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5425 PAU A LAKA LLC and
MP ELKO II, LLC

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IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI‘I

5425 PAU A LAKA LLC, a Hawai‘i limited
liability company, MP ELKO II, LLC, a
Nevada limited liability company,

Plaintiffs,

vs.

COUNTY OF KAUA‘I,

Defendant.

CIVIL NO. 5CCV-23-000087
(Declaratory Judgment)

PLAINTIFFS 525 PAU A LAKA LLC and
MP ELKO II, LLC’S MOTION FOR
SUMMARY JUDGMENT;
MEMORANDUM IN SUPPORT OF
MOTION; DECLARATION OF LAUREL
LOO; EXHIBITS “A” – “T”; NOTICE OF
HEARING; CERTIFICATE OF SERVICE

Hearing:

Date: October 24, 2023

Time: 1:00 P.M.

Judge: Hon. Randal Valenciano

Trial Date: None Set

PLAINTIFFS 5425 PAU A LAKA LLC and MP ELKO II, LLC'S MOTION FOR
SUMMARY JUDGMENT

Plaintiffs 5425 PAU A LAKA LLC (“**5425 Pau**”) and MP ELKO II, LLC (“**MP**”) (collectively, “**Plaintiffs**”), by and through their attorneys, McCorriston Miller Mukai MacKinnon LLP, hereby move this Court for summary judgment as to all claims concerning Counts I (Declaratory Relief) and II (Injunctive Relief) of the Plaintiffs’ Complaint. JEFS Civil No. 5CCV-23-0000087 dkt. 1.

The Plaintiffs are the owners and developers of certain parcels of real property situated in Koloa, Kaua‘i, Hawai‘i (collectively, the “**Property**”). The Property is part of thirteen (13) parcels that once made up a larger parcel (“**Mauka Lands**”). In 2006, a previous owner of the Property submitted a Class IV permit application to the Planning Commission, County of Kaua‘i (“**Planning Commission**”) which approved three permits (“**Permits**”), subject to certain conditions as recommended by the Planning Department, County of Kaua‘i (“**Planning Department**”). One of these conditions is for the Plaintiffs to “submit a master drainage plan for all lands mauka of Poipu Road [(e.g., the Mauka Lands)]. . . for Planning Commission review and approval.” Ex. A at 7 (emphasis added). No other property owners of the remaining parcels have been asked by Defendant County of Kaua‘i (“**County**”) to submit a master drainage plan as a condition for permit approval.

The Plaintiffs seek an order from this Honorable Court declaring that Condition 26 of the Permits is applicable only to the property owned by the Plaintiffs (i.e., the Property) and enjoining the County from requiring that the Plaintiffs prepare and submit a master drainage plan for the remaining parcels that Plaintiffs do not own.

This motion is brought pursuant to Rules 7 and 56 of the Hawai‘i Rules of Civil Procedure, Rule 7 of the Rules of the Circuit Courts of the State of Hawai‘i, the memorandum in support of motion, the declarations and exhibits, the records and files herein, and such other matters as may be presented to this Court at any hearing on this Motion.

DATED: Līhu‘e, Hawai‘i , September 26, 2023.

/s/ Laurel Loo
LAUREL LOO
DAVID J. MINKIN
JORDAN K. INAFUKU
SARA M. HAYDEN

Attorney for Plaintiffs
5425 PAU A LAKA LLC and
MP ELKO II, LLC

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI‘I

5425 PAU A LAKA LLC, a Hawai‘i limited liability company, MP ELKO II, LLC, a Nevada limited liability company,

Plaintiffs,

vs.

COUNTY OF KAUA‘I,

Defendant.

CIVIL NO. 5CCV-23-000087
(Declaratory Judgment)

MEMORANDUM IN SUPPORT OF
MOTION

MEMORANDUM IN SUPPORT OF MOTION

The County of Kaua‘i (“**County**”), via the Planning Department, County of Kaua‘i (“**Planning Department**”) and the Planning Commission, County of Kaua‘i (“**Planning Commission**”), is enforcing a permit condition based on prior ownership of the Mauka Lands. Over the past seventeen years, the ownership of the Mauka Lands has since changed from a single party to numerous parties; the Plaintiffs are the owners and developers of two (2) parcels (Parcels 32 and 41) situated in Koloa, Kaua‘i, Hawai‘i (collectively, the “**Property**”). As the Plaintiffs will demonstrate *infra*, the imposition of Condition 26 on a single property owner is unfair and requires declaratory and injunctive relief.

First, there is no genuine dispute that Condition 26 is forcing the Plaintiffs to prepare a master drainage plan to the Planning Department for the entire Mauka Lands property, when Plaintiffs own only the Property. This condition is unenforceable and inequitable by placing an unfair burden on the Plaintiffs. The requirements of Condition 26 are also impossible for the Plaintiffs to perform.

Second, there is no genuine dispute that the Plaintiffs will suffer irreparable harm if forced to comply with the Planning Department's Condition 26.

I. STATEMENT OF PERTINENT FACTS

The Property, designated by Tax Map Key ("**TMK**") Nos. (4) 2-8-014-032:0001 – 0019, and the other twelve (12) parcels are collectively referred to as the "Master Development." In 2006, in connection with the Master Development, Kiahuna Poipu Golf Resort LLC, then-owner of the entire Property, applied for permits to the Planning Department. Ex. A at 1. On September 15, 2006, the Planning Commission approved, with conditions, the following permits: (1) Project Development Use Permit P.D. U-2006-25, (2) Use Permit U-2006-26, and (3) Class IV Zoning Permit Z-IV-2006-27. *Id.* at 1. The twenty-seven (27) conditions included, *inter alia*, Condition 26, which states: "Prior to building permit approval, the Applicant shall submit a master drainage plan for all lands mauka of Poipu Road [(collectively, "**Mauka Lands**")] rezoned under Moana Corporation Ordinance No. PM-31-79 for Planning Commission review and approval, including Kānei'olouma Heiau." *Id.* at 7 (emphasis added). Kānei'olouma Heiau is not located on the Property within the Mauka Lands. Ex. B.

By Warranty Deed dated May 26, 2021, between Yellow Hale, LLC, as Grantor, and 5425 Pau A Laka LLC ("**5425 Pau**"), as Grantee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Document No. T-11474216, 5425 Pau obtained title to Parcel 32 of the Property.¹ Ex. C.

By Warranty Deed dated May 27, 2021, between Yellow Hale, LLC, as Grantor, and 5425 Pau, as Grantee, filed in the Office of the Assistant Registrar of the Land Court of the State

¹ We request that this Honorable Court take judicial notice of the Warranty Deeds stated *infra* as public records. *See Kaho'ohanohano v. State*, 114 Hawai'i 302, 328, 162 P.3d 696 (2007) (recognizing that public reports and records are appropriate for judicial notice if their "significant bears directly on the instant matter.").

of Hawai‘i as Document No. A-78220762, 5425 Pau obtained title to Parcel 41 of the Property. Exhibit D.

By Warranty Deed dated August 10, 2021, filed in the Bureau of Conveyances of the State of Hawai‘i on August 12, 2021 as Document No. A-78940056, 5425 Pau conveyed its entire interest in the Property to MP Elko II, LLC (“*MP*”). Ex. E. Essentially, the Plaintiffs were grandfathered into the requirements of Condition 26.

The Plaintiffs, together with Kauai Hale, Inc., as Developer, submitted the Property, formerly designated by TMK No. (4) 2-8-014-032, to a condominium property regime established under and pursuant to that certain First Amended and Restated Declaration of Condominium Property Regime for Kauanoe O Koloa Condominium Project dated December 27, 2021, recorded in the Bureau of Conveyances of the State of Hawai‘i as Document No. A-80460606 (the “*Condominium*”). Ex. E.

The Plaintiffs filed their Complaint on August 9, 2023. JEFS Civil No. 5CCV-23-0000087 dkt. 1. The County filed its Answer on August 22, 2023. JEFS Civil No. 5CCV-23-0000087 dkt. 7.

To date, all the Planning Department’s conditions have been fulfilled except for Condition 26. The other owners of the Mauka Lands projects that were previously developed or in development were not required by the County to submit a master drainage plan for the Mauka Lands: Poipu Beach Estates, Pilimai at Poipu, Wainani at Poipu, Kiahuna Golf Village, Royal Pams at Poipu, Poipu Golf Course, Knudsen 50-Lot Subdivision. The carrying costs of the Condominium project without permits is subjecting the Plaintiffs to a fee of \$90,000 a month.² Ex. F. The Plaintiffs made a reasonable effort to comply with Condition 26, with approval by

² Thus far, the Plaintiffs have expended \$38,700,000.00 on the Condominium project. The interest and financing costs of the Condominium are \$983,489.00 with the Loan origination cost of \$63,894.00 come to a total of \$1,047,383.00. Ex. G.

the County Engineer, by undertaking a substantial burden of gathering drainage plans for some of the original parcels based on plans that are publicly available for the area but the cost will exceed \$200,000.00 to complete. Ex. G at 2. However, the review of the plans by the County Engineer is a lengthy process and will take months to complete. If only the Plaintiffs are required to fulfill Condition 26, which is already burdensome, the Plaintiffs will likely lose their financing for the Condominium project. Ex. H.

II. LEGAL STANDARD

Summary judgment is appropriate when the record demonstrates that there are no genuine issues of material fact, and that the movant is entitled to judgment as a matter of law. Hawai‘i Rules of Civil Procedure (“*HRCP*”) Rule 56(c); *see also Young v. Planning Comm’n of Kaua‘i*, 89 Hawai‘i 400, 407, 974 P.2d 40, 47 (1999). The movant bears the burden of showing that (1) no genuine issue of material fact exists “with respect to the essential elements of the claim or defense which the motion seeks to establish or which the motion questions”; and (2) “based on the undisputed facts, it is entitled to summary judgment as a matter of law.” *Anderson v. State*, 88 Hawai‘i 241, 246, 956 P.2d 783, 788 (App. 1998) (citing *GECC Fin. Corp. v. Jaffarian*, 79 Hawai‘i 516, 521-22, 904 P.2d 530, 535-36 (App. 1995)).

Once the movant satisfies its burden of production, the burden “shift[s] to the non-moving party to respond to the motion . . . and demonstrate specific facts, as opposed to general allegations, that present a genuine issue worthy of trial.” *Id.* (emphasis added); *see also HRCP* 56(e) (“When a motion for summary judgment is made . . . , an adverse party may not rest upon the mere allegations or denials of the adverse party’s pleading, but the adverse party’s response, . . . , must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the

adverse party.”). The court views the facts set forth in the record in the light most favorable to the party opposing the motion. *Bank of Honolulu, N.A. v. Anderson*, 3 Haw. App. 545, 550, 654 P.2d 1370, 1374-75 (1982); *see also Anderson*, 88 Hawai‘i at 246, 956 P.2d at 788.

III. DISCUSSION

A. Plaintiffs should only be required to submit a drainage plan for the Property, which they own, and not for the entire Mauka Lands.

The Plaintiffs are entitled to declaratory relief in the instant matter. Pursuant to Hawaii Revised Statutes (“*HRS*”) § 632-1(b) (1984),³ declaratory judgment may be granted in civil cases and where “the court is satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding.” Further, “where governmental action is involved, courts should not intervene unless the need for equitable relief is clear, not remote or speculative.” *Application of Air Terminal Svcs., Inc.*, 47 Haw. 499, 532, 393 P.2d 60, 78 (1964) (block quote formatting and internal quotation marks omitted) (quoting *Eccles v. Peoples Bank of Lakewood Village*, 333 U.S. 426, 431 (1948)).

1. Condition 26 is Inequitable and Unenforceable on its Face.

³ HRS § 632-1(b) states,

Relief by declaratory judgment may be granted in civil cases where an actual controversy exists between contending parties, or where the court is satisfied that antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation, or where in any such case the court is satisfied that a party asserts a legal relation, status, right, or privilege in which the party has a concrete interest and that there is a challenge or denial of the asserted relation, status, right, or privilege by an adversary party who also has or asserts a concrete interest therein, and the court is satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding. Where, however, a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed; but the mere fact that an actual or threatened controversy is susceptible of relief through a general common law remedy, a remedy equitable in nature, or an extraordinary legal remedy, whether such remedy is recognized or regulated by statute or not, shall not debar a party from the privilege of obtaining a declaratory judgment in any case where the other essentials to such relief are present.

There is no question that Condition 26 is inequitable and unenforceable on its face.⁴

There are no facts or evidence to support Condition 26's requirement that the Plaintiffs, and only the Plaintiffs, submit a master drainage plan for all the Mauka Lands when Plaintiffs own only two (2) parcels (the Property) out of thirteen (13). Ex. A at 7. To date, no other property owner of a Mauka Lands parcel has been subjected to compliance with a similar permit condition requiring a master drainage plan for the entire Mauka Lands, let alone for properties that it does not own. There are no facts that provide reason or explanation as to why the Plaintiffs have been unfairly targeted to expend time, money, and resources to create a master drainage plan for all of the Mauka Lands when the Plaintiffs own only two (2) parcels out of thirteen (13) parcels.

There are no facts or evidence to support Condition 26's requirement that the Plaintiffs, and only the Plaintiffs, submit a master drainage plan for all the Mauka Lands when Plaintiffs own only several parcels (the Property) out of thirteen (13). *Id.* To date, no other property owner of a Mauka Lands parcel has been subjected to compliance with a similar permit condition requiring a master drainage plan for the entire Mauka Lands, let alone for properties that it does not own. There are no facts that provide reason or explanation as to why the Plaintiffs have been unfairly targeted to expend time, money, and resources to create a master drainage plan for all of the Mauka Lands when the Plaintiffs own only their two (2) parcels out of thirteen (13) parcels.

2. Compliance with Condition 26 is Impossible

Condition 26 is unreasonable because it is an impossible condition for Plaintiffs to satisfy. *Cf. Vaszauskas v. Zoning Bd. of Appeals of Town of Southbury*, 574 A.2d 212, 215 (Conn. 1990) (recognizing that conditions imposed by a zoning authority must be reasonable and that

⁴ *Dolan v. City of Tigard*, 512 U.S. 374, 383-88 (1994) (holding that conditions may be placed on development if the conditions have an "essential nexus" to legitimate state interests and are "roughly proportional" to the impact of the proposed development; *see also Nollan v. California Coastal Comm'n*, 483 U.S. 825, 831-37 (1984) (holding that the government's condition on building permits is a lawful land-use regulation if it substantially furthered governmental purposes that justify denial of the permit).

“[c]onditions that are impossible to satisfy are patently unreasonable[.]”⁵ The plain language of Condition 26 requires that the Plaintiffs “submit a master drainage plan” for the entire Mauka Lands; however, it provides no direction or requirement that the surrounding parcel owners provide the Plaintiffs’ access to their parcels in preparation for the drainage plan. Ex. A at 7. Condition 26 requires that the Plaintiffs’ subject themselves to the discretion of the other parcel owners who may or may not allow the Plaintiffs to access their parcel to complete the drainage plan. Compliance with Condition 26 is an impossibility simply because to complete a master drainage plan for the entire Mauka Lands requires the assistance and authorization of other landowners.

3. The Minimal Risk of Uncontrolled Drainage from the Property Does Not Justify the Master Drainage Plan Condition

In reading Condition 26, the crux the master drainage plan requirement is to avoid any uncontrolled drainage having a potential impact to the Kānei‘olouma Heiau. However, the Kānei‘olouma Heiau is not located on the Property, which is a small portion of the Mauka Lands, and does not have a connection with the Property. Further, Kānei‘olouma Heiau is not located on the Mauka Lands. Ex. B. The Hawai‘i Supreme Court has recognized that zoning conditions may be imposed for developments that fall under public trust duties or other special use permits. In *Kauai Springs, Inc. v. Planning Com’n of Cnty. of Kaua‘i*, 113 Hawai‘i 141, 146, 324 P.3d 951, 957 (2014), the permits at issue were to maintain and expand a water harvesting and bottling company that tapped into an underground spring that was several miles from the subject property at issue. The supreme court recognized that because the company’s use of water fell under public trust duties, the planning commission was correct to impose on the company the

⁵ While Hawai‘i case law has not discussed this topic, the *Vaszauskas* decision is analogous to the instant case, in that zoning conditions imposed on a variance grant that were impossible for the applicant to fulfill were deemed invalid. See *Vaszauskas*, 574 A.2d at 215.

“burden to demonstrate the propriety of its proposed use of the public trust resource” in imposing its permit conditions. *Id.* at 179-80, 324 P.3d at 989-90. Unlike the bottling company and the underground spring in *Kauai Springs, Inc.*, there is no special use or public trust connection between the proposed Condominium project on the Property and the Kānei‘olouma Heiau. Thus, to require the Plaintiffs to conduct a master drainage plan for the entire Mauka Lands without a direct connection to the Kānei‘olouma Heiau is burdensome and unreasonable. Further, the Kānei‘olouma Heiau has been owned by the County since 1987, and the County is the appropriate entity to be the steward of the heiau. The heiau is about $\frac{3}{4}$ of a mile from the Property and at least six parcels intervene between the heiau and the Property. *See* Declaration of Laurel Loo.

Based on the foregoing, this court should find that there is no issue of material fact that Condition 26 is unenforceable towards the Plaintiffs, who have already been burdened in their attempts to create a master drainage plan for property that they do not own, and that the drainage plan should apply only to the Property.⁶

B. Without Injunctive Relief, the Plaintiffs Would Be Irreparably Damaged by Condition 26

The court looks at three factors when determining whether preliminary injunctive relief is warranted: (1) whether the Plaintiff is likely to prevail on the merits; (2) whether the balance of irreparable damage favors the issuance of a temporary injunction; and (3) whether the public interest supports granting an injunction. *Nuuanu Valley Ass’n v. City and Cnty. of Honolulu*, 119 Hawai‘i 90, 106, 194 P.3d 531, 547 (2008) (citation omitted). “[T]he more the balance of irreparable damage favors issuance of the injunction, the less the party seeking the injunction has

⁶ There are also no statutory remedies available for the Plaintiffs; thus, declaratory relief is the only remedy available. *See* HRS § 632-1(b).

to show the likelihood of success on the merits.” *Id.* (citation and internal quotation marks omitted).

The Plaintiffs are entitled to injunctive relief because they will suffer irreparable damage if Condition 26 is enforced against them. As stated *supra*, the Plaintiffs have already expended time, money, and resources in their attempts to create a master drainage plan using existing publicly available plans for other parcels. The Plaintiffs, however, still cannot access the remaining privately-owned parcels to conduct the necessary studies for a master drainage plan. Assuming *arguendo* that the Plaintiffs submit their makeshift drainage plan to the County Engineer for review, the review process will still take a considerable amount of time and will further delay the project, which is costing the Plaintiffs additional money and resources monthly. Ex. G. The delay caused by Condition 26 is jeopardizing the Plaintiffs’ financing for the Condominium project, which the Plaintiffs will likely lose if there is any further postponement. Ex. I.

The public interest also supports granting an injunction to the Plaintiffs. As stated *supra*, the attempted master drainage plan assembled by the Plaintiffs does not account for the drainage plans of those parcels that are not publicly available. If a master drainage plan is needed by the Planning Commission to avoid the risk of any water runoff affecting the area or the Kānei‘olouma Heiau, then the Planning Commission should not arbitrarily enforce a single parcel owner, such as the Plaintiffs, to complete a master drainage plan especially since the Kānei‘olouma Heiau is not located on the Property.

Based on the above, the Plaintiffs have demonstrated that no genuine issue of material fact exists as to whether they are entitled to injunctive relief.

IV. CONCLUSION

Based on the foregoing, the Plaintiffs respectfully submit that they are entitled to summary judgment as a matter of law regarding declaratory relief and injunctive relief and requests that this Honorable Court grant their Motion.

DATED: Līhu‘e, Hawai‘i, September 26, 2023.

/s/ Laurel Loo
LAUREL LOO
DAVID J. MINKIN
JORDAN K. INAFUKU
SARA M. HAYDEN

Attorney for Plaintiffs
5425 PAU A LAKA LLC and
MP ELKO II, LLC

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

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5425 PAU A LAKA LLC, a Hawai'i limited liability company, MP ELKO II, LLC, a Nevada limited liability company,

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Defendant.

CIVIL NO. 5CCV-23-000087
(Declaratory Judgment)

DECLARATION OF LAUREL LOO

DECLARATION OF LAUREL LOO

I, LAUREL LOO, hereby declare as follows:

1. I am an attorney licensed to practice law in all courts of the State of Hawai'i.
2. I am a partner with the law firm of McCorriston Miller Mukai MacKinnon LLP and counsel for Plaintiffs 5425 PAU A LAKA LLC, a Hawai'i limited liability company, MP ELKO II, LLC, a Nevada limited liability company in the above-captioned matter.
3. Unless otherwise indicated, all statements made herein are based on my personal knowledge.
4. I submit this Declaration in support of 5425 Pau and MP's Motion for Summary Judgment.
5. Attached hereto as **Exhibit A** is a true and correct copy of the September 15, 2006 conditional approval letter from the Planning Department, County of Kauai'i.
6. Attached hereto as **Exhibit B** is a true and correct copy of a map depicting the location of the various parcels and the Kānei'olouma Heiau.

7. Attached hereto as **Exhibit C** is a true and correct copy of the Warranty Deed dated May 26, 2021 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai‘i as Document No. T-11474216. I request that this Honorable Court take judicial notice of this Warranty Deed as a public record. *See Kaho ‘ohanohano v. State*, 114 Hawai‘i 302, 328, 162 P.3d 696 (2007) (recognizing that public reports and records are appropriate for judicial notice if their “significant bears directly on the instant matter.”).
8. Attached hereto as **Exhibit D** is a true and correct copy of the Warranty Deed dated May 27, 2021, filed in the Bureau of Conveyances of the State of Hawai‘i on June 1, 2021 as Document No. A-78220762. I request that this Honorable Court take judicial notice of this Warranty Deed as a public record. *See id.*
9. Attached hereto as Attached hereto as **Exhibit E** is a true and correct copy of the Warranty Deed dated August 10, 2021, filed in the Bureau of Conveyances of the State of Hawai‘i on August 12, 2021 as Document No. A-78940056. I request that this Honorable Court take judicial notice of this Warranty Deed as a public record. *See id.*
10. Attached hereto as **Exhibit F** is a true and correct copy of the First Amended and Restated Declaration of Condominium Property Regime of Kauanoe O Koloa and Condominium Map No. 6277, recorded in the Bureau of Conveyances of the State of Hawai‘i on August 12, 2021 as Document No. A-80460606. I request that this Honorable Court take judicial notice of this Warranty Deed as a public record. *See id.*
11. Attached hereto as **Exhibit G** is a true and correct copy of the Plaintiffs’ Budget for the Condominium project.
12. Attached hereto as **Exhibit H** is a true and correct copy of the June 1, 2023 Esaki Surveying & Mapping, Inc. drainage proposal;

13. Attached hereto as **Exhibit I** is a September 25, 2023 letter to the Plaintiffs from
American Savings Bank.

14. Title to Kānei‘olouma Heiau is vested in the County of Kauai pursuant to public records.

The heiau is about $\frac{3}{4}$ of a mile from the Property and at least six parcels intervene
between the heiau and the Property.

I declare under penalty of perjury that the foregoing is true and correct to the best of my
knowledge.

DATED: Līhu‘e, Hawai‘i, September 26, 2023.

/s/ Laurel Loo
LAUREL LOO

BRYAN J. BAPTISTE
MAYOR



IAN K. COSTA
DIRECTOR OF PLANNING

GARY K. HEU
ADMINISTRATIVE ASSISTANT

MYLES S. HIRONAKA
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHU'E, KAUAI, HAWAII 96766-1326

TELEPHONE: (808) 241-6677 FAX: (808) 241-6699

September 15, 2006

Kiahuna Poipu Golf Resort LLC
c/o Greg Kamm
P.O. Box 1200
Kōloa, Kauai, Hawaii 96756

SUBJECT: Project Development Use Permit P.D. U-2006-25
Use Permit U-2006-26
Class IV Zoning Permit Z-IV-2006-27

At its meeting held on August 22, 2006, the Planning Commission approved the subject permits. Approval is subject to the following conditions, as recommended by the Planning Department and as amended by the Planning Commission:

1. The Applicant is advised that the property is subject to the conditions of LUC Decision and Order A76-418 (D&O) and County of Kauai Ordinances No. PM-31-79, PM-148-87 and PM-334-97 ("the Ordinances"), which shall run with the land. All conditions of the Ordinances are enforceable against any party seeking to use the entitlement. The following conditions are deemed complete, ongoing or to be resolved with LUC, or not applicable to the subject property: LUC Docket A76-418 #1-6, 17, 19-22; PM-31-79, PM -148-87 and PM-334-97 #1, 3, 4, 9, 15, 17, 19(c), 25.
2. Prior to building permit approval:
 - (a) The Applicant shall provide clearance from SHPD that data recovery is complete for any non-significant sites on the parcel prior to any grading or grubbing on the site.
 - (b) Prior to building permit approval, the Applicant shall provide to the Planning Department evidence that the subject parcel is clear of habitats for the Kauai cave amphipod or cave spiders worthy of preservation.

3. Prior to building permit approval, the applicant shall provide documentation substantiating compliance with LUC Condition #8 and County Ordinance Condition #7, relating to employment of Kauai residents in construction and permanent hotel related jobs. "Hotel related jobs" shall mean any sales, operations, management or maintenance job associated with the operation or transient vacation rentals conducted on the property.
4. Prior to building permit approval:
 - (a) as recommended by the Count Housing Agency, "Prior to building permit application, the Applicant shall resolve with the County Housing Agency and the Planning Department the satisfaction of the employee housing requirement in Condition No. 2 of Ordinance No. PM-31-79 for employee housing in the Kōloa-Po'ipū area," and
 - (b) the Applicant shall provide a preferential rate schedule or purchase price for employees.
5. The Applicant is advised that lands rezoned by the Ordinance Nos. PM-31-79, PM-148-87 and PM-334-97 are responsible for continued provision of a public pedestrian access between Po'ipū Road and the Ho'onani cul-de-sac as a condition of their zoning. Signage shall be maintained and replaced as needed. The sidewalk and crosswalk from Po'ipū Road to the shopping center sidewalk shall be provided prior to building permit approval for the project.
6. The Applicant is advised that should the maintenance agreement for the comfort station at the Ho'onani Road cul-de-sac be terminated, the Applicant and other rezoned parcels within the Moana project shall be required to fund the comfort station maintenance and liabilities, pursuant to Condition #8 of the Ordinances.
7. Prior to certificate of occupancy, KMP project sidewalks along Kiahuna Plantation Drive shall be developed to connect to and integrate with the Hapa Road path, at SHPD and Planning Department approved locations.
8. The Applicant shall resolve any improvements required for the extension of Kiahuna Plantation Drive for access to the subject project and to the KMP5 project subdivision with the Department of Public Works. Internal driveways shall be a minimum of 20' wide for two-way traffic, and landscaping maintained to provide adequate clearance for fire vehicle access. Parking areas shall meet County standards. No parking for the project shall be allowed along Kiahuna Plantation Drive, except for public parking stalls as represented for Hapa Trail users. An emergency vehicular connection shall be made from the Kiahuna Plantation Drive extension to Hapa Road or a future roadway which connects to Hapa Road as resolved with the Planning Department and the Department of Public Works.

9. The Applicant shall resolve fire protection, drainage, grading, water, and wastewater treatment requirements directly with the applicable agencies. Wastewater handling shall be provided through connection to and expansion of the private wastewater treatment plant on TMK 2-8-14: 27, as required by the Health Department. Easements shall be created in the subdivision for any sewer, irrigation or utility lines associated with this or other KMP projects, and granted to appropriate parties. Additional easements shall be dedicated if required by the Fire Department, Departments of Public Works or Water.
10. In order to address traffic circulation issues relating to the Kōloa-Po'ipū area:
 - (a) Prior to building permit application, the Kōloa-Po'ipū Area Circulation Plan shall be completed, and the Applicant shall enter into a non-occupancy agreement with the Planning Department which shall expire when the improvements are accepted or approved as complete by the County Department of Public Works. Prior to the County's issuance of certificate of occupancy, construction of the required improvements, and dedication to the County if applicable, shall be completed.

For KMP related improvements, circulation improvements as recommended by the final Kōloa-Po'ipū Area Circulation Plan shall be resolved with the Department of Public Works (DPW) Engineering Division, the Planning Department, and the County Transportation Agency, and constructed, or construction plans and a performance bond be posted for such construction, prior to any building permit application (except for temporary sales offices) on any adjoining Kiahuna Mauka Partners project phase parcel. If a bond is posted, improvements shall be completed prior to certificate of occupancy of such buildings. Such circulation improvements to be resolved shall include but not be limited to:

- (1) A sidewalk within the Po'ipū Road mauka right-of-way from Kiahuna Plantation Drive west to the Po'ipū Road-Kapili Road intersection;
- (2) A sidewalk within the Kiahuna Plantation Drive right-of-way from Po'ipū Road mauka to the western edge of the KMP4 project;
- (3) Improvements to the intersection of Po'ipū Road and Kiahuna Plantation Drive; and
- (4) Crosswalks on Po'ipū Road, and Kiahuna Plantation Drive at locations appropriate to the intersection improvements approved to be constructed; and
- (5) location and detail of any other sidewalks, bus turnout, road and access improvements, landscaping, and bikeways adjacent to KMP properties.

- (b) Prior to building permit application, the Applicant shall execute with the County of Kauai (Planning Department, Department of Public Works, and OCA Transportation Agency, the Mayor, County Attorneys and the County Council) and record with the Bureau of Conveyances on the deed for the subject property, an agreement as herein described:
 - (1) As represented, the Applicant or its successors in interest to the property shall contribute its reasonable and fair share of funding, in conjunction with other developers and government agencies, of any Kōloa-Po'ipū-Kukui'ula transportation or circulation measures and/or improvements which may include but shall not be limited to construction plans and environmental studies for and construction of Capital Improvements such as roads, intersection improvements, traffic signals, sidewalks, bike paths, off-street parking areas or structures, and traffic calming devices, and may include Traffic Demand Management measures such as increased bus service, shuttles, car-pooling, ride-sharing, flex-time work hours, bus/shuttle use incentives, car-pooling incentives and other measures, as approved, adopted or designated by the County of Kaua'i within seven years of approval of the subject zoning permit. As represented, prior to building permit approval the Applicant shall participate in and seek approval of a Community Facilities District (CFD) for implementation and cost-sharing of the foregoing improvements.
 - (2) The share attributable to each development shall be determined at the time of adoption of any implementing funding ordinance adopted, including but not limited to a Community Facilities District (CFD), Impact Fee, and Improvement District. Such commitment and responsibility to contribute shall run with the land.
- 11. In conjunction with the KMP projects and in compliance with an Ordinance condition, a landscaped buffer is proposed within the Po'ipū Road right-of-way from Waikomo Stream to Kiahuna Plantation Drive. Prior to building permit approval, landscaping construction plans for the proposed Po'ipū Road landscape buffer shall be submitted to the Planning Department and the Department of Public Works for review and approval. Landscaped buffers within the rights of way shall be installed prior to completion and acceptance of any road improvements. Offsite landscaping improvements shall be installed either prior to building permit approval of buildings within adjacent Kiahuna Mauka Partners projects (excepting temporary sales office) or a performance bond posted for the construction. If a bond is posted, offsite landscaping improvements shall be completed prior to issuance of certificate of occupancy for those buildings.
- 12. Prior to certificate of occupancy for project buildings, civil defense measures shall be installed within the KMP4 project area as represented in the KMP Implementation Plan addendum, and as resolved with State Civil Defense. Such improvements shall be adjacent to but not within the Hapa Road right-of-way.

