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/s/ LESLIE T. KOBATA  
ASSISTANT REGISTRAR

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Imanaka Asato  
745 Fort Street, 17<sup>th</sup> Floor  
Honolulu, Hawaii 96813  
(808) 521-9500 (OTI)

Tax Map Key Nos. (1) 2-3-016: 003, :004 and :008  
TCT Nos.: (See Exhibit "A")

Total Pages: 35

DECLARATION OF RECIPROCAL EASEMENTS  
AND IRREVOCABLE FACILITIES LICENSE

THIS DECLARATION OF RECIPROCAL EASEMENTS AND IRREVOCABLE FACILITIES LICENSE (this "Declaration") is made this 15<sup>th</sup> day of March, 2019 by and between JL AVALON CAPBRIDGE, LLC, a Hawaii limited liability company, with its principal place of business and post office address at 800 Bethel Street, Suite 501-A, Honolulu, Hawaii 96813 ("Avalon"), MARUITO USA, INC., a Hawaii corporation, with its post office address at c/o Goodwill Anderson Quinn & Stifel LLP (Alan Fujimoto, Esq.), 999 Bishop Street, Suite 1600, Honolulu, Hawaii 96813 ("Maruito"), and WATUMULL ENTERPRISES, LTD., a Hawaii corporation, with its post office address at PO Box 1037, Honolulu, Hawaii 96808 ("Watumull") (Maruito and Watumull are sometimes collectively referred to herein as "Lot Owners").

WITNESSETH:

WHEREAS, Avalon, with the joinder of Lot Owners, submitted those certain parcels of land situate at Kalia, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, identified as Tax Map Key Nos. (1) 2-3-016:003, :004 and :008 (the "Property") to a condominium property regime by way of that certain Master Declaration of Condominium Property Regime Establishing Spatial Condominium Units for Sky Ala Moana dated March 15, 2019 and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (the "Office") as Document No. T-10668210, and duly noted on the Land Court Certificate of Title Nos. listed in Exhibit "A", attached hereto and incorporated by reference herein, as the same may be amended from time to time (the "Master Declaration"); and

WHEREAS, the Master Declaration created two spatial condominium units, being Spatial Unit 1 (as more particularly described in Exhibit "B" attached hereto and incorporated herein by reference) and Spatial Unit 2 (as more particularly described in Exhibit "C" attached hereto and incorporated herein by reference (collectively, the "Spatial Units"), which Spatial Units are currently owned by Avalon and Lot Owners; and

WHEREAS, Avalon has entered into separate agreements with Lot Owners to acquire Lot Owners' interest in the Spatial Units; and

WHEREAS, Avalon, with the joinder of Lot Owners, intends to submit Spatial Unit 1 (the "Sky West Property") to a condominium property regime known as "Sky Ala Moana West" (the "Sky West Project") by way of a Declaration of Condominium Property Regime of Sky Ala Moana West (the "Sky West Declaration") (Avalon, in its capacity as developer of the Sky West Project is referred to as "Sky West Declarant"); and

WHEREAS, the Sky West Project is expected to contain commercial units (the "Sky West Commercial Units") and residential units (the "Sky West Residential Units") (the Sky West Commercial Units and the Sky West Residential Units are collectively referred to herein as the "Sky West Units"); and

WHEREAS, Avalon, with the joinder of Lot Owners, intends to submit Spatial Unit 2 (the "Sky East Property") to a condominium property regime known as "Sky Ala Moana East" (the "Sky East Project") by way of a Declaration of Condominium Property Regime of Sky Ala Moana East (the "Sky East Declaration") (Avalon, in its capacity as developer of the Sky East Project is referred to as "Sky East Declarant"); and

WHEREAS, the Sky East Project is expected to contain commercial units (the "Sky East Commercial Units"), affordable housing units (the "Sky East Affordable Units"), a front desk unit (the "Sky East Front Desk Unit"), and hotel units (the "Sky East Hotel Units") (the Sky East Commercial Units, Sky East Affordable Units, Sky East Front Desk Unit, and the Sky East Hotel Units are collectively referred to herein as the "Sky East Units"); and

WHEREAS, the Sky West Project and the Sky East Project are designed to share a seven (7) level podium (the "Podium") with common access for ingress and egress to Kapiolani Boulevard and Makaloa Street; and

WHEREAS, the Podium is comprised of common facilities (the "Sky West Common Facilities" and the "Sky East Common Facilities"; collectively referred to as the "Common Facilities"), parking facilities (the "Sky West Parking Facilities" and the "Sky East Parking Facilities"; collectively referred to as the "Parking Facilities") and recreational facilities (the "Sky West Recreational Facilities" and the "Sky East Recreational Facilities"; collectively referred to as the "Recreational Facilities"); and

WHEREAS, Sky West Declarant and Sky East Declarant (collectively, "Declarants") propose to develop the Sky West Project and the Sky East Project with shared access to the Common Facilities, Parking Facilities, and the Recreational Facilities, and, accordingly, the purpose and intent of this Declaration is to subject the Spatial Units to the easements, licenses, and other provisions hereinafter set forth, and to establish the rights and obligations hereinafter described; and

WHEREAS, although nothing in this Declaration affects the separate ownership of the Spatial Units or creates common property under the Master Declaration, Declarants and Lot Owners agree, as the sole owners of the Spatial Units under the Master Declaration, that the proper party to administer this Declaration is the Association of Unit Owners of Sky Ala Moana (the "Master Association");

NOW, THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarants covenant and agree as follows:

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

1. "Act" means the "Condominium Property Act" codified in Chapter 514B of the Hawaii Revised Statutes, as amended.
2. "Aggrieved Party" means, for the purposes of Section III.B, a party who disputes the adoption of a rule or regulation by the Master Association.
3. "Aggrieving Party" means, for the purposes of Section III.B, the Master Association.
4. "Association" means the Sky West Association and the Sky East Association.
5. "Avalon" means JL Avalon Capbridge, LLC, a Hawaii limited liability company, and its successors and assigns.
6. "Board" means the Board of Directors of an Association.
7. "Commercial Units" means, collectively, the Sky West Commercial Units and the Sky East Commercial Units.
8. "Common Facilities" means, collectively, the Sky West Common Facilities and the Sky East Common Facilities.
9. "County" means the City and County of Honolulu, State of Hawaii.
10. "Declarants" means the Sky West Declarant and the Sky East Declarant.
11. "Declaration" means this Declaration of Reciprocal Easements and Irrevocable Facilities License.
12. "Default" means the failure of a party to satisfy its obligations under this Declaration.
13. "Dispute" means the occurrence of any controversy of claim arising out of, or related to this Declaration.
14. "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.
15. "Licensee" means, for the purposes of Section II.E, Sky West Declarant.
16. "Licensor" means, for the purposes of Section II.E, Sky East Declarant and, upon creation of the Sky East Project, the Sky East Front Desk Unit Owner.
17. "Lienee" means the Declarant whose property against which a lien is filed.
18. "Lot Owners" means Maruito and Watumull.
19. "Maruito" means Maruito USA, Inc., a Hawaii corporation.
20. "Master Association" means the Association of Unit Owners of Sky Ala Moana. The sole members of the Master Association as of the date of this Declaration are Sky East Owner and Sky West Owner.
21. "Master Board" means the board of directors of the Master Association.
22. "Master Declaration" means the Master Declaration of Condominium Property Regime Establishing Spatial Condominium Units for Sky Ala Moana, as the same may be amended from time to time.
23. "Mortgage" means, for the purposes of Section V.B, a pledge, mortgage, or encumbrances of Declarant's right, title, and interest under this Declaration.
24. "Mortgagee" means, for the purposes of Section V.B, the holder of a Mortgage.

25. **"Mortgagor"** means, for the purposes of **Section V.B**, a Declarant, and its successor or permitted assign who pledges, mortgages, or encumbers any of all of its right, title, and interest under this Declaration.
26. **"Occupant"** means any person other than an Owner occupying a Unit.
27. **"Office"** means the Office of the Assistant Registrar of the Land Court of the State of Hawaii.
28. **"Owner"** means a person or entity owning severally or as a co-tenant, a Unit and the common interest appurtenant thereto, to the extent of the interest so owned.
29. **"Parking Facilities"** means, collectively, the Sky West Parking Facilities and the Sky East Parking Facilities.
30. **"Pipe"** means any pipeline, conduit, wire, cable, or other means of providing utility services.
31. **"Podium"** means the seven (7) level podium shared between the Projects.
32. **"Projects"** means the Sky West Project and the Sky East Project.
33. **"Property"** means those certain parcels of land situate at Kalia, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, identified as Tax Map Key Nos. (1) 2-3-016:003, :004 and :008, submitted to a condominium property regime pursuant to the Master Declaration.
34. **"Reciprocal Easement Budget"** means the amounts anticipated to be expended for the maintenance of the Common Facilities and the Parking Facilities, as discussed in **Section II.F.3**.
35. **"Reciprocal Easement Reimbursement"** means the amount payable monthly by each Association by the Master Association for maintaining, repairing, and replacing the Common Facilities and Parking Facilities as discussed in **Section II.F.2**.
36. **"Reciprocal Easement Map"** means that certain map attached hereto as **Exhibit "D"** depicted the Common Facilities, including the Recreational Facilities, and the Parking Facilities.
37. **"Recreational Facilities"** means, collectively, the Sky West Recreational Facilities and the Sky East Recreational Facilities.
38. **"Recreational Facilities Budget"** means the budget prepared by the Sky East Front Desk Unit Owner showing amounts anticipated to be expended for the maintenance of the Sky East Recreational Facilities as discussed in **Section II.E.4**.
39. **"Recreational Facilities Reimbursement"** means amounts payable by the Sky West Association to the Sky East Front Desk Unit Owner for the use of the Sky East Recreational Facilities as discussed in **Section II.E.3**.
40. **"Repairing Party"** means each Declarant or their respective successors and permitted assigns, and, upon creation of the Sky East Association and/or the Sky West Association, the Associations seeking to install, connect, relocate, enlarge, replace or repair any Pipe pursuant to **Section II.C.3**
41. **"Sky East Affordable Units"** are defined in the Declaration and means the eighty-four (84) affordable units anticipated to be located in the Sky East Project, as more particularly described in the Sky East Declaration.
42. **"Sky East Association"** means the Association of Unit Owners of Sky Ala Moana East.

