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DECLARATION OF CONDOMINIUM PROPERTY REGIME OF  
NORTHWEST CORNER OF VILLAGES OF KAPOLEI  
AND CONDOMINIUM MAP

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**DECLARATION OF CONDOMINIUM PROPERTY REGIME OF  
NORTHWEST CORNER OF VILLAGES OF KAPOLEI  
AND CONDOMINIUM MAP**

**THIS DECLARATION OF CONDOMINIUM PROPERTY REGIME OF NORTHWEST CORNER OF VILLAGES OF KAPOLEI ("Declaration")** is made this 1 day of February, 2021, by **HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**, a public body and body corporate and politic in the State of Hawaii ("**Declarant**"), with its post office address at 677 Queen Street, Suite 300, Honolulu, Hawaii 96813.

WHEREAS, Declarant owns in fee simple the real property more particularly described in Exhibit "A" attached hereto and incorporated herein by reference ("**Land**"); and

WHEREAS, the Land is subject to that certain Declaration of Covenants, Conditions, and Restrictions of Villages of Kapolei, as amended and restated from time to time ("**Master Declaration**"), of which the Amendment and Fourth Restated Declaration of Covenants, Conditions, Restrictions of Villages of Kapolei dated March 16, 2016, is filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. T-9703149; and

WHEREAS, Declarant desires to create a condominium project upon the Land as depicted on Condominium Map No. 2492 ("**Condominium Map**"), recorded concurrently herewith at the Recording Office (defined below); and

NOW THEREFORE, in order to create a condominium project consisting of the Land and any improvements located thereon, if any ("**Improvements**") to be known as "**NORTHWEST CORNER OF VILLAGES OF KAPOLEI**" (the "**Condominium**"), Declarant, by this Declaration and the concurrent recordation of the Condominium Map, confirms the submission of the Land and Improvements and all of its interest therein to a condominium property regime established pursuant to Chapter 514B, Hawaii Revised Statutes, as amended ("**Act**"). Declarant hereby declares and agrees that the Condominium is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration and the Bylaws of the Association of Unit Owners of Northwest Corner of Villages of Kapolei ("**Bylaws**"), as the provisions of this Declaration and the Bylaws may be amended from time to time in accordance with applicable law, and in accordance with the respective provisions of this Declaration and the Bylaws. The provisions of this Declaration and the Bylaws shall constitute covenants running with the Land and equitable servitudes, and shall be binding upon and shall inure to the benefit of Declarant, the Association, their respective successors and permitted assigns, and all subsequent owners and lessees of all or any part of the Condominium, and their respective successors, successors-in-trust, heirs, devisees, personal representatives, executors, administrators and assigns.

**I. USE OF DEFINED TERMS; DEFINED TERMS.**

**A. USE OF DEFINED TERMS.** For purposes of construing and interpreting this Declaration and the Bylaws, all terms, when written with initial capital letters in this Declaration or in the Bylaws, shall have the meaning given such terms in this Declaration, including this Section. Such defined terms may be used in the singular or plural or in varying tenses or forms, but such variation shall not affect the meaning of the terms so long as those terms are written in initial capital letters. When such terms are used in this Declaration or in the Bylaws without initial capital

letters, such terms shall have the meaning they have in common usage; provided, however, that where legal, technical or trade terms are used and the context in which such terms are used indicates that such terms are to be given their legal, technical or trade usage meanings, such terms shall be given such legal, technical or trade usage meanings.

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

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

"**Applicant Owner**" has the meaning set forth in Section VI.G.1.

"**Association**" means the Association of Unit Owners of Northwest Corner of Villages of Kapolei

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

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

"**Bylaws**" means the Bylaws of the Association, as and when adopted by the Association, and shall include any lawful amendments thereto. Operation and management of the affairs of the Condominium and the Association shall be conducted in accordance with the Bylaws and this Declaration.

"**Commercial Building**" means a building located on a portion of the Community, which is or may be planned for commercial use, or has been developed into Commercial Units.

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

"**Common Elements**" shall have the same meaning herein as "common elements" in the Act and are described at **Section II.B** and in **Exhibit "D."**

"**Common Expenses**" means and includes all charges, costs and expenses whatsoever incurred by the Association for and in connection with the administration, management and operation of the Condominium and may include, but not be limited to the following: (a) all charges for taxes (except real property taxes and other such taxes which are or may hereafter be assessed separately on each Unit and the Common Interest in the Common Elements appertaining thereto); (b) premiums for insurance, including property and other casualty and liability insurance (unless required to be separately covered by individual Owners); (c) other necessary expenses of the Condominium; and (d) the cost of all utility services, including water, electricity, gas, telecommunications and any other similar services, if any, unless separately metered, assessed or otherwise separately attributable to each Unit. The Common Expenses may also include such amounts as the Board may deem proper to make up any deficit in the Common Expenses for any prior year. The Common Expenses shall not include expenses attributed solely to a Unit or as otherwise set forth herein.

"**Common Interest**" means the undivided percentage interest in all Common Elements of the Condominium set forth in this Declaration and discussed in Section III below,

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

**"Community"** shall have the same meaning herein as "project" in the Act and here refers to the Northwest Corner of Villages of Kapolei community established by this Declaration and consisting of the land described in Exhibit "A," and any buildings, landscaping, improvements and structures thereon (including the Units, Common Elements and Limited Common Elements hereinafter defined) and all easements, rights and appurtenances belonging thereto, together with any property added to the Declaration by annexation as provided in **Section XII.D**, but only following the completion of such annexation, and all other property with respect to which a condominium property regime shall exist from time to time pursuant to this Declaration.

**"Community Access Road(s)"** means all internal Community access roads which connect to adjacent public roads, as shown on the Condominium Map.

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

**"Condominium Documents"** means this Declaration, the Condominium Map, the Bylaws, Community Rules, the Master Declaration, the Master Bylaws (if any), as the same may be amended from time to time.

**"Condominium Map"** means the Condominium Map that is referenced above and that is filed in said Office, as the same may be duly amended from time to time. The Condominium Map sets forth: (a) a site plan for the Condominium, depicting the location, layout and access for the Units to a public road or to a Common Element leading to a public road; and (b) the layout, location, boundaries, unit numbers and dimensions of the Units. The Condominium Map does not constitute any representation or warranty by Declarant.

**"Control Period"** has the meaning set forth in Section XII.H.

**"Cooperating Owner"** has the meaning set forth in Section VI.G.5.

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

**"Declaration"** means this Declaration of Condominium Property Regime of Northwest Corner of Villages of Kapolei and Condominium Map, together with any lawful amendments hereto.

**"Declarant"** means Hawaii Housing Finance and Development Corporation, and shall also include any of its permitted successors and assigns.

**"Design Guidelines"** means and refers to the architectural standards contained in the Northwest Corner of Villages of Kapolei Community Rules, as and when developed by Declarant. There may be specific Design Guidelines for residential, commercial and Veteran's Home areas. In the event the Community is annexed to the "Community Area" as defined in the Master Declaration (defined below), then the Community will be subject to the design guidelines set forth in the Master Declaration.

**"Design Review Committee" (sometimes "DRC")** means and refers to the committee that may be established pursuant to this Declaration to administer the Design Guidelines. The Declarant or the Board, pursuant to this Declaration, may appoint the Community Design Review Committee to administer the Design Guidelines.

**"Developer"** means a developer of Unit(s) for sale to third party purchasers.

**"Development Period"** means the period starting on the date this Declaration is recorded and ending upon the earlier of (i) December 31, 2060, or (ii) the date Declarant records a document relinquishing all of the Declarant's reserved rights.

**"Dispute"** has the meaning set forth in Section XXIII.A.

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

**"DPP"** means the Department of Planning and Permitting, City and County of Honolulu, State of Hawaii.

**"Hawaii State Veteran's Home" or "Veteran's Home"** means the buildings and facilities built or to be built on Unit 1, as shown on the Condominium Map.

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

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

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

**"Master Association"** means the Villages of Kapolei Association, the association formed by the Master Declaration.

**"Master Association Documents"** the organizational documents of the Master Association, including, without limitation, the Master Declaration.

**"Master Declaration"** means the recorded Declaration of Covenants, Conditions, Restrictions of Villages of Kapolei, as amended and restated from time to time, of which the Amendment and Fourth Restated Declaration of Covenants, Conditions, Restrictions of Villages of Kapolei is dated March 16, 2016, is filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. T-9703149. The Community may in the future be held, conveyed, encumbered, leased, occupied and improved subject to the Master Declaration if the Declarant, pursuant to its reserved rights described herein, elects to annex the Community to the "Community Area" as defined in the Master Declaration.

**"Multifamily Buildings"** means building which include Multifamily Homes.

**"Multifamily Homes"** means attached Units located in a Multifamily Building.

**"Northwest Corner of Villages of Kapolei"** shall be the name of the Condominium established by the submission of the Land and Improvements to a condominium property regime under the terms and conditions set forth in this Declaration.

**"Owner"** means a Person owning a fee simple interest in a Unit and the Common Interest appurtenant thereto, to the extent of the interest so owned. Where the Owner is a guardian, trustee, corporation or partnership, the method for designating the natural person who shall act as and for the Owner is as set forth in the Bylaws.

**"Permits"** has the meaning set forth in Section VI.G.1.

**"Person"** mean a natural person, corporation, partnership, limited liability entity, trustee, or other entity legally capable of holding title to real property, and such holder's respective heirs, personal representatives, successors and assigns.

**"Record, Recorded, Recording, Recordation, Recordable"** or like reference means an instrument of record in, or the act of recording or filing or having recorded or filed an instrument with, or being in form suitable for recording or filing in, the Recording Office and/or the Department of Commerce and Consumer Affairs of the State of Hawaii, as appropriate.

**"Recording Office"** means the Land Court or the Bureau.

**"Residences"** means detached, single family dwelling Units.

**"State"** means State of Hawaii.

**"Sub-Association"** has the meaning defined in the Master Declaration. The Condominium will be considered a Sub-Association of the Master Community Villages of Kapolei if the Community is annexed to the "Community Area" as defined in the Master Declaration.

**"Trustee"** means that bank or trust company having a principal place of business in the State of Hawaii that, at the discretion of the Board, may be designated to hold and administer condemnation or insurance proceeds for the Condominium.

**"Unit"** means a part of the Condominium, as described in this Declaration and as shown on the Condominium Map, intended for a use permitted under the Act. Initially, the Units included in the Condominium are described in Section II.A below, listed in **Exhibit "B"** (attached hereto and incorporated herein by reference), are depicted on the Condominium Map and are sometimes referred to herein as an **"Initial Unit"** or **"Initial Units."** One or more of the Initial Units is intended to be expanded in accordance with the terms of the Declaration, and such Initial Unit, as and when expanded, is sometimes referred to herein as an **"Expanded Unit"** or **"Expanded Units."**

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

## II. DESCRIPTION AND DIVISION OF PROPERTY.

**A. DESCRIPTION OF THE UNITS.** Three (3) separate freehold estates are now established within the invisible vertical surfaces and horizontal planes of each of the three (3) Units in the Condominium, as set forth in **Exhibit "B"** attached hereto and incorporated herein by this reference and as depicted on the Condominium Map.

1. **Unit Designations, Numbers, and Locations.** The Unit designations, numbers and locations are shown on the Condominium Map and are further identified in **Exhibit "B"** attached hereto and incorporated herein by this reference.

2. **Unit Areas, Layouts and Dimensions.** The Unit areas, layouts and dimensions are shown on the Condominium Map and are described in **Exhibit "C"** attached hereto and incorporated herein by this reference. The Condominium Map is intended only to show: (a) the location, layout and access for the Units to a public road; and (b) boundaries, unit numbers, and dimensions of the Units. The Condominium Map is not intended and shall not be deemed to contain or make any representation or warranty whatsoever. The descriptions contained in this Declaration or Exhibit "C" that describe the various areas of the Condominium, and the designations of areas on the Condominium Map are for identification purposes only, and are not intended and shall not be deemed or construed to limit or define in any manner the purpose for which areas may be used. Unless expressly restricted in this Declaration, such areas may be used for any purposes not prohibited by applicable law.

### 3. Unit Boundaries, Contents and Exclusions.

a. **Boundaries.** The footprint of the perimeter boundaries of the Units on the surface of the Land are shown on the Condominium Map, and are described by metes and bounds description as set forth more particularly in the Condominium Map. The approximate net areas of the Units are set forth in Exhibit "B" attached hereto and incorporated herein by reference. The Declarant shall have the right to adjust the boundaries and/or areas of the Units, and the descriptions of the perimeter boundaries set forth on said Condominium Map to correct minor discrepancies and/or errors in the descriptions or areas or pursuant to its reserved right to do so as stated herein; provided that Declarant shall record an amendment to this Declaration to reflect such modification.

Each Unit shall be deemed to include the building or buildings situated on the respective limited common element or its spatial coordinates or spatial planes, as applicable.