13. The project shall be served by private solid waste collection. A construction waste diversion plan shall be developed for the project for diversion of at least 80% of the waste generated by the project from the Kekaha landfill. Approval of the plan shall be obtained from the Department of Public Works prior to building permit approval, and the remainder of the waste may be accepted at the Kekaha Landfill.
14. The following uses are deemed permitted in the project:
 - (a) in the Residential (R-10) district, a maximum of 280 multi-family residential dwelling units; a front desk, rental and administrative management offices; a maintenance building and restrooms; and a Hapa Road shelter as represented in the Open District;
 - (b) designed for guest use, the following: a pool bar/snack bar of a maximum of 1,600 s.f.; business center; fitness center, game room, retreat center, outdoor recreational facilities as represented including a tennis court, sand volleyball courts, nine-hole executive putting course and putting shack, two swimming pools, keiki playground and activity center; and
 - (c) two single-family dwellings may be constructed in the Open District, subject to design review by the Planning Department.

Any other uses not specifically listed above shall require Planning Department review and approval.
15. The project shall comply with County and State codes, laws, ordinances, rules and regulations, except for the uses allowed in Condition #14 above and the following:
 - (a) minimum distance between residential buildings may vary from the applicable standard only for the third floor covered lanais as represented; and
 - (b) provided that the total lot coverage allowed for the combined zoning districts, including impervious surfaces within the road easement, is not exceeded and uses are generally allowed in the Open District, lot coverage may be transferred from the Residential District into the Open District through the Project Development Use Permit.
 - (c) The clubhouse shall meet the building height and setback requirements of CZO Section 8-3.11(a) for single-family dwellings.
16. The project shall provide parking for residential uses in accordance with CZO Section 8-3.7(a). The Applicant shall also provide a minimum of one parking stall adequate for maintenance vehicles at each building. Parking shall be provided for the pool bar/snack bar and offices in accordance with commercial standards designated in CZO Section 8-5.5.

17. The temporary sales offices shall be limited to "on-site" properties and shall not be used as general real estate brokerage offices. The driveway approach shall be paved to reduce transport of gravel onto the roadway. Any temporary sales facilities shall be included and indicated on the building permit application for the overall project.
18. Prior to building permit approval, the Applicant or other entity shall prepare and obtain construction plan approvals for undergrounding of electrical, street light wiring, communication and cable utilities abutting KMP projects in the Po'ipū Road right-of-way and construct the same or post a performance bond for completion.
19. The Applicant shall submit a landscaping plan at the time of building permit application, subject to Planning Department review and approval, and is encouraged to use endemic, indigenous or Polynesian introduced plant species common to the area in project landscaping and landscaped buffers.
20. In order to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, if external lighting is to be used in connection with the proposed project, all external lighting shall be only of the following types: shielded lights, cut-off luminaires, or indirect lighting. Spotlights aimed upward or spotlighting of structures shall be prohibited.
21. The applicant shall resolve and comply with all applicable conditions as recommended by the Water, Fire, and Public Works Departments, and with the State Departments of Health, Transportation and DLNR Historic Preservation Division.
22. The Applicant shall submit annual status reports documenting compliance with conditions of the permits until final completion of buildings and all conditions are completed.
23. The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or to revoke the subject permits through proper procedures should the applicant fail to comply with the conditions of approval or if unforeseen problems are generated by the proposed use at the project site.
24. The applicant is advised that additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).
25. The Applicant shall incorporate and integrate this project with any master plan to be developed for the Poipu area, where feasible.

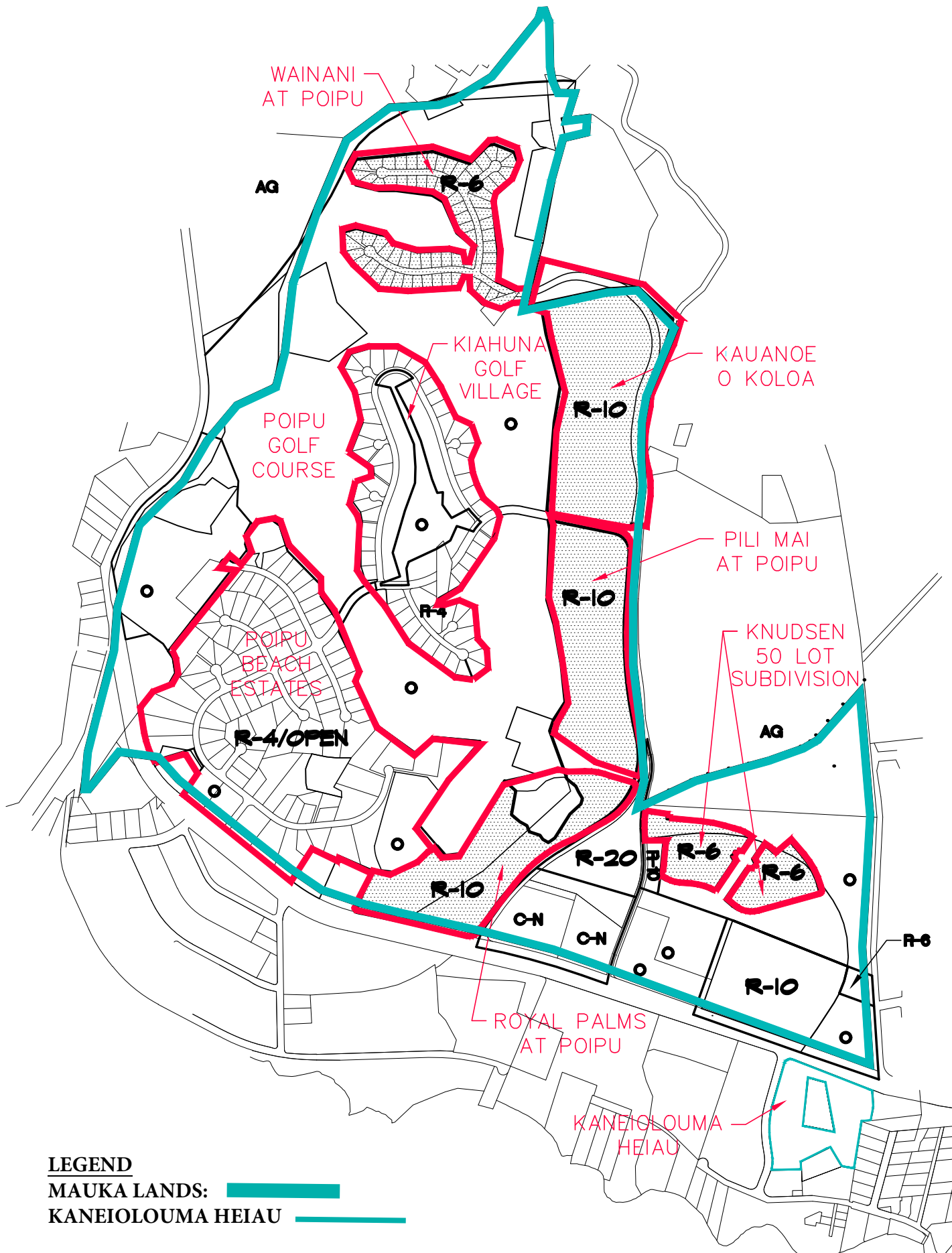
Kiahuna Poipu Golf Resort LLC
September 15, 2006
Page 7

26. Prior to building permit approval, the Applicant shall submit a master drainage plan for all lands mauka of Poipu Road rezoned under Moana Corporation Ordinance No. PM-31-79 for Planning Commission review and approval, including Kaneioulouma Heiau.
27. The Applicant shall demonstrate marketable title of the project premises to the Planning Department prior to building permit application.



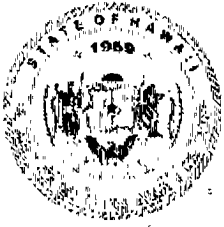
IAN K. COSTA
Planning Director

cc: DPW Engineering Div.; DPW Solid Waste Div.; Water Dept.; State Dept. of Health; DLNR
Historic Preservation Div.; Fire Dept.; State DOT Highways Div.; Finance Dept. Real
Property Div.



LEGEND
MAUKA LANDS:
KANEIOLOUMA HEIAU

EXHIBIT "B"



STATE OF HAWAII
OFFICE OF THE ASSISTANT REGISTRAR
RECORDED

June 1, 2021 8:01 AM

Doc No(s) T - 11474216

on Cert(s) 1076662

Issuance of Cert(s) 1214825

Pkg 11789023 YH

/s/ LESLIE T KOBATA
ASSISTANT REGISTRAR

Conveyance Tax. \$111,000.00

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by: Mail () Pickup ()
5425 PAU A LAKA LLC
1801 TIBURON BLVD STE 800
TIBURON CA 94920

TG; 202048700 -S
TGE: 21020166252
Ann Oshiro

LC-2

TYPE OF DOCUMENT:

WARRANTY DEED

PARTIES TO DOCUMENT:

GRANTOR: YELLOW HALE, LLC, a Hawaii limited liability company

GRANTEE: 5425 PAU A LAKA LLC, a Hawaii limited liability company
1801 Tiburon Blvd., Suite 800
Tiburon, California 94920

TAX MAP KEY FOR PROPERTY:

(4) 2-8-014-032

WARRANTY DEED

KNOW ALL PEOPLE BY THESE PRESENTS:

YELLOW HALE, LLC, a Hawaii limited liability company, whose mailing address is c/o Danny Errico, P. O. Box 1288, Hanalei, Hawaii 96714, hereinafter called the "Grantor", in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by 5425 PAU A LAKA LLC, a Hawaii limited liability company, whose mailing address is 1801 Tiburon Blvd., Suite 800, Tiburon, California 94920, hereinafter called the "Grantee", to ASSET PRESERVATION INC., a California corporation, in connection with an exchange by Grantor under Section 1031 of the Internal Revenue Code of 1986, the receipt of which is hereby acknowledged, does hereby grant and convey unto the Grantee, as a tenant in severalty, its successors and assigns, the property described in Exhibit "A" attached hereto and incorporated herein by reference.

AND the reversions, remainders, rents, issues, and profits thereof, and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with the improvements thereon and all rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith, unto the Grantee, according to the tenancy herein set forth, forever.

The Grantor hereby covenants with the Grantee that the Grantor is lawfully seised in fee simple of the premises described herein and has good right to sell and convey the same; that the same are free and clear of all encumbrances except as set forth herein and except for the lien of real property taxes not yet required by law to be paid; and that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid. The Grantor hereby consents to any future transfer of these covenants of warranty by the Grantee.

The Grantee confirms that Grantee has inspected the property being conveyed and specifically attests that Grantee is purchasing the property on an "AS IS" basis, without any representations or warranties, express or implied, with a full understanding that only Grantee and not the Grantor will be responsible for any and all imperfections, defects, obsolescence, wear and tear, and all other conditions of said property and hereby waives any claim hereafter against the Grantor for breach of express or implied warranty as to the condition of the property, except claims which are based on the Grantor's concealment of material facts and defects which Grantor is required by law to disclose.

This conveyance and the respective covenants of the Grantor and the Grantee shall be binding on and inure to the benefit of the Grantor and the Grantee, respectively. The terms "Grantor" and "Grantee" as and when used herein, or any pronouns used in place thereof, shall mean and include the singular or plural number, individuals, partnerships, trustees and corporations, and each of their respective heirs, personal representatives, successors and assigns.

All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed herein.

This Warranty Deed may be executed in counterparts. Each counterpart shall be executed by one or more of the parties hereinbefore named and the several counterparts shall constitute one instrument to the same effect as though the signatures of all the parties are upon the same document.

IN WITNESS WHEREOF, the Grantor and the Grantee have caused these presents to be duly executed on this 26 day of May, 20 21.

(SIGNATURES CONTINUED ON NEXT PAGE)

GRANTOR:

YELLOW HALE, LLC,
a Hawaii limited liability company

By



DONATO ERRICO, JR.
Its Managing Member

STATE OF HAWAII

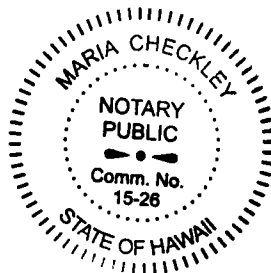
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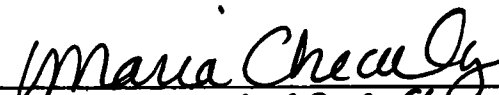
) SS:

COUNTY OF KAUAI

)

On this 27th day of May, 2021, before me appeared DONATO ERRICO, JR. to me personally known, who, being by me duly sworn, did say that he is the Managing Member of YELLOW HALE, LLC, a Hawaii limited liability company, that the foregoing WARRANTY DEED dated MAY 27, 2021, which document consists of 8 page(s), was signed in behalf of said entity, and the said Managing Member acknowledged said instrument to be the free act and deed of said entity.

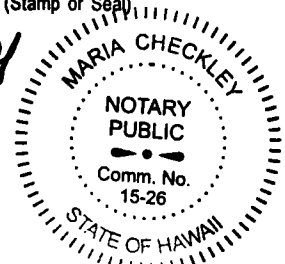



Name of Notary: MARIA Checkley
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: 1.11.2023

Doc. Date: 5.27.2021 # Pages 8
Notary Name: MARIA Checkley 5 Circuit
Doc. Description: WARRANTY Deed (Stamp or Seal)

 5.27.2021
Date



GRANTEE:

5425 PAU A LAKA LLC,
a Hawaii limited liability company

By [Signature]
Name: Gary Pinkston
Its: president

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

K Hawaii
STATE OF ~~CALIFORNIA~~)
)ss
COUNTY OF Kauai)

On 5/26/2021, before me, Kristan Suniga, Notary Public, a Notary Public, personally appeared Gary Lee Pinkston, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ~~California~~ Hawaii that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]
Kristan Suniga, Notary Public
Notary Public

Doc. Date: 5/26/2021 # Pages: 9
Name: Kristan Suniga 5 Circuit
Doc. Description: Warranty
Deed
Kristan Suniga 5/26/2021
Notary Signature Date
NOTARY CERTIFICATION

My Commission Expires
April 26, 2023

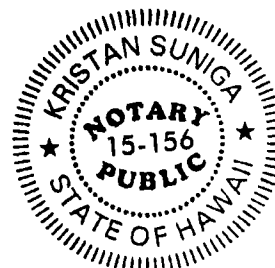
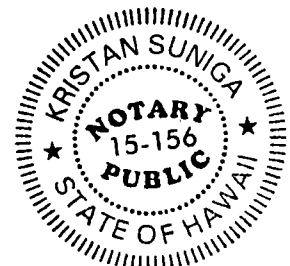


EXHIBIT "A"

All of that certain parcel of land situate at Koloa, District of Koloa, Island and County of Kauai, State of Hawaii, described as follows:

LOT 88, area 25.386 acres, more or less, as shown on Map 6, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 164 of First Hawaiian Bank and Valdemar L'Orange Knudsen, Trustees for Eric A. Knudsen, and Bishop Trust Company, Limited, Trustee for Augustus F. Knudsen.

Together with a non-exclusive easement for roadway and utility purposes, through, over, under, upon and across Lot 390, area 6.257 acres, as shown on Map 88, filed with Land Court Application No. 956, as granted by instrument dated September 30, 1987, recorded in Liber 21190, Page 377; provided, however, that if and when said easement shall be conveyed to or acquired by the County of Kauai or the State of Hawaii or any other governmental authority for use as a public highway, then and in such event, all easement rights granted therein shall forthwith terminate.

Being land(s) described in Transfer Certificate of Title No. 1,076,662 issued to YELLOW HALE, LLC, a Hawaii limited liability company.

Being the same premises conveyed to YELLOW HALE, LLC, a Hawaii limited liability company, by LIMITED WARRANTY DEED dated April 11, 2014, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. T-8866069, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-52140032.

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature.
2. The terms and provisions contained in instrument dated August 27, 1937, filed as Land Court Document No. 40955, recorded in Liber 1398 at Page 371, by and between The McBryde Sugar Company, Limited, Party of the First Part, Bishop Trust Company, Limited, Trustee for Eric A. Knudsen and Augustus F. Knudsen, Parties of the Second Part, Eric A. Knudsen and Augustus F. Knudsen, Parties of the Third Part, and Bishop Trust Company, Limited, Party of the Fourth Part.
3. DECREE dated June 7, 1951, filed as Land Court Document No. 135050, which stipulates that Carl E. Schimmelfennig, Petitioner in Equity No. 144 and occupant of R. P. 7269, L. C. Aw. 3606 to Kamae, "is entitled to receive water from the Konohiki of the Ahupuaa of Koloa in a constant stream 24 hours a day in the amount of 45,000 gallons per day."

4. The terms and provisions contained in EXCHANGE DEED dated January 28, 1971, filed as Land Court Document No. 558614, recorded in Liber 7947 at Page 418.

The foregoing includes, but is not limited to, matters relating to water reservation.

5. DESIGNATION OF EASEMENT(S) "67" for electrical and telephone purposes as referenced on Map 82, as set forth by Land Court Order No. 65923, filed May 16, 1983.

6. DESIGNATION OF EASEMENT(S) "68" for electrical and telephone purposes as referenced on Map 82, as set forth by Land Court Order No. 65923, filed May 16, 1983.

7. GRANT to CITIZENS UTILITIES COMPANY, now known as CITIZENS COMMUNICATIONS COMPANY, whose interest is now held by KAUAI ISLAND UTILITY COOPERATIVE and HAWAIIAN TELEPHONE COMPANY now known as HAWAIIAN TELCOM, INC., dated June 16, 1983, filed as Land Court Document No. 1189737, granting an easement over Easements "67" and "68".

8. Rights of way by necessity for exclusions not otherwise provided for, as mentioned in Land Court Order No. 74780, filed August 2, 1985.

9. The terms and provisions contained in DEED dated September 30, 1987, filed as Land Court Document No. 1499621, and also recorded in Liber 21190 at Page 377.

10. The terms and provisions contained in the DECLARATION, WAIVER AND TRANSFER OF ZONING RIGHTS dated April 1, 2003, filed as Land Court Document No. 2914814, and also recorded as Document No. 2003-067516.

11. The terms and provisions contained in the DECLARATION OF RESTRICTIVE COVENANTS AND AGREEMENT FOR GRANT OF EASEMENTS AND COOPERATION dated March 31, 2003, filed as Land Court Document No. 2935815, and also recorded as Document No. 2003-106200.

12. The terms and provisions contained in the AGREEMENT RE KIAHUNA GOLF COURSE PRIVILEGES dated April 4, 2003, filed as Land Court Document No. 2914824, and also recorded as Document No. 2003-067523.

13. The terms and provisions contained in the WAIVER AND RELEASE dated April 14, 2004, filed as Land Court Document No. 3103549, and also recorded as Document No. 2004-086578, by and between KIAHUNA FUND, LLC, an Oregon limited liability company, KENT HOWE ZIEGLER, husband of Susan Colt Ziegler, and RONALD HENRY ZIEGLER, unmarried (collectively, the "Owner"), and COUNTY OF KAUAI, a political subdivision of the State of Hawaii ("County"), regarding no County-supplied water service.

14. The terms and provisions contained in the AGREEMENT RE TRANSFER OF DENSITY RIGHTS dated August 19, 2004, filed as Land Court Document No. 3157114, by and

between KIAHUNA FUND, LLC, an Oregon limited liability company, KENT HOWE ZIEGLER, husband of Susan Colt Ziegler, RONALD HENRY ZIEGLER, unmarried, and COUNTY OF KAUAI, a political subdivision of the State of Hawaii.

15. The terms and provisions contained in the ORDER GRANTING KIAHUNA MAUKA PARTNERS, LLC'S MOTION TO AMEND OR MODIFY CONDITION NO. 9 OF DECISION AND ORDER, AS AMENDED IN AUGUST 5, 1997; AND ERIC A. KNUDSEN TRUST'S MOTION TO MODIFY CONDITION NO. 9a OF DECISION AND ORDER dated August 25, 2005, recorded as Document No. 2005-168955.

(Not noted on Transfer Certificate(s) of Title referred to herein)

16. The terms and provisions contained in NOTICE OF COUNTY ZONING ORDINANCE dated September 26, 2006, recorded as Document No. 2006-187289; re: compliance with amended condition no. 23 of Ordinance No. PM-334-97.

(Not noted on Transfer Certificate(s) of Title referred to herein)

17. CONVEYANCE OF WATER FACILITY to the BOARD OF WATER SUPPLY, COUNTY OF KAUAI, dated June 19, 2007, recorded as Document No. 2007-134277.

(Not noted on Transfer Certificate(s) of Title referred to herein)

18. CONVEYANCE OF WATER FACILITY to the BOARD OF WATER SUPPLY, COUNTY OF KAUAI, dated June 19, 2007, recorded as Document No. 2007-134278.

(Not noted on Transfer Certificate(s) of Title referred to herein)

19. DESIGNATION OF EASEMENT(S) "13" for access and utility purposes, as referenced on Map 6, as set forth by Land Court Order No. 169653, filed March 5, 2007.

20. GRANT to KIAHUNA KANAHIKU LLC, a Delaware limited liability company, dated February 27, 2007 and March 12, 2007, filed as Land Court Document No. 3573212, and also recorded as Document No. 2007-046286, granting an easement over Easement "13" for vehicular and pedestrian access, as well as an easement over Easement "A-2", more particularly described therein.

Said Grant was assigned by ASSIGNMENT OF GRANT OF ACCESS AND UTILITY EASEMENT; RESERVATION OF RIGHTS dated December 2, 2013, filed as Land Court Document No. T-8736390, recorded as Document No. A-50840959, by and between KW KIAHUNA, LLC, a Delaware limited liability company, and WAINANI AT POIPU COMMUNITY ASSOCIATION, a Hawaii non-profit corporation.

21. The terms and provisions contained in the DECLARATION OF RESTRICTIVE COVENANTS dated July 30, 2007, filed as Land Court Document No. 3637982, and also recorded as Document No. 2007-139897.

22. GRANT to the BOARD OF WATER SUPPLY, COUNTY OF KAUAI dated June 19, 2007, recorded as Document No. 2007-134272, granting an easement over and under said Easement "13".

Said above Grant was also filed as Land Court Document No. 3739425.

23. DESIGNATION OF EASEMENT(S) "101" for irrigation line purposes, as referenced on Map 18, as set forth by Land Court Order No. 188352, filed September 2, 2011.

24. The terms and provisions contained in the UNRECORDED KIAHUNA MAINTENANCE DISTRICT AGREEMENT dated July 3, 2013, by and between KIAHUNA MAUKA PARTNERS, LLC, a Hawaii limited liability company, KW KIAHUNA, LLC, a Delaware limited liability company, MORGAN STANLEY 2007-XLCI KIAHUNA SUBSIDIARY, LLC, a Delaware limited liability company, KIAHUNA FAIRWAYS LLC, a Hawaii limited liability company, WELK HO'OKIPA POIPU, LLC, a Hawaii limited liability company, and KIAHUNA MAKAI, LLC, a Hawaii limited liability company, "Developers".

A Memorandum of said above Agreement is dated July 11, 2013, filed as Land Court Document No. T-8621275, recorded as Document No. A-49690590.

25. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

26. Any unrecorded leases and matters arising from or affecting the same.

27. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described herein.

41: D



**STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED**

June 1, 2021 8:01 AM

Doc No(s) A - 78220762

Pkg 11789023 CGG

/s/ LESLIE T KOBATA
REGISTRAR

Conveyance Tax: \$41,300.00

<u>LAND COURT SYSTEM</u>	<u>REGULAR SYSTEM</u>
After Recordation, Return by: Mail ()	Pickup ()
5425 PAU A LAKA LLC	TG; 202048700 - S
1801 TIBURON BLVD STE 800	TGE: 21020166252
TIBURON CA 94920	Ann Oshiro

RS-3

TYPE OF DOCUMENT:

WARRANTY DEED

PARTIES TO DOCUMENT:

GRANTOR: YELLOW HALE, LLC, a Hawaii limited liability company

GRANTEE: 5425 PAU A LAKA LLC, a Hawaii limited liability company
1801 Tiburon Blvd., Suite 800
Tiburon, California 94920

TAX MAP KEY FOR PROPERTY:

(4) 2-8-014-041

WARRANTY DEED

KNOW ALL PEOPLE BY THESE PRESENTS:

YELLOW HALE, LLC, a Hawaii limited liability company, whose mailing address is c/o Danny Errico, P. O. Box 1288, Hanalei, Hawaii 96714, hereinafter called the "Grantor", in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by 5425 PAU A LAKA LLC, a Hawaii limited liability company, whose mailing address is 1801 Tiburon Blvd., Suite 800, Tiburon, California 94920, hereinafter called the "Grantee", to ASSET PRESERVATION INC., a California corporation, in connection with an exchange by Grantor under Section 1031 of the Internal Revenue Code of 1986, the receipt of which is hereby acknowledged, does hereby grant and convey unto the Grantee, as a tenant in severalty, its successors and assigns, the property described in Exhibit "A" attached hereto and incorporated herein by reference.

AND the reversions, remainders, rents, issues, and profits thereof, and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with the improvements thereon and all rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith, unto the Grantee, according to the tenancy herein set forth, forever.

The Grantor hereby covenants with the Grantee that the Grantor is lawfully seised in fee simple of the premises described herein and has good right to sell and convey the same; that the same are free and clear of all encumbrances except as set forth herein and except for the lien of real property taxes not yet required by law to be paid; and that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid. The Grantor hereby consents to any future transfer of these covenants of warranty by the Grantee.

The Grantee confirms that Grantee has inspected the property being conveyed and specifically attests that Grantee is purchasing the property on an "AS IS" basis, without any representations or warranties, express or implied, with a full understanding that only Grantee and not the Grantor will be responsible for any and all imperfections, defects, obsolescence, wear and tear, and all other conditions of said property and hereby waives any claim hereafter against the Grantor for breach of express or implied warranty as to the condition of the property, except claims which are based on the Grantor's concealment of material facts and defects which Grantor is required by law to disclose.

This conveyance and the respective covenants of the Grantor and the Grantee shall be binding on and inure to the benefit of the Grantor and the Grantee, respectively. The terms "Grantor" and "Grantee" as and when used herein, or any pronouns used in place thereof, shall mean and include the singular or plural number, individuals, partnerships, trustees and corporations, and each of their respective heirs, personal representatives, successors and assigns.

All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed herein.

This Warranty Deed may be executed in counterparts. Each counterpart shall be executed by one or more of the parties hereinbefore named and the several counterparts shall constitute one instrument to the same effect as though the signatures of all the parties are upon the same document.

IN WITNESS WHEREOF, the Grantor and the Grantee have caused these presents to be duly executed on this 26 day of May, 20 21.

(SIGNATURES CONTINUED ON NEXT PAGE)

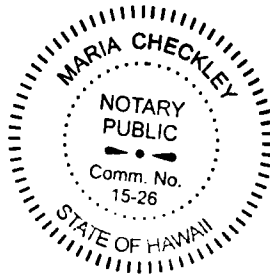
GRANTOR:


YELLOW HALE, LLC,
a Hawaii limited liability company

By 
DONATO ERRICO, JR.
Its Managing Member

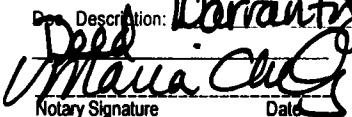
STATE OF HAWAII)
COUNTY OF KAUAI) SS:

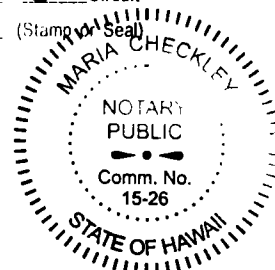
On this 27th day of MAY, 2021, before me appeared DONATO ERRICO, JR., to me personally known, who, being by me duly sworn, did say that he is the Managing Member of YELLOW HALE, LLC, a Hawaii limited liability company, that the foregoing WARRANTY DEED dated 5.27., 2021, which document consists of 8 page(s), was signed in behalf of said entity, and the said Managing Member acknowledged said instrument to be the free act and deed of said entity.





Name of Notary: MARIA Checkley
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: 1.11.2023

Doc. Date: 5.27.2021 # Pages: 8
Notary Name: MARIA Checkley 5 Circuit
Description: Warranty Deed (Stamp or Seal)

Notary Signature Date



5425 PAU A LAKA LLC,
a Hawaii limited liability company

By 
Name: Gary PINKSTON
Its: president

ACKNOWLEDGMENT

Hawaii
 STATE OF CALIFORNIA)
 COUNTY OF Kauai)ss
)

On 5/26/2021, before me, Kristan Suniga, Notary Public, a Notary Public, personally appeared Gary Pinkston, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by _____ signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ~~California~~ ^{Hawaii} that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Kurtar Lundy

Notary Public

Kristan Suniga, Notary Public

My Commission Expires:
April 26, 2023

Doc. Date: 5/26/2011 # Pages: 8
Name: Kristan Suniga S Circuit
Doc. Description: Warranty Deed
Kristan Suniga 5/26/2011
Notary Signature Date
NOTARY CERTIFICATION

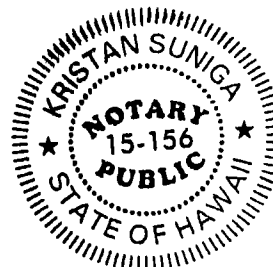
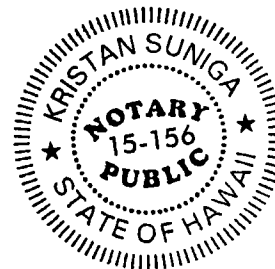


EXHIBIT "A"

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 7642, Land Commission Award Number 2668:1 to Roman Catholic Mission) situate, lying and being at Koloa, District of Koloa, Island and County of Kauai, State of Hawaii, being LOT B, and thus bounded and described:

Beginning at the east corner of this lot, which being the southeast corner of Lot "A", a subdivision of portion of Exclusion 14, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PAA" being 2614.17 feet north and 5102.14 feet west, thence running by azimuths measured clockwise from true South:

1. 86° 02' 222.10 feet along Lot 168 of Land Court Application 956 as shown on Map 18 to a spike in Pahoehe;
2. 77° 49' 563.80 feet along same to a pipe;
3. 194° 12' 329.00 feet along same to a pipe;
4. 284° 56' 14" 716.16 feet along Lot "A", a subdivision of portion of Exclusion 14 as shown on Map 4 of Land Court Application 956 to the point of beginning and containing an area of 2.50 acres, more or less.

Together with a non-exclusive easement for roadway and utility purposes, through, over, under, upon and across Lot 390, area 6.257 acres, as shown on Map 88, filed with Land Court Application No. 956, as granted by instrument dated September 30, 1987, recorded in Liber 21190, Page 377; provided, however, that if and when said easement shall be conveyed to or acquired by the County of Kauai or the State of Hawaii or any other governmental authority for use as a public highway, then and in such event, all easement rights granted therein shall forthwith terminate.

Being the same premises conveyed to YELLOW HALE, LLC, a Hawaii limited liability company, by LIMITED WARRANTY DEED dated April 11, 2014, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. T-8866069, and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-52140032.

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature.

2. The terms and provisions contained in the DECLARATION dated August 16, 1977, recorded in Liber 12379 at Page 549.

Said Declaration was amended by instrument dated July 3, 1978, recorded in Liber 13040 at Page 234, dated December 13, 1979, recorded in Liber 17769 at Page 734, dated November 17, 1997, recorded as Document No. 96-164842, and dated September 30, 1997, recorded as Document No. 98-183117.

3. The terms and provisions contained in DEED dated September 30, 1987, filed as Land Court Document No. 1499621, and also recorded in Liber 21190 at Page 377.

4. The terms and provisions contained in the DECLARATION, WAIVER AND TRANSFER OF ZONING RIGHTS dated April 1, 2003, filed as Land Court Document No. 2914814, and also recorded as Document No. 2003-067516.

