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DECLARATION OF CONDOMINIUM PROPERTY REGIME

OF

KA'ULU BY GENTRY IV

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**DECLARATION OF CONDOMINIUM PROPERTY REGIME  
OF KA'ULU BY GENTRY IV**

**RECITALS:**

**A. GENTRY KALAELOA, LLC**, a Hawaii limited liability company ("**Declarant**"), the address of which is 733 Bishop Street, Suite 1400, Honolulu, Hawaii 96813, owns in fee simple that certain real property situate at Honouliuli, Ewa, City and County of Honolulu, State of Hawaii, more particularly described in **Exhibit "A"** attached to this Declaration (as defined below) and incorporated into this Declaration by this reference (the "**Land**" or the "**Property**").

**B.** Declarant has undertaken to improve the Land by in accordance with plans filed in the Bureau of Conveyances of the State of Hawaii (the "**Bureau**") as Condominium Map No. 6794, as it may be amended from time to time (the "**Condominium Map**").

**DECLARATION:**

**A. SUBMISSION TO THE CONDOMINIUM PROPERTY REGIME.**

Declarant hereby submits all of its right, title and interest in and to the Land and all improvements now located or hereafter constructed on the Land to a condominium property regime as established by the Act (as defined below). Declarant hereby declares that the Land and improvements are owned and will be owned, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to the declarations, restrictions, covenants, conditions and easements set forth in this Declaration and the Bylaws (as defined below), which declarations, restrictions, covenants, conditions and easements constitute equitable servitudes, liens and covenants running with the Land and are binding on and will inure to the benefit of Declarant, the Association (as defined below), all subsequent Unit Owners (as defined below) and lessees of Units (as defined below) in the Project (as defined below) and their respective heirs, successors, successors in trust, personal representatives and assigns. All of the provisions of this Declaration and the Bylaws are intended to create mutual servitudes upon each Unit within the Project and to create reciprocal rights among the Unit Owners.

**B. PROJECT NAME.**

The condominium property regime established by this Declaration will be known as Ka'ulu by Gentry IV.

**C. DEFINITIONS OF CERTAIN TERMS.**

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

1. "**Act**" means the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended, and, as applicable, the rules of the Real Estate Commission promulgated pursuant thereto, as amended.

2. "**ADA**" means the Americans With Disabilities Act, 42 U.S.C. §§12101 et seq., including any and all rules and regulations promulgated thereunder, as each may be amended from time to time.

3. "**Alleged Defect**" has the meaning ascribed to it in Section P.2 of this Declaration.

4. "**Alleged Defect Claimant**" has the meaning ascribed to it in Section P.2 of this Declaration.

5. "**Alteration**" has the meaning ascribed to it in Section M.1(a) of this Declaration.

6. "**Altering Owner**" has the meaning ascribed to it in Section M.3 of this Declaration.

7. "**Applicable Laws**" means any and all federal, state and local laws, statutes (including the Act and the ADA), ordinances, codes, rules, regulations, standards, directives, interpretations and conditions of approval, permits, and all legislative, administrative or judicial orders, decrees, requirements, rulings or judgments of any local, county, state or federal government or agency thereof, which now or in the future may be applicable to the Project (or any portion thereof), to any improvements on the Project, and to any possession, development, improvement, operation, occupancy, use, enjoyment and other activities relating to the Project.

8. "**Assessment Lien**" means the continuing lien imposed upon each Residential Unit by the assessment of Common Assessments, other Association assessments and Master Assessments, together with interest thereon, late charges, attorneys' fees, court costs, and dispute resolution costs, and other costs of collection thereof.

9. "**Association**" means the Association of Unit Owners of Ka'ulu by Gentry IV, consisting of all Unit Owners acting as a group in accordance with this Declaration, the Bylaws and the Act; provided that if the Project is merged with another condominium project or other condominium projects in accordance with the Declaration of Intent to Develop and Merge, then all references to the Association will mean and refer to the merged association of unit owners of the entire project, as reconstituted by any such merger or mergers.

10. "**Attached Multi-Family Unit**" means a Residential Unit that is within a building that contains more than one Residential Unit.

11. "**Board of Directors**" or "**Board**" means the board of directors of the Association.

12. "**Bureau**" means the Bureau of Conveyances of the State of Hawaii, being the place in which conveyances of land are Recorded.

13. "**Bylaws**" means the Bylaws of the Association concurrently Recorded with this Declaration, as may be amended from time to time. The Bylaws are subject to and must comply with the Act and applicable provisions of this Declaration.

14. "**Cancellation Notice**" has the meaning ascribed to it in Section P.5 of this Declaration.

15. "**Changes Material to Mortgagees**" has the meaning ascribed to it in Section Q.8 of this Declaration.

16. "**Claim**" has the meaning ascribed to it in Section U.5.

17. "**Collection Costs**" has the meaning ascribed to it in Section J.16 of this Declaration.

18. "**Common Assessments**" means the mandatory fees to be assessed by the Association against the Residential Unit Owners for the payment of the common expenses, limited common expenses and other expenses allocable to the Owners' Residential Units in such manner as set forth in this Declaration and the Bylaws.

19. "**Community Park – Increment I**" means the large, vacant space, located within Ka'ulu Increment I, bordered by the Mail Pavilion – Increment I to the south, Units 172 to 176 of Ka'ulu Increment I to the east and Units 144 to 147 of Ka'ulu Increment I to the north.

20. "**Community Park – Increment II**" means the large, vacant space, located within Ka'ulu Increment II, bordered by Phase 7 to the west and Phases 10 and 11 to the east.

21. "**Community Park – Increment IV**" means the large, vacant space, located within Ka'ulu Increment IV, bordered by Phase 25 to the east and Phase 28 to the east and south.

22. "**Condominium Map**" is defined in the Recitals of this Declaration and comprises the plans Recorded in the Bureau that show the layout, location, unit numbers, dimensions and elevations of the Units in the Project.

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

24. "**Covered Parties**" means the Owners, the Association, Declarant, their real estate brokers, agents, or attorneys, the architects, engineers, or other consultants for the Project, the contractor, subcontractors, sub-subcontractors, material suppliers, the Managing Agent, or other Persons involved with the Project, and their respective officers, directors, agents, members, managers, principals, servants, employees, representatives, successors or assigns, provided such Person(s) is subject to this Declaration or has entered into an agreement or otherwise agrees to negotiate, mediate and/or arbitrate Disputes. ("**Covered Party**" refers to one of the Covered Parties.)

25. "**C.P.I. Adjusted**" means that the figure will be increased or decreased as the C.P.I. Index changes. The amount of the increase or decrease will be equal to the percentage change between (a) the C.P.I. Index published for December of 2023, and (b) the most recent December C.P.I. Index figure.

26. "**C.P.I. Index**" means the U.S. Department of Labor Consumer Price Index for All Urban Consumers – Honolulu. If the U.S. government stops publishing that index, then the most similar index available will be used in its place. The Board will choose the replacement index.

27. "**Cure Process**" has the meaning ascribed to it in Section P.1 of this Declaration.

28. "**December 2023 Surveyor's Affidavit**" means that certain Surveyor's Affidavit, dated December 13, 2023 and recorded in the Bureau as Document No. A-87480287.

29. **"Declarant"** refers to Gentry Kalaeloa, LLC, a Hawaii limited liability company, the owner in fee simple of the Land, its successors and assigns. All references to "Declarant" in this document include the successors and assigns. A Person will be deemed a successor or assign of Declarant for purposes of this Declaration only if specifically so designated in a duly Recorded written instrument as a successor or assign of Declarant under this Declaration, and will be deemed a successor or assign of Declarant only as to the particular rights or interests of Declarant under this Declaration that are specifically designated in the Recorded written instrument. It is understood that Declarant may collaterally assign to its mortgage lender Declarant's interest as "Declarant" under this Declaration and the other Project Documents.

30. **"Declarant Control Period"** has the meaning ascribed to it in Section I.8 of this Declaration.

31. **"Declarant's Reserved Rights"** means those rights of Declarant enumerated in Section E of this Declaration, which can be unilaterally exercised by Declarant during the Development Period without the consent or joinder of any other Person.

32. **"Declaration"** means this Declaration of Condominium Property Regime of Ka'ulu By Gentry IV, as it may be amended from time to time.

33. **"Declaration of Intent to Develop and Merge"** means that certain Declaration of Intent to Develop and Merge; Special Power of Attorney; and Declaration of Reservation of Rights and Easements, dated July 21, 2023, and Recorded as Document Nos. A-86550903 thru A-86550905, as it may be amended from time to time.

34. **"Detached Single-Family Unit"** means a Residential Unit that is within a building that contains just one Residential Unit.

35. **"Development Period"** means the period starting on the date the Declaration of Intent to Develop and Merge was Recorded and ending upon the earlier of (a) the date when the Declarant Records the Unit Deed conveying the last unsold Unit in the Joint Development Area to an unrelated third party, or (b) the date Declarant Records a document relinquishing all of Declarant's Reserved Rights.

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

37. **"Dispute"** has the meaning given to it in Section U.2.

38. **"Gazebo"** means the gazebo structure located in the northwest portion of the Community Park – Increment I.

39. **"Gravel Strip"** means the gravel strip that runs along the outside edge of certain portions of certain Detached Single-Family Units and the gravel strip that runs along the outside edge of certain portions of certain buildings containing Attached Multi-Family Units.

40. **"Hazardous Discharge"** means any event involving the use, deposit, disposal, spill, or release of any Hazardous Material on, within, about, or under the Project.

41. **"Hazardous Material"** means any hazardous or toxic substance, including those substances listed in the United States Department of Transportation Hazardous Materials Table (49 Code of Federal Regulations, Section 172.101), as amended, or by the Environmental Protection Agency as hazardous substances (40 Code of Federal Regulations, Section 302), as amended, and substances that are or become regulated under law, radioactive materials,

petroleum and petroleum products, asbestos, organic compounds known as polychlorinated biphenyls, and chemicals known to cause cancer or reproductive toxicity.

42. **"Hazardous Materials Claim"** means:

(a) Any action instituted or threatened with respect to a Unit or the Project pursuant to any Hazardous Materials Law, and

(b) Any and all claims made or threatened by any third party against an Owner or the Association or any other Person seeking damages, contribution, cost recovery, compensation, injunctive relief, or similar relief resulting from a Hazardous Discharge or from the existence of any Hazardous Material on, within, about, or under the Project.

43. **"Hazardous Materials Law"** means any law now existing or hereafter enacted affecting the Project relating to environmental conditions, industrial hygiene, or Hazardous Materials.

44. **"HCDA"** means the Hawaii Community Development Authority, a body corporate and a public instrumentality of the State of Hawaii (or its successor entity).

45. **"HCDA Equity Sharing Requirements"** is described in Section V.4 of this Declaration.

46. **"HCDA Occupancy Requirements"** is described in Section V.2 of this Declaration.

47. **"HCDA Sale and Transfer Restrictions"** is defined in Section V.3 of this Declaration.

48. **"High-Expense Alterations"** is defined in Section M.1(c) of this Declaration.

49. **"Improvements"** means the improvements that exist or will exist on the Land, including the landscaping and other structures and improvements thereon, as well as those improvements made on the Land by Owners (including Declarant) and/or the Association from time to time.

50. **"Increment"** means a group of Phases within Ka'ulu developed and built on an incremental basis. The Project (Ka'ulu by Gentry IV) comprises Ka'ulu Increment III.

51. **"Joint Development Agreement"** means that certain Joint Development Agreement, dated December 23, 2022, and Recorded on May 18, 2023 as Document No. A-85380495.

52. **"Joint Development Area"** means all of the real property subject to the Joint Development Agreement. Among other real property, the Joint Development Area includes the real property described in **Exhibit "A"** to this Declaration. Declarant reserves the right to amend the Declaration of Intent to Develop and Merge to include additional land in the Joint Development Area, including the parcel where a drainage basin for Ka'ulu will be located.

53. **"July 2025 Surveyor's Affidavit"** means that certain Surveyor's Affidavit, dated July 14, 2025 and recorded in the Bureau as Document No. A-9328000582.

54. **"Kalaeloa Design Guidelines"** means the Kalaeloa: Design Guidelines adopted by the Master Developer, dated December 6, 2021, as may be amended from time to time. Pursuant to that certain Memorandum of Design Guidelines, dated December 14, 2021, Recorded as Document no. A-80210250, the term of the Kalaeloa Design Guidelines ends on December 14, 2031, after which time the Kalaeloa Design Guidelines expire by its terms without further notice to other Persons or other Recorded documentation evidencing the expiration.

55. **"Kalaeloa Master Developer"** means Hunt Communities Hawaii LLC, a Hawaii limited liability company, or its successors and assigns.

56. **"Kalaeloa Reserved Housing Rules"** means Kalaeloa Community Development District Rules, Chapter 216 of Title 15, Hawaii Administrative Rules, administered by the HCDA.

57. **"Ka'ulu"** is defined in Section O.

58. **"Land"** or the **"Property"** means the real property described in **Exhibit "A"** attached to this Declaration, including all easements and other rights appurtenant thereto, but excludes any land that is subdivided and withdrawn after the Recording of this Declaration. The description of the Land is subject to change pursuant to Declarant's right to add, subdivide, or withdraw area as set forth in Section E.4 and elsewhere in this Declaration, and Declarant reserves the right to unilaterally amend this Declaration to change the description of the real property in **Exhibit "A"** pursuant to an addition, subdivision or withdrawal.

59. **"Low-Expense Alterations"** is defined in Section M.1(b) of this Declaration.

60. **"Mail Pavilion – Increment I"** means the mail facility described in Section E.19 of this Declaration that is located in the southern portion of the Community Park – Increment I.

61. **"Mail Pavilion – Increment IV"** means the mail facility described in Section E.19 of this Declaration that is located to the southwest of Building 44, near visitor parking stall V-65.

62. **"Majority of the Owners"** and **"Majority of Unit Owners"** means the Owners of Units to which are appurtenant more than fifty percent (50%) of the total common interests in the Project. Similarly, references to a certain percentage of the Unit Owners means the Owners of Units to which are appurtenant that percentage of the total common interests in the Project. For example, "at least 75% of the Unit Owners" means Owners representing Units to which are appurtenant at least 75% of the common interests in the Project.

63. **"Majority of the Units"** means those Units to which are appurtenant more than fifty percent (50%) of the total common interests in the Project. Similarly, references to a certain percentage of the Units means the Units to which are appurtenant that percentage of the total common interests in the Project. For example, "at least 75% of the Units" means Units to which are appurtenant at least 75% of the common interests in the Project.

64. **"Management Agreement"** means that certain agreement entered into or to be entered into between Declarant or the Association and the Managing Agent for the management and administration of the Association, the common elements, and the property of the Association, if any. The Management Agreement may also state that the Managing Agent provides certain services to Owners.

65. **"Manager"** refers to the individual, if any, retained by or on behalf of the Association, the Board or the Managing Agent to manage the day-to-day operations of the Project.

66. "**Managing Agent**" means the entity engaged by Declarant, the Association or the Board of Directors from time to time pursuant to the Management Agreement, as described in Section I.3 of this Declaration.

67. "**Market Units**" refers to the Detached Single-Family Units and to the Attached Multi-Family Units that are NOT subject to the HCDA Sale and Transfer Restrictions, the HCDA Occupancy Requirements and the HCDA Equity Sharing Requirements.

68. "**Master Assessments**" are the assessments, if any, assessed against, among others, Ka'ulu, the Project and/or the Residential Unit Owners by or on behalf of the Master Association, if any.

69. "**Member**" means every person who is entitled to membership in the Association, as provided in Section I of this Declaration.

70. "**Membership**" means a membership in the Association.

71. "**Mortgage**" means any Recorded or otherwise perfected security instrument in real property, which is not a fraudulent conveyance under Hawaii law, and which is given in good faith and for valuable consideration as security for the performance of an obligation, but will not include any instrument creating or evidencing solely a security interest arising under the Hawaii Uniform Commercial Code (Hawaii Revised Statutes Chapter 490, as amended). "**Mortgagor**" means the party executing a Mortgage as obligor. "**Mortgagee**" means the holder, insurer or guarantor of a note or other interest secured by a Mortgage. "**First Mortgage**" means a Mortgage in first lien position under Hawaii's Recording laws. "**First Mortgagee**" means the holder, insurer or guarantor of a First Mortgage. "**Eligible Holder of a First Mortgage**" means a First Mortgagee who notifies the Association in writing, which notice states the name and address of the First Mortgagee and the address of the affected real property; provided that any required approval to be obtained from an Eligible Holder of a First Mortgage under the provisions of this Declaration will be deemed to have been given if such Eligible Holder of a First Mortgage does not respond in writing to the Association's written request for approval within sixty (60) days after the date such written request is delivered to the Eligible Holder of a First Mortgage by certified mail, return receipt requested.

72. "**Notice of Alleged Defect**" has the meaning ascribed to it in Section P.3 of this Declaration.

73. "**Occupant**" means and includes an Owner, occupant, tenant, family member, lessee, guest and any other person who occupies or otherwise uses a Residential Unit or any other part of the Project on more than an occasional or temporary basis.

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

75. "**Owner**" has the same meaning as Unit Owner.

76. "**Owner Meeting**" has the meaning ascribed to it in Section P.10 of this Declaration.

77. "**Parking Stall Unit**" means a parking stall that is identified as a Unit in Section D and **Exhibit "B"** to this Declaration and is depicted on the Condominium Map.

78. "**Parking Stall Unit Owner**" means the Owner of a Parking Stall Unit.

79. "**Person**" refers to an individual, corporation, partnership, limited liability entity, association or other legal entity.

80. "**Phase**" means a portion of an Increment, with each Phase comprised of either (a) at least one building containing multiple Attached Multi-Family Units or (b) a group of Detached Single-Family Units. The Project (Ka'ulu by Gentry IV) has nine Phases.

81. "**Preliminary List of Alleged Defects**" has the meaning ascribed to it in Section P.3 of this Declaration.

82. "**Privacy Fence**" means and refers to (a) the "Privacy Fence", "Picket Fence" and gate shown on the Condominium Map that enclose portions of a Detached Single-Family Unit's limited common element Private Yard Area, (b) the "Picket Fence" shown on the Condominium Map that is constructed on the boundary of an Attached Multi-Family Unit's limited common element Private Yard Area, and (c) the "Privacy Fence" shown on the Condominium Map that separates the driveway areas of two adjoining Attached Multi-Family Units. Privacy Fences are limited common elements appurtenant to the Unit or Units served by the Private Yard Area or Private Yard Areas where the Privacy Fence is located.

83. "**Private Yard Area**" refers to the limited common element land area (a) appurtenant to a Detached Single-Family Unit, as shown by diagonal hatching on the Condominium Map, and (b) appurtenant to a ground-level Attached Multi-Family Unit, as shown by diagonal hatching on the Condominium Map. (When a Private Yard Area is between two Detached Single-Family Units, see Exhibit "B" to this Declaration for an explanation of how to determine which Unit(s) the Private Yard Area is appurtenant to as a limited common element.)

84. "**Project**" means the Ka'ulu By Gentry IV condominium project, created by the Recording of this Declaration and the filing of the Condominium Map in the Bureau, which project is located on the Land and includes the buildings, landscaping, improvements and structures thereon and all easements, rights and appurtenances belonging thereto.

85. "**Project Documents**" means this Declaration, the Condominium Map, the Bylaws, the Project Rules, and the Declaration of Intent to Develop and Merge, as each may be amended from time to time.

86. "**Project Rules**" or "**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; provided, however, that Declarant has the right to adopt the initial Project Rules on behalf of the Association, and, during the Declarant Control Period, to amend and repeal the initially adopted Project Rules.

87. "**Real Estate Commission**" refers to the Real Estate Commission of the Department of Commerce and Consumer Affairs of the State of Hawaii, or any successor entity.

88. "**Record,**" "**Recorded,**" "**Recording,**" "**Recordable,**" or "**Recordation**" means an instrument of record, or the act of recording or filing or causing to be recorded or filed an instrument, in the Bureau of Conveyances of the State of Hawaii.

89. "**Regulated Term**" means the five-year period after issuance of the Reserved Housing Unit's certificate of occupancy.

90. "**Request to Meet and Confer**" has the meaning ascribed to it in Section P.6 of this Declaration.

91. "**Reserved Housing Units**" refers to the Attached Multi-Family Units that are subject to the HCDA Sale and Transfer Restrictions, the HCDA Occupancy Requirements and the HCDA Equity Sharing Requirements.

92. "**Residential Units**" refers to Attached Multi-Family Units and Detached Single-Family Units.

93. "**Settlement Offer**" has the meaning ascribed to it in Section P.8 of this Declaration.

94. "**Solar Hot Water Heating System**" means the panels, pipes, cables, heater and other equipment comprising the solar hot water heating system serving each Residential Unit.

95. "**Storm Water Operation and Maintenance Plan**" means the Operation and Maintenance Plan for Permanent Storm Water BMPs (dated September 2022), accepted by the Department of Planning and Permitting of the City and County of Honolulu on October 13, 2022.

96. "**Unit**" means a unit (as that term is defined in the Act) within the Project, as described in Section D of this Declaration and as shown on the Condominium Map, including the common interest appurtenant to the unit. The Units included in the Project are listed in **Exhibit "B"** to this Declaration. The types of Units in the Project are Attached Multi-Family Units, Detached Single-Family Units and Parking Stall Units.

97. "**Unit Deed**" means the legal instrument signed by Declarant 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 in the Unit Deed.

98. "**Unit Owner**" has the meaning ascribed to it in the Act. For so long as Declarant owns unsold Units in the Project (or to the extent that Declarant reacquires any Units in the Project), Declarant will have the rights of an Owner, including the right to vote, and will 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.

99. "**Use Restrictions**" means those limitations on the use and occupancy of the Units, as more particularly described in Section H of this Declaration.

100. "**VA Center**" means the "Daniel Kahikina Akaka Department of Veterans Affairs Community-Based Outpatient Clinic" (also referred to as the "Daniel Kahikina Akaka VA Clinic") located adjacent to the Project, at the corner of Kamokila Boulevard and Franklin D. Roosevelt Avenue.

#### **D. DESCRIPTION OF THE PROJECT, LAND, BUILDINGS AND UNITS.**

1. **Project.** The one Project is depicted on the Condominium Map and includes the Units and the common elements described in this Declaration. Declarant plans to develop the Project as follows:

(a) Ka'ulu by Gentry IV, Phase 24, consisting of (i) one (1) two-story Building 30 (Craftsman style) containing six (6) Attached Multi-Family Units, designated as Units 301 to 306, inclusive, as shown on the Condominium Map, and (ii) one (1) two-story Building 31 (Plantation style) containing six (6) Attached Multi-Family Units, designated as Units 311 to 316, inclusive, as shown on the Condominium Map.

(b) Ka'ulu by Gentry IV, Phase 25, consisting of (i) ten (10) two story buildings, with each building being its own Detached Single-Family Unit, designated as Units 317 to 326, inclusive, as shown on the Condominium Map, and (ii) four (4) Parking Stall Units, designated as Parking Stall Units G-25 to G-28, inclusive, as shown on the Condominium Map.

(c) Ka'ulu by Gentry IV, Phase 26, consisting of one (1) two-story Building 47 (Craftsman style) containing eight (8) Attached Multi-Family Units, designated as Units 471 to 478, inclusive, as shown on the Condominium Map.

(d) Ka'ulu by Gentry IV, Phase 27, consisting of one (1) two-story Building 46 (Plantation style) containing eight (8) Attached Multi-Family Units, designated as Units 461 to 468, inclusive, as shown on the Condominium Map.

(e) Ka'ulu by Gentry IV, Phase 28, consisting of nine (9) two story buildings, with each building being its own Detached Single-Family Unit, designated as Units 447 to 455, inclusive, as shown on the Condominium Map.

(f) Ka'ulu by Gentry IV, Phase 29, consisting of one (1) two-story Building 43 (Craftsman style) containing eight (8) Attached Multi-Family Units, designated as Units 431 to 438, inclusive, as shown on the Condominium Map.

(g) Ka'ulu by Gentry IV, Phase 30, consisting of (i) one (1) two-story Building 40 (Plantation style) containing six (6) Attached Multi-Family Units, designated as Units 401 to 406, inclusive, as shown on the Condominium Map, (ii) one (1) two-story Building 44 (Craftsman style) containing six (6) Attached Multi-Family Units, designated as Units 441 to 446, inclusive, as shown on the Condominium Map, and (iii) six (6) Parking Stall Units, designated as Parking Stall Units G-29 to G-34, inclusive, as shown on the Condominium Map.

(h) Ka'ulu by Gentry IV, Phase 31, consisting of one (1) two-story Building 42 (Craftsman style) containing six (6) Attached Multi-Family Units, designated as Units 421 to 426, inclusive, as shown on the Condominium Map.

(i) Ka'ulu by Gentry IV, Phase 32, consisting of seven (7) two story buildings, with each building being its own Detached Single-Family Unit, designated as Units 410 to 416, inclusive, as shown on the Condominium Map.

2. **Land.** The land submitted to the condominium property regime is described in **Exhibit "A"** attached to this Declaration.

3. **Buildings and Units.** Subject to Declarant's right to increase or decrease the number of Units in the Project, as set forth in this Declaration, the Project will include 90 fee simple Units. Twenty-six (26) of the Units are Detached Single-Family Units contained in 26 separate buildings, fifty-four (54) of the Units are Attached Multi-Family Units contained in eight separate buildings, and ten (10) of the Units are Parking Stall Units that are not within any buildings. The buildings are described in **Exhibit "B"** to this Declaration and are shown on the Condominium Map. If the descriptions and divisions set forth in this Declaration conflict with the depictions and divisions shown on the Condominium Map, then the latter will control. The Condominium Map is intended only to show the layout, location, numbers, dimensions and, for the Residential Units, the elevations of the Units and is not intended and must not be deemed to contain or make any other representation or warranty. To the extent that the Condominium Map shows or depicts any detail, feature, or configuration of the Project that differs from the Project

as constructed, the Condominium Map does not constitute a representation or warranty by Declarant.

4. **Limits of Units.** The various Units and their respective areas are more particularly described in **Exhibit "B"** to this Declaration.

(a) Each Attached Multi-Family Unit will be deemed to include (i) all walls and partitions that are not load-bearing within its perimeter or shared walls, including the decorated or finished surfaces thereof, (ii) all pipes, shafts, vents, ducts, pumps, conduits, cables, wiring and other utility or service lines, running through such Attached Multi-Family Unit or other utility meters that are utilized for and serve only that Unit, (iii) the decorated or finished interior surfaces of all perimeter and shared walls, load-bearing walls and partitions, floors and ceilings of each Attached Multi-Family Unit, and the air space within the perimeter of the described space, (iv) any doors (including garage doors), door frames or panels along the perimeter walls of the described space and the decorated or finished exterior surfaces of such doors, door frames and panels, (v) all windows and window frames and the decorated or finished exterior surfaces of such windows and window frames, (vi) all cranks, rollers and other window or sliding door hardware, (vii) all appliances, built-in cabinets and countertops, interior hardware and fixtures installed in each Attached Multi-Family Unit, and replacements therefor, (viii) the garage of the Attached Multi-Family Unit, including the decorated or finished interior surfaces of the garage and the decorated or finished exterior surfaces of the garage door (but excluding all other decorated or finished exterior surfaces), (ix) any interior stairway connecting the first and second floors of an Attached Multi-Family Unit (as applicable), and (x) any air conditioning equipment or apparatus serving only the Unit that is located within the interior of the Unit, including, without limitation, the air handler, thermostat and other controls, registers, valves, vents, ducts, fan, condensing units, refrigerant coil and piping, condensate drain pan and piping and filters. (To be clear, the air conditioning equipment serving only the Unit that is located outside the interior of the Unit, including the compressor, as well as the piping that runs along the outside of the Unit and into the Unit, are not part of the Unit, but are limited common elements appurtenant to the Unit.)

(b) Anything in subsection (a) to the contrary notwithstanding, the respective Attached Multi-Family Units will NOT be deemed to include (i) the perimeter or shared walls, the undecorated or unfinished interior surfaces thereof, and the decorated or finished exterior surfaces of any perimeter wall thereof, (ii) the undecorated or unfinished surfaces of the floors and ceilings of each Attached Multi-Family Unit, and the roof of the building in which the Attached Multi-Family Unit is located, (iii) the interior load-bearing walls and columns (if any) and the undecorated or unfinished surfaces thereof, (iv) any pipes, shafts, vents, ducts, pumps, conduits, cables, wiring or other utility or service lines running through, or other utility meters within, each Attached Multi-Family Unit that are utilized for or serve more than one Unit, and, (v) if the Unit has appurtenant lanai, then the lanai and the lanai's flooring and railing, all of which are deemed limited common elements appurtenant to all Attached Multi-Family Units.

(c) Each Detached Single-Family Unit will be deemed to include the entire structure of the building comprising the Unit, as depicted on the Condominium Map, including (i) the perimeter and interior load-bearing walls, foundations, columns, girders, beams, floors, slabs, footings, supports, stairways, skylights (if any), ceilings of the building comprising the Unit, (ii) the walls and partitions within the building comprising the Unit, the decorated or finished surfaces thereof, and all of the space within the walls, floors and ceilings of such building, (iii) the windows, window frames, louvers, shutters (if any), doors and door frames along the perimeter of and within the building comprising the Unit, (iv) the garage, as shown on the Condominium Map, and the garage door, (v) the entry and lanai (if any), as shown on the Condominium Map, (vi) the roof, including the decorated or finished surfaces thereof, (vii) all mechanical and

electrical equipment originally installed and utilized for or serving only that one Unit, (viii) any pipes, wires, vents, shafts, ducts, pumps, cables, conduits or other utility or service lines or enclosed spaces for wiring, pipes or air exhaust or utility meters running under, through or otherwise located within the Unit or running within, under or upon the limited common element Private Yard Area appurtenant to the Unit that are utilized for or only serve the Unit, and (ix) all fixtures and appliances installed in the Detached Single-Family Unit, and replacements therefor.

(d) Anything in subsection (c) to the contrary notwithstanding, the respective Detached Single-Family Units will NOT be deemed to include (i) any pipes, wires, ducts, conduits or other utility or service lines running through a Unit or running within, under or upon the limited common element Private Yard Area appurtenant to the Unit that are utilized by or serve more than one Unit, all of which are common elements, or (ii) the limited common element Private Yard Area that is appurtenant to each Detached Single-Family Unit.

(e) Each Parking Stall Unit is designated on the Condominium Map with the letter "G", followed by a dash, followed by a number (e.g., G-29). Each Parking Stall Unit consists of the unenclosed space shown on the Condominium Map, and the on-the-ground boundaries defining each Parking Stall Unit are shown on the Condominium Map by the lines surrounding three of four sides of the Parking Stall Unit, with the fourth side extending approximately 18 feet from the "front" of the Parking Stall Unit. The lower horizontal boundary of each Parking Stall Unit is the top surface of the concrete or asphalt ground where the Parking Stall Unit is located. The upper horizontal boundary of each Parking Stall Unit extends vertically to a height of 10 feet above the lower boundary. The Parking Stall Units include any wheel guards within their boundary, but do not include any adjacent walls or pillars, or any pipes, wires, conduits, ducts, vents, or other service or utility lines above or under the Parking Stall Unit.

5. **Common Elements.** The common elements include the Land described in **Exhibit "A"** in fee simple, the limited common elements described below and all other portions of the Project, other than the Units, including, but not limited to, those common elements described in the Act that are actually constructed on the Land, and all other portions of the Project necessary or convenient to its existence, maintenance and safety or normally in common use and that are not included as part of a Unit, including, but not limited to, those common elements described in **Exhibit "B"** and those that may be depicted on the Condominium Map, as such description and depiction may be amended from time to time. The common elements will remain undivided and no right exists to partition or divide any part of the common elements, except as may be provided in this Declaration or the Act.

6. **Limited Common Elements.** Certain of the common elements are referred to as "limited common elements" and they are hereby designated and set aside for the exclusive use of one or more, but less than all, of the Units. Such Unit or Units will have appurtenant easements for the exclusive use of such limited common elements. The limited common elements, and the Unit or Units to which the limited common elements are appurtenant, are described in **Exhibit "B"**.

## **E. DECLARANT'S RESERVED RIGHTS.**

The rights reserved to Declarant in this Section E are Declarant's Reserved Rights. Notwithstanding any other provision in this Declaration to the contrary, and except as otherwise provided by Applicable Law, at any time and from time to time during the Development Period, Declarant, its agents, employees, consultants, contractors, partners, affiliates, licensees, successors and assigns (collectively, in this Section E, "Declarant") have the right, but not the obligation, to exercise Declarant's Reserved Rights unilaterally, without the consent, approval or

joinder of any Owner, Mortgagee, lienholder, Unit purchaser, the Association, the Board or any other Person. To the extent permitted by Applicable Law, this Section E cannot be amended without the prior written consent of Declarant.

**1. Reserved Right to Alter, Subdivide, and Consolidate Units.**

(a) Declarant has the right to: (i) alter the floor plan of any Unit that Declarant owns at any time and in any manner that Declarant deems appropriate, in its absolute discretion; (ii) cause the subdivision of any Unit that Declarant or an affiliate of Declarant owns at any time to create two or more Units from such original Unit; (iii) cause the consolidation of any Units that Declarant or an affiliate of Declarant owns at any time; (iv) convert certain portions of any existing Unit owned by Declarant or an affiliate of Declarant to limited common element status to facilitate any subdivision of a Unit or consolidation of Units; and, (v) upon any such alteration, subdivision or consolidation of Unit(s), reallocate the common interests appurtenant to each affected Unit, provided that the total common interest appurtenant to the altered Unit or newly created Unit(s) equals the common interest appurtenant to the original Unit(s).

(b) Declarant has the right to execute and Record amendments to this Declaration and the 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 reserved to Declarant in this Declaration, including to effect any subdivision or consolidation of Units or alterations to areas and other Declarant's Reserved Rights.

(c) Newly created Unit(s) will have the right to use the common elements in the Project to the same extent and subject to the same limitations as are imposed upon a Unit as though the newly created Unit(s) had been developed as part of the original Project.

(d) Until the conveyance by Declarant of any newly created Unit(s) thereby added to the Project, Declarant will, for all purposes, be deemed the "Unit Owner" as to such newly created Unit(s), and no other Unit Owner, Mortgagee, lienholder, Unit purchaser, or any other Person (other than Declarant and the holder of any Mortgage covering the newly created Unit(s)) will have any legal or equitable interest in such newly created Unit(s) and the common interest appurtenant thereto. Additionally, in connection with the creation of the newly created Unit(s), Declarant will have the right: to enter upon the Project with employees, agents, and contractors for all purposes reasonably necessary for or useful to constructing and completing the newly created Units; to connect the newly created Units to utilities of the Project; and to market and sell the newly created Units. Declarant may apply for and obtain from the Real Estate Commission effective dates for one or more public reports or amended public reports describing the changes made in the Project pursuant to the terms of this Section E.

(e) Declarant will Record or cause to be Recorded an amendment to the Condominium Map for the Unit(s) being altered, divided or consolidated to show an amended floor plan, as necessary, together with a verified statement of a registered architect or professional engineer that meets the requirements of Section 514B-34 of the Act, which amendment to the Condominium Map must meet the applicable requirements of Sections 514B-33 and 514B-34 of the Act, and will be effected by an amendment to this Declaration that need only be signed by or on behalf of Declarant.

**2. Rights Relating to Development and Sale.** Among Declarant's Reserved Rights are: (a) the right to complete improvements to the Project and to correct defects and other "punch list" items in the Project, at such times and in such sequence as Declarant determines in its sole discretion; (b) the right to create and cause noise, dust, vibration, odors and other nuisances or

annoyances created by and resulting from any work connected with or incidental to the development, construction, and sale of any Unit or other Improvements in the Joint Development Area; (c) the right to conduct extensive sales, leasing, rental, marketing, management and other commercial activities at the Joint Development Area, including on any of the Project's common elements, any Unit that Declarant owns and any limited common elements appurtenant thereto for model units, sales, leasing, rental, marketing, construction management and other commercial activities, management offices, parking, extensive sales displays and activities, and the posting and maintenance of banners, signs, and other advertisements and sales displays relating to such sales, leasing, rental, marketing and other commercial activities; (d) the right to install, maintain, locate, relocate, and reconfigure such structures, displays, advertising signs, billboards, flags, sales desks, kiosks, sales, leasing, rental, 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, marketing and disposition of Units by sale, resale, lease, rental or otherwise; (e) the right, but not the obligation, to provide ongoing maintenance, operation, service, construction, and repairs to individual Units; and (f) the right to inspect, evaluate, repair, replace, and/or otherwise cure defects in the planning, design, engineering, grading, construction, installation, management, or other development of a Unit, the common elements, and/or any other Improvements constructed on the Land. Each and every Owner or other Person acquiring any interest in the Project or the Land, by such acquisition, (x) acknowledges that the activities described in this Section E may result in noise and nuisances, (y) consents to such activity by Declarant and others, and (z) waives, releases, and discharges any and all rights, claims or actions that such party may acquire or might otherwise be asserted against Declarant, its agents, representatives, employees, consultants, contractors, affiliates, licensees, successors, assigns, attorneys, lenders and other related Persons, and their respective successors and assigns, (i) as a result of any noise, dust, vibration, odors and other nuisances or annoyances arising from the completion of such improvements, (ii) based on or as a result of any such noise, dust, vibration, odors and other nuisances or annoyances, and (iii) as a result of any such activity or activities.