The Unit 1 improvements are proposed to consist of a State of Hawaii Veteran's Home, consisting of two-story connected buildings, identified on the Condominium Map by building numbers A and B, and a one-story maintenance building. The three buildings on Unit 1 combine for a total of approximately 130,000 gross square feet, situated on a limited common element area of 307,128 square feet.

Units 2 and 3 are three dimensional Spatial Units at the locations shown on the Condominium Map. The horizontal boundaries of Units 2 and 3 are as shown on the Condominium Map. The vertical boundaries of Units 2 and 3 are imaginary surfaces that extend upwards and downwards from the horizontal boundaries of the respective Unit at a ninety degree (90°) angle to the "Floor Plane" (defined as a plane parallel to mean sea level at an

elevation ten (10) feet above mean sea level). The top horizontal boundary of Units 2 and 3 is defined by an imaginary plane parallel to the Floor Plane at an elevation of five hundred feet (500') above the Floor Plane. The bottom horizontal boundary is defined by an imaginary plane parallel to the Floor Plane at an elevation fifty feet (50') below the Floor Plane. Units 2 and 3 are the spaces bounded by these vertical surfaces and horizontal planes, together with any Improvements to Unit 2 and/or Unit 3. Initially there are no Improvements within Unit 2 or Unit 3, but Unit 2 and Unit 3 shall include all Improvements that may from time to time be built, located or installed within such Unit as provided in this Declaration.

b. **Contents and Exclusions.** Each Unit shall be deemed to include the building or buildings situated on the respective Limited Common Element or its spatial coordinates or spatial planes, as applicable, including specifically, but not limited to, all: (i) building foundations, footings, exterior and interior walls and partitions, roofs, ceilings, attics, basements, girders, beams, floor slabs, columns, supports, and fixtures and equipment of any kind, if any; (ii) all parking stalls, walkways, roadways, open space and landscaped areas located within the boundaries of the Unit; and (iii) pipes, wires, vents, shafts, lines, ducts, conduits, drainage ditches, water storage, pumps or systems, or other utility or service lines if they are used only to serve the Unit. The Units do not include pipes, wires, vents, shafts, ducts, conduits, or other utility service lines or enclosed or open spaces, wiring, pipes, drainage ditches, water storage, pumps or systems located within the Unit that serve more than one Unit or the Common Elements, if any.

4. **Measurements and Conflicts.** Should the descriptions and divisions set forth in this Declaration conflict with the depictions and divisions shown on the Condominium Map, the Condominium Map shall control.

5. **Expansion of Units.** The Declarant and any Unit owner shall have the right to expand the number of Units within the land area of such Unit, in accordance with all applicable laws.

**B. COMMON ELEMENTS.** One freehold estate is hereby designated in all remaining portions of the Condominium not otherwise defined as a "Unit," including the Land below each Unit and the airspace above each Unit, such freehold estate being herein called the "Common Elements." Generally, the Common Elements include the Land described in **Exhibit "A"** in fee simple and the Limited Common Elements described below, and all other portions of the Community, other than the Units. The Common Elements include specifically, but not limited to, the Common Elements mentioned in the Act that are actually constructed on the Land, and all other portions of the Community necessary or convenient to its existence, maintenance and safety or normally in common use and which are not included as part of a Unit, including but not limited to those Common Elements described in this Section and **Exhibit "D"** and as may be shown on the Condominium Map.

**C. LIMITED COMMON ELEMENTS.** Certain parts of the Common Elements, referred to as the "Limited Common Elements" are hereby designated and set aside for the exclusive use of certain Units, and such Units shall have appurtenant, exclusive easements for the use of such Limited Common Elements. The Limited Common Elements, and the Unit(s) to which the Limited Common Elements are appurtenant, are described in Exhibit "D." All costs of every kind pertaining to the Limited Common Elements (including utility services benefiting any Unit exclusively, but which are located on another Unit) including, but not limited to, costs of individual-Unit landscaping, all maintenance, repair, replacement and improvement, shall be borne solely by the owner of the Unit to which said Limited Common Elements are appurtenant.

### **III. COMMON INTEREST.**

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

### **IV. EASEMENTS.**

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

**A. EASEMENTS IN THE COMMON ELEMENTS.** Subject to the provision of Section 514B-38 of the Act, each Unit shall have appurtenant thereto nonexclusive easements in the Common Elements and in the Condominium designed for such purposes as 1) ingress and egress to public roads as necessary; 2) utility services, systems and apparatus' for support of the Unit; 3) as necessary, for the maintenance and repair of such Unit, subject to the provisions of Section 514B-38 of the Act; and 4) in the case of the "Wall Maintenance Area," as defined in Exhibit "D", for maintenance, repair and/or replacement of a wall on the southern boundary of the Community adjacent to the Kumu Iki community.

**B. EASEMENTS FOR UTILITIES AND SUPPORT.** Wherever sanitary sewer connections, water connections, electricity, gas, telephone, television lines, solar energy devices, including, but not limited to solar water heating systems, solar panels and photovoltaic cells or panels, drainage facilities, or duct facilities are installed within the Condominium, the Owners of Units that are served by said connections, lines or facilities shall have the right, and there are hereby reserved to all such Owners, together with the right to grant and transfer the same, easements and rights to the full extent necessary for the full use and enjoyment of such portion of such connections, lines, facilities or devices that service such Unit, and to enter the Unit, or to have utility companies or solar energy device companies to enter Units owned by others, in or upon which said connections, lines, devices or facilities, or any portions thereof, lie, to repair, replace and generally maintain said connections, lines, devices or facilities as and when the same may be necessary; provided that such entering Owner, utility company or solar energy device company shall repair all damage to any Unit caused by such entry as promptly as possible after completion of work thereon, and there shall be no such entry by any Owner, except in case of emergency, without notice to and the consent of the affected Owner.

**C. EASEMENT FOR ENCROACHMENTS.** If any part of the Common Elements now or hereafter encroaches upon any Unit, 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 Condominium, encroachments of any part of the Common Elements or Units due to such

construction, shifting, settlement or movement shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist for so long as such encroachment continues.

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

**E. EASEMENT FOR DEVELOPMENT, CONSTRUCTION, AND SALE.** Declarant and its agents, employees, contractors, licensees, successors, mortgagees and assigns shall have an easement over, under and upon the Community and each and any portion of the Community and the individual Units to create and cause noise, dust, vibration and other nuisances or annoyances created by and resulting from any work connected with or incidental to the development, construction and sale of any Unit or other Improvement to the Community. Each and every Owner or other person acquiring any interest in the Community waives any and all rights, claims or actions that might otherwise be asserted against Declarant, its agents, employees, licensees, successors, mortgagees and assigns, based on any such noise, dust, vibration and other nuisances or annoyances. Without limitation of the foregoing:

a. Declarant, its agents, employees, consultants, contractors, licensees, successors, mortgagees and assigns, shall have an easement over, under and upon the Community as may be reasonable or appropriate for additional construction, the completion of renovations to the improvements of the Community, and (at the option of Declarant) the correction of defects therein. In addition to any other easements reserved to Declarant under this Declaration, in connection with, and to the extent necessary for the development and construction of Units and/or common facilities following the transfer of ownership of any Unit to an individual or entity other than Declarant, Declarant shall have the right to enter upon the Community premises with employees, agents and contractors for all purposes reasonably necessary for or useful to constructing and completing all portions of the Community in accordance with this Declaration and the Condominium Map. Such rights shall include, but are not limited to, the following:

(i) An easement over, under and across the Common Elements of the Community and all utility service to the Community for the purposes of all work connected with or incidental to the development, construction and sale of the Units; and

(ii) The right in the nature of an easement over and upon the existing buildings and Common Elements of the Community to create and cause dust, noise, vibration and other nuisances created by and resulting from any work connected with or incidental to the development, construction and sale of the Units.

b. Declarant, its contractors, subcontractors, licensees, mortgagees and assigns, and their respective employees and agents, shall have the right and an easement at any time and from time to time to enter upon, use, remove, replace, add to, or otherwise alter the

Common Elements and the Limited Common Elements of the Community and to do all things reasonably necessary, desirable or useful for designing, developing, constructing or completing any additional area of the Community, connecting any such additional area to the utility installations of the Community, and selling the Units contained within any such additional area; provided that the exercise of the rights granted herein shall not cause any permanent or avoidable interruption in the service of utilities to the Community, and provided further that any person exercising such rights shall use reasonable efforts, without additional cost to Declarant and consistent with maintaining the progress of the design, development, construction, completion and sale of additional Units, to minimize interference with the Owners' use and enjoyment of the Property. Declarant further reserves the right to grant, for the benefit of the owner or owners from time to time of all or any portion of each of the other areas of the Community, easements over, under, across, along, upon and through the Common Elements of the Community for ingress and egress purposes, access purposes, electrical, gas, sight distance, communications and other utility purposes, sanitary sewer, drainage and drainline, waterline, and flowage purposes, and all other purposes, to the State of Hawaii, the County, the Board of Water Supply of the County, any other appropriate governmental agency, and/or any public or private utility or other corporation, partnership, individual or entity, provided that such easements and rights-of-way do not materially impair or interfere with the use of any Unit in the Community or the Common Elements of the Community.

c. Declarant's exercise of rights reserved in this Section are subject to Declarant's agreement to repair at its sole cost, in a good and workmanlike manner and in accordance with all laws any damage caused to the Community by reason of the exercise of the easements granted by this Section.

**F. EASEMENT TO CONDUCT SALES ACTIVITIES.** Declarant, and its agents, successors, mortgagees and assigns, shall, have the right and an easement to conduct extensive sales activities on and at the Community, including the use of any Unit owned by Declarant (and any other Unit, with the express permission of the Owner of such Unit) and the Common Elements (excluding Limited Common Elements appurtenant to other Units) for model units, sales and management offices, parking and extensive sales displays and activities, and the posting and maintenance of signs and other advertisements relating to such sales activities.

**G. CONVEYANCE OR ACCEPTANCE OF EASEMENTS.** The Association shall have the right, exercisable by its Board, to grant, convey, transfer, cancel, relocate or otherwise deal with any easements over, under, across or through the Common Elements of the Condominium, as necessary, for any reasonable purpose, which may include, but shall not be limited to, those purposes which are necessary to the operation, care, upkeep, maintenance or repair of any Unit or of the Common Elements, or any easements for utilities. The Association shall also have the right, exercisable by its Board, to receive any easements in favor of the Owners and the Condominium, over, under, across or through any area of the Condominium, or over, under, across or through any other property adjacent to or otherwise neighboring the Condominium, as said areas are shown on the Condominium Map, for any reasonable purpose, which may include, but shall not be limited to, those purposes which are necessary to the operation, care, upkeep, maintenance or repair of any Unit or of the Common Elements, or any easements for utilities or operation of the Condominium.

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

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

## **VI. USE; ALTERATION OF UNITS.**

**A. USES OF UNITS.** The Units shall be occupied and used for any lawful purpose and in accordance with the terms of the initial Unit Deed or lease agreement for each Unit.

**B. OWNERS' RIGHT TO LEASE UNITS.** The Owners of the respective Units shall have the absolute right to lease such Units subject to all provisions of this Declaration and the Bylaws; provided that any Owner leasing all or any part of its Unit shall at all times remain primarily and severally liable to all other Owners and the Association for any failure on the part of such Owner's tenant(s) to observe and comply with this Declaration and applicable laws.

**C. TRESPASS & NUISANCE.** Each Owner shall be liable to the Owner(s) of other Unit(s) for trespass, nuisance or other causes of action for persons or materials that enter one Unit from the other Unit to the same extent that they would be if the Units were subdivided lots; subject to any access or easements arrangements between the Owners.

**D. OWNERS' RIGHT TO SELL UNITS.** Each Owner shall have the absolute right to sell or otherwise transfer such Owner's Unit(s), subject to all provisions of the Act, this Declaration and the Bylaws.

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

**F. USE OF COMMON ELEMENTS.** Each Owner may use the Common Elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other Owners, subject always to the rights reserved to the Declarant herein, and further subject to the provisions of the Act.

## **G. ALTERATION OF THE UNIT.**

1. **Permits.** Each Owner shall have the right to apply for, pursue and secure all governmental permits, entitlements, exemptions and approvals with respect to its Unit that the Owner deems necessary or convenient to the use and development of the Owner's Unit, including without limitation grading and building permits, special or conditional use permits, variances, and changes in zoning and land use designations and the dedication of certain improvements and infrastructure in the Unit related to such permit and entitlement approvals (collectively "**Permits**"); provided however, that the Declarant, during the Declarant Control Period must pre-approve all permit requests in writing. Except as specifically provided in this Declaration, Permits shall pertain to and affect only the Unit of the Owner applying for the Permit (the "**Applicant Owner**"), and no Permit conditions or requirements may encumber, apply to, or affect another Owner or such Owner's Unit without the consent of that Owner. The Applicant Owner shall bear all expenses of any Permits it elects to secure, and shall indemnify and hold harmless the other Owner(s) and the Association from any costs or liabilities relating to or resulting from any Permit that the Applicant Owner secures. Except as specifically provided in this Declaration or any development agreement or similar instrument entered into between the Owners, each Owner shall be solely responsible for complying with all conditions and requirements of the Permits it applies for or secures. No Owner shall oppose before any governmental authority the Permit application of another Owner made lawfully and in accordance with this Section VI.G.

