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AMENDED AND RESTATED

DECLARATION OF CONDOMINIUM PROPERTY REGIME OF

WAILEA BEACH RESORT & RESIDENCES AND

CONDOMINIUM MAP

THIS AMENDED AND RESTATED DECLARATION is made this 9th day of November, 2006 by WAILEA HOTEL & BEACH RESORT, L.L.C., a Delaware limited liability company ("Developer"), with its principal place of business and post office address at Kobayashi Group, LLC, 1288 Ala Moana Boulevard, Suite 201, Honolulu, Hawaii 96814.

WITNESSETH:

WHEREAS, Developer owns in fee simple the real property located at Honuauia, District of Makawao, Island and County of Maui, State of Hawaii, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, by way of that certain Declaration of Condominium Property Regime of Wailea Beach Resort & Residences dated June 23, 2006, filed with the Office of the Registrar of the Land Court of the State of Hawaii as Document No. 3446757 and duly noted on Land Court Certificate of Title 669,405 ("Original Declaration"), Developer submitted the Land and Improvements (as hereinafter defined) to a condominium property regime known as "Wailea Beach Resort & Residences" ("Project") and contemporaneously therewith filed in said Office plans of said Project, designated as Condominium Map No. 1830 ("Original Map"); and

WHEREAS, Article XIII of the Original Declaration authorizes amendments to the Declaration by the affirmative vote or written consent of Owners of Units to which are appurtenant at least seventy-five percent (75%) of the Common Interest of the Project; and

WHEREAS, one hundred percent (100%) of the Common Interest of the Project is currently held by Developer; and

WHEREAS, Developer desires to amend and restate the Original Declaration in its entirety, pursuant to said Article XIII, and amend and restate the Original Map in its entirety in the manner set forth in this Amended and Restated Declaration of Condominium Property Regime of Wailea Beach Resort & Residences and Condominium Map (“Declaration”) and the Condominium Map filed concurrently herewith (“Condominium Map”);

NOW, THEREFORE, the Original Declaration shall be amended and restated in its entirety as follows, and the Original Map shall be deemed amended as set forth in the Condominium Map. In order to create a condominium project consisting of the Land and the Improvements to be known as “WAILEA BEACH RESORT & RESIDENCES,” Developer, by this Declaration, confirms the submission of the Land and Improvements and all of its interest therein to a condominium property regime established pursuant to Chapter 514B, Hawaii Revised Statutes, as amended (“Act”). Developer hereby declares and agrees that the Project is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration and the Amended and Restated Bylaws of the Association of Wailea Beach Resort & Residences (“Bylaws”), filed concurrently herewith at said Office, as the provisions of this Declaration and the Bylaws may be amended from time to time, in accordance with applicable law, and in accordance with the respective provisions of this Declaration and the Bylaws. The provisions of this Declaration and the Bylaws shall constitute covenants running with the land and equitable servitudes and liens thereon, and shall be binding upon and shall inure to the benefit of Developer, the Association, their respective successors and permitted assigns, and all subsequent owners and lessees of all or any part of the Project and their respective successors, successors-in-trust, heirs, devisees, personal representatives, executors, administrators and assigns. All of the provisions of this Declaration are subject to the provisions of that certain Wailea Community Association Amended and Restated Declaration of Covenants and Restrictions dated December 19, 1986, filed in said Office as Document No. 2479882, as amended (the “Master Declaration”).

I. USE OF DEFINED TERMS; DEFINED TERMS.

A. **USE OF DEFINED TERMS.** For purposes of construing and interpreting this Declaration and the Bylaws, all terms, when written with initial capital letters in this Declaration or in the Bylaws, shall have the meaning given such terms in this Declaration, including this Article. Such defined terms may be used in the singular or plural or in varying tenses or forms, but such variation shall not affect the meaning of the terms so long as those terms are written in initial capital letters. When such terms are used in this Declaration or in the Bylaws without initial capital letters, such terms shall have the meaning they have in common usage; provided, however, that where legal, technical or trade terms are used and the context in which such terms are used indicates that such terms are to be given their legal, technical or trade usage meanings, such terms shall be given such legal, technical or trade usage meanings.

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

1. “A la Carte Services” means those services (other than the Standard Hospitality Services) that may be provided from time to time to Residential Unit Owners in the sole discretion of the Front Desk Unit Owner and that are paid for by the Residential Unit Owners on a per-use, *per diem* or other periodic basis established by the Front Desk Unit Owner.

2. “Act” means the “Condominium Property Act” codified in Chapter 514B of the Hawaii Revised Statutes, as amended.

3. “ADA Accessible Units” means those Residential Units that are fully accessible under the Americans With Disabilities Act, 42 U.S.C. §§12101 *et seq.*

4. “Agreement of Sale” means an agreement of sale for the sale of a Unit filed at said Office.

5. "Articles of Incorporation" means the articles of incorporation of the Association, and shall include any lawful amendments thereto.

6. "Association" means the Association of Wailea Beach Resort & Residences.

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

8. "Building Structure" means the structural components of any building in the Project, including, but not limited to, all perimeter and party walls, load-bearing walls, exterior façade, and columns, foundations, footings, floor slabs, girders, beams, supports, elevators, stairs and stairways, exterior walls and roofs.

9. "Bylaws" means the Amended and Restated Bylaws of the Association, and shall include any lawful amendments thereto.

10. "Certificate of Occupancy" means the temporary certificate of occupancy (or the permanent certificate of occupancy where no temporary certificate of occupancy is issued for the Unit in question) issued by the County Department of Planning building official after inspection and prior to occupancy of a building or structure.

11. "Commercial Units" means those Units identified in Article II, Section A.2 of this Declaration and depicted on the Condominium Map.

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

13. "Common Elements" means those parts of the Project that are defined in this Declaration as Common Elements, being all areas not designated as a "Unit." Unless otherwise provided herein, the Common Elements are comprised of the Land in fee simple and the Limited Common Elements.

14. "Common Expenses" means and includes all charges, costs and expenses whatsoever incurred by the Association for and in connection with the administration, management and operation of the Project, including, but not limited to: (a) all charges for taxes (except real property taxes and other such taxes which are or may hereafter be assessed separately on each Unit and the Common Interest in the Common Elements appertaining thereto, or the personal property or any other interest of the Owner); (b) the cost of insurance, including property and other casualty and liability insurance; (c) any liability whatsoever for loss or damage arising out of or in connection with the Project or any fire, accident or nuisance thereon; (d) a sum for reserve purposes; (e) wages, accounting and legal fees; (f) management fees and start-up fees; (g) other necessary expenses of the Project; (h) the cost of all utility services, including water, electricity, gas, garbage disposal, telephone, telecommunications and any other similar services (unless separately metered, assessed or otherwise separately attributable to each Unit or a group of Units) with amounts charged or attributable to each Unit or group of Units as determined by the Board with the advice of the Resort Manager, the Managing Agent, an engineer, certified public accountant, or other appropriate consultant; (i) the License Fees charged to the Association for the use of the Resort Amenities, as discussed in Article IV, Section I; and (vii) the Hospitality Services Fees charged to the Association for Standard Hospitality Services provided or that are available to all Residential Unit Owners, as discussed in Article VII, Section A.1. The Common Expenses may also include such amounts as the Board may deem proper to make up any deficit in the Common Expenses for any prior year. The Common Expenses may also include such amounts as may be required, by special assessment, for the purchase or lease of any Unit by the Association, as permitted under Hawaii law or the Bylaws.

15. "Common Interest" means the undivided percentage interest in all Common Elements of the Project set forth in this Declaration and discussed in Article III below, which percentage interest is appurtenant to a Unit. The Common Interest appurtenant to a Unit may not be altered or transferred, except as expressly set forth in this Declaration.

16. "Condominium Map" means the Condominium Map that is referenced above and that is filed in said Office, as the same may be duly amended from time to time. The Condominium Map generally sets

forth: (a) a site plan for the Project depicting the location, layout and access to a public road for all buildings in the Project, and depicting access for the Units to a public road or to a Common Element leading to a public road; (b) elevations and floor plans of all buildings in the Project; (c) the layout, location, boundaries, unit numbers and dimensions of the Units; (d) a parking plan for the Project, showing the location, layout and stall numbers of all parking stalls included in the Project; and (e) the layout, location and other identifying information of the Limited Common Elements. The Condominium Map does not constitute a representation or warranty by Developer.

17. “County” means the County of Maui, State of Hawaii.

18. “Declaration” means this Amended and Restated Declaration of Condominium Property Regime of Wailea Beach Resort & Residences and Condominium Map, together with any lawful amendments hereto.

19. “Developer” means Wailea Hotel & Beach Resort, L.L.C., and shall also include any of its permitted successors and assigns.

20. “Developer Control Period” means the period in which Developer shall have the right to appoint and remove Officers and Directors as further discussed in Article XXXV.

21. “Director” means a member of the Board.

22. “Eligible Mortgage Holders” means a first mortgagee of a Unit that has made a written request to the Association for timely written notice of proposed amendments to the Project Documents, as provided in the Bylaws.