5. The terms and provisions contained in the AGREEMENT RE KIAHUNA GOLF COURSE PRIVILEGES dated April 4, 2003, filed as Land Court Document No. 2914824, and also recorded as Document No. 2003-067523.

6. The terms and provisions contained in the DECLARATION OF RESTRICTIVE COVENANTS AND AGREEMENT FOR GRANT OF EASEMENTS AND COOPERATION dated March 31, 2003, filed as Land Court Document No. 2935815, and also recorded as Document No. 2003-106200.

7. The terms and provisions contained in the WAIVER AND RELEASE dated April 14, 2004, filed as Land Court Document No. 3103549, and also recorded as Document No. 2004-086578, by and between KIAHUNA FUND, LLC, an Oregon limited liability company, KENT HOWE ZIEGLER, husband of Susan Colt Ziegler, and RONALD HENRY ZIEGLER, unmarried (collectively, the "Owner"), and COUNTY OF KAUAI, a political subdivision of the State of Hawaii ("County"), regarding no County-supplied water service.

8. The terms and provisions contained in the AGREEMENT RE TRANSFER OF DENSITY RIGHTS dated August 19, 2004, filed as Land Court Document No. 3157114, by and between KIAHUNA FUND, LLC, an Oregon limited liability company, KENT HOWE ZIEGLER, husband of Susan Colt Ziegler, RONALD HENRY ZIEGLER, unmarried, and COUNTY OF KAUAI, a political subdivision of the State of Hawaii.

9. The terms and provisions contained in the ORDER GRANTING KIAHUNA MAUKA PARTNERS, LLC'S MOTION TO AMEND OR MODIFY CONDITION NO. 9 OF DECISION AND ORDER, AS AMENDED IN AUGUST 5, 1997; AND ERIC A. KNUDSEN TRUST'S MOTION TO MODIFY CONDITION NO. 9a OF DECISION AND ORDER dated August 25, 2005, recorded as Document No. 2005-168955.

10. The terms and provisions contained in NOTICE OF COUNTY ZONING ORDINANCE dated September 26, 2006, recorded as Document No. 2006-187289; re: compliance with amended condition no. 23 of Ordinance No. PM-334-97.

11. GRANT to KIAHUNA KANAHIKU LLC, a Delaware limited liability company, dated February 27, 2007 and March 12, 2007, filed as Land Court Document No. 3573212, and also recorded as Document No. 2007-046286, granting an easement over Easement "13" for vehicular and pedestrian access, as well as an easement over Easement "A-2", more particularly described therein.

Said Grant was assigned by ASSIGNMENT OF GRANT OF ACCESS AND UTILITY EASEMENT; RESERVATION OF RIGHTS dated December 2, 2013, filed as Land Court Document No. T-8736390, recorded as Document No. A-50840959, by and between KW KIAHUNA, LLC, a Delaware limited liability company, and WAINANI AT POIPU COMMUNITY ASSOCIATION, a Hawaii non-profit corporation.

12. GRANT to the BOARD OF WATER SUPPLY dated June 19, 2007, recorded as Document No. 2007-134272, granting an easement over and under said Easement "13".

Said above Grant was also filed as Land Court Document No. 3739425.

13. The terms and provisions contained in the DECLARATION OF RESTRICTIVE COVENANTS dated July 30, 2007, filed as Land Court Document No. 3637982, and also recorded as Document No. 2007-139897.

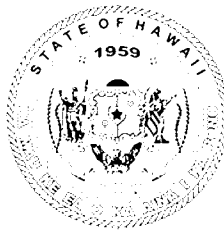
14. The terms and provisions contained in the UNRECORDED KIAHUNA MAINTENANCE DISTRICT AGREEMENT dated July 3, 2013, by and between KIAHUNA MAUKA PARTNERS, LLC, a Hawaii limited liability company, KW KIAHUNA, LLC, a Delaware limited liability company, MORGAN STANLEY 2007-XLCI KIAHUNA SUBSIDIARY, LLC, a Delaware limited liability company, KIAHUNA FAIRWAYS LLC, a Hawaii limited liability company, WELK HO'OKIPA POIPU, LLC, a Hawaii limited liability company, and KIAHUNA MAKAI, LLC, a Hawaii limited liability company, "Developers".

A Memorandum of said above Agreement is dated July 11, 2013, filed as Land Court Document No. T-8621275, recorded as Document No. A-49690590.

15. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

16. Any unrecorded leases and matters arising from or affecting the same.

17. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described herein.



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

August 12, 2021 8:01 AM

Doc No(s) A - 78940056

Doc 1 of 1
Pkg 11841361 ICL

/s/ LESLIE T KOBATA
REGISTRAR

Conveyance Tax: \$5,700.00

LAND COURT SYSTEM

AFTER RECORDATION, RETURN TO:

MP Elko II, LLC
2755 Mountain City Highway
Elko, Nevada 89801

REGULAR SYSTEM

RETURN BY: MAIL ☐ PICKUP ☐

TG: 202137308 - S RS
TGE: 21021181921
Ann Oshiro

Total pages: 7

Tax Map Key No. (4) 2-8-14-41

WARRANTY DEED

THIS DEED, made on AUG 10 2021, by **5425 PAU A LAKA LLC, a Hawaii limited liability company**, hereinafter called the "Grantor", in favor of **MP ELKO II, LLC, a Nevada limited liability company**, whose address is **94-050 Farrington Highway, Suite E1-3, Waipahu, Hawaii 96797**, hereinafter called the "Grantee",

WITNESSETH THAT:

The Grantor, in consideration of the sum of TEN DOLLARS (\$10.00) and other valuable consideration paid by Investment Property Exchange Services, Inc., a California corporation, in connection with a tax-free exchange of properties under Section 1031 of the Internal Revenue Code of 1986, as amended, by the Grantee herein, the receipt of which is hereby acknowledged by the Grantor, does hereby grant, bargain, sell and convey unto the Grantee, in fee simple, all of the property more particularly described in Exhibit A attached hereto and made a part hereof;

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereunto belonging or appertaining or held and enjoyed therewith, unto the Grantee according to the tenancy hereinafter set forth, forever.

Clay Chapman Iwamura Pulice & Nervell
700 Bishop Street, #2100, Honolulu, HI 96813
Telephone: (808) 535-8400

TG210684-08-MP Elko-Deed (1)B

The Grantor does hereby covenant with the Grantee that the Grantor is seised of the property herein described in fee simple; that said property is free and clear of and from all liens and encumbrances, except for the lien of real property taxes not yet by law required to be paid, and except as may herein specifically be set forth; that the Grantor has good right to sell and convey said property, as aforesaid; and, that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

This conveyance and the warranties of the Grantor are expressly declared to be in favor of the Grantee, **as tenant in severalty**, its successors and assigns.

The rights and obligations of the Grantor and the Grantee shall be binding upon and inure to the benefit of their respective successors and assigns. All obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed these presents on the day and year first above written.

[The remainder of this page is intentionally left blank - signature page(s) follow(s)]

5425 PAU A LAKA LLC

By *[Signature]*
Name: Gary Pinkston
Its: Manager

Grantor

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

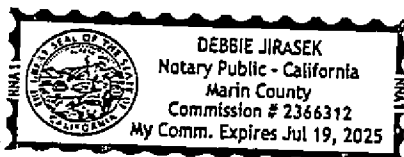
STATE OF CALIFORNIA

COUNTY OF Marin

)
) SS.
)

On August 10, 2021, before me, Debbie Jurasek,
a notary public, personally appeared **GARY PINKSTON**, who proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity on behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.



WITNESS MY HAND AND OFFICIAL SEAL

Signature
(Seal)

[Signature]

MP ELKO II, LLC

By Its Manager:

MP Financial Group, Ltd., a Nevada corporation

By *[Signature]*
Name: Gary Pinkston
Its: President

DS/r

Grantee

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

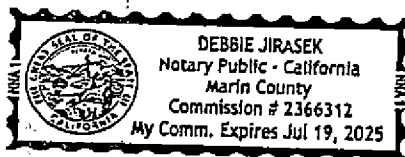
COUNTY OF Marin

)
) SS.
)

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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL



Signature
(Seal)

[Signature]

EXHIBIT A

An undivided 32.2% of the Grantor's 100% right, title and interest in and to the following:

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 7642, Land Commission Award Number 2668:1 to Roman Catholic Mission) situate, lying and being at Koloa, District of Koloa, Island and County of Kauai, State of Hawaii, being Lot B, and thus bounded and described:

Beginning at the east corner of this lot, which being the southeast corner of Lot "A", a subdivision of portion of Exclusion 14, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Paa" being 2614.17 feet north and 5102.14 feet west, thence running by azimuths measured clockwise from true south:

1. 86° 02' 222.10 feet along Lot 168 of Land Court Application 956 as shown on Map 18 to a spike in Pahoehoe;
2. 77° 49' 563.80 feet along same to a pipe;
3. 194° 12' 329.00 feet along same to a pipe;
4. 284° 56' 14" 716.16 feet along Lot "A", a subdivision of portion of Exclusion 14 as shown on Map 4 of Land Court Application 956 to the point of beginning and containing an area of 2.50 acres, more or less.

Together with a non-exclusive easement for roadway and utility purposes, through, over, under, upon and across Lot 390, area 6.257 acres, as shown on Map 88, filed with Land Court Application No. 956, as granted by instrument dated September 30, 1987, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 21190, at Page 377; provided, however, that if and when said easement shall be conveyed to or acquired by the County of Kauai or the State of Hawaii or any other governmental authority for use as a public highway, then and in such event, all easement rights granted therein shall forthwith terminate.

Being the premises described in Warranty Deed, dated May 26, 2021, recorded in said Bureau as Document No. A-78220762.

Subject, however, to the following:

1. Mineral and water rights of any nature.
2. The terms and provisions contained in Declaration, dated August 16, 1977, recorded in said Bureau in Liber 12379, at Page 549, as amended by instrument dated July 3, 1978, recorded in said Bureau in Liber 13040, at Page 234, dated December 13, 1979, recorded in said Bureau in Liber 17769, at Page 734, dated November 17, 1997, recorded in said Bureau as Document No. 96-164842, and dated September 30, 1997, recorded in said Bureau as Document No. 98-183117.
3. The terms and provisions contained in Deed, dated September 30, 1987, recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 1499621, and also recorded in said Bureau in Liber 21190, at Page 377.

4. The terms and provisions contained in Declaration, Waiver and Transfer of Zoning Rights, dated April 1, 2003, recorded in said Office as Land Court Document No. 2914814, and also recorded in said Bureau as Document No. 2003-067516.
5. The terms and provisions contained in Agreement Re Kiahuna Golf Course Privileges, dated April 4, 2003, recorded in said Office as Land Court Document No. 2914824, and also recorded in said Bureau as Document No. 2003-067523.
6. The terms and provisions contained in Declaration of Restrictive Covenants and Agreement for Grant of Easements and Cooperation, dated March 31, 2003, recorded in said Office as Land Court Document No. 2935815, and also recorded in said Bureau as Document No. 2003-106200.
7. The terms and provisions contained in Waiver and Release Agreement, dated April 14, 2004, recorded in said Office as Land Court Document No. 3103549, and also recorded in said Bureau as Document No. 2004-086578, regarding no County-supplied water service.
8. The terms and provisions contained in Agreement Re Transfer of Density Rights, dated August 19, 2004, recorded in said Office as Land Court Document No. 3157114.
9. The terms and provisions contained in Order Granting Kiahuna Mauka Partners, LLC's Motion to Amend or Modify Condition No. 9 of Decision and Order, as Amended in August 5, 1997; and Eric A. Knudsen Trust's Motion to Modify Condition No. 9a of Decision and Order, dated August 25, 2005, recorded in said Bureau as Document No. 2005-168955.
10. The terms and provisions contained in Notice of County Zoning Ordinance, dated September 26, 2006, recorded in said Bureau as Document No. 2006-187289; regarding compliance with amended condition No. 23 of Ordinance No. PM-334-97.
11. Grant of an easement over Easement "13" for vehicular and pedestrian access, as well as an easement over Easement "A-2", in favor of Kiahuna Kanahiku LLC, dated February 27, 2007, and March 12, 2007, recorded in said Office as Land Court Document No. 3573212, and also recorded in said Bureau as Document No. 2007-046286. Said Grant was assigned to Wainani at Poipu Community Association by Assignment of Grant of Access and Utility Easement; Reservation of Rights, dated December 2, 2013, recorded in said Office as Land Court Document No. T-8736390, and also recorded in said Bureau as Document No. A-50840959.
12. Grant of an easement on, over and under Easements "13" and "A-2" for utility purposes, in favor of Board of Water Supply, County of Kauai, dated June 19, 2007, recorded in said Bureau as Document No. 2007-134272, and also recorded in said Office as Land Court Document No. 3739425.
13. The terms and provisions contained in Declaration of Restrictive Covenants, dated July 30, 2007, recorded in said Office as Land Court Document No. 3637982, and also recorded in said Bureau as Document No. 2007-139897.
14. The terms and provisions contained in unrecorded Kiahuna Maintenance District Agreement, dated July 3, 2013, by and among Kiahuna Mauka Partners, LLC, a Hawaii limited liability company, KW Kiahuna, LLC, a Delaware limited liability company, Morgan Stanley 2007-XLCI Kiahuna Subsidiary, LLC, a Delaware limited liability company, Kiahuna Fairways LLC, a Hawaii limited liability company, Welk Ho'okipa Poipu, LLC, a Hawaii limited liability company,

and Kiahuna Makai, LLC, a Hawaii limited liability company, "Developers", for which a Memorandum of Kiahuna Maintenance District Agreement, is dated effective as of July 11, 2013, recorded in said Office as Land Court Document No. T-8621275, and also recorded in said Bureau as Document No. A-49690590.

15. Real Property Mortgage and Financing Statement, in favor of American Savings Bank, F.S.B., a federal savings bank, dated as of May 27, 2021, recorded in said Office as Land Court Document No. T-11474217, and also recorded in said Bureau as Document No. A-78220763.

16. Absolute Assignment of Rentals and Lessor's Interest in Leases, in favor of American Savings Bank, F.S.B., a federal savings bank, dated as of May 27, 2021, recorded in said Bureau as Document No. A-78220764.

17. Financing Statement in favor of American Savings Bank, F.S.B., a federal savings bank, recorded in said Bureau on June 1, 2021, as Document No. A-78220765.

18. The terms and provisions contained in Agreement Re: County of Kauai Housing Assessment, dated June 1, 2021, by and between 5425 Pau A Laka LLC, a Hawaii limited liability company, "Owner", and County of Kauai, a political subdivision of the State of Hawaii, by and through its Housing Agency, "County", recorded in said Office as Land Court Document No. T-11474218, and also recorded in said Bureau as Document No. A-78220766.

19. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

20. Any unrecorded leases and matters arising from or affecting the same.

End of Exhibit A

106 RES



**STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED**

January 11, 2022 11:27 AM
Doc No(s) A - 80460606

Pkg 11943097 ICL

/s/ LESLIE T KOBATA
REGISTRAR

LAND COURT SYSTEM

REGULAR SYSTEM

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

Imanaka Asato, LLC
745 Fort Street, 17th Floor
Honolulu, Hawaii 96813
(808) 521-9500 (SEK)

Tax Map Key Nos. (4) 2-8-014: 032, 041

Total Pages: 91

FIRST AMENDED AND RESTATED

DECLARATION OF CONDOMINIUM PROPERTY REGIME OF

KAUANOE O KOLOA AND CONDOMINIUM MAP NO. 6277

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**FIRST AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM PROPERTY REGIME
OF KAUANOE O KOLOA AND CONDOMINIUM MAP NO. 6277**

THIS FIRST AMENDED AND RESTATED DECLARATION is made this 27th day of December, 2021, by **Kauai Hale, Inc.**, a Delaware corporation, with its principal place of business and post office address at 94-050 Farrington Highway, Suite E1-3, Waipahu, Hawaii 96797 ("**Developer**").

WITNESSETH:

WHEREAS, 5425 Pau A Laka LLC, a Hawaii limited liability company, with its principal place of business and post office address at 94-050 Farrington Highway, Suite E1-3, Waipahu, Hawaii 96797, and MP Elko II, LLC, a Nevada limited liability company, with its principal place of business and post office address at 1801 Tiburon Boulevard, Suite 800, Tiburon, California 94920 (collectively, "**Fee Owners**"), own in fee simple the real property situate at Koloa, County of Kauai, State of Hawaii, identified as TMK Nos. (4) 2-8-014: 032 and 041, more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Land**"); and

WHEREAS, Fee Owners have agreed, subject to the terms and conditions hereinafter set forth, to join in this First Amended and Restated Declaration of Condominium Property Regime of Kauanoe o Koloa, referred to hereinafter as the "**Declaration**," solely for the purpose of permitting Developer to comply with the requirements relating to filing this Declaration pursuant to Section 514B-31 of the Act (hereinafter defined); and

WHEREAS, Fee Owners and Developer have agreed that Fee Owners shall be deemed the initial owner of all Units in the Project (hereinafter defined), and Fee Owners, its successors and assigns, shall from time to time, upon request by Developer, and upon terms satisfactory to both Fee Owners and Developer, convey their respective interest in all or a portion of the Units to Developer; and

WHEREAS, by way of that certain Declaration of Condominium Property Regime of Kauanoe o Koloa dated September 1, 2021, recorded at the Bureau of Conveyances of the State of Hawaii (the "**Bureau**") as Document No. A-79210950 (the "**Original Declaration**"), Developer, with the joinder of Fee Owners, submitted the Land and Improvements to a condominium property regime known as "Kauanoe o Koloa" (the "**Project**") and contemporaneously therewith recorded at the Bureau Condominium Map No. 6277 (the "**Original Condominium Map**"); and

WHEREAS, Article XV, Section B.1 of the Original Declaration states that Developer may amend the Original Declaration at any time prior to the closing of the sale of the first Residential Unit in the Project from Developer to a Residential Unit Owner; and

WHEREAS, no sales of Residential Units in the Project from Developer to a Residential Unit Owner have closed; and

WHEREAS, Article XXXVI of the Original Declaration states that the Original Declaration shall be deemed automatically amended to remove any references to the Spatial Unit effective on the date that the Spatial Unit is fully developed and converted into Residential Units, Commercial Units, and/or Common Elements and the Spatial Unit is no longer a part of the Project, and upon such date, Developer shall have the reserved right, without the consent or joinder of any other Person or party, to record an amendment to the Original Declaration to effect the same; and

WHEREAS, upon the recordation of this Declaration at the Bureau, the Spatial Unit will be fully converted into Residential Units, Commercial Units, and Common Elements, and the Spatial Unit will no longer be a part of the Project; and

WHEREAS, Developer desires to amend and restate the Original Declaration and the Original Condominium Map, as amended, in its entirety in the manner set forth in this Declaration and the Condominium Map recorded concurrently herewith (the "**Condominium Map**");

NOW, THEREFORE, in order to create a condominium project consisting of the Land and the Improvements, to be known as "Kauanoë o Koloa," Developer, by this Declaration, with the joinder of Fee Owners, does hereby submit the Land and the Improvements and all of their respective interests therein to a condominium property regime established pursuant to Chapter 514B of the Hawaii Revised Statutes, as amended (the "Act"). Developer 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 First Amended and Restated Bylaws of the Association of Unit Owners of Kauanoë o Koloa (the "Bylaws"), recorded concurrently herewith at the Bureau, as the provisions of this Declaration and the Bylaws may be amended, from time to time, in accordance with applicable law, and in accordance with the respective provisions of this Declaration and the Bylaws. The provisions of this Declaration and the Bylaws shall constitute covenants running with the Land and equitable servitudes and liens thereon, and shall be binding upon and shall inure to the benefit of Developer, the Association, their respective successors and permitted assigns, and all subsequent owners and lessees of all or any part of the Project and their respective successors, successors-in-trust, heirs, devisees, personal representatives, executors, administrators, and assigns.

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

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

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

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

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

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

8. **"Association"** means the Association of Unit Owners of Kauanoe o Koloa.
9. **"Board"** means the Board of Directors of the Association.
10. **"Building Structure"** means the structural framework of each building in the Project, including, without limitation, foundations, footings, floor slabs, columns, girders, beams, supports, roofs, and the load-bearing perimeter, partition, and party walls, not otherwise defined as part of a Unit.
11. **"Bureau"** means the Bureau of Conveyances of the State.
12. **"Bylaws"** means the First Amended and Restated Bylaws of the Association and shall include any lawful amendments thereto.
13. **"Capital Improvements Reserve Fund"** means that fund established by the Board pursuant to Article VI, Section 2(B) of the Bylaws to provide for specific capital improvements to the Project.
14. **"Capital Upgrades"** means the improvement or restoration of a physical asset that will enhance the value and/or increase the useful life thereof.
15. **"Certificate of Occupancy"** means the temporary certificate of occupancy (or the permanent certificate of occupancy where no temporary certificate of occupancy is issued) issued by the County Planning Department building official after inspection and prior to occupancy of a building or structure.
16. **"Claimant"** means the Association, Board, or any Owner or Owners claiming, contending, or alleging an Alleged Defect, as further discussed in **Section XLV.A** of this Declaration.
17. **"Class Common Interest"** means the Commercial Unit Class Common Interest and the Residential Unit Class Common Interest.
18. **"Commercial Director"** means the Commercial Unit Owner, or a person appointed by the Commercial Unit Owner pursuant to Article III, Section 3 of the Bylaws.
19. **"Commercial Unit"** means the Unit identified as Commercial Unit 1 in **Exhibit "B"** of this Declaration.
20. **"Commercial Unit Class"** means and includes the Commercial Unit.
21. **"Commercial Unit Class Common Interest"** means the percentage share assigned to a Commercial Unit within the Commercial Unit Class, as set forth in **Section III.B** and **Exhibit "B"** of this Declaration. The Commercial Unit Class Common Interest is subject to change if additional Commercial Units are added to the Project, in which case the Commercial Unit Class Common Interest shall be recalculated as set forth in **Section III.B** and **Exhibit "B"** of this Declaration.
22. **"Commercial Unit Owner"** means the Owner of the Commercial Unit.
23. **"Commission"** means the Real Estate Commission of the State.
24. **"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".
25. **"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 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; (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); and (i) the Residential Unit Class Expenses. 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.

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

27. **"Community System"** means photovoltaic systems and central telecommunication receiving and distribution systems and services (e.g., cable television, high speed data/internet/intranet services, cellular telephone, satellite television, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software.

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

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

30. **"Consolidated Lot"** means a new lot created upon the consolidation of the Land with another (or other) parcel(s) of land.

31. **"County"** means the County of Kauai, State of Hawaii.

32. **"D&O Policy"** means the policy insuring, to the extent allowed by law, each person who is or was a Director, Officer, agent, or employee of the Association and each person who is or was a Representative of Managing Agent against all liability in connection with any claim made against him or her as a result of his or her holding that position, including, without limitation, any claim that would be covered under employment practices liability insurance, which the Board is required to buy and maintain, as further discussed in **Section XII.E** of this Declaration.

33. **"Declaration"** means this First Amended and Restated Declaration of Condominium Property Regime of Kauanoe o Koloa, together with any lawful amendments hereto. This Declaration amends and restates the Original Declaration in its entirety.

34. **"Developer"** means Kauai Hale, Inc. a Delaware corporation, and shall also include any of its permitted successors and assigns.

35. **"Developer Control Period"** means the period in which Developer shall have the right to appoint and remove Officers and Directors, as further discussed in **Article XLVI** of this Declaration.

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

37. **"Development Period"** means the period starting on the date this Declaration is recorded at the Bureau and ending upon the earlier of: (a) December 31, 2041, (b) the date Developer no longer owns any interest in the Project following the initial conveyance of Units to Developer by Fee Owners, or (c) the date Developer records a document at the Bureau relinquishing all of Developer's Reserved Rights.

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

39. **"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.

40. **"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.

41. **"Fee Owners"** means 5425 Pau A Laka LLC, a Hawaii limited liability company, and MP Elko II, LLC, a Nevada limited liability company, the current fee simple owners of the Land, and shall also include any of its permitted successors and assigns.

42. **"FHA"** means the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*, as amended by the Fair Housing Amendments Act of 1988, and the rules and regulations adopted thereunder, as the same may be amended from time to time.

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

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

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

46. **"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.

47. **"Kauanoë o Koloa"** is the name of the Project established by the submission of the Land and Improvements to a condominium property regime under the terms and conditions set forth in this Declaration.

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

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

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

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

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

53. **"Majority"** means the Owners to which are appurtenant more than fifty percent (50%) of the Common Interest, or Class Common Interest with respect to the Commercial Unit Class and the Residential Unit Class or, when referring to Directors, more than fifty percent (50%) of the Directors entitled to vote on, take action, or otherwise decide the matter in question.

54. **"Management Agreement"** means that certain instrument entered into or to be entered into between the Association and the Managing Agent for management and administration of the Association, the Common Elements, the Limited Common Elements, the Commercial Unit, the Residential Units, and the property of the Association, if any.

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

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

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

58. **"Occupancy Restrictions"** means those limitations on the use and occupancy of the Residential Units, as more particularly described in **Section VI.B.5** of this Declaration.

59. **"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.

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

61. **"Original Condominium Map"** means the Condominium Map recorded with the Original Declaration, recorded at the Bureau as Condominium Map No. 6277.

62. **"Original Declaration"** means that certain Declaration of Condominium Property Regime of Kuanoe o Koloa dated September 1, 2021, recorded at the Bureau as Document No. A-79210950.

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

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

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

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

67. **"Project Quality Standard"** means the standard required to maintain and operate the Project in a condition and at a quality level no less than that which existed at the time that the Project was initially completed (ordinary wear and tear excepted). The Project Quality Standard may evolve as development of the Project progresses and industry standards for similar projects in the community evolve. All of the elements of the Project Quality Standard need not be set out in writing since such evaluation may require the exercise of subjective judgment and cannot be reduced to written criteria.

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

69. **"Recreational Amenities"** means those recreational amenities located in the Project, or which may be constructed and added to the Project, available for the use and enjoyment of the Residential Unit Owners.

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

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

72. **"Residential Unit"** means any of the Units identified as Residential Units in **Exhibit "B"** of this Declaration.

73. **"Residential Unit Class"** means and includes all of the Residential Units.

74. **"Residential Unit Class Common Interest"** means the percentage share assigned to a Residential Unit within the Residential Unit Class, as set forth in **Section III.B** and **Exhibit "B"** of this Declaration. The Residential Unit Class Common Interest is subject to change if additional Residential Units are added to the Project, in which case the Residential Unit Class Common Interest shall be recalculated as set forth in **Section III.B** and **Exhibit "B"** of this Declaration.

75. **"Residential Unit Class Expense"** means those Common Expenses which, pursuant to this Declaration or the Bylaws, are assessed against the Residential Units and are payable by each Residential Unit Owner based on the Residential Unit Class Common Interest assigned to the Residential Unit.

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

77. **"Residential Unit Owner"** means the Owner of a Residential Unit; provided, however, that any Person that holds such interest solely as security for the performance of an obligation shall not be a Residential Unit Owner solely by reason of such interest.

78. **"SHPD"** means the State Historic Preservation Division.

79. **"Special Costs"** means certain costs that are to be apportioned pursuant to an Alternative Allocation among or between the Commercial Unit Class and the Residential Unit Class based on a fair and equitable apportionment in accordance with Section 514B-41 of the Act.

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

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

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

83. **"Unit"** means a part of the Project, as described in this Declaration and as shown on the Condominium Map, intended for a use permitted under the Act, with an exit to a public street or highway, or to a

Common Element leading to a public street or highway, and includes the individual Units making up each of the Unit Classes. The Units included in the Project are listed in **Exhibit "B"** and include the Commercial Unit and the Residential Units.

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

85. **"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, subject to Developer's Reserved Right to increase or decrease the number of Units and otherwise modify the Improvements, consists of the following:

1. **COMMERCIAL UNIT.** One (1) Commercial Unit located in a single story building as shown on the Condominium Map and in **Exhibit "B"**, attached hereto and incorporated herein by this reference, as Commercial Unit 1.

2. **RESIDENTIAL UNITS.** Two hundred seventy-nine (279) Residential Units located in thirty (30) three (3) story buildings comprised of the Unit types set forth in **Exhibit "B"** attached hereto.

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

B. **DESCRIPTION OF THE UNITS.** Two hundred eighty (280) fee simple Units are hereby designated in the Project, which Units are designated on the Condominium Map and are described as follows:

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

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

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

4. **LIMITS OF UNITS.**

a. The Commercial Unit and the respective Residential Units shall be deemed to include: (a) all interior walls, doors, window frames, and partitions that are not load-bearing and that are located within the space bounded by the Unit's perimeter walls but not the perimeter walls themselves; (b) the interior decorated or finished surfaces of all doors, door frames, columns, and window frames of perimeter and party walls;

(c) the interior decorated or finished surfaces of all floors and ceilings; (d) all lath, furring, wallboard, plasterboard, plaster, paneling, tile, wallpaper, paint, finished flooring, and any other materials constituting the finished interior decorated surfaces of such walls and columns, interior doors, interior door and window frames, and floors and ceilings; (e) the air space surrounded by such walls, doors, door and window frames, floors and ceilings; (f) all fixtures (if any) originally installed in the Unit; and (g) any pipes, shafts, wires, conduits, ducts, or other utility or service lines running through such Unit that are utilized for or service only that Unit. The Commercial Unit and the respective Residential Units shall not be deemed to include the following: (t) the undecorated and unfinished surfaces of perimeter and party walls and doors, door frames, window frames, and any exterior surfaces thereof; (u) sliding doors, frames, and windows located on the perimeter and party walls; (v) the interior load-bearing walls and columns and their undecorated or unfinished surfaces; (w) any door or window frames located in the interior load-bearing walls and their undecorated or unfinished surfaces; (x) any lanai (if any), or walls, floors, and/or ceilings partially surrounding any lanai (if any); (y) any pipes, shafts, wires, conduits, ducts, or other utility or service lines running through such Unit that are utilized for or service more than one Unit; and (z) any Common Elements or Limited Common Elements as hereinafter provided. To the extent there is a conflict between this Section and **Sections II.C and II.D**, below, the inclusions and exclusions of the Commercial Unit and the Residential Units as provided for in this Section shall control.

Developer shall have the right to adjust the boundaries and/or living areas of the Units and the descriptions of the perimeter boundaries set forth on the Condominium Map as necessary to correct minor discrepancies and/or errors in the descriptions or areas; provided that Developer shall record an amendment to this Declaration to reflect such modification; and further provided that Developer need not recalculate and readjust Common Interests of the Units impacted for such minor corrections to the areas.

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

1. The Land in fee simple and any other appurtenances thereto described in **Exhibit "A"**; subject, however, to the rights of Developer herein affecting the Land;
2. The Building Structure identified on the Condominium Map as the "Club House";
3. All fans, vents, shafts, drains, sewer lines, water lines, pipes, generators, cables, conduits, ducts, electrical equipment, water pumps, fire pumps and other equipment, telecommunication equipment, security equipment, cooling tower(s), wiring and other central and appurtenant transmission facilities and installations on, above, over, under, and across the Project to the point of their respective connections to Improvements comprising a part of the Units, which serve the Commercial Unit and the Residential Units and their appurtenant Limited Common Elements, including, without limitation, those providing electricity, light, gas (if any), water, air conditioning, sewer, refuse, drainage, irrigation, telephone, security, and radio and television signal distribution (if any), unless otherwise designated herein or on the Condominium Map;
4. All areas or rooms, including, without limitation, areas or rooms housing the items described in **Section II.C.3** above, rooms housing fire protection, telecommunications and/or security equipment, storage rooms, and installations existing for common use by or for the common benefit of the Commercial Unit and the Residential Units, and not otherwise designated as a Unit herein or on the Condominium Map;
5. All mechanical equipment, rooms, and areas that service the Common Elements appurtenant to all Units;
6. The two (2) bathrooms located in the building identified as the "Club House" as shown on the Condominium Map;
7. All of the Limited Common Elements described in **Section II.D** below; and
8. All of the parts or portions of the Project that are not Units 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 clean, upkeep, repair, replace, alter, improve, and/or add to the Commercial Unit's Limited Common Elements, that are not also appurtenant to Residential Unit(s), shall be the responsibility of the Owner of the Commercial Unit to which such Limited Common Element is appurtenant. The responsibility to maintain, clean, upkeep, repair, replace, alter, improve, and/or add to Residential Unit Limited Common Elements shall be the responsibility of the Association, as set forth below. The costs and expenses of every description pertaining to the Limited Common Elements, including, but not limited to, the costs of maintenance, repair, replacement, improvement, or additions to the Limited Common Elements, shall be charged to the Owner(s) of the Unit(s) to which the Limited Common Element shall be appurtenant, and if there is more than one (1) Unit to which the Limited Common Element shall be appurtenant, then in proportion to the Common Interest appurtenant to each of the respective Units.

