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Cades Schutte LLP  
Attention: Richard Kiefer, Esq.  
1000 Bishop Street Suite 1200  
Honolulu, Hawaii 96813  
Telephone: (808) 871-6016

TITLE OF DOCUMENT:

**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM PROPERTY REGIME  
OF THE COLLECTION**

PARTIES TO DOCUMENT:

DEVELOPER: THE COLLECTION, LLC, a Hawaii limited liability company

TAX MAP KEY(S): (1) 2-1-55-4, -9 & -17

**CONDOMINIUM MAP NO. 5177**

(This document consists of 77 pages.)

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**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM PROPERTY REGIME  
OF THE COLLECTION**

**THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME OF THE COLLECTION** (this "Declaration") is made on June 20, 2013, by **THE COLLECTION LLC**, a Hawaii liability company (hereinafter "Developer"). Other capitalized terms used in this Declaration are defined in Section 2.5.

Whereas, Developer and Fee Owner established the Project by the Declaration of Condominium Property Regime of the Collection dated May 21, 2013, and recorded in the Bureau as Document No. A-48910795A through A-48910795B, and Condominium Map No. 5177 filed therewith in the Bureau, and no Units in the Project have been conveyed; and

Whereas, concurrently herewith Developer and Fee Owner are filing an amended Condominium Map for the Project in the Bureau and in connection therewith desire to amend and restate the Declaration in its entirety, all pursuant to Articles 9 and 18 of the Declaration;

NOW THEREFORE, the Declaration is hereby amended and restated as follows:

**ARTICLE 1. BACKGROUND AND INTENT**

**1.1 Initial Ownership.** As of the date of this Declaration the fee simple interest in the Real Property is owned by Fee Owner and Developer is the holder of certain rights to acquire the fee simple interest under the Option.

**1.2 Intent to Create Condominium.** In order to create a condominium project consisting of the Real Property and the existing and proposed Improvements thereon (the "Project"), to be known as "**The Collection**", the Developer and the Fee Owner, by this Declaration and Condominium Map No. 5177 recorded in the Bureau, as amended by the amended pages thereof recorded in the Bureau concurrently herewith, submit the Real Property and all of their respective interests therein and all appurtenances thereto to a Condominium Property Regime established pursuant to the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended, (the "Act"), and make the following declarations as to divisions, limitations, restrictions, covenants and conditions, and declare that the Real Property is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to this Declaration and the Bylaws of the Association of Unit Owners of the Project (the "Bylaws") recorded in the Bureau concurrently herewith, as they may be amended from time to time, which declarations, restrictions, and conditions shall constitute covenants running with the Real Property and shall be binding on and for the benefit of Fee Owner, Developer and their respective successors and assigns, and all subsequent owners, lessees and sublessees of all or any part of the Project and their respective heirs, devisees, personal representatives, successors and assigns.

**1.3 Liberal Construction.** The provisions of this Declaration and the Bylaws shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of this Project under the provisions of the Act and Hawaii law. To the extent they affect or pertain to this Declaration, the Bylaws and the Project, the provisions of the Act shall be liberally construed to effectuate the intent of this Declaration.

**ARTICLE 2. INTERPRETATION, USE OF DEFINED TERMS**

**2.1 Consistent with Act.** The terms used herein and in the Bylaws are intended to have the same meaning given in the Act unless the context clearly requires otherwise or to so define the terms would produce an illegal or improper result.

**2.2 Declaration and Bylaw Section References, Captions and Exhibits.** Reference to a "Section" means a section of the same document unless otherwise specified or apparent from the context. Captions given to the various sections are for convenience only and are not intended to modify or affect the meaning of any of substantive provisions of this Declaration or the Bylaws. The various Exhibits referred to herein and attached hereto shall be deemed incorporated by reference.

## 2.3 Construction and Validity.

2.3.1 All provisions of the Declaration and Bylaws are severable.

2.3.2 In the event of a conflict between the provisions of the Declaration and the Bylaws, the Declaration prevails except to the extent the Declaration is inconsistent with the Act.

2.3.3 Any provision set forth in this Declaration that the Act requires to be in the Bylaws shall be deemed incorporated in the Bylaws, and any provision of the Bylaws that the Act requires to be in this Declaration shall be deemed incorporated herein.

2.3.4 No provision contained in the Declaration or Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

2.3.5 The use of any gender in the Declaration or Bylaws shall be deemed to include either or both genders and the use of the singular shall be deemed to include the plural whenever the context shall so require.

2.3.6 The creation of this Project shall not be impaired and title to a Unit or Common Element shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of the Declaration or Condominium Map or any amendment thereto to comply with the Act. In the event of a change in statutory law applicable to this Project occurring after the recordation of the Declaration and the Bylaws, such change in law shall control over the provisions of the Declaration or the Bylaws only to the extent the legislative body enacting such change in law expressly provide that the provisions of such change in law shall control over provisions to the contrary in preexisting condominium documents, and then only to the minimum extent necessary to comport the Declaration and Bylaws with the change. In such event, the Developer, Association, and Board shall be authorized to act in accordance with such change in statutory law.

**2.4 Use of Defined Terms.** For purposes of construing and interpreting this Declaration and the Bylaws, terms written with initial capital letters in this Declaration or in the Bylaws ("Defined Terms") shall have the meaning given such terms in Articles 1 and 2 of this Declaration. Defined Terms may be used in the singular or plural or in varying tenses or forms, but such variation shall not affect the defined meaning of such terms so long as those terms are written in initial capital letters. Terms used in this Declaration or in the Bylaws that are written without initial capital letters shall have the meaning they have in common usage; provided, however, that where legal, technical or trade terms are used and the context in which such terms are used indicates that such terms are to be given their legal, technical or trade meanings, such terms shall be given such legal, technical or trade meanings. If any Defined Terms conflict with terms defined in the Act, the definition set forth in the Act will prevail.

