

City and County laws, ordinances and regulations applicable to the Project, the Board may waive this restriction to permit all Residential Units to be leased for periods no less than such legally-permitted shorter period. Residential Units may not be used for time share plans or programs or any similar arrangement by which use or occupancy of the Units is divided into defined time periods. Nothing contained herein shall be deemed to restrict the use of one or more Residential Units owned or leased by the Association from time to time for use as a Project resident manager's residence.

7.3 Permissible Uses of Additional Units. When the Developer adds new Units to the Project pursuant to the Developer's exercise of the Development Rights, the permissible uses of such Units shall be defined in the amendment to this Declaration that implements the exercise of such rights, and may include any uses permitted by applicable law and Master Community Charter.

7.4 Parking Stalls & Areas. Parking Units (if any) and Residential Unit parking stalls and areas shall be used only for motor vehicle parking, and may not be used for storage or automobile maintenance and repair.

7.5 Owners' Right to Sell. The Owners of the respective Units shall have the absolute right to sell or otherwise transfer such Units subject to all provisions of the Act, this Declaration, and the Bylaws.

7.6 Prohibition of Unauthorized Uses and Activities. No Owner shall do or suffer or permit to be done anything to any Unit or appurtenant Limited Common Element or elsewhere on the Project which will: (i) jeopardize the safety or soundness of the Project, or (ii) create a nuisance or interfere with or unreasonably disturb the rights of other Owners and occupants, (iii) result in the cancellation of any Association insurance required for the Project by the Declaration or Bylaws, (iv) result in the increase in premiums of any Association insurance required for the Project by the Declaration or Bylaws without the prior written consent of the Board, or (v) violate the Master Community Charter.

7.7 Prohibition of Unauthorized Alteration or Decoration to the Exterior and Common Areas of the Project. Except as specifically permitted by the Bylaws or as authorized in writing by the Board, no Owner of a Residential Unit shall place or permit the attachment, hanging, projection or protrusion of any object, garments or materials of any kind from the roofs, exterior walls, windows or doors of the Residential Units, or the placement of any other matter or decoration within or without the Unit which shall be visible from the exterior of the Project, nor shall any Owner change, tint or alter any of the exterior glass windows of a Residential Unit in any way, provided that with Board approval clear window tints may be permitted, nor shall any Residential Unit Owner change the exterior appearance of the Project in any manner. This section does not restrict the use or alteration of any Commercial Unit, including its windows, signage and exterior areas included within a Commercial Unit.

7.8 Owners to Maintain Units in Good Order. The Owner of each Unit shall keep the interior of such Unit and all plumbing, electrical, air conditioning and other fixtures and appurtenances in good order and repair and shall be responsible for any damage or loss caused by failure to do so.

7.9 Service Animals. Guide Dogs, Signal Dogs and Service Animals as defined in Chapter 515, Hawaii Revised Statutes, are permitted at the Project, subject to compliance with all applicable laws and ordinances and applicable provisions of the Bylaws and Association Rules. All such service animals shall be registered with the Managing Agent.

7.10 Pets and Other Animals. A maximum of two (2) dogs and/or cats may be kept or housed in each Residential Unit as domestic pets (and not for commercial or breeding purposes). In addition, a reasonable number of small pet birds (such as canaries and parakeets) and fish may be kept as domestic pets in cages or aquariums within a Residential Unit. All permitted pets shall be kept in strict accordance with the terms and conditions of the Bylaws and the Association Rules. All pets must be kept within the interior of a Residential Unit, not on its Lanai. No animals may be placed or kept in storage lockers. Except as specifically permitted in Section 7.9 or this Section 7.10, no animals of any kind may be kept, housed, kenneled, bred or raised in Residential Units.

ARTICLE 8. COMPLIANCE WITH DECLARATION AND BYLAWS

All Owners, and their respective employees, tenants, families, agents, 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 conditions and restrictions set forth herein, with the Bylaws and with the

Association Rules adopted pursuant thereto and all agreements, decisions and determinations of the Board as lawfully made or amended from time to time, and failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board on behalf of the Association, or, in a proper case, by any aggrieved Unit Owner. Each Unit Owner shall have standing to maintain an action to enforce the terms and conditions of this Declaration, the Bylaws and the Association Rules; provided, however that: (i) no Owner may bring an action on behalf of the Association or on behalf of more than one (1) Owner, except in accordance with the provisions of Article 22 below and with the Act with respect to derivative actions and (ii) any judgment, award or other recovery on behalf of an Association shall be payable only to the Association as a realization of the Association.

ARTICLE 9. AMENDMENT OF DECLARATION

9.1 Amendments. Except as otherwise provided herein or in the Act, this Declaration may be amended by affirmative vote of Owners of Units to which at least sixty-seven percent (67%) of the Common Interest is appurtenant, evidenced by an instrument in writing, signed and acknowledged by any two (2) officers of the Association, which amendment shall become effective upon recordation in the Bureau. Notwithstanding the foregoing: (i) the vote or written consent of the Owners of Units to which are appurtenant not less than sixty-seven percent (67%) of the Common Interest, and (ii) Fifty-One Percent (51%) Eligible Mortgage Holders' Consent shall be required to make any amendment to this Declaration that is of a material adverse nature to mortgagees. 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. Notwithstanding the foregoing and notwithstanding the sale of any of the Units, the Developer acting alone may amend this Declaration to: (i) file the "as built" verified statement, required by Section 514B-34(a) of the Act, of a licensed architect, engineer or surveyor certifying that the Condominium Map theretofore filed, as amended by the revised pages (if any) filed with the amendment, fully and accurately depicts the layout, location, boundaries, dimensions and Unit numbers of the Units substantially as built; and (ii) exercise the rights reserved to the Developer in Article 18 or elsewhere in this Declaration.

9.2 Limitations on Amendments. Notwithstanding the provisions of Section 9.1, (i) no amendment to this Declaration affecting the use or occupancy of the Commercial Units may be adopted by vote of the Owners without the consent of the Owners of such Commercial Units, (ii) no amendment to this Declaration affecting a Unit owned by the Master Association may be adopted without the consent of the Master Association, and (iii) no amendment to this Declaration affecting the Development Rights (including without limitation the Developer's reserved rights set forth in Articles 17 and 18), the use or occupancy of any Unit owned by the Developer or an affiliate of the Developer, or the ownership, use or control of any parking areas within the Project may be adopted by vote of the Owners without the consent of the Developer. This Section 9.2 may not be amended by vote of the Owners without the consent of the Developer, the Master Association and all of the Commercial Unit Owners.

ARTICLE 10. OWNERS' ASSOCIATION.

10.1 Form of Association. The Association shall be organized as a nonprofit corporation under the laws of the State of Hawaii and shall be known as Association of Unit Owners of The Collection.

10.2 Membership Qualification and Transfer. Each Owner shall be a member of the Association and shall be entitled to one membership for each Unit so owned. Ownership of a Unit shall be the sole qualification for membership in the Association. The Association membership of each Owner shall be appurtenant to the Unit giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to said Unit and then only to the transferee of title to such Unit. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Unit shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

10.3 Association Meetings. The Association shall meet at least once each year at a date to be selected by the Board, and at such other times and in accordance with such other procedures as set forth in the Bylaws.

10.3.1 Special Meetings. A special meeting of the Association may be called by the President, a majority of the Board, or by a petition to the secretary or Managing Agent signed by holders of not less than twenty-five percent (25%) of the Common Interest.

10.3.2 Notice of Meetings. Not less than fourteen days in advance of any meeting, the secretary or other officer specified in the Bylaws shall provide notice to each Owner by: (i) hand-delivery; (ii) prepaid U.S. Mail to the Unit address or such other address designated in writing by the Owner; or (iii) by electronic mail if requested in writing by the Owner. Meeting notice must state the date, time, and place of the meeting and provide an agenda.

10.3.3 Meeting Minutes. Minutes of each Association meeting shall be approved either at the next regular Association meeting or, if authorized by the Association, by the Board within sixty (60) days of the Meeting. If approved by the Board, Owners shall within thirty (30) days of approval be given a copy of the minutes or notified of their availability. If approved by the Association, draft minutes shall be made available within sixty (60) days of the meeting, and approved minutes shall be made available to Owners within seven (7) days of approval. Association members may offer corrections to the minutes at the next Association meeting.

