, employee, contractor or agent of the Commercial Unit Owner. The foregoing indemnification obligation shall only be applicable to the extent that the claim, demand, liability, penalty, damage, action, suit, expense, loss or judgment results in a loss which exceeds the liability insurance coverage maintained by Commercial Unit Owner.

B. SECURITY DISCLAIMER. The Association, Developer, Initial Commercial Owner, Managing Agent, and each of their Representatives are not in any way to be considered insurers or guarantors of safety or security within the Project, nor can any of them be held liable for any loss or damage by reason of failure to provide adequate or effective safety or security measures. Neither the Association nor Developer nor Initial Commercial Owner nor Managing Agent makes any representation or warranty that any fire protection, burglar alarm, or other safety or security system or measures, including anything intended to limit access to the Project, (i) will be effective in all cases and cannot be compromised or circumvented; (ii) will prevent all losses; (iii) will limit access to the Project; or (iv) will provide the detection or protection which it is designed or intended to provide. Each Owner and every other Interested Person acknowledges, understands and agrees that the Association, Developer, Initial Commercial Owner, and Managing Agent are not insurers and that each person using the Project assumes all risks of personal injury, death, or loss or damage to property resulting from the acts of third parties. Each Owner and every other person who has any interest in the Project or who has the right to use the Project or any part of it waives, releases and discharges any rights, claims or actions that such person may have, now or in the future, against Developer, Initial Commercial Owner and their Representatives by reason of failure to provide adequate or effective safety or security measures.

C. WARRANTIES. Each Residential Unit Owner by acceptance of a Unit Deed acknowledges that Developer is the developer of certain improvements which includes the Residential Units and their appurtenant Residential Limited Common Elements within the Residential Development. Initial Commercial Owner shall not assume or be responsible for any liabilities, warranties or obligations which have accrued or may accrue to Developer, its successors and assigns including, but not limited to, any liabilities, warranties or obligations concerning any Residential Units, buildings or other improvements constructed, or to be constructed, by or on behalf of Developer. Initial Commercial Owner makes no representation or warranty whatsoever, whether express or implied, with respect to any Units, Common Elements, buildings or other improvements made by Developer, nor has Initial Commercial Owner authorized any other party to make any such representation or warranty, and such other parties are without legal authority to make any such representation or warranty. Initial Commercial Owner shall not assume or be responsible for, and each Residential Unit Owner by acceptance of a Unit Deed expressly waives any and all claims against Initial Commercial Owner for, any liabilities, warranties or obligations which have or may accrue to Developer in connection with Developer's status under the Condominium Documents, or in connection with Developer's development of all or any real property and improvements within the Property, including, but not limited to, any liabilities, warranties or obligations concerning any Residential Units, their appurtenant Residential Limited Common Elements or other improvements constructed, or to be constructed, by or on behalf of Developer.

D. DEVELOPER AND INITIAL COMMERCIAL OWNER NOT CONTRACTOR; "AS IS". Developer is developing certain improvements in the Project, but it is not the general contractor or an affiliate of the general contractor who is building the improvements in 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. All rights and interests in the Project are sold "as is" and "where is", with all defects, whether visible or hidden and whether known or unknown. This means, among other things, that neither Developer nor Initial Commercial Owner is required to fix any defect no matter who or what causes it or when it is discovered. Each Owner and every other Interested Person waives, releases, and discharges any and all rights and claims such person may have, now or in the future, against Developer, Initial Commercial Owner, and their 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) injury to persons or property arising from any such defects. This means that neither Developer nor Initial Commercial Owner will have to pay for any injury or damage to people or things as a result of any defect.

CHAPTER 672E OF THE HAWAII REVISED STATUTES CONTAINS IMPORTANT REQUIREMENTS OWNERS MUST FOLLOW BEFORE THEY MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO DESIGNED, REPAIRED, OR CONSTRUCTED THE OWNER'S HOME OR FACILITY. NINETY (90) DAYS BEFORE AN OWNER FILES A LAWSUIT OR OTHER ACTION, THE OWNER MUST SERVE ON THE CONTRACTOR A

WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS THE OWNER ALLEGES ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECTS. THE OWNER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THE LAW, AND FAILURE TO FOLLOW THEM MAY NEGATIVELY AFFECT BUYER'S ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

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

F. 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 mold is 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 Bylaws set forth steps that should be taken by Unit Owners and the Association to reduce or eliminate the occurrence of mold growth and thereby minimize any possible adverse health effects that may be caused by mold. Neither Developer nor Initial Commercial Owner can ensure that mold and mold spores will not be present in the Project. The failure of an Owner or the Association to follow the steps set forth in the Bylaws may increase the risk of mold growth and mold spores being present in the Project. Neither Developer nor Initial Commercial Owner shall be liable for any actual, special, incidental or consequential damages based on any legal theory whatsoever, including, but not limited to, strict liability, breach of express or implied warranty, negligence or any other legal theory, with respect to the presence and/or existence of molds, mildew and/or microscopic spores at the Project, unless caused by the gross negligence or willful misconduct of Developer or Initial Commercial Owner.

G. ADDITIONAL DISCLOSURES. Without limiting any other provision in this Declaration, the Association and, by acquiring title to a Unit, or by possession or occupancy of a Unit, each Owner for itself and for the Owner's tenants, employees, family members, guests and other invitees, shall conclusively be deemed to understand, and to have acknowledged and agreed to all of the following:

1. Condominium Living; Mixed Use Project; Shopping Center. Living in a multi-story, mixed-use condominium building entails living in very close proximity to other persons, businesses, restaurants, shopping areas and other apartments, with attendant limitations on solitude and privacy. Walls, floors and ceilings have been designed to meet applicable building codes. Owners will hear noise from adjacent Units and from the Common Elements within the Project, including, but not limited to, noise from showers, bathtubs, sinks, toilets or other sources of running water and/or plumbing fixtures. Also, Owners may hear noise from such items as the pool, vacuum cleaners, stereos or televisions, or from people running, walking, exercising or socializing throughout the Project but especially within the Recreational Amenities such as the great lawn and park lane. The great lawn will be in use daily for day use and evening events with resultant noise and light. Owners may also be impacted by smells and smoke from barbeques located on outdoor lanais from other Residential Units in the Project. Certain Residential Units include dryer vents located within the Residential Unit. These dryer vents will require periodic maintenance conducted by the Association or its agents. Each such affected Residential Unit shall permit all necessary access in order to conduct reasonably necessary maintenance upon no less than 24 hours prior written notice to the Unit Owner and in such manner as to cause as little disruption to the Unit Owner as reasonably possible. Subject to Section VI.C.2, above, Owners acknowledge that the Commercial Development will be operated as part of the Ala Moana Shopping Center, and that Owners can expect to hear substantial levels of sound, music, noise, odors, vibrations, and other nuisances from the Commercial Development, Ala Moana Shopping Center, and from other retail, commercial and hotel developments in the vicinity of the Project. Owners may also experience light entering the Units from commercial lighting in the vicinity and from street lights located in close proximity to the windows and doors of the Units.

2. Noise; Traffic. Being located in a central commuter district, noise, dust, vibration, and/or traffic is higher than average in the vicinity of the Project. Each Owner and every other person who has any interest in the Project or who has the right to use the Project or any part of it waives, releases and discharges any rights, claims or actions that such person may have, now or in the future, against Developer, Initial Commercial Owner 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 City and County of Honolulu's planned elevated rail transit project, if constructed, which could be constructed in the near vicinity of the Project. Traffic, noises and uses which are typically encountered in a multi-story condominium mixed-use setting, including, but not limited to (1) transient noise and guest or pedestrian traffic from passage through hallways; (2) opening and closing of doors; and (3) traffic from the use of the Commercial Development as parking for the Ala Moana Shopping Center and special events taking place in or near the Property. Such noise shall not be deemed a nuisance, as such noises and/or uses are deemed to be common and accepted occurrences in a centrally located multi-

story condominium mixed-use setting. Furthermore, normal construction activities shall not be considered to violate the terms and conditions of this section. By accepting a Unit Deed, a Unit Owner acknowledges that the Project is adjacent to high traffic roads, businesses, and retail/entertainment facilities and that noise, lights and odors common to such activities and related commercial activities as well as construction activities, may exist on or near the Project, at any time and from time to time. Each Owner, by acceptance of a Unit Deed or other conveyance of his or her Unit, hereby acknowledges and agrees that sound transmission in buildings such as the Project is very difficult to control. Neither Developer nor Initial Commercial Owner makes any representation or warranty as to the level of sound transmission at the Project, and each Unit Owner hereby waives and expressly releases any such warranty and claim for loss or damage resulting from such sound transmission.