**2.5 Definitions.** As used in this Declaration and the Bylaws the following terms shall have the meanings set forth below:

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

**"Agreement of Sale"** means an agreement of sale recorded in the Bureau.

**"Annual Budget"** means that budget established by the Board to provide for the operation of the Project as set forth in Section 6.11 of the Bylaws.

**"Assessment"** means all sums chargeable by the Association against a Unit including, without limitation: (a) regular and special Assessments for Common Expenses, charges and fines imposed by the Association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the Association in connection with the collection of a delinquent Owner's account.

**"Association"** means the Unit Owners' Association of the Project.

**"Association Rules"** means the administrative rules and regulations governing the use and operation of the Project established by the Board from time to time pursuant to Section 10.1 of the Bylaws.

**"Board"** means the Board of Directors of the Unit Owners' Association of The Project.

**"Building"** means, initially, the Tower (which includes the Parking Garage) shown on the Condominium Map. If the Developer exercises its reserved right to expand the Project, "Buildings" shall also mean the additional buildings in the Project that are constructed, including without limitation the Midrise Building.

**"Building Structure"** means all portions of a Building that are not part of the Units in the Building as defined in Section 3.2.2, including all perimeter and party walls, load bearing walls and columns, foundations, footings, floor slabs, girders, beams, supports, interior lobbies and hallways, elevators, stairs and stairwells, parking areas, recreational facilities, storage areas, exterior walls, roofs and all other apparatus and installations existing for common use or support of the Units in the Building. In the event of any conflict between this definition and Section 3.2.2, Section 3.2.2 shall control.

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

**"Bylaws"** means the Bylaws of the Unit Owners' Association of the Project recorded concurrently herewith in the Bureau, as amended from time to time.

**"Capital Improvements Reserve Fund"** means the funds established by the Board pursuant to Section 6.4 of the Bylaws to provide for specific capital improvements for the Project.

**"Commercial Units"** means all Units in the Project except Residential Units and, if and when established pursuant to Section 18.7, Parking Units.

**"Common Elements"** mean those parts of the Project defined in Section 3.3 of this Declaration as Common Elements. The term Common Elements includes those portions of the Project designated in this Declaration as Common Elements, as well as those designated as Limited Common Elements.

**"Common Expenses"** means and includes: (a) all expenses of the administration, management, and operation of the Project and the maintenance, repair, and replacement of, and the making of any additions and improvements to, the Common Elements, and (b) all expenses authorized to be made by the Association pursuant to this Declaration or the Bylaws or pursuant to the Act as set forth in Article 13 of this Declaration or Article 6 of the Bylaws.

**"Common Interest"** means the undivided percentage interest set forth in **Exhibit B** of this Declaration that is appurtenant to a Unit, as it may be adjusted from time to time in accordance with this Declaration.

**"Condominium Map"** means the Condominium Map regarding the Project referenced in Section 1.2 filed in the Bureau, as amended from time to time.

**"Condominium Property Regime"** shall have the meaning set forth in the Act.

**"Cost of Living Factor"** means, for any date, that fraction whose numerator (the "Current Index") is the Consumer Price Index for Urban Consumers for the Standard Metropolitan Statistical Area of Honolulu ("Consumer Price Index"), published by the Bureau of Labor Statistics of the United States Department of Labor in effect on such date and whose denominator (the "Base Index") is the Consumer Price Index in effect on the date of this Declaration; provided, however, that for any date for which the relevant Current Index is less than or equal to the Base Index, the Cost of Living Factor shall be one (1). The Base Index on the date of this Declaration is 250.303. If the Consumer Price Index is discontinued, the Cost of Living Factor shall be calculated based upon that price index published by the Bureau of Labor Statistics which shall be determined by the Board to most closely approximate the purchasing power of all consumers in the City and County of Honolulu. If the Bureau of Labor Statistics shall cease to publish any price index which the Board deems to be comparable, the Cost of Living Factor shall be determined by the Board based on comparable statistics on changes in the purchasing power of the consumer dollar for the applicable period, as published by a responsible and recognized governmental or private authority.

**"Declaration"** means this Amended and Restated Declaration of Condominium Property Regime of the Project, as amended from time to time.

**"Defined Term"** means a capitalized term defined in this Section 2 or elsewhere in this Declaration.

**"Developer"** means The Collection LLC, a Hawaii limited liability company, and its successors and assigns.

**"Developer Control Period"** means the period defined in Article 17.

**"Development Rights"** means all rights or combination of rights reserved by the Developer pursuant to this Declaration.

**"Eligible Mortgage Holder"** means a mortgagee of a Unit that has requested, pursuant to Section 8.5.4 of the Bylaws, that the Association provide it with written notice of certain matters that may affect the Project or the Unit in which it has an interest.

**"Eligible Mortgage Holders' Consent"** means the consent of Eligible Mortgage Holders holding mortgages on Units representing the specified percentage of the Common Interest that is appurtenant to Unit subject to mortgages held by Eligible Mortgage Holders. In any case where this Declaration or the Bylaws require Eligible Mortgage Holders' Consent, the failure of an Eligible Mortgage Holder to respond within sixty (60) days of mailing of a written request for such consent that is mailed, postage prepaid, registered or certified mail, return receipt requested, to the last known address of such mortgagee, shall be deemed to constitute a consent.