1. COMMERCIAL UNIT LIMITED COMMON ELEMENTS. The Commercial Unit shall have appurtenant thereto, as a Limited Common Element:

a. Those portions of any pipes, drains, cables, conduits, chutes, flues, ducts, wires, vents, shafts, other utility or service lines, sewage treatment equipment and facilities (if any), supporting apparatus, electrical equipment, electrical closets, storage rooms, communications rooms, pump rooms, HVAC, air conditioning and/or heating equipment, and any other appurtenant pipes or ducts, or other central and appurtenant transmission facilities and installations over, under, and across the Limited Common Elements appurtenant only to the Commercial Unit; any other fixtures that serve only the Commercial Unit or the Limited Common Elements appurtenant thereto and serve none of the Residential Units or the Limited Common Elements appurtenant thereto;

b. All utility, maintenance and work rooms, closets and facilities, storage, trash, electrical, mechanical, and telecommunication rooms, fire protection and security rooms, accessory equipment areas, and other support areas (if any), and the equipment therein that service only the Commercial Unit or the Limited Common Elements appurtenant thereto;

c. The lanai area directly adjacent to the Commercial Unit depicted as "Commercial Unit Limited Common Element" on the Condominium Map; and

d. Any other areas described as "Commercial Unit Limited Common Elements" herein or on the Condominium Map.

2. RESIDENTIAL UNIT CLASS LIMITED COMMON ELEMENTS. The Residential Unit Class Limited Common Elements include those parts of the Limited Common Elements that are reserved for the exclusive use of all Residential Unit Owners, and shall include the following:

a. The Building Structures in which Residential Units are located;

b. Those portions of any pipes, drains, cables, conduits, chutes, flues, ducts, wires, vents, shafts, other utility or service lines, sewage treatment equipment and facilities (if any), supporting apparatus, electrical equipment, electrical closets, storage rooms, communications rooms, pump rooms, HVAC, air conditioning and/or heating equipment and any appurtenant pipes or ducts, or other central and appurtenant transmission facilities and installations over, under, and across the Limited Common Elements appurtenant only to the Residential Units; any other fixtures that serve more than one Residential Unit or the Limited Common Elements appurtenant to the Residential Units and do not serve the Commercial Unit or Limited Common Elements appurtenant thereto;

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

d. All parking stalls, loading zones, driveways, access lanes, roads, and roadways;

- e. All stairways, sidewalks, common walkways, and landscaping;
- f. All trash enclosures and trash receptacles located within the Project;
- g. The Recreational Amenities, which may include two (2) swimming pools, a pavilion, barbeque area, and club house; and
- h. Any other area described as "Residential Unit Class Limited Common Element" herein or on the Condominium Map.

3. **RESIDENTIAL UNIT LIMITED COMMON ELEMENTS.** Each Residential Unit shall have appurtenant thereto, as a Limited Common Element:

- a. The lanai adjacent to such Residential Unit, from the decorated or finished surface of all walls, floors, and ceilings of said lanai, as depicted on the Condominium Map, the total area of which is identified in **Exhibit "B"**; and
- b. An assigned mailbox as may be located within the Project. Such mailbox shall be identified by the same number as the Unit to which it is a Limited Common Element.

III. **COMMON INTEREST; CLASS COMMON INTEREST.**

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

B. **CLASS COMMON INTEREST.** In addition to the Common Interest, each Unit shall have assigned to it, for administrative purposes, a Class Common Interest as set forth in **Exhibit "B"** attached hereto, based upon the Unit Class to which such Unit belongs; that being the Commercial Unit Class or the Residential Unit Class. All Owners of Units in a Unit Class shall have the right to vote his or her Class Common Interest with respect to matters requiring voting by Unit Class. Developer shall have the absolute right to adjust the Class Common Interest in its discretion in order to ensure that the total Commercial Unit Class Common Interest for the Commercial Units in the aggregate equals one hundred percent (100%), that the total Residential Unit Class Common Interest for the Residential Units in the aggregate equals one hundred percent (100%), and may adjust the Class Common Interest of all or some of the Units in the Project to achieve such result. Developer shall further have the right to adjust the Class Common Interest in exercising certain Developer's Reserved Rights, as may be set forth herein.

IV. **EASEMENTS AND LICENSE.**

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

A. **EASEMENTS IN THE COMMON ELEMENTS AND OTHER UNITS.** Each Unit shall have appurtenant thereto nonexclusive easements in the Common Elements, including the Limited Common Elements, designed for such purposes as ingress to, egress from, utility services for, support of, and, as necessary, for the maintenance and repair of such Unit and the Limited Common Elements appurtenant thereto; in the Common Elements for use according to their respective purposes, subject always to the exclusive use of the Limited Common Elements as provided herein; and in the other Units in the building in which such Unit is located for support; subject to the provisions of Section 514B-38 of the Act. Wherever sanitary sewer connections, water connections, electricity, gas, telephone, HVAC, security and television lines, drainage facilities, or duct facilities are installed

within the Project, the Owners of Units that are served by said connections, lines, or facilities shall have the right, and there are hereby reserved to all other Owners, together with the right to grant and transfer the same, easements and rights to the full extent necessary for the full use and enjoyment of such portions of such connections, lines, or facilities which service such Units, and to enter Units owned by others, or to have utility companies enter Units owned by others, in or upon which said connections, lines, or facilities, or any portions thereof, lie, to repair, replace, and generally maintain said connections, lines, or facilities as and when the same may be necessary; provided that such entering Owner or utility company shall repair all damage to any Unit caused by such entry as promptly as possible after completion of work thereon.

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

C. EASEMENT FOR COMMERCIAL UNIT VENDORS, EMPLOYEES, CUSTOMERS, AND GUESTS. The Commercial Unit shall have an appurtenant easement for use by its vendors, licensees, and invitees for purposes of the business conducted in the Commercial Unit or its appurtenant Limited Common Elements (1) to come onto the Project areas intended for access to and from any nearby roads, streets, or highways, (2) to make deliveries using any delivery area and any Common Elements necessary to get from the delivery area to the Commercial Unit or its Limited Common Elements, (3) to go to and from the Commercial Unit and their Limited Common Elements using the walkways and sidewalks intended for such purposes, (4) for casual use, for recreation, and to enjoy entertainment and other services provided from the Commercial Unit or their Limited Common Elements, and (5) as otherwise may be reasonably necessary to operate and manage the services from the Commercial Unit and its Limited Common Elements. The Limited Common Elements appurtenant to the Commercial Unit are intended for general use by the Commercial Unit's vendors, licensees, and invitees and the general public accessing and patronizing the Commercial Unit. No impact or other fee will be assessed by the Association to the Commercial Unit Owner in connection with the exercise of these easement rights.

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 its 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, roadways, or other access to areas designated for public use, or the facilities that support the Project. The Association must have the written approval of the Commercial Unit Owner before it can exercise this right within any Limited Common Element appurtenant to the Commercial Unit.

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 or Owners or public access, as necessary for the project. The Association also has the right, exercisable by the Board, to grant, cancel, relocate, and otherwise deal with any easement or license encumbering the Land or the Project that benefits adjacent lands. The Association's rights are subject to the approval of Developer during the Development Period.

G. DEVELOPER'S EASEMENT TO COMPLETE IMPROVEMENTS TO THE PROJECT. To and until December 31, 2041, Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees, and assigns shall have an easement over, under, and upon the Project, including the Common Elements, Limited Common Elements, and any Unit, as may be reasonably necessary or appropriate for the completion of the Improvements of the Project and the correction of defects and other "punchlist" items therein. Each and every Owner or other Person acquiring an interest in the Project waives, releases, and discharges any rights, claims, or actions such party may acquire against Developer, its agents, employees, consultants, contractors, licensees, successors, and assigns as a result of any noise, dust, vibration, and other nuisances or annoyances arising from the completion of such Improvements.

H. DEVELOPER'S EASEMENT FOR NOISE AND DUST. To and until December 31, 2041, Developer, its agents, employees, consultants, contractors, licensees, successors, and assigns shall have an easement over, under, and upon the Project or any portion thereof, to create and cause noise, dust, vibration, and other nuisances created by and resulting from any work connected with or incidental to the development, construction, and sale of any Unit or any other Improvements in the Project. Each and every Owner or other Person acquiring any interest in the Project waives, releases, and discharges any rights, claims, or actions such party may acquire against Developer, its agents, employees, consultants, contractors, licensees, successors, and assigns as a result of any such noise, dust, vibration, and other nuisances or annoyances.

I. DEVELOPER'S EASEMENT FOR SALES ACTIVITIES. Developer, its brokers, sales agents, Representatives, and other related persons shall have the right to conduct extensive sales activities at the Project, including the use of any Unit owned by Developer and the Common Elements (excluding the Limited Common Elements appurtenant exclusively to Units not owned by Developer), for model units, tours, sales, leasing, management, and construction offices, parking, extensive sales displays, hosting promotion activities, functions, and receptions, the posting and maintenance of signs and other advertisements relating to such sales activities, and to install, maintain, locate, relocate, and reconfigure such structures, displays, advertising signs, billboards, flags, sales desks, kiosks, sales, leasing, management, and/or construction offices, model units, interior design and decorator centers, and parking areas for employees, agents, and prospective buyers, as may be necessary or convenient for the proper development and disposition of Units by sale, resale, lease, or otherwise, and the right, but not the obligation, to provide ongoing maintenance, operation, service, construction, and repairs to individual Units. This easement shall include the right of Developer to temporarily reasonably restrict access to such Common Elements and Limited Common Elements, and Owners shall have no redress against Developer for the temporary loss of use of such areas. In the event that Developer's mortgage lender, if any, or any successor to or assignee of Developer's mortgage lender shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the Mortgage remedies or by a deed or an assignment in lieu of foreclosure, such mortgage lender, its successors and assigns, shall have the same rights as Developer to conduct such sales activities on the Project.

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

J. EASEMENTS FOR COMMUNITY SYSTEMS AND TELECOMMUNICATIONS EQUIPMENT AND RIGHT TO ENTER INTO UTILITY CONTRACTS. There is reserved to Developer, its agents, employees, personnel, or licensees, and its successors and assigns, a perpetual right and easement over the Project to install and operate or provide for the installation and operation of Community Systems and Telecommunications Equipment as Developer, in its discretion, deems appropriate to serve all or any portion of the Project. Such right shall include, without limitation, Developer's right to select and contract with companies

licensed to provide photovoltaic, telecommunications, cable television, and other Community Systems services in the region, to receive compensation from any source related to the rights set forth in this Section, and to grant easements for such purpose, all upon such terms and conditions as Developer may determine in its discretion.

K. DEVELOPER'S ADDITIONAL EASEMENTS AND RIGHTS TO ACCEPT, GRANT, AND MODIFY EASEMENTS. To and until December 31, 2041, Developer reserves the right to designate, grant, convey, transfer, cancel, relocate, and otherwise deal with any easements over, under, across, or through the Common Elements as necessary or convenient for any reasonable purpose, which may include, but not be limited to, the repair, care, or upkeep of any Unit or Common Elements, any utility easements or infrastructure to serve the Project, or access ways, walkways, or vehicular or pedestrian access, 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.

L. EASEMENT IN FAVOR OF MANAGING AGENT FOR OPERATION OF THE PROJECT. The Managing Agent and its agents, employees, consultants, contractors, licensees, successors, and assigns shall have easements in the Common Elements to manage and provide maintenance, as necessary, throughout the Project.

M. LICENSE TO OCCUPANTS. Any Person who has a right or permission to occupy a Unit also has the right and license to use the Common Elements and the Limited Common Elements appurtenant to the Unit occupied, to the same extent that the Owner of such Unit would have the right to do so. This right to use and license remains in effect only during the time period when the Person has the right to occupy the Unit. This includes, for example, anyone who rents or leases a Unit (subject to any limits or additional terms contained in any rental agreement or lease with the Owner).

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

O. 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.

P. 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 recorded at the Bureau. The Common Interest shall not be separated from the Unit to which it appertains and shall be deemed conveyed or encumbered with such Unit even if such interest is not expressly mentioned or described in the instrument of conveyance or encumbrance. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an undivided interest in the Common Elements shall be void unless the Unit to which said interest is appurtenant is also transferred. The Common

Elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by the Act or by the terms of this Declaration.

Except as set forth in this Declaration, no alteration of the Common Interest or easements appurtenant to any Unit shall be made, nor shall any partition or subdivision of any Unit be made, without the prior written consent of Eligible Mortgage Holders.

VI. USE.

A. PROJECT; IN GENERAL.

1. **STANDARD OF OPERATION.** The Project shall be used only for those purposes that are consistent with a residential and commercial mixed-use development operating pursuant to a Project Quality Standard and permitted by law and the Condominium Documents.

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

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

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

recovery thereunder, or result in reputable companies refusing to provide insurance as required or permitted by the Bylaws. Any insurance increase caused by a Unit shall be paid by the Owner of such Unit.

B. RESIDENTIAL UNITS AND LIMITED COMMON ELEMENTS.

1. **RESIDENTIAL USE.** Except as provided herein, Residential Units and their appurtenant Limited Common Elements shall be used for any purpose permitted by applicable zoning ordinances and other applicable laws.

2. **MAXIMUM OCCUPANCY.** Unless limited otherwise by County ordinance, or other applicable law, no Residential Unit shall be occupied by more than nine (9) persons; provided, however, that this occupancy limitation shall not apply to or restrict the Owner of a Residential Unit from hosting a larger group of invited guests or visitors in such Unit for a one (1) day function with prior written notice to the Managing Agent and subject to the limitations set forth in the House Rules.

3. **UNSIGHTLY ARTICLES.** Portions of a Residential Unit and its appurtenant Limited Common Elements that are visible from the exterior of the Residential Unit must be kept in an orderly condition so as not to detract from the neat appearance of the Project. Other than as permitted in the House Rules, no items may be stored upon any lanai. To maintain a uniform and attractive exterior appearance for the Project, Residential Unit Owner-installed window coverings must include a backing of an off-white color and must be of a type and general appearance approved by the Board. Residential Unit Owners may not, without the prior written approval of the Board, apply any substance, material, or process to the exterior or interior surfaces of the Residential Unit's windows that may alter the exterior color, appearance, or reflectivity of the windows. The Board, in its sole discretion, may determine whether the portions of a Residential Unit visible from the exterior of the Residential Unit are orderly. The Board may have any objectionable items removed from the portions of a Residential Unit that are visible from the exterior of the Unit so as to restore its orderly appearance, without liability therefor, and charge the Residential Unit Owner for any costs incurred in connection with such removal.

4. **LEASES AND RENTALS.** It is intended that the Residential Units may be leased or rented. As such, Residential Unit Owners shall have the absolute right, without obtaining the consent or joinder of any other Owners, to lease or rent their Units subject to the provisions of the Act and the Condominium Documents. All leases and rentals of Units shall be made in accordance with any applicable zoning ordinances and other applicable laws, including, but not limited to, the Residential Landlord Tenant Code, Chapter 521 of the Hawaii Revised Statutes, unless otherwise exempted therefrom.

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

The restrictions set forth above shall be read broadly, and, among other things, shall encompass any type of plan, the nature of which causes Residential Units to be utilized by persons who have either joined a plan or program as a member or whose use is derivative of someone who has joined a plan or program as a member. Determination by Developer, the Association, or the Managing Agent that a violation of this provision

exists shall be binding on the violating Owner, and the Board may promulgate and effectuate additional rules, regulations, procedures, and processes for enforcement of this provision, including, but not limited to, any surcharge or other charge or Assessment that the Board shall solely determine. This Section shall not be terminated or amended without the prior written approval of Developer, to the extent permitted by applicable law.

6. **USE OF RECREATIONAL AMENITIES.** Except as otherwise provided herein, the Recreational Amenities, if and when constructed by Developer, shall only be used by the Residential Unit Owners, while in residence, their Occupants, and non-residing guests while accompanied by the Occupant. The Recreational Amenities are intended to promote recreation and leisure activities and any other purposes permissible by the Condominium Documents; provided that, and subject to any Developer's Reserved Rights, at no time shall there be any commercial use of the Recreational Amenities to service any Person other than an Owner (or Owner's invitees), nor shall any Owner charge a fee for others to utilize the Recreational Amenities, nor shall the areas in which the Recreational Amenities are located contain any third party independent commercial operation; provided that a third party independent commercial operation whose business is to provide services exclusively to Owners and their invitees may be permitted in the discretion of the Board. Developer shall have the option, at its sole discretion, to add to, reconfigure, resize, relocate, and/or remove any or all of the Recreational Amenities, which may in turn increase or decrease the Common Expenses and, consequently, affect maintenance fees. This Section shall not be considered a representation and/or warranty of Developer that any or all of the Recreational Amenities will be built and/or offered to Residential Unit Owners.

C. COMMERCIAL UNITS AND LIMITED COMMON ELEMENTS.

1. **COMMERCIAL USE.** The Commercial Unit may be used for any commercial purpose permitted by law, including, without limitation, all business or professional license and permit requirements, and the Condominium Documents, and shall be consistent with the Project Quality Standard. The Commercial Unit may be leased at the discretion of the Commercial Unit Owner, subject to the provisions of the lease. The Owner of the Commercial Unit, in its sole discretion, may contract with various providers of goods and services, such as food and beverage operators and vendors, to provide goods and services at the Project. The Commercial Unit Owner may retain any and all compensation paid to the Commercial Unit Owner in return for permitting a vendor to use space within the Commercial Unit or its Limited Common Elements. The commercial uses of the Commercial Unit are subject to change at the sole discretion of the Commercial Unit Owner in accordance with applicable law, subject to the terms of any lease. No Residential Unit Owner shall be guaranteed access through the Commercial Unit.

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

- a. Facilities for the sales or service of mobile homes or trailers;
- b. Junkyards, scrap metal yards, automobile used parts sales facilities, motor vehicle dismantling operations, and sanitary landfills;
- c. Dumping, storage, disposal, incineration, treatment, processing, or reduction of garbage, or refuse of any nature, other than handling or reducing waste produced on the premises from authorized use in a clean and sanitary manner;
- d. Salvage business;
- e. Truck terminals and truck stop-type facilities, including truck parking lots (except as may be incidental to a use that is not prohibited);
- f. Tanning parlors, massage parlors, or any establishment which offers entertainment or service by nude or partially dressed male or female persons, except that this provision shall not preclude tanning and massage services offered by fully clothed, trained personnel as part of a legitimate fitness or health facility, or a day spa operation that also offers beauty, body care, skin care, or similar services;

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

h. Mini-warehouses, and warehouse/distribution centers;

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

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

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

l. Heavy machinery sales and storage facilities; and

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

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

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

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

2. **NO RIGHT TO OBSTRUCT THE COMMON ELEMENTS.** Subject to Developer's Reserved Rights and subject to Developer's ability to obstruct such areas in the exercise of Developer's Reserved Rights, no Owner or Occupant may place, store, or maintain on walkways, roadways, grounds, or other Common Elements any furniture, packages, or objects of any kind or otherwise obstruct transit through the Common Elements. This does not prohibit: (a) an Owner from placing goods and other materials on the Common Elements when loading or unloading them, or transporting them to the Unit, or storing them on a Limited Common Element lanai appurtenant to the Owner's Unit in accordance with the House Rules; provided that any such loading, unloading, and transportation must be completed promptly in designated areas and in accordance with the House Rules; or (b) the Commercial Unit Owner's use of the Limited Common Elements appurtenant to the Commercial Unit for commercial activity.

E. USE OF LIMITED COMMON ELEMENTS. Subject to Developer's Reserved Rights set forth herein, Owners shall have the right to use the Limited Common Elements appurtenant to their Units for any purpose permitted by zoning, other applicable laws, and the Condominium Documents. Notwithstanding anything provided

to the contrary, or from which a contrary intent may be inferred, neither the Board nor the Association shall have any right to change the use of or lease or otherwise use any Limited Common Element without the prior written consent of the Owner(s) of the Unit(s) to which such Limited Common Element is appurtenant. The Owners of at least sixty-seven percent (67%) of the Common Interest that is appurtenant to Units to which any particular Limited Common Element is appurtenant shall have the right to change the use of a particular Limited Common Element.

F. **SEPARATION, COMBINATION OF UNITS; TRANSFER OF INTEREST.** Subject to Developer's Reserved Rights set forth herein, no Owner may partition or separate a Unit or the legal rights comprising ownership of a Unit from any other part thereof, nor shall an Owner combine a Unit with any portion of another Unit; provided that an Owner may consolidate Units pursuant to **Sections X.B.6 and X.C.1.e**. 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 or transfer.

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

H. **NUISANCES.** No nuisances shall be allowed in the Units which is a source of annoyance to the Owners or Occupants of other Units or which interferes with the peaceful possession or proper use of the Units by its Owners or Occupants. Notwithstanding the foregoing, the Commercial Unit may be used in accordance with **Section VI.C** herein, and commercially reasonable standards for noise and nuisance as to the Commercial Unit will be permitted at the Project.

I. **ADVERTISEMENTS; SIGNS.** Subject to Developer's Reserved Rights or easement rights or restrictions set forth herein and any applicable House Rules, Residential Unit Owners shall not place advertisements, posters, or signs of any kind, including, without limitation, any "**For Sale**" or "**For Rent**" signs, on the exterior of any Residential Unit, in the windows of a Residential Unit, in the exterior portions of the Limited Common Element lanai appurtenant to the Residential Unit, or in the Limited Common Elements appurtenant to the Residential Units, unless prior written approval is received from the Association. The Commercial Unit Owner shall have the right to affix signs to any portion of the Commercial Unit and the Limited Common Elements appurtenant solely thereto provided the same are consistent with the Project Quality Standard.

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

K. **PETS.** Residential Unit Owners are permitted to keep pets in their Units subject to the limitations set forth in the House Rules; provided, however, that notwithstanding this provision, visually impaired persons, hearing impaired persons, and physically and mentally impaired persons shall be allowed to use the services of a "**service animal**" as such term is defined under the ADA, and an "**emotional support**" animal.

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

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

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

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

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

4. The consent of the Commercial Director to the exercise of the Board's rights herein shall be required if the exercise of the right directly impacts the Commercial Unit Owner's use and operation of the Commercial Unit and its Limited Common Elements.

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

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

VII. ADMINISTRATION OF THE PROJECT.

Administration of the Project shall be vested in the Association, consisting of all Owners in accordance with the Bylaws. Operation of the Project and maintenance, repair, replacement, and restoration of the Common Elements, and any additions and alterations thereto, shall be in accordance with the provisions of the Act, this Declaration, and the Bylaws, including all requirements and limitations set forth in this Declaration and the Bylaws regarding the Units and the Common Elements. The Project is intended to be operated and administered at a Project Quality Standard at which the Units are operated and managed professionally and efficiently.

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

1. Make, build, maintain, and repair all Common Elements and Limited Common Elements, including, without limitation, any walls, fences, gates, stairways, walkways, sidewalks, utilities, lines, drains, roads, driveways, curbs, parking areas, storage areas, and lighting in the Common Elements and Limited Common Elements, as well as other improvements not located within the Project but of which the Association has use or to which the Association has access.

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

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

4. In performing the operations set forth in this Section, any actions of the Association to (a) alter the appearance of any portion of the Commercial Unit, or (b) affect in any way the Limited Common Elements appurtenant to the Commercial Unit, shall be subject to the Commercial Director's approval.

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

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

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

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

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

B. DEVELOPER, COMMERCIAL UNIT OWNER, AND RESIDENTIAL UNIT OWNER RIGHTS AND LIMITATIONS. Except as specifically provided herein, the Association shall have all of the powers set forth in Section 514B-104 of the Act.

The Commercial Unit Owner shall pay and be responsible for the operation, care, upkeep, repair, maintenance, and cost of the Commercial Unit and the Limited Common Elements appurtenant thereto, except as

otherwise set forth herein or in the Bylaws. The Residential Unit Owners shall pay and be responsible for the operation, care, upkeep, repair, maintenance, and cost of their respective Units, and shall pay for and be responsible for the costs associated with the Association's operation, care, upkeep, repair, and maintenance of any Limited Common Elements appurtenant to their respective Residential Unit. The Residential Unit Owners shall pay for and be responsible for the costs associated with the Association's operation, care, upkeep, repair, and maintenance of the Limited Common Elements appurtenant to their respective Residential Units, and the Limited Common Elements appurtenant to all Residential Units, except as otherwise set forth herein or in the Bylaws. The Commercial Unit Owner and the Residential Unit Owners shall pay and be responsible for costs associated with the Association's operation, care, upkeep, repair, and maintenance of the Common Elements.

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

C. CAPITAL UPGRADES TO COMMON ELEMENTS. Whenever in the judgment of the Board, the Common Elements shall require Capital Upgrades costing in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, and the making of such Capital Upgrades shall have been approved by a Majority of Owners, then, subject to the Commercial Director's approval, the Board shall proceed with such Capital Upgrades and may assess the Owners for the cost thereof as a Common Expense. If such Capital Upgrades, if not made, could reasonably result in a threat to the health or safety of the Owners or a significant risk of damage to the Project, then such actions may be taken without the prior approval of Owners and/or the Commercial Director. Any Capital Upgrades costing less than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year may be made by the Board without approval of the Owners; provided said Owners are given at least ten (10) business days' written notice of a special meeting at which actions are approved by an amendment to the budget by the Board. The cost of such Capital Upgrades shall constitute a Common Expense. The foregoing shall not apply to operational expenses, which shall be subject to applicable provisions of the Condominium Documents. This Section shall not apply to any Capital Upgrades made by Developer when exercising Developer's Reserved Rights.

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

E. EXTRAORDINARY ACTIONS. Although the Board shall generally have broad powers to regulate, govern, and manage the Project, the power to approve certain Extraordinary Actions (as defined below) shall remain vested in the Association. Any provision of this Declaration or the Bylaws to the contrary notwithstanding, the Board and the Association shall not be authorized to take any Extraordinary Actions during the Developer Control Period without the affirmative vote of Owners representing not less than eighty percent (80%) of the Common Interest and the approval of the Commercial Director and Developer, and after the end of the Developer Control Period, without the affirmative vote of Owners representing not less than a Majority of the Common Interest and the approval of the Commercial Director. As used herein, the term "Extraordinary Actions" shall mean any and all actions taken by or on behalf of the Association, including, without limitation, amending this Declaration to change the permitted use of the Common Elements, commencing or maintaining any litigation, defending any action, filing a counterclaim, mediation, or similar proceeding (except for routine Common Expense collection matters, or actions required to enforce the restrictions on use of Units, rules, or architectural controls) which would reasonably require the expenditure of funds in excess of One Hundred Thousand and No/100 Dollars (\$100,000.00) in the aggregate during any fiscal year of the Association, and any determinations pursuant to Section

514B-41(c) of the Act and that are not prohibited by a express provision of this Declaration. Extraordinary Actions shall not be deemed to include Capital Upgrades or actions by the Association in connection with operational expenses, including the establishment and utilization of reserves for the repair or replacement of Common Elements.

VIII. MANAGING AGENT.

Fiscal and administrative management of the Project and the physical management of the Common Elements and Limited Common Elements for which the Association is responsible 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 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. IN GENERAL. This Section applies, except as otherwise provided by the FHA and except as otherwise provided in this Declaration. This Section does not apply to changes made by Developer when exercising Developer's Reserved Rights. Neither the Association nor any Owner may make any structural changes or additions to the Common Elements, the Limited Common Elements, or the Units that are different in any material respect from the Condominium Map, except pursuant to any requisite vote by the Association and amendment of this Declaration, or as otherwise set forth herein or in the Bylaws. Any such restoration, replacement, construction, alteration, or addition must be made in accordance with complete plans and specifications that are first approved by the Board in writing and with the consent of the Commercial Director. Promptly after the work is completed, the Association, Developer, or the Owner must record the amendment along with any necessary changes to the Condominium Map. Nothing in this Section (1) authorizes any work or change that would jeopardize the soundness, safety, or structural integrity of any part of the Project; (2) authorizes any work or change by an Owner that would materially change the uniform external appearance of the Project without the approval of the Board and the consent of the Commercial Director; (3) prohibits the Board from making or requiring that an Owner make changes within any Unit or Limited Common Element appurtenant thereto as needed to comply with the fire code and all other laws that apply to the Project; and (4) prohibits Developer from completing the initial Project construction, Improvements, and any additional phases (if any).

B. BY THE COMMERCIAL UNIT OWNER. The Commercial Unit Owner shall not change or cause a change to the exterior of the Units or the Limited Common Elements appurtenant thereto (including, without limitation, the installation of any type of signage) without the prior written approval of Developer during the Development Period. Any change or modification that is made by Developer, in the exercise of Developer's Reserved Rights, shall not require the approval of the Board. The Commercial Unit Owner has the right to make any of the following changes, additions, and Improvements solely within the Commercial Unit or within the Limited Common Elements appurtenant thereto, at the Commercial Unit Owner's sole cost and expense.

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

2. To finish, change, or substitute any plumbing, electrical, or other fixtures attached to the ceilings, floors, or walls as appropriate for the use of the Commercial Unit and to tie into utility lines connecting to the Commercial Unit;

3. To decorate, paint, repaint, wallpaper, or otherwise change the appearance of any walls, floors, and ceilings within the Commercial Unit;

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

5. Subject to any zoning or building code requirements, to subdivide any Unit to create two (2) or more Units, designate which Limited Common Elements that were solely appurtenant to the Commercial Unit will be appurtenant to the Units resulting from the subdivision, and convert parts of the existing Commercial Unit to Common Element status to facilitate the subdivision. The total of the Common Interest for the newly-created Units must be equal to the Common Interest of the Unit that was subdivided. If the Commercial Unit is subdivided, the Commercial Unit Owner may decide whether one (1) or more than one (1) resulting Unit will have any special rights or easements that are appurtenant to the original Commercial Unit under this Declaration, or the Commercial Unit Owner may assign some or all of those rights to either or both of the resulting newly-created Units; and

6. To consolidate two (2) Units owned by the same Owner; provided that any intervening walls removed are not load-bearing or structural walls, and to install doors, stairways, and other Improvements in the intervening wall and/or make other commercially reasonable additions. The Owner must ensure that the structural integrity of the Units and the Limited Common Elements appurtenant thereto will not be adversely affected; the finish of the remaining Common Elements are restored to substantially the same condition as prior to removal; and all construction activity is completed within a reasonable time. The Common Interest of any newly-created Unit shall be the aggregate of the two (2) initially separate Units.

Any material addition or alteration to a Commercial Unit or Limited Common Element appurtenant thereto shall require the approval of the Board only if the proposed addition or alteration, as reasonably determined by a Majority of the Board, could jeopardize the soundness or safety of the Project, impair any easement, or interfere with or deprive any non-consenting Owner of the use or enjoyment, or structural integrity, of any part of the Project. The issuance of a building permit by the County for the material addition or alteration shall be conclusive evidence that the addition or alteration would not jeopardize the soundness, safety, or structural integrity of the Project.