43. **"Sky East Commercial Units"** are defined in the Recitals and means the three (3) commercial units anticipated to be located in the Sky East Project, as more particularly described in the Sky East Declaration.
44. **"Sky East Common Facilities"** means those Sky East facilities for the benefit of all Owners, including the bike parking, the fire command room, and the water/fire pump room.
45. **"Sky East Declarant"** means Avalon, as developer of the Sky East Project, and its successors and assigns.
46. **"Sky East Declaration"** means the Declaration of Condominium Property Regime of Sky Ala Moana East, as the same may be amended from time to time.
47. **"Sky East Front Desk Unit"** is defined in the Recitals and means the front desk unit anticipated to be located in the Sky East Project, as more particularly described in the Sky East Declaration. Until the establishment of the Sky East Project, for the purposes of this Declaration, the Sky East Front Desk Unit Owner shall be Sky East Declarant.
48. **"Sky East Hotel Units"** are defined in the Recitals and means the three hundred (300) hotel units anticipated to be located in the Sky East Project, as more particularly described in the Sky East Declaration.
49. **"Sky East Owner"** means Avalon, Maruito, and Watumull, and their respective successors and assigns, as owners of the Sky East Property.
50. **"Sky East Parking Facilities"** are defined in the Recitals shall include the parking stalls, loading zones, and all driveways, access lanes, paved areas, and ramps located in the Sky East Project, as more particularly described in the Sky East Declaration.
51. **"Sky East Project"** means the Sky Ala Moana East condominium project.
52. **"Sky East Property"** means Spatial Unit 2, as created by the Master Declaration.
53. **"Sky East Recreational Facilities"** are defined in the Recitals and means those certain recreational facilities which are a part of the Sky East Project located on level 8 of the Podium, as shown on the Reciprocal Easement Map; provided that the description of such recreational facilities 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.
54. **"Sky East Unit"** means a condominium unit in the Sky East Project.
55. **"Sky West Association"** means the Association of Unit Owners of Sky Ala Moana West.
56. **"Sky West Board"** means the Board of Directors of the Sky West Association.
57. **"Sky West Commercial Units"** are defined in the Recitals and means the two (2) commercial units anticipated to be located in the Sky West Project, as more particularly described in the Sky West Declaration.
58. **"Sky West Common Facilities"** means those Sky West facilities for the benefit of all Owners, including the electrical room, fire/booster pump room, and the emergency generator.
59. **"Sky West Declarant"** means Avalon, as developer of the Sky West Project, and its successors and assigns.
60. **"Sky West Declaration"** means the Declaration of Condominium Property Regime of Sky Ala Moana West, as the same may be amended from time to time.

61. "Sky West Owner" means Avalon, Maruito, and Watumull, and their respective successors and assigns, as owners of the Sky West Property.
62. "Sky West Parking Facilities" are defined in the Recitals shall include the parking stalls, loading zones, and all driveways, access lanes, paved areas, and ramps located in the Sky West Project, as more particularly described in the Sky West Declaration.
63. "Sky West Project" means the Sky Ala Moana West condominium property regime.
64. "Sky West Property" means Spatial Unit 1, as created by the Master Declaration.
65. "Sky West Recreational Facilities" are defined in the Recitals and means those certain recreational facilities which are a part of the Sky West Project located on level 8 of the Podium, as shown on the Reciprocal Easement Map; provided that the description of such recreational facilities 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.
66. "Sky West Residential Units" are defined in the Recitals and are the three hundred ninety (390) residential units anticipated to be located in the Sky West Project, as more particularly described in the Sky West Declaration.
67. "Sky West Share" means the proportionate share of the Sky West Association for use of the Sky East Recreational Facilities, as discussed in Section II.E.4.
68. "Sky West Unit" means a condominium unit in the Sky West Project.
69. "Spatial Units" means Spatial Unit 1 and Spatial Unit 2, created by the Master Declaration.
70. "State" means the State of Hawaii.
71. "Unit" means a Sky West Unit or Sky East Unit.
72. "Watumull" means Watumull Enterprises, Ltd., a Hawaii corporation.

## II. GRANT OF EASEMENTS IN, TO, AND OVER THE COMMON FACILITIES

### A. EASEMENTS FOR PEDESTRIAN INGRESS AND EGRESS.

1. **Easement for Pedestrian Ingress and Egress Over Sky West Common Facilities and Sky West Parking Facilities.** Sky West Owner hereby grants and conveys to Sky East Owner, for the benefit of the Sky East Property, a perpetual, nonexclusive easement over the Sky West Common Facilities and the Sky West Parking Facilities as depicted on the Reciprocal Easement Map, and the stairway and elevator servicing the Podium located in the southwest corner thereof, only to the extent that such easements are necessary for pedestrian ingress and egress to and from the proposed Sky East Units, and to and from any limited common element areas appurtenant to such Sky East Units, to the extent required under the Act. Nothing in this Section shall grant any Owner an easement in the Sky West Common Facilities and Sky West Parking Facilities for any purpose other than ingress and egress to their respective Units. Such easement shall be subject to the right of the Master Association marshal and regulate such ingress and egress in its discretion, and subject to any rules promulgated for Sky West Common Facilities by the Master Association from time to time (which rules and regulations shall be subject to the limitations set forth in Section III.A).

Sky West Owner, further grants to Sky East Owner, for the benefit of the proposed Sky East Commercial Units and their vendors, licensees, and invitees, for the purposes of the business conducted by the Sky East Commercial Units, nonexclusive easements in the Sky West Common Facilities and Sky West Parking Facilities: (a) to come onto the Sky West Project; (b) to make deliveries using any delivery area and any Sky West Common Facilities or Sky West Parking Facilities connecting the delivery area to the Sky East Commercial Units or their limited common elements; (c) for pedestrian access to the Sky East Commercial Units and their limited

common elements using walkways and other access ways intended for such purpose within the Sky West Common Facilities and Sky West Parking Facilities; and (d) to use the Sky West Common Facilities and Sky West Parking Facilities as may otherwise be reasonably necessary in connection with the ordinary conduct of business operations of the Sky East Commercial Units and their respective limited common elements.

2. **Easement for Pedestrian Ingress and Egress Over Sky East Common Facilities and Sky East Parking Facilities.** Sky East Owner hereby grants and conveys to Sky West Owner, for the benefit of Spatial West Property, a perpetual, nonexclusive easement over the Sky East Common Facilities and Sky East Parking Facilities as depicted on the Reciprocal Easement Map, only to the extent that such easements are necessary for ingress and egress to and from the Sky West Units, and to and from any limited common element areas appurtenant to such Sky West Units, to the extent required under the Act. Nothing in this Section shall grant any Owner an easement in the Sky East Common Facilities or Sky East Parking Facilities for any purpose other than ingress and egress to and from their respective Units. Such easement shall be subject to the right of the Master Association to marshal and regulate such ingress and egress in its discretion, and subject to any rules promulgated by the Master Association from time to time (which rules and regulations shall be subject to the limitations set forth in **Section III.A**).

Sky East Owner further grants to the Sky West Owner, for the benefit of the proposed Sky West Commercial Units and their vendors, licensees, and invitees, for the purposes of the business conducted by the Sky West Commercial Units, nonexclusive easements in the Sky East Common Facilities and Sky East Parking Facilities: (a) to come onto the Sky East Project; (b) to make deliveries using any delivery area and any Sky East Common Facilities and Sky East Parking Facilities connecting the delivery area to the Sky West Commercial Units or their limited common elements; (c) for pedestrian access to the Sky West Commercial Units and their limited common elements using walkways and other access ways intended for such purpose within the Sky East Common Facilities and Sky East Parking Facilities; and (d) to use the Sky East Common Facilities and Sky East Parking Facilities as may otherwise be reasonably necessary in connection with the ordinary conduct of business operations of the Sky West Commercial Units and their respective limited common elements.

#### B. **EASEMENT FOR USE OF PARKING FACILITIES.**

1. **Easement for Vehicular Ingress, Egress, and Parking Over Sky West Parking Facilities.** Sky West Owner hereby grants and conveys to Sky East Owner, for the benefit of the Sky East Property, a perpetual, nonexclusive easement in, over, and through the Sky West Parking Facilities as depicted on the Reciprocal Easement Map, for vehicular ingress, egress, and parking, subject to the limitations discussed below. Nothing in this Section shall grant any Owner an easement in the Sky West Parking Facilities for any purpose other than vehicular ingress, egress, and parking. Such easement shall be subject to the right of the Master Association to marshal and regulate such ingress and egress in its discretion, and subject to any rules promulgated by the Master Association from time to time (which rules and regulations shall be subject to the limitations set forth in **Section III.A**).

2. **Easement for Vehicular Ingress, Egress, and Parking Over Sky East Parking Facilities.** Sky East Owner hereby grants and conveys to Sky West Owner, for the benefit of the Sky West Property, a perpetual, nonexclusive easement over the Sky East Parking Facilities as depicted on the Reciprocal Easement Map, for vehicular ingress, egress, and parking, subject to the limitations discussed below. Nothing in this Section shall grant any Owner an easement in the Sky East Parking Facilities for any purpose other than vehicular ingress, egress, and parking. Such easement shall be subject to the right of the Master Association to marshal and regulate such ingress and egress in its discretion and subject to any rules promulgated by the Master Association from time to time (which rules and regulations shall be subject to the limitations set forth in **Section III.A**).

3. **Parking Assignments.** Notwithstanding the reciprocal easements granted herein, it is the intent of Declarants that the parking stalls within the Parking Facilities be assigned as follows: (a) parking on level 2 shall be assigned to the Commercial Units, Sky East Hotel Units, and serve as guest stalls for both Projects; (b) parking on level 3 shall be assigned to Sky East Hotel Units and Sky East Affordable Units; and (c) parking on levels 4 to 7 shall be assigned to Sky West Residential Units. Declarants reserve the right to more specifically assign parking stalls, and to have certain stalls designated as limited common elements to individual Units. In furtherance thereof: (i) Declarants shall mutually agree upon the parking stall assignments for level 2; (ii) Sky East

Declarant shall have the right, without the consent or joinder of any other party, to assign parking stalls located on level 3; and (iii) Sky West Declarant shall have the right, without the consent or joinder of any other party, to assign the parking stalls located on levels 4 to 7.