**"Fee Owner"** means Robert K.W.H. Nobriga, Micah A. Kane, Janeen-Ann Ahulani Olds, Corbett Aaron Kamohaikiokalani Kalama, and Lance Keawe Wilhelm, Trustees under the Will and of the Estate of Bernice Pauahi Bishop, as trustees and not individuals.

**"General Operating Reserve"** means that fund or funds established by the Board to provide financial stability for the Project as is more fully described in Section 6.3 of the Bylaws.

**"Improvements"** shall mean the improvements now or hereafter existing on, above, or under the Real Property, including, without limitation, the improvements described in this Declaration.

**"Lanai "** means an exterior lanai or balcony to which a Residential Unit has direct, exclusive access.

**"Limited Common Elements"** means those Common Elements designated in Section 3.4 of this Declaration that are reserved for the exclusive use of one or more Units to the exclusion of other Units.

**"Limited Common Interest"** is a percentage assigned to each Unit for purposes of allocating and assessing to that Unit certain Common Expenses that are paid by certain groups of Units as set forth in Article 13 and Section 6.7 the Bylaws. The initial Limited Common Interest percentages assigned to each of the Units are set forth on **Exhibit B**.

**"Majority of Unit Owners"** means the Owners of Units to which are appurtenant more than fifty percent (50%) of the Common Interest. Any other designated percentage of Units Owners shall mean the Owners of Units to which are appurtenant the designated percentage of the Common Interest.

**"Managing Agent"** means an entity employed by the Board pursuant to Section 3.3 of the Bylaws to manage the operation of the Project.

**"Master Association"** means the Kaiaulu 'o Kaka'ako Owners Association, Inc. established by the Master Community Charter.

**"Master Community"** means the master-planned lands identified in the Master Community Charter as "Kaiaulu 'o Kaka'ako", which shall include the Project.

**"Master Community Charter"** means the Community Charter for Kaiaulu 'o Kaka'ako made by Fee Owner that is to be recorded in the Bureau on title to the Real Property prior to or concurrently with Developer's acquisition of fee simple title to the Real Property, as amended from time to time, that contains covenants, conditions, easements and restrictions for the Master Community, together with such bylaws, rules and regulations promulgated pursuant to such charter that are binding on the Project in accordance with the terms of the charter. Upon recording of the Master Community Charter, this Declaration and the Project shall be subject and subordinate thereto.

**"Midrise Building"** means that certain four floor building planned to be constructed within the Project in the area designated on the Condominium Map as "Midrise Phase".

**"Midrise Parking Garage"** means the space within the portion of the Parking Garage shown on Sheet CPR-1.01 of the Condominium Map, which contains the parking stalls and other areas designated or to be designated for the exclusive use of Units in the Midrise Building.

**"Midrise Phase"** means the second increment of the Project that Developer currently intends to create pursuant to Section 18.11, consisting of approximately 54 Residential Units in the Midrise Building, 1 Commercial Unit in the Midrise Building, and 1 spatial Unit that will be the site of a monument identifying the Master Community and associated lighting and landscaping, that will be located and configured by Developer in the exterior area located west of the Midrise Building, near the corner of South Street and Ala Moana Boulevard, and that will be owned and maintained by the Master Association.

**"Opinion of Counsel"** means a written opinion of an attorney selected by the Board and licensed to practice before the Courts of the State of Hawaii advising the Association regarding action taken or proposed to be taken by the Association.

**"Option"** means that certain unrecorded Option Agreement and Purchase and Sale Agreement dated December 2, 2011, a memorandum of which is recorded in the Bureau as Document Number A-44150881, the optionee's rights in which were assigned to Developer by Assignment and Assumption of Option and Purchase and Sale Agreement recorded in the Bureau as Document Numbers A-48550936A through A-48550936B.

**"Owner"** means a person, trust, corporation, partnership, limited liability company, or other entity owning severally or as a co-tenant a Unit and its appurtenant Common Interest. To such extent and for such purposes, including the exercise of voting rights, as shall be provided by the terms of any lease recorded in the Bureau, a lessee or sublessee of a Unit or interest therein shall be deemed to be the Owner of such Unit to the extent provided in such lease. The vendee of a Unit pursuant to an Agreement of Sale shall have the rights of an Owner, including the right to vote; provided that the vendor may retain the right to vote on matters substantially affecting such vendor's security interest in the Unit as provided in Section 514B-124 of the Act. Prior to the first recordation of a Unit Deed regarding a Unit, the Developer is the Owner of that Unit and shall have all of the rights and responsibilities of an Owner with respect thereto that are set forth in this Declaration, the Bylaws, and the Act.

**"Owner Representative"** means a natural person designated pursuant to Section 2.5.3 of the Bylaws to represent an Owner that is a corporation, general partnership, limited partnership, limited liability company or other entity.

**"Parking Garage"** means that portion of the Tower identified on the Condominium Map as a seven-level parking structure and intended for use primarily for vehicular parking.

**"Parking Units"** means any Units consisting of a parking or loading area that the Developer may in the future create pursuant to Section 18.7.

**"Phase"** means the Tower Phase, and each separate increment within the Project subsequently created by the Declarant pursuant to Section 18.11.

**"Project"** means the condominium project consisting of the Real Property and the Improvements created by this Declaration.