**3. Declarant's Reserved Right to Add and/or Withdraw Land.** Declarant has the right to add real property to and/or withdraw real property from the Project and the effect of this Declaration, the Condominium Map and the Bylaws by amending this Declaration, the Bylaws, the Condominium Map and/or any other documents that Declarant deems necessary or convenient to effect such addition or withdrawal. A withdrawal of real property from the Project may, but need not necessarily, be related to a governmental agency's street or road widening. (As set forth in Section 2.6 of the Bylaws, the Association is obligated to cooperate with a withdrawal of land from the Project resulting from a road widening.)

(a) Effect of Withdrawal of Land. Upon a withdrawal of real property from the Project and this Declaration, and with no further action required, the withdrawn property will cease to be a part of the Project or subject to this Declaration, the Bylaws, or the Act, and no Unit Owner, Mortgagee, lien holder, Unit purchaser or any other Person who may have an interest in the Project or in any Unit (other than Declarant and the then-current holder of any Mortgage still in effect covering the Land prior to the Recording of this Declaration) will have any legal or equitable interest in the withdrawn real property. It is the intent of this provision that, upon such withdrawal, legal title to the withdrawn real property will be vested solely in Declarant. If deemed necessary to effect the intent of this Section E.3, each Unit Owner, Mortgagee, lien holder and any other Person who may have an interest in the Project or any Unit will, within 10 days after a written request by Declarant, unconditionally quitclaim and/or release its interest, if any, in the withdrawn real property to Declarant or to Declarant's designee.

(b) Declarant's Rights With Respect to Withdrawal of Land. In exercising the rights set forth in this Section E.3, Declarant may at any time: (i) execute, file and process to final approval an application with the City and County of Honolulu for the legal subdivision of the withdrawn land from the balance of the Land covered by this Declaration; (ii) execute and Record a petition and any supporting documentation necessary or convenient for such subdivision; (iii) execute and Record any amendments to this Declaration, the Condominium Map and the Bylaws to facilitate, describe and show the withdrawal of real property from the Project and this Declaration; and (iv) apply for and obtain from the Real Estate Commission an effective date for one or more public reports (or amendments thereto) in connection with the withdrawal of real property from the Project and this Declaration. The withdrawn real property will be deemed deleted from the Project and this Declaration for all purposes upon the Recordation in the Bureau of an amendment to this Declaration and/or the Condominium Map that sets forth the withdrawal of the real property.

(c) Limits on Declarant's Reserved Right to Add or Withdraw Land. Declarant's reserved rights in this Section E.3 are subject to the following terms and conditions:

(i) The addition or withdrawal of land will not affect the layout, location, dimensions or structure of any Unit that has been sold and the conveyance thereof Recorded, provided that such addition or withdrawal of land may affect the layout, location and dimensions of common element areas and limited common element areas, including Private Yard Areas.

(ii) The addition or withdrawal of land will not change or reapportion the relative common interests of any Units that have been sold and the conveyance thereof Recorded.

(iii) The withdrawn land will not include any land upon which a Unit that has been sold and the conveyance thereof Recorded is directly located, provided that such addition or withdrawal of land may affect the layout, location and dimensions of common element areas and limited common element areas, including Private Yard Areas.

4. **Declarant's Reserved Right to Subdivide and/or Consolidate Land.** Declarant has the right to subdivide any portion of the Land and/or consolidate any portion of the Land with other land (and to re-subdivide the consolidated lands if appropriate) in order to effect the addition and/or withdrawal of real property as described in Section E.3 of this Declaration by amending this Declaration, the Bylaws, the Condominium Map and/or any other document that Declarant deems necessary or appropriate to effect such subdivision and/or consolidation.

5. **Declarant's Additional Easements.** Declarant has 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 is not limited to, the repair, care or upkeep of any Unit or common elements, any utility easements or infrastructure to serve the Project or any portion thereof, or to comply with any government agreements or permits, private covenants or other easements or access requirements. Declarant also has the right to negotiate, accept, transfer, cancel, relocate, and otherwise deal with any easement or license over adjoining properties in favor of the Land or the Project for any reasonable purpose, which may include, but is not limited to, the repair, care, or upkeep of any Unit or common elements, any utility easements or infrastructure to serve the Project, or to comply with any government agreement or permits, private covenants or other easements 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.

**6. Easements for Governmental Agencies and the Master Association.**

Declarant has the right to grant to the County, the State of Hawaii, any governmental agency or the Master Association (defined below) easements and rights-of-way over, under, across and through the common elements, including roadways, parking areas, parking stalls and walkways in the Project, so that Declarant can comply with Applicable Laws, regulations, orders, or permits in respect of Declarant's ownership and development of the Joint Development Area.

**7. Reserved Rights Relating to Declarant's Units.** Declarant has the right to:

(a) transfer the exclusive use rights associated with a limited common element appurtenant to any Unit owned by Declarant to another Unit or Units or to the Association; (b) redesignate all or a portion of certain limited common elements as may be appurtenant to any Unit owned by Declarant to another Unit or Units; (c) redesignate and/or convert limited common elements appurtenant to any Unit owned by Declarant to common element status, and, upon such redesignation and/or conversion, the Association and/or the other Owners will accept any such redesignation and/or conversion to common element status and will not have any right to refuse or reject any such redesignation and/or conversion to common element status; and (d) alter, maintain, repair, replace, sell, transfer and/or convey any limited common element appurtenant to Units owned by Declarant.

**8. Rights Regarding Operation, Maintenance, Etc.** Declarant has the right to

designate, delete, grant, use, convey, transfer, cancel, accept, relocate, and otherwise deal with any easements and/or rights-of-way over, under, across or through those portions of the Project that are subject to County-required setbacks and the common elements (including the limited common elements) of the Project for any reasonable purpose, which may include those purposes that are necessary for the operation, care, upkeep, maintenance, or repair of any Unit, the common elements, any land owned by Declarant (or an affiliate of Declarant) in the vicinity of the Project, or any easements for utilities or for any public or private purpose.

**9. Reserved Right and Easement Regarding Utilities, Access, Etc.**

(a) Declarant has a nonexclusive easement for access and utility purposes over, across, under, along, through and upon any Units still owned by Declarant, those portions of the Project that are subject to County-required setbacks and the common elements of the Project, including parking areas, access ways and roadways benefitting the Project, together with the right to designate, delete, grant, convey, transfer, assign, cancel, accept, relocate, realign, reserve, and otherwise deal with any and all easements and rights of way at any time (perpetual or otherwise) for utilities (including, without limitation, water, gas, sewer, electric power, and telecommunications, electromagnetic, and optical transmission facilities), sanitary and storm sewers, drainage, flowage, cable television transmission facilities, refuse disposal, landscape development and maintenance, any public-type facility (e.g., for mail delivery), fire lane access, driveways, retention ponds, parking areas, access roadways, sidewalks and other purposes, whether or not for purposes of developing or servicing other lands owned by Declarant (or an affiliate of Declarant) in the vicinity of the Project, including a right of entry to construct, reconstruct, operate, maintain, repair, and relocate such lines, facilities, and appurtenances and to grant, assign, and/or transfer any such easements or rights of way to governmental or quasi-governmental authorities, utility or service companies, owners associations, or other entities and the right to grant, dedicate, designate, use, and enjoy easements and/or rights of way for access purposes appurtenant to any portion of the Property, the Joint Development Area and any portion of other lands owned by Declarant (or an affiliate of Declarant) in the vicinity of the Project, provided that Declarant has the right to negotiate and agree to such terms with respect to such easements and rights of way as Declarant deems appropriate in its sole discretion. These rights

will be exercised in a manner that will not materially impair or interfere with the use of any Unit that is not owned by Declarant.

(b) Declarant has the reserved right to assign or transfer the rights and obligations of any such easements and rights of way to the Association, which rights and obligations must be accepted and assumed by the Association.

10. **Reserved Right to Modify the Project.** Declarant has the right: (a) to effect such modifications to Units and common elements and/or to execute, Record, and deliver any amendments to this Declaration and/or the Condominium Map, as well as the Bylaws and/or the Project Rules, as may be necessary or required by Declarant, in its sole and absolute discretion or as may be required by the Real Estate Commission, by any title insurance company issuing title insurance on the Project or any of the Units, by any institutional lender lending funds on the security of the Project or any of the Units, or by any governmental agency, provided that the net interior area of the Residential Units that have been conveyed to Persons other than Declarant are not materially and adversely changed; and (b) to effect compliance by the Project, the Association, or Declarant with Applicable Laws.

11. **Reserved Rights Relating to Parking Stall Units.** Declarant has the right to sell, convey, lease, rent, use, allow others to use, and otherwise deal with the Parking Stall Units owned by Declarant. Such reserved right includes the right to convey one or more of the Parking Stall Units to the Association.

12. **Reserved Rights Regarding Permits.** To satisfy the requirements of any land use or other permits pertaining to the Project, whether issued by the County, the State or any other governmental agency, as the same may be amended or modified, Declarant has the right to (a) amend the Project Documents, (b) enter into any agreements, including declaring and subjecting the Land and Improvements to restrictive covenants, (c) designate and grant easements, (d) secure any other governmental permits, (e) do all things necessary and convenient and (f) execute, Record, and deliver any and all documents necessary to effect the same, including amendments to the Project Documents.

13. **Reserved Rights to Amend Project Documents.** Declarant has the right to execute, acknowledge, deliver and Record any and all instruments, including amendments to the Project Documents, any easement instrument, any deed, any amendment to a Unit Deed, assignment of rights or interest, or such other document or instrument that may be necessary or appropriate to permit Declarant to carry out and exercise Declarant's Reserved Rights and all other rights, powers, and privileges granted or reserved to Declarant under this Declaration. Any such action will be deemed taken by Declarant as the true and lawful attorney-in-fact of the respective Unit Owners and lienholders.

14. **Improvements.** Declarant has the right to construct any improvements that are shown on the Condominium Map.

15. **Reserved Rights Relating to Master Association.** Declarant has the right, either unilaterally or jointly with one or more other land owners or developers of land in Kalaeloa, to form and establish the Master Association described in Section O of this Declaration, to impose the Master Declaration (as defined in Section O) upon Ka'ulu, to annex the Project, including all of the Units, to the Master Declaration, and to convey common element roadways, landscape areas, archaeological areas, irrigation systems, drainage systems and other common areas, improvements, facilities and systems in the Project to the Master Association.

16. **Reserved Right to Maintain and Repair Certain Common Elements.** After the Declarant Control Period, but during the Development Period, Declarant will have the right to continue to maintain and repair certain common elements (including limited common elements) that Declarant identifies in writing to the Board and the Managing Agent. (Examples of such common elements might be the Community Parks, the Gazebo and the Mail Pavilions.) The primary purpose of this right is so that Declarant can be assured that such common elements are maintained and repaired to Declarant's standards while Declarant is still marketing and selling units in Ka'ulu. Declarant has the right, and intends, to charge (invoice) the Association for the direct costs and expenses (i.e., without markup) reasonably incurred by Declarant to maintain and repair such identified common elements, and the Association will be required to reimburse Declarant for such costs and expenses within 45 days after the invoice is delivered to the Managing Agent. (For example, if Declarant pays a landscaper to maintain the Community Park, then, within 45 days after Declarant delivers the invoice for such services to the Managing Agent, the Association will be required to reimburse Declarant for what Declarant paid to the landscaper.) This reserved right can be exercised by Declarant at its sole discretion. In other words, even if the Association is maintaining and repairing the identified common element, if Declarant determines that Declarant needs to maintain and repair the common element to assure that such common element is maintained and repaired to Declarant's standards while Declarant is still marketing and selling units in Ka'ulu, then Declarant can exercise this right.

17. **Declarant's Reserved Right to Effect Merger.** Declarant has the right to effect one or more administrative mergers of the Project with some or all of the Increments or other condominium projects built within the Joint Development Area, pursuant to and in accordance with the terms of the Declaration of Intent to Develop and Merge. All of the provisions of the Declaration of Intent to Develop and Merge are incorporated into and made a part of this Declaration and will govern in the event of a conflict with the provisions of this Declaration or any of the other Project Documents. The allocations of maintenance fees and votes among the Units in the Merged Project (as defined in the Declaration of Intent to Develop and Merge) will be as described in the Declaration of Intent to Develop and Merge.

18. **Right to Review and Approve Project Documents.** Pursuant to the terms of the Declaration of Intent to Develop and Merge, Declarant reserves the right to review and approve, using its reasonable discretion, any and all amendments to any or all of the Project Documents to ensure that, subject to the exceptions allowed by and authorized in the Declaration of Intent to Develop and Merge, the Project Documents are generally similar, in form and substance, to the condominium documents of any other condominium project created within the Joint Development Area so that Declarant is able to effect an administrative merger of the various condominium projects.

19. **Community Parks, Gazebo and Mail Pavilions.** Declarant has constructed the Community Park – Increment I, the Mail Pavilion – Increment I and the Gazebo on portions of Ka'ulu Increment I, and the Community Park – Increment II on portions of Ka'ulu Increment II. Declarant reserves the right to design and construct the Community Park – Increment IV and the Mail Pavilion – Increment IV on portions of the Project. The Mail Pavilions will serve as centralized mail stations for the Project and for the rest of the Joint Development Area. The Community Parks, the Gazebo and the Mail Pavilions will be available for use by the residents of the Units in the Project and by all the other residents in the Joint Development Area. The several associations of unit owners within the Joint Development Area, including the Association, will have the duty and obligation to maintain the Community Parks, the Gazebo and the Mail Pavilions at the common expense of all of the owners of units within the Joint Development Area. This duty and obligation may be delegated to a single association of unit owners should the several associations

be merged as described in this Declaration. Upon the merger of this Project with other condominium projects (the "**merged condominium project**"), the owners and occupants of the units in the merged condominium project will have the right to use the common elements of the merged condominium project, which common elements will include the Community Park – Increment I, the Community Park – Increment II, the Gazebo, the Mail Pavilion – Increment I, the Community Park – Increment IV and the Mail Pavilion – Increment IV.

**20. Reserved Right to Convey Property to the Association.**

(a) Declarant has the right to convey to the Association, and the Association must accept, title to any Unit or other property owned by Declarant within the Joint Development Area, together with the responsibility to perform any and all duties associated therewith. Upon conveyance or dedication of such property to the Association, the Association must maintain such property at its expense for the benefit of the Owners, and the cost of maintaining such areas will be assessed to all Owners as a common expense or, if appropriate, a limited common expense (as defined below). Any property or interest in property transferred to the Association by Declarant will, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Association "as is," "where is," free and clear of all liens and encumbrances, except for the following: (i) the lien for property taxes and assessments not then due and payable; (ii) the terms of the Project Documents and, if applicable, the Master Declaration; (iii) easements, rights-of-way, reservations, covenants, conditions, restrictions, and equitable servitudes, or other non-financial encumbrances as Declarant, in its discretion, may deem appropriate; and (iv) such financial encumbrances as may be reasonably accepted and assumed by the Association and specifically approved by resolution of the Board.

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

**21. Changes in the Act.** Declarant has the right to make amendments to this Declaration, the Condominium Map and the Bylaws to comply with changes in the Act and to take advantage, to the fullest extent permitted by Applicable Law, of changes in the Act that give Declarant more rights than currently permitted under the Act.

**22. Design Guidelines.** Declarant has the right and authority to adopt initial design guidelines for the Project, provided they are consistent with the Kalaeloa Design Guidelines. After any such adoption, any amendment to such design guidelines must be done in accordance with the provisions set forth in the design guidelines or amendments and/or supplements thereto.

**23. Right to Amend Condominium Map.** Declarant has the right to amend the Condominium Map (in part via an amendment to this Declaration) to insert applicable and appropriate metes and bounds descriptions of the boundaries between the various Phases and Increments of Ka'ulu.

**24. Interference with Declarant Rights.** Neither the Association, the Board nor any Owner may take any action or adopt any rules that interfere with or diminish any right reserved to

Declarant in this Declaration, without Declarant's prior written consent. Any action taken in violation of this Section E will be null and void and have no force or effect.

**25. Obligations Transferable.**

(a) Declarant may assign to the Association any obligations to be performed or conditions to be observed by Declarant under:

(i) any easement or easement agreements benefiting or burdening the Project; and

(ii) any other agreements regarding the use, operation, maintenance and repair of any other facilities that serve the Joint Development Area or that were otherwise entered into in connection with the development of the Joint Development Area.

(b) The Association must assume, perform and observe any such obligations assigned by Declarant pursuant to this Section E and must defend, indemnify and hold harmless Declarant from and against any and all costs, expenses, claims, demands, proceedings and liabilities asserted against or incurred by Declarant as a result of the Association's failure to assume, perform or observe such obligations.

**26. Joinder, Consent Regarding Reserved Rights.** Each Owner, by taking title to a Unit, and every other Person with an interest in the Project, consents to the easements, obligations and reserved rights set forth in this Section E and elsewhere in this Declaration without the necessity of such Owner, the Association, those claiming by, through or under the Owner or the Association, or any other Person entering into any further agreement with respect to the same. Specifically, Declarant has the right, without being required to obtain the consent or joinder of any Unit Owner, lienholder or other Persons, to unilaterally execute, acknowledge, deliver and Record any and all instruments, including, without limitation, all amendments to the Project Documents, necessary or appropriate for the purpose of carrying out the provisions and exercising the rights, powers, and privileges granted or reserved in this Section E and elsewhere in this Declaration. Any such action will be deemed taken by Declarant as the true and lawful attorney-in-fact of the Association and/or the respective Unit Owners and lienholders. Nevertheless, if determined to be necessary or desirable in order to exercise Declarant's Reserved Rights, the Association, each Owner and every other Person with an interest in the Project, as well as those claiming by, through or under an Owner or the Association, agree to join in, consent to, and execute all instruments and documents and do such other things as may be necessary or desirable for the reserved right, within 10 days after a written request by Declarant and without payment of additional consideration by Declarant, and, by execution of a contract for the sale of a Unit or by acceptance of a Unit Deed, lien or security interest therein, such Owner and other Person will be deemed to have consented to Declarant's Reserved Rights and to have irrevocably appointed Declarant its lawful and duly authorized attorney-in-fact with full right and power to join in, consent to, execute, deliver, and Record such documents and instruments and to do such things on behalf of the Owner or other Person, and to receive or send any legal notices required by the Hawaii Revised Statutes, and to receive service of process (legal papers) as to legal proceedings, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and will not be affected by the disability of such Person. Such grant of such power is 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.

## **F. OTHER EASEMENTS AND RESERVED RIGHTS.**

In addition to the easements of Record and those established as common elements or limited common elements and in addition to any easements and reserved rights described elsewhere in this Declaration, the Units and the common elements also have, as an appurtenance, or are subject to, as the case may be, the following easements and reserved rights:

1. **Easements in the Common Elements.** Each Unit will have appurtenant thereto nonexclusive easements in the common elements and in the Property designed for such purposes for ingress to, egress from, utility services for and support, maintenance and repair of each such Unit (and its appurtenant limited common elements), in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided in this Declaration. Each Attached Multi-Family Unit will also have an appurtenant easement in the common elements, limited common elements and the other Attached Multi-Family Units in the building in which such Attached Multi-Family Unit is located as may be necessary for support purposes, subject to the provisions of Section 514B-38 of the Act.

2. **For Access.** The Units will have appurtenant thereto, nonexclusive easements and access throughout all roadways, driveways, access lanes, ramps, landscaped areas, sidewalks, walkways, hallways, and grounds of the Project that is/are part of the Project, as depicted on the Condominium Map, to the extent that such easements are reasonably necessary for ingress to and egress from such Units and to and from any limited common element areas appurtenant to such Units.

3. **For Repair.** A Residential Unit Owner will have the irrevocable right to have access to and enter the other Units and/or the limited common elements appurtenant to those Units from time to time, with prior notice and during reasonable hours, as may be necessary for the installation, repair, maintenance or replacement of any common elements or any limited common elements or any lines or equipment serving such Owner's Unit or appurtenant limited common elements, or at any time for making emergency repairs that may be necessary to prevent damage to any Unit, its limited common elements or the common elements.

4. **For Use of Common Facilities.** Each Residential Unit Owner has an easement in common with the Owners of the other Residential Units to connect, use, maintain and repair all pipes, wires, ducts, cables, conduits, sewage systems, drainage systems, water systems and utility lines and other common elements for service to such Owner's Unit (and the Unit's limited common elements) and located in one or more other Residential Units or within a limited common element appurtenant to one or more other Residential Units. Each Unit is subject to an easement for access to any common elements located in the Unit or within any limited common element in favor of the Owners of the other Units served by such common elements.

5. **For Encroachments.** If any part of the common elements now or hereafter encroaches upon a Unit, or if a Unit now or hereafter encroaches upon a portion of the common elements, or if a Unit now or hereafter encroaches upon a portion of another Unit, then an easement will exist for such encroachment and its maintenance for so long as the encroachment continues, provided that such encroachment is minor and unintentional.

6. **Access to Units and Limited Common Elements.** Declarant, the Board and the Association each have the right, reasonably exercisable by Declarant, the Board, the Managing Agent (or their respective designees, successors, assigns, agents, employees, contractors, subcontractors, and other authorized personnel) or the Manager, to have access to and enter each Unit and/or the limited common elements from time to time during reasonable hours as may

be appropriate for the operation or maintenance of the Project, for the installation, repair, maintenance, or replacement of any common elements (including limited common elements), or for inspection or testing of a Unit and/or the common elements (including limited common elements) or for any other purpose reasonably related to the exercise of the rights or obligations of the Association under this Declaration, the Bylaws or the Act, without notice, and at any time for: (a) making emergency repairs necessary to prevent damage to any Unit or to any of the common elements; (b) abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity; (c) protecting the property rights of any Owner; or (d) preventing death or serious bodily injury to any Owner or Occupant.

**7. Rights Regarding Operation, Maintenance, Etc.** Declarant, the Board and the Association each have the right, reasonably exercisable by Declarant, the Board or the Managing Agent, to receive, hold, designate, relocate, realign, reserve, grant, use, convey, transfer, delete, accept, and otherwise deal with any easements and/or rights-of-way on, over, under, across or through the Units, the limited common elements and the common elements of the Project (or any part thereof) as may be necessary for the operation, care, upkeep, maintenance, or repair of any other Unit, the common elements (including the limited common elements), or any easements for access, for utilities or for any public or private purpose, provided that the exercise of such rights and such easements and rights-of-way are not located on or within any existing structure on the Land and do not materially impair or unreasonably interfere with the normal use and enjoyment of the Project by any Unit Owner or of any Unit or appurtenant limited common element. During the Development Period, the Association and the Board must have the written consent of Declarant before it may exercise any of the rights described in this Section. Repair, maintenance and alteration work to the common elements must be performed by a licensed contractor, authorized to do business in the State of Hawaii, and must be done in accordance with all Applicable Laws. The foregoing to the contrary notwithstanding, the Owner of each Unit, and not the Association, is primarily responsible to keep the Unit and any limited common elements appurtenant to the Unit in clean and sanitary condition and with all maintenance and repair needed to keep it in good order and condition.

**8. Rights of Occupants.** Except as otherwise provided in this Declaration or the Bylaws, Occupants and anyone else who has the right or permission to occupy a Unit also has the right and a license to use the common elements of the Project and the limited common elements appurtenant to the Unit occupied, to the same extent that the Owner of the Unit would have the right to do so. This includes, for example, a Person who leases a Unit. This right and license are also subject to any limits contained in the lease with the Unit Owner. This right of use and license will remain in effect only during the time period that the Person has the right to occupy the Unit.

**9. Utilities.** Each Residential Unit Owner has an easement in common with the Owners of all of the other Units to connect, use, maintain, and repair all pipes, wires, ducts, cables, conduits, and public and private utility lines and other common elements located in another Unit and serving such Owner's Residential Unit. Each Unit (and its appurtenant limited common elements) is subject to an easement for necessary and reasonable access, for maintenance and repair purposes, to (a) any common elements located in the Unit (or within the Unit's limited common elements) in favor of the Owners of all other Units served by such common elements, and (b) another Unit in favor of the Owner of such other Unit.

**10. Utility Easements.** There are hereby created nonexclusive easements, in favor of the applicable public and private utility providers, across the common elements of the Project for purposes of utility services to and for the Project, together with a right of entry to construct, reconstruct, operate, maintain, repair, and relocate utility lines, facilities, and appurtenances,

together, also, with the right to designate, delete, grant, transfer, assign, cancel, relocate, and realign such easements. The utility purposes include, without limitation, water, gas, electric power, communications, cable television and sewage transmission.

11. **Easement in Favor of Benefitted Unit.** Where the Private Yard Area of a Detached Single-Family Unit (the "**Benefitted Unit**") directly borders the Private Yard Area of a neighboring Detached Single-Family Unit (the "**Adjacent Unit**"), the Owner of the Benefitted Unit will have a right of access into the Adjacent Unit's Private Yard Area, including entry through the gate that secures the Adjacent Unit's Private Yard Area, in order to access the exterior sides of the Benefitted Unit and, if applicable, the limited common element Gravel Strip appurtenant to the Benefitted Unit. Each Benefitted Unit will have appurtenant thereto, and each Adjacent Unit (and its Private Yard Area) will be burdened by, an easement in favor of the Benefitted Unit, subject to the following conditions: (a) the purpose of the easement is to allow access to the exterior sides of, and to the Gravel Strips (if applicable) appurtenant to, the Benefitted Unit so that such exterior sides and Gravel Strips (if applicable) can be inspected, maintained and repaired; (b) as more particularly described at the end of this Section, the access rights (which include access through the gate) must be exercised at reasonable times and only upon obtaining the prior verbal or written consent of the Owner or Occupant of the Adjacent Unit, which consent cannot be unreasonably withheld, conditioned or delayed; (c) during the inspection, maintenance and repair of the exterior sides and Gravel Strips (if applicable) of the Benefitted Unit, the party performing the inspection, maintenance and repair will have the right to encroach into the Private Yard Area of the Adjacent Unit as may be reasonably necessary to perform such inspection, maintenance and repair (e.g., for the placement of scaffolding for painting); (d) after such entry, inspection, maintenance or repair, the Owner of the Benefitted Unit will be responsible for putting the Private Yard Area of the Adjacent Unit into the same condition it was in immediately prior to the entry, inspection, maintenance or repair; (e) neither the Owner nor any Occupant of the Adjacent Unit will be liable for any property damage or personal injury that occurs during or as a result of such entry, inspection, maintenance or repair, unless such damage or injury is caused by the reckless or intentional act of the Owner or Occupant of the Adjacent Unit (or someone acting under their authority); and (f) the Owner of the Benefitted Unit must indemnify, defend and hold harmless the Owner and any Occupant of the Adjacent Unit from any costs incurred by, or claims brought against, such Owner or Occupant as a result of any such entry, inspection, maintenance or repair, unless such damage or injury is caused by the reckless or intentional act of the Owner or Occupant of the Adjacent Unit (or someone acting under their authority). Exercise of the access rights described in item (b) above must be as follows (collectively, the "**Access Process**"): The Owner of the Benefitted Unit must make a verbal or written request to the Owner or Occupant of the Adjacent Unit to grant the Owner of the Benefitted Unit with access to the exterior sides of, or to the Gravel Strips (if applicable) appurtenant to, the Benefitted Unit. If access is not granted pursuant to a verbal request, then the Benefitted Owner must send a written request for such access. If the Owner or Occupant of the Adjacent Unit does not respond to a written request for access from the Owner of the Benefitted Unit within seven (7) days after delivery of such a request from the Owner of the Benefitted Unit, then the Owner of the Benefitted Unit is to send another written notice to the Owner or Occupant of the Adjacent Unit, which notice will state the day, time and length that the Owner of the Benefitted Unit will need entry into the Private Yard Area of the Adjacent Unit. No earlier than two (2) days after having delivered the written notice to the Owner or Occupant of the Adjacent Unit of the day, time and length of entry, the Owner of the Benefitted Unit (and such Owner's agents and contractors) will have the right to enter the Private Yard Area of the Adjacent Unit, during daylight hours.

12. **Declarant's Easement to Exercise Reserved Rights.** Declarant, its agents, employees, consultants, contractors, licensees, and Mortgagees, 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 Declarant's Reserved Rights, and such easement allows Declarant, its agents, employees, consultants, contractors, licensees, and Mortgagees 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 does not unreasonably interfere with the use and enjoyment of the Project by Residential Unit Owners.

13. **Easement for Mailbox Use.** Each Unit has an exclusive easement and right to use the mailbox in the Mail Pavilion – Increment IV bearing the same numerical designation as the Unit or such other designation as may be established for the mailboxes.

14. **Trash Container Easements.** Owners and Occupants of Units 324, 325 and 326 each have the right and an easement to place their respective trash containers on portions of the Project's landscaping and other common elements within the Project southeast of Unit 321, as well as easements for access to such locations. Owners and Occupants of Units 414, 415 and 416 each have the right and an easement to place their respective trash containers on portions of the Project's landscaping and other common elements within the Project southwest of Unit 406, as well as easements for access to such locations.

15. **Access for Joint Development Area.** The Project's common elements are subject to an easement for access purposes in favor of the real property (including the condominium units) within the Joint Development Area so that the owners and occupants of such real property (and units) have rights of ingress and egress to and from Franklin D. Roosevelt Avenue and/or other public roads with direct access to Ka'ulu.

## G. COMMON INTEREST.

1. **Allocation of Undivided Common Interest.** Each Unit will have an appurtenant undivided interest (referred to as the "**common interest**") in all common elements of the Project, each Residential Unit will have the same proportionate share in all common profits and common expenses of the Project (except as otherwise provided in this Declaration), and each Unit will have the same proportionate share for all other purposes, including voting, consents and other decision making, as set forth in **Exhibit "B"** attached to this Declaration. The common interest appurtenant to each Residential Unit is generally determined by dividing the approximate total net living area of each such Residential Unit by the approximate total net living area of all Residential Units, and rounding off so that the total of all common interests equals exactly 100.0000%, but only after accounting for the 0.000001% common interest appurtenant to each Parking Stall Unit. Declarant has 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 (100.00%), provided that the proportion of each Unit's common interest will remain generally and approximately the same in relation to the other Units.

2. **Alterations and Transfers of Common Interest.** Subject to Declarant's Reserved Rights and to Declarant's rights to adjust the common interest as set forth in this Declaration and except as otherwise set forth in this Declaration, the common interest and easements appurtenant to each Unit have a permanent character and cannot be altered except by an amendment to this Declaration that contains the written consent of all Unit Owners whose Units are or will be affected by such alteration, as well as the consent of First Mortgagees with First Mortgages affecting such Unit(s); provided, however, Declarant has the absolute right to adjust the common interest, in its discretion, (a) of one or more of the Parking Stall Units and/or (b) in order to assure that the total common interest for all Units in the aggregate equals one hundred percent (100.0000%), provided that the proportion of each Unit's common interest will

remain generally and approximately the same in relation to the other Units. The common interest and appurtenant easements cannot be separated from the Unit to which they appertain and will be deemed to be conveyed or encumbered with that Unit even though such interest or easements are not expressly mentioned in the conveyance or other instrument. The common elements will remain undivided and there is no right to partition or divide any part of the common elements.

## **H. PURPOSES AND RESTRICTIONS AS TO USE.**

Subject to the rights reserved to Declarant and other Persons in the Project Documents, the Project and each of the Units are intended for and are restricted to the following purposes and uses, which, together with any other restrictions contained in the Project Documents, are intended and will be deemed to be cumulative:

1. **Enforcement.** The use and occupancy restrictions set forth in this Section H are collectively referred to as the "**Use Restrictions.**" The Use Restrictions may be enforced by Declarant, the Association, the Board and/or the Managing Agent.

2. **Generally.**

(a) All Units can only be used for such purposes as are authorized under the Project Documents, subject to compliance with all Applicable Laws, as such documents and laws may be amended from time to time. Every Owner and Occupant must, at all times, keep their Unit and the limited common elements appurtenant only to that Unit in a neat, well- and continuously maintained, safe and sanitary condition in accordance with the purposes and specifications of the Project Documents, and must observe and perform all Applicable Laws.

(b) Subject to the rights reserved to Declarant in this Declaration, no Owner or Occupant is allowed to do or suffer or permit anything to be done or kept on or in any Unit or appurtenant limited common elements or elsewhere on the Project, and nothing is allowed or can be done or kept in any Unit or common element (including the limited common elements) of the Project, that will, as reasonably determined by the Board: (i) injure the reputation of the Project; (ii) jeopardize the safety or soundness of any portion of the Project, including, but not limited to, altering or affecting the load bearing walls in any Unit in any way; (iii) create a nuisance or interfere with or unreasonably disturb the rights of other Owners and Occupants; (iv) invalidate or otherwise jeopardize the warranty on any portion of the Project; (v) reduce the value of the Project; (vi) result in the cancellation of, or substantial increase in the premium of, any insurance applicable to the Project or adversely affect the right of recovery thereunder or result in reputable companies refusing to provide insurance as required or permitted by the Project Documents; (vii) overload or impair the floors, walls, or roofs of any building; (viii) violate any Applicable Law; (ix) impair any easement; (x) cause the breach or violation of any Project Document; (xi) fail to satisfy the applicable requirements of the Storm Water Operation and Maintenance Plan; or (x) make or suffer any strip or waste or unlawful, improper or offensive use of the Owner's Unit, any limited common element appurtenant thereto or any other part of the Project. No Owner or Occupant is allowed to alter or remove any furniture, furnishings or equipment from the common elements that are not limited common elements available for exclusive use by such Owner or Occupant. The Project Rules provide further guidance regarding the use of the Units. No activities or business conducted by or on behalf of Declarant will be deemed a nuisance.

3. **Residential Units.** The following applies to the Residential Units.

(a) The Residential Units must at all times be occupied and used only as private, residential dwellings by the Unit Owners, Occupants, their families, tenants and social

guests, in accordance with Applicable Laws, this Declaration, the Bylaws and the Project Rules, and for no other purposes; provided, however, that the Residential Units may be used by the Owner for Home-Based Small Businesses (defined below) if the Owner also uses the Unit as his or her principal residence; and provided, further, that the Manager may use the Residential Unit he or she occupies and any other office, room or building within the Project in connection with his or her duties as Manager. Except for use as Home-Based Small Businesses and except for use by or for Declarant, the Association, the Managing Agent and/or the Manager, no Residential Unit can be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purpose. Common element areas, including driveways and parking stalls, are not to be used for performing business activities, including any portion of a Home-Based Small Business. Notwithstanding anything in the previous sentences to the contrary, Declarant may use any Residential Unit owned by Declarant, or any other Residential Unit with the permission of the Owner, for a model unit, a sales office or such other purposes as Declarant deems appropriate.

(b) "Home-Based Small Business" means a business that: (i) is operated solely within the Residential Unit incidental to the use of the Unit for residential purposes; (ii) is limited to arts and crafts, the rendition of professional services, or other similar activities; (iii) is operated solely by the Owner of the Unit whose principal residence is the Unit; (iv) is permitted by, and is at all times in compliance with, all Applicable Laws, regulations, this Declaration, the Bylaws and the Project Rules; (v) does not have clients, customers or others come onto the Project or into the Unit for business purposes; and (vi) does not result in (A) the violation of any of the provisions of the Project Documents, (B) any unreasonable increase in the flow of traffic within the Project, (C) any odor, noise, or vibration outside of the Unit, or (D) parking problems within the Project. Food catering and commercial food preparation are not included within the definition of Home-Based Small Business, meaning that those businesses are not allowed in any of the Units.

(c) The Reserved Housing Units are subject to the owner-occupancy requirements and other requirements and restrictions set forth in applicable provisions of the Kalaehoa Reserved Housing Rules.

(d) All garages must be used for parking operational vehicles only and for incidental storage, provided such incidental storage does not interfere with the parking of vehicles.

4. **No Holes in Shared Walls or Fire-Rated Walls.** A Unit's shared walls and its fire-rated walls cannot be tampered with at all, which means no holes (even for the hanging of frames) can be made within such walls. Shared walls include walls between adjacent Units and walls that are adjacent to an external stairway. In addition to the standard shared walls (all of which are fire-rated walls), the following Units also have atypical fire-rated walls within them: 303, 304, 305, 312, 313, 314, 423, 424, 433, 436, 463, 466 and 473. The locations of the fire-rated walls within such Units are identified on the plot plan for each such Unit or on an exhibit to the Unit's plot plan.

5. **Parking Stall Units.** The following applies to the Parking Stall Units.