C. BY RESIDENTIAL UNIT OWNERS. Residential Unit Owners shall not change or cause a change to the exterior of the Units or the Limited Common Elements appurtenant thereto (including, without limitation, the installation of any type of signage) without the prior written approval of the Board pursuant to **Section X.E** of this Declaration, and the prior written approval of Developer during the Development Period. Any change or modification that is made by Developer, in the exercise of Developer's Reserved Rights, shall not require the approval of the Board.

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

a. To install, maintain, remove, and rearrange non-load-bearing partitions, walls, and structures from time to time within the perimeter walls of the Unit; provided that the initial enclosed living area of any Unit (as depicted on the Condominium Map) shall not be increased, including, without limitation, through the full or partial enclosure of any lanai;

b. To paint, paper, panel, plaster, tile, finish, and do or cause to be done such other work on the interior surfaces of ceilings, floors, and walls within the Unit (excluding exterior windows);

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

d. To make such changes, additions, and Improvements to the Unit or Limited Common Element appurtenant solely thereto to facilitate handicapped accessibility within the Unit or Limited Common Element; and

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

2. **NOISE RESTRICTIONS ON UNIT FLOOR COVERINGS.** As a condition to the installation, repair, alteration, or replacement of any surface floor coverings in a Residential Unit, the Owner shall provide the Board with written evidence that, as installed, the sound control underlayment of the new floor covering will mitigate sound transmission with a minimum Sound Transmission Coefficient (STC) Acoustic Standard of STC-FF and an Impact Isolation Class (IIC) rating of IIC-55 or such other rating as the Board shall have determined is required to prevent unreasonable sound transmission through the type of flooring that will be installed. The installation of foregoing insulation materials shall be performed in a manner that provides proper mechanical isolation of the flooring materials from any rigid part of the building, whether of the concrete subfloor (vertical transmission) or adjacent walls and fittings (horizontal transmission). Following installation of such approved hard floor covering and sound control underlayment, the Owner will provide the Board with written confirmation from the installer that the material specified in the Board's written approval was duly installed and that as installed, such flooring meets the minimum standards set forth above. The Board shall have the right to require any hard surface floor covering installed without the Board's prior written approval or not in conformity with the minimum standards in this Section to be removed at the Owner's expense.

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

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

1. **APPROVAL OF THE BOARD FOR CHANGES AFFECTING EXTERIOR APPEARANCE OF PROJECT.** Whenever any proposed modification, change, addition to, or alteration of any Unit or Limited Common Element appurtenant thereto will impact such appearance of the Project:

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

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

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

The Board shall base its decision to grant or deny approval at least in part upon considerations of whether (and to what extent) the proposed modification, change, addition, or alteration will adversely affect the exterior appearance of the Project. Except in connection with proposed modifications to accommodate Owners with disabilities, if the Board or the Commercial Director determines that the proposed modification, change, addition, or alteration will adversely affect the appearance of the exterior of the Project or is

not consistent with the Project Quality Standard, the Board shall not grant approval. If the Board decides that a proposed modification, change, addition, or alteration will not adversely affect the appearance of the exterior of the Project and decides to permit the modification, change, addition, or alteration as consistent with the Project Quality Standard, the Board shall first provide all Owners with written notice, and the proposed modification, change, addition, or alteration shall not be implemented until the Owners shall have an opportunity to challenge the determination, and, if challenged by any Owner, then the proposed modification, change, addition, or alteration will require the approval of Owners of Units holding no less than sixty-seven percent (67%) of the Common Interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. **FACADE SIGNAGE.** The Commercial Unit Owner shall have the exclusive right for the benefit of the Commercial Unit, to install, maintain, repair, and replace, from time to time, signs and other displays on the exterior facade of the Commercial Unit or the Limited Common Elements appurtenant solely thereto ("**Facade Signs**"), in a size and location as permitted by and subject to any zoning laws or other governmental requirements. Facade Signs shall be consistent with the Project Quality Standard. Facade Signs shall be subject to any requirements and limitations established by Developer with respect to all Facade Signs (including, without limitation, the plans, specifications, and method of affixing Facade Signs to the building and extending electrical service thereto, if applicable). All Facade Signs, to the extent not required to be insured by the Association, shall be insured at the exclusive cost of the Commercial Unit Owner, unless insured by the Occupant of the Commercial Unit pursuant to the terms of the lease or other occupancy agreement. If the Commercial Unit Owner exercises its right to install Facade Signs pursuant to this Section, then the Commercial Unit Owner shall be solely responsible for the lighting, installation, and replacement of such Facade Signs, and shall be liable for the cost and repair of any damage to the Project proximately caused by such installation, maintenance, and replacement. Developer or the Commercial Director may establish and administer any comprehensive sign criteria and shall assume all duties relating to Facade Signs, including, without limitation, approval thereof.

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

XI. COMMON EXPENSES; LIMITED COMMON ELEMENT EXPENSES; OTHER EXPENSES; LIEN.

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

A. **COMMON EXPENSES.** Subject to Developer's right to pay the actual expenses of the Project prior to a specified date to be set forth in a written notice to the Owners, the Association, and the Managing Agent, pursuant to Section 514B-41(b) of the Act and as stated in Article VI, Section 4.A of the Bylaws, other than those profits or expenses directly attributable to the Limited Common Elements, the common profits of the Association shall be distributed among, and the Common Expenses, including, without limitation, salary expenses of all personnel, if any, shall be charged to the Residential Owners and the Commercial Unit Owner in proportion to the Common Interest appurtenant to their respective Units, except as otherwise provided herein, in the Act, or the Bylaws.

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

C. **RESIDENTIAL UNIT CLASS EXPENSES.** Residential Unit Class Expenses shall be allocated to the Residential Unit Owners based on the Residential Unit Class Common Interest set forth in **Exhibit "B"**, except as otherwise provided herein, in the Act, or the Bylaws. Residential Unit Class Expenses shall include, but not be limited to, (1) costs to support, maintain, and operate the Limited Common Elements appurtenant to all Residential Units; (2) all costs of maintenance, repair, and replacement, including reserves, of any equipment or apparatus servicing only the Limited Common Elements appurtenant to all Residential Units; and (3) the cost of personnel exclusively servicing the Residential Units and their Limited Common Elements.

D. **CERTAIN VENDOR COSTS; SEPARATE METERS.** If any services are provided to or if any costs are incurred for any Common Element where the respective direct allocation of such costs between Common Elements and Limited Common Elements appurtenant to all Residential Units are not readily determinable by separate meters or separate billing by vendors, the Board shall request the vendor of the services to segregate the billings as between the Common Elements and the Limited Common Elements appurtenant to all Residential Units. If the vendor is unable to or refuses to meter usage or allocate costs, then the Board may unanimously agree to an Alternative Allocation of such Special Costs between the Residential Unit Class and the Commercial Unit Class. In arriving at such agreement, the Board may engage the services of a professional engineer or other professional to provide his/her opinion on a fair allocation. If the Board is unable to agree on such allocation (a "**deadlock**"), notwithstanding anything contained in this Declaration to the contrary, the matter will be submitted to binding arbitration unless the Board unanimously agrees otherwise. In the event of a deadlock, any Board member may initiate arbitration to resolve the deadlock by providing written notice of such desire to each Board member. The Board shall have a period of twenty (20) calendar days following the date notice is given to agree by a Majority of the Board on a single arbitrator who shall be a professional engineer or other professional to resolve the deadlock, and if the Board fails to do so, then the arbitrator shall be determined by application to DPR (or similar alternative dispute resolution services if DPR ceases to exist). The cost of the arbitration shall be a Common Expense. The decision of the arbitrator shall be final and binding on the Board and the Owners, and a judgment on the arbitrator's decision may be entered by any court having jurisdiction.

E. **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 a lien created under this Section pursuant to the provisions of Section 514B-143(d) of the Act.

F. **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.

G. **COLLECTION OF ASSESSMENTS.** When the Lender or other purchaser of any Unit acquires title to such Unit as a result of the remedies provided in the Mortgage, foreclosure of the Mortgage, or a private sale or deed in lieu of foreclosure, such Lender or such other purchaser, as the case may be, and their respective heirs, devisees, personal representatives, successors, and assigns, shall not be liable for the share of the Common Expenses or Assessments chargeable to such Unit which became due prior to such acquisition of title. Subject to the right of the Board to specially assess the amount of the unpaid regular monthly Assessments for Common Expenses against an Owner pursuant to the provisions of Section 514B-146(g) of the Act (other than purchasers who hold a first Mortgage filed prior to the filing of a notice of lien), (1) the unpaid share of Common Expenses which become due prior to the acquisition of title of such Lender or such other purchaser shall be deemed Common Expenses collectible from all of the Residential Unit Owners and the Commercial Unit Owner, including such Lender or such other purchaser and their respective heirs, devisees, personal representatives, successors, and assigns, (2) the unpaid share of Residential Unit Class Expenses shall be deemed collectible from all of the Residential Unit Owners, including the purchasing Lender or purchaser of the Unit with the unpaid share of such Residential Unit Class Expense and their respective heirs, devisees, personal representatives, successors, and assigns, (3) the unpaid share of Special Costs shall be deemed collectible from all of the Owners to which such Special Costs are applicable, including the purchasing Lender or purchaser of the Unit with the unpaid share of such Special Costs and their respective heirs, devisees, personal representatives, successors, and assigns, and (4) the unpaid share of Limited Common Element Expenses shall be deemed collectible from all of the Owners to which such Limited Common Element Expenses are applicable, including the purchasing Lender or purchaser of the Unit with the unpaid share of such Limited Common Element 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.

H. **ASSESSMENT LIEN.** All unpaid Assessments shall constitute a lien against the Unit to which such Assessment is attributed. The lien may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in Chapter 667 of the Hawaii Revised Statutes ("**Chapter 667**"), by the Managing Agent or Board, acting on behalf of the Association and in the name of the Association. PURSUANT TO SECTION 667-40 OF THE HAWAII REVISED STATUTES, EACH OWNER, BY ACQUIRING A UNIT IN THE PROJECT, GRANTS TO THE ASSOCIATION A POWER OF SALE IN CONNECTION WITH THE LIEN AND FURTHER UNDERSTANDS AND AGREES THAT THE ASSOCIATION, IN THE EXERCISE OF SAID POWER OF SALE, MAY SELL THE UNIT AT A PUBLIC SALE WITHOUT FILING A LAWSUIT, AND THAT THE ASSOCIATION OR ANY OTHER PERSON MAY ACQUIRE THE UNIT AT THE PUBLIC SALE.

In any such foreclosure, the Owner shall be required to pay a reasonable rental for the Unit during the pendency of such action and the 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 and in the name of the Association, may, unless otherwise prohibited in this Declaration, bid on the Unit at the foreclosure sale, and acquire and hold, lease, Mortgage, and convey the same. Action to recover a money judgment for unpaid Common Expenses and other Assessments shall be maintainable without foreclosing or waiving the lien securing the same.

Prior to foreclosing upon such lien, the Board or Managing Agent shall provide not less than thirty (30) calendar days prior written notice of its intention to foreclose, unless a different notice period is otherwise provided for by Chapter 667. Such notice shall be mailed, postage prepaid, to the last known address of all Persons having an interest in such Unit as shown in a title report pertaining to the Unit, which title report shall be dated not

more than sixty (60) calendar days prior to the date of any such notice, including, but not limited to, any holder or insurer of a Mortgage of any interest in such Unit.

I. 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 Residential Unit Owners and the Commercial Unit Owner in their respective proportionate shares except for the Owners of any Units then reconstituted as part of a new condominium property regime.

XII. INSURANCE.

A. INSURANCE GENERALLY. The Association shall obtain and maintain the insurance required by this Article with the exception of the insurance coverage to be obtained by the Owners pursuant to **Sections XII.B.3 and XII.F** below; provided, however, the terms and conditions of the insurance obtained and maintained by the Association shall comply with, but shall not exceed, the insurance requirements of Developer's mortgage lender, if any. Each policy may be separate, or the Association can buy one or more commercial package policies; provided such package policy allocates the amount of coverage from time to time required hereunder or shall otherwise provide the same protection as would a separate policy insuring only the Project. Until the end of the Developer Control Period, Developer shall have the rights of the Association and/or the Insurance Trustee provided herein.

1. SOURCE OF THE INSURANCE. The Association shall purchase the insurance.

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

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

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

5. YEARLY REVIEW OF INSURANCE PROGRAMS. The Board must review the adequacy of its entire insurance program at least yearly. The Managing Agent must furnish an analysis of (a) the insurance needs of the Association and the Owners; and (b) the adequacy of the existing insurance policies to meet those needs. The Board shall review this analysis and then make any changes in the insurance program that it deems necessary or appropriate. All Board decisions are final provided such decisions align with but, notwithstanding anything to the contrary, do not exceed the insurance requirements of Developer's mortgage lender, if any. The Board must report in writing its conclusions and the action taken after its review.

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

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

8. **NOTICE OF CHANGES IN INSURANCE.** The Association will send notice to the Owners and any holder, insurer, or guarantor of any Mortgage who requests such notice, if:

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

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

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

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

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

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

3. **OWNER HAZARD COVERAGE REQUIRED.**

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

b. The Commercial Unit Owner is responsible, at its sole expense, for obtaining insurance coverage for personal property, Improvements and betterments, and other items within the Commercial Unit to the extent that such items or personal property are not covered under the Policy and such insurance policy may include business interruption coverage for loss of rents, as applicable.

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

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

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

4. **FORM OF POLICY.** The Policy must cover the perils insured under ISO special causes of loss form (CP 10 30) or its equivalent. A "**special form policy**" typically insures against the following: fire, lightning, windstorm, hail, smoke, explosion, civil commotion, riot and riot attending strike, aircraft and vehicle damage, vandalism, sprinkler leakage, sinkhole collapse, volcanic action, breakage of glass, falling objects, water damage, collapse of structure, and direct physical loss. If the Project is located in an area prone to earthquakes, tsunamis, flood, windstorm, named storms, storm surge or hurricanes, the Association must also buy insurance for such risks available at a reasonable cost or in form and amounts as required by Developer's mortgage lender, if any.

5. **ADDITIONAL COVERAGE.** The Policy must contain an agreed amount endorsement or waive any co-insurance requirement. The policy must cover terrorism, ordinance or law, boiler and machinery/equipment breakdown and must provide rental loss and/or business income interruption insurance with, as respects loss of income, an endorsement or provision containing an extended period of indemnity of not less than eighteen (18) months and, as respects rental insurance, in an amount equal to one hundred percent (100%) of the projected gross income from operations.

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

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

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

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

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

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

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

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

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

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

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

(iv) Provide that the insurance company waives:

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

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

(c) any right to contribution from the Lender.

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

C. **FLOOD INSURANCE.** The Project is located in Flood Zone X and federal flood insurance is not required for the Project. The Association may buy a policy of flood insurance that complies with the requirements of the National Flood Insurance Program and the Federal Insurance Administration if available at a reasonable cost.

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

1. **WHO IS INSURED.** The Liability Policy must cover all Owners, the Board, the Association, the Managing Agent and, during the Development Period, Developer and each of their Representatives against claims for personal injury, bodily injury, death, and property damage. The Liability Policy must name Owners and their Representatives as additional insureds and the policy must include coverage for terrorism. To evidence compliance with this requirement, the Board will obtain a certificate of insurance and provide a copy to the Commercial Unit Owner. During such time that Developer is an Owner, the liability policy must name as additional insureds Developer, and such additional insureds as Developer shall direct from time to time and the Representatives of all of the foregoing. To the extent commercially reasonably available, the certificate shall also provide that not less than thirty (30) calendar days' notice of cancellation or decrease in coverage shall be given to the Commercial Unit Owner. To the fullest extent permitted by law, any policy obtained pursuant to this **Section XII.D** must provide that the insurance company waives any right of subrogation to any right of the Persons insured by the Policy as against the Association, the Board, the Managing Agent, Developer, the Owners, and the Representatives of each of the foregoing.

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

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

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

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

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

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

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

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

4. **OPTING OUT.** Notwithstanding anything herein contained, the Commercial Unit Owner may elect at any time and from time to time by notice to the Association to obtain on its behalf (and not on a shared basis with the Association) commercial general liability insurance and the commercial umbrella insurance set forth above, in which event (a) the Commercial Unit Owner shall pay for such insurance and the costs and benefits thereof shall not be shared; (b) the Commercial Unit Owner shall provide to the Association upon its request, and in any event, not less than once every twelve (12) months, with reasonably satisfactory evidence of such coverage; (c) the insurance coverage provided by the separate policies maintained by the Commercial Unit Owner must be substantially equivalent (to provide coverage for the Commercial Unit Owner's exposure) to the coverage that would have been required to be maintained by the Association for the benefit of all Owners if the Commercial Unit Owner had not made such election; and (d) in the event that the Commercial Unit Owner has elected to obtain on its behalf such insurance, then with respect to such Commercial Unit Owner, the coverages maintained by the Association as set forth in this Section shall be limited to covering the Residential Unit Owners, the Board, the Association, and each of their Representatives, and the Commercial Unit Owner shall have no obligation to pay any portion of the cost of such liability insurance coverage maintained by the Association.

E. **DIRECTORS' AND OFFICERS' LIABILITY INSURANCE.** The Board shall procure and maintain a policy insuring, to the extent allowed by law, each person who is or was a Director, Officer, agent, or

employee of the Association and each person who is or was a Representative of Managing Agent against all liability in connection with any claim made against him or her as a result of his or her holding that position, including, without limitation, any claim that would be covered under employment practices liability insurance. This is called the "**D&O Policy**" in this Section. The D&O Policy must also cover anyone who serves, at the request of the Association, as a Director, Officer, employee, or agent. The Board will determine the D&O Policy coverages and limits from time to time provided any such determination shall align with but shall not exceed the insurance requirements of Developer's mortgage lender, if any. If it can be obtained at a reasonable cost, the D&O Policy must provide coverage to the extent permitted by law for any proceeding whether it is civil or criminal, administrative or investigative. The D&O Policy must cover any expense actually and reasonably incurred. This includes, but is not limited to, attorneys' fees, court costs, and payment of any judgments, fines, and settlements. The Board may decide to buy insurance to cover circumstances where direct reimbursement is not required by law.

F. RESIDENTIAL UNIT AND COMMERCIAL UNIT LIABILITY AND OTHER INSURANCE. A Residential Unit Owner who operates a home-based business in his or her Unit shall obtain a commercial general liability policy with coverage that is customary for operations of its size and character, and the Association and its Representatives shall be named as an additional insured on such policy. The Commercial Unit Owner is also responsible for obtaining (i) a commercial general liability policy with coverage that is customary for operations of its size and character; (ii) worker's compensation insurance and employer's liability insurance covering all personnel employed by the Commercial Unit Owner; and (iii) during any period in which significant construction, alterations, repairs, or reconstruction are being undertaken by the Commercial Unit Owner, builder's risk insurance covering the total completed value including any "**soft costs**" with respect to the Improvements being constructed, altered, repaired, or reconstructed (on a completed value, non-reporting basis) by such Commercial Unit Owner, replacement cost of work performed and equipment, supplies, and materials furnished in connection with such construction or repair of Improvements or equipment, together with such "**soft cost**" endorsements and such other endorsements as the Board may reasonably determine, and commercial general liability, workers' compensation, and automobile liability insurance with respect to the services provided by the contractor and all such policies, except builder's risk, to the extent obtainable in the market, shall have limits of not less than THREE MILLION DOLLARS (\$3,000,000) per occurrence including any combination of primary and umbrella policy limits. The Association, the Board, and each of their Representatives shall be named as an additional insured on all such policies, and the Commercial Unit Owner shall, promptly upon request, provide the Board with a certificate evidencing the required coverage. The Association shall be entitled to receive at least thirty (30) calendar days prior notice before the termination or material change of any such policy. To the fullest extent permitted by law, any policy obtained pursuant to this **Section XII.F** must provide that the insurance company waives any right of subrogation to any right of the Persons insured by the Policy as against the Association, the Board, the Managing Agent, Developer, and the Representatives of each of the foregoing. **FAILURE OF THE BOARD TO REQUEST OR VERIFY INSURANCE DOES NOT RELIEVE THE OWNER OF THESE INSURANCE REQUIREMENTS.**

G. FIDELITY INSURANCE. To the extent reasonably available, blanket fidelity bond or crime insurance shall be required to be maintained by the Board for all Officers, Directors, managers, trustees, employees, and volunteers of the Association and all other persons handling or responsible for funds held or administered by the Association, whether or not they receive compensation for their services. Where the Board has delegated some or all of the responsibility for the handling of funds to the Managing Agent, such Managing Agent shall be covered by its own fidelity insurance policy which must provide the same coverage as fidelity insurance maintained by the Board. Except for fidelity insurance that a Managing Agent obtains for its personnel, all other fidelity insurance policies shall name the Association as the insured and premiums will be a Common Expense. Fidelity insurance obtained by the Managing Agent shall name the Association as an additional insured. The total amount of fidelity coverage required shall be sufficient to cover the maximum funds (including reserve funds) that will be in the custody of the Association or Managing Agent at any time while the fidelity insurance policy is in force, but must at least equal the sum of three (3) months aggregate Assessments on all Units within the Project plus any reserves or shall otherwise be in form and amounts as required by Developer's mortgage lender, if any. Fidelity insurance policies shall contain waivers by the insurers of all defenses based upon the exclusion of persons serving without compensation from the definition of "**employees**," or similar terms or expressions. The fidelity insurance policies shall provide that they cannot be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) business days' prior written notice to the Association, any Insurance Trustee, and all Eligible Mortgage Holders.

H. **SUBSTITUTE INSURANCE COVERAGE.** Any insurance coverage specified in this **Article XII** shall be subject to availability on commercially reasonable terms with reputable insurance companies authorized to do business in the State. Where such coverage is not available, or is not available on commercially reasonable terms, then the Board shall substitute such other insurance coverage as is acceptable to Developer's mortgage lender, if any, or to institutional Lenders for Units in projects similar in construction, location, and use. The Board may accept deductibles, uninsured retention, and co-insurance as it chooses in its business judgment. Any amount paid on account of any deductible, uninsured retention, or co-insurance will be a Common Expense; provided that if a loss results from the negligence or willful misconduct of an Owner, then the Association may charge the amount to the Owner as provided in the Bylaws.

I. **FAILURE OF UNIT OWNER TO OBTAIN INSURANCE.** If an Owner shall fail to obtain insurance for his or her Unit as may be required by this Declaration and the Bylaws, the Board is hereby authorized to obtain such insurance for the Unit, the expense of which shall be charged to the Owner. Such expense shall be secured by a lien on the Unit and may be foreclosed in a like manner to a lien for Common Expenses.

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

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

XIII. INSURED DAMAGE OR DESTRUCTION.

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

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

Director, at his or her election, may cause the same to be rebuilt in accordance with the requirements of this Declaration, in which event the Association or the Insurance Trustee shall make the proceeds of the Policy available for such purposes subject to the requirements of **Section XIII.E**.

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

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

1. Proceeds will be applied first to pay that Unit's share of the cost of debris removal;
2. The part of the insurance proceeds allocable to that Unit and/or its Limited Common Elements will be paid to the Owner of the Unit and to any Lender having a Mortgage on that Unit, as their interests may appear.

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

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

1. An architect or engineer (who may be an employee of the Board) experienced in managing this type of work must be in charge of the work.
2. Each request for payment must be given to the Insurance Trustee at least seven (7) calendar days in advance. It must include a certificate signed by the architect or engineer. The certificate must state that:
 - a. All of the work completed complies with the approved plans and specifications;
 - b. The amount requested is justly required to reimburse the Board or Developer (based on construction of the Project) for payments by the Board or Developer to, or is justly due to, the contractor,

subcontractors, materialmen, laborers, engineers, architects, or other Persons providing services or materials for the work (giving a brief description of those services or materials); and

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

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

a. Be satisfactory to the Insurance Trustee, and

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

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

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

6. The fees and expenses of the Insurance Trustee, as agreed by the Board and the Insurance Trustee, shall be paid by each Owner according to their Common Interest. The Insurance Trustee may pay these fees and expenses from any proceeds it holds from time to time.

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

F. **EXCESS INSURANCE PROCEEDS.** "Excess proceeds" paid under an insurance policy procured and maintained by the Association are proceeds that remain after the cost to rebuild or repair damage has been paid. Any excess proceeds will be paid to the Owners and their Lenders in proportion to their Common Interest.

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

H. **RESTORATION.** In the event of an insured casualty or loss of all or any part of the Project, the Project or such portion thereof will be repaired, rebuilt, and restored as provided in this **Article XIII** and except as provided herein, no vote of the Owners is required to approve the rebuilding, repairing, or restoring of the Project. Restoration of the Project with less than all of the Units after casualty or condemnation may be undertaken by the Association only (1) pursuant to an amendment to this Declaration, duly executed by or pursuant to the affirmative vote or written consent of Owners of Units to which are appurtenant not less than eighty percent (80%) of the Common Interest and consented to in writing by all holders of first Mortgage liens affecting any of the Units of the Owners executing or voting for such amendment to this Declaration; (2) by removing the Project from the condominium property regime established hereby; (3) by reconstituting all of the remaining Units and Common Elements to be restored as a new condominium property regime; and (4) by providing for the payment to each Owner of a Unit not to be restored of the agreed value of such Unit and its Common Interest, which payment shall include, without prejudice to the generality of the foregoing, all of the insurance proceeds or condemnation award payable for or on account of such Units and the Owners' proportionate share of any Capital Improvements Reserve

Fund and general operating reserve without deduction for the cost of such restoration, except for the Owners' proportionate share of the cost of debris removal.

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

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

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

A. **DECISION NOT TO REBUILD.** The Association may decide at a meeting duly held not to repair, rebuild, or restore the Improvements. The Association may only make this decision by the affirmative vote of Owners holding no less than sixty-seven percent (67%) of the Common Interests and their respective Lenders. The meeting must be held within ninety (90) calendar days after the damage or destruction occurs. Unless such restoration is undertaken within a reasonable time after such casualty, the Association shall remove all remains and Improvements so damaged or destroyed and restore the site thereof to good orderly condition and even grade, and the cost of any such removal shall be a Common Expense.

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

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

1. The uninsured costs to repair, rebuild, and restore the Common Elements will be assessed as a Common Expense.

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

3. The Commercial Unit Owner will be assessed the cost to repair, rebuild, and restore the Commercial Unit and any Limited Common Elements appurtenant thereto.

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

XV. AMENDMENT OF DECLARATION.

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

1. **"CHANGES MATERIAL IN NATURE."** Except as otherwise provided herein or in the Act, 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 Condominium Documents; or
- n. any provisions that expressly benefit Mortgage holders, insurers, or guarantors.

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

- a. The Owner of the changed Unit or Units must sign the amendment. Notwithstanding anything set forth in this Section to the contrary, it is not necessary for any other party to vote for,

approve, or sign the amendment, except for any Lender who has a Mortgage on the Unit or Units that are changed or altered.

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

3. **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 mortgagees pursuant to this Declaration.

b. **Reduction in Services.** Subject to any restrictions contained in the Bylaws regarding limitations on general Assessment increases, any significant reduction in the services to be provided to the Association and Owners.

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

d. **Enforcement of the Declaration.** Alteration in the method of enforcing the provisions of this Declaration.

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

B. BY DEVELOPER.

1. **PRIOR TO PROJECT COMMENCEMENT.** This Declaration may be amended by Developer at any time prior to the closing of the sale of the first Residential Unit in the Project from Developer to a Residential Unit Owner. Developer's right to amend this Declaration shall not be affected by the sale or conveyance of any Unit in the Project from Fee Owners to Developer.

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

3. **AMENDMENT TO FILE "AS-BUILT" STATEMENT.** Notwithstanding any provision of this Declaration to the contrary and notwithstanding the sale of any of the Units, Developer, without the approval or joinder of any Owner, lienholder, or other Person, may amend this Declaration to file the "as built" verified statement (with plans, if applicable) required by Section 514B-34 of the Act, so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed fully and accurately depict the layout, location, Unit numbers, and dimensions of the Units substantially as built and such statement may also state that any plans filed therewith involve only immaterial changes to the layout, location, Unit numbers, or dimensions of the Units as built.

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

5. **AMENDMENTS AFFECTING FIRST MORTGAGES.** Notwithstanding any provision of this Declaration to the contrary, any amendment affecting any provision of this Declaration which is for the express benefit of Developer's mortgage lender and/or holders or insurers of first Mortgages on Units shall require the approval of Developer's mortgage lender and/or Eligible Mortgage Holders on Units to which at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by such Eligible Mortgage Holders are allocated, as applicable, together with such other approvals as may be required in this **Article 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; COMMERCIAL UNIT.** Except as provided in **Section XV.B**, notwithstanding anything stated to the contrary in the Condominium Documents, all amendments to the Condominium Documents shall be subject to the following:

1. No amendment to the Condominium Documents affecting any of the Limited Common Elements appurtenant to the Commercial Unit shall be effective without the approval of the Commercial Unit Owner. Until the end of the Developer Control Period, no amendment to the Condominium Documents affecting any of the Limited Common Elements appurtenant to all Residential Units shall be effective without the approval of Developer. This restriction, during the Development Period, may not be amended without the approval of Developer.

2. Any amendment to the Condominium Documents to prohibit or materially restrict the use, operation, or occupancy of, or behavior within the Commercial Unit or its Limited Common Elements shall be subject to the Commercial Director's approval.

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

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

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

This Section 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 recording at the Bureau.

XVI. TERMINATION.

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

XVII. LAND TRUSTS.

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

XVIII. COMPLIANCE BY OWNERS.

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

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

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

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

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

XIX. RESERVED RIGHT TO GRANT AND RECEIVE EASEMENTS.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2041, 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 and correct construction defects or other punchlist items in the Common Elements or Units, or to exercise any of 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 further 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.

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

Notwithstanding anything herein provided to the contrary, and except as otherwise provided by law, to and until December 31, 2041:

A. Developer hereby reserves the right to: (1) alter the floor plan of any Unit which it owns at any time, and in any manner Developer deems appropriate, in its absolute discretion; provided that the Common Interest appurtenant to the Unit shall not change; (2) cause the subdivision of any Unit which it owns at any time to create two (2) or more Units; provided that the total Common Interest appurtenant to the newly-created Units shall equal the Common Interest appurtenant to the original Unit; (3) cause the consolidation of any Units which it owns at any time; (4) convert certain portions of any existing Unit to Limited Common Element status to facilitate any subdivision or consolidation; and (5) recalculate the Common Interest appurtenant to each Unit upon such subdivision and/or consolidation; provided that the total Common Interest appurtenant to the newly-created Unit(s) shall equal the Common Interest appurtenant to the original Unit(s). Subject to Article III, Section 1 of the Bylaws, the subdivision or consolidation of Units by Developer or any other Owner shall not affect the number of Commercial Directors or Residential Directors on the Board.

B. If Developer is the Owner of any two (2) or more Units separated by a party wall, floor, or ceiling, Developer shall have the right to consolidate two (2) or more Units that are so separated, to later subdivide such Units once consolidated, and to alter, remove, or restore all or portions of the intervening wall, floor, or ceiling at Developer's expense; provided that: (1) the structural integrity of the Project is not thereby affected, (2) the finish of any Common Element or Limited Common Element then remaining is restored to a condition substantially compatible with that of the Common Element or Limited Common Element prior to such alteration, and (3) all

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

C. Developer, in the process of consolidating Units, shall have the right to convert that area between Units to a Unit (as opposed to the same remaining a Limited Common Element) for so long as such Units shall remain consolidated or shall continue to be commonly used or owned.

