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STATE OF HAWAII
(Bureau of Conveyances)

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Chun, Kerr, Dodd, Beaman & Wong, LLLP (ARB)
745 Fort Street, Fort Street Tower, 9th Floor
Honolulu, HI 96813
Tel. No. (808) 528-8200

Tax Map Key (1) 9-8-008-026

DECLARATION OF CONDOMINIUM PROPERTY REGIME
OF MARY SAVIO MEDICAL PLAZA AT NEWTOWN

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, **KMC PARTNERS LLC**, a Hawaii limited liability company (“**Developer**”), whose principal place of business and post office address is 931 University Avenue, Suite 105, Honolulu, Hawaii 96826, is the owner in fee simple of that certain property located 98-1247 Kaahumanu Street, Aiea, Hawaii 96701, identified by Tax Map Key No. (1) 9-8-008-026, and more particularly described in **Exhibit A** attached hereto and made a part hereof (the “**Land**”) together with all buildings and improvements located thereon (the Land and said buildings and improvements are hereinafter collectively referred to as the “**Property**”);

WHEREAS, Developer desires to submit the Property to a condominium property regime to be known as “Mary Savio Medical Plaza at Newtown” as described in this Declaration (the “**Project**”);

NOW, THEREFORE, Developer hereby submits the Property to a condominium property regime established pursuant to and in accordance with Chapter 514B, Hawaii Revised Statutes (“**HRS**”), as amended (the “**Act**”), and in furtherance thereof, makes the following

declarations, restrictions, covenants and conditions, and hereby declares and agrees that the Property is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, restrictions, covenants and conditions set forth herein (this “**Declaration**”), and in the Bylaws of the Association of Unit Owners of Mary Savio Medical Plaza at Newtown (the “**Bylaws**”), to be recorded in the same manner as and concurrently herewith, as the same may from time to time be amended, and Mary Savio Medical Plaza at Newtown Condominium Map recorded in the Bureau of Conveyances of the State of Hawaii (the “**Bureau**”) as Condominium Map No. 511 and filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii (the “**Land Court**”) as Condominium Map No. 2174 (the “**Condominium Map**”), which declarations, restrictions, covenants and conditions shall constitute covenants running with the Land and equitable servitudes and shall be binding on and for the benefit of Developer, its successors and assigns, and all subsequent owners and lessees of all or any part of the Project and their respective heirs, legal representatives, successors and assigns.

1. **NAME.** The condominium property regime established hereby shall be known as “Mary Savio Medical Plaza at Newtown.”

2. **DESCRIPTION OF LAND.** The Land submitted to the condominium property regime is described in Exhibit A attached hereto and made a part hereof.

3. **DESCRIPTION OF PROJECT.**

3.1. **Generally.** The Project is an office and retail condominium project, intended primarily for medical office and healthcare services, consisting of an existing three-story building containing sixty (60) commercial condominium units (the “**Office Units**”), and two (2) spatial condominium units adjacent to the building located in the exterior land areas of the Project (the “**Spatial Units**”).

3.2. **Buildings.** The Project currently contains four Buildings: a three-story office building with an adjoining elevator room (the “**Office Building**”), a one-story utility building (the “**Utility Building**”), a one-story electric transformer/elevator equipment building (the “**Equipment Building**”), a one-story switch vault (“**Switch Vault**”), and a parking attendant’s kiosk (the “**Parking Kiosk**”) (collectively the Office Building, Equipment Building, Utility Building, Switch Vault, and the Parking Kiosk are referred to as the “**Buildings**”), as more particularly shown on the Condominium Map. A trash compacting unit is located outside near the Utility Building and a transformer is located outside of the Switch Vault. The Office Building is composed of the following:

a. The Ground Floor of the Office Building contains twenty (20) Office Units, three (3) common stairways (Mauka Stairs, Makai Stairs, and Lobby Stairs), and a Lobby that provides access to the elevators, mailboxes, Makai Wing corridor, Lobby Stairs and two (2) common building doorways to the parking area abutting Kaahumanu Street and Waimalu Stream, women’s and men’s restroom facilities, storage areas for electrical, maintenance, and elevator equipment, and electric transformer housing.

b. The Second Floor of the Office Building contains seventeen (17) Office Units, three (3) common stairways (Mauka Stairs, Makai Stairs, and Lobby Stairs), a Lobby providing access to the elevators, Mauka and Makai Wing corridors and Lobby Stairs, women's and men's restroom facilities, storage areas for electrical and maintenance equipment.

c. The Third Floor of the Office Building contains twenty-three (23) Office Units, three (3) common stairways (Mauka Stairs, Makai Stairs, and Lobby Stairs), a Lobby providing access to the elevators, Mauka and Makai Wing corridors and Lobby Stairs, women's and men's restroom facilities, storage areas for electrical and maintenance equipment.

d. The roof of the Office Building is accessed via the fire escape and ladder and contains the air-conditioning equipment.

3.3. **Parking.** The Project presently has a total of two hundred and one (201) parking stalls, all of which are located within the Spatial Units. In total, there are currently one hundred ninety two (192) standard stalls, nine (9) handicap stalls, and two (2) loading stalls. Fourteen (14) standard stalls are configured as tandem stalls. There are no loading stalls. The parking plan for the Project is shown on the Condominium Map.

3.4. **New Buildings.** There may be new buildings containing additional commercial condominium Units and/or parking stalls which may be constructed within the Spatial Units, more particularly described in Section 4 below. The Spatial Unit located on the *mauka* (mountain) side of the Project (the "*Mauka Spatial Unit*") is intended to be used for a parking structure and may include an extension of the Office Building with additional commercial condominium Units (the "*Future Parking Structure*"), and the Spatial Unit located on the *makai* (ocean) side of the Project (the "*Makai Spatial Unit*") is intended to be used for an extension of the Office Building with additional commercial condominium Units (the "*Future Office Building Extension*") (the Future Parking Structure and the Future Office Building are collectively referred to as the "*New Buildings*").

3.5. **Access.** The Project fronts Ka'ahumanu Street, a public street. All Units in the Project have access via the common element hallways, stairways, elevators, and driveways to Ka'ahumanu Street. Prior to construction of the Future Office Building Extension in the Makai Spatial Unit, vehicular access to the Project from Ka'ahumanu will be by easement over the improved driveway areas of the Spatial Units.

4. **DIVISION OF PROPERTY.**

4.1. **Units.** There are sixty-two (62) commercial condominium apartment units in the Project (a "*Unit*" or the "*Units*"). Each Unit is designated as a separate freehold estate. The Units consist of the sixty (60) Office Units located in the Office Building and the two (2) Spatial Units, as shown on the Condominium Map.

4.2. **Spatial Units.**

a. **Generally.** The Spatial Units consist of airspace as delineated below and the land and improvements within such airspace. There are two Spatial Units, the


Mauka Spatial Unit and the Makai Spatial Unit. The boundaries of the Spatial Units, which circumscribe the land area of each Spatial Unit, are shown on the Condominium Map as intermittently dashed lines (“- x - x - x -”). Each Spatial Unit is enclosed by (1) imaginary vertical planes rising straight up and straight down from the perimeter surface boundaries of such Spatial Units that are described in **Exhibit B** hereof and shown on the Condominium Map, (2) an imaginary horizontal plane which is thirty (30) feet below the unfinished surface of the ground area within a Spatial Unit extending in all directions until it intersects with the vertical plane described in (1) above, and (3) an imaginary horizontal plane which is one hundred twenty (120) feet above the unfinished surface of the ground area within a Spatial Unit extending in all directions until it intersects with the vertical plane described in (1) above. The metes and bounds for each Spatial Unit is shown on **Exhibit B** attached hereto and made a part hereof. Each Spatial Unit also includes, but is not limited to, all structural improvements within the Spatial Unit, which currently exist or may be hereafter constructed within the Spatial Unit. No Spatial Unit shall be deemed to include any pipes, wires, conduits or other utility lines running over, under or through such Spatial Unit which are utilized by or which serve other Units, the same being deemed Common Elements as hereinafter provided.

b. Spatial Unit Measurements. The approximate net land areas for the Spatial Units as set forth in Exhibit B are based on measurements taken from the boundary lines as surveyed and as shown on the Condominium Map.

4.3. Office Units.

a. Generally. Each Office Unit consists of the spaces within the perimeter walls, floors and ceilings of the respective Office Units as shown on the Condominium Map. Each Office Unit is of a unique type, size and configuration and is more particularly described below and in **Exhibit C** attached hereto and made a part hereof, and are shown on the Condominium Map. Office Units on the Ground Floor through the Third Floor are commercial loft space and, except as otherwise indicated on the Condominium Map, are without interior partitions.

Certain Office Units are delineated by perimeter walls that are not existing physical walls and are instead delineated by an imaginary plane extending from floor to ceiling. These “imaginary” perimeter walls are shown on the Condominium Map as solid-bold lines (“**_____**”)(and identified in the Symbol Ledger thereof as “NEW”). Where the imaginary plan is interrupted by a permitted doorway, the doorway is shown on the condominium map in similar solid-bold lines (“**┐**”)(and identified in the Symbol Ledger thereof as “NEW”). The existence of a doorway penetration does not alter the plane that establishes the Unit boundary. The Units delineated in part by “imaginary” perimeter walls are as follows: Unit 101, Unit 110, Unit 113/115, Unit 117A, Unit 117B, Unit 118A, Unit 118B, Unit 119, Unit 122, Unit 205, Unit 207/209/211, Unit 310B, and Unit 310A.

Each Office Unit will have the approximate net floor area in square feet and configuration as set forth in **Exhibit C** attached hereto and made a part hereof. The extent of each unit is shown on the Condominium Map by arrows pointing to the corner boundaries of the unit, identified in the Symbol Legend as “UNIT EXTENTS” (“”).

b. Office Unit Measurements. All approximate net floor areas set forth in **Exhibit C** are based on measurements taken from the undecorated or unfinished interior surface of all perimeter walls as shown on the Condominium Map, except that no reduction has been made to account for interior walls, ducts, vents, shafts and the like located within the perimeter walls. Where a unit is delineated by an imaginary perimeter wall, such imaginary plane shall be deemed to have a width that is the same as the average width of an existing perimeter wall in the Office Building, and the unit boundary and measurement shall be taken from the interior surface of the imaginary plane. All floor areas set forth in **Exhibit C** are not exact but approximations based on the floor plans of each type of Office Unit derived from existing architectural and construction plans for such Office Unit. All floor areas set forth in **Exhibit C** have also been rounded to the lowest full square foot where the approximation of such floor areas exceed a square foot by any fraction of a square foot. For these reasons, the measurements of the floor areas set forth in **Exhibit C** and shown on the Condominium Map may not follow the designations of the limits of the Office Units (the legally designated areas of the Office Units) set forth below, and the floor areas set forth in **Exhibit C** may be different from the floor areas of the Office Units as so designated and described below. Each Office Unit has immediate access to corridors and/or stairways and/or other access ways which lead to the Common Elements of the Project.

c. Limits of the Office Units. Notwithstanding the floor areas set forth in **Exhibit C** and the manner in which such floor areas have been measured, the respective Office Units shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls or interior load-bearing walls or partitions, the foundations, columns, girders, beams, floor slabs, supports, roofs and ceilings located within or at the perimeter of or surrounding such Office Unit, any pipes, vents, shafts, ducts, conduits or other utility or service lines or enclosed spaces for wiring, pipes, air exhaust or air conditioning running through or otherwise within such Office Unit which are utilized for or serve more than one Unit, all of which are deemed Common Elements as hereinafter provided. Each Office Unit shall be deemed to include all of the walls and partitions which are not load-bearing and which are within its perimeter walls, the inner decorated or finished surfaces of all walls, floors and ceilings, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of each Office Unit, all spaces, interior non-load-bearing partitions and other fixtures and improvements within the boundaries of an Office Unit, all windows (both exterior and interior), window frames, louvers, shutters, panels, doors (both exterior and interior), and door frames along its perimeter, and all of the fixtures originally installed therein.

4.4. Conflicting Descriptions. 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; provided, however, that the Condominium Map is intended only to show the layout, location, Unit designations and dimensions of the Units and elevations of the Buildings and the Units and is not intended to contain any other representation or warranty.

5. COMMON ELEMENTS. One freehold estate is hereby designated in all common elements of the Project, which include all portions of the Project other than the Units

(except as specifically included herein), and all other common elements mentioned in the Act which are actually included in the Project (the “*Common Elements*”), including specifically without limitation:

- 5.1. To the extent not part of a Spatial Unit, the Land in fee simple;
- 5.2. The air and air rights above the Project, to the extent not located with a Spatial Unit;
- 5.3. Any existing water lines, sewer lines, sewage treatment equipment and facilities (if any), electrical equipment, wiring, lighting equipment and poles, utility yards and equipment, telephone poles and power poles, telecommunications equipment, streetlights, fire hydrants, drainage pipelines, culverts and ditches, utility poles and transmission lines, and other central and appurtenant transmission facilities installed or to be installed on, over, under and across the Project that serve more than one Unit, whether or not located within any particular Unit for services such as but not limited to electricity, water, gas, sewer, telephone, radio, television and cable television signal distribution;
- 5.4. All setback areas, yards, grounds, landscaping, planters, sidewalks, walkways, walkway railings, refuse enclosures and facilities on the exterior of the Office Building located outside of the Spatial Units;
- 5.5. The Switch Vault, to the extent such is not owned or under the control of the Hawaiian Electric Company, or its successor;
- 5.6. Any and all apparatus and installations existing for common use of all Units, or necessary or convenient to its existence, maintenance and safety of the Project, or normally in common use by all Units; and
- 5.7. Certain parts and portions of the Common Elements have been set aside as “Limited Common Elements,” which are more particularly described in Section 6 below.

6. **LIMITED COMMON ELEMENTS.** Certain parts of the Common Elements, herein called and designated “*Limited Common Elements*,” are hereby set aside and reserved for the exclusive use and benefit of certain Units, and such Units shall have appurtenant thereto exclusive easements for the use of such Limited Common Elements. The Limited Common Elements so set aside and reserved are as follows:

- 6.1. All structured components such as foundations, columns, girders, beams, floor slabs, supports, perimeter, party and load-bearing walls and partitions (excluding the finishes thereon within a Unit as specified in Section 4 above), and roofs of the Office Building shall be Limited Common Elements appurtenant to the Office Units;
- 6.2. All entrances, entryways and exits to the Office Building, and all interior lobby areas, stairwells, stairways and stairway landings, walkways, corridors, ramps, elevator shafts and landings, maintenance rooms, storage rooms, elevator machine rooms, mechanical rooms, electrical rooms, trash rooms, recreation rooms, mail rooms, management rooms, security

rooms and common toilet facilities in the Project that are not located within the boundaries of an Office Unit shall be Limited Common Elements appurtenant to the Office Units;

6.3. All ducts, vents, shafts, sewer lines, sewage treatment equipment and facilities, electrical transformers, emergency generators, electrical equipment, pipes, wiring and other central and appurtenant transmission facilities and installations over, under and across the Project which serve the Office Building, but not the Spatial Units, for services such as power, light, water, gas, cable television, air conditioning, sewer, refuse, telephone, and radio and television signal distribution shall be Limited Common Elements appurtenant to the Office Units;

6.4. The Equipment Building shall be a Limited Common element appurtenant to the Office Units;

6.5. All driveways and driveway ramps, curbs, loading and service areas, parking stalls and parking areas that are not located within the boundaries of the Spatial Units shall be appurtenant to the Spatial Units;

6.6. The mailbox corresponding to the Unit number of each Unit in the area designated by the Association for location of mailboxes, such location currently being on the Ground Floor lobby of the Office Building, as shown on Sheet A-3 of the Condominium Map;

6.7. Any chute, flue, duct, wire, conduit or any other fixture which lies partially within and partially outside the designated boundaries of a Unit serving only that Unit is a Limited Common Element appurtenant solely to that Unit;

6.8. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, lanais, patios and all exterior doors and windows or other fixtures designed to serve a single Unit, but that are located outside the Unit's boundaries, are Limited Common Elements appurtenant exclusively to that Unit; and

6.9. The Utility Building shall be a Limited Common Element appurtenant to the Mauka Spatial Unit;

6.10. The Parking Kiosk, if relocated outside of the Makai Spatial Unit, shall be a Limited Common Element appurtenant to the Mauka Spatial Unit; and

6.11. Any other Common Element of the Property which is rationally related to only one Unit shall be deemed a Limited Common Element appurtenant to and for the exclusive use of such Unit.

The designation of Limited Common Elements shall be subject to the rights of Unit owners to exchange or transfer appurtenant Limited Common Elements to another Unit or Units pursuant to the Act. The Limited Common Elements on each floor that are appurtenant only to the Units on that floor may be changed, relocated or reconfigured with the consent of the Unit owners on such floor.

7. **COMMON INTEREST.**

7.1. **Common Interest.** Each Unit shall have appurtenant thereto an undivided interest in the Common Elements of the Project as shown in Exhibit C hereto (hereinafter referred to as the "***Common Interest***") and the same percentage share in all common profits and expenses of the Common Elements of the Project and, except as herein expressly provided for, the same percentage interest for all other purposes, including, without limitation, voting, except as otherwise provided in this Declaration.

7.2. **Alteration and Transfer of Interest.** Except as otherwise provided in this Declaration, the undivided interest in the Common Elements and other easements appurtenant to each Unit shall have a permanent character, and shall not be altered without the prior written consent of all of the Unit owners affected, expressed in an amendment to this Declaration duly recorded. Such amendment shall contain the consent thereto by the holders of any first mortgage on such Units as shown in the Association's record of ownership, or who shall have given the Board notice of their interest through the secretary of the Association or the Managing Agent (if any). The Common Interest shall not be separated from the Unit to which it appertains, and shall be deemed to be conveyed, leased or encumbered with such Unit even though such interest or easements are not expressly mentioned or described in the conveyance or other instrument. The Limited Common Elements and Common Elements shall remain undivided, and no right shall exist to partition or divide any portion thereof except as provided in the Act and as otherwise expressly provided herein. The condominium property regime created hereby cannot be terminated except in accordance with the Act and the provisions of this Declaration and the Bylaws.