3. Views. Each Owner acknowledges that there are no protected views in the Project, and the Units are not assured the existence or unobstructed continuation of any particular view. Any view from the Unit is not intended as part of the value of the Unit, and is not guaranteed, and Developer and Initial Commercial Owner make no representation or warranty regarding the effect of the view on the value of a Unit, including, but not limited to, views across the Ala Moana Beach Park. The views from the Unit or Project may change or be affected or obstructed by (i) construction or installation of buildings, improvements, structures, walls and/or landscaping by Developer, Initial Commercial Owner 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 within the near 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, Initial Commercial Owner and their Representatives, licensees, successors and assigns, and arising directly or indirectly out of or from any such change or obstruction of views by reason of such further development.

4. Neighboring Developments. Certain portions of land (the “**Neighboring Developments**”) outside, abutting and/or near the Project may be subject to redevelopment, and in the future may be developed. The Association, Developer and Initial Commercial Owner make no representations as to the nature, use or architecture of any future development or improvements in Neighboring Developments. Any such use, development and/or construction in Neighboring Developments may result in noise, dust, increased traffic and congestion, or other “nuisances” to the Project or Owners, and each Unit Owner acknowledges the same.

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

6. Uses Changes. Except as expressly set forth in the Condominium Documents, Developer makes no representation or warranty 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 the costs of such services) which may be provided to Owners.

7. **Marketing Materials.** Any Marketing Materials used by Developer in the promotion and sales of the Residential Units and of the Project shall not be a representation or warranty by Developer of the Residential Unit layout, décor, coloring, furnishings or fixtures provided with the Unit or the types of amenities provided in the Project. The Marketing Materials are intended to give a purchaser a general idea of the standard and quality of the Project, and are not intended to represent the precise décor, coloring, furnishing or fixtures that will be included in the Project.

XXV. DISPUTE RESOLUTION.

A. **CLAIM NOTICE; INSPECTION; RIGHT TO REPAIR.** Every claim against Developer, including any of its employees, agents or contractors (each of the foregoing a “**Respondent**”) by the Association and/or any Owner or Owners (each of the foregoing a “**Claimant**”) regarding the design or construction of the improvements made on behalf of Developer, shall be resolved pursuant to the requirements of this section.

1. The Respondent shall have the absolute right, in its sole discretion, to repair, or cause the repair of, any portion of the Project, including but not limited to, items listed in the Claim Notice, as defined below, provided that such repair is undertaken and completed within a reasonable period of time and is performed within acceptable industry standards in effect when the improvement was originally constructed by or on behalf of the Respondent. The Association and each Owner shall provide the Respondent with all necessary access to the Project to perform such repairs.

2. The Claimant shall make a prudent and reasonable attempt to mail or otherwise deliver written notice to the Respondent specifying the defect or defects that are the subject of its claim, including specific identification of the exact locations of all portions of the Project for which the Respondent has responsibility that has manifested damage, or otherwise indicate existence of a defect (the “**Claim Notice**”). The Claim Notice must clearly state and describe in detail whether and how the Claim involves the improvements constructed by or on behalf of the Respondent.

3. Within twenty (20) days after the receipt of the Claim Notice, the Respondent may notify the Claimant that the Claim is rejected or may be rejected subject to investigation and may make a written request to the Claimant to inspect the property identified in the Claim Notice (the “**Inspection Request**”).

4. Within ten (10) days after receipt of the Inspection Request, the Claimant shall make available for inspection the property identified in the Claim Notice during normal working hours or other mutually agreed upon times. If necessary, interior inspections of Units shall occur only during normal business hours or other mutually agreed upon times, only upon prior notice to the Owner or occupant of the Unit, and only with the approval of the Owner of the

Unit, which approval may not be unreasonably withheld or delayed. In addition, if the Claimant has engaged the services of a professional to prepare the contents of the Claim Notice, then the Claimant shall make the professional available to meet with and/or accompany the Respondent in inspecting the items in the Claim Notice.

5. Such inspection shall be completed within forty-five (45) days after the date the subject property is made available to the Respondent by the Claimant for inspection; provided, however, that if such inspection is not reasonably capable of being completed within such forty-five (45) day period, and provided further that the Respondent uses good faith efforts to commence such inspection within such forty-five (45) day period and thereafter diligently prosecutes such efforts to completion, such forty-five (45) day period shall be extended for the period of time reasonably necessary for the Respondent to commence and complete such inspection. The Respondent shall pay all costs of such inspection, shall restore the subject property to the condition that existed immediately before such inspection within ten (10) days after the completion of such inspection, and shall indemnify the Claimant for any and all damages resulting from such inspection; provided, however, that if such restoration is not reasonably capable of being completed within such ten (10) day period, and provided further that the Respondent uses good faith efforts to commence such restoration within such ten (10) day period and thereafter diligently prosecutes such efforts to completion, such ten (10) day period shall be extended for the period of time reasonably necessary for the Respondent to commence and complete such restoration.

B. SETTLEMENT STATEMENT; SETTLEMENT CONFERENCE. Within thirty (30) days after completion of the inspection under Section XXV.A above, the Respondent shall submit a written statement to the Claimant stating the Respondent's position regarding the items in the Claim Notice which may include a proposed settlement of the claim or claims identified in the Claim Notice, and may state whether the Respondent proposes to do any remedial work, pay the Claimant a cash amount, or both (the "**Settlement Statement**").

1. If the Respondent fails to deliver a timely Settlement Statement, the Claimant may bring an action on the claim or claims identified in the Claim Notice.

2. If the Respondent delivers a timely Settlement Statement, then within thirty (30) days after receipt of the Settlement Statement, the Claimant shall hold a settlement conference with the Respondent to discuss the claim or claims identified in the Claim Notice and the proposed settlement stated in the Settlement Statement (the "**Settlement Conference**"). If the Claimant is the Association, it shall be represented by at least a majority of the members of the Board of Directors at the Settlement Conference. The Claimant and the Respondent may be represented by attorneys and consultants at the Settlement Conference and any mutually agreed upon continuation thereof.

3. If a settlement of the claim or claims identified in the Claim Notice is not reached within thirty (30) days after the Settlement Conference, or any mutually agreed upon continuation thereof, the Claimant or the Respondent may deliver to the other party, within thirty (30) days after the Settlement Conference, or any mutually agreed upon continuation thereof, a written request for nonbinding mediation. Either party to any such nonbinding mediation may

elect to terminate such nonbinding mediation at any time, but not before the mediation has lasted at least three (3) hours, upon that party's determination that the nonbinding mediation has been unable to resolve the dispute, by giving written notice to the other party of such determination.

4. Any notice, request, statement, or other communication required to be sent to the Respondent or a Claimant under this section shall be mailed by first-class registered or certified mail, return receipt requested, or sent by facsimile (with evidence of transmission and receipt), or personally served on the party entitled to receive such notice, request statement or other communication.

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

C. WAIVER OF JURY TRIAL. ANY LAWSUIT AGAINST THE RESPONDENT BY A CLAIMANT SHALL BE SOLELY BEFORE A JUDGE IN THE JURISDICTION WHERE THE CONDOMINIUM IS LOCATED. THE ASSOCIATION AND ALL INDIVIDUAL UNIT OWNERS WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY THE ASSOCIATION OR ANY INDIVIDUAL UNIT OWNER AGAINST THE RESPONDENT IN CONNECTION WITH ANY RIGHTS OR OBLIGATIONS BETWEEN THE ASSOCIATION AND/OR A UNIT OWNER AGAINST THE RESPONDENT REGARDLESS OF THE FORM OF THE CLAIM(S) MADE OR DAMAGES SOUGHT. THIS WAIVER OF JURY TRIAL WILL EXTEND TO ANY THIRD PARTY NAMED IN ANY PROCEEDING BY THE ASSOCIATION, ANY UNIT OWNER OR THE RESPONDENT.

XXVI. EXEMPTIONS FOR PERSONS WITH DISABILITIES.

Notwithstanding anything to the contrary contained in this Declaration, the Bylaws or the House Rules, Owners with disabilities shall be allowed reasonable exemptions from this Declaration, the Bylaws and the House Rules when necessary and as appropriate to enable them to use and enjoy their Residential Units and the appurtenant Residential Limited Common Elements; provided that any Owner with a disability desiring such an exemption shall make such request in writing, to the Association. 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 Association shall not unreasonably withhold or delay its approval of such request, and any such request shall be deemed to be granted if not denied in writing within forty-five (45) days of the Association's receipt thereof, or within forty-five (45) days of the Association's receipt of additional information reasonably required by the Association in order to consider such request, whichever shall last occur.