10.4 Voting. Each Owner shall be a member of the Association and shall be entitled to that fraction of the total vote of all of the Owners which equals the percentage of the Common Interest appurtenant to such Apartment as set forth in the Declaration. Voting by multiple owners and by proxy shall be governed by procedures set forth in the Bylaws.

ARTICLE 11. CONDOMINIUM MANAGEMENT

11.1 Board, Election by Owners. From and after the Transition Date on which the Developer Control Period ends, the Board shall consist of nine (9) members who meet the qualifications set forth in the Bylaws, unless such number is changed in accordance with the Bylaws. Prior to the Transition Date, Board members shall be appointed by the Developer in accordance with Article 18. Following the Transition Date, Board members shall be elected in accordance with such procedures set forth in the Bylaws.

11.2 Duties of the Board. Except as otherwise provided in this Declaration, the Bylaws, or the Act, the Board shall at all times act on behalf of the Association and shall exercise all powers of the Association in accordance with such procedures set forth in the Declaration and Bylaws. The Board, on behalf of the Association, shall:

11.2.1 Improvements Required by Law. Make, build, maintain and repair all roads, curbs, sidewalks, street lights, fences, sewers, drains and other improvements which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Common Elements or any part thereof.

11.2.2 Observe Requirements Concerning Maintenance of the Project. Keep all Common Elements of the Project in a strictly clean and sanitary condition and observe and perform all requirements of the Master Community Charter applicable to the Project and all laws, ordinances, rules and regulations now or hereafter made by any governmental authority during the period that they are applicable to the Project or the use thereof.

11.2.3 Maintain Project in Good Order. Maintain, keep, and, as necessary, repair all Common Elements of the Project in good order and condition except as otherwise provided herein, and maintain and keep the Real Property in a neat and attractive condition and maintain and keep all trees, shrubs and landscaping in the Project in good cultivation and replant the same as may be necessary. In the event that any Owner shall give written notice of an alleged defect in the repair or maintenance of any Common Element, the Board, consistent with generally accepted standards of practice and sound business judgment, shall review the claim of the alleged defect; if the Board determines that the defect is one which the Association should remedy, the Board shall, if practicable, commence appropriate repairs or

maintenance with respect to such defect within not less than thirty (30) days of the receipt of such notice and shall thereafter proceed with due diligence to complete the repair and to make good such defect.

11.2.4 Adopt Budgets and Assessments. Adopt budgets and make assessments sufficient to fulfill all duties and responsibilities of the Board and Association, and make available, upon request, a copy of the each budget to all Owners.

11.2.5 Construct Improvements, Bonding. Before commencing or permitting construction of any improvement on the Project the Board may obtain, or cause the construction contractor to obtain, performance and payment bond(s) or certificate(s) thereof naming as obligees collectively all Owners and their respective mortgagees as their interests may appear, in a penal sum not less than one hundred percent (100%) of the cost of such construction and with a corporate surety authorized to do business in Hawaii, guaranteeing performance of such construction free and clear of any mechanics' and materialmen's liens or any liens in lieu of mechanics' and materialmen's liens.

11.2.6 Not Permit Waste or Improper Use. Not make or suffer any strip or waste or unlawful, improper or offensive use of the Project.

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

11.2.8 Plans and Specifications for Improvements, Diligent Completion of Construction Projects. 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 of the Project whatsoever, except in accordance with plans and specifications including detailed plot plans, prepared by a licensed architect, if so required by the Board, and approved by the Board and by the percentage of Unit Owners as required by law and this Declaration, and with such approvals as may be required under the Master Community Charter and the Mauka Area Rules of the Hawaii Community Development Authority, and complete any such improvements diligently after the commencement thereof.

11.2.9 Comply with Laws and Restrictions. Observe and comply with the provisions of any requirements or restrictions pertaining to the Real Property, including all applicable laws and the Master Community Charter.

11.2.10 Financial Statements and Condominium Records. Maintain and make available to Owners, Mortgagees, and their respective agents, financial records in accordance with generally-accepted accounting principles and current copies of the Declaration, the Bylaws, Association Rules (if any) and other books and records of the Association. "Available" shall mean available for inspection upon request, during normal business hours or under other reasonable expenses. The Association may require the requesting party to pay a reasonable charge for copies. The financial statement shall be audited at least annually, within 120 days following the end of the Association's fiscal year, by a certified public accountant who is not a member of the Board or an Owner.

11.3 Powers of Board. The Association, acting by and through the Board and its Manager appointed by the Board, for the benefit of the Condominium and the Owners, shall enforce the provisions of this Declaration and of the Bylaws and shall have those powers expressly permitted to the Association under this Declaration and in the Bylaws, including without limitation:

11.3.1 Adopt Rules Adopt and amend rules and regulations which are consistent with this Declaration and the Bylaws and Master Community Charter and which do not restrict or burden in any manner the rights of use, enjoyment and commercial use set forth in this Declaration;

11.3.2 Budgets Adopt and amend budgets for revenues, expenditures and reasonable reserves, and impose and collect Assessments for Common Expenses from Unit Owners;

11.3.3 Hiring Hire and discharge or contract with resident managers, managing agents, employees and other agents and independent contractors;

11.3.4 Legal Action Subject to Article 22 below, institute, defend, or intervene in litigation, arbitrations or administrative proceedings in its own name on behalf of itself or two (2) or more Unit Owners on matters affecting the Condominium;

11.3.5 Contracts Make contracts and incur liabilities relating to the Project, the Common Expense and Common Elements, including the right to borrow money;

11.3.6 Maintenance Provide for the use, maintenance, repair, replacement and modification of Common Elements;

11.3.7 Designation of High Risk Components Declare, after providing Owners with notice and opportunity to be heard in accordance with the Bylaws, certain objects or appliances to be "high risk components" that pose a particular risk of damage to the Condominium or other Units, and thereafter require periodic inspection, replacement, or repair of such high risk components at such time intervals to be set by the Board, and if the Owner refuses to follow Board requirements, to enter the Unit and undertake such inspection, replacement, or repair at the sole cost and expense of the Owner, provided that any action taken by the Board with respect to high risk components does not relieve the Owner of any obligation to inspect, replace, maintain, insure or repair such components;

11.3.8 Improvements Cause additional Improvements to be made as a part of the Common Elements, subject to the Master Community Charter and to the extent reasonably required to secure the practical and economical enjoyment of the Improvements or any portion thereof;

11.3.9 Owning Property Acquire, purchase, hold, lease, mortgage, encumber and convey in its own right any right, title, or interest to real or personal property which is reasonably necessary in connection with the use, repair, maintenance and enjoyment of the Project or any Unit, including without limitation the power to purchase, own or lease, and mortgage one or more Residential Units for use by resident managers for the Project, costs of which shall be a Common Expense;

11.3.10 Easements Grant easements for the through or over the Common Elements, provided no such grant shall be permitted if it materially impairs access to any Unit;

11.3.11 Collections Impose and collect any amounts required to pay or reimburse the Association for the actual cost of maintaining, repairing, or replacing any portion of the Common Elements, or rendering services to any Unit Owner beyond those required of the Association hereunder, including the payment of any uninsured costs for the repair of damaged Improvements, as provided in Section 15.2.

11.3.12 Late Fees Impose and collect charges for late payment of Assessments;

11.3.13 Administrative Fees Impose and collect reasonable charges for the preparation and recording of amendments to the Declaration and statements of unpaid Assessments;

11.3.14 Indemnification Provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance;

11.3.15 Mandating Insurance Require Owners to obtain and maintain reasonable types and limits of insurance;

11.3.16 Security Assignments Assign its right to future income, including the right to receive Common Expense Assessments;

11.3.17 Exercise Other Powers Exercise any other powers conferred by the Declaration or Bylaws, or powers necessary and proper for the governance and operation of the Association;

11.3.18 Unit Repairs Maintain and repair the Improvements located within any Unit, its appurtenances and appliances, and any Limited Common Elements, if such maintenance or repair is reasonably necessary in the discretion of the Board to protect the Common Elements or preserve the appearance and value of the Condominium, and the Owner of said Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board to the Owner; provided that the Board shall levy a special charge against the Unit and such Owner for the cost of such maintenance or repair; and

11.3.19 Protection Against Liens Pay any amount necessary to discharge any lien or encumbrance levied against the entire Property or any part thereof which is claimed to or may, in the opinion of the Board, constitute a lien against the Property or against the Common Elements, rather than merely against the interest therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any

costs and expenses (including court costs and attorneys' fees) incurred by the Board by reason of such lien or liens shall be specially charged against the Owners and the Units responsible to the extent of their responsibility.