8. **EASEMENTS.** In addition to any easements of record, the Units and Common Elements shall have and be subject to the following easements:

8.1. **Access and Support of Units.** Each Unit shall have appurtenant thereto non-exclusive easements (a) in the Common Elements designed for such purposes for ingress to, egress from, drainage (whether natural or man-made), utility services (including but not limited to electricity, water and sewer) for and support, maintenance and repair of such Unit and its appurtenant Limited Common Elements; and (b) for use of other Common Elements according to their respective purposes, subject always to the exclusive or limited use of the Limited Common Elements as provided herein; and (c) in the other Unit and Limited Common Elements of the Project for support. Each Office Unit in the Office Building in which it is located is granted, under this Declaration, a non-exclusive easement (i) in all structural members, footings, caissons, foundations, columns and beams and any other supporting components located in or constituting a part of the Office Building for the support and maintenance thereof, and (ii) for access to, from and through, the Office Building for the use of such Office Building for its intended purposes and maintenance of the Office Building.

8.2. **Encroachments.** If any part of the Common Elements now or hereafter encroaches upon any Unit or Limited Common Element, or if any Unit or Limited Common Element now or hereafter encroaches upon the Common Elements or any other Unit or Limited Common Element, a valid easement for such encroachment and the maintenance thereof does

and shall exist for so long as such encroachment continues to exist. In the event any building or structure in the Project shall be partially or totally destroyed and thereafter rebuilt, or in the event of any shifting, settlement or movement of any portion of the Project, then, and in each such case, any minor encroachments into any parts of the Common Elements, Units, or Limited Common Elements due to such construction, shifting, settlement or movement shall be permitted and valid easements for such encroachments and the maintenance thereof shall and do exist for so long as such encroachments continue.

8.3. **Operation of Project.** The Association is responsible for the operation of the Project and each Unit owner is responsible for maintenance, repair and replacement of the owner's Unit. Each Unit owner shall afford to the Association and to other Unit owners, and to employees, independent contractors or agents of the Association or other Unit owners, during reasonable hours, access through the owner's Unit reasonably necessary for these purposes. Unless entry is made in case of emergency as described below, if damage is inflicted on the Common Elements or on any Unit through which access is taken, the Unit owner responsible for the damage, or the Association, if it is responsible, is liable for the prompt repair thereof; provided that the Association shall not be responsible to pay the costs of removing or replacing any finished surfaces or other barriers that impede its ability to maintain and repair the Common Elements. The Association shall have the irrevocable right, exercisable by the Board (defined in Section 10 below), or the Managing Agent (defined in Section 11 below), to have access to and enter each Unit and the Limited Common Elements from time to time during reasonable hours as may be necessary for the operation of the Project, or for the installation, repair, maintenance of any Common Elements, or at any time for making emergency repairs that may be necessary to prevent damage to any Units or the Common Elements.

8.4. **Utilities.** Each Unit owner shall have an easement in common with the owners of all other Units to use all pipes, wires, ducts, cables, conduits, sewer and public utility lines, drainage lines and other Common Elements located in, under or over any of the other Units and serving such owner's Unit. Each Unit shall be subject to an easement for necessary and reasonable access to any Common Elements located in the Unit in favor of the owners of all other Units served by such Common Elements. Each Office Unit owner shall have the right to install pipes, wires, ducts, cables, conduits, sewer and public utility lines, drainage lines serving such owner's Unit from the public street (i) through the existing conduit for utilities running from the street to the Office Building, (ii) through the vertical conduit and riser rooms and spaces designed for delivery of utility service the Units (such that they are not visible to the outside of the Building), and (iii) running horizontally through any Unit or the Common Elements within twenty-four (24) inches beneath the ceiling of each floor and above the drop ceiling in any Unit; provided, however, that the installation of the same shall be made at the benefiting Unit owner's cost, with the prior consent of the Board and pursuant to the commercially reasonable rules and regulations of the Association adopted to ensure the best utility of such spaces for the benefit of the Project as a whole and the least interference with the operation of the Project or any Unit owner. Office Unit owners shall not be allowed to install or maintain any exterior vents, exterior or roof penetrations, exterior air-conditioning units, or other utilities lines and conduits on the exterior of the Office Building without first obtaining the consent of the Board.

8.5. **Right to Grant and Realign Easements.** Developer and the Association (exercisable by the Association by the Board) shall have the right, to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across, or through the Common Elements 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 the Common Elements or any easements for utilities or for any public purpose without joinder or consent of any owner, any owner's Mortgagee, or other person; provided, however, that such right of the Association is subject to, and may not be exercised in any manner which is inconsistent with, in derogation of or which would materially limit, abrogate or materially interfere with, the exclusive use of any Limited Common Elements or any rights or easements reserved in favor of Developer or any owner. Developer and the Association shall further have the right to transfer, cancel, relocate, accept the benefit of, and otherwise deal with any easement over, under, across or through any lands adjacent to the Project, which may be appurtenant to the Land of the Project, for any reasonable purpose, which may include, but shall not be limited to, any of the same purposes set forth above or for the reason that any owner of any such lands adjacent to the Project exercises any right to require the relocation of any such easement.

8.6. **Parking.** Each Unit owner shall have an easement in common with the owners of all other Units of ingress and egress to their Unit over the existing driveway areas of the Project, including those driveway areas located within the Spatial Units or the Limited Common Elements appurtenant to the Spatial Units for so long as such driveway areas may exist, and the right to park one (1) standard size automobile in the parking areas of the Project, even if the parking area is located within the Spatial Units or the Limited Common Elements appurtenant to the Spatial Units for so long as such driveway areas may exist; provided, however, that the owners of the Spatial Units shall have the absolute right, in their sole and absolute discretion, to (a) permanently remove, change, add to, relocate, and/or reconfigure all parking and driveway areas that are within their respective Spatial Units or are Limited Common Elements appurtenant to their unit; (b) adopt rules and regulations for the use of the driveway and parking areas, including control of the hours of access to the driveway and parking areas; and (c) charge fees to Unit owners and others using the driveway and parking areas at commercially reasonable rates; provided, further, that during any period of construction for the New Buildings, parking availability may be severely limited and there may be no parking being available for Office Unit owners, and the Spatial Unit owners shall not have to provide such parking, during such period.

8.7. **Reserved Rights and Easements of Developer.**

a. **Ongoing Construction Activities.** Developer and its agents, sales agents, employees, contractors, licensees, successors, mortgagees and assigns shall have an easement over, under and upon any portion of the Project, including the Common, Limited Common Elements and any Unit, as may be reasonably necessary for the inspection of and for the completion of construction of the Project and correction of defects and other items in the Unit or the Community, in the sole determination of the Developer. Each owner, in purchasing or otherwise taking title to a Unit, does so with the express understanding and acknowledgment that the Project will be affected by the ongoing construction within the Project, including

construction of the New Buildings, which may result in various disturbances such as noise, dust, smoke, soot, ash, odor, noxious vapors, surface water runoff, or other adverse environmental conditions, and that construction and sales activities by Developer may result in noise, dust, vibration and other nuisances, disturbances, annoyances, hazards and effects and may also result in temporary conditions of inconvenience to the owner, such as increased traffic congestion, impairment of access to the Project and decreased parking areas. **Each owner hereby accepts these circumstances and grants an easement for such nuisance, inconvenience, irritation or annoyance which the owner may experience as a result of such activities and conditions and agrees to suffer and permit all actions and consequences incidental to such ongoing development, construction and sales activities. Each owner further covenants and agrees to assume all risk of any property damage, personal injury or loss in property value arising from such development, construction and sales activities and to hold harmless Developer and its managers, directors, officers, agents, counsel, related or affiliated entities, successors and assigns, from and against any and all liability, claims, losses, damages, or expenses, including attorneys' fees, occasioned by such property damage or personal injury to the property or person of owner, or owner's tenants, lessees, family, servants, guests, invitees, licensees, employees, or other persons who may occupy or otherwise use the Project or the Units.**

b. Developer's Easements over the Common Elements.

Notwithstanding anything provided in this Declaration to the contrary, Developer and the assignee of Developer's reserved rights shall have an easement over the Common Elements (including Limited Common Elements appurtenant to other Units) of the Project, which easement may be assigned from time to time to anyone whom Developer wishes, including owners and non-owners, on a permanent or temporary basis, for access over, under, across and through and to utilize the Common Elements (including Limited Common Elements appurtenant to other Units) of the Project.

c. Developer's Reserved Rights Concerning Easements. Developer reserves a present easement over the whole of the Common Area and the Limited Common Areas of the Office Building, together with the right for itself and its successors and assigns, to designate, grant, convey, transfer, cancel, relocate, reserve or otherwise deal with any easements, licenses, and rights of way at any time for utilities, any public-type facility (mail centers, collection boxes, and the like), sanitary and storm sewers, cable television transmission facilities, party walls, refuse disposal, landscape, maintenance, driveways, parking areas, access roadways and other similar purposes, on, over, across, under and through the Common Elements of the Project. The foregoing reserved right and easement is together with the right of entry to construct, reconstruct, operate, maintain, repair and relocate such lines, facilities and appurtenances and to grant easements or rights of way for such purposes to Governmental Authorities, public or private utility or service companies, and the right to grant, designate, use and enjoy easements and/or rights of way for access purposes (including for vehicular and pedestrian access). Developer also reserves the right to assign or transfer the rights and obligations of any such reserved easements and rights of way to the Association, which rights and obligations shall be accepted and assumed by the Association. The easements retained in this Section and these reserved rights not be exercised in any manner which would materially limit, abrogate or interfere with the exclusive use of any Unit or Limited Common Elements.

Each Owner, by purchasing a Unit, consents to any such designation, granting, conveyance, transfer, cancellation, relocation and reservation of easements and/or rights of way as provided above without the necessity of any Owner or those claiming by, through or under an Owner entering into any further agreement respecting such action or document; provided, however, that such Owner and those claiming by, through or under an Owner agrees to join in and execute such documents and instruments and do such other things as may be necessary or convenient to effect the same promptly at the request of Developer without payment of additional consideration.

d. Sales and Leasing Activities. Developer, its agents, employees, contractors, licensees, successors and assigns shall have the right and an easement to conduct extensive sales and leasing activities on the Project, including, without limitation, the use of any Unit owned by Developer (and any other Unit, with the express permission of the owner of such Unit) and the Common Elements (including Limited Common Elements appurtenant to other Units) for model Units, sales and management offices, parking and extensive sales displays and activities the posting and maintenance of signs and other advertisements relating to such sales activities upon any Unit owned by Developer and any Common Elements (including Limited Common Elements appurtenant to other Units) and to install, maintain, locate, relocate and reconfigure such structures, displays, advertising signs, billboards, flags, sales desks, kiosks, sales offices, construction offices, interior design and decorator centers and parking areas for employees, agents and prospective purchasers as may be necessary or convenient for the proper development and disposition of Units by sale, resale, lease or otherwise, and the right, but not the obligation, to provide ongoing maintenance, operation, service, construction and repairs to individual Units. Developer and its prospective purchasers shall be entitled to the non-exclusive use of the Common Elements, without further cost for access, ingress, egress, use or enjoyment, in order to show the Property to prospective purchasers or to otherwise dispose of the Property as provided herein. Without limitation of the foregoing, Developer reserves, for itself and its successors and assigns, the right during the course of Developer's sales and/or leasing of Units in the Project to supplement, modify and amend the estimated breakdown of annual maintenance fees and estimated cost of assessment to each Unit, as Developer 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, Developer may supplement and amend its public report applicable to the Project.

e. Configuration of Units and Other Changes. Developer shall have the absolute right, notwithstanding the lease, sale, or conveyance of any Unit and without being required to obtain the consent or joinder of the Association, any Unit owner, lien holder, or other persons, to make alterations in the Project (and to amend this Declaration and the Condominium Map accordingly) which change the configuration of, alter the number of rooms of, decrease or increase the size of, or change the location of any Unit (and the Limited Common Elements appurtenant thereto) in the Project which is not sold and the conveyance thereof Recorded, which right includes the ability to change the overall "product mix" (e.g., change the Unit types or change the configuration of Unit built on a particular floor of a building). Without limitation of the foregoing, Developer may change or remove of all or part of an intervening Common Element wall, floor, and/or ceiling separating two (2) Units owned by the Developer or Limited Common Elements controlled by the Developer, install doors, stairways, and other

Improvements in such opening or openings in the intervening Common Element, seal hallways or other openings, remove Limited Common Element walkways, remove Limited Common Element driveways, create Limited Common Element driveways, and make any other reasonable related changes or additions Developer determines expedient or necessary. Further, Developer may consolidate any two (2) adjacent Units owned by the Developer into a single Unit and make any Common Element walls, floors, or ceilings between the Units part of the Unit or its Limited Common Elements. In that regard, Developer may change the designation of the Limited Common Elements appurtenant to any two (2) adjacent Units owned by the Developer so that one or more Limited Common Elements appurtenant to one Unit will be appurtenant to the other Unit or to both of the Units. Without limitation of the foregoing, Developer reserves the right to modify exterior elevations of buildings, door and window types (open versus fixed, slider versus awning or otherwise) and the location of the same, roof types and materials, and utility locations from those reflected on the Condominium Map.

f. Developer's Reserved Right to Transfer Property to the Association. The Association shall accept title to any interest or property, including any improvements thereon and personal property, transferred to the Association by Developer, 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 Developer may include, without limitation, any improvements in the Project, including any part of the New Buildings, any driveway and parking areas, any flowage, drainage, or utility easements, and may encompass leasehold title, easements, leasehold interests and licenses to use, and Units owned by Developer; provided, however, that any property or interest in property transferred to the Association by Developer shall be transferred to the Association "as-is," "where-is," free and clear of all liens and encumbrances except for the following: (i) the lien for property taxes and assessments not then due and payable; (ii) easements, rights-of-way, reservations, covenants, conditions, restrictions and equitable servitudes or other non-financial encumbrances as Developer in its discretion may deem appropriate, and (iii) any liens and encumbrances deemed acceptable by the Association. Any property or interest in property transferred to the Association by Developer 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 Developer 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 such property as provided herein and any interest appurtenant thereto. The conveyance by Developer 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. Furthermore, and notwithstanding anything to the contrary contained or implied in this Declaration, Developer shall have the absolute right, without consent or joinder of the Association, or any member thereof or the Board, to convey to the Association the property and properties described in this Section 8.7. Notwithstanding the foregoing, in the event the Future Parking Structure is conveyed to the Association, such conveyance shall be governed by Section 22.3 below.

g. Developer's Right to File Amendments to Declaration and Condominium Map. Developer shall have the absolute right, notwithstanding the lease, sale, or conveyance of any Unit and without being required to obtain the consent or joinder of the Association, any Unit owner, lien holder, or other persons, to amend the Declaration and the Condominium Map as necessary or convenient to describe any new Improvements constructed on the Property in accordance with the Declaration and to make such amendments to this Declaration as are appropriate in accordance with this Section 8.7.

h. Developer's Reserved Right to Convert Limited Common Elements to Common Elements. Developer shall have the reserved right to convert and redesignate any Units, Limited Common Elements appurtenant to such Units, or any portion thereof, that it owns to Common Elements of the Project. Notwithstanding anything to the contrary herein contained, Developer may amend this Declaration (and when appropriate the Condominium Map) without the approval, consent and joinder of the Association, any Unit owner or any mortgagee, lienholder, or any other person who may have an interest in the Project or in any Unit in any manner required to convert and redesignate any Limited Common Elements that are appurtenant to Developer owned Units to Common Elements. Such reassignment is hereby specifically declared not to constitute the material amendment of this Declaration or when appropriate the Condominium Map. All costs of such reassignment shall be borne as determined by Developer.

i. Assignment of Developer's Rights. The rights of the Developer under this Section shall extend to the Developer and its respective successors and assigns. Without limitation of the foregoing, Developer may, by recorded instruments or by Supplemental Declaration, assign or partially assign, while retaining equivalent rights to Developer, to any assignee, including without limitation the Association, any one of more of the rights and easements reserved to Developer under this Section 8.7 and its subparts (or otherwise reserved to Developer in this Declaration).

j. Developer's Reserved Right to Assign Parking Stalls to Unit. Developer hereby reserves the right to amend this Declaration in any manner to assign additional parking stalls that are reserved to Developer or appurtenant to any Developer owned Unit to any Unit as appurtenant Limited Common Element(s) to such Unit. 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 Developer.

k. Developer's Reserved Right to Modify Project to Comply with Law. Developer 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 of the Project, and by the Association or by Developer, with laws which apply to the Project, including, without limitation, the Americans With Disabilities Act, as amended, 42 U.S.C. §§ 12101 et seq., including any and all rules and regulations promulgated thereunder.

1. **Limitation on Developer's Reserved Rights.** The rights reserved in this Section 8.7 shall continue until the later of: (i) ten (10) years after the time that all Units in the Project have been sold by Developer and the conveyance thereof recorded, (ii) ten (10) years after the filing by Developer of the "as built" verified statement (with plans, if applicable) required by Section 514B-34(a) of the Act, or (iii) ten (10) years after the "date of completion" of the improvements as defined in Section 507-43(f), Hawaii Revised Statutes, of the New Buildings constructed in the Project.

8.8. **Easements for Lessees and Occupants.** Any lessee or occupant shall have a non-exclusive easement to use the Common Elements; provided, however, that such easement and any Limited Common Elements appurtenant to the Unit or the building or structure being rented, leased or licensed shall be subject to any limitations contained in this Declaration to the same extent as applicable to the owner of such Unit, or in any rental agreement, lease, license or other agreement with such owner. Such right of use shall exist only during the time period when such person is entitled to use and possession of a Unit or a building or structure located therein.

8.9. **Easements and Encumbrances Benefitting Less than All of the Units.** In the event that any of the Project is subject to easements, covenants, or other matters of record that benefit less than all of the Units, the Units and owners of such Units that benefit from the same shall be solely responsible for complying with the terms thereof, and such owners shall indemnify, defend, protect and hold harmless the Association and all owners that are not benefitted by the same from any losses, claims, costs and expenses arising by reason of any violation of or noncompliance with the same.

8.10. **No Amendment.** This Declaration shall not be amended to modify or eliminate the easements reserved to Developer by this or any other section without the prior written consent of Developer and any attempt to do so shall have no effect.

8.11. **Special Power of Attorney.** To the extent that the joinder or consent of any Unit owner may be required in order to confirm, effectuate or exercise any easements or rights granted or reserved to Developer or others, or validate any act or thing done pursuant to such easements, rights and reservations of Developer or others, such joinder or consent may be executed and given by Developer as the attorney-in-fact for, and in the name and stead and on behalf of, such Unit owner. Each Unit owner, by acquiring or accepting the ownership of a Unit, shall thereby (i) appoint Developer as such owner's attorney-in-fact as aforesaid, such appointment being coupled with an interest and being irrevocable, and (ii) agree that such owner shall, promptly upon Developer's request and for no further consideration, execute, acknowledge and deliver to Developer such instruments as Developer may require to evidence or confirm such joinder or consent.