2. **Right to Make Improvements.** Subject to Section VI.G.1. above, the Owner of a Unit may from time to time make any lawful Improvements within the Owner's Unit without the consent of any other Owner, the Declarant, the Association or its Board, if any, and each such Owner shall be entitled to all the floor area that would be permitted by applicable laws and ordinances as if the Unit were a subdivided lot with the area shown on the Condominium Map. Subject to the terms of this Declaration, the Master Declaration if applicable and Community Rules, if any, each other Owner consents to and approves of the development and Improvements made to a Unit in the sole and absolute discretion of a Unit Owner. Prior to constructing any Improvements, each Owner shall obtain all required Permits for the planned Improvements and any approvals from the Declarant and any other Person whose approval is required under any recorded covenants, conditions or restrictions applicable to the Unit. No Owner of any other Unit, nor the Association, nor its Board (if any), shall have the right to approve or disapprove any Improvements to or within a Unit except as required by this Declaration or the Act. All Improvements shall be constructed in accordance with the approvals granted by the State of Hawaii and the City and County of Honolulu, all applicable provisions of the Master Declaration, and all applicable laws. Unless otherwise provided pursuant to Section VI.G.3 below, all Improvements shall be deemed a part of the Unit in which they were constructed. Each Owner shall indemnify and hold harmless and defend the other Owner from any costs or liabilities relating to the construction of all Improvements in or for the Unit or Units and any and all third party claims for defects.

3. **Subdivision of the Condominium Unit.** Each Developer shall have the right and power to, without the consent or joinder of the Association or any other Owner, amend the Declaration and Condominium Map to divide the Owner's Unit into two or more condominium Units, and each Unit thus created shall be a Unit for all purposes under this Declaration. Such amendment must set forth Unit numbers for and descriptions of the divided Units, describe their boundaries and permitted uses, state their respective Common Interests (which may be determined by the dividing Owner in its discretion, provided that the Common Interests of the subdivided Units must in the aggregate be the same as the Common Interest of the original Unit

from which they were divided), designate their respective Limited Common Elements (if any), specify the assignment of all easements appurtenant to the original Unit among the divided Units, and specify such other terms and conditions applicable to the Units thus created that are not inconsistent with this Declaration or the Act. Any portions of the divided Unit not included in these boundaries of the new Units shall be deemed part of the Common Elements and shall be designated in the amendment as Limited Common Elements appurtenant to one or more of the Units thus created. Such an amendment may contain provisions required by law or by any governmental agency (including without limitation, the VA, HUD, FHA, FNMA and/or FHLMC). Such an amendment may be executed and recorded in the Recording Office by the Developer without the consent or joinder by the Association or any other Owner; provided, however, that as long as the Declarant owns any Unit in the Community, the Declarant must approve any such amendment prior to recordation. Upon such recordation, the Units thus created shall be owned solely by the Developer exercising this right, and those Units shall be subject to any mortgage or lien that affected the Unit that was divided and to all of the terms and conditions of this Declaration and the Bylaws.

4. **Registration of Condominium Unit.** Declarant may dispose of some or all of the Units in the Condominium in transactions exempt from registration under the Hawaii Condominium Property Act pursuant to Sections 514B-51 and -81, Hawaii Revised Statutes. In that event, each Developer shall have the right and power to, without the consent or joinder by the Association or any other Owner, register the Owner's Unit or Units with the Commission pursuant to Part IV of Chapter 514B, Hawaii Revised Statutes. Except as specifically provided in this Declaration, such Owner shall be solely responsible for all costs and conditions of registration (provided, for clarity, that it shall be the obligation of all Owners at all times to maintain their Units in conformance with the zoning and Permit requirements applicable to their respective Units in accordance with Section 514B-5, Hawaii Revised Statutes). Each Developer shall indemnify and hold harmless and defend the Declarant, the Association and other Owner(s) from any costs or liabilities relating to or resulting from the registration of the Owner's Unit or Units with the Commission, the sales of the Unit or Units to third party buyers, and any and all related marketing or contracting activities with any such buyers related thereto.

5. **Cooperation & Limited Power of Attorney.** If and to the extent that the legal or regulatory requirements for Permit issuance or the exercise of any other right set forth in this Section VI.G require the joinder, consent or other action of another Owner (a "**Cooperating Owner**"), that Cooperating Owner shall upon written request promptly take the required action at no charge to the Owner seeking the Permit or other action. However, the Cooperating Owner shall not under any circumstances be required to pay any amount, incur any material expense or liability, change, restrict, surrender, limit, or otherwise impair the use of its Unit or Improvements thereon, or dedicate or convey the Cooperating Owner's Unit or any portions thereof or interests therein to any governmental authority or other Person, and if the Cooperating Owner reasonably determines that any such impact on the Cooperating Owner is threatened or likely, it may suspend or terminate its cooperation unless and until the Applicant Owner provides reasonable assurance that the impact will not occur or that the Applicant Owner will bear the full cost and burden of it. The Applicant Owner shall indemnify, defend (with counsel acceptable to the Cooperating Owner) and hold the Cooperating Owner harmless from and against any cost, liability, claims or actions incurred or asserted in connection with its cooperation in the Applicant Owner's permitting process.

Each Owner hereby appoints the other Owner as its attorney-in-fact with full power of substitution, to take such actions as the Cooperating Owner is required to take under

this Section, which grant of such power, being coupled with an interest, is irrevocable, and shall not be affected by the disability of such party or parties, and which grant of such power shall be binding upon any assignee of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any such assignee or successor-in-interest upon any transfer of any Unit or any interest in it, whether by deed, mortgage, lease, agreement of sale, or any other instrument of conveyance. Notwithstanding the foregoing, the Applicant Owner may not exercise this power of attorney unless it has first requested in writing that the Cooperating Owner take the action required under this Section and the Cooperating Owner has failed or refused to do so within seven (7) days of the date of the request. Further, this power of attorney may not be used to bind the Cooperating Owner or its Unit to any obligation, expense, or liability which the Cooperating Owner is not required to incur under this Section. Any Owner exercising this power of attorney shall indemnify, defend and hold harmless the appointing Owner from all claims, liabilities and expenses resulting from exercise of this power of attorney.

6. **Indemnification.** Any Owner of a Unit altered pursuant to this Section VI.G (as used herein, an "**Altering Owner**") shall indemnify and hold harmless the Declarant, the Association and other Owners from any: (a) costs, expenses or financial liabilities relating to or resulting from the development and sale activities permitted under this Section; (b) any actions of such Altering Owner to create and develop the Owner's Unit and compliance with law in performing such actions; (c) all claims, liabilities and expenses resulting from exercise of the power of attorney for any other Owner; (d) any and all claims by lenders or mortgagees; (e) any construction, warranty or defect claims; and (f) any claims by Owners or tenants of Units created from the Altering Owner's Unit. No action taken by any Altering Unit Owner in this Section VI.G. shall be deemed to be the act of the Declarant.

7. **No Liens.** No lien as result of work done or material furnished for the exercise of the right herein, shall arise or be created against the Common Elements or Limited Common Elements or any other Unit within the Condominium, including any newly created Common Elements or Limited Common Elements that are part of or intended to part of the Condominium, or any land area anticipated or designated to be a part of the Condominium.

## H. MAINTENANCE.

1. **Appearance of Improvements.** Each Owner shall maintain the Unit and Appurtenant Limited Common Elements in a neat and attractive manner, consistent with the surrounding areas in accordance with the provisions of this Declaration and the maintenance responsibilities as may be set forth in the Community Rules, if any.

2. **Design Guidelines.** Each Owner shall comply with the applicable Design Guidelines.

3. **Trees and Planting Strip Area.** The Declarant may plant trees in the Common Elements within the Community and along the Community Access Drives in the Community, including without limitation the planting strip between the curbs and the sidewalks and may install other landscaping in the street frontage area adjacent to Community Access Roads or public roads (the "**Planting Strip Area**"). Each Unit Owner shall be responsible for maintaining the landscaping within its Planting Strip Area unless and until the responsibility for such maintenance is assumed by the Association or the Master Association, provided that the Association shall be responsible for the proper maintenance and care of any trees planted. No trees planted by the Declarant shall be removed, changed or relocated without the prior written

consent of the Declarant and the County agency or agencies with jurisdiction thereover. Under no circumstances may the Association or an Owner alter the Planting Strip Area without written permission of the Board of Directors and the Declarant. Each Owner is prohibited from altering, modifying, removing, or adding any tree to the Planting Strip Area and may not without limitation (i) fill in the ground area of the Planting Strip Area, (ii) pile building materials or equipment in the Planting Strip Area, (iii) poison any landscaping in the Planting Strip Area, (iv) post any signs or notices in the Planting Strip Area, and (v) damage any tree in the Planting Strip Area. County ordinance restricts the removal of trees growing in the Planting Strip Area and may restrict the alteration of any landscaping in the Planting Strip Area, without first obtaining a permit from DPP, or in emergencies, the traffic engineer and the chief engineer of the County. Owners may not plant trees in the Planting Strip Area, landscape, or alter the landscaping in the Planting Strip Area without first obtaining an appropriate Street Tree Planting Permit from the DPP and/or approval of the Declarant. The County may prohibit any person from injuring or destroying street trees in any manner, including but not limited to: (i) the filling in of the ground area around the tree; (ii) the piling of building materials or equipment which may injure the tree; (iii) poisoning the tree or parking strip area; (iv) the posting of any signs or notices on any tree; and (v) the damaging of any tree.

4. **Future Additions and Alterations.** No Owner shall add to or alter any Improvement constructed by the Declarant, including the Units, without the prior written consent of DPP, if required by DPP, and the Association's Board. All Improvements made to a Unit or Limited Common Element by an Owner shall conform with the requirements of this Declaration and the applicable Design Guidelines. In the event of a conflict between this Declaration and the Design Guidelines, the more restrictive provision shall control.

## **VII. ALLOCATION OF COMMON INTEREST, PROFITS AND EXPENSES.**

The Common Expenses shall be charged to the Owners, including Declarant, in proportion to the Common Interest appurtenant to their respective Units, except as otherwise provided herein, in the Act or the Bylaws.

The Association shall prepare an annual budget and assess the Common Expenses to the Owners on an annual or other periodic basis. Any assessed but unpaid Common Expenses shall be secured by a lien having the same priority as provided in Section 514B-146 (a) and (b) of the Act, except that the mortgages having priority over assessments shall be limited to first mortgages to banks or other institutional lenders. The lien may be foreclosed in the manner provided in Section 514B-146(a) of the Act and assessments not recovered in such foreclosure may be assessed against the Units in accordance with Section 514B-146(b) of the Act.

**A. ALLOCATION OF COMMON PROFITS AND EXPENSES.** As provided in this Section, the common profits and expenses of the Community shall be allocated to and shared among all Unit Owners; provided, however, that all common profits and expenses of the Community may initially be allocated to and shared among only those Initial Units, proportionate to the common interests appurtenant to such Units, chargeable to such Initial Unit Owner upon the closing of the purchase of the Initial Unit; and provided, further, however, that upon the expansion of Units, all common profits and expenses of the Community shall be allocated to and shared among those Units for which an amendment to this Declaration has been Recorded, proportionate to the common interests appurtenant to such Units.

**B. ALLOCATION OF UNDIVIDED COMMON INTEREST.** Each Unit shall have appurtenant thereto an undivided interest (referred to as the "**common interest**") in all Common Elements of the Community and the same proportionate share in all common profits and common expenses of the Community, except as otherwise provided in this Declaration or the Bylaws, and for all other purposes, including voting, as set forth in Exhibit "B" attached hereto. The common interest appurtenant to each Unit shall be calculated generally by dividing the appropriate total acreage of each such Unit by the approximate total acreage of all Units, and rounding off so that all common interest equals 1.0000 (100.00%); provided, however, that the Declarant shall have the right, in its sole and absolute discretion, to round the result of such calculations so that the sum of the percentages equals exactly one hundred percent (100%), and provided further, that the Declarant has the right to alter the common interest of a Unit in a fair and equitable manner to account for differences in the benefits of the Community enjoyed by commercial vs residential Units.

**C. ALTERATIONS AND TRANSFERS OF COMMON INTEREST.** The common interest and easements appurtenant to each Unit shall have a permanent character and shall not be altered except as noted in this Section. The common interest, voting rights and easements appurtenant to each Unit may be altered (diminished or increased) by a Recorded amendment to this Declaration: (a) as may be determined necessary by Declarant, without the consent of any party, to correct typographical or mathematical errors in the statement of such common interests, and/or (b) filed by Declarant upon the alteration of the Community as permitted pursuant to this Declaration, and/or (c) upon the action or consent of all Owners of Units affected thereby, and the consent of the holders of any mortgage affecting such Units as shown in the Association's records of ownership, or who have given the Board notice of their interest. The common interest and appurtenant easements shall not be separated from the Unit to which they appertain and shall be deemed to be conveyed or encumbered with that Unit even though such interest or easements are not expressly mentioned in the conveyance or other instrument.