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

1. If necessary, Developer shall record or cause to be recorded an amendment to this Declaration describing the Unit(s) in question and setting forth at least: (a) a description of the newly-formed Unit(s); (b) in the case of the consolidation of Units by Developer, the Common Interest appurtenant to the newly-formed Unit, which shall be calculated by adding together the Common Interest for the Units to be consolidated; or (c) in the case of the subdivision of a Unit by Developer, the Common Interest appurtenant to each of the newly-formed Units, which shall in the aggregate equal the total of the Common Interest appurtenant to the original Unit;

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

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

Developer expressly reserves the right to amend the Declaration and Condominium Map to effect any subdivision or consolidation of Units or alterations to floor plans at any time to and until December 31, 2041, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder, or other persons, execute and record amendments to this Declaration and Condominium Map and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the rights, powers, or privileges herein reserved to Developer. To the extent permitted by applicable law, this Section shall not be amended without the prior written consent of Developer.

XXI. RESERVED RIGHT TO INSTALL AND MAINTAIN TELECOMMUNICATIONS EQUIPMENT AND PHOTOVOLTAIC SYSTEMS AND TO RECEIVE REVENUE THEREFROM.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2041, Developer hereby reserves the right to install or cause the installation of Telecommunications Equipment and photovoltaic systems on the Common Elements, at its sole cost and expense, and upon such installation the same shall become a Limited Common Element appurtenant to a Unit designated and owned by Developer. The installation of Telecommunications Equipment and photovoltaic systems pursuant to this Section shall not be deemed to alter, impair, or diminish the Common Interest, Common Elements, and easements appurtenant to the Units, or a structural alteration or addition to the Project constituting a material change, or necessitate an amendment to the Condominium Map. All profits or expenses directly attributable to the Telecommunications Equipment or photovoltaic systems shall be distributed or charged directly to the Unit to which the Telecommunications Equipment or photovoltaic systems is appurtenant.

XXII. RESERVED RIGHT TO CONSTRUCT OR NOT TO CONSTRUCT THE RECREATIONAL AMENITIES AND TO MODIFY, RELOCATE, RECONFIGURE, AND REMOVE RECREATIONAL AMENITIES.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2041, Developer hereby reserves the right to construct, or not to construct, and/or not to construct at the same time, Recreational Amenities in the Project, and to modify, relocate, reconfigure, and remove all or certain of the Recreational Amenities. Nothing in this Declaration shall be construed as a representation or warranty by Developer that the Recreational Amenities or any portion thereof, will be developed or built or that the Recreational Amenities and/or the types of Recreational Amenities offered will not change and/or that the other portions of the Common Elements will be built or completed prior to, concurrently with, or soon after any or all of the Residential Units are conveyed to third parties.

XXIII. RESERVED RIGHT TO INSTALL DEVELOPER'S SIGNAGE.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2041, Developer hereby reserves the right, for the benefit of the Project, to install, maintain, repair, replace, and approve of (from time to time) directional signage within the Project, identity signage, canopy signage, and other signage within the Project, subject to any zoning laws or other governmental requirements. With respect to all aspects of the signage, including, without limitation, the method of affixing the signage and extension of electrical service thereto, if applicable, such signage shall comply with the Project Quality Standard. Until such time that Developer shall provide notice that all Owners shall be obligated for the payment of Common Expenses as set forth in the Bylaws, Developer shall be responsible for lighting, installation, maintenance, and replacement of such signage as well as costs to repair any damage to the Project proximately caused by such installation, maintenance, and replacement of any signage and, after such notice, the Board shall be responsible for administering such obligations and assessing the costs thereof as a Common Expense.

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

Notwithstanding anything herein provided to the contrary, to and until December 31, 2041, Developer hereby reserves the right to effect such modifications to Units and Common Elements in the Project and/or to execute, record, and deliver any amendments to the Condominium Documents promulgated hereunder, as may be necessary or appropriate to effect compliance by the Project, the Association, or Developer, with laws which apply to the Project, including, but not limited to, the FHA and ADA, and any rules and regulations 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.

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

Notwithstanding anything provided to the contrary, and except as otherwise provided by law, to and until December 31, 2041:

A. Developer hereby reserves the right to convert a Limited Common Element solely appurtenant to a Unit or Units owned by Developer into a separate Unit of the Project or to add to the area of a Unit. In such event, Developer shall have the right, without obtaining the approval of any party with an interest in the Project, including any other Owner and/or mortgagee, to alter the physical aspects of said Limited Common Element and Unit(s) at Developer's expense in connection with such conversion, including building such structures as may be necessary or appropriate; provided that: (1) the structural integrity of the Project is not thereby affected; (2) the finish of the Unit is consistent with the quality of other Units in the Project, and any remaining portion of the Limited Common Element not converted to a Unit, if any, is restored, to the extent feasible, to a condition substantially compatible with that of the Limited Common Element prior to such conversion; and (3) all construction activity necessary to any such conversion shall be completed within a reasonable period of time after the commencement thereof, subject to delays beyond the control of Developer or its contractors, whether caused by strikes, the unavailability of construction materials, or otherwise, in which case any such construction activity shall be completed in such additional time as may be reasonably necessary in the exercise of due diligence.

B. Developer shall have the reserved right to designate certain Limited Common Elements of the Project as Limited Common Elements solely appurtenant to the newly-created Unit; provided that there is no material adverse effect on the remainder of the Project.

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

1. Developer shall record or cause to be recorded an amendment to this Declaration describing the Unit(s) in question and setting forth at least: (a) a description of the newly-formed Unit(s), and (b) the Common Interest appurtenant to the newly-formed Units and existing Units, which shall be calculated and/or recalculated by dividing the approximate net living area of each individual Unit by the total net living area of all Units within the Project, including any newly-formed Units. Developer may adjust the Common Interest to assure that the total of all Common Interests equals one hundred percent (100%). If Developer increases the area of an existing Unit by converting a portion of the Limited Common Element solely appurtenant thereto to a Unit and connecting it to the Unit, but an additional Unit is not created, then the Common Interest percentage allocated to the Unit shall remain unchanged;

2. Developer shall record or cause to be recorded an amendment to the Condominium Map to show the floor plans and elevations for the newly-created Unit, as necessary, together with a verified statement of registered architect or professional engineer, in the manner required by Section 514B-34 of the Act, that said Condominium Map, as so amended, contains an accurate copy of portions of the plans of the newly-created Unit(s) as recorded with and approved by the County officer having jurisdiction over the issuance of permits for the construction of buildings, and that the plans fully and accurately depict the layout, location, Unit number(s), and dimensions of the Unit(s) substantially as built; and

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

The right to amend the Declaration and Condominium Map to effect the conversion of any Limited Common Element into a Unit and the alterations to floor plans may occur at any time to and until December 31, 2041, and Developer may, without being required to obtain the consent or joinder of any Owner, lien holder, or other persons, execute, deliver, and record amendments to the Declaration and Condominium Map and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers, or privileges. To the extent permitted by applicable law, this Section shall not be amended without the prior written consent of Developer.

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

Notwithstanding anything herein provided to the contrary, to and until December 31, 2041, Developer hereby reserves the right to amend this Declaration to (a) recharacterize all or a portion of certain Limited Common Elements solely appurtenant to a Unit or Units owned by Developer or Limited Common Elements appurtenant to all Residential Units, if all Residential Units are owned by Developer, as being Common Elements of the Project, thus giving up or waiving the exclusive use of such area or areas; and/or (b) redesignate all or a portion of certain Limited Common Elements solely appurtenant to any Unit owned by Developer to another Unit or Units, or as Limited Common Elements appurtenant to all Residential Units or appurtenant to the Commercial Unit; and/or (c) redesignate a portion of the Limited Common Elements appurtenant to all Residential Units, if all Residential Units are owned by Developer, as Limited Common Elements solely appurtenant to a Unit or Units owned by Developer. Upon recharacterization of any Limited Common Element to Common Element of the Project, the Association shall be required to maintain such areas at its expense for the benefit of all Owners, and the cost of maintaining such areas shall be assessed to all Owners as a Common Expense.

The right to amend this Declaration to effect such recharacterization or redesignation of any such Limited Common Elements shall occur at any time or times to and until December 31, 2041, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder, or other persons, execute, deliver, and record any deed and/or amendments to this Declaration or to the Condominium Map, and any and all other

instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers, or privileges.

XXVII. RESERVED RIGHT TO CONVEY PROPERTY TO THE ASSOCIATION.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2041, Developer hereby reserves the right, but not the obligation, to convey to the Association, and the Association shall accept, title to any property owned by Developer or its successors or assigns, together with the responsibility to perform any and all duties associated therewith. Upon conveyance or dedication of such property to the Association, the Association shall maintain such property at its expense for the benefit of the Owners, and the cost of maintaining such areas, including any maintenance fees associated with such areas, shall be assessed to all Owners as a Common Expense. Any property or interest in property transferred to the Association by Developer shall be by way of quitclaim deed, "AS IS," "where is." Developer shall have the further right to redesignate Limited Common Elements appurtenant to Units owned by Developer or its successors and assigns as Limited Common Elements appurtenant to Units owned by the Association, if any, and to the extent necessary or required, to amend this Declaration and the Condominium Map to effect the same.

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

XXVIII. RESERVED RIGHT TO CONDUCT SALES ACTIVITIES.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2041, Developer hereby reserves the right unto itself, its brokers, sales agents, and other related Persons to access and conduct extensive sales activities at the Project, including the use of any Unit owned by Developer or its successors or assigns and its appurtenant Limited Common Elements and the Common Elements for hosting of receptions, model units, sales, leasing, management, and construction offices, parking and extensive sales displays and activities, the posting and maintenance of signs and other advertisements relating to such sales activities, and to install, maintain, locate, relocate, and reconfigure such structures, displays, advertising signs, billboards, flags, sales desks, kiosks, sales, leasing, management, and/or construction offices, interior design and decorator centers, and parking areas for employees, agents, and prospective buyers, as may be necessary or convenient for the proper development and disposition of Units by sale, resale, lease, or otherwise, and the right, but not the obligation, to provide ongoing maintenance, operation, service, construction, and repairs to individual Units in the Project. This easement shall include the right of Developer to temporarily reasonably restrict access to such Common Elements, and Owners shall have no redress against Developer for the temporary loss of use of such areas. In the event that Developer is unable to sell all of the Units by December 31, 2041, Developer shall have the right to conduct sales activities on the Project until the closing of the sale of the last unsold Residential Unit of the Project; provided that such sales are conducted in an unobtrusive manner which will not unreasonably interfere with the use, possession, and aesthetic enjoyment of the Project by the Owners. Such sales activities may include the initial sale and resale of Units. In the event that Developer's mortgage lender, if any, or any successor to or assignee of Developer's mortgage lender shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the Mortgage remedies or by a deed or an assignment in lieu of foreclosure, such mortgage lender, its successor and assigns, shall have the right to conduct such extensive sales activities on the Project until at least ninety-five percent (95%) of all of the Units in the Project have been sold and Unit Deeds therefor recorded, notwithstanding the foregoing. Each and every party acquiring an interest in the Project, by such acquisition, acknowledges that the sales activities may result in noise and nuisances, and consents to such activity by Developer, and further waives, releases, and discharges any rights, claims, or actions such party may acquire against Developer, its brokers, sales agents, employees, and Lenders, and their respective successors and assigns, as a result of any such activity or activities.

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

Notwithstanding anything herein provided to the contrary, beginning on that date upon which Fee Owners no longer hold any real property interest in the Project or with Fee Owners' consent, to and until December 31, 2041, Developer hereby reserves the right to (i) consolidate the Land with another parcel(s) of land ("**Consolidated Lot**"), (ii) subdivide the Land to create separate parcels of land ("**Subdivided Lots**"), and/or (iii) withdraw certain Subdivided Lots from the operation of this Declaration, and convey or cause the conveyance of said withdrawn Subdivided Lots to itself or to a third party as it deems appropriate. This right to subdivide and withdraw shall include, without limitation, the right to subdivide and withdraw from this Project that certain archaeological site located in the Project, that certain portion of Kiahuna Plantation Drive located in the Project, and certain other portions of the Land, as depicted on the Condominium Map.

In connection with the right to consolidate, Developer shall have the further reserved right to enter and go upon the Land to do all things necessary, proper, or convenient to effectuate such 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; and (iv) granting or receiving all other required easements and/or rights of way. Said consolidation shall be subject to, and Developer shall, at its own expense, comply with, all of the then-applicable governmental laws, rules, and regulations.

In connection with the right to subdivide, Developer shall have the further reserved right to enter and go upon the Land to do all things necessary, proper, or convenient to effectuate such subdivision of the Land and withdrawal and conveyance of certain Subdivided Lots, including, without limitation, the following: (i) making surveys to undertake a reasonable realignment of boundaries of the Land to define said Subdivided Lots (it being understood that Developer shall have the reserved right to effect any such realignment); (ii) filing and recording the necessary subdivision map and related documentation; and (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; provided 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; provided, however, Developer may, and has the reserved right to, subdivide and withdraw that certain portion of Kiahuna Plantation Drive located in the Project and the land areas adjacent thereto. Said subdivision, withdrawal, and conveyance shall be subject to, and Developer shall, at its own expense, comply with, all of the then-applicable governmental laws, rules, and regulations, including subdivision requirements.

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

Upon the exercise of said reserved rights, Developer shall, at Developer's expense and without being required to obtain the consent or joinder of any Owner or lienholder, execute and record at the Bureau the subdivision map (and, to the extent deemed necessary or approved by Developer, for designation of easements), and an amendment to the Declaration and the Condominium Map: (i) describing the withdrawn land and any Improvements thereon; (ii) describing the realigned boundaries of the Land upon which the Units then constituting the Project are located; and (iii) where applicable and appropriate, granting, reserving, or relocating easements over,

under, and on the Common Elements, as permitted above. The recording of the amendment to this Declaration and the Condominium Map shall effectuate the withdrawal, without any further consent or joinder of any party. Developer shall have the right, as grantor, to execute, deliver, and record a deed of any subdivided and withdrawn area upon recording of the amendments aforesaid.

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

XXX. RESERVED RIGHT TO CONSTRUCT PROJECT IN PHASES.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2041, Developer hereby reserves the right to develop the Project in two (2) or more phases and/or to add Residential Units and/or Commercial Units to the Project from time to time in its sole discretion. Developer shall be under no obligation to construct any additional Units or buildings in the Project.

In the event that Developer develops the Project in phases and/or adds Residential Units or Commercial Units to the Project, each Residential Unit and Commercial Unit's obligation to share in the payment of the Common Expenses shall be calculated from time to time based on the number of Units for which Certificates of Occupancy have been issued; subject, however, to Developer's right to pay the actual expenses of the Project prior to a specified date to be set forth in a written notice to the Owners, the Association, and the Managing Agent pursuant to Section 514B-41(b) of the Act and as stated in Article VI, Section 4.A of the Bylaws. Each developed Unit's share of the Common Expenses shall be calculated based on a fraction, the numerator of which shall be such Unit's Common Interest set forth in **Exhibit "B"** and the denominator of which shall be the aggregate of Common Interest set forth in **Exhibit "B"** of all Units for which a Certificate of Occupancy has been issued. As Certificates of Occupancy are issued for additional Units in the Project, the obligation to share in the payment of the Common Expenses will be adjusted to reflect the additional Units.

In the event that Developer develops the Project in phases and/or adds Residential Units to the Project, each Residential Unit's obligation to share in the payment of the Residential Unit Class Expenses shall be calculated from time to time based on the number of Residential Units for which Certificates of Occupancy have been issued; subject, however, to Developer's right to pay the actual expenses of the Project prior to a specified date to be set forth in a written notice to the Owners, the Association, and the Managing Agent pursuant to Section 514B-41(b) of the Act and as stated in Article VI, Section 4A of the Bylaws. Each developed Residential Unit's share of the Residential Unit Class Expenses shall be calculated based on a fraction, the numerator of which shall be such Residential Unit's Residential Unit Class Common Interest set forth in **Exhibit "B"** and the denominator of which shall be the aggregate of Residential Unit Class Common Interest set forth in **Exhibit "B"** of all Residential Units for which a Certificate of Occupancy has been issued. As Certificates of Occupancy are issued for additional Residential Units in the Project, the obligation to share in the payment of the Residential Unit Class Expenses will be adjusted to reflect the additional Residential Units.

In order to carry out the provisions of or exercise the rights, powers, or privileges reserved in this Section, Developer expressly reserves the right, without being required to obtain the consent or joinder of any Owner, lienholder, or other Persons, to execute, and record amendments to this Declaration, the Bylaws, and/or the Condominium Map to describe any changes to the Units, the Common Elements, the Common Interest, or the Class Common Interest herein described at any time, notwithstanding the lease, sale, or conveyance of any or all of the Units in the Project. Developer may execute, record, and deliver any such amendment to the Declaration, the Bylaws, and/or the Condominium Map and to such Unit Deeds as may have been recorded, and any and all other instruments necessary or desirable.

XXXI. RESERVED RIGHT TO ALTER THE NUMBER OF UNITS IN THE PROJECT.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2041, Developer hereby reserves the right to reduce or increase the number of Units in the Project. Any such alteration to the number of Units in the Project shall be effective provided that:

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

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

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

Developer expressly reserves the right to amend this Declaration and Condominium Map to effect any increase or decrease in the number of Units or alterations to the floor plans at any time or times to and until December 31, 2041, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder, or other Persons, execute, and record amendments to this Declaration and Condominium Map and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the rights, powers, or privileges herein reserved to Developer.

XXXII. RESERVED RIGHT TO DEVELOP AND CONSTRUCT OR NOT TO DEVELOP AND CONSTRUCT ALL BUILDINGS.

All buildings and Improvements in the Project defined herein and as depicted in the Condominium Map may not be constructed at the same time; provided, however, that Developer reserves the right at any time and from time to time prior to December 31, 2041 to complete construction of all buildings and Improvements. Nothing in this Declaration shall be construed as a representation or warranty by Developer that all buildings and Improvements described in the Condominium Map will be developed and built, nor shall anything herein require Developer to develop and build all of the buildings and Improvements described in the Condominium Map. Developer has the reserved right to change the number of buildings and the Improvements consisting of the Project from time to time.

Developer, its contractors and subcontractors, and their respective employees and agents shall have the right, in favor of Developer and its successors and permitted assigns, to enter upon the Project and use the Project and any Common Elements, and to do all things reasonably necessary, desirable, or useful for designing, developing, and constructing or completing any building and Improvement and connecting the same to the utility installations of the Project as then constituted and selling any Units created in any building upon and subject to the following terms and conditions:

A. All buildings shall be constructed in accordance with plans and specifications prepared by a licensed architect and shall be consistent with or superior to the Improvements existing in the Project in terms of

quality of construction; provided, however, that such plans and specifications shall not require the alteration or demolition of any existing Units in the Project as then constituted. A description of each building constituting the Project has been set forth in this Declaration and the Condominium Map. Developer reserves the right to modify any existing plans for the buildings and may change the area, layout, locations, types, or numbers of Units constituting any building, and may further modify, delete, and/or add types of Common Elements in connection with the development of any building.

B. Developer shall have the right to delete, cancel, relocate, realign, reserve, designate, grant, and receive all easements and rights of way and to otherwise make alteration in and use the Common Elements for such development and construction, and to designate Limited Common Elements over, under, through, across, and upon the Common Elements necessary or desirable with any building, including, but not limited to, easements and rights of way for utilities (including, without limitation, electrical lines, cable television, telephone lines and water lines), septic tanks, cesspools, sanitary and storm sewers, refuse disposal, driveways, parking areas, and roadways; provided that such easements and rights of way and Limited Common Elements shall not be located on or within any existing building of the Project, and upon completion, shall not unreasonably and materially impair the use of any existing Unit or Limited Common Element appurtenant thereto; provided further, that Developer shall have the right to eliminate, delete, reconfigure, readjust, and/or redesignate any Limited Common Element appurtenant to a Unit provided that a substantially equivalent Limited Common Element is substituted therefor.

C. Developer, its contractors and subcontractors, and their respective employees and agents, shall not in their construction of any building, cause any interruption other than a temporary interruption in the services of utilities to the Project, and shall use reasonable efforts without additional costs to Developer and consistent with maintaining the progress of the design, development, construction, completion, and sale to minimize interference with the Owners' use and enjoyment of the Project.

In the event that Developer chooses not to exercise its reserved right to construct all buildings or Improvements prior to December 31, 2041, Developer may forfeit and abandon its undivided percentage interest in and to the Common Elements of the Project, at which time said interest shall be automatically vested in and allocated among the then physically-existing Residential Units and Commercial Unit(s) of the Project, and such physically-existing Units' undivided interests in the Common Elements of the Project shall be recalculated based on dividing the net living area of each Unit by the total net living area of all then-physically existing Units in the Project. 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 Project in the aggregate equals to one hundred percent (100%). If necessary, Developer shall quitclaim the Common Interests appurtenant to Units in any of the buildings not built to the Owners of the physically-existing Units to effect the vestiture of Common Interests in the then-physically-existing Units, and the Owners shall accept such deed of Common Interests.

XXXIII. RESERVED RIGHT TO LEASE OR TRANSFER THE COMMERCIAL UNIT AND ITS LIMITED COMMON ELEMENTS TO THE ASSOCIATION.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2041, Developer hereby reserves the right, as the Owner of the Commercial Unit, but not the obligation, to lease or transfer ownership of the Commercial Unit owned by Developer to the Association, and to redesignate any Limited Common Element appurtenant to the Commercial Unit to a Unit owned by the Association, and to the extent necessary or required, to amend this Declaration and the Condominium Map to effect the same. Upon transfer to the Association, the Association shall accept ownership of the Commercial Unit together with any appurtenant Limited Common Element(s) "AS IS" by way of a quitclaim deed. In the event the Commercial Unit is transferred or leased to the Association, at such time, the Association shall assume the cost of maintenance of all such Limited Common Element areas and the Common Expense in proportion to the percentage Common Interest set forth in **Exhibit "B"** attributable to the Commercial Unit. Developer further reserves the right to retain administrative and managerial control over such areas, unless such right is otherwise delegated to the Association at the time of such transfer. In the event that the Commercial Unit is ever transferred or leased to the Association and the Association thereafter but prior to and including December 31, 2041, desires to offer the Commercial Unit for sale or lease, Developer shall be given the first right of refusal to reacquire or to lease the Commercial Unit under the same terms and conditions (including financing terms) as may be offered to or by such bona fide third party. Accordingly, the Association desiring to sell or lease the Commercial Unit must first notify Developer in writing of its intent to list, sell, or lease

the Commercial Unit. The Association's written notice to Developer must include the proposed listing, offer price, or rental rate and general terms of the proposed listing, sale, or lease. Upon receipt of such written notice, Developer shall have fifteen (15) calendar days within which to notify the Association or such third party in writing as to whether Developer elects to exercise its right of first refusal set forth herein. If Developer elects to exercise its right of first refusal, closing shall occur no later than sixty (60) calendar days after Developer notifies the Association in writing (within such fifteen (15) calendar day period) of its decision to purchase the Commercial Unit. If Developer elects not to exercise its right of first refusal or fails to notify the Association in writing of Developer's election to exercise its right of first refusal within such fifteen (15) calendar day period, the Association shall be entitled, for a period of seven (7) months thereafter, to list the Commercial Unit with a real estate broker or the Commercial Unit to a third party for a price equal to or greater than the price offered to Developer without further notice to Developer.

The right to convey such Commercial Unit to the Association and for the Association to accept ownership thereof and/or to redesignate Limited Common Elements appurtenant to the Commercial Unit, and, to the extent necessary, to amend this Declaration to effect the same, shall occur no later than December 31, 2041. Developer, as the Owner of the Commercial Unit, has the right for the duration of its ownership to convey the Commercial Unit to third parties, which right shall continue notwithstanding that December 31, 2041 may have passed. Developer may, without being required to obtain the consent or joinder of any Owner, lienholder, or other Person, execute, deliver, and record any deed and/or amendment to this Declaration and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers, or privileges.

XXXIV. RESERVED RIGHT TO ADDRESS ARCHAEOLOGICAL ISSUES.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2041, Developer hereby reserves the right to respond to and appropriately deal with any inadvertent finds of human skeletal remains or burial goods, or other historic or archaeological finds during the course of construction of the Project in compliance with applicable Hawaii law, and the determinations with respect thereto made by the State Historic Preservation Division ("SHPD") by (a) designating one (1) or more Common Elements, including open spaces and areas beneath structural elements of a building structure as burial preserve areas; (b) recording against the Land one (1) or more documents related to the preservation or relocation of any burials or artifacts, including, but not limited to, binding short term and long term measures such as fencing, buffers, landscaping, access easements, plaques, and other identifying measures; (c) relocating or preserving in place at any portion of the Project any remains, burial goods, or artifacts that may be found during the course of site preparation and construction of the Project; (d) subdividing and withdrawing certain portions of the Land that may contain historic or archaeological finds from the operation of the Declaration, and conveying or causing the conveyance of said withdrawn portion of the Land to itself or to a third party as it deems appropriate; (e) making changes to the Project, Common Elements, and Limited Common Elements necessary to accommodate the foregoing; and (f) entering into any agreements and preparing any reports necessary or prudent to document the decisions and requirements of any governmental agency or entity, including, but not limited to, SHPD, Developer's agreements related to such requirements or decision(s), or of applicable laws, including, but not limited to, preservation plans, archaeological data recovery plans, mitigation plans, monitoring plans, and in site burial agreements. The Association shall be subject to and responsible for compliance with all such plans, agreements, and easements, expenses of which shall be a Common Expense. All persons who are classified as recognized cultural or lineal descendants by SHPD or the Kauai/Niihau Island Burial Council with relation to the Project shall have a reasonable right of entry and access over, across, and through the ground level Common Elements to gain access to and for visitation of any burial preserve area so created, subject to reasonable rules and policies established from time to time by Developer and/or the Board relating to hours of visitation, security procedures for visitation, and parking at the Project; provided, however, that no such rules and policies shall at any time unreasonably hinder, impair, or interfere with the right of the recognized cultural and lineal descendants to visit any burial preserve area.

XXXV. RESERVED RIGHT TO AMEND OR MODIFY THE SHARED SEWER LINE DOCUMENTS AND TO ASSIGN THE SHARED SEWER LINE DOCUMENTS TO THE ASSOCIATION.

Kiahuna Fairways, LLC, as the developer of the condominium project known as "Pili Mai at Poipu" located on the adjacent parcel of land identified as Tax Map Key No. (4) 2-8-014: 033 ("Lot 4"), and Wind Ridge Island Properties LLC, as a previous fee owner of the Land, entered into that certain Shared Sewer Line and Easement

Agreement dated December 12, 2006 ("**Shared Sewer Agreement**"). Pursuant to the terms of the Shared Sewer Agreement, Kiahuna Fairways, LLC agreed to (1) construct a shared sewer main trunk line through Lot 4 for the joint use of Pili Mai at Poipu and the Project, and (2) grant a non-exclusive sewer easement in favor of and appurtenant to the Land for use of such shared sewer main trunk line ("**Grant**"). In this Section, the Shared Sewer Agreement and Grant are together called the "**Shared Sewer Line Documents**." The shared sewer main trunk line was completed on or about December 21, 2016. BH Hawaii Holdings LLC, as the successor developer of Kiahuna Fairways, LLC, and Yellow Hale, LLC, as Developer's predecessor in interest as fee owner of the Land, executed the Grant providing a perpetual non-exclusive and shared easement for sewer purposes upon, through, under, and across Lot 4 for the non-exclusive use and benefit of the Project, subject to the terms, limitations, and conditions set forth in the Grant. The Grant provides, among other things, that BH Hawaii Holdings LLC, or its successor or assign, shall be responsible for the maintenance, repair, replacement, and upkeep of the shared sewer line in good order and safe condition; provided that Developer shall be responsible for its proportionate share of the cost of the maintenance, repair, replacement, and upkeep, the cost of which shall be equally divided between BH Hawaii Holdings LLC (or its successor or assign) and Developer.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2041, Developer hereby reserves the right to amend or modify the Shared Sewer Line Documents as Developer deems necessary or desirable in Developer's sole discretion, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder, or other Persons, execute and record amendments to the Shared Sewer Line Documents and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the rights, powers, or privileges herein reserved to Developer.

Developer also hereby reserves the right, to and until December 31, 2041, to assign all of the covenants, conditions, restrictions, and rights set forth in the Grant to the Association. The assignment shall be in writing, executed by both Developer and the Board, on behalf of the Association, and shall be recorded at the Bureau. Upon execution of the assignment, Developer shall be fully released from and shall have no further liability or responsibility of any kind under the Grant, and BH Hawaii Holdings LLC (or its successor or assign) shall look solely to the Association for the observance and performance of all covenants, obligations, and undertakings to be observed or performed under the Grant. The Association's proportionate share of the cost of maintenance, repair, replacement, and upkeep of the shared sewer line shall be a Common Expense.

XXXVI. RESERVED RIGHT TO AMEND OR MODIFY THE KIAHUNA MAINTENANCE DISTRICT AGREEMENT AND TO ASSIGN THE KIAHUNA MAINTENANCE DISTRICT AGREEMENT TO THE ASSOCIATION.

Morgan Stanley 2007-XLCI Kiahuna Subsidiary, LLC, as a previous fee owner of the Land, along with four (4) other owners of adjacent or nearby land (each a "**Member**"), executed that certain Kiahuna Maintenance District Agreement dated July 3, 2013 ("**Maintenance Agreement**"). The Maintenance Agreement establishes an unincorporated, non-profit association ("**District Association**") composed of the five Members for the purpose of owning, maintaining, administering, repairing, replacing, restoring, operating, and/or keeping in good condition the "**Maintenance Property**", as defined in the Maintenance Agreement. The Maintenance Agreement further provides, among other things, for the establishment of an annual budget and collection of assessments from each Member for the maintenance, repair, and upkeep of the Maintenance Property.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2041, Developer hereby reserves the right to amend or modify the Maintenance Agreement according to the procedures set forth therein, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder, or other Persons, execute and record amendments to the Maintenance Agreement and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the rights, powers, or privileges herein reserved to Developer.

Developer also hereby reserves the right, to and until December 31, 2041, to assign all of the covenants, conditions, restrictions, and rights set forth in the Maintenance Agreement to the Association. The assignment shall be in writing, executed by both Developer and the Board, on behalf of the Association, and shall be recorded at the Bureau. Upon such assignment, the Association shall become a Member of the District Association and shall comply with the requirements and obligations that are contained in the Maintenance Agreement, including, without

limitation, the obligation to pay its share of the applicable assessments and such other amounts that may be due to the District Association. The Association's share of the applicable assessments shall be a Common Expense.

XXXVII. ASSIGNMENT OF RESERVED RIGHTS.

To and until December 31, 2041, notwithstanding anything stated herein to the contrary, the rights reserved to Developer in this Declaration shall be fully and freely assignable by Developer in whole or in part. Any assignment of the rights reserved to Developer shall be in writing, executed by both Developer and the assignee of Developer's rights, and shall be recorded at the Bureau. Every Owner of a Unit in the Project and all holders of liens affecting any of the Units and each and every other party acquiring an interest in the Project, or any part thereof, by acquiring such Unit, lien, or other interest, consents to any such assignment by Developer, and, to the extent designated by Developer, agrees to recognize any assignee as the "Developer" under this Declaration; agrees to execute, deliver, and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints Developer and its assigns his or her attorney-in-fact with full power of substitution to execute, deliver, and record such documents and instruments and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest upon any transfer of any Unit or any interest therein, whether by deed, Mortgage, or any other instrument of conveyance.