(a) Parking Stall Units must only be used for parking of operational vehicles and must not be used for business, storage or any other purposes. No personal property can be placed or stored in a Parking Stall Unit.

(b) Except with respect to those Parking Stall Units owned by Declarant or the Association, (i) each and every Parking Stall Unit must at all times be owned by an Owner of a

Residential Unit in the Joint Development Area, (ii) no Parking Stall Unit can be transferred by contract, operation of law, or otherwise, unless the transfer is to an Owner of a Residential Unit in the Joint Development Area, and (iii) Parking Stall Units can only be used by the Owner of the Parking Stall Unit or by an Owner or Occupant during the time that such Owner or Occupant is within the Project.

(c) Until Declarant informs the Managing Agent otherwise, Parking Stall Units owned by Declarant can be used as visitor parking stalls, subject to the same rules, regulations and restrictions that apply to other visitor parking stalls in the Project. In other words, although Declarant may initially allow the Parking Stall Units that it owns to be used as visitor parking stalls, Declarant has the right, at any time, to disallow such use by informing the Managing Agent that Parking Stall Units owned by Declarant can no longer be used as visitor parking stalls.

## **6. Maintenance Obligations.**

(a) Except as otherwise specifically provided in this Declaration or in any agreement with the Association, the performance and cost of all maintenance, repair and replacement of each Unit and such Unit's limited common elements (including the Private Yard Area appurtenant to such Unit) is the sole responsibility of the Owner of the Unit.

(b) Each Owner of a Detached Single-Family Unit must maintain the exterior appearance of the Owner's Unit and the limited common elements (including the Private Yard Area) appurtenant to the Owner's Unit in a state of good repair and in a neat and attractive condition, consistent with the surrounding areas and in accordance with the provisions of this Declaration.

(c) Each Owner of a Detached Single-Family Unit is responsible for the control of pests (termites, insects, rodents, and the like) in and around the Owner's Unit and the limited common elements (including the Private Yard Area) appurtenant to the Owner's Unit.

(d) Each Owner of an Attached Multi-Family Unit is responsible for the control of pests (termites, insects, rodents, and the like) in the Owner's Unit and, for Owners of an Attached Multi-Family Unit that has an appurtenant Private Yard Area, the Private Yard Area appurtenant to the Owner's Unit.

(e) Residential Unit Owners must keep the interior of the Owner's Unit and all appliances, plumbing, electrical, air conditioning and other fixtures and appurtenances constituting a part of the Unit and the limited common elements appurtenant thereto in good order and repair, and will be responsible for any damage or loss caused by a failure to do so. Decisions on repairs or modifications to the limited common elements will be made by the Owners of Units to which such limited common elements are appurtenant, subject to any applicable provisions in the Project Documents. Owners are responsible for any damage or loss caused by such Owner's Occupants to any of the common elements and limited common elements.

(f) Every Owner, from time to time and at all times, must perform promptly all repair, maintenance and alteration work within the Owner's Unit the omission of which, as determined by the Board, would adversely affect any common element, any other Unit, or the exterior appearance of the Project and will be responsible for all loss and damage caused by such Owner's failure to do so.

(g) All repair, maintenance and alteration work must be performed in accordance with all Applicable Laws.

(h) Every Owner must reimburse the Association for any expenditures incurred by the Association in repairing damage to, or in preventing or attempting to prevent damage to the common elements or to property of the Association or of any other Owner or Occupant damaged or lost, when caused by the fault of such Owner or any Person using the Project under such Owner, and such Owner must give prompt notice to the Managing Agent of any such damage, loss, or other defect when discovered.

**7. Grading and Drainage.**

(a) Each Owner of a Detached Single-Family Unit must maintain the grade and ground cover of the Owner's Private Yard Area so as to prevent soil erosion and excessive water run-off onto any neighboring Private Yard Area and to prevent the ponding of any water on the Owner's Private Yard Area. Each such Owner is responsible for keeping all swales, ditches and drainage ways within the Owner's Private Yard Area free of debris, open and in good operating condition, and for making sure that the Owner's Private Yard Area satisfy the applicable requirements of the Storm Water Operation and Maintenance Plan.

(b) Each Owner of an Attached Multi-Family Unit that has an appurtenant Private Yard Area must maintain the grade and ground cover of the Owner's Private Yard Area so as to prevent soil erosion and excessive water run-off onto any other portion of the Project and to prevent the ponding of any water on the Owner's Private Yard Area. Each such Owner is responsible for keeping all swales, ditches and drainage ways within the Owner's Private Yard Area free of debris, open and in good operating condition, and for making sure that the Owner's Private Yard Area satisfies the applicable requirements of the Storm Water Operation and Maintenance Plan.

(c) No Owner is allowed to alter the existing drainage pattern on Private Yard Area.

**8. Landscaping.** All yard areas must be landscaped and/or grassed in compliance with this Declaration, the Project Rules and the Storm Water Operation and Maintenance Plan, which landscaping and grass must be maintained in a neat and attractive manner. For aesthetic reasons and to prevent the blowing of fugitive dust, each Owner of a Detached Single-Family Unit must have their Unit's Private Yard Area fully (i.e., the entirety of it) landscaped (with approved landscaping) and/or grassed within ninety (90) days after the Owner takes title to the Unit. If, after thirty (30) days following written demand from the Association, the Board or the Managing Agent, an Owner fails to install, maintain, repair and/or restore the landscaping and/or grass on the Private Yard Area appurtenant to the Owner's Unit in a neat and attractive manner, then the Board or the Managing Agent may, at their respective option, perform the work and the costs incurred to perform the work will be specially assessed against the Owner. Any sums not paid by the Owner on demand will be a lien against the Owner's Unit, subject to foreclosure.

**9. Private Yard Areas that Directly Abut a Benefitted Unit.** Neither the Owner nor any Occupant of an Adjacent Unit is allowed to:

(a) unreasonably prevent access to the exterior sides of a Benefitted Unit or to a Benefitted Unit's Gravel Strip when such access is impeded by a fence and/or gate enclosing a portion of the Adjacent Unit's Private Yard Area and when the Owner of the Benefitted Unit has complied with the Access Process;

(b) cause or allow any trees, shrubbery or other vegetation belonging to such Owner or Occupant or pertaining to the Adjacent Unit to interfere with the access to, or the

inspection, maintenance or repair of, the exterior sides of the Benefitted Unit or the Benefitted Unit's Gravel Strip;

(c) keep or allow any items on any portion of the Benefitted Unit's Gravel Strip;

(d) attach anything to the Benefitted Unit or allow any items (including any trees, shrubbery or other vegetation) belonging to an Owner or Occupant of an Adjacent Unit to touch any portion of the Benefitted Unit;

(e) perform or allow any landscaping, grading or other work that would or could (i) prevent proper drainage of the Benefitted Unit or its limited common element Private Yard Area, (ii) promote soil erosion, attract termites or other insects, (iii) undermine the integrity of the foundation of the Benefitted Unit, or (iv) disturb any portion of the Benefitted Unit's Gravel Strip;

(f) cause or allow water from a hose or from the Adjacent Unit's irrigation system to come into contact with any portion of the Benefitted Unit or the Benefitted Unit's Gravel Strip;

(g) cause or allow any offensive contact (including, but not limited to, pounding or bouncing of objects) with the Benefitted Unit; or

(h) cause or allow any activity by household pets or other animals that would tend to cause damage to any portion of the Benefitted Unit or the Benefitted Unit's Gravel Strip.

#### 9. **Owners' Transfer Rights.**

(a) **No Transient Use.** No Unit, garage or any portion thereof can be leased for transient or hotel purposes, which are defined herein as (i) rental for any period of less than ninety (90) days or (ii) any rental in which the occupants of the Units are provided customary hotel services, such as room services for food and beverage, maid service, laundry and linen or bellboy service. Neither the Units in the Project nor any interest therein can be sold, transferred, conveyed, leased, occupied, rented or used for or in connection with any time-sharing purpose or under any time-sharing plan, arrangement or program, including, without limitation, any so-called "vacation license", "travel club membership" or "time interval ownership" arrangement. The term "time-sharing" as used herein is deemed to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess a Unit or Units in the Project rotates among various Persons on a periodically recurring basis according to a fixed or floating interval or period of time, whether by way of deed, lease, association or club membership, license, rental or use agreement, co-tenancy agreement, partnership or otherwise and whether or not registered or required to be registered under Chapter 514E, Hawaii Revised Statutes, as amended. No Unit may be used as a rooming house or for bed and breakfast purposes.

(b) **Owners' Right to Sell, Lease and Transfer.** Except for the foregoing and subject to the HCDA's use, sale and transfer restrictions affecting the Reserved Housing Units and subject to all provisions of the Act and the Project Documents, the Owner of a Unit has the absolute right, without obtaining the consent or joinder of any other Owners, to sell, lease, rent, or otherwise transfer such Unit, or such Owner's undivided interest in the Unit. No Unit Owner is allowed to sell, lease or otherwise transfer less than the entire Unit and its appurtenant interest in the common elements, except by way of a transfer of an undivided interest in the Unit. So long as Declarant owns a Unit in the Project, no "open houses" or other on-Project advertising or marketing is permitted with respect to the sale of a Unit that is not owned by Declarant; provided, however, that, subject to applicable HCDA restrictions, Unit Owners will be permitted to list their

Units for sale in the Multiple Listing Service ("MLS") and to show their Units by appointment to persons responding to the MLS listing.

(c) Requirements for Leasing Units. Any lease or rental of a Unit must be in writing, must be signed by the tenant and the Unit Owner, must not be in conflict with the Project Documents, must be (and must provide that it is) subject in all respects to the requirements and provisions of the Project Documents, and must provide that the failure of the lessee or tenant to comply with the terms of the Project Documents will be a default under the lease or rental agreement. Unit Owners must register (and keep up to date) the name, address, phone number and email address of the person leasing or renting the Unit with the Managing Agent or the Manager before the person can take occupancy of the Unit. An Owner that rents its Unit will at all times remain primarily and severally liable to all other Unit Owners and to the Association for any failure on the part of such Owner's tenant(s) to observe and comply with all provisions of this Declaration, the Bylaws, the Project Rules, and all Applicable Laws. Any other provision in this Declaration to the contrary notwithstanding, no Unit restricted with the HCDA Sale and Transfer Restrictions or the HCDA Occupancy Requirements or the HCDA Equity Sharing Requirements can be leased or rented.

**10. Restrictions on Parking and on Use of Parking Stalls and Roadways.**

(a) No parking is allowed on or within any of the common elements of the Project, except entirely within common element parking stalls. No boats or other vehicles not appropriate for use on public roads are allowed on or within any of the common elements of the Project. On-street parking stalls (whether visitor stalls, Parking Stall Units or otherwise) must only be used for parking of operational vehicles and must not be used for business, storage or any other purposes. No personal property can be placed or stored in a parking stall. Parking Stall Units that are not owned by Declarant or the Association can only be used by the Owner of the Parking Stall Unit or by an Owner or Occupant during the time that such Owner or Occupant is within the Project. No part of any common element driveway can be blocked. No vehicle parked or stopped in a driveway, appurtenant parking stall or in a visitor parking stall is allowed to protrude beyond the driveway apron or to block or extend into any landscaped area, sidewalk or roadway within the Project. All sidewalks must remain clear at all times. Tandem parking and double-parking are not allowed on any streets within the Project. Curbside parking outside of designated visitor parking stalls is not allowed.

(b) Every Attached Multi-Family Unit in the Project has a single-car garage that should accommodate a standard-size car, the Unit's trash and recycling bins, a washer/dryer, a heater for the Unit's Solar Hot Water Heating System and laundry sink, provided that the garages for Type 5 Attached Multi-Family Units may also be able to accommodate a compact-sized car. Every Attached Multi-Family Unit in the Project has an additional parking space for parking an additional car, tandem formation, directly in front of the garage.

(c) Every Detached Single-Family Unit in the Project has a two-car garage containing one standard and one compact parking stall that should also accommodate the Unit's trash and recycling bins.

(d) Owners and Occupants (i) must park their vehicles in the garage and, if applicable, the tandem space in front of the garage and (ii) are not allowed to park a vehicle in any of the Project's common element visitor parking stalls, all of which are reserved for visitors to the Project; provided, however, that the Owner of a Parking Stall Unit may use the Parking Stall Unit for the parking of an operational vehicle in accordance with this Declaration and the Project Rules.

(e) Use of the visitor parking stalls may also be governed by rules and regulations adopted in accordance with the Project Documents.

(f) No vehicle belonging to an Owner or Occupant or to an Owner's or Occupant's family member, tenant, guest or service or delivery person is allowed to be stopped or parked in such a manner so as to prevent the exit from or entrance to any portion of the Project.

(g) The proper and efficient use of space in the Project requires that Owners and Occupants park their vehicle(s) only in their garage and, if applicable, the tandem parking stall directly in front of their garage, so Owners and Occupants must not use any other parking stalls in the Project at any time. There are no other options for Owners Occupants to park their vehicles, because all of the on-street common element parking stalls in the Project are reserved for visitor use only. If all of the vehicles of a Unit's Owners and Occupants will not fit in the Unit's garage or tandem parking stall, then such Owner should not purchase, and such Occupant should not reside in, a Unit in the Project. Ka'ulu only works if all Owners and Occupants park their vehicles in the Unit's garage or tandem parking stall.

(h) The Project Rules have additional rules and regulations relating to parking.

11. **Common Elements.** Subject to the reserved rights of Declarant contained in this Declaration, and the express limitations on use set forth in this Declaration, each Unit 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.

(a) No Owner or Occupant is allowed to use or keep anything on the grounds of the Project or any other common element not located within the Owner's Unit that would in any way hinder the full use and enjoyment of the Project by any other Owner or Occupant entitled to the use of the Project. No Owner or Occupant can place, store, maintain or permit the placement, storage or maintenance of any equipment, inventory, furniture, packages, bicycles, containers or objects of any kind in or on the common element hallways, walkways, parking stalls, driveways, grounds or other common element areas. This does not prohibit Owners and Occupants from placing goods and other materials on the common areas when actively loading or unloading them, or actively transporting them to the Unit. Any such loading, unloading, and transportation must be completed promptly.

(b) All common element areas of the Project must be cleaned of all construction debris and other trash on a daily basis by any person or persons working on a Unit. No accumulation of trash or other debris from the construction activity within or with respect to a Unit is allowed or permitted to remain in the common element areas of the Project.

(c) Each Unit Owner may use the common elements in accordance with the purposes permitted under this Declaration, subject to:

(i) the rights of other Unit Owners to use the common elements;

(ii) any Owner's (or Owners') exclusive right to use of the limited common elements, as provided in this Declaration;

(iii) the right of the Owners to amend this Declaration to change the permitted uses of the common elements; provided that, subject to Section 514B-140(c) of the Act:

(A) changing common element open spaces or landscaped spaces to other uses will not require an amendment to this Declaration; and

(B) minor additions to or alterations of the common elements for the benefit of individual Units are permitted if the additions or alterations can be accomplished without substantial impact on the interests of other Owners in the common elements, as reasonably determined by the Board;

(iv) any rights reserved in this Declaration to amend this Declaration to change the permitted uses of the common elements;

(v) the right of the Board, on behalf of the Association, to lease or otherwise use for the benefit of the Association those common elements that the Board determines are not actually used by any of the Unit Owners for a purpose permitted in this Declaration. Unless the lease is approved by at least sixty-seven percent (67%) of the Owners, the lease will have a term of no more than five years and may be terminated by the Board or the lessee on no more than sixty (60) days prior written notice; provided that the requirements of this paragraph will not apply to any leases, licenses, or other agreements entered into for the purposes authorized by Section 514B-140(d) of the Act;

(vi) the right of the Board, on behalf of the Association, to lease or otherwise use for the benefit of the Association those common elements that the Board determines are actually used by one or more Unit Owners for a purpose permitted in this Declaration. The lease or use must be approved by at least sixty-seven percent (67%) of the Owners, including all directly affected Unit Owners that the Board reasonably determines actually use the common elements; provided that the requirements of this paragraph will not apply to any leases, licenses, or other agreements entered into for the purposes authorized by Section 514B-140(d) of the Act; and

(vii) the applicable requirements of the Storm Water Operation and Maintenance Plan.

## 12. Privacy Fences.

(a) Owners and Occupants may not remove the Privacy Fences or the gate, if any, appurtenant to their Unit and each Owner (i) will be responsible, at the Owner's cost, to maintain, repair, reconstruct and replace as necessary the Privacy Fences and gate appurtenant to the Owner's Unit (the "**Fence Maintenance Obligation**"), and (ii) will, to the extent required, have a right in the nature of an easement over the adjacent Private Yard Area and/or common element area to perform such Fence Maintenance Obligation. Any maintenance, repair, reconstruction or replacement of Privacy Fences and/or gate must be in a style and with material as close as is reasonably possible to the original style and material of the Privacy Fence and/or gate. No additions or alterations can be made to Privacy Fences and/or gates except as permitted pursuant to this Section.

(b) The constructed placement and location of Privacy Fences and gates within the Project, together with the encroachments resulting therefrom, are specifically authorized by this Declaration. A Privacy Fence and/or gate may not be demolished or relocated by the Owner or Occupant of a Unit served by the Privacy Fence and/or gate, except (i) in accordance with the terms of this Declaration, and (ii) with the written consent of the Owner of the other Unit (if any) served by the Privacy Fence. Owners of the Private Yard Areas that share a Privacy Fence on a common boundary have a mutual Fence Maintenance Obligation to maintain, repair, reconstruct and replace the common Privacy Fence in a neat and attractive manner and as directed by the Association. The cost of such maintenance, repair, reconstruction and replacement, as required, will be shared equally by such Owners. Each Privacy Fence will

constitute a "party wall" and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions will apply.

(c) If a Privacy Fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner of a Private Yard Area where part of a Privacy Fence is located may restore the entire Privacy Fence. If applicable, the Owner of the other Private Yard Area where the other part of the Privacy Fence is located will contribute one-half (1/2) of the cost of such restoration, without prejudice, however, to the right of either Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions. The right of any Owner to contribution from any other Owner under this Section will be appurtenant to the Unit and will pass to such Owner's successors-in-title.

(d) Should an Owner fail to pay such Owner's share of the cost to maintain, repair, restore or replace the Privacy Fence serving such Owner's Private Yard Area within thirty (30) days following a demand therefor by the other Owner whose Private Yard Area is served by the Privacy Fence and who advanced such sum, the Board, at the request of the advancing Owner and upon the receipt of proof of such advance, will specially assess the non-paying Owner therefor, which will be a lien on the non-paying Owner's Unit, subject to all the rights of the Association, including foreclosure of such lien, set forth in and in accordance with this Declaration, the Bylaws and the Act.

(e) If, after thirty (30) days following a written demand from the Association, the Board or the Managing Agent, an Owner or Owners fails to maintain, repair, reconstruct or replace a Privacy Fence that is dilapidated or destroyed, then the Board or the Managing Agent may, at their respective option, perform the work and the costs incurred to perform the work will be specially assessed against the Owner or Owners. Any sums not paid by the Owner or Owners on demand will be a lien against the Owner's Unit or the Owners' Units, subject to foreclosure.

13. **Gravel Strips.** Owners and occupants of Detached Single-Family Units that have a Gravel Strip running along the outside edge of certain portions of the Unit must keep and maintain the Gravel Strip in good and proper condition, and can neither remove nor allow the removal of any portion of the Gravel Strip. Gravel Strips that may run along the outside edge of certain portions of buildings containing Attached Multi-Family Units will be maintained by the Association and no portion of such Gravel Strip can be removed.

14. **Antennae, Satellite Dishes.** No radio station, satellite or shortwave operators of any kind can operate from any Unit or any other portion of the Project unless approved in writing by the Board. With the exception of any master antenna or wireless router maintained by the Association, a cable system maintained by an authorized cable supplier and/or operator, or anything installed by or on behalf of Declarant, no exterior radio antenna, "C.B." antenna, television antenna, receiving station, satellite dish, or other antenna of any type can be erected or maintained anywhere on the Property without the prior written consent of the Board, unless such prohibition and consent requirements violate Applicable Laws. The restrictions and prohibitions set forth in this Section are meant to be subject to and consistent with rules and regulations promulgated by the Federal Communications Commission, pursuant to Section 207 of the Telecommunications Act of 1996. Normal radio, stereo, high fidelity, and television equipment installation within a Unit is excepted from the provisions of this Section; provided, however, that in no event can such radio, stereo, high fidelity, television equipment, or other electrical equipment interfere with the use of any such equipment by any other Owner within the Project.

15. **Firearms and Fireworks.** The display and/or discharge of firearms or fireworks in any part of the Project is strictly prohibited; provided that the display of lawful firearms in the common elements is permitted by law enforcement officers and also is permitted for the limited purpose of transporting lawful firearms across the common elements to or from the Owner's Unit. The term "firearms" includes "B.B." guns, pellet guns, tasers, and other firearms of all types, regardless of size.

16. **Sound Attenuation.** In the buildings where the Attached Multi-Family Units are located, sound may be audible between Units, particularly where the sound level of the source is sufficiently high and the background noise in a nearby Unit is very low. Each Owner, by acceptance of a Unit Deed or other conveyance of a Unit, acknowledges and agrees that noises from adjoining or nearby Units and/or mechanical equipment may be heard from another Unit. Declarant does not make any representation or warranty as to the level of sound transmission between and among the Units and other portions of the Project, and each Owner waives any claims they may have for loss or damage resulting from such sound transmission. No alterations or additions can be made that materially and adversely affect the sound attenuation of any Attached Multi-Family Unit within the Project. Each Owner and Occupant will endeavor to minimize any noise transmission from their Unit, and must adhere to the rules and regulations set forth in this Declaration, the Bylaws and/or the Project Rules that are designed to minimize noise transmission. To minimize the noise transmission from an Attached Multi-Family Unit, all Attached Multi-Family Units (other than those owned by Declarant) must adhere to the following:

(a) No holes or other penetrations more than two inches deep can be made in common element or limited common element walls or the ceiling without the prior written permission of the Board.

(b) No modifications can be made to any Unit that would result in a reduction in the minimum impact insulation class of the Unit.

(c) Loudspeakers for music reproduction and television cannot be supported from or contact common element or limited common element walls or ceilings and must be elevated from the floor by a proper acoustic platform.

(d) Subject to subsection (e) (below), all Attached Multi-Family Units located above another Attached Multi-Family Unit must adhere to the following:

(i) Pianos must have at least one-half inch neoprene pads under the supports to minimize vibration transmission into the structure.

(ii) All furniture must contain rubber castors or felt pads.

(iii) Hardwood, Luxury Vinyl Plank (LVP) or other hard surface floor covering must be preceded by the installation of subfloor padding and/or acoustical insulation of at least the same quality and sound barrier rating as installed initially by Declarant.

(iv) Prior written approval from the Manager or the Managing Agent is required before any portion of the flooring in the Unit can be removed and replaced.

(v) Tile flooring is prohibited.

(e) Subsection (d) (above) to the contrary notwithstanding:

(i) Type 2 and Type 2-R Attached Multi-Family Units are allowed to have hardwood, Luxury Vinyl Plank (LVP) or other hard surface floor covering only in the entry area, kitchen, and bathrooms; and

(ii) Carpet, with pad dimensions determined by the Manager or the Managing Agent, must be installed in all other living areas, hallways, and bedrooms of the Type 2 and Type 2-R Attached Multi-Family Units.

17. **Unsightly Articles.** No unsightly articles will be permitted to remain upon or within any Unit, the common elements, or any limited common element so as to be visible from any other portion of the Project. No refuse or trash of any kind can be thrown, placed, or kept outside of any Unit, except in approved trash receptacles.

18. **Smoking Restrictions.** Smoking is prohibited in all common areas of the Project. Authorized smoking must be performed in accordance with Applicable Laws. For these purposes, the term "smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, vape cartridge or other product in any manner or any form. Disputes between Owners and Residents relating to smoke emanating from Units and limited common element areas (as opposed to the common areas) must be dealt with by the Owners and Residents themselves. Unless there is a violation of this Declaration, the Bylaws or the Project Rules, the Association will not get involved in such disputes. In no event whatsoever can a lit cigarette, cigar, pipe or other smoking device be allowed in any portion of the Project (including within any Unit) where there is also an oxygen canister.

19. **Signage.** No exterior signage or any signage designed to be seen or any signage primarily visible from outside a Unit is allowed to be displayed, installed or erected on any portion of the Project or be affixed to or within any portion of a building, and no other thing can be placed in or upon any door, window, wall, or other portion of a Unit or the common elements so as to be visible from outside of the Unit, except with the prior written approval of the Board; provided, however, that this does not prevent Declarant from utilizing such signs or displays as it desires in connection with its development, marketing and/or sales activities. (For purposes of this Declaration, the word "signage" includes signs, posters, billboards, advertising devices, or other displays of any kind.)

20. **Exterior Appearance; Board Approval Required.**

(a) It is intended that the exterior of the Project present an attractive and consistent appearance. To that end, the Owners agree that Declarant and the Board may (i) regulate the type(s) and color(s) of window coverings (including tinting) that may be used in and outside the Units, and (ii) arrange for the repair or painting (in colors and types of paint determined by Declarant and the Board) of the lanais, outside doors, windows, trim, fences, railings, perimeter walls, gates, other exterior portions of the Project and those portions of a Unit or of a limited common element appurtenant to a Unit that are visible from outside the Project, from another Unit or from another Unit's appurtenant limited common elements. Such repair or painting resulting from an Owner's negligence, misuse or neglect, as determined by Declarant and the Board, will be at the Owner's expense. Declarant and the Board will have the authority to determine whether the costs and expenses of any such repairs or painting are a common expense or are to be allocated only among certain Units.

(b) No Unit Owner can, without the prior written consent of Declarant and the Board, place or permit the placement of any attachment, hanging, projection, or protrusion of any object, garments, or materials of any kind from the roof, lanais, exterior walls, windows, or doors

of the Units, or place or permit the placement of any other matter or decoration inside or out of the Unit, which is visible from the exterior of the Unit. All curtains, drapes, shutters, blinds, window tinting and window coverings of Units that are visible from the exterior of the Unit must be standardized to reflect a consistent exterior appearance of the Project. Except for window treatments that have been pre-approved by the Board for use throughout the Project (as evidenced by a list held by the Managing Agent or the Manger), installation of curtains, drapes, shutters, blinds, window tinting and window coverings that differ from the standard type, size, style, and color used in the Project require the prior written consent of Declarant and the Board. No Unit Owner can change or alter any of the exterior glass windows, in any way, or change the exterior appearance of the Project in any manner, without the prior written consent of Declarant and the Board. No Unit Owner can, without the written consent of Declarant and the Board, place or permit the placement of any object on or within any portion of those common elements that are not limited common elements appurtenant to the Owner's Unit.

21. **Storm Water Operation and Maintenance Plan.** The Project, the Association and all Unit Owners and residents must comply with and abide by the applicable requirements of the Storm Water Operation and Maintenance Plan, including all applicable permanent source control BMPs (or best management practices) set forth in the Storm Water Operation and Maintenance Plan. The BMPs include, but are not limited to, making sure that all outdoor trash bins are properly covered to prevent trash and deleterious materials from entering the drainage system. Pursuant to the Storm Water Operation and Maintenance Plan, vehicle (car) washing is NOT allowed anywhere in the Project, including in garages or within limited common element driveways. The Association is responsible for (a) assuring and monitoring the proper operation and maintenance of the permanent source control BMPs, (b) making and maintaining records showing that the Storm Water Operation and Maintenance Plan is being adhered to, which records are subject to inspection by the City and County of Honolulu, and (c) maintaining the three temporary retention basins and the landscape, irrigation and retention basins.

22. **Private Drainage System.** The Project uses a private drainage system that connects to the County's municipal drainage system. As such, Applicable Laws prohibit the following from being discharged into the drainage system used by the Project: (a) domestic wastewater; (b) industrial wastewater; (c) any debris, refuse or solid waste or yard waste; (d) chlorinated swimming pool water; (e) wastewater from vehicle and equipment cleaning; and oil and petroleum products. Owners are prohibited from discharging any of these into the drainage system used by the Project. The Association is responsible for the maintenance and upkeep of the Project's drainage system. The Association must cooperate with Declarant by assuming Declarant's drainage obligations for the Joint Development Area, by which the Association will also assume the County's National Pollutant Discharge Elimination System permit(s) (the "NPDES Permit") and be responsible for enforcing the terms and conditions of the NPDES Permit as it relates to the Project.

23. **Generally.**

(a) Nothing can be done within the Units or any of the common elements or limited common elements that may be, or may become, an annoyance, disturbance, or nuisance to other Owners or Occupants or the Project, or which will in any way interfere with the quiet enjoyment of each of the Owners of their respective Units.

(b) All exterior lighting emanating from a Unit must be shielded and directed away from other Units, the common elements, and any abutting lots. All external lighting within the Project can be only of the following types: shielded lights; cut-off lights; or indirect lighting. Except with respect to spotlights installed by or on behalf of Declarant or allowed by the Board,

spotlights aimed upward or toward abutting lots and spotlighting of structures and landscaping are prohibited.

(c) No emissions from ducts located in any Unit can be discharged into any other Unit. No odorous matters can be emitted upon or about the Project in such quantity as to be readily detectable outside the physical boundaries of the space within which the odor was generated. Unless otherwise permitted by the Project Documents, no Owner can serve food or beverages, cook or engage in similar activities, except within such Owner's Unit or within the common elements designated for such purpose, subject to the provisions of the Project Documents.

(d) The operation of a family child care home within the Project is prohibited; provided, however, that, if such prohibition is determined by appropriate judicial or arbitration authority to be contrary to Applicable Law, then all limitations to the operation of family child care homes allowed under Haw. Rev. Stat. Chapter 502C (as amended) will apply.

(e) Unless such occupancy restrictions are prohibited by Applicable Laws, occupancy is limited to no more than two persons per bedroom in each Unit, not including children under the age of five years, but in no event can the number of Occupants per bedroom exceed three, including children under the age of five years.

(f) All garbage, rubbish, and trash must be kept in covered containers in designated areas. The storage, collection, and disposal of garbage, rubbish, and trash must be in strict compliance with the Project Documents.

(g) No outside clotheslines or other outside clothes drying or aging facilities is allowed to be maintained or used on the Project at any time.

(h) There can be no exterior fires, except barbecue fires contained within facilities or receptacles and in areas designated by Declarant and/or the Board for such purpose. No Occupant is allowed to permit any condition that creates a fire hazard, creates a nuisance or is in violation of any fire prevention regulations. Open-flame cooking/barbecuing (whether by gas, coal, electric or other heating method) is NOT allowed in or within ten (10) feet of the Project's Attached Multi-Family Units, including upstairs lanais, downstairs covered patios, or building overhangs. Open-flame cooking/barbecuing (whether by gas, coal, electric or other heating method) is NOT allowed in or within five (5) feet of the Project's Detached Single-Family Units, including upstairs lanais, downstairs covered patios, or building overhangs.

(i) Declarant and the Board each have the right and authority to limit or restrict access to and/or use of certain of the Project's common elements (e.g., the roofs of the buildings, electrical equipment rooms, and other areas that would not ordinarily be open to the public in an apartment or office building, and stairways not serving an Owner's Unit) to persons authorized by Declarant or the Board. Such limitation, restriction or authorized access by Declarant or the Board can be for the following reasons: (i) to perform inspections, maintenance, or repairs on or to such common elements; (ii) to enhance privacy and security for those Owners whose Units are actually served by such common elements; and (iii) for such other reasons as Declarant or the Board determines in its reasonable discretion.

**24. Non-Applicability of Use Restrictions.** Any other provision in this Declaration, the Bylaws or the Project Rules to the contrary notwithstanding, (a) the Use Restrictions do not apply to Declarant, to Units owned by Declarant, to Units for which Declarant has the approval of the Unit Owner or to the limited common elements appurtenant to such Units, (b) the Use

Restrictions do not apply to any improvements proposed or made by Declarant in connection with its development, construction, promotion, marketing, sales, or leasing of any Unit or any portion of the Project, and (c) Declarant may use any of the Project's common elements, any Unit owned by Declarant, any other Unit with the permission of the Owner and any limited common elements appurtenant thereto for promotional purposes, in connection with the initial sales of the Units in the Project, a model unit, a sales office, or such other purposes as Declarant deems appropriate.

## I. **ASSOCIATION; ADMINISTRATION AND MANAGEMENT OF THE PROJECT.**

1. **Formation, Membership, and Voting Rights.** The Association has been, or will be, incorporated as a non-profit corporation to serve as the governing body for all Owners for the protection, improvement, alteration, maintenance, repair, replacement, management, administration, and operation of the Project, the assessment of Owners and the collection of assessments, the payment of losses, the disposition of casualty insurance proceeds, and other matters as provided in the Project Documents. The Association will not be deemed to be conducting a business of any kind, and all funds received by the Association must be held and applied by it for the benefit of the Owners in accordance with the provisions of the Project Documents.

(a) Members of the Association will be each of the Unit Owners (including Declarant). The Owner of a Unit will automatically be the holder of the Membership in the Association, which Membership will be appurtenant to the Unit. There will be one Membership in the Association for each Unit owned in the Project, provided that when more than one Person owns a Unit, all such Persons will be considered Members.

(b) All Memberships will initially belong to Declarant and will automatically pass with the fee simple title to each Unit.

(c) Each Member will be obligated promptly, fully, and faithfully to comply with the provisions of the Project Documents.

(d) The Association will have one class of voting membership and each Owner will be entitled to such vote as is provided in this Declaration or the Bylaws. When a Unit is owned of Record by two or more Persons, any one of them present at any meeting may exercise the voting rights appurtenant to the Unit in the absence of protest by any other Owners of that Unit. In case of protest, each cotenant will be entitled to vote a fraction only of such vote in proportion to the cotenant's share of ownership in such Unit. Joint tenants and tenants by the entirety will be deemed to have equal ownership interests.

2. **Administration.** The administration of the Project will be governed by the Act, the Project Documents, and any agreements, decisions, and determinations lawfully made by Declarant, the Association, the Board of Directors, or the Managing Agent. The right and duty to administer the Project is vested in the Association and the Board of Directors in accordance with this Declaration and the Bylaws. Issues and decisions relating to common expenses and to those common elements that are not also limited common elements must be addressed and made by the Board, unless the Act, this Declaration or the Bylaws provide (or unless the Board determines) that the issue or decision should be addressed or made at the Association level.

3. **Management.** The management and control of the Association's affairs and of the Project's common elements will be the responsibility of the Board of Directors, acting on behalf of the Association; provided, however, that, unless seventy-five percent (75%) or more of the Owners vote or give their written approval otherwise, management and operation of the

Project and the everyday management of the Association's affairs will be conducted for the Board and the Association by a responsible, professional corporate managing agent, experienced in the operation of condominium projects and duly registered with the Real Estate Commission, and appointed by the Board of Directors in accordance with this Declaration, the Bylaws and the Act (the "**Managing Agent**"); provided that the initial Managing Agent has been appointed by Declarant (on behalf of the Association while it is controlled by Declarant); provided, further, that the Management Agreement (defined below) entered into between Declarant and the Managing Agent gives the Board the right to terminate the Management Agreement under and subject to certain conditions. The Managing Agent will be responsive to the direction of the Board pursuant to a written agreement (the "**Management Agreement**") and must, at all times, comply with the fidelity bond and other requirements of the Act relating to managing agents. By acceptance of a deed of a Unit, lease or other conveyance of an interest in a Unit ("**Unit Deed**"), each and every Owner and other Person acquiring such interest, including Mortgagees, acknowledges and consents to, ratifies, and accepts the terms and provisions of the Management Agreement.

4. **Rights, Powers and Duties of the Board.** The Board will have such rights and powers as are delineated in the Act, this Declaration and the Bylaws. The Board and the Association will have such duties as are delineated in the Act, this Declaration and the Bylaws. Among the many duties of the Board will be the duty to cause the Association to accept and assume Declarant's and the Association's obligations under, and to accept assignments of, agreements entered into by Declarant relating to the Association or the Project, including, without limitation, the Management Agreement with the initial Managing Agent.

5. **Service of Process.** The Managing Agent is authorized to receive service of legal process in all cases provided in the Act. The initial Managing Agent is Associa Hawaii, the address of which is 737 Bishop Street, Suite 3100, Honolulu, Hawaii 96813. In addition, once the Board is appointed or elected, process may be served upon any member of the Board who has a residence or place of business within the County.

6. **No Relief of Responsibility.** Nothing in this Section is intended or will be deemed to relieve any Owner of its responsibility for such Owner's Unit, or the limited common elements appurtenant to the Unit, pursuant to and in accordance with the Project Documents.

7. **Acceptance of Property by Association.** The Association may accept and acquire title to property; provided, however, that the Association is not authorized to acquire or invest in property simply for the purpose of acquiring income or a financial profit, and the Association must not carry on any business, trade, association, or profession for profit. In accepting or acquiring title to property, the Association will be authorized to take on debt to help finance payment for the property. Any such debt will be a common expense of the Project.