## **VIII. ADMINISTRATION OF CONDOMINIUM.**

Administration of the Condominium shall be vested in the Association, consisting of all Unit Owners of the Condominium, in accordance with this Declaration and the Bylaws. The administration, fiscal management and operation of the Condominium, and the maintenance, repair, replacement and restoration of the Common Elements, any additions and alterations thereto and any other areas of the Condominium specified in this Section VIII, shall be in accordance with the provisions of the Act, this Declaration and the Bylaws.

**A. IMPROVEMENTS REQUIRED BY LAW.** The Association shall within the Common Elements, secure, make, build, maintain and repair all improvements, if any, required by law to be secured, made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Condominium or any part thereof.

**B. EMERGENCY REPAIRS.** The Association shall have the right, to be exercised by its Board or its designee, to enter any Unit from time to time during reasonable hours as may be necessary for the operation of the Condominium, at any time for making emergency repairs therein required to prevent damage to any Unit or Common Elements.

**C. UNIT OWNER'S OBLIGATION.** The Owner of each Unit, and not the Association, shall be responsible to keep the Owner's Unit, including all Improvements within the Unit and the

Limited Common Elements appurtenant to the Unit, in good order and condition and in compliance with all applicable laws and regulations.

**D. COMMITTEES.** The Board may create and appoint such general or special committees, including, without limitation, Budget Committees and committees based on use and/or occupancy of Units (e.g., multi-family homes, residence and/or commercial), as the affairs of the Association may require, and may define the authority and duties of such committees.

**E. COMMON EXPENSES AND ASSESSMENTS.**

**1. Common Expense Allocation Items Included.**

(a) Generally. Except as otherwise provided in this Declaration, all charges, costs and expenses incurred by the Association for or in connection with the administration, management and operation of the Community, and all other amounts designated as common expenses under the Act, this Declaration or the Bylaws, shall constitute common expenses.

(b) Common Expenses for Multifamily Homes. Common expenses applicable to Multifamily Homes shall include, without limitation, all charges for taxes which are not assessed separately on each Multifamily Home, Master Association assessments of Unit Owners levied on the Association, if applicable to the Community, governmental assessments, premiums for insurance, including fire and other casualty and liability insurance, required or permitted to be maintained by the Association pursuant to this Declaration, costs authorized by the Bylaws of repair, rebuilding, replacement and restoration of the Common Elements of the Community, including, without limitation, maintenance repair, replacement, additions and improvement of any Multifamily Building, and any additions or alterations thereto, costs of yard, janitorial and other similar services, wages, accounting, legal and management fees, start-up fees and other necessary expenses of upkeep, maintenance, management and operation actually incurred on or for the Common Elements, and the cost of all utility services (including water, electricity, gas, refuse disposal, sewer and any similar services), unless separately metered or allocated. Common expenses shall also include such amounts as the Board of Directors may deem proper for the payment of any deficit in the common expense assessments for any prior year, for a reserve fund for the operation and maintenance of the Property and a reserve fund for working capital and replacements, repairs and contingencies. Common expenses may also include such amounts as may be required (including Umbrella Coverage), by special assessment, for the purchase or lease of any Unit by the Board or its designee on behalf of the Association. Notwithstanding anything in this Declaration to the contrary, common expenses relating exclusively to the Multifamily Homes (e.g., charges for maintenance repair, replacement, additions and improvement of any Multifamily Building, private trash service, dryer vent cleaning and reserve assessments therefor) shall be common expenses allocable solely to the Multifamily Homes and shall be borne by the Multifamily Home Unit Owners in the ratio and percentages specified in an amendment to this Declaration.

(c) Common Expenses for Residences. Common expenses applicable to Residences shall include, without limitation, all charges for taxes which are not assessed separately on each Residence, Master Association assessments of Unit Owners levied on the Association if applicable to the Community, governmental assessments, costs of repair, rebuilding, replacement and restoration of the common elements of the Community, excluding the cost of maintenance, repair, replacement, addition and improvements to Multifamily Buildings or

Commercial Buildings in the Community, and any additions or alterations thereto, costs of yard, janitorial and other similar services, wages, accounting, legal and management fees, start-up fees and other necessary expenses of upkeep, maintenance, management and operation actually incurred on or for the Common Elements, and the cost of all utility services (including water, electricity, gas, refuse disposal, sewer and any similar services), unless separately metered or allocated. The common expenses applicable to Residences shall NOT include premiums for fire and casualty insurance applicable to Multifamily Buildings or Commercial Buildings in the Community, but shall include the cost of liability and other insurance, required or permitted to be maintained by the Association pursuant to this Declaration regardless of whether applicable to the Residences or Multifamily Homes or Commercial Buildings within the Community. Common expenses shall also include such amounts as the Board of Directors may deem proper for the payment of any deficit in the common expense assessments for any prior year, for a reserve fund for the operation and maintenance of the Property and a reserve fund for working capital and replacements, repairs and contingencies; provided, however, common assessments applicable to Residences shall NOT include reserve assessments applicable to components of Multifamily Buildings or Commercial Buildings. The common expenses may also include such amounts as may be required (including Umbrella Coverage), by special assessment, for the purchase or lease of any Residence by the Board or its designee on behalf of the Association. Notwithstanding anything in this Declaration to the contrary, common expenses relating exclusively to the Residences shall be common expenses allocable solely to the Residences and shall be borne by the Residences Unit Owners in the ratio and percentages specified in an amendment to this Declaration.

(d) Common Expenses for Commercial Buildings. Common expenses applicable to Commercial Buildings shall include, without limitation, all charges for taxes which are not assessed separately on each Commercial Buildings, Master Association assessments of Unit Owners levied on the Association if applicable to the Community, governmental assessments, premiums for insurance, including fire and other casualty and liability insurance, required or permitted to be maintained by the Association pursuant to this Declaration, costs authorized by the Bylaws of repair, rebuilding, replacement and restoration of the Common Elements of the Community, including, without limitation, maintenance repair, replacement, additions and improvement of any Commercial Building, and any additions or alterations thereto, costs of yard, janitorial and other similar services, wages, accounting, legal and management fees, start-up fees and other necessary expenses of upkeep, maintenance, management and operation actually incurred on or for the Common Elements, and the cost of all utility services (including water, electricity, gas, refuse disposal, sewer and any similar services), unless separately metered or allocated. Common expenses shall also include such amounts as the Board of Directors may deem proper for the payment of any deficit in the common expense assessments for any prior year, for a reserve fund for the operation and maintenance of the Property and a reserve fund for working capital and replacements, repairs and contingencies. Common expenses may also include such amounts as may be required (including Umbrella Coverage), by special assessment, for the purchase or lease of any Unit by the Board or its designee on behalf of the Association. Notwithstanding anything in this Declaration to the contrary, common expenses relating exclusively to the Commercial Buildings shall be common expenses allocable solely to the Commercial Buildings and shall be borne by the Commercial Unit Owners in the ratio and percentages specified in an amendment to this Declaration.

(e) Responsibility. Each Unit Owner shall be severally liable for payment of the common expenses allocable to their Units in proportion to the common interest appurtenant to such Owner's Unit.

(f) Limited Common Element Charges. Notwithstanding the foregoing, Unit Owners shall be charged for costs and expenses incurred with respect to Limited Common Elements as follows:

(i) Each Unit Owner shall be charged all costs and expenses (including, but not limited to, maintenance, repair, replacement, additions and improvements) of each Limited Common Element appurtenant to such Owner's Unit. If a Limited Common Element is appurtenant to two or more Units, all of such costs and expenses shall be charged to and divided among each of the Owners of such Units, in the proportion that the common interest appurtenant to each Unit bears to the total common interest of all such Units to which such Limited Common Element is appurtenant.

(ii) Declarant or a Developer may install water and sewer submeters to the Units for commercial, household and/or irrigation purposes, in which event, the Board shall bill each Owner such Owner's prorata portion of the water and sewer charges owed to the Board of Water Supply or other utility supplying water to the Community based on reading by the Association of such Owner's water submeter, which reading by the Association shall be conclusive evidence of such Owner's actual use of water and sewer. Billings for water and sewer charges may be made by the Board monthly independent of or concurrent with or as part of common element assessment billings or as otherwise determined by the Board. In addition to the water and sewer usage charges, a fee per unit per month may be added to each Unit Owner's monthly bill to offset the cost of meter reading and billings services for water and sewer. The cost of delivering water and sewer services to the Unit shall be a limited common element expense for each Unit. In the event the Owner fails to timely pay the water and sewer assessment charges billed by the Board, the Board shall have all of the rights and remedies available under this Declaration, and under the Act.

(iii) It is recognized that extra costs and work may be incurred to separately account for and charge Unit Owners for maintenance, repair and replacement of such Limited Common Elements and/or direct cost increases and that such extra costs and work may not be justified when taking into account the amount of the cost or expense, the difficulty of segregating such costs and expenses, the number of Units to which similar Limited Common Elements are appurtenant, the number of Units which contribute to such extra costs and expenses, the apparent difference in the amount of the various assessments to Unit Owners if such costs and expense were separately charged rather than being assessed on the basis of each Unit's common interest, and other relative factors. Accordingly, the Board may decide by resolution to assess certain types of costs and expenses of Limited Common Elements, to assess all costs and expenses of certain similar Common Elements, or to assess direct cost increases to all Owners in accordance with the common interest appurtenant to their respective Units, if the Board determines that such a method of assessment would be equitable. Such a determination shall be final and binding on all Unit Owners in the absence of a clear showing of abuse of discretion by the Board.

2. The Board shall from time to time assess the common expenses against the Units in their respective proportionate shares as set forth above. The unpaid amount of such assessments together with all special assessments, penalties, fines, late charges, interest, costs and reasonable attorneys' fees, if any, assessed against any Unit shall constitute a lien against such Unit which may be foreclosed as provided for in the Bylaws and/or in the Act, provided that thirty days' prior written notice of intention to foreclose shall be mailed by registered mail to all

persons having any interest in such Unit as shown on the Association's record of ownership, including mortgagees of record. Upon receipt of such notice, any mortgagee of record shall be entitled to pay all unpaid amounts of any such assessment and the Board, acting on behalf of the Association, shall accept such payment in satisfaction thereof and thereupon release and discharge the lien securing the payment thereof. The Managing Agent, acting on behalf of the Association and as directed by the Board, shall be entitled to bid on a Unit at foreclosure sale and to acquire, hold, lease, mortgage and convey such Unit to the extent required by Section 514B-146 of the Act. An action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing such expenses.

3. No Unit Owner may exempt himself or herself from liability for his or her share of the common expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his or her Unit.

4. Pursuant to the terms of the Master Declaration, the Association is required to collect from each Unit Owner the Maintenance Assessments (as defined in the Master Declaration) assessed against the respective Units pursuant to the provisions of the Master Declaration.

#### **F. RESERVE FUNDS.**

1. **Working Capital and Reserve Funds.** The Board shall establish a working capital fund for the initial months of Community operations by assessment against each of the Units of an amount equal to at least two months of the estimated share of common expenses for each Unit. Subject to the limitations provided at **Sections E.1.b, E.1.c, and E.1.d**, the Board shall also establish and maintain reserve funds described below in accordance with any applicable provisions of the Bylaws to provide protection for the payment of common utilities, insurance, maintenance, repair, restoration, and replacement of the Common Elements and the furniture, fixtures, and mechanical equipment thereof, and other expenses of administration and management of the Community and such other regular and ongoing expenses or recurring liabilities as the Board may reasonably foresee. The amounts of such reserve funds shall be considered a common expense and shall be assessed to the Owners as provided in **Section E.1**. Such reserve funds shall meet the requirements set forth in the Bylaws. The Board may also establish reserves for unexpected contingencies and liabilities and such contingency reserves may from time to time be increased or decreased at the discretion of the Board. The amount of such contingency reserves shall be considered a common expense and shall be assessed to the Owners as provided above. Any amount of the assessment of common expenses which is allocated, used or to be used for capital improvements, or any other capital expenditure, shall not be deemed income to the Association but shall be credited upon the books of the Association to paid-in surplus as a capital contribution by the Owners.