**"Project Architect"** means such architect for the Project as the Board may select from time to time.

**"Quorum"** shall, with respect to the Association, have the meaning set forth in Section 2.5.4 of the Bylaws and shall, with respect to the Board, have the meaning set forth in Section 3.8.7 of the Bylaws.

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

**"Real Property"** means the land and appurtenant rights and easements described on **Exhibit A**, together with all Improvements located on, above or within such land from time to time.

**"Residential Units"** means all Units in the Project that may be used for residential purposes pursuant to this Declaration.

**"Tower"** means that certain 43-floor Building within the Project shown on the Condominium Map, including the Parking Garage and the six-level portion of the Tower at the corner of Keawe and Auahi Streets.

**"Tower Parking"** means all parking stalls, driveways, loading areas, bicycle parking, and stairs in the Parking Garage excluding the Midrise Parking Garage and the Limited Common Elements within the Parking Garage assigned to Commercial Unit Number 3.

**"Tower Phase"** means the initial increment of the Project as described herein, consisting primarily of the Tower (including 397 Residential Units and 3 Commercial Units) and Parking Garage.

**"Tower Recreation Facilities"** means the E-lounge and surf board storage located on the first floor of the Tower, the workshop area located on the second floor of the Tower, all bicycle storage areas located within the Tower and the Tower Parking, including without limitation the bicycle storage on the fourth floor of the Tower, the dog run and dog washing areas on the sixth floor of the Tower, the recreation deck, pool, club room and adjacent kitchen, the fitness and yoga center, and common restrooms located on the seventh floor of the Tower and above the Parking Garage, and all other areas in or around the Tower designated for the exclusive recreation-related use of the residents of Residential Units in the Tower.

**"Transition Date"** means the date on which the Developer Control Period terminates and the Owners first elect members of the Board.

**"Trustee"** means that bank or trust company having a principal place of business in the State of Hawaii designated by the Board to hold and administer condemnation or insurance proceeds for the Project.

**"Unit"** shall mean, initially, any one of the 397 Residential Units and 3 Commercial Units contained in the Tower Phase of the Project, any two or more of which may sometimes be referred to collectively as "Units." If the Developer exercises its reserved right to expand the Project, "Unit" shall also mean any additional condominium units created within the Project.

**"Unit Deed"** means the legal instrument signed by Developer conveying a fee simple interest in a Unit and the Common Interest appurtenant to the Unit to an Owner.

### **ARTICLE 3. DESCRIPTION OF THE PROJECT AND DIVISION OF PROPERTY**

**3.1 Description of the Buildings.** Initially the Project contains one (1) new Building identified as the Tower, which contains forty three stories, without a basement, and includes the Parking Garage. The Tower is constructed principally of concrete, steel, glass, and allied building materials.

**3.2 Description of the Units.** Each Unit, together with its appurtenant interest in the Common Elements, constitutes, for all purposes a separate parcel of real estate. Initially, Four Hundred (400) fee simple estates are designated in the spaces within the perimeter walls, floors and ceilings of each of the Four Hundred (400) Units of the Project, which spaces are designated on the Condominium Map.

**3.2.1 Unit Numbers and Locations.** The Unit numbers, layout, locations, and interior areas of each Unit are shown on the Condominium Map. Each Unit's number, type, and Common Interest are listed on **Exhibit B**. Each Residential Unit type is described on **Exhibit C**. The numbers of the Residential Units on floors three through eight of the Tower are identified on sheets CPR-1.12 through CPR-1.17 of the Condominium Map. The numbers of the Residential Units on floors nine through forty three of the Tower are identified on sheets CPR-1.18 through CPR-1.21 of the Condominium Map, with each such Unit's number consisting of the number of the floor on which the Unit is located followed by the two-digit number shown on the relevant sheet of the Condominium Map. For example, the type "A" Unit located on the ninth floor of the Tower, as shown on Sheet CPR-1.18, is Unit number 901. Commercial Units 1, 2 and 3 are all located on the first floor of the Project, with their specific layout, locations, areas and numbers shown on Sheets CPR-1.10 and CPR-2.07 of the Condominium Map.

**3.2.2 Unit Boundaries.** Each Unit consists of the space and improvements within the boundaries of the Unit as shown on the Condominium Map and described herein.

**3.2.2.1 Residential Unit Boundaries.** Each Residential Unit shall be deemed to include as part of the Unit: (i) the inner decorated or finished surfaces of all walls and columns located along the perimeter of a Unit as shown on the Condominium Map, and of the Unit floors and ceilings, (ii) all of the walls within the perimeter of the Unit that are not load-bearing, the finish surface of all load-bearing walls and columns located entirely within the perimeter of a Unit, the interior pane of all double-pane windows, the interior surfaces of all window frames, window cranks and hardware, Lanai doors and frames, the entirety of the entry door except its exterior surface facing the common hallway, and interior doors; (iii) all

lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces referenced above; (iv) all appliances and fixtures installed within the boundaries of the Unit or on its Lanai and replacements thereof, including all water heaters within Residential Units and all portions of the individual air conditioning system serving each Residential Unit that are located within the Unit or on the Unit's Lanai; (v) any pipes, shafts, ducts, pumps, valves, wires, conduits or other utility or service lines which are located within the perimeter of a Unit and serve only that Unit (including the spaces therein); and (vi) the space surrounded by such boundaries. The Residential Units shall not be deemed to include: (i) the undecorated or unfinished surfaces of the perimeter (including party) walls or interior load bearing walls or columns; (ii) the undecorated or unfinished surface of the floors and ceilings surrounding each Unit; (iii) any pipes, shafts, ducts, pumps, valves, wires, conduits or other utility or service lines located within a Residential Unit's boundaries that are utilized for or serve more than one Unit; and (iv) all other portions of the Residential Units' exterior windows.