8. **Declarant Control Period.** Declarant has, and will exercise, all of the rights and incidents of Membership for a Unit, including voting, until closing of the sale of the Unit occurs; provided, however, that, notwithstanding the foregoing or any other provision contained in this Declaration or the Bylaws to the contrary, Declarant will control the Association and appoint and remove the officers and members of the Board until expiration of the "**Declarant Control Period**", which is the earlier of: (a) 60 days after conveyance of 75% of the common interest appurtenant to Units to Unit Owners other than Declarant or an affiliate of Declarant; (b) two years after Declarant has ceased to offer Units for sale in the ordinary course of its business; (c) two years after any right to add new Units was last exercised by Declarant; or (d) the day Declarant, after giving written notice to Unit Owners, Records an instrument voluntarily surrendering all rights to control activities of the Association. As part of the exercise of Declarant's control, Declarant is entitled to appoint the initial Managing Agent on behalf of the Association. Declarant may

voluntarily surrender the right to control activities of the Association or the right to appoint and remove officers and members of the Board before the termination of the Declarant Control Period, but, in that event, Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or the Board, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective. Thereafter, Declarant, as the Owner of any unsold Units, will be entitled to vote the interest of each such Unit.

9. **Scenario If Future Merger Does Not Include the Entire Joint Development Area.** If Declarant does not merge certain other condominium projects within the Joint Development Area with this Project pursuant to the Declaration of Intent to Develop and Merge, then the Association will be obligated to allow the residents of the other condominium projects within the Joint Development Area to use the Community Park – Increment IV and the Mail Pavilion – Increment IV in the same manner and to the same extent as residents of the Project. Each condominium project using the Community Parks, the Gazebo and the Mail Pavilions that is not merged with the Project (where the Community Park – Increment IV and the Mail Pavilion – Increment IV are located) may be charged a usage fee equal to the Project's proportionate share of the costs attributable to the Community Park – Increment IV and the Mail Pavilion – Increment IV, allocated on a fair and reasonable basis.

10. **Rights, Easements and Obligations of the Condominium Projects in the Joint Development Area.** There exist the following rights, easements and obligations:

(a) If there is a merger of the Association for the Project (where the Community Park – Increment IV and the Mail Pavilion – Increment IV are located) with the other associations of unit owners in the Joint Development Area, then, upon such merger, each unit in the Joint Development Area will have a non-exclusive right, in common with all other units in any existing and future condominium projects within the Joint Development Area, to use the Community Park – Increment IV and the Mail Pavilion – Increment IV, as well as a non-exclusive easement for ingress and egress to and from the Community Park – Increment IV and the Mail Pavilion – Increment IV over the various condominium projects within the Joint Development Area.

(b) Each Unit in the Project and each unit in the other condominium projects in the Joint Development Area will have an exclusive easement to use the mailbox in the Mail Pavilions that has the same numerical designation as the Unit or the unit. Such easement is not a limited common element, but is a permanent easement appurtenant to a particular Unit or unit and will be conveyed or assigned together with the Unit or unit to which it is appurtenant, whether or not reference is made to such easement in the document conveying the Unit or unit. Declarant reserves the right to Record the necessary documentation, including, without limitation, amendments to this Declaration, the Bylaws and the Condominium Map to effect this easement.

(c) Certain parking stalls in the Project and in other condominium projects in the Joint Development Area are visitor parking stalls that are available for use by visitors to any or all of the units in the Joint Development Area.

## **J. PAYMENT OF EXPENSES.**

1. **Common Expenses Generally.** Except as otherwise provided in the Project Documents, all charges, costs and expenses incurred or to be incurred by the Association for or in connection with the administration, management and operation of the Project, the maintenance, repair, replacement of, or the making of any additions or improvements to, the common elements

(excluding limited common elements) will be made only by or at the direction of the Board and, along with all other amounts designated as common expenses under the Act, this Declaration or the Bylaws, will constitute, and be charged to all Residential Unit Owners as, common expenses. Except as otherwise provided in the Project Documents, the Board must, from time to time, assess common expenses against the Residential Units in their respective proportionate share as set forth in this Declaration. Common expenses will generally be assessed and paid via Common Assessments.

**2. Identification of Common Expenses.** Except as otherwise provided in the Project Documents, common expenses include, without limitation: (a) all charges, costs and expenses whatsoever incurred by the Association for and in connection with the administration, management, and operation of the Project; (b) all charges for real property taxes that are not assessed separately on each Unit, other taxes and governmental assessments that are not assessed or allocated separately against each Unit or the personal property or other interest of a Unit Owner; (c) all Master Assessments that are not assessed separately on each Unit or that are assessed on all of the Units as a group; (d) premiums for insurance for the common elements or for all of the Units, including fire, property and other casualty and liability insurance maintained by the Association pursuant to the Act, this Declaration or the Bylaws; (e) insurance deductibles and insurance retentions for which the Association (and not Unit Owners) is responsible; (f) any liability of the Association whatsoever for loss or damage arising out of or in connection with those common elements that are not also limited common elements or any fire, accident, or nuisance thereon, provided, however, that if such liability, loss or damage results from the act or neglect of less than all of the Unit Owners, then the costs related thereto must be paid by the Unit Owner(s) who committed the act or neglect; (g) special assessments by the Association against all of the Residential Units; (h) wages, accounting fees, and legal fees; (i) start-up fees and management fees, including the fee paid to the Managing Agent pursuant to the Management Agreement; (j) other necessary expenses of the Project; (k) the cost of all utility services, including water, electricity, gas, refuse disposal, sewer, telephone, telecommunications (including cable television and internet), and other similar services), unless such charges, costs and other expenses are separately metered, assessed, allocated or otherwise separately charged or attributable to one or more individual Units by the Association, the Master Association (defined below), if any, the applicable utility company or other supplying or billing entity, with amounts charged or attributable to each Residential Unit determined by the Board with the advice of the Managing Agent, an engineer, certified public accountant, or other appropriate consultant, and the costs associated with any such separate metering or allocation; (l) the costs of maintenance, repair, rebuilding, replacement and restoration of the common elements, and any additions, alterations or improvements thereto; (m) the costs of yard, landscaping, janitorial, security and other similar services for all of the Residential Units and/or serving the common elements; (n) the costs associated with the Project's administrative and office staff (including the Manager); (o) the Master Assessments and other fees, charges and assessments assessed against the Property or the Project, as a whole; and (p) all costs and expenses related to those common elements that are not also limited common elements.

The common expenses also include such amounts as the Board may deem proper (subject, however, to any minimum funding requirements set forth in the Bylaws) to make up any deficit in the common expenses for any prior year, for a reserve fund for the operation and maintenance of the Project and a reserve fund for working capital and replacements, repairs and contingencies.

The common expenses also include such amounts as may be required, by regular or special assessment, for the purchase, lease, maintenance, repair and/or use of any Unit by or for the Manager, the Association or the Board or its designee, corporate or otherwise, on behalf

of the Association, as permitted under the Act, this Declaration or the Bylaws; provided, however, that prior to such purchase or lease of a Unit, the approval, by vote and/or written consent, of at least sixty-seven percent (67%) of the Owners must be obtained, provided that such approval is not required to purchase a Unit in a foreclosure proceeding; provided, further, however, that no such vote or written consent will be required or solicited for the Board and/or the Association to accept the rental, leasing or conveyance of a Unit from Declarant, because such acceptance by the Association is a mandatory obligation.

3. **Limited Common Expenses.** The foregoing to the contrary notwithstanding, Residential Unit Owners will be charged for costs and expenses incurred with respect to limited common elements (defined as "**limited common expenses**") as follows: Each Residential Unit Owner will be charged all costs and expenses (including, but not limited to, maintenance, repair, replacement, additions, and improvements) of each limited common element appurtenant to the Owner's Residential Unit. If a limited common element is appurtenant to two or more Residential Units, then all of such costs and expenses will be charged to and divided among each of the Owners of such Units roughly in the proportion that the common interest appurtenant to each Unit bears to the total common interest of all such Units to which such limited common element is appurtenant, except that it is possible that the Association's budget will call for Residential Units of the same Plan or Unit Type to pay the same share of the common expenses even if their respective common interests differ from one another. (For example, because the roof over a building containing Attached Multi-Family Units is a limited common element appurtenant to all of the Attached Multi-Family Units, the costs incurred by the Association to maintain and repair such roof will be charged to and divided only among the Attached Multi-Family Unit Owners roughly in the proportion that the common interest appurtenant to each Attached Multi-Family Unit bears, roughly, to the total common interest of all the Attached Multi-Family Units.) It is recognized that extra costs and work may be incurred to separately account for and charge Residential Unit Owners for costs and expenses relating to the limited common elements and that such extra costs and work may not be justified when taking into account the amount of the cost or expense, the difficulty of segregating such costs and expenses, the number of Residential Units to which similar limited common elements are appurtenant, the apparent difference in the amount of the various assessments to Residential Unit Owners if such costs and expenses were separately charged rather than being assessed roughly on the basis of each Residential Unit's common interest, and other factors that the Board deems relevant. Accordingly, the Board may decide by resolution to assess certain types of costs and expenses of limited common elements or to assess all costs and expenses of certain similar common elements to all Residential Unit Owners roughly in accordance with the common interest appurtenant to their respective Units, if the Board determines, in good faith with due regard to the fiduciary duty owed by the Board to all Owners, that such a method of assessment would be equitable. Such a determination will be final and binding on all Unit Owners in the absence of a clear showing of abuse of discretion by the Board.

4. **Owner Maintenance Responsibility.** The preceding provisions are not intended to and will not relieve the Owners of their responsibilities for limited common elements appurtenant to their respective Units as provided in other provisions of this Declaration, the Bylaws and the Project Rules.

5. **Not Common Expenses.** Any other provision in this Declaration to the contrary notwithstanding, taxes, governmental assessments, Master Assessments, utility fees and other charges or expenses that are or may hereafter be assessed or charged separately on each Unit or on less than all of the Units or on the personal property or other interest of the applicable Unit Owner(s), including real property taxes and charges for utilities or other services that are separately metered or separately chargeable or attributable to an individual Unit, are not common expenses, but will be the liability of the Owner(s) of such Unit(s). Expenses relating to any

individual Unit or the limited common elements appurtenant to the Unit (including limited common expenses), including all costs of maintenance, repair, additions and alterations, are to be charged to and the liability of the Owner of such Unit. Other than the assessments of regular Common Assessments to cover common expenses and limited common expenses, which Parking Stall Units are exempt from, the expenses described in this paragraph also apply to Parking Stall Units and Owners of Parking Stall Units.

6. **Special Assessments.** In addition to the regular assessment of Common Assessments to pay for common expenses, limited common expenses and other expenses, the Board may, from time to time, make special assessments, in the same manner as the assessment of Common Assessments, to cover those common expenses not covered by regular assessments. All charges, costs, and expenses incurred by the Association, by the Project or by a Unit or a Unit Owner that are necessitated by or result from the negligence, misuse, excessive use, or neglect of the Owner or Occupant of a Unit or any Person claiming under any of them will be charged to such Owner or the Owner of the Unit of such Occupant, as a special assessment and will be the liability of such Owner. (As an example, but without limitation, if the Association incurs costs to repair or maintain a portion of the Property that one or more, but less than all, of the Unit Owners is supposed to repair or maintain, then such costs will be charged to such Owner or Owners as a special assessment.) The Board may also make special assessments against the Owner(s) of one or more Units to collect any amount owed by a Unit Owner under the provisions of the Act or the Project Documents. Each Unit Owner is obligated to pay, and is liable for payment of, such special assessments as may be assessed against such Owner's Unit. (Other than Board-approved special assessments made against all or most Residential Units, the charges, costs, and expenses described in this paragraph also apply to Parking Stall Units and Owners of Parking Stall Units.) Without limiting the generality of the Board's rights and authority relating to special assessments, the Board has the right and authority to specially assess a Residential Unit and its Owner if the Board determines that a Residential Unit Owner or Occupant has been, will be or is using more than its "fair share" (as defined by the Board) of any utilities or services that are not separately metered for each Unit. To address such excessive use, the Board will determine the level of special assessment against the Residential Unit to compensate for or otherwise address the excessive use.

7. **Payment of Assessments and Charges.** Except as otherwise provided in this Declaration or the Bylaws, each Residential Unit Owner is severally liable for and must pay the common expenses and limited common expenses (via the assessment and payment of Common Assessments) allocable to their Unit, which allocation is roughly related to the common interest appurtenant to such Owner's Unit; provided that it is possible the Association's budget will call for Residential Units of the same Plan or Unit Type (e.g., 1 and 1-R; 2 and 2-R; 3 and 3-R; 4; and 5) to pay the same share of the common expenses even if their respective common interests differ from one another. Subject to the right (but not the obligation) of Declarant to initially and temporarily assume all actual common expenses of the Project pursuant to Section 514B-41(b) of the Act, all common profits and common expenses of the Project will be allocated to and shared among only those Residential Units for which a certificate of occupancy (temporary or otherwise) has been issued by the County, proportionate to the share of common expenses allocated to such Residential Units; provided, however, that if the County does not require certificates of occupancy for Residential Units, then the relevant event will be the County inspector's conclusion of the final inspection of the applicable Residential Units by signing off on the building permit that permits occupancy of the respective Residential Units. Regular assessments of Common Assessments are payable in monthly installments in advance, unless otherwise determined by the Board, on the first day of each month. Declarant will fix the rate of regular installments of Common Assessments until such rate is re-determined by the Board. Special assessments and costs, expenses and fees recoverable by the Association under Section 514B-157 of the Act and the

provisions of the Project Documents, and any penalties and late charges, will be payable upon request therefor, as from time to time made by the Board or the Managing Agent. There will be no common expenses allocated to the Parking Stall Units.

8. **Obligations to Pay Master Assessments.** Any other provision in this Declaration to the contrary notwithstanding, the amount of common expenses collected from the Unit Owners must always ensure that the Association is able to meet its obligation to pay Master Assessments.

9. **Obligations to Pay HCDA Assessments.** Any other provision in this Declaration to the contrary notwithstanding, the amount of common expenses collected from the Unit Owners must always ensure that the Association is able to meet its obligation to pay assessments that the HCDA may make against the entire Project and/or the entire Joint Development Area. Such assessments by the HCDA may include, but are not limited to, assessments against land owners in Kalaeloa (a) to pay their proportionate share of the HCDA's administrative and operating expenses, as described in Hawaii Revised Statutes, Section 206E-196, and (b) to cover costs relating to district-wide bonds or programs (e.g., the HCDA District-Wide Improvement Program) implemented by or for the HCDA for infrastructure improvements.

10. **No Exemption from Liability.** No Unit Owner may be exempt from liability for the Unit Owner's share of Common Assessments by waiver of the use or enjoyment of any of the limited common elements or common elements or by abandonment of the Owner's Unit.

11. **Working Capital.** A working capital fund will be established to help the Association meet unforeseen expenditures, to purchase any additional equipment or services, and/or for such other purposes as the Board may deem proper from time to time, including, without limitation, to supplement or cover a deficit in Common Assessments for the current or any prior year. The initial funds comprising the working capital fund, portions of which can also be expended by Declarant for the Project's start-up expenses, will be obtained by assessing each initial Residential Unit Owner an amount equal to two months of the Common Assessments for such Residential Unit, which will not be considered an advance payment of Common Assessments. Declarant will not be required to pay into such fund for unsold Units.

12. **Reserve Funds.** The Board must establish and maintain reserve funds in accordance with the provisions of the Act, this Declaration and the Bylaws to provide protection for the payment of common utilities, insurance, maintenance, repair, restoration, and replacement of the common elements and the furniture, fixtures, and mechanical equipment thereof, and other expenses of administration and management of the Project and such other regular and ongoing expenses or recurring liabilities as the Board may reasonably foresee. The amounts of such reserve funds will be considered a common expense or a limited common expense, as appropriate, and will be assessed to the Residential Unit Owners as provided in this Section J. Such reserve funds must meet the requirements set forth in this Declaration, the Bylaws and the Act. The Board may also establish reserves for unexpected contingencies and liabilities and such contingency reserves may, from time to time, be increased or decreased at the discretion of the Board. The amount of such contingency reserves will be considered a common expense or a limited common expense, as appropriate, and will be assessed to the Residential Unit Owners as provided in this Section J. Any amount of the collected Common Assessments that is allocated, used or to be used for capital improvements, or any other capital expenditure, will not be deemed income to the Association, but will be credited upon the books of the Association to paid-in surplus as a capital contribution by the Residential Unit Owners.

The proportionate interest of each Residential Unit Owner in all reserve funds of the Association must not be withdrawn or assigned separately but will be deemed to be

transferred with such Residential Unit even though not mentioned or described expressly in the instrument of transfer or conveyance. If the condominium project established by this Declaration is terminated or waived, then the funds remaining after the full payment of all common expenses of the Association are to be distributed to all Residential Unit Owners in proportion to their respective common interests, except for Owners of Units reconstituted as a new condominium project, in which case the proportionate share of such Owners is to be transferred to the association of such new condominium project.

13. **Reserve Fund Payments.** A portion of the funds comprising the reserve funds will be obtained by the Association assessing each Residential Unit Owner an amount equal to one month of the Common Assessments for such Residential Unit (the "**Reserve Fund Payment**"). The Reserve Fund Payment will not be considered an advance payment of Common Assessments, but will be secured by an Assessment Lien on the Residential Unit. Subject to the exceptions listed below, the Reserve Fund Payment must be paid by each Residential Unit Owner at the time they acquire fee simple title to the Unit, not just those who are conveyed their Units by Declarant. Declarant will not be required to make Reserve Fund Payments for unsold Units.

The Reserve Fund Payment will not be assessed, and need not be paid, upon the following fee simple title transfers of a Residential Unit (each an "**Exempt Transfer**"): (a) to Declarant; (b) among co-Owners of a Residential Unit; (c) to the Owner's estate, surviving spouse, or child upon the death of the Owner; (d) to an entity wholly owned or controlled by the Owner-grantor; provided, however, that the Reserve Fund Payment must be paid, and will become due, upon any subsequent transfer of an ownership interest in such entity; or (e) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage.

Unless it is an Exempt Transfer, at least ten (10) days prior to the date that a Residential Unit Owner is scheduled to transfer fee simple title to the Owner's Residential Unit, the Owner must notify the Managing Agent or the Manager in writing of the pending title transfer. Such notice of pending title transfer must include the name of the transferee, the date of title transfer, and other information as the Board may require. If timely notice of the pending title transfer is not provided to the Managing Agent or the Manager and if the Reserve Fund Payment is not collected from the Person taking title to the Residential Unit, then the Person transferring the Residential Unit will remain personally liable for the Reserve Fund Payment until it is paid in full.

14. **Real Property Taxes.** It is acknowledged that the County may not commence separate real property tax assessments of the individual Units until sometime after this Declaration has been Recorded and that, until such separate assessments take place, the County's real property tax assessments may be of the Land and its improvements, as a whole. Until separate real property tax assessments commence against the individual Units, Declarant or the Association (a) has the right to continue to collect from each Unit Owner an amount of money that will cover the Unit's common interest share of the County's real property tax assessments on the Land and its improvements as a whole, and (b) will pay the real property taxes assessed against the Land and its improvements from such collected amounts. If, once the County begins to assess real property taxes on each Unit separately, there are residual or surplus funds, then such surplus funds will be returned to the individual Unit Owners.

15. **Utility Services.** The cost and expense of utility services to any Unit or limited common element that are separately metered, sub-metered or check-metered (and any cost of reading or otherwise administering the meters) is to be paid by the Owner(s) of the Unit(s), or the Owner(s) of the Unit(s) to which such limited common element is appurtenant, payable directly to the utility company if a separate bill is rendered, or otherwise payable to the Association on

demand. Unless otherwise determined by the Board, all utility expenses not separately metered, sub-metered, check-metered or allocated will be assessed against, and paid by, the Residential Unit Owners roughly in proportion to their respective common interests, provided that Residential Units of the same Plan or Unit Type may be assessed the same utility expenses even if their respective common interests differ from one another.

16. **Creation of Lien and Personal Obligation to Pay Assessments.** Each Unit Owner, by acceptance of a Unit Deed or other conveyance of an interest in a Unit and/or title thereto, whether or not it is so expressed in such Unit Deed, is deemed to covenant and agree to pay to the Association the Common Assessments, special assessments and other assessments assessed against the Unit to pay the Unit's share of common expenses, limited common expenses and other expenses or charges, as may be established and collected from time to time, as provided in this Declaration and the Bylaws. The unpaid amount of all assessments against a Unit, including Common Assessments, special assessments and other assessments, together with interest thereon, penalties, fines, late charges, attorneys' fees, court costs, and other costs of collection thereof (collectively, "**Collection Costs**"), assessed against a Unit will constitute a lien against such Unit that may be foreclosed by the Board or the Managing Agent as provided for in this Declaration, the Bylaws and/or in the Act, provided that 30 days' prior written notice of intention to foreclose must be mailed, postage prepaid, by first class mail, and by an express mail service that provides proof of delivery, to the Unit Owner and all other Persons having any interest in such Unit as shown on the Association's record of ownership, including Mortgagees of Record. Said lien will constitute a lien prior to all other liens, except (a) all sums unpaid to the HCDA under the HCDA Equity Sharing Requirements pursuant to the Kalaeloa Reserved Housing Rules, (b) liens established by the use, sale and transfer restrictions of the HCDA Sale and Transfer Restrictions, the HCDA Occupancy Requirements and/or the HCDA Equity Sharing Requirements in favor of HCDA, as established and/or set forth in the Kalaeloa Reserved Housing Rules, (c) liens for taxes and assessments lawfully imposed by governmental authority against the Unit, and (d) all sums unpaid on any Mortgage that was Recorded prior to the Recordation of a notice of lien by (or on behalf of) the Association, and costs and expenses (including attorneys' fees) provided in such Mortgage. Upon receipt of such notice, any Mortgagee of Record will be entitled to pay all unpaid amounts of any such assessment and the Board, acting on behalf of the Association, must accept such payment in satisfaction thereof and thereupon release and discharge the lien securing the payment thereof. The Managing Agent, acting on behalf of the Association and as directed by the Board, is entitled to bid on a Unit at foreclosure sale and to acquire, hold, lease, mortgage and convey such Unit. In any such foreclosure, the Owner is required to pay a reasonable rental fee for the Unit and the Association will be entitled to the appointment of a receiver to collect the same. An action to recover a money judgment for unpaid Common Assessments, special assessments, other assessments and Collection Costs is maintainable without foreclosing or waiving the lien securing such amounts. Each described assessment and fee, together with such Collection Costs, will also be the personal obligation of the Person who was the Owner of such Unit at the time when the assessment fell due.

#### **K. INSURANCE.**

The Association and each Residential Unit Owner must maintain such insurance as required by the Bylaws, the Act, other Applicable Laws and other provisions of this Declaration.

## L. RESTORATION AFTER CASUALTY.

In the event any of the Residential Units or any of the common elements (including the limited common elements) are damaged or destroyed by any casualty, such improvements must be rebuilt, repaired or restored, unless the Owners of at least seventy-five percent (75%) of the Residential Units (and their First Mortgagees, if any), including the Owner(s) of any damaged or destroyed Unit(s), agree in writing (i) not to rebuild, repair or restore the damaged Unit(s) and common elements, and (ii) to remove the Project from the Act in accordance with Section 514B-47 of the Act. The Association must rebuild and restore the common elements in good and substantial manner according to the Condominium Map or according to such modified plans conforming to Applicable Laws as first approved by the Board. Any restoration must be completed diligently. To the extent not covered by insurance maintained by or for the Unit Owners, the Unit Owners will be solely responsible for the restoration of their respective Units and the limited common elements appurtenant to their respective Units. If the Owners of the Residential Units and their First Mortgagees determine not to repair and restore the Unit(s) or common elements, then any insurance proceeds remaining after the site is cleared and restored to good condition and even grade will be paid to the Residential Unit Owners in accordance with the terms of the respective insurance policies.

If the requisite Owners agree not to rebuild, repair or restore, or if such rebuilding, repair or restoration is not commenced within a reasonable time after such casualty (in no event more than one hundred eighty (180) days following the date of such casualty), then the Association, as a common expense, must (x) remove all remains or improvements so damaged or destroyed and restore the site to good and orderly condition and even grade, (y) sell the Land, and (z) disburse the proceeds and all remaining insurance proceeds to the Residential Unit Owners (or their Mortgagees of Record, if any, if required under the Mortgage documents), pro rata in accordance with the common interest appurtenant to each Residential Owner's Unit.

If any rebuilding, repair or restoration results in any improvement that is different in any material respect from the Condominium Map, then this Declaration and the Condominium Map must be amended to reflect the difference. If the amendments to this Declaration and to the Condominium Map relate to a rebuilding, repair or restoration of a Unit or a limited common element appurtenant to that Unit, then the amendment to this Declaration need only be signed by the Owner whose Unit or limited common element was rebuilt, repaired or restored. If the amendments to this Declaration and to the Condominium Map relate to a rebuilding, repair or restoration of more than one Unit or to limited common elements appurtenant to more than one Unit, then the amendment to this Declaration must be signed by all affected Unit Owners. If the amendments to this Declaration and to the Condominium Map relate to a rebuilding, repair or restoration of a common element that is not also a limited common element, then the amendment to this Declaration must be signed by the Owners of at least seventy-five percent (75%) of the Units.

## M. ADDITIONS AND ALTERATIONS TO THE PROJECT.

### 1. Alterations to Common Elements.

(a) Generally. Except as otherwise expressly provided in this Declaration to the contrary, the repair, alteration, modification, reconstruction, restoration, improvement, addition, replacement or removal (collectively, an "**Alteration**") of any portion of the common elements (but excluding limited common elements) or construction of any additional building or other structure or structural alteration, improvement, or addition thereto, different in any material respect from the Condominium Map, as it then exists, can be undertaken by the Association only

pursuant to an amendment of this Declaration and the Condominium Map. Anything in this Declaration, the Bylaws or the Project Rules to the contrary notwithstanding, no Alteration of the common elements is allowed to materially and adversely affect the value of any Residential Unit or materially and adversely affect the right of any Residential Unit Owner to use and enjoy such Owner's Residential Unit without the prior written approval of the affected Unit Owner. Owners of Attached Multi-Family Units are permitted to make, without the permission of the Board, the following, which will not be deemed "Alterations": a limited number of holes or other penetrations into the common element walls and ceilings surrounding their Units, provided such holes or penetrations are less than two inches deep, are for a reasonable purpose to improve their Units, and do not jeopardize the soundness, safety, or structural integrity of any part of the Project.

(b) Low-Expense/Nonmaterial Alterations. Whenever in the judgment of the Board the common elements require an Alteration that costs less than Fifty Thousand Dollars (\$50,000.00) (C.P.I. Adjusted) and is a "nonmaterial addition and alteration" (as defined in §514B-140 of the Act) ("**Low-Expense Alteration**"), the Association may proceed with such Alteration and assess all Residential Unit Owners for the cost thereof as a common expense. With respect to Low-Expense Alterations, the amendment to this Declaration and the Condominium Map required by subsection (a) above must be duly executed by two officers of the Board and, during the Declarant Control Period, by Declarant, and must be in accordance with complete plans and specifications therefor first approved in writing by the Board. Promptly upon completion of such Low-Expense Alteration, such amendment must be duly Recorded and filed of record, together with a complete set of floor plans of the Project as so altered, certified as-built by a licensed architect, engineer, or surveyor.

(c) High-Expense/Material Alterations. Whenever in the judgment of the Board the common elements require an Alteration that costs Fifty Thousand Dollars (\$50,000.00) or more (C.P.I. Adjusted) or is not a "nonmaterial addition and alteration" (as defined in §514B-140 of the Act) ("**High-Expense Alteration**"), the Association may proceed with such Alteration only after obtaining approval of Declarant, if Declarant owns a Unit in the Project, and at least 67% of the Unit Owners (by vote or written consent), and after the Board has authorized an assessment of all Residential Unit Owners for the cost thereof as a common expense. With respect to High-Expense Alterations, the amendment to this Declaration and the Condominium Map required by subsection (a) above must be duly executed by or pursuant to the affirmative vote or written consent of at least 67% of the Unit Owners, must be duly executed by two officers of the Board, and, during the Declarant Control Period, must be duly executed by Declarant and must be in accordance with complete plans and specifications therefor first approved in writing by the Board. The foregoing to the contrary notwithstanding, such approval and voting by the Association will not be required (i) for any Alterations covered by available insurance proceeds held in the name of the Association, or (ii) for any Alterations required by law or to insure public health or safety, or (iii) in the event of an emergency threatening immediate and substantial damage to persons or property, or (iv) for any Alterations anticipated in the Association's budget and for which funds (reserve or otherwise) have been allocated in accordance with the requirements of the Bylaws and the Act. Promptly upon completion of such High-Expense Alteration, such amendment must be duly Recorded and filed of record, together with a complete set of floor plans of the Project as so altered, certified as-built by a licensed architect, engineer, or surveyor.

(d) Alterations to Limited Common Elements. The cost of any Alterations performed on any limited common elements must be charged to the Owners of Units to which such limited common elements are appurtenant.

2. **Alterations to Units.** The provisions of this Section M.2 apply to Alterations made to the Residential Units and to limited common elements appurtenant to the Residential Units.

(a) Generally. Except as otherwise provided for in this Declaration, the Bylaws or the Project Rules, neither the Association nor any individual Unit Owner is allowed to make an alteration to the original design of a Unit that would be visible from the exterior of the Unit, to construct any additional structure or make any structural alterations or structural additions to an existing structure without first (i) obtaining the consent of the Board and (ii) Recording an amendment to this Declaration and the Condominium Map to reflect such change. This provision does not apply to Declarant during the Development Period, when Declarant is exercising Declarant's Reserved Rights. This provision will also not apply to the extent it conflicts with any provision of the federal Fair Housing Act (42 U.S.C. Sec 3601, et seq), as the same has been amended and may be further amended from time to time.

(b) Alterations Permitted. Except as otherwise provided by Applicable Laws, each Residential Unit Owner has the following rights:

(i) Additions or Alterations Solely Within a Unit Not Requiring Board Approval. Each Residential Unit Owner will have the right, at any time and from time to time, at such Unit Owner's sole cost and expense, and without the consent of any other Person (unless governmental agencies require such consent), except Declarant, if Declarant owns a Unit in the Project, to make any of the following Alterations solely affecting and solely within the Owner's Residential Unit: (A) to finish, change, alter, or substitute any plumbing, electrical, or other fixtures attached to the ceilings, floors, or walls as appropriate for the utilization of such Unit by such Owner or the Occupants thereof, provided there is no adverse effect on other Units or limited common elements; (B) to paint, paper, panel, plaster, tile, finish, carpet, re-carpet, and otherwise change the appearance of any walls, floors, or ceilings of the Unit not readily visible from outside of the Unit, subject to limitations on installation and replacement of hard floor surfaces in certain Units set forth in the Project Documents; (C) to install, remove, rearrange, paint, finish, change, alter or substitute counters and cabinets within such Unit as long as not readily visible from outside of the Unit; and (D) to make Alterations to the Unit that are not readily visible from outside of the Unit or the limited common element to facilitate handicapped accessibility within the Unit or limited common element.

(ii) Alterations to a Unit or Limited Common Element Requiring Board Approval. Each Residential Unit Owner, only with the prior written consent of the Board of Directors, Declarant (if Declarant owns a Unit in the Project), appropriate governmental agencies (if such agencies so require), and all other Owners directly affected (as determined by the Board), has the right, at any time and from time to time, at such Unit Owner's sole cost and expense, to make Alterations to the Residential Unit or limited common elements over which such Owner has sole control that are not covered under subsection (i) above or that are not "nonmaterial additions and alterations" (as defined in §514B-140 of the Act), including, without limitation, (A) Alterations adversely affecting other Units or limited common elements and (B) Alterations that are readily visible from outside of the Unit or the limited common element.

(iii) No Combining or Division of Units. Other than Declarant and Units owned by Declarant, no Residential Unit Owner is allowed to combine Residential Units or divide a Residential Unit into two or more Units without the prior written consent of the Board, Declarant, if Declarant owns a Unit in the Project, and appropriate governmental agencies (if such agencies so require).

(iv) Alterations to a Unit or Limited Common Element Requiring Board Approval. Each Residential Unit Owner, with the prior written consent of the Board of Directors, Declarant (if Declarant owns a Unit in the Project), appropriate governmental agencies (if such agencies so require), and all other Owners directly affected (as determined by the Board), will

have the right, at any time and from time to time, at such Unit Owner's sole cost and expense, to make Alterations to the Residential Unit or limited common elements over which such Owner has sole control that are not covered under subsection (i) above or that are not "nonmaterial additions and alterations" (as defined in §514B-140 of the Act), including, without limitation, (A) Alterations adversely affecting other Units or limited common elements and (B) Alterations that are readily visible from outside of the Unit or the limited common element.

(v) No Combining or Division of Units. Other than Declarant and Units owned by Declarant, no Residential Unit Owner is allowed to combine Residential Units or divide a Residential Unit into two or more Units without the prior written consent of the Board (which consent will not be unreasonably withheld), Declarant, if Declarant owns a Unit in the Project, and appropriate governmental agencies (if such agencies so require).

(c) Prohibited Alterations. Nothing contained in this Section 2 authorizes any Alteration that would: (i) jeopardize the soundness, safety, or structural integrity of any part of the Project; (ii) reduce the value of the Project or any Residential Unit (unless authorized by the Owner of the affected Unit(s)); (iii) unreasonably interfere with or disturb the rights of other Owners (other than temporary inconveniences during the Alteration); (iv) materially increase the transfer of sounds, air, odors, or smoke to other Residential Units or the common elements or limited common elements; (v) significantly increase the rate of fire insurance on the applicable building or the contents of the applicable building to an extent that Owners of all Units in such building would be materially affected; (vi) affect or impair any easement or rights of any of the other Residential Unit Owners; or (vii) interfere with or deprive any non-consenting Residential Unit Owner of the use or enjoyment of those common elements or limited common elements used or available for use by such non-consenting Owner, subject, however, to the exclusive use of the limited common elements. Further, nothing in this Section prohibits the Board from effecting such changes within a Unit or limited common element, or to require the same, in order that the applicable building may continue to comply with Applicable Laws, including any fire code requirements.

(d) Board Approval Required. Any other provision in this Declaration, the Bylaws or the Project Rules to the contrary notwithstanding, none of the following actions can be taken by Persons other than Declarant without the prior written consent of the Board and Declarant (if Declarant owns a Unit in the Project) and without being in compliance with the Project Documents: (i) Alterations that affect (or may affect) a structural component of any part of the Project; (ii) Alterations to the common elements; (iii) any penetration by more than two inches of an exterior common element wall, an area separation common element wall, a common element floor, a common element roof or a common element ceiling; and, (iv) unless such consent by the Board violates Applicable Laws, installation of any wiring for electrical installations, television antenna, machines or air conditioning units, or other equipment or appurtenances whatsoever on the exterior of any Unit or protruding through the walls, windows or roof thereof that are visible from the exterior of the Unit.

(e) Optional Floor Plans Shown on the Condominium Map. Notwithstanding the foregoing, the Owner of a Detached Single-Family Unit may add any optional floor plan that may be shown on the Condominium Map for that Unit's particular floor plan without amending the Condominium Map, provided the Unit Owner first obtains written approval from the Board and any necessary governmental permits and approvals.

(f) Limited Approval for Certain Floor Plans. Notwithstanding any other provision in this Declaration to the contrary, the Owner of a Detached Single-Family Unit need only obtain the consent of the Board and any necessary governmental permits and approvals for

changes to the layout of a Detached Single-Family Unit that do not increase or decrease the total area of the original Unit's "building footprint" by more than one hundred square feet (100 sq. ft.). As used in this section, the original Unit means the Unit as originally constructed by Declarant. Upon obtaining the necessary approvals and completing the construction of the changes or alterations, the Owner of the Detached Single-Family Unit must Record an amendment to this Declaration and to the Condominium Map that includes a revised set of floor plans describing and showing the changes and/or alterations to the Unit. The amendment need only be signed by the Owner of the Detached Single-Family and an officer of the Board.

(g) Solar Energy Devices. The installation of any "solar energy device" (as defined in the Act) on or within any Attached Multi-Family Unit must be pre-approved in writing by the Board. The installation, maintenance and repair of any solar energy device within any portion of the Project must comply with the Act, Hawaii Revised Statutes Section 196-7, as may be amended from time to time ("**Section 196-7**"), this Declaration and any additional rules relating to solar energy devices that may be adopted by the Board. The installation of any solar energy device must be performed by a duly licensed Hawaii contractor, and the solar energy device must be registered with the Managing Agent within 30 days after installation. The Board has the right to adopt additional rules relating to the installation, maintenance and repair of solar energy devices within the Project, provided such rules comply with the Act and Section 196-7.

(h) Lanais/Covered Entries.