9. **USE OF THE PROJECT.**

9.1. **Units.** The Office Units, and the Limited Common Elements appurtenant thereto, shall be used for healthcare related uses, including, without limitation, medical and dental offices, pharmacies, laboratories, surgical clinics, urgent care centers, physical therapy

and rehab facilities, library and records storage, the sale of healthcare related products, and any use that is ancillary and supporting the foregoing permitted uses, as permitted by Applicable Law. Veterinary uses are prohibited at the Project. The Board shall have the right to grant to any unit owner a variance permitting any other use not otherwise prohibited by law provided such is complimentary to and not inconsistent with the purpose of maintaining the primary use of the Project as a healthcare facility. In the event the owner of the Makai Spatial Unit develops additional floor area, such owner may designate certain space or units for the sale of food and beverage in the owner's sole and absolute discretion. The Spatial Units shall be used for construction of the New Buildings, and the New Buildings shall be used for the foregoing purposes and/or for parking lot and parking related uses. The Association, acting through its Board, may approve any other use if permitted by Applicable Law. The prohibition on veterinary uses shall not apply to the use of Unit 109/111 by the tenant currently occupying Unit 109/111 as of the date of this Declaration, and such tenant may continue to operate and use Unit 109/111 pursuant to the terms of its lease until the lease is terminated or otherwise expires.

9.2. **Pharmacy and Lab Units.** Office Unit No. 110 shall be designated for use as a pharmacy selling items typically sold in drug stores and pharmacies in Hawaii, including the sale of prescriptions, health and beauty products, and sundries (the "***Pharmacy Unit***"). Office Unit Nos. 116 and 119 shall be used as medical laboratory facility providing laboratory services on an outpatient basis for anatomical and clinical testing, including pathology, toxicology and microbiology testing, for the medical community (the "***Laboratory Units***"). The owners of the Pharmacy Units and Laboratory Units may change the use of their respective units, and the use restrictions of this Section 9.2 shall not apply, if such owner provides to the Association sixty (60) days prior written notice of such owner's intent to change the use of the Unit. In such event, the Association shall have the option, to be exercised by delivering written notice to the Association within said sixty (60) day period, to purchase the Unit from the owner at a mutually agreed upon price, or, if the Association and the Unit owner cannot agree upon a price, then at a price which shall be the current appraised market value of the Unit, without the encumbrance of the use restrictions set forth in this Section 9.2, as determined by a qualified appraiser selected by the parties. The term "qualified appraiser," as used herein, shall mean a professional appraiser (i) duly licensed in the State of Hawaii, (ii) having at least fifteen (15) years of experience in the field of commercial real estate in the State of Hawaii, (iii) who is a member of the Appraisal Institute, or any successor to the Appraisal Institute, and (iv) who has been awarded the "MAI" designation, or any successor or equivalent designation which incorporates the requirements of the "MAI" designation, by the Appraisal Institute. If the parties are unable to agree upon a mutually acceptable appraiser within ten (10) days after the either party makes a request for an appraisal, either party may apply to and have such arbitrator selected and appointed by any judge of the First Circuit, State of Hawaii, and the arbitrator so appointed shall thereupon proceed to determine the fair market value of the unit, as set forth above. In the event the Association exercises its option to purchase as set forth above, then the closing of such purchase shall take place within one hundred eighty (180) days of receiving the unit owner's notice of desire to change the permitted use. This Section 9.2 shall not apply to the use of Unit 116 by the tenant currently occupying Unit 116 as of the date of this Declaration, and such tenant may continue to operate and use Unit 116 pursuant to the terms of its lease until the lease is terminated or otherwise expires.

9.3. **Common Elements.** All Common Elements shall be kept free of obstruction which interferes with ingress and egress, except as the Association shall decide. Each Unit owner may use the Common Elements in accordance with the purposes permitted under this Declaration, the Bylaws, and any other applicable rules, laws, or regulations, subject to the rights of other Unit owners to use the Common Elements, any owner's exclusive right to use of the Limited Common Elements as provided in this Declaration; the right of the owners to amend the declaration to change the permitted uses of the Common Elements or to designate any portion of the Common Elements as a limited common element; and the right of the Association to manage the Common Elements as set forth in Section 10 below.

9.4. **Nuisance.** No Unit owner shall do or suffer or permit to be done anything in any Unit or elsewhere on the Project which will: (a) injure the reputation of the Project, (b) jeopardize the safety or soundness of the Project, (c) create a nuisance or interfere with or unreasonably disturb the rights of other owners and occupants, (d) reduce the value of the Project, (e) result in the cancellation of insurance applicable to the Project or adversely affect the right of recovery thereunder or result in reputable companies refusing to provide insurance as required or permitted by this Declaration, or (f) increase the rate of insurance applicable to the Units or the contents thereof, or to the Project.

9.5. **Structural Alterations.** Except as otherwise specifically provided in this Declaration or in the Bylaws, no Unit owner shall, without the prior written consent of the Board, make any structural alterations to such owner's Unit or make any alterations of or any additions to the exterior of the Unit or to any other portion or portions of the Common Elements unless otherwise specifically permitted herein, in the Bylaws, and by applicable zoning and building rules, regulations and laws.

9.6. **Owners' Right to Sell, Lease and Transfer.** The Unit owners shall have the absolute right to sell, lease, rent or otherwise transfer their respective Units subject to all provisions of the Act, this Declaration, the Unit owner's deed, the Bylaws and any house rules promulgated thereunder (the "***House Rules***"), and Applicable Law. Any lease or rental agreement of a Unit shall provide that it shall be subject in all respects to the provisions of the Act, this Declaration, the Bylaws, the House Rules and the Unit owner's deed, and that the failure of either the lessor or the lessee to comply with the terms of such documents shall be a default under the lease or rental agreement. All leases and any amendments thereto shall be in writing and a copy of each lease shall be filed with the Association.

9.7. **Maintenance of Units and Limited Common Elements.**

a. The owner of each Unit shall be solely responsible for the maintenance, repair, replacement and restoration of such Unit and the Limited Common Elements appurtenant thereto, and shall:

(i) Keep their Unit and all appurtenant Limited Common Elements in a strictly clean, orderly and sanitary condition, and observe and perform all laws,

ordinances, rules and regulations now or hereafter made by any Governmental Authority for the time being applicable to the Project or the use thereof;

(ii) Well and substantially repair, maintain, amend, and keep all their Unit and all appurtenant Limited Common Elements with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided herein, and maintain and keep said land and all adjacent land between any street boundary of the Project and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass therein on good cultivation and replant the same as may be necessary; and

(iii) Observe and perform all of the limitations, restrictions, covenants and conditions to be observed and performed under this Declaration, the Bylaws and the House Rules (if any).

b. Corrective Action. In the event any portion of any Unit or any portion of the Limited Common Elements appurtenant to any Unit or any improvement thereon presents an unreasonable public or private nuisance (as reasonably determined by the Board in its sole discretion) with respect to other owners or their occupants, or in the event any portion of a Unit or Limited Common Element appurtenant to any Unit or any improvement thereon is being used in a manner which violates this Declaration or the rules and regulations of the Association, or in the event the owner of a Unit fails to perform any of its obligations under this Declaration or the rules and regulations of the Association, the Board may by resolution make a finding to such effect. In the resolution, the Board shall specify the particular condition(s) which exist, and pursuant thereto, give notice to the offending owner that unless corrective action is taken within ten (10) days thereof, the Board may cause such action to be taken at the owner's cost. If, at the expiration of the ten-day period, the requisite corrective action has not been taken, the Board shall be authorized to cause such action to be taken and the cost thereof shall be a special assessment against the offending owner and the owner's Unit, secured by a special assessment lien enforceable in accordance with Section 12.3 of this Declaration.

10. ADMINISTRATION OF THE PROJECT. Administration of the Project shall be vested in the Association of Unit Owners of Mary Savio Medical Plaza at Newtown (the "*Association*") by its Board of Directors (the "*Board*"), consisting of all Unit owners of the Project, in accordance with the Bylaws. Operation of the Project and maintenance, repair, replacement and restoration of the Common Elements, and any additions and alterations thereto, shall be in accordance with the provisions of the Act, this Declaration and the Bylaws. Without limiting the generality the following:

10.1. Common Elements. The Association shall well and substantially maintain and keep all Common Elements of the Project, with all necessary repairs and replacements whatsoever, in good order and condition except as otherwise provided herein, and maintain and keep the Land and all adjacent land between any street boundary of the Project and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass thereon in good cultivation, and replant the same as may be necessary, and repair and make good all defects in the Common Elements of the Project herein required to be repaired by the Association, of which notice shall be given by any owner or owner's agent; and if, within thirty

(30) days after the giving of such notice, the Association shall fail to perform its obligations as set forth herein, any owner may enforce such obligations of the Association and seek reimbursement of the reasonable costs therefor from the Association; provided, however, that the Association shall not be deemed to have failed to perform its obligations hereunder with regard to any defect not made good or repair not effected within thirty (30) days of receiving notice thereof so long as it has undertaken a good faith effort to make good such defect or effect such repair within such time.

10.2. **Improvements Required By Law.** The Association shall secure, make, build, maintain and repair all fences, ramps, sewers, drains, roads, curbs, sidewalks, driveways, ramps, street lights, parking areas for visitors and/or disabled persons (if any) and other improvements which may be required by law to be secured, made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Project or any part thereof.

10.3. **Performance Bond.** Before commencing or permitting construction of any improvements on the Project where the cost thereof exceeds Fifty Thousand and No/100 Dollars (\$50,000.00) in Constant Dollars (defined in Section 32, below), the Association may require, and shall have the authority to obtain, a bond or certificate thereof naming as obligees collectively, the Association, the Board, and all Unit owners and their respective mortgagees as their interests may appear, in a penal sum of not less than one hundred percent (100%) of the cost of such construction, with a corporate surety authorized to do business in Hawaii, guaranteeing completion of such construction free and clear of all mechanics' and materialmen's liens, provided, however, that any structural alterations shall not be made unless performed by a licensed structural engineer and in conformance with the provisions of this Declaration. The Board may, in its sole discretion, waive the bond requirement for any Unit owner who demonstrates the financial strength or resources to insure completion of such construction.

10.4. **Setbacks.** The Association shall observe any setback line affecting the Project as may be shown in said Condominium Map or required to be observed by any law, ordinance or rule of Governmental Authority, and not erect, place or maintain any building or other structure whatsoever except approved fences or walls between any street boundary of the Project and the setback line along such boundary.

10.5. **Entry and Inspection.** The Association shall have the right, to be exercised by the Board or its managing agent, to enter any Units and Limited Common Elements from time to time during reasonable hours for periodic inspections as may be necessary or appropriate in connection with the operation of the Project or for emergency repairs therein required to prevent damage to any Units, Common Elements or Limited Common Elements or for the installation, repair or replacement of Common Elements. In addition to the Association's general maintenance obligations set forth in this Declaration, the Association shall, at all times, contract with (subject to the limitations set forth in any restrictions contained in the Bylaws) or otherwise retain the services of independent, qualified, licensed individuals or entities to provide the Association with inspection services on a reasonable periodic basis relative to the maintenance, repair and physical condition of the Project.

10.6. **Plans and Specifications.** Except as otherwise specifically provided herein, the Association shall not erect or place on the Project any building or structure, including fences and walls, nor make additions or structural alterations to or exterior changes of any Common Elements or Limited Common Elements of the Project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with plans and specifications, including a detailed plot plan prepared by a licensed architect and/or structural engineer first approved in writing by the Board, and the Association shall complete or cause any such improvements to be completed diligently after commencement thereof.

10.7. **No Waste.** The Association shall not make or suffer any strip or waste or unlawful, improper or offensive use of the Project;

10.8. **Right to Borrow Money.** The Association shall have the right to borrow money for the purpose of repair, replacement and maintenance, operation or administration of the Common Elements of the Project or the making of any additions, alterations or improvements thereto, upon terms and conditions acceptable to the Board in the exercise of its sole discretion, subject, however, to the provisions of this Section 10.8. The cost of such borrowing, including, without limitation, all principal, interest, commitment fees and other expenses payable with respect to such borrowing, shall be a common expense of the Project; provided, however, that Unit owners representing fifty percent (50%) of the Common Interest shall first give written consent to such borrowing, having been first notified of the purpose and use of the funds; and

10.9. **Right to Lease Common Areas.** The Association shall have the right, to be exercised by the Board or the Managing Agent, on behalf of the Association, to lease or otherwise use for the benefit of the Association those Common Elements as more particularly set forth in the Bylaws.

11. **MANAGING AGENT AND SERVICE OF PROCESS.** The operation of the Project shall be conducted by the Association, or by a responsible corporate managing agent (the "***Managing Agent***"), which shall be appointed by the Association in accordance with the Bylaws. The Managing Agent is hereby authorized to receive service of legal process in all cases provided in the Act. The initial Managing Agent shall be Hawaiiana Management Company Ltd., whose address is 711 Kapiolani Boulevard, 7th Floor, Honolulu, Hawaii 96813.

12. **COMMON EXPENSES**

12.1. **General.** All charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration of the Project, including without limitation of the generality of the foregoing, all charges for taxes (except real property taxes and such other taxes which are or may hereafter be assessed separately on each Office Unit and the Common Interest in the Common Elements appertaining thereto or the personal property or any other interest of the Unit owner), assessments, insurance, including fire and other casualty and liability insurance required to be maintained by the Association pursuant to Section 14 of this Declaration, any liability whatsoever for loss or damage arising out of or in connection with the Common Elements or any accident, fire or nuisance thereon, costs of repair, reinstatement,

rebuilding, replacement, and restoration of the Common Elements of the Project and any additions and alterations thereto, yard, janitorial and other similar services, wages, accounting and legal fees, management fees and other expenses of upkeep, maintenance, management and operation incurred on or for the Common Elements of the Project, and the cost of all utility services, including water, electricity, gas, garbage disposal, and other similar services, unless separately metered or assessed to the Unit owners individually, and all other sums designated as common expenses of the Project shall be considered "***common expenses***" for which all Unit owners shall be severally liable in proportion to the Common Interests appurtenant to their respective Units; provided, however, that all charges, costs and expenses incurred by the Association only for or in connection with any of the Limited Common Elements, including without limitation of the generality of the foregoing, all costs of maintenance, repair, replacement, additions and improvements to the Limited Common Elements, shall constitute limited common expenses of the Project for which only the owners of the Units to which such Limited Common Elements are appurtenant shall be severally liable in proportion to the ratio that their respective Common Interests bear to the sum of the Common Interests of the Units to which such Limited Common Elements are appurtenant (such charges, costs and expenses incurred only for or in connection with any of the Limited Common Elements are hereinafter called "***limited common expenses***"); and provided, further, however, that all charges, costs and expenses incurred by the Association which are necessitated by the negligence, misuse or neglect of a Unit owner or occupant or any person under either of them shall be charged to such Unit owner or the Unit owner of the Unit occupied by such occupant, as an assessment secured by the lien created under this Section 12.3.

12.2. **No Exemption from Liability.** No Unit owner may exempt himself from liability for his contribution toward the common expenses or limited common expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit.

12.3. **Assessments.** The Board shall from time to time assess the common and limited common expenses against all the Units in their respective proportionate shares as set forth in this Section 12.3. All sums chargeable as common expenses or limited common expenses to any Unit but unpaid shall constitute a lien against such Unit prior to all other liens, except only (1) liens for taxes and assessments lawfully imposed by Governmental Authority against such Unit, and (2) liens for sums unpaid and costs and expenses, including attorneys' fees, on any mortgage of record which was recorded prior to the recordation of a notice of a lien by the Association. Such lien for an unpaid assessment may be foreclosed by suit by the Board or the Managing Agent on behalf of the Association, in like manner as the foreclosure of a mortgage of real property, provided that thirty (30) days' prior written notice of intention to foreclose shall be mailed by certified or registered mail to all persons having any interest in such Unit as shown in 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 such Unit at foreclosure sale and to acquire, hold, lease, mortgage and convey such Unit. Action to recover a money judgment for unpaid common or limited common expenses shall be maintainable without foreclosing or waiving the lien securing such expenses.

12.4. **Involuntary Conveyances.** When the mortgagee of a mortgage of record or other purchaser of any Unit acquires title to such Unit as a result of a forfeiture or as a result of foreclosure of the mortgage or a conveyance in lieu of foreclosure, such mortgagee or purchaser and their respective heirs, devisees, personal representatives, successors and assigns shall not be liable for the share of the common expenses, limited common expenses or assessments chargeable to such Unit which became due prior to such acquisition of title, except as set forth in Section 514B-146 of the Act. Such unpaid share shall be deemed a common expense collectible from all Unit owners, including such mortgagee or such other purchaser and their respective heirs, devisees, personal representatives, successors and assigns.

12.5. **Voluntary Conveyances.** In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid common expenses, limited common expenses or assessments chargeable to such Unit up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantor or grantee shall be entitled to a statement from the Managing Agent or the Board setting forth the amount of the unpaid common expenses, limited common expenses or assessments chargeable to such Unit, and except as to the amount of subsequently dishonored payments, such as returned checks, mentioned in such statement as having been received within the 30-day period immediately preceding the date of such statement, the grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth in the statement.

12.6. **Establishment of Working Capital Fund.** Developer shall establish and maintain a working capital fund to meet unforeseen expenditures or to purchase any additional services or equipment required for the Project. The fund shall be not less than an amount that is equal to two (2) months of estimated common charges for each Unit in the Project. Developer will recover the cost of establishing the working capital fund by assessing each Unit owner such Unit owner's proportionate share of the fund at the closing of the sale of that Unit owner's Unit. Amounts paid into the working capital fund shall not be considered as advance payments of regular common expenses assessments. Developer shall not be permitted to use the working capital fund to defray any of Developer's expenses, reserve contributions, or construction costs or to make up any budget deficits. The working capital fund shall be transferred to the Association for deposit into a segregated fund when management of the Project is transferred to the Association.

12.7. **Separate Accounting of Parking Income.** In the event the Association purchases the Future Parking Structure pursuant to Section 22.3 hereof, there shall be a separate accounting of the expenses and income related to the Future Parking Structure and income and expenses relating to the Future Parking Structure and parking areas shall be reported separately from other expenses of the Project.