ARTICLE 12. MANAGING AGENT: SERVICE OF PROCESS

Operation of the Project shall be conducted for the Association by a responsible corporate Managing Agent duly registered with the Real Estate Commission. Prior to the Transition Date, the Managing Agent shall be appointed by the Developer. After the Transition Date, the Managing Agent shall be appointed by the Board 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 principal place of business and post office address is 711 Kapiolani Boulevard, Suite 700, Honolulu, Hawaii 96813.

ARTICLE 13. COMMON EXPENSES

All charges, costs and expenses incurred or to be incurred by the Association pursuant to this Declaration, the Bylaws or the Act for or in connection with the administration, management and operation of the Project and the maintenance, repair, replacement of or the making of any additions or improvements to the Common Elements, inclusive of any reserves for future charges, costs or expenditures, shall constitute the Common Expenses of the Project for which each Owner shall be severally liable in proportion to such Owner's respective shares of the Common Interest, except as provided in Article 17 (Developer Control Period) or as otherwise provided in this Declaration or Section 6.7 of the Bylaws (which is incorporated herein by reference) with respect to allocation of certain Common Expenses to certain groups of Units in accordance with the Limited Common Interest assigned to each such Unit.

ARTICLE 14. INSURANCE

14.1 Insurance Requirements; Board Authority to Modify Insurance Requirements.

Notwithstanding anything to the contrary in the Act, including without limitation Section 143 of the Act, the Association shall maintain such insurance as is required under this Article 14 and Article 7 of the Bylaws. The Board, in its discretion, may vary or waive the provisions of this Article 14 and Article 7 of the Bylaws in accordance with such procedures set forth in the Bylaws. In the absence of any Board variance or waiver, the insurance requirements in this Article and the Bylaws shall apply.

14.2 Property And Liability Coverages . The Board shall at all times procure and maintain property and liability insurance as required under Article 7 of the Bylaws.

14.3 Additional Insurance. The Board, as a Common Expense, shall also procure and maintain directors' and officers' liability coverage ("D&O Coverage") in an amount deemed sufficient in the judgment of the Board, and such other insurance as may be required by the Bylaws or the Act.

14.4 Insurance Deductibles. All insurance coverages and limits are subject to reasonable deductibles as set by the Board. In case of a claim for damage to a Unit or Common Elements, the Board, at its discretion, may either pay the deductible as a Common Expense or, after providing notice and an opportunity for a hearing, assess the deductible amount against the Owner or Owners who caused the damage or from whose Unit(s) the damage or cause of loss originated.

14.5 Required Owner Insurance. Each Residential Owner shall at all times maintain a policy of liability insurance, with a minimum coverage amount of \$100,000 a maximum deductible of \$3000 (or such other coverage and deductible amounts as the Board may designate from time to time) with coverage for damage that may result from water leaks, spills or infiltration from the Owner's Unit or the use or operation of high risk components located within the Unit. The Board, with the vote or written consent of a majority of Owners, may also require Owners to obtain additional insurance covering, at the least, the deductible amounts of the Association's property insurance. If an Owner fails or refuses to purchase the required insurance, the Board may, in good faith, purchase such insurance and assess reasonable insurance premium to the Owner. In no event shall the Board or Association be liable for choosing not to, or failing to, purchase or obtain insurance for an Owner.

14.6 Deficiencies. Subject to Section 6.7 of the Bylaws, any deficiency in insurance proceeds shall be a Common Expense of the Association.

ARTICLE 15. RESTORATION AND TERMINATION OF PROJECT

15.1 Restoration of the Project. If the Project is substantially damaged or destroyed by fire or other casualty and is capable of being restored under the laws in force at that time without eliminating any of the Units (even if such restoration otherwise requires modification of the building plans), the Project shall be rebuilt, repaired and restored unless there is (i) a vote not to restore the Project by Owners of Units to which are appurtenant at least eighty percent (80%) of the Common Interest, and (ii) at least fifty one percent (51%) Eligible Mortgage Holders' Consent to the decision not to restore. The Association shall rebuild and restore the Common Elements of the Project in good and substantial manner according to the Condominium Map or according to such modified plan conforming to laws and ordinances then in effect as shall be first approved by the Board; any deficiency in insurance proceeds available to pay for such restoration shall be a Common Expense of the Association; the Owners shall be solely responsible for any restoration of their respective Units so damaged or destroyed. If such restoration is not approved, or if such restoration is not commenced within a reasonable time after such casualty, the Association, as a Common Expense, shall: (i) remove all remains or improvements so damaged or destroyed and restore the site thereof to good and orderly condition and even grade, (ii) sell the Real Property, and (iii) disburse the sale proceeds and all remaining insurance proceeds to the Unit Owners' (or their mortgagees of record, if any, if required under the mortgage documents), pro rata in accordance with the Common Interest appurtenant to each Owner's Unit.

15.2 Partial Restoration of the Project. If the Project shall be damaged or destroyed by fire or other casualty and is not capable of being substantially restored under the laws then in force without eliminating one or more Units, the Project shall be rebuilt, repaired and restored in accordance with modified plans approved by the Board if: (i) the Board has agreed to pay the Owner of any Unit that is eliminated compensation for such Owner's Unit, and (ii) eighty percent (80%) of the Owners of Units that are not eliminated under such modified plans vote in favor of restoration. For purposes of this paragraph, the compensation payable to the Owner of any eliminated Unit shall be the amount determined by multiplying that Unit's Common Interest percentage by the total of (i) the available insurance proceeds and (ii) the fair market value of the Real Property at that time. The Association shall rebuild and restore the Common Elements of the Project in good and substantial manner according to the original plan and elevation thereof or according to such modified plan conforming to laws and ordinances then in effect as shall be first approved by the Board; any deficiency in insurance proceeds shall be a Common Expense of the Association; the Owners shall be solely responsible for any restoration of their respective Units so damaged or destroyed. If such restoration is not approved, or if such restoration is not commenced within a reasonable time after such casualty, the Association, as a Common Expense, shall: (i) remove all remains or improvements so damaged or destroyed and restore the site thereof to good and orderly condition and even grade, (ii) sell the Real Property, and (iii) disburse the Real Property sale proceeds and all remaining insurance proceeds to the Unit Owners' (or their mortgagees of record, if any, if required under the mortgage documents), pro rata in accordance with the Common Interest appurtenant to each Owner's Unit.

15.3 Termination of the Project. If the Project is substantially damaged or destroyed by casualty, is not capable of being substantially restored under the laws in force at that time, and the Owners do not elect to partially restore the Project in accordance with Section 15.2, or if termination of the Project is otherwise required under Section 514B-47 of the Act, then the Project shall be terminated in accordance with said Section 514B-47 and Section 15.1, provided there is at least fifty one percent (51%) Eligible Mortgage Holders' Consent to such termination.

ARTICLE 16. ALTERATION OF PROJECT

16.1 General Provisions. Except as otherwise expressly provided in this Article 16 or Article 18 to the contrary, restoration or replacement of the Project or any portion thereof or construction of any additional building or structural alteration or addition to any building, different in any material respect from the Condominium Map of the Project, shall be undertaken by the Board or any Unit Owner only pursuant to an amendment of this Declaration in accordance with Articles 9, 16 or 18, duly executed pursuant to the provisions thereof, accompanied by the written consent, as may be required, of the holders of all liens

affecting any of the Units involved, and (for alterations or additions to the Common Elements or Residential Units) in accordance with complete plans and specifications therefor first approved in writing by the Board. Promptly upon completion of such restoration, replacement or construction the Association or Owner, as the case may be, shall duly record or file of record such amendment, together with a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer.