23. “First Class Standard” means the highest of the following standards: (a) the standard required to maintain and operate the Project in a condition and at a quality level no less than that which existed at the time that the Project was initially completed (ordinary wear and tear excepted); (b) the standard required under the Resort License Agreement or any franchise, license or management agreement applicable to the Project entered into and between the Front Desk Unit Owner and/or the Association and a third party franchisor or licensor of a resort, hotel, leisure or other hospitality brand; or (c) the level of quality and luxury comparable to (i) Grand Wailea Resort Hotel & Spa, located at 3850 Alanui Drive, Wailea, Hawaii; (ii) The Ritz-Carlton Kapalua, located at One Ritz-Carlton Drive, Kapalua, Hawaii; or (iii) the Four Seasons Resort, Maui at Wailea, located at 3900 Wailea Alanui Drive, Wailea, Hawaii, as the same exists on the date hereof.

24. “Front Desk Unit” means Commercial Unit 1 or CU1, identified in Article II, Section A.2 of this Declaration as the Front Desk Unit, and depicted on the Condominium Map.

25. “General Operating Reserve” means that fund established by the Board to provide financial stability for the Project, as is more fully described in Article VI, Section 1(b) of the Bylaws.

26. “Hospitality Services Fee” means those amounts payable to the Front Desk Unit Owner by the Association for Standard Hospitality Services provided or that are available to all Residential Unit Owners.

27. “House Rules” means the administrative rules and regulations promulgated by the Board that govern the operation and use of the Project, as the same may be amended or supplemented from time to time.

28. “Improvements” means improvements that exist or will exist on the Land, and shall also include those improvements made by Unit Owners (including Developer) and/or the Association from time to time.

29. “Land” means the real property described in Exhibit “A” attached hereto.

30. “License Fee” means the amounts payable to the Front Desk Unit Owner by the Association in consideration of the license granted the Association for the use of the Resort Amenities, as discussed in Article IV, Section I. The License Fee shall include an amount sufficient to reimburse the Front Desk Unit

Owner for all charges, costs and expenses whatsoever incurred by the Front Desk Unit Owner for and in connection with the administration, management, maintenance, renovation and operation of the Resort Amenities, including, but not limited to: (a) the cost of insurance, including property and other casualty and liability insurance; (b) any liability whatsoever for loss or damage arising out of or in connection with the Resort Amenities or any fire, accident or nuisance thereon; (c) cost of repair, reinstatement, rebuilding and replacement of the premises, systems, furniture, fixtures and equipment; (d) landscaping within the Resort Amenities; (e) janitorial and other similar services for facilities within the Resort Amenities; (f) a reasonable management fee; (g) a sum for reserve purposes; (h) any general excise tax or other tax that may be assessed based upon the amount of the License Fee; (i) other necessary or appropriate expenses of upkeep, maintenance, management and operation actually incurred or anticipated to be incurred on or for the Resort Amenities; and (j) any taxes due as a result of the payment or collection thereof, including the general excise tax.

31. **"Limited Common Elements"** means those Common Elements that are designated in this Declaration as reserved for the exclusive use of one or more Units to the exclusion of other Units. No amendment of this Declaration materially and adversely affecting the Limited Common Elements appurtenant to a Unit or Units, or in any way limiting the use thereof, shall be effective without the consent of the Owner or Owners of the Unit or Units to which said Limited Common Elements are appurtenant.

32. **"Majority of Unit Owners"** means the Owners of Units to which are appurtenant more than fifty percent (50%) of the total Common Interest. Any specified percentage of Owners means Owners of Units to which are appurtenant such percentage of the Common Interest.

33. **"Maluhia Declaration"** means that certain Declaration of Restrictive Covenants dated August 16, 2006, filed in said Office as Document No. 3469292, together with any lawful amendments thereto.

34. **"Management Agreement"** means that certain instrument entered into or to be entered into between the Association and the Managing Agent for the management and administration of the Project, or certain elements thereof.

35. **"Managing Agent"** means an entity or individual employed or retained by the Association from time to time pursuant to the Management Agreement.

36. **"Master Declaration"** means that certain Wailea Community Association Amended and Restated Declaration of Covenants and Restrictions dated December 19, 1986, filed in said Office as Document No. 2479882, as amended.

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

38. **"Original Bylaws"** means the Bylaws of the Association of Apartment Owners of Wailea Beach Resort & Residences dated June 23, 2006, and filed at said Office as Document No. 3446758, and duly noted on Land Court Certificate of Title No. 669,405. The Original Bylaws are amended and restated in their entirety by the Bylaws.

39. **"Original Declaration"** means the Declaration of Condominium Property Regime of Wailea Beach Resort & Residences dated June 23, 2006, filed at said Office as Document No. 3446757, and duly noted on Land Court Certificate of Title No. 669,405. The Original Declaration is amended and restated in its entirety by this Declaration.

40. **"Owner" or "Unit Owner"** means a person or entity owning severally or as a co-tenant, a Unit and the Common Interest appurtenant thereto, to the extent of the interest so owned; provided that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by the terms of any applicable lease documents filed in said Office, a lessor or lessee or sublessee of a Unit or interest therein shall be deemed the Owner of such Unit to the extent permitted in such lease. The vendee of a Unit pursuant to an Agreement of Sale shall have the rights of a Unit Owner, including the right to vote; provided that the vendor may retain the right to vote on matters substantially affecting the vendor's security interest in the Unit as provided in

Section 514B-124 of the Act. Where the Owner is a guardian, trustee, corporation or partnership, the method for designating the natural person who shall act as and for the Owner is as set forth in the Bylaws and, as to land trusts, in Article XV hereof. For so long as Developer owns unsold Units in the Project (or to the extent that Developer shall reacquire any Units in the Project), Developer shall have the rights of a Unit Owner, including the right to vote, and shall assume the duties of a Unit Owner as said rights and duties relate to said unsold Units (or reacquired Units), subject, however, to the provisions of the Act.

41. **"Project"** means the condominium project established pursuant to the Original Declaration and this Declaration, including the Land and Improvements. The Project has been submitted to a condominium property regime by the Original Declaration, as amended and restated by this Declaration, and shall include any additional lands and/or improvements annexed to the condominium property regime by Developer, and exclude any lands and/or improvements withdrawn by Developer in accordance with this Declaration.

42. **"Project Documents"** means this Declaration, the Condominium Map, the Bylaws, the Resort Rules, the House Rules and Articles of Incorporation, if any, as the same may be amended.

43. **"Recreational Facilities"** means certain portions of the Resort Amenities as depicted on the Condominium Map which the Unit Owners have the right to use pursuant to a license agreement with the Front Desk Unit Owner set forth in Article IV, Section I of this Declaration. The Recreational Facilities may include, but are not limited to, the main pool and the fitness center. The Recreational Facilities shall not include the Commercial Units, the Residential Units, the ballroom, the function lawn and other areas designated as Limited Common Elements for the exclusive use of the Front Desk Unit Owner.

44. **"Residential Units"** means the Units identified in Article II, Section A.1 of the Declaration and depicted on the Condominium Map.

45. **"Resort Amenities"** means those certain Limited Common Elements appurtenant to the Front Desk Unit, as more particularly identified in Article II, Section D.2.a of this Declaration. The Association, for the benefit of each of the Owners, has an irrevocable, nonexclusive license to use the Resort Amenities pursuant to Article IV, Section I of this Declaration.

46. **"Resort License Agreement"** means that agreement, if any, pursuant to which the Project is "branded" by a third party franchisor or licensor of a resort, hotel, leisure or other hospitality brand.

47. **"Resort Management Agreement"** means that certain instrument entered into or to be entered into between the Front Desk Unit Owner and the Resort Manager for the management and administration of Front Desk Unit, the Standard Hospitality Services, A la Carte Services and the Resort Amenities, or any part or portion thereof; provided that the Resort Manager shall have the right to subcontract any of its duties thereunder.

48. **"Resort Manager"** means an entity or individual employed or retained by the Front Desk Unit Owner from time to time to manage the Front Desk Unit, the Standard Hospitality Services, the A la Carte Services and the Resort Amenities.

49. **"Resort Rules"** means the administrative rules and regulations promulgated by the Front Desk Unit Owner that govern the operation and use of the Resort Amenities, as the same may be amended or supplemented from time to time.

50. **"Standard Hospitality Services"** means those certain standard services provided to Residential Unit Owners by the Front Desk Unit Owner, the cost of which shall be payable by the Association and assessed as a Common Expense to all Residential Unit Owners. Standard Hospitality Services may include, but shall not be limited to, concierge services, luggage services and front desk registration services.

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

52. "Unit" means a part of the Project, as described in this Declaration and as shown on the Condominium Map, intended for a use permitted under the Act, with an exit to a public street or highway, or to a Common Element leading to a public street or highway. The Units included in the Project are listed in Exhibit "B" and include Commercial Units and Residential Units.

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

54. "Wailea Beach Resort & Residences" shall be the name of the Project established by the submission of the Land and Improvements to a condominium property regime under the terms and conditions set forth in this Declaration; provided that Developer shall have the reserved right to change the name of the Project in its sole discretion to comply with the Resort License Agreement, if any, as provided in Article XXVI, or as otherwise set forth in this Declaration.