12.8. **Common Expenses Passed Through to Tenants.** Unit owners may charge tenants as maintenance fees the common expenses, described above, in addition to any other rents, charges and fees as may be agreed to in an owner's lease agreement for a Unit. These charges and fees may include, without limitation, management fees, costs of improvements to the Unit, and taxes or special assessments assessed specifically against the Unit

owner for the particular Unit. Unit owners are not obligated to pass through to tenants any benefits from income related to the Future Parking Structure, if any.

13. **COMPLIANCE WITH DECLARATION, BYLAWS AND LAWS.** All Unit owners, their tenants, families, employees, servants and guests, and any other persons who may in any manner use the Project, shall be bound by and comply strictly with the provisions of this Declaration, the Bylaws, the House Rules, the Act, all applicable rules, laws and regulations, and all agreements, decisions and determinations of the Association as are lawfully made or amended from time to time. 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, and any other remedies available in law or in equity, maintainable by the Board or Managing Agent on behalf of the Association or, in a proper case, by any aggrieved Unit owner. All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for (1) collecting any delinquent assessments against any owner's Unit, (2) foreclosing any lien thereon, or (3) enforcing any provision of this Declaration, the Bylaws, the House Rules, the Act or any other applicable rules, laws or regulations, against a Unit owner, occupant, tenant, employee of an owner or any other person who may in any manner use the Property shall be promptly paid by such person or persons on demand to the Association; provided that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by such person or persons as a result of the action of the Association, shall be promptly paid on demand on such person or persons by the Association. In the event that any provision of this Declaration conflicts with the provisions of the Act, the terms of the Act shall govern.

14. **INSURANCE.**

14.1. **Casualty Insurance.** The Association, at its common expense, shall at all times keep the Buildings and all improvements, fixtures, Common Elements and whether or not part of the Common Elements, all exterior and interior walls, fences, gates, exterior doors, exterior glass, floors, roofs, ceilings, fixtures, and mechanical and electrical equipment of the Project, in accordance with the as-built plans and specifications thereof, insured against loss or damage by fire and other damages under the Insurance Services Office, Inc. (ISO) condominium association coverage "Special Form" or equivalent, or such broader forms of protection as the Board shall determine, by a responsible insurance company authorized to operate in the State of Hawaii having a financial rating by Best's Insurance Reports of Class A-VI or better, in the name of the Association. Such insurance shall be in an amount equal to the sum of (i) an amount as near as practicable to the full replacement costs of all Common Elements and, whether or not part of the Common Elements, all exterior and interior walls, floors and ceilings (but exclusive of land, foundation, excavation and other items normally excluded from coverage); and (ii) an amount sufficient (as determined by the Board) to adequately protect all other portions of the buildings and all other fixtures, improvements and equipment covered by such insurance, without deduction for depreciation, and with an Inflation Guard Endorsement, an Agreed Amount Endorsement and a water damage endorsement. Such insurance shall be payable in case of loss to the Association or such bank or trust company authorized to do business in the State of Hawaii as the Board shall designate and with whom the Association has entered into an insurance trust agreement (herein sometimes called the "*Trustee*") for the custody and

disposition as hereinafter provided of all proceeds of such insurance, and the Association shall from time to time cause to be deposited with each mortgagee of record of any interest in a Unit, at least fifteen (15) days prior to the effective date or renewal date of such policies, true copies of such insurance policies or current certificates thereof, all without prejudice to the right of each Unit owner to insure such Unit owner's Unit for such Unit owner's own benefit.

14.2. **Flood Insurance.** The Association, at its common expense, shall at all times keep the buildings and all improvements, fixtures, Common Elements and, whether or not part of the Common Elements, all exterior and interior walls, fences, gates, exterior doors, exterior glass, floors, roofs, ceilings, fixtures, and mechanical and electrical equipment of the Project, in accordance with the as-built plans and specifications thereof, insured against loss or damage by flood under the Federal Flood Disaster Protection Act if the Land is located in an identified flood hazard area as designated by the United States Department of Housing and Urban Development, such flood insurance to meet all applicable Federal National Mortgage Association ("*FNMA*") requirements as they exist from time to time, in an amount which shall be the lesser of (i) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property within the Project to the extent that such buildings and insurable property are within the flood hazard area, and if such Program is discontinued, an amount that is commonly required by prudent institutional mortgage investors, or (ii) one hundred percent (100%) of the current replacement cost of all such buildings and insurable property within such area, by blanket policy or policies with an Agreed Amount Endorsement or its equivalent, if available, and if required by FNMA, Demolition and Contingent Liability from Operation of Building Laws Endorsements, an Increased Cost of Construction Endorsement and such other endorsements as are necessary, in the name of the Association and payable in case of loss to the Trustee, and shall pay all premiums on such insurance when due and all fees and expenses of the Trustee in connection with such services.

14.3. **Liability Insurance.** The Association, at its common expense, shall also effect and maintain at all times a commercial general liability insurance policy written on an occurrence form to include coverage for premises and operations, independent contractors, products and completed operations, personal and advertising injury, blanket contractual liability, fire legal liability, water liability, liability for non-owned and hired automobiles, and fire legal liability with the following minimum limits (in Constant Dollars):

Commercial General Liability
\$2,000,000 general aggregate
\$1,000,000 products and completed operations
\$1,000,000 Personal & Advertising Liability
\$1,000,000 per occurrence
\$100,000 Rented Premise (each occurrence)
\$5,000 Medical Expense (any one person)

The policy shall cover the Board, the Association, all Unit owners, Developer and its designated agents (so long as Developer has any interest in the Project), the Managing Agent, and their respective employees, and the employees of the Association with respect to the Project, and shall be issued by a responsible insurance company authorized to operate in the State of Hawaii

having a financial rating by Best's Insurance Reports of Class A-VI or better. The Board may from time to time increase the limits of insurance with due regard to then prevailing prudent business practice in the State of Hawaii as reasonably adequate for the Board's, the Association's, all Unit owners', the Managing Agent's and its employees', and the employees of the Association's protection, and shall from time to time cause to be deposited with each mortgagee of record of any interest in any Unit, at least fifteen (15) days prior to the effective date or renewal date of such policies, true copies of such insurance policies or current certificates thereof, all without prejudice to the right of the Unit owners to maintain additional liability insurance for their respective Units.

14.4. **Umbrella.** The Association, at its common expense, shall also effect and maintain at all times, umbrella liability insurance to be excess over the Commercial General Liability insurance above, written on an occurrence form, with a limit of liability of Three Million and No/100 Dollars (\$3,000,000.00) in Constant Dollars. The policy shall also contain an endorsement naming as additional insured, following the form of the underlying Commercial General Liability and Automobile Liability policies, Landlord and its directors, officers, employees and agents. Notwithstanding anything to the contrary in this Lease, the liability insurance coverage requirements may be satisfied by a combination of primary and excess policies.

14.5. **Fidelity Coverage.** Procure and maintain at all times fidelity coverage in an amount not less than that specified by the applicable provisions of the Act to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association, and all others who handle or are responsible for handling funds of the Association, which fidelity bonds shall be a common expense to the Association and meet the following requirements:

a. All such fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the Managing Agent, as the case may be, at any given time during the term of each bond; provided, however, that in no event may the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Units plus reserve funds;

b. Such fidelity bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; and

c. Such fidelity bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association or Trustee and the holders of all mortgages of Units in the Project.

14.6. **Directors and Officers Liability.** Procure and maintain at all times directors and officers liability coverage in an amount not less than that specified by the applicable provisions of the Act.

14.7. **Policy Standards and Requirements.** Every policy of insurance required by this Declaration shall, when applicable:

a. Provide that the liability of the insurer thereunder shall be primary and shall not be affected by, and that the insurer shall not claim any right to set-off, counterclaim, apportionment, proration or contribution by reason of any other insurance obtained by or for any Unit owner;

b. Contain no provision relieving the insurer from liability for loss occurring while the hazard to the Project is increased, whether or not within the knowledge or control of the Board, the Managing Agent, any Unit owner or any other persons under any of them, or because of any breach of warranty or condition or any other act or neglect by the Board or any Unit owner or any other person under either of them;

c. Provide that such policy may not be cancelled or substantially modified (including cancellation for nonpayment of premium), except by the insurer giving at least thirty (30) days' prior written notice thereof to the Board, any mortgagee of record of any interest in any Unit, and every other person in interest who shall have requested such notice of the insurer;

d. Contain a waiver by the insurer of any right of subrogation to any right of the Board, the Association or Unit owners against any of them or any other persons claiming under either of them and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insureds;

e. Contain a waiver by the insurer of any right to deny liability because of vacancy of any Unit or Units;

f. Contain a provision requiring the insurer, at the inception of the policy and on each anniversary date thereof, to provide the Board with a written summary, in layman's terms, of the policy, which summary shall include the type of policy, a description of the coverage and the limits thereof, amount of annual premiums, and renewal dates, which information shall be provided by the Board to each Unit owner;

g. Contain a "severability of interest" endorsement precluding the insurer from denying the claim of the Board of Directors of the Association, the Association, the Managing Agent or any Unit owner because of negligent acts of any of the others;

h. Provide that, notwithstanding any provisions in any policy of property insurance which give the insurer the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written consent of the Board, or when in conduct with any insurance trust agreement to which the Association may be a party, or if in violation of law;

i. Contain a standard mortgagee clause which shall:

(i) Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any Unit of the Project in their respective order and preference, whether or not named therein, and the holders of mortgages affecting the fee simple interest in the land;

(ii) Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board, Developer, the Association, the Managing Agent or Unit owners or any persons under any of them;

(iii) Waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause; and

(iv) Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to the Association or the Trustee;

j. Not prejudice the right of each Unit owner to insure such Unit owner's own Unit and appurtenant Limited Common Elements for such Unit owner's own benefit; provided, however, that the Association's policies shall be primary in the event that the insurance covers the same loss;

k. Satisfy all other requirements for insurance under the Act or other applicable federal, state or local law including all applicable provisions of FNMA mortgage requirements as may exist from time to time;

l. If obtainable, shall be accompanied by the certificate of a licensed insurance broker or agent certifying that the policy complies with and satisfies all of the requirements hereinabove set forth; and

m. Name as the insured under such policies either the Association for the use and benefit of the individual owners, or the Trustee for the use and benefit of the individual owners.

14.8. **Additional Insurance.** The Board may also procure as a common expense insurance against such additional risks, such as worker's compensation, auto liability and boiler and machinery, as the Board may deem advisable for the protection of the Association, the Board or Unit owners of a character normally carried with respect to properties of comparable character and use in the State of Hawaii.

14.9. **Insurance Obtained by Individual Unit Owner.** Any insurance coverage procured by the Board of Directors shall be without prejudice to the right of any Unit owner to insure such Unit owner's Unit and the contents thereof and the Limited Common Elements appurtenant thereto for his own benefit and at his own expense.

a. **Unit Owner Liability Insurance.** Each Unit owner in the Project shall obtain and keep in full force and effect a policy or policies of Commercial General Liability

insurance with respect to the Unit and the business operated within the Unit, together with such endorsements and/or additional coverage as would be carried by a reasonable and prudent operator operating the same business as the Unit owner, with limits not less than those set forth in Section 14.3 above, or as otherwise determined by the Board. Each owner shall name the Association as an additional insured on such owner's liability policy.

b. **Unit Owner Property Insurance.** Each Unit owner shall obtain and keep in full force and effect a Commercial Property insurance policy on its improvements, fixtures and equipment in the Unit, with limits and coverages not less than the full replacement cost (without deduction for depreciation) of all such owners improvements, fixtures, and equipment in and upon the Unit, providing protection against any peril included within the ISO classification "Special Form" or equivalent, together with insurance against plate glass damage, business interruption, sprinkler damage, vandalism and malicious mischief, including demolition and debris removal and extended coverage, and with inflation guard endorsement, if available, or as may hereafter be required by the Board, and with a deductible not more than an amount to be determined by the Board from time to time.

14.10. **Alternative Coverage.** Any insurance coverage required under this Section 14.10 shall be subject to availability with responsible insurance companies authorized to do business in the State of Hawaii as herein provided. Where such coverage is not available, or is not available at a reasonable cost, the Board may substitute such other insurance coverage as is acceptable to institutional lenders for projects similar in construction, location and use.

15. **INSURED CASUALTY.**

15.1. **Collection of Insurance Proceeds.** In the event of any damage to all or any portion of the Project by fire or other casualty which is insured against, the Board shall take all reasonable steps necessary to collect the insurance proceeds and deposit the same with the Trustee, if any, at the earliest practicable date and, except as otherwise provided herein, to cause all rebuilding or repair work to be undertaken and completed as hereinafter provided as promptly as may be reasonably possible in the circumstances.

15.2. **Repair of Insured Casualty Damage to Single Unit and Limited Common Elements.** If any portion of the Project is damaged by fire or other casualty which is insured against and such damage is limited to a single Unit and/or the Limited Common Elements appurtenant thereto, all of the insurance proceeds shall be used by the Trustee for payment of the contractor employed by the Board to rebuild or repair such Unit and/or Limited Common Elements (including paint, floor covering, fixtures and mechanical, electrical and air conditioning equipment therein whether or not deemed to be Common Elements as provided herein) in accordance with the original plans and specifications therefore, or if reconstruction in accordance with said plans and specifications is not permissible under the laws then in force, in accordance with such modified plans and specifications as shall be previously approved by the Board and any mortgagee of record of any interest in the Unit or Limited Common Elements so damaged.

15.3. **Repair of Other Insured Casualty.** If any insured-against damage to the Project should occur other than the damage described in Section 15.2, the Board shall thereupon contract to repair or rebuild the damaged portions of the Project (including paint, floor covering, fixtures, and any mechanical, electrical and air conditioning equipment therein whether or not deemed to be Common Elements as provided herein), in accordance with the original plans and specifications therefor, or if reconstruction in accordance with said plans and specifications is not permissible under the laws then in force, in accordance with such modified plans and specifications as shall be previously approved by the Board, and the mortgagee of a record of any interest in a Unit directly affected thereby. In the event said modified plans and specifications eliminate any Unit or its appurtenant Limited Common Elements and such Unit or Limited Common Elements are not reconstructed, the Trustee shall pay the owner of said Unit and any mortgagee of record of any interest in said Unit, as their interests may appear, the portion of said insurance proceeds allocable to said Unit and Limited Common Elements (less the proportionate share of said Unit and Limited Common Elements in the cost of debris removal) and shall disburse the balance of the insurance proceeds as required to repair or rebuild the Project as aforesaid.

15.4. **Insufficient Insurance Proceeds.** If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding, then the Board shall levy, as soon as reasonably possible following the determination for the amount of such insufficiency, a special assessment (1) with respect to the repairing and/or rebuilding of the Common Elements, exclusive of Limited Common Elements, against the owners of all Units, except for Units being eliminated from the Project, in proportion to their Common Interests, and/or (2) with respect to the repairing and/or rebuilding of a Unit or Limited Common Elements appurtenant thereto, against the owner of such Unit. All of the foregoing assessments shall be secured by the lien created under Section 12.3. of this Declaration.

15.5. **Excess Insurance Proceeds.** Upon completion of the work and payment in full therefor, any remaining proceeds of insurance then or thereafter in the hands of the Board or of the Trustee shall be paid or credited (1) for proceeds attributable to the Common Elements exclusive of the Limited Common Elements, to the owners of all the Units and the holders of any mortgage on the Units, as their interest may appear, in proportion to their Common Interests, or (2) for proceeds attributable to a Unit and the Limited Common Elements appurtenant to such Unit, to the owner of such Unit and the holder of each mortgage on such Unit, as their interests may appear.

16. **UNINSURED CASUALTY.** In case at any time or times any improvements of the Project shall be damaged or destroyed by any casualty not insured against, such improvements shall be promptly and diligently rebuilt, repaired or restored unless the Unit owners owning eighty percent (80%) or more of the Units in number and owning Units to which are appurtenant eighty percent (80%) of the Common Interests vote to the contrary. Any such approved rebuilding, repair or restoration shall be completed diligently by the Association as (1) a common expense with respect to the cost of rebuilding, repairing or restoring the Common Elements exclusive of Limited Common Elements, and (2) limited common expense with respect to the cost of rebuilding, repairing or restoring the Limited Common Elements; and the Unit owners shall be solely responsible for any restoration of their respective Units so damaged or

destroyed. Such rebuilding, repair or restoration shall be performed in accordance with the original plans and specifications therefor or such other plans and specifications first approved by the Board, and the mortgagees of record of any interest in a Unit directly affected thereby. Unless such restoration is undertaken within a reasonable time after such casualty, the Association as a common expense or limited common expense, as applicable, shall remove all remains of improvements so damaged or destroyed and restore the site thereof to an orderly, safe and sanitary condition and even grade.

17. **CONDEMNATION.**

17.1. **Condemnation of Units.** In case at any time or times the Project or any part thereof shall be required, taken or condemned by any authority having the power of eminent domain, each Unit owner whose Unit has been so taken shall be paid out of the proceeds of the condemnation award the amount shown in such award for the value of such owner's Unit so taken, provided that such Unit owner shall use said proceeds promptly and to the extent necessary for restoring or replacing said Unit unless such restoration or replacement is impractical for the use to which the Unit is restricted under the circumstances; provided further that in the event of such impracticality, the condominium property regime hereby created shall be terminated and the remaining Units and/or land which are not so required, taken or condemned shall immediately upon such termination be inclusively reconstituted as a new condominium property regime under the same terms and conditions (except for those Units and/or land which are taken or required) as the previous condominium property regime hereby created, provided further that in the event of such impracticality, termination and reconstitution of the Association, the newly reconstituted Association shall remove all debris upon the Land and restore the Land to good, orderly condition and even grade at the expense of the newly reconstituted Association.

17.2. **Condemnation of Common Element.** In case at any time or times any common element or any part thereof shall be required, taken or condemned by any authority having the power of eminent domain, all compensation and damages from such taking shall be payable to the Association and shall be held in trust for the Unit owners and their first mortgage holders as their interests appear. The Board shall promptly use such compensation and damages to the extent necessary for restoring or replacing such Common Elements to substantially the same condition prior to such condemnation on the remaining land unless such restoration or replacement is impractical under the circumstances; provided that in the event the amount of such proceeds is insufficient to cover the cost of such Common Elements' restoration or replacement, then the Association, or the newly reconstituted Association (in the event of termination of this condominium property regime and the immediate reconstitution of a new condominium property regime in accordance with Section 17.1. above) shall at its common expense make up any deficiency in the condemnation proceeds for said restoration or replacement of the condemned common element.