2. **Replacement Reserve Fund.** The Board of Directors shall establish and maintain the Replacement Reserve Fund as required by Section 514B-148 of the Act, as amended, by the assessment of and payment by all Unit Owners in equal monthly installments of their respective proportionate shares of such annual amount as required by the Act for the upkeep, repair, replacement of those parts of the Common Elements, including, but not limited to, roofs, walls, paving and equipment, and Limited Common Elements that the Association is obligated to maintain. Without limitation of the foregoing, the Board, when establishing such Replacement Reserve Fund and budgeting therefor, shall familiarize itself with the minimum reserve budget and cash requirements necessary to satisfy federal Fannie Mae, Freddie Mac, VA and HUD/FHA

lending standards so that the Board shall be fully informed concerning the impacts of the replacement reserve standards to be implemented by the Board. The Association shall be obligated to maintain the Common Elements and Limited Common Elements of the Community, which includes such items as any open space areas and the Community Access Roads, and shall be responsible for collecting adequate replacement reserves from the Unit Owners; provided, however, that the Association shall not be obligated to maintain the Units or any Limited Common Elements appurtenant thereto. Each Unit Owner shall have the obligation to maintain his or her Unit and Limited Common Elements and to set aside adequate replacement reserves to maintain such Unit and Limited Common Elements. The Replacement Reserve Fund (as defined in the Act) may from time to time be increased or reduced by the Board of Directors pursuant to the Act. The proportionate interest of each Unit Owner in the Replacement Reserve Fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with such Unit even though not expressly mentioned or described in the conveyance thereof. In case the Condominium Property Regime hereby created shall be terminated, the Replacement Reserve Fund remaining after full payment of all Common Expenses of the Association shall be distributed to all Unit Owners in proportion to their respective Common Interests, excluding Owners of any Units then reconstituted as a new condominium property regime. In the event additional Units are created and annexed to the Community, the account of each Unit Owner with respect to funds in the Replacement Reserve Fund shall be subject to adjustment as set forth otherwise in this Declaration.

#### **IX. INSURANCE; PARTIAL RESTORATION.**

**A. UNITS.** The Owner of each Unit, and not the Association, shall be responsible for insuring Owner's Unit, all Limited Common Elements appurtenant to the Unit, all of the Owner's Improvements in the Unit and all contents for the Unit Owner's own benefit and at the Unit Owner's own expense. The Owner of each Unit, and not the Association, shall be responsible for maintaining liability insurance with respect to loss, damage, injury or death occurring within the Owner's Unit and its Limited Common Elements.

**B. COMMON ELEMENTS.** Notwithstanding Section 514B-143 of the Act, the Association shall, to the extent deemed necessary by the Board, maintain such insurance for all or any portion of the Condominium as may from time to time be determined by the Board. The cost of any premium therefor may be assessed to all Unit Owners as a Common Expense.

Each Owner appoints the Association, or any Trustee, as attorney-in-fact for the collection and appropriate disposition of the proceeds from any insurance policy, the negotiation of losses and execution of releases of liability and the performance of all other acts necessary relating to the Condominium's insurance.

**C. DAMAGE AND DESTRUCTION.** In case at any time any Improvements in the Common Elements shall be damaged or destroyed by any casualty, such Improvements shall be rebuilt, repaired or restored unless Owners unanimously vote against such rebuilding, repairing or restoration. Each Owner will determine whether or not to rebuild any Improvements within its Unit or any land area that is a Limited Common Element appurtenant only to its Unit that are damaged or destroyed by any casualty. Any such restoration or repair and any demolition will be at the Unit Owner's expense. Any Improvements within a Unit or its Limited Common Elements that are not restored or repaired shall be demolished and removed from the Land if the damage is visible from the exterior of the Improvement or if necessary for safety.

## **X. AMENDMENT OF DECLARATION.**

**A. AMENDMENT OF DECLARATION BY UNIT OWNERS.** Except as otherwise expressly provided in this Declaration, including without limitation **Section X.C.**, or in the Act, this Declaration may be amended by the affirmative vote or written consent of not less than sixty-seven percent (67%) of the Unit Owners at a meeting of the Association called for that purpose, and effective only upon the Recording of an instrument setting forth such amendment and vote, duly executed by two (2) officers of the Association as provided in the Bylaws; provided, however, that, except as otherwise expressly provided in this Declaration or in the Act, the approval of holders of first mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by such holders are allocated, together with such other approval requirements as set forth in this Section, shall be required to materially amend any provision of this Declaration, or to add any material provisions hereto, which establish, provide for, govern or regulate any of the following:

1. By act or omission, seek to abandon or terminate the Community;
2. Change the common interest appurtenant to any individual Unit;
3. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements, provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Community shall not be deemed a transfer within the meaning of this subsection;
4. Use condemnation proceeds or hazard insurance proceeds for losses to the Property or any part thereof (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of same;
5. Amend any provision of the Declaration or the Bylaws that materially and adversely affect mortgagees, provided, however, that this subsection shall not apply to any actions taken pursuant to rights expressly reserved to Declarant in the Community Documents.

Any amendment to the Declaration on behalf of the Association shall be signed by such officer or officers as shall be provided by general or special resolution of the Board or, in the absence of any resolution applicable to such instrument, by the President and Vice President, or by the President or the Vice President and the Treasurer or the Secretary.

In addition, each Owner, including the Declarant, shall have the right to amend this Declaration (and, when applicable, the Condominium Map) and Record that amendment in the Recording Office, without the approval, consent or joinder of any Persons then owning or leasing any Unit, or any other Person, to make such amendments necessary or appropriate to reflect such alterations solely within and to the Unit which the Owner is permitted to make in accordance with **Section VI.G**, and, to the extent required by the Act, filing the "as-built" amendment to the Condominium Map for any Improvements an Owner makes. So long as the Declarant owns a Unit in the Community, the amendment reflecting the subdivision of a Unit into two or more Expanded Units requires the prior written approval of the Declarant.

**B. AMENDMENT OF DECLARATION BY DECLARANT.**

1. Any provision of this Section X to the contrary notwithstanding, and until the last of the Recording of Unit conveyances or agreements of sale with respect to all of the Units in the Community in favor of persons other than Declarant, Declarant may amend this Declaration, the Bylaws and/or the Condominium Map, without the approval, consent or joinder of, or notice to, any person or group of persons, including the Association, any Owner or any mortgagee, lienholder, Unit purchaser or any other person who may have an interest in the Community, to correct typographical or mathematical errors and to make such amendments as may be required by law, by the Real Estate Commission of the State of Hawaii, by any title insurance company issuing a title insurance policy on the Community or any of the Units, by any institutional lender lending funds on the security of the Community or any of the Units, or by any governmental agency (including without limitation the VA, HUD, FHA, FNMA and/or FHLMC) or as otherwise required by Declarant; provided, however, that, except as otherwise provided herein, no such amendment which would change the common interest appurtenant to a Unit or substantially change the design, location or size of a Unit shall be made without the consent to such amendment by all persons having an ownership interest in such Unit.

2. Any provision of this Section to the contrary notwithstanding, Declarant may amend this Declaration (and when appropriate the Condominium Map) in connection with Declarant's exercise of any rights reserved to Declarant pursuant to **Section XII** or otherwise in this Declaration without the approval, consent or joinder of, or notice to, any person or group of persons, including the Association, any Owner or any mortgagee, lienholder, or any other person who may have an interest in the Community or in any Unit.

**C. NO IMPAIRMENT OR DIMINISHMENT OF DECLARANT'S RIGHTS.** Any provision of this Declaration to the contrary notwithstanding, and in addition to such other approval requirements as are set forth in this Section X, to the extent permitted by Section 514B-106(d) of the Act, the prior written approval of Declarant is required before any amendment which would impair or diminish any rights of Declarant shall become effective. Notwithstanding any other provisions of this Declaration, until such time as Declarant no longer owns any Unit in the Community, the following actions, before being undertaken by the Association, shall first be approved in writing by Declarant:

1. **Mortgagee Approval.** Any amendment or action requiring the approval of Mortgagees pursuant to this Declaration;

2. **Capital Improvement Assessment.** The levy of a capital improvement assessment for the construction of new facilities not constructed in the Common Elements by Declarant;

3. **Reduction in Services.** Subject to any restrictions contained in the Bylaws regarding limitations on general assessment increases, any significant reduction of Association maintenance or other services;

4. **Assessments.** Alteration in the method of fixing and collecting assessments or any increases in assessments beyond the amounts permitted under the Bylaws;

5. **Responsibility for Repairs.** Reduction in the level of, or change in allocation of, responsibility for maintenance of and repairs to all or any portion of the Common Elements

subject to this Declaration, or any other maintenance obligations of the Association set forth in this Declaration;

6. Common Elements. Conveyance or dedication by the Association of all or any portion of the Common Elements;

7. Improvements to and Maintenance of Common Elements. Modification to Improvements to the Common Elements or to the level or frequency of maintenance of the Common Elements;

8. Enforcement of the Declaration. Alteration in the method of enforcing the provisions of this Declaration; or

9. Declarant's Reserved Rights. Any modification of the rights reserved and granted to Declarant herein with respect to development or sale of the Property or which are for the express benefit of Declarant.

## **XI. RESPONSIBILITIES OF OWNERS.**

All Unit Owners, tenants of such Owners, employees of Owners and guests, and any other persons who may in any manner use the Condominium or any part thereof submitted to the condominium property regime (including Declarant to the extent Declarant retains an ownership interest in any Units) are subject to the provisions of the Act and to the provisions of this Declaration, the Bylaws, and to all agreements, decisions and determinations lawfully made by the Association in accordance with the voting percentages established under the Act, this Declaration and the Bylaws. Each Owner shall comply strictly with the Bylaws and with the covenants, conditions and restrictions set forth in this Declaration. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or both.

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

### **A. DECLARANT'S RESERVED RIGHT TO GRANT AND RECEIVE EASEMENTS.**

During the Development Period, Declarant does hereby reserve the right unto itself, its successors and assigns, to delete, cancel, relocate, realign, reserve, designate, grant and receive any and all easements and rights of way over, under, through, across and upon the Land, Common Elements, or involving adjacent parcels of land, deemed necessary or desirable in Declarant's sole discretion, including, but not limited to, easements and/or rights of way for any infrastructure, access rights to adjacent parcels of land, public or other access to open space and/or parks, and for other similar purposes; and to dedicate any improvements apparatus, facility or systems located within such easement to any utility operator or to the State or County; provided that such easements and/or rights of way shall not be located on or within any existing structure of the Condominium and shall not be exercised so as to unreasonably disturb, impair or interfere with the normal use and enjoyment of the Condominium by the Unit Owners; and further provided that Declarant shall have the right to negotiate and agree to such terms with respect to such easements and rights of way as Declarant deems appropriate in its sole discretion.

**B. DECLARANT'S RESERVED RIGHTS REGARDING ENTITLEMENTS, LICENSES AND PERMITS.** Declarant shall have the reserved right during the Development Period to perform the following as necessary to comply with any existing entitlements and/or State

or County permits: (1) to amend the Condominium Documents, including, without limitation, this Declaration, (2) to enter into any agreements and to declare and subject the Land and Improvements to restrictive covenants or joint development agreements, (3) to designate and grant easements, (4) to secure any other governmental permits and approvals or amend or supplement any existing government permits and approvals or agreement, and (5) to do all things necessary and convenient, to satisfy the requirements or conditions of any land use entitlements, permits or approvals, or other government requirements pertaining to the Community, as the same may be amended or modified, and to execute, record and deliver any and all documents necessary to effect the same.

Without limitation of the foregoing, the rights reserved to Declarant by this Section include by way of example and not limitation, the right (i) to provide open space(s) and a sidewalk for use by the public in the Community; (ii) to establish a private park area(s) at the Community; (iii) to designate one or more areas and/or to record against the Community one or more agreements with the Department of Land and Natural Resources of the State of Hawaii for purposes of addressing the preservation, establishment, location and/or relocation of any burial or historic sites or artifacts found during development of the Community and protected under the laws of the State of Hawaii; (iv) to amend the Community Declaration and to modify the Condominium Map and scope of any Limited Common Element or Common Element, including, without limitation, the recreational facilities and parking facilities; (v) to perform such additional offsite requirements as may be mandated, including, without limitation, road widening improvements and/or the provisioning of utilities, traffic signals, bus stops and/or stop signs; (vi) to modify building types, unit types (alter the number of rooms and Net Living/Floor Area, and location within the Community), the overall "product mix", the landscaping plan, available number of parking stalls (both Common Element and Limited Common Element parking stalls); and (vii) enter into a joint development agreement affecting and two or more Units. The Association and each Owner shall indemnify and hold harmless Declarant, its successors and assigns, from and against any and all claims and demands for damages in connection with the Association's fulfillment of its obligations under transferred licenses and permits, including, without limitation, any storm sewer connection obligations.

**C. DECLARANT'S RESERVED RIGHT TO SUBDIVIDE AND WITHDRAW PORTIONS OF THE LAND AND TO DEDICATE CERTAIN IMPROVEMENTS TO THE STATE OR COUNTY.** The Declarant shall have the reserved right during the Development Period, to consolidate, subdivide, and withdraw the Land, and to dedicate any roadway in the Condominium and other related portions of the Land and improvements thereon, including, without limitation, certain parks, to the State or County and amend the Condominium Documents, including, but not limited to, this Declaration, to satisfy all State or County permits, entitlements and the dedication requirements. If, however, the State or County will not accept the dedication of any such infrastructure, facilities, other improvements, parks or the roadway, they will remain part of the Unit in which they are located or as a Common Element, as applicable, and their use and cost will be determined and shared as a Common Expense. In addition, Declarant shall have the right to secure any other Permits and governmental approvals or amend or supplement any existing Permits, approvals or agreements, revise the Condominium budget, Common Expenses and implement fees and do all things necessary and convenient to satisfy the requirements of or to complete such dedications.

