

**MASTER DECLARATION OF CONDOMINIUM PROPERTY REGIME ESTABLISHING
SPATIAL UNITS FOR SKY ALA MOANA**

THIS MASTER DECLARATION OF CONDOMINIUM PROPERTY REGIME ESTABLISHING SPATIAL UNITS FOR SKY ALA MOANA (this "**Declaration**") is made this 15th day of March, 2019, by **JL AVALON CAPBRIDGE, LLC**, a Hawaii limited liability company, with its principal place of business and post office address at 800 Bethel Street, Suite 501-A, Honolulu, Hawaii 96813 ("**Developer**").

WITNESSETH:

WHEREAS, Developer owns in fee simple the real property identified as TMK No. (1) 2-3-016:004, and has the right to acquire the real property identified as TMK Nos. (1) 2-3-016:003 and :008, more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Land**"); and

WHEREAS, MARUITO USA, INC., a Hawaii corporation ("**Maruito**"), with its post office address at c/o Goodwill Anderson Quinn & Stifel LLP (Alan Fujimoto, Esq.), 999 Bishop Street, Suite 1600, Honolulu, Hawaii 96813 owns in fee simple the real property identified as TMK No. (1) 2-3-016:003 (the "**Maruito Property**") and **WATUMULL ENTERPRISES, LTD.**, a Hawaii corporation ("**Watumull**"), with its post office address at PO Box 1037, Honolulu, Hawaii 96808 owns in fee simple the real property identified as TMK No. (1) 2-3-016:008 (the "**Watumull Property**") (Maruito and Watumull are collectively referred to as the "**Lot Owners**") and the Maruito Property and the Watumull Property are collectively referred to as the "**Lot Owners' Property**"); and

WHEREAS, Developer has entered into separate agreements with Lot Owners to acquire the fee interest in Lot Owners' Property; and

WHEREAS, there will exist on the Land certain spatial units pursuant to Section 514B-3 of the Act, which Land and Units are depicted on Condominium Map No. 01271 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (the "**Office**"), which Condominium Map is incorporated herein by this reference; and

WHEREAS, it is contemplated that said spatial units shall be submitted and subject to separate condominium property regimes by way of separate declarations of condominium property regime (the "**Unit Declarations**") that will, among other things, define the elements of the respective projects contained within such Units; and

WHEREAS, the separate projects created by the Unit Declarations shall be known as "Sky Ala Moana West" and "Sky Ala Moana East", subject to the right of Developer to change the name of the Projects; and

WHEREAS, Lot Owners have agreed, subject to the terms and conditions hereinafter set forth, to join in this Declaration for the sole purpose of permitting Developer to comply with the requirements relating to filing of this Declaration, pursuant to Section 514B-31 of the Act, as hereinafter defined; and

WHEREAS, the Project, as hereinafter defined, is being developed pursuant to that certain Interim Planned Development-Transit and Special District Permit No. 2018/SDD-25, as the same may be amended or supplemented ("**Permit**");

NOW, THEREFORE, in order to create a condominium project consisting of the Land and the Units, to be known as "**SKY ALA MOANA**" (the "**Project**"), Developer, by this Declaration of Condominium Property Regime of Sky Ala Moana, referred to hereinafter as this "**Declaration**", with the joinder of Lot Owners, does hereby submit the Land and the Units and all of their interests therein to a condominium property regime established pursuant to Chapter 514B of the Hawaii Revised Statutes, as amended (the "**Act**"). Developer hereby declares that the Project is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to the provisions of this Declaration and the Bylaws of the Association of Unit Owners of Sky Ala Moana (the "**Bylaws**"), filed concurrently herewith in the Office, as the provisions of this Declaration and the Bylaws may be amended from time to time, in accordance with applicable law, and in accordance with the respective provisions of this Declaration and the Bylaws. The provisions of this Declaration and the Bylaws shall constitute covenants running with the land and equitable servitudes and liens thereon, and shall be binding upon and shall inure to the

benefit of Developer, the Association, their successors and permitted assigns, and all subsequent owners and lessees of all or any part of the Project and their respective successors, successors-in-trust, heirs, devisees, personal representatives, executors, administrators, and assigns.

I. USE OF DEFINED TERMS; DEFINED TERMS.

A. USE OF DEFINED TERMS. For purposes of construing and interpreting this Declaration and the Bylaws, all terms, when written with initial capital letters in this Declaration or in the Bylaws, shall have the meanings given such terms in this Declaration and/or the Bylaws, 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 meanings they have in common usage; provided, however, that where legal, technical, or trade terms are used and the context in which such terms are used indicates that such terms are to be given their legal, technical, or trade usage meanings, such terms shall be given such legal, technical, or trade usage meanings.

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

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

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

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

4. **"Association"** means the Association of Unit Owners of Sky Ala Moana.

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

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

7. **"Commission"** means the Real Estate Commission of the State.

8. **"Common Elements"** means those parts of the Project that are defined in this Declaration as Common Elements, being all areas not designated as a "Unit".

9. **"Common Expenses"** means and includes all charges, costs, and expenses whatsoever incurred by the Association for and in connection with the administration, management, and operation of the Project, including but not limited to: (a) all charges for taxes (except real property taxes and other such taxes that are or may hereafter be assessed separately on each Unit and the Common Interest in the Common Elements appertaining thereto, or the personal property or any other interest of the Owner); (b) insurance, including property and other casualty and liability insurance to the extent such insurance is maintained by the Association; (c) any liability whatsoever for loss or damage arising out of or in connection with the Project or any fire, accident, or nuisance thereon; (d) a sum for reserve purposes; (e) wages, accounting, and legal fees; (f) management fees and start-up fees; (g) other necessary expenses of the Project; and (h) the cost of all utility services, including water, electricity, gas, garbage disposal, telephone, telecommunications, and any other similar services (unless separately metered, assessed, or otherwise separately attributable to each Unit or a group of Units). The Common Expenses may also include such amounts as the Board may deem proper to make up any deficit in the Common Expenses for any prior year. The Common Expenses may also include such amounts as may be required, by special assessment, for the purchase or lease of any Unit by the Association, as permitted under the Act or the Bylaws.

10. **"Common Interest"** means the undivided percentage interest in all Common Elements of the Project set forth in this Declaration and discussed in **Section III** of this Declaration, which percentage interest is

appurtenant to a Unit. The Common Interest appurtenant to a Unit may not be altered or transferred, except as expressly set forth in this Declaration.

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

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

13. "**Condominium Map**" means the Condominium Map that is referenced above and that is filed in the Office, as the same may be amended from time to time. To the extent required by the Act, the "Condominium Map" shall mean and include the condominium maps for the projects created under the Unit Declarations, as the same may be amended from time to time. The Condominium Map does not constitute a representation or warranty by Developer.

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

15. "**Declaration**" means this Master Declaration of Condominium Property Regime Establishing Spatial Units for Sky Ala Moana, together with any lawful amendments hereto.

16. "**Developer**" means JL Avalon Capbridge, LLC, a Hawaii limited liability company, and shall also include any of its permitted successors and assigns.