XXVII. COMPLIANCE WITH COUNTY ZONING AND BUILDING LAWS.

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

XXVIII. RIGHT TO APPOINT AND REMOVE THE OFFICERS AND MEMBERS OF THE BOARD; DEVELOPER CONTROL PERIOD.

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

XXIX. RESIDENT MANAGER UNIT.

Developer is the Owner of Residential Unit 1306, which is initially intended to be used as the resident manager Unit. Developer may sell, pledge, lease, assign, convey, mortgage and/or transfer Unit 1306 to a third party, including without limitation, the Association, in its sole discretion. Upon such conveyance, Developer does not guaranty, warrant or represent that Unit 1306 will continue to be used as a resident manager Unit or be utilized to serve the Project or its Owners.

XXX. 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 Declaration unless that is made impossible by the absence of the omitted term.

C. NOTICES. Except as otherwise expressly required in this Declaration, the Bylaws or the Act, all notices, requests, demands, bills, statements, or other communications under this Declaration and the Bylaws (collectively, “Communications”) shall be in writing and shall be deemed to have been duly given if delivered personally or when delivered by certified mail, return receipt requested, by electronic mail (email) or by any other delivery or courier service that can provide tracking information regarding the delivery of such notice, to a party at

its address set forth below or such address as may be provided by a party from time to time in writing to the Board of Directors.

Notwithstanding the foregoing, all Communications to any Lender under this Declaration and the Bylaws shall be in writing and shall be deemed to have been duly given only when delivered by certified mail, return receipt requested or by overnight courier with proof of delivery.

If to Developer:

AMX Partners, LLC
1288 Ala Moana Blvd., Ste. 208
Honolulu, Hawaii 96813
Attn: Alana Pakkala, Kathy Inouye and
Russell Kaupu

During the Developer Control Period, the address for Communications to the Board of Directors shall be the same as the address provided for Developer.

If delivery of any notice as provided in this section is refused, the date of such refusal shall be deemed to be the date of delivery.

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

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

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

G. EFFECT OF FAILURE TO ENFORCE. A violation of any part of the Condominium Documents by one person does not excuse that person or anyone else from his or her duty to obey that and all other parts of the Condominium Documents. Any failure to enforce any provision of this Declaration does not limit or take away the right to enforce that provision later.

H. NO PARTNERSHIP. Nothing contained in this Declaration shall be deemed to or is intended to create a partnership between Developer or any Unit Owner for federal income tax law, state law, or any other purpose.

I. APPROVAL STANDARD. When the approval of a party is called for in this Declaration, such approval shall not be unreasonably conditioned, withheld or delayed unless a different approval standard is specifically set forth herein.

J. 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.

K. 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.

L. OWNERS' RIGHT TO INCORPORATE. The Unit 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 of the Association, the action will be void.

M. ATTORNEYS' FEES AND COSTS. If any party shall bring an action or proceeding (including, but not limited to, any cross-complaint, counter-claim, third party claim or arbitration proceeding) against an Owner or Managing Agent by reason of the alleged breach or violation of any provision hereof, or for the enforcement of any provision hereof, or to interpret any provision hereof, or otherwise arising out of this Declaration, then the prevailing party in such action or proceeding shall be entitled to its costs and expenses of such action or proceeding, including, but not limited to, its actual attorneys' fees, which shall be payable by the non-prevailing party whether or not such action or proceeding is prosecuted to judgment or award. For the purposes of this Declaration, the term "**attorneys' fees**" shall mean the fees and expenses of counsel to the parties hereto, which may include fees incurred with respect to post-judgment motions, contempt proceedings, garnishment, levy, debtor and third-party examinations, discovery, bankruptcy, litigation, and may include expenses such as printing, photostating, duplicating, facsimiles, filing fees, air freight charges and fees billed for law clerks, paralegal and other Persons not admitted to the bar but performing services under the supervision of an attorney, all of which shall be deemed to have accrued upon the occurrence of the act or omission giving rise to the incurrence of such fees.

N. NO PUBLIC DEDICATION. Nothing herein contained shall be deemed a gift or dedication of the Project, or any 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 Unit Owners.

O. 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.

P. 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.

Q. 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 Bylaws and the House Rules, the Bylaws shall control.

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

S. RULE AGAINST PERPETUITIES; DURATION OF RESERVED RIGHTS. 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 Barack Obama. All of the Developer's Reserved Rights, if exercised, and all of the Initial Commercial Owner's Reserved Rights, if exercised, must be exercised during the period set forth herein.

XXXI. INVALIDITY AND CHANGES IN THE 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 by the Bylaws, such change in law shall control over the provisions of this Declaration or the Bylaws only to the extent the legislative body enacting such change in law expressly provides that the provisions of such change in law shall control over provisions to the contrary in preexisting Condominium Documents.

IN WITNESS WHEREOF, the undersigned have executed this Declaration effective as of September 22, 2014.

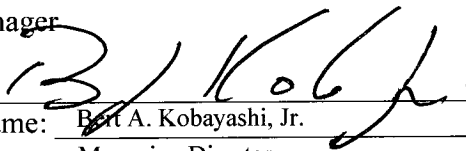
GGP ALA MOANA L.L.C.
a Delaware limited liability company

By: _____
Name: _____
Its: _____

“Fee Owner”

✓ AMX PARTNERS, LLC
a Delaware limited liability company


By Kahikolu Partners, LLC
a Delaware limited liability company
Its Manager

By: 
Name: Bert A. Kobayashi, Jr.
/ Its: Managing Director

“Developer”

IN WITNESS WHEREOF, the undersigned have executed this Declaration effective as of September 22, 2014.

GGP ALA MOANA L.L.C.
a Delaware limited liability company

By: 
Name: Francisco Gutierrez
Its: Authorized Signatory

“Fee Owner”

AMX PARTNERS, LLC
a Delaware limited liability company

By Kahikolu Partners, LLC
a Delaware limited liability company
Its Manager

By: _____
Name: _____
Its: _____

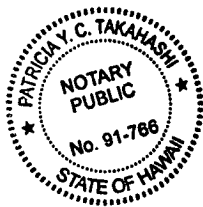
By: _____
Name: _____
Its: _____

“Developer”

STATE OF HAWAII)
)
CITY AND COUNTY OF HONOLULU) SS

On this 22 day of September, 2014, before me appeared
Bert A. Kobayashi, Jr., 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 capacity shown, having been duly authorized to executed
such instrument in such capacity.

(seal)



Patricia Y. C. Takahashi

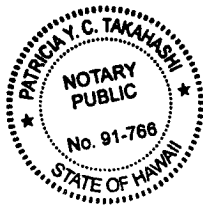
Name: Patricia Y. C. Takahashi
Notary Public, State of Hawaii
First Judicial Circuit

My commission expires on: July 8, 2015

Notary Certification

Doc. Date: Undated at time of notary # Pages: 116
First First Circuit
[Print Name of Notary]

(seal)



Doc. Description: Declaration of Condominium Property Regime
of Park Lane

Patricia Y. C. Takahashi

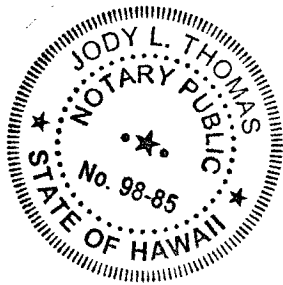
Notary Signature

09/22/2014

Date

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 22nd day of September, 2014, before me personally appeared **FRANCISCO GUTIERREZ**, personally known/proved to me on the basis of satisfactory evidence, 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 capacity shown, having been duly authorized to execute such instrument in such capacity.



(Notary Stamp or Seal)

Jody L. Thomas

Name: **Jody L. Thomas**

Notary Public, State of Hawaii

My commission expires: 2/17/2018

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Declaration of the Condominium Property Regime of Park Lane

Document Date: September 22, 2014

No. of Pages: 49 (including this page)

Jurisdiction (in which notarial act is performed): First

Jody L. Thomas

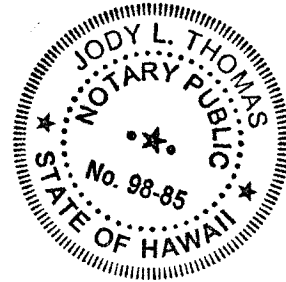
Signature of Notary

9/22/2014

Date of Notarization and
Certification Statement

Jody L. Thomas

Printed Name of Notary



(Notary Stamp or Seal)

EXHIBIT A
PROPERTY DESCRIPTION

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

✓ Lot 23, area 315,224 square feet, more or less, as shown on Map 19 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 48 of Hawaiian Land Company, Limited; ✓

100
8880218
Being land(s) described in Transfer Certificate of Title No. 1,068,953 issued to GGP Ala Moana L.L.C., a Delaware limited liability company.