**D. DECLARANT'S RESERVED RIGHT TO CONSOLIDATE, SUBDIVIDE, MERGE, ANNEX, WITHDRAW, REALIGN AND/OR DEREGISTER LAND.** Declarant shall have the reserved right during the Development Period, to (1) subdivide, consolidate and/or resubdivide

the Land and to create separate parcels of land, and/or (2) merge, and/or (3) annex land to the property by Supplemental Declaration, and/or (4) annex the Community to the "Community Area" as defined in the Master Declaration, and/or (5) withdraw portions of the Land from the operation of this Declaration, and to convey said withdrawn portions to itself or to a third party as it deems appropriate, and/or (6) realign the boundaries of the Community to reflect an adjustment in the Land due to, without limitation, road widening or consolidation and resubdivision of public roads, and/or (7) to effect a deregistration of the Land from the Land Court. In connection with such rights, Declarant shall have the further reserved right to enter and go upon the Land to do all things necessary, proper or convenient to effectuate such consolidation and subdivision, annexation of land, withdrawal and conveyance of said portions of Land, realignment of boundaries, or deregistration of the Land, including, without limitation, making surveys to undertake a reasonable realignment of boundaries of the Land to define said subdivided or consolidated or annexed Land, filing and recording the necessary consolidation and/or subdivision map and Condominium Map, and related documentation and to facilitate the granting, reserving, adding, deleting, receiving, realigning, and/or relocating of easements and/or rights of ways for utilities, necessary infrastructure, roadways and to grant or receive all other required easements and/or rights of way. Said consolidation, subdivision, annexation, realignment and deregistration shall comply with all of the then-applicable governmental laws and rules and regulations, including subdivision requirements. Any such adjustment of boundaries may reconfigure the Community land such that it actually conforms to the configuration of the Community land as depicted on the Condominium Map and, consequently, will not affect the layout, location, dimensions of any of the Units or other Increments of the Community as shown on the Condominium Map, and will not change or reapportion the common interests appurtenant to the Units, all as set forth and described in this Declaration.

In connection with the exercise of its rights reserved unto it hereunder, Declarant hereby further reserves the right, at its expense, to: (i) grant, reserve, add, delete, receive, realign and/or relocate over, across and under the Community, as appropriate, easements and/or rights-of-ways for any necessary utilities and infrastructure and other access and roadways; (ii) enter into and execute any license and/or agreements, as appropriate, to facilitate the use of any areas located outside the Community that will be used to benefit Owners or of areas within the Community; (iii) negotiate, execute and accept any licenses, easements or rights of way over adjacent properties which may benefit or support the Community; and (iv) relocate or realign any existing easements and rights-of-way over, across and under the Condominium, as appropriate, including, without limitation, any existing utilities and infrastructure, and connect the same over, across and under the Community; provided that such easements and such relocations and connections of lines shall not materially impair or interfere with the use of any Units in the Community as then constituted; and provided further that Declarant specifically reserves the right, whether or not in connection with its rights reserved hereunder, to grant an easement for access over the Community in favor of the withdrawn portion(s) of the Property in the event the same shall be withdrawn from the operation of this Declaration.

Upon the exercise of said reserved rights, Declarant shall, at Declarant's expense and without being required to obtain the consent or joinder of any Owner or lienholder, execute and record in the Recording Office, the subdivision map (and, to the extent deemed necessary or approved by Declarant, for designation of easements), and an amendment to the Declaration and the Condominium Map: (i) describing the realigned boundaries of the Land upon which the Units then constituting the Condominium are located; and (ii) where applicable and appropriate, granting, reserving or relocating easements over, under and on the Common Elements, as

permitted above. The Declarant shall have the right, as grantor, to execute, deliver and record a deed of any subdivided area upon filing of the amendments aforesaid.

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

**E. DECLARANT'S RESERVED RIGHT REGARDING ALTERATIONS AND TRANSFERS OF COMMON INTEREST.** Declarant reserves and shall have the right to alter the common interest and easements appurtenant to each Unit, which otherwise shall have a permanent character, as noted in this Section. The common interest, voting rights and easements appurtenant to each Unit may be altered (diminished or increased) by a Recorded amendment to this Declaration: (a) as may be determined necessary by Declarant, without the consent of any party, to correct typographical or mathematical errors in the statement of such common interests, (b) filed by Declarant, without the joinder of any party, upon the alteration of the Community as permitted pursuant to this Declaration, and/or (c) upon the action or consent of all Owners of Units affected thereby, and the consent of the holders of any mortgage affecting such Units as shown in the Association's records of ownership, or who have given the Board notice of their interest. Declarant reserves the right to alter the common interest in a fair and equitable manner to reflect the discrete uses and benefits or lack thereof accruing to Units within an individual class of use and to the respective classes of uses, allocating the estimated general benefit received by the Unit from the operation and maintenance of the Common Elements and Limited Common Elements and taking into account the mixed use character of the Community, and rounding off so that the total of all common interests equals 1.0000 (100.00%). In apportioning the common interests between the residential Units and the commercial Units, Declarant recognizes that commercial Units will not benefit in the same manner from the many recreational amenities and landscaping as will the Multi-Family Homes and Residences, as these amenities and landscaping are primarily for the benefit of Owners of residential Units, rather than commercial enterprises.

**F. DECLARANT'S RESERVED RIGHT TO TRANSFER PROPERTY TO THE ASSOCIATION.** The Association shall accept title to any property, including any Improvements thereon and personal property transferred to the Association by Declarant, together with the responsibility to perform any and all duties associated therewith, which, upon conveyance or dedication to the Association, the Association shall maintain at its expense for the benefit of the Owners as provided in this Declaration. Property interests transferred to the Association by Declarant shall constitute Common Elements of the Community, which may include, without limitation, any contract relating to Community facilities, any landscaping, flowage, drainage, or utility easements (pending dedication of all or portions of the affected easement areas to the County), the adjacent roadways, parks, walkways, pathways, landscape buffers, any trade name, recreational or leisure equipment or facilities, any unassigned parking stall or parking stall reserved to Declarant under the terms of this Declaration, and may encompass fee simple title, easements, leasehold interests and licenses to use; provided, however, that any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Association "as-is," "where-is," free and clear of all liens and encumbrances except for the following: (a) the lien for property taxes and assessments not then due and payable; (b) the terms of this Declaration and the Master Declaration; (c) easements, rights-of-way, reservations, covenants, conditions, restrictions and equitable servitudes or other non-financial encumbrances as Declarant in its discretion may deem appropriate; and (d) such financial encumbrances as may be reasonably

accepted and assumed by the Association and specifically approved by resolution of the Board. Any property or interest in property transferred to the Association by Declarant shall not impose any unreasonable or special burden on the Association other than the normal burdens of ownership and maintenance of property and the operation of facilities thereon; provided, however, such conveyance instrument may contain an indemnity of the Declarant by the Association. Each Owner, by accepting title to any portion of the Property and becoming an Owner, is deemed to approve and accept the acquisition by the Association of Common Elements as provided herein, and any Common Expenses which may relate thereto. The conveyance by Declarant may be without warranty of any kind except as aforesaid and without the benefit of escrow or title insurance, provided, however, the Association may purchase such title insurance, at the Association's expense, as the Association may wish. Upon transfer, the Association agrees to assume the obligations of the Declarant under any applicable leases, contracts, and other agreements. Furthermore, and notwithstanding anything to the contrary contained or implied in this Declaration, Declarant shall have the absolute right, to convey to the Association the Common Element(s) and properties described in this Section.

**G. DECLARANT'S RESERVED RIGHT TO SUBDIVIDE AND DEVELOP UNITS.**

Declarant reserves the right to, from time to time, divide any Unit in the Condominium owned by Declarant into two or more separate condominium Units, and to further divide any Units thus created, and in connection with any such division to designate portions of the divided Unit as Limited Common Elements appurtenant to one or more of said Units into which said Unit shall have been divided. In order to implement such a Unit division, Declarant shall execute and record an amendment to this Declaration (which shall not require the consent or joinder of the Association or any other Owner) together with an amendment to the Condominium Map. The Declaration and Condominium Map amendment shall set forth Unit numbers for and descriptions of the divided Units, describe their boundaries and permitted uses, state their respective Common Interests (which may be determined by Declarant in its discretion, provided that the Common Interests of the subdivided Units must in the aggregate be the same as the Common Interest of the original Unit from which they were subdivided), designate their respective Limited Common Elements (if any), specify the assignment of all easements appurtenant to the original Unit among the divided Units, and specify such other terms and conditions applicable to the Units thus created that are not inconsistent with this Declaration or the Act. Any portions of the divided Unit not included in these boundaries of the new Units shall be designated in the amendment as Limited Common Elements appurtenant to one or more of the Units thus created. If any Common Elements are created, the Declaration amendment shall designate them as Limited Common Elements appurtenant to one or more of the Units created from the original Unit. Upon recording of such amendments, the original Unit shall be deemed to have been subdivided into the new Units and (if applicable) Common and Limited Common Elements described therein, each of which shall be a separate "Unit" or "Common Element" and "Limited Common Element" (as applicable) for all purposes under this Declaration and the Act. Notwithstanding any other provision to the contrary herein, the Declarant has the right to sell spatial Units within the Condominium to a Developer and to close the sale of any Units created therein. Those Units shall be subject to any mortgage or lien that affected the Unit that was divided and to all of the terms and conditions of this Declaration and the Bylaws. The Declarant further has the right, to the fullest extent of the law, to construct any improvements within a Unit owned by the Declarant in accordance with applicable law, without the consent or joinder of the Association or any other Owner.

**H. DECLARANT'S RESERVED RIGHT TO CONTROL ASSOCIATION FOR LIMITED PERIOD.** Declarant shall have the reserved right to control the Association in accordance with Section 514B-106(d) of the Act, during which time Declarant, or persons

designated by Declarant, may appoint and remove the officers and members of the Board of Directors. Such period of control of the Association by Declarant (the "**Control Period**") shall terminate no later than the earlier of:

1. Sixty (60) days after conveyance of seventy-five percent (75%) of the common interest appurtenant to Units to Owners other than Declarant or an affiliate of Declarant;
2. Two (2) years after Declarant has ceased to offer Units for sale in the ordinary course of business;
3. Two (2) years after any right to add new Units was last exercised; or
4. The day Declarant, after giving written notice to Unit Owners, Records an instrument voluntarily surrendering all rights to control activities of the Association.

Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Control Period, but in such event Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Board, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective, provided, however, that during the Control Period (i) Declarant must provide a copy of all amendments to the Department of Veterans Administration (the "**VA**"), and (ii) the Association may not make any material amendments or take any extraordinary actions as described in VA Pamphlet 26-7 revised, as may be applicable, without the approval of VA.

Until such time as the Declarant has turned over administration of the Community to the Association, Declarant shall have the right to amend the Bylaws without the approval, consent or joinder of, or notice to, any person or group of persons, including the Association, any Owner or any mortgagee, lienholder, Unit purchaser or any other person who may have an interest in the Community.

**I. DECLARANT'S RESERVED RIGHT TO MODIFY COMMUNITY TO COMPLY WITH LAW.** Declarant shall have the reserved right, to effect such modifications to the Units and Common Elements in the Community and/or to execute, record and deliver any amendments to this Declaration, the Condominium Map as well as the Bylaws and rules and regulations promulgated thereunder, as may be necessary or required to effect compliance or conformance by the Community, the Association, the Master Association if applicable, or by Declarant with laws which apply to the Community, including, without limitation, the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq., including any and all rules and regulations promulgated thereunder, and the Americans With Disabilities Act, as amended, 42 U.S.C. §§ 12101 et seq., including any and all rules and regulations promulgated thereunder, or to make the Units eligible for financing programs of federally regulated mortgage insurance or purchasing oversight programs. Without limitation, Declarant may amend this Declaration (and, when appropriate, the Condominium Map) in any manner required to retrofit guest parking stalls, including without limitation any adaptable parking stall, so they are suited for use by persons with disabilities and to assign such stalls as appurtenant Limited Common Elements to any one or more of the Units intended for use by persons with disabilities upon substitution therefor of alternate guest parking stall(s). Such stall assignment may be made to Units, the Owners of which Declarant, in its sole judgment, determines require a parking stall accessible to persons with disabilities. Such reassignment is hereby specifically declared not to constitute a material amendment of this Declaration or, when

appropriate, the Condominium Map. All costs of such reassignment shall be borne as determined by Declarant. Notwithstanding the foregoing, Declarant also reserves the right, but does not hereby undertake any obligation, to interchange guest parking stalls and the disabled guest parking stalls to accommodate Unit Owners in need of such parking. The rights of Declarant under this Section may be assigned to the Association.