(i) If a Detached Single-Family Unit includes a lanai and/or a covered entry, then such lanai and covered entry cannot be painted, decorated, partially or fully enclosed or covered or otherwise permanently improved or altered without first obtaining written approval of such painting, decorating, enclosure, covering, improvement or alteration from the Board, as well as any necessary governmental permits and approvals.

(ii) If an Attached Multi-Family Unit includes a lanai and/or a covered entry (whether as part of the Unit or as a limited common element), then such lanai and covered entry (A) cannot be painted, decorated or altered without first obtaining written approval of such painting, decorating or alteration from the Board, as well as any necessary governmental permits and approvals, and (B) cannot be partially or fully enclosed or covered or otherwise permanently improved.

(iii) Lanais must be used only as outdoor living areas containing appropriate patio furniture and other similar outdoor furnishings that comply with the Project Rules and any other standards governing the appearance of such items as determined by the Board.

(i) General Requirements for Alterations.

(i) Approval Procedures. With respect to Alterations that require approval of the Board, the Board has the right and authority to establish such requirements and procedures that it deems appropriate for Owners to follow before any such Alteration to a Unit, to the Unit's limited common elements or to the common elements can commence, provided that the Board will not unreasonably withhold or delay its consent to a request for approval. Any such request will be deemed to be granted if not denied in writing within forty-five (45) days after the Boards' receipt of the request, or within forty-five (45) days after the Boards' receipt of additional information reasonably required by the Board in order to consider such request, whichever occurs later. Other requirements and procedures for the Board to follow in response to requests for Alterations may be set forth in the Project Rules. The Board also has the right to form an architectural review committee to process any Alteration request and to specially assess

applicable Owners for costs incurred by the Association in connection with any Alteration. Further, the Board has the right to effect such changes within a Unit or limited common element, or to require the same, in order that a building may continue to comply with Applicable Laws, including any fire code requirements.

(ii) Performance and Labor and Materials Payment Bond. With respect to Alterations that require approval of the Board, if the Alterations have an estimated cost of more than \$100,000 (C.P.I. Adjusted), then the Owner of the Unit must obtain a performance and labor and materials payment bond (or other form of security acceptable to the Board), naming as obligees the Board, the Association and collectively all Unit Owners and their respective Mortgagees, as their interests may appear, for a penal sum of not less than 100% of the estimated cost of such construction.

(iii) Plans and Specifications. With respect to Alterations that require approval of the Board, all plans and specifications for any such Alterations must be prepared by a Hawaii-licensed architect or professional engineer and conform with all Applicable Laws and ordinances, and all Alterations, the cost of which is expected to exceed \$100,000 (C.P.I. Adjusted), must be undertaken by a building contractor licensed in the State of Hawaii.

(iv) Insurance. During the entire course of any physical Alteration that requires approval of the Board, the Owner making such Alteration will cause to be maintained at such Owner's expense builder's all-risk insurance in an amount not less than the estimated cost of construction. The Association and the other Unit Owner(s) must be named as additional insureds.

(v) Certain Alterations Must be Completed Within a Reasonable Time. All construction activity relating to any Alterations affecting the exterior of a building or otherwise readily visible from outside the Unit or limited common element being altered must be completed within a reasonable period of time after the commencement thereof, subject to extension for delays beyond the control of the Owner or its contractors, in which case any such construction activity must be completed in such additional time as may be reasonably necessary in the exercise of due diligence (as determined by the Board).

(e) Withholding of Board or Declarant Approval. Where applicable, the Board may withhold its approval to any request for an Alteration based upon: the terms of this Declaration, the Bylaws or the Project Rules; the potential or perceived effect such proposed Alteration may have on the appearance, safety or integrity of any part of the Project; considerations of applicable zoning and other requirements; the terms of any permits, agreements or authorizations pursuant to which the Project has been designed and constructed; or costs incurred, or to be incurred, by the Association. Declarant may withhold its approval to any request for an Alteration for any reason within its sole discretion.

**3. Amendment to Declaration and Condominium Map.** The provisions of Section Q of this Declaration to the contrary notwithstanding, in the event of an Alteration that alters (a) the depiction of the particular Unit(s) or limited common elements as they may be shown on the Condominium Map, (b) the description thereof in this Declaration, or (c) the limited common elements appurtenant to a Unit, the Unit Owner or Owners making the Alteration must amend this Declaration and, if applicable, the Condominium Map to set forth such Alteration, which amendment(s) must be executed by the Owner or Owners of the affected Unit or Units and by such other Persons, if any, whose approval or consent to such Alteration is required by the Project Documents or Applicable Laws, but such amendment(s) will not require execution by any other Person, and such amendment(s) will become effective upon the Recordation thereof; provided,

however, that all required consents to the Alteration have been obtained and not repealed prior to such Recordation. Every Unit Owner, as Unit Owners and as Members of the Association and, if applicable, the Board of Directors, 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: (y) consents to and agrees that he, she, or it will, if required by law or by any such Owner who has changed or altered a Unit as aforesaid (the "**Altering Owner**"), 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 (z) appoints the Altering Owner and the Altering Owner's assigns his, her, or its attorney-in-fact and/or agent with full power of substitution to execute, deliver, and Record such documents and to do such things on his, her, or its behalf, which grant of such power, being coupled with an interest, is irrevocable and, being a durable power of attorney and/or agency, will not be affected by the disability of any such party. Alterations made by or on behalf of Declarant, and amendments to this Declaration or the Condominium Map in connection with such Alterations, will not require the vote or consent of the Board or any other Person.

4. **Alterations by Declarant.** The provisions of Sections M.1 through M.3 above do not apply to Alterations or other modifications that are made by or on behalf of Declarant. Declarant's right to make Alterations and other modifications to the Project is set forth in this Section M.4.

(a) Declarant's Reserved Rights. Any other provision in this Declaration to the contrary notwithstanding and without limiting any other provision in this Declaration, prior to (i) the time that the fee simple interest in all Units in the Project have been sold and the conveyance thereof Recorded, and (ii) the Recording by Declarant of the "as built" statement (with plans, if applicable) required by Section 514B-34 of the Act with respect to all Residential Units in the Project, Declarant will have the right, from time to time, without being required to obtain the consent or joinder of any Person or group of Persons, including the Association, any Unit Owner, or any Mortgagee, lienholder, Unit purchaser, or any other Person who may have an interest in the Project, but subject to Section M.8, to do the following:

(i) Pre-Closing Alterations. To make Alterations or other modifications in the Project (and, if appropriate, to amend this Declaration and the Condominium Map accordingly) that change the floor plan of (including, without limitation, establishing a new floor plan), change the configuration of, decrease or increase the size of, or change the location of any Unit (or the limited common elements appurtenant to the Unit) that has not been sold and had the conveyance thereof Recorded.

(ii) Post-Closing Alterations. To make other Alterations or other modifications in the Project (and, if appropriate, to amend this Declaration and the Condominium Map accordingly) that make minor changes to any Unit, including the limited common elements appurtenant to the Unit, that has been sold and the conveyance thereof Recorded, provided such changes do not materially and adversely affect the physical location, design or size of the Unit or limited common element.

(iii) Alterations to Common Elements. After Recordation of the first conveyance of a Unit, to make Alterations or modifications in the Project (and, if appropriate, to amend this Declaration and the Condominium Map accordingly) that make changes to any common element, provided such changes do not materially and adversely affect the use, physical location, design or size of the common element.

5. **Exemptions for Persons With Disabilities.** Notwithstanding any other provision to the contrary contained in the Bylaws, this Declaration or the Project Rules, Owners of Residential Units with disabilities are allowed reasonable exemptions from the Project Documents and are permitted to make reasonable Alterations to their Residential Units, the limited common elements appurtenant to their Residential Units and/or the common elements, at their expense (including the cost of obtaining any required permits and bonds), as and to the extent required under the ADA or other Applicable Laws, or if such Alterations are necessary, to enable them to use and enjoy their Residential Units, the limited common elements appurtenant to their Units and/or the common elements, as the case may be, provided that any such Owner with a disability desiring such an exemption or to make such Alterations must make such request, in writing, to the Board and provided that such Owner will be responsible for all costs related to such exemptions. The written request must set forth, with specificity and in detail, the nature of the request and the reason that the requesting party needs to be granted such exemption or needs to make such Alterations and the requested modifications, if any, together with copies of any requisite permits and/or plans filed with the appropriate government entity. Nothing contained in this Section M exempts an Owner from making all amendments to the Bylaws, this Declaration or the Condominium Map necessitated by any changes authorized under this Section.

6. **Emergency Alterations.** The foregoing to the contrary notwithstanding, any requirements set forth above for obtaining approvals or votes by the Board, the Association or other Unit Owners before an Alteration can take place will be suspended for: (a) Alterations required by law or to insure public health or safety; or (b) Alterations required in the event of an emergency threatening immediate and substantial damage to persons or property.

7. **Common Elements Converted to Limited Common Elements.** Any part of the common elements of the Project that, as a result of the Alterations described in this Section M, serves or is used by exclusively one or more, but not all, Units will become a limited common element appurtenant to and for the exclusive use of such Unit or Units, among the limited common elements listed in **Exhibit "B"**, and any costs in connection therewith will be borne as provided in Section J of this Declaration. Documentation of the conversion of such common elements to the status of limited common elements need only be by such amendments to the Condominium Map and this Declaration as may be required under this Section M, executed by such parties as provided in this Section M.

8. **Consistent with Kalaeloa Design Guidelines.** Any other provision in this Declaration to the contrary notwithstanding, any and all Improvements within the Project and any and all Alterations made to any part of the Project must be consistent with the Kalaeloa Design Guidelines until the Kalaeloa Design Guidelines expire on December 14, 2031 (the "**Kalaeloa Design Guidelines Expiration Date**").

(a) Common Elements. Prior to the undertaking by the Association or Declarant, as the case may be, of any Improvement or Alteration of any portion of the common elements in accordance with Section M.1 before the Kalaeloa Design Guidelines Expiration Date, the Association or Declarant, as the case may be, must submit a request to the Kalaeloa Master Developer (or its designee), together with such other information as may be reasonably requested by the Kalaeloa Master Developer, that the Kalaeloa Master Developer determine, in its commercially reasonable discretion, whether the proposed Improvement and/or Alteration complies with the Kalaeloa Design Guidelines.

(b) Residential Units. The Association (via the Board or architectural review committee, if any) has the right and obligation to review any proposed Alteration to any Residential Unit by an Owner to determine compliance with the Kalaeloa Design Guidelines. If,

in connection with an Owner's request to make an Alteration pursuant to Section M.2 before the Kalaeloa Design Guidelines Expiration Date, the Association determines that the proposed Alteration complies with the Kalaeloa Design Guidelines, then the Association must submit such approval to the Kalaeloa Master Developer (or its designee) so that the Kalaeloa Master Developer can determine, in its commercially reasonable discretion, whether the proposed Alteration complies with the Kalaeloa Design Guidelines.

(c) Review. Any written submittal made to the Kalaeloa Master Developer (or its designee) pursuant to this Section M.8 will be deemed to comply with the Kalaeloa Design Guidelines if the Kalaeloa Master Developer does not respond otherwise in writing within fifteen (15) days after the Kalaeloa Master Developer's receipt of the submittal, or within fifteen (15) days after the Kalaeloa Master Developer's receipt of additional information reasonably required by the Kalaeloa Master Developer to consider such submittal (provided the Kalaeloa Master Developer requests such additional information within seven (7) days after receiving the initial submittal), whichever occurs later. To assure that the requested Alterations comply with the Kalaeloa Design Guidelines, the Kalaeloa Master Developer may require as part of its approval that the Alterations meet certain specific conditions. The Kalaeloa Master Developer has the right and authority to establish in writing such additional and reasonable requirements and procedures that it reasonably deems appropriate for the Association to follow in connection with any Alteration request submitted hereunder and to specially assess the Association for reasonable and verifiable costs incurred by the Kalaeloa Master Developer in connection with any submittal made to the Kalaeloa Master Developer pursuant to this Section M.8. The address for submittals to the Kalaeloa Master Developer (and to its designee) is: Kalaeloa Master Developer, c/o Hunt Communities Hawaii LLC, 737 Bishop Street, Suite 2750, Honolulu, Hawaii 96813.

(d) Enforcement. Prior to the Kalaeloa Design Guidelines Expiration Date, the Association (via the Board or the Managing Agent) will enforce compliance with the Kalaeloa Design Guidelines and remedy any non-compliant Improvement or Alteration within the Project. If, prior to the Kalaeloa Design Guidelines Expiration Date and within 45 days after receiving a written request from the Kalaeloa Master Developer to do so, the Association fails to undertake remedial measures that the Kalaeloa Master Developer reasonably deems necessary to effect compliance with the Kalaeloa Design Guidelines, then the Kalaeloa Master Developer has the right, but not the obligation, to undertake such remedial measures, provided such remedial measures are undertaken by the Kalaeloa Master Developer within six (6) months after sending the written request for such remedial measures to the Association and prior to the Kalaeloa Design Guidelines Expiration Date. If the Kalaeloa Master Developer exercises its rights under this subsection (d), then the Association must reimburse the Kalaeloa Master Developer, upon demand, for reasonable and verifiable costs incurred by the Kalaeloa Master Developer in connection with such remedial measures. Failure by the Association and/or the Kalaeloa Master Developer to enforce any provision of the Kalaeloa Design Guidelines will not be deemed a waiver of the right to do so thereafter.

(e) Amendment. Any other provision in this Declaration to the contrary notwithstanding, the provisions of this Section M.8., and any other provision referenced herein, may not be amended before the Kalaeloa Design Guidelines Expiration Date without the written consent of the Kalaeloa Master Developer.

## **N. COMPLIANCE WITH PROJECT DOCUMENTS; ENFORCEMENT; COOPERATION.**

1. **Obligation to Comply.** By acquiring a Unit in the Project, each Owner covenants and agrees that such Owner and the family, tenants, Mortgagees, lessees and guests of such Owner will abide by, observe and strictly comply with all applicable terms, covenants, conditions and provisions set forth in the Project Documents. The Association, all Unit Owners, Occupants, Mortgagees, invitees, lessees, tenants, agents, servants, contractors and guests, and any other Persons who may in any manner use or have an interest in the Project (or portions thereof), are bound by and must strictly comply with the provisions, conditions and restrictions of the Project Documents, all agreements, decisions and determinations of the Board and the Association as lawfully made or amended from time to time and with applicable provisions of the Act. Failure to comply with any such provisions will be grounds for an action to recover sums due, for damages (to the extent permitted under Section P of this Declaration) or injunctive relief or both, under the dispute resolution proceedings of Section U of this Declaration, maintainable by Declarant, the Managing Agent, the Board (on behalf of the Association), or, in a proper case, by any aggrieved Unit Owner.

### **2. Enforcement.**

(a) Except as otherwise set forth in this Declaration or the Bylaws, Declarant, the Managing Agent and the Board (on behalf of the Association) have the right, but not the obligation, to enforce the provisions of the Project Documents and all agreements, decisions and determinations of the Board and the Association as lawfully made or amended from time to time. The Association (via the Board or the Managing Agent) has the exclusive right to the enforcement of the Assessment Lien. Failure by the Board to enforce any provision of the Project Documents will not be deemed a waiver of the right to do so thereafter.

(b) Except as otherwise set forth in this Declaration, the Bylaws or the Project Rules, each Owner has standing to initiate the dispute resolution proceedings under Section U on their own behalf (and at their own expense) to enforce the terms and conditions of the Project Documents and all agreements, decisions and determinations of the Board and the Association as lawfully made or amended from time to time, but no Owner may bring an action or proceeding on behalf of the Association or on behalf of another Owner. Any judgment, award or other recovery on behalf of the Association must be payable only to the Association as a realization of the Association. The limitations, restrictions, conditions and covenants set forth in the Project Documents constitute a general scheme for (i) the maintenance, protection and enhancement of the value of the Project, and (ii) the benefit of all Owners and Occupants. Each remedy provided for in this Declaration is cumulative and not exclusive. The result of or condition caused by any violation of any of the provisions of the Project Documents is and will be deemed a nuisance.

3. **Payment of Costs of Enforcement.** All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for (a) collecting delinquent assessments against any Owner or any Owner's Unit, (b) foreclosing any lien on any Owner's Unit, and, (c) subject to the applicable provisions of Section J.16 of this Declaration, enforcing provisions of the Project Documents or the Act, must be promptly paid on demand to the Association by the Unit Owner, and, if not so paid, will be assessed as a special assessment that can be foreclosed upon; provided that the Association will promptly pay on demand to the Unit Owner those costs and expenses, including reasonable attorneys' fees, incurred by the Unit Owner as a result of claims made by the Association that are not substantiated.

4. **Compliance Excused by Court.** The First Circuit Court of the State of Hawaii may excuse compliance with any of the provisions referenced in Section 514B-111(a) of the Act

that are in this Declaration or the Bylaws if the Court finds that the provision unreasonably interferes with the Association's ability to manage the common elements, administer the Project, or carry out any other function set forth in this Declaration or the Bylaws, and that compliance is not necessary to protect the legitimate interests of the members or lenders holding security interests. The Board, on behalf of the Association, will, by certified mail, provide all Owners with notice of the date, time, and place of any court hearing to be held pursuant to this Section and Section 514B-111 of the Act.

5. **Obligation of Good Faith and Mutual Cooperation.** Each Unit Owner, by acquiring a Unit in the Project, acknowledges and agrees that such Owner has an obligation to act in good faith and mutual cooperation with respect to the Project, the Association and the other Unit Owners. In that respect, if something needs to be done that is reasonable and necessary, but the Project Documents do not address (i.e., are silent on) the act that needs to be done, then, provided the act will not have a material and adverse effect on the Owner, the Owner's Unit (or appurtenant limited common elements) or the use of or obligations with respect to the Owner's Unit (or appurtenant limited common elements) and provided the Unit Owner is not required to incur any costs related thereto, the Unit Owner agrees to cooperate, in good faith, in the performance of the desired act. If, despite such good faith mutual cooperation, an agreement cannot be reached with respect to the act that needs to be done, then the matter is to be submitted to the dispute resolution process set forth in Section U below.

#### **O. MASTER DECLARATION; MASTER ASSOCIATION; MASTER ASSESSMENTS.**

The Project is an Increment within what Declarant projects will be an approximately 30-acre residential community called Ka'ulu by Gentry ("**Ka'ulu**"). Ka'ulu is located within and/or adjacent to lands that are part of a large-scale planned development commonly referred to as "**Kalaeloa**", which may include various residential, commercial, recreational and/or other components. In connection therewith, there may be established and imposed (by Declarant and/or another party) upon all or portions of such lands, which may include Ka'ulu, for the purpose of establishing a general plan for use and enjoyment of such lands and common facilities related thereto, a declaration of conditions and covenants applicable to such lands (the "**Master Declaration**"), which may include the creation of an association comprised of the owners of such lands or certain interests therein ("**Master Association**"). It is expected that the Master Association may, if and when formed, among other things, own, manage, operate, maintain, restore and/or repair roadways, landscape areas, archaeological areas, irrigation systems, drainage systems and other common areas, improvements, facilities and systems (collectively, the "**Master Facilities**"), for the benefit of all or portions of the Kalaeloa lands, including Ka'ulu. Declarant has reserved the right, but is under no obligation, to annex the Project, including all of the Units, to the Master Declaration, and, in such event, all Unit Owners will become members of the Master Association as and to the extent provided in the Master Declaration. Effective upon any such annexation, all Unit Owners must comply with and be bound by all of the applicable terms, conditions and obligations in or under the Master Declaration and any bylaws, rules and regulations of the Master Association. Obligations may include payment of Master Assessments for, among other things, use of the Master Facilities and/or for the ownership, management, operation, maintenance, restoration and repair of the Master Facilities. The Master Declaration may provide for lien rights upon each Unit in the Project for non-payment of Master Assessments. Master Assessments would be separate and distinct from the Association's Common Assessments for the Project and Ka'ulu. Declarant will have the right to convey common element roadways, landscape areas, archaeological areas, irrigation systems, drainage systems and other common areas, improvements, facilities and systems to the Master Association.

**P. ALLEGED DEFECTS; RIGHT OF DECLARANT TO CURE.**

1. **Declarant's Right to Cure Alleged Defects.** It is Declarant's intent that all Improvements constructed or renovated 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 good construction and development practices for similar projects. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, issues may arise as to whether an alleged defect exists and Declarant's responsibility for such defect. It is Declarant'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 or even the dispute resolution process described in Section U below. Accordingly, the Association, the Board, and all Owners are and will be bound by the claim resolution procedures set forth in this Section P (collectively, the "**Cure Process**").

2. **Declarant's Right to Cure.** In the event that the Association, the Board or any Owner or Owners (each an "**Alleged Defect Claimant**") claim, contend, or allege that any portion of a Unit, the common elements, and/or any other Improvements constructed on the Land are defective or that Declarant or other Covered Parties were negligent or are otherwise liable for defects in the planning, design, engineering, grading, construction, installation, management, or other development thereof (an "**Alleged Defect**"), Declarant hereby reserves the right and an easement for itself and all other applicable Covered Parties to inspect, evaluate, repair, replace, and/or otherwise cure such Alleged Defect as set forth herein.

3. **Notice to Declarant.** If an Alleged Defect Claimant discovers an Alleged Defect, then the Alleged Defect Claimant must, within five (5) days after discovery of the Alleged Defect, attempt to contact Declarant by telephone to discuss the Alleged Defect. If the Alleged Defect Claimant does not receive adequate resolution of the Alleged Defect via the telephone call to Declarant, then the Alleged Defect Claimant must, within twenty (20) days after discovery of the Alleged Defect, deliver a written notice (the "**Notice of Alleged Defect**") to Declarant. Alleged Defects affecting more than one Unit must be filed by the Association as Alleged Defect Claimant and one written notice for one claim must be delivered to Declarant. The Notice of Alleged Defect must include all of the following:

(a) A preliminary list of Alleged Defects, citing in reasonable detail the characteristics, nature, extent, and possible causes of the Alleged Defects (a "**Preliminary List of Alleged Defects**");

(b) The Alleged Defect Claimant's answers to a survey or questionnaire distributed to the Owners by Declarant to determine the nature and extent of the Alleged Defects, if such a survey has been conducted or questionnaire has been distributed;

(c) A summary of the results (or the actual results) of testing conducted by or on behalf of the Alleged Defect Claimant to determine the nature and extent of the Alleged Defects, if such testing has been conducted and such results are available; and

(d) Originals or copies of any photographs or samples of the Alleged Defect taken by or on behalf of the Alleged Defect Claimant.

4. **Initial Attempt at Resolution.** The Notice of Alleged Defect will, upon delivery to Declarant, commence a period of time not to exceed sixty (60) days, unless the Alleged Defect Claimant and Declarant agree to a longer period, during which the Alleged Defect Claimant and Declarant will either, in accordance with the requirements of this Section P, attempt to resolve the

issue or attempt to agree to submit it to the dispute resolution process set forth in Section U of this Declaration.

5. **Tolling of Claim Periods.** Except as otherwise provided in this Section P, the Notice of Alleged Defect will, upon mailing, toll all statutory and contractual limitations on actions against all parties who may be responsible for the defects claimed, whether named in the Notice or not, including claims for indemnity applicable to the claim, for a period of 150 days or a longer period agreed to in writing by Alleged Defect Claimant and Declarant; provided, however, that, at any time, Declarant may give written notice (the "**Cancellation Notice**") to cancel the tolling of the limitations period provided in this Section P.5. Upon delivery of the Cancellation Notice, the Alleged Defect Claimant and Declarant will be relieved of any further obligation to satisfy the claim resolution procedures set forth in this Section P (thereby allowing the parties to pursue the dispute resolution process set forth in Section U of this Declaration), except that the Alleged Defect Claimant will not be relieved of the obligations under Section P.12 below, and if the Association is an Alleged Defect Claimant, then the Association will not be relieved of the obligations under Section P.10 below. The tolling of all applicable limitations periods will cease sixty (60) days after a Cancellation Notice is delivered to the Alleged Defect Claimant.

6. **Meet and Confer.** Within twenty five (25) days after the date the Alleged Defect Claimant delivers the Notice of Alleged Defect to Declarant, Declarant may request in writing (the "**Request to Meet and Confer**") to meet and confer with the Alleged Defect Claimant, if Alleged Defect Claimant is an Owner, or with the Board, if Alleged Defect Claimant is the Association, and to inspect the Alleged Defect and conduct testing, including testing that may cause physical damage to any property within the Project, in order to evaluate the Alleged Defect. If Declarant does not make a timely Request to Meet and Confer, then the Alleged Defect Claimant and Declarant will be relieved of any further obligation to satisfy the claim resolution procedures set forth in this Section P (thereby allowing the parties to pursue the dispute resolution process set forth in Section U of this Declaration); provided, however, that the Alleged Defect Claimant will not be relieved of the obligations of Section P.12 below, and if the Association is an Alleged Defect Claimant, then the Association will remain obligated to satisfy the requirements of Section P.10 below. Unless Declarant and the Alleged Defect Claimant otherwise agree, the meeting (the "**Initial Meeting**") will take place no later than ten (10) days after the date of the Request to Meet and Confer at a mutually agreeable time and place. If the Association is an Alleged Defect Claimant, then the Association will provide to all members of the Board notice of the time and place of the Initial Meeting pursuant to the provisions of the Bylaws relating to meetings of the Board. The discussions at the Initial Meeting will be privileged communications and will not be admissible in evidence in any proceeding or civil action unless Declarant and the Alleged Defect Claimant consent in writing to their admission. The Initial Meeting will be for the purpose of discussing all of the following:

- (a) the nature and extent of the Alleged Defects;
- (b) proposed methods of correction, to the extent there is sufficient information or, if not, to determine the need for further investigation;
- (c) proposals for submitting the issue to the dispute resolution process set forth in Section U of this Declaration; and
- (d) requests from Declarant to inspect the Alleged Defects and conduct testing.

7. **Inspection and Testing.**

(a) If the Alleged Defect Claimant has conducted inspection and testing prior to the date it sent the Notice of Alleged Defect to Declarant, then the Alleged Defect Claimant must, at the earliest practicable date after the Initial Meeting, but no later than five (5) days after the Initial Meeting, make available to Declarant for inspection and testing at least those areas inspected or tested by the Alleged Defect Claimant. Declarant will have the right (but not the obligation), upon reasonable notice to the Alleged Defect Claimant and the Owners of Units upon which Declarant intends to enter and during normal business hours, to enter onto or into, as applicable, the relevant portions of the Project, including, without limitation, any Unit or other improvement within the Project, for the purposes of inspection and testing (including testing that may cause physical damage to any property in the Project) in order to evaluate the Alleged Defect. Each Owner and the Association will make such areas available to Declarant for such inspection and testing.

(b) The inspection and testing, if any, is to be completed within thirty (30) days after the date the Alleged Defect Claimant makes such areas available for inspection and testing, unless the Alleged Defect Claimant and Declarant agree in writing to a longer period or unless such inspection and testing cannot reasonably be completed within such time. If Declarant does not timely complete the inspection and testing, then the Alleged Defect Claimant and Declarant will be relieved of any further obligation to satisfy the claim resolution procedures set forth in this Section P (thereby allowing the parties to pursue the dispute resolution process set forth in Section U of this Declaration); provided, however, that the Alleged Defect Claimant will not be relieved of the obligations under Section P.12 below, and if the Association is an Alleged Defect Claimant, then the Association will remain obligated to satisfy the requirements of Section P.10 below. In conducting such inspection and testing, Declarant will be entitled to take any actions it deems reasonable and necessary under the circumstances.

(c) Declarant will pay all costs of inspection and testing that are requested by Declarant and will, within a reasonable time period, restore the inspected property to the condition that it was in immediately prior to such testing and inspection. The results of the inspection and testing will not be admissible in evidence in any arbitration proceeding or civil action unless Declarant consents to their admission.

8. **Settlement Attempts.** Within sixty (60) days after receiving the results of the inspection and testing or within sixty (60) days after the Initial Meeting, if no inspection and testing are conducted pursuant to Section P.7, Declarant is to submit to the Alleged Defect Claimant the following:

(a) If Declarant desires a meeting, then a request to meet with the Alleged Defect Claimant if the Alleged Defect Claimant is an Owner, or with the Board if the Alleged Defect Claimant is the Association, to discuss a written settlement offer;

(b) A written settlement offer ("**Settlement Offer**") and an explanation of the reasons for the terms of the Settlement Offer, which may include an offer to submit the issue to the dispute resolution process set forth in Section U of this Declaration; and

(c) A summary of the results of the inspection and testing, if any, conducted by Declarant; provided, however, that if the Alleged Defect Claimant provided Declarant with actual test results pursuant to Section P.3(c) above, then Declarant must also provide the Alleged Defect Claimant with actual test results.

If Declarant does not timely submit the items required by this Section P.8, then the Alleged Defect Claimant will be relieved of any obligations to meet and confer with Declarant

about the Settlement Offer. Otherwise, the Alleged Defect Claimant or the Board, as the case may be, must meet and confer with Declarant about the Settlement Offer no less than ten (10) days after Declarant submits the items described in this Section P.8 to the Owner or the Board, as the case may be.

9. **Modification of Time Periods.** At any time after the Notice of Alleged Defect is delivered to Declarant, the Alleged Defect Claimant and Declarant may agree in writing to modify or excuse any of the time periods or other obligations imposed by this Section P. Except for the notice required pursuant to Section P.10 below, all notices, requests, statements, or other communications required pursuant to this Section P are to be hand delivered to the intended recipient or delivered by certified mail, return receipt requested.

10. **Association as Alleged Defect Claimant.** If the Alleged Defect Claimant is the Association, then the Association will comply with either Section P.10(a) or Section P.10(b) below. The failure of the Association to comply with this Section P.10 will be a procedural deficiency to an action for damages by the Association against Declarant.

(a) If the Board rejects the Settlement Offer, then the Board must hold a meeting (the "**Owner Meeting**"), open to every Owner, no less than fifteen (15) days before the Association initiates the dispute resolution process of Section U of this Declaration. No less than fifteen (15) days before the Owner Meeting is held, a written notice must be sent to each Owner specifying all of the following:

(i) that a meeting will take place to discuss issues that may lead to the initiation of dispute resolution process on behalf of the Association;

(ii) the time and place of the Owner Meeting;

(iii) the options that are available to address the issues, including the commencement of the dispute resolution process in accordance with Section U of this Declaration, and a statement of the various alternatives that are reasonably foreseeable by the Association to pay for those options, and whether such payments are expected to be made from the use of funds currently within the Association's account, from increases in maintenance fees, or from the imposition of special assessments;

(iv) the complete text of any Settlement Offer, Declarant's explanation of the reasons for the terms of the Settlement Offer, and any offer by Declarant to submit the issue to the dispute resolution process set forth in Section U of this Declaration;

(v) the Preliminary List of Alleged Defects provided by the Association to Declarant, a list of any other documents provided by the Association to Declarant pursuant to this Section P, and information about where and when Owners may inspect those documents;

(vi) a complete and accurate description of Declarant's attempts to correct the Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect; and

(vii) the estimated cost to repair such Alleged Defect.

The discussions at the Owner Meeting, the contents of the notice of the Owner Meeting, and the items required to be specified in such notice are privileged communications and

are not admissible in evidence in any proceeding or civil action unless Declarant and the Board consent to their admission.

(b) If, pursuant to Sections P.5, P.6 and P.7 above, the Association is relieved of its obligation to satisfy the requirements of this Section P, other than this Section P.10 and Section P.12 below, then the Association may commence the dispute resolution process set forth in Section U of this Declaration.

11. **Legal Actions.** No Alleged Defect Claimant is allowed to initiate any legal action, cause of action or proceeding against Declarant or any other Covered Party alleging damages (a) for the costs of repairing or replacing any Alleged Defect, (b) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (c) for any consequential damages resulting from such Alleged Defect, unless and until (i) Alleged Defect Claimant has delivered to Declarant a Notice of Alleged Defect and (ii) Declarant has, within ninety (90) days after its receipt of such Notice of Alleged Defect, either (A) failed to repair or replace such Alleged Defect or (B) if such Alleged Defect cannot reasonably be repaired or replaced within such ninety (90) day period, failed to commence such repair or replacement of the Alleged Defect and, thereafter, failed to pursue diligently such repair or replacement to completion.

12. **Use of Received Funds.** Any funds received by an Alleged Defect Claimant as a result of any judgment or award in connection with any legal action, cause of action or proceeding against Declarant or any other Covered Party alleging damages (a) for the costs of repairing or replacing any Alleged Defect, (b) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (c) for any consequential damages resulting from such Alleged Defect, must first be used to correct and/or repair such Alleged Defect or to reimburse the Alleged Defect Claimant for any costs actually incurred by such Alleged Defect Claimant in correcting and/or repairing the Alleged Defect. In the event the Association recovers any funds from Declarant or any other Covered Party to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect must be paid into the Association's general operating account, unless at least sixty-seven percent (67%) of the Owners vote to allocate or distribute the remaining funds otherwise.

13. **Correction of Defects.** As soon as is reasonably practical after the Association and Declarant (or other Covered Party) have entered into a settlement agreement or the matter has otherwise been resolved regarding Alleged Defects in the Common Elements, where the defects giving rise to the Dispute have not been corrected, the Association must, in writing, inform only the Owners whose names appear on the records of the Association that the matter has been resolved, by settlement agreement or other means, and disclose all of the following:

(a) A general description of the defects that the Association reasonably believes, as of the date of the disclosure, will be corrected or replaced;

(b) A good faith estimate, as of the date of the disclosure, of when the Association believes that the defects identified in Section P.13(a) will be corrected or replaced;

(c) The status of the claims for Alleged Defect that were not identified in Section P.13(a), whether expressed in a Preliminary List of Alleged Defects sent to each Owner or otherwise claimed and disclosed to the Owners. The Association may amend the disclosures required pursuant to this Section P.13, and any amendments will supersede any prior conflicting information disclosed to the Owners.

**14. Generally.**

(a) Nothing set forth in this Section P is to be construed as imposing any obligation on Declarant to inspect, repair, or replace any item or Alleged Defect for which Declarant is not otherwise obligated to do under Applicable Law. The right of Declarant to enter, inspect, repair, and/or replace reserved hereby is irrevocable and may not be waived or otherwise terminated except by a writing signed by Declarant and Recorded.

(b) Any Dispute concerning the interpretation or the enforceability of this Section P, any challenges to the enforcement or the validity of this Section P, and any defense relating to the enforcement of this Section P, including, without limitation, waiver, estoppel, or laches, will be decided in accordance with the dispute resolution procedures set forth in Section U of this Declaration.

(c) Utilization of all or part of the Cure Process by Declarant and any other applicable Covered Parties will not result in a waiver of any right by Declarant or such applicable Covered Parties to seek recovery of the costs related to the Cure Process.

(d) Any other provision in this Section P to the contrary notwithstanding, Declarant and/or any other Covered Party responding to a claim of an Alleged Defect by an Alleged Defect Claimant may, at any time, by written notice to the Alleged Defect Claimant, waive the Cure Process set forth in this Section P and have the matter proceed directly to the dispute resolution process set forth in Section U of this Declaration.

**Q. AMENDMENT OF THIS DECLARATION AND THE CONDOMINIUM MAP.**

**1. Generally.**

(a) Except as otherwise expressly provided in this Declaration or in the Act, this Declaration and/or the Condominium Map may be amended by the affirmative vote and/or written consent of the Owners holding not less than sixty-seven percent (67%) of the common interest of the Project, and will be effective only upon the Recording of an instrument setting forth such amendment and vote and/or consent, duly executed by all of the consenting Owners or any two officers of the Association; provided, however, that, except as otherwise expressly provided in this Declaration, amendments involving Changes Material to Mortgagees must be agreed to by Eligible Mortgage Holders that represent at least 51% of the common interest of Residential Units that are subject to Mortgages held by Eligible Mortgage Holders; and provided further that an amendment to any of the provisions of this Declaration that are for the express benefit of Declarant will also require the express written consent and joinder of Declarant, together with such other approval requirements as set forth in this Section Q. Approval to a proposed amendment to this Declaration or the Condominium Map by a Mortgagee entitled to give such approval will be deemed given when such Mortgagee fails to submit a response to a written proposal for such amendment within sixty (60) days after the Mortgagee receives (or is deemed to have received) proper notice of the proposal, provided the notice was delivered by certified mail, with a "return receipt" requested. Subject to the Owner-approval requirements set forth above and any other requirements set forth in this Declaration, any two officers may prepare, execute, certify, and Record an amendment to this Declaration and/or the Condominium Map on behalf of the Association.

(b) Except as otherwise provided in this Declaration and/or the Bylaws, no amendment that would change the common interest appurtenant to a Unit (except to correct mathematical errors as described above) or substantially and adversely change the design,

location or size of a Unit can be made without the written consent to such amendment by the Owner and the First Mortgagee, if any, of such Unit.

(c) Each and every Person acquiring an interest in the Project, by such acquisition, consents to such amendments as described in this Section 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 Declarant and its assigns as such Person's attorney-in-fact with full power of substitution to execute, deliver and Record such documents and instruments and to do such things on such Person's behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and will not be affected by the disability of such Person.