**3.2.2.2 Commercial Unit Boundaries.** Each Commercial Unit shall be deemed to include as part of the Unit: (i) the inner decorated or finished surfaces of all walls and columns located along the portions of the perimeter of a Unit as shown on the Condominium Map that adjoin other portions of the Building in which the Commercial Unit is located, and of the Unit ceiling and interior floors, (ii) all of the walls within the perimeter of the Unit that are not load-bearing, including non-load-bearing walls that separate the interior and exterior portions of the Unit, (iii) the finish surface of all load-bearing walls and columns located entirely within the perimeter of a Unit, including without limitation the load-bearing walls and columns that separate the interior and exterior portions of the Unit, (iv) the entirety of the Unit's exterior windows and doors, including frames, handles, and window cranks and hardware, (v) for any Commercial Unit with a Unit "Exterior" area identified on the Condominium Map, the exterior space consisting of the area extending horizontally from the exterior surface of the Building to the border of the "Exterior" area defined by dimensioned lines on the Condominium Map, and extending vertically from two feet below the surface of the ground within that "Exterior" area to a height equal to the maximum height of the Unit's interior ceiling, including all space, improvements, seating and display areas, and signage within that area; (vi) all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces referenced above; (vii) all appliances and fixtures installed within the boundaries of the Commercial Unit and replacements thereof; (viii) any pipes, shafts, ducts, pumps, valves, wires, conduits or other utility or service lines which are located within the perimeter of a Unit and serve only that Unit (including the spaces therein); and (ix) the space surrounded by such boundaries. The Commercial Units shall not be deemed to include: (i) the undecorated or unfinished surfaces of the interior load bearing walls or columns, and other walls that constitute a portion of the Unit's boundaries; (ii) the undecorated or unfinished surface of the floors and ceilings surrounding each Unit; and (iii) any pipes, shafts, ducts, pumps, valves, wires, conduits or other utility or service lines located within a Commercial Unit's boundaries that are utilized for or serve more than one Unit.

**3.2.3 Access.** Each Unit has immediate access through Common Element hallways, elevators, stairwells, corridors, lobbies and/or walkways of the Project to public streets and to the common areas of the Project.

**3.3 Common Elements.** One freehold estate is hereby designated in all remaining portions of the Project, herein called the "Common Elements," including specifically but not limited to:

**3.3.1** The Real Property, in fee simple, and any and all easements and appurtenances thereto.

**3.3.2** Except to the extent included within the boundaries of a Commercial Unit as defined above, the Buildings and other Improvements, including all unfinished, undecorated portions of all perimeter (including party) walls and interior load-bearing walls and columns, the undecorated or unfinished surfaces of floors and ceilings, all structural components, foundations, floor slabs, columns, girders, beams, supports, shafts, ceilings and spaces between the ceiling and the floor slab or roof above, roofs, exterior surfaces of the Project, including any paint or coating thereon, but excluding the Units located within the Buildings. In the event of any conflict between this Section and Section 3.2.2, Section 3.2.2 shall control.

**3.3.3** The Parking Garage and all roads, parking areas and parking stalls, driveways, ramps, loading areas or zones, sidewalks and walkways which are rationally of common use by Owners of more than one Unit.

**3.3.4** All grounds, planters, landscaping, hardscaping, irrigation, exterior or common area lighting, and signage within or appurtenant to the Project.

**3.3.5** All chutes, flues, ducts, pumps, valves, sewer lines, drain lines, electrical equipment, cables, wiring, pipes, shafts, wires, conduits or other utility or service lines which are utilized for or serve more than one Unit and other central and appurtenant transmission facilities over, under and across the Project which serve more than one Unit for services such as power, light, water, gas, sewer, refuse, telephone and radio and television signal distribution.

**3.3.6** Any individual electrical or water meters or submeters for Units, together with the lines from such meters to the Units, but only to the point where such lines enter the Units.

**3.3.7** The lobbies, mailrooms, mailboxes, elevators, storage rooms, trash rooms, utility rooms, generator room, common hallways, bike storage areas, storage lockers, common restrooms and utility and electrical rooms, excluding any of the foregoing that are expressly included within the boundaries of a Commercial Unit.

**3.3.8** All exterior windows and doors (excluding Unit Lanai doors, and the interior surface of Unit windows).

**3.3.9** The Tower Recreation Facilities.

**3.3.10** All Lanais to which a Residential Unit has direct and exclusive access, including the finish surfaces and railings.

**3.3.11** Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

**3.4 Limited Common Elements.** Certain parts of the Common Elements, herein called the "Limited Common Elements," are or may be designated, set aside and reserved for the exclusive use of certain Units, and such Units shall have appurtenant thereto exclusive easements for the use of such Limited Common Elements as set forth herein.

**3.4.1 Designated Limited Common Elements.** Each portion of the Common Elements listed in this Section shall be a Limited Common Element appurtenant to the Unit or Units identified with it in this Section.

**3.4.1.1 Utilities and Exterior Fixtures Serving or Used by Only One Unit.** The following shall be Limited Common Elements appurtenant to a Unit: (i) all chutes, flues, ducts, wires, conduits, or any other fixtures intended for the exclusive use of that Unit; (ii) grease traps designed to serve a single Unit; and (iii) any other fixtures that are designed to serve a single unit but that are located outside the Unit's boundaries.