II. DESCRIPTION AND DIVISION OF PROPERTY.

A. **DESCRIPTION OF THE PROJECT.** The Project is depicted on the Condominium Map and consists of the following:

1. **Residential Units.** One hundred ninety-three (193) Residential Units contained in four (4) two-story buildings, two (2) three to four-story buildings, and seven (7) four-story buildings.

2. **Commercial Units.** Five (5) Commercial Units located within the Project and identified on the Condominium Map as: "Commercial Unit 1," "CU1" or the "Front Desk Unit," located on level 3 of Building A.2 and depicted on the Condominium Map; "Commercial Unit 2," "CU2" or the "Lobby Bar," located on level 3 of Building A.2 and depicted on the Condominium Map; "Commercial Unit 3," "CU3" or the "Spa," located on level 3 of Building A.2 and depicted on the Condominium Map; "Commercial Unit 4," "CU4" or the "Specialty Restaurant," located on level 2 of Building A.2 and depicted on the Condominium Map; and "Commercial Unit 5," "CU5" or the "Pool Restaurant," located on level 1 of Building F and depicted on the Condominium Map.

3. **Common Elements.** The Common Elements identified below.

B. **DESCRIPTION OF THE UNITS.** One hundred ninety-eight (198) freehold estates are hereby established, designated and shown on the Condominium Map. Each Residential Unit consists of the spaces within the perimeter and party walls, windows, doors, floors and ceilings of the respective Residential Unit as shown on the Condominium Map. Each Commercial Unit consists of the spaces within the perimeter and party walls (if any) and/or the imaginary vertical planes (where there is no perimeter wall), floors and ceiling of the respective Commercial Unit, as shown on the Condominium Map.

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

2. **Unit Areas, Layouts and Dimensions.** The Unit areas and layouts are generally shown on the Condominium Map and are further described in Exhibit "B" attached hereto and incorporated herein by this reference. The Condominium Map is intended only to show: (a) the location, layout and access to a public road of the buildings and access for the Units to a public road; (b) elevations and floor plans of the buildings; (c) the layout, location, boundaries, unit numbers and dimensions of the Units; (d) a parking plan for the Project showing the location, layout and stall numbers of all parking stalls included in the Project; and (e) the layout, location and other identifying information of the Limited Common Elements. The Condominium Map is not intended and shall not be deemed to contain or make any representation or warranty whatsoever. The descriptions contained in this Declaration or Exhibit "B" that describe the various rooms and areas of the Project, and the designations of rooms and areas on the Condominium Map are for identification purposes only, and are not intended and shall not be deemed or construed to limit or define in any manner the purpose for which such rooms and areas may be used.

Unless expressly restricted in this Declaration or the Master Declaration, such areas may be used for any purposes not prohibited by applicable law.

3. **Access to Public Streets or Highways.** Except as may be limited by the terms of this Declaration, each Unit has immediate access through elevators, stairways, walkways and driveways of the Project to public streets and to the grounds of the Project that have access to public streets.

4. **Other Data Identifying and Defining the Units.** The respective Units shall not be deemed to include: (a) the perimeter or party walls or the undecorated or unfinished interior surfaces thereof, (b) the floors and ceilings surrounding each Unit or the undecorated or unfinished interior surfaces thereof, (c) the perimeter doors, door frames, windows and window frames and all exterior hardware associated therewith, or the undecorated or unfinished interior surfaces thereof, (d) the interior load-bearing walls and columns, if any, or the undecorated or unfinished surfaces thereof, (e) any pipes, shafts, ducts, flues, chutes, equipment, pumps, conduits, wires or other utility or service lines that are utilized for or serve more than one Unit, (f) lanais, balconies and patios, (g) exterior surfaces, doors and door frames, including columns, floors, roofs, railings, fences, foundations and walls, or (h) any areas designated as Limited Common Elements. Each Unit shall be deemed to include: (i) all of the walls and partitions that are not load-bearing within its perimeter or party walls (and/or, with respect to each Commercial Unit, the imaginary vertical planes where there is no perimeter wall), (ii) all pipes, shafts, ducts, flues, chutes, equipment, pumps, conduits, wires and other utility or service lines running through such Unit that are utilized for and serve only that Unit, (iii) the interior decorated or finished surfaces of all walls, floors and ceilings surrounding each Unit and the air space located therein, and (iv) all appliances, interior hardware, and fixtures installed therein, and replacements therefor.

C. **COMMON ELEMENTS.** One freehold estate is hereby designated in all remaining portions of the Project not otherwise defined as a "Unit," herein called the "Common Elements." Unless otherwise provided herein, the Common Elements shall include the Land in fee simple and any appurtenances thereto as described in Exhibit "A" and the Limited Common Elements described in Article II, Section D, below.

D. **LIMITED COMMON ELEMENTS.** The Limited Common Elements are hereby 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. Subject to Article IV, Section I that requires the Association to reimburse the Front Desk Unit Owner for costs and expenses associated with maintaining the Resort Amenities, 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 charged to the Owner of the Unit to which the Limited Common Element shall be appurtenant, and if there is more than one (1) Unit to which the Limited Common Element shall be appurtenant, then in proportion to the Common Interest appurtenant to each of the respective Units. Unless otherwise provided herein, Limited Common Elements shall be managed and maintained by the Owner of the Unit to which the Limited Common Element shall be appurtenant; and Limited Common Elements that are appurtenant to more than one (1) Unit shall be managed and maintained by the Front Desk Unit Owner, on behalf of such Unit Owners. The Front Desk Unit Owner shall assess Unit Owners for all costs attributable to the Limited Common Elements appurtenant to said Owner's Unit that are operated and maintained by the Front Desk Unit Owner. In any event that a dispute shall arise between Unit Owners to which a particular Limited Common Element shall be appurtenant with respect to the management and/or maintenance thereof, unless otherwise provided herein or by contract, such dispute shall be resolved by the Front Desk Unit Owner, which shall be the sole arbiter with respect to such matters. The Limited Common Elements appurtenant to the Front Desk Unit shall be maintained by the Front Desk Unit Owner, and the cost and expenses pertaining thereto, including, but not limited to, the costs of maintenance, repair, replacement, improvement or additions, and reserves therefor, shall be payable by the Front Desk Unit Owner; provided that the Front Desk Unit Owner shall be entitled to be reimbursed for all or a portion of such costs associated with the Resort Amenities, plus any general excise or other tax assessed thereon, by the Association pursuant to Article IV, Section I herein.

1. **Residential Units.** Each Residential Unit shall have appurtenant thereto, as Limited Common Elements:

a. The lanai area adjacent to such Unit, from the decorated or finished surfaces of all walls, floors and ceilings of said lanais, as depicted on the Condominium Map, the approximate areas of which are identified in Exhibit "B";

b. The outdoor shower, if any, adjacent to such Unit, as depicted on the Condominium Map;

c. The roof deck, if any, located on the roof above such Unit, as depicted on the Condominium Map. The roof deck shall be managed and maintained by the Front Desk Unit Owner and the costs and expenses of every description pertaining thereto shall be assessed to the Owner of the Unit to which the roof deck is appurtenant;

d. The stairway to the roof deck (if any) shall be a Limited Common Element to the Units requiring the use of the stairway to access the roof deck. The stairway to the roof deck shall be managed and maintained by the Front Desk Unit Owner and the costs and expenses of every description pertaining thereto shall be assessed among the Unit Owners utilizing the stairway access in proportion to the Common Interest appurtenant to such Units; and

e. The plunge pool, if any, adjacent to such Unit, as depicted on the Condominium Map. The plunge pool shall be managed and maintained by the Front Desk Unit Owner and the costs and expenses of every description pertaining thereto shall be assessed to the Owner of the Unit to which the plunge pool is appurtenant.