16.2 Additions or Alterations Solely Within a Residential Unit. Subject to the provisions of this Declaration, the Bylaws, the Association Rules, and the Act, each Owner of a Residential Unit shall have the right, at any time, and from time to time, at such Owner's sole cost and expense, and without the necessity of the consent or joinder of any other Unit Owner or the amendment of the Declaration, but with the prior approval of the Board and with the presentation of such plans and specifications and other materials as the Board may require as is more fully set forth in Section 10.6 of the Bylaws, to make any of the following alterations solely within the Residential Unit space as defined in Section 3.2.2.1, above: to install, maintain, remove, and rearrange non-load-bearing partitions and other structures from time to time within such Unit, and to paint, paper, panel, plaster, tile, finish, and do or cause to be done such other work on the interior surfaces of the ceilings, floors and walls within any such Unit (excluding exterior windows) and to finish, alter or substitute any plumbing, electrical or other fixtures attached to said ceilings, floors and walls as shall be appropriate for the utilization of such Unit by such Owner or the tenants or lessees thereof; provided, however, that nothing contained in this paragraph shall authorize any work or alteration which would jeopardize the soundness or safety of any part of the Project, reduce the value thereof, adversely affect any Common Element or other Unit, alter the uniform external appearance of the Project, or affect or impair any easement or right of any other Unit Owner.

16.3 Noise Restrictions on Residential Unit Floor Coverings. As a condition to the installation, repair, alteration or replacement of any surface floor coverings in a Residential Unit, the Unit Owner must provide the Board with written evidence that, as installed, the new floor covering will mitigate sound transmission with a minimum Sound Transmission Coefficient (STC) Acoustic Standard of STC-55 and an Impact Isolation Class (IIC) rating of IIC-55 or such other rating as the Board shall have determined is required to prevent unreasonable sound transmission through the type of flooring that will be installed. Following installation of any such approved hard floor covering, the Owner will provide the Board with written confirmation from the installer that the material specified in the Board's written approval was duly installed and that as installed, such flooring meets the minimum standards set forth above. The Board shall have the right to require that any hard surface floor covering installed without the Board's prior written approval or not in conformity with the minimum standards in this paragraph shall be removed at the Unit Owner's expense.

16.4 Protection of Post-Tension Concrete System. Concrete components of the Project will be built using a post-tension concrete system that involves placing steel cables under high tension in the concrete slab foundation forming floors and ceilings. No Owner shall alter, pierce or otherwise tamper with the concrete slabs above and below the Unit, which could result in serious damage the integrity of the post-tension concrete system and/or cause serious injury or damage to persons and property. Without limiting the foregoing, window coverings may not be attached or anchored to such slabs. By accepting a Unit Deed, each Owner will further acknowledge and accept (i) that one of the effects of using a post-tension concrete system is that concrete surfaces may experience non-structural, cosmetic cracking that may be visible to Owners and require cosmetic repairs, and (ii) that it is an inherent part of a post-tension concrete system that floors will not be level beyond the permitted construction tolerances and thus installation of certain floor coverings such as a wood or other hard surface floor covering may require some leveling prior to installation.

16.5 Adjoining Residential Units May Be Combined. The Owner of any two adjoining Residential Units may, with the consent of the Board and of any mortgagee of such Units and at the Owner's sole expense, alter or remove all or portions of the non-structural or load bearing portion of the intervening wall which separates such Units if the structural integrity of the Project is not thereby affected and if the Common Elements affected are restored to a condition comparable to that of the Common Elements prior to such alteration of such Common Elements. In addition to all other requirements set forth herein, any alteration or removal of all or portions of such wall shall be done pursuant to written plans and specifications drawn by a licensed architect or structural engineer and approved by the Project Architect

and such work shall be personally supervised by said architect or engineer. Any Residential Unit Owner making the alterations permitted hereunder shall secure a performance and payment bond naming as obligees said Owner and collectively the Owners of all other Units as their interests may appear in a penal sum of not less than one hundred percent (100%) of the cost of any construction, guaranteeing the payment of funds in an amount necessary to ensure the completion thereof free and clear of all mechanic's and materialmen's liens, and that any such construction shall be carried out in strict compliance with all applicable laws, rules and regulations. Each Owner of such adjoining Units may install in and attach to such opening or openings in such wall, doors and other service devices and may remove and retain ownership of the items so installed. Upon the termination of the common ownership of such adjoining Units, any intervening wall which has been altered or removed pursuant to the foregoing provisions shall be restored at the Owner's expense to substantially the same condition which existed prior to such alteration or removal, if the new Owner or Owners do not consent to such alteration.

16.6 Additions or Alterations Solely Within a Commercial Unit and Its Limited Common Elements. Each Owner of a Commercial Unit shall have the right, at any time, and from time to time, at such Owner's sole cost and expense, and without the approval, consent or joinder of the Board, the Association, or any other Unit Owner, to make any and all such alterations or additions to the Commercial Unit structure and space as defined in Section 3.2.2.2 and the Commercial Unit's Limited Common Elements as the Owner deems appropriate; provided, however, that (a) all such alterations and additions must be constructed in accordance with applicable building codes and laws and the Master Community Charter, and (b) nothing contained in this paragraph shall authorize any alteration or addition which would jeopardize the structural soundness or safety of any part of the Project. Upon request the Board shall promptly confirm that proposed alteration or additions are permitted, which confirmation shall not be withheld unless a licensed architect or structural engineer provides the Board a written opinion that the alterations or additions would jeopardize the structural soundness and integrity of the Project.

16.7 Subdivision and Consolidation of Commercial Units. The Owner of any Commercial Unit may subdivide the Commercial Unit to create two or more Commercial Units, and the Owner(s) of any two or more adjoining Units may consolidate such Units into a single Unit, all without approval of the Board or the Association. In order to subdivide Commercial Units, the Owner shall construct such partition walls and other improvements within the Unit as the Owner deems necessary to physically separate the Unit into multiple distinct spaces, all in accordance with all applicable building code requirements and the Master Community Charter. Upon completion of such walls and improvements, the Owner shall execute and record an amendment to this Declaration (which shall not require the consent or joinder of the Association or any other Owner) together with an amendment to the portions of the Condominium Map depicting the division of the Commercial Unit and the architect's or engineer's certification of such map amendment required under Section 34 of the Act. The Declaration and Condominium Map amendment shall set forth Unit numbers for and descriptions of the subdivided Units, describe their boundaries consistent with Section 3.2.2.2, state their respective Common Interests and Limited Common Interests (which may be determined by the Owner in its discretion, provided that they must in the aggregate be the same as the Common Interest and Limited Common Interest of the original Commercial Unit), and specify the assignment of all Limited Common Elements and easements appurtenant to the original Unit among the subdivided Units. Upon recording of such amendments, the original Commercial Unit shall be deemed to have been subdivided into the new Units described therein, each of which shall be a separate "Unit" for all purposes under this Declaration, the Bylaws and the Act, and the portions of the partition walls between such Units not included within the boundaries of such Units shall become part of the Common Elements. In order to consolidate adjoining Commercial Units, the Owner(s) shall remove or reconfigure such non-load bearing perimeter walls (if any) as the Owner deems necessary to implement the consolidation. Upon completion of such work, the Owner shall execute and record an amendment to this Declaration (which shall not require the consent or joinder of the Association or any other Owner) together with an amendment to the portions of the Condominium Map depicting the consolidation of the Commercial Unit and the architect's or engineer's certification of such map amendment required under Section 34 of the Act. The Declaration and Condominium Map amendment shall set forth Unit number for and description of the consolidated Unit, describe its boundaries consistent Section 3.2.2.2, state its Common Interest and Limited Common Interest (which shall be the sum of the consolidated Units' Common and Limited Common Interests), and specify that all Limited Common Elements and easements appurtenant to the original Units are now assigned and appurtenant to the consolidated Units. Upon

recording of such amendments, the original Commercial Units shall be deemed to have been consolidated into the new Unit described therein, which shall be a single "Unit" for all purposes under this Declaration, the Bylaws and the Act. All Commercial Unit Owners shall promptly provide the Association with a copy of any Declaration and Condominium Map amendments made pursuant to this Section.