Together with a non-exclusive, irrevocable and perpetual easement and right-of-way for purposes of ingress and egress and utilities over, under, in and through Lots 1, 3 and 7 of Land Court Consolidation No. 65 and Lot 4 of Land Court Consolidation No. 70, as granted by Easement Agreement dated --- (acknowledged June 28, 1982), filed as Land Court Document No. 1121201, as amended by instrument dated December 15, 1982, filed as Land Court Document No. 1160791; subject to the terms and provisions contained therein.

-Note:- Lot 1 of Land Court Consolidation No. 65 is shown on Tax Map as Kona Iki Street. Lots 3 and 7 of Land Court Consolidation No. 65 are shown on Tax Map as Mahukona Street. Lot 4 of Land Court Consolidation No. 70 is shown on Tax Map as Kona Street.

Being the premises acquired by Quitclaim Deed:

Grantor: D/E Hawaii Joint Venture, a Hawaii general partnership

Grantee: GGP Ala Moana L.L.C., a Delaware limited liability company

Dated: July 30, 1999

Filed: Land Court Document No. 2564250

✓ Together also with non-exclusive rights and easements over Lot 73, Lot 2-A, and Lot 22, for the purposes more particularly described therein, as granted by Reciprocal Easement Agreement dated June 25, 2014, filed as Land Court Document No. T-8946262; as amended by First Amendment to Reciprocal Easement Agreement, dated September 19, 2014, filed as Land Court Document No. T-9027317; and subject to the terms and provisions contained therein.

Subject, however, to all encumbrances of record.

EXHIBIT B

UNIT NUMBERS, UNIT TYPES, UNIT DESCRIPTIONS, APPROXIMATE NET LIVING AREAS, APPROXIMATE NET LANAI AREAS, COMMON INTERESTS, COMMON INTERESTS, CLASS COMMON INTEREST, PARKING STALLS AND STORAGE ROOMS/STORAGE LOCKERS

A. Residential Units

Unit		Unit Descriptions		Apprx. Net Living Area		Apprx. Net Lanai Area		Common Interest	Residential Class Common Int%	Individual Residential LCE Parking Stall No(s)	Individual Residential LCE Storage Room No.	Individual Residential LCE Locker No(s)
Unit Number	Unit Type	Bed/Bath	+Additional Rooms/Amenities	Sq Ft	Area	SF	Area					
1300	1B-2	1/1	Den	1,037	0	0	0.235896%	0.235898%	0.235898%	3027		L301
1301	1B-1	1/1	Den	977	70	70	0.222247%	0.222333%	0.222333%	3028		L302
1302	1B	1/1	Den	961	70	70	0.218608%	0.218692%	0.218692%	3029		L303
1303	1A	1/1.5		836	70	70	0.190173%	0.190246%	0.190246%	3030		L304
1304	1A	1/1.5		836	70	70	0.190173%	0.190246%	0.190246%	3031		L305
1305	1A-1	1/1.5		842	70	70	0.191538%	0.191612%	0.191612%	3032		L306
1306	2D	2/2	Den	1,847	144	144	0.420118%	0.420337%	0.420337%	**See Exhibit C for Stall, Storage & Lockers**		
1400	1B-3	1/1	Den	1,049	0	0	0.238626%	0.238718%	0.238718%	4246		L411
1401	1B-1	1/1	Den	977	87	87	0.222247%	0.222333%	0.222333%	4230		L417
1402	1B	1/1	Den	961	70	70	0.218608%	0.218692%	0.218692%	4247		L419
1403	1A	1/1.5		836	87	87	0.190173%	0.190246%	0.190246%	4237		L308
1404	1A	1/1.5		836	70	70	0.190173%	0.190246%	0.190246%	4239		L310
1405	1A-1	1/1.5		842	87	87	0.191538%	0.191612%	0.191612%	4255		L459
1406	2D	2/2	Den	1,847	178	178	0.420155%	0.420317%	0.420317%	4303T 4304T	S485	
1500	1B-3	1/1	Den	1,049	0	0	0.238626%	0.238718%	0.238718%	4245		L410
1501	1B-1	1/1	Den	977	70	70	0.222247%	0.222333%	0.222333%	4229		L414
1502	1B	1/1	Den	961	93	93	0.218608%	0.218692%	0.218692%	4231		L418
1503	1A	1/1.5		836	70	70	0.190173%	0.190246%	0.190246%	4236		L307
1504	1A	1/1.5		836	87	87	0.190173%	0.190246%	0.190246%	4238		L309
1505	1A-1	1/1.5		842	70	70	0.191538%	0.191612%	0.191612%	4253		L311
1506	2D	2/2	Den	1,847	178	178	0.420155%	0.420317%	0.420317%	4301T 4302T	S518	
1600	1B-3	1/1	Den	1,049	0	0	0.238626%	0.238718%	0.238718%	4228HC		L404
1601	1B-1	1/1	Den	977	70	70	0.222247%	0.222333%	0.222333%	4258		L407
1602	1B	1/1	Den	961	70	70	0.218608%	0.218692%	0.218692%	4244		L409

Unit Number	Unit Type	Unit Descriptions		Apprx. Net Living Area Sq Ft	Appx. Net Lanai Area SF	Common Interest	Residential Class Common Int%	Individual Residential LCE Parking Stall No(s).	Individual Residential LCE Storage Room No.	Individual Residential LCE Locker No(s).
1603	1A	1/1.5		836	70	0.190173%	0.190246%	4251		L426
1604	1A	1/1.5		836	70	0.190173%	0.190246%	4252		L427
1605	1A-1	1/1.5		842	70	0.191538%	0.191612%	4235		L430
1606	2D-1	2/2 Den		1,930	144	0.439035%	0.439205%	4299T 4300T	S601	
1700	1B-4	1/1 Den		1,058	0	0.240673%	0.240766%	4256HC		L402
1701	1B-1	1/1 Den		977	87	0.222247%	0.222333%	4270		L405
1702	1B	1/1 Den		961	70	0.218608%	0.218692%	4257		L408
1703	1A	1/1.5		836	87	0.190173%	0.190246%	4232		L422
1704	1A	1/1.5		836	70	0.190173%	0.190246%	4234		L424
1705	1A-1	1/1.5		842	87	0.191538%	0.191612%	4250		L425
1706	2D-1	2/2 Den		1,930	144	0.439035%	0.439205%	3103T 3104T	S701	
1800	1B-4	1/1 Den		1,058	0	0.240673%	0.240766%	4269HC		L401
1801	1B-1	1/1 Den		977	70	0.222247%	0.222333%	4243HC		L403
1802	1B	1/1 Den		961	93	0.218608%	0.218692%	4259		L406
1803	1A	1/1.5		836	70	0.190173%	0.190246%	4248		L420
1804	1A	1/1.5		836	87	0.190173%	0.190246%	4249		L421
1805	1A-1	1/1.5		842	70	0.191538%	0.191612%	4233		L423
1806	2D-1	2/2 Den		1,930	179	0.439035%	0.439205%	3101T 3102T	S801	
2300	2J-1	2/2.5 Den Laundry	Spa	1,823	598	0.414695%	0.414856%	3059 3060	S426	
2301	2J	2/2.5 Den Laundry	Spa	2,018	606	0.459054%	0.459231%	3057 3058	S422	
2302	2I	2/2 Laundry	Spa	1,580	462	0.359418%	0.359557%	3099T 3100T	S102	
2303	2I-1	2/2 Den Laundry	Spa	1,614	632	0.367152%	0.367294%	3001 3002	S410	
2304	2A	2/2.5 Den Laundry	Garage	1,972	336	0.448590%	0.448763%	3093G 3094G		
2400	2J-1	2/2.5 Den Laundry		1,823	256	0.414695%	0.414856%	4271 4272	S416	
2401	2J	2/2.5 Den Laundry		2,018	452	0.459054%	0.459231%	4283 4284	S428	
2402	2I	2/2 Laundry		1,580	313	0.359418%	0.359557%	4297T 4298T		L462 L463
2403	2I-1	2/2 Den Laundry		1,614	310	0.367152%	0.367294%	4295T 4296T		L460 L461
2500	2J-1	2/2.5 Den Laundry		1,823	454	0.414695%	0.414856%	3079 3080	S413	
2501	2J	2/2.5 Den Laundry		2,018	255	0.459054%	0.459231%	3054 3055	S424	
2502	2I	2/2 Laundry		1,580	313	0.359418%	0.359557%	3041 3042	S101	