2. **Commercial Unit 1 (Front Desk Unit).** The Front Desk Unit shall have appurtenant thereto, as Limited Common Elements, all elements of the Project that are not Units, and that are not designated as Limited Common Elements appurtenant to Residential Units or other Commercial Units, including, but not limited to, the following:

a. **Resort Amenities.** The Front Desk Unit shall have appurtenant thereto the Resort Amenities, subject to an irrevocable, nonexclusive license granted to the Association in Article IV, Section I herein to use the Resort Amenities. The Resort Amenities shall be maintained by the Front Desk Unit Owner. The cost incurred for such maintenance shall be included as part of the License Fee, which is discussed further below. The Resort Amenities shall include, but not be limited to, the following:

(i) All perimeter or party walls and the undecorated or unfinished interior surfaces thereof, any load-bearing walls and columns and the undecorated or unfinished interior surfaces thereof, and the floors and ceilings surrounding each Unit and the undecorated or unfinished interior surfaces thereof, all structural components such as foundations, concrete sidewalks and curbs, floor slabs, columns, girders, beams, supports, halls, corridors, elevators, elevator lobbies, exterior stairs and stairways, main walls and roofs, that are not a part of a Unit;

(ii) All perimeter doors, door frames, windows, window frames, and all exterior hardware associated therewith, and the undecorated or unfinished interior surfaces thereof; whether at the perimeter of a Building Structure or at the perimeter of a Unit that are not a part of a Unit;

(iii) All walls, floors and ceilings of any lanai area, from the undecorated or unfinished interior surface thereof;

(iv) All grounds and landscaping, and all trash enclosures within the Project;

(v) All driveways, access lanes, paved areas, ramps, hallways and walkways within the Project;

(vi) All parking areas shown on the Condominium Map, including, without limitation, the parking stalls located therein and the loading docks depicted on the Condominium Map;

(vii) The Recreational Facilities;

(viii) All cables, conduits, ducts, sewer lines, electrical equipment, wiring, pipes, catch basins and other central and appurtenant transmission facilities and installations over, under and across the Project that serve more than one (1) Unit for services such as power, light, water, gas, sewer, storm water, refuse, telecommunications, cable television and television signal distribution;

(ix) All unimproved areas, maintenance, mechanical, electrical, and storage areas and other similar areas, that are not part of a Unit, as depicted on the Condominium Map;

(x) All other apparatus and installations existing for common use, such as tanks, pumps, motors, fans, air-conditioning units, including fan coil equipment located within a Unit, compressors, ducts, shafts, vents, water heating and distribution equipment, fire suppression equipment, trash chutes, laundry chutes and other such installations and apparatus;

(xi) The entire telephone PBX system and all appurtenances thereto; and

(xii) All other parts of the Project necessary or convenient to its existence, maintenance and safety, and normally in common use, and other areas designated on the Condominium Map as Limited Common Elements appurtenant to the Front Desk Unit, except as noted in Article II, Section D.2.b, below.

b. **Front Desk Unit Limited Common Elements.** In addition to the Resort Amenities, the Front Desk Unit shall have appurtenant thereto the following Limited Common Elements for its exclusive use which Limited Common Elements shall not be subject to the license granted to the Association under Article IV, Section I:

(i) The function lawn located adjacent to Building M, as depicted on the Condominium Map;

(ii) The ballroom located on level 1 of Building N, as depicted on the Condominium Map; and

(iii) The back-of-house and other areas intended for the exclusive use of the Front Desk Unit Owner.

3. **Commercial Unit 3 (Spa).** Commercial Unit 3 shall have appurtenant thereto the outdoor areas and treatment areas adjacent thereto, as depicted on the Condominium Map.

4. **Commercial Unit 4 (Specialty Restaurant).** Commercial Unit 4 shall have appurtenant thereto the kitchen area and outdoor dining area adjacent thereto, as depicted on the Condominium Map.

5. **Commercial Unit 5 (Pool Restaurant).** Commercial Unit 5 shall have appurtenant thereto the kitchen area and outdoor dining area adjacent thereto, as depicted on the Condominium Map.

III. COMMON INTEREST.

Each Unit shall have appurtenant thereto an undivided percentage interest in all Common Elements of the Project as shown in said Exhibit "B," herein called the Common Interest, and the same proportionate share in all Common Expenses of the Project, and for all other purposes, except as otherwise provided in this Declaration, including, but not limited to voting, which Common Interest shall be subject to adjustment as otherwise provided in this Declaration. Any profits generated from the use of a particular Unit or Limited Common Element shall not be 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. Developer shall have the absolute right to adjust the Common Interest in its discretion in order to assure that the total Common Interest for all Units in the aggregate equals one hundred percent (100%), and may adjust the Common Interest of all or some of the Units in the Project to achieve such result.

IV. EASEMENTS AND LICENSE.

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

A. EASEMENT IN THE RESORT AMENITIES AND OTHER UNITS FOR SUPPORT. Each Unit shall have appurtenant thereto nonexclusive easements in the Resort Amenities designed for such purposes as support, maintenance and repair of such Unit; and in other Units in the building in which such Unit is located for support; provided that such easements and the utilization thereof shall not materially or adversely impact the use and/or operation of the Resort Amenities, and shall be subject to such rules and regulations and/or limitations as may from time to time be prescribed by the Front Desk Unit Owner or the Board.

B. 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, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. In the event that a Unit shall be partially or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Project, encroachments of any part of the Common Elements, Units or Limited Common Elements due to such construction, shifting, settlement or movement shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist for so long as such encroachment continues.

C. EASEMENT FOR ACCESS TO UNITS. The Association and the Front Desk Unit Owner shall have the irrevocable right, but not the duty, to be reasonably exercised by the Board, the Managing Agent, the Front Desk Unit Owner, the Resort Manager, or any of their successors, assigns, agents, employees, contractors, subcontractors and other authorized personnel, to enter each Unit from time to time during reasonable hours as may be appropriate for the operation or maintenance of the Project or without notice, at any time for (1) making emergency repairs therein necessary to prevent damage to any Unit or Limited Common Element, (2) abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity, (3) protecting the property rights of any Owner, or (4) preventing death or serious bodily injury to any Owner or other occupant therein.

Additionally, the Front Desk Unit Owner shall have the irrevocable right, but not the duty, to be reasonably exercised by the Front Desk Unit Owner or the Resort Manager, to enter each Unit or Limited Common Element from time to time during reasonable hours as may be appropriate for any purpose reasonably related to the exercise of the rights and obligations of the Front Desk Unit Owner under this Declaration.

D. DEVELOPER'S EASEMENT TO COMPLETE IMPROVEMENTS TO THE PROJECT. To and until December 31, 2026, 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 and the correction of defects and other "punchlist" items therein. Each and every Owner or other person acquiring an 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 nuisance or annoyances arising from the completion of such improvements.

E. DEVELOPER'S EASEMENT FOR NOISE AND DUST. To and until December 31, 2026, Developer, its agents, employees, consultants, contractors, licensees, successors and assigns, shall have an easement over, under and upon the Project or any portion thereof, to create and cause noise, dust, vibration and other nuisances created by and resulting from any work connected with or incidental to the development, construction and sale of any Unit or other improvements in 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 such noise, dust, vibration, and other nuisances or annoyances.

F. DEVELOPER'S EASEMENT FOR SALES ACTIVITIES. 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 by Developer and the Common Elements (excluding the Limited Common Elements appurtenant to Units not 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, billboards, 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 proper development and disposition of Units by sale, resale, lease, or otherwise, and the right, but not the obligation, to provide ongoing maintenance, operation, service, construction and repairs to individual Units. 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.

Each and every party acquiring an interest in the Project or the Land hereby acknowledges that the sales activities may result in noise and nuisances, and consents to such activity by Developer, and further waives, releases and discharges any rights, claims or actions such party may acquire against Developer, its brokers, sales agents, representatives, employees, consultants, attorneys and lenders, and their respective successors and assigns as a result of any such activity or activities.

G. DEVELOPER'S EASEMENT FOR THE SUBDIVISION AND CONSOLIDATION OF UNITS. To and until December 31, 2026, Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees and assigns, shall have an easement over, under, upon and through the Common Elements and any Limited Common Elements and through the Units or any portion thereof as may be reasonably necessary to effect the subdivision or consolidation of Units, as contemplated by Article XVIII below, and such easement shall allow Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees and assigns, to create and cause noise, dust and other nuisances created by and resulting from any work connected with or incidental to effecting any such subdivision or consolidation of Units, provided that any such work is undertaken with the exercise of reasonable diligence and shall not unreasonably interfere with the use and enjoyment of the Project by Owners.

H. EASEMENT IN FAVOR OF UNIT OWNERS FOR ACCESS OVER LIMITED COMMON ELEMENTS APPURTENANT TO THE FRONT DESK UNIT FOR INGRESS, EGRESS AND RELATED PURPOSES. Each Unit in the Project other than the Front Desk Unit, shall have appurtenant thereto, nonexclusive easements in the roadways, driveways, access lanes, ramps, loading areas, sidewalks, walkways, hallways and grounds of the Project that are part of the Limited Common Elements appurtenant to the Front Desk Unit as depicted on the Condominium Map, only to the extent that such easements are necessary for ingress to and egress from, such Units and to and from any Limited Common Element areas appurtenant to such Units. Nothing in this Section shall grant any Unit Owner the right to utilize the parking stalls and loading areas in the Project for any purposes other than pedestrian ingress and egress to their respective Units, without the consent of the Front Desk Unit Owner. Such easements shall be subject to the right of the Front Desk Unit Owner to marshal and regulate such ingress and egress in its discretion; provided specifically that ingress and egress through lobby areas or walkways shall not be denied to Unit Owners seeking access to their respective Units.

Each Commercial Unit other than the Front Desk Unit shall also have appurtenant thereto nonexclusive easements in the roadways, driveways, access lanes, ramps, loading areas, sidewalks, walkways, hallways and grounds of the Project under which the Commercial Unit Owner and its vendors, licensees and invitees have the right, for the purposes of the business conducted in the Commercial Unit or its Limited Common Elements, to (1) come onto the Project; (2) make deliveries using any delivery area and any Limited Common Elements appurtenant to the Front Desk Unit connecting the delivery area to the Commercial Unit or its Limited Common Element; (3) pedestrian access the Commercial Unit and its Limited Common Elements using walkways and other access ways

intended for such purpose; (4) use the Limited Common Elements appurtenant to the Front Desk Unit as may otherwise be reasonably necessary in connection with the ordinary conduct of business operations in the Commercial Unit and/or its Limited Common Elements.