18. **ALTERATION OF THE PROJECT.**

18.1. **Board Approval for Alterations.** Except as otherwise provided in this Declaration or the Act or as otherwise required by law, neither the Association nor any Unit

owner shall perform any of the following acts, except pursuant to plans and specifications therefor which have been approved in writing in advance by the Board: (a) repairing, replacing or rebuilding any Unit, or any Common Element or Limited Common Elements in a manner different in any material respect from the Condominium Map; (b) replacing any exterior door or window to a unit; (c) engaging in any alterations which will affect the structural integrity of any Unit or the Common Elements and Limited Common Elements; or (d) constructing on the Common Elements or Limited Common Elements any new building or structure. Concurrently with a Unit owner's submittal of its plans and specifications for the Board's approval, the Unit owner shall also submit to the Board payment of any review or approval fees, which may be imposed by the Board, in its reasonable discretion, or as set forth in the House Rules. Tenant shall also reimburse the Board for its costs and expenses in reviewing and approving any plans and specifications, including, without limitation, the Board's architects', engineers', consultants', or attorneys' fees.

18.2. **As-Built Plans and Declaration Amendment.** Upon the completion of any work described in Section 18.1 above, there shall be filed with the Board a final "as built" set of the plans and specifications for such work, and if any such work should constitute a material alteration to the Project as shown on the Condominium Map (as determined by the Board), the Association or Unit owner, as the case may be, shall file an amendment to this Declaration describing such alteration and amending the Condominium Map to show such alteration, together with a certificate signed by a licensed architect and structural engineer, certifying that the plans showing such alterations accurately reflect such alterations, as built. Such amendment shall be signed by the Association or the Unit owner, as the case may be, and approved by the Board or Developer, and no consent or joinder of any other Unit owner or person shall be required. Except as otherwise provided in this Declaration, the Bylaws, and the House Rules, each Unit owner shall be free, with the consent of all mortgagees of record of any interest in such Unit owner's Unit, to make such alterations and improvements within such Unit owner's Unit or within or on the Limited Common Elements appurtenant thereto, without the consent or joinder of the Board, the Association, any Unit owner, Developer or any other person.

18.3. **Certain Work Prohibited.** Notwithstanding anything to the contrary in this Declaration, no Unit owner (i) shall do any work which could jeopardize the soundness or safety of the Project, reduce the value thereof, impair any easement or hereditament; (ii) shall make or allow any material addition or alteration to the Common Elements (except as otherwise permitted herein), or (iii) shall rebuild, repair or restore the Project in the event of substantial or total destruction of the Project, without in every such case obtaining the prior consent of sixty-seven percent (67%) of the Unit owners, together with the prior written consent of all Unit owners whose Units or Limited Common Elements appurtenant thereto are directly affected, and the approval of the Board, which shall not be unreasonably withheld; provided that nonmaterial additions to or alterations of the Common Elements or Units made within such Units or within a limited common element appurtenant to and for the exclusive use of the Unit, shall require approval only by the Board, which shall not unreasonably withhold its approval, and such percentage, number or group of Unit owners or other parties as may be required by this Declaration or the Bylaws. As used in this Section 18.3, "***nonmaterial additions and alterations***" means an addition to or alteration of the Common Elements or a Unit that does not jeopardize the soundness or safety of the Project, reduce the value thereof, impair any easement,

detract from the appearance of the Project, interfere with or deprive any nonconsenting Unit owner of the use or enjoyment of any part of the Project or directly affect any nonconsenting Unit owner.

18.4. **Structural Alterations.** No alterations or changes of any nature under any circumstances shall be made to the structural elements of the Units, including, without limitation, roofs, floors, supporting walls, foundations, columns, girders, floor slabs, supports, perimeter, party or load bearing walls and partitions, without first obtaining certification from a licensed structural engineer reasonably acceptable to the Association that the plans for such alterations or changes will not in any way diminish the present structural integrity of the Buildings and the elements therein. The aforementioned structural engineer shall be licensed in the State of Hawaii, in good standing, and shall have a policy of professional liability insurance with appropriate coverage from a responsible insurance company authorized to operate in the State of Hawaii, having a financial rating by Best's Insurance Reports of Class A, VI, or better. Notwithstanding anything in this Declaration to the contrary, no storage or alterations or changes of any nature under any circumstances, including any lanai enclosures, shall be made that would violate the Building Code or any other Applicable Law.

18.5. **Improvements Within a Unit.** The owner of each Unit shall have the right, at such owner's sole cost and expense and if solely within the such owner's Unit, to install, maintain, remove and rearrange partitions and other non-structural improvements from time to time within such Unit, to finish, alter or substitute any plumbing, electrical or other fixtures attached to the ceilings, floors and walls as shall be appropriate for the utilization of such Unit by such owner or the tenants or lessees thereof, and to tile, finish, re-carpet, and do or cause to be done such work on the floors of any Unit, subject to Applicable Law and the conditions contained herein and the Bylaws and the House Rules. The owner of each Unit shall have the right, at such owner's sole cost and expense, to demolish all or any portion of the existing improvements within such Unit and to construct new improvements therein, for such use and purpose as may be permitted by Applicable Law, to the intent, purpose and effect that such Unit will include such new improvements, subject to the conditions contained herein and the Bylaws and the House Rules. Such new improvements shall conform with all applicable statutes, ordinances and rules and regulations of Governmental Authorities and with plans and specifications prepared by a licensed architect and approved by a licensed structural engineer. No such construction shall exceed the limits described in this Section 18.5 without the consent of the Association, nor shall such construction adversely and materially affect the value, light, air, use or enjoyment of any other Unit including, but not limited to, the structural or mechanical integrity thereof, nor the structural or mechanical integrity of the Common Elements. Without limitation to the foregoing, each Office Unit owner shall have the right to remove any existing perimeter walls and doors within such owner's unit that are designated "TO BE REMOVED" on the Condominium Map (displayed as light gray dashed lines on the Map: "-----").

18.6. **Connection Between Units/Reconfiguration of Floors.** Owners of any two or more adjacent Units that are separated by a common element which is a wall, corridor, ceiling or floor shall have the right and option at any time and from time to time, at such owners' sole cost and expense to alter or relocate any portion of the common element intervening wall, corridor, ceiling or floor in order to effect a connection between Units or the reconfiguration of a

floor or floors for purposes of integrated use among all the Units on such floor or floors. Notwithstanding the foregoing, any alteration or additions permitted under this Section 18.6 shall be subject to the following limitations and requirements:

a. Where adjacent Units are owned by different owners, the owners shall submit to the Board a document evidencing the owners agreement to undertake such connection and/or reconfiguration in a form satisfactory to the Board;

b. Such owner(s) shall obtain the prior written consent of (1) all mortgagees of record of any interest in such owner's Unit or Units, and (2) the Board, provided that the Board shall not unreasonably withhold its consent and any conditions imposed shall be limited to ensuring that such improvements and alterations are in compliance with this Declaration, and, where adjacent Units are owned by different owners, ensuring the restoration of such Units to their prior condition upon the termination of the owners' agreement to connect/reconfigure their Units;

c. No alteration or addition shall adversely affect the structural integrity of the Common Elements or any other Unit or Limited Common Element in the Project;

d. The finish of the Common Element then remaining shall be placed in a condition substantially comparable to or better than that of the common element prior to such alterations;

e. If any Common Element bathroom or storage area is altered or relocated it shall be replaced by a bathroom or storage area, as the case may be, that is substantially the same as the original and access and use by the Association, owners and authorized occupants of the Buildings shall be unimpeded;

f. Any alteration or additions permitted shall not affect the Common Interest or allocable to any Unit;

g. If any intervening wall, wall, corridor, ceiling or floor between adjacent Units shall have been altered or removed, then prior to the termination of the common ownership of such adjacent Units, the owner of such Units shall restore such intervening wall, wall, corridor, ceiling or floor to substantially the same condition in which the same existed prior to such alteration or removal unless the purchaser of such Units shall agree in writing to forego such restoration and accept the Units in as is condition;

h. The plans and specifications for any new improvements shall be prepared by a licensed architect and certified by a licensed structural engineer acceptable to the Association and shall not require the alteration or demolition of unaffected Units or Limited Common Elements appurtenant to such unaffected Units or the improvements which are contained within such unaffected Units and shall not materially interfere with easements in favor of such unaffected Units or the use and enjoyment of the Project by the owners of such unaffected Units; and

i. The owner(s) of the Units being joined or reconfigured shall, at such owner's sole expense, without the consent or joinder of any other Unit owner or lienholder thereof, execute and record in the Bureau and/or file with the Land Court an amendment to this Declaration and the Condominium Map: (1) to show the connection between Units and any reconfiguration of the floor, the corridors, storage rooms and bathrooms; and (2) when applicable, to add, delete, relocate, realign, serve and grant all easements and rights-of-way over, under, on and above the Unit and the Limited Common Elements appurtenant to the Unit being subdivided as necessary or desirable, including, without limitation, easements and rights-way for utilities, sanitary and storm sewers, and refuse disposal; provided that such easements and rights-of-way do not materially impair the use of the Common Elements by the unaffected Units.

18.7. **Subdivision and Consolidation.** Notwithstanding anything to the contrary contained in this Declaration, the owner of a Unit or adjacent Units shall have the right and option at any time and from time to time, at such owner's sole cost and expense, to alter such owner's Unit by (i) subdividing such owner's Unit into two or more Units and/or (ii) consolidating such owner's Units into one Unit. Notwithstanding the foregoing, any alteration or additions permitted under this Section 18.7 shall be subject to the following limitations and requirements:

a. The Units affected by such subdivision or consolidation must be owned by the same owner, and the owner shall submit to the Board a document evidencing ownership;

b. The owner shall obtain the prior written consent of (A) all mortgagees of record of any interest in such owner's Unit or Units, and (B) the Board, provided that the Board shall not unreasonably withhold its consent and conditions imposed shall be limited to ensuring that such subdivision and/or consolidation is in compliance with this Declaration;

c. If such subdivision rights are exercised, then the aggregate Common Interests of the Units thereby created (the "***Subdivided Units***") shall be equal to the Common Interests described in **Exhibit C** hereof for the Unit prior to such subdivision;

d. If such subdivision rights are exercised, the Subdivided Units must, at a minimum, (i) extend from a wall that is adjacent to the interior common area hallway to the exterior wall of the Office Building, (ii) have a width not less than ten (10) linear feet, and contain a floor area of at least three hundred and fifty square feet (350 sf);

e. If such consolidation rights are exercised, then the Unit thereby created (the "***Consolidated Unit***") shall be equal to the aggregate Common Interests of the Units described in **Exhibit C** hereof for the Units prior to such consolidation;

f. If there are any alterations or improvements made to physically connect the Units through any Common Element, then the owner shall follow all of the conditions and procedures set for the in Section 18.6 above; and

g. The owner of a Unit being subdivided and/or consolidated shall, at such owner's sole expense, without the consent or joinder of any other Unit owner or lienholder thereof, execute and record in the Bureau and/or file in the Land Court an amendment to this Declaration and the Condominium Map: (A) to create the Subdivided Units or Consolidated Unit, as shown on said plans and specifications and amendment to the Condominium Map; (B) to describe the Limited Common Elements appurtenant to the Subdivided Units or Consolidated Unit; (C) if applicable, to reallocate the Common Interests and Limited Common Elements appurtenant to the Unit being divided among the Subdivided Units, as determined solely by the owner of the Unit being subdivided, but in conformity with this Section 18.7; and (D) if applicable, to allocate the Common Interests and Limited Common Elements appurtenant to the Units being consolidated to the Consolidated Unit, but in conformity with this Section 18.7; (E) when applicable, to add, delete, relocate, realign, serve and grant all Limited Common Elements appurtenant to the Subdivided Units or Consolidated Unit, as necessary or desirable; provided that such does not materially impair the use of the Common Elements by any unaffected Unit or any Limited Common Element appurtenant to an unaffected Unit.

18.8. **Windows and Doors.** Each Unit owner shall have the right to install, remove, change and replace the windows and entry doors located on an interior Common Element or Limited Common Element hallway. In making such improvements, such owners shall (i) comply with all Applicable Law, including the building ordinance and fire codes; (ii) not install window or door which would cause an increase in applicable fire insurance rates to the Association; (iii) ensure that such installations do not affect the structural integrity of the Office Building; and (iv) conform to architectural and aesthetic guidelines for the same which have been duly adopted by the Board.

18.9. **Floor Covering and Sound Transmission.** All Unit owners must minimize the transmission of footsteps and other floor sounds into neighboring Units below. Any owner or occupant of a Unit (except the Units located on the ground floor) who wishes to change the floor covering on any floor areas that customarily have carpeting with cushion padding, must first: (i) provide written evidence that the new floor covering shall have sound absorbent material and will not exceed the maximum decibel level to be established as described in the House Rules, and (ii) obtain the Board's prior written approval of such floor covering change.

18.10. **General Limitations.** Any owner undertaking any of improvements shall be subject to the following requirements: (i) all improvements shall be in compliance with all Applicable Law; (ii) all improvements shall be in compliance with design guidelines for any installations as may be adopted from time to time by the Board; (iii) all costs of every kind pertaining to such improvements, including without limitation, costs of maintenance, repair, replacements, additions and improvements, shall be the responsibility of the Unit owner making such improvements; (iv) all loss and damage affecting any common element or any other Unit which may be caused by the installation of such improvements shall be the responsibility of the Unit owner making such improvements; (v) all improvements shall be made in compliance with plans and specifications prepared by a licensed architect and approved by a licensed structural engineer; (vi) no construction or improvement shall adversely and materially affect the value, light, air, use or enjoyment of any other Unit including, but not limited to, the structural or

mechanical integrity thereof, nor the structural or mechanical integrity of the Common Elements; and (viii) such owner shall comply with all other applicable provisions of this Declaration.

18.11. **Amendment of Declaration and Condominium Map.** Upon completion of construction of any improvements, the owner of Unit being improved shall amend this Declaration by filing the as-built plans showing such new improvements and **Exhibit C** hereof to reflect any change in the floor area and configuration of such Unit, provided that no such amendment shall change the Common Interest appurtenant to such Unit.

18.12. **Consent and Joinder.** Every Unit owner and all mortgagees and holders of liens affecting any of the Units in the Project shall, if necessary or desirable to effectuate the exercise of the reserved rights described in this Section 18, join in, consent to, or execute any and all instruments and documents necessary or desirable therefor, and, by execution of this Declaration, a reservation or contract for the sale of an Unit, or by acceptance of any deed, lien, security interest or any other interest herein, such Unit owner, mortgagee and holder of a lien shall be deemed to have consented to such reserved rights and to have irrevocably appointed the owner exercising such rights its lawful and duly authorized attorney-in-fact with full right and power to join in, consent or execute all such instruments and documents for and on behalf of such Unit owner, mortgagee and lien holder.

18.13. **Access.** Every Unit owner, its employees, agents, contractors and subcontractors shall have the right to enter upon the Common Elements and the Limited Common Elements appurtenant to the Unit and to do all things reasonably necessary, desirable or useful for completing such construction, improvements or subdivision, connecting any Units, Subdivided Units and Limited Common Elements to utilities of the Project, and marketing any Subdivided Units.

18.14. **Procedure for Commencing Permitted Improvements.** Prior to commencing any improvements or alterations permitted by this Declaration, and as a condition to the Unit owner's right to undertake such improvements and alterations, the Unit owner shall provide to the Board: (i) a certification in form and content reasonably satisfactory to the Board signed by an architect or structural engineer licensed in the State of Hawaii, that such improvement or alteration will not adversely affect the structural integrity of the Common Elements or any other Unit in the Project as set forth in Section 18.1 above, (b) satisfactory evidence that all governmental approvals required for such alteration or removal have been duly obtained, and (ii) if the cost of such improvement or alteration, as reasonably determined by the Board, shall exceed the sum of Fifty Thousand and No/100 Dollars (\$50,000.00) in Constant Dollars, the Board may require that the owner provide evidence satisfactory to the Board of sufficient financing to complete such alteration or removal or, in lieu thereof, require that the owner obtain a performance and lien payment bond as set forth in Section 10.3.

18.15. **Spatial Units Improvements.** Notwithstanding anything herein to the contrary, the owners of the Spatial Units shall have the right to construct, build, install, demolish, repair, replace, improve, alter, and/or otherwise modify any building, structure and other improvements within their respective Spatial Units or any Limited Common Element

appurtenant to their Spatial Unit, without the prior written consent of the Association or any other Unit owner or any other person, and shall have the following rights and obligations:

a. Without limitation to the generality of the foregoing, the owner of the Makai Spatial Unit may construct the Future Office Building Extension and the owner of the Mauka Spatial Unit may construct the Future Parking Structure, including, without limitation, making structural connections to such to the Office Building, connecting to existing corridors in the Office Building, relocating the stairwells on either end of the Office Building, adding elevator bays and shafts or extending the existing elevator bays, shafts and equipment to add a fourth floor stop, enclosing and adding features to the roof area of the Office Building to create additional functional space (including rentable and common area space), extending and integrating the roof of the Office Building to connect with the roof of the Future Office Building Extension, connecting to, extending or replacing common or limited common element utility lines and conduit, and reconfiguring the parking, loading and driveway areas of the Project.

b. In constructing the Future Office Building Extension and/or the Future Parking Structure, the Spatial Unit owners shall have the right, without limitation, (i) to change or remove any Common Element or Limited Common Element, including walls, floors, and/or ceilings necessary to make such connections and integrate the new buildings into the Office Building, (ii) to integrate utilities serving the New Buildings with the Office Building, (iii) to install doors, stairways, elevators, remove or relocate hallways or other openings, remove or relocate walkways, driveways, and make any other changes or additions such owners determine expedient or necessary to affect such connections; (iv) to modify exterior elevations of buildings, door and window types (open versus fixed, slider versus awning or otherwise) and the location of the same, roof types and materials, and utility locations from those reflected on the Condominium Map; (v) to convert and redesignate any portion of a Spatial Unit, Limited Common Elements appurtenant to such Spatial Unit, or any portion thereof, to Common Elements of the Project; (vi) to connect and integrate the New Buildings to the Office Building in any way it deems proper to effect the orderly development of the New Buildings and the Office Building as integrated medical and/or office facility; and/or (vii) to make such improvements to the Office Buildings as may be required by governmental authority in conjunction with the development of the New Buildings.

c. The Owner of a Spatial Unit shall have the right to create additional Office Units in the Project located in Future Office Building Extension or the Future Parking Structure and merge such units into the Project by amendment to this Declaration and the Condominium Map. In such event, upon completion of construction of such Units, the Common Interest appurtenant to all of the Office Units in the project shall be adjusted on a pro rata basis with each Office Unit's Common Interest being the quotient obtained by dividing the floor area of such Office Unit by the floor area of all Office Units then in the Project, expressed to the nearest hundredth.

d. The Owner of a Spatial Unit shall have the absolute right, notwithstanding the lease, sale, or conveyance of any Unit and without being required to obtain the consent or joinder of the Association, any Unit owner, lien holder, or other persons, to amend the Declaration and the Condominium Map as necessary or convenient to describe any new

improvements constructed on the Property in accordance with the Declaration and to make such amendments to this Declaration as are appropriate in accordance with the rights set for in this Section 18.15.

e. Upon the completion of any such construction, demolition, repairs, replacements, improvements, alterations, and/or other modifications described in this Section 18.15, the Unit owner responsible for such improvements shall comply, at its sole cost and expense, with all provisions of the Act requiring the recording of an amendment to this Declaration describing such alteration and amending the Condominium Map to show such alteration. The consent or joinder of the Developer, Association, or any other owners or their respective mortgagees, shall not be required as a prerequisite for the recordation of such amendment (provided, however, the foregoing shall not limit the rights and remedies of any such mortgagee against or with respect to the applicable Unit owner, as contained in its loan documents with the applicable Unit owner, if any such recordation takes place without such mortgagee's consent or approval to the extent required under such loan documents).

