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AMENDED AND RESTATED

DECLARATION OF CONDOMINIUM PROPERTY REGIME OF

SKY ALA MOANA EAST AND CONDOMINIUM MAP

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME OF
SKY ALA MOANA EAST AND CONDOMINIUM MAP**

THIS AMENDED AND RESTATED DECLARATION is made this 29th day of November, 2021, by **JL AVALON CAPBRIDGE, LLC**, a Hawaii limited liability company ("**Developer**"), with its principal place of business and post office address at 1440 Kapiolani Boulevard, Suite 1509, Honolulu, Hawaii 96814.

WITNESSETH:

WHEREAS, Developer is the fee simple owner of the real property located at Kalia, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Land**"); and

WHEREAS, by way of that certain Declaration of Condominium Property Regime of Sky Ala Moana East dated January 7, 2021 and recorded at the Bureau of Conveyances of the State of Hawaii (the "**Bureau**") as Document No. A-77460189 (the "**Original Declaration**"), Developer submitted the Land and Improvements (as hereinafter defined) to a condominium property regime known as "Sky Ala Moana East" (the "**Project**") and contemporaneously therewith filed in said Bureau plans of said Project, designated as Condominium Map No. 6201 (the "**Original Condominium Map**"); and

WHEREAS, pursuant to Article XV, Section A of the Original Declaration, the Original Declaration may be amended by the affirmative vote of Owners of Units to which are appurtenant at least sixty-seven percent (67%) of the Common Interest; and

WHEREAS, pursuant to Article XV, Section B.1 of the Declaration, Developer is authorized to amend the Declaration at any time prior to the closing of the sale of the first Flats, Hotel, or Resort Unit in the Project; and

WHEREAS, Developer owns one hundred percent (100%) of the Common Interest in the Project and no Flats, Hotel, or Resort Unit in the Project have closed; and

WHEREAS, Developer wishes to amend and restate the Original Declaration and amend and restate the Original Condominium Map in the manner set forth in this Amended and Restated Declaration of Condominium Property Regime of Sky Ala Moana East and Condominium Map (this "**Declaration**") and the amendments to the Condominium Map filed concurrently herewith;

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

I. USE OF DEFINED TERMS; DEFINED TERMS.

A. USE OF DEFINED TERMS. For purposes of construing and interpreting this Declaration and the Bylaws, all terms, when written with initial capital letters in this Declaration or in the Bylaws, shall have the meanings given such terms in this Declaration, including this Section. Such defined terms may be used in the singular or plural

or in varying tenses or forms, but such variation shall not affect the meaning of the terms so long as those terms are written in initial capital letters. When such terms are used in this Declaration or in the Bylaws without initial capital letters, such terms shall have the meaning they have in common usage; provided, however, that where legal, technical, or trade terms are used and the context in which such terms are used indicates that such terms are to be given their legal, technical, or trade usage meanings, such terms shall be given such legal, technical, or trade usage meanings.

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

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

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

3. **"ADA Accessible Units"** means those Hotel and Units that are fully accessible under the ADA.

4. **"Affiliate"** means, for any Person, a Person that is directly or indirectly Controlling, Controlled by, or under common Control with such Person.

5. **"Affordable Housing Agreement"** means that certain Sky Ala Moana Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants dated September 24, 2021, by and between Developer and the City, and recorded at the Bureau of Conveyances of the State of Hawaii as Document No. A-79430907-08, as the same may be amended from time to time.

6. **"Affordable Unit Restriction"** means the affordable housing conditions imposed on the Flats Units by the Permit and the Affordable Housing Agreement.

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

8. **"A la Carte Services"** means those services (other than the Base Services) that may be provided from time to time to Hotel Unit Owners and Resort Unit Owners in the sole discretion of the Front Desk Unit Owner (or the Hotel Manager on behalf of the Front Desk Unit Owner) and that are paid for by the Hotel Unit Owner or Resort Unit Owner on a per-use, *per diem* or other periodic basis established by the Front Desk Unit Owner (or the Hotel Manager on the Front Desk Unit Owner's behalf). A la Carte Services are further discussed in **Section VII.G.2** of this Declaration.

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

10. **"Alternative Allocation"** means an allocation of the Special Costs (hereinafter defined) between the Commercial Class, the Flats Class, the Front Desk Class, the Hotel Class, the Parking Class, the Resort Class, the Hotel, Resort and Flats Class, and the Hotel and Resort Class based on a fair and equitable apportionment in accordance with Section 514B-41 of the Act.

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

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

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

14. **"Association Assets"** means all tangible and intangible real or personal property of the Association, accounts and contracts of the Association, and the right to collect all Common Expenses, Class Common Expenses, and other costs and expenses charged to Owners and collected by the Association from the Owners.

15. **"Base Services"** means those standard services provided to all Hotel Unit Owners and Resort Unit Owners by the Front Desk Unit Owner (or the Hotel Manager on the Front Desk Unit Owner's behalf), as further discussed in **Section VII.G.1** of this Declaration. All Hotel Unit Owners and Resort Unit Owners shall participate in and shall accept the Base Services.

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

17. **"Branded Name"** is defined in **Section XXXVI.C**.

18. **"Building Structure"** means the structural framework of the Sky East Parking Structure and the Tower including, without limitation, foundations, floor slabs, columns, girders, beams, supports, and the loadbearing perimeter, partition, and party walls, not otherwise defined as part of a Unit.

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

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

21. **"Capital Improvements Reserve Fund"** means that fund established by the Board pursuant to Article VI, Section 2 of the Bylaws to provide for specific capital improvements to the Project.

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

23. **"Certificate of Occupancy"** means the temporary certificate of occupancy (or the permanent certificate of occupancy where no temporary certificate of occupancy is issued covering the Unit in question) issued by the County Department of Planning and Permitting building official after inspection and prior to occupancy of a building or structure.

24. **"Claimant"** means the Association, Board, or any Owner or Owners claiming, contending, or alleging an Alleged Defect, as further discussed in **Section XL.A** of this Declaration.

25. **"Class Common Expense"** means those costs, expenses, and charges payable by a Unit based upon the Class Common Interest allocable to the Unit or Units within the Unit Class, if any, as more particularly described in this Declaration.

26. **"Class Common Interest"** means the Commercial Class Common Interest, the Flats Class Common Interest, the Front Desk Class Common Interest, the Hotel Class Common Interest, the Resort Class Common Interest, the Parking Class Common Interest, the Hotel, Resort and Flats Class Common Interest, and the Hotel and Resort Class Common Interest.

27. **"Commercial Class"** means and includes all of the Commercial Units and their respective Owners.

28. **"Commercial Class Common Interest"** means the percentage share assigned to a Commercial Unit within the Commercial Class set forth in **Exhibit "C"** of this Declaration. Note that the Commercial Class Common Interest is subject to change if a Commercial Unit is subdivided into multiple Commercial Units, in which case the Commercial Class Common Interest shall be recalculated as set forth in **Section III.B** herein and elsewhere in this Declaration, and in **Exhibit "C."**

29. **"Commercial Class Expense"** means those Common Expenses which, pursuant to this Declaration or the Bylaws, are assessed against the Commercial Units and are payable by each Owner of a Commercial Unit based on their respective Commercial Class Common Interest.

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

31. **"Commercial Director"** means the Director elected by the Commercial Class pursuant to Section III.3 of the Bylaws. The Commercial Director shall be the individual appointed by Developer until Developer no longer owns any Commercial Units in the Project.

32. **"Commercial Unit"** means any of the Units identified as Commercial Units in **Exhibit "B"** of this Declaration and depicted on the Condominium Map.

33. **"Commercial Unit Limited Common Elements"** means those parts of the Common Elements that are reserved for the exclusive use of one or more, but less than all, of the Commercial Unit Owners.

34. **"Commercial Unit Owner"** means the Owner of a Commercial Unit; provided, however that any person or legal entity or trust that holds such interest solely as security for the performance of an obligation shall not be a Commercial Unit Owner solely by reason of such interest.

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

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

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

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

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

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

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

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

43. **"Control"** (in any form, including "Controlling" or "Controlled") means, for any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person or the power to veto major policy decisions of such Person. No Person (or Persons acting together) will be considered to have Control of a publicly-traded company merely due to ownership of voting stock of such company if such Persons collectively beneficially own less than 25% of the voting stock of such company.

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

45. **"CUP"** means Conditional Use Permit File Number 2021/CUP-21, approved by the City on July 16, 2021.

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

47. **"Declaration"** means this Declaration of Condominium Property Regime of Sky Ala Moana East, together with any lawful amendments hereto.

48. **"Declaration of Covenants"** means that certain Declaration of Covenants, Conditions and Restrictions and Agreement to Grant Easement by and between Developer and Maruito dated August 8, 2019 and recorded with the Office as Document No. T-10811169, as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions and Agreement to Grant Easement dated October 1, 2021, recorded with the Office as Document No. T-11609288 and recorded with the Bureau as Document No. A-79571434, and shall include any lawful amendments thereto.

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

50. **"Developer Control Period"** means the period in which Developer shall have the right to appoint and remove Officers and Directors, as further discussed in **Section XLI**.

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

52. **"Development Period"** means the period starting on the date this Declaration is recorded in said Bureau and ending upon the earlier of (a) December 31, 2041, (b) the date Developer no longer owns any interest in the Project, or (c) the date Developer records a document in said Bureau relinquishing all of Developer's Reserved Rights.

53. **"Director"** means a member of the Board and includes the Commercial Director, Flats Directors, Front Desk Director, Hotel Directors, Parking Director, and Resort Directors.

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

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

56. "**Facade Sign**" is defined in **Section X.I** of this Declaration.

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

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

59. "**Flats Class**" means and includes all of the Flats Units and their respective Owners.

60. "**Flats Class Common Interest**" means the percentage share assigned to a Flats Unit within the Flats Class set forth in **Exhibit "C"** of this Declaration.

61. "**Flats Class Expense**" means those Common Expenses which, pursuant to this Declaration or the Bylaws, are assessed against the Flats Units and are payable by each Owner of a Flats Unit based on their respective Flats Class Common Interest.

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

63. "**Flats Director**" means the Director elected by the Flats Class pursuant to Section III.3 of the Bylaws.

64. "**Flats Unit**" means any of the Units identified as Flats Units in **Exhibit "B"** of this Declaration and depicted on the Condominium Map.

65. "**Flats Unit Deed**" the legal instrument signed by Developer conveying an interest in a Flats Unit and an undivided interest in the Common Elements, in fee simple, to a Flats Unit Owner; subject, however, to the encumbrances and reservations identified therein, which shall include certain deed restrictions as required by the Affordable Housing Agreement.

66. "**Flats Unit Limited Common Elements**" means those parts of the Common Elements that are reserved for the exclusive use of one or more, but less than all, of the Flats Unit Owners.

67. "**Flats Unit Owner**" means the Owner of a Flats Unit; provided, however that any person or legal entity or trust that holds such interest solely as security for the performance of an obligation shall not be a Flats Unit Owner solely by reason of such interest.

68. "**Franchise Agreement**" means any franchise agreement or other similar agreement and any future agreement, if any, entered into by the Front Desk Unit Owner or Affiliate and/or the Association, pursuant to which the Project is "branded" by a third-party franchisor or licensor of a hotel, resort, leisure, residential, or other hospitality brand.

69. "**Front Desk Class**" means and includes the Front Desk Unit and its Owner.

70. "**Front Desk Class Common Interest**" means the percentage share assigned to the Front Desk Unit in the Front Desk Class, which is one hundred percent (100%).

71. "**Front Desk Director**" means the Director elected by the Front Desk Class pursuant to Section III.3 of the Bylaws. The Front Desk Director shall be an individual appointed by Developer until Developer no longer owns the Front Desk Unit.

72. "**Front Desk Unit**" means the Unit located on the first floor of the Tower identified as the Front Desk Unit in **Exhibit "B"** of this Declaration and depicted on the Condominium Map.

73. **"Front Desk Unit Limited Common Elements"** means those parts of the Common Elements that are reserved for the exclusive use of the Front Desk Unit. Owner.

74. **"Front Desk Unit Owner"** means the Owner of the Front Desk Unit, which, initially, shall be Developer.

75. **"Hospitality Services"** means the Base Services and A la Carte Services collectively, as further discussed in **Section VII.G** of this Declaration.

76. **"Hospitality Services Budget"** means the budget prepared by the Front Desk Unit Owner (or the Hotel Manager on the Front Desk Unit Owner's behalf) annually which includes the composition of Base Services necessary to continue the operation of the Project pursuant to a Project Quality Standard and the cost of such services, as further discussed in **Section VII.G.1** of this Declaration.

77. **"Hospitality Services Fee"** means those amounts payable to the Front Desk Unit Owner by the Association for Base Services provided to or that are available to all Hotel Unit Owners and Resort Unit Owners as further discussed in **Section VII.G.1** of this Declaration. The Association shall assess the Hospitality Services Fee to all Hotel Unit Owners and Resort Unit Owners as a Hotel and Resort Class Expense.

78. **"Hotel and Resort Class"** means and includes all of the Hotel Units and Resort Units and their respective Owners.

79. **"Hotel and Resort Class Common Interest"** means the percentage share assigned to a Hotel Unit and Resort Unit within the Hotel and Resort Class set forth in **Exhibit "C"** of this Declaration.

80. **"Hotel and Resort Class Expense"** means those Common Expenses which, pursuant to this Declaration or the Bylaws, are assessed against the Hotel Units and Resort Units and are payable by each Owner of a Hotel Unit and/or a Resort Unit based on their respective Hotel and Resort Class Common Interest.

81. **"Hotel Class"** means and includes all of the Hotel Units and their respective Owners.

82. **"Hotel Class Common Interest"** means the percentage share assigned to a Hotel Unit within the Hotel Class, set forth in **Exhibit "C"** of this Declaration.

83. **"Hotel Class Expense"** means those Common Expenses which, pursuant to this Declaration or the Bylaws, are assessed against the Hotel Units and are payable by each Owner of a Hotel Unit based on their respective Hotel Class Common Interest.

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

85. **"Hotel Director"** means each Director elected by the Hotel Class pursuant to Section III.3 of the Bylaws.

86. **"Hotel Guests"** means Owners and/or Occupants of Hotel Units or Resort Units, as appropriate.

87. **"Hotel Management Agreement"** means that certain instrument entered into between the Front Desk Unit Owner and the Hotel Manager for the management and administration of the Front Desk Unit, the Hotel Shared Facilities, the provision of Base Services and A la Carte Services; provided that the Hotel Manager shall have the right to subcontract any of its duties thereunder.

88. **"Hotel Manager"** means an entity or individual employed or retained by the Front Desk Unit Owner from time to time (a) to manage the Front Desk Unit and the Hotel Shared Facilities, (b) to provide the Base Services and A la Carte Services to Hotel Guests, and/or (c) to provide additional services from the Front Desk Unit Owner or to the Hotel Guests. The Hotel Manager and the Condominium Manager may be the same party. There may be more than one Hotel Manager.

89. **"Hotel, Resort and Flats Class"** means and includes all of the Hotel Units, Resort Units, and Flats Units and their respective Owners.

90. **"Hotel, Resort and Flats Class Common Interest"** means the percentage share assigned to each Hotel Unit, Resort Unit and Flats Unit within the Hotel, Resort and Flats Class, set forth in **Exhibit "C"** of this Declaration.

91. **"Hotel, Resort and Flats Class Expense"** means those Common Expenses which, pursuant to this Declaration or the Bylaws, are assessed against the Hotel Units, Resort Units and Flats Units and are payable by each Owner of a Hotel Unit, Resort Unit and Flats Unit based on their respective Hotel, Resort and Flats Class Common Interest.

92. **"Hotel, Resort and Flats Class Limited Common Elements"** means those parts of the Common Elements that are reserved for the exclusive use of all Hotel, Resort and Flats Unit Owners.

93. **"Hotel Rules"** means the administrative rules and regulations promulgated by the Front Desk Unit Owner that govern the operation and use of the Hotel Shared Facilities, as the same may be amended or supplemented from time to time.

94. **"Hotel Shared Facilities"** means those Limited Common Elements appurtenant to the Front Desk Unit, more particularly described in **Section II.D.2** of this Declaration. The Hotel Unit Owners and Resort Unit Owner have an irrevocable, nonexclusive right or license to use the Hotel Shared Facilities as further discussed in **Section IV.P** of this Declaration.

95. **"Hotel Shared Facilities Budget"** means the itemized annual budget prepared by the Front Desk Unit Owner estimating amounts to be incurred by the Front Desk Unit Owner in the operation and maintenance (including major repairs, alterations, improvements, betterments, insurance premiums, reserves for replacements, and management fees) of the Hotel Shared Facilities for the next fiscal year, as further discussed in **Section IV.P** of this Declaration.

96. **"Hotel Shared Facilities Fee"** means the amounts payable to the Front Desk Unit Owner by the Association in consideration of the non-exclusive license granted to the Association for the benefit of the Hotel Unit Owners and Resort Unit Owners to use the Hotel Shared Facilities. The Hotel Shared Facilities Fee shall include an amount sufficient to reimburse the Front Desk Unit Owner for all charges, costs, and expenses whatsoever incurred by the Front Desk Unit Owner for and in connection with the administration, management, maintenance, renovation, and operation of the Hotel Shared Facilities consistent with the Project Quality Standard, including, but not limited to: (a) the cost of insurance, including property and other casualty and liability insurance maintained by the Front Desk Unit Owner; (b) any liability whatsoever for loss or damage arising out of or in connection with the Hotel Shared Facilities or any fire, accident, or nuisance thereon; (c) cost of repair, reinstatement, rebuilding, and replacement of the premises, systems, furniture, fixtures, and equipment of the Hotel Shared Facilities; (d) janitorial and other similar services for facilities within the Hotel Shared Facilities; (e) a reasonable management fee; (f) a sum for reserve purposes; (g) other necessary or appropriate expenses of upkeep, maintenance, management, and operation actually incurred or anticipated to be incurred on or for the Hotel Shared Facilities; (h) the cost of all utility services, including water, electricity, gas, garbage disposal, telephone, telecommunications, and other similar services for the Hotel Shared Facilities; and (i) any taxes due as a result of the payment or collection of the Hotel Shared Facilities Fee, including the general excise tax. The Association shall assess the Hotel Shared Facilities Fee to all Hotel Unit Owners and Resort Unit Owners as a Hotel and Resort Class Expense, as further discussed in **Section IV.P**.

97. **"Hotel Unit"** means any of the Units identified as Hotel Units in **Exhibit "B"** of this Declaration and depicted on the Condominium Map.

98. **"Hotel Unit Limited Common Elements"** means those parts of the Common Elements that are reserved for the exclusive use of one or more, but less than all, of the Hotel Unit Owners.

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

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

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

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

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

104. **"Joint Development Agreement"** means that certain Joint Development Agreement and Declaration of Restrictive Covenants by and between Developer and Maruito dated September 24, 2021, recorded with the Office as Document No. T-11595469-70 and recorded at the Bureau as Document No. A-79430905-06, and shall include any lawful amendments thereto.

105. **"Land"** means the real property located at Kalia, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

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

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

108. **"Licensed Marks"** is defined in **Section XXXVI.C**.

109. **"Licensor"** is defined in **Section XXXVI.C**.

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

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

112. **"LUO"** means the Land Use Ordinance of the City and County of Honolulu, as the same may be amended from time to time.

113. **"Majority of Owners"** means the Owners of Units to which are appurtenant more than fifty percent (50%) of the total Common Interest. Any specified percentage of Owners means Owners of Units to which are appurtenant such percentage of the Common Interest.

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

115. **"Maruito"** means Maruito USA, Inc., a Hawaii corporation, and shall also include any successors, permitted assigns, and designees of Maruito as owner of the Pacific Guardian Tower.

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

117. **"Notice of Alleged Defect"** means a Claimants notice to Developer of the specific nature of an Alleged Defect as further discussed in **Section XL.B** of this Declaration.

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

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

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

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

122. **"Pacific Guardian Tower"** means that certain building consisting of approximately seventeen (17) floors located at 1440 Kapiolani Boulevard, Honolulu, Hawaii, or any permitted replacement thereof, and the property underlying the building, which is identified as Tax Map Key No. (1) 2-3-016:002.

123. **"Parking Class"** means and includes the Parking Unit and its Owner.

124. **"Parking Class Common Interest"** means the percentage share assigned to the Parking Unit in the Parking Class, which is currently one hundred percent (100%). Note that this is subject to change if the Parking Unit is subdivided into multiple Parking Units, in which case the Parking Class Common Interest shall be recalculated as set forth in **Section III.B** herein and elsewhere in this Declaration, and in **Exhibit "C."**

125. **"Parking Director"** means the Director elected by the Parking Class pursuant to Section III.3 of the Bylaws.

126. **"Parking Structure"** means the seven (7) story parking structure depicted on the Condominium Map, which includes, without limitation, the parking stalls and Recreational Amenities that serve the Project. The Parking Structure includes certain improvements located in the Sky West Project that Owners will have access to through the Reciprocal Easement Agreement.

127. **"Parking Unit"** means the Unit located on the first floor of the Tower identified as the Parking Unit in **Exhibit "B"** of this Declaration and depicted on the Condominium Map.

128. **"Parking Unit Limited Common Elements"** means those parts of the Common Elements that are reserved for the exclusive use of the Parking Unit Owner.

129. **"Parking Unit Owner"** means the Owner of the Parking Unit, which, initially, shall be Developer.

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

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

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

133. **"Project Quality Standard"** means the highest of the following standards: (a) the standard required to maintain and operate the Project in a condition and at a quality level no less than that which existed at the time that the Project was initially completed (ordinary wear and tear excepted); or (b) the standard required under the Franchise Agreement, or any future franchise or license agreement applicable to the Project entered into between the Front Desk Unit Owner and/or the Association and a third-party franchisor, or licensor of a hotel, resort, leisure, residential, or other hospitality brand; or (c) the standard required under the Hotel Management Agreement or other agreement applicable to the Project entered into between the Front Desk Unit Owner and/or the Association and a third-party manager. Subject to the foregoing, the Project Quality Standard may evolve as development of the Project progresses and industry standards for similar projects in the community evolve. All of the elements of the Project Quality Standard need not be set out in writing since such evaluation may require the exercise of subjective judgment and cannot be reduced to written criteria.

134. **"Property"** means the Land together with the Improvements.

135. **"Reciprocal Easement Agreement"** means that certain Declaration of Reciprocal Easements and Irrevocable Facilities License entered into between Developer, as the owner of the Land and Developer, as owner and developer of the Sky West Project, dated March 15, 2019, and filed at the Office as Document No. T-10668210, as amended by that certain First Amendment to Declaration of Reciprocal Easements and Irrevocable Facilities License dated February 9, 2021, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-77130315, as may be further amended from time to time. The Reciprocal Easement Agreement provides certain reciprocal access and use rights to Owners and the owners of units in the Sky West Project to the Parking Structure and the Recreational Amenities.

136. **"Reciprocal Easement Fees"** means those fees payable under the Reciprocal Easement Agreement by the Association for the reciprocal access and use rights in and to the Parking Structure.

137. **"Recreational Amenities"** means those recreational amenities located on the roof of the Parking Structure which shall be Hotel Shared Facilities available for the use and enjoyment of the Hotel Unit Owners and Resort Unit Owners.

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

139. **"Residential Trademark License Agreement"** means any license agreement entered into between Developer and/or the Association and a third party licensor for the limited license of the Licensed Marks in connection with the Resort Units.

140. **"Resort Class"** means and includes all of the Resort Units and their respective Owners.

141. **"Resort Class Common Interest"** means the percentage share assigned to a Resort Unit within the Resort Class set forth in **Exhibit "C"** of this Declaration.

142. **"Resort Class Expense"** means those Common Expenses which, pursuant to this Declaration or the Bylaws, are assessed against the Resort Units and are payable by each Owner of a Resort Unit based on their respective Resort Class Common Interest.

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

144. **"Resort Director"** means the Director elected by the Resort Class pursuant to Section III.3 of the Bylaws.

145. **"Resort Unit"** means any of the Units identified as Resort Units in **Exhibit "B"** of this Declaration and depicted on the Condominium Map.

146. **"Resort Unit Limited Common Elements"** means those parts of the Common Elements that are reserved for the exclusive use of one or more, but less than all, of the Resort Unit Owners.

147. **"Resort Unit Owner"** means the Owner of a Resort Unit; provided, however that any person or legal entity or trust that holds such interest solely as security for the performance of an obligation shall not be a Resort Unit Owner solely by reason of such interest.

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

149. **"Sky East Parking Structure"** means that portion of the Parking Structure located within the Project.

150. **"Sky West Parking Structure"** means that portion of the Parking Structure located within the Sky West Project.

151. **"Sky West Project"** means the Sky Ala Moana West condominium project, which is located adjacent to the Project and shares the Parking Structure with the Project.

152. **"Special Costs"** means certain costs that are to be apportioned pursuant to an Alternative Allocation between the Commercial Class, the Flats Class, the Front Desk Class, the Hotel Class, the Parking Class, the Resort Class, the Hotel, Resort and Flats Class, and the Hotel and Resort Class based on a fair and equitable apportionment in accordance with Section 514B-41 of the Act.

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

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

155. **"Tower"** means the thirty-nine (39) story building depicted on the Condominium Map. Floors are designated consecutively as floors one (1) to and including thirty-nine (39).

156. **"Unit"** means a part of the Project, as described in this Declaration and as shown on the Condominium Map, intended for a use permitted under the Act, with an exit to a public street or highway, or to a Common Element leading to a public street or highway, and includes the individual Units making up each of the Unit Classes. The Units included in the Project are listed in **Exhibit "B"** and include the Commercial Units, the Flats Units, the Front Desk Unit, the Hotel Units, the Parking Unit, and the Resort Units.

157. **"Unit Class"** means and refers to the Commercial Class, the Flats Class, the Front Desk Class, the Hotel Class, the Parking Class, the Resort Class, the Hotel, Resort and Flats Class, and the Hotel and Resort Class.

158. **"Unit Class Expense"** means those costs, expenses, and charges payable by a Unit Class based on the Unit Class Common Interest allocable to the Unit or Units within the Unit Class, as more particularly described in this Declaration.

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

160. "Unit Maintenance Agreement" means the Unit Maintenance and Operation Agreement between each Resort Unit Owner or Hotel Unit Owner and the Front Desk Unit Owner whereby the Front Desk Unit Owner agrees to provide certain Unit Maintenance Services for the Resort Unit or Hotel Unit, as further discussed in Section VI.F.6 of this Declaration.

161. "Unit Maintenance Services" means those certain services, including (a) providing for and enforcing uniform reservation and check-in and check-out procedures for all Owners of Hotel and Resort Units located at the Project, (b) monitoring each Hotel Unit and Resort Unit Owner's compliance with the Declaration and Bylaws, (c) ensuring the Hotel Units and Resort Units within the Project are maintained pursuant to the Project Quality Standard, (d) providing certain requirements with respect to leases, rental or transient occupancy of Hotel Units and Resort Units provided to Hotel Unit Owners and the Resort Unit Owners by the Front Desk Unit Owner pursuant to the Unit Maintenance Agreement.

162. "Vacation Club Product" means timeshare, fractional, interval, vacation club, destination club, vacation membership, private membership club, private residence club, and points club products, programs and services and includes other forms of products, programs, and services where purchasers acquire an ownership interest, use, or other rights to use determinable leisure units on a periodic basis and pay in advance for such ownership interest, use, or other right, as more particularly defined in Section VI.F.1 of this Declaration.

II. DESCRIPTION AND DIVISION OF THE PROJECT.

A. **DESCRIPTION OF THE PROJECT.** The Project is depicted on the Condominium Map and consists of a thirty-nine (39) story building (the "Tower"), which shall be used for residential, commercial, hotel, recreational, and/or such other purposes permitted under this Declaration, and the Sky East Parking Structure, which shall be used for parking, commercial, recreational, and/or such other purposes permitted under this Declaration. The Project includes:

1. **COMMERCIAL UNITS.** Three (3) Commercial Units located on the first floor of the Tower and identified on the Condominium Map and in Exhibit "B" as Commercial Unit Nos. 2, 4, and 5.

2. **FLATS UNITS.** Eighty-four (84) Flats Units located on floors 9 through 14 of the Tower comprised of the Unit types set forth in Exhibit "B", attached hereto and incorporated herein by reference and identified on the Condominium Map.

3. **FRONT DESK UNIT.** One (1) Front Desk Unit located on the first floor of the Tower and identified on the Condominium Map and in Exhibit "B" as the Front Desk Unit.