I. **LICENSE TO USE RESORT AMENITIES.** The Resort Amenities, which are Limited Common Elements appurtenant to the Front Desk Unit, shall be maintained by the Front Desk Unit Owner in a manner that is consistent with, and appropriate to, a resort destination operating pursuant to the First Class Standard; provided that the Front Desk Unit Owner may delegate its duties hereunder to the Resort Manager pursuant to the Resort Management Agreement. If the Front Desk Unit Owner delegates its duties hereunder to the Resort Manager, the Resort Manager shall have all corresponding rights as may be provided to the Front Desk Unit Owner in this Article IV, Section I. The obligation of the Front Desk Unit Owner to maintain the Resort Amenities at the First Class Standard is subject to and conditioned upon the timely payment of the License Fee by the Association, as discussed herein.

Developer, as the initial Front Desk Unit Owner, hereby grants to the Association, for the benefit of each of the Owners, an irrevocable, nonexclusive license to use the Resort Amenities, subject to such rules and regulations as the Front Desk Unit Owner may promulgate. Nothing herein shall grant the Association the right to use any other Limited Common Element appurtenant to the Front Desk Unit. The term of such license shall be coterminous with the Project, unless earlier terminated by reason of the conveyance of the Front Desk Unit to the Association or as provided in Article IV, Section I.3, below. Neither the Association, nor any Owner other than the Front Desk Unit Owner, shall have or claim, at any time, any interest or estate of any kind or extent in such Resort Amenities by virtue of this grant of license or any permitted use hereunder, and the Association and any person claiming through or under the Association, by accepting any deed or mortgage of an interest in any Unit in the Project, waives any rights in and to such Resort Amenities, except as may be expressly provided herein. The license granted herein is a non-proprietary, non-voting, non-transferable use right, terminable only in accordance with the provisions of this Declaration. Neither the Association nor any other Owner, shall have an interest in the income or profit of the Front Desk Unit Owner that may be derived from activities conducted within or upon such Resort Amenities, nor any right to a specified level of availability of any of such Resort Amenities, nor any right to a specified configuration of the Resort Amenities or equipment, facilities, structures or other improvements situated therein, nor any right to influence any decision by the Front Desk Unit Owner with respect to the Resort Amenities. Each Owner of a Unit in the Project shall have the right of ingress to, egress from, use and enjoyment of the facilities of the Resort Amenities, subject to such rules and regulations as may be promulgated by the Front Desk Unit Owner; provided that the Owner is current in the payment of Common Expenses to the Association and/or has paid such Owner's share of the License Fee to the Front Desk Unit Owner and is otherwise not in default under the Project Documents. Expenses related to the Resort Amenities shall be paid to the Front Desk Unit Owner pursuant to the following provisions:

1. **Payable by Association.** In consideration of the license granted herein, the Association shall reimburse the Front Desk Unit Owner the expenses incurred by the Front Desk Unit Owner for the maintenance, use and upkeep of the Resort Amenities. The reimbursement of such expenses (the "License Fee") shall be charged to each Owner as a Common Expense and shall be determined as follows: the Association shall pay to the Front Desk Unit Owner, on the first day of each month, in advance, an amount equal to one-twelfth (1/12th) of the Annual License Fee Budget, as hereinafter defined.

2. **Determination of License Fee.** The Front Desk Unit Owner shall prepare an itemized annual budget estimating amounts to be incurred by the Front Desk Unit Owner in the operation and maintenance (including major repairs, alterations, betterments and reserves for replacements) of the Resort Amenities for the following calendar year (the "Annual License Fee Budget"). The Front Desk Unit Owner shall present to the Board, at least ninety (90) days prior to the end of the calendar year, the Annual License Fee Budget for the ensuing calendar year.

Upon receipt, the Board shall have thirty (30) days to review the Annual License Fee Budget. If the Board has any objections to the Annual License Fee Budget, the Board shall notify the Front Desk Unit Owner in writing, which writing shall specify the objections. Within a reasonable period after receipt of such written notice, which period shall not exceed thirty (30) days, a representative of the Board and a representative of the Front Desk Unit Owner shall meet at a mutually acceptable place within or near the Project to discuss the objections of the Board,

and shall negotiate in good faith to resolve such objections. In the event the Board and the Front Desk Unit Owner are unable to resolve the objections, the parties agree to submit the matter to alternative dispute resolution as provided in Article XXX of this Declaration.

Each Owner acknowledges that the Front Desk Unit Owner is, subject to the timely payment of the License Fee, obligated to maintain the Resort Amenities in a manner that is consistent with, and appropriate to, a resort destination operating pursuant to the First Class Standard, and will enter into contracts with vendors and other contractors to maintain the Project to the First Class Standard. Accordingly, notwithstanding any dispute regarding the Annual License Fee Budget, the Association shall pay to the Front Desk Unit Owner the License Fee calculated in accordance with the Annual License Fee Budget prepared by the Front Desk Unit Owner pending the resolution of any dispute, and the Front Desk Unit Owner may disburse such amounts so collected to any third-party vendor or contractor without liability to the Association for amounts paid. Additionally, the Front Desk Unit Owner shall be granted broad discretion in determining the level of maintenance necessary to maintain the First Class Standard, and its determination shall not be reversed unless there is an abuse of such discretion.

The Annual License Fee Budget shall be reconciled at least once per calendar year by the Front Desk Unit Owner; provided, however, that the Front Desk Unit Owner may reconcile the Annual License Fee Budget more frequently if it determines that the actual expenses associated with the Resort Amenities will result in a shortfall in any calendar month. In the event the actual expenses associated with the Resort Amenities differ from the License Fee collected for the calendar year or calendar month in question, the Association shall: (a) remit the difference to the Front Desk Unit Owner within sixty (60) days of the end of the calendar year or calendar month in question and assess the shortfall to all Unit Owners as a special assessment in proportion to the respective Common Interests of all Unit Owners; or (b) apply any surplus in amounts collected to the following year's or month's License Fee.

Notwithstanding the foregoing, where the actual expenses associated with the Resort Amenities for any calendar year exceeds the Annual License Fee Budget, the Association shall not be required to reimburse the Front Desk Unit Owner any amounts in excess of one hundred twenty percent (120%) of the Annual License Fee Budget, except in "emergency situations," as such term is defined in Section 514B-148 of the Act, or with the prior approval of the Majority of Unit Owners.

3. **Failure to Reimburse.** The Association shall include the License Fee in its annual budget for Common Expenses and shall take such additional measures as are reasonably necessary for the timely payment of the License Fee to the Front Desk Unit Owner. In the event that any installment of the License Fee is not paid when due, the Front Desk Unit Owner shall give written notice of such default to the Association. If the Association fails to cure its default by paying the amount payable hereunder within ten (10) business days after receipt of such notice of default, or within any extended period granted by the Front Desk Unit Owner in its sole discretion, the Front Desk Unit Owner may accelerate the remaining installments of the License Fee for the then current calendar year and may terminate the license granted hereunder, provided that the Front Desk Unit Owner shall continue to make such Resort Amenities available to any Owner who pays such Owner's proportionate share of the License Fee for each Unit such Owner owns that would be payable to the Front Desk Unit Owner by the Association if the license granted hereunder had not been terminated.

4. **Assessment and Lien Rights; Enforcement.** The Front Desk Unit Owner shall have a lien on, and a security interest in, the General Operating Reserve of the Association in an amount equal to all License Fees, interest and late charges, and costs associated with the collection thereof. In the event the Association shall fail to make payments of the License Fee when due, to the extent permitted by applicable law, the Front Desk Unit Owner may enforce the lien hereby granted to secure the payment of such sums as the holder of a security interest.

The Front Desk Unit Owner shall also have a lien on, and a security interest in, the Association's right to charge and collect Common Expenses from the Owners in an amount equal to all License Fees, interest and late charges, and costs associated with the collection thereof. In the event the Association shall fail to make payments of the License Fee when due, to the extent permitted by applicable law, the Front Desk Unit Owner may enforce the lien hereby granted to secure the payment of such sums as the holder of a security interest may.