Unit Number	Unit Type	Unit Descriptions Bed/Bath +Additional Rooms/Amenities		Apprx. Net Living Area		Appx. Net Lanai Area	Common Interest	Residential Class Common Int%	Individual Residential LCE Parking Stall No(s)		Individual Residential LCE Storage Room No.	Individual Residential LCE Locker No(s)
				Sq Ft	SF							
2503	2I-1	2/2	Den Laundry	1,614	310		0.367152%	0.367294%	3105T 3106T		S103	
2600	2J-1	2/2.5	Den Laundry	1,823	256		0.414695%	0.414856%	3077 3078		S414	
2601	2J	2/2.5	Den Laundry	2,018	452		0.459054%	0.459231%	3075 3076		S421	
2602	2I	2/2	Laundry	1,580	313		0.359418%	0.359557%	3003 3004		S510	
2603	2I-1	2/2	Den Laundry	1,614	310		0.367152%	0.367294%	3043 3044		S106	
2604	2G	2/2.5	Den	1,878	477		0.427207%	0.427372%	3018 3019		S412	
2700	2J-1	2/2.5	Den Laundry	1,823	256		0.414695%	0.414856%	3072 3073		S427	
2701	2J	2/2.5	Den Laundry	2,018	452		0.459054%	0.459231%	3071 3092		S429	
2702	2I	2/2	Laundry	1,580	313		0.359418%	0.359557%	3020 3021		S407	
2703	2I-1	2/2	Den Laundry	1,614	310		0.367152%	0.367294%	3022 3023		S107	
2704	2G	2/2.5	Den	1,878	477		0.427207%	0.427372%	3033 3034		S418	
2706	3A-1	3/3.5	Laundry	2,930	310		0.666515%	0.666773%	3052 3053		S419	
2800	2J-1	2/2.5	Den Laundry	1,823	454		0.414695%	0.414856%	3095 3096		S423	
2801	2J	2/2.5	Den Laundry	2,018	452		0.459054%	0.459231%	3097 3098		S425	
2802	2I	2/2	Laundry	1,580	313		0.359418%	0.359557%	3035 3051		S417	
2803	2I-1	2/2	Den Laundry	1,614	310		0.367152%	0.367294%	3016 3017		S420	
2804	2G	2/2.5	Den	1,878	477		0.427207%	0.427372%	4285 4286		S430	
2806	3A-1	3/3.5	Laundry	2,930	310		0.666515%	0.666773%	3069 3070		S415	
3300	2J-3	2/2.5	Den Laundry	1,953	488		0.444268%	0.444439%	3085 3086		S304	
3301	2J-2	2/2.5	Den Laundry	1,836	391		0.417652%	0.417814%	3083 3084		S303	
3302	3E	3/3.5	Den Laundry	2,758	498		0.627389%	0.627631%	3121G 3122G			
3303	2I-1	2/2	Den Laundry	1,614	398		0.367152%	0.367294%	3067 3068		S301	
3305	2A-1	2/2.5	Den Laundry	1,970	328		0.448135%	0.448308%	3113G 3114G			
3400	2J-3	2/2.5	Den Laundry	1,953	455		0.444268%	0.444439%	3088 3089		S447	
3401	2J-2	2/2.5	Den Laundry	1,836	256		0.417652%	0.417814%	4341 4266		S440	
3402	3E-15	3/3.5	Den Laundry	2,738	514		0.622839%	0.623080%	4353G 4354G			
3403	2I-1	2/2	Den Laundry	1,614	310		0.367152%	0.367294%	4307T 4308T			L415 L416
3500	2J-3	2/2.5	Den Laundry	1,953	253		0.444268%	0.444439%	4346 4347		S444	
3501	2J-2	2/2.5	Den Laundry	1,836	452		0.417652%	0.417814%	3081 3082		S432	
3502	PR-5	4/4.5	Laundry	4,328	716		0.984651%	0.984912%	3126G 3127G 3065		S305	

Unit Number	Unit Type	Unit Descriptions			Apprx. Net Living Area Sq Ft	Apprx. Net Lanai Area SF	Common Interest	Residential Class Common Int%	Individual Residential LCE Parking Stall No(s)		Individual Residential LCE Storage Room No.	Individual Residential LCE Locker No(s)
3503	2I-1	2/2	Den	Laundry	1,614	310	0.367152%	0.367294%	4260	4261	L428	L429
3600	2I-3	2/2.5	Den	Laundry	1,953	455	0.444268%	0.44439%	3117	3118	S435	
3601	2I-2	2/2.5	Den	Laundry	1,836	256	0.417652%	0.417814%	3111	3112	S433	
3602	2I-2	2/2	Den	Laundry	1,638	310	0.372611%	0.372756%	4278	4279	S443	
3603	2I-1	2/2	Den	Laundry	1,614	310	0.367152%	0.367294%	4273	4274	S402	
3604	2H-1	2/2.5	Den	Laundry	1,997	286	0.454277%	0.454452%	4348	4349	S448	
3605	2G-1	2/2.5	Den		1,785	493	0.406051%	0.406208%	4263	4264	S405	
3700	2I-3	2/2.5	Den	Laundry	1,953	455	0.444268%	0.44439%	4351	4352	S434	
3701	2I-2	2/2.5	Den	Laundry	1,836	452	0.417652%	0.417814%	3108	3109	S431	
3702	2I-2	2/2	Den	Laundry	1,638	310	0.372611%	0.372756%	4280	4281	S441	
3703	2I-1	2/2	Den	Laundry	1,614	310	0.367152%	0.367294%	4276	4277	S404	
3704	3A-3	3/3.5	Laundry		2,695	347	0.613057%	0.613294%	3119	3120	3012	S446
3705	2G-1	2/2.5	Den		1,785	493	0.406051%	0.406208%	4267	4268	S442	
3707	3A-2	3/3.5	Laundry		2,934	310	0.667425%	0.667683%	4292	4293	S439	
3800	GPH-A	4/4.5	Den	Laundry Office Garage Elevator	5,596	885	1.272975%	1.273468%	4358G	4359G	4315T	4316T
3803	2I-1	2/2	Den	Laundry	1,614	310	0.367152%	0.367294%	3056	3074	S438	
3804	3A-3	3/3.5	Laundry		2,695	347	0.613057%	0.613294%	3115	3116	3025	S445
3805	2G-1	2/2.5	Den		1,785	493	0.406051%	0.406208%	3087	3040	S436	
3807	3A-2	3/3.5	Laundry		2,934	310	0.667425%	0.667683%	4342	4343	S437	
5300	2K	2/2		Yard Spa	1,353	411	0.307780%	0.307899%	3130	3133	S307	
5301	3G-2	3/3		Yard Spa	2,104	449	0.478617%	0.478802%	3140	3141	S308	
5304	3F	3/3.5	Den	Laundry Office Garage Yard	3,366	515	0.765696%	0.765992%	3146G	3147G		
5305	3E-1	3/3.5	Laundry	Garage	2,641	459	0.600773%	0.601006%	3136G	3137G		
5400	3G-3	3/3	Laundry		2,162	254	0.491811%	0.492001%	4367	4370	S517	
5401	3G	3/3.5	Laundry		2,334	254	0.530937%	0.531143%	4357	4360	S457	
5404	3E-3	3/3.5	Laundry	Garage	2,627	505	0.597589%	0.597820%	4377G	4378G		
5405	3E-2	3/3.5	Laundry	Garage	2,638	505	0.600091%	0.600323%	4368G	4369G		
5500	3G-1	3/3	Laundry		2,204	254	0.501365%	0.501559%	4365	4366	S507	
5501	3G	3/3.5	Laundry		2,334	291	0.530937%	0.531143%	4361	4362	S512	
5504	PR-3	4/4.5	Laundry	Garage	4,124	668	0.938126%	0.938488%	3131G	3132G	3045	S306