### C. UTILITY EASEMENTS.

1. **Easement for Utilities Over Sky West Common Facilities and Sky West Parking Facilities.** Sky West Owner hereby grants and conveys to Sky East Owner, for the benefit of the Sky East Property, a perpetual, nonexclusive easement across, through and on the Sky West Common Facilities and the Sky West Parking Facilities: (a) for the purpose of providing utility service to the Sky East Property or the Sky East Project, to the extent reasonably necessary, without substantially interfering with the use of the Sky West Common Facilities and the Sky West Parking Facilities by any Owner; and (b) for access to use the water, storm, and sanitary sewer systems located within the Sky West Property, for the benefit of the Sky East Property.

2. **Easement for Utilities Over Sky West Common Facilities and Sky West Parking Facilities.** Sky East Owner hereby grants and conveys to Sky West Owner, for the benefit of the Sky West Property, a perpetual, nonexclusive easement across, through and on the Sky East Common Facilities and the Sky East Parking Facilities: (a) for the purpose of providing utility service to the Sky West Property or the Sky West Project, to the extent reasonably necessary, without substantially interfering with the use of the Sky East Common Facilities and the Sky East Parking Facilities by any Owner; and (b) for access to use the water, storm, and sanitary sewer systems located within the Sky East Property, for the benefit of the Sky West Property.

3. **Repair of Utility Easements.** Each Declarant or their respective successors and permitted assigns, and, upon creation of the Sky East Association and/or the Sky West Association, the Associations (the "**Repairing Party**") shall have the right to install, connect, relocate, enlarge, replace or repair any pipeline, conduit, wire, cable, or other means of providing utility services (hereinafter collectively referred to as a "**Pipe**") located on the other Declarant's property pursuant to the easement rights referred to in **Sections II.C.1 and II.C.2**, if reasonably deemed by such Declarant to be necessary to the enjoyment and proper use of the Repairing Party's property, provided such Repairing Party complies with the following conditions:

a. The Repairing Party proposing to do such work shall give no less than thirty (30) calendar days prior written notice to the other Declarant or Association, as applicable, that it anticipates doing such work, together with notification of the proposed area of such work and the anticipated starting and completion date of such work; except that if the work involved is emergency repair work, only such advance notice as is reasonably practicable need be given, but nothing contained in this sentence shall in any way modify, limit, or lessen the obligations of the Declarants hereto, respectively, elsewhere in this Declaration;

b. Such work shall be done at the sole cost of the Repairing Party undertaking the same and shall be performed in such a manner as not to cause any interruption of or undue interference with the quiet and peaceful enjoyment of the Units or common areas by the Owner(s) and Occupant(s) of the other Project hereto, or any unreasonable interruption in the utility services provided in the Pipe servicing the other Owner(s) and/or Occupant(s)'s property; and

c. After completion of such work, the Repairing Party performing the same shall promptly restore, at its own cost and expense, the Common Facilities and/or Parking Facilities on the other Declarant's property to at least the same or as good condition as existed immediately before the commencement of such work.

### D. EASEMENT FOR SUPPORT, MAINTENANCE, AND REPAIR; EASEMENT FOR ENCROACHMENTS.

1. **Easement for Support, Maintenance, and Repair.** Although the Podium is comprised of portions of each of the Projects, because such Projects will be physically connected, Sky West Owner and Sky East Owner understand and intend for the Podium to operate cohesively, as if part of a single Project. Sky West Owner hereby grants and conveys to the Sky East Owner, for the benefit of the Sky East Property and the Sky East Project, a perpetual, nonexclusive easement in the Sky West Common Facilities, the Sky West Parking Facilities, and the Sky West Recreational Facilities for support, maintenance, and repair of the Sky East Property and the Sky



East Project. Sky East Owner hereby grants and conveys to Sky West Owner, for the benefit of the Sky West Property and the Sky West Project, a perpetual, nonexclusive easement in the Sky East Common Facilities, the Sky East Parking Facilities, and the Sky East Recreational Facilities for support, maintenance, and repair of the Sky West Property and the Sky West Project.

2. **Easement for Encroachments.** If any part of the Common Facilities, Parking Facilities, or Recreational Facilities of a Project now or hereafter encroaches upon the Common Facilities, Parking Facilities, or Recreational Facilities of the other Project, Sky West Owner and Sky East Owner (as applicable) hereby grant an easement for such encroachment and the maintenance thereof, so long as it continues. In the event of any shifting, settlement, or movement of any part of a Project, encroachments in the Common Facilities, Parking Facilities, or Recreational Facilities due to such shifting, settlement, or movement shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist for so long as such encroachment continues.

#### E. LICENSE TO USE SKY EAST RECREATIONAL FACILITIES.

1. **Irrevocable License.** In addition to the easements granted herein, Sky East Declarant, and, upon creation of the Sky East Project, the Sky East Front Desk Unit Owner (for the purpose of this **Section II.E, "Licensor"**), hereby grants to Sky West Declarant, and, upon the creation of the Sky West Project, the Sky West Association, for the benefit of the Sky West Residential Unit Owners (each, a **"Licensee"**), an irrevocable, nonexclusive license to use the Sky East Recreational Facilities for the purposes authorized under this Declaration. The term of such license shall be coterminous with the term of the Sky East Project. Each Licensee shall have beneficial use and enjoyment of the Sky East Recreational Facilities, and shall have access, ingress to, egress from, and use of the Sky East Recreational Facilities, subject to the rules and regulations promulgated by Licensor (which rules and regulations shall be subject to the limitations set forth in **Section III.A**; provided that Licensee is current on payment of the Recreational Facilities Reimbursement (as hereinafter defined) to the Licensor and is not otherwise in default under this Declaration.

2. **Nature of License.** No Licensee, nor any person claiming rights through it or under it, shall have or claim, at any time, any interest or estate of any kind or extent in the Sky East Recreational Facilities of Licensor by virtue of this license or any permitted use hereunder, and each Licensee waives any rights in or to the Sky East Recreational Facilities. The license herein granted is a non-proprietary, non-voting, non-transferable use right, terminable only in accordance with the provisions of this Declaration. Licensee shall not have any interest in the income that may be derived from the Sky East Recreational Facilities, nor shall any Licensee have any right to a specified level of service, availability or configuration of any of the Sky East Recreational Facilities, nor any right to influence any decision of the Licensor concerning the foregoing.

3. **Payable by Sky West Association.** The Sky West Association, in consideration of the licenses granted herein, shall reimburse the Sky East Front Desk Unit Owner a share of the expenses incurred in maintaining, repairing, and replacing the Sky East Recreational Facilities. The Sky West Association shall pay to the Sky East Front Desk Unit Owner on the first day of each month, an amount equal to one-twelfth (1/12<sup>th</sup>) of the Sky West Share (as hereinafter defined) of the Recreational Facilities Budget (as hereinafter defined) (the **"Recreational Facilities Reimbursement"**).

4. **Calculation and Manner of Payment.** Based on estimated uses of the Sky East Recreational Facilities, the proportionate share of the Sky West Association shall be forty percent (40%) of the Recreational Facilities Budget (the **"Sky West Share"**). The Sky East Front Desk Unit Owner shall determine the costs incurred for the ordinary and necessary maintenance and repair of the Sky East Recreational Facilities, including a sum for reserve purposes. At least sixty (60) calendar days prior to the end of the calendar year, the Sky East Front Desk Unit Owner shall prepare and present to the Sky West Board a budget showing the amounts anticipated to be expended for maintenance of the Sky East Recreational Facilities (the **"Recreational Facilities Budget"**). If at any time the Recreational Facilities Budget exceeds the previous year's Recreational Facilities Budget by more than three percent (3%), the Sky East Front Desk Unit Owner shall adjust the Sky West Share of the Recreational Facilities Budget so that the Recreational Facilities Reimbursement for the year does not exceed the previous year's Recreational Facilities Reimbursement by more than three percent (3%). Upon receipt, the Sky West Board shall have thirty (30) calendar days to review the Recreational Facilities Budget. If the Sky West Board has any objections to the Recreational Facilities Budget, such Board shall notify the Sky East 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 Sky West Board and a representative of the Sky East Front Desk Unit Owner shall meet at a mutually acceptable place within or near the Projects to discuss the objections of such Board, and shall negotiate in good faith to resolve such objections. In the event such Board and the Sky East 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 VII** of this Declaration. The parties acknowledge that the Sky East Front Desk Unit Owner is, subject to the timely payment of the Recreational Facilities Reimbursement, obligated to maintain the Sky East Recreational Facilities as required by the Sky East Declaration, and will enter into contracts with vendors and other contractors to maintain the Sky East Recreational Facilities to the required standard. Accordingly, notwithstanding any dispute regarding the Recreational Facilities Budget, the Sky West Association shall pay to the Sky East Front Desk Unit Owner the Recreational Facilities Reimbursement calculated in accordance with the Recreational Facilities Budget prepared by the Sky East 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, expenditures necessary to meet life safety requirements, and other expenses) pending the resolution of any dispute, and the Sky East Front Desk Unit Owner may disburse such amounts so collected to any third-party vendor or contractor without liability to the Sky West Association for amounts paid. Additionally, the Sky East Front Desk Unit Owner shall be granted broad discretion in determining the level of maintenance necessary to maintain the standard required under the Sky East Declaration, and its determination shall not be disputed unless there is an abuse of such discretion.

Each Recreational Facilities Budget shall be reconciled at least once per calendar year by the Sky East Front Desk Unit Owner; provided, however, that the Sky East Front Desk Unit Owner may reconcile the Recreational Facilities Budget more frequently if it determines that the actual expenses associated with the Sky East Recreational Facilities will result in a shortfall in any calendar month. In the event the actual expenses associated with the Recreational Facilities differ from the Recreational Facilities Reimbursement collected for the calendar year or calendar month in question, the Sky West Association shall: (a) remit the difference to the Sky East Front Desk Unit Owner within sixty (60) calendar days of the end of the calendar year or calendar month in question; or (b) apply any surplus in amounts collected to the following year or month's Recreational Facilities Reimbursement.