4. **PARKING UNIT.** One (1) Parking Unit located on the first floor of the Tower and identified on the Condominium Map and in Exhibit "B" as the Parking Unit.

5. **HOTEL UNITS.** One hundred eighty-seven (187) Hotel Units located on floors 15 through 29 of the Tower comprised of the Unit types set forth in Exhibit "B", attached hereto and incorporated herein by reference and identified on the Condominium Map.

6. **RESORT UNITS.** One hundred twelve (112) Resort Units located on floors 30 through 39 of the Tower comprised of the Unit types set forth in Exhibit "B," attached hereto and incorporated herein by reference and identified on the Condominium Map.

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

B. **DESCRIPTION OF THE UNITS.** Three hundred eighty-eight (388) freehold estates are hereby designated in the spaces within the perimeter and party walls, windows, doors, floors, and ceilings of each of the Units of the Project, which spaces are designated on the Condominium Map and are described as follows:

1. **UNIT DESIGNATIONS, NUMBERS, AND LOCATIONS.** The unit types, designations, numbers and locations are generally shown on the Condominium Map and are further identified in **Exhibit "B"** attached hereto and incorporated herein by this reference.

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

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

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

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

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

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

3. All fans, vents, shafts, sewer lines, water lines, pipes, generators, cables, conduits, ducts, electrical equipment, cooling tower(s), HVAC, wiring and other central and appurtenant transmission facilities and installations on, above, over, under and across the Project to the point of their respective connections to Improvements comprising a part of the Units or the Limited Common Elements appurtenant thereto, which serve the Commercial Units, the Flats Units, the Front Desk Unit, the Hotel Units, the Resort Units, the Parking Unit, and their appurtenant Limited Common Elements, including, without limitation, those providing electricity, light, gas (if any), water, air conditioning, sewer, refuse, drainage, irrigation, telephone, security, and radio and television signal distribution (if any), unless designated otherwise herein;

4. All hallways, areas, or rooms, including, without limitation, areas or rooms housing the items described in 3 above, rooms housing fire protection, telecommunications and/or security equipment, storage rooms, equipment, restrooms, trash rooms, areas and receptacles, apparatus, and installations existing for common use by or for the common benefit of the Commercial Units, the Flats Units, the Front Desk Unit, the Hotel Units, the Resort Units, and the Parking Unit, and not designated as a Unit or a Limited Common Element on the Condominium Map;

5. The driveway leading from Kapiolani Boulevard to the first floor of the Parking Structure, and any signage, decorative façade, or Improvement attached to said driveways and/or the first floor of the Parking Structure;

6. The drive through areas and loading stalls on the first floor of the Parking Structure;

7. The ramps and drive aisles located in the Parking Structure;

8. All sidewalks and common walkways on the first floor of the Project;

9. The bicycle rack adjacent to the first floor of the Tower;

10. The interior surfaces of the walls, ceilings, and floors of the Parking Structure and the exterior surfaces of the Parking Structure and Tower, including, without limitation, any louver, trellis, screening, paneling, signage, decorative façade, or Improvement attached thereto;

11. All other areas described as a "Common Element" herein or on the Condominium Map, or otherwise designated as a Common Element;

12. All of the Limited Common Elements described in **Section II.D** below; and

13. All other areas of the Project that are not described as a Unit or a part thereof and that are necessary or convenient to its existence, maintenance, and safety, or normally in common use.

D. LIMITED COMMON ELEMENTS. The Limited Common Elements are hereby designated, set aside and reserved for the exclusive use of certain Units, or groups of Units, and such Units shall have appurtenant thereto exclusive easements for the use of such Limited Common Elements, unless otherwise set forth herein. Except for the Front Desk Unit Limited Common Elements, Hotel Shared Facilities, Commercial Class Limited Common Elements, Commercial Unit Limited Common Elements, and Parking Unit Limited Common Elements, the responsibility to maintain, clean, upkeep, repair, replace, alter, improve and/or add to such Limited Common Elements shall be the responsibility of the Association, as set forth below. The costs and expenses of every description pertaining to such Limited Common Element shall be the responsibility of the Owner(s) of Unit(s) to which such Limited Common Element is appurtenant. The responsibility to clean, upkeep, repair, replace, alter, improve, and/or add to the Front Desk Unit Limited Common Elements, Hotel Shared Facilities, Commercial Class Limited Common Elements, Commercial Unit Limited Common Elements, and Parking Unit Limited Common Elements shall be the responsibility of the applicable Unit Owner or Unit Class, and the costs and expenses of every description pertaining thereto shall be the responsibility of the Owner(s) who are obligated to contribute under this Declaration. If there is more than one Unit to which the Limited Common Element is appurtenant, then the cost thereof shall be charged to each Owner in proportion to the Common Interest appurtenant to each respective Unit.

1. CLASS LIMITED COMMON ELEMENTS.

a. **Commercial Class Limited Common Elements.** The Commercial Class Limited Common Elements include those parts of the Common Elements that are reserved for the exclusive use of all Commercial Unit Owners, and shall include the following:

(i) The parking stall(s), if any, assigned to the Commercial Class, as set forth in **Exhibit "B"** attached hereto;

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

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

(iv) Any other areas described as "Commercial Class Limited Common Element" herein or on the Condominium Map.

b. **Flats Class Limited Common Elements.** The Flats Class Limited Common Elements include those parts of the Common Elements that are reserved for the exclusive use of all Flats Unit Owners, and shall include the following:

(i) The Residential Lobby located on the first floor of the Tower;

(ii) The elevator control room located on the seventh floor of the Parking Structure;

(iii) The elevators exclusively serving the Flats Units, from the first floor to the fourteenth floor of the Tower;

(iv) The elevator lobbies and corridors on floors nine through fourteen of the Tower;

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

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

(vii) Any and all decorative elements which may be added by or on behalf of Developer to any Limited Common Element appurtenant to the Flats Units and/or the exterior of the Flats Units and any replacements thereof or additions thereto, including without limitation, any louvers, metal panels, signs, glass curtain walls, glass, fixtures, water features, fencing, gates, and landscaping; and

(viii) Any other areas described as "Flats Class Limited Common Element" herein or on the Condominium Map.

c. **Hotel Class Limited Common Elements.** The Hotel Class Limited Common Elements include those parts of the Common Elements that are reserved for the exclusive use of all Hotel Unit Owners, and shall include the following:

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

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

(iii) Any and all decorative elements which may be added by or on behalf of Developer to any Limited Common Element appurtenant to the Hotel Units and/or the exterior of the Hotel Units and any replacements thereof or additions thereto, including without limitation, any louvers, metal panels, signs, glass curtain walls, glass, fixtures, water features, fencing, gates, and landscaping; and

(iv) Any other areas described as "Hotel Class Limited Common Element" herein or on the Condominium Map.

d. **Resort Class Limited Common Elements.** The Resort Class Limited Common Elements include those parts of the Common Elements that are reserved for the exclusive use of all Resort Unit Owners, and shall include the following:

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

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

(iii) Any and all decorative elements which may be added by or on behalf of Developer to any Limited Common Element appurtenant to the Flats Units and/or the exterior of the Resort Units and any replacements thereof or additions thereto, including without limitation, any louvers, metal panels, signs, glass curtain walls, glass, fixtures, water features, fencing, gates, and landscaping; and

(iv) Any other areas described as "Resort Class Limited Common Element" herein or on the Condominium Map.

e. **Hotel, Resort and Flats Class Limited Common Elements.** The Hotel, Resort and Flats Class Limited Common Elements include those parts of the Common Elements that are reserved for the exclusive use of all Hotel, Resort, and Flats Unit Owners, and shall include the following:

- (i) The trash room located on the first floor of the Tower;
- (ii) The interior stairways of the Tower, from floor 1 to floor 14;
- (iii) The elevator lobbies located on floors 2 and 3 of the Tower;
- (iv) The MEP rooms located on floors 9 to 14 of the Tower;
- (v) Those portions of any pipes, drains, cables, conduits, chutes, flues, ducts, wires, vents, shafts, other utility or service lines, sewage treatment equipment and facilities (if any), supporting apparatus, electrical equipment, electrical closets, storage rooms, communications rooms, pump rooms, HVAC, air conditioning and/or heating equipment and any appurtenant pipes or ducts, or other central and appurtenant transmission facilities and installations over, under, and across the Limited Common Elements appurtenant only to the Hotel, Resort, and Flats Units;
- (vi) All utility, maintenance and work rooms, closets and facilities, storage rooms, equipment room, electrical, mechanical and telecommunication rooms, accessory equipment areas, storage areas, and other support areas that service only the Hotel, Resort, and Flats Units or the Limited Common Elements appurtenant thereto; and
- (vii) Any other areas described as "Hotel, Resort, and Flats Class Limited Common Element" herein or on the Condominium Map.

f. **Hotel and Resort Class Limited Common Elements.** The Hotel and Resort Class Limited Common Elements include those parts of the Common Elements that are reserved for the exclusive use of all Hotel and Resort Unit Owners, and shall include the following:

- (i) Those portions of any pipes, drains, cables, conduits, chutes, flues, ducts, wires, vents, shafts, other utility or service lines, sewage treatment equipment and facilities (if any), supporting apparatus, electrical equipment, electrical closets, storage rooms, communications rooms, pump rooms, HVAC, air conditioning and/or heating equipment and any appurtenant pipes or ducts, or other central and appurtenant transmission facilities and installations over, under, and across the Limited Common Elements appurtenant only to the Hotel Units and Resort Units not otherwise designated as Hotel Shared Facilities;
- (ii) All utility, maintenance and work rooms, closets and facilities, storage rooms, equipment room, electrical, mechanical and telecommunication rooms, accessory equipment areas, storage areas, and other support areas that service only the Hotel Units and Resort Units or the Limited Common Elements appurtenant thereto not otherwise designated as Hotel Shared Facilities; and
- (iii) Any other areas described as "Hotel and Resort Class Limited Common Element" herein or on the Condominium Map.

2. UNIT LIMITED COMMON ELEMENTS.

a. **Commercial Unit Limited Common Elements.** Each Commercial Unit shall have as a Limited Common Element appurtenant thereto the following:

- (i) Any louver, trellis, screening, paneling, signage, decorative façade, or Improvement affixed to the exterior of the Commercial Unit;
- (ii) Each Commercial Unit shall have one (1) assigned mailbox, located on the first floor of the Tower as a Limited Common Element. Such mailbox shall be identified by the same number as the Commercial Unit to which it is a Limited Common Element;
- (iii) Any other areas described and/or depicted as "Unit Limited Common Element" labeled by the appurtenant Commercial Unit, herein or on the Condominium Map;

(iv) Commercial Unit 2 shall have, as a Limited Common Element appurtenant thereto, the outdoor seating area on the first floor of the Tower, as more particularly depicted on the Condominium Map;

(v) The parking stall(s), if any, assigned to the Commercial Unit, as set forth in **Exhibit "B"** attached hereto;

(vi) Any chute, drain, flue, duct, wire, conduit, or any other fixture that lies totally within or partially within and partially outside the designated boundaries of the Commercial Unit, any portion thereof serving only the Commercial Unit; and

(vii) Any other areas described and/or depicted as "Unit Limited Common Element" labeled by the appurtenant Commercial Unit, herein or on the Condominium Map.

b. **Flats Unit Limited Common Elements.** Each Flats Unit shall have as a Limited Common Element appurtenant thereto the following:

(i) One (1) assigned mailbox, located in the Residential Lobby located on the first floor of the Tower, as a Limited Common Element. Such mailbox shall be identified by the same number as the Flats Unit to which it is appurtenant;

(ii) Any chute, flue, duct, wire, conduit, drain, or any other fixture which lies totally within or partially within and partially outside the designated boundaries of a Flats Unit, any portion thereof serving only that Flats Unit shall be appurtenant to said Flats Unit;

(iii) The parking stall(s), if any, assigned to the Flats Unit, as set forth in **Exhibit "B"** attached hereto; and

(iv) Any other areas described and/or depicted as "Unit Limited Common Element" labeled by the appurtenant Flats Unit, herein or on the Condominium Map.

c. **Hotel Unit Limited Common Elements.** Each Hotel Unit shall have as a Limited Common Element appurtenant thereto the following:

(i) Any chute, flue, duct, wire, conduit, drain, or any other fixture which lies totally within or partially within and partially outside the designated boundaries of a Hotel Unit, any portion thereof serving only that Hotel Unit shall be appurtenant to said Hotel Unit; and

(ii) Any other areas described and/or depicted as "Unit Limited Common Element" labeled by the appurtenant Hotel Unit, herein or on the Condominium Map.

d. **Resort Unit Limited Common Elements.** Each Resort Unit shall have as Limited Common Elements appurtenant thereto the following:

(i) Any chute, flue, duct, wire, conduit, drain, or any other fixture which lies totally within or partially within and partially outside the designated boundaries of a Resort Unit, any portion thereof serving only that Resort Unit shall be appurtenant to said Resort Unit; and

(ii) Any other areas described and/or depicted as "Unit Limited Common Element" labeled by the appurtenant Resort Unit, herein or on the Condominium Map.

e. **Parking Unit Limited Common Elements.** The Parking Unit shall have as Limited Common Elements appurtenant thereto the following:

(i) The parking stalls assigned to the Parking Unit, more particularly identified in **Exhibit "B"**;

(ii) Any chute, flue, duct, wire, conduit, drain, or any other fixture which lies totally within or partially within and partially outside the designated boundaries of the Parking Unit, any portion thereof serving only the Parking Unit shall be appurtenant to the Parking Unit; and

(iii) Any other areas described and/or depicted as "Parking Unit Limited Common Element" herein or on the Condominium Map.

f. **Front Desk Unit Limited Common Elements.** The Front Desk Unit shall have as Limited Common Elements appurtenant thereto, those areas designated as Front Desk Unit Limited Common Elements and Hotel Shared Facilities.

(i) **Front Desk Unit Limited Common Elements.** The Front Desk Unit shall have as a Limited Common Element appurtenant thereto, the following:

(a) The back-of-house area located on the third floor of the Parking Structure;

(b) The Executive Office, Renaissance Lounge, and Conference Room located on the fifteenth floor of the Tower;

(c) Any chute, flue, duct, wire, conduit, drain, or any other fixture which lies totally within or partially within and partially outside the designated boundaries of a Front Desk Unit, any portion thereof serving only the Front Desk Unit shall be appurtenant to the Front Desk Unit; and

(d) Any other areas described and/or depicted as "Front Desk Unit Limited Common Element" herein or on the Condominium Map.

(ii) **Hotel Shared Facilities**

(a) The outdoor area located outside of the hospitality lobby on the first floor of the Tower as depicted on the Condominium Map;

(b) The interior stairways of the Tower, from the fifteenth floor to the roof;

(c) The pool equipment room located on the seventh floor of the Parking Structure;

(d) The Recreational Facilities located on the roof of the Parking Structure;

(e) The restrooms located on the fifteenth floor of the Tower;

(f) The elevator lobbies and corridors from the fifteenth floor to the thirty-ninth floor of the Tower;

(g) The MEP rooms located on floors 15 to 39 of the Tower;

(h) The elevators servicing the Hotel Units and Resort Units;

(i) Any chute, flue, duct, wire, conduit, drain, or any other fixture which lies totally within or partially within and partially outside the designated boundaries of the Hotel Shared Facilities, any portion thereof serving only the Hotel Shared Facilities shall be Hotel Shared Facilities; and

(j) Any other areas described and/or depicted as "Hotel Shared Facilities" herein or on the Condominium Map.

III. COMMON INTEREST; CLASS COMMON INTEREST.

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

B. **CLASS COMMON INTEREST.** In addition to the Common Interest, each Unit shall have assigned to it, for administrative purposes, one or more Class Common Interest(s) as set forth in **Exhibit "C,"** attached hereto and incorporated by reference herein, based upon the Unit Class(es) to which such Unit belongs, including the Commercial Class, the Flats Class, the Front Desk Class, the Hotel Class, the Parking Class, the Resort Class, the Hotel, Resort and Flats Class, and the Hotel and Resort Class. All Owners of Units in a Unit Class shall have the right to vote his or her Class Common Interest with respect to matters requiring voting by Unit Class, and each Owner of a Unit in a Unit Class shall be responsible for its proportionate share of all Class Common Expenses of the Project, if any. Developer shall have the absolute right to adjust the Class Common Interest in its discretion in order to ensure that the total Commercial Class Common Interest for the Commercial Units in the aggregate equals one hundred percent (100%), that the total Flats Class Common Interest for the Flats Units in the aggregate equals one hundred percent (100%), that the total Front Desk Class Common Interest for the Front Desk Unit equals one hundred percent (100%), that the total Hotel Class Common Interest for the Hotel Units in the aggregate equals one hundred percent (100%), that the total Parking Class Common Interest for the Parking Unit equals one hundred percent (100%), that the total Resort Class Common Interest for the Resort Units in the aggregate equals one hundred percent (100%), that the total Hotel, Resort and Flats Class Common Interest for the Hotel Units, the Resort Units, and the Flats Units in the aggregate equals one hundred percent (100%), that the total Hotel and Resort Class Common Interest for the Hotel Units and the Resort Units in the aggregate equals one hundred percent (100%) and may adjust the Class Common Interest of all or some of the Units in the Project to achieve such result. Developer shall further have the right to adjust the Class Common Interest in exercising certain Developer's Reserved Rights, as may be set forth herein.

IV. EASEMENTS AND LICENSE.

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

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

B. **EASEMENTS IN CERTAIN LIMITED COMMON ELEMENTS FOR UTILITIES AND SUPPORT.** Wherever sanitary sewer connections, water connections, electricity, gas, telephone, HVAC, security and television lines, drainage facilities, or duct facilities are installed within the Project, the Owners of Units that are served by said connections, lines or facilities shall have the right, and there are hereby reserved to all other Owners, together with the right to grant and transfer the same, easements and rights to the full extent necessary for the full use and enjoyment of such portions of such connections, lines or facilities which service such Units, and to enter Units owned by others, or to have utility companies enter Units owned by others, in or upon which said connections, lines or facilities, or any portions thereof, lie, to repair, replace and generally maintain said connections, lines or facilities

as and when the same may be necessary; provided that such entering Owner or utility company shall repair all damage to any Unit caused by such entry as promptly as possible after completion of work thereon.

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

D. EASEMENT IN SKY WEST PARKING STRUCTURE. Each Unit shall have appurtenant thereto nonexclusive easements in the portion of the Sky West Parking Structure, as more particularly described in the Reciprocal Easement Agreement, designed for such purposes as ingress to, egress from, utility services for, support of, and, as necessary, for the maintenance and repair of such Unit and the Limited Common Elements appurtenant thereto.

E. EASEMENT FOR COMMERCIAL UNIT AND FRONT DESK UNIT VENDORS, EMPLOYEES, CUSTOMERS, AND GUESTS. The Commercial Units and the Front Desk Unit shall have an appurtenant easement for use by its vendors, licensees, and invitees for purposes of the business conducted in the Commercial Units, Front Desk Unit, or their appurtenant Limited Common Elements (1) to come onto the Project areas intended for access to and from any nearby roads, streets, or highways, (2) to make deliveries using any delivery area and any Common Elements necessary to get from the delivery area to the Commercial Units, Front Desk Unit, or their Limited Common Elements, (3) to go to and from the Commercial Units, Front Desk Unit, and their Limited Common Elements using the walkways and sidewalks intended for such purpose, (4) for casual use, for recreation, and to enjoy entertainment and other services provided from the Commercial Units, Front Desk Unit, or their Limited Common Elements, and (5) as otherwise may be reasonably necessary to operate and manage the services from the Commercial Units, Front Desk Unit and their Limited Common Elements. The Limited Common Elements appurtenant to the Commercial Units and Front Desk Unit are intended for general use by the Commercial Units' and Front Desk Unit's vendors, licensees, and invitees, and by the general public accessing and patronizing the Commercial Units and the Front Desk Unit.

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

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

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

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

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

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

K. DEVELOPER'S EASEMENT FOR SALES ACTIVITIES. Developer, its brokers, sales agents, Representatives, and other related persons shall have the right to conduct extensive sales activities at the Project, including the use of any Unit owned by Developer and the Common Elements (excluding the Limited Common Elements appurtenant to Units not owned by Developer), for model units, tours, sales, leasing, management, and construction offices, parking, extensive sales displays, and hosting promotion activities, functions and receptions, the posting and maintenance of signs and other advertisements relating to such sales activities, and to install, maintain, locate, relocate, and reconfigure such structures, displays, advertising signs, billboards, flags, sales desks, kiosks, sales, leasing, management, and/or construction offices, model units, interior design and decorator centers, and parking areas for employees, agents, and prospective buyers, as may be necessary or convenient for the proper development and disposition of Units by sale, resale, lease, or otherwise, and the right, but not the obligation, to provide ongoing maintenance, operation, service, construction, and repairs to individual Units. In the event that Developer's mortgage lender, if any, or any successor to or assignee of Developer's mortgage lender shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the Mortgage remedies or by a deed or an assignment in lieu of foreclosure, such mortgage lender, its successors and assigns, shall have the same rights as Developer to conduct such sales activities on the Project.

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

L. EASEMENTS FOR COMMUNITY SYSTEMS AND TELECOMMUNICATIONS AND RIGHT TO ENTER INTO UTILITY CONTRACTS. There is reserved to Developer, its agents, employees, personnel or licensees and its successors and assigns, a perpetual right and easement over the Project to install and operate, or provide for the installation and operation of, central telecommunication receiving and distribution systems and services (e.g., cable television, high speed data/Internet/intranet services, cellular telephone, satellite television, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software (collectively, "**Community Systems**") as Developer, in its discretion, deems appropriate to serve all or any portion of the Project. Such right shall include, without limitation, Developer's right to select and contract with

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

M. DEVELOPER'S ADDITIONAL EASEMENTS AND RIGHTS TO ACCEPT, GRANT, AND MODIFY EASEMENTS. To and until December 31, 2041, Developer reserves the right to designate, grant, convey, transfer, cancel, relocate, and otherwise deal with any easements over, under, across or through the Common Elements as necessary or convenient for any reasonable purpose, which may include, but not be limited to the repair, care or upkeep of any Unit or Common Elements, any utility easements or infrastructure to serve the Project or access ways, walkways, or to comply with any government agreement or permit, private covenant, or other easement or access requirements. Developer further reserves the right to designate, negotiate, accept, grant, convey, transfer, cancel, relocate, and otherwise deal with any easement or license over, under, across, or through the Land or the Project or adjoining properties in favor of, or encumbering, the Land or the Project for any reasonable purpose. Developer also has the right to grant such easements necessary for repair, care, or upkeep of any utility infrastructure to serve the Project or access ways, walkways, or vehicular or pedestrian access to comply with any government agreement or permit, private covenant, or other easement or access requirements, or for the reason that any owner of property that is subject to an easement in favor of the Land or the Project uses any right it has to require a change in the location of that easement.

N. EASEMENT IN FAVOR OF OWNERS FOR ACCESS OVER HOTEL SHARED FACILITIES AND/OR LIMITED COMMON ELEMENTS FOR INGRESS AND EGRESS PURPOSES. Each Unit in the Project, as applicable, shall have appurtenant thereto, nonexclusive easements in and over the Front Desk Unit, and the Limited Common Elements appurtenant thereto as depicted on the Condominium Map, only to the extent that such easements are necessary for ingress to and egress from such Units, and to and from any Limited Common Element areas appurtenant to such Units, to the extent required under the Act. Nothing in this Section shall grant any Owner an easement in the Front Desk Unit and the Limited Common Elements appurtenant thereto, for any purposes other than ingress and egress to their respective Units without the consent of the Front Desk Unit Owner. Such easements shall be subject to the right of the Front Desk Unit Owner to marshal and regulate such ingress and egress in its discretion and subject to rules promulgated by such Owners; provided specifically that ingress and egress through lobby areas or walkways as necessary, shall not be denied to Owners seeking access to their respective Units.

The Commercial Units shall also have appurtenant thereto nonexclusive easements in the roadways, driveways, access lanes, ramps, loading areas, sidewalks, walkways, and grounds of the Project under which the Owners of the Commercial Units and their vendors, licensees, and invitees have the right, for the purposes of the business conducted in the Commercial Units or their Limited Common Elements, to (1) come onto the Project; (2) make deliveries using any delivery area and any Limited Common Elements appurtenant to the Front Desk Unit connecting the delivery area to the Commercial Units or their Limited Common Elements; (3) pedestrian access to the Commercial Units and their Limited Common Elements using walkways and other access ways intended for such purpose; and (4) use the Limited Common Elements appurtenant to the Front Desk Unit as may otherwise be reasonably necessary in connection with the ordinary conduct of business operations in the Commercial Units and/or their Limited Common Elements.

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

P. LICENSE TO USE HOTEL SHARED FACILITIES. The Hotel Shared Facilities, which are Limited Common Elements appurtenant to the Front Desk Unit, shall be maintained by the Front Desk Unit Owner in a manner that is consistent with and appropriate to the Project Quality Standard; provided that the Front Desk Unit Owner may delegate its duties hereunder to the Hotel Manager. If the Front Desk Unit Owner delegates its duties hereunder to the Hotel Manager, the Hotel Manager shall have all corresponding rights and obligations as may be provided to the Front Desk Unit Owner in this Section.

Developer, as the initial Front Desk Unit Owner, hereby grants to the Association (and the Condominium Manager, acting on its behalf), for the benefit of each of the Hotel Unit Owners and the Resort Unit Owners, an irrevocable, nonexclusive license to use the Hotel Shared Facilities for the purposes authorized under this Declaration, subject to the Hotel Rules. The term of such license shall be coterminous with the term of the Project, unless earlier terminated by reason of the conveyance of the Front Desk Unit to the Association or as provided in **Section IV.P.3**, below. Neither the Association nor any Owner other than the Front Desk Unit Owner, shall have or claim, at any time, any interest or estate of any kind or extent in the Hotel Shared Facilities by virtue of this grant of license or any permitted use hereunder, and the Association and any person claiming through or under the Association, by accepting any deed or mortgage of an interest in any Unit in the Project, waives any rights in and to the Hotel Shared Facilities, except as may be expressly provided herein. The license granted herein is a non-proprietary, non-voting, non-transferable use right, terminable only in accordance with the provisions of this Declaration. Neither the Association nor any other Owner, shall have an interest in the income or profit of the Front Desk Unit Owner that may be derived from activities conducted within or upon the Hotel Shared Facilities, nor any right to a specified level of availability of any of the Hotel Shared Facilities, nor any right to a specified configuration of the Hotel Shared Facilities, or equipment, facilities, structures, or other Improvements situated therein, nor any right to influence any decision by the Front Desk Unit Owner with respect to the Hotel Shared Facilities. Each Hotel Unit Owner and Resort Unit Owner shall have beneficial use, and enjoyment of the facilities of the Hotel Shared Facilities, and shall have access, ingress to, egress from, and use of the Hotel Shared Facilities, subject to the Hotel Rules; provided that the Hotel Unit Owner or Resort Unit Owner is current in the payment of Common Expenses to the Association and is not otherwise in default under the Project Documents. Expenses related to the Hotel Shared Facilities shall be paid to the Front Desk Unit Owner pursuant to the following provisions:

1. **Payable by Association.** In consideration of the license granted herein, the Association shall reimburse the Front Desk Unit Owner the expenses incurred by the Front Desk Unit Owner through the Hotel Shared Facilities Fee. The Hotel Shared Facilities Fee shall be charged to each Hotel Unit Owner and Resort Unit Owner as a Hotel and Resort Class Common Expense and shall be determined as follows: the Association shall pay to the Front Desk Unit Owner, on the first day of each month, in advance, an amount equal to one-twelfth (1/12th) of the Hotel Shared Facilities Budget, as hereinafter defined.