16.8 Unit Owners to Execute Amendment Documents in Certain Cases. In the event that any change or alteration made in accordance with this Article 16 requires an amendment to this Declaration and/or to the Condominium Map, such amendment shall be executed by the Owner of the affected Unit or Units, and shall become effective upon recordation in the Bureau. Such amendment shall not require the consent or joinder of the Owner of any other Unit, the Board, the Association, or any other person or entity, other than any mortgagee of such Unit or Units, if and to the extent required by the terms of its mortgage.

ARTICLE 17. DEVELOPER CONTROL PERIOD

17.1 Developer Control Period, Transition Date. The Developer Control Period shall run from the recordation of this Declaration until the Transition Date. The Transition Date shall be the earliest of: (i) the date sixty (60) days after conveyance of 75% of the Common Interest appurtenant to all Units which may be created under this Declaration (including Units and additional Phases which may be created pursuant to Article 18) to Owners other than Developer; or (ii) the day the Developer, after giving written notice to Owners, records an instrument voluntarily surrendering all rights to control activities of the Association. Developer may voluntarily surrender the right to appoint and remove officers and members of the Board before the termination of the Developer Control Period, but in that event, Developer may require, for the duration of the Developer Control Period, that specified actions of the Association or Board, as described in a recorded instrument executed by Developer, be approved by Developer before they become effective.

17.2 Developer Power to Appoint Board and Officers. During the Developer Control Period, the Developer shall have the right and duty to appoint and remove all members of the Board and all Officers. During the Developer Control Period, the Board shall consist of three (3) members.

17.3 Developer May Assume Actual Expenses. Developer may elect to initially assume all actual Common Expenses in the Project. Any Developer's assumption of all actual Common Expenses will terminate upon the earlier of the following: (i) Developer's mailing to each Owner and to the Managing Agent written notice that after a specified date, not less than thirty (30) days after mailing of such notice, each Owner will be responsible for Common Expenses in proportion to such Owner's respective shares of the Common Interest; or (ii) the Transition Date.

17.4 Developer Transfer of Association Documents. Not later than sixty (60) days following the Transition Date, the Developer shall deliver to the Association all property of the Owners and of the Association held or controlled by the Developer, including: the Declaration with all amendments thereto; the current Bylaws; the current Association Rules (if any); all minute books, insurance records, financial records or other records of the Association; all Association funds and tangible property; all leases, contracts or other written obligations of the Association; all warranties still in effect relating to elements for which the Association has a duty of repair or maintenance.

17.5 Association Right to Terminate Developer Contracts after Transition Date. For a period of 180 days following the Transition Date and upon giving ninety (90) days prior notice to the other party, the Board shall have the power to terminate, without penalty, agreements entered into during the period of Developer Control, including: (i) any management contract, employment contract, or lease of recreational or parking areas or facilities (excluding a lease of parking stalls or areas to an Owner or lessee of a Unit); (ii) any contract or lease between the Association and the Developer or an affiliate of a Developer; or (iii) any contract, lease or agreement that is not bona fide or was unconscionable to the Unit Owners at the time entered into under the circumstances then prevailing.

ARTICLE 18. RESERVATIONS OF RIGHTS BY DEVELOPER

The Developer reserves the following rights, which shall be liberally construed to effectuate the development of the Project and/or comply with the Master Community Charter:

18.1 Reservation of Power to Deal with the Real Property and Grant Easements. The Developer reserves to itself the right to acquire Fee Owner's interest in the Real Property and to mortgage, pledge, encumber, and otherwise deal with the Real Property in any ways the Developer deems necessary or appropriate for the development, conveyance or use of the Real Property, the Project, or any one or more of the Units or Phases. The Developer further reserves the non-exclusive right to grant from time to time within the Common Elements easements and rights-of-way over, under, and across the Common Elements for access, utilities, cable television, internet and other communications services, driveways, parking, loading, refuse collection, landscaping, preservation, signage, monuments, mail collection and delivery, sanitary and storm sewers, drains, encroachments, overhangs, and such other uses and purposes as Developer deems necessary or appropriate for the development, subdivision, conveyance or use of the Real Property, the Project, any one or more of the Units or Phases, or any parcel adjoining or near the Real Property, together with the right to amend, relocate, realign or cancel such easements and rights-of-way, and the right to subordinate this Declaration to such easements. Developer also reserves the right to grant to, create and/or accept on behalf of the Association easements and rights of way in favor of the Real Property, the Project or any Unit for any such purposes over parcels adjoining or near the Real Property as Developer deems necessary or appropriate for the development or use of the Project. All such easements and rights of way may be in favor of one or more Unit Owners, the Association, Developer, the Master Association, any governmental entity, any public or private utility company, any owner of lands adjacent to or near the Real Property or any interest therein, or any other person or entity, and may be on such terms and conditions as the Developer may determine in Developer's reasonable discretion, provided that such easements, their use, relocation, realignment, or cancellation shall not materially impair or interfere with the use of any Unit.

18.2 Required Amendments. The Developer reserves the right to make, at any time prior to the recordation of a Unit Deed for the last Unit in the Project (including Units that may be added pursuant to Article 18), amendments to the Declaration, the Bylaws, or the Condominium Map that are required by law, by the Real Estate Commission, by a title insurance company, by a mortgage lender, by any governmental agency, or to conform this Declaration to amendments to the Act or any other statute, ordinance, rule or regulation enacted by any governmental authority, or to implement the rights of Developer under this Declaration, or to comply with the Master Community Charter, provided that such amendments shall not change the Common Interest appurtenant to a Unit or substantially change the design, location, size or permitted use of any Unit for which a Unit Deed has been recorded without the consent of the Owner of such Unit.

18.3 Restatement. Any other provision of this Declaration notwithstanding, the Board, or the Developer acting on behalf of the Board during the Developer Control Period, shall have the authority as set forth in the Act to restate this Declaration from time to time to set forth any prior amendments hereof, in connection with Developer's exercise of its reserved rights, or to amend this Declaration as required to conform with the provisions of the Act or any other statute, ordinance, rule or regulation enacted by any governmental authority.

18.4 Amendment to Unit and Common Element Configurations and Uses. Notwithstanding anything herein to the contrary, the Developer reserves the right to amend this Declaration, the Bylaws, the Condominium Map and related condominium documents at any time to change the permitted uses of Units (including imposition of use restrictions on individual Commercial Units, and changing Residential Units to Commercial Units and vice versa), and to change the layout, floor area, partitions, ceilings, structures, fixtures, exterior doors and windows, pipes, chases, ducts and other equipment of a Unit, its Limited Common Elements, or the Common Elements, including without limitation to configuration of the Tower lobby, to meet marketing, design, architectural, law- and code-compliance, accessibility or construction requirements. This right includes the power to convert portions of a Unit into Common Elements or Limited Common Elements, to convert Common Elements to Limited Common Elements, to convert Limited Common Elements to Common Elements, and to convert Common Elements or Limited Common Elements into Units or portions of Units. If such changes affect the area of affected Units, the amendments may include adjustments to the Common Interests appurtenant to all Units to reflect such adjustments. Prior to the recording of a Unit Deed for the affected Unit, Developer may execute and record each such amendment unilaterally and without requiring the consent or joinder of any person. After the recording of a Unit Deed for the affected Unit the Developer may execute and record each such

amendment unilaterally, with only the consent in writing of the Owner of the Unit and the Owner's mortgagee (to the extent required under the terms of its mortgage); provided no such consent is required for common interest adjustments as provided above. Developer may change the Condominium Map to reflect the new configuration of any Units, to change the description of Units and to revise the statement of Unit net floor areas, and other changes as shall be appropriate under the circumstances.

18.5 Subdivision or Consolidation of Units. Developer reserves the right, at any time prior to the recording of a Unit Deed for a Unit, to divide the Unit into two or more separate Units or to consolidate two or more Units (including Units located on different floors) into one Unit by: (i) amending the Condominium Map and related exhibits to this Declaration to reflect the subdivision or consolidation, and (ii) making such other amendments to this Declaration, the Bylaws, the Condominium Map, and other documents pertaining to the Project as the Developer deems necessary or convenient to effectuate the subdivision of the Unit.