2. **Unit Owners' Right to Amend.** Notwithstanding any other provision in this Declaration to the contrary, each Unit Owner has the right to amend this Declaration (and, when applicable, the Condominium Map), without the approval, consent or joinder of any purchaser of a Unit or any of the Persons then owning or leasing any Unit, or any other Person, to make such amendments as may be necessary or appropriate to reflect such Improvements, additions or alterations in the Project that the Unit Owner is permitted to make in accordance with Section M.3.

3. **Declarant's Right to Amend.**

(a) At any time prior to the first Recording in the Bureau of a conveyance of a Unit to a Person other than Declarant or an affiliate of Declarant, Declarant may unilaterally amend this Declaration and the Condominium Map in any manner without the approval or consent of any other Person, including any Unit purchaser. This provision must not be deemed to limit or restrict Declarant's rights to amend this Declaration as a Unit Owner pursuant to this Declaration.

(b) Notwithstanding any other provision in this Section to the contrary, Declarant's Reserved Rights include the right of Declarant, without the approval of any other Person, to amend the Project Documents in accordance with the exercise of any Declarant's Reserved Rights and in accordance with the exercise by Declarant of any other of rights reserved to Declarant in the Project Documents.

(c) Any other provision of this Section or otherwise of this Declaration to the contrary notwithstanding, until the Recording of Unit conveyances or agreements of sale with respect to all of the Units in the Project in favor of Persons other than Declarant, Declarant, acting alone, may amend this Declaration, the Bylaws and/or the Condominium Map, without the approval, consent or joinder of any Person or group of Persons, including the Association, any Unit Owner or any Mortgagee, Occupant, lienholder, Unit purchaser, or any other Person who may have an interest in the Project, to make such amendments (i) to correct any misstatements of fact in the Project Documents, to correct typographical or technical errors, to correct mathematical errors in the statement of common interests or to correct errors in the legal description of the Land, (ii) as may be required by law, by the Real Estate Commission, by the County, or by any title insurance company issuing a title insurance policy on the Project or any of the Units, (iii) to comply with any requirements that may reasonably be imposed by any takeout, permanent, or secondary market lender, including, but not limited to, any institutional mortgage lender or any governmental or quasi-governmental agency, (iv) to conform this Declaration or the Condominium Map to updated requirements or standards of any governmental or quasi-governmental agency, or (v) to bring the Project and the Project Documents into compliance with the laws and rules of any state or country in which Declarant intends to market or sell Units.

4. **As-Built Amendment.** Declarant Recorded the Condominium Map prior to construction of the buildings and the Units. Any other provision in this Section to the contrary notwithstanding, and notwithstanding the conveyance of any of the Units, Declarant, acting alone, may amend this Declaration (and when appropriate the Condominium Map) without the approval, consent or joinder of any Person or group of Persons, including the Association, any Unit Owner or any Mortgagee, Occupant, lienholder, Unit purchaser or any other Person who may have an interest in the Project or in any Unit, to file the "as-built" verified statement (with plans, if applicable) required by Section 514B-34 of the Act to depict the layout, location, Unit numbers, boundaries or dimensions of the Units, or such other changes as a Unit Owner or Declarant is permitted to make pursuant to this Declaration, substantially as built.

5. **Amendments Reflecting Alterations.** Any other provision in this Section to the contrary notwithstanding, (a) Declarant may amend this Declaration (and when appropriate the Condominium Map) as provided in Section M.4 of this Declaration without the approval, consent or joinder of any Person or group of Persons, including the Association, any Unit Owner or any mortgagee, lienholder, Unit purchaser or any other Person who may have an interest in the Project or in any Unit, and (b) any Unit Owner making a change or alteration of the Unit pursuant to and in compliance with Section M.3 of this Declaration is to Record an amendment to this Declaration and/or the Condominium Map setting forth such approved change or alteration, which amendment can be made without the consent or joinder of any other Owner or Person, and is to notify Declarant and the Board of such change or alteration as soon as practicable.

6. **Amendments Requiring Declarant's Approval.** Any other provision in this Declaration to the contrary notwithstanding, even after the conveyance of any of the Units by Declarant, any amendment affecting any provision of this Declaration that is for the express benefit of Declarant or that would impair or diminish the rights of, or increase the obligations of, Declarant, including without limitation, Declarant's Reserved Rights, require the written consent and joinder of Declarant, together with such other approval requirements as set forth in this Section Q.

7. **Restatement of Declaration and Bylaws.** Subject to Section 514B-23 of the Act, the Association, at any time, may, by a resolution adopted by the Board, restate this Declaration or the Bylaws to amend this Declaration or the Bylaws for the reasons set forth in Section 514B-109(b) of the Act, subject, however, to the requirements of Section 514B-109(b) of the Act.

8. **Changes Material to Mortgagees.** Amendments related to the following are "Changes Material to Mortgagees":

- (a) voting rights of Residential Unit Owners;
- (b) Assessment Liens or the priority of Assessment Liens with respect to Residential Units;
- (c) a decision by at least seventy-five percent (75%) of the Owners to establish self-management of the Project; or
- (d) any provisions that expressly benefit Mortgagees of Residential Units.

9. **Amendments Binding.** Any amendment made pursuant to the provisions of this Section will be binding upon every Owner and every Unit whether the burdens thereon are

increased or decreased, and such amendment will be effective upon its Recordation in the Bureau.

## **R. RIGHTS OF MORTGAGEES AND GUARANTORS.**

1. **Contact Information.** Subject to Section R.2 below, before a Mortgagee or guarantor of a Mortgage is entitled to exercise any rights of approval or disapproval under this Declaration (including, but not limited to, under this Section R) or to be notified of any action that may affect the applicable Mortgage, the Mortgagee or guarantor of a Mortgage, as the case may be, must provide their contact information to the Association and request that they be notified when such exercise or action may be required.

2. **Notices of Action.** Provided a Mortgagee or guarantor of a Mortgage provides their contact information to the Association and requests that such notices be provided to them, a Mortgagee and guarantor of the Mortgage on any Residential Unit in the Project will be entitled to timely written notice of:

(a) Any condemnation or casualty loss that affects either a material portion of the Project or the Residential Unit securing its Mortgage;

(b) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Residential Unit on which it holds its Mortgage;

(c) A lapse, cancellation or material modification of any insurance policy maintained by the Association; and

(d) Any proposed action that requires the consent of a specified percentage of Mortgagees.

3. **Examination of Books and Project Documents.** Each First Mortgagee of a Residential Unit is permitted to examine the Project Documents and the books, records, and financial statements of the Association at reasonable times on business days, and each such First Mortgagee has the right to require, by written notice to the Association, the submission to it of annual reports and other financial data that may be required to be submitted to an Owner.

4. **Release of Information.** The Board may provide any information available to it pertaining to a Unit or the Project to the First Mortgagee of a Residential Unit and all Mortgagees may provide any information to the Board regarding the Mortgagor, the Mortgagor's loan and the status of such loan.

5. **Termination of Condominium Property Regime.** Any other provision in this Declaration to the contrary notwithstanding, but subject to Section 514B-47 of the Act, any action to terminate the Project as a condominium project may only occur upon approval of Declarant and Mortgagees that represent at least 51% of the common interests appurtenant to the Residential Units that are subject to Mortgages.

6. **First Mortgagees' Rights Confirmed.** No provision of this Declaration or of the Bylaws gives or is to be construed as giving any Owner or other Person priority over any rights of the First Mortgagee of any Residential Unit pursuant to its Mortgage in the case of payment to the Residential Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Residential Units and/or common elements.

## **S. PROJECT AND RELATED MATTERS; DISCLOSURES.**

### **1. Disclosures and Limitations on Liabilities.**

(a) General Limitation. Except as specifically provided in the Project Documents or as required by law, no right or power conferred on the Board or Declarant by the Project Documents is to be construed as a duty or obligation charged upon Declarant or any of its members, affiliates, agents, employees, the Board, any member of the Board or any other officer, employee, agent or committee member of the Association. The Association, its members, directors, officers, agents and committee members, and the Board are subject to the insulation from liability provided for directors of corporations by the laws of the State of Hawaii to the fullest extent provided by such laws. Members of the Board are not personally liable to the victims of crimes occurring on the Project.

(b) Indemnification of Association. When liability is sought to be imposed on a member of the Board, an officer, committee member, employee or agent of the Association, the Association will indemnify him or her for his or her losses or claims, and will 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 of willful or wanton misfeasance or gross negligence of such person indemnified by the Association, the Association will no longer be liable for the cost of defense and the Association may recover the indemnification costs expended by the Association 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 is to be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by Applicable Law. The entitlement to indemnification under this Section S inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees or any Person entitled to such indemnification.

(c) Indemnification of Declarant. Notwithstanding any other provision to the contrary contained in this Declaration, except where prohibited by Applicable Law and/or a finding of fraud or breach of duty upon final adjudication, each Owner agrees to defend, indemnify and hold harmless Declarant and its officers, directors, employees and agents from and against, and properly reimburse them 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.

**2. Security Disclaimer.** Declarant and/or the Association may, but are not obligated to, maintain or support certain activities within the Project designed to make the Project safer than it might otherwise be, but neither the Association nor Declarant will in any way be considered insurers or guarantors of security within the Project, including any common areas or facilities in which the Association may have an interest or obligation, and neither the Association nor Declarant will be held liable for any loss or damage by reason of any failure to provide adequate security or the ineffectiveness of security measures undertaken. Each Unit Owner, for such Owner and for the Occupants of and invitees to the Unit, as well as the family, lessees, tenants and guests of such Owner and Occupants of the Unit, acknowledges and understands that the Association and Declarant do not represent or warrant that any fire protection system or other security system designated or installed 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, or 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 Unit Owner, for such Owner and for the Occupants of and invitees to the Unit, as well as the family, lessees, tenants and guests of such Owner and Occupants of the Unit, acknowledges and understands that neither Declarant nor the Board are

insurers of the safety or wellbeing of Owners, Occupants or invitees of the Project or their property, and that each Unit Owner assumes all risks for loss or damage to persons, the Units, the common elements and environs of the Project, and to the contents of improvements located thereon, and further acknowledges that neither Declarant nor the Board has made any representations or warranties nor has any Unit Owner or Occupant of or invitee to the Project relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to the security of the Project and the surrounding areas, or any security measures undertaken within the Project or the surrounding areas.

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

4. **Sound/Noise.** Noises and uses that are typically encountered in a residential setting, including, but not limited to, (a) transient noise and guest or pedestrian traffic from passage through hallways, (b) transient noise from other Units, (c) opening and closing of doors, and (d) construction activities, and (e) cleaning, landscaping and/or provision of other related services will not be deemed a nuisance, as such noises and/or uses are deemed to be common and accepted occurrences in a multi-family, residential setting. By accepting a Unit Deed, each Owner acknowledges that the Project is a part of a residential community and that noise, lights, and odors common to residential activities, as well as construction activities, may exist on or near the Project, at any time and from time to time. Each Owner, by taking title to a Unit, understands and acknowledges that although the Project and the Unit will be built in substantial compliance with the approved plans and specifications, in any multi-family setting, sound may be audible between units, particularly where the sound level of the source is sufficiently high and the background noise in a nearby unit is very low. Due to the proximity of the various Units and of Units to common elements, various noises and vibrations inherent in the occupancy of a Unit within a residential condominium project (including plumbing, impact, vibration, adjacent neighbors, wind-related noises and other types of noises) may result, to which some Owners and Occupants may be especially sensitive and which may prove a nuisance for some. Further, the Project is located in a busy commercial and residential area, where noise levels may exceed ordinary noise level standards for residential areas. Each Owner, by taking title to a Unit, agrees to accept the Unit subject to sound impacts from the surrounding area, from nearby Units, and from common element areas and to accept responsibility for minimizing noise transmission from their Unit and adhering to any rules, regulations, and laws that are designed to minimize noise transmission. Each Owner acknowledges that, notwithstanding the unacceptability of these noise levels, neither Declarant nor any of its agents, employees, contractors, partners, affiliates,

licensees, successors or assigns will be held liable for any nuisance, personal injury, illness, or any other loss or damage caused by noise or vibrations.

5. **Urban-Related Activities.** Each Owner, in purchasing or otherwise taking title to a Unit, does so with the express understanding and acknowledgment that the Project is located in a busy, urban area and that numerous activities take place in and around the area that may be considered nuisances to the Owner. Those activities include, but are not limited to, traffic and the operation of schools, retail stores and other commercial establishments. Such activities and events may from time to time bring upon the Project, or result in, smoke, loud noises, loud music, bright lights, traffic congestion and other nuisances. Each Owner accepts the foregoing conditions, as well as any inconvenience or annoyance that the Owner may experience as a result of such conditions, and waives any rights, claims or actions that the Owner might otherwise have against Declarant as a result of such circumstances, including, without limitation, any right to make any claim for injury to persons or property attributable thereto, and any right to require that such conditions be corrected or eliminated.

6. **VA Center.** The VA Center is located in the vicinity of the Project. The VA Center is anticipated to include a nearly 90,000- square-foot facility, with 528 parking stalls, and provide specialized health care to over 87,000 veterans and their families. Use of the VA Center may create noise issues for the Project, due to, among other reasons, emergency vehicles going to and from the VA Center, cars driving to and parking at the VA Center and people using the VA Center. Lights emanating from the VA Center may also be a nuisance to people in the Project. By taking title to or occupying a Unit, each Owner and Occupant (a) represents and warrants to Declarant that the benefits of owning or leasing the Unit outweigh such detriments and risks, and (b) agrees to release any and all nuisance claims against Declarant, or any of its members, affiliates, agents, employees arising out of any light and/or noise from the VA Center or use of the VA Center.

7. **Condominium Living.** Living in a multi-family condominium project entails living in very close proximity to other persons, with attendant limitations on solitude and privacy. Owners may hear noise from adjacent Units within the Project, including, but not limited to, noise from showers, bathtubs, sinks, toilets or other sources of running water and/or plumbing fixtures. Also, Owners may hear noise from such items as vacuum cleaners, stereos or televisions, or from people running, walking, exercising or socializing. Owners can also expect to hear substantial levels of sound, music, noise, odors, vibrations and other nuisances from industrial and commercial developments in the vicinity of the Project. Owners may also experience light entering the Units from commercial lighting in the vicinity of the windows and doors for the Units.

8. **Ongoing Construction and Surrounding Activities.** Each Owner, in taking title to a Unit, does so with the express understanding and acknowledgment that the Project and/or the Unit may be affected by the ongoing surrounding development and redevelopment, which includes residential, commercial, industrial, and other types of development or redevelopment, by various hazards, and by noise, dust, smoke, soot, ash, odor, noxious vapors, surface water runoff, or other adverse environmental conditions, and that construction and sales activities by Declarant and others over whom Declarant has no control and the construction activities undertaken on surrounding properties may result in noise, dust, vibration, and other nuisances, disturbances, annoyances, hazards, and effects and may also result in temporary conditions of inconvenience to Owners and Occupants, such as increased traffic congestion and impairment of access to the Project. Each Owner accepts these circumstances and any nuisance, inconvenience, irritation, or annoyance that the Owners and Occupants may experience as a result of such activities and conditions and agrees to suffer and permit all actions and consequences incidental to such

ongoing development, construction, and sales activities. Each Owner further covenants and agrees to assume all risk of any property damage, personal injury, or loss in property value arising from such development, redevelopment, construction, and sales activities and to hold harmless Declarant and Declarant's members, managers, directors, officers, agents, related or affiliated entities, successors and assigns, from and against any and all liability, claims, losses, damages, or expenses, including attorneys' fees, occasioned by such property damage or personal injury to the property or person of the Owner, or the Owner's tenants, lessees, family, servants, guests, invitees, licensees, Occupants of the Unit or other persons who may occupy or otherwise use the Project or any Unit.

9. **Natural Hazards and Nuisances.** In addition to the hazards, nuisances and other issues referenced elsewhere in this Declaration, the Units and other portions of the Project may be subject to and affected by the following hazards and nuisances: hurricanes and tropical storms; and effects from climate change (including drainage problems).

10. **Nuisances Related to Surrounding Operations.** Without in any manner limiting the preceding provisions of this Section S, each Owner, in taking title to a Unit, does so with the express understanding and acknowledgment that the Project and the Owner's Unit may be periodically affected by various hazards and by adverse environmental conditions, including, but not limited to, those attributable to winddrift and other weather factors (the "**Surrounding Use Effects**") created by or attributable to historical, existing, and prospective surrounding construction, development, commercial, vehicular and other non-residential uses and activities, and specifically approves all of those uses and activities, which include, but are not limited to: (a) the VA Center being in close proximity to the Project; (b) noise, vibrations, odors, lighting, and other nuisances associated with nearby industrial and commercial uses (including the VA Center); (c) the items described in this Section S; and (d) real estate development, construction, grading, improvement, and maintenance of adjacent and surrounding properties (collectively the "**Surrounding Operations**").

11. **Assumption of Risk, Waiver of Claims, Hold Harmless and Defend.** Without limiting the effect of any of the foregoing provisions of this Section S, each Owner, by taking title to a Unit, hereby covenants and agrees, on behalf of such Owner, and the tenants, lessees, family, servants, guests, invitees and licensees of the Owner and the Occupants of the Owner's Unit: (a) to accept any nuisance, inconvenience, irritation, or annoyance that the Owner or such other Person claiming through the Owner may experience as a result of the activities and conditions described in this Declaration, and agrees to suffer and permit all actions and consequences incidental to such activities and conditions; (b) to assume and does hereby assume any and all risks associated with the Surrounding Operations and the annoyances, inconveniences, Surrounding Use Effects, and other nuisances thereby created, as well as with the ongoing construction and sales activities; (c) to waive and does hereby expressly waive all rights to make any claim against Declarant and any of its agents, employees, contractors, partners, affiliates, licensees, successors or assigns, arising out of or in connection with the ongoing construction and sales activities, the Surrounding Operations and the annoyances, inconveniences, Surrounding Use Effects, and other nuisances thereby created, the clean-up or remediation of the same, including, but not limited to, (i) any claim for damages attributable thereto or for the design or the placement of improvements to the Project, any Unit or the surrounding property, or any part thereof, or related or adjacent facilities or to the orientation of the Unit as it relates to exposure to the Sun or wind, (ii) any and all claims, demands, actions, lawsuits, proceedings, fines, penalties, damages, liabilities, judgments, awards, expenses, and costs (including attorneys' fees and costs) that may arise out of or may directly or indirectly be attributable to the condition of the Land, the soils thereon and therein, and the use, generation,

manufacture, treatment, handling, refining, production, storage, release, discharge, disposal, or presence of any Hazardous Material on, about, around, over or within the Project, or (iii) claims for the abatement or elimination thereof (such waiver, however, does not include claims arising out of or in connection with the recklessness and/or willful misconduct of such entities); (d) to indemnify and hold harmless Declarant and any of its agents, employees, contractors, partners, affiliates, licensees, successors or assigns, from and against any and all claims, demands, actions, lawsuits, proceedings, fines, penalties, damages, liabilities, judgments, awards, expenses and costs (including attorneys' fees and costs) that may arise out of or may directly or indirectly be attributable to any and all of the foregoing Surrounding Operations, Surrounding Use Effects, and ongoing construction and sales activities; and (e) to defend Declarant and any of any of its agents, employees, contractors, partners, affiliates, licensees, successors or assigns, against any and all claims, demands, actions, lawsuits, proceedings, fines, penalties, damages, liabilities, judgments, awards, expenses and costs (including attorneys' fees and costs) that may arise out of or may directly or indirectly be attributable to any and all of the foregoing Surrounding Operations, Surrounding Use Effects and ongoing construction and sales activities.

#### **T. ASSIGNMENT OF RIGHTS BY DECLARANT.**

Notwithstanding any other provision in this Declaration to the contrary, the rights and easements reserved to Declarant in this Declaration, including Declarant's Reserved Rights, are fully and freely assignable by Declarant in whole or in part to any other Person, and Declarant may, without the consent or approval of the Association, the Board, any Unit Owner, any Mortgagee, or any other Person, and in Declarant's sole discretion, transfer or assign all or any portion of Declarant's rights under this Declaration to third Persons, in whole or part, either directly or as security for financing relating to the development of the Project; provided, however, that such rights will not be transferred except by a Recorded instrument expressly referencing the rights contained in this Declaration that are being transferred or assigned and executed by both Declarant and the assignee of Declarant's rights. A Person will be deemed a transferee, successor or assign of Declarant for purposes of this Declaration if such Person is a successor by merger and otherwise only if specifically so designated in a Recorded instrument as a transferee, successor or assign of Declarant under this Declaration, and will be deemed a transferee, successor or assign of Declarant only as to the particular rights or interests of Declarant under this Declaration that are specifically designated in the Recorded instrument. No deed of the Property in whole or part and no Unit Deed will transfer or assign any of Declarant's rights under this Declaration unless reference is expressly made to said transfer or assignment. Once transferred or assigned, the transferee, successor or assignee may have and exercise all of the rights under the provisions of this Declaration so transferred or assigned, but only to the extent so transferred or assigned by Declarant. Every Owner of a Unit in the Project and all holders of liens affecting any of the Units and each and every other Person acquiring an interest in the Project, or any part thereof, by acquiring such Unit, lien or other interest, (a) consents to any such assignment by Declarant, and, to the extent designated by Declarant, agrees to recognize any assignee as the "Declarant" under this Declaration, and (b) 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.

#### **U. DISPUTE RESOLUTION.**

1. **No Litigation.** Except as specifically permitted in this Section or elsewhere in this Declaration, no judicial or administrative (inclusive of arbitration) proceeding is allowed to be commenced or maintained by the Managing Agent, the Board, the Association, any Owner, individually or collectively, or Declarant, nor is any lis pendens or notice of pendency of action allowed to be filed or Recorded.

2. **Covered Matters.** Each Owner, on behalf of such Owner and the Owner's successors and assigns, and in the Owner's capacity as a Member of the Association and/or the Board, and Declarant agree that there is no right to litigate in respect of the Covered Matters (defined below), and if the Board, the Association, Declarant, or any Owner or any other Person with an interest in the Project has any Claim, cause of action, grievance, or dispute arising out of or in any way related to (A) the interpretation, application, or enforcement of any of the Project Documents or any of their provisions, (B) the design or orientation of the Project, one or more Units or Improvements as they relate to adjacent or nearby properties and/or exposure to the Sun, the wind and other elements, (C) the development, construction, quality, sales, marketing, disclosures concerning, financing or delivery of the common elements, the Project, any Unit or the Improvements to a Unit or any other Improvements within the Project, (D) warranties, if any, (E) the reservations with respect to, or limitations on, use or purpose of the Project, the common elements, any Unit or the Improvements thereto, (F) the agreements, decisions, and determinations of the Board and/or the Association or the enforcement thereof, (G) the rights, obligations, and duties of any of the Covered Parties under any of the Project Documents or (H) any other aspect of or activity with respect to the common elements, the Project or a Unit (herein collectively the "**Covered Matters**"), against any of the Covered Parties, then such Claim, cause of action, grievance or dispute (a "**Dispute**"), whether such Dispute is based on contract, tort, common law or statute, including, without limitation, any Dispute over (1) the disposition of any deposits, (2) breach of contract, (3) negligent or intentional misrepresentation or fraud, (4) nondisclosure, (5) breach of any alleged duty of good faith and fair dealing, (6) allegations of latent or patent construction defects, or (7) any other matter arising from or related to the interpretation of any term or provision of the Project Documents or any defense going to the formation or validity of the Project Documents or any provision of the Project Documents, including, without limitation, allegations of unconscionability, fraud in the inducement, or fraud in the execution, whether such Dispute arises before or after the close of escrow, must be submitted and resolved according to the dispute resolution process described below.

3. **Dispute Resolution Process.** Covered Parties must first attempt to resolve a Dispute by negotiation and then by mediation. If Covered Parties are unable to resolve a Dispute by negotiation and mediation, then (a) any unresolved Dispute must be resolved by arbitration before a single arbitrator administered by Dispute Prevention and Resolution, Inc., or another dispute resolution group acceptable to all parties, (b) the parties voluntarily, knowingly and intelligently waive their right to a jury trial, and (c) judgment upon the arbitrator's award may be entered in any court having jurisdiction thereof. If all parties agree, then the person serving as mediator may also serve as arbitrator for a Dispute. Each party will be responsible for the administrative fees incurred by that party, and the arbitrator's and mediator's compensation will be shared equally by the participating parties. The prevailing party, if any, will be entitled to an award of reasonable attorney's fees, and the arbitrator will be the sole judge in determining the reasonableness of attorney's fees to be awarded and in determining which party is the prevailing party. The parties and the mediator and arbitrator will keep the content and results of any mediation or arbitration confidential. The arbitration may not be consolidated with other arbitration proceedings unless all parties agree to such consolidation.

4. **Venue.** Any negotiation, mediation and arbitration concerning a Dispute must take place only in Honolulu, Hawaii. Any lawsuit filed to enforce an arbitration award or otherwise must be brought only in the courts of the State of Hawaii, including the United States District Court in Honolulu, and nothing can be done to (a) defeat the jurisdiction of a Honolulu negotiation, mediation and arbitration or of those courts or (b) try to get a change of venue (in other words, to

have the negotiation, mediation, arbitration or lawsuit transferred to another city or state or another jurisdiction).

**5. Definition of Claim; Not Claims or Covered Matters.**

(a) The word "Claim" includes losses, costs, expenses, liabilities, injuries or damages, including, without limitation, property damage, personal injury and wrongful death, fines and penalties for violation of Applicable Laws or the Project Documents, investigative and other expenses and costs, and reasonable attorneys' and consultants' fees and expenses.

(b) The foregoing to the contrary notwithstanding, the following are **not** considered "Claims" or "Covered Matters" (and, thus, need not be submitted and resolved according to the dispute resolution process described in this Section U) unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in this Section U: (i) any suit by the Association (including the Board or the Managing Agent on behalf of the Association) to collect Common Assessments or other amounts due from any Owner; (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo of the Project and to preserve the Association's ability to enforce the provisions of the Project Documents; (iii) any suit that does not include Declarant or the Association as a party, if such suit asserts a claim that would constitute a cause of action independent of the Project Documents; (iv) any Dispute that affects the material rights or obligations of a party that is not a Covered Party and has not agreed to submit to the procedures set forth in this Section U; and (v) counterclaims brought by the Association in court proceedings instituted against it.

**V. HCDA RESTRICTIONS ON RESERVED HOUSING UNITS.**

1. **Generally.** Approximately 25% of the Residential Units in Ka'ulu are expected to be Reserved Housing Units, with the other 75% of the Residential Units being Market Units. The Reserved Housing Units are to be priced at levels that may be considered affordable to certain households. Pursuant to the Kalaeloa Reserved Housing Rules, the Reserved Housing Units are subject to certain HCDA occupancy, sale, and transfer restrictions, and equity sharing requirements.

2. **Occupancy Requirements.** Owners of Reserved Housing Units are required to occupy their Unit in compliance with the Kalaeloa Reserved Housing Rules at least for the duration of the Regulated Term. The Owner of a Reserved Housing Units must physically occupy the Reserved Housing Unit. The County's maximum occupancy limits for a residential dwelling unit apply. Violation of these requirements will be sufficient reason for HCDA, at its option, to purchase the Unit as provided in Section 15-216-36 (first option to purchase) of the Kalaeloa Reserved Housing Rules. Any deed, lease, agreement of sale, Mortgage, or other instrument of conveyance issued for the Reserved Housing Unit must expressly contain the restrictions on use prescribed in Section 15-216-33 (occupancy requirements) of the Kalaeloa Reserved Housing Rules. The HCDA Occupancy Requirements are attached as **Exhibit "C"** to this Declaration and are made a part hereof. By acceptance of a Unit Deed, all Owners of Reserved Housing Units will be deemed to have acknowledged and agreed that they (a) have read, reviewed, approved and accepted all of the terms and conditions of the HCDA Occupancy Requirements, and (b) accept title to their respective Unit subject to the HCDA Occupancy Requirements.

3. **Sale and Transfer Restrictions.** Reserved Housing Units are also subject to certain restrictions on the sale and transfer of the Unit pursuant to the Kalaeloa Reserved

Housing Rules. Such restrictions include, without limitation, a first option in favor of the HCDA to purchase the Unit during the Regulated Term in the event that the Owner wishes to sell the Unit during the Regulated Term. The Owner must notify the HCDA in writing of the Owner's intent to sell the Unit. The HCDA's first option to purchase the Unit will be at a sales price determined by the HCDA in accordance with Section 15-216-36 of the Kalaeloa Reserved Housing Rules. Also, during the Regulated Term, (a) the Owner cannot purchase additional limited common elements or personal property, and (b) the HCDA must approve any initial or subsequent Mortgage placed on the Unit that does not exceed 80% of the original purchase price of the Unit. After the end of the Regulated Term, the Owner may sell the Unit free from any transfer or price restrictions, except for applicable equity sharing requirements set forth in Section 15-216-41 (equity sharing requirements) of the Kalaeloa Reserved Housing Rules. The HCDA Sale and Transfer Restrictions are attached as **Exhibit "C"** to this Declaration and are made a part hereof. By acceptance of a Unit Deed, all Owners of Reserved Housing Units will be deemed to have acknowledged and agreed that they (y) have read, reviewed, approved and accepted all of the terms and conditions of the HCDA Sale and Transfer Restrictions, and (z) accept title to their respective Unit subject to the HCDA Sale and Transfer Restrictions.

4. **Equity Sharing Requirements.** The transfer and sale of the Unit are also subject to equity sharing requirements in favor of the HCDA, which require that the Owner make a payment to the HCDA upon transfer of the Unit to a third party. The calculation of the payment is determined by, among other factors, the Unit's original fair market price, as determined by the HCDA, and its original sales contract price. The Owner will be required to provide financial documents acceptable to the HCDA before the cost of improvements made by the Owner can be deducted from the sale price. The HCDA Equity Sharing Requirements are attached as **Exhibit "D"** to this Declaration and are made a part hereof. By acceptance of a Unit Deed, all Owners of Reserved Housing Units will be deemed to have acknowledged and agreed that they (a) have read, reviewed, approved and accepted all of the terms and conditions of the HCDA Equity Sharing Requirements, and (b) accept title to their respective Unit subject to the HCDA Equity Sharing Requirements.

5. **Liability for HCDA Restrictions and Requirements.** By acceptance of a Unit Deed, each Owner of a Reserved Housing Unit acknowledges and agrees that such Owner is obligated to comply with the terms and conditions of the HCDA Sale and Transfer Restrictions, the HCDA Occupancy Requirements and the HCDA Equity Sharing Requirements. Declarant is not (and will not be) responsible or liable: (a) for the administration of the HCDA Sale and Transfer Restrictions, the HCDA Occupancy Requirements or the HCDA Equity Sharing Requirements; (b) for the observance or performance by HCDA of its obligations or for the enforcement by HCDA of its rights under the HCDA Sale and Transfer Restrictions, the HCDA Occupancy Requirements or the HCDA Equity Sharing Requirements; (c) for any actions taken by HCDA or the failure of HCDA to take any action in connection with the HCDA Sale and Transfer Restrictions, the HCDA Occupancy Requirements or the HCDA Equity Sharing Requirements; or (d) for the obligations of, or to otherwise comply with, the HCDA Sale and Transfer Restrictions, the HCDA Occupancy Requirements or the HCDA Equity Sharing Requirements.

6. **Owner Indemnities.** Each Owner of a Reserved Housing Unit must indemnify, defend and hold Declarant, its agents, successors and assigns, harmless from and against any and all liability, claims, losses, damages, expenses and costs, including attorneys' fees, incurred by or through the Owner arising out of or resulting from the administration, observance, performance and enforcement of or the failure to administer, observe, perform or enforce the

HCDCA Sale and Transfer Restrictions, the HCDCA Occupancy Requirements and the HCDCA Equity Sharing Requirements, or any term or provision thereof.

## **W. CONDEMNATION.**

4. **Generally.** If there is a taking in condemnation or by eminent domain of part or all of the Project, then all compensation payable for or on account thereof will be payable to a condemnation trustee, which will be designated by the Board and which will be a bank or trust company doing business in the State of Hawaii (the "**Condemnation Trustee**"). Each Unit Owner (other than Declarant) gives the Association a special power of attorney to represent the Owner in any proceedings, negotiations, settlements or agreements related to any actual or threatened condemnation of the Project or any part of it. Declarant will represent itself with respect to any right or claim it may have to proceeds payable for Declarant's Reserved Rights or with respect to any Units owned by Declarant.

4. **Division of Proceeds Between Declarant and the Owners.** If all or any part of the Project is taken or is sold under threat of condemnation before the end of the Development Period, then the condemnation proceeds must first be divided between Declarant and the Unit Owners. Declarant will be entitled to receive all proceeds payable to or on account of the loss of Declarant's Reserved Rights. This includes, for example, but is not limited to (a) the right to all proceeds paid for any part of the Land that Declarant has the right to withdraw pursuant to this Declaration, and (b) the right to all proceeds paid for any improvements made by Declarant to serve any Phases or Increments to be built in the future. The amount payable to Declarant under this Section W will be based upon the court's final decision as to such allocation, if such a decision is made. If a court has not made such a decision, then the amount payable to Declarant will be based upon the value of Declarant's Reserved Rights, as determined by a qualified appraiser pursuant to this Section W. After payment to Declarant, as set forth above, the balance of the condemnation proceeds will be payable to the Unit Owners or will be used by the Condemnation Trustee as set forth in this Section W. The amounts allocable to the various Unit Owners affected by the condemnation action will be determined by the court (if the court has made such a determination) or by a qualified appraiser, as set forth in this Section W.

4. **Determination by Qualified Appraiser.** If the allocation of condemnation proceeds will be made by an appraiser, then such determination will be made by a single real estate appraiser who must be a member of the American Institute of Real Estate Appraisers (a "**qualified appraiser**"), who will be chosen by the Board and Declarant. If they are unable to agree upon a single appraiser within ten (10) days after request to do so is made by either party, then they will each appoint an appraiser within fifteen (15) days thereafter, and the two appointed appraisers will select a third appraiser. If either party fails to choose an appraiser on time, then the appraiser chosen by the other party will make the determination on its own. Otherwise, the decision of any two appraisers will decide how much to pay Declarant and/or how much to pay to each Unit Owner. The costs of the appraiser(s) will be divided equally among the parties involved in the condemnation.

4. **Partial Taking.** If only part of the Project is taken, and if the Association does not decide to terminate the condominium property regime, then the Condemnation Trustee must (a) pay to Declarant Declarant's share of the condemnation proceeds for the value of Declarant's Reserved Rights, as provided in this Section W, and (b) use the rest of the proceeds in the manner set forth below. The Condemnation Trustee will arrange for the repair and restoration of the buildings and improvements according to the Condominium Map on file immediately prior to such condemnation. If such repair and restoration according to the Condominium Map on file is not permissible under Applicable Laws then in force, then repair and restoration will be according to

such modified plan as is previously approved by the Board. If a partial taking occurs in which any Unit is eliminated or not restored, then the Condemnation Trustee will disburse the portion of the proceeds of such award allocable to the Unit, less the Unit's proportionate share of the cost of debris removal, to the Owner of the Unit and the Owner's Mortgagee, if any, as their interests may appear, in satisfaction of their interests in the Unit. The Condemnation Trustee will disburse the remainder of the proceeds of such award to the contractor engaged in such repair and restoration in appropriate progress payments. If such proceeds are insufficient to pay the costs, then the Board is expressly authorized to pay such excess costs from the reserve fund(s), provided that, if the reserve fund(s) is/are insufficient for this purpose, then the Board will levy a special assessment on the Owners of the Units in proportion to their common interests. If sums are received in excess of the cost of repairing and restoring the remaining buildings and improvements, then such excess proceeds will be divided among the Owners of the Units according to their common interests.

## **X. HAZARDOUS MATERIALS; CONDITION OF LAND; ENVIRONMENTAL ISSUES.**

1. **Restriction on Use.** An Owner must not cause or permit any Hazardous Material to be generated, used, transported, stored or disposed of upon, in or about the Owner's Unit or the common elements, except in a manner that complies with all applicable Hazardous Materials Laws. No Person is allowed to discharge into the Project's wastewater system or storm drain any Hazardous Material or any toxic or noxious matter in such concentrations as to be detrimental to or endanger the public health, safety or welfare, violate any law, subject any Owner or other Person to liability under state or federal law for any clean-up, or cause injury or damage to any portion of the Project or any property outside of the Project.

2. **Notices.** An Owner must give written notice to the Board of Directors, the Manager and the Managing Agent within two business days after the Owner learns or first has reason to believe that (a) a Hazardous Discharge has occurred, or (b) a Hazardous Materials Claim has been made by any governmental agency or third person, or (c) any report, notice or complaint has been made to or filed with any governmental agency concerning the presence, use or disposal of any Hazardous Material at the Project. The notice must be accompanied by copies of (x) all permits, licenses, and proofs of disclosure to governmental agencies pertaining to the Hazardous Material that is the subject of the claim, (y) any material safety data sheets pertaining to such substances that are required by applicable law, and (z) any claim, report, complaint, notice, warning or other communication that is in the possession of or is reasonably available to the Owner. The Board will have the right to have the Association join and participate, as a party, if it so elects, in any actions initiated in respect of any Hazardous Materials Claim.