2. **Determination of Hotel Shared Facilities Fee.** The Front Desk Unit Owner shall prepare and present to the Board, at least sixty (60) calendar days prior to the end of the calendar year, the Hotel Shared Facilities Budget for the ensuing calendar year. Upon receipt, the Hotel Directors and the Resort Directors shall have thirty (30) calendar days to review the Hotel Shared Facilities Budget. If the Hotel Directors and the Resort Directors have any objections to the Hotel Shared Facilities Budget, the Hotel Directors and the Resort Directors shall notify the Front Desk Unit Owner in writing, which writing shall specify the objections. Within a reasonable period after receipt of such written notice, which period shall not exceed thirty (30) calendar days, a representative of the Hotel Directors, Resort Directors, and a representative of the Front Desk Unit Owner shall meet at a mutually acceptable place within or near the Project to discuss the objections of the Hotel Directors and Resort Directors, and shall negotiate in good faith to resolve such objections. In the event the Hotel Directors, Resort Directors, and the Front Desk Unit Owner are unable to resolve the objections, the parties agree to submit the matter to alternative dispute resolution as provided in **Section XXXVII** of this Declaration. Each Hotel Unit Owner and Resort Unit Owner acknowledges that the Front Desk Unit Owner is, subject to the timely payment of the Hotel Shared Facilities Fee, obligated to maintain the Hotel Shared Facilities in a manner that is consistent with, and appropriate to, the Project Quality Standard, and will enter into contracts with vendors and other contractors to maintain the Project to the Project Quality Standard. Accordingly, notwithstanding any dispute regarding the Hotel Shared Facilities Budget, the Association shall pay to the Front Desk Unit Owner the Hotel Shared Facilities Fee calculated in accordance with the Hotel Shared Facilities Budget prepared by the Front Desk Unit Owner for the previous calendar year (as increased by undisputed items and any increase in the cost of insurance, utilities, taxes, emergency expenditures, and expenditures necessary to meet fire protection and life safety requirements of the Hotel Manager or as required under any Franchise Agreement or Hotel Management Agreement) pending the resolution of any dispute, and the Front Desk Unit Owner may disburse such amounts so collected to any third-party vendor or contractor without liability to the Association for amounts paid. Additionally, the Front Desk Unit Owner shall be granted broad discretion in determining the level of maintenance necessary to maintain the Project Quality Standard, and its determination shall not be disputed unless there is an abuse of such discretion.

The Hotel Shared Facilities Budget shall be reconciled at least once per calendar year by the Front Desk Unit Owner; provided, however, that the Front Desk Unit Owner may reconcile the Hotel Shared Facilities Budget more frequently if it determines that the actual expenses associated with the Hotel Shared Facilities will result in a shortfall in any calendar month. In the event the actual expenses associated with the Hotel Shared Facilities differ from the Hotel Shared Facilities Fee collected for the calendar year or calendar month in question, the Association shall: (a) remit the difference to the Front Desk Unit Owner within sixty (60) days of the end of the calendar year or calendar month in question and assess the shortfall to all Hotel Unit Owners and Resort Unit Owners as a special assessment in proportion to the respective Hotel and Resort Class Common Interests of the Owners; or (b) apply any surplus in amounts collected to the following year or month's Hotel Shared Facilities Fee.

Notwithstanding the foregoing, where the actual expenses associated with the Hotel Shared Facilities for any calendar year exceeds the Hotel Shared Facilities Budget, the Association shall not be required to reimburse the Front Desk Unit Owner any amounts in excess of one hundred twenty percent (120%) of the Hotel Shared Facilities Budget, except in "emergency situations", as such term is defined in Section 514B-148 of the Act, or with the prior approval of the Majority of the Hotel and Resort Class.

3. **Failure to Reimburse.** The Association shall include the Hotel Shared Facilities Fee in its annual budget for Common Expenses and shall take such additional measures and do such things as are reasonably necessary to secure the timely payment of the Hotel Shared Facilities Fee to the Front Desk Unit Owner. If any installment of the Hotel Shared Facilities Fee is not paid when due, the Front Desk Unit Owner shall give written notice of such default to the Association. If the Association fails to cure its default in paying the amount payable hereunder within thirty (30) calendar days after receipt of such notice of default, or within any extended period granted by the Front Desk Unit Owner in its sole discretion, the Front Desk Unit Owner may accelerate the remaining installments of the Hotel Shared Facilities Fee for the then current calendar year and may terminate the license granted hereunder, except to the extent necessary for ingress to and egress from the Units and to and from any Limited Common Elements appurtenant to such Units.

4. **Assessment and Lien Rights; Enforcement.** The Front Desk Unit Owner shall have a lien on, and a security interest in, the Association Assets in an amount equal to all Hotel Shared Facilities Fees, interest and late charges, and costs associated with the collection thereof. In the event the Association shall fail to make payments of the Hotel Shared Facilities Fee when due, to the extent permissible by applicable law, the Front Desk Unit Owner may enforce the lien hereby granted to secure the payment of such sums as a holder of a security interest may, to the fullest extent permitted by applicable law.

Although the Association shall be primarily liable for the payment of the Hotel Shared Facilities Fee, each Hotel Unit Owner and Resort Unit Owner shall be jointly and severally liable for his or her pro-rata share of the Hotel Shared Facilities Fee, such amounts being a personal obligation and debt of such Hotel Unit Owner or Resort Unit Owner at the time the Hotel Shared Facilities Fee is levied. For the purposes of this Section, each Owner's "pro-rata share" of the Hotel Shared Facilities Fee shall refer to the total Hotel Shared Facilities Fee multiplied by the Hotel and Resort Class Common Interest appurtenant to such Hotel Unit or Resort Unit Owner's Unit. To the extent permitted by law, the amount of the Hotel Unit or Resort Unit Owner's pro-rata share of the Hotel Shared Facilities Fee shall be: (a) a charge and continuing lien in favor of the Front Desk Unit Owner after the time that it is due and payable; and (b) the personal obligation of the Hotel Unit or Resort Unit Owner at the time it is due and payable. No Hotel Unit Owner or Resort Unit Owner may exempt himself or herself from liability for payment of the Hotel Shared Facilities Fee by non-use of the Hotel Shared Facilities or abandonment of his or her Hotel Unit or Resort Unit. The obligation to pay the Hotel Shared Facilities Fees is a separate and independent covenant of each Hotel Unit Owner and Resort Unit Owner.

All amounts of the Hotel Shared Facilities Fee due and unpaid (including accelerated sums) shall, to the extent notice thereof is recorded at the Bureau, constitute a lien and security interest on each Hotel Unit Owner's Unit and Resort Unit Owner's Unit, to the extent of such Unit's pro-rata share of the unpaid Hotel Shared Facilities Fee, together with all interest, late charges, and collection and enforcement costs thereon or with respect thereto. At the option of the Front Desk Unit Owner, the lien may be foreclosed upon by the Front Desk Unit Owner in like manner as a mortgage of real property, including, but not limited to, by way of power of sale, as specified and in accordance with the provisions of Chapter 667 of the Hawaii Revised Statutes, as amended, or such successor statute as may be applicable, and said lien shall extend to cover all money and other proceeds and amounts received on account of a Hotel Unit or Resort Unit and its use, including all rents, insurance and condemnation proceeds, sales

proceeds, and cash and non-cash proceeds as defined in Section 490:9-306 of the Hawaii Revised Statutes, as amended, or such successor statute as may be applicable. The lien and security interest created herein shall be subject and subordinate to first mortgages and security interests given by a Hotel Unit Owner or Resort Unit Owner in good faith and for value to any prior Hotel Unit Owner or Resort Unit Owner or to any institutional lender and filed prior to the filing of a notice of lien by the Front Desk Unit Owner. Any Hotel Unit Owner or Resort Unit Owner may obtain a release of the lien created by making payment to the Front Desk Unit Owner of such Hotel Unit Owner's or Resort Unit Owner's proportionate annual share of the Hotel Shared Facilities Fee (including interest, late charges and collection and enforcement costs) for each Hotel Unit or Resort Unit such Owner owns prior to foreclosure by the Front Desk Unit Owner of its lien on the Hotel Unit or Resort Unit. Upon receipt of such payment, the Front Desk Unit Owner shall file an appropriate instrument to effectuate the release of said Owner's Hotel Unit(s) or Resort Unit(s) from the lien provided for in this paragraph at the Hotel Unit Owner's or Resort Unit Owner's expense.

5. **General Excise Tax.** Amounts payable by the Association to the Front Desk Unit Owner under the license granted herein represent a reimbursement of the proportionate share of Common Expenses payable in respect of such Hotel Shared Facilities by the Hotel Unit Owners and Resort Unit Owners. In the event that such sums are deemed to be subject to the general excise tax pursuant to Chapter 237 of the Hawaii Revised Statutes (or other applicable tax), the Association shall pay such additional amount as may be necessary to permit the Front Desk Unit Owner to receive the sum it would have received should the general excise tax not apply.

6. **No Waiver.** No Hotel Unit Owner or Resort Unit Owner shall be relieved of the obligation to pay for the use of such Hotel Shared Facilities through his or her share of the Common Expenses by waiving his or her rights to use the Hotel Shared Facilities or any part thereof. Neither the Association nor any Hotel Unit Owner or Resort Unit Owner can abandon the license granted herein. The Front Desk Unit Owner shall be able to directly charge individual Hotel Unit Owners and Resort Unit Owners for any additional goods sold or services rendered in connection with the Hotel Shared Facilities. This Section shall not be amended or terminated without the prior written consent of the Front Desk Unit Owner.

7. **Right of Front Desk Unit Owner to Modify, Amend, Designate, and Redesignate Hotel Shared Facilities and Amend the Hotel Shared Facilities Budget.** The Front Desk Unit Owner shall have the reserved right for the duration of the license to amend, modify, designate, and redesignate the Hotel Shared Facilities, and/or to increase and/or diminish the Limited Common Elements appurtenant to the Front Desk Unit. The Hotel Shared Facilities Budget may also change based on the cost of operating and maintaining the Hotel Shared Facilities and may only be amended, supplemented, or modified by the Front Desk Unit Owner. As a result, the Hotel Shared Facilities Budget is subject to change at any time. Every Owner and all holders of liens affecting any of the Hotel Units and Resort Units in the Project consents to and agrees that he or she shall, if required by law, join in, consent to, execute, deliver, and record all instruments and documents necessary or desirable to effect the amendment of this Declaration and/or the Condominium Map; and appoints the Front Desk Unit Owner and its assigns his or her attorney-in-fact with full power of substitution to execute, deliver, and record such documents and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of any such party or parties; which grant of such power shall be binding upon any assign or successor-in-interest upon any transfer of any Unit or any interest therein, whether by deed, mortgage, or any other conveyance instrument.

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

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

S. **DEVELOPER'S EASEMENT TO EXERCISE RESERVED RIGHTS.** Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees, and assigns, shall have an easement over, under, upon, and through the Common Elements and any Limited Common Elements and through the Units or any portion thereof as may be reasonably necessary to exercise any of its reserved rights, and such easement shall allow Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees, and assigns, to create and cause noise, dust, and other nuisances created by and resulting from any work connected with or incidental to

effecting any such exercise; provided that any such work is undertaken with reasonable diligence and shall not unreasonably interfere with the use and enjoyment of the Project by Owners.

V. ALTERATION AND TRANSFER OF INTEREST.

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

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

VI. USE.

A. PROJECT; IN GENERAL.

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

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

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

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

Condominium Documents. Owners shall be responsible for any damage or loss to the Common Elements or other Units caused by such Owner's tenants, guests, or invitees.

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

B. **USE OF PARKING STRUCTURE.** The Parking Structure shall be used for access, parking, and any other purposes permitted by the Condominium Documents and the Reciprocal Easement Agreement. The Association shall be prohibited from reducing the total number of parking stalls, handicap parking stalls, guest stalls, and/or loading stalls or areas located at the Project, without the prior written approval of Developer during the Development Period. All Owners shall be provided access to the Parking Structure to access and utilize their designated parking stall(s) (if any), guest stalls, patron stalls (if any), and Unit and the Limited Common Elements appurtenant thereto, as applicable. Hotel Units and Resort Units will not be assigned parking stalls. Parking stalls for Hotel Units and Resort Units shall be Limited Common Elements appurtenant to the Parking Unit, and all parking for Hotel Units and Resort Units shall be by valet. Valet parking operations shall be managed by the Parking Unit Owner, and may charge a fee for such valet parking services, which may be assessed against Hotel Unit Owners and Resort Unit Owners as a Hotel and Resort Class Common Expense.

C. **FLATS UNITS AND LIMITED COMMON ELEMENTS.**

1. **RESIDENTIAL USE.** Except as provided herein, Flats Units and their appurtenant Limited Common Elements shall be used for residential purposes exclusively, except that a home-based business may be maintained within a Flats Unit, provided that (a) such maintenance and use is limited to the person actually residing in the Flats Unit; (b) no employees or staff other than a person actually residing in the Flats Unit are utilized; (c) no clients or customers of such business visit the Flats Unit; (d) the number of persons, other than clients or customers, that shall visit such business and the frequency of such visits shall be kept to a reasonable minimum, as determined in the sole discretion of the Board; (e) such maintenance and use is in strict conformity with the provisions of any applicable law (including zoning law), ordinance or regulation; (f) the person utilizing such office maintains a principal place of business other than the Flats Unit; (g) such business uses no equipment or process that creates noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable by neighbors and does not cause an increase of Common Expenses that can be solely and directly attributable to the business; (h) such business does not involve the use, storage, or disposal of any materials that the State of Hawaii or any governing body with jurisdiction over the Property designates as hazardous material; and (i) the Owner has provided the Board thirty (30) calendar days prior written notice of his or her intent to operate such home-based business. Notwithstanding the foregoing, the Board shall have the authority, but not the obligation, to permit a home-based business to be maintained within a Flats Unit which does not meet one or more of the requirements set forth above, which permission may be withdrawn at any time in the sole discretion of the Board. Nothing contained in this Section shall be construed to prohibit Developer from the use of any Flats Unit owned by Developer for promotional or display purposes, such as for a model home, a sales and/or construction office, or for any other lawful purpose for development, construction, and/or marketing and sales of the Units in the Project.

2. **AFFORDABILITY REQUIREMENTS.** The Flats Units shall be subject to the Affordable Unit Restriction, including the requirement that such Flats Units remain affordable for the minimum periods of time, as further discussed in the Affordable Housing Agreement and the Flats Unit Deed.

3. **MAXIMUM OCCUPANCY.** Unless limited otherwise by County ordinance, or other applicable law, no Flats Unit shall be occupied by more than five (5) individuals and provided that in no event shall occupancy of a Flats Unit exceed three (3) individuals per bedroom; provided however, that this occupancy limitation shall not apply to or restrict the Owner of a Flats Unit from hosting a larger group of invited guests or visitors in such

Flats Unit for a one (1) day function with prior written notice to the Managing Agent and subject to the limitations set forth in the House Rules.

4. **UNSIGHTLY ARTICLES.** Portions of a Flats Unit and its appurtenant Limited Common Elements that are visible from the exterior of the Flats Unit must be kept in an orderly condition so as not to detract from the neat appearance of the Project. To maintain a uniform and attractive exterior appearance for the Project, Flats Unit Owner-installed window coverings must include a backing of an off-white color and must be of a type and general appearance approved by the Board. Flats Unit Owners may not, without the prior written approval of the Board, apply any substance, material, or process to the exterior or interior surfaces of the Flats Unit's windows that may alter the exterior color, appearance or reflectivity of the windows. The Board, in its sole discretion, may determine whether the portions of a Flats Unit visible from the exterior of the Flats Unit are orderly. The Board may have any objectionable items removed from the portions of a Flats Unit that are visible from the exterior of the Unit so as to restore its orderly appearance, without liability therefor, and charge the Flats Unit Owner for any costs incurred in connection with such removal.

5. **PROHIBITION AGAINST TIME SHARE PROGRAMS.** Flats Units and their Limited Common Elements, or any portion of either, shall *not be the subject of or sold, transferred, conveyed, leased, occupied, rented, or used under a time share plan (as defined in Hawaii Revised Statutes, Chapter 514E, as amended) or similar arrangement or program, whether covered by Chapter 514E or not, including, but not limited to, any so-called "fractional ownership," "vacation license," "travel club membership," "club membership," "membership club," "destination club," "time-interval ownership," "interval exchange" (whether the exchange is based on direct exchange or occupancy rights, cash payments, reward programs or other point or accrual systems) or "interval ownership" as offered and established through a third party vacation membership service provider who is in the business of providing and managing such programs. The Flats Units shall not be used as part of any occupancy plan or for similar purposes, which shall include: (a) any joint ownership, whether or not ownership is deeded, of a Flats Unit where unrelated (i.e., non-family) owners share and enjoy use or occupation of the Flats Unit according to a periodic (fixed or floating) schedule based on time intervals, points or other rotational system; or (b) any club, the membership of which allows access and use of one or more properties by its members based on availability and reservation priorities, commonly known as destination clubs (equity or non-equity) or vacation clubs. Furthermore, the Flats Units and their Limited Common Elements, or any portion of either, shall not be used for transient or hotel purposes, which are defined as (a) rental for any period less than thirty (30) days, or (b) any rental in which the Occupants of the Flats Unit are provided customary hotel or rental services. The foregoing restrictions may be enforced by Developer, the Association, or the Managing Agent.*

The restrictions set forth above shall be read broadly, and, among other things, shall encompass any type of plan, the nature of which causes Flats Units to be utilized by persons who have either joined a plan or program as a member or whose use is derivative of someone who has joined a plan or program as a member. Determination by Developer, the Association, or the Managing Agent that a violation of this provision exists shall be binding on the violating Owner, and the Board may promulgate and effectuate additional rules, regulations, procedures, and processes for enforcement of this provision, including but not limited to any surcharge or other charge or assessment that the Board shall solely determine. This Section shall not be terminated or amended without the prior written approval of Developer, to the extent permitted by applicable law.

6. **SALES AND MARKETING; MARKETING MATERIALS.** Except for Flats Units owned by Developer and used for sales and marketing purposes, no "open houses" or similar activity promoting the sale of a Flats Unit shall be permitted at the Project without the prior written consent of Developer. All sales and marketing materials provided to an Owner in connection with the Flats Unit or the Project that are otherwise the property of Developer, including, but not limited to, any imagery, logos, artistic renderings, weblinks, layout depictions, video clips, and other similar marketing materials, may not be used by an Owner or any rental agent in the promotion of any Flats Unit in the Project in any fashion whatsoever without the prior written approval of the Developer, which approval may be withheld in their sole discretion. Any use of such material in any way by Owner or any rental agent without such permission will entitle Developer to immediately enjoin such use and to pursue any and all remedies against the Owner, independently of the obligations set forth in this Declaration. The Owner and/or rental agent will be fully responsible to pay for all costs incurred by the Developer in enforcing its proprietary rights in and to such material, including, but not limited to, any and all attorneys' fees and costs.

D. COMMERCIAL UNITS AND LIMITED COMMON ELEMENTS.

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

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

- a. facilities for the sales or service of mobile homes or trailers;
- b. junkyards, scrap metal yards, automobile used parts sales facilities, motor vehicle dismantling operations, sanitary landfills, except that auto specialty stores or boutiques (with any one store or boutique not to exceed 10,000 square feet) that display only a limited number of automobiles on-site at any particular time may be permitted upon approval by Developer, and thereafter, by the Board;
- c. dumping, storage, disposal, incineration, treatment, processing, or reduction of hazardous materials, garbage, or refuse of any nature, other than handling or reducing waste produced on the premises from authorized use in a clean and sanitary manner;
- d. salvage business;
- e. truck terminals and truck stop-type facilities, including truck parking lots (except as may be incidental to a use that is not prohibited);
- f. tanning parlors, massage parlors, or any establishment which offers entertainment or service by nude or partially dressed male or female persons, except that this provision shall not preclude tanning and massage services offered by fully clothed, trained personnel as part of a legitimate fitness or health facility, or a day spa operation that also offers beauty, body care, skin care, or similar services;
- g. "adult entertainment uses," which shall include, for the purposes of this section, any theater or other establishment which shows, previews, or prominently displays, advertises, or conspicuously promotes for sale or rental: (i) movies, films, videos, magazines, books, or other medium (whether now or hereafter developed) that are rated "X" by the movie production industry (or any successor rating established by the movie production industry) or are otherwise of a pornographic or obscene nature (but not including the sale or rental of movies, films, or videos for private viewing); or (ii) sexually explicit games, toys, devices, or similar merchandise;
- h. mini-warehouses, and warehouse/distribution centers;
- i. any facility for the dyeing and finishing of textiles, the production of fabricated metal products, or the storage and refining of petroleum;
- j. laundromat, laundry facilities, or dry cleaning plant or establishment; provided that facilities for drop-off or pick-up of items dry cleaned outside of the Project are permitted;
- k. engine and motor repair facilities (except in connection with any permitted automobile service station);
- l. heavy machinery sales and storage facilities;
- m. emergency medical facility or clinic;
- n. funeral parlor or mortuary;

- merchandise;
- o. liquidator or other facilities for the sale of used, damaged, discontinued, or surplus merchandise;
 - p. convenience store or fast food restaurant; and
 - q. any use that would cause or threaten the cancellation of any insurance maintained by the Association, or which would measurably increase insurance rates for any insurance maintained by the Association or Owners above the rates that would apply in the absence of such use.

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

E. FRONT DESK UNIT. The Front Desk Unit and the Hotel Shared Facilities may be used for any commercial purpose permitted by zoning, other applicable laws, this Declaration, and the Bylaws, including, but not limited to, administrative offices, concierge services, storage, sales and marketing offices, and activity desks or offices; provided that such use is consistent with the Project Quality Standard. The Front Desk Unit Owner may enter into such agreements, as it deems appropriate, to utilize the Front Desk Unit. Any income derived from the Front Desk Unit, the Hotel Shared Facilities, and/or any other Limited Common Elements appurtenant to the Front Desk Unit shall belong solely to the Front Desk Unit Owner. This Section shall not be terminated or amended without the prior written consent of the Front Desk Unit Owner.

F. HOTEL UNITS, RESORT UNITS, AND LIMITED COMMON ELEMENTS.

1. USE GENERALLY; RESTRICTIONS. The Hotel Units and Resort Units shall be occupied and used only for the purposes that are consistent with, and appropriate to the Project Quality Standard. *Accordingly, to the extent permitted by County ordinance or other applicable law, the Hotel Units and Resort Units may be used for transient vacation rental purposes or transient lodging for periods of less than thirty (30) days (subject to additional rental restrictions as set forth in the Unit Maintenance Agreements and the Hotel Rules), or residential use or other uses permitted by law and the Project Documents, that are consistent with the Project Quality Standard;* provided that: (a) subject to the terms hereof, a Hotel Unit Owner or Resort Unit Owner shall be permitted to personally occupy his or her Unit and may also make his or her Unit available for use to third parties when not occupied by such Owner; (b) other than as may be provided herein, no commercial business activity or home occupation or office shall be conducted from any Hotel Unit or Resort Unit; (c) notwithstanding anything contained herein or in law to the contrary, without the prior written consent of the Front Desk Unit Owner, and, for the term of the Franchise Agreement, Licensor, the Hotel Units, Resort Units, or any interest therein, *shall not be the subject of or sold, transferred, conveyed, leased, occupied, rented, or used at any time under a time share plan (as defined in Hawaii Revised Statutes, Chapter 514E, as amended) or similar arrangement or program whether covered by Chapter 514E or not, including, but not limited to, any so-called "fractional ownership," "vacation license," "travel club membership," "club membership," "membership club," "destination club," "time-interval ownership," "interval exchange" (whether the exchange is based on direct exchange or occupancy rights, cash payments, reward programs or other point or accrual systems) or "interval ownership" as offered and established through a third-party vacation membership service provider who is in the business of providing and managing such programs; and (d) without the prior written consent of the Front Desk Unit Owner, no Hotel Unit or Resort Unit shall be used as part of any occupancy plan or for similar purposes, which shall include: (i) any joint ownership, whether or not ownership is deeded, of a Hotel Unit or Resort Unit where unrelated (i.e., non-family) owners share and enjoy use or occupation of the Hotel Unit or Resort Unit according to a periodic (fixed or floating) schedule based on time intervals, points or other rotational system; or (ii) any club, the membership of which allows access and use of one or more properties by its members based on availability and reservation priorities, commonly known as destination clubs (equity or non-equity) or vacation clubs (the uses discussed in subsections (c) and (d), above, are collectively referred to as a "Vacation Club Product"). *The foregoing restrictions may be enforced by the Association, the Front Desk Unit Owner, the Hotel Manager, and/or the Condominium Manager.**

The restrictions on Vacation Club Products above shall be read broadly, and, among other things, shall encompass any type of plan, the nature of which causes Hotel Units or Resort Units to be utilized by persons who have either joined a plan or program as a member or whose use is derivative of someone who has joined

a plan or program as a member. Determination by the Association, the Front Desk Unit Owner, the Hotel Manager, or the Condominium Manager that a violation of this provision exists shall be binding on the violating Owner, and the Board may promulgate and effectuate additional rules, regulations, procedures, and processes for enforcement of this provision, including but not limited to any surcharge or other charge or assessment that the Board shall solely determine.

2. **OCCUPANCY LIMITATION.** Unless further limited by County ordinance or applicable law, for the duration of the Franchise Agreement, no Resort Unit shall be occupied by more than two (2) individuals per bedroom plus two (2) individuals provided, however, that this occupancy limitation shall not apply to or restrict the Owner of a Resort Unit from hosting a larger group of invited guests with prior written notice to the Hotel Manager and subject to the limitations set forth in the House Rules.

3. **HOTEL UNITS.** In addition to the provisions generally applicable to the Hotel Units, the Hotel Units are "lodging units" as such term is defined in the LUO. Under the LUO, a lodging unit may not contain a kitchen. No Owner or Occupant of a Hotel Unit shall place or maintain in the Unit any fixture, appliance, or device of any kind for heating or cooking food, including any oven, toaster oven, microwave oven, toaster, rice cooker, or hotplate. In the event that any Owner or Occupant of a Hotel Unit breaches this use restriction and does not cure the breach within twenty-four (24) hours after notice from the Board or the Front Desk Unit Owner to do so, the Board, the Managing Agent, the Front Desk Unit Owner, the Hotel Manager, or any of their successors, assigns, agents, employees and other authorized personnel shall have the right of access to the Hotel Unit to remove the offending fixture, appliance or device, and, by accepting a deed to the Hotel Unit or taking occupancy of the Hotel Unit, all Owners and occupants waive any claim for trespass or otherwise in connection with such entry or removal. Any advertisement or listing of any Hotel Unit for a period of more than thirty (30) calendar days shall specify that the Hotel Unit is a lodging unit and contains no kitchen. Any rental agreement for a Hotel Unit shall contain a copy of this paragraph and shall require the tenant to comply with it and abide by it.

4. **SALES AND MARKETING; MARKETING MATERIALS.** Except for Hotel Units and Resort Units owned by Developer and used for sales and marketing purposes, no "open houses" or similar activity promoting the sale of a Hotel Unit or Resort Unit shall be permitted at the Project without the prior written consent of Developer. All sales and marketing materials provided to an Owner in connection with the Hotel Unit, Resort Unit, or the Project that are otherwise the property of the Hotel Manager, the Front Desk Unit Owner, or Developer, including, but not limited to, any imagery, logos, artistic renderings, weblinks, layout depictions, video clips, and other similar marketing materials, may not be used by an Owner or any rental agent in the promotion of any Unit in the Project in any fashion whatsoever without the prior written approval of the Hotel Manager, Front Desk Unit Owner, or Developer, as applicable, which approval may be withheld in their sole discretion. Any use of such material in any way by Owner or any rental agent without such permission will entitle the Hotel Manager, Front Desk Unit Owner, or Developer to immediately enjoin such use and to pursue any and all remedies against the Owner, independently of the obligations set forth in this Declaration. The Owner and/or rental agent will be fully responsible to pay for all costs incurred by the Hotel Manager, the Front Desk Unit Owner, or Developer in enforcing its proprietary rights in and to such material, including, but not limited to, any and all attorneys' fees and costs.

5. **LEASES AND RENTALS.** It is intended that the Hotel Units and Resort Units may be leased or used for transient rentals. As such, Hotel Unit Owners and Resort Unit Owners shall have the absolute right, without obtaining the consent or joinder of any other Owners, to lease or rent their Units or portions thereof, subject to the provisions of law, the Act and the Project Documents. All leases and rentals of Units or portions thereof shall be made in accordance with any applicable zoning ordinances and other applicable laws, including, but not limited to, the Residential Landlord Tenant Code, Chapter 521 of the Hawaii Revised Statutes, unless otherwise exempted therefrom. Notwithstanding the foregoing, to ensure the continuing operation of the Project pursuant to the Project Quality Standard, and to maintain the consistency of services offered at the Project, Owners may only rent their Hotel Units or Resort Units on their own or through a rental agent authorized by the Board.

6. **UNIT MAINTENANCE AGREEMENT.** All Hotel Unit Owners and Resort Unit Owners will be required to enter into a Unit Maintenance Agreement with the Front Desk Unit Owner (in the form then in use by the Front Desk Unit Owner) and each Hotel Unit Owner and Resort Unit Owner will be required to be a party to such Unit Maintenance Agreement for so long as such Owner owns a Hotel Unit or Resort Unit. No Owner shall have the right to opt out of receiving the services to be provided pursuant to the Unit Maintenance Agreement. All Owners will receive the Unit Maintenance Services specified in the Unit Maintenance Agreement at no cost upon

the other terms and conditions set forth therein. The Front Desk Unit Owner may delegate its duties under the Unit Maintenance Agreement to the Hotel Manager. The Unit Maintenance Agreement may contain restrictions on lease or rental of Hotel Units and Resort Units and other provisions and shall be recorded at the Bureau.