19. DISPUTE RESOLUTION.

19.1. **Mediation.** At the request of any party to a dispute concerning or involving one or more Unit owners and the Association, the Board, the Managing Agent, or one or more other Unit owners relating to the interpretation, application or enforcement of the Act, this Declaration, the Bylaws or the House Rules, the parties to the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation unless both parties agree that one party shall pay all or a specified portion of the mediation costs. If a party refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs and attorneys' fees in accordance with Section 514B-161 of the Act. Nothing in this Section 19 shall be interpreted to mandate the mediation of any dispute which is exempt from mediation pursuant to Section 514B-161 of the Act. If any mediation under this Section 19 is not completed within two (2) months from commencement, no further mediation shall be required unless agreed to by the parties.

19.2. **Arbitration.** At the request of any party, any dispute concerning or involving one or more Unit owners and the Association, the Board, the Managing Agent or one or more other Unit owners relating to the interpretation, application or enforcement of the Act, this Declaration, the Bylaws or any of the House Rules, shall be submitted to arbitration as provided by Section 514B-162 of the Act. Nothing in this Section 19.b. shall be interpreted to require the arbitration of any dispute which is either exempt from arbitration or determined to be unsuitable for arbitration pursuant to Section 514B-162 of the Act.

19.3. **Disputes with Developer.** The following provisions shall apply to any disputes involving the Developer arising out of this Declaration or any agreement incidental or ancillary to this Declaration or regarding the Project:

a. **Notice.** The parties agree to have any dispute arising out of this Declaration or any agreement incidental or ancillary to this Declaration or regarding the Project decided under binding arbitration as provided by Hawaii law and in this Section 19.3, and are

giving up any rights they might possess to have the dispute litigated in court. If any party refuses to submit to arbitration after agreeing to this provision, the refusing party may be compelled to arbitrate under the authority of the Hawaii statutes.

b. Arbitration of Disputes, Controversies and Claims. Except as provided in this Section 19.3 or elsewhere in this Declaration, any dispute, controversy or claim involving the Developer and arising out of or relating to this Declaration, including, but not limited to, any dispute regarding whether such disputes, controversies, or claims are subject to arbitration, and any action sounding in tort or breach of any duty or obligation shall be resolved by arbitration conducted only in the manner set forth in this Section 19.3.

c. Selection of Arbitrator(s).

(i) At any time that a matter which is to be resolved by arbitration pursuant to this Section 19.3 is unresolved, any party may appoint an arbitrator, who need not be a disinterested person but who shall have at least ten (10) years of experience in the subject matter of the arbitration, and give written notice to any other party of such appointment. Within twenty (20) days after receipt of such notice, the other party shall appoint an arbitrator, who need not be a disinterested person but who shall have at least ten (10) years of experience in the subject matter of the arbitration, and give written notice of such appointment to the original party. The two arbitrators shall appoint a third arbitrator and give written notice thereof to both parties. If there are more than two parties to the arbitration, and the parties fail to agree upon the arbitrators within twenty (20) days after one party gives notice to the others of its selection of an arbitrator, then any party shall have the right to request any judge of the First Circuit Court of the State of Hawaii to make such selection, as provided in Chapter 658A, Hawaii Revised Statutes, as amended, or any successor statute ("**Chapter 658A**").

(ii) The third arbitrator shall be a disinterested person who has at least ten (10) years of experience in matters pertaining to the matter sought to be arbitrated. No person may be selected as the third arbitrator if that person represented or was employed by any party to the arbitration or any other person involved in the dispute within the five (5) year period prior to such selection.

(iii) If a party fails to appoint its arbitrator as provided in this Section 19.3, the first arbitrator selected shall proceed alone to determine the dispute in the manner herein provided. If, within twenty (20) days after appointment of the second arbitrator, the two arbitrators appointed by the parties shall fail to appoint a third arbitrator, the two arbitrators shall give the parties written notice of such failure, and if the parties fail to agree upon the selection of a third arbitrator within ten (10) days after receipt of such notice, then either party shall have the right to request any judge of the First Circuit Court of the First Circuit of the State of Hawaii to make such selection as provided in Chapter 658A.

(iv) In the event of the failure, refusal or inability of any arbitrator to act, a new arbitrator shall be appointed in his or her stead, which appointment shall

be made in the same manner as hereinbefore provided for the appointment of the arbitrator so failing, refusing or unable to act.

d. Time for Hearing. The arbitrator or arbitrators so appointed shall promptly fix a time and place in Honolulu, Hawaii, for hearing the dispute to be arbitrated. Unless the parties mutually agree otherwise, the time for the hearing shall be no later than sixty (60) days after the appointment of the final arbitrator, subject to any extensions granted by a majority of the arbitrators for good cause; provided, however, that any extension which would set the hearing more than six (6) months from the date that the final arbitrator is appointed must be consented to in writing by both parties. The arbitrators shall give both parties written notice of the time and place for the hearing at least fifteen (15) days prior to the date so fixed.

e. Arbitration Process.

(i) The arbitration shall be conducted in accordance with Chapter 658A, and the arbitrator(s) shall have all the powers and duties prescribed by Chapter 658A. Judgment may be entered upon such decision and award as provided in Chapter 658A.

(ii) The arbitrators shall conduct the hearing and determine the matter in accordance with the Commercial Rules and under the auspices of Dispute Prevention & Resolution, Inc., Honolulu, Hawaii 96813 ("**DPR**"); provided, however, that if DPR shall not be in business, arbitration shall be conducted in accordance with the Commercial Rules and under the auspices of the American Arbitration Association or such other organization as the parties may agree on; and provided, further, that if there is any conflict or inconsistency between the terms of this Section 19.3 and said Commercial Rules, this Section 19.3 shall govern.

(iii) The parties shall each be entitled to present evidence and argument to the arbitrators and to be represented by counsel. Other than the production of documents, the parties must agree, in their sole discretion, to further discovery.

(iv) Anything in this Section 19.3 to the contrary notwithstanding, the arbitrators shall have the right only to interpret and apply the terms, covenants, agreements, provisions, conditions or limitations of this Declaration, and may not change any such terms, covenants, agreements, provisions, conditions or limitations or deprive any party to this Declaration of any right or remedy expressly or impliedly provided in this Declaration.

(v) The arbitration award shall be in writing and shall be acknowledged or approved by a majority of the arbitrators in like manner as a deed for the conveyance of real estate and delivered to one of the parties. A copy of the arbitration award shall be delivered to the other party. The written determination shall include findings of fact and conclusions of law. The determination of a majority of the arbitrators shall determine the question arbitrated, or any other matters to be decided by the arbitrators, and such determination shall be final, binding and conclusive upon the parties.

(vi) Unless the parties mutually agree in writing otherwise, if two of the three arbitrators shall fail to reach an agreement and the determination of the matter in question within thirty (30) days after the final hearing on the matter, or within ten (10) days shall fail to reach an agreement and the determination of any other matters to be decided by the arbitrators, upon written demand of either party to the other, the matter shall be decided by three (3) new arbitrators, who shall be appointed and shall proceed in the manner set forth in this Section 19.3, and the process shall be repeated until a decision is finally reached by two of the three arbitrators selected.

f. Modification of Time Schedule. The parties may mutually agree in writing to modify the time schedule set forth above.

g. Costs of Arbitration. Each party shall be responsible for the fees of the arbitrator it appointed, and the costs and fees of its counsel and experts. The parties shall equally share the fees of the third arbitrator and all other costs and expenses of the arbitration proceedings.

h. Provisional Remedies. No provision of this Section 19.3 limits the rights of any party to exercise self-help remedies legally available or to obtain provisional or ancillary remedies from a court of competent jurisdiction before, after or during the pendency of any arbitration or other proceeding. The exercise of such a remedy does not waive the right of either party to resort to arbitration and shall not constitute a default in proceeding with arbitration.

20. AMENDMENT OF DECLARATION.

20.1. General. Except as otherwise provided in this Declaration or in the Act, and without limitation to any rights reserve to the Developer or any Unit owner to amend this Declaration as set forth herein, this Declaration may be amended by the vote or written consent of Owners of Units to which are appurtenant at least sixty-seven percent (67%) of the Common Interest appurtenant to such Units. Such vote or written consent shall be effective only upon recording an instrument setting forth such amendment and vote duly executed by the proper officers of the Association.

20.2. Super-Majority Vote. Notwithstanding Section 20.1, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision. For example, if the Declaration expressly states that Owners owning Units to which are appurtenant at least eighty percent (80%) of the Common Interest must concur with a proposal to remove any part of the Project from the condominium property regime created by this Declaration, then the affirmative vote of Owners owning Units to which are appurtenant at least eighty percent (80%) of the Common Interest is necessary to amend such provisions regardless of the percentage set forth in Section 20.1.

20.3. Limitations on Amendments. Notwithstanding Section 20.1, and except as otherwise provided in this Declaration, no amendment hereof shall effect a change in: (a) the

boundaries of any Unit, Limited Common Element, or the exclusive easement rights appertaining thereto, (b) the Common Interest of any Unit, or (c) the permitted uses and restrictions on the use of any Unit or its appurtenant Limited Common Elements, unless the record Owner of the Unit and any mortgagee of such Unit shall join in the execution of the amendment.

20.4. **Restatement.** Notwithstanding any other provision of this Declaration, the Association shall have the authority provided in the Act to restate this Declaration from time to time to set forth any prior amendments hereto, or to amend this Declaration as required to conform with the provisions of the Act or any other statute, ordinance, rule or regulation enacted or adopted by a Governmental Authority. No such restated or amended Declaration shall be effective unless it is recorded.

21. **TERMINATION OF CONDOMINIUM PROPERTY REGIME.** Except as otherwise provided by the Act or in this Declaration, the legal status of the Project as a Condominium Property Regime may be terminated in the following manner:

21.1. If (i) owners of Units owning not less than eighty percent (80%) in the aggregate, and owning Units which are appurtenant to not less than eighty percent (80%) of the Common Interests, record in the Bureau and/or file in the Land Court an instrument, duly executed by such owners, setting forth their desire to terminate this Condominium Property Regime and the vote, provided that the holders of all liens affecting any of the Units of the Unit owners executing the aforementioned instrument shall file with the aforementioned office(s) an instrument or instruments, duly executed, consenting to such termination; or (ii) the Common Elements suffer substantial damage or destruction and such damage or destruction has not been rebuilt, repaired or restored within a reasonable time after the occurrence thereof or the Unit owners have voted, as provided in this Declaration, that such damage or destruction shall not be rebuilt, repaired or restored, then the Property shall be subject to an action for partition in the First Circuit Court of the State of Hawaii by any Unit owner or lienor as if owned in common, in which event the sale of the property shall be ordered by the court and the net proceeds of such sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the Unit owners in proportion to their respective Common Interests, provided that no payment shall be made to a Unit owner until all liens on the owner's Unit have been satisfied first out of the owner's share of such net proceeds. Upon such sale, the Property shall cease to be the subject of a condominium property regime, or subject to the Act.

21.2. Upon the unanimous consent of all the Unit owners in the Project, the Property, or part of the Property, may be removed from this Condominium Property Regime by recording in the Bureau and/or filing in the Land Court an instrument of termination, duly executed by all owners in the Project. Upon the filing of such instrument, the Property shall cease to be the subject of a condominium property regime or the Act and shall be deemed to be owned in common by all such Unit owners in proportion to their respective Common Interests.

21.3. Notwithstanding the foregoing, and except as set forth in the Act, the Project shall not be abandoned, terminated or removed from the Condominium Property Regime

created by this Declaration without the prior written approval of all mortgagees of record who may have an interest in the Project.

22. **DEVELOPER'S RESERVED RIGHTS.** In addition to, and without limitation of, those reserved easements in favor of Developer set forth in Section 8 above, Developer reserves the following:

22.1. **Right to Retain or Acquire Ownership in Units.** The right to retain or acquire the ownership of any number of Units in the Project. Developer shall be entitled to make such use of the Units retained or acquired as Developer, in its sole discretion, sees fit; provided that Developer shall comply with all rules and regulations established for the governance of the Project.

22.2. **Right to Change Parking Stall Types and to Change Unit Numbering or Other Designations.** Developer reserves the right, without being required to obtain the consent or joinder of, or provide notice to, any person or entity, including the Association, any owner or any mortgagee, lien holder, Unit purchaser or any other person or entity who may have an interest in the Project or in any Unit, and notwithstanding the sale of a Unit provided the conveyance therefor has not been recorded in the Bureau and/or filed in the Land Court (i) to change the designation of compact, standard, and handicapped-accessible parking stalls, (ii) to construct Parking Lots, and (iii) to amend this Declaration and the Condominium Map as necessary or convenient to describe such changes.

22.3. **Conveyance of Future Parking Structure to The Association.** Developer shall not offer to sell the Future Parking Structure, or accept any offer to purchase the Future Parking Structure from, any person other than the Association without first offering to sell the Future Parking Structure to the Association, as more particularly set forth in this Section.

a. If Developer desires to sell the Future Parking Structure, Developer shall not offer to sell the Future Parking Structure to any person other than the Association unless and until Developer shall have delivered to the Association an invitation to negotiate for the purchase and sale of the Future Parking Structure, which shall be in writing and shall set forth a proposed purchase price for the Future Parking Structure (the "*Invitation to Negotiate*"); and the Association shall have declined in writing the Invitation to Negotiate, or more than sixty (60) calendar days shall have elapsed following the Association's receipt of the Invitation to Negotiate, and the Association shall not have accepted the same in writing. If within said sixty (60) day period the Association shall accept the Invitation to Negotiate, Developer and the Association shall negotiate in good faith a purchase and sale agreement, and following execution thereof, shall consummate the purchase and sale of the Future Parking Structure in accordance with its terms. Notwithstanding anything to the contrary, it shall be reasonable for the Developer to require that the Association purchase of the Future Parking Structure on an "as-is" basis at a purchase price that is sufficient to satisfy the Developers cost to construct the Future Parking Structure and/or to retire any existing debt allocable to construction of the New Parking Structure and related improvements. In the event Developer conveys the Future Parking Structure to the Association, Developer shall also assign the associated easements and other rights related to the ownership of the Future Parking Structure.

b. If Developer and the Association are unable to come to an agreement regarding the terms and conditions of such purchase and sale agreement within ninety (90) calendar days following the Association's acceptance of the Invitation to Negotiate, Developer shall be free to offer to sell the Future Parking Structure to any person at a price no less than ten percent (10%) less than the last price proposed by Developer to the Association for the sale of the Future Parking Structure; provided, however, that if Developer shall not have completed the sale of the Future Parking Structure to any third party at a price permitted under the preceding clause within one (1) year following the expiration of said sixty (60) day period, the procedures in this Section shall repeat indefinitely with respect to any subsequent attempts to sell the Future Parking Structure by Developer.

c. Notwithstanding anything herein to the contrary, the Association shall have the authority, acting by a majority vote of its Board of Directors, without the need for joinder, consent or approval of any Unit owner or any mortgagee of a Unit, to purchase the Future Parking Structure and to borrow funds as necessary to finance the purchase of the Future Parking Structure, on such terms as may be determined by the Board.

22.4. **Right to Modify Project to Comply with Law.** Developer shall have the reserved right, to effect such modifications to the Units, Common Elements, and Limited Common Elements and/or to execute, record and deliver any amendments to this Declaration, the Condominium Map, and Bylaws and any rules and regulations promulgated thereunder, as may be necessary or required to effect compliance by the federal, state and local laws and regulations, including the Act and any and all rules and regulations promulgated thereunder. Without limitation, Developer may amend this Declaration (and, when appropriate, the Condominium Map) in any manner required to retrofit any parking stalls so they are suited for use by persons with disabilities and to assign or license such stalls to any one or more of the Units intended for use by persons with disabilities upon substitution therefor of an alternate parking stall. Such assignment may be made to Units, the owners of which Developer, in its sole judgment, determines require an accessible parking stall to persons with disabilities. Such assignment is hereby specifically declared not to constitute a material amendment of this Declaration or the Condominium Map. All costs of such assignment shall be borne as determined by Developer. Notwithstanding the foregoing, Developer also reserves the right, but does not hereby undertake any obligation, to interchange standard parking stalls and handicapped-accessible parking stalls to accommodate owners in need of such parking. The rights of Developer under this Section 22.4 may be assigned to the Association, without the consent of joinder of, or notice to, the Board.

22.5. **Amendment of Developer's Reserved Rights.** This Declaration cannot be amended to modify or eliminate the easements or other rights reserved to Developer by this or any other section without the prior written consent of Developer, and any attempt to do so shall have no effect.

22.6. **Transfer of Developer's Rights.** Any or all of the rights, reservations and easements of Developer may be transferred to any other person or entity that succeeds to Developer's rights in the Project; provided, however that the transfer shall not enlarge a right or reservation beyond that contained herein, and provided further, no such transfer shall be effective

unless it is in a written instrument signed by Developer and recorded in the Bureau and/or filed with the Land Court.

23. **TRANSFER OF CONTROL TO THE ASSOCIATION OF UNIT OWNERS.**

Without limitation to the rights and reservations set forth in Section 8 (Easements) and Section 22 (Developer's Reserved Rights) hereof, after the first meeting of the Association, Developer retains no special rights, expressed or implied, through which Developer may directly or indirectly control, direct, modify, or veto any action of the Association, the Board, or a majority of owners other than those specifically enumerated in this Declaration.