Notwithstanding the foregoing, where the actual expenses associated with the Sky East Recreational Facilities for any calendar year exceeds the Recreational Facilities Budget, the Sky West Association shall not be required to reimburse the Sky East Front Desk Unit Owner any amounts in excess of one hundred three percent (103%) of the Recreational Facilities Reimbursement, except in "emergency situations," as such term is defined in Section 514B-148 of the Act, or with the prior approval of a majority of the Sky West Residential Unit Owners as required under the Sky West Declaration.

5. **Failure to Reimburse.** The Sky West Association shall include the Recreational Facilities Reimbursement in its annual budget for common expenses, and shall assess such amounts to Sky West Residential Unit Owners. The Sky West Association shall take such additional measures and do such things as are reasonably necessary to secure the timely payment of the Recreational Facilities Reimbursement to the Sky East Front Desk Unit Owner. If any installment of the Recreational Facilities Reimbursement is not paid when due, the Sky East Front Desk Unit Owner shall give written notice of such default to the Sky West Association. If the Sky West 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 Sky East Front Desk Unit Owner in its sole discretion, the Sky East Front Desk Unit Owner may accelerate the remaining installments of the Recreational Facilities Reimbursement for the then current calendar year, demand payment of the same, and may suspend the license granted hereunder.

6. **General Excise Tax.** Amounts payable by the Sky West Association to the Sky East Front Desk Unit Owner under the license granted herein represent a reimbursement of the proportionate share of the maintenance of the Sky East Recreational Facilities by the Sky West Residential 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 Sky West Association shall pay such additional amount as may be necessary to permit the Sky East Front Desk Unit Owner to receive the sum it would have received should the general excise tax (or other applicable tax) not apply.

7. **No Waiver.** No Sky West Residential Unit Owner shall be relieved of the obligation to pay for the use of such Sky East Recreational Facilities through his or her share of the common expenses by waiving his or her rights to use the Sky East Recreational Facilities or any part thereof. Neither the Sky West Association nor any Sky West Residential Unit Owner can abandon the license granted herein. The Sky East Front Desk Unit Owner shall be able to directly charge individual Owners for any additional goods sold or services rendered in connection with the Sky East Recreational Facilities.

F. **MAINTENANCE OF COMMON FACILITIES AND PARKING FACILITIES.**

1. **Duty to Maintain Common Facilities and Parking Facilities.** Sky East Owner and Sky West Owner, as the sole members of the Master Association acknowledge and agree that the Master Association, subject to the provisions of the Master Declaration and subject to the provisions of this Section, shall operate, manage, equip (when appropriate), light (when appropriate), repair, replace (when necessary), and maintain, or cause to be so operated, managed, equipped, lighted, repaired, replaced, and maintained, the Common Facilities and Parking Facilities, and keep such Common Facilities and Parking Facilities in good order and condition as required under the Project Declarations. Without limiting the provisions of the preceding sentence, the Master Association shall keep the Common Facilities and Parking Facilities well-lighted and replace burnt-out light bulbs, and maintain and keep in good working order and repair the lighting fixtures that illuminate the Common Facilities and Parking Facilities, and maintain and keep in good working order and repair the sewage, water, air conditioning, plumbing, and electrical systems and other utilities, if any, servicing the Common Facilities or Parking Facilities. Pedestrian and vehicular access ways of the Common Facilities and Parking Facilities shall be kept free of water, rubbish, and other hazards.

2. **Payable by Association.** Sky East Owner and Sky West Owner, and upon creation of the Projects, the Sky East Association and the Sky West Association, in consideration of the easements and the licenses granted herein, shall make payment to the Master Association, Sky East Owner's, Sky West Owner's, or the Association's proportionate share of the expenses incurred by the Master Association in maintaining, repairing, and replacing the Common Facilities and the Parking Facilities. Each party shall pay to the Master Association, in advance of the first day of each month, an amount equal to one-twelfth ( $1/12^{\text{th}}$ ) of the Reciprocal Easement Budget, as hereinafter defined (the "**Reciprocal Easement Reimbursement**").

3. **Calculation and Manner of Payment.** Prior to completion of the Sky East Project, the proportionate share of the expenses attributed to the Sky West Owner shall be fifty-one percent (51%) and the Sky East Owner shall be forty-nine percent (49%) each. Upon completion of the Sky East Project, the proportionate share of each Association shall be a fraction, the numerator of which is the aggregate of the net living area of all Units within the Association's Project and the denominator of which is the aggregate of the net living area of all Units in the Projects combined. The Master Association shall determine the costs incurred for the ordinary and necessary maintenance and repair of the Common Facilities and Parking Facilities, including a sum for reserve purposes. At least sixty (60) calendar days prior to the end of the calendar year, the Master Board shall prepare a budget showing the amounts anticipated to be expended for maintenance of the Common Facilities and the Parking Facilities (the "**Reciprocal Easement Budget**").

The Reciprocal Easement Budget shall be reconciled at least once per calendar year by the Master Association; provided, however, that the Master Association may reconcile the Reciprocal Easement Budget more frequently if it determines that the actual expenses associated with the Common Facilities and Parking Facilities will result in a shortfall in any calendar month. In the event the actual expenses associated with the Common Facilities or Parking Facilities differ from the Reciprocal Easement Reimbursement collected for the calendar year or calendar month in question, each Association shall: (a) remit the difference to the Master Association within sixty (60) calendar days of the end of the calendar year or calendar month in question; or (b) apply any surplus in amounts collected to the following year or month's Reciprocal Easement Reimbursement.

Notwithstanding the foregoing, where the actual expenses associated with the Common Facilities and Parking Facilities for any calendar year exceeds the Reciprocal Easement Budget, each Association shall not be required to reimburse the Master Association any amounts in excess of one hundred three percent (103%) of the Reciprocal Easement 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 Owners as required under the applicable Project Declaration.

4. **Failure to Reimburse.** Each Association shall include the Reciprocal Easement Reimbursement 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 Reciprocal Easement Reimbursement to the Master Association. If any installment of the Reciprocal Easement Reimbursement is not paid when due, the Master Association shall give written notice of such default to the applicable Association. If such 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 Master Association in its sole discretion, the Master Association may accelerate the remaining installments of the Reciprocal Easement Reimbursement for the then current calendar year and demand payment of the same.

5. **General Excise Tax.** Amounts payable by each Association to the Master Association herein represent a reimbursement of the proportionate share of the maintenance of the Common Facilities and Parking Facilities by the 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), each Association shall pay such additional amount as may be necessary to permit the Master Association to receive the sum it would have received should the general excise tax (or other applicable tax) not apply.

6. **No Waiver.** No Owner shall be relieved of the obligation to pay for the use of such Common Facilities and Parking Facilities through his or her share of the common expenses by waiving his or her rights to use the Common Facilities and Parking Facilities or any part thereof. Neither any Association nor any Owner can abandon the license granted herein.

G. **INDEMNIFICATION.** Each Association agrees to defend, indemnify, and save Declarants, the Master Association, and the Sky East Front Desk Unit Owner, with respect to the Sky East Recreational Facilities, harmless against and from any and all claims, damages, costs and expenses, including reasonable counsel fees, because of personal injury or death of persons or damages to or destruction of property occurring in or on the Common Facilities, the Parking Facilities, and the Recreational Facilities. There shall be (1) included in each such indemnity the results of negligent or willful acts or negligent omissions of the respective indemnitor, or its employees or agents, no matter where in or on the Project such act or omission occurred, and (2) excluded from each such indemnity the results of negligent or willful acts or negligent omissions of the indemnitee or its employees or agents, no matter where on the Project such act or omission occurred. Each Association waives, as against Declarants, the Master Association, and the Sky East Front Desk Unit Owner with respect to the Sky East Recreational Facilities, any and all recovery in connection with the loss of or damage to property or any of them occurring in, on or in about the Project resulting from fire and perils included in extended coverage insurance so long as Declarants, the Master Association, and the Sky East Front Desk Unit Owner with respect to the Sky East Recreational Facilities, in favor of whom the foregoing waiver is made, is actually insured by an insurance company against fire and extended coverage perils or is a self-insurer and will furnish such waiver to each Association.

### III. **RULES AND REGULATIONS; AMENDMENTS TO DECLARATION.**

A. **ADOPTION OF RULES AND REGULATIONS.** Pursuant to this Declaration, the Master Association may adopt such reasonable rules and regulations as the Master Association may from time to time determine relating to the use of the Common Facilities and the Parking Facilities; provided that the Sky East Front Desk Unit Owner may adopt rules and regulations for the Sky East Recreational Facilities. Such rules and regulations shall (1) be adopted, imposed, enforced, and implemented so as not to be inconsistent with or conflict with any of the terms and provisions of this Declaration, and (2) be adopted, imposed, enforced, and implemented uniformly with respect to all Owners and occupants, unless there shall be a reasonable basis for such non-uniformity; provided that in no event shall such rules or regulations favor the Owners and occupants of one Project over the Owners and occupants of the other Project. Such rules and regulations shall be published from time to time by the Master Association and/or the Sky East Front Desk Unit Owner, and shall be provided to the Associations. Subject to the provisions of **Section III.B**, below, the Aggrieved Association, as hereinafter defined, shall, after reasonable advanced notice thereof, use all commercially reasonable efforts to abide by such rules and regulations to comply with the provisions of this Section and to cause its members to conform hereto.

B. **DISPUTES.** In the event an Association disputes the adoption of a rule or regulation ("**Aggrieved Party**") by the Master Association, ("**Aggrieving Party**") as not being adopted, imposed, implemented, or enforced in accordance with the provisions of **Section III.A**, the Aggrieved Party, without limiting

any other rights or remedies available under this Declaration, may submit the dispute to arbitration, pursuant to **Section VII** hereof. If the Aggrieved Party gives written notice to the Aggrieving Party of its objection to such rule or regulation, then such notice shall, except in case of emergency, as against the Aggrieved Party and its Owners, at the option of the Aggrieved Party, suspend the effectiveness, implementation, and enforcement of such rule or regulation until a resolution of such dispute by arbitration.

The non-prevailing party in any such arbitration proceeding shall pay all fees and expenses of each and every arbitrator, in addition to any and all damages, if any, sustained by the prevailing party.