G. **PARKING UNIT.** The Parking Unit, and the Parking Unit Limited Common Elements shall be used for parking and any other purposes permissible by zoning, other applicable laws, this Declaration, and the Bylaws. The Parking Unit Owner shall have the right to lease, rent, or otherwise permit the use of all or a portion of the Parking Unit and the Parking Unit Limited Common Elements for any length or periods of time as the Parking Unit Owner may desire; provided, however, that the Parking Unit Owner shall be prohibited from reducing the total number of parking stalls, handicap parking stalls, or loading zones located at the Project, without the prior written consent of the Front Desk Unit Owner. To the extent the Parking Unit is owned or maintained by the Front Desk Unit Owner, the Parking Unit Limited Common Elements may be treated as part of the Hotel Shared Facilities for administrative purposes, subject to the license to use the Hotel Shared Facilities granted to the Association as discussed in **Section IV.P** of this Declaration, and, accordingly, the costs of maintenance and operation thereof shall be reimbursed by the Association through the Hotel Shared Facilities Fee. So long as the Parking Unit Owner elects to have the Parking Unit Limited Common Elements treated as part of the Hotel Shared Facilities, the Parking Unit Owner shall be entitled to no other remuneration for the use thereof from the Association or any Owner, but may generate and retain any revenue received from other third party sources.

H. **RECREATIONAL AMENITIES.** The Recreational Amenities are located on the roof of the Parking Structure and are Hotel Shared Facilities managed and maintained by the Front Desk Unit Owner. Except as otherwise provided herein, the Recreational Amenities shall only be used by the Hotel Unit Owners and Resort Unit Owners while in residence, Hotel Guests, non-residing guests while accompanied by a Hotel Guest, and any other person granted a license to use the Recreational Amenities by the Front Desk Unit Owner. The Recreational Amenities are to promote recreation and leisure activities and any other purposes permissible by the Condominium Documents; provided that, and subject to any Developer's Reserved Rights, at no time shall there be any commercial use of the Recreational Amenities to service any Person other than a Hotel Unit Owner, Hotel Guest, or any other person granted a license to use the Recreational Amenities, nor shall Recreational Amenities contain any third party independent commercial operation, provided that a third party independent commercial operation whose business is to provide services exclusively to Owners and their invitees may be permitted in the discretion of the Front Desk Unit Owner. Developer shall have the option, at its sole discretion, to add to, reconfigure, resize, relocate, and/or remove any or all of the Recreational Amenities, which may in turn increase or decrease the Common Expenses and, consequently, affect maintenance fees. This Section shall not be considered a representation and/or warranty of Developer that any or all of the Recreational Amenities will be built and/or offered to Hotel Unit Owners or Resort Unit Owners.

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

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

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

J. USE OF LIMITED COMMON ELEMENTS. Subject to the reserved rights of Developer herein, Owners shall have the right to use the Limited Common Elements appurtenant to their Units for any purpose permitted by zoning, other applicable laws, and the Condominium Documents. Notwithstanding anything provided to the contrary, or from which a contrary intent may be inferred, neither the Board nor the Association shall have any right to change the use of or lease or otherwise use any Limited Common Element without the prior written consent of the Owners of the Unit(s) to which such Limited Common Element is appurtenant. The Owners of at least sixty-seven percent (67%) of the Common Interest that is appurtenant to Units to which any particular Limited Common Element is appurtenant shall have the right to change the use of a particular Limited Common Element.

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

L. ADA COMPLIANCE. To the extent required, the Project will be constructed in compliance with the Americans with Disabilities Act (42 U.S.C. §§ 12101 et seq.), as amended ("**ADA**"). All such areas required to be ADA compliant, as well as all Improvements therein, must at all times comply with the ADA, as well as all other laws, ordinances, building codes, rules, regulations, orders and directives of any governmental authority having jurisdiction now or in the future applicable to such ADA areas. Any Hotel Units or Resort Units designated as "**ADA Accessible Units**", as more specifically identified in **Exhibit "B"** will be designed and constructed to be accessible to disabled persons. All ADA Accessible Units, as well as all improvements therein, must at all times be in compliance with the ADA as well as all other laws, ordinances, building codes, rules, regulations, orders, and directives of any governmental authority having jurisdiction now or in the future applicable to such ADA Accessible Units. Each Owner of an ADA Accessible Unit shall not modify such Unit without the prior written approval of the Front Desk Unit Owner and the Board, and shall be responsible, at such Owner's sole cost and expense, and shall take all actions required, to cause such ADA Accessible Unit to be in compliance in all respects with all applicable laws.

M. NUISANCES No nuisances shall be allowed in the Units which is a source of annoyance to the Owners or Occupants of other Units or which interferes with the peaceful possession or proper use of the Units by its Owners or Occupants. Notwithstanding the foregoing, the Commercial Units may be used in accordance with **Section VI.D.1** herein, and commercially reasonable standards for noise and nuisance as to such Commercial Units will be permitted at the Project.

N. WEIGHT RESTRICTION. Hard and/or heavy surface floor coverings, including, but not limited to, tile, marble, wood, or the like, may not be installed in any part of a Flats Unit or Hotel Unit without the prior approval of the Board. Furthermore, the Owner must ensure that a sound control underlayment system which meets an Impact Insulation Criteria (IIC) acoustic standard of 54 or better is used, which system must be approved by the Association. The installation of the foregoing insulation materials shall be performed in a manner that provides proper mechanical isolation of the flooring materials from any rigid part of the Tower, whether of the concrete subfloor (vertical transmission) or adjacent walls and fittings (horizontal transmission) and must be installed prior to the Unit being occupied. The Association may require a structural or acoustical engineer to review certain proposed Improvements, with such review to be at the Owner's sole expense. Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of the violations.

O. ADVERTISEMENTS; SIGNS. Subject to Developer's Reserved Rights or easement rights or restrictions set forth herein and any applicable House Rules or Hotel Rules, Flats Unit Owners, Hotel Unit Owners, and Resort Unit Owners shall not place advertisements, posters, or signs of any kind, including, without limitation,

any "For Sale" or "For Rent" signs, on the exterior of any Unit, in the windows of a Unit, in the exterior portions of the Limited Common Element balcony appurtenant to the Unit, in the Limited Common Elements appurtenant to the Units, or in any Common Element, unless prior written approval is received from the Association. The Commercial Units shall have the right to affix signs to any portion of the Commercial Unit and the Limited Common Elements appurtenant solely thereto provided the same are consistent with the Project Quality Standard, but may not place any signs or advertisements in any Common Element without the prior written approval of the Association.

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

Q. **PETS.** Flats Unit Owners are permitted to keep pets in their Unit subject to the limitations set forth in the House Rules. Hotel Unit Owners and Resort Unit Owners shall not be permitted to keep pets in their Unit. Notwithstanding this provision, visually impaired persons, hearing impaired persons, and physically and mentally impaired persons, shall be allowed to use the services of a "service animal" as such term is defined under the ADA, and an "emotional support" animal.

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

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

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

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

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

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

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

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

VII. ADMINISTRATION OF THE PROJECT.

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

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

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

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

3. Keep all Common Elements and Limited Common Elements appurtenant to more than one (1) Unit in a strictly clean and sanitary condition, with all necessary reparations whatsoever, in good order and condition, and repair and make good all defects in the Common Elements and Limited Common Elements appurtenant to more than one (1) unit required to be repaired by the Association and observe and do anything required by all laws, ordinances, rules, and regulations that apply from time to time to the Project or the use of it. Because portions of the Common Elements and Limited Common Elements are visible to and, in some cases, utilized by the general public, including customers of the Commercial Units, these areas may be maintained by the Commercial Unit Owners, in order to be consistent with the Project Quality Standard, and certain costs arising therefrom shall be shared by the all Owners as Common Expenses.

4. In performing the operations set forth in this Section, any actions of the Association to (a) alter the exterior portion of the Sky East Parking Structure (subject to the Reciprocal Easement Agreement) and/or Tower, (b) alter the appearance of any portion of the Commercial Units, or (c) affect in any way the Limited Common Elements appurtenant to all Commercial Units or the Limited Common Elements solely appurtenant to one (1) Commercial Unit, shall be subject to the consent of a Majority of the Commercial Class.

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

6. Before commencing or permitting construction of any Improvement on the Project where the cost thereof exceeds Five Hundred Thousand and No/100 Dollars (\$500,000.00), obtain a performance and labor and materials payment bond, naming as obligees the Board, the Association and collectively all Owners and their respective Lenders of record, as their respective interests may appear, with a responsible corporate surety authorized to do business in the State of Hawaii, guaranteeing the full and faithful performance of the contract for such

construction free and clear of any mechanics' and materialmen's liens for such construction, the payment of all subcontractors, laborers, and materialmen, and the discharge of any mechanics' and materialmen's liens for a penal sum of not less than one hundred percent (100%) of the estimated cost of such construction. As an alternative, and under the appropriate circumstances, the Board may approve a written guaranty or other instrument guaranteeing the full and faithful performance of the contract for such construction free and clear of any mechanics' and materialmen's liens for such construction, the payment of all subcontractors, laborers, and materialmen, and the discharge of any mechanics' and materialmen's liens.

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

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

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

B. DEVELOPER, COMMERCIAL UNIT OWNERS, FLATS UNIT OWNERS, FRONT DESK UNIT OWNER, HOTEL UNIT OWNERS, PARKING UNIT OWNER, AND RESORT UNIT OWNERS RIGHTS AND LIMITATIONS. Except as specifically provided herein, the Association shall have all of the powers set forth in Section 514B-104 of the Act.

All Unit Owners shall pay and be responsible for the operation, care, upkeep, repair, maintenance, and cost of their respective Units. The Commercial Unit Owner(s) shall pay and be responsible for the operation, care, upkeep, maintenance, and cost of any Limited Common Elements appurtenant to their respective Commercial Units, and the Limited Common Elements appurtenant to all Commercial Units to the exclusion of the Flats Units, the Front Desk Unit, the Hotel Units, and the Resort Units except as otherwise set forth herein or in the Bylaws. The Front Desk Unit Owner shall pay and be responsible for the operation, care, upkeep, maintenance, and cost of any Limited Common Elements appurtenant to the Front Desk Unit, subject to the right to payment of the Hotel Shared Facilities Fee from the Association. The Flats Unit Owners shall pay for, and the Association shall be responsible for the operation, care, upkeep, maintenance, and cost of any Limited Common Elements appurtenant to the Flats Units. The Hotel Unit Owners shall pay for, and the Association shall be responsible for the operation, care, upkeep, maintenance, and cost of any Limited Common Elements appurtenant to the Hotel Units, except as otherwise set forth herein or in the Bylaws. The Parking Unit Owner shall pay and be responsible for the operation, care, upkeep, maintenance, and cost of any Limited Common Elements appurtenant to the Parking Unit, subject to any right to payment from the Association set forth herein or in the Bylaws. The Resort Unit Owners shall pay for, and the Association shall be responsible for the operation, care, upkeep, maintenance, and cost of any Limited Common Elements appurtenant to the Resort Units, except as otherwise set forth herein or in the Bylaws. All Owners shall pay and be responsible for the operation, care, upkeep, repair, maintenance, and cost of the Common Elements.

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

C. CAPITAL UPGRADES OF COMMON ELEMENTS. Whenever in the judgment of the Board, the Common Elements shall require Capital Upgrades costing in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, and the making of such Capital Upgrades shall have been approved by a Majority of Owners and the Front Desk Unit Owner, the Board shall proceed with such Capital Upgrades and may assess the Owners for the cost thereof as a Common Expense. If such Capital Upgrades, if not made, could reasonably result in a threat to the health or safety of the Owners or a significant risk of damage to the Project, then such actions may be taken without the prior approval of Owners and/or the Front Desk Unit Owner. Any Capital Upgrades costing less than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year may be made by the Board without approval of the Owners, provided said Owners are given at least ten (10) business

days written notice of a special meeting at which actions are approved by an amendment to the budget by the Board. The cost of such Capital Upgrades shall constitute a Common Expense. The foregoing shall not apply to operational expenses, which shall be subject to applicable provisions of the Condominium Documents. This Section shall not apply to any Capital Upgrades made by Developer when exercising the Developer's Reserved Rights.

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

E. EXTRAORDINARY ACTIONS. Although the Board shall generally have broad powers to regulate, govern, and manage the Project, the power to approve certain Extraordinary Actions (as defined below) shall remain vested in the Association. Any provision of this Declaration or the Bylaws to the contrary notwithstanding, the Board and the Association shall not be authorized to take any Extraordinary Actions during the Developer Control Period without the affirmative vote of Owners representing not less than eighty percent (80%) of the Owners and Developer, and after the end of the Developer Control Period, without the affirmative vote of Owners representing not less than a Majority of Owners. As used herein, the term "**Extraordinary Actions**" shall mean any and all actions taken by or on behalf of the Association, including, without limitation, amending this Declaration to change the permitted use of the Common Elements, commencing or maintaining any litigation, defending an action, filing a counterclaim, mediation, or similar proceeding (except for routine Common Expense collection matters, or actions required to enforce the restrictions on use of Units, rules or architectural controls) which would reasonably require the expenditure of funds in excess of One Hundred Thousand Dollars (\$100,000.00) in the aggregate during any fiscal year of the Association, and any determinations pursuant to Section 514B-41(c) of the Act and that are not prohibited by an express provision of this Declaration. Extraordinary Actions shall not be deemed to include Capital Upgrades or actions by the Association in connection with operational expenses, including the establishment and utilization of reserves for the repair or replacement of Common Elements.

F. MAINTENANCE OF LANDSCAPING. Developer, during the Developer Control Period, and the Association may be required by the County or State to maintain the area between the edge of the pavement along Kapiolani Boulevard to the Project boundary. Such maintenance and any costs associated therewith shall be Common Expenses.

G. HOSPITALITY SERVICES. In order to ensure that the Project operates pursuant to the Project Quality Standard, the Front Desk Unit Owner shall manage and provide Hotel Guests with Hospitality Services. The Front Desk Unit Owner shall have the authority to assign or subcontract the provision of Hospitality Services to the Hotel Manager or others selected by the Front Desk Unit Owner, in its sole discretion. If the Front Desk Unit Owner delegates its duties hereunder to the Hotel Manager, the Hotel Manager shall have all corresponding rights as may be provided to the Front Desk Unit Owner in this Section. The Association shall cause each Hotel Unit Owner and Resort Unit Owner to observe and abide by the following provisions, which provisions shall not be amended or terminated without the consent of the Front Desk Unit Owner:

1. BASE SERVICES. The Front Desk Unit Owner shall provide Base Services to Hotel Guests. Base Services offered to Hotel Guests, subject to the Front Desk Unit Owner's approval and consent, may include, but are not limited to, concierge services, luggage services, and front desk registration services that are generally not provided in a standard non-resort residential project. These Base Services are intended to provide all Hotel Guests with a uniform resort-like experience when in residence at the Project. Owners acknowledge that the Front Desk Unit Owner may alter the types and amounts of Base Services provided at the Project or may offer additional Base Services that in the Front Desk Unit Owner's discretion, is necessary to maintain the Project Quality Standard or to comply with the Franchise Agreement, which may in turn affect the total cost of such services and, accordingly, increase or decrease the Hospitality Services Fee, and consequently, the Hotel and Resort Class Common Expenses attributable to each Hotel Unit and Resort Unit.

a. **Payable by Association.** Each Hotel Unit Owner and Resort Unit Owner will be required to pay for these Base Services, and the Front Desk Unit Owner shall charge the costs associated with such services to the Association as the Hospitality Services Fee. The Association shall be obligated to pay to the Front Desk Unit Owner the Hospitality Services Fee, on the first day of each month, which Hospitality Services Fee shall be an amount equal to one-twelfth (1/12) of the Hospitality Services Budget, as defined below. The Association shall allocate the Hospitality Services Fee among the Hotel Unit Owners and the Resort Unit Owners in accordance with their respective Hotel and Resort Class Common Interest, as a Hotel and Resort Class Common Expense.

b. **Determination of Hospitality Services Fee.** The Front Desk Unit Owner shall determine annually the composition of the Base Services necessary to continue the operation of the Project pursuant to the Project Quality Standard, and shall prepare a budget for such services for the following calendar year (the "**Hospitality Services Budget**"). The Front Desk Unit Owner shall present to the Board, at least sixty (60) calendar days prior to the end of the calendar year, the Hospitality Services Budget for the ensuing calendar year.

Upon receipt, the Board shall have thirty (30) calendar days to review the Hospitality Services Budget. If the Hotel Directors and Resort Directors have any objections to the Hospitality Services Budget, the Hotel Directors and Resort Directors shall notify the Front Desk Unit Owner in writing, which writing shall specify the objections. Within a reasonable period after receipt of such written notice, which period shall not exceed thirty (30) calendar days, a representative of the Hotel Directors and Resort Directors and a representative of the Front Desk Unit Owner shall meet at a mutually acceptable place within or near the Project to discuss the objections of the Board, and shall negotiate in good faith to resolve such objections. In the event the Hotel Directors, Resort Directors, and the Front Desk Unit Owner are unable to resolve the objections, the parties agree to submit the matter to alternate dispute resolution as provided in **Section XXXVII** of this Declaration.

Each Owner acknowledges that the Front Desk Unit Owner is obligated to maintain the Base Services that are consistent with, and appropriate to, a resort destination operating pursuant to the Project Quality Standard, and will enter into contracts with vendors and other contractors to provide Base Services to the Hotel Guests consistent with the Project Quality Standard. Accordingly, notwithstanding any dispute regarding the Hospitality Services Budget, the Association shall pay to the Front Desk Unit Owner the Hospitality Services Fee calculated in accordance with the Hospitality Services Budget prepared by the Front Desk Unit Owner for the previous calendar year pending the resolution of any dispute (as increased by undisputed items and any increase in the cost of insurance, utilities, taxes, emergency expenditures, and expenditures necessary to meet life safety requirements of the Hotel Manager or as required under any Franchise Agreement and the Front Desk Unit Owner may disburse such amounts so collected to any third-party vendor or contractor without liability to the Association for amounts paid. Additionally, the Front Desk Unit Owner shall be granted broad discretion in determining the level of service necessary to maintain the Project Quality Standard, and its determination shall not be reversed unless there is an abuse of such discretion.

The Hospitality Services Budget shall be reconciled at least once per calendar year by the Front Desk Unit Owner; provided, however, that the Front Desk Unit Owner may reconcile the Hospitality Services Budget more frequently if it determines that the actual expenses associated with the Base Services will result in a shortfall in any calendar month. In the event the actual expenses associated with the Base Services differ from the Hospitality Services Fee collected for the calendar year or calendar month in question, the Association shall: (i) remit the difference to the Front Desk Unit Owner within sixty (60) calendar days of the end of the calendar year or calendar month and assess the shortfall to all Hotel Units Owners and Resort Unit Owners as a special assessment pursuant to the allocation in **Section VII.G.1.a**, above; or (ii) apply any surplus in amounts collected to the following year's or month's Hospitality Services Fee.

Notwithstanding the foregoing, where the actual expenses associated with the Base Services for any calendar year exceeds the Hospitality Services Budget, the Association shall not be required to reimburse the Front Desk Unit Owner any amounts in excess of one hundred twenty percent (120%) of the Hospitality Services Budget, except in "emergency situations," as such term is defined in Section 514B-148 of the Act, or with the prior approval of the Majority of the Hotel and Resort Class.

c. **Failure to Make Payment.** The Association shall include the Hospitality Services Fee in its annual budget, which fee shall be assessed to all Hotel Unit Owners and Resort Unit Owners as a Class Common Expense payable by all Hotel Unit Owners and Resort Unit Owners, and shall take such additional

measures as are reasonably necessary for the timely payment of the Hospitality Services Fee to the Front Desk Unit Owner. In the event that any installment of the Hospitality Services Fee is not paid when due, the Front Desk Unit Owner shall give written notice of such default to the Association. If the Association fails to cure its default in paying the amount payable hereunder within ten (10) business days after receipt of such notice of default, or within any extended period granted by the Front Desk Unit Owner in its sole discretion, the Front Desk Unit Owner may accelerate the remaining installments of the Hospitality Services Fee for the then current calendar year and may cease providing the Base Services; provided that the Front Desk Unit Owner shall continue to make such Base Services available to any Hotel Unit Owner or Resort Unit Owner if such Owner pays his or her proportionate share of the Hospitality Services Fee for each Unit such Owner owns that would be payable to the Front Desk Unit Owner by the Association if the Base Services provided hereunder had not been terminated.

d. **Assessment and Lien Rights; Enforcement.** The Front Desk Unit Owner shall have a lien on, and a security interest in, the Association Assets in an amount equal to all Hospitality Services Fees, interest and late charges, and costs associated with the collection thereof. In the event the Association shall fail to make payments of the Hospitality Services Fees when due, to the extent permitted by applicable law, the Front Desk Unit Owner may enforce the lien hereby granted to secure the payment of such sums as the holder of a security interest may, to the fullest extent permitted by applicable law.

Although the Association shall be primarily liable for the payment of the Hospitality Services Fee, each Hotel Unit Owner and Resort Unit Owner shall be jointly and severally liable for his or her pro-rata share of the Hospitality Services Fee, such amounts being a personal obligation and debt of such Owner at the time the Hospitality Services Fee is levied. For the purposes of this Section, each Owner's "**pro-rata share**" of the Hospitality Services Fee shall refer to the said Unit's allocation of Hotel Shared Facilities Fee as set forth above. To the extent permitted by law, the amount of the Owner's pro-rata share of the allocation of the Hospitality Services Fee shall be: (i) a charge and continuing lien in favor of the Front Desk Unit Owner after the time that it is due and payable; and (ii) the personal obligation of the Owner at the time it is due and payable. No Owner may exempt himself or herself from liability for payment of the Hospitality Services Fee by non-use of the Hospitality Services or abandonment of his or her Unit. The obligation to pay the Hospitality Services Fees is a separate and independent covenant of each Owner.

All amounts of the Hospitality Services Fee due and unpaid (including accelerated sums) shall, to the extent notice thereof is filed at the Bureau, constitute a lien and security interest on each Owner's Unit, to the extent of such Unit's pro-rata share of the unpaid Hospitality Services Fee, together with all interest, late charges, and collection and enforcement costs thereon or with respect thereto. At the option of the Front Desk Unit Owner, the lien may be foreclosed upon by the Front Desk Unit Owner in like manner as a mortgage of real property, including, but not limited to, by way of power of sale, as specified and in accordance with the provisions of Chapter 667 of the Hawaii Revised Statutes, as amended, or such successor statute as may be applicable, and said lien shall extend to cover all money and other proceeds and amounts received on account of a Unit and its use, including all rents, insurance, and condemnation proceeds, sales proceeds, cash and non-cash proceeds as defined in Section 490:9-306 of the Hawaii Revised Statutes, as amended, or such successor statute as may be applicable. The lien and security interest created herein shall be subject and subordinate to first mortgages and security interests given by an Owner in good faith and for value to any prior Owner or to any institutional lender and filed prior to the filing of a notice of lien hereunder by the Front Desk Unit Owner, which mortgages and security interests shall be superior to the Front Desk Unit Owner's lien and security interest. Any Owner may obtain a release of the lien created hereunder by making payment to the Front Desk Unit Owner of such Owner's proportionate annual share of the Hospitality Services Fee for each Unit such Owner owns. Upon receipt of such payment, the Front Desk Unit Owner shall file an appropriate instrument to effectuate the release of said Owner's Unit(s) for the lien provided for in this paragraph at the Owner's expense.

e. **General Excise Tax.** The Association shall be responsible for all general excise tax pursuant to Chapter 237 of the Hawaii Revised Statutes (and other applicable taxes) accruing on the Hospitality Services Fee. If sums payable for the Hospitality Services Fee are deemed subject to the general excise tax or other applicable tax, the Association shall pay such additional amount as may be necessary to permit the Front Desk Unit Owner to receive the sum it would have received should the general excise tax or other tax not apply.

f. **No Waiver.** In order to maintain the Project Quality Standard, the Hotel Unit Owners and Resort Unit Owners shall not be relieved of their obligation to pay for the Base Services through the

Common Expense by waiving their rights to use the Base Services. This Section shall not be amended or terminated without the prior written consent of the Front Desk Unit Owner.

2. **A LA CARTE SERVICES.** The Front Desk Unit Owner shall also offer A la Carte Services, which may include more frequent housekeeping services, room service, maintenance service, engineering service, and/or private concierge services. The Front Desk Unit Owner may, on commercially reasonable terms, bill the cost of any A la Carte Services to each Hotel Unit Owner and Resort Unit Owner who utilizes these services, or may create an incidental account to be paid by any authorized Hotel Guest to the Front Desk Unit Owner for goods and/or services from one or more vendors providing these A la Carte Services at the Project. The Front Desk Unit Owner shall have the right to discontinue providing the A la Carte Services to the Hotel Guests at any time in its sole discretion.

3. **CHECK-IN REQUIRED.** Hotel Unit Owners and Resort Unit Owners, or their rental agent, are required to notify the Front Desk Unit Owner in writing of the name, address, expected check-in time and date, and expected check-out time and date of the Hotel Unit Owner, Resort Unit Owner, or any other Hotel Guest occupying the Owner's Hotel Unit or Resort Unit at least seventy-two (72) hours in advance of the expected arrival time. The Front Desk Unit Owner is specifically authorized to deny the check-in of any person whose name has not been furnished to it at least seventy-two (72) hours in advance of the expected arrival time. The Front Desk Unit Owner is further specifically authorized to deny the check-in of any person into a Hotel Unit or Resort Unit where the Owner has not furnished the Front Desk Unit Owner with the evidence of Owner's insurance required pursuant to **Section XII**, below, or such other commercially reasonable insurance as may be required by the Front Desk Unit Owner. All Hotel Units and Resort Units may be subject to a surcharge to compensate for any additional financial impact such use may have for the Project, as determined by the Front Desk Unit Owner. Without limiting the generality of the foregoing, Front Desk Unit Owner may charge a registration fee, in an amount reasonably determined and established annually by the Front Desk Unit Owner as the cost of providing services such as check-in and check-out service, registration services, and key service. Such registration fee applies each time a Hotel Unit or Resort Unit is occupied by any person when the Owner is not in residence. The registration fee shall be paid either on demand at check out by the Hotel Guest or through such other means, as determined by the Front Desk Unit Owner and shall be assessed once per stay. Any amounts not paid by the Hotel Guest or otherwise shall be invoiced to the Hotel Unit Owner or Resort Unit Owner and shall be payable within thirty (30) calendar days of delivery of such invoice.

Every Hotel Guest shall present himself or herself to the Front Desk Unit Owner at the commencement and conclusion of such person's occupancy at the Project. At the time of check-in, the Front Desk Unit Owner shall collect any and all information deemed necessary by Front Desk Unit Owner to provide for the safety, security, and operation of the Project. The Front Desk Unit Owner shall also establish a credit card account for the person (including the Hotel Unit Owner or Resort Unit Owner) authorized to check in to the Hotel Unit or Resort Unit to stand as security for any damage caused to the Project by the Hotel Guest or for incidental charges incurred by the Hotel Guest. Should electronic keys or card keys be utilized at the Project, the Front Desk Unit Owner shall provide a key to the authorized Hotel Guest. The Front Desk Unit Owner has the right, in its sole discretion, to deny access to the Hotel Unit or Resort Unit if: (a) the Front Desk Unit Owner has the reasonable belief that the intended occupant of the Unit will not comply with the terms of the Project Documents; (b) the Front Desk Unit Owner determines that the intended occupants are under age 18 and not accompanied by a responsible adult; (c) the Front Desk Unit Owner determines that the persons attempting to check in are intoxicated or otherwise intending to engage in appropriate or illegal activity; or (d) the Front Desk Unit Owner reasonably believes that the number of intended occupants of the Unit will exceed the number of permitted occupants established in the Project Documents or any fire, health, or safety regulations promulgated by the appropriate governmental agency.