18.6 Reconfigure and Assign Parking and Storage Units. Developer reserves the right to reconfigure the parking areas in the Project, which may include elimination of parking stalls and storage lockers, creation of additional parking stalls and storage lockers, and relocation of stalls and storage lockers, as Developer deems appropriate, and to amend the Declaration and the Condominium Map to reflect such reconfiguration. Developer further reserves the right to assign or reassign one or more parking stalls or storage lockers as Limited Common Elements appurtenant to a Unit, and to designate guest parking stalls and loading stalls as Common Elements or as Limited Common Elements appurtenant to one or more Units. All parking stalls and storage lockers assigned to a specific Unit shall be Limited Common Elements associated with such Unit.

18.7 Creation of Parking and Spatial Units. The Developer reserves the right to designate parking stalls and other portions of the Parking Garage or other parking areas in the Project as Parking Units. The Developer also reserves the right to designate portions of the Common Elements (including any Building roof, portions of the Parking Garage, and exterior areas of the Project) as one or more Units whose boundaries are defined by spatial coordinates rather than structural boundaries, and to specifically permit the use of such Units for the installation and operation of communications systems and equipment, the installation of signage and monuments, and the installation and operation of photovoltaic or other systems for capturing solar energy and converting it to electricity, or other uses. In order to create any such Units, Developer shall record amendments to this Declaration and the Condominium Map describing and identifying such Units and their appurtenant Common Interest, Limited Common Elements and easements (which may include conduits for power, control and other lines), and setting forth such other matters as Developer deems necessary or appropriate to create such Units. Any such Units created pursuant to this section shall be assigned a Common Interest of 0.000001%, unless Developer determines that a larger Common Interest is appropriate and equitable in light of the Unit's likely use of and impact on the Common Elements of the Project, and Developer shall make a corresponding reduction in the Common Interest of any Commercial or Residential Unit owned by Developer or, if Developer does not then own any such Units, then the offsetting Common Interest reduction shall be applied to the Commercial Unit with the largest Common Interest. Any Parking Unit or spatial Unit created pursuant to this paragraph shall be a Unit for all purposes and upon its creation the Unit shall be owned by Developer. If any such Units are created for purposes of the installation and operation of communications equipment, photovoltaic or other systems for capturing solar energy and converting it to electricity, or similar equipment and installations, such equipment, systems 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 portion of the Project in which they are located. Upon request the Board shall promptly confirm that installation, operation, use and replacement of such equipment, systems 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 portion of the Project in which they are located.

18.8 Relocation of Residential Unit Air Conditioning Equipment. Developer reserves the right to relocate portions of the air conditioning systems located on Unit Lanais to locations outside of the Units (including without limitation rooftop or Parking Garage locations), and in connection with such relocation to designate a Limited Common Element appurtenant to such Unit for its relocated air conditioning

equipment. Developer also reserves the right to relocate the air conditioning equipment of the Residential Units identified in Section 3.4.1.11 to the Lanais of those Units, and in connection with such relocation to eliminate the Limited Common Elements designated for such Units in that section for the portions of their air conditioning system located outside of the Units. Any such changes may result in changes to the useable area of affected Lanais and changes to the size and configuration of air conditioning ducts and conduits.

18.9 Reserved Right to Enter Into Development Agreements and Encumbrances. Developer reserves the right to apply for and secure any such permits or governmental approvals as Developer deems necessary or desirable to develop the Project, and to create or agree to such recorded restrictions, covenants, and agreements as may be required in connection with such permits and approvals, including without limitation unilateral agreements, joint development agreements, and planned development permit agreements, provided that such restrictions, covenants and agreements shall not substantially prohibit the use of the Units for the principal uses permitted under this Declaration.

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

18.11 Reserved Right to Develop the Buildings In Phases, and to Expand the Project to Include Additional Buildings and Units. Subject to compliance with the Option, the Developer shall have the reserved right to develop the Project in phases and to reduce or increase the number of Buildings and Units in the Project notwithstanding anything provided to the contrary. In exercising this reserved right, the Developer may elect, without limitation, to construct the Tower and the Midrise Building in two separate Phases, to replace the Midrise with a Building of a different type, configuration, or use, or to create or construct other Buildings, Units and Improvements of any kind, all to the maximum extent permitted by applicable building and zoning codes. In connection with the exercise of this reserved right, the Developer may create, modify or eliminate Units, provided that no Unit for which a Unit Deed has been recorded shall be modified or eliminated without the consent of the Unit's Owner.

18.11.1 Exercise of Reserved Right. The expansion of the size of the Project shall take effect upon the recording in the Bureau of:

18.11.1.1 An amendment to this Declaration (or an amendment and restatement thereof) confirming the Developer's election to increase the size of the Project by constructing the Midrise Building

or additional or revised Buildings or Improvements and setting forth: (i) the description of the additional or revised Buildings, (ii) the description of each additional Unit and the uses, if any, to which they are restricted, (iii) the undivided percentage Common Interest and Limited Common Interest appurtenant to each Unit (including the revised Common Interest and Limited Common Interest appurtenant to the Units within any prior Phase), (iv) a description of any additional Common Elements, (v) a description of any additional or newly designated Limited Common Elements, if any, stating to which Units their use is reserved, (vi) any easements relevant to the new Buildings, Improvements or Units not already provided for in this Declaration, (vii) such amendments to the various definitions set forth in this Declaration as Developer determines are necessary or desirable to effect the modification or increase of the size of the Project, and (viii) such other matters as the Developer deems necessary or appropriate or as are required by law to effect the modification or increase of the size of the Project and/or the operation of the Project. This reservation specifically includes without limitation the right (i) to designate the Midrise Parking Garage as a Limited Common Element appurtenant to the Residential Units in the Midrise Building, (ii) to assign parking stalls M001 through M078 and 1069RH through 1087L shown on the Condominium Map as Limited Common Elements appurtenant to Units in the Midrise Phase or to designate some of such stalls as guest parking stalls or loading stalls appurtenant to some or all of the Units in the Midrise Phase. The Common Interest appurtenant to each Unit in the expanded Project shall be calculated by dividing the Unit's approximate net interior area by the approximate net interior area of all Units in the Project; provided, however, that the Developer shall have the right, in its sole and absolute discretion, to round or arbitrarily adjust the result of such calculations so that the sum of the percentages equals exactly one hundred percent (100%); and provided further that in the event Developer uses this right or its rights under Section 18.7 to create Parking Units or spatial Units in the Project, then Developer shall allocate a Common Interest percentage to each such Unit in an equitable manner in light of the Unit's likely use of and impact on the Common Elements of the Project. Without limiting the foregoing, Developer shall have the right in connection with the development of the Midrise Building as the Midrise Phase of the Project to replace the initial schedule of Units attached as **Exhibit B** with the schedule of Units (Tower and Midrise) attached as **Exhibit D**, which represents the combined plans of the Tower and Midrise as of the date of this Declaration. **Exhibit D** is not a representation or guaranty that the Midrise Phase will be constructed as described therein, and Developer specifically reserves the right to revise that schedule of Units as necessary to reflect Developer's plans for Midrise Phase at the time it is developed.

18.11.1.2 An amendment to the Condominium Map showing a composite site plan for the Project including such additional or amended floor plans and elevations as may be necessary or appropriate, together with the verified statement of a licensed architect, surveyor or engineer as required by the Act.

18.11.1.3 Any such other documents or instruments, including amendments to the Bylaws (or an amendment and restatement thereof) or any permits or development agreements that Developer determines are necessary, desirable or required by law to effect the modification or increase of the size of the Project.