If the Aggrieved Party fails to give written notice to the Aggrieving Party of its objection to such rule or regulation within fifteen (15) calendar days after the Aggrieved Party shall have been given written notice by the Aggrieving Party of the adoption, imposition, implementation or enforcement of such rule or regulation, the Aggrieved Party's right to dispute such adoption, imposition, implementation or enforcement of such rule or regulation in question shall be deemed waived; provided, however, if such rule or regulation is not thereafter uniformly enforced, without a reasonable basis for such non-uniform enforcement, the Aggrieved Party shall not have waived the right to object to such non-uniform enforcement if it gives written notice to the Aggrieving Party of its objection thereto within fifteen (15) calendar days after it learns of such non-uniform enforcement.

#### **IV. FURTHER CONSTRUCTION/REPAIRS.**

**A. ADDITIONS AND ALTERATIONS.** Subject to the Project Declarations, any of the Declarants, the Associations (or with respect to the Sky East Recreational Facilities, the Sky East Front Desk Unit Owner), at its own expense, may, at any time and from time to time, make any additions, alterations, improvements, replacements, repairs, or changes (including, without limitation, the construction of new buildings or structures) in, or, to or of the Common Facilities or Parking Facilities, or, as to the Sky East Front Desk Unit Owner, the Sky East Recreational Facilities, in whole or in part, which said Owner, in its sole discretion, may deem necessary or desirable, provided that such additions, alterations, improvements, replacements, repairs, or changes:

1. Shall not in any material respect adversely affect the rights of the Owners of the other Project granted under this Declaration;
2. Shall be conducted in such manner as shall, within the limits of practicability, minimize the inconvenience or disruption to the Owners of the other Project;
3. Shall not be inconsistent with the final plans and all other agreements of record affecting the applicable Project (including without limitation, any and all joint development agreements affecting the Projects) and all applicable requirements of statutes, regulations, ordinances and rules, including but not limited to applicable zoning and building codes; and
4. With respect to the Sky East Recreational Facilities, the Sky East Front Desk Unit Owner shall not reduce or otherwise impair the facilities available to the Sky West Residential Unit Owners when the Sky East Project was originally constructed.

**B. CLOSURE OF COMMON FACILITIES, PARKING FACILITIES, AND RECREATIONAL FACILITIES.** Either Declarant or an Association (or with respect to the Sky East Recreational Facilities, the Sky East Front Desk Unit Owner) may, at any time, when reasonably necessary, without liability to the Owners of the other Project or other party, temporarily close portions of the Common Facilities or Parking Facilities located within its Project, and, as to the Sky East Front Desk Unit Owner, the Sky East Recreational Facilities for so long as is deemed necessary in its good faith judgment, in order to effect any such additions, alterations, improvements, replacements, repairs, or changes described **Section IV.A**; provided that such temporary closure shall be conducted in such manner as shall, within the limits of practicability, minimize the inconvenience or disruption to the Owners of the other Project

**C. DAMAGE OR DESTRUCTION.** In the event of damage to or destruction of any of the Common Facilities or Parking Facilities by fire or other casualty, whether or not insured or insurable, applicable Association whose Project upon or within which the damaged or destroyed Common Facilities or Parking Facilities

lies, shall promptly and fully repair, restore and/or replace the same, at its own cost and expense, as soon as reasonably possible, in a manner that complies with **Section VII.A.**

## V. ENCUMBRANCES.

A. **MECHANIC'S/MATERIALMAN'S LIENS.** Neither Declarant, and their successors or permitted assigns shall permit any mechanic's, laborer's or materialman's lien to be filed at any time against their respective Projects or any part thereof, for any work, labor, services or materials claimed to have been performed at or furnished for or on behalf of that Declarant. If any such lien shall be filed against either Project, the Declarant whose property against which the lien is filed (the "**Lienee**") shall promptly cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. So long as the Lienee causes such lien to be discharged of record as aforesaid, Lienee shall have the right to contest the same. If Lienee shall fail to cause such lien to be so discharged within thirty (30) calendar days after notice of the existence of the lien has been given to Lienee, the other Declarant, its successors or permitted assigns, in addition to any other right or remedy such Declarant may have, may (but shall not be obligated to) discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and, in any such event, such Declarant shall be entitled, if it so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, cost, and allowance. Lienee shall pay to the other Declarant any amount so paid by the latter and all costs and expenses (including reasonable attorney's fees) incurred by the Declarant in connection therewith, together with interest thereon at the rate of twelve percent (12%) per annum from the date payment was made.

## B. MORTGAGES.

1. Either Declarant, and their successors or permitted assigns ("**Mortgagor**") may, without the other Declarant's consent, from time to time, pledge, mortgage or encumber any or all of its right, title and interest under this Declaration (each such pledge, mortgage, or encumbrance, a "**Mortgage**"), it being understood that each such Mortgage shall be subject and subordinate to this Declaration and all modifications made to this Declaration prior to the date of such Mortgage, but such Mortgage shall not be subject to liens or offsets resulting from mortgagor's acts or omissions hereunder except as may be expressly provided for herein. The non-mortgaging Declarant shall not be bound to recognize the holder of such Mortgage (each such holder, a "**Mortgagee**") unless and until such Mortgagee or the Mortgagor shall have notified said Declarant of the existence of such Mortgage and of the name and address of such Mortgagee.

2. So long as a Mortgage made in accordance with the provisions of this Declaration shall remain unsatisfied of record:

a. The non-mortgaging Declarant shall, when giving notice to the Mortgagor with respect to any failure on part of the Mortgagor to satisfy its obligations under this Declaration ("**Default**"), also give a copy of such notice by registered or certified mail, return receipt requested, to each Mortgagee at the address of such Mortgagee furnished to the non-mortgaging Declarant; and no such notice shall be deemed to have been duly given to Mortgagor nor shall such notice be effective as against Mortgagor unless such notice is given in said manner to each Mortgagee. From and after the delivery of a notice described in this Section, the parties agree that no amendment, modifications, or voluntary termination of this Declaration shall be effective as to any Mortgagee entitled to notice hereunder unless consented to in writing by such Mortgagee.

b. In case Mortgagor shall Default in respect to any of the provisions of this Declaration, each Mortgagee shall have the right but shall not be obligated to cure such Default, and the non-mortgaging Declarant shall accept performance by or on behalf of the Mortgagee as though, and with the same effect as if, it had been done or performed by Mortgagor; provided, however, nothing contained in this Declaration shall be deemed to make Mortgagee liable for the performance of any term, covenant, or condition under this Declaration to be performed by Mortgagor, unless and until such holder acquires fee title to the applicable property, at which time the holder of such Mortgage shall be liable for the performance of the terms, covenants, and conditions of Mortgage. Mortgagee will have a period of time after the service of notice of Default upon it within which it may cure the Default specified in such notice, or cause it to be cured, which is the same period for cure, if any, as is given to Mortgagor under this Declaration in respect to the specified Default after giving of such notice to Mortgagor, plus an additional period of thirty (30) calendar days. In the event of a Default, which cannot reasonably

be cured within said period, the period of time for cure shall be extended for so long as Mortgagee is diligently proceeding to cure such Default, provided that Mortgagee had begun to cure the Default within the said period; provided, however, if Mortgagee must obtain possession of the property of the Mortgagor in order to cure such Default, then the period of time for cure shall be extended for a reasonable time thereafter to enable Mortgagee to obtain possession of Mortgagor's property (including possession by a receiver) or to institute, prosecute and complete foreclosure or other proceedings to acquire Mortgagor's right, title and interest hereunder, and for so long as Mortgagee thereafter is diligently proceeding to cure such Default.

c. Any notice or other communication which the non-mortgaging Declarant shall desire or is required to give to or serve upon the Mortgagee shall be in writing and shall be served by registered or certified mail, return receipt requested, addressed to such holder at such address as set forth in such Mortgage, or in the last assignment thereof delivered to the non-mortgaging Declarant, or at such other address as shall be designated from time to time by such holder by notice in writing given to the non-mortgaging Declarant by registered mail, return receipt requested. Any notice of other communication which the Mortgagee shall desire or is required to give to or serve upon the non-mortgaging Declarant shall be deemed to have been duly given or served when received or, if there is no receipt because of the failure of the non-mortgaging Declarant to give notice of a change of address or because of the non-mortgaging Declarant's refusal to accept receipt, then when given or served if sent by registered or certified mail, return receipt requested, addressed to the non-mortgaging Declarant at the non-mortgaging Declarant's address as set forth in the provisions of this Declaration providing for notices to the non-mortgaging Declarant or at such other address as shall be designated from time to time by the non-mortgaging Declarant by notice in writing given to the Mortgagee by registered or certified mail, return receipt requested.

3. This Declaration shall not be amended and or terminated without the prior written consent of any Mortgagee.

#### **VI. NO PUBLIC DEDICATION.**

Except for pedestrian easements throughout the Properties and other dedications as may be required by the County, no party shall dedicate any part of the Common Facilities, Parking Facilities, or Recreational Facilities to any governmental authority or for any other public use without the prior written consent of the Declarant or the Association of the other Project, and in order to avoid such dedication or prevent the acquisition of any easement to other similar special rights, the Parties shall, to the extent required, close from time to time any or all portions of the driveway, walks, parking areas, roadways and streets within the Spatial Units, erect private boundary marks or take such further action as may be reasonably appropriate for that purpose, but without undue interference with the use of the Projects.

#### **VII. ALTERNATIVE DISPUTE RESOLUTION.**

In the event of the occurrence of any controversy or claim arising out of, or related to this Declaration ("**Dispute**"), provided that the Dispute cannot be resolved by negotiation, the Parties to the Dispute agree to submit the Dispute to mediation by a mediator mutually selected by the Parties in the County. If the Parties are unable to agree upon a mediator, then the mediator shall be appointed by the Dispute Prevention and Resolution, Inc. any successor thereto, or any other entity offering mediation and/or arbitration services that are acceptable to the Parties ("**DPR**"). In any event, the mediation shall take place within thirty (30) calendar days of the date that a party gives the other party written notice of its desire to mediate the Dispute. If the Dispute is not resolved through mediation, the Dispute shall be resolved by arbitration pursuant to this Section and the then-current rules and under the supervision of DPR. The duties to mediate and arbitrate hereunder shall extend to any officer, employee, shareholder, principal, partner, member, manager, agent, trustee-in-bankruptcy, affiliate, subsidiary, third-party beneficiary, or guarantor of all Parties making or defending any claim which would otherwise be subject to this Section.