4. **RENTAL AGENT REQUIREMENT.** Any Hotel Unit Owner or Resort Unit Owner who decides to rent or lease his or her Hotel Unit or Resort Unit shall lease his or her Hotel Unit or Resort Unit only through himself or herself, or a rental agent meeting the criteria set forth herein and who has been authorized by the Board. The rental of the Hotel Units and Resort Units shall be accomplished in a manner that provides the benefit of rental to Owners while at the same time conforming to Project Quality Standard and reducing any disruption to the use and enjoyment of other Hotel Units and Resort Units and the Project by other Owners and Occupants. This goal will be accomplished at the Project by means of a review and approval process to be managed by the Board to ensure that authorized rental agents understand the goals of the Project and its Owners, the nature of the Project, the desire to maintain the Project Quality Standard in all regards, the undesirability of transient guests who might be looking for a

boisterous resort experience, and the manner in which rental and check-ins must be accomplished at the Project, including the requirements that all persons, including Owners who do not reside at the Project, are required to check in with the Front Desk Unit Owner so that the Front Desk Unit Owner at all times knows which persons are entitled to use the Project property. For those Owners properly using the services of an authorized rental agent, the right of an Owner to lease or rent his or her Hotel Unit or Resort Unit shall not be subject to the approval of the Association; however, any lease or rental arrangement will be deemed to be an acknowledgment and consent on the part of the lessee-sublessee-tenant to use, occupy, and possess such Hotel Unit or Resort Unit in conformance and compliance with the provisions of the Project Documents.

5. **RENTAL AGENT CRITERIA.** Any person or entity other than the Hotel Manager or the Front Desk Unit Owner desiring to become an authorized rental agent shall make application to the Board for approval and demonstrate compliance with the following criteria, and any additional criteria that may be established by the Board from time to time:

a. Rental agent is registered to do business in the State of Hawaii, is in good standing and has current permits, licenses, and registrations required by law for it to perform necessary rental functions, including, but not limited to, registration to operate transient rentals or holding a current license as a real estate broker with the Department of Commerce and Consumer Affairs of the State of Hawaii, and is a resident of the County.

b. Rental agent agrees to comply with applicable Hawaii State law pertaining to client trust accounts and commingling of funds with other operating accounts in the Project.

c. Rental agent agrees to be responsible for and be liable for filings and paying all applicable Hawaii State taxes generated from its rental operations at the Project, including, without limitation, any general excise taxes or transient accommodations taxes, as may be applicable.

d. Rental agent agrees to obtain and maintain, at such rental agent's expense, (1) a policy of general liability insurance with a limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) per occurrence, (2) employee and/or agent worker's compensation and employers liability insurance, (3) auto liability insurance with a limit of not less than One Million and No/100 Dollars (\$1,000,000.00), and (4) professional errors and omissions liability insurance for any errors or omissions arising out of the professional services provided by the rental agent. Such insurance policies (except workers compensation and professional liability) shall name the Board, the Front Desk Unit Owner, the Hotel Manager, and the Association as additional insureds. The rental agent shall provide the Front Desk Unit Owner with a certificate of insurance confirming that such insurance is being maintained.

e. Rental agent agrees to comply with the Project Documents.

f. Any other criteria as may be established by the Board to ensure that the Project complies with the Project Quality Standard.

The Board shall reasonably and timely review and approve rental agents that meet the criteria to become a Board-authorized rental agent. Furthermore, should any rental agent fail to adhere to the criteria expressed above, the Board may withdraw a rental agent's approval at any time at its sole discretion.

6. **INSURANCE.** Any Owner renting or leasing a Hotel Unit or Resort Unit in accordance with this Section shall, at Owner's expense, acquire and maintain in effect with respect to the Hotel Unit or Resort Unit insurance required under **Section XII** herein, or such other commercially reasonable insurance as may be required by the Front Desk Unit Owner.

H. **HOTEL SHARED FACILITIES.** The maintenance and administration of the Hotel Shared Facilities shall be vested in the Front Desk Unit Owner, subject to the right of the Front Desk Unit Owner to reimbursement for the expenses incurred for the maintenance, use, and upkeep of the Hotel Shared Facilities as provided in **Section IV.P**. Subject to having the financial resources to do so, the Front Desk Unit Owner shall ensure that the maintenance, use, and upkeep of the Hotel Shared Facilities and the services offered therein is consistent with the Project Quality Standard and shall observe applicable laws and regulations in its operation thereof; provided that the Front Desk Unit Owner may delegate its duties hereunder to the Hotel Manager or to such other person or party

as the Hotel Manager may elect, in its sole discretion. Without limiting the generality of the foregoing, and subject to having the financial resources to do so:

1. **IMPROVEMENTS REQUIRED BY LAW.** The Front Desk Unit Owner shall or shall cause to be secured, made, built, maintained, and repaired all sewers, drains, roads, curbs, sidewalks, street lights, parking areas, and other improvements that may be required by law to be secured, made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Hotel Shared Facilities or any part thereof.

2. **OBSERVANCE OF LAWS CONCERNING MAINTENANCE OF THE PROJECT.** The Front Desk Unit Owner shall maintain the Hotel Shared Facilities in accordance with a Project Quality Standard, and in a strictly clean and sanitary condition and in accordance with the Project Quality Standard and observe and perform all laws, ordinances, rules, and regulations now or hereafter made by any governmental or community authority during the period that they are applicable to the Project or the use thereof.

3. **FRONT DESK UNIT OWNER TO MAINTAIN PROJECT IN GOOD ORDER.** The Front Desk Unit Owner shall well and substantially repair, maintain, amend, and keep all Hotel Shared Facilities, including, without limitation, the Building Structure, with all necessary repairs and additions thereto in good order and condition and in accordance with the Project Quality Standard except as otherwise provided herein, and maintain and keep the Hotel Shared Facilities in a neat and attractive condition.

4. **FRONT DESK UNIT OWNER NOT TO PERMIT WASTE OR IMPROPER USE.** The Front Desk Unit Owner shall not make or suffer any waste or unlawful, improper, or offensive use of the Hotel Shared Facilities.

5. **OBSERVANCE OF SETBACKS.** The Front Desk Unit Owner shall observe any setback lines affecting the Project.

VIII. **MANAGING AGENT.**

Fiscal and administrative management of the Project and the physical management of the Common Elements and Limited Common Elements appurtenant to more than one (1) Unit, and other Limited Common Elements that the Association shall be responsible to maintain shall be conducted for the Association by a qualified, corporate Managing Agent who shall be appointed by the Association, in accordance with the Bylaws. The Condominium Management Agreement shall contain a requirement that the Managing Agent operate the Project at a Project Quality Standard and further provide for the right of the Board to terminate the Condominium Management Agreement if the Project is not operated or maintained at such standard by the Managing Agent.

IX. **SERVICE OF LEGAL PROCESS.**

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

X. **ALTERATION OF THE PROJECT.**

A. **IN GENERAL.** This Section applies, except as otherwise provided by the FHA, ADA, and except as otherwise provided in this Declaration. This Section does not apply to changes made by Developer when exercising the Developer's Reserved Rights. Neither the Association nor any Owner may make any structural changes or additions to the Common Elements, the Limited Common Elements, or the Units that are different in any material respect from the Condominium Map, except pursuant to any requisite vote by the Association and amendment of this Declaration, or as otherwise set forth herein or in the Bylaws. Any such restoration, replacement, construction, alteration, or addition must be made in accordance with complete plans and specifications that are first approved by the Board in writing, and with the consent of the Front Desk Unit Owner. Promptly after the work is completed, the Association, Developer, or the Owner must record the amendment along with any necessary changes to the Condominium Map. This Section does not apply to "**nonmaterial structural additions to the Common Elements**" as that term is used in Section 514B-140 of the Act. Nothing in this Section (1) authorizes any work or change that would jeopardize the soundness, safety or structural integrity of any part of the Project; (2) authorizes any work or change by an Owner that would materially change the uniform external appearance of the Project without the approval

of the Board and the Front Desk Unit Owner; (3) authorizes any work or change by the Board that would materially change the exterior of the Sky East Parking Structure (subject to the Reciprocal Easement Agreement) or Tower without the consent of the Front Desk Unit Owner; (4) prohibits the Board from making or requiring that an Owner make changes within any Unit or Limited Common Element appurtenant thereto as needed to comply with the fire code and all other laws that apply to the Project; and (5) prohibits Developer from completing the initial Project construction and Improvements.

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

Each Flats, Hotel, or Resort Unit Owner has the right, subject to the terms and provisions in the Condominium Documents and the approvals required above, which approvals shall not be unreasonably withheld or delayed, to make any of the following changes, additions, and Improvements solely within the Owner's Unit or within a Limited Common Element appurtenant only to the Owner's Unit, at such Owner's sole cost and expense:

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

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

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

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

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

Each Commercial Unit Owner has the right, subject to the terms and provisions in the Condominium Documents, to make any of the following changes, additions, and Improvements solely within the Owner's Unit or within a Limited Common Element appurtenant only to the Owner's Unit, at such Owner's sole cost and expense:

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

2. To finish, change, or substitute any plumbing, electrical, or other fixtures attached to the ceilings, floors, or walls as appropriate for the use of the Unit;

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

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

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

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

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

D. BY THE BOARD. The Board has the right to change the exterior appearance of the Project, without approval of the Association, but with the consent of the Front Desk Unit Owner; provided that the cost of such change shall not exceed five hundred thousand dollars (\$500,000.00). During the Development Period, however, the Board may not pursue any such change without Developer's prior written approval.

E. APPROVAL OF THE BOARD; CONDITIONS TO BOARD APPROVAL. It is intended that the Parking Structure and the Tower present a uniform and attractive appearance in accordance with the Project Quality Standard. Accordingly, whenever any proposed modification, change, addition to, or alteration of any Unit or Limited Common Element appurtenant thereto will impact such appearance, the Owner(s) must submit a written request for Board approval, which request must include plans and specifications depicting or showing the proposed modification, change, addition, or alteration. The Board must respond to a request for approval within forty-five (45) calendar days after it receives such a request. The request will be deemed approved unless, within the forty-five (45) day period, the Board (i) disapproves the request, (ii) asks the Owner to make changes, or (iii) notifies the Owner that other Owners have challenged the request. The Board shall base its decision to grant or deny approval at least in part upon considerations of whether (and to what extent) the proposed modification, change, addition, or alteration will adversely affect the exterior appearance of the Project. Except in connection with proposed modifications to accommodate Owners with disabilities, if the Board or the Front Desk Unit Owner determines that the proposed modification, change, addition, or alteration will adversely affect the appearance of the exterior of the Project or is not consistent with the Project Quality Standard, the Board shall not grant approval. If the Board decides that a proposed modification, change, addition, or alteration will not adversely affect the appearance of the exterior of the Project and decides to permit the modification, change, addition, or alteration as consistent with the Project Quality Standard, the Board shall first provide all Owners with written notice, and the proposed modification, change, addition, or alteration shall not be implemented until the Owners shall have an opportunity to challenge the determination, and, if challenged

by any Owner, then the proposed modification, change, addition, or alteration will require the approval of Owners of Units holding no less than sixty seven (67%) of the Common Interests. The Board may impose reasonable conditions upon the Board's approval of any modification, change, addition, or alteration over which it has approval authority under this Section in the Board's sole discretion, including, without limitation the following:

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

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

3. For modifications, changes, additions, alterations, and other work the estimated cost of which shall exceed five hundred thousand dollars (\$500,000.00), the Owner of the Unit provide a performance bond and a labor and materials payment bond in a face amount equal to one hundred percent (100%) of the estimated cost of the construction, naming the Board on behalf of the Association, the Owners, and their Lenders, as their respective interests may appear, as additional obligees. As an alternative, and under the appropriate circumstances, the Board may approve a written indemnity, in form and content acceptable to the Association, under which the Owner of the Unit agrees to indemnify and save harmless the Association, the Owners, and their Lenders, as their respective interests may appear, from and against any claims, demands or liability arising out of any failure by the Owner to pay all costs and expenses for any and all labor, materials, or supplies for any work performed in or to the Unit or appurtenant Limited Common Element.

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

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

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

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

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

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

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

I. FACADE SIGNAGE; COMMERCIAL UNIT OWNERS AND DEVELOPER. Each Commercial Unit Owner shall have the exclusive right for the benefit of its Commercial Unit, to install, maintain, repair and replace (from time to time) signs and other displays on the exterior facade of the Sky East Parking Structure and the Commercial Unit or the Limited Common Elements appurtenant solely thereto (individually, a "**Facade Sign**" and collectively, the "**Facade Signs**"), in a size and location as permitted by and subject to any zoning laws or other governmental requirements. The Facade Signs shall be consistent with the Project Quality Standard. Facade Signs shall be subject to any requirements and limitations established by Developer with respect to all aspects of Facade

Signs (including, without limitation, the plans, specifications, and method of affixing the Facade Signs to the building and extending electrical service thereto, if applicable). All Facade Signs, to the extent not required to be insured by the Association, shall be insured at the exclusive cost of the Commercial Unit Owner installing such signage, unless insured by the Occupant of a Commercial Unit pursuant to the terms of the lease or other occupancy agreement. Any Commercial Unit Owner who exercises its right to install the Facade Sign pursuant to this Section shall be solely responsible for the lighting, installation, maintenance and replacement, of its Facade Sign, and liable for the costs and repair of any damage to the Project proximately caused by such installation, maintenance, and replacement. Developer or the Front Desk Unit Owner may establish and administer any comprehensive sign criteria and shall assume all duties relating to Facade Signs, including, without limitation, approval thereof.

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

XI. COMMON EXPENSES; LIMITED COMMON ELEMENT EXPENSES; UNIT CLASS EXPENSES; LIEN.

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

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

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

C. UNIT CLASS EXPENSES. Profits and expenses attributable to the Commercial Class ("**Commercial Class Expense**"), Flats Class ("**Flats Class Expense**"), Front Desk Class ("**Front Desk Class Expense**"), Hotel Class ("**Hotel Class Expense**"), Resort Class ("**Resort Class Expense**"), Hotel, Resort and Flats Class ("**Hotel, Resort and Flats Class Expense**") and Hotel and Resort Class ("**Hotel and Resort Class Expense**") shall be allocated to the appropriate Unit Class based on the Class Common Interest set forth in **Exhibit "B"**.

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

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

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

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

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

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

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

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

XII. INSURANCE.

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

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

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

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

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

5. **YEARLY REVIEW OF INSURANCE PROGRAMS.** The Board must review the adequacy of its entire insurance program at least yearly. The Managing Agent must furnish an analysis of (a) the

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

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

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

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

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

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

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

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

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

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

3. **OWNER HAZARD COVERAGE REQUIRED.**

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

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

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

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

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

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

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

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

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

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

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

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

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

counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Owner.

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

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

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

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

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

(iv) Provide that the insurance company waives:

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

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

(c) any right to contribution from the Lender.

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

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

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

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

the Association, the Board, the Managing Agent, Developer, the Owners and the Representatives of each of the foregoing.

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

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

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

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

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

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

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

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

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

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

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

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

H. SUBSTITUTE INSURANCE COVERAGE. Any insurance coverage specified in this **Section XII** shall be subject to availability on commercially reasonable terms with reputable insurance companies authorized to do business in the State of Hawaii. Where such coverage is not available, or is not available on commercially reasonable terms, then the Board shall substitute such other insurance coverage as is acceptable to Developer's mortgage lender, if any, or to institutional Lenders for Units in projects similar in construction, location, and use.

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

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

XIII. INSURED DAMAGE OR DESTRUCTION.

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

A. DAMAGE TO A UNIT. Excluding damage insured under **Sections XII.B.3.a** and **XII.B.3.b**, if any Unit, and/or its appurtenant Limited Common Elements are damaged, the Board shall hire one (1) or more contractors to rebuild or repair such damaged areas according to their design just before the damage occurred. The repairs will include those items covered by the Policy. If the Board cannot repair such damaged areas according to their design just before the damage occurred (for example, if changes in the law prevent it), then the Association will rebuild or repair the Unit, and/or its appurtenant Limited Common Elements according to a new design. The new design must comply with this Declaration and with all laws then in effect. Any modified plans and specifications must first be approved by the Board, the Owner, and by any Lender holding a Mortgage on that Unit. If only one (1) or more of the Commercial Units and/or their appurtenant Limited Common Elements are damaged, the Commercial Director, at his or her election, may cause the same to be rebuilt in accordance with the requirements of this Declaration, in which event the Association or the Insurance Trustee shall make the proceeds of the Policy available for such purposes subject to the requirements of **Section XIII.D**.

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

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

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

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

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

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

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

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

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

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

- a. Be satisfactory to the Insurance Trustee, and
- b. Cover the work for which payment or reimbursement is being requested.

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

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

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

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

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

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

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

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

of liability; and (3) the execution of all documents and the performance of all other acts necessary to accomplish such purpose.

XIV. UNINSURED CASUALTY; DECISION NOT TO REPAIR.

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

A. DECISION NOT TO REBUILD. The Association may decide at a meeting duly held not to repair, rebuild, or restore the Improvements. The Association may only make this decision by the affirmative vote of Owners holding no less than sixty-seven percent (67%) of Common Interests and their respective Lenders. The meeting must be held within ninety (90) calendar days after the damage or destruction occurs.

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

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

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

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

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

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

XV. AMENDMENT OF DECLARATION.

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

1. **"CHANGES MATERIAL IN NATURE."** Except as otherwise provided herein or in the Act, no amendment to the provisions of this Declaration that are material and adverse in nature shall be effective without the written consent of no less than fifty-one percent (51%) of the votes of Units of the Project that are subject to Mortgages held by Eligible Mortgage Holders. A change of any of the following would be considered "material in nature:"

- a. voting rights;
- b. increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens, or the priority of Assessment liens;

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

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

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

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

3. **REDESIGNATION OF ASSIGNED PARKING STALLS.** Any Owner (including Developer) may redesignate and exchange a Limited Common Element parking stall that is assigned to such Owner's Unit to another Unit owned by the same Owner, or to another Unit with the approval of the other Unit Owner. The transfer shall be executed and filed as an amendment to this Declaration and the amendment need only be executed by the Owner of the Unit whose Limited Common Element(s) is being transferred and the Owner of the Unit receiving the Limited Common Element(s) and if not the same Owner, subject to any required approval of Lenders or lessors. A copy of the Amendment must be promptly delivered to the Association.

4. **NO IMPAIRMENT OR DIMINISHMENT OF DEVELOPER'S RIGHTS OR INCREASE OF OBLIGATIONS.** Notwithstanding any provision of this Declaration to the contrary, notwithstanding the sale of any of the Units, and in addition to such other approval requirements as are set forth in this Section, the prior written approval of Developer will be required before any amendment that would impair or

diminish the rights of, or increase the obligations of, Developer. Without limiting the generality of the foregoing, the following actions impairing or diminishing the rights of Developer, shall first be approved in writing by Developer, as applicable:

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

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

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

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

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

B. BY DEVELOPER.

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

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

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

4. **COMPLIANCE WITH LAWS, LENDER REQUIREMENTS, CORRECTION OF ERRORS AND TO MEET REGISTRATION REQUIREMENTS.** Notwithstanding any provision of this Declaration to the contrary and notwithstanding the sale of any of the Units, Developer, without the approval or joinder of any Owner, lienholder, or other Person, may amend this Declaration in order (a) to bring the Project and the Condominium Documents into compliance with the laws and rules of any jurisdiction in which Developer intends to market or sell Units; (b) to comply with any requirements that may reasonably be imposed by any takeout, permanent, or secondary market Lender, including, but not limited to, any Lender or any governmental or quasi-governmental agency including, but not limited to, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development or the Veterans Administration; (c) to comply with the requirements of FHA; (d) to comply with the requirements of the federal Bureau of Consumer Financial Protection (agency that oversees the Interstate Land Sales Full Disclosure Act); (e) to comply with any requirements by another jurisdiction in order to obtain any registration, report, or license to offer to sell or sell and market the Project in such other jurisdiction; (f) to comply with any state or county entitlements, agreements, or permits; and (g) to correct typographical or technical errors. Each and every party acquiring an interest in the Project, by such acquisition, consents to such amendments as described in the preceding sentence and agrees to execute, deliver, and record such

documents and instruments and do such other things as may be necessary or convenient to effect the same and appoints Developer and its assigns as his or her attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties.

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

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

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

2. Any amendment to the Condominium Documents to prohibit or materially restrict the use, operation, or occupancy of, or behavior within a Commercial Unit, Limited Common Element appurtenant to all Commercial Units, or Limited Common Element solely appurtenant to one (1) Commercial Unit, shall be subject to the consent of a Majority of the Commercial Class.

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

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

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

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

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

XVI. TERMINATION.

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

XVII. LAND TRUSTS.

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

XVIII. COMPLIANCE BY OWNERS.

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

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

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

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

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

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

XIX. RESERVED RIGHT TO GRANT AND RECEIVE EASEMENTS.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2041, Developer shall have the reserved right to delete, cancel, relocate, realign, reserve, designate, grant, and receive any and all easements and rights of way over, under, through, across, and upon the Project, or involving adjacent or neighboring parcels of land or adjacent or neighboring condominium projects, deemed necessary or desirable in Developer's sole discretion, or as may be required by a governmental entity, including, but not limited to, easements and/or rights of way for utilities, public purpose (i.e., pedestrian walkways, bus stops, stairs, ramps, paths, trails, bikeways, or other passageways), any public-type facility (e.g. for mail delivery), fire lane access, sanitary and storm sewers, retention ponds, cable television, refuse disposal, driveways, and parking areas. Such right also includes easements for operation, upkeep, care and maintenance, or repair of any Unit or any Limited Common Element or to complete any Improvements and correct construction defects or other punchlist items in the Common Elements or Units, or to exercise any of the Developer's Reserved Rights, and other similar purposes; provided that such easements and/or rights of way shall not be located on or within any existing structure of the Project and shall not be exercised so as to unreasonably disturb, impair, or interfere with the normal use and enjoyment of the Project by the Owners; and provided that Developer shall have the right to negotiate and agree to such terms with respect to such easements and rights of way as Developer deems appropriate in its sole discretion. Any easement granted and/or received by Developer pursuant to the exercise of this reserved right shall not be amended, modified, or terminated by the Association without the consent of Developer. Developer shall have the right to define any easement right received pursuant to this Section as a Common Element or Limited Common Element. In the event that Developer assigns to the Association any rights it acquires, whether the same constitute easement rights or otherwise, the Association shall assume such rights.

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

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

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

B. If Developer is the Owner of any two (2) or more Units separated by a party wall, floor, or ceiling, Developer shall have the right to consolidate two (2) or more Units that are so separated, to later subdivide such Units once consolidated, and to alter, remove or restore all or portions of the intervening wall, floor, or ceiling at Developer's expense, provided that: (1) the structural integrity of the Project is not thereby affected, (2) the finish of any Common Element or Limited Common Element then remaining is restored to a condition substantially compatible with that of the Common Element or Limited Common Element prior to such alteration, and (3) all construction activity necessary to any such alteration or removal shall be completed within a reasonable period of time after the commencement thereof, subject to delays beyond the reasonable control of Developer or its contractors, whether caused by strikes, the unavailability of construction materials or otherwise, in which case any such construction activity shall be completed in such additional time as may be reasonably necessary in the exercise of due diligence.

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

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

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

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

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

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

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

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

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

To and until December 31, 2041, Developer hereby reserves the right not to construct, and/or not to construct at the same time, all of the Recreational Amenities in the Project, as depicted on the Condominium Map, and to modify, relocate, reconfigure, and remove all or certain of the Recreational Amenities. Nothing in this Declaration shall be construed as a representation or warranty by Developer that the Recreational Amenities or any portion thereof, will be developed or built or that the Recreational Amenities and/or the types of Recreational Amenities offered will not change and/or that the other portions of the Hotel Shared Facilities will be built or completed prior to, concurrently with, or soon after any or all of the Hotel Units or Resort Units are conveyed to third parties.

XXIII. RESERVED RIGHT TO INSTALL DEVELOPER'S SIGNAGE.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2041, Developer hereby reserves the right, for the benefit of the Project, to install, maintain, repair, replace, and approve of (from time to time)

directional signage within the street level of the Project, identity signage, and canopy signage, and other signage within the Common Elements and Limited Common Elements; subject to any zoning laws or other governmental requirements. With respect to all aspects of the signage, including, without limitation, the method of affixing the signage and extension of electrical service thereto, if applicable, such signage shall comply with the Project Quality Standard. Until such time that Developer shall provide notice that all Owners shall be obligated for the payment of Common Expenses as set forth in the Bylaws, Developer shall be responsible for lighting, installation, maintenance, and replacement of such residential signage as well as costs to repair any damage to the Project proximately caused by such installation, maintenance, and replacement of any residential signage and, after such notice, the Board shall be responsible for administering such obligations and assessing the costs thereof as a Common Expense.

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

To and until December 31, 2041, Developer shall have the reserved right to effect such modifications to Units and Common Elements in the Project and/or to execute, record, and deliver any amendments to the Condominium Documents promulgated hereunder, as may be necessary or appropriate to effect compliance by the Project, the Association, or Developer, with laws which apply to the Project, including, but not limited to, the Permit, the Affordable Housing Agreement, the Joint Development Agreement, the CUP, FHA and ADA, and any rules and regulations promulgated thereunder, or as may be required by the Commission, by any title insurance company issuing title insurance on the Project or any of the Units, by any Lender lending funds secured by the Project or any of the Units, or by any governmental agency.

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

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

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

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

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

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

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

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

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

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

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

The right to amend the Declaration to effect such recharacterization or redesignation of any such Limited Common Elements shall occur at any time or times to and until December 31, 2041, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder or other persons, execute, deliver, and record any deed and/or amendments to this Declaration or to the Condominium Map, and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers or privileges.

XXVII. RESERVED RIGHT TO CONVEY PROPERTY TO THE ASSOCIATION.

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

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

any loss incurred by Developer as a result of any claim made against Developer pursuant to any agreement with a third party arising after such conveyance.

XXVIII. RESERVED RIGHT TO CONDUCT SALES ACTIVITIES.

To and until December 31, 2041, Developer does hereby reserve the right unto itself, its brokers, sales agents, and other related Persons to access and conduct extensive sales activities at the Project, including the use of any Unit owned by Developer or its successors, or assigns, and the Limited Common Elements appurtenant solely to said Unit for hosting of receptions and use of the Recreational Amenities for such activities, and use of the Limited Common Elements appurtenant to all Commercial Units for model Units, sales, leasing, management, and construction offices, parking and extensive sales displays and activities, the posting and maintenance of signs and other advertisements relating to such sales activities, and to install, maintain, locate, relocate, and reconfigure such structures, displays, advertising signs, billboards, flags, sales desks, kiosks, sales, leasing, management and/or construction offices, interior design and decorator centers, and parking areas for employees, agents, and prospective buyers, as may be necessary or convenient for the proper development and disposition of Units by sale, resale, lease, or otherwise, and the right, but not the obligation, to provide ongoing maintenance, operation, service, construction, and repairs to individual Units in the Project. In the event that Developer is unable to sell all of the Units by December 31, 2041, Developer shall have the right to conduct sales activities on the Project until the closing of the sale of the last unsold Flats or Resort Unit of the Project; provided that such sales are conducted in an unobtrusive manner which will not unreasonably interfere with the use, possession and aesthetic enjoyment of the Project by the Owners. Such sales activities may include the initial sale and resale of Units. In the event that Developer's mortgage lender, if any, or any successor to or assignee of Developer's mortgage lender shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the Mortgage remedies or by a deed or an assignment in lieu of foreclosure, such mortgage lender, its successor and assigns, shall have the right to conduct such extensive sales activities on the Project until at least ninety-five percent (95%) of all of the Units in the Project have been sold and Unit Deeds therefor filed, notwithstanding the foregoing. Each and every party acquiring an interest in the Project, by such acquisition, acknowledges that the sales activities may result in noise and nuisances, and consents to such activity by Developer, and further waives, releases and discharges any rights, claims, or actions such party may acquire against Developer, its brokers, sales agents, employees, and Lenders, and their respective successors and assigns, as a result of any such activity or activities.