18.11.1.4 The Developer expressly reserves the right to so amend the Declaration, Bylaws and Condominium Map notwithstanding the lease, sale or conveyance of any or all of the Units in any or all phases of the Project, and Developer may, without being required to obtain the consent or joinder of the Association, any Unit owner, lienholder or other persons, execute and file amendments to the Declaration and Condominium Map and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the rights, powers, or privileges herein reserved to the Developer. Such amendments may include amendments to Section 6.7 of the Bylaws to allocate expenses to newly created Units and Phases and to establish reserve funds for such Units and Phases. Any such action shall be deemed taken by Developer as the true and lawful attorney-in-fact of the respective Unit owners. Each and every party acquiring an interest in the Project, by such acquisition, consents to the expansion of the Project by construction of all additional Buildings, Improvements, or phases, and to the recording of such documents as may be necessary to effect the same; agrees to execute such documents and do such other things as may be necessary or convenient to effect the same; and appoints the Developer and its assigns his attorney-in-fact with full power of substitution to execute such documents and to do such things on his behalf, which grant of such power, being coupled

with an interest, is irrevocable for the term of said reserved rights and shall not be affected by disability of any such party.

18.11.2 Rights Incident to Exercise of this Reserved Right. Subject to the provisions above and in furtherance of the rights reserved to Developer hereunder, Developer, its successors and assigns, and their respective contractors and subcontractors, and their respective employees and agents, shall have the right and an easement to enter upon and use the Common Elements of the Project and do all things reasonably necessary, desirable or useful for designing, developing, constructing or completing such additional Buildings, Improvements, Units or Phases, connecting the same to the utility installations of prior phase(s) of the Project, and selling the Units contained within the additional Buildings and Phases, upon and subject to the following terms and conditions:

18.11.2.1 All additional Buildings and Improvements, if constructed, shall be constructed in accordance with plans and specifications prepared by a licensed architect and in accordance with the floor plans and elevations contained in the Condominium Map; provided, however, that such plans and specifications shall not require the alteration or demolition of any existing Units for which a Unit Deed has been recorded unless the Unit Owner consents thereto;

18.11.2.2 Developer shall have the right, without notice to, or the approval, consent or joinder of, the Association, any Owner, or any other person, to add, delete, relocate, realign, reserve and grant all easements and rights-of-way and to otherwise make alterations in and use the Common Elements for such development and construction, and to designate Limited Common Elements over, under and on the Common Elements, necessary or desirable with respect to the construction or use of any additional Building, including but not limited to easements and rights-of-way for utilities, sanitary and storm sewers, refuse disposal, driveways, parking areas and roadways; provided, that such easements, rights-of-way and limited common elements, upon completion, shall not unreasonably and materially impair the use of any existing Unit;

18.11.2.3 Every Unit owner and all holders of liens affecting any of the Units in the Project and each and every other party acquiring an interest in the Project or any part thereof, by acquiring such Unit, lien or other interest, consents to and agrees that he/she/it shall, if required by law or by Developer, join in, consent to and execute all instruments and documents necessary or desirable to effect the granting of easements and/or rights-of-ways and/or covenants or restrictions affecting the Common Elements or Limited Common Elements and/or the designation of Limited Common Elements or recharacterization of Common Elements provided for hereinabove; and appoints the Developer and its assigns as attorney-in-fact with full power of substitution to execute such documents and to do such things on his/her/its behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights and shall not be affected by disability of any such party.

18.11.2.4 The Developer, its contractors and subcontractors, and their respective employees and agents, shall not cause any interruption in utility service other than a temporary interruption in the service of utilities to the Project and shall use reasonable efforts without additional cost to the Developer and consistent with maintaining the progress of the design, development, construction, completion and sale, to minimize interference with the Unit owners' use and enjoyment of the Project.

18.11.3 Effect of Exercise of This Reserved Right. Developer is under no obligation to construct any additional Buildings, Improvements or Units. However, if Developer should, in its sole discretion, elect to develop any Buildings, Improvements, or Units and expand the size of the Project, upon the recording of the necessary amendments or other documents as hereinabove provided, the following consequences shall result:

18.11.3.1 This Declaration, the Bylaws, the Condominium Map, and the Administrative Rules, as any of them may be amended from time to time, shall be the Declaration, Bylaws, Condominium Map and Administrative Rules applicable to the expanded or modified Project.

18.11.3.2 The Developer shall for all purposes be deemed the owner of the newly created or constructed Units and the undivided percentage interest and other rights and easements appurtenant to such Units from the effective date of the recordation of the necessary amendments or other documents as hereinabove provided.

18.11.3.3 All Owners of newly created or constructed Units shall have the right to use the Common Elements of all of the Project (but not Limited Common Elements) to the same extent and subject to the same limitations as are imposed upon all Owners of the initial Units in the Project, except as otherwise provided in the recorded documents creating such Units.

18.11.3.4 Each Unit within the expanded or modified Project shall have appurtenant thereto an undivided Common Interest in the Common Elements of the expanded Project. Each Unit's undivided percentage Common Interest shall constitute such Unit's proportionate interest in the common profits and common expenses of the expanded Project and such Unit's proportionate representation for all other purposes, including voting in the Project; provided, however, that newly added Units shall not be assessed for Common Expenses nor shall they have any obligation with respect to debts or obligations incurred prior to the issuance of a temporary or permanent certificate of occupancy covering such Units. All reserve funds for Common Elements (but not reserve funds established for specific Limited Common Elements or funded by specific groups of Units, which shall remain segregated for their intended uses) shall be consolidated and maintained as a single fund for the expanded Project; and if necessary so that the interest in such reserve funds attributable to each Unit in the expanded Project shall be equal to that Unit's Common Interest the Board may make adjustments to the account of each Unit owner from time to time as each additional Building or phase is constructed by: (i) refunding in whole or in part; and/or (ii) credit in whole or in part against future assessments; and/or (iii) special assessments or series of assessments; and/or (iv) any other means consistent with generally accepted accounting principles; provided, however, that the Board shall make such adjustments without charging any Unit Owner a special assessment for reserves in any one month which exceeds more than twenty percent (20%) of the monthly assessment for other common expenses, after excluding any assessments for reserves.

18.11.3.5 There shall be only one Association, one Board and one Managing Agent for the entire Project. If the Developer Control Period has expired at such time, then notwithstanding any provision in any document, no later than one hundred eighty (180) days following the recording of a Unit Deed for a Unit in a newly added Building, a special meeting of the Association of owners of the expanded Project shall be held to elect a new Board of Directors to replace the existing Board of Directors. The procedure for calling and holding such meeting as well as the number of Directors to be elected shall be as provided in the Bylaws.

18.11.4 No Obligations Regarding Additional Buildings or Phases. Nothing in this Section pertaining to expansion of the size of the Project shall be construed as an agreement, representation, covenant or warranty by Developer that any additional Buildings, Improvements or phase will be constructed.

18.12 Reserved Right to Subdivide, Consolidate and Reconfigure the Real Property and to Add or Withdraw Real Property. Initially the Real Property includes all of the land within the block bounded by South, Auahi and Keawe Streets and Ala Moana Boulevard. Subject to the Option and the Master Community Charter, Developer shall have the reserved right to subdivide, consolidate, and resubdivide the Real Property, to add additional land to the Real Property (in fee or in any lesser estate), and to amend the Declaration and Condominium Map to withdraw portions of the Real Property from the Project, and to convey said withdrawn areas to a third party as it deems appropriate or subject it to another condominium property regime neighboring the Project or annex it into one or more of the other Condominium Projects and/or consolidate it back into the Project. Without limiting the foregoing, Developer reserves the right to subdivide and reconfigure the Real Property as shown on Sheet CPR-0.1 of the Condominium Map filed with this Declaration to consist solely of the area identified as "Lot 1" and to excluded the areas labeled "Lot 2 (Not in Project)" and "Lot 3 (Not in Project)". The area being subdivided and withdrawn may contain Improvements described in this Declaration, or shown on the Condominium Map. In connection with such right, Developer shall have the further reserved right to enter and go upon the Real Property to do all things necessary or proper to effectuate such subdivision and withdrawal and conveyance of said portions of the Real Property, including, without limitation, making surveys to undertake a reasonable realignment of boundaries of the Real Property to define the areas to be withdrawn (it being understood that the Developer shall have the reserved right to effect any such realignment), filing and recording any necessary file plan or subdivision map and related subdivision documentation and to facilitate the granting, reserving, adding, deleting, receiving, realigning, and/or relocating of easements and/or rights of way as described in Section 18.1; and provided further that

Developer specifically reserves the right, whether or not in connection with its right to subdivide, withdraw and convey hereunder, to grant easements for access, driveway, parking and other purposes over the Project in favor of the withdrawn portion(s) of the Property, if any, in the event the same shall be withdrawn from the operation of this Declaration. Upon the exercise of said reserved rights, Developer shall, at Developer's expense and without being required to obtain the consent or joinder of any Unit Owner or lien holder, execute and record in the Bureau any instruments necessary to effectuate such exercise, including grants of easements or amendments to the Declaration or Condominium Map: (i) describing the withdrawn or added land and any improvements thereon; (ii) describing the realigned boundaries of the Real Estate; and (iii) where applicable and appropriate, granting, reserving or relocating easements over, under and on the Common Elements, as permitted above. The filing of the amendment to the Declaration and Condominium Map shall effectuate the withdrawal, without any further consent or joinder of any party. The Developer shall have the right, as grantor, for itself and as attorney-in-fact for all Owners (which power of attorney is coupled with an interest and irrevocable) to execute, deliver and record a deed of any subdivided and withdrawn area upon filing of the amendments aforesaid, conveying in fee the entire interest in the withdrawn area. Said subdivision, withdrawal and conveyance shall be subject to, and the Developer shall, at its own expense, comply with, all of the then-applicable governmental laws and rules and regulations, including all subdivision requirements.