Unit Number	Unit Type	Unit Descriptions		Apprx. Net Living Area		Apprx. Net Lanai Area	Common Interest	Residential Class Common Int%	Individual Residential LCE Parking		Individual Residential LCE Storage Room No.	Individual Residential LCE Locker No(s).
				Sq Ft	SF							
5505	PR-2	4/4.5	Laundry	Garage	4,142	653	0.942220%	0.942585%	4382G	4383G	4262	S459
5600	3G-1	3/3	Laundry		2,204	292	0.501365%	0.501559%	4371	4372		S502
5601	3G	3/3.5	Laundry		2,334	254	0.530937%	0.531143%	4379	4380		S458
5602	2C	2/2	Den	Laundry	1,451	251	0.330073%	0.330200%	4305T	4306T		L412 L413
5603	2C-1	2/2	Den	Laundry	1,481	261	0.336897%	0.337028%	4344T	4345T		L457 L458
5604	2H-2	2/2.5	Den	Laundry	2,040	310	0.464058%	0.464238%	4375	4376		S514
5605	2H	2/2.5	Den	Laundry	1,995	284	0.453822%	0.453997%	3124	3125		S505
5700	3G-1	3/3	Laundry		2,204	292	0.501365%	0.501559%	3128	3129	4240	S455
5701	3G	3/3.5	Laundry		2,334	291	0.530937%	0.531143%	4373	4374		S451
5702	2C	2/2	Den	Laundry	1,451	251	0.330073%	0.330200%	4355	4287		L433 L434
5703	2C-1	2/2	Den	Laundry	1,481	261	0.336897%	0.337028%	4356	4288		L431 L432
5704	3A-4	3/3.5	Laundry		2,725	370	0.619882%	0.620122%	3144	3145	3010	S452
5705	3A	3/3.5	Laundry		2,705	358	0.615332%	0.615570%	3134	3135	3015	S453
5800	GPH-B	4/4.5	Den	Laundry	Office	Garage	Elevator	1.424345%	4363G	4364G	4317T 4318T	S450
5802	2C	2/2	Den	Laundry		1,451	251	0.330073%	3123	3061		L312 L313 L314
5804	3A-4	3/3.5	Laundry		2,725	370	0.619882%	0.620122%	3142	3143	3005	S454
5805	3A	3/3.5	Laundry		2,705	358	0.615332%	0.615570%	3138	3139	3024	S456
6300	2B-1	2/2		Spa	1,387	897	0.315514%	0.315636%	3165	3166		S312
6301	2B	2/2		Spa	1,376	898	0.313012%	0.313133%	3155	3158		S311
6304	3E-6	3/3.5	Den	Laundry	Garage	Yard	Pool/Spa	0.632621%	3172G	3173G		
6305	3E-4	3/3.5	Den	Laundry	Garage	Yard	Pool/Spa	0.636033%	3161G	3162G		
6400	2F-1	2/2.5	Den		1,953	342	0.444268%	0.444439%	4385	4386		S508
6401	2F	2/2.5	Den		1,953	342	0.444268%	0.444439%	4396	4397		S513
6404	3E-7	3/3.5	Den	Laundry	Garage			0.627404%	4392G	4393G		
6405	3E-5	3/3.5	Den	Laundry	Garage			0.631045%	4403G	4404G		
6500	2F-1	2/2.5	Den		1,953	385	0.444268%	0.444439%	4398	4399		S504
6501	2F	2/2.5	Den		1,953	342	0.444268%	0.444439%	4400	4401		S403
6504	PR	3/3.5	Den	Laundry	Garage			0.923014%	3151G	3152G	3047	S309
6505	PR-1	4/4.5	Laundry	Garage	4,263	723	0.969745%	0.970120%	3156G	3157G	3064	S310
6600	2F-1	2/2.5	Den		1,953	342	0.444268%	0.444439%	3153	3154		S503

Unit Number	Unit Type	Unit Descriptions Bed/Bath +Additional Rooms/Amenities		Apprx. Net Living Area		Appx. Net Lanai Area	Common Interest	Residential Class Common Int%	Individual Residential LCE Parking		Individual Residential LCE Storage Room No.	Individual Residential LCE Locker No(s).
				Sq Ft	SF				Stall No(s).	Room No.		
6601	2F	2/2.5	Den	1,953	385		0.444268%	0.444439%	3149	3150	S509	
6602	2E	2/2.5	Laundry	1,440	288		0.327571%	0.327697%	4381	4290		L437 L455 L456
6603	2E-1	2/2.5	Den	1,591	288		0.361920%	0.362060%	3148	3063		L317 L318 L319
6604	2H-4	2/2.5	Den	2,024	288		0.460419%	0.460597%	4394	4395	S461	
6605	2H-3	2/2.5	Den	2,017	280		0.458826%	0.459004%	4389	4390	S516	
6700	2F-1	2/2.5	Den	1,953	342		0.444268%	0.444439%	3159	3160	S462	
6701	2F	2/2.5	Den	1,953	342		0.444268%	0.444439%	3169	3170	S406	
6702	2E	2/2.5	Laundry	1,440	288		0.327571%	0.327697%	4391	4291		L436 L453 L454
6703	2E-1	2/2.5	Den	1,591	288		0.361920%	0.362060%	4384	4289		L438 L439 L440
6704	3A-6	3/3.5	Laundry	2,694	370		0.612830%	0.613067%	3167	3168	S464	
6705	3A-5	3/3.5	Laundry	2,731	370		0.621247%	0.621487%	3163	3164	S463	
6800	GPH-C	5/5.5	Laundry Office Garage Elevator	5,709	905		1.298681%	1.299183%	4387G 4388G 4313T 4314T	S460		
6802	2E	2/2.5	Laundry	1,440	288		0.327571%	0.327697%	3171	3110	S486	
6804	3A-6	3/3.5	Laundry	2,694	370		0.612830%	0.613067%	4407	4408	S467	
6805	3A-5	3/3.5	Laundry	2,731	370		0.621247%	0.621487%	3176	3177	S316	
7300	2K	2/2	Yard Spa	1,353	467		0.307780%	0.307899%	3178	3107		L322 L332 L333
7301	3G-2	3/3	Laundry	2,104	449		0.478617%	0.478802%	3190	3193	S314	
7304	3F-1	3/3.5	Den	3,361	497		0.764559%	0.764854%	3196G 3197G			
7305	3E-8	3/3.5	Laundry	2,696	514		0.613285%	0.613522%	3184G 3185G			
7400	3G-5	3/3	Laundry	2,166	255		0.492721%	0.492911%	4418	4420	S506	
7401	3G	3/3.5	Laundry	2,334	254		0.530937%	0.531143%	4425	4428	S475	L445
7404	3E-10	3/3.5	Laundry	2,659	481		0.604868%	0.605102%	4426G 4427G			
7405	3E-9	3/3.5	Laundry	2,664	496		0.606005%	0.606240%	4414G 4415G			
7500	3G-1	3/3	Laundry	2,204	254		0.501365%	0.501559%	3198	3199	S315	
7501	3G	3/3.5	Laundry	2,334	291		0.530937%	0.531143%	4423	4424	S318	
7504	PR-6	4/4.5	Laundry	4,159	651		0.946087%	0.946453%	3174G 3175G 3050		S313	
7505	PR-7	4/4.5	Laundry	4,154	653		0.944950%	0.945316%	4405G 4406G 4241		S465	
7600	3G-1	3/3	Laundry	2,204	292		0.501365%	0.501559%	3179	3180	S473	
7601	3G	3/3.5	Laundry	2,334	254		0.530937%	0.531143%	4421	4422	S469	
7602	2C-3	2/2	Den	1,442	251		0.328025%	0.328152%	3189	3037		L326 L327