The arbitration shall be held in the State before a single arbitrator who is knowledgeable in the subject matter at issue. The arbitrator's decision and award shall be final and binding and may be entered in any court having jurisdiction thereof. The arbitrator shall not have the power to award punitive, exemplary, or consequential damages, or any damages excluded by, or in excess of, any damage limitations expressed in this Declaration or any other agreement between the Parties. In order to prevent irreparable harm, the arbitrator may grant temporary or permanent injunctive or other equitable relief for the protection of property rights.

Issues of arbitrability shall be determined in accordance with the federal substantive and procedural laws relating to arbitration; all other aspects of the dispute shall be interpreted in accordance with, and the arbitrator shall apply and be bound to follow, the substantive laws of the State. Each party shall bear its own attorneys' fees associated with negotiation, mediation, and arbitration, and other costs and expenses shall be borne as provided by the rules of DPR.

If court proceedings to stay litigation or compel arbitration are necessary, the party who unsuccessfully opposed such proceedings shall pay all associated costs, expenses, and attorneys' fees which are reasonably incurred by the other party.

The arbitrator may order the Parties to exchange copies of nonrebuttable exhibits and copies of witness lists in advance of the arbitration hearing. However, the arbitrator shall have no other power to order discovery or depositions unless and then only to the extent that all Parties otherwise agree in writing.

Neither a party, witness, or the arbitrator may disclose the facts of the underlying dispute or the contents or results of any negotiation, mediation, or arbitration hereunder without prior written consent of all Parties, unless and then only to the extent required to enforce or challenge the negotiated agreement or the arbitration award, as required by law, or as necessary for financial and tax reports and audits.

No party may bring a claim or action, regardless of form, arising out of or related to this Declaration more than one (1) year after the cause of action accrues, unless the injured party cannot reasonably discover the basic facts supporting the claim within one (1) year.

Notwithstanding anything to the contrary in this Section, in the event of alleged violation of a party's property or equitable rights, including, but not limited to, unauthorized disclosure of confidential information, that party may seek temporary injunctive relief from any court of competent jurisdiction pending appointment of an arbitrator. The party requesting such relief shall simultaneously file a demand for mediation and arbitration of the dispute, and shall request DPR to proceed under its rules for expedited procedures. In no event shall any such court-ordered temporary injunctive relief continue for more than thirty (30) calendar days.

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

## VIII. MISCELLANEOUS.

A. **ATTORNEYS' FEES.** If a lawsuit or other proceeding is commenced by any party to enforce any of its rights under this Declaration, the prevailing party in that lawsuit or other proceeding shall be entitled to recover its reasonable attorneys' fees and other costs of litigation from the other party to the extent permitted by applicable law and the rules of court.

B. **ENTIRE DECLARATION.** This document constitutes the entire agreement between the Declarants and supersedes all prior or contemporaneous discussions, representations or agreements relating to the subject matter hereof. No amendments, modifications or additions to this Declaration shall be made or be binding on any party unless made in writing and signed by each party. All Exhibits that are attached to this Declaration are incorporated herein by this reference.

C. **SEVERABILITY OF PROVISIONS.** If any part of this Declaration or any amendment thereto is held to be invalid or unenforceable for any reason, the remainder of this Declaration shall continue in full force and effect.

D. **HEADINGS AND PRONOUNS.** The headings to the sections in this Declaration have been inserted for convenience of reference only, and shall in no way modify or restrict any provision of this Declaration or be used to construe any of such provisions. Any pronoun used herein shall include all other numbers and genders, as the context or the number and gender of its antecedent may require.

E. **WAIVER.** No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon a party unless in writing and executed by such party. Neither the failure of a party to insist upon a



strict performance of any of the terms, provisions, covenants, agreements and conditions hereof, nor the acceptance of any item by a party with knowledge of a breach of this Declaration by the other party in the performance of their respective obligations hereunder, shall be deemed a waiver of any rights or remedies that a party may have or a waiver of any subsequent breach or default in any of such terms, provisions, covenants, agreements and conditions. This paragraph shall survive termination of this Declaration.

F. **NO MERGER.** All (1) warranties and representations, and (2) obligations, covenants and agreements contained in this Declaration, shall not be merged with any instruments delivered by any of the Declarants.

G. **COMPUTATION OF TIME.** References to "business days" shall mean those days which are not Saturdays, Sundays or Federal and/or State holidays in the State. Any time period provided for in this Declaration that ends on a Saturday, Sunday or State and/or Federal holiday shall extend to 5:00 p.m. on the next full business day. Time shall be determined by reference to Hawaii Standard Time. Time periods commencing with the Effective Date shall not include the Effective Date in the calculation thereof.

H. **PERSONS BOUND.** This Declaration shall be binding upon and inure to the benefit of the Declarants, the Sky East Front Desk Unit Owner, and the respective Associations, their respective successors and permitted assigns, but shall not inure to the benefit of any third party.

I. **GOVERNING LAW.** This Declaration shall be governed by and construed in accordance with the laws of the State.

J. **NOTICES.** Except as otherwise provided in this Declaration, all notices, demands, requests, consents, approvals and other communications that are required or permitted to be given hereunder or which are given with respect to this Declaration shall be in writing and shall be delivered personally or sent either by facsimile transmission, or by overnight delivery service, or by registered or certified mail with return receipt requested and postage prepaid, and addressed to the party to be notified at the following address, or to such other address as that party shall have specified most recently by like notice:

If to Avalon:

JL AVALON CAPBRIDGE, LLC  
800 Bethel Street, Suite 501-A  
Honolulu, Hawaii 96813  
Attention: Christine Camp

With a copy to:

Imanaka Asato, L.L.C.  
745 Fort Street, Suite 1700  
Honolulu, Hawaii 96813  
Attention: Owen T. Iida, Esq.

If to Maruito:

MARUITO USA, INC.  
c/o Goodsill Anderson Quinn & Stifel LLP (Alan Fujimoto, Esq.)  
999 Bishop Street, Suite 1600  
Honolulu, Hawaii 96813

If to Watumull:

WATUMULL ENTERPRISES, LTD.  
PO Box 1037  
Honolulu, Hawaii 96808  
Attention: Rajan Watumull, President

Any notice delivered as aforesaid shall be deemed delivered and received immediately upon mailing, the next day after delivery to an appropriate carrier, or receipt or refusal of delivery of said notice, whichever is earliest. If challenged by the other party, the party claiming delivery of notice via telecopier or facsimile shall have the burden of proving notice was in fact sent, which burden can be carried without further evidence if confirmed by the transmitting telecopier or facsimile machine. Any communication sent by facsimile or telecopier shall promptly be followed by a copy delivered by one of the other approved methods. Receipt shall be deemed to have occurred if made by any authorized agent or any employee of the addressee or of the addressee's company. The addressees and addresses for the purpose of this Section may be changed by giving notice in accordance with the requirements of this Section. Unless and until such written notice is received, the last addressee and address stated herein shall be deemed to continue in effect for all purposes hereunder. Counsel for the respective parties are expressly permitted to execute and deliver notices for the parties. Counsel for each of the parties consent to the other parties' counsel communicating with their client for the limited purpose of providing notices required or authorized by this Declaration.

**K. COMMENCEMENT.** The charges herein shall commence upon the completion and opening of the applicable Sky East Common Facility, Sky East Parking Facility, or Sky East Recreational Facility for use by Owners.


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

**M. ESTOPPELS.** Either Declarant shall, within ten (10) business days of written request from the other Declarant, execute, acknowledge, and deliver an estoppel certificate, certified to such requesting Declarant or any actual or prospective purchaser, assignee, lessee, or mortgagee designated by such requesting Declarant, without charge, certifying that : (1) this Declaration is in full force and effect, without modification (or if there have been modifications, identifying the modifications); (2) there are no existing defaults nor does any set of facts exist which with the passage of time or the giving of notice or both would constitute a default (or if so, specifying the nature and extent thereof); and (3) such other information concerning the status of this Declaration or the performance of each Declarant of their respective obligations hereunder as may be reasonably requested.

(The remainder of this page is intentionally left blank)


IN WITNESS WHEREOF, the undersigned has executed these presents on this day first above mentioned.

JL AVALON CAPBRIDGE, LLC  
a Hawaii limited liability company

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

"Avalon"

MARUITO USA, INC.  
a Hawaii corporation

By:   
Name: Steve K. Sombreno  
Its: Authorized Representative

"Maruito"

WATUMULL ENTERPRISES, LTD.  
a Hawaii corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

"Watumull"

**IN WITNESS WHEREOF**, the undersigned has executed these presents on this day first above mentioned.

JL AVALON CAPBRIDGE, LLC  
a Hawaii limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_


"Avalon"

MARUITO USA, INC.  
a Hawaii corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

"Maruito"

WATUMULL ENTERPRISES, LTD.  
a Hawaii corporation

By:  \_\_\_\_\_  
Name: Rajan Watumull  
Its: President

"Watumull"

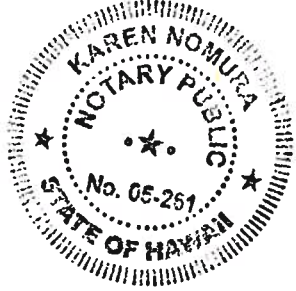
STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 13<sup>th</sup> day of March, 2019, before me appeared Christine Camp, 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.

H.H. Kn.N.P.



Karen Nomura

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

My commission expires: 5/1/2021

**NOTARY CERTIFICATION STATEMENT**

Document Identification or Description: **DECLARATION OF RECIPROCAL EASEMENTS AND IRREVOCABLE FACILITIES LICENSE**

Document Date: undated or Undated at time of notarization.

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

Karen Nomura  
Signature of Notary

3/13/2019  
Date of Notarization and Certification Statement

Karen Nomura  
Printed Name of Notary



(Official Stamp or Seal)

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

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



Karen Nomura

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

My commission expires: 5/1/2021

**NOTARY CERTIFICATION STATEMENT**

Document Identification or Description: **DECLARATION OF RECIPROCAL EASEMENTS AND IRREVOCABLE FACILITIES LICENSE**

Document Date: undated or Undated at time of notarization.