18.13 Reserved Right to Amend Recorded Documents. The Developer reserves the right to amend, modify, supplement, cancel, terminate or release (in whole or in part) any easements, restrictions, covenants, agreements or other documents or instruments recorded on title to the Real Property, on such terms and conditions as the Developer may determine in Developer's reasonable discretion.

ARTICLE 19. DEVELOPER'S RIGHTS.

19.1 Consent to Developer's Reserved Rights; Appointment of Developer and Association as Attorney-in-Fact. Each and every person acquiring an interest in the Project, by such acquisition, consents to all of the rights reserved unto the Developer as set forth in the Declaration, including but not limited to those rights as set forth in Article 18 and this Article 19, and to the recording of any and all documents necessary to effect the same in the Bureau; agrees to execute, deliver and file such documents and instruments and do such other things as may be necessary or convenient to effect the same. If the joinder or consent of any such person shall be required by law or any other document, each such person appoints the Developer, or Developer's successors and assigns if applicable, as such person's attorney-in-fact with full power of substitution to execute, deliver and file such documents and instruments and to do such things on his behalf, and to receive or send any legal notices required by the Act, and to receive service of process (legal papers) as to legal proceedings in the Bureau, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Unit or interest therein, whether by deed, mortgage, or any other instrument of conveyance. Without limitation to the generality of the rights reserved unto Developer hereunder, Developer will have the right to execute, deliver and record any amendment to this Declaration or to the Condominium Map, Bylaws and/or Association Rules, any easement instrument, any deed, any amendment to a Unit deed, assignment of rights or interest, or such other document or instrument that may be necessary or appropriate to permit Developer to exercise its rights pursuant to the provision of this Declaration. Each and every party acquiring an interest in the Project, by such acquisition, also appoints the Association as such party's attorney-in-fact with full power of substitution to receive and accept on such party's behalf any and all legal notices required by or pursuant to the Act, and to receive service of process in connection with any other legal proceedings.

19.2 Transfer of Developer Rights. A Developer's Reserved Rights may be transferred only by an instrument executed by the transferee and recorded with the Bureau.

19.2.1 Transferor's Liability after Transfer. After transfer of a Developer Reserved Right, the transferor shall remain liable for obligations arising before the transfer and for all warranty obligations, regardless of presence or lack of privities. If the successor to any Developer Reserved Right is an affiliate of the transferor, the transferor remains jointly and severally liable for liabilities related to the

condominium. A transferor has no liability for any act or omission arising from the exercise of a Developer Reserved Right by a successor transferee which is not an affiliate of the Developer.

19.2.2 Transferee's Liability after Transfer. A successor to a Developer Reserved Right who is an affiliate of the Developer is subject to all obligations and liabilities imposed by the Act or the Declaration. A successor to any Developer Reserved Right which is not an affiliate of the Developer is subject to obligations and liability arising from the successor's exercise or failure to exercise those Developer Reserved Rights to which it has succeeded, but the successor is not liable for: (i) misrepresentations or breaches of fiduciary obligations by previous Developers or transferors or Board members appointed by the previous Developer; (ii) warranty obligations on improvements made by the previous Developers or transferors; or (iii) liabilities imposed on the transferor as a result of the transferor's acts following the transfer. A successor to only the Developer's Reserved Right to maintain models, sales offices, and signs, is subject only to liability and obligations related to providing copies of the Public Report to purchasers and to operations of the Board and Association.

19.2.3 Transferee Pursuant to Action in Lieu of Foreclosure. A successor to Developer Reserved Rights which succeeds to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure, judgment, or instrument conveying title, succeeds to all rights, obligations and liabilities of the transferor, provided, that so long as the successor: (i) declares in a recorded instrument its intention to hold all Developer Reserved Rights solely for transfer to another person; and (ii) does not in fact exercise any Developer Reserved Rights except those rights set forth in Sections 17.1, 17.2 and 17.3 of this Declaration related to the Developer Control Period, such successor shall not be subject to liability arising from Developer Reserved Rights except liabilities arising from any exercise by the successor of rights set forth in Sections 17.1, 17.2, and 17.3 of this Declaration.

ARTICLE 20. JUDICIAL POWER TO EXCUSE COMPLIANCE

20.1 Provisions Subject to Excuse. Except for compliance with the Master Community Charter, the Circuit Court of the First Circuit of Hawaii may excuse compliance with those provisions in the Declaration or Bylaws listed in H.R.S. Section 514B-111, if the court finds that the provisions unreasonably interfere with the Board's or Association's ability to manage the Common Elements or otherwise administer the Condominium, and that compliance is not necessary to protect the legitimate interests of the members or lenders holding security interests.

20.2 Notice to Owners of Court Hearing. The Board shall send notice by certified mail to all Owners of the date, time, and place of any court hearing regarding a request for excuse from compliance with the Declaration, Bylaws or the Act.

ARTICLE 21. DEVELOPER'S REPURCHASE RIGHTS.

21.1 Developer's Repurchase Right. The Developer hereby reserves the right to repurchase a Unit from an Owner for a period of three (3) years from the date of recordation of the Deed conveying the Unit to the Owner, provided, however, that the Developer may exercise this right *if and only if* the Owner of the Unit shall have made a complaint to the Developer about the physical condition and/or design of the Unit or the Project and the Developer, after a good faith and diligent effort, shall be unable to rectify the matters complained about to the Owner's satisfaction within a reasonable period of time, as determined by the Developer in its sole discretion. The exercise of the Developer's repurchase rights shall be subject to the following terms and conditions:

21.1.1 Notice. Developer shall give the Unit Owner and the Owner's mortgagee (if any) written notice of the Developer's election to exercise its right to repurchase the Owner's Apartment.

21.1.2 Closing. The closing of the purchase shall be no earlier than three (3) months no later than six (6) months from the date of delivery of Developer's written notice of its election to exercise its repurchase right. Real property taxes and assessments shall be prorated as of the closing date. Developer shall pay for recording fees, the cost of drafting the conveyance document, the escrow fee, and the applicable conveyance taxes. At Closing the Owner shall convey the Unit to Developer free and clear of any mortgages or other monetary liens and any other encumbrances made or suffered by the Owner.

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19.2.2 Transferee's Liability after Transfer. A successor to a Developer Reserved Right who is an affiliate of the Developer is subject to all obligations and liabilities imposed by the Act or the Declaration. A successor to any Developer Reserved Right which is not an affiliate of the Developer is subject to obligations and liability arising from the successor's exercise or failure to exercise those Developer Reserved Rights to which it has succeeded, but the successor is not liable for: (i) misrepresentations or breaches of fiduciary obligations by previous Developers or transferors or Board members appointed by the previous Developer; (ii) warranty obligations on improvements made by the previous Developers or transferors; or (iii) liabilities imposed on the transferor as a result of the transferor's acts following the transfer. A successor to only the Developer's Reserved Right to maintain models, sales offices, and signs, is subject only to liability and obligations related to providing copies of the Public Report to purchasers and to operations of the Board and Association.

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