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

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

XXXIX. INDEMNIFICATION OF FEE OWNERS.

Developer and the Association agree to indemnify, defend, and hold Fee 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 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 Fee Owners, or (b) claims against Fee Owners other than as a result of Fee Owners permitting Developer to create a condominium property regime on the Land, or Fee Owners being a signatory to this Declaration or the Bylaws. Nothing in the foregoing exception shall be deemed a waiver by Fee Owners or a limitation of any of Fee Owners' rights or remedies, except as set forth in said exception. Developer and, by their acceptance thereof, Owners, acknowledge that Fee Owners have no obligation to review this Declaration or any other document prepared by Developer for adequacy or compliance with law, that Fee 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 Fee Owners.

XL. LIMITED PURPOSE OF JOINDER BY FEE OWNERS; RELEASE AND WAIVER OF CLAIMS.

Fee Owners have joined this Declaration for the sole purpose of permitting Developer to comply with the requirements relating to the submission of the Land to a condominium property regime pursuant to the Act, have 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 Fee 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 Fee Owners, and to have released Fee 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 Fee Owners, unless such action is expressly authorized or approved by Fee Owners in writing in each instance. Notwithstanding anything to the contrary herein contained, under no circumstances will Fee Owners have any liability for expenses under this Declaration except to the extent that Fee Owners are a Unit Owner. In the event that Fee Owners are found to be liable in any claim relating to this Declaration, any recovery shall be limited to the assets of Fee Owners, and shall not extend to the individual officers, directors, or shareholders thereof. No officer, director, or shareholder of Fee Owners shall, by reason of being an officer, director, or shareholder of Fee Holders, have any personal liability under the terms of this Declaration.

XLI. DISCLOSURES AND LIMITATIONS ON LIABILITIES.

A. NONLIABILITY AND INDEMNIFICATION.

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

2. **INDEMNIFICATION BY ASSOCIATION.** When liability is sought to be imposed on a Director, an Officer, committee member, employee, or agent of the Association or a Representative of the Managing Agent, the Association shall indemnify him or her for his or her losses or claims, and undertake all costs of defense, unless 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, and the Association may recover indemnification costs expended from the individual who so acted. Punitive damages may not be recovered against the Association but may be recovered from persons whose activity gave rise to the damages. This Section shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees or any person entitled to such indemnification.

3. **INDEMNIFICATION OF MANAGING AGENT.** Notwithstanding anything to the contrary contained herein, all Owners agree to defend, indemnify, and hold harmless the Managing Agent from and against, and properly reimburse it for, any and all liability, cost, damages, expense, or deficiency resulting from, arising out of, or in connection with the negligent acts of such Owner.

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

Neither the Association, the Managing Agent, nor Developer shall in any way be considered insurers or guarantors of security within the Project, and neither the Association, the Managing Agent, Developer,

nor any successor Developer shall be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of security measures undertaken. All Owners and Occupants of any Unit, as applicable, acknowledge that the Association, the Managing Agent, Developer, or any successor Developer do not represent or warrant that any fire protection system or other security system designed or installed according to the guidelines established by Developer or the Association may not be compromised or circumvented, that any fire protection or burglar alarm systems or other security systems will prevent loss by fire, smoke, burglary, theft, hold-up, terrorism, or otherwise, nor that fire protection or burglar alarm systems or other security systems will in all cases provide the detection or protection for which the system was designed or intended. Each Owner and the Occupants of a Unit acknowledge and understand that the Association, its Board and committees, Developer, and any other successor to Developer are not an insurer, and each Owner and the Occupants of a Unit assume all risks for loss or damage to persons, Units and the contents of Units, and further acknowledges that the Association, the Managing Agent, Developer, and any successor Developer have made no representations or warranties nor has any Owner or the Occupants of a Unit relied upon any representation or warranty, expressed or implied, including any warranty of merchantability as to the fitness of any alarm systems or other security systems recommended or installed, or any security measure undertaken within the Project.

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

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

E. 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 not located within the tsunami evacuation zone.

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

1. NO REPRESENTATION REGARDING RENTALS. Each Residential Unit Owner specifically acknowledges and agrees that neither Developer, the Managing Agent, nor any of their respective agents or representatives have made any representations, warranties, guaranties, or other claims of any kind regarding any rental activity or rental programs that may be available from time to time to Residential Unit Owners. Developer,

and the Managing Agent expressly disclaim any representations, warranties, guaranties, or other claims of any kind regarding any rental programs.

2. **CONDOMINIUM LIVING.** Living in a multi-story, mixed-use condominium project entails living in very close proximity to other persons, with attendant limitations on solitude and privacy. Walls, floors, and ceilings have been designed to meet applicable building codes. However, Owners will hear noise from adjacent Units within the Project, including, but not limited to, noise from showers, bathtubs, sinks, toilets, washing machines, or other sources of running water and/or plumbing fixtures, and will smell odors from adjacent Units within the Project, including, but not limited to, cooking odors and cigarette smoke. Also, Owners may hear noise from such items as the swimming pool, vacuum cleaners, stereos or televisions, or from people running, walking, exercising, socializing, or enjoying the Recreational Amenities. Finally, Owners can expect to hear substantial levels of sound, music, noise, odors, vibrations, and other nuisances from retail and commercial establishments in the Project, and/or in the vicinity of the Project. Owners may also experience light entering the Units from commercial lighting in the vicinity and from street lights located in close proximity to the windows and doors of the Units.

3. **NOISE.** The Association and Developer have no control over the transmission of noise, light, or odors within the Project and/or from adjacent retail/entertainment, commercial, residential, and hotel developments, and the potential effect of such noise, light, or odors on Units within the Project. Each Owner and every other Person who has any interest in the Project or who has the right to use the Project or any part of it waives, releases, and discharges any rights, claims, or actions that such Person may have, now or in the future, against the Association and Developer, and its Representatives, licensees, successors, and assigns, and arising directly or indirectly out of or from such noise, light, or odors.

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

5. **GOLF COURSE HAZARDS.** Each Owner acknowledges, accepts, and assumes the risk of Golf Course Hazards, as defined below from the golf course located on the property adjacent to the Project ("**Golf Course**"). All Owners and Occupants disclaim any liability for personal injury or property damage resulting in any way, all or in part, from any of the items listed below. Each Owner, for the Owner and Owner's Occupants: (a) accepts such disclaimer; (b) assumes the risk of a trespass or nuisance created by or arising in connection with the Golf Course Hazards (collectively, the "**Assumed Risks**"); and (c) releases, waives, discharges, covenants not to sue, indemnifies, and agrees to hold harmless Developer, the Association, the owner of the Golf Course and each of their respective Representatives, successors, and assigns (collectively, the "**Released Parties**") from any and all liability to the Owner or Owner's Occupant for any losses, costs (including, but not limited to, attorneys' fees), claims, demands, suits, judgments, or other obligations arising out of or connected with any of the Assumed Risks, whether caused by the negligence of the Released Parties or otherwise. Notwithstanding the immediately preceding provision, however, in no event shall this Section relieve any golfer from any claims or liability for any Golf Course Hazard caused by such golfer. The term "**Golf Course Hazards**" shall include, but not be limited to, the following:

a. Owner of Units, particularly those Units abutting the Golf Course, acknowledge the inherent risk of errant golf balls and assume and accept such risk. Owners acknowledge and accept the risk that golfers may attempt to retrieve errant golf balls from Units and their appurtenant Limited Common Elements and each Owner agrees to release and waive any claims Owner may have as a result of such retrieval.

b. Owners of Units, including Owners of Units abutting the Golf Course, have no guarantee that their view over and across such facilities will be forever preserved without impairment or that the view from Owner's Unit will not be impaired. The owner of the Golf Course has no obligation to prune or not prune trees or other landscaping and may add, change, or reconfigure such facilities and other related facilities, including any trees, landscaping, tees, bunkers, fairways, and greens.

c. The owner of the Golf Course may use reclaimed and treated wastewater to irrigate any Golf Course facilities and related landscaping. Owners acknowledge and accept the use of such reclaimed and retreated wastewater.

d. Pesticides, fertilizers, and other chemicals approved for use on golf courses will be utilized in connection with the operation of the Golf Course and related landscaping. Owners acknowledge and accept the use of such pesticides, fertilizers, and chemicals.

e. Owners of Units, particularly Owners of those Units abutting any Golf Course facilities, may experience "overspray" from the irrigation system of the Golf Course, and such Owners acknowledge and accept such "overspray."

f. Owners of Units may be exposed to lights, noise, and/or activities resulting from use of the Golf Course. Owners acknowledge, accept, and assume the risk of such light, noise, and/or activities.

g. The owner of the Golf Course may sponsor and conduct golf tournaments on any Golf Course facilities and in connection with any such tournaments may erect temporary tents and other structures necessary or convenient to stage and operate such tournaments. Owners, particularly Owners of those Units in close proximity to the Golf Course, acknowledge, accept, and assume the risk of any noise, inconvenience, or other impact of any such golf tournaments.

h. Owners abutting the Golf Course acknowledge that the owner of the Golf Course may not permit access to any portion of the Golf Course facilities directly from any Unit or the Project. Such access is permitted only through the clubhouse and such other entry points as the owner of the Golf Course may from time to time specifically designate. Accordingly, each Owner abutting any portion of the Golf Course facilities agrees not to access the Golf Course facilities directly from the Owner's Unit or the Project and shall not permit any of the Owner's Occupants or any other person to do so.

i. The Golf Course facilities require daily maintenance, including mowing, irrigation, and grooming during early morning and evening hours, including, without limitation, the use of tractors, blowers, pumps, compressors, and utility vehicles. Owners, particularly Owner of Units in close proximity to the Golf Course facilities, will be exposed to the noise and other effects of such maintenance. Owners acknowledge, accept, and assume the risk of such noise and other effects.

6. **AGRICULTURAL LANDS.** Each Owner acknowledges and understands that the Project is located near or in the vicinity of lands zoned for agricultural use and which may be used for growing, harvesting, and processing of agricultural products and for farming, aquaculture, or livestock operations that may affect the use and enjoyment of the Project. Each Owner and every other Person who has any interest in the Project or who has the right to use the Project or any part of it waives, releases, and discharges any rights, claims, or actions that such Person may have, now or in the future, against the Association, Developer, and either of its Representatives, licensees, successors, and assigns, and arising directly or indirectly out of or from any odors, noise, dust, smoke, noxious vapors, and any other nuisances or hazards emanating from, or incidental to, any such agricultural operations or activities. Each Owner further acknowledges and understands that the Hawaii Right-to-Farm Act, Chapter 165 of the Hawaii Revised Statutes, limits the circumstances under which pre-existing farm activities may be deemed a nuisance.

7. **CONTINUING ACTIVITIES.** Each Owner understands and agrees that Developer is engaged in a sales and development program and that certain elements of the Project may not be completed, and completion of the Improvement of such items may be deferred by Developer at its sole and absolute option; provided normal access and parking facilities are provided for the Units conveyed to Owners. As an integrated

project consisting of a variety of uses that may be changed from time to time, alterations, construction, remodeling, repair, and changes of uses within portions of the Property may occur from time to time.

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

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

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

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

a. **Location of Units Near the Recreational Amenities.** Certain Residential Units may be located in close proximity to the Recreational Amenities. These Units may be exposed to greater noise and other nuisances than Units located farther away from the Recreational Amenities.

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

c. **Engineered Wood Flooring and Wood Veneer Cabinets in Units.** The Units may have engineered wood flooring installed in a portion of the Unit. Such floors tend to scratch easily. Further, wood flooring has special maintenance, care, and upkeep requirements that will need to be complied with by each of the Owners in the Project in order to maximize the enjoyment and useful life of the originally-installed engineered wood flooring in the Unit. The failure to comply with these special maintenance, care, and upkeep requirements will result in additional costs to the Owner and detract from the Owner's enjoyment of the Unit. The potential sound transmission through an engineered wood floor when compared to carpeting is greater, and each Owner, by accepting a deed to a Unit, will be deemed to have acknowledged and accepted that this condition may result in greater noise being heard from the Units above and adjacent to the Owner's Unit. Owners shall at all times comply with the requirements and provisions of the House Rules, as may be established from time to time by the Board, to minimize and soften the level of sound transmission through the engineered wood floor of each Unit. Certain kitchens may also have cabinets made from natural wood veneer, which is subject to color, texture, and surface variations and aging. The failure to comply with special maintenance, care, and upkeep requirements will result in additional costs to the Owner and detract from the Owner's enjoyment of the Unit.

XLII. DISPUTE RESOLUTION.

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

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

C. **MEDIATION.** If the Parties cannot resolve such Dispute by discussion pursuant to **Section B** of this Article, 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 the County.

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

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

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

4. **NO JUDICIAL INTERVENTION.** If a Party institutes litigation prior to observing the procedures set forth in **Sections B** and **C** of this Article ("**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** of this Article, 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 state courts located in the County or the federal court 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** of this Article.

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

XLIII. EXEMPTIONS FOR PERSONS WITH DISABILITIES.

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

XLIV. COMPLIANCE WITH COUNTY ZONING AND BUILDING LAWS.

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

XLV. DEVELOPER'S RIGHT TO CURE ALLEGED DEFECTS.

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

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

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

C. **RIGHT TO ENTER, INSPECT, REPAIR, AND/OR REPLACE.** Within the timeframe described below, or a reasonable time after the independent discovery of any Alleged Defect by Developer, as part of Developer's reservation of rights, Developer shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, any Unit, and/or any Improvements or other portion of the Project for the purposes of inspecting and, if deemed necessary by Developer, repairing and/or replacing such Alleged Defect. In conducting such inspection, repairs, and/or replacement, Developer shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

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

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

2. Developer has either

a. rejected Claimant's claim, or

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

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

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

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

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

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

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

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

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

duration of the Developer Control Period, that specified actions of the Association or Board, as described in a recorded instrument executed by Developer, be approved by Developer before they become effective.

XLVII. 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 hereof.

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

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

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

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

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

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

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

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

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

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

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

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

XLVIII. INVALIDITY AND CHANGES IN LAW.

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

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


XLIX. JOINDER OF FEE OWNERS; CONSENT TO DEVELOPER'S RESERVED RIGHTS; APPOINTMENT OF DEVELOPER AS ATTORNEY-IN-FACT.

In compliance with Section 514B-31 of the Act, Fee Owners hereby join in and affirmatively commit their respective fee simple interest in the Land to the terms and conditions of this Declaration in order to create a condominium property regime in accordance with the Act. Fee Owners and Developer hereby agree and acknowledge that Fee Owners shall be deemed the initial owner of all Units in the Project, and Fee Owners, its successors and assigns, shall from time to time, upon request by Developer, upon terms satisfactory to both Fee Owners and Developer, convey its interest in all or a portion of the Units to Developer. Fee Owners further hereby consent to the reserved rights of Developer set forth herein and to Developer's exercise of said reserved rights. Fee Owners hereby appoint Developer as Fee Owners' attorney-in-fact for purposes of exercising said reserved rights, all as more particularly detailed in **Article XXXVIII** of this Declaration.

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

KAUAI HALE, INC.,
a Delaware corporation

By: 
Name: Gary L. Pinkston
Its: President


"Developer"

5425 PAU A LAKA LLC,
a Hawaii limited liability company

By: 
Name: Gary L. Pinkston
Its: Manager

MP ELKO II, LLC
a Nevada limited liability company

By: MP FINANCIAL GROUP, LTD., a Nevada
corporation
Its: Manager

By: 
Name: Gary L. Pinkston
Its: President

"Fee Owners"

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF Marin

SS:

On December 27, 2021, before me, Debbie Jirasek, Notary Public
(here insert name and title of the officer)

personally appeared GARY L. PINKSTON, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signatures on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Debbie Jirasek

(Seal)

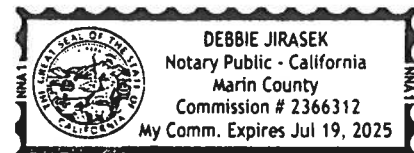


EXHIBIT "A"

-PARCEL FIRST:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 7642, Land Commission Award Number 2668:1 to Roman Catholic Mission) situate, lying and being at Koloa, District of Koloa, Island and County of Kauai, State of Hawaii, being LOT B, and thus bounded and described:

Beginning at the east corner of this lot, which being the southeast corner of Lot "A", a subdivision of portion of Exclusion 14, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PAA" being 2614.17 feet north and 5102.14 feet west, thence running by azimuths measured clockwise from true South:

1. 86° 02' 222.10 feet along Lot 168 of Land Court Application 956 as shown on Map 18 to a spike in Pahoehoe;
2. 77° 49' 563.80 feet along same to a pipe;
3. 194° 12' 329.00 feet along same to a pipe;
4. 284° 56' 14" 716.16 feet along Lot "A", a subdivision of portion of Exclusion 14 as shown on Map 4 of Land Court Application 956 to the point of beginning and containing an area of 2.50 acres, more or less.

Together with a non-exclusive easement for roadway and utility purposes, through, over, under, upon and across Lot 390, area 6.257 acres, as shown on Map 88, filed with Land Court Application No. 956, as granted by instrument dated September 30, 1987, recorded in Liber 21190, Page 377; provided, however, that if and when said easement shall be conveyed to or acquired by the County of Kauai or the State of Hawaii or any other governmental authority for use as a public highway, then and in such event, all easement rights granted therein shall forthwith terminate.

Said above described parcel of land(s) having been acquired as follows:

1. By 5425 PAU A LAKA LLC, a Hawaii limited liability company, as Tenant in Severalty, as to an undivided 67.8% interest, by WARRANTY DEED of YELLOW HALE, LLC, a Hawaii limited liability company, dated May 26, 2021, recorded as Document No. A-78220762.
2. By MP ELKO II, LLC, a Nevada limited liability company, as Tenant in Severalty, as to an undivided 32.2% interest, by WARRANTY DEED of 5425 PAU A LAKA LLC, a Hawaii limited liability company, dated August 10, 2021, recorded as Document No. A-78940056.

-PARCEL SECOND:-

All of that certain parcel of land situate at Koloa, District of Koloa, Island and County of Kauai, State of Hawaii, being the land(s) described in deregistered Transfer Certificate of Title No. 1,214,825 recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-79060878, described as follows:

LOT 88, area 25.386 acres, more or less, as shown on Map 6, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 164 of First Hawaiian Bank and Valdemar L'Orange Knudsen, Trustees for Eric A. Knudsen, and Bishop Trust Company, Limited, Trustee for Augustus F. Knudsen, which lot has been deregistered from the Land Court System pursuant to Hawaii Revised Statutes Section 501 Part II.

Together with a non-exclusive easement for roadway and utility purposes, through, over, under, upon and across Lot 390, area 6.257 acres, as shown on Map 88, filed with Land Court Application No. 956, as granted by instrument dated September 30, 1987, recorded in Liber 21190, Page 377; provided, however, that if and when said easement shall be conveyed to or acquired by the County of Kauai or the State of Hawaii or any other governmental authority for use as a public highway, then and in such event, all easement rights granted therein shall forthwith terminate.

Together with a non-exclusive and shared easement for sewer purposes upon, through, under, and across Lot 4 within Easement S-1, 10 feet wide, area 18,036 square feet, more particularly described in Exhibit "C" attached thereto and shown on map attached thereto as Exhibit "D", as granted by GRANT OF NON-EXCLUSIVE SHARED SEWER EASEMENT, dated June 1, 2021, filed as Land Court Document No. T-11474215, recorded as Document No. A-78220761, more particularly described therein; and subject to the terms and provisions contained therein.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : YELLOW HALE, LLC, a Hawaii limited liability company

GRANTEE : 5425 PAU A LAKA LLC, a Hawaii limited liability company,
as Tenant in Severalty

DATED : May 26, 2021

FILED : Land Court Document No. T-11474216

END OF EXHIBIT "A"

EXHIBIT "B"

**UNIT NUMBERS, UNIT TYPES, BUILDING NUMBERS, BUILDING TYPES,
BEDROOMS/BATHROOMS, APPROXIMATE NET LIVING AREAS, APPROXIMATE LANAI AREAS,
APPROXIMATE TOTAL AREAS, CLASS COMMON INTEREST, COMMON INTEREST**

Unit No.	Unit Type	Building No.	Building Type	Bed/ Bath	Approx. Net Living Area (SF)*	Approx. Lanai Area (SF)	Approx. Total Area (SF)	Common Interest %
111	B Reversed	1	A Reversed	3/3	1,410	131	1,541	0.366293%
112	B	1	A Reversed	3/3	1,410	131	1,541	0.366293%
113	A Reversed	1	A Reversed	2/2	1,170	131	1,301	0.303945%
121	B Reversed	1	A Reversed	3/3	1,410	131	1,541	0.366293%
122	B	1	A Reversed	3/3	1,410	131	1,541	0.366293%
123	A Reversed	1	A Reversed	2/2	1,170	131	1,301	0.303945%
131	B Reversed	1	A Reversed	3/3	1,410	131	1,541	0.366293%
132	B	1	A Reversed	3/3	1,410	131	1,541	0.366293%
133	A Reversed	1	A Reversed	2/2	1,170	131	1,301	0.303945%
211	A	2	B	2/2	1,170	131	1,301	0.303945%
212	C Reversed	2	B	4/3	1,553	131	1,684	0.403442%
213	C	2	B	4/3	1,553	131	1,684	0.403442%
221	A	2	B	2/2	1,170	131	1,301	0.303945%
222	C Reversed	2	B	4/3	1,553	131	1,684	0.403442%
223	C	2	B	4/3	1,553	131	1,684	0.403442%
231	A	2	B	2/2	1,170	131	1,301	0.303945%
232	C Reversed	2	B	4/3	1,553	131	1,684	0.403442%
233	C	2	B	4/3	1,553	131	1,684	0.403442%
311	B Reversed	3	A Reversed	3/3	1,410	131	1,541	0.366293%
312	B	3	A Reversed	3/3	1,410	131	1,541	0.366293%
313	A Reversed	3	A Reversed	2/2	1,170	131	1,301	0.303945%
321	B Reversed	3	A Reversed	3/3	1,410	131	1,541	0.366293%
322	B	3	A Reversed	3/3	1,410	131	1,541	0.366293%
323	A Reversed	3	A Reversed	2/2	1,170	131	1,301	0.303945%
331	B Reversed	3	A Reversed	3/3	1,410	131	1,541	0.366293%
332	B	3	A Reversed	3/3	1,410	131	1,541	0.366293%
333	A Reversed	3	A Reversed	2/2	1,170	131	1,301	0.303945%
411	A	4	B	2/2	1,170	131	1,301	0.303945%
412	C Reversed	4	B	4/3	1,553	131	1,684	0.403442%
413	C	4	B	4/3	1,553	131	1,684	0.403442%
421	A	4	B	2/2	1,170	131	1,301	0.303945%
422	C Reversed	4	B	4/3	1,553	131	1,684	0.403442%
423	C	4	B	4/3	1,553	131	1,684	0.403442%
431	A	4	B	2/2	1,170	131	1,301	0.303945%

Unit No.	Unit Type	Building No.	Building Type	Bed/Bath	Approx. Net Living Area (SF)*	Approx. Lanai Area (SF)	Approx. Total Area (SF)	Common Interest %
432	C Reversed	4	B	4/3	1,553	131	1,684	0.403442%
433	C	4	B	4/3	1,553	131	1,684	0.403442%
511	B Reversed	5	A Reversed	3/3	1,410	131	1,541	0.366293%
512	B	5	A Reversed	3/3	1,410	131	1,541	0.366293%
513	A Reversed	5	A Reversed	2/2	1,170	131	1,301	0.303945%
521	B Reversed	5	A Reversed	3/3	1,410	131	1,541	0.366293%
522	B	5	A Reversed	3/3	1,410	131	1,541	0.366293%
523	A Reversed	5	A Reversed	2/2	1,170	131	1,301	0.303945%
531	B Reversed	5	A Reversed	3/3	1,410	131	1,541	0.366293%
532	B	5	A Reversed	3/3	1,410	131	1,541	0.366293%
533	A Reversed	5	A Reversed	2/2	1,170	131	1,301	0.303945%
611	A	6	B	2/2	1,170	131	1,301	0.303945%
612	C Reversed	6	B	4/3	1,553	131	1,684	0.403442%
613	C	6	B	4/3	1,553	131	1,684	0.403442%
621	A	6	B	2/2	1,170	131	1,301	0.303945%
622	C Reversed	6	B	4/3	1,553	131	1,684	0.403442%
623	C	6	B	4/3	1,553	131	1,684	0.403442%
631	A	6	B	2/2	1,170	131	1,301	0.303945%
632	C Reversed	6	B	4/3	1,553	131	1,684	0.403442%
633	C	6	B	4/3	1,553	131	1,684	0.403442%
711	C Reversed	7	B Reversed	4/3	1,553	131	1,684	0.403442%
712	C	7	B Reversed	4/3	1,553	131	1,684	0.403442%
713	A Reversed	7	B Reversed	2/2	1,170	131	1,301	0.303945%
721	C Reversed	7	B Reversed	4/3	1,553	131	1,684	0.403442%
722	C	7	B Reversed	4/3	1,553	131	1,684	0.403442%
723	A Reversed	7	B Reversed	2/2	1,170	131	1,301	0.303945%
731	C Reversed	7	B Reversed	4/3	1,553	131	1,684	0.403442%
732	C	7	B Reversed	4/3	1,553	131	1,684	0.403442%
733	A Reversed	7	B Reversed	2/2	1,170	131	1,301	0.303945%
811	A	8	B	2/2	1,170	131	1,301	0.303945%
812	C Reversed	8	B	4/3	1,553	131	1,684	0.403442%
813	C	8	B	4/3	1,553	131	1,684	0.403442%
821	A	8	B	2/2	1,170	131	1,301	0.303945%
822	C Reversed	8	B	4/3	1,553	131	1,684	0.403442%
823	C	8	B	4/3	1,553	131	1,684	0.403442%
831	A	8	B	2/2	1,170	131	1,301	0.303945%
832	C Reversed	8	B	4/3	1,553	131	1,684	0.403442%
833	C	8	B	4/3	1,553	131	1,684	0.403442%

Unit No.	Unit Type	Building No.	Building Type	Bed/Bath	Approx. Net Living Area (SF)*	Approx. Lanai Area (SF)	Approx. Total Area (SF)	Common Interest %
911	C Reversed	9	B Reversed	4/3	1,553	131	1,684	0.403442%
912	C	9	B Reversed	4/3	1,553	131	1,684	0.403442%
913	A Reversed	9	B Reversed	2/2	1,170	131	1,301	0.303945%
921	C Reversed	9	B Reversed	4/3	1,553	131	1,684	0.403442%
922	C	9	B Reversed	4/3	1,553	131	1,684	0.403442%
923	A Reversed	9	B Reversed	2/2	1,170	131	1,301	0.303945%
931	C Reversed	9	B Reversed	4/3	1,553	131	1,684	0.403442%
932	C	9	B Reversed	4/3	1,553	131	1,684	0.403442%
933	A Reversed	9	B Reversed	2/2	1,170	131	1,301	0.303945%
1011	A	10	A	2/2	1,170	131	1,301	0.303945%
1012	B Reversed	10	A	3/3	1,410	131	1,541	0.366293%
1013	B	10	A	3/3	1,410	131	1,541	0.366293%
1021	A	10	A	2/2	1,170	131	1,301	0.303945%
1022	B Reversed	10	A	3/3	1,410	131	1,541	0.366293%
1023	B	10	A	3/3	1,410	131	1,541	0.366293%
1031	A	10	A	2/2	1,170	131	1,301	0.303945%
1032	B Reversed	10	A	3/3	1,410	131	1,541	0.366293%
1033	B	10	A	3/3	1,410	131	1,541	0.366293%
1111	A	11	B	2/2	1,170	131	1,301	0.303945%
1112	C Reversed	11	B	4/3	1,553	131	1,684	0.403442%
1113	C	11	B	4/3	1,553	131	1,684	0.403442%
1121	A	11	B	2/2	1,170	131	1,301	0.303945%
1122	C Reversed	11	B	4/3	1,553	131	1,684	0.403442%
1123	C	11	B	4/3	1,553	131	1,684	0.403442%
1131	A	11	B	2/2	1,170	131	1,301	0.303945%
1132	C Reversed	11	B	4/3	1,553	131	1,684	0.403442%
1133	C	11	B	4/3	1,553	131	1,684	0.403442%
1211	B Reversed	12	A Reversed	3/3	1,410	131	1,541	0.366293%
1212	B	12	A Reversed	3/3	1,410	131	1,541	0.366293%
1213	A Reversed	12	A Reversed	2/2	1,170	131	1,301	0.303945%
1221	B Reversed	12	A Reversed	3/3	1,410	131	1,541	0.366293%
1222	B	12	A Reversed	3/3	1,410	131	1,541	0.366293%
1223	A Reversed	12	A Reversed	2/2	1,170	131	1,301	0.303945%
1231	B Reversed	12	A Reversed	3/3	1,410	131	1,541	0.366293%
1232	B	12	A Reversed	3/3	1,410	131	1,541	0.366293%
1233	A Reversed	12	A Reversed	2/2	1,170	131	1,301	0.303945%
1311	A	13	B	2/2	1,170	131	1,301	0.303945%
1312	C Reversed	13	B	4/3	1,553	131	1,684	0.403442%

Unit No.	Unit Type	Building No.	Building Type	Bed/Bath	Approx. Net Living Area (SF)*	Approx. Lanai Area (SF)	Approx. Total Area (SF)	Common Interest %
1313	C	13	B	4/3	1,553	131	1,684	0.403442%
1321	A	13	B	2/2	1,170	131	1,301	0.303945%
1322	C Reversed	13	B	4/3	1,553	131	1,684	0.403442%
1323	C	13	B	4/3	1,553	131	1,684	0.403442%
1331	A	13	B	2/2	1,170	131	1,301	0.303945%
1332	C Reversed	13	B	4/3	1,553	131	1,684	0.403442%
1333	C	13	B	4/3	1,553	131	1,684	0.403442%
1411	A	14	C	2/2	1,170	131	1,301	0.303945%
1412	B Reversed	14	C	3/3	1,410	131	1,541	0.366293%
1413	B	14	C	3/3	1,410	131	1,541	0.366293%
1414	A Reversed	14	C	2/2	1,170	131	1,301	0.303945%
1421	A	14	C	2/2	1,170	131	1,301	0.303945%
1422	B Reversed	14	C	3/3	1,410	131	1,541	0.366293%
1423	B	14	C	3/3	1,410	131	1,541	0.366293%
1424	A Reversed	14	C	2/2	1,170	131	1,301	0.303945%
1431	A	14	C	2/2	1,170	131	1,301	0.303945%
1432	B Reversed	14	C	3/3	1,410	131	1,541	0.366293%
1433	B	14	C	3/3	1,410	131	1,541	0.366293%
1434	A Reversed	14	C	2/2	1,170	131	1,301	0.303945%
1511	A	15	C	2/2	1,170	131	1,301	0.303945%
1512	B Reversed	15	C	3/3	1,410	131	1,541	0.366293%
1513	B	15	C	3/3	1,410	131	1,541	0.366293%
1514	A Reversed	15	C	2/2	1,170	131	1,301	0.303945%
1521	A	15	C	2/2	1,170	131	1,301	0.303945%
1522	B Reversed	15	C	3/3	1,410	131	1,541	0.366293%
1523	B	15	C	3/3	1,410	131	1,541	0.366293%
1524	A Reversed	15	C	2/2	1,170	131	1,301	0.303945%
1531	A	15	C	2/2	1,170	131	1,301	0.303945%
1532	B Reversed	15	C	3/3	1,410	131	1,541	0.366293%
1533	B	15	C	3/3	1,410	131	1,541	0.366293%
1534	A Reversed	15	C	2/2	1,170	131	1,301	0.303945%
1611	B Reversed	16	A Reversed	3/3	1,410	131	1,541	0.366293%
1612	B	16	A Reversed	3/3	1,410	131	1,541	0.366293%
1613	A Reversed	16	A Reversed	2/2	1,170	131	1,301	0.303945%
1621	B Reversed	16	A Reversed	3/3	1,410	131	1,541	0.366293%
1622	B	16	A Reversed	3/3	1,410	131	1,541	0.366293%
1623	A Reversed	16	A Reversed	2/2	1,170	131	1,301	0.303945%
1631	B Reversed	16	A Reversed	3/3	1,410	131	1,541	0.366293%