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

Karen Nomura  
Signature of Notary

3/15/2019  
Date of Notarization and  
Certification Statement



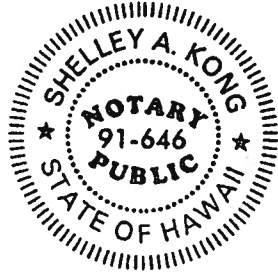
(Official Stamp or Seal)


Printed Name of Notary

STATE OF HAWAII  
CITY AND COUNTY OF HONOLULU

SS:

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



  
Print Name: SHELLEY A. KONG  
Notary Public, in and for said State

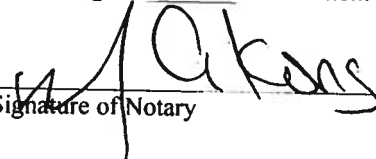
My commission expires: 09/05/2019

**NOTARY CERTIFICATION STATEMENT**

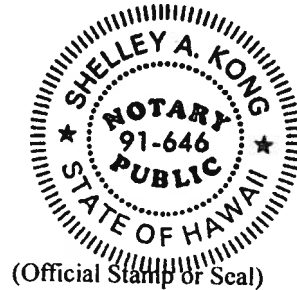
Document Identification or Description: **DECLARATION OF RECIPROCAL EASEMENTS AND IRREVOCABLE FACILITIES LICENSE**

Document Date: undated or Undated at time of notarization.

No. of Pages: 31 Jurisdiction: First Circuit  
(in which notarial act is performed)

  
Signature of Notary  
Date of Notarization and Certification Statement: March 12, 2019

SHELLEY A. KONG  
Printed Name of Notary



(Official Stamp or Seal)

**EXHIBIT "A"**

**Land Court Certificate of Title Numbers**

- ✓ 250,348
- ✓ 1,014,665
- 1,131,851 ✓
- 1,131,852 ✓
- 1,131,853 ✓
- 1,131,854 ✓
- 1,131,855 ✓
- 1,131,856 ✓
- 1,131,857 ✓
- 1,131,858 ✓



## EXHIBIT "B"

### Legal Description for Sky Ala Moana West Property

Those certain premises comprising a portion of that certain condominium project known as "SKY ALA MOANA" ("Project"), which Project consists of those certain parcels of land described herein and in that certain Declaration of Condominium Property Regime of Sky Ala Moana dated March 15, 2019, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1-10668207, as the same may be amended from time to time ("Declaration"), and the improvements and appurtenances thereof, as described in and established by the Declaration, and as shown on the plans of the Project filed in said Office as Condominium Map No. 2437, as the same may be amended from time to time ("Condominium Map"), described as follows:

#### -FIRST:-

Spatial Unit No. 1 ("Unit") located in the Project, established by the Declaration, and shown on the Condominium Map.

TOGETHER WITH those easements appurtenant to the Unit as set forth in the Declaration, which may include the following:

(a) The exclusive right to use those certain Limited Common Elements of the Project that are described in the Declaration as being appurtenant to the Unit.

(b) Nonexclusive easements in the Common Elements, including the Limited Common Elements, designed for such purposes as necessary, for the maintenance and repair of such Unit and the Limited Common Elements appurtenant thereto; in the Common Elements for use according to their respective purposes, subject always to the exclusive use of the Limited Common Elements as provided in the Declaration; and in the other units for support; subject to the provisions of Section 514B-38 of the Act.

(c) The right, together with the right to grant and transfer, easements and rights to the full extent necessary for the full use and enjoyment of such portions of sanitary sewer connections, water connections, electricity, gas, telephone, HVAC, security and television lines, drainage facilities, or duct facilities which service the Unit, and to enter the unit owned by others, or to have utility companies enter the unit owned by others, in or upon which said connections, lines or facilities, or any portions thereof, lie, to repair, replace and generally maintain said connections, lines or facilities as and when the same may be necessary; provided that such entering owner or utility company shall repair all damage to any unit caused by such entry as promptly as possible after completion of work thereon.

(d) 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.

EXCEPTING AND RESERVING AND SUBJECT TO all easements as provided in the Declaration, including, but not limited to, (i) easements for encroachments appurtenant to other units or the Common Elements as they arise in the manner set forth above, now or hereafter existing thereon; (ii) easements for access to the Unit or any Limited Common Element appurtenant thereto from time to time during reasonable hours as may be appropriate for the operation or maintenance of the Project and, without notice, at any time for (a) making emergency repairs therein necessary to prevent damage to any unit or Limited Common Element, (b) abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity, (c) protecting the property rights of any Owner, or (d) preventing death or serious bodily injury to any Owner or Occupant therein; (iii) easements necessary to complete the Project, for noise and dust, to conduct sales activities upon the Project; and (iv) easements necessary pursuant to

the exercise of any reserved rights set forth in the Declaration, all as provided in the Declaration.

**-SECOND:-**

An undivided 51% interest appurtenant to the Unit, in all Common Elements of the Project, as established for the Unit by the Declaration, or such other fractional or percentage interest as hereafter established for the Unit by any amendment of the Declaration, as tenant in common with all other owners and tenants thereof.

ALL TOGETHER WITH AND SUBJECT TO as to FIRST and SECOND above, the covenants, agreements, easements, obligations, conditions, exceptions, reservations and other matters and provisions of the Declaration and the Bylaws, all of which are incorporated herein by this reference and which constitute and shall constitute covenants running with the land, equitable servitudes and liens to the extent set forth therein and provided by law, and which are hereby accepted by the Grantee as binding and to be binding on the Grantee, and Grantee's successors and assigns.

The lands upon which the Project is located are described as follows:

**ITEM I:**

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

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

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

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

**BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED**

GRANTOR        :        A & B PROPERTIES, INC., a Hawaii corporation  
GRANTEE        :        MARUITO USA, INC., a Hawaii corporation  
DATED           :        as of March 1, 2011  
FILED           :        Land Court Document No. 4053051

**ITEM II:**

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

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

as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land

Court Consolidation 45 of Hawaiian Land Company, Limited.

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

-AS TO LOT 27:-

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

-AS TO LOT 28:-

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

-AS TO LOT 29:-

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

-AS TO LOT 30:-

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

-AS TO LOT 31:-

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

-AS TO LOT 32:-

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

-AS TO LOT 33:-

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

-AS TO LOT 34:-

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

ITEM III:

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

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

as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land

EXHIBIT "B"

Court Consolidation No. 45 of Hawaiian Land Company, Limited. ✓

Being land(s) described in Transfer Certificate of Title No. 250.348 issued to WATUMULL ENTERPRISES, LTD., a Hawaii corporation.

**BEING THE PREMISES ACQUIRED BY QUITCLAIM DEED**

GRANTOR : ALA MOANA HAWAII PROPERTIES, a Hawaii registered limited partnership  
GRANTEE : WATUMULL ENTERPRISES, LTD., a Hawaii corporation  
DATED : June 30, 1983  
FILED : Land Court Document No. 1177779

**END EXHIBIT "B"**

EXHIBIT "C"

**Legal Description for Sky Ala Moana East Property**

Those certain premises comprising a portion of that certain condominium project known as "SKY ALA MOANA" ("Project"), which Project consists of those certain parcels of land described herein and in that certain Declaration of Condominium Property Regime of Sky Ala Moana dated March 15, 2019, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. T-10668207, as the same may be amended from time to time ("Declaration"), and the improvements and appurtenances thereof, as described in and established by the Declaration, and as shown on the plans of the Project filed in said Office as Condominium Map No. 2437 as the same may be amended from time to time ("Condominium Map"), described as follows:

**-FIRST:-**

Spatial Unit No. 2 ("Unit") located in the Project, established by the Declaration, and shown on the Condominium Map.

TOGETHER WITH those easements appurtenant to the Unit as set forth in the Declaration, which may include the following:

(a) The exclusive right to use those certain Limited Common Elements of the Project that are described in the Declaration as being appurtenant to the Unit.

(b) Nonexclusive easements in the Common Elements, including the Limited Common Elements, designed for such purposes as necessary, for the maintenance and repair of such Unit and the Limited Common Elements appurtenant thereto; in the Common Elements for use according to their respective purposes, subject always to the exclusive use of the Limited Common Elements as provided in the Declaration; and in the other units for support; subject to the provisions of Section 514B-38 of the Act.

(c) The right, together with the right to grant and transfer, easements and rights to the full extent necessary for the full use and enjoyment of such portions of sanitary sewer connections, water connections, electricity, gas, telephone, HVAC, security and television lines, drainage facilities, or duct facilities which service the Unit, and to enter the unit owned by others, or to have utility companies enter the unit owned by others, in or upon which said connections, lines or facilities, or any portions thereof, lie, to repair, replace and generally maintain said connections, lines or facilities as and when the same may be necessary; provided that such entering owner or utility company shall repair all damage to any unit caused by such entry as promptly as possible after completion of work thereon.

(d) 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.

EXCEPTING AND RESERVING AND SUBJECT TO all easements as provided in the Declaration, including, but not limited to, (i) easements for encroachments appurtenant to other units or the Common Elements as they arise in the manner set forth above, now or hereafter existing thereon; (ii) easements for access to the Unit or any Limited Common Element appurtenant thereto from time to time during reasonable hours as may be appropriate for the operation or maintenance of the Project and, without notice, at any time for (a) making emergency repairs therein necessary to prevent damage to any unit or Limited Common Element, (b) abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity, (c) protecting the property rights of any Owner, or (d) preventing death or serious bodily injury to any Owner or Occupant therein; (iii) easements necessary to

complete the Project, for noise and dust, to conduct sales activities upon the Project; and (iv) easements necessary pursuant to the exercise of any reserved rights set forth in the Declaration, all as provided in the Declaration.

**-SECOND:-**

An undivided 49% interest appurtenant to the Unit, in all Common Elements of the Project, as established for the Unit by the Declaration, or such other fractional or percentage interest as hereafter established for the Unit by any amendment of the Declaration, as tenant in common with all other owners and tenants thereof.