Unit Number	Unit Type	Unit Descriptions				Apprx. Net Living Area		Apprx. Net Lanai Area	Common Interest	Residential Class Common Int%	Individual Residential LCE Parking		Individual Residential LCE Storage Room No.	Individual Residential LCE Locker No(s).
		Bed/Bath	+Additional Rooms/Amenities	Unit Descriptions		Sq Ft	SF				Stall No(s).			
7603	2C-1	2/2	Den Laundry			1,481	261		0.336897%	0.337028%	4402	4275	L443	L444
7604	2H-5	2/2.5	Den Laundry			2,040	288		0.464058%	0.464238%	4416	4417	S466	
7605	2H-7	2/2.5	Den Laundry			1,976	284		0.449500%	0.449673%	4413	4419	S468	
7700	3G-1	3/3	Laundry			2,204	292		0.501365%	0.501559%	3182	3183	S470	
7701	3G	3/3.5	Laundry			2,334	291		0.530937%	0.531143%	3194	3195	S471	
7702	2C-3	2/2	Den Laundry			1,442	251		0.328025%	0.328152%	4409	4265		L441 L442
7703	2C-1	2/2	Den Laundry			1,481	261		0.336897%	0.337028%	3181	3039		L324 L325
7704	3A-7	3/3.5	Laundry			2,704	360		0.615105%	0.615343%	3187	3188 3011	S474	
7705	3A-9	3/3.5	Laundry			2,700	370		0.614195%	0.614432%	4429	4430	S515	
7800	GPH-B1	4/4.5	Den Laundry Office Garage Elevator			6,267	690		1.425614%	1.426166%	4431G 4432G 4311T 4312T	S476		
7802	2C-3	2/2	Den Laundry			1,442	251		0.328025%	0.328152%	3186	3062		L323 L334 L335
7804	3A-7	3/3.5	Laundry			2,704	360		0.615105%	0.615343%	3191	3192 3008	S472	
7805	3A-9	3/3.5	Laundry			2,700	370		0.614195%	0.614432%	4410	4411	S317	
8300	2B-2	2/2	Yard Spa			1,368	418		0.311192%	0.311312%	3208	3213	S322	
8301	2B-4	2/2	Yard Spa			1,377	773		0.313239%	0.313360%	3224	3227	S321	
8304	3E-13	3/3.5	Den Laundry	Garage	Pool/Spa	2,926	521		0.665605%	0.665863%	3222G 3223G			
8305	3E-11	3/3.5	Den Laundry	Garage	Pool/Spa	2,823	515		0.642175%	0.642423%	3211G 3212G			
8400	2B-3	2/2				1,442	306		0.328025%	0.328152%	4457	4350		L446 L451 L452
8401	2F	2/2.5	Den			1,953	342		0.444268%	0.444439%	4433	4434	S484	
8404	3E-14	3/3.5	Den Laundry	Garage		2,949	488		0.670837%	0.671097%	4452G 4453G			
8405	3E-12	3/3.5	Den Laundry	Garage		2,813	483		0.639900%	0.640147%	4441G 4442G			
8500	2B-3	2/2				1,442	306		0.328025%	0.328152%	4445	4446	S408	
8501	2F	2/2.5	Den			1,953	342		0.444268%	0.444439%	4449	4450	S401	
8504	PR-8	5/5.5	Laundry	Garage	Yard	4,696	824		1.068244%	1.068657%	3206G 3207G	3066	S320	
8505	PR-4	4/4.5	Laundry	Garage		4,171	687		0.948817%	0.949184%	3201G 3202G	3049	S319	
8600	2B-3	2/2				1,442	263		0.328025%	0.328152%	3225	3226	S323	
8601	2F	2/2.5	Den			1,953	385		0.444268%	0.444439%	4443	4444	S477	
8602	2E-3	2/2.5				1,569	286		0.356915%	0.357053%	4451	4454		L447 L448 L449 L450
8603	2E-2	2/2.5	Laundry			1,479	288		0.336442%	0.336572%	3200	3038		L330 L331
8604	3B	3/3.5	Den Laundry			3,010	290		0.684713%	0.684978%	3220	3221 3007	S479	

Unit Number	Unit Type	Unit Descriptions		Bed/Bath +Additional Rooms/Amenities		Apprx. Net Living Area		Apprx. Net Lanai Area		Common Interest		Residential Class Common Int%		Individual Residential LCE Parking Stall No(s).		Individual Residential LCE Storage Room No.		Individual Residential LCE Locker No(s).	
						Sq Ft		SF		Interest		Common Int%							
8605	2H-6	2/2.5	Den	Laundry		2,019		284		0.459281%		0.459459%		4439	4440	S511			
8700	2B-3	2/2				1,442		263		0.328025%		0.328152%		4455	4456	S483			
8701	2F	2/2.5	Den			1,953		342		0.444288%		0.444439%		4447	4448	S482			
8702	2E-3	2/2.5				1,569		286		0.356915%		0.357053%		3216	3219	S411			
8703	2E-2	2/2.5	Laundry			1,479		288		0.336442%		0.336572%		3203	3036		L328	L329	
8704	3H	3/3.5	Den	Laundry		3,239		347		0.736806%		0.737091%		3214	3215	S481			
8705	3A-8	3/3.5	Laundry			2,703		360		0.614877%		0.615115%		3204	3205	S501			
8800	GPH-D	4/4.5	Den	Laundry Office Garage Elevator		5,093		822		1.158553%		1.159001%		4436G	4437G 4309T 4310T	S478			
8802	2E-3	2/2.5				1,569		177		0.356915%		0.357053%		4435	4438	S409			
8804	3H	3/3.5	Den	Laundry		3,239		347		0.736806%		0.737091%		3217	3218	S480			
8805	3A-8	3/3.5	Laundry			2,703		360		0.614877%		0.615115%		3209	3210	S302			
Residential Totals						439,430		71,935		99.961300000%		100.000000000%							

B. Commercial Units

Unit Number	Apartment Type	Unit Description				Apprx. Net Living Area Sq Ft	Appx. Net Lanai Area SF	Common Interest	Commercial Class Common Int%
C-1	C-1	Commerial Unit				170	0	0.038700%	100.000000%
Total								100.000000%	100.000000%

EXHIBIT B

UNIT NUMBERS, UNIT TYPES, UNIT DESCRIPTIONS, APPROXIMATE NET LIVING AREAS, APPROXIMATE NET LANAI AREAS, COMMON INTERESTS, RESIDENTIAL/COMMERCIAL UNIT CLASS COMMON INTEREST, PARKING STALLS AND STORAGE ROOMS/STORAGE LOCKERS (Cont'd)

- A. Layout and Floor Plans of Units. There are ninety-two (92) materially different Residential Unit types (including “reverse” types). Each type has the number of bedrooms and bathrooms and the layouts depicted on the Condominium Map and set forth above. There is one (1) type of Commercial Unit. The Commercial Unit does not have any bedrooms or bathrooms and the layout of the Commercial Unit is as depicted on the Condominium Map.
- B. Approximate Net Living Areas. The approximate net living areas of the Commercial Unit and the Residential Units are based on measurements taken from the interior surface of all perimeter walls, except that no reduction has been made to account for interior walls, ducts, vents, shafts, stairways and the like located within the perimeter walls.
- C. Common Interest. The Common Interest for each of the two hundred sixteen (216) Units, including both the Commercial Unit and the Residential Units, in the Project is calculated based on dividing the approximate net living area of the Unit by the total net living area of all Units in the Project. In order to permit the Common Interest for all Units in the Project to equal exactly one hundred percent (100%) in the aggregate, the Common Interest attributable to the resident manager’s Unit (Unit 1306, as described in **Exhibit C**) has been decreased by 0.000037%.
- D. Commercial Unit Class Common Interest and Residential Class Common Interest. The Commercial Unit Class Common Interest of any Commercial Unit is calculated by dividing the approximate net area of the Commercial Unit by the total net area of all Commercial Units in the Project. In order to permit the Commercial Class Common Interest for all Commercial Units in the Project to equal exactly one hundred percent (100%) in the aggregate, the Initial Commercial Owner may increase or decrease the Commercial Class Common Interest appurtenant to a particular Commercial Unit by rounding in a fair and equitable manner. The Residential Class Common Interest is calculated by dividing the approximate net living area of the Residential Unit by the total net living area of all Residential Units in the Project. In order to permit the Residential Class Common Interest for all Residential Units in the Project to equal exactly one hundred percent (100%) in the aggregate, the Residential Class Common Interest attributable to the resident manager’s Unit (Unit 1306) has been increased by 0.00002%.
- E. Parking Stalls, Storage Rooms and Storage Lockers. Each Residential Unit has as an Individual Limited Common Element the parking stall(s) as listed above. Other numbered parking stalls (including the Residential Guest Parking) not otherwise identified as Individual Limited Common Elements above in the Residential Development are described in Exhibit C as being appurtenant to the Residential Unit 1306. Developer has reserved the right to redesignate such parking stalls, storage rooms and storage lockers currently appurtenant to Residential Unit

EXHIBIT B (Cont'd)

1306 to other Residential Units in the Project as Individual Limited Common Elements appurtenant to such Residential Units.

F. Lanais and Amenities. The Residential Units each have Individual Limited Common Element lanais with square footages as set forth above. Some Residential Units also have Individual Limited Common Element garages, yards, pools and spas as set forth above.

EXHIBIT C

GENERAL COMMON ELEMENTS; LIMITED COMMON ELEMENTS; RESIDENTIAL LIMITED COMMON ELEMENTS; COMMERCIAL LIMITED COMMON ELEMENTS; INDIVIDUAL LIMITED COMMON ELEMENTS; POTENTIAL INDIVIDUAL LIMITED COMMON ELEMENTS

One freehold estate is hereby designated in all portions of the Project not described as a Unit, herein called the "Common Elements," including, but not limited to the following areas:

A. GENERAL COMMON ELEMENTS. The General Common Elements include specifically:

1. The Land in fee simple and any other appurtenances thereto described in **Exhibit A**, subject, however, to all encumbrances of record and the rights of Developer and Initial Commercial Owner affecting the Land.