17. "**Developer's Reserved Rights**" means those rights of Developer enumerated in Sections XVIII through XXII, which can be unilaterally exercised by Developer without the consent or joinder of any other party.

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

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

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

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

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

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

24. "**Limited Common Elements**" means those Common Elements that are designated in this Declaration as reserved for the exclusive use of one Unit to the exclusion of the other Unit.

25. "**Lot Owners**" means Maruito USA, Inc., a Hawaii corporation and Watumull Enterprises, Ltd., a Hawaii corporation.

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

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

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

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

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

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

32. "**Owner**" means a Person owning severally or as co-tenant a Unit and the Common Interest appurtenant thereto, to the extent of the interest so owned. For the purposes of rights and obligations of Owners who are owners of units created under and pursuant to a Unit Declaration, rights shall be exercised by and obligations shall be assumed by the Unit Association created by such Unit Declaration and the Unit Bylaws. For Units subject to a lease, the rights of and responsibilities of the Owner shall be provided by the terms of any applicable lease documents. The vendee of a Unit pursuant to an Agreement of Sale shall have the rights of an Owner, including the right to vote; provided that the vendor may retain the right to vote on matters substantially affecting the vendor's security interest in the Unit as provided in Section 514B-124 of the Act. Where the Owner is a guardian, trustee, corporation, partnership, limited liability company, or other entity, the method for designating the natural person who shall act as and for the Owner is as set forth in the Bylaws and, as to land trusts, in Section XVI of this Declaration. For so long as Developer owns unsold Units in the Project (or to the extent that Developer shall reacquire any Units in the Project), Developer shall have the rights of an Owner, including the right to vote, and shall assume the duties of an Owner as said rights and duties relate to said unsold Units (or reacquired Units), subject, however, to the provisions of the Act.

33. "**Permit**" means Interim Planned Development-Transit and Special District Permit No. 2018/SDD-25, as the same may be amended or supplemented.

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

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

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

37. "**Sky Ala Moana**" is the name of the Project established by the submission of the Land to a condominium property regime under the terms and conditions set forth in this Declaration.

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

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

40. "**Unit**" means a part of the Project, as described in this Declaration and as shown on the Condominium Map, intended for any use permitted under applicable law, with an exit to a public street or highway, or to a Common Element leading to a public street or highway.

41. "**Unit Association**" means the association of unit owners of a condominium project created pursuant to a Unit Declaration.

42. "**Unit Bylaws**" means the bylaws for the Unit Association for projects created pursuant to a Unit Declaration, as amended.

43. "Unit Declarations" means those declarations of condominium property regime submitting the Units to separate condominium property regimes, as amended.

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

II. DESCRIPTION AND DIVISION OF THE PROJECT.

A. **DESCRIPTION OF THE PROJECT.** The Project is depicted on the Condominium Map and consists of two (2) spatial Units, which may be used for any purposes permitted under applicable law. As of the date of this Declaration, there are plans to construct on the Land two (2) buildings, designated as Sky Ala Moana West and Sky Ala Moana East, which buildings may share a common parking structure; provided that nothing in this Declaration imposes an obligation on the part of any Owner to make improvements within the Owner's Unit. The Project includes:

1. **SPATIAL UNITS.** Two (2) spatial Units identified on the Condominium Map as Spatial Unit 1 and Spatial Unit 2.

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

B. **DESCRIPTION OF THE UNITS.** Two (2) separate freehold estates are hereby established in the spaces within the invisible vertical planes and horizontal planes of each of the two (2) Units in the Project, as shown on the Condominium Map.

1. **UNIT NUMBERS AND LOCATIONS.** The unit numbers and locations are shown on the Condominium Map.

2. **UNIT AREAS, LAYOUTS, AND DIMENSIONS.** The Unit areas, layouts, and dimensions are shown on the Condominium Map. The Condominium Map is intended only to show: (a) the location, layout, and access to a public road for the Units; (b) elevations of the Units; (c) the layouts, locations, and other identifying information of the Limited Common Elements, and (d) a description to identify any land area that constitutes a Limited Common Element. Should the descriptions and divisions set forth in this Declaration conflict with the depictions and divisions shown on the Condominium Map, the Condominium Map shall control. The Condominium Map is not intended and shall not be deemed to contain or make any representation or warranty whatsoever.

3. **ACCESS TO PUBLIC STREETS OR HIGHWAYS.** Except as may be limited by the terms of this Declaration, each Unit has immediate access to public streets.

4. **LIMITS OF UNITS.** The lower boundary of each Unit consists of an invisible horizontal plane shown on the Condominium Map and consists of the area as depicted on the Condominium Map. The upper boundary of each Unit consists of an invisible horizontal plane at that height above the lower boundary of the Unit, as depicted on the Condominium Map. The sides of each Unit consists of the invisible vertical planes perpendicular to the upper boundary of each Unit and the lower boundary of each Unit, as depicted on the Condominium Map.

The Units shall each include and contain all of the space within the upper boundary, lower boundary, and sides of each Unit, as shown on the Condominium Map.

The respective Units shall not be deemed to include any pipes, cables, conduits, chutes, flues, ducts, wires, vents, shafts, other utility or service lines, or any other fixture running through or otherwise located within such Unit which are utilized for or serve more than one Unit, all of which shall be deemed Common Elements.

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

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

2. All pipes, cables, conduits, chutes, flues, ducts, wires, vents, shafts, other utility or service lines, or any other fixture unless otherwise located within a Unit which are utilized for or serve more than one Unit, unless otherwise designated herein or on the Condominium Map; and

3. All other areas of the Project that are not described as a Unit or a part thereof.

D. LIMITED COMMON ELEMENTS. The Limited Common Elements are hereby designated, set aside and reserved for the exclusive use of certain Units, and such Units shall have appurtenant thereto exclusive easements for the use of such Limited Common Elements, unless otherwise set forth herein. The responsibility to maintain, clean, upkeep, repair, replace, alter, improve and/or add to Limited Common Elements shall be the responsibility of Owner of the Unit to which such Limited Common Elements are appurtenant. Each Unit shall have as a Limited Common Element the land area within the Project consisting of the land under and beneath the Unit, subject, however, to the rights of others as provided in this Declaration; provided that any improvements to such land area, whether existing above or below grade, shall be deemed a part of the Unit to which such land area is appurtenant. No amendment to this Declaration materially and adversely affecting the Limited Common Elements appurtenant to a Unit, or in any way limiting the use thereof, shall be effective without the consent of the Owner of the Unit to which said Limited Common Element is appurtenant.

III. COMMON INTEREST

Spatial Unit 1 shall have appurtenant thereto an undivided fifty-one percent (51%) interest in all Common Elements of the Project, and Spatial Unit 2 shall have appurtenant thereto an undivided forty-nine percent (49%) interest in all Common Elements of the Project herein called the Common Interest, and the same proportionate share in all Common Expenses of the Project, and for all other purposes, except as otherwise provided in this Declaration, including, but not limited to, voting; which Common Interest shall be subject to adjustment as otherwise provided in this Declaration. Developer shall have the absolute right to adjust the Common Interest in its discretion in order to assure that the total Common Interest for all Units in the aggregate equals one hundred percent (100%), and may adjust the Common Interest of all or some of the Units in the Project to achieve such result. Developer shall further have the right to adjust the Common Interest in exercising certain Developer's Reserved Rights, as may be set forth herein.