24. **GENERAL RIGHTS OF UNIT MORTGAGE HOLDERS, INSURERS OR GUARANTORS.**

24.1. **Eligible Mortgage Holders.** "*Eligible Mortgage Holders*" as used herein shall mean and refer to those holders, insurers, or guarantors of first mortgages on Units in the Project whose interest appears in the record of ownership or who has otherwise delivered a timely written request to the Association stating the name and address of their interest and the Unit number or Unit address of the Unit comprising its collateral.

24.2. **Required Notice.** Holders or guarantors of the mortgage on any Unit in the Project shall have the right to timely written notice of (a) any condemnation or casualty loss that affects either a material portion of the Project or the Unit covered by its mortgage; (b) any 60-day delinquency in the payment of assessments or charges owed by the owner of any Unit on which it holds a mortgage; (c) a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and (d) any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holder; provided, however, that such notice shall only be required if the mortgage holder or guarantor sends a written request for this information to the Association, stating both its name and address and the Unit number or address of the Unit on which it has (or guarantees) a mortgage.

24.3. **Limitations on Ability to Sell/Right of First Refusal.** In the event this Declaration or any bylaws promulgated pursuant to this Declaration shall provide for, or be amended to provide for, any right of first refusal to purchase the Project or any Unit in the Project, such right of first refusal shall not affect and shall be subordinate to the rights of an Eligible Mortgage Holder to (a) foreclose or take title to a Unit pursuant to the remedies in its mortgage, (b) accept a deed or assignment in lieu of foreclosure in the event of a default by a mortgagor, and (c) sell or lease a Unit acquired by an Eligible Mortgage Holder or its assignee. Any Eligible Mortgage Holder that forecloses or takes title to a Unit shall comply with all of the covenants and restrictions contained in this Declaration, the Bylaws, and the House Rules.

24.4. **First Mortgagee's Rights Confirmed.** No provision of this Declaration or any bylaws promulgated pursuant to this Declaration shall give a Unit owner or any other party priority over any rights of an Eligible Mortgage Holder pursuant to its mortgage of a Unit in the case of payment to an owner of insurance proceeds or condemnation awards for losses to or a taking of such Unit and appurtenant interest.

24.5. **Unpaid Dues and Assessments.** Any Eligible Mortgage Holder who obtains title to a Unit pursuant to the remedies in the mortgage of such Unit or through foreclosure will not be liable for more than (a) six (6) months of the Unit's unpaid regularly budgeted assessments and charges accrued before acquisition of the title to such Unit by the mortgagee, or (b) the amount permitted to be collected by Section 514B-146 of the Act regarding the Association's lien for assessments, whichever shall be less. If the Association's lien priority includes cost of collecting unpaid dues and assessments, an Eligible Mortgage Holder will be liable for any fees or costs related to the collection of the unpaid assessment.

24.6. **Amendments Requiring Consent of Eligible Mortgage Holders.** Amendments to the Declaration effecting changes of a material adverse nature to mortgagees shall require the prior written approval of not less than fifty-one percent (51%) of the Eligible Mortgage Holders in the Project, except as otherwise set forth in this Declaration. The term "material adverse nature to mortgagees" shall include (a) voting rights of Unit owners; (b) assessments, assessment liens, or subordination of assessment liens; (c) the reserve funds for maintenance, repair and replacement of Common Elements; (d) responsibility for maintenance and repair of the Units, Common Elements and Limited Common Elements; (e) the Common Elements and Limited Common Elements appurtenant to the Units, or the rights to the use of the Common Elements and Limited Common Elements, including any change in the undivided interests in the Common Elements appurtenant to the Units; (f) the boundaries of any Unit; (g) conversion of Unit spaces into Common Elements or Limited Common Elements or vice versa; (h) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project; (i) insurance or fidelity bonds; (j) a Unit owner's right to sell, lease or otherwise transfer his or her Unit or the imposition of any right of first refusal or similar restriction on the right of a Unit owner to sell, lease or otherwise transfer his or her Unit; (k) the qualification for the Managing Agent of the Project or the establishment of self-management by the Association where professional management has been required by any agency or corporation which has an interest or prospective interest in the Project; (l) restoration or repair of the Project after damage or destruction or partial condemnation; (m) termination of the legal status of the Project as a condominium after substantial destruction or condemnation or any other reason; or (n) any provision that expressly affects the rights and remedies of holders, insurers, or guarantors of first mortgages on Units of the Project. The references to a percentage of the Eligible Mortgage Holders shall mean Eligible Mortgage Holders representing the specified percentage of the votes of the Units that are subject to mortgages held by the eligible mortgage holders.

24.7. **Deemed Approval by Eligible Mortgage Holders.** In the event that an eligible mortgage holder fails respond to a proposal for amendments of a material nature to this Declaration within sixty (60) days after it received proper notice of the proposed amendment delivered by certified or registered mail, with a "return receipt" requested, then and in any such event such amendments shall conclusively be deemed approved by such Eligible Mortgage Holder.

25. CONDITION OF THE BUILDING; CODE COMPLIANCE.

25.1. **Code Compliance.** The Project is zoned B-2, Community Business District, under the LUO. According to a letter from the Department of Planning and Permitting

of the City and County of Honolulu (“**DPP**”) dated July 13, 2012 (the “**DPP Letter**”) the “three-story office building with 193 all-weather-surface off-street parking spaces and two loading spaces met all applicable code requirements when it was constructed in 1974, on this 124,955-square-foot B-2 Community-Business-District-zoned lot.” On December 19, 1981, a Special Management Area Permit (File No. 1981/SMA-148) was approved for an exterior canvas canopy. Except as described above, according to the DPP Letter, no variances or other permits were granted to allow deviations from any applicable codes. Developer hereby declares, subject to the penalties set forth in Section 514B-69(b) of the Act, that to the best of Developer’s knowledge, the Project is in compliance with all building ordinances and codes, the existing underlying county zoning for the Property and all applicable county permitting requirements adopted by the City and County of Honolulu, including any supplemental rules adopted by the City and County of Honolulu, applicable to the Project as of the date hereof.

25.2. “As Is” Condition. Based on professional third party property condition reports concerning the condition of the commercial buildings, Developer believes that the Office Building is in such condition as is consistent with its age. Notwithstanding anything to the contrary contained herein, the Office Building and Units, and any fixtures, appliances, and electrical and plumbing equipment included within the Units and the Limited Common Elements appurtenant thereto, will be sold “AS IS” “WITH ALL FAULTS”, and neither Developer nor any of its affiliates or representatives, make any warranties, express or implied, as to their working order and condition. All recommended work described in the property condition reports will be the responsibility of the respective Unit owners and not that of Developer or any other party. Each Unit owner, by the acceptance of such owner’s Unit deed, shall be deemed to have accepted the building conditions described above and agreed that, except as otherwise set forth herein, neither Developer nor any of its affiliates or representatives, shall be responsible for changing any nonconforming conditions.

26. USE OF HAZARDOUS MATERIAL.

26.1. Restriction on Use. Unit owners shall not cause or permit any Hazardous Material to be generated, used, transported, stored or disposed of upon, in, or about his or her unit or the common elements, except in a manner that complies with all Applicable Law now existing or hereafter enacted affecting the Property or the Project relating to environmental conditions, industrial hygiene or Hazardous Materials (“**Hazardous Materials Laws**”). “**Hazardous Material**” means any hazardous or toxic substance, including those substances listed in the United States Department of Transportation Hazardous Materials Table (49 Code of Federal Regulations, Section 172.101) or by the Environmental Protection Agency as hazardous substances (40 Code of Federal Regulations, Part 302), as amended, and substances that are or become regulated under law, radioactive materials, petroleum and petroleum products, asbestos, organic compounds known as polychlorinated biphenyls and chemicals known to cause cancer or reproductive toxicity.

26.2. Notices. Unit owners shall give written notice to the Board within three (3) business days after the owner learns or first has reason to believe that (i) any event involving the use, deposit, disposal, spill or release of any Hazardous Material on, within, or under the

Property (“**Hazardous Discharge**”) has occurred; or (ii) either (A) an action has been instituted or threatened by a third party or Governmental Authority with respect to a unit or the Project pursuant to any Hazardous Materials Law, or (B) a claim has been made or threatened by a third party or a Governmental Authority against a unit owner or the Association or any other person seeking damages, contribution, cost recovery, compensation, injunctive relief or similar relief resulting from a Hazardous Discharge or from the existence of any Hazardous Material on, within or under the Property (collectively, a “**Hazardous Materials Claim**”); or (iii) any report, notice or complaint has been made to or filed with any Governmental Authority concerning the presence, use or disposal of any Hazardous Material at the Property. The notice shall be accompanied by copies of (x) all permits, licenses and proofs of disclosure to Governmental Authority pertaining to the Hazardous Material that is the subject of the claim, (y) any material safety data sheets pertaining to such substances that are required by Applicable Law, and (z) any claim, report, complaint, notice, warning or other communication that is in the possession of or is reasonably available to the unit owner. The Association shall have the right to join and participate, as a party, if it so elects, in any actions initiated in respect of any Hazardous Materials Claim.

26.3. **Indemnity.** If the generation, use, transportation, storage or disposal of Hazardous Materials by a unit owner results in contamination of a unit or the common elements, the owner shall hold harmless the Association, the Board and all other unit owners from (i) all damages, including foreseeable and unforeseeable consequential damages, diminution in value of a unit, losses and damages for the loss or restriction on use of a unit, any part of the common elements or of any amenity of the Project, (ii) sums paid in settlement of claims, (iii) all reasonable expenses, including attorneys’ fees, consultant fees and expert fees which arise as a result of any investigation by the Association or the defense of Hazardous Materials Claims (whether or not formal administrative or legal action is filed) by the Association or any unit owner, and (iv) all costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restorative work required by any Governmental Authority because of a Hazardous Material present in the soil or ground water on or under the unit or the common elements.

26.4. **Cleanup.**

a. **By an Owner.** Without limiting the foregoing, if the presence of any Hazardous Material at a unit or the common elements caused or permitted by a unit owner results in any contamination of the Property, the owner shall promptly take all actions at his or her sole expense as are necessary to return the Property to the condition existing prior to the Hazardous Discharge; provided that the Board’s approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Property.

b. **By the Association.** If the presence of any Hazardous Material on the common elements results in any contamination of the common elements, the Association shall promptly take all actions as are necessary to clean up and restore the common elements in accordance with all Hazardous Materials Laws, and all unit owners shall be severally liable for the cost of any such cleanup and restoration as a common expense to the extent such costs are

not chargeable to the unit owners of one or more units, as provided in this Declaration, and are not reimbursed to the Association by those owners.

26.5. **Survival.** The obligations in this Section 26 shall survive the termination of the ownership of a unit in the Project.

27. **OTHER ENVIRONMENTAL ISSUES.** Mold and mold spores are present throughout the environment, and Unit construction is not, and cannot be, designed to exclude mold spores. All mold is not necessarily harmful, but certain strains of mold have been shown to have adverse health effects in susceptible persons. The most common effects are allergic reactions, including skin irritations, watery eyes, runny nose, coughing, sneezing, congestion, sore throat and headache. Individuals with suppressed immune systems may risk infections. Moisture is the only mold growth factor that can be controlled in a commercial setting. By minimizing moisture, an owner can reduce or eliminate mold growth. Although the Center for Disease Control states that a causal link between the presence of toxic mold and serious health conditions has not been proven, Unit owners should take positive steps to reduce or eliminate the occurrence of mold growth and thereby minimize any possible adverse effects that may be caused by mold by, without limitation, doing the following:

27.1. **Check Items.** Before bringing items into the Unit, check for signs of mold. Potted plants (roots and soil), furnishings or stored clothing and bedding material, as well as many other commercial goods, could already contain mold growth. Avoid storing organic material in damp areas.

27.2. **Vacuuming and Cleaning.** Regular vacuuming and cleaning will help reduce mold levels. Mild bleach solutions and most tile cleaners are effective in eliminating or preventing mold growth.

27.3. **Humidity.** Keep humidity in the Unit low. Ventilate bathrooms by using exhaust fans to facilitate evaporation of water from wet surfaces. Maintain and properly service your air conditioning system, furnaces, heat pumps and humidifiers attached to furnaces to keep them in full working condition.

27.4. **Clean Spills.** Promptly clean up spills, condensation and other sources of moisture. Thoroughly dry any wet surfaces or material. Do not let water pool or stand in the Unit. Promptly replace any materials that cannot be thoroughly dried, such as drywall or insulation.

27.5. **Leaks.** Inspect for leaks on a regular basis. Look for discolorations or wet spots. Repair any leaks promptly. Inspect condensation pans (refrigerators and air conditioners) for mold growth. Take notice of musty odors and any visible signs of mold.

27.6. **Water Intrusion.** Seek to prevent water intrusion into the Unit by regular caulking and painting.

27.7. **Clean Affected Areas.** Should mold develop, thoroughly clean the affected area with a mild solution of bleach. First, test to see if the affected material or surface is color safe. Porous materials, such as fabric, upholstery or carpet should be discarded. Should the mold growth be severe, call on the services of a qualified professional cleaning service.

28. **DEVELOPER NOT LIABLE.** Each Unit owner acknowledges and agrees that Developer will not be liable for any actual, special, incidental or consequential damages based on any legal theory whatsoever, including, but not limited to, strict liability, breach of express or implied warranty, negligence, or any other legal theory with respect to the presence and/or existence of molds, mildew, microscopic spores, or hazardous substances unless caused by the sole negligence or willful misconduct of Developer. Each Unit owner, on behalf of itself and its family members, tenants, invitees and licensees, hereby releases Developer and its members, managers and their respective officers, directors, partners, affiliates, subsidiaries, parent, successors and assigns from and against any and all claims, actions, damages, causes of action, liabilities and expenses (including without limitation, attorneys' fees and costs of enforcing this indemnity) for property damage, injury or death resulting from the exposure to microscopic spores, mold and/or mildew and from any loss of resale value due to the presence and/or existence of mold, mildew and/or microscopic spores.

29. **NO WARRANTIES OF DEVELOPER.** The execution, delivery and recordation of a Unit deed from Developer to a Unit owner shall constitute the assignment by Developer to such owner of any and all warranties given to Developer by the contractors for the Project, if any, including, without limitation, any warranty of materials and workmanship against faulty or deficient materials and installation. **DEVELOPER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY OR WORKMANLIKE CONSTRUCTION WITH RESPECT TO A UNIT, THE PROPERTY, ANY COMMON ELEMENT, LIMITED COMMON ELEMENT, OR ANYTHING INSTALLED THEREIN.** The Condominium Map which has been or will be filed in the Land Court is intended only to show the layout, location, Unit numbers and dimensions of the Units, approximate elevations of the Project and parking plans and any other detail which is specifically required to be shown under Section 514B-34 of the Act. The Condominium Map is not intended to be and does not constitute any representation or warranty by Developer to construct or install any other improvements, amenities or facilities as may be depicted thereon.

30. **WAIVER.** No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of this Declaration or the intent of any provision hereof.

31. **CAPTIONS.** The captions herein are inserted only as a matter of convenience and for reference, and in no way to define, limit or describe the scope of this Declaration nor the intent of any provision hereof.

32. **DEFINITIONS.** All terms used herein and in the Bylaws which are identical to terms used in the Act shall, except where clearly repugnant to the context, have the same meanings as are attributed to them in said Act. Without limitation to defined terms found elsewhere in this instrument, the following definitions shall apply to the terms set forth herein below:

32.1. “***Constant Dollars***” means the value of the U.S. dollar as adjusted from time to time. An adjustment shall occur on the 1st day of January of the 5th full calendar year following the date of this Declaration, and thereafter at 5 year intervals (each, an “***Adjustment Date***”). Constant Dollars will be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The “***Base Index Number***” is the level of the Index most recently published as of the Effective Date of this Declaration; the “***Current Index Number***” is the level of the Index most recently published as of the pertinent Adjustment Date; the “***Index***” is the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1982-84=100), or any successor index thereto as hereinafter provided.

32.2. “***Governmental Authorities***” means any federal, state, county, city or local governmental or quasi-governmental authority, entity or body (or any departmental agency thereof) exercising jurisdiction over a particular subject matter.

32.3. “***Applicable Law***” means all applicable laws, statutes, ordinances, codes, rules, regulations, orders, and applicable judicial decisions or decrees, as presently existing and hereafter amended, of any Governmental Authorities.

32.4. “***Person***” means an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

32.5. The terms “***owner***” and “***Unit owner***” as referred to herein shall mean the owner of a Unit, whether singly or jointly, partnerships, corporations, trusts or other legal entities or their heirs, personal representatives, trustees, successors and assigns or the heirs and assigns of the survivor as the case may be. Each Owner shall be liable for the performance of all covenants, obligations and undertakings applicable to the Unit and any Owner in the Project that accrue during the period of such ownership. Nothing in this Declaration prevents an Owner from delegating to a tenant or lessee of a Unit of all or any portion of its responsibility for performance of obligations under this Declaration, provided such delegation shall not constitute a release of the Owner’s obligations under this Declaration. If a Unit is owned by more than one Owner, the Owner or Owners holding at least 51% of the ownership interest in such Lot shall designate in writing one Person to represent all Owners of the Unit and such designated Person will be deemed the Person authorized to give consents and/or approvals pursuant to this Declaration for such Unit.

32.6. The term “***majority***” or “***majority of owners***” herein means the owners of Units to which are appurtenant more than fifty percent (50%) of the Common Interests, and any specified percentage of Unit owners means the owners of Units to which are appurtenant such

percentage of the Common Interests as established by this Declaration. The singular number or masculine gender, as used herein, shall be deemed to include the plural number and the feminine or neuter genders, and vice versa, whenever the context so requires.

33. **INVALIDITY**. The invalidity of any provision of this Declaration 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.

[The Remainder of This Page is Intentionally Left Blank.]

148716-v5A

EXHIBIT A

Description of Land

All right, title and interest of Grantor in and to the following:

LOT 2-C-1, containing a total area of 124,957 square feet, more or less, as shown on map prepared by Harry K. Matsuo, Land Surveyor, with Community Planning, Inc., approved by the Department of Land Utilization, City and County of Honolulu, on April 4, 1974, comprised of the following:

-PARCEL FIRST:-

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

LOT 3-B-3-A-1, area 110,110.0 square feet, 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 Consolidation No. 84 of Bishop Trust Company, Limited, Trustee under the Will and of the Estate of Edith Austin, deceased, and others.