3. **Indemnity.** If the generation, use, transportation, storage, or disposal of Hazardous Materials by an Owner, or by anyone using the Project through the Owner, results in contamination of a Unit or any portion of the common elements, then the Owner must indemnify, defend and hold harmless Declarant, the Association, the Board of Directors and all other Owners from (a) all damages, including foreseeable and unforeseeable consequential damages, diminution in value of a Unit, losses and damages for the loss or restriction on use of a Unit or any part of the common elements, (b) sums paid in settlement of claims, (c) all reasonable expenses, including attorneys' fees, consultant fees and expert fees that arise as a result of any investigation by the Association, or the defense of Hazardous Materials Claims (whether or not a formal administrative or legal action is filed) by the Association or any Owner, and (d) all costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restorative work required by any governmental agency because of a Hazardous Material present in the soil or ground water on or under the Unit or the common elements.

#### 4. Cleanup.

(a) By an Owner. Without limiting the generality of the foregoing, if the presence of any Hazardous Material at a Unit or the common elements caused or permitted by an Owner, or by anyone using the Project through the Owner, results in any contamination of any part of the Project, then the Owner must promptly take all actions at the Owner's sole expense as are necessary to return the Project to the condition existing prior to the Hazardous Discharge; provided that the Board's approval of such actions must first be obtained, which approval will not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Project.

(b) By the Association. If the presence of any Hazardous Material on the Common Elements results in any contamination of any of the common elements, then the Association must promptly take all actions as are necessary to clean up and restore the common elements in accordance with all Hazardous Materials Laws, and all Owners will be severally liable for the cost of any such cleanup and restoration as a Common Assessment to the extent such costs are not chargeable to the Owners of one or more Units, as provided in this Declaration, and are not reimbursed to the Association by those Owners.

(c) Pesticide-Impacted Soils. Each Owner understands and acknowledges that the Land of the Project (including the land under the Unit) is within an approximately 50-acre portion of Kalaeloa (called "**Parcel 1**") that was analyzed for the presence of pesticide-impacted soils ("**PIS**") around and beneath concrete slabs for military housing that existed in the area. To protect the health of the contractors and others who are developing Parcel 1 (including the Project), a Construction Environmental Hazard Management Plan (or C-EHMP) was completed in May 2021 to identify and remediate potential environmental and health hazards associated with organochlorine pesticides, such as chlordane, which was widely used as a ground termite pesticide until its use was banned in 1986. The C-EHMP was approved by the Department of Health of the State of Hawaii on June 17, 2021. Based on the guidance of the C-EHMP, the PIS was removed from the land under the Project and buried under at least two feet of clean soil in another portion of Parcel 1 that is outside of (and not adjacent to) the Project site (the "**Bury Pit**"). With the contaminated soil having been removed from the land under the Project, a Long-Term Environmental Hazard Management Plan (or EHMP) was completed in August 2022 (and revised in May 2023) to provide a framework for the long-term management of the PIS that remains buried in the Bury Pit. According to the EHMP, as long as required engineering and institutional controls are maintained, there are no specific health and safety requirements for residents to adhere to and residents are protected from potential exposure to the contaminated soil.

(d) Condition of Land. Except as expressly set forth herein, Owner is relying and will rely solely upon Owner's own inspection and investigation of the Land of the Project and surrounding properties, and is not relying and will not rely in any way upon any representations, statements, warranties, or other information or material furnished by Declarant or its representatives, whether oral or written, express or implied. Without limiting the generality of the foregoing, Owner assumes all risks associated with the condition of the Land, the nature of the soils making up the Land and of any Hazardous Materials on, about, around, under, over or within the Project, including all risks of (a) any and all enforcement, clean up, or other governmental or regulatory actions instituted or threatened pursuant to any Hazardous Materials laws affecting the Project, (b) all claims made or threatened by any third party against the Owner or the Project relating to damage, contribution, compensation, loss or injury resulting from any Hazardous Materials, and (c) the Owner discovering any occurrence or condition on the Land or any land adjoining or in the vicinity of the Project that might result in the Owner or the Project being made

subject to restrictions on ownership, occupancy, transferability or use of the Project pursuant to any applicable Hazardous Materials Laws. Each Owner also understands and acknowledges that (1) the Land of the Project (including the land under the Unit) contains (or may contain) expansive soils, and, as a result, may be subject to subsidence, settlement or expansion, and (2) standard construction techniques and applicable designs for any building slabs in the Project may result in a degree of non-structural cracking or "spider" cracking within the slab and that slabs may contain contraction joints.

## 5. **Molds and Other Environmental Issues.**

(a) Mold, mildew, toxins, fungi and mold spores (collectively "**Molds**") are present throughout the environment and residential dwelling construction is not, and cannot be, designed to exclude all Molds, and, as such, may exist and/or develop within the Unit and/or the Project. All Molds are not necessarily harmful, but certain Molds have been shown to have adverse health effects in susceptible persons, and, as such, may be, or if allowed to remain for a sufficient period may become toxic producing and potentially pose health risk. The most common effects are allergic reactions, including skin irritation, watery eyes, runny nose, coughing, sneezing, congestion, sore throat and headache. Individuals with suppressed immune systems may risk infections. Moisture is the only factor for the growth of Molds that can really be controlled in a residential setting. By minimizing moisture, an Owner can reduce or eliminate the growth of Molds. Owners should take positive steps to reduce or eliminate the occurrence of the growth of Molds and thereby minimize any possible adverse effects that may be caused by Molds.

(b) By taking title to a Unit, each Owner acknowledges and agrees that Declarant will not be liable for damages of any type, including 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 unless caused by the recklessness or willful misconduct of Declarant. By taking title to a Unit, each Owner, on behalf of itself and the Occupants of and invitees to the Unit, will be deemed to have assumed the risks associated with Molds and releases Declarant and its agents, employees, contractors, partners, affiliates, licensees, successors and assigns from and against any and all claims, actions, damages, causes of action, liabilities and expenses (including without limitation, attorneys' fees and costs of enforcing this indemnity) for property damage, injury or death resulting from the exposure to Molds and from any loss of resale value due to the presence and/or existence of Molds.

(c) The obligations under this Section will survive the termination of the ownership of a Unit in the Project.

## Y. **GENERAL PROVISIONS; MISCELLANEOUS; CONSENT.**

1. **Consent, Special Power of Attorney.** By acceptance of a Unit Deed, each and every Owner or other Person or entity acquiring an interest in a Unit, including Mortgagees, consents to all of the rights reserved to Declarant in this Declaration, including, but not limited to, Declarant's Reserved Rights, the right to prepare, execute, file, process and Record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Condominium Map and the Bylaws. By such acceptance, each and every Owner or Person acquiring such interest, including Mortgagees, agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance will be deemed an appointment of Declarant, with full power and right of substitution, as the attorney-in-fact of such Owner or acquiring Person to execute, deliver, file and Record such documents and instruments and to do such things on

such Owner's or acquiring Person's behalf, and to receive or send any legal notices required by Applicable Laws; and such appointment, being coupled with an interest, will be irrevocable for the specific period(s) of Declarant's Reserved Rights as set forth in this Declaration and will not be affected by the disability of any such Owner or acquiring Person; which grant of such power will be binding upon any assign of, or successor-in-interest to, any such Person and will 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 Declarant under this Declaration, Declarant will have the right to execute, deliver, file and Record any amendment to this Declaration or to the Condominium Map, the Bylaws and/or the Project Rules, any easement instrument, any deed, any amendment to a Unit Deed, assignment of rights or interest, any necessary petitions and/or amendments with the Bureau to note any recalculated common interest appurtenant to any Unit, or such other document or instrument that may be necessary or appropriate to permit Declarant to exercise its rights pursuant to the provisions of this Declaration.

## **2. Transfer of Limited Common Elements.**

(a) Unit Owners (including Declarant) have the right to transfer or exchange a limited common element (including a parking stall) that is appurtenant only to the Owner's Unit to another Unit in the Project by a written document expressly providing: (i) that the document is an amendment to this Declaration; and (ii) the identification of the limited common element being transferred or exchanged, the Unit to which the limited common element was appurtenant prior to the transfer, and the Unit to which the limited common element is being transferred and to which it will be appurtenant as a limited common element. Any such document need only be executed by the Owner of the Unit whose limited common element is being transferred or exchanged (and that Owner's Mortgagee(s), if any and if required by such Mortgagee(s)) and by the Owner of the Unit receiving the limited common element (and that Owner's Mortgagee(s), if any and if required by such Mortgagee(s)), and will be effective upon Recording. A copy of such document, bearing Recordation data, is to be promptly delivered to the Association, via the Managing Agent. This section does not apply to Parking Stall Units, which are separately conveyable Units and are not limited common elements.

(b) Declarant will have and hereby reserves the right, by way of an amendment to this Declaration (if necessary and/or appropriate) executed only by Declarant and duly Recorded: (i) to sell, lease, rent, convey and/or otherwise designate any parking stall that is not designated in this Declaration (or an amendment hereto) as a limited common element appurtenant to a Unit not owned by Declarant to be appurtenant to and/or available for the exclusive use of any other Unit in the Project as a limited common element appurtenant to that Unit or for use by Persons not part of the Project; (ii) to designate any parking stall that is not designated in this Declaration (or an amendment hereto) as a limited common element appurtenant to a Unit not owned by Declarant for use as a common element visitor parking stall for the Project; (iii) to designate any parking stall that is a limited common element appurtenant to one or more Units owned by Declarant for use as a general common element (including a visitor parking stall) for the Project; (iv) to sell, lease, convey and/or otherwise designate any parking stall that is a limited common element appurtenant to one or more Units owned by Declarant to be appurtenant to and/or available for the exclusive use of any Unit in the Project as a limited common element for that Unit or for use by Persons not part of the Project; (v) to use, or allow others to use, as Declarant deems appropriate, any parking stall that has not been designated in this Declaration (or an amendment hereto) as a limited common element appurtenant to a Unit not owned by Declarant; and (vi) to assign or change, from time to time, the assignments of individual parking stalls to individual Units that have not been conveyed by Declarant.

3. **Rules Regarding Parking Stalls.**

(a) Declarant has the exclusive right to use and/or assign unassigned parking stalls that are not appurtenant to any specific Unit. Unless and until Declarant exercises this right with respect to any one or more unassigned parking stalls, use of those unassigned parking stalls, if any, or those parking stalls, if any, designated as "visitor" parking stalls may be governed by rules and regulations adopted in accordance with the Project Documents to assure equitable use of such parking stalls among the Owners, Occupants and invitees of the Units.

(b) To help ensure the fair, safe and proper use of roadways and parking areas within the Project, the Board may, with respect to roadways and parking areas in the Project and with respect to the parking stalls used in connection with the Units, employ the use of speed limits and an allocation system, hire parking attendants, install parking meters, gates, security devices, checkpoints, and other appropriate equipment, and issue parking stickers. Without limiting, but subject to, the foregoing, the Board may establish additional regulations relating to any of the unassigned or unleased/unrented parking stalls, including designating "visitor parking", "guest parking", "parking", and "no parking" areas thereon. Any parking areas will be subject to such further reasonable control and use limitations as the Board may establish. The Board has the authority to determine whether there is a violation of the parking and vehicular restrictions set forth in the Project Documents or otherwise established by the Board. If such noncompliance is determined by the Board to exist, then the Board will have the power to enforce all parking and vehicle regulations applicable to the Project, including the power to remove violating vehicles and objects from the Project.

4. **Incorporation of Exhibits.** Exhibit "A", Exhibit "B", Exhibit "C" and Exhibit "D" attached to this Declaration are incorporated herein by reference.

5. **Incorporation of Condominium Map.** The Condominium Map is incorporated herein by reference.

6. **No Waiver.** Failure to enforce any provision of this Declaration will not constitute a waiver of the right to enforce that provision, or any other provision of this Declaration.

7. **Cumulative Remedies.** Each remedy provided for in this Declaration is cumulative and not exclusive. The failure to exercise any remedy provided for in this Declaration or any other document will not constitute a waiver of such remedy or of any other remedy provided in this Declaration or in the other document.

8. **Severability.** The provisions of this Declaration are deemed independent and severable, and if, for any reason, any provision stated in this instrument is subsequently determined to be invalid, illegal or unenforceable, then that determination will not impair or affect, or be deemed to impair or affect, in any manner, the validity, legality, effect or enforceability of the remaining provisions stated in this instrument, except for those terms made impossible by the absence of the omitted provision, and, in such event, all of the other provisions of this Declaration will continue in full force and effect as if such provision had never been included in this Declaration.

9. **Captions; Headings.** Captions and headings given to various sections in this Declaration are inserted only as a matter of convenience and for reference purposes only and are not intended to and do not modify, define, limit or affect the meaning, scope, construction, or interpretation of any of the substantive provisions of this Declaration, or the intent of any provisions of this Declaration.

10. **Interpretation.** The provisions of this Declaration are to be liberally construed to effectuate the purpose of creating a uniform condominium project whereby the Owners of Units carry out and pay for the operation and maintenance of the Project as a mutually beneficial and efficient establishment. Except for construction by a court of law or arbitrator, the Association, by its Board (including while the Association and the Board are controlled by Declarant), has the exclusive right to construe and interpret the provisions of this Declaration and the other Project Documents. In the absence of any adjudication to the contrary by a court of competent jurisdiction or arbitrator, the Board's construction or interpretation of the provisions of this Declaration and the other Project Documents will be final, conclusive and binding as to all Persons and property benefited or bound by the provisions of this Declaration.

11. **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 will 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, will be subject to the provisions of this Declaration and any instrument of conveyance will be deemed to incorporate the provisions of this Declaration, whether or not such instrument refers to this Declaration.

12. **Governing Law.** This Declaration is governed by the laws of the State of Hawaii without giving effect to the principles of conflict of laws thereof.

13. **Provisions Run With the Land.** The provisions of this Declaration and the Bylaws constitute covenants running with the land and equitable servitudes, and are binding upon and inure to the benefit of Declarant and the Association, their respective successors and permitted assigns, and all subsequent owners and lessees of all or any part of the Project and their respective successors, successors-in-trust, heirs, devisees, personal representatives, executors, administrators, and assigns. Declarant grants and reserves the easements described in this Declaration. Declarant reserves Declarant's Reserved Rights in the Land and the Project. Declarant declares that all Units and their appurtenant common interests and all common elements (including limited common elements) are subject to Declarant's Reserved Rights and to the easements granted or reserved in this Declaration. When any interest in real property in the Project is conveyed, the interest will be burdened by the provisions of this Declaration for the benefit of the remaining portions of the Project and the interest conveyed will be entitled to the benefit of this Declaration.

14. **Conflicts.** This Declaration is intended to comply with the Act. In case of any conflict between the provisions of this Declaration and those of Hawaii law or the Act, the provisions of Hawaii law or the Act, as the case may be, will control. In case of any conflict between the provisions of this Declaration and those of the Bylaws or the Project Rules, the provisions of this Declaration will control. In case of any conflict between the provisions of the Bylaws and those of the Project Rules, the provisions of the Bylaws will control.

15. **No Representations or Warranties.** Notwithstanding any other provision in this Declaration to the contrary, no representations or warranties of any kind, express or implied, have been given or made by Declarant 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 project under

the Act, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant from time to time with any governmental authority.

16. **Changes in Law.** In the event of a change in statutory law applicable to the Project occurring after the Recording of this Declaration or the Bylaws, such change in law will 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 will control over provisions to the contrary in preexisting documents.

17. **Limitation on Liability.** Any other provision to the contrary in this Declaration notwithstanding, each Owner, by accepting title to a Unit and becoming an Owner, acknowledges and agrees that neither Declarant nor any of its related entities or affiliates will have any personal liability to the Association, or to any Owner, Member or other Person, arising under, in connection with, or resulting from (including, without limitation, resulting from action or failure to act with respect to) this Declaration or the Association if the action taken or the failure to act was in good faith and without malice, except, in the case of Declarant, to the extent of its interest in the Project; and, in the event of a judgment, no execution or other action is allowed to be sought or brought thereon against any other assets, nor be a lien upon such other assets, of Declarant or any of its related entities or affiliates. Further, each Owner, by acceptance of a Unit Deed, will be deemed to have agreed that Declarant has no liability whatsoever resulting from any term or provision of this Declaration having been held to be unenforceable in whole or in part.

18. **Scope of Declarant.** Whenever, in this Declaration, "Declarant" is to be released, indemnified or have claims against it waived, the release, indemnification and waiver also applies to Declarant's officers, partners, directors, agents, members, managers, affiliates, principals, employees, successors and assigns.

19. **Indemnities and Institutional Lenders.** Any other provision in this Declaration to the contrary notwithstanding, any agreement to indemnify (express or deemed) will not extend to or obligate an institutional lender who holds a Mortgage covering all or any part of the Property (including any Unit) or who takes title to said property upon foreclosure or by way of a deed-in-lieu of foreclosure or otherwise; provided, however, that any Person acquiring the part of the Property from such Mortgagee will be subject to the indemnity obligations set forth in this Declaration.

20. **Time of Essence.** Time is of the essence of each provision of this Declaration of which time is an element.

21. **Notices.** All notices permitted, required or otherwise described in this Declaration and the other Project Documents must be in writing.

(a) **Notices to Association, Board and Managing Agent.** Notices to the Association (or any committees thereof), the Board (or any committees thereof) or the Managing Agent provided for in the Project Documents must be in writing and must be addressed to the Association, the Board or the Managing Agent at the Hawaii business address of the Managing Agent. The Association, the Board and the Managing Agent may, from time to time, designate a different address or addresses for notice by giving written general notice of such change of address to all Owners.

(b) **Notices to Owners.** If notice of any action or proposed action by Declarant, the Association, the Board or any committee or of any meeting is required by Applicable Law, any of the Project Documents or resolution of the Board to be given to any Owner or Occupant, then,

unless otherwise specified in this Declaration or in the resolution of the Board, such notice must be delivered to the last known address of such Owner on file in the records of the Association at the time of such mailing, or, if no address has been furnished, then to the address of the Unit of such Owner. For purposes of the Project Documents, notice to one Owner of a Unit will constitute notice to all Owners of such Unit. This section must not be construed to require that any notice be given if not otherwise required and does not prohibit satisfaction of any notice requirement in any other manner.

(c) Notices to Declarant. Notices to Declarant provided for in the Project Documents must be addressed to Declarant as follows: Gentry Kalaeloa, LLC, 733 Bishop Street, Suite 1400, Honolulu, Hawaii 96813. Declarant may from time to time designate a different address or addresses for notice by giving written general notice of such change of address to all Owners.

(d) Effective Delivery. Unless otherwise required by Applicable Law (including the Act) or otherwise specifically provided in this Declaration, all notices permitted or required to be given under this Declaration or the Bylaws may be given: (i) by delivery in person; (ii) by private courier against receipt; (iii) by first class mail, postage prepaid; or (iv) by certified mail, return receipt requested and postage prepaid. A notice will be considered delivered and effective: (A) upon receipt in the case of personal delivery; (B) five days after deposit with the United States Postal Service with the correct address and first class postage affixed; (C) the date shown on a return receipt, if sent by certified mail, return receipt requested, signed by or on behalf of the addressee; or (D) the date shown on a receipt, if sent by private courier, signed by or on behalf of the addressee. Actual receipt of notice will be effective notice regardless of the manner in which the notice was given.

(e) Waiver. Whenever any notice is required to be given under the provisions of the Act, or under the provisions of the Project Documents, a waiver of such notice in writing, signed by the Person or Persons entitled to such notice, whether before or after the time stated therein, will be deemed equivalent to the giving of such notice.

## 22. **Construction.**

(a) The use of the singular will be deemed to include the plural whenever the context so requires. The use of the plural will be deemed to include the singular whenever the context so requires.

(b) The terms "herein," "hereof" or "hereunder" or similar terms used in this Declaration refer to this entire Declaration and not to the particular provision in which the terms are used.

(c) When the terms "include" or "including" are used in this Declaration, they will not be interpreted as a term of limitation, but will mean "include or including, but not limited to".

(d) When, in this Declaration, a Person reserves or is given or granted a right to do something, the Person is not obligated to exercise that right, even if a term such as "but is not obligated" or "but not the obligation" does not accompany the reservation, giving or granting of the right.

(e) References to "days" in this Declaration mean calendar days unless otherwise specified. References to "business days" means those non-weekend days that are not recognized as holiday days by the government of the State of Hawaii.

(f) When used in this Declaration, the words "and/or" are deemed to mean one, some or all of the listed items.

(g) When words or terms are used in this Declaration or in the Bylaws, but without initial capital letters, such words or terms will have the meaning they have in common usage; provided, however, that where legal, technical, or trade words or terms are used and the context in which such words or terms are used indicates that such words or terms are to be given their legal, technical, or trade usage meanings, such words or terms will be given such legal, technical, or trade usage meanings.

23. **Successors and Assigns.** This Declaration is binding on all Owners and each of their respective successors, successors in trust, successors in title and assigns. This Declaration will inure to the benefit of Declarant, its affiliates and each of their respective successors and assigns.

*[signature page follows]*

Declarant has signed this Declaration as of JAN 02 2025.

**GENTRY KALAELOA, LLC,**  
a Hawaii limited liability company

By: Gentry Homes, Ltd.,  
a Hawaii corporation  
Its: Member

By: *Andrew Kamikawa*  
Andrew Kamikawa  
Its Vice President

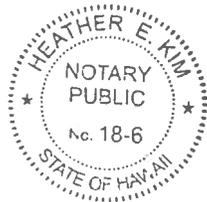
Declarant

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

On October 29, 2025, before me personally appeared Andrew Kamikawa, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Further, I certify, as of this date, as follows:

Date of Document: Undated  
Number of Pages: 88 (Excluding Exhibits)  
Document Description: Declaration of Condominium Property Regime  
of Ka'ulu by Gentry IV  
Jurisdiction/Judicial Circuit Where Signed: First Circuit



*Heather E. Kim*

Name: Heather E. Kim  
Notary Public, State of Hawaii  
My Commission Expires: 2/4/2026

## EXHIBIT "A"

### Description of the Land

#### ITEM I:

Lot 24  
(DPP File No. 2024/SUB-139)

Being a portion of Lot 13047-E (DPP File No. 2019/SUB-160)

Situate at Honouliuli, Ewa, Island of Oahu, Hawaii

Beginning at the Southwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI NEW", being 20,012.70 feet South and 3,750.17 feet West and thence running by azimuths measured clockwise from true South:

1. Thence along Lot 25 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160), on a curve to the right with a radius of 250.00 feet, the chord azimuth and distance being:

182° 35' 15.5" 49.48 feet;

2. 188° 16' 176.86 feet along Lots 25 and 17 (DPP File No. 2024/SUB-139), being portions of Lot 13047-E (DPP File No. 2019/SUB-160);

3. 278° 16' 101.23 feet along Lot 15 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);

4. Thence along the west side of Copahee Avenue, on a curve to the left with a radius of 5,785.00 feet, the chord azimuth and distance being:

8° 26' 38" 8.86 feet;

5. 8° 24' 217.23 feet along the west side of Copahee Avenue;

6. 98° 16' 95.80 feet along Lot 25 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160) to the point of beginning and containing an area of 22,746 square feet, more or less.

Together with the following easements:

Easements AU-3 to AU-30 (DPP File No. 2023/SUB-75), inclusive;  
Easements AU-31 to AU-40 (DPP File No. 2024/SUB-139), inclusive; and  
Easements AU-42 to AU-50 (DPP File No. 2024/SUB-139), inclusive.

ITEM II:

Lot 25  
(DPP File No. 2024/SUB-139)

Being a portion of Lot 13047-E (DPP File No. 2019/SUB-160)

Situate at Honouliuli, Ewa, Island of Oahu, Hawaii

Beginning at the Northwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI NEW" being 19,855.05 feet South and 3,825.70 feet West and thence running by azimuths measured clockwise from true South:

1. 278° 16' 92.52 feet along Lot 17 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
2. 8° 16' 95.92 feet along Lot 24 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
3. Thence along Lot 24 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160), on a curve to the left with a radius of 250.00 feet, the chord azimuth and distance being:  
2° 35' 15.5" 49.48 feet;
4. 278° 16' 95.80 feet along Lot 24 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
5. 8° 24' 154.33 feet along the west side of Copahee Avenue;
6. Thence along the intersection of Copahee Avenue and Boxer Road, on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:  
57° 23' 30" 45.28 feet;
7. 106° 23' 70.55 feet along the northeast side of Boxer Road;
8. 196° 23' 49.31 feet along Lot 26 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
9. 286° 23' 0.70 feet along Lot 26 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
10. 188° 24' 60.66 feet along Lot 26 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
11. 97° 23' 10.80 feet along Lot 26 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);

12. Thence along Lot 26 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160), on a curve to the right with a radius of 300.00 feet, the chord azimuth and distance being:

101° 53' 47.08 feet;

13. 106° 23' 45.61 feet along Lot 26 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);

14. 196° 23' 40.19 feet along Lot 28 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);

15. Thence along Lot 28 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160), on a curve to the left with a radius of 67.75 feet, the chord azimuth and distance being:

192° 19' 30" 9.59 feet;

16. 188° 16' 151.18 feet along Lot 28 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160) to the point of beginning and containing an area of 37,149 square feet, more or less.

Together with the following easements:

Easements AU-3 to AU-30 (DPP File No. 2023/SUB-75), inclusive;  
Easements AU-31 to AU-41 (DPP File No. 2024/SUB-139), inclusive; and  
Easements AU-43 to AU-50 (DPP File No. 2024/SUB-139), inclusive.

ITEM III:

Lot 26  
(DPP File No. 2024/SUB-139)

Being a portion of Lot 13047-E (DPP File No. 2019/SUB-160)

Situate at Honouliuli, Ewa, Island of Oahu, Hawaii

Beginning at the Northwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI NEW" being 20.040.86 feet South and 3,900.69 feet West and thence running by azimuths measured clockwise from true South:

1. 286° 23' 87.17 feet along Lots 28 and 25 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);

2. Thence along Lot 25 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160), on a curve to the left with a radius of 300.00 feet, the chord azimuth and distance being:

281° 53' 47.08 feet;

3. 277° 23' 10.80 feet along Lot 25 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
4. 8° 24' 60.66 feet along Lot 25 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
5. 106° 23' 0.70 feet along Lot 25 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
6. 16° 23' 49.31 feet along Lot 25 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
7. 106° 23' 156.49 feet along the northeast side of Boxer Road;
8. 196° 23' 70.16 feet along Lot 27 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
9. 231° 23' 6.97 feet along Lot 27 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
10. 196° 23' 28.13 feet along Lot 27 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160) to the point of beginning and containing an area of 16,088 square feet, more or less.

Together with the following easements:

Easements AU-3 to AU-30 (DPP File No. 2023/SUB-75), inclusive;  
Easements AU-31 to AU-42 (DPP File No. 2024/SUB-139), inclusive; and  
Easements AU-45 to AU-50 (DPP File No. 2024/SUB-139), inclusive.

ITEM IV:

Lot 27  
(DPP File No. 2024/SUB-139)

Being a portion of Lot 13047-E (DPP File No. 2019/SUB-160)

Situate at Honouliuli, Ewa, Island of Oahu, Hawaii

Beginning at the Northwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI NEW" being 19,997.42 feet South and 4,048.44 feet West and thence running by azimuths measured clockwise from true South:

1. 286° 23' 154.00 feet along Lot 28 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
2. 16° 23' 28.13 feet along Lot 26 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);

3. 51° 23' 6.97 feet along Lot 26 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
4. 16° 23' 70.16 feet along Lot 26 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
5. 106° 23' 150.00 feet along the northeast side of Boxer Road;
6. 196° 23' 104.00 feet along Lot 29 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160) to the point of beginning and containing an area of 15,724 square feet, more or less.

Together with the following easements:

Easements AU-3 to AU-30 (DPP File No. 2023/SUB-75), inclusive;  
Easements AU-31 to AU-44 (DPP File No. 2024/SUB-139), inclusive; and  
Easements AU-46 to AU-50 (DPP File No. 2024/SUB-139), inclusive.

ITEM V:

Lot 28  
(DPP File No. 2024/SUB-139)

Being a portion of Lot 13047-E (DPP File No. 2019/SUB-160)

Situate at Honouliuli, Ewa, Island of Oahu, Hawaii

Beginning at the Northwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI NEW" being 19,814.85 feet South and 4,064.20 feet West and thence running by azimuths measured clockwise from true South:

1. 285° 23' 92.33 feet along Lot 18 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
2. Thence along Lot 18 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160), on a curve to the left with a radius of 26.50 feet, the chord azimuth and distance being:  
  
248° 02' 29.5" 32.15 feet;
3. 285° 23' 82.57 feet along Lot 17 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
4. 278° 16' 40.47 feet along Lot 17 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
5. 8° 16' 151.18 feet along Lot 25 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);

6. Thence along Lot 25 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160), on a curve to the right with a radius of 67.75 feet, the chord azimuth and distance being:

12° 19' 30" 9.59 feet;

7. 16° 23' 40.19 feet along Lot 25 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);

8. 106° 23' 259.20 feet along Lots 26, 27 and 29 (DPP File No. 2024/SUB-139), being portions of Lot 13047-E (DPP File No. 2019/SUB-160);

9. 195° 23' 170.74 feet along Lot 30 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160) to the point of beginning and containing an area of 46,557 square feet, more or less.

Together with the following easements:

Easements AU-3 to AU-30 (DPP File No. 2023/SUB-75), inclusive;  
Easements AU-31 to AU-45 (DPP File No. 2024/SUB-139), inclusive; and  
Easements AU-47 to AU-50 (DPP File No. 2024/SUB-139), inclusive.

ITEM VI:

Lot 29  
(DPP File No. 2024/SUB-139)

Being a portion of Lot 13047-E (DPP File No. 2019/SUB-160)

Situate at Honouliuli, Ewa, Island of Oahu, Hawaii

Beginning at the Northwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI NEW" being 19,955.11 feet South and 4,192.35 feet West and thence running by azimuths measured clockwise from true South:

1. 286° 23' 150.00 feet along Lots 30 and 28 (DPP File No. 2024/SUB-139), being portions of Lot 13047-E (DPP File No. 2019/SUB-160);

2. 16° 23' 104.00 feet along Lot 27 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);

3. 106° 23' 150.00 feet along the northeast side of Boxer Road;

4. 196° 23' 104.00 feet along Lot 31 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160) to the point of beginning and containing an area of 15,600 square feet, more or less.

Together with the following easements:

Easements AU-3 to AU-30 (DPP File No. 2023/SUB-75), inclusive;  
Easements AU-31 to AU-46 (DPP File No. 2024/SUB-139), inclusive; and  
Easements AU-48 to AU-50 (DPP File No. 2024/SUB-139), inclusive.

ITEM VII:

Lot 30  
(DPP File No. 2024/SUB-139)

Being a portion of Lot 13047-E (DPP File No. 2019/SUB-160)

Situate at Honouliuli, Ewa, Island of Oahu, Hawaii

Beginning at the Northwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI NEW" being 19,756.99 feet South and 4,274.52 feet West and thence running by azimuths measured clockwise from true South:

1. 285° 23' 218.13 feet along Lots 20 and 18 (DPP File No. 2024/SUB-139), being portions of Lot 13047-E (DPP File No. 2019/SUB-160);
2. 15° 23' 170.74 feet along Lot 28 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
3. 106° 23' 218.16 feet along Lots 29, 31 and 32 (DPP File No. 2024/SUB-139), being portions of Lot 13047-E (DPP File No. 2019/SUB-160);
4. 195° 23' 166.93 along Lot 32 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160), to the point of beginning and containing an area of 36,828 square feet, more or less.

Together with the following easements:

Easements AU-3 to AU-30 (DPP File No. 2023/SUB-75), inclusive;  
Easements AU-31 to AU-47 (DPP File No. 2024/SUB-139), inclusive; and  
Easements AU-49 to AU-50 (DPP File No. 2024/SUB-139), inclusive.

ITEM VIII:

Lot 31  
(DPP File No. 2024/SUB-139)

Being a portion of Lot 13047-E (DPP File No. 2019/SUB-160)

Situate at Honouliuli, Ewa, Island of Oahu, Hawaii

Beginning at the Northwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI NEW" being

19,923.38 feet South and 4,300.28 feet West and thence running by azimuths measured clockwise from true South:

1. 286° 23' 112.50 feet along Lot 30 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
2. 16° 23' 104.00 feet along Lot 29 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
3. 106° 23' 112.50 feet along the north side of Boxer Road;
4. 196° 23' 104.00 feet along Lot 32 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160) to the point of beginning and containing an area of 11,700 square feet, more or less.

Together with the following easements:

Easements AU-3 to AU-30 (DPP File No. 2023/SUB-75), inclusive;  
Easements AU-31 to AU-48 (DPP File No. 2024/SUB-139), inclusive; and  
Easement AU-50 (DPP File No. 2024/SUB-139).

ITEM IX:

Lot 32  
(DPP File No. 2024/SUB-139)

Being a portion of Lot 13047-E (DPP File No. 2019/SUB-160)

Situate at Honouliuli, Ewa, Island of Oahu, Hawaii

Beginning at the North corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI NEW" being 19,721.44 feet South and 4,403.72 feet West and thence running by azimuths measured clockwise from true South:

1. 285° 23' 134.00 feet along Lot 23 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
2. 15° 23' 166.93 feet along Lot 30 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
3. 286° 23' 19.30 feet along Lot 30 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
4. 16° 23' 104.00 feet along Lot 31 (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160);
5. 106° 23' 151.51 feet along the north side of Boxer Road;



6. 195° 23' 268.61 feet along Lot C (DPP File No. 2024/SUB-139), being a portion of Lot 13047-E (DPP File No. 2019/SUB-160) to the point of beginning and containing an area of 38,063 square feet, more or less.

Together with the following easements:

Easements AU-3 to AU-30 (DPP File No. 2023/SUB-75), inclusive; and  
Easements AU-31 to AU-49 (DPP File No. 2024/SUB-139), inclusive.

AS TO ITEM I (Lot 24) THROUGH ITEM IX (Lot 32):

Being portions of the premises conveyed by Limited Warranty Deed and Reservation of Rights recorded September 29, 2023 as Document No. A-86720362, by Grantor HCHP1 LLC, a Delaware limited liability company, in favor of Grantee, Gentry Kalaeloa, LLC, a Hawaii limited liability company, and portions of the premises conveyed by Limited Warranty Deed and Reservation of Rights recorded December 29, 2021 as Document No. A-80330557, by Grantor, HCHP1 LLC, a Delaware limited liability company, in favor of Grantee, Gentry Kalaeloa, LLC, a Hawaii limited liability company.

Together with access over Lot 13047-F and Lot 13047-G (together "**Roadway Lots**"), as shown on Map approved by the Department of Planning and Permitting, City and County of Honolulu, Subdivision File No. 2019/SUB-160, on August 13, 2021, and being more particularly described in instrument recorded November 3, 2021 as Document No. A-79770205, provided, however, that in the event that any Roadway Lots are conveyed to the State of Hawaii, the City and County of Honolulu, or other governmental authority, said right of access as to said Roadway Lots so conveyed will immediately terminate.

And together with access over the access and utility easements within Lots 1 to 13, inclusive, and within Lots 47 to 49, inclusive, as shown on DPP File No. 2023/SUB-75, as such easements and lots are further described in the December 2023 Surveyor's Affidavit, which descriptions are incorporated into this Declaration by reference.

And together with access over the applicable access and utility easements within Lots 14 to 32, inclusive, as shown on DPP File No. 2024/SUB-139, as such easements and lots are further described in the July 2025 Surveyor's Affidavit, which descriptions are incorporated into this Declaration by reference.

## EXHIBIT "B"

### KA'ULU BY GENTRY IV

The following is subject to the reserved rights of Declarant set forth in this Declaration.

#### **DESCRIPTIONS OF BUILDINGS AND UNITS:**

The Project has a total of 34 two-story buildings, 26 of which are comprised of two-story Detached Single-Family Units, with one Residential Unit in each building, and eight of which are comprised of one-level and two-level Attached Multi-Family Units. Three of the buildings with Attached Multi-Family Units have eight one-level or two-level Residential Units in each building, and five of the buildings with Attached Multi-Family Units have six one-level or two-level Residential Units in each building.

None of the buildings have basements. The buildings are comprised of wood frames constructed on concrete slab-on-grade foundations with wood frame interior walls with gypsum board. Exterior walls are sheathed with gypsum board on interior surfaces and sided on exterior surfaces with pre-primed manufactured cementitious siding. Roofs are constructed of engineered wood trusses, plywood sheathing and composition shingles.