IV. EASEMENTS AND LICENSE.

In addition to any easements of filed, the Units and the Common Elements shall also have, as an appurtenance, or be subject to, as the case may be, the following easements:

A. EASEMENTS IN THE COMMON ELEMENTS AND OTHER UNITS. Each Unit shall have appurtenant thereto nonexclusive easements in the Common Elements, including the Limited Common Elements, designed for such purposes as necessary, for the maintenance and repair of such Unit and the Limited Common Elements appurtenant thereto; in the Common Elements for use according to their respective purposes, subject always to the exclusive use of the Limited Common Elements as provided herein; and in the other Units for support; subject to the provisions of Section 514B-38 of the Act.

B. EASEMENTS IN CERTAIN LIMITED COMMON ELEMENTS FOR UTILITIES AND SUPPORT. Wherever sanitary sewer connections, water connections, electricity, gas, telephone, HVAC, security and television lines, drainage facilities, or duct facilities are installed within the Project, the Owner of Unit that is served by said connections, lines or facilities shall have the right, and there are hereby reserved to the other Owner, together with the right to grant and transfer the same, easements and rights to the full extent necessary for the full use and enjoyment of such portions of such connections, lines or facilities which service such Unit, and to enter the Unit owned by others, or to have utility companies enter the Unit owned by others, in or upon which said connections, lines or facilities, or any portions thereof, lie, to repair, replace and generally maintain said connections, lines or facilities as and when the same may be necessary; provided that such entering Owner or utility company shall repair all damage to any Unit caused by such entry as promptly as possible after completion of work thereon.

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

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

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

E. EASEMENT AFFECTING COMMON ELEMENTS. The Association has the right, exercisable by the Board, to designate, grant, lease, convey, transfer, cancel, relocate, and otherwise deal with any easements over, under, across, or through the Common Elements for any reasonable purpose, including, without limitation: (1) those purposes necessary to the operation, care, upkeep, maintenance, or repair of any Unit, the Common Elements or any Limited Common Element; or (2) any easements for utilities or for any public purpose including for example, pedestrian walkways, landscaped areas, stairs, ramps, roadways, or other access to areas designated for public use, or the facilities that support the Project.

F. EASEMENTS THROUGH OR BENEFITTING ADJACENT LANDS. The Association has the right, exercisable by the Board, to receive, transfer, cancel, relocate, and otherwise deal with any easement or license through adjoining parcels of land in favor of the Land or the Project, including, without limitation, for utility infrastructure, Owner or public access, as necessary for the Project. The Association also has the right, exercisable by the Board, to grant, cancel, relocate, and otherwise deal with any easement or license encumbering the Land or the Project that benefits adjacent lands.

G. DEVELOPER'S ADDITIONAL EASEMENTS AND RIGHTS TO ACCEPT, GRANT, AND MODIFY EASEMENTS. To and until December 31, 2039, Developer reserves the right to designate, grant, convey, transfer, cancel, relocate, and otherwise deal with any easements over, under, across or through the Common Elements as necessary or convenient for any reasonable purpose, which may include, but not be limited to the repair, care or upkeep of any Unit or Common Elements, any utility easements or infrastructure to serve the Project, or for access ways or walkways, or to comply with any government agreement or permit, private covenant, or other easement or access requirements. Developer further reserves the right to designate, negotiate, accept, grant, convey, transfer, cancel, relocate, and otherwise deal with any easement or license over, under, across, or through the Land or the Project or adjoining properties in favor of, or encumbering, the Land or the Project, for any reasonable purpose. Developer also has the right to grant such easements necessary for repair, care, or upkeep of any utility infrastructure to serve the Project or access ways, walkways, or vehicular or pedestrian access to comply with any government agreement or permit, private covenant, or other easement or access requirements, or for the reason that any owner of property that is subject to an easement in favor of the Land or the Project uses any right it has to require a change in the location of that easement.

H. CONSENT OF OTHER PERSONS NOT REQUIRED. Developer may exercise the rights reserved to it in this Section without the approval or joinder of any other Person, except as otherwise specifically provided in this Section.

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

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

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

Except as set forth in this Declaration, the Common Interest appurtenant to each Unit shall have a permanent character and shall not be altered without the consent of all of the Owners affected, expressed in an amendment to this Declaration that is duly filed in the Office. The Common Interest shall not be separated from the Unit to which it appertains, and shall be deemed conveyed or encumbered with such Unit even if such interest is not expressly mentioned or described in the instrument of conveyance or encumbrance. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an undivided interest in the Common Elements shall be void unless the Unit to which said interest is appurtenant is also transferred. The Common Elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by the Act or by the terms of this Declaration.

VI. **USE.**

A. **PROJECT; IN GENERAL.**

1. **STANDARD OF OPERATION.** The Project shall be used only for those purposes permitted by applicable law.

2. **RIGHT TO SELL, LEASE OR RENT.** Subject to those certain prohibitions on uses set forth herein, the Owners of the respective Units shall have the absolute right, without the consent or joinder of any other Owners, to sell, rent, lease, or otherwise transfer such Units subject to all of the provisions of the Condominium Documents.

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

4. **MAINTENANCE OF THE UNITS AND THEIR LIMITED COMMON ELEMENTS.** The Owner of a Unit shall keep his or her Unit and the Limited Common Elements appurtenant thereto in a clean and sanitary condition and in good order and repair and in compliance with law, and shall be responsible for any damage or loss caused by his or her failure to do so or his or her improper operation thereof.

5. **PROHIBITION ON ACTIVITIES THAT MAY JEOPARDIZE THE PROJECT.** No Owner shall do or suffer or permit anything to be done or kept on or in any Unit or appurtenant Limited Common Element or elsewhere on the Project that will: (a) injure the reputation of the Project; (b) jeopardize the safety, soundness, or structural integrity of the Project; (c) create a nuisance, interfere with, or unreasonably disturb the rights of other Owners and Occupants; (d) reduce the value of the Project; (e) increase the rate of insurance applicable to the Units or the contents thereof, or to the Project; (f) violate any applicable law, ordinance, statute,

rule, or regulation of any local, county, state, or federal government or agency; (g) cause the violation of any conditions or restrictions or covenants, agreement(s) entered into for the benefit of the Project and/or (h) result in the cancellation of insurance applicable to the Project, adversely affect the right of recovery thereunder, or result in reputable companies refusing to provide insurance as required or permitted by the Bylaws.

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

C. USE OF LIMITED COMMON ELEMENTS. Subject to the reserved rights of Developer herein and the provisions hereof, Owners shall have the right to use the Limited Common Elements appurtenant to their Units for any purpose permitted by applicable law and the Condominium Documents. Notwithstanding anything provided to the contrary, or from which a contrary intent may be inferred, neither the Board nor the Association shall have any right to change the use of or lease or otherwise use any Limited Common Element without the prior written consent of the Owner of the Unit to which such Limited Common Element is appurtenant.