To the extent permitted by applicable law, all amounts of the License Fee due and unpaid (including accelerated sums) shall, to the extent notice thereof is filed at the Office, constitute a lien on each Unit in favor of the Front Desk Unit Owner, to the extent of such Unit's pro-rata share of the unpaid License Fee, together with all interest, late charges and collection and enforcement costs thereon or with respect thereto. At the option of the Front Desk Unit Owner, the lien may be foreclosed upon by the Front Desk Unit Owner in like manner as a mortgage of real property, including, but not limited to, by way of power of sale, as specified and in accordance with the provisions of Chapter 667 of the Hawaii Revised Statutes, as amended, and said lien shall extend to cover all money and other proceeds and amounts received on account of a Unit and its use, including all rents, insurance and condemnation proceeds, sales proceeds, cash and non-cash proceeds as defined in Section 490:9-306 of the Hawaii Revised Statutes. The lien and security interest created herein shall be subject and subordinate to first mortgages and security interests given by an Owner in good faith and for value to any prior Owner or to any institutional lender and filed prior to the filing of a notice of lien hereunder by the Front Desk Unit Owner, which mortgages and security interests shall be superior to the Front Desk Unit Owner's lien and security interest. Any Unit Owner may obtain a release of the lien created hereunder by making payment to the Front Desk Unit Owner of such Owner's proportionate annual share of the License Fee for each Unit such Owner owns. Upon receipt of such payment, the Front Desk Unit Owner shall file an appropriate instrument to effectuate the release of said Owner's Unit(s) for the lien provided for in this paragraph.

5. **General Excise Tax.** Amounts payable by the Association to the Front Desk Unit Owner under the license granted herein represent a reimbursement of the proportionate share of Common Expenses payable in respect of such Resort Amenities by the Owners. In the event that such sums are deemed to be subject to the general excise tax pursuant to Chapter 237 of the Hawaii Revised Statutes (or other applicable tax), the Association shall pay such additional amount as may be necessary to permit the Front Desk Unit Owner to receive the sum it would have received should the general excise tax not apply.

6. **No Waiver.** No Owner shall be relieved of the obligation to pay for the use of such Resort Amenities through his or her share of the Common Expenses by waiving his or her rights to use the Resort Amenities or any part thereof. Neither the Association nor any Owner can abandon the license granted herein. The Front Desk Unit Owner shall be able to directly charge individual Owners for any additional goods sold or services rendered in connection with such Resort Amenities. This Article IV, Section I shall not be amended or terminated without the prior written consent of the Front Desk Unit Owner.

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

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

Except as set forth in this Declaration, no alteration of the Common Interest or easements appurtenant to any Unit shall be made, nor shall any partition or subdivision of any Unit be made, without the prior written consent of Eligible Mortgage Holders.

VI. **USE.**

A. **RESIDENTIAL UNITS.**

1. **Use Generally; Restrictions.** The Residential Units shall be occupied and used only for the purposes that are consistent with, and appropriate to, a resort destination operating pursuant to the First Class Standard. Accordingly, the Units may be used for long-term residential use, hotel or transient vacation rental purposes, or other uses permitted by law, this Declaration, the Bylaws and House Rules, that are consistent with a

resort destination operating pursuant to the First Class Standard; provided that, without the prior written consent of the Front Desk Unit Owner: (a) other than as may be provided herein, no commercial business activity, or home occupation involving visitation by members of the public on a regular basis shall be conducted from any Residential Unit; and (b) notwithstanding anything contained herein or in law to the contrary, the Residential Units or any interest therein, shall not be the subject of or sold, transferred, conveyed, leased, occupied, rented or used at any time under a time share plan (as defined in Hawaii Revised Statutes, Chapter 514E, as amended) or similar arrangement or program whether covered by Chapter 514E or not, including, but not limited to, any so-called "fractional ownership," "vacation license," "travel club membership," "club membership," "membership club," "destination club," "time-interval ownership," "interval exchange" (whether the exchange is based on direct exchange or occupancy rights, cash payments, reward programs or other point or accrual systems) or "interval ownership" as offered and established through a third-party vacation membership service provider who is in the business of providing and managing such programs.

The restrictions set forth in subsection (b) above shall be read broadly, and, among other things, shall encompass any type of plan, the nature of which causes Residential Units to be utilized by persons who have either joined a plan or program as a member or whose use is derivative of someone who has joined a plan or program as a member. Determination by the Association that a violation of this provision exists shall be binding on the violating Owner, and the Board may promulgate and effectuate additional rules, regulations, procedures and processes for enforcement of this provision, including but not limited to any surcharge or other charge or assessment that the Board shall solely determine. This Article VI, Section A.1 shall not be terminated or amended without the prior written consent of Developer.

2. **Sales and Marketing.** Except for Residential Units owned by Developer and used for sales and marketing purposes in accordance with Article IV, Section F above, no "open houses" or similar activity promoting the sale of a Residential Unit shall be permitted at the Project.

3. **Sales and Marketing Materials.** All sales and marketing materials provided to an Owner in connection with the Unit or the Project that are otherwise the property of Developer, including, but not limited to, any imagery, logos, artistic renderings, weblinks, layout depictions, video clips, and other similar marketing materials, may not be used by an Owner or any rental agent in the promotion of any Unit in the Project in any fashion whatsoever without the prior written approval of Developer, which approval may be withheld by Developer in its sole discretion. Any use of such material in any way by Owner or any rental agent without such permission will entitle Developer or the Front Desk Unit Owner to immediately enjoin such use and to pursue any and all remedies against the Owner and/or rental agent that Developer or the Front Desk Unit Owner may have, independently of the obligations set forth in this Declaration. The Owner and/or rental agent will be fully responsible to pay for all costs incurred by Developer or the Front Desk Unit Owner in enforcing its proprietary rights in and to such material, including, but not limited to, any and all attorneys' fees and costs.

4. **Leases and Rentals.** It is intended that the Residential Units may be leased or used for transient and/or hotel rentals. As such, Owners of Residential Units shall have the absolute right, without obtaining the consent or joinder of any other Owners, to lease or rent their Units or portions thereof, subject to the provisions of the Act, this Declaration and the Bylaws. All leases and rentals of Units or portions thereof shall be made in accordance with any applicable zoning ordinances and other applicable laws, including, but not limited to, the Residential Landlord Tenant Code, Chapter 521 of the Hawaii Revised Statutes, unless otherwise exempted therefrom.

Notwithstanding the foregoing, to ensure the continuing operation of the Project as a resort destination operating pursuant to the First Class Standard, and to maintain the consistency of services offered at the Project, Owners may only rent their Residential Units on their own or through a rental agent authorized by the Board. Any person or entity desiring to become an authorized rental agent shall make an application to the Board for approval and demonstrate compliance with the following criteria, and any additional criteria that may from time to time be established by the Board:

a. Rental agent has at least five (5) years experience renting or managing transient occupancy units;

b. Rental agent is registered to do business in the State of Hawaii, is in good standing and has current permits, licenses and registrations required by law for it to perform necessary rental functions, and is a resident of the County;

c. Rental agent agrees to comply with applicable Hawaii law pertaining to client trust accounts and commingling of funds with other operating accounts in the Project;

d. Rental agent agrees to be responsible for all filings and for paying all applicable Hawaii State taxes generated from its rental operations at the Project, including, but not limited to, any general excise taxes or transient accommodations taxes, as may be applicable; and

e. Rental agent agrees to obtain, at such rental agent's expense, a policy of liability insurance with a limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) per occurrence, naming the Front Desk Unit Owner, the Resort Manager, the Association and the Board as additional insureds, to the extent reasonably practicable, and shall provide the Front Desk Unit Owner, the Resort Manager and the Board with a certificate of insurance confirming that such insurance is being maintained.

B. COMMERCIAL UNITS. The Commercial Units and the Resort Amenities may be used for any commercial purpose permitted by zoning and other applicable laws, this Declaration, the Bylaws and the Master Declaration, including, but not limited to, restaurants, health clubs, administrative offices, concierge services, storage, sales and marketing offices, and activity desks or offices; provided that such use is consistent with the First Class Standard. The Commercial Unit Owners may enter into such agreements as they deem appropriate to utilize the Commercial Units. Any income from the Commercial Units, the Limited Common Elements appurtenant to the Commercial Units, including the Resort Amenities, shall belong solely to the Commercial Unit Owner to which such income derived. This Section shall not be terminated or amended without the prior written consent of the Commercial Unit Owner thereby affected, to the extent permitted by applicable law.

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

D. PROHIBITION ON ACTIVITIES THAT MAY JEOPARDIZE THE PROJECT. No Unit Owner shall do or suffer or permit anything to be done or kept on or in any Unit or appurtenant Limited Common Element or elsewhere on the Project that will: (1) injure the reputation of the Project; (2) jeopardize the safety or soundness of the Project; (3) create a nuisance or interfere with or unreasonably disturb the rights of other Owners and occupants; (4) reduce the value of the Project; (5) result in the cancellation of insurance applicable to the Project or adversely affect the right of recovery thereunder or result in reputable companies refusing to provide insurance as required or permitted by the Bylaws; (6) increase the rate of insurance applicable to the Units or the contents thereof, or to the Project; (7) violate any applicable law, ordinance, statute, rule or regulation of any local, county, state or federal government or agency thereof; or (8) cause the violation of any license agreement(s) entered into for the benefit of the Project, including, but not limited to, the Resort License Agreement.

E. CHANGES TO BUILDING STRUCTURES AND UNITS. The Front Desk Unit Owner shall have the right to change the exterior appearance of any Building Structure, which Building Structure shall be a portion of the Resort Amenities. No change shall be made which shall result in an appearance that is inconsistent with a resort destination operating pursuant to the First Class Standard. Except for the Front Desk Unit Owner, which shall have the right to change the appearance of such Unit and the Resort Amenities without consent, no Unit Owner shall in any way, form or manner enclose, affix any improvement thereon, or extend any lanai attached to a Unit. In addition, no Unit Owner shall, without the prior written consent of the Front Desk Unit Owner, and without first obtaining any requisite governmental permits or approvals, change or cause a change to the exterior appearance of a Unit or Limited Common Element in any manner.