XXIX. RESERVED RIGHT TO LEASE OR TRANSFER COMMERCIAL UNITS AND THEIR LIMITED COMMON ELEMENTS.

To and until December 31, 2041, Developer, as the Owner of a Commercial Unit, shall have the reserved right, but not the obligation, to lease or transfer ownership of any of the Commercial Units owned by Developer to the Association or to a third party, and to redesignate any Limited Common Element solely appurtenant to such Unit to a Unit owned by the Association or a third party, and redesignate Limited Common Elements appurtenant to all Commercial Units as Common Element and to the extent necessary or required, to amend this Declaration and Condominium Map to effect the same. Upon transfer to the Association, the Association shall accept ownership of such Commercial Unit together with any appurtenant Limited Common Element(s) "AS IS" by way of a quitclaim deed. In the event the Commercial Unit is transferred or leased to the Association or a third party, at such time, the Association or such third party shall assume the cost of maintenance of all such Limited Common Element areas and the Common Expense in proportion to the percentage common interest set forth in **Exhibit "B"** attributable to such Commercial Unit. Developer further reserves the right to retain administrative and management control over such areas, unless such right is otherwise delegated to the Association or such third party buyer at the time of such transfer. In the event that any Commercial Unit is ever transferred or leased to the Association or to a third party and the Association or such third party thereafter but prior to and including December 31, 2041, desires to offer such Commercial Unit for sale or lease, Developer shall be given the first right of refusal to reacquire or to lease such Commercial Unit under the same terms and conditions (including financing terms) as may be offered to or by such bona fide third party. Accordingly, the Association or such third party Owner desiring to sell or lease the Commercial Unit must first notify Developer in writing of its intent to list, sell, or lease the Commercial Unit. The Association's or such third party Owner's written notice to Developer must include the proposed listing, offer price, or rental rate and general terms of the proposed listing, sale, or lease. Upon receipt of such written notice, Developer shall have fifteen (15) calendar days within which to notify the Association or such third party Owner in writing as to whether Developer elects to exercise its right of first refusal set forth herein. If Developer elects to exercise its right of first

refusal, closing shall occur no later than sixty (60) calendar days after Developer notifies the Association or such third party Owner in writing (within such fifteen (15) calendar day period) of its decision to purchase the Commercial Unit. If Developer elects not to exercise its right of first refusal or fails to notify the Association or such third party Owner in writing of Developer's election to exercise its right of first refusal within such fifteen (15) calendar day period, the Association or such third party Owner shall be entitled, for a period of seven (7) months thereafter, to list the Commercial Unit with a real estate broker or the Commercial Unit to a third party for a price equal to or greater than the price offered to Developer without further notice to Developer.

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

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

Developer shall have the reserved right to and until December 31, 2041, to reduce or increase the number of floors and/or Units in the Project notwithstanding anything provided to the contrary, and except as otherwise provided by law. Any such alteration to the number of floors and/or Units and/or floors in the Project shall be effective provided that:

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

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

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

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

XXXI. RESERVED RIGHT TO ENTER INTO AGREEMENTS WITH BICYCLE SHARING ENTITY.

Notwithstanding anything herein provided to the contrary, to and until December 31, 2041, Developer hereby reserves the right, unto itself, its agents, employees, personnel or licensees and its successors and assigns, to select and contract with a City and County of Honolulu bicycle sharing partner or entity for a bike share station to be located on a publicly-accessible portion of the Project in accordance with the Permit. Such right shall include a perpetual right and easement over the Project to install and operate, or provide for the installation and operation of, said bike share station and to grant easements for such purposes, upon such terms and conditions as Developer may determine in its discretion.

XXXII. RESERVED RIGHT TO ADDRESS ARCHAEOLOGICAL ISSUES.

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

XXXIII. RESERVED RIGHT OF THE CITY TO COMPEL COMPLIANCE WITH THE LUO.

The Director of the Department of Planning and Permitting, or any successor department empowered to enforce compliance with the LUO, shall have the right to compel Developer and/or the Association to make modifications to this Declaration or the Condominium Map, without compensation to Developer, the Association, or any Unit Owner, as necessary to ensure that the Project complies with the LUO and other development related codes and ordinances, including, without limitation, the Joint Development Agreement and the CUP. Each and every party acquiring an interest in the Project, by such acquisition, consents to and authorizes the Director of the Department of Planning and Permitting to serve all legal notices and process by sending a single copy to the Association. To the maximum extent permitted by law, this provision will operate as a waiver of personal service of individual notice requirements that would otherwise apply to Unit Owners and their tenants.

XXXIV. ASSIGNMENT OF RESERVED RIGHTS.

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

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

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

XXXVI. DISCLOSURES AND LIMITATIONS ON LIABILITIES.

A. NONLIABILITY AND INDEMNIFICATION.

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

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

3. **INDEMNIFICATION OF FRONT DESK UNIT OWNER, HOTEL MANAGER, AND FRANCHISOR.** Notwithstanding anything to the contrary contained herein, all Owners agree to defend, indemnify, and hold harmless the Front Desk Unit Owner, the Hotel Manager, and any third-party franchisor or licensor under a Franchise Agreement from and against, and properly reimburse it for, any and all liability, cost, damages, expense or deficiency resulting from, arising out of, or in connection with the negligent acts of such Owner.

B. JOINT DEVELOPMENT AGREEMENT AND CUP WITH PACIFIC GUARDIAN TOWER. A portion of the Land is subject to the Joint Development Agreement which permitted the construction of the Pacific Guardian Tower. Because the Pacific Guardian Tower and the Land are jointly developed under the LUO, the properties are treated as the same zoning lot for the duration of the Joint Development Agreement. The Joint Development Agreement is necessary to permit the current density of the Pacific Guardian Tower (which has been allocated 34,901.76 of buildable square feet from the Land) and to allow portions of the Pacific Guardian Tower to encroach into the setbacks of the Land. If the Joint Development Agreement is terminated, the Director of the Department of Planning and Permitting may require modification or abatement of any structure and/or land uses that do not comply with the LUO or other development-related codes or ordinances. Structures and land uses enabled by

the Joint Development Agreement and CUP will not qualify or be recognized as nonconforming structures or uses upon termination of the Joint Development Agreement and/or the CUP.

Because the Pacific Guardian Tower is dependent upon the continued existence of the Joint Development Agreement, the Declaration of Covenants requires that Developer, and its successors and assigns owning the Land (including Unit Owners) not improve or develop the Land so as to (1) increase the parking or loading requirements under the LUO for the Pacific Guardian Tower; (2) create any nonconformities under the LUO, the CUP, the Joint Development Agreement, any ordinances of the City, including the Building Code; (3) violate covenants and conditions running with the Pacific Guardian Tower to which Developer is a party; (4) adversely affect the development rights of the Pacific Guardian Tower (including without limitation the decrease in "floor area" (as used in the LUO) required for the Pacific Guardian Tower or increase in 'open space' (as defined in the LUO) required of the Pacific Guardian Tower, without the prior written approval of Maruito, which may be given or withheld in Maruito's sole and absolute discretion. Developer, and its successors and assigns as owners of the Land, further agree to indemnify Maruito and hold Maruito harmless against all claims, loss, damages, liability and expense (including reasonable attorneys' fees incurred or suffered by Maruito due to (i) nonconformities caused by the Project or (ii) breach of Developer's covenants or obligations discussed herein.

C. FRANCHISE AGREEMENT AND RESIDENTIAL TRADEMARK LICENSE AGREEMENT. Developer (or its Affiliate) has entered into a Franchise Agreement which grants certain rights to, and imposes certain obligations on, Developer and the Project with respect to the use of the branded name or marks affiliated with the Resort Units and the Hotel Units (the "**Branded Name**"), and certain trademarks, trade names, symbols, logos, insignias, indicia of origin, copyrights, slogans and designs used in connection therewith (collectively, the "**Licensed Marks**"). Developer (or its Affiliate) has also entered into a Residential Trademark License Agreement with the owner of the Licensed Marks ("**Licensor**") for the license of certain Licensed Marks in connection with the Resort Units in accordance with the Franchise Agreement. Upon creation of the Association, Developer will assign and novate the Residential Trademark License Agreement to the Association. Pursuant to the Residential Trademark License Agreement, the Resort Units may be known under the Branded Name or such other name as may be approved by Licensor for so long as the Residential Trademark License Agreement is in effect.

Among other things, the Residential Trademark License Agreement will provide that any use of the Branded Name, as approved for the Resort Units, will be limited to (a) signage on or about the Project, which may also include the use of certain Licensed Marks, in form and style approved by Licensor in its sole but good faith discretion, and (b) the textual use of the approved Branded Name by the Association, the Board and the Resort Unit Owners solely to identify the address and/or physical location of the Resort Units. Any other use of the Branded Name or the Licensed Marks approved for the Resort Units under the Residential Trademark License Agreement in relation to the Project, the Resort Units or any other Units is strictly prohibited. Neither the Resort Unit Owners (or any other Unit Owners), the Board, nor the Association will have any right, title or interest in or to the approved Branded Name or the Licensed Marks, except as may be expressly set forth in the Residential Trademark License Agreement.

Upon termination or expiration of the Residential Trademark License Agreement, all affiliation of the Resort Units with the approved Branded Name will terminate, and all uses of the Branded Name and the Licensed Marks, including all signs or other materials bearing such approved Branded Name or the Licensed Marks, will cease and be removed from the Project.

D. SECURITY AND FIRE PROTECTION DISCLAIMER. The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it might otherwise be.

Neither the Association, the Front Desk Unit Owner, the Hotel Manager, nor Developer shall in any way be considered insurers or guarantors of security within the Project, and neither the Association, the Front Desk Unit Owner, the Hotel Manager, Developer, nor any successor Developer shall be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of security measures undertaken. All Owners and Occupants of any Unit, as applicable, acknowledge that the Association, the Board, the Front Desk Unit Owner, the Hotel Manager, Developer or any successor Developer, do not represent or warrant that any fire protection system or other security system designed or installed according to the guidelines established by Developer or the Association may not be compromised or circumvented, that any fire protection or burglar alarm systems or other security systems

will prevent loss by fire, smoke, burglary, theft, hold-up, terrorism, or otherwise, nor that fire protection or burglar alarm systems or other security systems will in all cases provide the detection or protection for which the system was designed or intended. Each Owner and the Occupants of a Unit acknowledge and understand that the Front Desk Unit Owner, the Hotel Manager, the Association, its Board and committees, Developer, and any other successor to Developer is not an insurer, and each Owner and the Occupants of a Unit assume all risks for loss or damage to persons, Units and the contents of Units, and further acknowledges that the Front Desk Unit Owner, the Hotel Manager, the Association, its Board and committees, Developer, or any successor Developer have made no representations or warranties nor has any Owner or the Occupants of a Unit relied upon any representation or warranty, expressed or implied, including any warranty of merchantability as to the fitness of any alarm systems or other security systems recommended or installed, or any security measure undertaken within the Project.

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

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

G. FLOOD ZONE (X); TSUNAMI EVACUATION ZONE. The Project is located in a Flood Zone (X) and federal flood insurance is not required for the Project. The Project is, however, located within the tsunami evacuation zone.

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

1. RIGHTS OF FRONT DESK UNIT OWNER. Each Owner specifically acknowledges and agrees that the Front Desk Unit Owner shall have the right, in its sole discretion, to (a) select one or more Hotel Managers to manage and/or operate the Front Desk Unit and/or to provide services from the Front Desk Unit, including the Hospitality Services, the Unit Maintenance Services, and services for Hotel Guests; (b) change such Hotel Manager(s) from time to time; and (c) change the name of the Project at any time as may be required by the Franchise Agreement or otherwise. Each Owner specifically acknowledges and agrees that neither Developer, the Front Desk Unit Owner nor any of their respective agents or representatives have made any representations, warranties, guaranties, or other claims of any kind regarding the identity of the Hotel Manager(s) for the Front Desk Unit or if a Hotel Manager

will be hired to operate and manage the Front Desk Unit. Developer and the Front Desk Unit Owner expressly disclaim any representations, warranties, guaranties, or other claims of any kind regarding the same.

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

3. **NOISE; TRAFFIC.** Being located in a central shopping, entertainment, and commuter district, noise, dust, vibration, and/or pedestrian and vehicular traffic are higher than average in the vicinity of the Project. Each Owner and every other Person who has any interest in the Project or who has the right to use the Project or any part of it waives, releases, and discharges any rights, claims, or actions that such Person may have, now or in the future, against Developer, and its Representatives, licensees, successors, and assigns, and arising directly or indirectly out of or from such noise, dust, vibrations, and/or additional traffic, including, without limitation, construction and operation of the County's planned elevated rail transit project, if constructed, which may be constructed in close proximity to the Project. Traffic, noises, and uses which are typically encountered in a high-rise condominium commercial-residential mixed-use setting, include, but are not limited to (a) transient noise and guest or pedestrian traffic from the street or the Limited Common Elements appurtenant to the Commercial Units or neighboring properties; (b) opening and closing of doors; (c) loud music from restaurants or other outlets, concert events, or performances; (d) vehicular traffic from the street; (e) voices of people talking outside retail and/or food and beverage establishments; and (f) noises from special events taking place near the Project. Such noise shall not be deemed a "nuisance", as such noises and/or uses are deemed to be common and accepted occurrences in a centrally located high-rise condominium mixed-use setting. Furthermore, normal construction activities shall not be considered a "nuisance". By accepting a deed to a Unit, an Owner acknowledges that the Project is adjacent to high-traffic roads, businesses, and retail/entertainment facilities, and that noise, lights, and odors common to such activities and related commercial activities as well as construction activities, may exist on or near the Project, at any time and from time to time. Each Owner, by acceptance of a deed or other conveyance of his or her Unit, hereby acknowledges and agrees that sound transmission in a high-rise building such as the Tower is very difficult to control. Developer does not make any representation or warranty as to the level of sound transmission at the Project, and each Owner hereby waives and expressly releases any claim for loss or damage resulting from such sound transmission.

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

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

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

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

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

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

9. **NO WARRANTIES; WAIVER AND RELEASE OF CLAIMS.** Developer is developing the Project but it is not the general contractor or an Affiliate of the general contractor who is building the Project. Developer makes no warranties, express or implied, about the Units or the Project, or about consumer products or anything else installed or contained in the Units or the Project. This includes, but is not limited to, warranties of merchantability, habitability, workmanlike construction, fitness for a particular purpose, or sufficiency of design. *Each Owner and every other Interested Person gives up (in legal terms, "waives and releases") any and all rights and claims such Person may have, now or in the future, against Developer, its Representatives, successors and assigns for (i) any defects in the Units or the Project or any consumer products or anything else installed or contained in the Units or the Project, and (ii) for injury to Persons or property arising from any such defects. This means that Developer will not have to pay for any injury or damage to people or things as a result of any defect.*

10. **FUTURE RAIL ROUTE.** The Project may be in the vicinity of the proposed future light rail route by the County, which may cause noise, dust, vibrations, traffic congestion, and/or other inconveniences or nuisances associated with the development, construction, and operation of such light rail transit system ("**Rail Effects**"). By signing and accepting a deed to a Unit, the Owner accepts the Rail Effects and waives any claims or rights of action or suits against Developer or Developer's successors and assigns arising from any impairment of the Owner's use and enjoyment of the Unit or the Project, or from any inconvenience, property damage or personal injury arising directly or indirectly from the Rail Effects.

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

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

b. **Countertops.** Natural stone countertops ("**Countertops**") may be installed in the Units, including in the bathrooms and kitchens. If such material is used, due to the mineral composition and crystalline structure of the Countertops, small pits may be visible on the polished surface. The pitting as well as natural fissures shall not be considered flaws, as they do not impair the function or durability of the material. Although the Countertops will be finished, due to the porous nature of stone, the Countertops will still be susceptible to discoloration, staining,

fracturing, and chipping. The Countertops have special maintenance, care, and upkeep requirements that will need to be complied with by each of the Owners in the Project in order to maximize the enjoyment and useful life of the originally installed Countertops. The failure to comply with these special maintenance, care, and upkeep requirements will result in additional costs to the Owner and detract from the Owner's enjoyment of the Unit.

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

XXXVII. DISPUTE RESOLUTION.

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

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

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

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

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

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

3. **Expenses.** The expenses of witnesses shall be paid by the Party producing such witnesses. All other expenses of the mediation including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses, or the cost of any proof or expert advice produced at the direct request of the mediator,

shall be borne equally by the Parties unless they agree otherwise. Each Party shall bear its own attorneys' fees and costs in connection with such mediation.

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

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

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

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

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

XXXVIII. EXEMPTIONS FOR PERSONS WITH DISABILITIES.

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

XXXIX. COMPLIANCE WITH COUNTY ZONING AND BUILDING LAWS.

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

XL. DEVELOPER'S RIGHT TO CURE ALLEGED DEFECTS.

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

A. **DEVELOPER'S RIGHT TO CURE.** In the event that the Association, Board or any Owner (collectively, "**Claimant**") claims, contends, or alleges that any portion of the Project, including, but not limited to,

any Unit, and/or any Improvements, is defective or that Developer or its agents, consultants, contractors, or subcontractors were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "**Alleged Defect**"), Developer hereby reserves the right, but is not obligated, to inspect, repair and/or replace such Alleged Defect as set forth herein.

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

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

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

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

2. Developer has either

a. rejected Claimant's claim or

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

either

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

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

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

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

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

G. SEVERABILITY AND APPLICABILITY. If any provision of this Section is held to be invalid, such a determination shall not affect the other provisions hereof, which shall remain in full force and effect. Notwithstanding anything to the contrary herein, if any provision in this Section conflicts with any applicable portion

of Hawaii Revised Statutes Chapter 672E, the Contractor Repair Act, the provisions of said statute, as amended, shall apply.

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

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

XLII. GENERAL PROVISIONS.

A. WAIVER OF CERTAIN RIGHTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

P. **COUNTERPARTS.** The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument,

binding all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterpart. For all purposes, including, without limitation, recordation, filing, and delivery of this instrument, duplicate, unexecuted, and unacknowledged pages of the counterparts may be discarded, and the remaining pages assembled as one document.

XLIII. INVALIDITY AND CHANGES IN LAW.

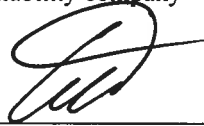
The invalidity of any provision of this Declaration for any reason shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration, and, in such event, all of the other provisions of this Declaration shall continue in full force and effect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

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

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

JL AVALON CAPBRIDGE, LLC
a Hawaii limited liability company



By: _____

Name: Timothy Lee

Its: Authorized Representative

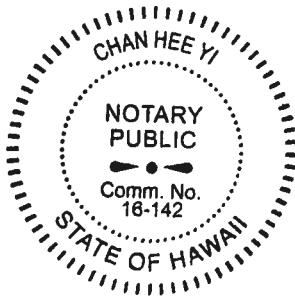
"Developer"

STATE OF HAWAII

SS:

CITY AND COUNTY OF HONOLULU

On this 29th day of November, 2021, before me appeared Timothy Lee, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Chan Hee Yi

Print Name: Chan Hee Yi
Notary Public, in and for said State

My commission expires: 4-10-2024

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **AMENDED AND RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME OF SKY ALA MOANA EAST AND CONDOMINIUM MAP**

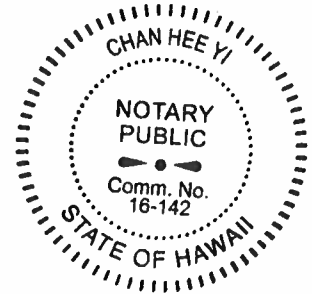
Document Date: — or Undated at time of notarization.

No. of Pages: 108 Jurisdiction: First Circuit
(in which notarial act is performed)

Chan Hee Yi
Signature of Notary

11-29-2021
Date of Notarization and Certification Statement

Chan Hee Yi
Printed Name of Notary



(Official Stamp or Seal)

EXHIBIT "A"

PROPERTY DESCRIPTION

All of that certain parcel of land (being Lots 35 through 37, inclusive, as shown on Map 1 of Land Court Consolidation No. 45 of Hawaiian Land Company, Limited, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-72270698, portion of Lot 31, as shown on Map 1 of Land Court Consolidation No. 45 of Hawaiian Land Company, Limited, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-72270694, and Lots 32 through 34, inclusive, as shown on Map 1 of Land Court Consolidation No. 45 of Hawaiian Land Company, Limited, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document No(s). A-72270695 through A-72270697, inclusive) situate, lying and being at Kalia, Waikiki, City and County of Honolulu, State of Hawaii, being LOT B as shown on Map dated November 10, 2020, approved by the Department of Planning and Permitting, City and County of Honolulu, DPP File No. 2020/SUB-153, on January 8, 2021, and thus bounded and described in AFFIDAVIT recorded as Document No. A-77130312 and as follows:

Beginning at the west corner of this parcel of land, the same being the south corner of Lot A, City and County of Honolulu, Department of Planning and Permitting File No. 2020/SUB-153, approved on January 8, 2021 and on the northeast side of Kapiolani Boulevard, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 6,740.90 feet South and 1,947.88 feet East and thence running by azimuths measured clockwise from true South:

1. 205° 20' 200.00 feet along Lot A, portions of Grant 1290 to Wm. Miller and Grant 2790 to L. Kamehameha, DPP File No. 2020/SUB-153;
2. 295° 20' 174.00 feet along Makaloa Street;
3. 25° 20' 200.00 feet along Lot 38, Land Court Consolidation 45;
4. 115° 20' 174.00 feet along Kapiolani Boulevard to the point of beginning and containing an area of 34,800 square feet.

Being the premises acquired by JL Avalon Capbridge, LLC, a Hawaii limited liability company, as follows:

1. By LIMITED WARRANTY DEED of MARUITO USA, INC., a Hawaii corporation, dated August 8, 2019, filed as Land Court Document No. T-10811168, as amended by instrument recorded as Document No. A-79560381.
2. By LIMITED WARRANTY DEEDS of LKY KENROCK, LLC, a Hawaii limited liability company, as follows:
 - (A) dated February 22, 2017, filed as Land Court Document No. T-9914121.
 - (B) dated February 22, 2017, filed as Land Court Document No. T-9914122.
 - (C) dated February 22, 2017, filed as Land Court Document No. T-9914123.
 - (D) dated February 22, 2017, filed as Land Court Document No. T-9914124.
 - (E) dated February 22, 2017, filed as Land Court Document No. T-9914125.
 - (F) dated February 22, 2017, filed as Land Court Document No. T-9914126.
 - (G) dated February 22, 2017, filed as Land Court Document No. T-9914127.

(H) dated February 22, 2017, filed as Land Court Document No. T-9914128.

3. By LIMITED WARRANTY DEED of WATUMULL ENTERPRISES, LTD., a Hawaii corporation, dated August 8, 2019, filed as Land Court Document No. T-10811171.

END OF EXHIBIT "A"

EXHIBIT "B"

UNIT NUMBERS, UNIT TYPES, PARKING STALL NO(S), NUMBER OF BEDROOMS AND BATHROOMS, APPROXIMATE NET LIVING AREAS, COMMON INTEREST

Unit Number	Unit Class	Unit Type	Parking Stall No(s)	Bedrooms/ Bathrooms	Approx. Net Living Area (square feet)	Common Interest
901	Flats	F-01		1/1	424	0.247125%
902	Flats	F-02		2/1	598	0.348540%
903	Flats	F-03		0/1	299	0.174270%
904	Flats	F-04		0/1	299	0.174270%
905	Flats	F-05		0/1	299	0.174270%
906	Flats	F-06		0/1	299	0.174270%
907	Flats	F-07		0/1	299	0.174270%
908	Flats	F-08		0/1	299	0.174270%
909	Flats	F-09		0/1	299	0.174270%
910	Flats	F-10		0/1	290	0.169024%
911	Flats	F-11		2/1	489	0.285010%
912	Flats	F-12		2/1	622	0.362528%
913	Flats	F-13		0/1	299	0.174270%
914	Flats	F-14		0/1	299	0.174270%
1001	Flats	F-01		1/1	424	0.247125%
1002	Flats	F-02		2/1	598	0.348540%
1003	Flats	F-03		0/1	299	0.174270%
1004	Flats	F-04		0/1	299	0.174270%
1005	Flats	F-05		0/1	299	0.174270%
1006	Flats	F-06		0/1	299	0.174270%
1007	Flats	F-07		0/1	299	0.174270%
1008	Flats	F-08		0/1	299	0.174270%
1009	Flats	F-09		0/1	299	0.174270%
1010	Flats	F-10		0/1	290	0.169024%
1011	Flats	F-11		2/1	489	0.285010%
1012	Flats	F-12		2/1	622	0.362528%
1013	Flats	F-13		0/1	299	0.174270%
1014	Flats	F-14		0/1	299	0.174270%
1101	Flats	F-01		1/1	424	0.247125%
1102	Flats	F-02		2/1	598	0.348540%
1103	Flats	F-03		0/1	299	0.174270%
1104	Flats	F-04		0/1	299	0.174270%
1105	Flats	F-05		0/1	299	0.174270%
1106	Flats	F-06		0/1	299	0.174270%
1107	Flats	F-07		0/1	299	0.174270%
1108	Flats	F-08		0/1	299	0.174270%
1109	Flats	F-09		0/1	299	0.174270%
1110	Flats	F-10		0/1	290	0.169024%
1111	Flats	F-11		2/1	489	0.285010%
1112	Flats	F-12		2/1	622	0.362528%
1113	Flats	F-13		0/1	299	0.174270%
1114	Flats	F-14		0/1	299	0.174270%
1201	Flats	F-01		1/1	424	0.247125%

Unit Number	Unit Class	Unit Type	Parking Stall No(s)	Bedrooms/ Bathrooms	Approx. Net Living Area (square feet)	Common Interest
1202	Flats	F-02		2/1	598	0.348540%
1203	Flats	F-03		0/1	299	0.174270%
1204	Flats	F-04		0/1	299	0.174270%
1205	Flats	F-05		0/1	299	0.174270%
1206	Flats	F-06		0/1	299	0.174270%
1207	Flats	F-07		0/1	299	0.174270%
1208	Flats	F-08		0/1	299	0.174270%
1209	Flats	F-09		0/1	299	0.174270%
1210	Flats	F-10		0/1	290	0.169024%
1211	Flats	F-11		2/1	489	0.285010%
1212	Flats	F-12		2/1	622	0.362528%
1213	Flats	F-13		0/1	299	0.174270%
1214	Flats	F-14		0/1	299	0.174270%
1301	Flats	F-01		1/1	424	0.247125%
1302	Flats	F-02		2/1	598	0.348540%
1303	Flats	F-03		0/1	299	0.174270%
1304	Flats	F-04		0/1	299	0.174270%
1305	Flats	F-05		0/1	299	0.174270%
1306	Flats	F-06		0/1	299	0.174270%
1307	Flats	F-07		0/1	299	0.174270%
1308	Flats	F-08		0/1	299	0.174270%
1309	Flats	F-09		0/1	299	0.174270%
1310	Flats	F-10		0/1	290	0.169024%
1311	Flats	F-11		2/1	489	0.285010%
1312	Flats	F-12		2/1	622	0.362528%
1313	Flats	F-13		0/1	299	0.174270%
1314	Flats	F-14		0/1	299	0.174270%
1401	Flats	F-01		1/1	424	0.247125%
1402	Flats	F-02		2/1	598	0.348540%
1403	Flats	F-03		0/1	299	0.174270%
1404	Flats	F-04		0/1	299	0.174270%
1405	Flats	F-05		0/1	299	0.174270%
1406	Flats	F-06		0/1	299	0.174270%
1407	Flats	F-07		0/1	299	0.174270%
1408	Flats	F-08		0/1	299	0.174270%
1409	Flats	F-09		0/1	299	0.174270%
1410	Flats	F-10		0/1	290	0.169024%
1411	Flats	F-11		2/1	489	0.285010%
1412	Flats	F-12		2/1	622	0.362528%
1413	Flats	F-13		0/1	299	0.174270%
1414	Flats	F-14		0/1	299	0.174270%
1502	Hotel	H-02		0/1	356	0.207492%
1503	Hotel	H-03		0/1	391	0.227891%
1505	Hotel	H-05		0/1	332	0.193504%
1512	Hotel	H-12		1/1	643	0.374768%
1513	Hotel	H-13		1/1	560	0.326392%
1601**	Hotel	H-01		0/1	468	0.272770%
1602	Hotel	H-02		0/1	356	0.207492%