D. SEPARATION, COMBINATION OF UNITS; TRANSFER OF INTEREST. Subject to the Developer's Reserved Rights set forth herein, and subject to the rights of Owners to combine, subdivide or submit his or her Unit to a condominium property regime as set forth in **Section X.B**, no Owner may partition or separate a Unit or the legal rights comprising ownership of a Unit from any other part thereof, nor shall an Owner combine a Unit with any portion of another Unit. No Owner shall sell, assign, convey, transfer, gift, devise, bequeath, hypothecate, or encumber anything other than a single, complete Unit; provided, however, that nothing herein contained shall (1) limit the right of Developer and its successors and assigns to sell or lease Units as contemplated herein, or (2) restrict the manner in which title to a Unit may lawfully be held under Hawaii law (e.g., joint tenants, tenants in common, or the like). Except as provided in clause (1) above, every sale, assignment, conveyance, transfer, gift, devise, bequest, hypothecation, encumbrance, or other disposition of a Unit, or any part thereof, shall be presumed to be a disposition of the entire Unit, together with all appurtenant rights and interests created by law or by the Condominium Documents. The transfer of any Unit shall operate to transfer to the new Owner of the Unit the interest of the prior Owner in all funds held by the Association even though not expressly mentioned or described in the instrument of transfer, and without any further instrument of transfer.

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

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

VII. ADMINISTRATION OF THE PROJECT.

A. ASSOCIATION OBLIGATIONS. If and to the extent required by the Act, and except as otherwise provided in this Declaration, the Association shall be responsible for the administration of the Project, and

the maintenance, repair, replacement, and restoration of the improvements to the Common Elements, if any, and any additions and alterations thereto, in accordance with the provisions of the Act, this Declaration and the Bylaws.

B. OWNER OBLIGATIONS. Owners shall pay and be responsible for the operation, care, upkeep, repair, maintenance, and cost of their respective Units and any Limited Common Elements appurtenant to their respective Units, including any improvements in the Unit, except as otherwise set forth herein or in the Bylaws. All Owners shall pay and be responsible costs associated with the Association's operation, care, upkeep, repair, maintenance of the Common Elements.

C. INITIAL ORGANIZATION AND OPERATION OF THE ASSOCIATION. In accordance with Section 514B-101(b) of the Act, Developer elects that Part VI of the Act entitled "Management of Condominiums" shall not apply to the Project, except that Section 514B-32 entitled "Managing Agents" shall apply so long as required by Section 514B-101 of the Act. So long as the Project contains no more than five (5) Units, the Bylaws shall not be effective, and management of the Association and Project shall be governed by this Section and other provisions of this Declaration. The submission of a Unit to a condominium property regime, and the creation of units thereby, shall not be deemed a "subdivision" that creates an "additional Unit". For the purposes of this Section, creation of additional Units shall only occur by way of an amendment to this Declaration and the Condominium Map to create such Units. Each Owner shall from time to time appoint a Director to represent the Unit, which Directors shall collectively constitute the Board; provided that there shall be a minimum of three (3) Directors. If there are fewer than three (3) Units, Spatial Unit 1 shall be entitled to appoint two (2) Directors. Each Director will have full authority to represent the Owner and to act on its behalf to make Association decisions and agreements or give such consents as may be required from time to time under this Declaration. Such Directors shall serve until removed or replaced by the appointing Owner, provided that if the Owner who appoints a Director ceases to own the Unit, that Owner's Director(s) shall be automatically removed and the new Owner shall appoint a replacement. Upon request of any Director, the Directors of each Spatial Unit shall meet in person or by telephone or by other form of telecommunications to consider such Association issues and decisions (if any) which may arise from time to time. Except as otherwise provided in this Declaration, decisions of the Association shall be made by majority vote, with each Director having an equal vote; provided that nothing herein shall preclude decisions of the Association made by unanimous written consent of the Directors in the absence of a meeting. Subject to the limitations contained in this Declaration, any such decisions shall be binding on the Owners and the Association. Among other things, such representatives shall have the authority to designate, appoint, and remove a president of the Association and such other officers as they may deem appropriate, and designate the scope and limitations on all such officers' authority to act on behalf of and bind the Association.

D. BYLAWS. At any time the Project contains more than five (5) Units, the Bylaws shall become effective and operation and management of the affairs of the Project and the Association shall be conducted in accordance with the Bylaws and this Declaration. The first meeting of the Association pursuant to the Bylaws shall be held within sixty (60) days of the date on which the Bylaws become effective.

VIII. MANAGING AGENT.

Fiscal and administrative management of the Project shall be conducted for the Association by a qualified, corporate Managing Agent who shall be appointed by the Association, in accordance with the Bylaws.

IX. SERVICE OF LEGAL PROCESS.

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

X. ALTERATION OF THE PROJECT.

A. PERMISSIBLE ALTERATIONS. Notwithstanding any other provision of this Declaration to the contrary, the Owner of a Unit from time to time may make any improvements, additions, and/or alterations within said Owner's Unit and the Limited Common Elements appurtenant to the Unit and also may attach appendages to improvements within the Unit which extend beyond the upper boundary of the Unit (as permitted by applicable zoning and building ordinances and codes), provided that in each case, (1) such Owner obtains written

approval thereof, including approval of the Owner's plans therefor, by the appropriate agencies of the State and County if such agencies so require, including, but not limited to, the Permit, and (2) upon completion of such improvements, additions, and/or alterations to the Unit and the Limited Common Elements appurtenant to the Unit, the floor area of all improvements within the Unit and the Limited Common Elements appurtenant to the Unit does not exceed the maximum floor area allocated to the Unit, as established by the Permit or such other maximum floor area as may be agreed upon by the Owners. Such improvements, additions, and alterations may include, without limitation, the addition, deletion, or alteration of buildings and parking stalls within a Unit. Such improvements, additions, and alterations may be undertaken within an amendment to this Declaration or filing a complete set of floor plans of the Project as so altered. The Board shall not have the right to approve or disapprove any improvements, additions, or alterations within a Unit or the Limited Common Elements appurtenant to a Unit except as provided in the Act.

B. OWNERS' RIGHTS TO MODIFY UNITS. Notwithstanding any other provision in this Declaration to the contrary, each Owner shall have the right, from time to time, without the approval, consent or joinder of any other Owner of the Project or any party with any interest in the Project, to do any one or more of the following:

1. Subdivide any Unit that it owns, designate the Limited Common Elements appurtenant to the Unit that is subdivided into one or more subdivided Units and redistribute the Common Interest of the Unit that is subdivided among the resulting subdivided units.
2. Combine any Units that it owns into a single Unit and combine the Common Interests of the Units that are combined into the resulting, combined Unit;
3. Submit any Unit that it owns to a condominium property regime under the Act thereby creating a new condominium project; provided that such condominium project shall remain a part of the Unit for the purposes of this Declaration;
4. Convert a Unit that it owns, or a portion thereof, to a Limited Common Element appurtenant to a Unit that it owns, and reallocate the Common Interests associated with the remaining Unit(s) that it owns so that the Common Interests for the Project will total 100%;
5. Convert a Limited Common Element appurtenant to a Unit that it owns, or a portion of said Limited Common Element, to a Unit (either to create a new Unit or to combine it with an existing Unit), and if a new Unit is created, reallocate the Common Interests from another Unit or Units that it owns to the new Unit so that the Common Interests for the Project will total 100%;
6. Redesignate a Limited Common Element appurtenant to a Unit that it owns, or a portion of said Limited Common Element, to another Unit that it owns;
7. Reallocate the Common Interests among the Units that it owns;
8. Reallocate the maximum floor area among the Units that it owns; provided that the maximum floor area for all Units owned, in the aggregate, shall not exceed the maximum floor area for said Units, in the aggregate, as permitted under the Permit;
9. Increase the height of a Unit that it owns to encompass the maximum height of improvements within the Unit as permitted by zoning and building ordinances and codes and applicable permitting requirements adopted by the County; and
10. Expand the area of a Unit that it owns to encompass the air space above that portion of the land area appurtenant to such Unit which would consist of the buildable area within the boundaries of such land area as permitted by zoning and building ordinances and codes and applicable permitting requirements adopted by the County; provided, however, that the dimensions of the Unit shall not extend beyond the boundaries of the land area appurtenant to such Unit.

Any alteration made pursuant to this Section shall be subject to the requirement that upon completion thereof, each Unit will have immediate access to one or more roadways and/or other Common Elements which lead to the public roads. Any alterations made pursuant to this Section shall be reflected in an amendment to this Declaration as provided in **Section XIV.A.2.**

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

XI. COMMON EXPENSES; LIEN.

The Board, acting on behalf of the Association, shall, from time to time, assess the Common Expenses against all the Units and costs against specific Units in accordance with the Act, this Declaration, and the Bylaws.

A. COMMON EXPENSES. Other than those profits or expenses directly attributable to the Limited Common Elements, and except as otherwise provided herein, the common profits and expenses of the Association shall be distributed among, and the Common Expenses, including, without limitation, salary expenses of all personnel, may be charged to, the Owners. The costs of maintenance, repair, and replacement of the Common Elements, reserves for the Common Elements, and all other Common Expenses of the Common Elements shall be charged to the Owners in proportion to the Common Interest appurtenant to their respective Units, except as otherwise provided herein, in the Act or the Bylaws.

B. OTHER EXPENSES. All charges, costs, and expenses incurred by the Association which are necessitated by the negligence, misuse, or neglect of any Owner or Occupant or any Person under either of them, to the extent not covered by insurance, may be charged to such Owner or the Owner of the Unit of such Occupant, as a special assessment, secured by the lien created under this Section pursuant to the provisions of Section 514B-144(d) of the Act; provided that should one or more of the Units be submitted to a condominium property regime, all sums assessed to such Unit Association shall constitute a lien on the accounts of the Unit Association, and not the units within the project.

C. ASSESSMENT OF EXPENSES. Assessments shall be levied at such time as the Board adopts the budget for the calendar year in question. The Board shall mail to each Owner, at the address shown in the records of the Association, a written statement setting forth the amount of the assessment against the Unit. Except as otherwise provided herein or in the Act, all sums assessed by the Association but unpaid constitute a lien on the Unit prior to all other liens, except only: (1) liens for taxes and assessments lawfully imposed by governmental authority against the Unit, and (2) all sums unpaid on Mortgages filed prior to the filing of a notice of lien by the Association, and costs and expenses, including attorneys' fees, provided for in such Mortgages. Notwithstanding the forgoing, should one or more of the Units be submitted to a condominium property regime, all sums assessed to such Unit Association shall constitute a lien on the accounts of the Unit Association, and not the units within the project.

D. COLLECTION OF ASSESSMENTS. When the Lender or other purchaser of any Unit acquires title to such Unit as a result of the remedies provided in the Mortgage, foreclosure of the Mortgage, or a private sale or deed in lieu of foreclosure, such Lender or such other purchaser, as the case may be, and their respective heirs, devisees, personal representatives, successors, and assigns, shall not be liable for the share of the Common Expenses

or Assessments chargeable to such Unit which became due prior to such acquisition of title. Subject to the right of the Board to specially assess the amount of the unpaid regular monthly Assessments for Common Expenses against an Owner pursuant to the provisions of Section 514B-146(g) of the Act (other than purchasers who hold a first Mortgage filed prior to the filing of a notice of lien), the unpaid share of Common Expenses shall be deemed Common Expenses collectible from all of the Owners, including such Lender or such other purchaser of a Unit with the unpaid share of Common Expenses and their respective heirs, devisees, personal representatives, successors, and assigns.

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

E. ASSESSMENT LIEN. All Assessments shall constitute a lien against the Unit to which such assessment is attributed; provided that should one or more of the Units be submitted to a condominium property regime, all sums assessed to such Unit Association shall constitute a lien on the accounts of the Unit Association, and not the units within the project. The lien may be foreclosed by action by the Managing Agent or Board, acting on behalf of the Association, in like manner as a Mortgage of real property. In any such foreclosure, the Owner shall be required to pay a reasonable rental for the Unit and the Association shall be entitled to the appointment of a receiver to collect the same. The Managing Agent or Board, acting on behalf of the Association, may, unless otherwise prohibited in this Declaration, bid on the Unit at the foreclosure sale, and acquire and hold, lease, Mortgage, and convey the same. Action to recover a money judgment for unpaid Common Expenses and other Assessments shall be maintainable without foreclosing or waiving the lien securing the same.

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

F. INTEREST IN COMMON EXPENSE FUNDS NOT SEPARATELY ASSIGNABLE. The proportionate interest of each Owner in any capital contributions, custodial fund, or maintenance reserve fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with such Unit even though not expressly mentioned or described in the conveyance thereof. In case the Project shall be terminated or waived, said capital contributions, custodial fund, or maintenance reserve fund remaining after full payment of all Common Expenses of the Association shall be distributed to all Owners in their respective proportionate shares except for the Owners of any Units then reconstituted as part of a new condominium property regime.

XII. INSURANCE.

A. COMMON ELEMENTS. The Association shall carry such insurance on the Common Elements as the Board shall determine. Premiums for such agreed insurance on the Common Elements shall be a Common Expense.

B. UNITS AND LIMITED COMMON ELEMENTS. Each Owner, and not the Association, shall be responsible for insuring its Unit, all Limited Common Elements appurtenant to its Unit, all of Owner's improvements in the Unit, and all contents for the Owner's benefit and at Owner's own expense. Each Owner, and not the Association, shall be responsible for maintaining liability insurance with respect to loss, damage, injury, or death occurring within the Owner's Unit and its Limited Common Elements.

XIII. CASUALTY; DECISION NOT TO REPAIR.

A. COMMON ELEMENTS. In the event that any improvements to the Common Elements are damaged or destroyed by any casualty, the improvements shall be rebuilt, repaired, or restored unless the Owners vote unanimously not to rebuild, repair, or restore.

B. UNITS AND LIMITED COMMON ELEMENTS. Each Owner will determine whether or not to rebuild any improvements within its Unit or any land area that is a Limited Common Element appurtenant only to

its Unit that are damaged or destroyed by any casualty. Any such restoration or repair and any demolition will be at the Owner's expense. Any improvements within a Unit or its Limited Common Elements that are not restored or repaired shall be demolished and removed from the Land if the damage is visible from the exterior of the Improvement or if necessary for safety.