**J. DECLARANT'S RESERVED RIGHT TO MAKE CONTINUING DISCLOSURES.**

Declarant reserves, for itself and its successors and assigns, the right during the course of Declarant's sales of Units in the Community to supplement, modify and amend the estimated breakdown of annual maintenance fees and estimated cost of assessment to each Unit, as Declarant deems appropriate, to reflect changes in estimated expenses applicable to ownership of Units attributable to the increase in cost of service or modification of proposed service to the Association reflected in the budget for annual maintenance fees. Upon such modifications, Declarant may supplement and amend its public report applicable to the Community, which modification shall not be deemed material in any respect.

**XIII. CONSENT TO DECLARANT'S RESERVED RIGHTS; APPOINTMENT OF DECLARANT AND ASSOCIATION AS ATTORNEY-IN-FACT.**

Each and every party acquiring an interest in the Condominium, by such acquisition, consents to all of the rights reserved unto Declarant as set forth in this Declaration, the permitted actions taken by Declarant pursuant thereto, and to the recordation of any and all documents necessary to exercise and effect the same at the Recording Office; agrees to execute, deliver, and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints Declarant and its assigns as his or her attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and to do such things on his or her behalf, and to receive or send any legal notices required by law, and to receive service of process, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Unit or any interest therein, whether by deed, mortgage, or any other instrument of conveyance. Without limitation to the generality of the rights reserved unto Declarant hereunder, Declarant will have the right to execute, deliver and record any amendment to this Declaration or to the Condominium Map, Bylaws, any easement instrument, any deed, any amendment to a Unit Deed, or such other document or instrument that may be necessary or appropriate to permit Declarant to exercise its reserved rights pursuant to the provisions of this Declaration. The reserved right of the Declarant set forth herein may not be amended or terminated without the prior written consent of the Declarant.

**XIV. ASSIGNMENT OF DECLARANT'S RIGHTS.**

The rights reserved to Declarant in this Declaration shall be fully or partially assignable by Declarant to any person, and Declarant may assign or mortgage or grant a security interest in whole or in part in any rights reserved to Declarant in this Declaration by a recorded instrument specifically assigning or mortgaging or granting a security interest in such rights, but such rights shall be held by only one person or entity at any time. Every Owner of a Unit in the Condominium and all holders of liens affecting any of the Units and each and every other party acquiring an interest in the Condominium or in the Land or any part of it, by acquiring such Unit, lien or other

interest, consents to any such assignment by Declarant, and, to the extent designated by Declarant, agrees to recognize any assignee as the "Declarant" under this Declaration.

#### **XV. DECLARANT'S RIGHTS AS OWNER.**

Declarant's reserved rights under this Declaration are without limitation to the rights Declarant has as an Owner under Section VI.G with respect to any Units that Declarant owns. To the extent Declarant has any such rights under Section VI.G they shall be deemed reserved rights of the Declarant for purposes of Section XII.

#### **XVI. LIMITATION ON RIGHTS OF LESSEES.**

Lessees of Units shall not have the rights and privileges afforded to Owners set forth in this Declaration, unless otherwise explicitly granted to such lessees in the lease or in this Declaration. Owners of Units have the right to assign any of the Owner's obligations and responsibilities under this Declaration to lessees through the lease or separate instrument. All leases of Units by Owners shall be subordinate to the terms and provisions of this Declaration and the other Condominium Documents.

#### **XVII. DISCLOSURES AND LIMITATIONS ON LIABILITIES.**

##### **A. NONLIABILITY AND INDEMNIFICATION.**

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

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

3. **No Indemnification Obligations of Declarant as State Agency.** Notwithstanding anything herein to the contrary, so long as the Declarant is the State of Hawaii, or a State of Hawaii agency, department, branch, or administratively attached public entity, none

of the indemnification obligations in this Declaration shall be applicable to or obligations of the Declarant.

**B. NONLIABILITY FOR UNIT AREA CALCULATION.** Each Owner, by acceptance of a Unit Deed or other conveyance of a Unit, understands and agrees that there are various methods for calculating the area of a Unit, and that depending on the method of calculation, the quoted area of the Unit may vary by more than a nominal amount. Additionally, as a result of grading or construction, other permitted changes to the Unit, and settling and shifting of the Land, the actual area of the Unit may also be affected. By accepting title to the Unit, the applicable Unit Owner(s) shall be deemed to have conclusively agreed to accept the size and dimensions of the Unit, regardless of any variances in the area from that which may have been disclosed at any time prior to closing. Without limiting the generality of this Section, Declarant does not make any representation or warranty as to the actual size, dimensions or area of any Unit, and each Owner shall be deemed to have fully waived and released any such warranty and claims for losses or damages resulting from any variances between any represented or otherwise disclosed area and the actual area of Units.

**C. CONDOMINIUM MAP.** Nothing in the Condominium Map is intended to be or is a representation or warranty by Declarant.

**D. NOT A SUBDIVISION.** The perimeter boundaries of the Units depicted on the Condominium Map are not subdivision lines. The land underlying the Condominium is as described in Exhibit "A" attached hereto.

## **XVIII. DISPUTE RESOLUTION.**

**A. DISPUTES.** The purpose of this Section is to provide the Owners, Association and the Board, excluding the Declarant unless in its capacity as an Owner or Board member, or as otherwise set forth in Section 514B-161 of the Act, as amended (collectively, for purposes of this Section, the "**Parties**") with a mechanism to resolve Disputes (defined herein). A "**Dispute**" for purposes of this Section means and includes any and all actions, claims or disputes between or among the Parties with respect to, arising out of, or relating to this Declaration, the Community Rules, if any, or the Bylaws. A Dispute shall not include: (a) claims for construction defects governed by the Contractor Repair Act, Chapter 672E of the Hawaii Revised Statutes; (b) incidents of threatened property damage or the health or safety Owners or any other Person; (c) assessments; (d) personal injury claims; or (e) matters that would affect the availability of any coverage pursuant to an insurance policy obtained by or on behalf of the Association.

**B. MEDIATION.** If the Parties cannot resolve such Dispute by discussion pursuant to Section XVIII.A above within thirty (30) calendar days after the commencement of such discussion, the matter shall be submitted to mediation by and pursuant to the procedures adopted by Dispute Prevention and Resolution, Inc. ("**DPR**") in Honolulu, Hawaii, or to any successor entity thereto, or to any other entity offering mediation services that is acceptable to the Parties. In addition, any of the Parties may apply to the First Circuit Court for an order compelling mediation as set forth in Section 514B-161 of the Act.

**C. FURTHER RESOLUTION.** If the Parties are unable to resolve a Dispute pursuant to the procedures described in Section XVIII.A or XVIII.B above, each Party shall have the right to pursue all rights and remedies available to such Party at law or in equity. If a Dispute proceeds in court, such action shall be brought exclusively in the federal or state courts located in Honolulu,

Hawaii. The Parties hereby agree that the court shall apply Hawaii substantive law and applicable statutes of limitations and will honor claims of privilege recognized by law.

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

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

**XIX. COMPLIANCE WITH STATE AND COUNTY ZONING AND BUILDING LAWS.**

To Declarant's actual knowledge, (a) the Condominium is in compliance with all applicable zoning and building ordinances and codes of the State and/or County, and all other permitting requirements applicable to the Condominium pursuant to Section 514B-5 of the Act; (b) no variances have been granted to achieve this compliance; and (c) the Condominium does not contain any legal nonconforming conditions, uses or structures.

**XX. GENERAL PROVISIONS.**

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

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

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

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

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

**F. CONSTRUCTIVE NOTICE AND ACCEPTANCE; INCORPORATION OF DECLARATION INTO DEEDS.** Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Condominium is and shall be deemed to have consented and agreed to every covenant, condition, restriction and provision contained in this Declaration. Any deed or other instrument by which all or any portion of the Condominium is

conveyed, whether by fee, easement, leasehold interest or otherwise, shall be subject to the provisions of this Declaration and any instrument of conveyance shall be deemed to incorporate the provisions of this Declaration, whether or not such instrument makes reference to this Declaration.

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

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

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

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

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

**L. ALLOCATIONS IN THE EVENT OF CONDEMNATION OR TERMINATION.** No matter what else this Declaration says, and notwithstanding the Units' respective Common Interests in the Condominium, if all or any portion of a Unit, any Improvements within a Unit, or any land area that is a Limited Common Element appurtenant only to that Unit is taken or condemned by any authority or conveyed under threat of condemnation, all compensation and damages payable for or on account of the Unit, Improvements or Limited Common Element shall be payable to the Owner of the Unit. In the event the Condominium is terminated by operation of law and the Land is sold, then notwithstanding the Common Interest appurtenant to each Unit the proceeds of such sale shall be allocated between the Unit Owners based on the proportionate value of the land area included within their respective Units (or designated as Limited Common Elements appurtenant only to their Units) and any Improvements thereon.

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

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

**O. INCORPORATION OF EXHIBITS.** The Exhibits attached to this Declaration are incorporated herein by reference.

**P. INCORPORATION OF CONDOMINIUM MAP.** The Condominium Map is incorporated herein by reference.

**XXI. INVALIDITY AND CHANGES IN LAW.**

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

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

**[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]**

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

HAWAII HOUSING FINANCE AND  
DEVELOPMENT CORPORATION

APPROVED AS TO FORM:

  
Deputy Attorney General  
State of Hawaii

By: Francis Paul Keeno  
Francis Paul Keeno  
Executive Assistant

Date: 2/1/21

"Declarant"

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

On this 1 day of February, 2021, before me appeared Francis Paul Keeno, to me personally known, who, being by me duly sworn, did say that he is the Executive Assistant of HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and a body corporate and politic of the State of Hawaii; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that this 51-page Declaration of Condominium Property Regime of Northwest Corner of Villages of Kapolei and Condominium Map, dated February 1, 2021, was signed and sealed in behalf of the corporation by authority of its Board of Directors, and said officer acknowledged the instrument to be the free act and deed of the corporation.



A handwritten signature in black ink, appearing to read "Enid Munoz", is written over a solid horizontal line.

Name: Enid Munoz  
Notary Public, State of Hawaii  
1<sup>st</sup> Judicial Circuit

My commission expires: 11/24/2023

## EXHIBIT "A"

### LAND DESCRIPTION

#### -PARCEL FIRST:-

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT 2-A, area 3.634 acres, more or less, as shown on Map 13, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1828 of the Trustees of the Estate of James Campbell.

The following as set forth by Order filed as Land Court Document No. T-11292188 filed on December 1, 2020:

Lot 2-A will have access:

- (i) Over Lots 5351, 5353 and 5349, as shown on Map 505 of Land Court Application 1069, to Farrington Highway, a public Road; or
- (ii) Over Lots 5351, 5353 and 5354, as shown on Map 505 of Land Court Application 1069, to Farrington Highway, a public Road; or
- (iii) Over Lots 5351, 5353, 5349 and 5356, as shown on Map 505 of Land Court Application 1069, to Farrington Highway, a public Road.

#### -PARCEL SECOND:-

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOTS 5351, area 22.890 acres, and 5353, area .506 acre, more or less, as shown on Map 505, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, deceased.

Being land(s) described in Transfer Certificate of Title No. 341,501 issued to HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and body corporate and politic in the State of Hawaii.

#### BEING THE PREMISES ACQUIRED BY DEED

GRANTOR: STATE OF HAWAII, by its Board of Land and Natural Resources, acting pursuant to Section 171-95, Hawaii Revised Statutes

GRANTEE: HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and body corporate and politic of the State of Hawaii

DATED: January 4, 1990  
FILED: Land Court Document No. 1696820

The following as set forth by Land Court Order No. 97282, filed March 21, 1990:

Lot 5351 will have access over Lots 5349 and 5356.  
Lot 5353 will have access over Lot 5349.

SUBJECT, HOWEVER, TO:

1. Mineral and water rights of any nature.
2. -AS TO PARCEL FIRST (LOT 2-A):-
  - (A) Restriction of access rights for vehicular traffic, as shown on Map 1 of Land Court Application No. 1828.

A portion of said restriction of vehicular access rights affecting Lot 2-B has been cancelled by Order filed as Land Court Document No. T-10453245, as shown on Map 13.

- (B) DESIGNATION OF EASEMENT "N"

PURPOSE: irrigation  
SHOWN: on Map 2, as set forth by Land Court Order No. 21338, filed June 3, 1963

- (C) Restriction of vehicle access rights, as shown on Map 13, as set forth by Order filed as Land Court Document No. T-10453245.
- (D) The terms and provisions contained in the following:

INSTRUMENT: UNILATERAL AGREEMENT AND DECLARATION FOR  
CONDITIONAL ZONING

DATED: March 6, 2001  
FILED: Land Court Document No. 2689090

Said above Agreement was also recorded as Document No. 2001-032622.

- (E) The terms and provisions contained in the following:

INSTRUMENT: MEMORANDUM OF AGREEMENT  
DATED: November 27, 2002  
RECORDED: Document No. 2005-068465  
PARTIES: HOUSING AND COMMUNITY DEVELOPMENT  
CORPORATION OF HAWAII, a public body and body corporate  
and politic of the State of Hawaii, and STATE OF HAWAII,  
Department of

(F) Abutter's rights of vehicle access over and across the common boundary of Lot 2 and 3, which rights were conveyed to the State of Hawaii by Deed dated April 19, 1966, filed as Land Court Document No. 393650.