F. OWNERS TO MAINTAIN UNITS AND LIMITED COMMON ELEMENTS IN GOOD ORDER. The Owner of a Unit shall keep the interior of his or her Unit and all appliances, plumbing, electrical and other fixtures and appurtenances constituting a part of the Unit and the Limited Common Elements appurtenant thereto in good order and repair in accordance with the First Class Standard, and shall be responsible for any damage or loss caused by his or her failure to do so. Decisions on repairs or modifications to the Limited Common Elements shall be made by the Owners of Units to which such Limited Common Elements are appurtenant, subject to the provisions of Article VI, Section E, above, and subject to any additional provisions stated in the Bylaws; provided that the Front Desk Unit Owner shall be responsible for the management and maintenance of certain Limited Common Elements appurtenant to the Residential Units, as provided in Article II, Section D.1. Unit Owners shall be responsible for any damage or loss caused by such Owner's tenants, guests, or invitees to any of the Common Elements and Limited Common Elements.

G. USE OF LIMITED COMMON ELEMENTS. Subject to the reserved rights of Developer herein and reserved to the declarant in the Master Declaration, Unit Owners shall have the right to use the Limited Common Elements appurtenant to their Units for any purpose permitted by zoning and other applicable laws, this Declaration, the Master Declaration, the Resort Rules and the House Rules. Notwithstanding anything provided to the contrary, or from which a contrary intent may be inferred, neither the Board nor the Association shall have any right to change the use of or lease or otherwise use any Limited Common Element without the prior written consent of all Units to which such Limited Common Element is appurtenant. The Owners of at least seventy-five percent (75%) of the Common Interests that are appurtenant to Units to which any particular Limited Common Element shall be appurtenant shall have the right to change the use of a particular Limited Common Element.

H. SEVERANCE OF COMMON ELEMENTS FROM UNIT. No Owner shall be entitled to sever his or her Unit, or any portion thereof, from his or her undivided interest in the Common Elements, in any easement interests appurtenant thereto or licenses granted under this Declaration. Neither may such component interests be severally sold, conveyed, leased, encumbered, hypothecated or otherwise dealt with, and any such attempt to do so in violation of this provision shall be void and of no effect. Developer and its successors, assigns and grantees and each Owner each covenant and agree that the Units and the corresponding undivided interest in the Common Elements and the easements, licenses and other interests appurtenant thereto, shall not be separated or separately conveyed, and (1) each such undivided interest in the Common Elements and any easements appurtenant to a Unit shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to title to the Unit, and (2) each such Unit shall be deemed to be conveyed or encumbered with its respective undivided interest in the Common Elements and in any easements, licenses or other interests appurtenant thereto even though the description in the instrument of conveyance or encumbrance may refer only to the title to the respective undivided interest.

I. SEPARATION, COMBINATION OF UNITS; TRANSFER OF INTEREST. No Owner may partition or separate a Unit or the legal rights comprising ownership of a Unit from any other part thereof, nor shall an Owner combine a Unit with another or any portion of another Unit. No Owner shall sell, assign, convey, transfer, gift, devise, bequeath, hypothecate or encumber anything other than a single, complete Unit; provided, however, that nothing herein contained shall (1) limit the right of Developer and its successors and assign to sell Units as contemplated herein, or (2) restrict the manner in which title to Unit may lawfully be held under Hawaii law (e.g., joint tenants, tenants in common, or the like). Except as provided in clause (1) above, every sale, assignment, conveyance, transfer, gift, devise, bequest, hypothecation, encumbrance or other disposition of a Unit or any part thereof shall be presumed to be a disposition of the entire Unit, together with all appurtenant rights and interests created by law or by this Declaration or any other Project Document. The transfer of any Unit shall operate to the new Owner of the Unit the interest of the prior Owner in all funds held by the Association even though not expressly mentioned or described in the instrument of transfer, and without any further instrument or transfer.

Notwithstanding the foregoing, for as long as Developer owns a Unit, Developer shall have the right to (1) relocate the boundaries of and between two adjoining Units, (2) physically combine a part of or combination of parts of the space of one Unit with a part of or combination of parts of the space within one or more adjoining Units, or (3) subdivide a Unit or part of a Unit to create additional Units (in each case, provided that the affected Units are owned by Developer or the Owners of the affected Units otherwise consent). Before exercising its rights herein, Developer must obtain all necessary approvals from any governmental authority having jurisdiction over the Units. The cost and expense incurred for legal, architectural and/or engineering fees and all other costs and expenses

incurred by the Association in connection with Developer's exercise of rights under this Section shall be borne by Developer. Developer shall be permitted to execute and record any amendment to this Declaration or Condominium Map, or both, effectuating the relocation of boundaries of, combination or subdivision, or redesignation of Units. If Developer requires, whether for title purposes, governmental approvals or otherwise, the Board shall ratify the action in connection with effectuating such relocation of boundaries, combination or subdivision, or redesignation of Units, and take such necessary actions in connection therewith if the requirements in this Section have been satisfied. The rights reserved to Developer under this Section shall not apply to a Unit after Developer first conveys such Unit to an unaffiliated third-party purchaser.

J. **ADA COMPLIANCE.** To the extent required, the Project will be constructed in compliance with Americans With Disabilities Act (42 U.S.C. §§ 12101 et seq.) and, in accordance therewith, certain Residential Units designated as "ADA Accessible Units," as more specifically identified in Exhibit "B," will be designed and constructed to be accessible to disabled persons. All Residential Units that are designated as ADA Accessible Units, as well as all improvements therein, must at all times be in compliance with the Americans With Disabilities Act as well as all other laws, ordinances, building codes, rules, regulations, orders and directives of any governmental authority having jurisdiction now or in the future applicable to such ADA Accessible Units (collectively, "Applicable Laws"). Each Owner of an ADA Accessible Unit shall not modify such Unit without the prior written approval of the Front Desk Unit Owner and the Board, and shall be responsible, at such Owner's sole cost and expense, and shall take all actions required, to cause such ADA Accessible Unit to be in compliance in all respects with all Applicable Laws.

K. **NUISANCES.** No nuisances (as defined by the Front Desk Unit Owner or the Association, as applicable) shall be allowed on the Resort Amenities, nor shall any use or practice be allowed which is a source of annoyance to the occupants of Units or which interferes with the peaceful possession or proper use of the Resort Amenities by its residents or occupants. No activities or business conducted from the Front Desk Unit by or on behalf of the Front Desk Unit Owner shall be deemed a nuisance. Noises and uses which are typically encountered in a hotel setting, including, but not limited to (1) transient noise and guest or pedestrian traffic from passage through hallways; (2) transient noise from other Units; (3) opening and closing of doors; (4) cleaning and/or provision of other related services; and (5) special events taking place on the Resort Amenities such as luaus and other gatherings shall not be deemed a nuisance, as such noises and/or uses are deemed to be common and accepted occurrences in a hotel setting. Normal construction activities shall not be considered to violate the terms and conditions of this Section. By accepting a deed to a Unit, a Unit Owner acknowledges that the Project is adjacent to hotels and retail/entertainment facilities and that noise, lights and odors common to such activities and related commercial activities as well as construction activities, may exist on or near the Project, at any time and from time to time.

L. **WEIGHT AND SOUND RESTRICTION.** Hard and/or heavy surface floor coverings, including, but not limited to, tile, marble, wood or the like, may not be installed in any part of a Unit without the consent of the Front Desk Unit Owner. Furthermore, the Unit Owner must ensure that a sound control underlayment system is used, which system must be approved by the Front Desk Unit Owner. The installation of the foregoing insulation materials shall be performed in a manner that provides proper mechanical isolation of the flooring materials from any rigid part of the Building Structure, whether of the concrete subfloor (vertical transmission) or adjacent walls and fittings (horizontal transmission) and must be installed prior to the Unit being occupied. Also, the installation of any improvement or heavy object must be submitted to and approved by the Front Desk Unit Owner, and be compatible with the overall structural design of the Building Structure. The Front Desk Unit Owner may require a structural engineer to review certain of the proposed improvements, with such review to be at the Owner's sole expense. Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Front Desk Unit Owner has the right to require immediate removal of the violations. Each Owner, by acceptance of a deed or other conveyance of his or her Unit, hereby acknowledges and agrees that sound transmission is very difficult to control, and that noises from adjoining or nearby Units and or mechanical equipment can often be heard from another Unit. Developer does not make any representation or warranty as to the level of sound transmission between and among Units and the portions of the Project, and each Unit Owner hereby waives and expressly releases any such warranty and claim for loss or damage resulting from such sound transmission.

M. **SIGNS.** Except as provided to Developer and the Front Desk Unit Owner under this Declaration, no sign, poster, billboard, advertising device or other display of any kind shall be displayed without the prior written approval of the Front Desk Unit Owner.