XIV. AMENDMENT OF DECLARATION.

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

1. **"CHANGES MATERIAL IN NATURE."** Except as otherwise provided herein or in the Act, no amendment to the provisions of this Declaration that are material and adverse in nature shall be effective without the written consent of mortgagees that represent at least fifty-one percent (51%) of the votes of Units that are subject to mortgages. A change of any of the following would be considered "material in nature:"

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

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

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

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

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

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

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

c. **Enforcement Of The Declaration.** Alteration in the method of enforcing the provisions of this Declaration.

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

B. BY DEVELOPER.

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

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

3. **COMPLIANCE WITH LAWS, LENDER REQUIREMENTS, CORRECTION OF ERRORS AND TO MEET REGISTRATION REQUIREMENTS.** Notwithstanding any provision of this Declaration to the contrary and notwithstanding the sale of any of the Units, Developer, without the approval or joinder of any Owner, lienholder, or other Person, may amend this Declaration in order (a) to bring the Project and the Condominium Documents into compliance with the laws and rules of any jurisdiction in which Developer intends to market or sell Units; (b) to comply with any requirements that may reasonably be imposed by any construction, bridge, takeover, permanent, secondary market Lender, or any other entity necessary to obtain any construction or take-out loan, including, but not limited to, any institutional Lender or any governmental or quasi-governmental agency including, but not limited to, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development or the Veterans Administration; (c) to comply with the requirements of Fair Housing Administration; (d) to comply with the requirements of the federal Bureau of Consumer Financial Protection (agency that oversees the Interstate Land Sales Full Disclosure Act); (e) to comply with any requirements by another jurisdiction in order to obtain any registration, report, or license to offer to sell or sell and market the Project in such other jurisdiction; (f) to comply with any state or county

entitlements, agreements, or permits; and (g) to correct typographical or technical errors. Each and every party acquiring an interest in the Project, by such acquisition, consents to such amendments as described in the preceding sentence and agrees to execute, deliver, and file or record such documents and instruments and do such other things as may be necessary or convenient to effect the same and appoints Developer and its assigns as his or her attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties.

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

C. **LIMITATIONS ON AMENDMENTS.** Except as provided in **Section XV.B**, notwithstanding anything stated to the contrary in the Condominium Documents, all amendments to the Condominium Documents shall be subject to the following:

1. Any amendment to the Condominium Documents that would limit or interfere in any way with the use or operation of a Unit or its Limited Common Elements or with access to or from the Unit or its Limited Common Elements, shall not be effective without the prior written approval of the affected Owner.

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

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

D. **AMENDMENTS BINDING.** Any amendment made pursuant to the provisions of this Section shall be binding upon every Owner and every Unit whether the burdens thereon are increased or decreased, and such amendment shall be effective upon its filing at the Office.

XV. TERMINATION.

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

XVI. LAND TRUSTS.

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

XVII. COMPLIANCE BY OWNERS.

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

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

Notwithstanding the foregoing, no notice shall be necessary where immediate action is necessary to: (a) prevent damage to any Unit or Limited Common Element; (b) abate a nuisance or any dangerous, unauthorized, prohibited, or unlawful activity; (c) protect the property rights of any Owner; or (d) prevent the death or injury of any Owner or other person at the Project.

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

- A. Collecting any delinquent Assessments against any Owner's Unit;
- B. Foreclosing any lien thereon;
- C. Enforcing any provision of the Condominium Documents or the Act; or
- D. Complying with rules and regulations of the Commission

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

XVIII. RESERVED RIGHT TO GRANT AND RECEIVE EASEMENTS.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2039, Developer hereby reserves the right to delete, cancel, relocate, realign, reserve, designate, grant, and receive any and all easements and rights of way over, under, through, across, and upon the Project, or involving adjacent or neighboring parcels of land or adjacent or neighboring condominium projects, deemed necessary or desirable in Developer's sole discretion, or as may be required by a governmental entity, including, but not limited to, easements and/or rights of way for utilities, public purpose (i.e., pedestrian walkways, bus stops, stairs, ramps, paths, trails, bikeways, or other passageways), any public-type facility (e.g. for mail delivery), fire lane access, sanitary and storm sewers, retention ponds, cable television, refuse disposal, driveways, and parking areas. Such right also includes easements for operation, upkeep, care and maintenance, or repair of any Unit or any Limited Common Element or to complete any improvements, or to exercise any of the Developer's Reserved Rights, and other similar purposes; provided that such easements and/or rights of way shall not be located on or within any existing structure of the Project and shall not be exercised so as to unreasonably disturb, impair, or interfere with the normal use and enjoyment of the Project by the Owners; and provided that Developer shall have the right to negotiate and agree to such terms with respect to such easements and rights of way as Developer deems appropriate in its sole discretion. Any easement granted and/or received by Developer pursuant to the exercise of this reserved right shall not be amended, modified, or terminated

by the Association without the consent of Developer. Developer shall have the right to define any easement right received pursuant to this Section as a Common Element or Limited Common Element. In the event that Developer assigns to the Association any rights it acquires, whether the same constitute easement rights or otherwise, the Association shall assume such rights.

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

Notwithstanding anything herein provided to the contrary, to and until December 31, 2039, Developer hereby reserves the right to effect such modifications to Units and Common Elements in the Project and/or to execute, file, record, and deliver any amendments to the Condominium Documents promulgated hereunder, as may be necessary or appropriate to effect compliance by the Project, the Association, or Developer, with laws or lender requirements which apply to the Project, including, but not limited to, the Act, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development, the Veterans Administration, the Fair Housing Administration, and Americans with Disabilities Act, and any rules and regulations or guidelines promulgated thereunder, or as may be required by the Commission, by any title insurance company issuing title insurance on the Project or any of the Units, by any institutional Lender lending funds secured by the Project or any of the Units, or by any governmental agency.

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

Notwithstanding anything herein provided to the contrary, to and until December 31, 2039, Developer hereby reserves the right to (a) consolidate the Land with another parcel(s) of land ("**Consolidated Lot**"), (b) subdivide the Land to create separate parcels of land ("**Subdivided Lots**"), and/or (c) withdraw certain Subdivided Lots from the operation of this Declaration, and convey or cause the conveyance of said withdrawn Subdivided Lots to itself or to a third party as it deems appropriate. This right to subdivide and withdraw shall include, without limitation, the right to subdivide and withdraw from this Project certain portions of the Land, as depicted on the Condominium Map.

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

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

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

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

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

XXI. RESERVED RIGHT TO AMEND THE CONDOMINIUM DOCUMENTS TO REMOVE REFERENCES TO LOT OWNER AFTER ACQUISITION.

This Declaration and the Bylaws shall be deemed automatically amended to remove any references to Lot Owner as fee simple owner of the Land effective on the date of filing of the conveyance documents conveying to Developer the Lot Owner's fee simple interests in the Land, and upon such date Developer shall have the reserved right, without the consent or joinder of any other person or party, to file an amendment to this Declaration and the Bylaws, as appropriate, to effect the same at the Office.