Unit Number	Unit Class	Unit Type	Parking Stall No(s)	Bedrooms/ Bathrooms	Approx. Net Living Area (square feet)	Common Interest
1603	Hotel	H-03		0/1	391	0.227891%
1604	Hotel	H-04		0/1	292	0.170190%
1605	Hotel	H-05		0/1	332	0.193504%
1606	Hotel	H-06		0/1	351	0.204578%
1607	Hotel	H-07N		0/1	289	0.168441%
1608	Hotel	H-08		0/1	357	0.208075%
1609	Hotel	H-09		0/1	355	0.206909%
1610	Hotel	H-10		0/1	394	0.229640%
1611	Hotel	H-11		0/1	388	0.226143%
1612	Hotel	H-12		1/1	643	0.374768%
1613	Hotel	H-13		1/1	560	0.326392%
1701	Hotel	H-01		0/1	468	0.272770%
1702	Hotel	H-02		0/1	356	0.207492%
1703	Hotel	H-03		0/1	391	0.227891%
1704	Hotel	H-04		0/1	292	0.170190%
1705	Hotel	H-05		0/1	332	0.193504%
1706	Hotel	H-06		0/1	351	0.204578%
1707	Hotel	H-07		0/1	301	0.175436%
1708	Hotel	H-08		0/1	357	0.208075%
1709	Hotel	H-09		0/1	355	0.206909%
1710	Hotel	H-10		0/1	394	0.229640%
1711**	Hotel	H-11		0/1	388	0.226143%
1712	Hotel	H-12		1/1	643	0.374768%
1713	Hotel	H-13		1/1	560	0.326392%
1801	Hotel	H-01		0/1	468	0.272770%
1802	Hotel	H-02		0/1	356	0.207492%
1803	Hotel	H-03		0/1	391	0.227891%
1804	Hotel	H-04		0/1	292	0.170190%
1805*	Hotel	H-05		0/1	332	0.193504%
1806	Hotel	H-06		0/1	351	0.204578%
1807	Hotel	H-07N		0/1	289	0.168441%
1808	Hotel	H-08		0/1	357	0.208075%
1809	Hotel	H-09		0/1	355	0.206909%
1810	Hotel	H-10		0/1	394	0.229640%
1811	Hotel	H-11		0/1	388	0.226143%
1812	Hotel	H-12		1/1	643	0.374768%
1813	Hotel	H-13		1/1	560	0.326392%
1901	Hotel	H-01		0/1	468	0.272770%
1902	Hotel	H-02		0/1	356	0.207492%
1903	Hotel	H-03		0/1	391	0.227891%
1904	Hotel	H-04		0/1	292	0.170190%
1905	Hotel	H-05		0/1	332	0.193504%
1906	Hotel	H-06		0/1	351	0.204578%
1907	Hotel	H-07		0/1	301	0.175436%
1908	Hotel	H-08		0/1	357	0.208075%
1909	Hotel	H-09		0/1	355	0.206909%
1910*	Hotel	H-10		0/1	394	0.229640%
1911	Hotel	H-11		0/1	388	0.226143%

Unit Number	Unit Class	Unit Type	Parking Stall No(s)	Bedrooms/ Bathrooms	Approx. Net Living Area (square feet)	Common Interest
1912	Hotel	H-12		1/1	643	0.374768%
1913*	Hotel	H-13		1/1	560	0.326392%
2001	Hotel	H-01		0/1	468	0.272770%
2002*	Hotel	H-02		0/1	359	0.209240%
2003	Hotel	H-03		0/1	391	0.227891%
2004	Hotel	H-04		0/1	292	0.170190%
2005	Hotel	H-05		0/1	332	0.193504%
2006	Hotel	H-06		0/1	351	0.204578%
2007	Hotel	H-07N		0/1	289	0.168441%
2008	Hotel	H-08		0/1	357	0.208075%
2009	Hotel	H-09		0/1	355	0.206909%
2010	Hotel	H-10		0/1	394	0.229640%
2011	Hotel	H-11		0/1	388	0.226143%
2012	Hotel	H-12		1/1	643	0.374768%
2013	Hotel	H-13		1/1	560	0.326392%
2101	Hotel	H-01		0/1	468	0.272770%
2102	Hotel	H-02		0/1	356	0.207492%
2103	Hotel	H-03		0/1	391	0.227891%
2104	Hotel	H-04		0/1	292	0.170190%
2105	Hotel	H-05		0/1	332	0.193504%
2106	Hotel	H-06		0/1	351	0.204578%
2107	Hotel	H-07		0/1	301	0.175436%
2108	Hotel	H-08		0/1	357	0.208075%
2109	Hotel	H-09		0/1	355	0.206909%
2110	Hotel	H-10		0/1	394	0.229640%
2111**	Hotel	H-11		0/1	388	0.226143%
2112	Hotel	H-12		1/1	643	0.374768%
2113	Hotel	H-13		1/1	560	0.326392%
2201	Hotel	H-01		0/1	468	0.272770%
2202	Hotel	H-02		0/1	356	0.207492%
2203	Hotel	H-03		0/1	391	0.227891%
2204	Hotel	H-04		0/1	292	0.170190%
2205	Hotel	H-05		0/1	332	0.193504%
2206	Hotel	H-06		0/1	351	0.204578%
2207	Hotel	H-07N		0/1	289	0.168441%
2208	Hotel	H-08		0/1	357	0.208075%
2209	Hotel	H-09		0/1	355	0.206909%
2210	Hotel	H-10		0/1	394	0.229640%
2211	Hotel	H-11		0/1	388	0.226143%
2212	Hotel	H-12		1/1	643	0.374768%
2213	Hotel	H-13		1/1	560	0.326392%
2301	Hotel	H-01		0/1	468	0.272770%
2302	Hotel	H-02		0/1	356	0.207492%
2303	Hotel	H-03		0/1	391	0.227891%
2304	Hotel	H-04		0/1	292	0.170190%
2305	Hotel	H-05		0/1	332	0.193504%
2306	Hotel	H-06		0/1	351	0.204578%
2307	Hotel	H-07		0/1	301	0.175436%

Unit Number	Unit Class	Unit Type	Parking Stall No(s)	Bedrooms/ Bathrooms	Approx. Net Living Area (square feet)	Common Interest
2308	Hotel	H-08		0/1	357	0.208075%
2309	Hotel	H-09		0/1	355	0.206909%
2310	Hotel	H-10		0/1	394	0.229640%
2311	Hotel	H-11		0/1	388	0.226143%
2312	Hotel	H-12		1/1	643	0.374768%
2313	Hotel	H-13		1/1	560	0.326392%
2401	Hotel	H-01		0/1	468	0.272770%
2402	Hotel	H-02		0/1	356	0.207492%
2403	Hotel	H-03		0/1	391	0.227891%
2404	Hotel	H-04		0/1	292	0.170190%
2405	Hotel	H-05		0/1	332	0.193504%
2406	Hotel	H-06		0/1	351	0.204578%
2407	Hotel	H-07N		0/1	289	0.168441%
2408	Hotel	H-08		0/1	357	0.208075%
2409	Hotel	H-09		0/1	355	0.206909%
2410**	Hotel	H-10		0/1	394	0.229640%
2411	Hotel	H-11		0/1	388	0.226143%
2412	Hotel	H-12		1/1	643	0.374768%
2413	Hotel	H-13		1/1	560	0.326392%
2501	Hotel	H-01		0/1	468	0.272770%
2502	Hotel	H-02		0/1	356	0.207492%
2503	Hotel	H-03		0/1	391	0.227891%
2504	Hotel	H-04		0/1	292	0.170190%
2505	Hotel	H-05		0/1	332	0.193504%
2506	Hotel	H-06		0/1	351	0.204578%
2507	Hotel	H-07		0/1	301	0.175436%
2508	Hotel	H-08		0/1	357	0.208075%
2509	Hotel	H-09		0/1	355	0.206909%
2510	Hotel	H-10		0/1	394	0.229640%
2511	Hotel	H-11		0/1	388	0.226143%
2512	Hotel	H-12		1/1	643	0.374768%
2513	Hotel	H-13		1/1	560	0.326392%
2601	Hotel	H-01		0/1	468	0.272770%
2602	Hotel	H-02		0/1	356	0.207492%
2603	Hotel	H-03		0/1	391	0.227891%
2604	Hotel	H-04		0/1	292	0.170190%
2605*	Hotel	H-05		0/1	332	0.193504%
2606	Hotel	H-06		0/1	351	0.204578%
2607	Hotel	H-07N		0/1	289	0.168441%
2608	Hotel	H-08		0/1	357	0.208075%
2609	Hotel	H-09		0/1	355	0.206909%
2610	Hotel	H-10		0/1	394	0.229640%
2611	Hotel	H-11		0/1	388	0.226143%
2612	Hotel	H-12		1/1	643	0.374768%
2613	Hotel	H-13		1/1	560	0.326392%
2701	Hotel	H-01		0/1	468	0.272770%
2702	Hotel	H-02		0/1	356	0.207492%
2703	Hotel	H-03		0/1	391	0.227891%

Unit Number	Unit Class	Unit Type	Parking Stall No(s)	Bedrooms/ Bathrooms	Approx. Net Living Area (square feet)	Common Interest
2704	Hotel	H-04		0/1	292	0.170190%
2705	Hotel	H-05		0/1	332	0.193504%
2706	Hotel	H-06		0/1	351	0.204578%
2707	Hotel	H-07		0/1	301	0.175436%
2708	Hotel	H-08		0/1	357	0.208075%
2709	Hotel	H-09		0/1	355	0.206909%
2710	Hotel	H-10		0/1	394	0.229640%
2711	Hotel	H-11		0/1	388	0.226143%
2712	Hotel	H-12		1/1	643	0.374768%
2713	Hotel	H-13		1/1	560	0.326392%
2801	Hotel	H-01		0/1	468	0.272770%
2802	Hotel	H-02		0/1	356	0.207492%
2803	Hotel	H-03		0/1	391	0.227891%
2804	Hotel	H-04		0/1	292	0.170190%
2805	Hotel	H-05		0/1	332	0.193504%
2806	Hotel	H-06		0/1	351	0.204578%
2807	Hotel	H-07N		0/1	289	0.168441%
2808	Hotel	H-08		0/1	357	0.208075%
2809	Hotel	H-09		0/1	355	0.206909%
2810	Hotel	H-10		0/1	394	0.229640%
2811	Hotel	H-11		0/1	388	0.226143%
2812	Hotel	H-12		1/1	643	0.374768%
2813	Hotel	H-13		1/1	560	0.326392%
2901	Hotel	H-01		0/1	468	0.272770%
2902	Hotel	H-02		0/1	356	0.207492%
2903	Hotel	H-03		0/1	391	0.227891%
2904	Hotel	H-04		0/1	292	0.170190%
2905*	Hotel	H-05		0/1	332	0.193504%
2906	Hotel	H-06		0/1	351	0.204578%
2907	Hotel	H-07		0/1	301	0.175436%
2908	Hotel	H-08		0/1	357	0.208075%
2909	Hotel	H-09		0/1	355	0.206909%
2910	Hotel	H-10		0/1	394	0.229640%
2911	Hotel	H-11		0/1	388	0.226143%
2912	Hotel	H-12		1/1	643	0.374768%
2913	Hotel	H-13		1/1	560	0.326392%
3001	Resort	E-01		0/1	467	0.272187%
3002*	Resort	E-02		0/1	354	0.206326%
3003	Resort	E-03		0/1	289	0.168441%
3004	Resort	E-04		0/1	393	0.229057%
3005	Resort	E-05		0/1	351	0.204578%
3006	Resort	E-06		0/1	331	0.192921%
3007	Resort	E-07		0/1	357	0.208075%
3008	Resort	E-08		0/1	306	0.178350%
3009	Resort	E-09		0/1	356	0.207492%
3010	Resort	E-10		0/1	393	0.229057%
3011	Resort	E-11		0/1	388	0.226143%
3012	Resort	E-12		1/1	560	0.326392%

Unit Number	Unit Class	Unit Type	Parking Stall No(s)	Bedrooms/ Bathrooms	Approx. Net Living Area (square feet)	Common Interest
3013	Resort	E-13		1/1	641	0.373602%
3101	Resort	E-01		0/1	467	0.272187%
3102	Resort	E-02		0/1	354	0.206326%
3103	Resort	E-03		0/1	289	0.168441%
3104	Resort	E-04		0/1	393	0.229057%
3105	Resort	E-05		0/1	351	0.204578%
3106	Resort	E-06		0/1	331	0.192921%
3107	Resort	E-07		0/1	357	0.208075%
3108	Resort	E-08N		0/1	294	0.171356%
3109	Resort	E-09		0/1	356	0.207492%
3110	Resort	E-10		0/1	393	0.229057%
3111	Resort	E-11		0/1	388	0.226143%
3112*	Resort	E-12		1/1	560	0.326392%
3113	Resort	E-13		1/1	641	0.373602%
3201	Resort	E-01		0/1	467	0.272187%
3202	Resort	E-02		0/1	354	0.206326%
3203	Resort	E-03		0/1	289	0.168441%
3204	Resort	E-04		0/1	393	0.229057%
3205	Resort	E-05		0/1	351	0.204578%
3206	Resort	E-06		0/1	331	0.192921%
3207	Resort	E-07		0/1	357	0.208075%
3208	Resort	E-08		0/1	306	0.178350%
3209	Resort	E-09		0/1	356	0.207492%
3210	Resort	E-10		0/1	393	0.229057%
3211*	Resort	E-11		0/1	388	0.226143%
3212	Resort	E-12		1/1	560	0.326392%
3213	Resort	E-13		1/1	641	0.373602%
3301	Resort	E-01		0/1	467	0.272187%
3302	Resort	E-02		0/1	354	0.206326%
3303	Resort	E-03		0/1	289	0.168441%
3304	Resort	E-04		0/1	393	0.229057%
3305	Resort	E-05		0/1	351	0.204578%
3306	Resort	E-06		0/1	331	0.192921%
3307	Resort	E-07		0/1	357	0.208075%
3308	Resort	E-08N		0/1	294	0.171356%
3309	Resort	E-09		0/1	356	0.207492%
3310*	Resort	E-10		0/1	393	0.229057%
3311	Resort	E-11		0/1	388	0.226143%
3312	Resort	E-12		1/1	560	0.326392%
3313	Resort	E-13		1/1	641	0.373602%
3401	Resort	E-01		0/1	467	0.272187%
3402	Resort	E-02		0/1	354	0.206326%
3403	Resort	E-03		0/1	289	0.168441%
3404	Resort	E-04		0/1	393	0.229057%
3405	Resort	E-05		0/1	351	0.204578%
3406	Resort	E-06		0/1	331	0.192921%
3407	Resort	E-07		0/1	357	0.208075%
3408	Resort	E-08		0/1	306	0.178350%

Unit Number	Unit Class	Unit Type	Parking Stall No(s)	Bedrooms/ Bathrooms	Approx. Net Living Area (square feet)	Common Interest
3409	Resort	E-09		0/1	356	0.207492%
3410	Resort	E-10		0/1	393	0.229057%
3411	Resort	E-11		0/1	388	0.226143%
3412	Resort	E-12		1/1	560	0.326392%
3413	Resort	E-13		1/1	641	0.373602%
3501	Resort	G-01		1/1	572	0.333386%
3502**	Resort	G-02		1/1	744	0.433635%
3503	Resort	G-03		1/1	605	0.352620%
3504	Resort	G-04		0/1	306	0.178350%
3505	Resort	G-05		1+DEN/1	727	0.423726%
3506	Resort	G-06		0/1	356	0.207492%
3507	Resort	G-07		0/1	393	0.229057%
3508	Resort	G-08		0/1	388	0.226143%
3509	Resort	G-09		1/1	641	0.373602%
3510	Resort	G-10		1/1	560	0.326392%
3601	Resort	G-01		1/1	572	0.333386%
3602	Resort	G-02		1/1	744	0.433635%
3603	Resort	G-03		1/1	605	0.352620%
3604	Resort	G-04N		0/1	294	0.171356%
3605	Resort	G-05		1+DEN/1	727	0.423726%
3606	Resort	G-06		0/1	356	0.207492%
3607	Resort	G-07		0/1	393	0.229057%
3608*	Resort	G-08		0/1	388	0.226143%
3609	Resort	G-09		1/1	641	0.373602%
3610	Resort	G-10		1/1	560	0.326392%
3701	Resort	G-01		1/1	572	0.333386%
3702	Resort	G-02		1/1	744	0.433635%
3703	Resort	G-03		1/1	605	0.352620%
3704	Resort	G-04		0/1	306	0.178350%
3705	Resort	G-05		1+DEN/1	727	0.423726%
3706	Resort	G-06		0/1	356	0.207492%
3707	Resort	G-07		0/1	393	0.229057%
3708	Resort	G-08		0/1	388	0.226143%
3709	Resort	G-09		1/1	641	0.373602%
3710	Resort	G-10		1/1	560	0.326392%
3801	Resort	G-01		1/1	572	0.333386%
3802	Resort	G-02		1/1	744	0.433635%
3803	Resort	G-03		1/1	605	0.352620%
3804	Resort	G-04N		0/1	294	0.171356%
3805	Resort	G-05		1+DEN/1	727	0.423726%
3806	Resort	G-06		0/1	356	0.207492%
3807	Resort	G-07		0/1	393	0.229057%
3808	Resort	G-08		0/1	388	0.226143%
3809	Resort	G-09		1/1	641	0.373602%
3810	Resort	G-10		1/1	560	0.326392%
3901	Resort	PH-01		2/2	1,243	0.724473%
3902	Resort	PH-02		1/1	744	0.433635%
3903	Resort	PH-03		1+DEN/1	727	0.423726%

Unit Number	Unit Class	Unit Type	Parking Stall No(s)	Bedrooms/ Bathrooms	Approx. Net Living Area (square feet)	Common Interest
3904	Resort	PH-04		0/1	306	0.178350%
3905	Resort	PH-05		2/2	1,171	0.682508%
3906	Resort	PH-06		1/1	560	0.326392%
3907	Resort	PH-07		1/1	641	0.373602%
Commercial Unit 2	Commercial				6,172	3.597303%
Commercial Unit 4	Commercial				2,146	1.250780%
Commercial Unit 5	Commercial				560	0.326392%
Front Desk Unit	Front Desk				4,509	2.627989%
Parking Unit	Parking				227	0.132305%
TOTAL					171,573	100.000000%

NOTE: DUE TO STRUCTURAL VARIATIONS, NOT ALL UNITS OF THE SAME UNIT TYPE ARE IDENTICAL, AND ACCORDINGLY, THE APPROXIMATE NET LIVING AREA MAY VARY AMONG UNITS OF THE SAME UNIT TYPE.

* * ADA Accessible Unit.

** ADA Accessible Unit with Roll-In Shower.

A. **Layout and Floor Plans of Units.** Each Flats, Hotel, and Resort Unit has the number of bedrooms and bathrooms noted above. The layouts and floor plans of each Unit are depicted in the Condominium Map. None of the Units contain a basement.

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

C. **Common Interest.** The Common Interest for each of the three hundred eighty-eight (388) Units (the Flats Units, Hotel Units, Resort Units, Commercial Units, Front Desk Unit, and Parking Unit) in the Project is calculated by dividing the approximate net living area of the Unit by the total net living area of all the Units in the Project. In order to permit the Common Interest to equal one hundred percent (100%), the Common Interest attributable to the Front Desk Unit was decreased by 0.000047%.

D. **Parking Stalls.** The Condominium Map depicts the location, type and number of parking stalls in the Project. The parking stalls for the Commercial Units are located on level 2 of the Parking Structure (being parking stall numbers 2051 to 2061 and 2082 to 2093), which parking stalls shall be Commercial Class Common Elements. The parking stalls for the Hotel Units and Resort Units are located on levels 2 to 3 of the Parking Structure (being parking stall numbers 2036 to 2050, 2062 to 2076, 2094 to 2110, 2112 to 2132, 3030 to 3047, 3061 to 3075, 3078 to 3080, 3090 to 3097, 3111, 3117 to 3133, and 3151 to 3153) and are Limited Common Elements to the Parking Unit. The parking stalls for the Flats Units are located on levels 2 to 3 of the Parking Structure (being parking stall numbers 2077 to 2081, 2111, 3007 to 3029, 3048 to 3060, 3076, 3077, 3081 to 3089, 3110, 3134 to 3139, and 3141 to 3150) and shall be assigned to Commercial Unit 5 unless otherwise specifically assigned above. Developer has the reserved right to redesignate and reassign parking stalls.

END OF EXHIBIT "B"

EXHIBIT "C"

CLASS COMMON INTEREST

UNIT NO.	UNIT CLASS	APROX. NET LIVING AREA	COMMON INTEREST	FLATS CLASS COMMON INTEREST	HOTEL CLASS COMMON INTEREST	RESORT CLASS COMMON INTEREST	COMM. CLASS COMMON INTEREST	HOTEL, RESORT AND FLATS CLASS COMMON INTEREST	HOTEL AND RESORT CLASS COMMON INTEREST
901	Flats	424	0.247125%	1.381828%				0.268424%	
902	Flats	598	0.348540%	1.948898%				0.378579%	
903	Flats	299	0.174270%	0.974449%				0.189290%	
904	Flats	299	0.174270%	0.974449%				0.189290%	
905	Flats	299	0.174270%	0.974449%				0.189290%	
906	Flats	299	0.174270%	0.974449%				0.189290%	
907	Flats	299	0.174270%	0.974449%				0.189290%	
908	Flats	299	0.174270%	0.974449%				0.189290%	
909	Flats	299	0.174270%	0.974449%				0.189290%	
910	Flats	290	0.169024%	0.945118%				0.183592%	
911	Flats	489	0.285010%	1.593664%				0.309574%	
912	Flats	622	0.362528%	2.027115%				0.393773%	
913	Flats	299	0.174270%	0.974449%				0.189290%	
914	Flats	299	0.174270%	0.974449%				0.189290%	
1001	Flats	424	0.247125%	1.381828%				0.268424%	
1002	Flats	598	0.348540%	1.948898%				0.378579%	
1003	Flats	299	0.174270%	0.974449%				0.189290%	
1004	Flats	299	0.174270%	0.974449%				0.189290%	
1005	Flats	299	0.174270%	0.974449%				0.189290%	
1006	Flats	299	0.174270%	0.974449%				0.189290%	
1007	Flats	299	0.174270%	0.974449%				0.189290%	
1008	Flats	299	0.174270%	0.974449%				0.189290%	
1009	Flats	299	0.174270%	0.974449%				0.189290%	
1010	Flats	290	0.169024%	0.945118%				0.183592%	
1011	Flats	489	0.285010%	1.593664%				0.309574%	
1012	Flats	622	0.362528%	2.027115%				0.393773%	
1013	Flats	299	0.174270%	0.974449%				0.189290%	

UNIT NO.	UNIT CLASS	APROX. NET LIVING AREA	COMMON INTEREST	FLATS CLASS COMMON INTEREST	HOTEL CLASS COMMON INTEREST	RESORT CLASS COMMON INTEREST	COMM. CLASS COMMON INTEREST	HOTEL, RESORT AND FLATS CLASS COMMON INTEREST	HOTEL AND RESORT CLASS COMMON INTEREST
1014	Flats	299	0.174270%	0.974449%				0.189290%	
1101	Flats	424	0.247125%	1.381828%				0.268424%	
1102	Flats	598	0.348540%	1.948898%				0.378579%	
1103	Flats	299	0.174270%	0.974449%				0.189290%	
1104	Flats	299	0.174270%	0.974449%				0.189290%	
1105	Flats	299	0.174270%	0.974449%				0.189290%	
1106	Flats	299	0.174270%	0.974449%				0.189290%	
1107	Flats	299	0.174270%	0.974449%				0.189290%	
1108	Flats	299	0.174270%	0.974449%				0.189290%	
1109	Flats	299	0.174270%	0.974449%				0.189290%	
1110	Flats	290	0.169024%	0.945118%				0.183592%	
1111	Flats	489	0.285010%	1.593664%				0.309574%	
1112	Flats	622	0.362528%	2.027115%				0.393773%	
1113	Flats	299	0.174270%	0.974449%				0.189290%	
1114	Flats	299	0.174270%	0.974449%				0.189290%	
1201	Flats	424	0.247125%	1.381828%				0.268424%	
1202	Flats	598	0.348540%	1.948898%				0.378579%	
1203	Flats	299	0.174270%	0.974449%				0.189290%	
1204	Flats	299	0.174270%	0.974449%				0.189290%	
1205	Flats	299	0.174270%	0.974449%				0.189290%	
1206	Flats	299	0.174270%	0.974449%				0.189290%	
1207	Flats	299	0.174270%	0.974449%				0.189290%	
1208	Flats	299	0.174270%	0.974449%				0.189290%	
1209	Flats	299	0.174270%	0.974449%				0.189290%	
1210	Flats	290	0.169024%	0.945118%				0.183592%	
1211	Flats	489	0.285010%	1.593664%				0.309574%	
1212	Flats	622	0.362528%	2.027115%				0.393773%	
1213	Flats	299	0.174270%	0.974449%				0.189290%	
1214	Flats	299	0.174270%	0.974449%				0.189290%	
1301	Flats	424	0.247125%	1.381828%				0.268424%	
1302	Flats	598	0.348540%	1.948898%				0.378579%	
1303	Flats	299	0.174270%	0.974449%				0.189290%	

UNIT NO.	UNIT CLASS	APROX. NET LIVING AREA	COMMON INTEREST	FLATS CLASS COMMON INTEREST	HOTEL CLASS COMMON INTEREST	RESORT CLASS COMMON INTEREST	COMM. CLASS COMMON INTEREST	HOTEL, RESORT AND FLATS CLASS COMMON INTEREST	HOTEL AND RESORT CLASS COMMON INTEREST
1304	Flats	299	0.174270%	0.974449%				0.189290%	
1305	Flats	299	0.174270%	0.974449%				0.189290%	
1306	Flats	299	0.174270%	0.974449%				0.189290%	
1307	Flats	299	0.174270%	0.974449%				0.189290%	
1308	Flats	299	0.174270%	0.974449%				0.189290%	
1309	Flats	299	0.174270%	0.974449%				0.189290%	
1310	Flats	290	0.169024%	0.945118%				0.183592%	
1311	Flats	489	0.285010%	1.593664%				0.309574%	
1312	Flats	622	0.362528%	2.027115%				0.393773%	
1313	Flats	299	0.174270%	0.974449%				0.189290%	
1314	Flats	299	0.174270%	0.974449%				0.189290%	
1401	Flats	424	0.247125%	1.381828%				0.268424%	
1402	Flats	598	0.348540%	1.948898%				0.378579%	
1403	Flats	299	0.174270%	0.974449%				0.189290%	
1404	Flats	299	0.174270%	0.974449%				0.189290%	
1405	Flats	299	0.174270%	0.974449%				0.189290%	
1406	Flats	299	0.174270%	0.974449%				0.189290%	
1407	Flats	299	0.174270%	0.974449%				0.189290%	
1408	Flats	299	0.174270%	0.974449%				0.189290%	
1409	Flats	299	0.174270%	0.974449%				0.189290%	
1410	Flats	290	0.169024%	0.945118%				0.183592%	
1411	Flats	489	0.285010%	1.593664%				0.309574%	
1412	Flats	622	0.362528%	2.027115%				0.393773%	
1413	Flats	299	0.174270%	0.974449%				0.189290%	
1414	Flats	299	0.174270%	0.974465%				0.189290%	
1502	Hotel	356	0.207492%		0.475726%			0.225375%	0.279709%
1503	Hotel	391	0.227891%		0.522497%			0.247533%	0.307209%
1505	Hotel	332	0.193504%		0.443655%			0.210181%	0.260852%
1512	Hotel	643	0.374768%		0.859247%			0.407068%	0.505205%
1513	Hotel	560	0.326392%		0.748333%			0.354522%	0.439992%
1601	Hotel	468	0.272770%		0.625393%			0.296279%	0.367708%
1602	Hotel	356	0.207492%		0.475726%			0.225375%	0.279709%

UNIT NO.	UNIT CLASS	APROX. NET LIVING AREA	COMMON INTEREST	FLATS CLASS COMMON INTEREST	HOTEL CLASS COMMON INTEREST	RESORT CLASS COMMON INTEREST	COMM. CLASS COMMON INTEREST	HOTEL, RESORT AND FLATS CLASS COMMON INTEREST	HOTEL AND RESORT CLASS COMMON INTEREST
1603	Hotel	391	0.227891%		0.522497%			0.247533%	0.307209%
1604	Hotel	292	0.170190%		0.390202%			0.184858%	0.229424%
1605	Hotel	332	0.193504%		0.443655%			0.210181%	0.260852%
1606	Hotel	351	0.204578%		0.469044%			0.222210%	0.275781%
1607	Hotel	289	0.168441%		0.386193%			0.182959%	0.227067%
1608	Hotel	357	0.208075%		0.477062%			0.226008%	0.280495%
1609	Hotel	355	0.206909%		0.474390%			0.224742%	0.278924%
1610	Hotel	394	0.229640%		0.526506%			0.249432%	0.309566%
1611	Hotel	388	0.226143%		0.518488%			0.245633%	0.304852%
1612	Hotel	643	0.374768%		0.859247%			0.407068%	0.505205%
1613	Hotel	560	0.326392%		0.748333%			0.354522%	0.439992%
1701	Hotel	468	0.272770%		0.625393%			0.296279%	0.367708%
1702	Hotel	356	0.207492%		0.475726%			0.225375%	0.279709%
1703	Hotel	391	0.227891%		0.522497%			0.247533%	0.307209%
1704	Hotel	292	0.170190%		0.390202%			0.184858%	0.229424%
1705	Hotel	332	0.193504%		0.443655%			0.210181%	0.260852%
1706	Hotel	351	0.204578%		0.469044%			0.222210%	0.275781%
1707	Hotel	301	0.175436%		0.402229%			0.190556%	0.236496%
1708	Hotel	357	0.208075%		0.477062%			0.226008%	0.280495%
1709	Hotel	355	0.206909%		0.474390%			0.224742%	0.278924%
1710	Hotel	394	0.229640%		0.526506%			0.249432%	0.309566%
1711	Hotel	388	0.226143%		0.518488%			0.245633%	0.304852%
1712	Hotel	643	0.374768%		0.859247%			0.407068%	0.505205%
1713	Hotel	560	0.326392%		0.748333%			0.354522%	0.439992%
1801	Hotel	468	0.272770%		0.625393%			0.296279%	0.367708%
1802	Hotel	356	0.207492%		0.475726%			0.225375%	0.279709%
1803	Hotel	391	0.227891%		0.522497%			0.247533%	0.307209%
1804	Hotel	292	0.170190%		0.390202%			0.184858%	0.229424%
1805	Hotel	332	0.193504%		0.443655%			0.210181%	0.260852%
1806	Hotel	351	0.204578%		0.469044%			0.222210%	0.275781%
1807	Hotel	289	0.168441%		0.386193%			0.182959%	0.227067%
1808	Hotel	357	0.208075%		0.477062%			0.226008%	0.280495%