**3.4.1.2 Building Structure.** The Building Structure of each Building in the Project (including the Tower and any additional Buildings added to the Project in the future) is a Limited Common Element appurtenant to all of the Units located within that Building.

**3.4.1.3 Lanais.** All Lanais are Limited Common Elements appurtenant to the Residential Units to which they have immediate access. The Lanai Limited Common Elements include the improved surface of the Lanai deck, and the Unit-facing surfaces of the railings, walls and glass barriers surrounding the Lanai, and any light fixtures within the Lanai, all of which shall be the Unit Owner's responsibility to maintain.

**3.4.1.4 Residential Unit Parking Stalls.** Each Residential Unit shall have for its exclusive use the Limited Common Element parking stall(s) designated for that Unit's use on **Exhibit B**. References to a parking stall number in this Declaration and **Exhibit B** shall mean the parking stall depicted on the Condominium Map that bears that number.

**3.4.1.5 Commercial Unit Parking Stalls.** The Commercial Units shall have for their exclusive use the following Limited Common Element parking stalls:

**3.4.1.5.1 Commercial Unit Number 1.** Parking stall numbers 1064R, 1065R, 1066R, 1067R and 1068RH.

**3.4.1.5.2 Commercial Unit Number 2.** Parking stall numbers 1041R, 1042R and 1043R.

**3.4.1.5.3 Commercial Unit Number 3.** Parking stall numbers 1001RH, 1002R, 1003R, 1004R, 1005R, 1006R, 1007R, 1008R, 1009R, 1010R, 1011R, 1012R, 1013R, 1014R, 1015R, 1016R, 1017R, 1018R, 1019R, 1020R, 1021R, 1022R, 1023R, 1024R, 1025R, 1026R, 1027R, 1028R, 1029R, 1030R, 1031R, 1032R, 1033R, 1034R, 1035R, 1036R, 1037R, 1038R and 1040H.

**3.4.1.6 Tower Guest Parking Stalls.** The following parking stalls are Limited Common Elements appurtenant to and for the exclusive use of the Tower Residential Units collectively as guest parking: 1045G, 1046G, 1047G, 1048G, 1049G, 1050G, 1051G, 1052G, 1053G, 1054G, 1055G, 1056G, 1057G, 1058G, 1059G, 1060G, 1061G, 2001G, 2002G, 2003G, 2004G, 2005G, 2006G and 2007G.

**3.4.1.7 Tower Loading Stalls.** The following loading stalls are Limited Common Elements appurtenant to and for the exclusive use of the Tower Residential Units and Commercial Unit Number 1 collectively as temporary vehicle loading and unloading zones, in accordance with the Association Rules: 1039L, 1062L and 1063L.

**3.4.1.8 Tower Recreation Facilities.** The Tower Recreation Facilities are Limited Common Elements appurtenant to and for the exclusive use of all of the Residential Units in the Tower.

**3.4.1.9 Mailboxes.** Each Residential Unit in the Tower shall have exclusive use of the mailbox in the lobby of the Tower bearing the same number as the Unit.

**3.4.1.10 Storage Lockers.** Each Residential Unit in the Tower shall have exclusive use of the storage locker in the Tower or the Parking Garage that is designated for that Unit's use on **Exhibit B**. The storage lockers are identified on the Condominium Map by the letter "S" or "L" followed by a three-digit number. Developer may create and assign additional storage lockers as provided in Article 18, and any such additional storage lockers so assigned to a Unit shall be a Limited Common Element appurtenant to that Unit. Unit Owners shall be responsible for maintaining their storage lockers and their contents in clean, sanitary and pest- and odor-free condition.

**3.4.1.11 Certain Air Conditioning Equipment, Lines and Conduits.** Portions of the air conditioning system for certain Residential Units, including the air conditioning compressor and associated power, control and refrigerant lines and conduits, are located outside the Residential Units and Lanais. Initially this applies to the air conditioning systems for Residential Units 306, 307, 308, 406, 407, 408, 506, 507, 508, 606, 607, 608, 702, 704 and 706 and all of the Residential Units on Tower floors forty-two and forty-three. The compressors for those air conditioning systems are located in the Parking Garage (in case of Units on floors three through seven) or on the roof of the Tower (in case of Units on floors forty-two and forty-three). Each such Unit's compressor is located in an area designated on the Condominium Map as an "A/C Limited Common Element" for that Unit and others, which areas shall each be Limited Common Elements appurtenant to the Units for which they are designated, collectively, for use solely as the location of the Unit's air conditioning compressor. (As set forth in Article 18, Developer reserves the right to designate additional such areas for Units not initially designated to have out-of-Unit air conditioning equipment.) All portions of each such Unit's air conditioning equipment located outside of the Unit, including the air conditioning compressor located in such a garage or rooftop Limited Common Element, and its power, control and refrigerant lines and conduits located outside of the Unit, shall be Limited Common Elements appurtenant to that Unit, maintenance of which shall be the responsibility of the Unit Owner and not the Association.

**3.4.1.12 Tower Parking Areas.** All levels of the Parking Garage except the Midrise Parking Garage and the portion of the Parking Garage containing the parking stalls assigned to Commercial Unit number 3, and all gates and security equipment controlling access to such levels are Limited Common Elements appurtenant to the Residential Units in the Tower.

**3.4.1.13 Midrise Parking Garage.** The Midrise Parking Garage and all gates and security equipment controlling access to that garage shall be a Limited Common Element appurtenant to the Units in the Midrise Phase, if and when it is constructed.