(G) The terms and provisions contained in the following:

INSTRUMENT: AGREEMENT

DATED: April 11, 1989

FILED: Land Court Document No. 1650349

PARTIES: STATE OF HAWAII by its Board of Land and Natural Resources, HOUSING FINANCE AND DEVELOPMENT CORPORATION and STATE OF HAWAII DEPARTMENT OF TRANSPORTATION and THE TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED

RE: to provide for the acquisition by the State through its condemnation powers of approximately 830 acres of land for the development of the Kapolei Village project

(H) DESIGNATION OF EASEMENT "X" (10 feet wide)

PURPOSE: sewer

REFERENCED: on Map 5, as set forth by Land Court Order No. 96678, filed January 26, 1990

3. -AS TO PARCEL SECOND (LOT 5351):-

(A) Restriction of access as set forth by Land Court Order No. 18309, filed on August 16, 1960.

(B) Abutter's right of vehicle access in favor of the State of Hawaii along Barbers Point Naval Air Station Access Road, by Quitclaim Deed dated October 18, 1972, filed as Land Court Document No. 623619

(C) DESIGNATION OF EASEMENT "2312"

PURPOSES: electrical

SHOWN: on Map 505, as set forth by Land Court Order No. 97282, filed March 21, 1990.

(D) DESIGNATION OF EASEMENT "2315"

PURPOSES: drainage

SHOWN: on Map 505, as set forth by Land Court Order No. 97282, filed March 21, 1990.

(E) GRANT

TO: HAWAIIAN ELECTRIC COMPANY, INC., a Hawaii corporation

DATED: July 10, 1990  
FILED: Land Court Document No. 1747712  
GRANTING: a perpetual right and easement for utility purposes, Easement "2313"

(F) DESIGNATION OF EASEMENT "6756"

PURPOSE: none stated  
SHOWN: on Map 956, as set forth by Land Court Order No. 134762, filed April 13, 1999

(G) Order filed as Land Court Document No. T-11292188 filed December 1, 2020 sets forth the following:

Access in favor of Lot 2-A.

4. -AS TO PARCEL SECOND (LOT 5353):-

(A) DESIGNATION OF EASEMENT "2312"

PURPOSES: electrical  
SHOWN: on Map 505, as set forth by Land Court Order No. 97282, filed March 21, 1990.

(B) DESIGNATION OF EASEMENT "2315"

PURPOSES: drainage  
SHOWN: on Map 505, as set forth by Land Court Order No. 97282, filed March 21, 1990.

(C) GRANT

TO: HAWAIIAN ELECTRIC COMPANY, INC., a Hawaii corporation  
DATED: July 10, 1990  
FILED: Land Court Document No. 1747712  
GRANTING: a perpetual right and easement for utility purposes, over Easement 2312

(D) DESIGNATION OF EASEMENT "6755"

PURPOSE: none stated  
SHOWN: on Map 956, as set forth by Land Court Order No. 134762, filed April 13, 1999

(E) The terms and provisions contained in the following:

INSTRUMENT: UNILATERAL AGREEMENT AND DECLARATION FOR  
CONDITIONAL ZONING  
DATED: March 6, 2001  
FILED: Land Court Document No. 2689090

Said above Agreement was also recorded as Document No. 2001-32622.

(F) GRANT

TO: HAWAIIAN ELECTRIC COMPANY, INC. and HAWAIIAN  
TELCOM, INC.  
DATED: April 25, 2013  
FILED: Land Court Document No. T-8521109  
GRANTING: non-exclusive easement for transmission and distribution of  
electricity

(G) The terms and provisions contained in the following:

INSTRUMENT: DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS, VILLAGES OF KAPOLEI  
DATED: July 26, 1990  
FILED: Land Court Document No. 1752834

Restated Declaration of Covenants, Conditions and Restrictions of Villages of Kapolei dated September 30, 1994, filed as Land Court Document No. 2199063.

Second Restated Declaration of Covenants, Conditions and Restrictions of Villages of Kapolei dated February 16, 1995, filed as Land Court Document No. 2238460 (Consent thereto given by the U.S. Department of Housing and Urban Development, by instrument dated February 27, 1995, filed as Land Court Document No. 2238461; No consent given by Housing Finance and Development Corporation).

Said Declaration was supplemented by instruments dated May 11, 1994, filed as Land Court Document No. 2151494, dated September 1, 1995, filed as Land Court Document No. 2258452 and dated December 11, 2006, filed as Land Court Document No. 3534701. (Not noted on Transfer Certificate(s) of Title referred to herein)

Third Restated Declaration of Covenants, Conditions and Restrictions of Villages of Kapolei dated March 23, 1999, filed as Land Court Document No. 2620834 (Consent thereto given by Housing and Community Development Corporation and the U.S. Department of Housing and Urban Development).

Amendment and Fourth Restated Declaration of Covenants, Conditions and Restrictions of Villages of Kapolei dated March 16, 2016, filed as Land Court Document No. T-9703149 (Consent thereto given by Hawaii Housing Finance & Development Corporation)

(H) Order filed as Land Court Document No. T-11292188 filed December 1, 2020 sets forth the following:

Access in favor of Lot 2-A.

5. The terms and provisions contained in the following:

INSTRUMENT: QUITCLAIM DEED  
DATED: January 3, 1990 and June 20, 1990  
FILED: Land Court Document No. 1696820

The foregoing includes, but is not limited to, matters relating to the reservation of minerals, water and prehistoric and historic remains.

6. The terms and provisions contained in the following:

INSTRUMENT: DECLARATION OF CONDITIONS IMPOSED BY THE LAND USE  
COMMISSION  
DATED: June 6, 1990  
FILED: Land Court Document No. 1736622

Said Declaration was amended by instrument dated February 6, 1992, filed as Land Court Document No. 1888121.

7. The terms and provisions contained in the following:

INSTRUMENT: QUITCLAIM DEED  
DATED: July 9, 1990 and June 20, 1990  
FILED: Land Court Document No. 1745093

The foregoing includes, but is not limited to, matters relating to reservation of minerals, water and prehistoric and historic remains.

**EXHIBIT "B"**

**UNIT NUMBER, UNIT TYPE, APPROXIMATE AREA OF LIMITED COMMON ELEMENTS,  
PERCENTAGE OF COMMON INTEREST AND PARKING**

<b>Unit</b>	<b>Unit Type</b>	<b>Approximate Area of Limited Common Element (Acres)</b>	<b>Percentage of Common Interest</b>
1	Veteran's Home	7.051	26.583
2	Spatial	15.839	59.716
3	Spatial	3.634	13.701
<b>Total</b>		<b>26.524</b>	<b>100.000</b>

Calculation of Common Interest.

The common interest attributable to each Unit was calculated by dividing the approximate land area of each individual Unit by the total land area of all Units within the Condominium.

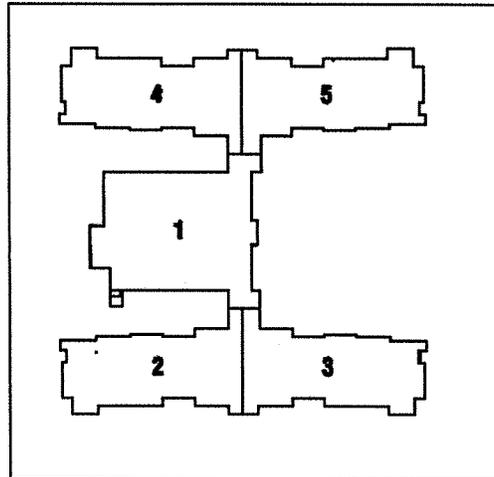
Parking Stalls.

Each Owner will be allocated parking stalls located within the Owner's Unit which may or may not be reserved stalls.

## EXHIBIT "C"

### DESCRIPTION OF BUILDINGS AND UNITS

**Unit 1** is a State of Hawaii Veteran's Home facility, consisting of two-story buildings, identified on the Condominium Map by buildings numbered 1 through 5 (see *key plan below*), and a one-story storage building as a standalone structure. The five buildings on Unit 1 combine for a total of approximately 130,000 gross square feet.



Buildings 2, 3, 4, and 5 consist of two story neighborhood wings that are connected to a commons center (Building 1) with a connecting corridor ("main street"). The "main street" provides functional access from all five buildings and to the central commons center.

Each of Buildings 2, 3, 4, and 5, are further divided into two household wings (total of four wings) each supporting 15 private residential rooms (for a total of 60 residential rooms with toilets), dedicated dining, kitchen, den, sitting lounges, living and outdoor patio areas, community support spaces, office and administrative areas, rehabilitation areas, resident support spaces, building support spaces, housekeeping closets, and electrical rooms, all as shown on the Condominium Map.

The one-story storage building is located behind the commons center via a dedicated service road, as shown on the Condominium Map.

**Units 2 and 3** are spatial Units, intended to be further subdivided into additional units at a later date.

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

Each Unit in the Community has access to the Common Elements of the Community.

#### **ACCESS TO A PUBLIC ROAD:**

The Community will have access to Farrington Highway, a public road, directly and via Lot 5349 (Kealanani Avenue) and Lots 5351 and 5353. The Community will have access to Ft. Barrette Road, a public road, via Lots 5349, 5351, 5353 and 5356.

**EXHIBIT "D"**  
**COMMON ELEMENTS**  
**LIMITED COMMON ELEMENTS**

**The common elements of the Community shall include, but are not limited to, the following:**

1. The Land and those improvements to the Land, excluding the Units, but including without limitation the Community Access Road(s), exterior lighting fixtures located along and/or adjacent to the Community Access Road(s), the common area landscaping and similar improvements.
2. All the benefits, if any, inuring to the Land or to the Community from all easements, if any, shown on the Condominium Map or listed in Exhibit "A" attached to this Declaration of Condominium Property Regime.
3. The buildings, including without limitation, all structural components, such as foundations, girders, columns, beams, floor slabs, supports, main walls, load-bearing walls, floors, ceilings (except the inner or decorated surfaces of such walls, floors and ceilings), roofs, exterior and interior stairs and stairways, landings, railings (walkway or lanai railings), entrances and exits of the buildings, excluding those items that are included in the Unit.
4. Without limitation of the foregoing, Common Elements include:
  - (i) All utility service, including without limitation, all drainage facilities or swales, pipes, shafts, wires, conduits or other utilities or service lines running through a Unit, if any, which are utilized for or serve more than one Unit, or other features of the Community.
  - (ii) Any and all apparatus and installations of common use and all other parts of the Community necessary or convenient to its existence, maintenance and safety, or normally in common use.
  - (iii) All ducts, electrical equipment, transformers, wiring, pipes and other central and appurtenant transmission facilities and installations over, under and across the Community which are utilized by or serve more than one Unit or for services such as power, light, water, gas, sewer, drainage, telephone and radio and television signal distribution, if any.
  - (iv) All areas, rooms, spaces, structures, housings, chutes, shafts or facilities of the Community within or outside of the buildings, which are for common use or which serve more than one Unit, such as electrical, maintenance, service, security, machine, mechanical and equipment rooms and the equipment, machinery and facilities therein.
5. A 20-foot wide strip of land along the southern boundary of the Community (the "**Wall Maintenance Area**"), for access and maintenance of a wall separating the Community from the Kumu Iki neighborhood (the "**Neighborhood Wall**"), as shown on the Condominium Map. No improvements may be constructed within the Wall Maintenance Area without the prior written consent of the Board, and the Neighborhood Wall and its foundation may be repaired or rebuilt at any time during the term of this Declaration regardless of any improvements built on any Units in the Community, until the Board, at its discretion, decides to alter or remove the Neighborhood Wall.
6. A walkway located adjacent to and within the Wall Maintenance Area.

7. Lot 5353.
8. All other parts of the Community not included in the definition of a Unit.

**The Limited Common Elements of the Community shall include, but are not limited to, the following:**

Without limitation of designations specified in the Declaration and as determined appropriate by the Board of Directors of the Association, certain parts of the Common Elements, herein called the "**Limited Common Elements**," are hereby designated and set aside for the exclusive use of certain Units, and such Units shall have appurtenant thereto exclusive use of such Limited Common Elements as follows:

1. The land area surrounding and under Unit 1 is a limited common element of Unit 1 and is for the exclusive use of Unit 1 and consists of approximately 7.051 acres.
2. The land area surrounding and under Unit 2 is a limited common element of Unit 2 and is for the exclusive use of Unit 2 and consists of approximately 15.839 acres.
3. The land area surrounding and under Unit 3 is a limited common element of Unit 3 and is for the exclusive use of Unit 3 and consists of approximately 3.634 acres.
4. With respect to any pipes, shafts, wires, conduits or other utility or service lines running through a Unit which are utilized for or serve more than one Unit, if any such wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element appurtenant solely to that Unit.
5. Any area designated as a Limited Common Element for the exclusive use of specific Owners.