2. The shared manhole and sewer pipeline providing a connection between the Project and the sewer system of the City and County of Honolulu on Ala Moana Boulevard located underneath the "Bloomingdale's" vehicle entrance to the Project (collectively, the "General Common Element Shared Sewer Connection").

3. The shared structural elements located within the Commercial Development on Level 1, Level 1M and Level 2, together with the columns supporting Level 3, but excluding the Level 3 transition slab that provide support to both the Commercial Development and the Residential Development, including all foundations, columns, girders, beams, supports, and load bearing walls and partitions (excluding the finishes thereon) (collectively, the "General Common Element Shared Structural Elements").

B. LIMITED COMMON ELEMENTS. The Limited Common Elements include specifically, but are not limited to:

1. COMMERCIAL LIMITED COMMON ELEMENTS.

a. All Level 1, 1M and 2 sidewalks, walkways, landscaped areas, elevator shaft, storage and utility rooms and stairways but excluding all Residential Limited Common Elements as shown on the Condominium Map.

b. All Level 1 drive through areas, vehicle access ways and ramps, four hundred eighty-five (485) parking stalls numbered 1001 through 1485, the trolley stop and trolley drive through areas.

c. All Level 1M drive through areas, vehicle access ways and ramps, one hundred fifty-four (154) parking stalls numbered 1M001 through 1M154.

d. All Level 2 drive through areas, vehicle access ways and ramps, five hundred thirty-three (533) parking stalls numbered 2001 through 2533.

e. The elevator overrun and related equipment on Level 3 depicted as a Commercial Limited Common Element on the Condominium Map.

f. All structural Improvements providing support to only the Commercial Development.

g. Any signage or other items attached to such Commercial Limited Common Elements.

h. Those portions of any pipes, cables, conduits, chutes, flues, ducts, wires, vents, shafts, other utility or services lines, sewage treatment equipment and facilities (excluding the General Common Element sewage connection), electrical equipment, electrical closets, storage rooms, communication rooms, or other central and appurtenant transmission facilities and installments over, under and across the Commercial Development, or any other fixtures, whether located partially within and partially outside the designated boundaries of a Commercial Unit, which serve more than one Commercial Unit.

i. Any other areas designated on the Condominium Map as Commercial Limited Common Elements

2. RESIDENTIAL LIMITED COMMON ELEMENTS.

a. The fire stairways providing access from the Residential Development to Level 1, elevators providing access to Level 1 and Levels 3 through 8, the vehicle access ramp and security gate providing vehicle access from Piikoi Street to Levels 3, 4, 5 and 5A and the Individual Limited Common Element parking stalls and garages, the residential pedestrian accessway to the adjacent Ala Moana Shopping Center located on Level 2, 22 Residential Guest Parking stalls and 3 loading zone parking stalls located thereon.

b. The loading and service zones, rubbish transit area, utility rooms and storage rooms and lockers, landscaping area adjacent to the residential vehicle access ramp located on Level 1 as depicted as Residential Limited Common Elements on the Condominium Map.

c. The entirety of the structure of the Residential Development (other than the Residential Units and Individual Limited Common Elements) from the Level 3 transition slab and upwards, including, without limitation, the floor slabs, columns, girders, beams, supports, perimeter, party and load-bearing walls and partitions and the finishes thereon, not otherwise described as part of a Residential Unit, including, without limitation, the following:

(i) Those portions of the Residential Development not part of a Unit, an Individual Limited Common Element or a Potential Individual Limited Common Element;

(ii) All walkways, sidewalks, retaining walls, fences, gates, yard areas and all other common ways, pool enclosure areas, landscaping and grounds in the Residential Development;

(iii) Those portions of any pipes, cables, conduits, chutes, flues, ducts, wires, vents, shafts, other utility or service lines, sewage treatment equipment and facilities (excluding the General Common Element Shared Sewer Connection), supporting apparatus, electrical equipment, electrical closets, storage rooms, communications rooms, mail rooms, pump rooms, pool support pumps and equipment, systems and apparatus, HVAC, air conditioning and heating equipment and any appurtenant pipes and ducts, or other central and appurtenant transmission facilities and installations over, under and across the boundaries of the Residential Development, or any other fixtures, whether located partially within and partially outside the designated boundaries of a Residential Unit, which serve more than one Residential Unit or the Residential Limited Common Elements.

(iv) All utility and maintenance rooms, closets and facilities, storage rooms, electrical and mechanical rooms, elevator control rooms, overruns and pits, accessory equipment areas, storage areas, trash rooms and chutes, and other support areas that service the Residential Development;

(v) The Recreational Amenities located on Levels 3, 4, 5 and 5A, including, but not limited to, swimming pool and spa, any lounge areas, fitness areas, park and lawn areas, and all other recreational amenities;

(vi) Any and all decorative elements added by or on behalf of Developer to the Residential Development, including, without limitation, any louvers, metal panels, signs, glass curtain wall, glass and fixtures; and

(vii) The roofs of the Residential Development, including any elevator overruns or equipment thereon, antennae or Community Systems and other systems or equipment installed thereon.

f. Any other areas designated on the Condominium Map as Residential Limited Common Elements.

3. INDIVIDUAL LIMITED COMMON ELEMENTS.

a. The parking stall(s) assigned to each Residential Unit as set forth in **Exhibit B** attached hereto.

- b. Each of the storage lockers and storage rooms (designated by “S” and number (storage room) or “L” and number (locker)) identified and depicted on the Condominium Map.
- c. The yard areas, swimming pools and spas located on Level 3 and Level 5 and depicted on the Condominium Map as Individual Limited Common Elements.
- d. The lanais adjacent to the Residential Units and depicted on the Condominium Map as Individual Limited Common Elements.
- e. The elevator(s) serving the penthouse Residential Unit(s) as depicted on the Condominium Map.
- f. Any chute, flue, duct, pipe, cable, wire, conduit, or other fixture which lies totally or partially within and partially outside the designated boundaries of a Residential Unit, or any portion thereof, serving only that Residential Unit.
- g. Any other areas designated on the Condominium Map as Individual Limited Common Elements or Potential Individual Limited Common Elements.
- h. Unit 1306 has appurtenant to it:
 - Parking stalls: 3090HC, 4294HC, 4282HC, 4331T, 4332T, 4335T, 4336T and 4412.
 - Storage Rooms: S104 and S105.
 - Storage Lockers: L315, L316, L337, L320, L321 and L345.

4. POTENTIAL INDIVIDUAL LIMITED COMMON ELEMENTS.

- a. The hallway areas adjacent to certain Residential Units which may be converted to Individual Limited Common Elements as set forth in the Declaration and as designated on the Condominium Map as Potential Individual Limited Common Elements.

EXHIBIT D
TABLE OF GENERAL COMMON EXPENSES AND ALTERNATIVE ALLOCATIONS

General Common Expenses	Alternative Allocation
General Common Element Shared Sewer Connection	<p>Maintenance and repairs, excluding major repairs:</p> <p>Initial Commercial Owner pays 100%</p> <p>Residential Unit Owners pay 0%,</p> <p>until such time as Initial Commercial Owner transfers ownership of the same to the Association, at which time:</p> <p>Initial Commercial Owner pays 0%</p> <p>Residential Unit Owners pay 100%</p>
	<p>Major repairs (i.e., work costing in excess of \$50,000 as of the date of this Declaration, as adjusted by changes in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index, All Items, U.S. Average, or the successor of such index::</p> <p>Initial Commercial Owner pays 85%</p> <p>Residential Unit Owners pay 15%</p> <p>until such time as Initial Commercial Owner transfers ownership of the same to the Association, at which time:</p> <p>Initial Commercial Owner pays 0%</p> <p>Residential Unit Owners pay 100%</p>
Capital Upgrades to, or replacement of, Shared Structural Elements that are General Common Elements	<p>Initial Commercial Owner pays 33%</p> <p>Residential Unit Owners pay 67%</p> <p>(allocation based on estimated structural reliance on such supports of the Commercial Development versus the Residential Development)</p>
The portion of the cost of Initial Commercial Owner's Property Insurance Policy that is allocable to the insurance of (i) the General Common	<p>Initial Commercial Owner pays 33%</p> <p>Residential Unit Owners pay 67%</p>

Element Shared Sewer Connection, and (ii) the General Common Element Shared Structural Elements	(allocation based on estimated structural reliance on such supports of the Commercial Development versus the Residential Development)
Managing Agent costs, if any, in connection with determination of General Common Expenses and Alternative Allocations	Initial Commercial Owner pays 50% Residential Unit Owners pay 50%