UNIT NO.	UNIT CLASS	APROX. NET LIVING AREA	COMMON INTEREST	FLATS CLASS COMMON INTEREST	HOTEL CLASS COMMON INTEREST	RESORT CLASS COMMON INTEREST	COMM. CLASS COMMON INTEREST	HOTEL, RESORT AND FLATS CLASS COMMON INTEREST	HOTEL AND RESORT CLASS COMMON INTEREST
1809	Hotel	355	0.206909%		0.474390%			0.224742%	0.278924%
1810	Hotel	394	0.229640%		0.526506%			0.249432%	0.309566%
1811	Hotel	388	0.226143%		0.518488%			0.245633%	0.304852%
1812	Hotel	643	0.374768%		0.859247%			0.407068%	0.505205%
1813	Hotel	560	0.326392%		0.748333%			0.354522%	0.439992%
1901	Hotel	468	0.272770%		0.625393%			0.296279%	0.367708%
1902	Hotel	356	0.207492%		0.475726%			0.225375%	0.279709%
1903	Hotel	391	0.227891%		0.522497%			0.247533%	0.307209%
1904	Hotel	292	0.170190%		0.390202%			0.184858%	0.229424%
1905	Hotel	332	0.193504%		0.443655%			0.210181%	0.260852%
1906	Hotel	351	0.204578%		0.469044%			0.222210%	0.275781%
1907	Hotel	301	0.175436%		0.402229%			0.190556%	0.236496%
1908	Hotel	357	0.208075%		0.477062%			0.226008%	0.280495%
1909	Hotel	355	0.206909%		0.474390%			0.224742%	0.278924%
1910	Hotel	394	0.229640%		0.526506%			0.249432%	0.309566%
1911	Hotel	388	0.226143%		0.518488%			0.245633%	0.304852%
1912	Hotel	643	0.374768%		0.859247%			0.407068%	0.505205%
1913	Hotel	560	0.326392%		0.748333%			0.354522%	0.439992%
2001	Hotel	468	0.272770%		0.625393%			0.296279%	0.367708%
2002	Hotel	359	0.209240%		0.479735%			0.227274%	0.282066%
2003	Hotel	391	0.227891%		0.522497%			0.247533%	0.307209%
2004	Hotel	292	0.170190%		0.390202%			0.184858%	0.229424%
2005	Hotel	332	0.193504%		0.443655%			0.210181%	0.260852%
2006	Hotel	351	0.204578%		0.469044%			0.222210%	0.275781%
2007	Hotel	289	0.168441%		0.386193%			0.182959%	0.227067%
2008	Hotel	357	0.208075%		0.477062%			0.226008%	0.280495%
2009	Hotel	355	0.206909%		0.474390%			0.224742%	0.278924%
2010	Hotel	394	0.229640%		0.526506%			0.249432%	0.309566%
2011	Hotel	388	0.226143%		0.518488%			0.245633%	0.304852%
2012	Hotel	643	0.374768%		0.859247%			0.407068%	0.505205%
2013	Hotel	560	0.326392%		0.748333%			0.354522%	0.439992%
2101	Hotel	468	0.272770%		0.625393%			0.296279%	0.367708%

UNIT NO.	UNIT CLASS	APROX. NET LIVING AREA	COMMON INTEREST	FLATS CLASS COMMON INTEREST	HOTEL CLASS COMMON INTEREST	RESORT CLASS COMMON INTEREST	COMM. CLASS COMMON INTEREST	HOTEL, RESORT AND FLATS CLASS COMMON INTEREST	HOTEL AND RESORT CLASS COMMON INTEREST
2102	Hotel	356	0.207492%		0.475726%			0.225375%	0.279709%
2103	Hotel	391	0.227891%		0.522497%			0.247533%	0.307209%
2104	Hotel	292	0.170190%		0.390202%			0.184858%	0.229424%
2105	Hotel	332	0.193504%		0.443655%			0.210181%	0.260852%
2106	Hotel	351	0.204578%		0.469044%			0.222210%	0.275781%
2107	Hotel	301	0.175436%		0.402229%			0.190556%	0.236496%
2108	Hotel	357	0.208075%		0.477062%			0.226008%	0.280495%
2109	Hotel	355	0.206909%		0.474390%			0.224742%	0.278924%
2110	Hotel	394	0.229640%		0.526506%			0.249432%	0.309566%
2111	Hotel	388	0.226143%		0.518488%			0.245633%	0.304852%
2112	Hotel	643	0.374768%		0.859247%			0.407068%	0.505205%
2113	Hotel	560	0.326392%		0.748333%			0.354522%	0.439992%
2201	Hotel	468	0.272770%		0.625393%			0.296279%	0.367708%
2202	Hotel	356	0.207492%		0.475726%			0.225375%	0.279709%
2203	Hotel	391	0.227891%		0.522497%			0.247533%	0.307209%
2204	Hotel	292	0.170190%		0.390202%			0.184858%	0.229424%
2205	Hotel	332	0.193504%		0.443655%			0.210181%	0.260852%
2206	Hotel	351	0.204578%		0.469044%			0.222210%	0.275781%
2207	Hotel	289	0.168441%		0.386193%			0.182959%	0.227067%
2208	Hotel	357	0.208075%		0.477062%			0.226008%	0.280495%
2209	Hotel	355	0.206909%		0.474390%			0.224742%	0.278924%
2210	Hotel	394	0.229640%		0.526506%			0.249432%	0.309566%
2211	Hotel	388	0.226143%		0.518488%			0.245633%	0.304852%
2212	Hotel	643	0.374768%		0.859247%			0.407068%	0.505205%
2213	Hotel	560	0.326392%		0.748333%			0.354522%	0.439992%
2301	Hotel	468	0.272770%		0.625393%			0.296279%	0.367708%
2302	Hotel	356	0.207492%		0.475726%			0.225375%	0.279709%
2303	Hotel	391	0.227891%		0.522497%			0.247533%	0.307209%
2304	Hotel	292	0.170190%		0.390202%			0.184858%	0.229424%
2305	Hotel	332	0.193504%		0.443655%			0.210181%	0.260852%
2306	Hotel	351	0.204578%		0.469044%			0.222210%	0.275781%
2307	Hotel	301	0.175436%		0.402229%			0.190556%	0.236496%

UNIT NO.	UNIT CLASS	APROX. NET LIVING AREA	COMMON INTEREST	FLATS CLASS COMMON INTEREST	HOTEL CLASS COMMON INTEREST	RESORT CLASS COMMON INTEREST	COMM. CLASS COMMON INTEREST	HOTEL, RESORT AND FLATS CLASS COMMON INTEREST	HOTEL AND RESORT CLASS COMMON INTEREST
2308	Hotel	357	0.208075%		0.477062%			0.226008%	0.280495%
2309	Hotel	355	0.206909%		0.474390%			0.224742%	0.278924%
2310	Hotel	394	0.229640%		0.526506%			0.249432%	0.309566%
2311	Hotel	388	0.226143%		0.518488%			0.245633%	0.304852%
2312	Hotel	643	0.374768%		0.859247%			0.407068%	0.505205%
2313	Hotel	560	0.326392%		0.748333%			0.354522%	0.439992%
2401	Hotel	468	0.272770%		0.625393%			0.296279%	0.367708%
2402	Hotel	356	0.207492%		0.475726%			0.225375%	0.279709%
2403	Hotel	391	0.227891%		0.522497%			0.247533%	0.307209%
2404	Hotel	292	0.170190%		0.390202%			0.184858%	0.229424%
2405	Hotel	332	0.193504%		0.443655%			0.210181%	0.260852%
2406	Hotel	351	0.204578%		0.469044%			0.222210%	0.275781%
2407	Hotel	289	0.168441%		0.386193%			0.182959%	0.227067%
2408	Hotel	357	0.208075%		0.477062%			0.226008%	0.280495%
2409	Hotel	355	0.206909%		0.474390%			0.224742%	0.278924%
2410	Hotel	394	0.229640%		0.526506%			0.249432%	0.309566%
2411	Hotel	388	0.226143%		0.518488%			0.245633%	0.304852%
2412	Hotel	643	0.374768%		0.859247%			0.407068%	0.505205%
2413	Hotel	560	0.326392%		0.748333%			0.354522%	0.439992%
2501	Hotel	468	0.272770%		0.625393%			0.296279%	0.367708%
2502	Hotel	356	0.207492%		0.475726%			0.225375%	0.279709%
2503	Hotel	391	0.227891%		0.522497%			0.247533%	0.307209%
2504	Hotel	292	0.170190%		0.390202%			0.184858%	0.229424%
2505	Hotel	332	0.193504%		0.443655%			0.210181%	0.260852%
2506	Hotel	351	0.204578%		0.469044%			0.222210%	0.275781%
2507	Hotel	301	0.175436%		0.402229%			0.190556%	0.236496%
2508	Hotel	357	0.208075%		0.477062%			0.226008%	0.280495%
2509	Hotel	355	0.206909%		0.474390%			0.224742%	0.278924%
2510	Hotel	394	0.229640%		0.526506%			0.249432%	0.309566%
2511	Hotel	388	0.226143%		0.518488%			0.245633%	0.304852%
2512	Hotel	643	0.374768%		0.859247%			0.407068%	0.505205%
2513	Hotel	560	0.326392%		0.748333%			0.354522%	0.439992%

UNIT NO.	UNIT CLASS	APROX. NET LIVING AREA	COMMON INTEREST	FLATS CLASS COMMON INTEREST	HOTEL CLASS COMMON INTEREST	RESORT CLASS COMMON INTEREST	COMM. CLASS COMMON INTEREST	HOTEL, RESORT AND FLATS CLASS COMMON INTEREST	HOTEL AND RESORT CLASS COMMON INTEREST
2601	Hotel	468	0.272770%		0.625393%			0.296279%	0.367708%
2602	Hotel	356	0.207492%		0.475726%			0.225375%	0.279709%
2603	Hotel	391	0.227891%		0.522497%			0.247533%	0.307209%
2604	Hotel	292	0.170190%		0.390202%			0.184858%	0.229424%
2605	Hotel	332	0.193504%		0.443655%			0.210181%	0.260852%
2606	Hotel	351	0.204578%		0.469044%			0.222210%	0.275781%
2607	Hotel	289	0.168441%		0.386193%			0.182959%	0.227067%
2608	Hotel	357	0.208075%		0.477062%			0.226008%	0.280495%
2609	Hotel	355	0.206909%		0.474390%			0.224742%	0.278924%
2610	Hotel	394	0.229640%		0.526506%			0.249432%	0.309566%
2611	Hotel	388	0.226143%		0.518488%			0.245633%	0.304852%
2612	Hotel	643	0.374768%		0.859247%			0.407068%	0.505205%
2613	Hotel	560	0.326392%		0.748333%			0.354522%	0.439992%
2701	Hotel	468	0.272770%		0.625393%			0.296279%	0.367708%
2702	Hotel	356	0.207492%		0.475726%			0.225375%	0.279709%
2703	Hotel	391	0.227891%		0.522497%			0.247533%	0.307209%
2704	Hotel	292	0.170190%		0.390202%			0.184858%	0.229424%
2705	Hotel	332	0.193504%		0.443655%			0.210181%	0.260852%
2706	Hotel	351	0.204578%		0.469044%			0.222210%	0.275781%
2707	Hotel	301	0.175436%		0.402229%			0.190556%	0.236496%
2708	Hotel	357	0.208075%		0.477062%			0.226008%	0.280495%
2709	Hotel	355	0.206909%		0.474390%			0.224742%	0.278924%
2710	Hotel	394	0.229640%		0.526506%			0.249432%	0.309566%
2711	Hotel	388	0.226143%		0.518488%			0.245633%	0.304852%
2712	Hotel	643	0.374768%		0.859247%			0.407068%	0.505205%
2713	Hotel	560	0.326392%		0.748333%			0.354522%	0.439992%
2801	Hotel	468	0.272770%		0.625393%			0.296279%	0.367708%
2802	Hotel	356	0.207492%		0.475726%			0.225375%	0.279709%
2803	Hotel	391	0.227891%		0.522497%			0.247533%	0.307209%
2804	Hotel	292	0.170190%		0.390202%			0.184858%	0.229424%
2805	Hotel	332	0.193504%		0.443655%			0.210181%	0.260852%
2806	Hotel	351	0.204578%		0.469044%			0.222210%	0.275781%

UNIT NO.	UNIT CLASS	APROX. NET LIVING AREA	COMMON INTEREST	FLATS CLASS COMMON INTEREST	HOTEL CLASS COMMON INTEREST	RESORT CLASS COMMON INTEREST	COMM. CLASS COMMON INTEREST	HOTEL, RESORT AND FLATS CLASS COMMON INTEREST	HOTEL AND RESORT CLASS COMMON INTEREST
2807	Hotel	289	0.168441%		0.386193%			0.182959%	0.227067%
2808	Hotel	357	0.208075%		0.477062%			0.226008%	0.280495%
2809	Hotel	355	0.206909%		0.474390%			0.224742%	0.278924%
2810	Hotel	394	0.229640%		0.526506%			0.249432%	0.309566%
2811	Hotel	388	0.226143%		0.518488%			0.245633%	0.304852%
2812	Hotel	643	0.374768%		0.859247%			0.407068%	0.505205%
2813	Hotel	560	0.326392%		0.748333%			0.354522%	0.439992%
2901	Hotel	468	0.272770%		0.625393%			0.296279%	0.367708%
2902	Hotel	356	0.207492%		0.475726%			0.225375%	0.279709%
2903	Hotel	391	0.227891%		0.522497%			0.247533%	0.307209%
2904	Hotel	292	0.170190%		0.390202%			0.184858%	0.229424%
2905	Hotel	332	0.193504%		0.443655%			0.210181%	0.260852%
2906	Hotel	351	0.204578%		0.469044%			0.222210%	0.275781%
2907	Hotel	301	0.175436%		0.402229%			0.190556%	0.236496%
2908	Hotel	357	0.208075%		0.477062%			0.226008%	0.280495%
2909	Hotel	355	0.206909%		0.474390%			0.224742%	0.278924%
2910	Hotel	394	0.229640%		0.526506%			0.249432%	0.309566%
2911	Hotel	388	0.226143%		0.518488%			0.245633%	0.304852%
2912	Hotel	643	0.374768%		0.859247%			0.407068%	0.505205%
2913	Hotel	560	0.326392%		0.748310%			0.354522%	0.439997%
3001	Resort	467	0.272187%			0.890508%		0.295646%	0.366922%
3002	Resort	354	0.206326%			0.675031%		0.224109%	0.278138%
3003	Resort	289	0.168441%			0.551085%		0.182959%	0.227067%
3004	Resort	393	0.229057%			0.749399%		0.248799%	0.308780%
3005	Resort	351	0.204578%			0.669311%		0.222210%	0.275781%
3006	Resort	331	0.192921%			0.631173%		0.209548%	0.260067%
3007	Resort	357	0.208075%			0.680752%		0.226008%	0.280495%
3008	Resort	306	0.178350%			0.583502%		0.193721%	0.240424%
3009	Resort	356	0.207492%			0.678845%		0.225375%	0.279709%
3010	Resort	393	0.229057%			0.749399%		0.248799%	0.308780%
3011	Resort	388	0.226143%			0.739865%		0.245633%	0.304852%
3012	Resort	560	0.326392%			1.067846%		0.354522%	0.439992%

UNIT NO.	UNIT CLASS	APROX. NET LIVING AREA	COMMON INTEREST	FLATS CLASS COMMON INTEREST	HOTEL CLASS COMMON INTEREST	RESORT CLASS COMMON INTEREST	COMM. CLASS COMMON INTEREST	HOTEL, RESORT AND FLATS CLASS COMMON INTEREST	HOTEL AND RESORT CLASS COMMON INTEREST
3013	Resort	641	0.373602%			1.222303%		0.405802%	0.503634%
3101	Resort	467	0.272187%			0.890508%		0.295646%	0.366922%
3102	Resort	354	0.206326%			0.675031%		0.224109%	0.278138%
3103	Resort	289	0.168441%			0.551085%		0.182959%	0.227067%
3104	Resort	393	0.229057%			0.749399%		0.248799%	0.308780%
3105	Resort	351	0.204578%			0.669311%		0.222210%	0.275781%
3106	Resort	331	0.192921%			0.631173%		0.209548%	0.260067%
3107	Resort	357	0.208075%			0.680752%		0.226008%	0.280495%
3108	Resort	294	0.171356%			0.560619%		0.186124%	0.230996%
3109	Resort	356	0.207492%			0.678845%		0.225375%	0.279709%
3110	Resort	393	0.229057%			0.749399%		0.248799%	0.308780%
3111	Resort	388	0.226143%			0.739865%		0.245633%	0.304852%
3112	Resort	560	0.326392%			1.067846%		0.354522%	0.439992%
3113	Resort	641	0.373602%			1.222303%		0.405802%	0.503634%
3201	Resort	467	0.272187%			0.890508%		0.295646%	0.366922%
3202	Resort	354	0.206326%			0.675031%		0.224109%	0.278138%
3203	Resort	289	0.168441%			0.551085%		0.182959%	0.227067%
3204	Resort	393	0.229057%			0.749399%		0.248799%	0.308780%
3205	Resort	351	0.204578%			0.669311%		0.222210%	0.275781%
3206	Resort	331	0.192921%			0.631173%		0.209548%	0.260067%
3207	Resort	357	0.208075%			0.680752%		0.226008%	0.280495%
3208	Resort	306	0.178350%			0.583502%		0.193721%	0.240424%
3209	Resort	356	0.207492%			0.678845%		0.225375%	0.279709%
3210	Resort	393	0.229057%			0.749399%		0.248799%	0.308780%
3211	Resort	388	0.226143%			0.739865%		0.245633%	0.304852%
3212	Resort	560	0.326392%			1.067846%		0.354522%	0.439992%
3213	Resort	641	0.373602%			1.222303%		0.405802%	0.503634%
3301	Resort	467	0.272187%			0.890508%		0.295646%	0.366922%
3302	Resort	354	0.206326%			0.675031%		0.224109%	0.278138%
3303	Resort	289	0.168441%			0.551085%		0.182959%	0.227067%
3304	Resort	393	0.229057%			0.749399%		0.248799%	0.308780%
3305	Resort	351	0.204578%			0.669311%		0.222210%	0.275781%

UNIT NO.	UNIT CLASS	APROX. NET LIVING AREA	COMMON INTEREST	FLATS CLASS COMMON INTEREST	HOTEL CLASS COMMON INTEREST	RESORT CLASS COMMON INTEREST	COMM. CLASS COMMON INTEREST	HOTEL, RESORT AND FLATS CLASS COMMON INTEREST	HOTEL AND RESORT CLASS COMMON INTEREST
3306	Resort	331	0.192921%			0.631173%		0.209548%	0.260067%
3307	Resort	357	0.208075%			0.680752%		0.226008%	0.280495%
3308	Resort	294	0.171356%			0.560619%		0.186124%	0.230996%
3309	Resort	356	0.207492%			0.678845%		0.225375%	0.279709%
3310	Resort	393	0.229057%			0.749399%		0.248799%	0.308780%
3311	Resort	388	0.226143%			0.739865%		0.245633%	0.304852%
3312	Resort	560	0.326392%			1.067846%		0.354522%	0.439992%
3313	Resort	641	0.373602%			1.222303%		0.405802%	0.503634%
3401	Resort	467	0.272187%			0.890508%		0.295646%	0.366922%
3402	Resort	354	0.206326%			0.675031%		0.224109%	0.278138%
3403	Resort	289	0.168441%			0.551085%		0.182959%	0.227067%
3404	Resort	393	0.229057%			0.749399%		0.248799%	0.308780%
3405	Resort	351	0.204578%			0.669311%		0.222210%	0.275781%
3406	Resort	331	0.192921%			0.631173%		0.209548%	0.260067%
3407	Resort	357	0.208075%			0.680752%		0.226008%	0.280495%
3408	Resort	306	0.178350%			0.583502%		0.193721%	0.240424%
3409	Resort	356	0.207492%			0.678845%		0.225375%	0.279709%
3410	Resort	393	0.229057%			0.749399%		0.248799%	0.308780%
3411	Resort	388	0.226143%			0.739865%		0.245633%	0.304852%
3412	Resort	560	0.326392%			1.067846%		0.354522%	0.439992%
3413	Resort	641	0.373602%			1.222303%		0.405802%	0.503634%
3501	Resort	572	0.333386%			1.090729%		0.362119%	0.449421%
3502	Resort	744	0.433635%			1.418710%		0.471008%	0.584561%
3503	Resort	605	0.352620%			1.153655%		0.383011%	0.475349%
3504	Resort	306	0.178350%			0.583502%		0.193721%	0.240424%
3505	Resort	727	0.423726%			1.386293%		0.460246%	0.571204%
3506	Resort	356	0.207492%			0.678845%		0.225375%	0.279709%
3507	Resort	393	0.229057%			0.749399%		0.248799%	0.308780%
3508	Resort	388	0.226143%			0.739865%		0.245633%	0.304852%
3509	Resort	641	0.373602%			1.222303%		0.405802%	0.503634%
3510	Resort	560	0.326392%			1.067846%		0.354522%	0.439992%

UNIT NO.	UNIT CLASS	APROX. NET LIVING AREA	COMMON INTEREST	FLATS CLASS COMMON INTEREST	HOTEL CLASS COMMON INTEREST	RESORT CLASS COMMON INTEREST	COMM. CLASS COMMON INTEREST	HOTEL, RESORT AND FLATS CLASS COMMON INTEREST	HOTEL AND RESORT CLASS COMMON INTEREST
3601	Resort	572	0.333386%			1.090729%		0.362119%	0.449421%
3602	Resort	744	0.433635%			1.418710%		0.471008%	0.584561%
3603	Resort	605	0.352620%			1.153655%		0.383011%	0.475349%
3604	Resort	294	0.171356%			0.560619%		0.186124%	0.230996%
3605	Resort	727	0.423726%			1.386293%		0.460246%	0.571204%
3606	Resort	356	0.207492%			0.678845%		0.225375%	0.279709%
3607	Resort	393	0.229057%			0.749399%		0.248799%	0.308780%
3608	Resort	388	0.226143%			0.739865%		0.245633%	0.304852%
3609	Resort	641	0.373602%			1.222303%		0.405802%	0.503634%
3610	Resort	560	0.326392%			1.067846%		0.354522%	0.439992%
3701	Resort	572	0.333386%			1.090729%		0.362119%	0.449421%
3702	Resort	744	0.433635%			1.418710%		0.471008%	0.584561%
3703	Resort	605	0.352620%			1.153655%		0.383011%	0.475349%
3704	Resort	306	0.178350%			0.583502%		0.193721%	0.240424%
3705	Resort	727	0.423726%			1.386293%		0.460246%	0.571204%
3706	Resort	356	0.207492%			0.678845%		0.225375%	0.279709%
3707	Resort	393	0.229057%			0.749399%		0.248799%	0.308780%
3708	Resort	388	0.226143%			0.739865%		0.245633%	0.304852%
3709	Resort	641	0.373602%			1.222303%		0.405802%	0.503634%
3710	Resort	560	0.326392%			1.067846%		0.354522%	0.439992%
3801	Resort	572	0.333386%			1.090729%		0.362119%	0.449421%
3802	Resort	744	0.433635%			1.418710%		0.471008%	0.584561%
3803	Resort	605	0.352620%			1.153655%		0.383011%	0.475349%
3804	Resort	294	0.171356%			0.560619%		0.186124%	0.230996%
3805	Resort	727	0.423726%			1.386293%		0.460246%	0.571204%
3806	Resort	356	0.207492%			0.678845%		0.225375%	0.279709%
3807	Resort	393	0.229057%			0.749399%		0.248799%	0.308780%
3808	Resort	388	0.226143%			0.739865%		0.245633%	0.304852%
3809	Resort	641	0.373602%			1.222303%		0.405802%	0.503634%
3810	Resort	560	0.326392%			1.067846%		0.354522%	0.439992%
3901	Resort	1,243	0.724473%			2.370238%		0.786913%	0.976625%

UNIT NO.	UNIT CLASS	APROX. NET LIVING AREA	COMMON INTEREST	FLATS CLASS COMMON INTEREST	HOTEL CLASS COMMON INTEREST	RESORT CLASS COMMON INTEREST	COMM. CLASS COMMON INTEREST	HOTEL, RESORT AND FLATS CLASS COMMON INTEREST	HOTEL AND RESORT CLASS COMMON INTEREST
3902	Resort	744	0.433635%			1.418710%		0.471008%	0.584561%
3903	Resort	727	0.423726%			1.386293%		0.460246%	0.571204%
3904	Resort	306	0.178350%			0.583502%		0.193721%	0.240424%
3905	Resort	1,171	0.682508%			2.232943%		0.741332%	0.920055%
3906	Resort	560	0.326392%			1.067846%		0.354522%	0.439992%
3907	Resort	641	0.373602%			1.222317%		0.405778%	0.503634%
Commercial Unit 2	Commercial	6,172	3.597303%				69.520162%		
Commercial Unit 4	Commercial	2,146	1.250780%				24.172111%		
Commercial Unit 5	Commercial	560	0.326392%				6.307727%		
Front Desk Unit	Front Desk	4,509	2.627989%						
Parking Unit	Parking	227	0.132305%						
Total		171,573	100.000000%	100.000000%	100.000000%	100.000000%	100.000000%	100.000000%	100.000000%

CALCULATION OF CLASS COMMON INTEREST.

- A. The Flats Class Common Interest is calculated by dividing the approximate net living area of the Flats Unit by the total approximate net living area of all Flats Units in the Project. To permit the Flats Class Common interest to equal one hundred percent (100%), the Flats Class Common Interest attributable to Unit 1414 was increased by 0.000016%.
- B. The Hotel Class Common Interest is calculated by dividing the approximate net living area of the Hotel Unit by the total approximate net living area of all Hotel Units in the Project. To permit the Hotel Class Common interest to equal one hundred percent (100%), the Hotel Class Common Interest attributable to Unit 2913 was decreased by 0.000023%.
- C. The Resort Class Common Interest is calculated by dividing the approximate net living area of the Resort Unit by the total approximate net living area of all Resort Units in the Project. To permit the Resort Class Common interest to equal one hundred percent (100%), the Resort Class Common Interest attributable to Unit 3907 was increased by 0.000014%.
- D. The Commercial Class Common Interest is calculated by dividing the approximate net living area of the Commercial Unit by the total approximate net living area of all Commercial Units in the Project.

E. The Flats, Hotel and Resort Class Common Interest is calculated by dividing the approximate net living area of the Unit by the total approximate net living area of all Flats Units, Hotel Units, and Resort Units in the Project. To permit the Flats, Hotel and Resort Class Common interest to equal one hundred percent (100%), the Flats, Hotel and Resort Class Common Interest attributable to Unit 3907 was decreased by 0.000024%.

F. The Hotel and Resort Class Common Interest is calculated by dividing the approximate net living area of the Unit by the total approximate net living area of all Hotel Units and Resort Units in the Project. To permit the Hotel and Resort Class Common interest to equal one hundred percent (100%), the Hotel and Resort Class Common Interest attributable to Unit 2913 was increased by 0.000005%.

END OF EXHIBIT "C"