Being land(s) described in Transfer Certificate of Title No. 1,044,426 issued to KMC PARTNERS LLC, a Hawaii limited liability company.

-PARCEL SECOND:-

All of that certain parcel of land (being a portion of the land described in and covered by Royal Patent Number 2067, Land Commission Award Number 5649 to Kuhanaipuaa) situate, lying and being at Waimalu, District of Ewa, City and County of Honolulu, State of Hawaii, being more particularly described as follows:

Beginning at the most easterly corner of this parcel of land, the coordinates of which referred to Government Survey Triangulation Station "EWA CHURCH" being 1,428.03 feet south and 9,232.75 feet east and running by azimuths measured clockwise from true South:

1. Along remainder of L. C. Aw. 5649 to Kuhanaipuaa on a curve to the left
with a radius of 296.00 feet, the
chord azimuth and distance
being
32° 37' 52" 68.79 feet;
2. 115° 57' 30" 98.17 feet along remainder of L. C. Aw. 5649 to
Kuhanaipuaa;
3. 213° 30' 80.81 feet along Lot 3-B-3-A-1 of Land Court

Consolidation 84 (Map 13);

4. 302° 58' 96.26 feet along Lot 3-B-3-A-1 of Land Court Consolidation 84 (Map 13) to the point of beginning and containing an area of 7,147 square feet, more or less.

-PARCEL THIRD:-

All of that certain parcel of land (being a portion of the land described in and covered by Royal Patent Number 385, Land Commission Award Number 9356, Apana 3 to Kuheuheu), being a portion of EXCLUSION 1 of Land Court Application 950, situate, lying and being at Waimalu, District of Ewa, City and County of Honolulu, State of Hawaii, being more particularly described as follows:

Beginning at the southeast corner of this parcel of land, the coordinates of which referred to Government Survey Triangulation Station "EWA CHURCH" being 1,164.65 feet south and 9,525.43 feet east and running by azimuths measured clockwise from true South:

1. Along remainder of R. P. 385, L. C. Aw. 9356, Apana 3 to Kuheuheu on a curve to the left with a radius of 1,046.00 feet, the chord azimuth and distance being

55° 56' 59" 90.61 feet;

2. 145° 00' 128.06 feet along Lot 3-B-3-A-1 of Land Court Consolidation 84, Map 13;
3. 88° 00' 36.30 feet along Lot 3-B-3-A-1 of Land Court Consolidation 84, Map 13;
4. 157° 30' 30" 40.32 feet along Lot 3-B-3-A-1 of Land Court Consolidation 84, Map 13;
5. 294° 14' 20" 219.56 feet along remainder of R. P. 385, L. C. Aw. 9356, Apana 3 to Kuheuheu to the point of beginning and containing an area of 7,698 square feet, more or less.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED
WITH COVENANTS

GRANTOR: JAMES DOUGLAS KEAUHOU ING, MICAH A. KANE,
JANEEN-ANN AHULANI OLDS, CORBETT AARON
KAMOHAIKIOKALANI KALAMA, and LANCE KEAWE
WILHELM, as Trustee of the Estate of Bernice Pauahi Bishop

GRANTEE: KMC PARTNERS LLC, a Hawaii limited liability company

DATED: Effective as of June 29, 2012

FILED: Land Court Document No. T-8215447

RECORDED: Document No. A-45630733

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. -AS TO PARCEL FIRST:-

(A) DESIGNATION OF EASEMENT "C"

PURPOSE : Waimalu Stream maintenance
SHOWN : on Map 1, as set forth by Land Court Order No.
20284, filed July 20, 1962

(B) Easement "C" for Waimalu Stream maintenance purposes in
favor of the CITY AND COUNTY OF HONOLULU, acquired
by FINAL ORDER OF CONDEMNATION filed May 3, 1971,
in the Circuit Court of the First Circuit, State of Hawaii, Civil
No. 8199, filed as Land Court Document No. 536319.

(C) DESIGNATION OF EASEMENT "P"

PURPOSE : electrical
SHOWN : on Map 9, as set forth by Land Court Order No.
37242, filed April 6, 1973

(D) DESIGNATION OF EASEMENT "Q"

PURPOSE : utility
SHOWN : on Map 9, as set forth by Land Court Order No.
37242, filed April 6, 1973

(E) DESIGNATION OF EASEMENT "R"

PURPOSE : sanitary sewer
SHOWN : on Map 9, as set forth by Land Court Order No.
37242, filed April 6, 1973

(F) DESIGNATION OF EASEMENT "U"

PURPOSE : stream maintenance
SHOWN : on Map 13, as set forth by Land Court Order No.
39913, filed June 5, 1974

(G) Right-of-way in favor of Lot 3-B-3-A-2 for access to
Kaahumanu Street, a public road, as set forth by Land Court
Order No. 39913, filed June 5, 1974.

(H) GRANT

TO : HAWAIIAN ELECTRIC COMPANY, INC.

DATED : August 29, 1974
FILED : Land Court Document No. 698269
GRANTING : an easement over Easement "P", and being more
particularly described therein

(I) GRANT

TO : CITY AND COUNTY OF HONOLULU

DATED : October 2, 1973
FILED : Land Court Document No. 724626
GRANTING : an easement over Easement "Q", and being more
particularly described therein

(J) GRANT

TO : CITY AND COUNTY OF HONOLULU

DATED : May 2, 1984
FILED : Land Court Document No. 1333079
GRANTING : an easement over Easement "U", and being more
particularly described therein

(K) GRANT

TO : CITY AND COUNTY OF HONOLULU

DATED : May 2, 1984
FILED : Land Court Document No. 1333080
GRANTING : an easement over Easement "R", and being more particularly described therein

3. -AS TO PARCEL SECOND:-

(A) EXISTING SEWER EASEMENT and EXISTING EASEMENT "E" for Waimalu Stream maintenance, as shown on City and County of Honolulu, Division of Land Survey and Acquisition Parcel Map in Files 16-11-1-78 and 12-4-2-46-A, respectively, as contained in DEED dated July 1, 1975, filed as Land Court Document No. 714615, recorded in Liber 10523 at Page 333.

(B) Easement in favor of the CITY AND COUNTY OF HONOLULU for right of way over, under, through and across that certain parcel of land designated as Parcel E, containing an area of 0.997 acre, more or less, acquired by FINAL ORDER OF CONDEMNATION filed in the Circuit Court of the First Circuit of the State of Hawaii, Civil No. 8183, on October 28, 1963, recorded in Liber 4627 at Page 488.

(C) GRANT

TO : CITY AND COUNTY OF HONOLULU

DATED : October 2, 1973
RECORDED : Liber 10725 Page 382
GRANTING : an easement for sewer and drainage purposes over Easement "2-A", 16 feet wide, containing an area of 1,556 square feet, more or less, and being more particularly described therein

4. -AS TO PARCEL THIRD:-

(A) PARCEL "C" for Waimalu Stream maintenance purposes in favor of the CITY AND COUNTY OF HONOLULU, acquired by FINAL ORDER OF CONDEMNATION filed December 19, 1963, in the Circuit Court of the First Circuit, Civil No. 8182, recorded in Liber 4657 at Page 42.

(B) GRANT

TO: CITY AND COUNTY OF HONOLULU

DATED: July 24, 1971
RECORDED: Liber 7790 Page 270
GRANTING: an easement for sewer pipeline purposes over
Parcel 5 containing an area of 1,805 square feet,
more or less, and being more particularly described
therein

(C) GRANT

TO : CITY AND COUNTY OF HONOLULU

DATED : February 13, 1984
RECORDED : Liber 18247 Page 393
GRANTING : an easement for maintenance purposes over
Easement "M-5-A" containing an area of 1,290
square feet, more or less, and being more
particularly described therein

5. The terms and provisions contained in the following:

INSTRUMENT : LIMITED WARRANTY DEED WITH
COVENANTS

DATED : June 29, 2012
FILED : Land Court Document No. T-8215447
RECORDED : Document No. A-45630733

END OF EXHIBIT A

EXHIBIT B

Metes and Bounds description of Spatial Unit **and** **Limited Common Element Land Areas Appurtenant to Spatial Units**

DESCRIPTION
S-1
MAKAI SPATIAL UNIT
Future Office Building Extention

Waimalu, Ewa, Oahu, Hawaii

Being a portion of Lot 3-B-3-A-1 as shown Map 13 of Land Court Consolidation 84.

Being also a portion of the land described in and covered by Royal Patent Number 2067, Land Commission Award Number 5649 to Kuhanaipuaa.


Beginning at the Northwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Ewa Church" being 1,428.67 feet South and 9,000.90 feet East, thence running by azimuths measured clockwise from True South:

1. 205° 57' 30" 72.58 feet along the remainder Lot 3-B-3-A-1 as shown on Map 13 of
Ld. Ct. Cons. 84;
2. 295° 58' 30" 25.99 feet along L.C.E.;
3. 25° 58' 30" 5.68 feet along L.C.E.;
4. 295° 58' 30" 129.09 feet along L.C.E., the remainder of Lot 3-B-3-A-1 as shown on
Map 13 of Ld. Ct. Cons. 84 and portion of Royal Patent
Number 2067, Land Commission Award Number 5649 to
Kuhanaipuaa;
5. 205° 58' 30" 9.08 feet along portion of Royal Patent Number 2067, Land
Commission Award Number 5649 to Kuhanaipuaa and
remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct.
Cons. 84;
6. 295° 58' 30" 42.88 feet along the remainder of Lot 3-B-3-A-1 as shown on Map
13 of Ld. Ct. Cons. 84;
7. Thence along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84 and
portion of Royal Patent Number 2067, Land Commission
Award Number 5649 to Kuhanaipuaa, on a curve to the left
with a radius of 298.00 feet, the direct chord azimuth and
distance being:
33° 43' 46" 76.62 feet;

8. 115° 57' 30" 187.60 feet along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84 to the point of beginning and containing an area of 13,255 Square Feet.

1088 Bishop Street, #2506
Honolulu, Hawaii 96813
August 31, 2012

HAWAII ENGINEERING GROUP, INC.

By:  _____

MICHAEL KUTAKA
REGISTERED PROFESSIONAL LAND
(expires 4/30/14)

SURVEYOR CERTIFICATE Number 9488

DESCRIPTION
S-2
Mauka Spatial Unit
Future Parking Structure

Waimalu, Ewa, Oahu, Hawaii

Being a portion of Lot 3-B-3-A-1 as shown Map 13 of Land Court Consolidation 84.

Being also a portion of the land described in and covered by Royal Patent Number 385, Land Commission Award Number 9356, Apana 3 to Kuheuheu.

Beginning at the Northwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Ewa Church" being 1,066.90 feet South and 9,185.91 feet East, thence running by azimuths measured clockwise from True South:

1. 194° 47' 58" 48.91 feet along the remainder Lot 3-B-3-A-1 as shown on Map 13 of
Ld. Ct. Cons. 84;
2. 294° 14' 20" 353.97 feet along the remainder Lot 3-B-3-A-1 as shown on Map 13 of
Ld. Ct. Cons. 84 and portion of Royal Patent Number 385,
Land Commission Award Number 9356, Apana 3 to
Kuheuheu;
3. Thence along portion of Royal Patent Number 385, Land Commission Award Number
9356, Apana 3 to Kuheuheu and the remainder of Lot 3-B-
3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84 on a curve
to the left with a radius of 1,048.00 feet, the direct chord
azimuth and distance being:
55° 21' 10" 105.06;
4. 322° 35' 20" 10.00 feet along the remainder of Lot 3-B-3-A-1 as shown on Map
13 of Ld. Ct. Cons. 84;
5. Thence along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84 on
a curve to the left with a radius of 1,038.00 feet, the direct
chord azimuth and distance being:
49° 53' 51" 93.48 feet;
6. 47° 19' 00" 194.25 feet along the remainder of Lot 3-B-3-A-1 as shown on Map
13 of Ld. Ct. Cons. 84;
7. 317° 19' 00" 5.01 feet along the remainder of Lot 3-B-3-A-1 as shown on Map
13 of Ld. Ct. Cons. 84;
8. Thence along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84 on
a curve to the left with a radius of 298.00 feet, the direct


chord azimuth and distance being:
44° 13' 25" 28.16 feet;

9. 115° 58' 30" 33.92 feet along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84;
10. Thence along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84 on a curve to the right with a radius of 15.50 feet, the direct chord azimuth and distance being:
160° 58' 30" 21.92;
11. 205° 58' 30" 31.71 feet along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84;
12. 295° 58' 30" 16.58 feet along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84;
13. 205° 58' 41" 8.48 feet along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84;
14. 115° 58' 30" 17.90 feet along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84;
15. 205° 58' 30" 64.75 feet along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84;
16. 295° 58' 30' 16.48 feet along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84;
17. 205° 58' 30" 27.08 feet along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84;
18. 115° 58' 30" 29.61 feet along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84;
19. 205° 58' 30" 24.66 feet along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84;
20. 295° 55' 45" 32.88 feet along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84;
21. 205° 58' 30" 160.07 feet along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84;
22. 115° 58' 30" 157.98 feet along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84 and L.C.E to the point of beginning

and containing an area of 50,313 Square Feet;

1088 Bishop Street, #2506
Honolulu, Hawaii 96813
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REGISTERED PROFESSIONAL LAND
(expires 4/30/14)

SURVEYOR CERTIFICATE Number 9488

DESCRIPTION
L.C.E.

Waimalu, Ewa, Oahu, Hawaii

Being a portion of Lot 3-B-3-A-1 as shown Map 13 of Land Court Consolidation 84.

Being also a portion of the land described in and covered by Royal Patent Number 2067, Land Commission Award Number 5649 to Kuhanaiipuaa.

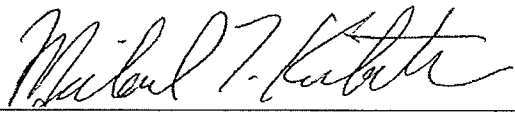
Beginning at the Northwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Ewa Church" being 1,363.41 feet South and 9,032.67 feet East, thence running by azimuths measured clockwise from True South:

1. 205° 57' 30" 139.80 feet along the remainder Lot 3-B-3-A-1 as shown on Map 13 of
Ld. Ct. Cons. 84;
2. Thence along the remainder of Lot 3-B-3-A-1 as shown on Map 13 of Ld. Ct. Cons. 84 on
a curve to the left with a radius of 1,045.00 feet, the direct
chord azimuth and distance being:
200° 28' 20" 199.82;
3. 284° 47' 58" 25.61 feet along the remainder Lot 3-B-3-A-1 as shown on Map 13
of Ld. Ct. Cons. 84;
4. 14° 48' 00" 10.17 feet along S-2 Mauka Spatial Unit;
5. 295° 58' 30" 57.05 feet along S-2 Mauka Spatial Unit;
6. 25° 58' 30" 156.16 feet along the remainder of Lot 3-B-3-A-1 as shown on Map 13
of Ld. Ct. Cons. 84;
7. 115° 58' 30" 16.31 feet along the remainder of Lot 3-B-3-A-1 as shown on Map 13
of Ld. Ct. Cons. 84;
8. 25° 58' 30" 183.20 feet along the remainder of Lot 3-B-3-A-1 as shown on Map
13 of Ld. Ct. Cons. 84;
9. 115° 58' 30" 20.64 feet along Makai Spatial Unit;
10. 205° 58' 30" 5.68 feet along Makai Spatial Unit;
11. 115° 58' 30" 27.99 feet along Makai Spatial Unit to the point of beginning and

containing an area of 20,270 Square Feet;

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SURVEYOR CERTIFICATE Number 9488

END OF EXHIBIT B

EXHIBIT C

Unit Areas and Common Interests

Unit Count	Unit Number	Floor Area (Sq. Ft)	Common Interest
1	101	932.00	1.50%
2	102	743.00	1.22%
3	103	912.00	1.47%
4	104	787.00	1.26%
5	105	834.00	1.35%
6	106	1,134.00	1.82%
7	107/107A	832.00	1.34%
8	108A	571.00	0.92%
9	109B	521.00	0.84%
10	109/111	1,448.00	2.34%
11	110	1,622.00	2.61%
12	113/115	1,689.00	2.72%
13	114	747.00	1.20%
14	116	967.00	1.55%
15	117A	412.00	0.66%
16	117B	416.00	0.67%
17	118A	2,163.00	3.48%
18	118B	929.00	1.50%
19	119	948.00	1.52%
20	122	2,062.00	3.32%
21	202	999.00	1.61%
22	203	1,388.00	2.24%
23	204	673.00	1.09%
24	205	1,120.00	1.81%
25	206/208/210	2,528.00	4.08%
26	207/209/211	1,674.00	2.70%
27	212	843.00	1.36%
28	213	840.00	1.36%
29	214	835.00	1.35%
30	215	1,129.00	1.82%
31	216/218	1,668.00	2.69%
32	217A	1,159.00	1.87%
33	219B/219C	1,608.00	2.59%
34	220	638.00	1.03%
35	222	1,024.00	1.65%

Unit Count	Unit Number	Floor Area (Sq. Ft)	Common Interest
36	223	1,120.00	1.81%
37	224	834.00	1.35%
38	301	1,033.00	1.67%
39	302	835.00	1.35%
40	303	639.00	1.03%
41	304	832.00	1.34%
42	305	829.00	1.34%
43	306/306A	831.00	1.34%
44	307	830.00	1.34%
45	308	481.00	0.78%
46	309	527.00	0.85%
47	310A	831.00	1.34%
48	310B	342.00	0.55%
49	311	1,143.00	1.84%
50	312	493.00	0.80%
51	312A	339.00	0.55%
52	314	842.00	1.36%
53	315	1,677.00	2.71%
54	316	834.00	1.35%
55	318/320A	1,186.00	1.91%
56	319	831.00	1.34%
57	320/322/322A	1,319.00	2.13%
58	321	1,672.00	2.70%
59	324	824.00	1.33%
60	325	837.00	1.35%
61	S-1	-	1.00%
62	S-2	-	1.00%

Total:	60,771.00	100.00%
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*The approximate net floor area of each Unit as set forth above is measured from the interior surface of the Unit perimeter walls and includes all of the walls and partitions within its perimeter walls, whether loadbearing or non-loadbearing.

Note: THE FLOOR AREAS SHOWN ARE APPROXIMATE ONLY. DEVELOPER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE FLOOR AREA OF ANY PARTICULAR UNIT.

END OF EXHIBIT C