ALL TOGETHER WITH AND SUBJECT TO as to FIRST and SECOND above, the covenants, agreements, easements, obligations, conditions, exceptions, reservations and other matters and provisions of the Declaration and the Bylaws, all of which are incorporated herein by this reference and which constitute and shall constitute covenants running with the land, equitable servitudes and liens to the extent set forth therein and provided by law, and which are hereby accepted by the Grantee as binding and to be binding on the Grantee, and Grantee's successors and assigns.

The lands upon which the Project is located are described as follows:

**ITEM I:**

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

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

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

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

**BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED**

GRANTOR       :       A & B PROPERTIES, INC., a Hawaii corporation  
GRANTEE       :       MARUITO USA, INC., a Hawaii corporation  
DATED         :       as of March 1, 2011  
FILED         :       Land Court Document No. 4053051

**ITEM II:**

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

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

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

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

-AS TO LOT 27:-

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

-AS TO LOT 28:-

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

-AS TO LOT 29:-

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

-AS TO LOT 30:-

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

-AS TO LOT 31:-

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

-AS TO LOT 32:-

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

-AS TO LOT 33:-

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

-AS TO LOT 34:-

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

ITEM III:

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

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

EXHIBIT "C"

Page 3 of 4

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

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

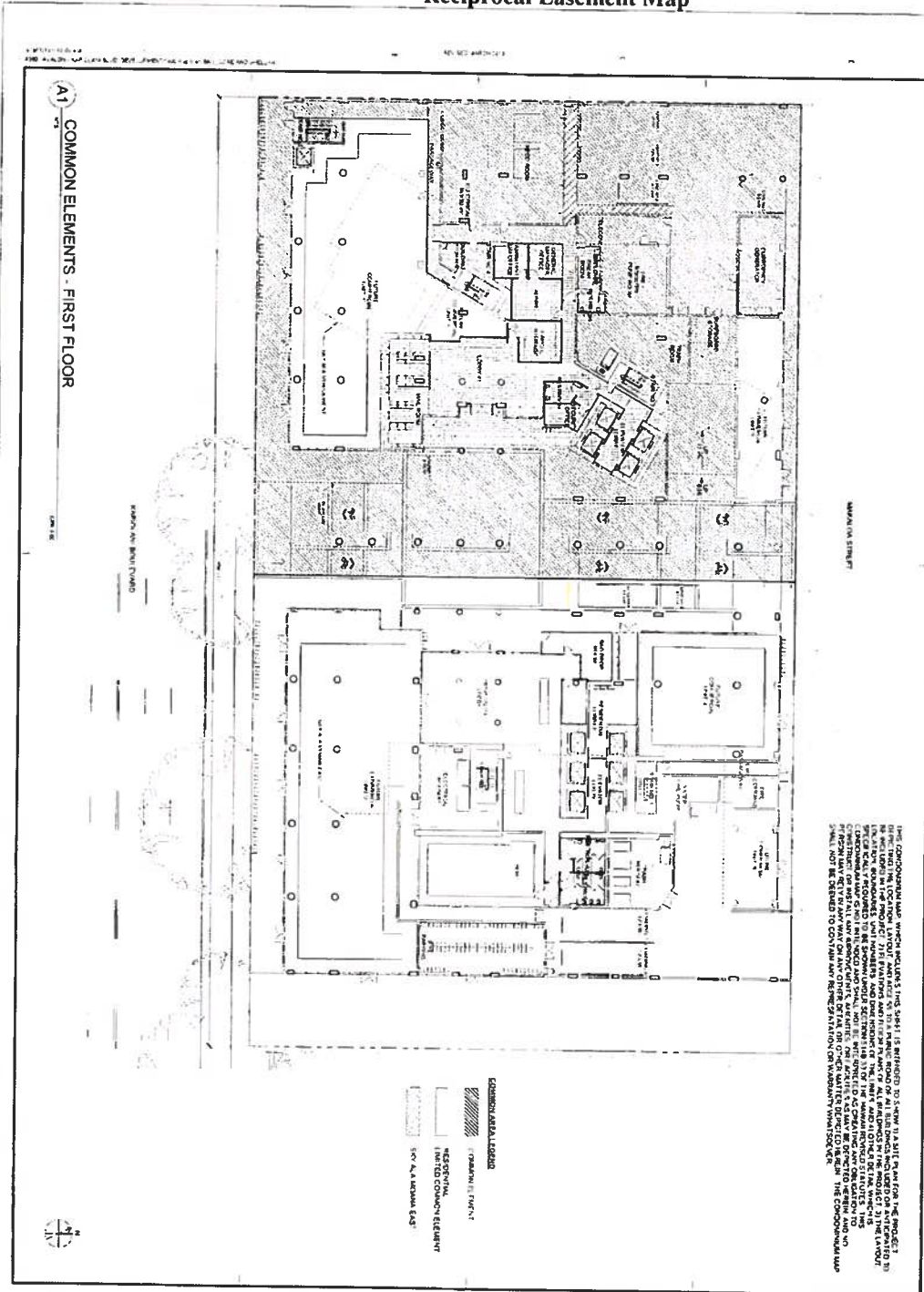
**BEING THE PREMISES ACQUIRED BY QUITCLAIM DEED**

GRANTOR : ALA MOANA HAWAII PROPERTIES, a Hawaii registered limited partnership  
GRANTEE : WATUMULL ENTERPRISES, LTD., a Hawaii corporation  
DATED : June 30, 1983  
FILED : Land Court Document No. 1177779


**END EXHIBIT "C"**



# EXHIBIT "D" Reciprocal Easement Map

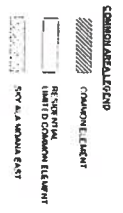


THIS COMMONS MAP SHOWS PORTIONS THAT ARE TO BE SET ASIDE TO FORM A COMMONS AREA AS REQUIRED BY THE HAWAIIAN LAND USE ACT AND THE HAWAIIAN CONDOMINIUM ACT. THE COMMONS AREA IS DEFINED AS THAT PORTION OF THE LAND WHICH IS NOT TO BE SET ASIDE TO FORM A COMMONS AREA AS REQUIRED BY THE HAWAIIAN LAND USE ACT AND THE HAWAIIAN CONDOMINIUM ACT. THE COMMONS AREA IS DEFINED AS THAT PORTION OF THE LAND WHICH IS NOT TO BE SET ASIDE TO FORM A COMMONS AREA AS REQUIRED BY THE HAWAIIAN LAND USE ACT AND THE HAWAIIAN CONDOMINIUM ACT. THE COMMONS AREA IS DEFINED AS THAT PORTION OF THE LAND WHICH IS NOT TO BE SET ASIDE TO FORM A COMMONS AREA AS REQUIRED BY THE HAWAIIAN LAND USE ACT AND THE HAWAIIAN CONDOMINIUM ACT.

<p><b>CPR-4.00</b></p>	<p>Project Name: <b>Avalon - Kapiolani Blvd. Development</b> 1388 KAPIOLANI BLVD 1MK-2-3-016 003 004 &amp;</p>	<p>Revision Number / Description</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </table>											 <p><b>Design Partners Incorporated</b></p>
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DATE: 11/15/2011  
 PROJECT: 1388 KAPOLANI BLVD. AVONEL PART 1 - COMMON ELEMENTS - PARKING FLOORS

**A1** COMMON ELEMENTS - PARKING FLOORS

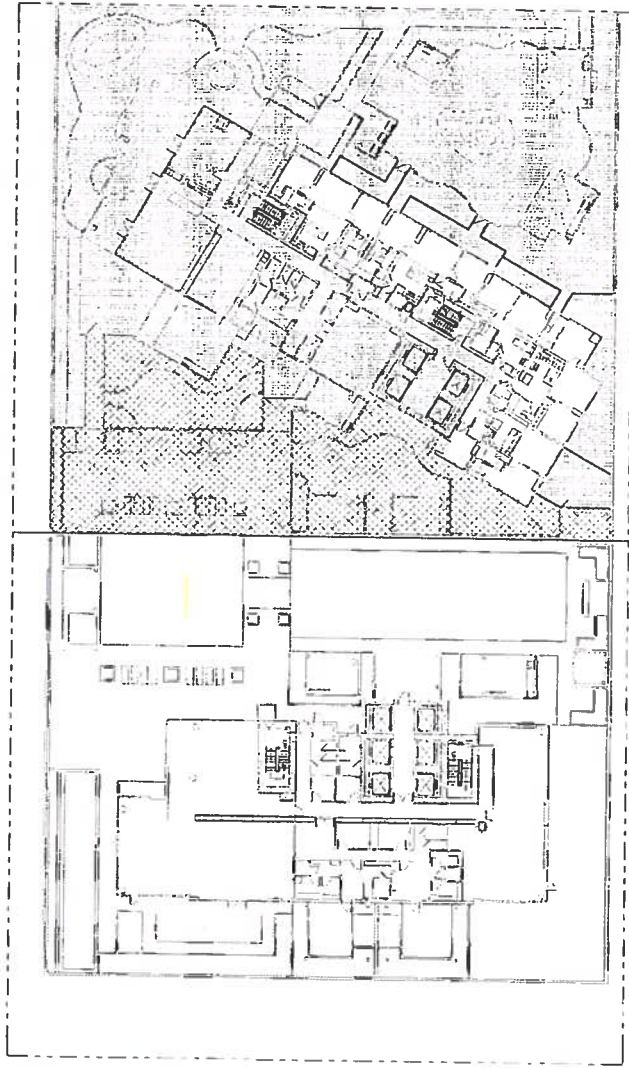


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	<p>Project Number</p> <p>1388 KAPOLANI BLVD</p> <p>1388 KAPOLANI BLVD</p>	<p>Revision Description</p>

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**A1** COMMON ELEMENTS - RECREATIONAL DECK - EIGHTH FLOOR



**COMMON ELEMENTS**  
 COMMON ELEMENTS  
 RECREATIONAL DECK  
 SYMA ADOBE EAST

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<p><b>Avalon - Kapiolani Blvd. Development</b>                  1388 KAPIOLANI BLVD                  IMK 2-3-016-003, 004 &amp;</p>	<p>Project Name                  Drawing Title                  Drawing Date                  Project Location                  Project Number                  Project Manager                  Designer                  Checker                  Approver</p>										

**CPR-4.02.**

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