**3.4.1.14 Commercial Unit Number 1 Rooftop Equipment Area.** The rooftop area designated as "Commercial Unit 1 Equipment Area" on Sheet CPR-1.16 of the Condominium Map, and any conduits and power, control or other lines connecting that area to Commercial Unit Number 1 shall be Limited Common Elements for the exclusive use of Commercial Unit number 1 to install and maintain rooftop equipment for air conditioning, communications, antennae, solar energy collection and conversion, and other equipment used in connection with the use or operation of that Unit. Such equipment and installations may be installed, operated, repaired and replaced without the approval of the Board, the Association or any other Owners so long as they do not jeopardize safety or the structural soundness and integrity of the rooftop. Upon request the Board shall promptly confirm that installation, operation, use and replacement of such equipment and installations is permitted, which confirmation shall not be withheld unless a licensed architect or structural engineer provides the Board a written opinion that it would jeopardize the structural soundness and integrity of the rooftop. The Owner of Commercial Unit Number 1 shall be responsible for maintenance of all such equipment and installations and any damage to the rooftop or other components of the Building Structure resulting from its use of that area.

**3.4.1.15 Commercial Unit Trash Collection Areas.** The enclosed area designated as "C.U. 1 Trash" on Sheet CPR-1.10 of the Condominium Map is a Limited Common Element appurtenant to Commercial Unit 1. The enclosed area designated as "C.U. 2 Trash" on Sheet CPR-1.10 of the Condominium Map is a Limited Common Element appurtenant to Commercial Unit 2. Each Commercial Unit Owner shall be responsible for maintaining its trash collection area and its contents in clean, sanitary and pest-free condition.

**3.4.1.16 Commercial Unit 3 Parking Garage Area.** The entire space within the portion of the Parking Garage in which Commercial Unit 3's parking stall numbers 1001RH through 1033R are located as shown on Sheet CPR-1.00 of the Condominium Map is a Limited Common Element appurtenant to Commercial Unit 3 which may be used for parking (including valet parking), storage and a trash collection area. The Owner of Commercial Unit 3 shall be responsible for maintaining this area, which shall be kept in a clean, sanitary and pest-free condition.

**3.4.2 Limited Common Element Expenses.** Except where otherwise provided herein or in the Bylaws, the costs and expenses of every description pertaining to the Limited Common Elements, including but not limited to the costs of maintenance, repair, replacement, improvement or additions to the Limited Common Elements, shall be a Common Expense, some of which shall be allocated and assessed to certain groups of Units as set forth in more detail in Section 6.7 of the Bylaws.

**3.4.3 Designation of Additional Limited Common Elements.** As set forth in Article 18, the Developer has the reserved right and power to designate portions of the Common Elements, including parking stalls and exterior and rooftop areas, as Limited Common Elements appurtenant to existing Units or additional Units developed within the Project.

**3.4.4 Reassignment and Transfer of Limited Common Elements.** Limited Common Elements may be reassigned and transferred between Units in accordance with the provisions of Section 514B-40 of the Act.

#### **ARTICLE 4. COMMON INTEREST**

**4.1 Common Interest** Each Unit shall have appurtenant thereto an undivided percentage interest in all Common Elements of the Project (the "Common Interest"), and the same percentage interest in all common profits and Common Expenses of the Project and for all other purposes including voting. The initial Common Interest appurtenant to each Unit in the initial Tower Phase is listed in **Exhibit B**. The Common Interest for each Unit was initially determined based on the approximate proportion that the Unit's net interior area bears to the aggregate net interior area of all Units, rounded to the sixth decimal place and with minor adjustments made arbitrarily to ensure that the total Common Interest equals 100%. If and when one or more additional Phases of the Project are developed as provided below, the Common Interest appurtenant to each Unit shall be adjusted as provided below. Any profits generated from the use of a particular Unit or Limited Common Element shall not be deemed "common profits" subject to

distribution in accordance with the Common Interest as set forth above, but shall belong to the Owner of such Unit or Units to which such Limited Common Element is appurtenant.

**4.2 Changes to Common Interest** The Common Interest is subject to change in connection with the Developer's exercise of its reserved rights as set forth herein. In that case Developer shall have the absolute right to make insubstantial adjustments to the Common Interest of such Units as it determines in its discretion to assure that the total Common Interest for all Units in the aggregate equals one hundred percent (100%). Otherwise the Common Interest may not be altered except as provided in the Act.

## **ARTICLE 5. ALTERATION AND TRANSFER OF THE COMMON INTEREST**

**5.1 Permanent Character of Common Interest.** Except as provided in this Declaration (including Section 18.11 relating to future Phases of the Project) or the Act, the Common Interest appurtenant to each Unit shall have a permanent character and shall not be altered without the consent of all of the Unit Owners affected, expressed in an amendment to this Declaration duly recorded or except as otherwise set forth in this Declaration or the Act. 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 if such interest is not expressly mentioned or described in the conveyance or other instrument.

## **ARTICLE 6. EASEMENTS**

In addition to any easements of record or as provided in the Master Community Charter, the Units and the Common Elements shall also have, or be subject to as the case may be, the following easements:

**6.1 Easement of Ingress and Egress.** Each Unit shall have appurtenant to it: nonexclusive easements in the Common Elements for ingress to, egress from, utility services for, and support of such Unit; and in the other Common Elements for use according to their respective purposes, subject always to the exclusive use of the Limited Common Elements as provided herein; and in all other Units for support.