The Project contains 90 Units. Twenty-six (26) of the Units (Units 317 to 326, inclusive, 447 to 455, inclusive, and 410 to 416, inclusive) are Detached Single-Family Units. Fifty-four (54) of the Units (Units 301 to 306, inclusive, 311 to 316, inclusive, 401 to 406, inclusive, 421 to 426, inclusive, 431 to 436, inclusive, 441 to 446, inclusive, 461 to 468, inclusive, and 471 to 478, inclusive) are Attached Multi-Family Units. Ten (10) of the Units (Units G-25 to G-34, inclusive) are Parking Stall Units.

The Condominium Map shows the floor plans and the internal areas of each Residential Unit.

#### **LOCATION AND NUMBERING OF UNITS:**

The locations of the Residential Units within the buildings are as shown on the Condominium Map. The locations of the Parking Stall Units are as shown on the Condominium Map. Each Residential Unit is designated by a 3-digit number, as referenced in the table below. Each Parking Stall Unit is designated by a 2-digit letter/number combination, the first of which is the letter "G", then, following a hyphen, a number.

#### **ACCESS TO COMMON ELEMENTS:**

Each Unit in the Project will have immediate access to the common elements of the Project, which, in turn, have immediate access to Franklin D. Roosevelt Avenue, which is a public roadway. As noted below, among the common elements of the Project are the benefits inuring from easements listed in **Exhibit "A"** to this Declaration, which include access rights over (a) Lot 13047-F and Lot 13047-G, as shown on Map approved by the Department of Planning and Permitting, City and County of Honolulu, Subdivision File No. 2019/SUB-160, on August 13, 2021, (b) the access and utility easements within Lots 1 to 13, inclusive, and Lots 47 to 49, inclusive, as such easements and lots are described in the December 2023 Surveyor's Affidavit, and (c) the applicable access and utility easements within Lots 14 to 32, inclusive, as such easements and lots are further described in the July 2025 Surveyor's Affidavit.

**UNIT SCHEDULE:**

Unit No.	Single-Family ("SF") or Multi-Family ("MF")#	Plan/Type	Approximate Net Living Area (sq. ft.)	Approximate Net Lanai (sq. ft.)	Approximate Net Covered Entry / Lanai (sq. ft.)**	Approximate Net Garage Area (sq. ft.)	Common Interest* (%)
301	MF (C6)	Type 3-R	1,195	147	16	353	1.195985%
302	MF (C6)	Type 1-R	1,020	0	99	330	1.020822%
303	MF (C6)	Type 2-R	1,080	92	224	317	1.080878%
304	MF (C6)	Type 2	1,080	92	224	317	1.080878%
305	MF (C6)	Type 1	1,020	0	99	330	1.020822%
306	MF (C6)	Type 3	1,195	147	16	353	1.195985%
311	MF (P6)	Type 3-R	1,195	148	17	353	1.195985%
312	MF (P6)	Type 1-R	1,020	0	77	330	1.020822%
313	MF (P6)	Type 2-R	1,080	70	224	317	1.080878%
314	MF (P6)	Type 2	1,080	70	224	317	1.080878%
315	MF (P6)	Type 1	1,020	0	77	330	1.020822%
316	MF (P6)	Type 3	1,195	148	17	353	1.195985%
317	SF	Plan 2	1,592	0	47	436	1.593361%
318	SF	Plan 1-R	1,508	61	47	440	1.509283%
319	SF	Plan 2-R	1,592	0	47	436	1.593361%
320	SF	Plan 3-R	1,582	0	58	436	1.583353%
321	SF	Plan 1-R	1,508	61	47	440	1.509283%
322	SF	Plan 3	1,582	0	58	436	1.583353%
323	SF	Plan 1	1,508	61	47	440	1.509283%
324	SF	Plan 3	1,582	0	58	436	1.583353%
325	SF	Plan 1	1,508	61	47	440	1.509283%
326	SF	Plan 2	1,592	0	47	436	1.593361%
401	MF (P6)	Type 3-R	1,195	148	17	353	1.195985%
402	MF (P6)	Type 1-R	1,020	0	77	330	1.020822%
403	MF (P6)	Type 2-R	1,080	70	224	317	1.080878%
404	MF (P6)	Type 2	1,080	70	224	317	1.080878%
405	MF (P6)	Type 1	1,020	0	77	330	1.020822%
406	MF (P6)	Type 3	1,195	148	17	353	1.195985%
410	SF	Plan 2	1,592	0	47	436	1.593361%
411	SF	Plan 1	1,508	61	47	440	1.509283%
412	SF	Plan 2	1,592	0	47	436	1.593361%
413	SF	Plan 3	1,582	0	58	436	1.583353%
414	SF	Plan 2	1,592	0	47	436	1.593361%
415	SF	Plan 1	1,508	61	47	440	1.509283%
416	SF	Plan 3	1,582	0	58	436	1.583353%
421	MF (C6)	Type 3	1,195	147	16	353	1.195985%
422	MF (C6)	Type 1	1,020	0	99	330	1.020822%
423	MF (C6)	Type 2	1,080	92	224	317	1.080878%
424	MF (C6)	Type 2-R	1,080	92	224	317	1.080878%
425	MF (C6)	Type 1-R	1,020	0	99	330	1.020822%
426	MF (C6)	Type 3-R	1,195	147	16	353	1.195985%
431	MF (C8)	Type 3	1,195	147	10	353	1.195985%
432	MF (C8)	Type 1	1,020	0	99	342	1.020822%
433	MF (C8)	Type 2	1,080	92	228	306	1.080878%
434	MF (C8)	Type 4	877	164	228	355	0.877689%
435	MF (C8)	Type 5	1,324	0	95	489	1.325105%

Unit No.	Single-Family ("SF") or Multi-Family ("MF")#	Plan/Type	Approximate Net Living Area (sq. ft.)	Approximate Net Lanai (sq. ft.)	Approximate Net Covered Entry / Lanai (sq. ft.)**	Approximate Net Garage Area (sq. ft.)	Common Interest* (%)
436	MF (C8)	Type 2-R	1,089	92	379	306	1.089887%
437	MF (C8)	Type 1-R	1,020	0	99	342	1.020822%
438	MF (C8)	Type 3-R	1,195	147	10	353	1.195985%
441	MF (C6)	Type 3	1,195	147	16	353	1.195985%
442	MF (C6)	Type 1	1,020	0	99	330	1.020822%
443	MF (C6)	Type 2	1,080	92	224	317	1.080878%
444	MF (C6)	Type 2-R	1,080	92	224	317	1.080878%
445	MF (C6)	Type 1-R	1,020	0	99	330	1.020822%
446	MF (C6)	Type 3-R	1,195	147	16	353	1.195985%
447	SF	Plan 1-R	1,508	61	47	440	1.509283%
448	SF	Plan 2-R	1,592	0	47	436	1.593361%
449	SF	Plan 3-R	1,582	0	58	436	1.583353%
450	SF	Plan 1-R	1,508	61	47	440	1.509283%
451	SF	Plan 2-R	1,592	0	47	436	1.593361%
452	SF	Plan 3-R	1,582	0	58	436	1.583353%
453	SF	Plan 1-R	1,508	61	47	440	1.509283%
454	SF	Plan 2-R	1,592	0	47	436	1.593361%
455	SF	Plan 3-R	1,582	0	58	436	1.583353%
461	MF (P8)	Type 3	1,195	148	10	353	1.195985%
462	MF (P8)	Type 1	1,020	0	77	342	1.020822%
463	MF (P8)	Type 2	1,080	70	228	306	1.080878%
464	MF (P8)	Type 4	877	165	228	355	0.887689%
465	MF (P8)	Type 5	1,325	0	69	489	1.326106%
466	MF (P8)	Type 2-R	1,089	70	379	306	1.089887%
467	MF (P8)	Type 1-R	1,020	0	77	342	1.020822%
468	MF (P8)	Type 3-R	1,195	148	10	353	1.195985%
471	MF (C8)	Type 3	1,195	147	10	353	1.195985%
472	MF (C8)	Type 1	1,020	0	99	342	1.020822%
473	MF (C8)	Type 2	1,080	92	228	306	1.080878%
474	MF (C8)	Type 4	877	164	228	355	0.877689%
475	MF (C8)	Type 5	1,324	0	95	489	1.325105%
476	MF (C8)	Type 2-R	1,089	92	379	306	1.089887%
477	MF (C8)	Type 1-R	1,020	0	99	342	1.020822%
478	MF (C8)	Type 3-R	1,195	147	10	353	1.195985%
G-25	n/a	Parking Stall	153**	n/a	n/a	n/a	0.000001%
G-26	n/a	Parking Stall	153**	n/a	n/a	n/a	0.000001%
G-27	n/a	Parking Stall	153**	n/a	n/a	n/a	0.000001%
G-28	n/a	Parking Stall	153**	n/a	n/a	n/a	0.000001%
G-29	n/a	Parking Stall	153**	n/a	n/a	n/a	0.000001%
G-30	n/a	Parking Stall	153**	n/a	n/a	n/a	0.000001%
G-31	n/a	Parking Stall	153**	n/a	n/a	n/a	0.000001%
G-32	n/a	Parking	153**	n/a	n/a	n/a	0.000001%

Unit No.	Single-Family ("SF") or Multi-Family ("MF")#	Plan/ Type	Approximate Net Living Area (sq. ft.)	Approximate Net Lanai (sq. ft.)	Approximate Net Covered Entry / Lanai (sq. ft.)**	Approximate Net Garage Area (sq. ft.)	Common Interest* (%)
		Stall					
G-33	n/a	Parking Stall	153**	n/a	n/a	n/a	0.000001%
G-34	n/a	Parking Stall	153**	n/a	n/a	n/a	0.000001%

\* Declarant has the reserved right to make adjustments to the common interests of individual Units as may be necessary so that the total of all the common interests equals exactly one hundred percent (100.0000%).

\*\* The areas of the Parking Stall Units are not "living areas".

\*\*\* Because the Craftsman Type 2 Units and Type 4 Units share a covered entry, one half of the area of that covered entry is allocated to the Type 2 Units and the other half of the area of that covered entry is allocated to the Type 4 Units.

# "(C6)" designates a Craftsman-style Attached Multi-Family Unit in a building with six Units. "(C8)" designates a Craftsman-style Attached Multi-Family Unit in a building with eight Units. "(P6)" designates a Plantation-style Attached Multi-Family Unit in a building with six Units. "(P8)" designates a Plantation-style Attached Multi-Family Unit in a building with eight Units.

**NOTE:** If applicable, an "-R" next to the plan or type number above designates a reverse floor plan for that particular Unit plan or Unit type.

**NOTE: Calculation of Living Areas:** The approximate net living area of each Residential Unit, as set forth above, is measured in square feet from the interior surface of the Unit's perimeter walls and such measurement includes all of the walls, columns, shafts and partitions within its perimeter walls, whether load-bearing or non-load-bearing and whether among the common elements or not.

**NOTE:** The areas shown are approximate only. Declarant makes no representations or warranties whatsoever as to the area of any particular Unit.

**NOTE:** Section D.1 of this Declaration provides the building number for each Attached Multi-Family Unit.

## **DESCRIPTIONS OF RESIDENTIAL UNIT FLOOR PLANS**

### **Attached Multi-Family Units**

#### **Unit Type 1 and Type 1-R (2 Bedrooms, 2 Baths)**

Each is a one-story, ground-level Unit, containing 2 bedrooms, 2 bathrooms, a great room, a kitchen and a one-car garage that includes a washer and dryer. The Condominium Map shows the floor plan, layout, location, boundaries, unit numbers and dimensions of the Type 1 Units. (Note that the Condominium Map sometimes refers to Type 1 and Type 1-R Units as "Unit 1" and "Unit 1(R)", respectively.) The Type 1 and Type 1-R Units in Building 30 are part of a Craftsman-style 6-Plex building, the Type 1 and Type 1-R Units in Building 31 are part of a Plantation-style 6-Plex building,

the Type 1 and Type 1-R Units in Building 46 are part of a Plantation-style 8-Plex building, the Type 1 and Type 1-R Units in Buildings 43 and 47 are part of a Craftsman-style 8-Plex building, the Type 1 and Type 1-R Units in Building 42 are part of a Craftsman-style 6-Plex building, the Type 1 and Type 1-R Units in Building 40 are part of a Plantation-style 6-Plex building, and the Type 1 and Type 1-R Units in Building 44 are part of a Craftsman-style 6-Plex building. For Type 1 and Type 1-R Units, the primary difference between the two styles is the entry lanai is larger for the Units in the Craftsman-style buildings. All Type 1 and Type 1-R Units have a fenced limited common element Private Yard Area. The Craftsman 6-Plex Type 1 and Type 1-R Units have a net living area of approximately 1,020 square feet, an entry lanai area of approximately 99 square feet and a garage area of approximately 330 square feet. The Craftsman 8-Plex Type 1 and Type 1-R Units have a net living area of approximately 1,020 square feet, an entry lanai area of approximately 99 square feet and a garage area of approximately 342 square feet. The Plantation 6-Plex Type 1 and Type 1-R Units have a net living area of approximately 1,020 square feet, an entry lanai area of approximately 77 square feet and a garage area of approximately 330 square feet. The Plantation 8-Plex Type 1 and Type 1-R Units have a net living area of approximately 1,020 square feet, an entry lanai area of approximately 77 square feet and a garage area of approximately 342 square feet.

#### Unit Type 2 and Type 2-R (3 Bedrooms, 2 Baths)

Each is a one-story, second-level Unit, containing 3 bedrooms, 2 bathrooms, a great room, a kitchen and a one-car garage on the ground floor, which includes a washer and dryer and is accessible by an exterior staircase that is not part of the Unit. The Condominium Map shows the floor plan, layout, location, boundaries, unit numbers and dimensions of the Type 2 Units. (Note that the Condominium Map sometimes refers to Type 2 and Type 2-R Units as "Unit 2" and "Unit 2(R)", respectively.) The Type 2 and Type 2-R Units in Building 30 are part of a Craftsman-style 6-Plex building, the Type 2 and Type 2-R Units in Building 31 are part of a Plantation-style 6-Plex building, the Type 2 and Type 2-R Units in Building 46 are part of a Plantation-style 8-Plex building, the Type 2 and Type 2-R Units in Buildings 43 and 47 are part of a Craftsman-style 8-Plex building, the Type 2 and Type 2-R Units in Building 40 are part of a Plantation-style 6-Plex building, and the Type 2 and Type 2-R Units in Buildings 42 and 44 are part of a Craftsman-style 6-Plex building. For Type 2 and Type 2-R Units of 8-Plex buildings, the primary difference between the two styles is the lanai is approximately 22 square feet larger for the Units in the Craftsman-style buildings. The Craftsman 6-Plex Type 2 and Type 2-R Units have a net living area of approximately 1,080 square feet, a lanai area of approximately 92 square feet, a covered entry of approximately 224 square feet, and a garage area of approximately 317 square feet. The Craftsman 8-Plex Type 2 and Type 2-R Units have a net living area of approximately 1,080 to 1,089 square feet, a lanai area of approximately 92 square feet, and a garage area of approximately 306 square feet. The Plantation and Craftsman 8-Plex Type 2 Units and Type 4 Units share a covered entry of approximately 456 square feet. The Plantation 6-Plex Type 2 and Type 2-R Units have a net living area of approximately 1,080 square feet, a lanai area of approximately 70 square feet, a covered entry of approximately 224 square feet and a garage of approximately 317 square feet. The Plantation 8-Plex Type 2 and Type 2-R Units have a net living area of approximately 1,080 to 1,089 square feet, a lanai area of approximately 70 square feet, and a garage area of approximately 306 square feet. (As these figures reflect, the Craftsman and Plantation 8-Plex Type 2-R Units' net living area is approximately 9 square feet larger than that of the Type 2 Units.) The Plantation and Craftsman 8-Plex Type 2-R Units have a covered entry of approximately 379 square feet.

### Unit Type 3 and Type 3-R (3 Bedrooms, 2 Baths)

Each is a one-story, second-level Unit, containing 3 bedrooms, 2 bathrooms, a living room, a kitchen and a one-car garage on the ground floor, which includes a washer and dryer and is accessible by an internal staircase that is part of the Unit. The Condominium Map shows the floor plan, layout, location, boundaries, unit numbers and dimensions of the Type 3 Units. (Note that the Condominium Map sometimes refers to Type 3 and Type 3-R Units as "Unit 3" and "Unit 3(R)", respectively.) The Type 3 and Type 3-R Units in Buildings 30, 42 and 44 are part of a Craftsman-style 6-Plex building, the Type 3 and Type 3-R Units in Buildings 31 and 40 are part of a Plantation-style 6-Plex building, the Type 3 and Type 3-R Units in Buildings 43 and 47 are part of a Craftsman-style 8-Plex building, and the Type 3 and Type 3-R Units in Building 46 are part of a Plantation-style 8-Plex building. The Craftsman 6-Plex Type 3 and Type 3-R Units have a net living area of approximately 1,195 square feet, a lanai area of approximately 147 square feet, a covered entry of approximately 16 square feet, and a garage area of approximately 353 square feet. The Craftsman 8-Plex Type 3 and Type 3-R Units have a net living area of approximately 1,195 square feet, a lanai area of approximately 147 square feet, a covered entry of approximately 10 square feet, and a garage area of approximately 353 square feet. The Plantation 6-Plex Type 3 and Type 3-R Units have a net living area of approximately 1,195 square feet, a lanai area of approximately 148 square feet, a covered entry of approximately 17 square feet, and a garage area of approximately 353 square feet. The Plantation 8-Plex Type 3 and Type 3-R Units have a net living area of approximately 1,195 square feet, a lanai area of approximately 148 square feet, a covered entry of approximately 10 square feet, and a garage area of approximately 353 square feet.

### Unit Type 4 (2 Bedrooms, 2 Baths)

Each is a one-story, second-level Unit, containing 2 bedrooms, 2 bathrooms, a living room, a kitchen and a one-car garage on the ground floor, which includes a washer and dryer and is accessible by an exterior staircase that is not part of the Unit. The Condominium Map shows the floor plan, layout, location, boundaries, unit numbers and dimensions of the Type 4 Units. (Note that the Condominium Map sometimes refers to Type 4 Units as "Unit 4".) The Type 4 Units in Building 46 are part of a Plantation-style 8-Plex building, and the Type 4 Units in Buildings 43 and 47 are part of a Craftsman-style 8-Plex building. All of the Type 4 Units (whether in a Plantation-style building or a Craftsman-style building) have a net living area of approximately 877 square feet, an entry lanai area of approximately 164 square feet, a garage area of approximately 355 square feet, and share a covered entry of approximately 456 square feet with a Type 2 Unit.

### Unit Type 5 (2 Bedrooms, 2 ½ Baths)

Each is a two-story Unit, containing 2 bedrooms, 2 ½ bathrooms, a great room, a dining room, a kitchen, as well as a two-car garage on the ground floor that contains one standard and one compact parking stall, includes a washer and dryer and is accessible by an internal staircase that is part of the Unit. The Condominium Map shows the floor plan, layout, location, boundaries, unit numbers and dimensions of the Type 5 Units. (Note that the Condominium Map sometimes refers to Type 5 Units as "Unit 5".) The Type 5 Units in Building 46 are part of a Plantation-style 8-Plex building, and the Type 5 Units in Buildings 43 and 47 are part of a Craftsman-style 8-Plex building. All Type 5 Units have a fenced limited common element Private Yard Area. The Plantation Type 5 Units have a net living area of approximately 1,325 square feet, an entry lanai area of approximately 69 square feet and a garage area of approximately 489 square feet. The Craftsman Type 5 Units have a net living area of approximately 1,324 square feet, an entry lanai area of approximately 95 square feet and a garage area of approximately 489 square feet.

## **Detached Single-Family Units**

### **Plan 1 and Plan 1-R (3 Bedrooms, 2 ½ Baths)**

Each is a two-story Unit, containing 3 bedrooms, 2 ½ bathrooms, with a kitchen, living room, a lanai built off of the living room and half bathroom on the ground floor, connected by an interior stairway to the second floor, which has a master bedroom, master bathroom, two other bedrooms, an additional bathroom and a laundry room. The Unit also includes a two-car garage containing one standard and one compact parking stall. The Condominium Map shows the floor plan, layout, location, boundaries, unit numbers and dimensions of the Plan 1 Units. All Plan 1 and Plan 1-R Units have a fenced limited common element Private Yard Area. This type of Unit has a net living area of approximately 1,508 square feet, a covered entry area of approximately 47 square feet, a lanai area of approximately 61 square feet, and a garage area of approximately 440 square feet.

### **Plan 2 and Plan 2-R (3 Bedrooms, 2 ½ Baths)**

Each is a two-story Unit, containing 3 bedrooms, 2 ½ bathrooms, with a kitchen, living room and half bathroom on the ground floor, connected by an interior stairway to the second floor, which has a master bedroom, master bathroom, two other bedrooms, an additional bathroom, a family room and a laundry room. The Unit also includes a two-car garage containing one standard and one compact parking stall. The Condominium Map shows the floor plan, layout, location, boundaries, unit numbers and dimensions of the Plan 2 Units. All Plan 2 and Plan 2-R Units have a fenced limited common element Private Yard Area. This type of Unit has a net living area of approximately 1,592 square feet, a covered entry area of approximately 47 square feet and a garage area of approximately 436 square feet.

### **Plan 3 and Plan 3-R (3 Bedrooms, 2 ½ Baths)**

Each is a two-story Unit, containing 3 bedrooms, 2 ½ bathrooms, with a kitchen, living room, dining room and half bathroom on the ground floor, connected by an interior stairway to the second floor, which has a master bedroom, master bathroom, two other bedrooms, an additional bathroom, a family room and a laundry room. The Unit also includes a two-car garage containing one standard and one compact parking stall. The Condominium Map shows the floor plan, layout, location, boundaries, unit numbers and dimensions of the Plan 3 Units. All Plan 3 and Plan 3-R Units have a fenced limited common element Private Yard Area. This type of Unit has a net living area of approximately 1,582 square feet, a covered entry area of approximately 58 square feet and a garage area of approximately 436 square feet.

**NOTE:** The sizes and configurations of the fenced Private Yard Areas reflected on the Condominium Map are approximations only. Actual sizes and configurations may vary due to the placement and location of utilities and due to varying terrain surrounding each building.

### **COMMON ELEMENTS:**

The common elements of the Project specifically include, but are not limited to, the following, some of which are also limited common elements:

1. The land described in **Exhibit "A"** (as may be amended) in fee simple.
2. The limited common elements.
3. Community Park – Increment IV.

4. Mail Pavilion – Increment IV (identified with "407" on the Condominium Map) and parking stall M-2 reserved for use by the United States Postal Service and/or those acting on its behalf while serving Ka`ulu by Gentry.

5. All trees, grounds, planting areas, gardens, planters, plants and landscaping not located within a Unit or within the Private Yard Area of one or more Units.

6. Walls (including retaining walls), fences, entry gates, entry monuments and sign monuments installed by Developer.

7. Trash collection areas serving the Project.

8. Roads, curbs, sidewalks, walkways, pathways, street lights, walkway lights, park lights, access aisles, crosswalks, walkway railings, service corridors, fire hydrants and parking areas not located within Private Yard Areas.

9. The visitor parking stalls, including those numbered V-58, V-59, V-60, V-61, V-62, V-63, V-64, V-65, V-66, V-67, V-68, V-69, V-70, V-71, and V-72, as shown on the Condominium Map. (In the event that the Project has more visitor parking stalls than is required by applicable laws, ordinances, rules and regulations now or hereafter made by any governmental authority, Developer has the reserved right to record an amendment to this Declaration to redesignate a particular common element visitor parking stall as a limited common element appurtenant to a particular Unit.)

10. Any large parking stalls that are identified as "Load" on the Condominium Map.

11. All ducts, electrical equipment, vents, shafts, lines, conduits, cables, transformers, transformer pads, switch pads, wiring, pipes and other central and appurtenant transmissions facilities and installations over, under and across the Project to the point of their respective connections to improvements comprising a part of the Units or the limited common elements appurtenant thereto, that are utilized by or serve more than one Unit for services such as, but not limited to, those providing power, light, water, irrigation, gas, sewer, refuse, drainage, telephone and radio and television signal distribution, if any, not owned by a governmental agency, utility company or other service entity providing a service.

12. Any meter or other measuring device that is not part of a Unit that is utilized by or serves more than one Unit and that is not owned by a governmental agency, utility company or other service entity providing a service.

13. Any and all apparatus and installations existing for common use by more than one Unit, such as tanks, pumps, irrigation lines, motors, fans, compressors, ducts, vents and other such installations and apparatus.

14. All the benefits, if any, inuring to the Land or to the Project from all easements, if any, shown on the Condominium Map, described in this Declaration, listed in **Exhibit "A"** to this Declaration or that are otherwise appurtenant to the Land.

15. All other parts of the Project not included in the definition of a Unit.

**LIMITED COMMON ELEMENTS:**

Subject to easements, rights, reservations and other exceptions set forth in the Project Documents, certain common elements, called "limited common elements", are designated and

set aside for the exclusive use of certain Units, with such Units having appurtenant thereto easements for the exclusive use of such limited common elements as follows:

**Limited common elements appurtenant to certain Detached Single-Family Units:**

1. Subject to the right of the Owner of a Benefitted Unit to have limited access to the Private Yard Area appurtenant to an Adjacent Unit, the Private Yard Area adjoining a Detached Single-Family Unit (as well as the two gated Privacy Fences enclosing that portion of the Private Yard Area), as shown on the Condominium Map, are limited common elements appurtenant to such Detached Single-Family Unit; provided, however, that (A) the enclosed portion of a Private Yard Area located between two adjacent Detached Single-Family Units (as well as the two gated Privacy Fences enclosing that portion of the Private Yard Area), where there is no fence between the two Units that runs most of the length of the Private Yard Area, is limited common element appurtenant only to the Unit closest to the gates leading into the enclosed portion of the Private Yard Area ("Scenario (A)"), and (B) where there is a Privacy Fence between two adjacent Detached Single-Family Units that runs most of the length of the Private Yard Area, the enclosed portion of the Private Yard Area located closest to the Unit, as well as the relevant portions (roughly 50%) of the two gated Privacy Fences, are limited common elements appurtenant only to such Unit ("Scenario (B)").

a. An example of Scenario (A) is shown on Sheet S-05 of the Condominium Map, where there is Private Yard Area between Units 451 and 452. Because there is no fence between the two Units that runs most of the length of the Private Yard Area, and because the two gates leading into the fenced portion of the Private Yard Area are closest to Unit 452, the enclosed portion of the Private Yard Area, as well as the two gated Privacy Fences enclosing that portion of the Private Yard Area, are limited common elements appurtenant only to Unit 452.

b. An example of Scenario (B) would be if there is a Privacy Fence between the two Units that runs most of the length of the Private Yard Area, then the enclosed portion of the Private Yard Area located closest to one of the Units, as well as the portions of the two gated Privacy Fences located closest to that Unit, are limited common elements appurtenant only to that Unit, and the enclosed portion of the Private Yard Area located closest to the other Unit, as well as the portions of the two gated Privacy Fences located closest to that other Unit, are limited common elements appurtenant only to that other Unit.

2. Where applicable, the gravel strip that runs along the outside edge of certain portions of a Detached Single-Family Unit (the "**Gravel Strip**") is a limited common element appurtenant to such Detached Single-Family Unit.

3. The driveway that adjoins the garage of a Detached Single-Family Unit, as shown on the Condominium Map, is a limited common element appurtenant to such Detached Single-Family Unit.

4. The Detached Single-Family Unit's covered entry and the walkway that leads to the covered entry to the Unit, as shown on the Condominium Map, are limited common elements appurtenant to such Detached Single-Family Unit.

5. The Solar Hot Water Heating System located on the exterior of a Detached Single-Family Unit serving that Detached Single-Family Unit is a limited common element appurtenant to such Detached Single-Family Unit.

6. The lanai (if any), concrete pad (if any), concrete stoop (if any) and A/C pad (if any) adjoining a Detached Single-Family Unit are limited common elements appurtenant to such Detached Single-Family Unit.

7. The walkway between the Private Yard Areas of Units 414 and 415, as shown on Sheet S-09 of the Condominium Map, is a limited common element appurtenant to both of those Units.

**Limited common elements appurtenant to certain Attached Multi-Family Units:**

1. The Private Yard Area adjoining a ground-level Attached Multi-Family Unit is a limited common element appurtenant to such Attached Multi-Family Unit.

2. The driveway that adjoins the garage of an Attached Multi-Family Unit, as shown on the Condominium Map, is a limited common element appurtenant to such Attached Multi-Family Unit.

3. The areas (usually, but not always, landscaped) on the sides of the driveways that adjoin the garages of the Attached Multi-Family Units, as shown on the Condominium Map, are limited common elements appurtenant to all of the Attached Multi-Family Units.

4. All structural components of each building containing Attached Multi-Family Units, such as the foundation, girders, columns, beams, floor slabs, supports, main walls, load-bearing walls and partitions, floors, ceilings (except the inner, decorated or finished surfaces, if any, of such girders, columns, beams, walls, floors and ceilings), the roof of each such building, exterior stairs and stairways, landings, railings and other building appurtenances, are limited common elements appurtenant to all of the Attached Multi-Family Units.

5. The perimeter or party walls of an Attached Multi-Family Unit, the undecorated or unfinished interior surfaces thereof, and the decorated or finished exterior surfaces of any perimeter wall thereof are limited common elements appurtenant to all Attached Multi-Family Units.

6. The undecorated or unfinished surfaces of the floors and ceilings of each Attached Multi-Family Unit, and the roof of the building in which the Attached Multi-Family Unit is located are limited common elements appurtenant to all Attached Multi-Family Units.

7. The interior load-bearing walls, girders, beams and columns (if any) of an Attached Multi-Family Unit and the undecorated or unfinished surfaces thereof are limited common elements appurtenant to all Attached Multi-Family Units.

8. Any meter boxes, measuring devices, pipes, shafts, vents, ducts, pumps, conduits, cables, wiring, electrical equipment, valves, controls, transformers, plumbing (including sewer cleanouts and manholes), drip controls and other central and appurtenant transmission facilities, utility and service lines, facilities and installations or other utility or service lines running through, or other utility meters within, a Attached Multi-Family Unit that are utilized for or serve more than one Unit are limited common elements appurtenant to all Attached Multi-Family Units.

9. If an Attached Multi-Family Unit has appurtenant lanai, then the lanai and the lanai's flooring and railing are limited common elements appurtenant to such Attached Multi-Family Unit.

10. The entry area outside the entry door of an Attached Multi-Family Unit is a limited common element appurtenant to such Attached Multi-Family Unit, except that, because the Type

2 Units and the Type 4 Units share a covered entry, that shared covered entry is a limited common element appurtenant to both the Type 2 Unit and the Type 4 Unit.

11. External stairs and walkways that serve or provide access to more than one Attached Multi-Family Unit are limited common elements appurtenant to all Attached Multi-Family Units.

12. Privacy Fences (including their gates) that provide access to Private Yard Areas for one or more Attached Multi-Family Units are limited common elements appurtenant to all Attached Multi-Family Units.

**Limited common elements appurtenant to certain Residential Units:**

1. All other common elements of the Project that serve less than all of the Residential Units in the Project and that are not among the limited common elements listed above are limited common elements appurtenant to the Residential Units that are served by such common elements.

2. The air conditioning equipment serving only the Residential Unit located outside the interior of the Residential Unit, including the compressor and the piping that runs along the outside of the Residential Unit and into the Residential Unit, are not part of the Unit, but are limited common elements appurtenant to the Residential Unit served by such equipment.

3. Each mailbox or mail slot located at the Mail Pavilion – Increment IV (identified with "407" on the Condominium Map), which bears the same identification as (or is otherwise assigned to) a Residential Unit, is a limited common element appurtenant to that Unit.

## EXHIBIT "C"

### HCDA OCCUPANCY AND TRANSFER RESTRICTIONS UNDER THE KALAELOA RESERVED HOUSING RULES

#### SELECTED PROVISIONS OF KALAELOA RESERVED HOUSING RULES, CHAPTER 216 OF THE HAWAII ADMINISTRATIVE RULES ("KALAELOA RESERVED HOUSING RULES")

##### §15-216-33 Occupancy requirements.

- (a) The following are occupancy requirements for reserved housing units:
- (1) Applicants for reserved housing shall certify that, if selected, all applicants will be occupants of the reserved unit;
  - (2) The purchaser or lessee shall physically occupy the reserved unit; and
  - (3) The city and county of Honolulu maximum occupancy limits for a residential dwelling unit shall apply.
- (b) Violation of subsection (a) shall be sufficient reason for the authority, at its option, to purchase the unit as provided in section 15-216-36 (first option to purchase) or evict the renter from the unit, as applicable.
- (c) Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance issued for the reserved housing unit shall expressly contain the restrictions on use prescribed in this section.
- (d) The restriction prescribed in subsection (a) above shall not apply if the authority waives its option to purchase the reserved housing unit or subsequent to the expiration of the option to purchase period. [Eff Oct 27 2012] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

##### §15-216-35 Term of reserved housing requirements.

- (a) The regulated term for reserved housing units that are for sale shall be five years from the date of issuance of certificate of occupancy. Reserved housing rental units shall be regulated for fifteen years. The authority may suspend or modify regulated term and qualifying income requirements on a project by project basis, if, in its sole judgment, it determines that these requirements are negatively impacting the sale or rental of reserved housing units as the primary objective of the authority to promote redevelopment within the Kalaeloa CDD.
- (b) During the regulated term, a reserved unit owner shall not purchase additional limited common elements or personal property.
- (c) During the regulated term, the executive director shall approve any initial or subsequent mortgage placed on a reserved unit which does not exceed eighty per cent of the original purchase price of the unit.
- (d) After the end of the regulated term, the owner may sell the unit or assign the property free from any transfer or price restrictions except for applicable equity sharing requirements set forth in section 15-216-41 (equity sharing requirements). [Eff Oct 27 2012] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-216-36 First option to purchase. If the owner of a reserved housing unit wishes to sell the unit during the regulated term, the authority or an entity approved by the authority shall have the first option to purchase the unit. The purchase price shall be based on the lower of:

- (1) The current fair market price of the reserved housing unit as determined by the authority less the authority's share of equity in the unit as determined by section 15-216-41 (equity sharing requirements); or
- (2) The reserved housing unit price calculated based on the AMI at the time of sale of the unit. [Eff Oct 27 2012] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-216-37 Sale or transfer of reserved housing units. Sale or transfer of reserved housing units during the regulated term shall be as follows:

- (1) The authority or an entity approved by the authority shall have the first option to purchase the unit in the manner indicated in section 15-216-36 (first option to purchase);
- (2) The owner shall notify the authority in writing of the intent to sell the reserved housing unit;
- (3) The authority shall notify the owner of its decision within sixty days of receipt of the owner's notification required in subsection (2) above. The authority may:
  - (A) Wave its option to purchase the unit,
  - (B) Agree to purchase the unit, or
  - (C) Designate another buyer for the unit;
- (4) If the authority fails to notify the owner of a decision in the manner prescribed in subsection (3), the authority shall have waived its first option to purchase the unit;
- (5) The authority may purchase the unit either outright, free and clear of all liens and encumbrances; or by transfer subject to an existing mortgage. If by outright purchase, the owner shall ensure that all existing mortgages, liens, and encumbrances have been satisfactorily paid; and
- (6) In any purchase by transfer subject to an existing mortgage, the authority shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the owner to obtain funds for the purchase of the unit and any other mortgages which were created with the approval and consent of the authority. In these cases, the amount to be paid to the owner by the authority shall be the difference between the price as determined in section 15-216-36 (first option to purchase) (1) or (2) and the principal balance of all mortgages outstanding and assumed at the time of transfer of title to the authority. [Eff Oct 27, 2012] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

## EXHIBIT "D"

### HCDA EQUITY SHARING REQUIREMENTS UNDER THE KALAELOA RESERVED HOUSING RULES

§15-216-41 Equity sharing requirements.

- (a) The authority's share of the equity in the reserved housing unit shall become due upon resale of the reserved housing unit.
- (b) The authority's share of the equity in the reserved housing unit shall be the higher of:
  - (1) An amount equal to the difference between the original fair market price of the unit as determined by the authority and its original sales contract price; or
  - (2) An amount equivalent to the percentage of net appreciation calculated as the difference between the original fair market price of the unit as determined by the authority and its original contract price divided by the original fair market price of the unit.
- (c) At its sole discretion, the authority may allow the project developer to buy out the shared appreciation provisions for all or a portion of the reserved housing units by making a cash payment to the authority of an amount equal to the amount for equity sharing calculated in subsection (b) above.
- (d) The owner of the reserved housing unit shall provide financial documents acceptable to the authority before the cost of improvements made by the owner can be deducted from the sale price.
- (e) The authority, in its sole discretion, shall determine the fair market value of the reserved housing unit at the time of original sale and also at the time of resale.
- (f) The resale price and terms shall be approved by the authority. [Eff October 27, 2012] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)