XXII. ASSIGNMENT OF RESERVED RIGHTS.

To and until December 31, 2039, notwithstanding anything stated herein to the contrary, the rights reserved to Developer in this Declaration shall be fully and freely assignable by Developer in whole or in part. Any assignment of the rights reserved to Developer shall be in writing, executed by both Developer and the assignee of Developer's rights, and shall be filed in the Office. Every Owner of a Unit in the Project and all holders of liens affecting any of the Units and each and every other party acquiring an interest in the Project, or any part thereof, by acquiring such Unit, lien, or other interest, consents to any such assignment by Developer, and, to the extent designated by Developer, agrees to recognize any assignee as the "Developer" under this Declaration; agrees to execute, deliver, file and/or record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints Developer and its assigns his or her attorney-in-fact with full power of substitution to execute, deliver, file and/or record such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest upon any transfer of any Unit or any interest therein, whether by deed, Mortgage, or any other instrument of conveyance.

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

Each and every party acquiring an interest in the Project, by such acquisition, consents to all of the rights reserved unto Developer, as set forth in this Declaration, including, but not limited to those rights as set forth in

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

XXIV. INDEMNIFICATION OF LOT OWNERS.

Developer and the Association agree to indemnify, defend, and hold Lot Owners and their respective officers, directors, shareholders, agents, and employees harmless from and against any and all claims, liabilities, and any damage, including attorneys' fees, any of which arise, directly or indirectly, as a result of, or directly or indirectly in connection with, this Declaration or any other document, including, but not limited to any public report under the Act, created, executed or delivered by Developer in connection with the Project; provided that this indemnity shall not extend to (a) claims caused by the gross negligence or willful misconduct of a Lot Owner, or (b) claims against a Lot Owner other than as a result such Lot Owner permitting Developer to create a condominium property regime on the Land or Lot Owner being a signatory to the Declaration and Bylaws. Nothing in the foregoing exception shall be deemed a waiver by Lot Owners or a limitation of any of Lot Owners' rights or remedies, except as set forth in said exception. Developer and, by their acceptance thereof, Owners acknowledge that Lot Owners have no obligation to review this Declaration or any other document prepared by Developer for adequacy or compliance with law, that Lot Owners do not by the execution hereof endorse this Declaration or any such document, and any inadequacy or misrepresentation by Developer hereunder shall not be deemed gross negligence or willful misconduct of Lot Owners.

XXV. LIMITED PURPOSE OF JOINDER BY LOT OWNERS; RELEASE AND WAIVER OF CLAIMS.

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

XXVI. DISCLOSURES AND LIMITATIONS ON LIABILITIES.

A. NONLIABILITY AND INDEMNIFICATION.

1. **GENERAL LIMITATION.** Except as specifically provided in the Condominium Documents or as required by law, no right, power, or responsibility conferred on the Board by the Condominium Documents shall be construed as a duty, obligation, or disability charged upon Developer Parties or Association Parties. The Association Parties are subject to the insulation from liability provided for directors of corporations by the laws of the State to the fullest extent provided by such laws. Members of the Board are not personally liable to the victims of crimes occurring on the Project.

2. **INDEMNIFICATION OF ASSOCIATION.** When liability is sought to be imposed on an Association Party or a Representative of Managing Agent, the Association shall indemnify him or her for his or her losses or claims, and undertake all costs of defense, unless and until it is proven that he or she acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the cost of defense due to the willful or wanton misfeasance or gross negligence of such person indemnified by the Association, the Association may recover indemnification costs expended from the individual who so acted. Punitive damages may not be recovered against the Association, but may be recovered from persons whose activity gave rise to the damages. This Section shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees or any person entitled to such indemnification.

B. **FLOOD ZONE X; TSUNAMI EVACUATION ZONE.** The Project is located in Flood Zone X, and federal flood insurance is not required for the Project. The Project is located within the tsunami evacuation zone.

XXVII. DISPUTE RESOLUTION.

A. **DISPUTES.** The purpose of this Section is to provide the Owners, Association, Board, Managing Agent, Developer and their respective Representatives (collectively, for purposes of this Section, the "Parties") with a mechanism to resolve Disputes (as defined below).

1. A "**Dispute**" means and includes any and all actions, claims or disputes between or among the Parties with respect to, arising out of, or relating to this Declaration. A Dispute shall not include: (a) claims for construction defects governed by the Contractor Repair Act, Chapter 672E of the Hawaii Revised Statutes; (b) actions seeking equitable relief involving threatened property damage or the health or safety of Owners or any other persons; (c) actions to collect assessments; (d) personal injury claims; or (e) actions against the Association, the Board, or any Director, Officer, agent, employee, or other persons for amounts in excess of THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$3,500.00) if insurance coverage under a policy of insurance procured by the Association or the Board would be unavailable for defense or judgment because mediation was pursued.

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

C. **MEDIATION.** If the Parties cannot resolve such Dispute by discussion pursuant to **Section B**, above, within thirty (30) calendar days after the commencement of such discussion, the matter shall be submitted to mediation by and pursuant to the procedures adopted by DPR in Honolulu, Hawaii, or to any successor entity thereto, or to any other entity offering mediation services that is acceptable to the Parties.

1. **PARTIES PERMITTED AT SESSIONS.** Persons other than the Parties, their authorized representatives and the mediator may attend the mediation sessions only with the consent of the

mediator; provided, however, such permission and consent shall not be required to allow participation of such Parties' liability insurers in the mediation to the extent required under such Parties' liability insurance policy.

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

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

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

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

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

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

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

XXVIII. COMPLIANCE WITH COUNTY ZONING AND BUILDING LAWS.

Developer declares, pursuant to Section 514B-32(a)(13) of the Act, and subject to the penalties set forth in Section 514B-69 of the Act, that the Project is in compliance with all zoning and building ordinances and codes, and all other permitting requirements Pursuant to Section 514B-5 of the Act and Hawaii Revised Statutes Chapter 205.

XXIX. GENERAL PROVISIONS.

A. WAIVER OF CERTAIN RIGHTS.

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

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

3. **WAIVER OF CLASS ACTION.** EACH OWNER, THE ASSOCIATION, THE BOARD, MANAGING AGENT, DEVELOPER AND EACH OF THEIR REPRESENTATIVES

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

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

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

D. **CAPTIONS.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration, or the intent of any provisions 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 this Declaration shall be liberally construed to effectuate the purpose of creating a uniform condominium property regime whereby the Owners shall carry out and pay for the operation and maintenance of the Project as a mutually beneficial and efficient establishment.

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

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

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

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

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

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

provision set forth in this Declaration that the Act requires to be in the Bylaws shall be deemed incorporated in the Bylaws, and any provision of the Bylaws that the Act requires to be in the Declaration shall be deemed incorporated herein.

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

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

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

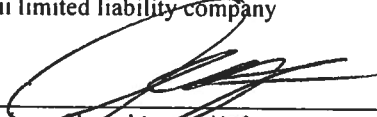
XXX. INVALIDITY AND CHANGES IN LAW.