**6.2 Easement for Encroachments.** If any part of the Common Elements now or hereafter encroaches upon any Unit or Limited Common Element, or if any Unit encroaches upon the Common Elements or upon any other Unit or appurtenant Limited Common Element, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. In the event that the improvements in the Project shall be partially or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Project, minor encroachments (as determined by the Board) of 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 exist.

**6.3 Easement for Access to Common Elements Located in Units.** Each Unit and Limited Common Element shall be subject to an easement in favor of the Owners of all other Units, exercisable by the Board of Directors and its Managing Agent, without liability to any Owner for trespass or other consequential damage, during reasonable hours, for access to any Common Elements located in such Unit or Limited Common Element.

**6.4 Easement for Access Through Units to Common Elements for Emergency Repairs.** The Association shall have the right, to be exercised by its Board or the Managing Agent, without liability to any Owner for trespass or other consequential damage, to enter each Unit or Limited Common Element from time to time during reasonable hours as may be appropriate for the operation of the Project or, at any time, for making emergency repairs therein which may be necessary to prevent damages to any Unit, Common Element, or Limited Common Element.

**6.5 Easements for Noise and Other Impacts.** Operation and use of the Project's mechanical equipment, air conditioning systems (including compressors and other equipment in the Parking Garage, on Lanais, and on the Project's roofs), elevators, trash chutes, indoor and outdoor recreational and common areas, and the Commercial Units (including their outdoor areas, fans, blowers and air conditioning systems) will result in noise, vibrations, dust, odors, light and other impacts to Units above, below, or adjacent to any such equipment, facilities or Units. All Units and the Common Elements shall be subject to an easement for such impacts and neither the Association nor any Unit Owner shall be

liable for such impacts or any resulting disturbance of Unit occupants or effects on Unit contents, vehicles or other property.

**6.6 Developer's Easement for Development & Construction of the Project.** Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees and assigns, shall have an easement over, under and upon the Project, including the Common Elements, Limited Common Elements, and any Unit, as may be reasonably necessary or appropriate for the completion of the improvements of the Project, including the performance of any work, demolition, or repairs required to remedy any potential, alleged or existing design or constructed defects. Developer's rights under this Easement include, without limitation: (i) the right to create and cause noise, dust, vibration and other nuisances created by and resulting from any work connected with or incidental to development and construction of the Project or any projects or work located therein, (ii) the right to designate and exclusively use construction and construction storage, staging and construction worker parking areas within the Project, and to secure such areas with temporary construction fences or walls, and (iii) the right to permit construction traffic, including trucks delivering concrete and other construction materials and equipment, to use the roads and parking areas within the Project. Each and every Owner or other person acquiring any interest in the Project waives, releases and discharges any rights, claims or actions such party may acquire against Developer, its agents, employees, consultants, contractors, licensees, successors and assigns, as a result of any noise, dust, vibration and other nuisances or annoyances arising from the completion of such improvements or the exercise of the foregoing rights.

**6.7 Developer's Easement for Sales and Marketing of the Project.** Developer, its brokers, sales agents, representatives and other related persons shall have the right to conduct extensive sales activities at the Project, including the use of any Unit owned or leased by Developer, the Common Elements, the Tower Recreation Facilities, guest parking stalls, and all Limited Common Elements appurtenant to any Unit owned by Developer, for model Units, sales, leasing, management and construction offices, parking and extensive sales displays and activities, the posting and maintenance of signs and other advertisements relating to such sales activities, and to install, maintain, locate, relocate, and reconfigure such structures, displays, advertising signs, flags, sales desks, kiosks, sales, leasing, management and/or construction offices, model Units, interior design and decorator centers, and parking areas for employees, agents, and prospective buyers, as may be necessary or convenient for the development of the Project or any component thereof. In the event that Developer's mortgage lender, if any, or any successor to or assignee of Developer's mortgage lender shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or in the exercise of the mortgage remedies or by a deed or an assignment in lieu of foreclosure, such mortgage lender, its successors and assigns, shall have the same rights as Developer to conduct such sales activities on the Project.

**6.8 Power of Association to Grant Certain Easements.** To the maximum extent permitted by law, the Association shall have the right, to be exercised by its Board, to grant within the Common Elements (other than the Limited Common Elements reserved to exclusive use of a single Unit), easements and rights-of-way over, across, and under the Common Elements (other than Limited Common Elements reserved to exclusive use of a single Unit) for utilities, sanitary and storm sewers, cable television, and other public services and to relocate, realign or cancel the same provided that such easements, their use, relocation, realignment, or cancellation shall not materially impair or interfere with the use of any Unit or Limited Common Element.

## **ARTICLE 7. REGULATIONS OF USES & ACTIVITIES**

**7.1 Permissible Uses of Commercial Units.** The Commercial Units may be used and occupied for any purpose permitted by law, the Master Community Charter, the terms of any lease demising a Commercial Unit, and any separate restrictive covenants included in the Unit Deed for such Commercial Units or otherwise recorded on title to a Commercial Unit.

**7.2 Permissible Uses of Tower Residential Units.** The Residential Units in the Tower may be used and occupied only for residential use by Owners and their families, tenants and guests, subject at all times to the applicable laws, ordinances, rules, regulations and restrictions of the State of Hawaii, the Hawaii Community Development Authority, the City & County of Honolulu, and the Master Community Charter. Leases of Residential Units for periods of less than thirty (30) consecutive days are prohibited. However, if in the future leases of Residential Units for a shorter period are permitted under the State and