Unit No.	Unit Type	Building No.	Building Type	Bed/Bath	Approx. Net Living Area (SF)*	Approx. Lanai Area (SF)	Approx. Total Area (SF)	Common Interest %
1632	B	16	A Reversed	3/3	1,410	131	1,541	0.366293%
1633	A Reversed	16	A Reversed	2/2	1,170	131	1,301	0.303945%
1711	A	17	B	2/2	1,170	131	1,301	0.303945%
1712	C Reversed	17	B	4/3	1,553	131	1,684	0.403442%
1713	C	17	B	4/3	1,553	131	1,684	0.403442%
1721	A	17	B	2/2	1,170	131	1,301	0.303945%
1722	C Reversed	17	B	4/3	1,553	131	1,684	0.403442%
1723	C	17	B	4/3	1,553	131	1,684	0.403442%
1731	A	17	B	2/2	1,170	131	1,301	0.303945%
1732	C Reversed	17	B	4/3	1,553	131	1,684	0.403442%
1733	C	17	B	4/3	1,553	131	1,684	0.403442%
1811	A	18	B	2/2	1,170	131	1,301	0.303945%
1812	C Reversed	18	B	4/3	1,553	131	1,684	0.403442%
1813	C	18	B	4/3	1,553	131	1,684	0.403442%
1821	A	18	B	2/2	1,170	131	1,301	0.303945%
1822	C Reversed	18	B	4/3	1,553	131	1,684	0.403442%
1823	C	18	B	4/3	1,553	131	1,684	0.403442%
1831	A	18	B	2/2	1,170	131	1,301	0.303945%
1832	C Reversed	18	B	4/3	1,553	131	1,684	0.403442%
1833	C	18	B	4/3	1,553	131	1,684	0.403442%
1911	A	19	B	2/2	1,170	131	1,301	0.303945%
1912	C Reversed	19	B	4/3	1,553	131	1,684	0.403442%
1913	C	19	B	4/3	1,553	131	1,684	0.403442%
1921	A	19	B	2/2	1,170	131	1,301	0.303945%
1922	C Reversed	19	B	4/3	1,553	131	1,684	0.403442%
1923	C	19	B	4/3	1,553	131	1,684	0.403442%
1931	A	19	B	2/2	1,170	131	1,301	0.303945%
1932	C Reversed	19	B	4/3	1,553	131	1,684	0.403442%
1933	C	19	B	4/3	1,553	131	1,684	0.403442%
2011	A	20	A	2/2	1,170	131	1,301	0.303945%
2012	B Reversed	20	A	3/3	1,410	131	1,541	0.366293%
2013	B	20	A	3/3	1,410	131	1,541	0.366293%
2021	A	20	A	2/2	1,170	131	1,301	0.303945%
2022	B Reversed	20	A	3/3	1,410	131	1,541	0.366293%
2023	B	20	A	3/3	1,410	131	1,541	0.366293%
2031	A	20	A	2/2	1,170	131	1,301	0.303945%
2032	B Reversed	20	A	3/3	1,410	131	1,541	0.366293%
2033	B	20	A	3/3	1,410	131	1,541	0.366293%

Unit No.	Unit Type	Building No.	Building Type	Bed/Bath	Approx. Net Living Area (SF)*	Approx. Lanai Area (SF)	Approx. Total Area (SF)	Common Interest %
2111	A	21	B	2/2	1,170	131	1,301	0.303945%
2112	C Reversed	21	B	4/3	1,553	131	1,684	0.403442%
2113	C	21	B	4/3	1,553	131	1,684	0.403442%
2121	A	21	B	2/2	1,170	131	1,301	0.303945%
2122	C Reversed	21	B	4/3	1,553	131	1,684	0.403442%
2123	C	21	B	4/3	1,553	131	1,684	0.403442%
2131	A	21	B	2/2	1,170	131	1,301	0.303945%
2132	C Reversed	21	B	4/3	1,553	131	1,684	0.403442%
2133	C	21	B	4/3	1,553	131	1,684	0.403442%
2211	A	22	B	2/2	1,170	131	1,301	0.303945%
2212	C Reversed	22	B	4/3	1,553	131	1,684	0.403442%
2213	C	22	B	4/3	1,553	131	1,684	0.403442%
2221	A	22	B	2/2	1,170	131	1,301	0.303945%
2222	C Reversed	22	B	4/3	1,553	131	1,684	0.403442%
2223	C	22	B	4/3	1,553	131	1,684	0.403442%
2231	A	22	B	2/2	1,170	131	1,301	0.303945%
2232	C Reversed	22	B	4/3	1,553	131	1,684	0.403442%
2233	C	22	B	4/3	1,553	131	1,684	0.403442%
2311	A	23	B	2/2	1,170	131	1,301	0.303945%
2312	C Reversed	23	B	4/3	1,553	131	1,684	0.403442%
2313	C	23	B	4/3	1,553	131	1,684	0.403442%
2321	A	23	B	2/2	1,170	131	1,301	0.303945%
2322	C Reversed	23	B	4/3	1,553	131	1,684	0.403442%
2323	C	23	B	4/3	1,553	131	1,684	0.403442%
2331	A	23	B	2/2	1,170	131	1,301	0.303945%
2332	C Reversed	23	B	4/3	1,553	131	1,684	0.403442%
2333	C	23	B	4/3	1,553	131	1,684	0.403442%
2411	A	24	A	2/2	1,170	131	1,301	0.303945%
2412	B Reversed	24	A	3/3	1,410	131	1,541	0.366293%
2413	B	24	A	3/3	1,410	131	1,541	0.366293%
2421	A	24	A	2/2	1,170	131	1,301	0.303945%
2422	B Reversed	24	A	3/3	1,410	131	1,541	0.366293%
2423	B	24	A	3/3	1,410	131	1,541	0.366293%
2431	A	24	A	2/2	1,170	131	1,301	0.303945%
2432	B Reversed	24	A	3/3	1,410	131	1,541	0.366293%
2433	B	24	A	3/3	1,410	131	1,541	0.366293%
2511	A	25	B	2/2	1,170	131	1,301	0.303945%
2512	C Reversed	25	B	4/3	1,553	131	1,684	0.403442%

Unit No.	Unit Type	Building No.	Building Type	Bed/Bath	Approx. Net Living Area (SF)*	Approx. Lanai Area (SF)	Approx. Total Area (SF)	Common Interest %
2513	C	25	B	4/3	1,553	131	1,684	0.403442%
2521	A	25	B	2/2	1,170	131	1,301	0.303945%
2522	C Reversed	25	B	4/3	1,553	131	1,684	0.403442%
2523	C	25	B	4/3	1,553	131	1,684	0.403442%
2531	A	25	B	2/2	1,170	131	1,301	0.303945%
2532	C Reversed	25	B	4/3	1,553	131	1,684	0.403442%
2533	C	25	B	4/3	1,553	131	1,684	0.403442%
2611	B Reversed	26	A Reversed	3/3	1,410	131	1,541	0.366293%
2612	B	26	A Reversed	3/3	1,410	131	1,541	0.366293%
2613	A Reversed	26	A Reversed	2/2	1,170	131	1,301	0.303945%
2621	B Reversed	26	A Reversed	3/3	1,410	131	1,541	0.366293%
2622	B	26	A Reversed	3/3	1,410	131	1,541	0.366293%
2623	A Reversed	26	A Reversed	2/2	1,170	131	1,301	0.303945%
2631	B Reversed	26	A Reversed	3/3	1,410	131	1,541	0.366293%
2632	B	26	A Reversed	3/3	1,410	131	1,541	0.366293%
2633	A Reversed	26	A Reversed	2/2	1,170	131	1,301	0.303945%
2711	A	27	A	2/2	1,170	131	1,301	0.303945%
2712	B Reversed	27	A	3/3	1,410	131	1,541	0.366293%
2713	B	27	A	3/3	1,410	131	1,541	0.366293%
2721	A	27	A	2/2	1,170	131	1,301	0.303945%
2722	B Reversed	27	A	3/3	1,410	131	1,541	0.366293%
2723	B	27	A	3/3	1,410	131	1,541	0.366293%
2731	A	27	A	2/2	1,170	131	1,301	0.303945%
2732	B Reversed	27	A	3/3	1,410	131	1,541	0.366293%
2733	B	27	A	3/3	1,410	131	1,541	0.366293%
2811	B Reversed	28	A Reversed	3/3	1,410	131	1,541	0.366293%
2812	B	28	A Reversed	3/3	1,410	131	1,541	0.366293%
2813	A Reversed	28	A Reversed	2/2	1,170	131	1,301	0.303945%
2821	B Reversed	28	A Reversed	3/3	1,410	131	1,541	0.366293%
2822	B	28	A Reversed	3/3	1,410	131	1,541	0.366293%
2823	A Reversed	28	A Reversed	2/2	1,170	131	1,301	0.303945%
2831	B Reversed	28	A Reversed	3/3	1,410	131	1,541	0.366293%
2832	B	28	A Reversed	3/3	1,410	131	1,541	0.366293%
2833	A Reversed	28	A Reversed	2/2	1,170	131	1,301	0.303945%
2911	A	29	C	2/2	1,170	131	1,301	0.303945%
2912	B Reversed	29	C	3/3	1,410	131	1,541	0.366293%
2913	B	29	C	3/3	1,410	131	1,541	0.366293%
2914	A Reversed	29	C	2/2	1,170	131	1,301	0.303945%

Unit No.	Unit Type	Building No.	Building Type	Bed/Bath	Approx. Net Living Area (SF)*	Approx. Lanai Area (SF)	Approx. Total Area (SF)	Common Interest %
2921	A	29	C	2/2	1,170	131	1,301	0.303945%
2922	B Reversed	29	C	3/3	1,410	131	1,541	0.366293%
2923	B	29	C	3/3	1,410	131	1,541	0.366293%
2924	A Reversed	29	C	2/2	1,170	131	1,301	0.303945%
2931	A	29	C	2/2	1,170	131	1,301	0.303945%
2932	B Reversed	29	C	3/3	1,410	131	1,541	0.366293%
2933	B	29	C	3/3	1,410	131	1,541	0.366293%
2934	A Reversed	29	C	2/2	1,170	131	1,301	0.303945%
3011	A	30	B	2/2	1,170	131	1,301	0.303945%
3012	C Reversed	30	B	4/3	1,553	131	1,684	0.403442%
3013	C	30	B	4/3	1,553	131	1,684	0.403442%
3021	A	30	B	2/2	1,170	131	1,301	0.303945%
3022	C Reversed	30	B	4/3	1,553	131	1,684	0.403442%
3023	C	30	B	4/3	1,553	131	1,684	0.403442%
3031	A	30	B	2/2	1,170	131	1,301	0.303945%
3032	C Reversed	30	B	4/3	1,553	131	1,684	0.403442%
3033	C	30	B	4/3	1,553	131	1,684	0.403442%
Commercial Unit 1					1,580		1,580	0.410401%
Total					384,938			100.000000%

A. RESIDENTIAL UNIT CLASS COMMON INTEREST

Unit Number	Approximate Net Living Area (SF)	Residential Unit Class Common Interest (%)
111	1410	0.367802%
112	1410	0.367802%
113	1170	0.305198%
121	1410	0.367802%
122	1410	0.367802%
123	1170	0.305198%
131	1410	0.367802%
132	1410	0.367802%
133	1170	0.305198%
211	1170	0.305198%
212	1553	0.405104%
213	1553	0.405104%
221	1170	0.305198%
222	1553	0.405104%

Unit Number	Approximate Net Living Area (SF)	Residential Unit Class Common Interest (%)
223	1553	0.405104%
231	1170	0.305198%
232	1553	0.405104%
233	1553	0.405104%
311	1410	0.367802%
312	1410	0.367802%
313	1170	0.305198%
321	1410	0.367802%
322	1410	0.367802%
323	1170	0.305198%
331	1410	0.367802%
332	1410	0.367802%
333	1170	0.305198%
411	1170	0.305198%
412	1553	0.405104%
413	1553	0.405104%
421	1170	0.305198%
422	1553	0.405104%
423	1553	0.405104%
431	1170	0.305198%
432	1553	0.405104%
433	1553	0.405104%
511	1410	0.367802%
512	1410	0.367802%
513	1170	0.305198%
521	1410	0.367802%
522	1410	0.367802%
523	1170	0.305198%
531	1410	0.367802%
532	1410	0.367802%
533	1170	0.305198%
611	1170	0.305198%
612	1553	0.405104%
613	1553	0.405104%
621	1170	0.305198%
622	1553	0.405104%
623	1553	0.405104%

Unit Number	Approximate Net Living Area (SF)	Residential Unit Class Common Interest (%)
631	1170	0.305198%
632	1553	0.405104%
633	1553	0.405104%
711	1553	0.405104%
712	1553	0.405104%
713	1170	0.305198%
721	1553	0.405104%
722	1553	0.405104%
723	1170	0.305198%
731	1553	0.405104%
732	1553	0.405104%
733	1170	0.305198%
811	1170	0.305198%
812	1553	0.405104%
813	1553	0.405104%
821	1170	0.305198%
822	1553	0.405104%
823	1553	0.405104%
831	1170	0.305198%
832	1553	0.405104%
833	1553	0.405150%
911	1,553	0.405104%
912	1,553	0.405104%
913	1,170	0.305198%
921	1,553	0.405104%
922	1,553	0.405104%
923	1,170	0.305198%
931	1,553	0.405104%
932	1,553	0.405104%
933	1,170	0.305198%
1011	1,170	0.305198%
1012	1,410	0.367802%
1013	1,410	0.367802%
1021	1,170	0.305198%
1022	1,410	0.367802%
1023	1,410	0.367802%
1031	1,170	0.305198%

Unit Number	Approximate Net Living Area (SF)	Residential Unit Class Common Interest (%)
1032	1,410	0.367802%
1033	1,410	0.367802%
1111	1,170	0.305198%
1112	1,553	0.405104%
1113	1,553	0.405104%
1121	1,170	0.305198%
1122	1,553	0.405104%
1123	1,553	0.405104%
1131	1,170	0.305198%
1132	1,553	0.405104%
1133	1,553	0.405104%
1211	1,410	0.367802%
1212	1,410	0.367802%
1213	1,170	0.305198%
1221	1,410	0.367802%
1222	1,410	0.367802%
1223	1,170	0.305198%
1231	1,410	0.367802%
1232	1,410	0.367802%
1233	1,170	0.305198%
1311	1,170	0.305198%
1312	1,553	0.405104%
1313	1,553	0.405104%
1321	1,170	0.305198%
1322	1,553	0.405104%
1323	1,553	0.405104%
1331	1,170	0.305198%
1332	1,553	0.405104%
1333	1,553	0.405104%
1411	1,170	0.305198%
1412	1,410	0.367802%
1413	1,410	0.367802%
1414	1,170	0.305198%
1421	1,170	0.305198%
1422	1,410	0.367802%
1423	1,410	0.367802%
1424	1,170	0.305198%

Unit Number	Approximate Net Living Area (SF)	Residential Unit Class Common Interest (%)
1431	1,170	0.305198%
1432	1,410	0.367802%
1433	1,410	0.367802%
1434	1,170	0.305198%
1511	1,170	0.305198%
1512	1,410	0.367802%
1513	1,410	0.367802%
1514	1,170	0.305198%
1521	1,170	0.305198%
1522	1,410	0.367802%
1523	1,410	0.367802%
1524	1,170	0.305198%
1531	1,170	0.305198%
1532	1,410	0.367802%
1533	1,410	0.367802%
1534	1,170	0.305198%
1611	1,410	0.367802%
1612	1,410	0.367802%
1613	1,170	0.305198%
1621	1,410	0.367802%
1622	1,410	0.367802%
1623	1,170	0.305198%
1631	1,410	0.367802%
1632	1,410	0.367802%
1633	1,170	0.305198%
1711	1,170	0.305198%
1712	1,553	0.405104%
1713	1,553	0.405104%
1721	1,170	0.305198%
1722	1,553	0.405104%
1723	1,553	0.405104%
1731	1,170	0.305198%
1732	1,553	0.405104%
1733	1,553	0.405104%
1811	1,170	0.305198%
1812	1,553	0.405104%
1813	1,553	0.405104%

Unit Number	Approximate Net Living Area (SF)	Residential Unit Class Common Interest (%)
1821	1,170	0.305198%
1822	1,553	0.405104%
1823	1,553	0.405104%
1831	1,170	0.305198%
1832	1,553	0.405104%
1833	1,553	0.405104%
1911	1,170	0.305198%
1912	1,553	0.405104%
1913	1,553	0.405104%
1921	1,170	0.305198%
1922	1,553	0.405104%
1923	1,553	0.405104%
1931	1,170	0.305198%
1932	1,553	0.405104%
1933	1,553	0.405104%
2011	1,170	0.305198%
2012	1,410	0.367802%
2013	1,410	0.367802%
2021	1,170	0.305198%
2022	1,410	0.367802%
2023	1,410	0.367802%
2031	1,170	0.305198%
2032	1,410	0.367802%
2033	1,410	0.367802%
2111	1,170	0.305198%
2112	1,553	0.405104%
2113	1,553	0.405104%
2121	1,170	0.305198%
2122	1,553	0.405104%
2123	1,553	0.405104%
2131	1,170	0.305198%
2132	1,553	0.405104%
2133	1,553	0.405104%
2211	1,170	0.305198%
2212	1,553	0.405104%
2213	1,553	0.405104%
2221	1,170	0.305198%

Unit Number	Approximate Net Living Area (SF)	Residential Unit Class Common Interest (%)
2222	1,553	0.405104%
2223	1,553	0.405104%
2231	1,170	0.305198%
2232	1,553	0.405104%
2233	1,553	0.405104%
2311	1,170	0.305198%
2312	1,553	0.405104%
2313	1,553	0.405104%
2321	1,170	0.305198%
2322	1,553	0.405104%
2323	1,553	0.405104%
2331	1,170	0.305198%
2332	1,553	0.405104%
2333	1,553	0.405104%
2411	1,170	0.305198%
2412	1,410	0.367802%
2413	1,410	0.367802%
2421	1,170	0.305198%
2422	1,410	0.367802%
2423	1,410	0.367802%
2431	1,170	0.305198%
2432	1,410	0.367802%
2433	1,410	0.367802%
2511	1,170	0.305198%
2512	1,553	0.405104%
2513	1,553	0.405104%
2521	1,170	0.305198%
2522	1,553	0.405104%
2523	1,553	0.405104%
2531	1,170	0.305198%
2532	1,553	0.405104%
2533	1,553	0.405104%
2611	1,410	0.367802%
2612	1,410	0.367802%
2613	1,170	0.305198%
2621	1,410	0.367802%
2622	1,410	0.367802%

Unit Number	Approximate Net Living Area (SF)	Residential Unit Class Common Interest (%)
2623	1,170	0.305198%
2631	1,410	0.367802%
2632	1,410	0.367802%
2633	1,170	0.305198%
2711	1,170	0.305198%
2712	1,410	0.367802%
2713	1,410	0.367802%
2721	1,170	0.305198%
2722	1,410	0.367802%
2723	1,410	0.367802%
2731	1,170	0.305198%
2732	1,410	0.367802%
2733	1,410	0.367802%
2811	1,410	0.367802%
2812	1,410	0.367802%
2813	1,170	0.305198%
2821	1,410	0.367802%
2822	1,410	0.367802%
2823	1,170	0.305198%
2831	1,410	0.367802%
2832	1,410	0.367802%
2833	1,170	0.305198%
2911	1,170	0.305198%
2912	1,410	0.367802%
2913	1,410	0.367802%
2914	1,170	0.305198%
2921	1,170	0.305198%
2922	1,410	0.367802%
2923	1,410	0.367802%
2924	1,170	0.305198%
2931	1,170	0.305198%
2932	1,410	0.367802%
2933	1,410	0.367802%
2934	1,170	0.305198%
3011	1,170	0.305198%
3012	1,553	0.405104%
3013	1,553	0.405104%

Unit Number	Approximate Net Living Area (SF)	Residential Unit Class Common Interest (%)
3021	1,170	0.305198%
3022	1,553	0.405104%
3023	1,553	0.405104%
3031	1,170	0.305198%
3032	1,553	0.405104%
3033	1,553	0.405104%
Total	383,358	100.000000%

B. COMMERCIAL UNIT CLASS COMMON INTEREST

Unit Number	Approximate Net Living Area (SF)	Commercial Unit Class Common Interest (%)
Commercial Unit 1	1,580	100.000000%
Total	1,580	100.000000%

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

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

C. COMMON INTEREST. The Common Interest for each of the two hundred eighty (280) Units (including the Residential Units and the Commercial Unit) in the Project is calculated based on dividing the approximate net living area of the Unit by the total net living area of all the Units in the Project. In order to permit the Common Interest to equal one hundred percent (100%), the Common Interest attributable to the Commercial Unit was decreased by 0.000055%.

D. RESIDENTIAL UNIT CLASS COMMON INTEREST AND COMMERCIAL UNIT CLASS COMMON INTEREST. The Residential Unit Class Common Interest is calculated by dividing the approximate net living area of the Residential Unit by the total net living area of all Residential Units in the Project. In order to permit the Residential Unit Class Common Interest to equal one hundred percent (100%), the Residential Unit Class Common Interest attributable to Unit 833 was increased by 0.000046%. The Commercial Unit Class currently only consists of Commercial Unit 1, which has a Commercial Unit Class Common Interest of one hundred percent (100%).

E. PARKING STALLS. The Condominium Map depicts the location, type, and number of parking stalls in the Project. All parking stalls in the Project are designated as Residential Unit Class Limited Common Elements.

END OF EXHIBIT "B"

Sources of Funds	
Gary Pinkston Equity	\$ 25,020,989
American Savings Bank A&D Loan	\$ 12,967,635
American Savings Bank Revolving Line of Credit	\$ 745,248
Total Sources of Funds	\$ 38,733,872
Uses of Funds	
Land Acquisition	\$ 17,000,000
Hard Costs	
Vertical Construction	\$ 517,079
Civil Construction	\$ 2,641,824
Clubhouse and Pool	\$ -
Site Work - Phase 1 - 1	\$ 4,827,582
Site Work - Phase 1 - 2	\$ -
Offsite/Paving/Landscaping	\$ 108,107
Roundabout/Permits	\$ -
Contingency	\$ -
Equipment Rental	\$ 103,864
Insurance and Bonds	\$ 1,444,393
Project Management	\$ 467,400
Total Hard Costs	\$ 10,110,249
Soft Costs	
Architect / Engineering	\$ 3,706,398
Legal	\$ 831,586
Marketing/Other	\$ 1,398,149
Property Taxes	\$ 205,012
Interest / Financing Costs	\$ 983,489
Loan Origination Fee/Closing Costs	\$ 63,894
Easements and Assesments	\$ 1,581,180
Permits/Fees	\$ 145,601
Will Serve Letters	\$ 1,274,113
Security	\$ 791,700
Commissions	\$ 642,500

EXHIBIT "G"

ESAKI SURVEYING & MAPPING, INC

1610 HALEUKANA STREET - LIHUE, KAUA'I, HAWAI'I 96766

(808) 246-0625 ESM@ESAKIMAP.COM

June 1, 2023

Ms. Kanani Fu, Vice President of Development
Meridian Pacific, Ltd.
PO Box 459
Koloa, HI 96756

Subject: **Proposal for
Professional Engineering Services for Kauanoe O Koloa
Master Drainage Plan
TMK: (4) 2-8-014:032**

Esaki Surveying and Mapping, Inc. (ESM) is pleased to submit its proposal to provide professional engineering services for a master drainage plan for all lands mauka of Poipu Road rezoned under Moana Corporation Ordinance No. PM-31-79, located in the Koloa District on the island of Kauai. The drainage master plan is meant to satisfy condition 26 of the Project Development Use Permit P.D. U-2006-25; Use Permit U-2006-26; Class IV Zoning Permit Z-IV- 2006-27.

Scope of Work

The following Scope of Work will be performed by ESM and is the basis for this fee proposal:

- A. **Project Management:** ESM will coordinate meetings with Meridian Pacific, Ltd. and/or County of Kauai agencies. ESM will also attend meetings with landowners and/or developers of lands mauka of Poipu Road rezoned under Moana Corporation Ordinance No. PM-31-79. This proposal is based on a maximum of 5 meetings.
- B. **Data Collection:** ESM will perform research to obtain drainage reports, as-built plans, and conceptual development plans for the lands mauka of Poipu Road rezoned under Moana Corporation Ordinance No. PM-31-79. The Client will assist ESM in obtaining previous studies, analyses, models, and calculations. ESM will review these previous studies to gain an understanding of the drainage improvements implemented by the developments.
- C. **Analysis and Calculations:** After review of all previous studies and as-builts, ESM utilize existing zoning plans and information to use as a basis for the drainage analysis. The existing drainage reports will be utilized to develop a comprehensive master drainage plan. ESM will perform analysis and calculations in accordance with the County of Kauai Drainage Standards.
- D. **Report and Summary:** ESM will prepare a master drainage report based on the analysis and calculations performed. ESM will summarize the results of the analysis along with all drainage improvements completed and planned by the developments.

EXHIBIT "H"

Compensation

In accordance with the abovementioned Scope of Work, ESM proposes a time and material not to exceed (NTE) amount of \$200,000 based on our standard hourly rates:

Principal Engineer	\$182.00
Project Engineer	\$125.00
Civil Engineer	\$97.00
CADD Operator	\$86.00

The above hourly rates are inclusive of labor, overhead, and profit. State of Hawaii General Excise Tax is not included in these rates and will be added separately.

The NTE amount shown above is a budgetary estimate of our costs, inclusive of reimbursable expenses, to complete this scope of work. Should there be unexpected labor/expenses or changes to the scope of work that were not considered in this fee proposal, an increase to the NTE amount may be required. ESM will monitor the balance of the NTE amount and if an increase is necessary, ESM will then inform the Client in writing.

The Client shall reimburse ESM for expenses incurred to complete the scope of work. Reimbursable expenses include travel (car), reproduction, or other miscellaneous expenses. Receipts will be attached to invoices for reimbursement by the client.

Other Matters

- A. Proposal Conditions. This proposal will be held firm for 30 days from date of this letter, and includes all labor, materials, supplies, equipment, overhead, profit and taxes required to complete the work.
- B. Termination of Work. It is mutually agreed that either party may terminate services by providing seven (7) days written notice to the other at any time for any substantial failure to perform by the other party or by mutual agreement. Within a reasonable time after termination not to exceed 30 days, ESM shall be paid for work due to date of termination according to the work completed.
- C. Periodic Billings. During the progress of the work, payment shall be made on a time and material basis. The number of hours expended on particular tasks will be reflected on our invoices according to the labor categories shown herein.
- D. Service Charge. A service charge of 1.5 percent per month will be applied on any unpaid balance remaining after 30 calendar days of original billing date.

- E. Insurance. ESM shall secure and maintain such insurance as will protect it from claims under the Workmen's Compensation Act and from claims for bodily injury, death or property damage which may arise from the performance of its services under this agreement.
- F. Professional Liability Insurance. ESM shall secure and maintain insurance covering it and its employees or agents for liability arising out of errors, omissions or negligence in the performance of services under this agreement.
- G. Successors and Assigns. Client and ESM each binds itself and its partners, successors, executors, administrators and assigns to the other party of this agreement and to the partners, successors, executors, administrators and assigns such other party, in respect to all covenants of this agreement; except as above, neither Client nor ESM shall assign, sublet, or transfer its interest in this agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

We appreciate the opportunity to work with Meridian Pacific, Ltd. on this important project. If this fee proposal is acceptable, please sign in the space provided below and return one copy of the executed proposal for our files. Your execution of this proposal will authorize ESM to proceed with the work. If you have any questions regarding this proposal, please call our project engineer John Holwegner, P.E. or me at (808) 246-0625.

Very truly yours,



Wayne Wada, P. E.

ACCEPTED AND AUTHORIZED
Meridian Pacific, Ltd.

By: 
Its: VP Development

Date: 06/05/2023

cc: File



AMERICAN
Savings Bank

PO Box 2300
Honolulu, HI 96804-2300

To: Mr. Gary Pinkston
From: Kiley Nakamura, Vice President, American Savings Bank
Date: September 25, 2023
Subject: MP Elk Grove Construction Loan Facility Loan #2200000478 & 2200000479.

Dear Mr. Pinkston,

This letter is to advise you of the current status of the above-referenced loan facility.

The existing loan facility (original loan) is currently matured as of 9/10/23. An extension is being processed to bring the new maturity date to 10/25/23. No further advances will be allowed during this extension period unless building permits are received from the County of Kauai.

Furthermore, building permits must be received from the County of Kauai before approval of the new construction facility that you have requested to refinance the original loan.

If you have any questions or concerns, please feel free to contact me on my mobile at 808-372-9234. Thank you.

Sincerely,

Kiley Nakamura
Vice President
Commercial Real Estate Loan Division

Kiley Nakamura, VP
Commercial Real Estate Loans
knakamura@asbhawaii.com



Member FDIC

EXHIBIT "I"

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI'I

5425 PAU A LAKA LLC, a Hawai'i limited
liability company, MP ELKO II, LLC, a
Nevada limited liability company,

Plaintiffs,

vs.

COUNTY OF KAUA'I,

Defendant.

CIVIL NO. 5CCV-23-000087
(Declaratory Judgment)

NOTICE OF HEARING

NOTICE OF HEARING FOR MOTION FOR SUMMARY JUDGMENT

To: Matthew M. Bracken, Esq.
County Attorney
Chris Donahoe
Deputy County Attorneys
Office of the County Attorney
4444 Rice Street, Suite 220
Lihu'e, Hawaii 96766

Attorneys for Defendant
COUNTY OF KAUA'I,

NOTICE IS HEREBY GIVEN that Plaintiffs 5425 PAU A LAKA LLC, a Hawai'i limited liability company, MP ELKO II, LLC'S Motion for Summary Judgment shall come on for hearing before the Honorable Randal Valenciano, Judge of the above-entitled court, in his courtroom at Pu'u honua Kaulike Building, 3970 Ka'ana Street, Lihu'e, Kauai, Hawai'i, on Tuesday, October 24, 2023 at 1:00 p.m., or as soon as counsel may be heard.

DATED: Līhu‘e, Hawai‘i, September 26, 2023.

/s/ Laurel Loo
LAUREL LOO
DAVID J. MINKIN
JORDAN K. INAFUKU
SARA M. HAYDEN

Attorney for Plaintiffs
5425 PAU A LAKA LLC and
MP ELKO II, LLC

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI‘I

5425 PAU A LAKA LLC, a Hawai‘i limited
liability company, MP ELKO II, LLC, a
Nevada limited liability company,

Plaintiffs,

vs.

COUNTY OF KAUA‘I,

Defendant.

CIVIL NO. 5CCV-23-000087
(Declaratory Judgment)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was duly served upon
the following parties via the Judiciary Electronic Filing and Service System (JEFS) at their last
known email address:

MATTHEW M. BRACKEN
CHRIS DONAHOE
4444 Rice Street, Suite 220
Līhu‘e, Hawai‘i 96766
Email: cdonahoe@kauai.gov

Attorneys for Defendant
COUNTY OF KAUA‘I,

DATED: Līhu‘e, Hawai‘i, September 26, 2023.

/s/ Laurel Loo
LAUREL LOO
DAVID J. MINKIN
JORDAN K. INAFUKU
SARA M. HAYDEN

Attorney for Plaintiffs
5425 PAU A LAKA LLC and
MP ELKO II, LLC