The invalidity of any provision of this Declaration for any reason shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration, and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such provision had never been included herein. In the event of any conflict or inconsistency between the provisions of the Act and this Declaration, and in the event Owners have no power under the Act to opt out of such provisions, the provisions of the Act shall prevail. In the event any change in the Act shall result in a conflict or inconsistency between the provisions of the Act and this Declaration, the provisions of the Act shall prevail only to the extent required by law. If a change to the Act provides that "except as otherwise provided in the Declaration" or similar words a provision of the Act shall apply, then this Declaration shall be deemed to contain such an exception.

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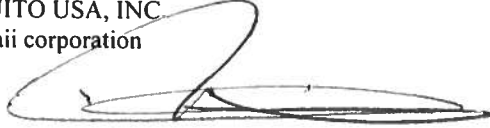
IN WITNESS WHEREOF, the undersigned have executed these presents on the date first above written.

JL AVALON CAPBRIDGE, LLC
a Hawaii limited liability company

By: 
Name: Christine H.H. Camp
Its: Authorized Representative

"Developer"

MARUITO USA, INC.
a Hawaii corporation

By: 
Name: Steve H. Sankara
Its: Authorized Representative

WATUMULL ENTERPRISES, LTD.
a Hawaii corporation

By: _____
Name: _____
Its: _____

"Lot Owners"

IN WITNESS WHEREOF, the undersigned have executed these presents on the date above first written.

JL AVALON CAPBRIDGE, LLC
a Hawaii limited liability company

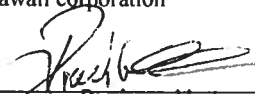
By: _____
Name: _____
Its: _____

"Developer"

MARUITO USA, INC.
a Hawaii corporation

By: _____
Name: _____
Its: _____

WATUMULL ENTERPRISES, LTD.
a Hawaii corporation

By:  _____
Name: Rajan Watumull
Its: President

"Lot Owners"

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 13th day of March, 2019, before me appeared Christine Camp^{H.H. K.N.P.}, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Karen Nomura
Print Name: Karen Nomura
Notary Public, in and for said State

My commission expires: 5/1/2021

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: MASTER DECLARATION OF CONDOMINIUM PROPERTY REGIME ESTABLISHING SPATIAL UNITS FOR SKY ALA MOANA

Document Date: undated or Undated at time of notarization.

No. of Pages: 33 Jurisdiction: First Circuit
(in which notarial act is performed)

Karen Nomura 3/13/2019
Signature of Notary Date of Notarization and
Certification Statement

Karen Nomura
Printed Name of Notary



(Official Stamp or Seal)

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 15th day of March, 2019, before me appeared Steve K. Sombrogo to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Karen Nomura

Print Name: Karen Nomura

Notary Public, in and for said State

My commission expires: 5/1/2021

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: MASTER DECLARATION OF CONDOMINIUM PROPERTY REGIME ESTABLISHING SPATIAL UNITS FOR SKY ALA MOANA

Document Date: undated or Undated at time of notarization.

No. of Pages: 33 Jurisdiction: First Circuit
(in which notarial act is performed)

Karen Nomura

Signature of Notary

3/15/2019

Date of Notarization and Certification Statement

Karen Nomura

Printed Name of Notary



(Official Stamp or Seal)

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 12th day of March, 2019, before me appeared Rajan Watumull, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



[Handwritten Signature]

Print Name: Shelley A. Kong
Notary Public, in and for said State

My commission expires: 09/05/2019

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **MASTER DECLARATION OF CONDOMINIUM PROPERTY REGIME ESTABLISHING SPATIAL UNITS FOR SKY ALA MOANA**

Document Date: undated or Undated at time of notarization.

No. of Pages: 32 Jurisdiction: First Circuit
(in which notarial act is performed)

[Handwritten Signature]

March 12, 2019

Signature of Notary

Date of Notarization and Certification Statement

Shelley A. Kong

Printed Name of Notary



(Official Stamp or Seal)

EXHIBIT "A"

PROPERTY DESCRIPTION

ITEM I:

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

LOTS: 35, area 5,000 square feet,
 36, area 5,000 square feet, and
 37, area 5,000 square feet, more or less,

as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation 45 of Hawaiian Land Company, Limited.

Being land(s) described in Transfer Certificate of Title No. 1,014,665 issued to MARUITO USA, INC., a Hawaii corporation.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : A & B PROPERTIES, INC., a Hawaii corporation

GRANTEE : MARUITO USA, INC., a Hawaii corporation

DATED : as of March 1, 2011

FILED : Land Court Document No. 4053051

ITEM II:

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

LOTS: 27, area 5,000 square feet,
 28, area 5,000 square feet,
 29, area 5,000 square feet,
 30, area 5,000 square feet,
 31, area 5,000 square feet,
 32, area 5,000 square feet,
 33, area 5,000 square feet, and
 34, area 5,000 square feet, more or less,

as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation 45 of Hawaiian Land Company, Limited.

BEING THE PREMISES ACQUIRED BY JL AVALON CAPBRIDGE, LLC, a Hawaii limited liability company, by LIMITED WARRANTY DEEDS of LYK KENROCK, LLC, a Hawaii limited liability company, as follows:

-AS TO LOT 27:-

DEED dated February 22, 2017, filed as Land Court Document No. T-9914121, issuing Transfer Certificate of Title No. 1,131,851.

-AS TO LOT 28:-

DEED dated February 22, 2017, filed as Land Court Document No. T-9914122, issuing Transfer Certificate of Title No. 1,131,852.

-AS TO LOT 29:-

DEED dated February 22, 2017, filed as Land Court Document No. T-9914123, issuing Transfer Certificate of Title No. 1,131,853.

-AS TO LOT 30:-

DEED dated February 22, 2017, filed as Land Court Document No. T-9914124, issuing Transfer Certificate of Title No. 1,131,854.

-AS TO LOT 31:-

DEED dated February 22, 2017, filed as Land Court Document No. T-9914125, issuing Transfer Certificate of Title No. 1,131,855.

-AS TO LOT 32:-

DEED dated February 22, 2017, filed as Land Court Document No. T-9914126, issuing Transfer Certificate of Title No. 1,131,856.

-AS TO LOT 33:-

DEED dated February 22, 2017, filed as Land Court Document No. T-9914127, issuing Transfer Certificate of Title No. 1,131,857.

-AS TO LOT 34:-

DEED dated February 22, 2017, filed as Land Court Document No. T-9914128, issuing Transfer Certificate of Title No. 1,131,858.

ITEM III:

All of those certain parcels of land situate at Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOTS: 24, area 5,000 square feet,
 25, area 5,000 square feet, and
 26, area 5,000 square feet, more or less,

as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 45 of Hawaiian Land Company, Limited.

Being land(s) described in Transfer Certificate of Title No. 250,348 issued to WATUMULL ENTERPRISES, LTD., a Hawaii corporation.

BEING THE PREMISES ACQUIRED BY QUITCLAIM DEED

GRANTOR : ALA MOANA HAWAII PROPERTIES, a Hawaii registered limited partnership
GRANTEE : WATUMULL ENTERPRISES, LTD., a Hawaii corporation
DATED : June 30, 1983
FILED : Land Court Document No. 117779

EXHIBIT "A"