N. **ANTENNAS, SATELLITE DISHES.** To the extent permitted by applicable law, no Owner may install any antenna, satellite dish or other transmitting or receiving apparatus in or upon his or her Unit (and/or areas appurtenant thereto), without the prior written consent of the Front Desk Unit Owner.

O. **UNSIGHTLY ARTICLES.** No unsightly articles shall be permitted to remain upon or within any Unit, the Resort Amenities, or any Limited Common Element so as to be visible from any other portion of the Project.

P. **SPECIAL MANAGEMENT AREA PERMIT REQUIREMENTS.** The use of the Resort Amenities will be subject to any conditions imposed by the Special Management Area Permit covering the Project. Each Owner's ownership, use and occupancy is subject to, limited by and must conform and comply with Chapter 205A of the Hawaii Revised Statutes, as amended, and the terms, conditions, obligations and other provisions set forth in the Special Management Area Permit. Each Owner is further deemed to acknowledge that the Resort Amenities of the Project are subject to a shoreline setback imposed and regulated by Section 205A-41 of the Hawaii Revised Statutes, as amended, which prohibits certain structures and activities within the shoreline area.

Q. **PROHIBITION AGAINST INCREASING ENCLOSED LIVING AREA.** The enclosed living area of any Residential Unit (as such living area is depicted on the Condominium Map on the date the Unit is conveyed to an Owner by Developer) may not be increased. This prohibition includes any partial or full enclosure of any outdoor shower area or lanai that is adjacent to the Unit.

R. **NON-APPLICABILITY TO DEVELOPER AND FRONT DESK UNIT OWNER.** Notwithstanding anything provided herein to the contrary, as long as there are unsold Units in the Project, the provisions of this Article VI shall not apply to the Units owned by Developer, the Front Desk Unit Owner, or the Limited Common Elements appurtenant thereto, or to any improvements proposed or made by Developer in connection with its development, construction, promotion, marketing, sales, or leasing of any Unit or any portion of the Project.

VII. ADMINISTRATION OF PROJECT.

A. **HOSPITALITY SERVICES.** In order to ensure that the Project operates pursuant to the First Class Standard, the Front Desk Unit Owner shall manage and provide the Residential Unit Owners with Standard Hospitality Services and A la Carte Services. The Front Desk Unit Owner shall have the authority to assign or subcontract such Standard Hospitality Services and A la Carte Services to the Resort Manager or others selected by the Front Desk Unit Owner, in its discretion. If the Front Desk Unit Owner delegates its duties hereunder to the Resort Manager, the Resort Manager shall have all corresponding rights as may be provided to the Front Desk Unit Owner in this Article VII. The Association shall cause each Residential Unit Owner to observe and abide by the following provisions, which provisions shall not be amended or terminated without the consent of the Front Desk Unit Owner:

1. **Standard Hospitality Services.** Standard Hospitality Services offered to Residential Unit Owners, subject to the Front Desk Unit Owner's approval and consent, may include, but are not limited to, concierge services, luggage services and front desk registration services that are generally not provided in a standard non-resort residential project. These Standard Hospitality Services are intended to provide all Owners, guests, transient renters and long-term tenants of Residential Units with a uniform resort-like experience when in residence at the Project. Owners acknowledge that the Front Desk Unit Owner may alter the types and amounts of Standard Hospitality Services provided at the Project or may offer additional Standard Hospitality Services that in the Front Desk Unit Owner's discretion, is necessary to maintain the First Class Standard or to comply with the Resort License, which may in turn affect the total cost of such services and, accordingly, increase or decrease the Hospitality Services Fee and, consequently, the maintenance fees attributable to each Residential Unit.

a. Payable by Association. Each Residential Unit Owner will be required to pay for these Standard Hospitality Services, and the Front Desk Unit Owner shall charge the costs associated with such services to the Association as the Hospitality Services Fee. The Association shall be obligated to pay to the Front Desk Unit Owner the Hospitality Services Fee, on the first day of each month, which Hospitality Services Fee shall be an amount equal to one-twelfth (1/12) of the Standard Hospitality Services Budget, as defined below. The Association shall assess such costs to all Residential Unit Owners, in proportion to the Residential Unit's proportionate Common Interest to all Residential Units, as a Common Expense.

b. Determination of Hospitality Services Fee. The Front Desk Unit Owner shall determine annually the composition of the Standard Hospitality Services necessary to continue the operation of the Project pursuant to a First Class Standard, and shall prepare a budget for such services for the following calendar year (the "Standard Hospitality Services Budget"). The Front Desk Unit Owner shall present to the Board, at least ninety (90) days prior to the end of the calendar year, the Standard Hospitality Services Budget for the ensuing calendar year.

Upon receipt, the Board shall have thirty (30) days to review the Standard Hospitality Services Budget. If the Board has any objections to the Standard Hospitality Services Budget, the Board shall notify the Front Desk Unit Owner in writing, which writing shall specify the objections. Within a reasonable period after receipt of such written notice, which period shall not exceed thirty (30) days, a representative of the Board and a representative of the Front Desk Unit Owner shall meet at a mutually acceptable place within or near the Project to discuss the objections of the Board, and shall negotiate in good faith to resolve such objections. In the event the Board and the Front Desk Unit Owner are unable to resolve the objections, the parties agree to submit the matter to alternate dispute resolution as provided in Article XXX of this Declaration.

Each Owner acknowledges that the Front Desk Unit Owner is obligated to maintain the Resort Amenities in a manner that is consistent with, and appropriate to, a resort destination operating pursuant to the First Class Standard, and will enter into contracts with vendors and other contractors to provide Standard Hospitality Services to the Residential Unit Owners consistent with the First Class Standard. Accordingly, notwithstanding any dispute regarding the Standard Hospitality Services Budget, the Association shall pay to the Front Desk Unit Owner the Hospitality Services Fee calculated in accordance with the Standard Hospitality Services Budget prepared by the Front Desk Unit Owner pending the resolution of any dispute, and the Front Desk Unit Owner may disburse such amounts so collected to any third-party vendor or contractor without liability to the Association for amounts paid. Additionally, the Front Desk Unit Owner shall be granted broad discretion in determining the level of service necessary to maintain the First Class Standard, and its determination shall not be reversed unless there is an abuse of such discretion.

The Standard Hospitality Services Budget shall be reconciled at least once per calendar year by the Front Desk Unit Owner; provided, however, that the Front Desk Unit Owner may reconcile the Standard Hospitality Services Budget more frequently if it determines that the actual expenses associated with the Standard Hospitality Services will result in a shortfall in any calendar month. In the event the actual expenses associated with the Standard Hospitality Services differ from the Hospitality Services Fee collected for the calendar year or calendar month in question, the Association shall: (i) remit the difference to the Front Desk Unit Owner within sixty (60) days of the end of the calendar year or calendar month and assess the shortfall to all Residential Unit Owners as a special assessment in proportion to the respective Common Interest of all Residential Unit Owners; or (ii) apply any surplus in amounts collected to the following year's or month's Hospitality Services Fee.

Notwithstanding the foregoing, where the actual expenses associated with the Standard Hospitality Services for any calendar year exceeds the Standard Hospitality Services Budget, the Association shall not be required to reimburse the Front Desk Unit Owner any amounts in excess of one hundred twenty percent (120%) of the Standard Hospitality Services Budget, except in "emergency situations," as such term is defined in Section 514B-148 of the Act, or with the prior approval of the majority of Unit Owners.

c. Failure to Make Payment. The Association shall include the Hospitality Services Fee in its annual budget, which fee shall be assessed to all Residential Unit Owners as a Common Expense payable by Residential Unit Owners, and shall take such additional measures as are reasonably necessary for the timely payment of the Hospitality Services Fee to the Front Desk Unit Owner. In the event that any installment of

the Hospitality Services Fee is not paid when due, the Front Desk Unit Owner shall give written notice of such default to the Association. If the Association fails to cure its default in paying the amount payable hereunder within ten (10) business days after receipt of such notice of default, or within any extended period granted by the Front Desk Unit Owner in its sole discretion, the Front Desk Unit Owner may accelerate the remaining installments of the Hospitality Services Fee for the then current calendar year and may cease providing the Standard Hospitality Services; provided that the Front Desk Unit Owner shall continue to make such Standard Hospitality Services available to any Residential Unit Owner who pays his or her proportionate share of the Hospitality Services Fee for each Unit such Owner owns that would be payable to the Front Desk Unit Owner by the Association if the Standard Hospitality Services provided hereunder had not been terminated.

d. Assessment and Lien Rights; Enforcement. The Front Desk Unit Owner shall have a lien on, and a security interest in, the General Operating Reserve of the Association in an amount equal to all Hospitality Services Fees, interest and late charges, and costs associated with the collection thereof. In the event the Association shall fail to make payments of the Hospitality Services Fees when due, to the extent permitted by applicable law, the Front Desk Unit Owner may enforce the lien hereby granted to secure the payment of such sums as the holder of a security interest.

The Front Desk Unit Owner shall also have a lien on, and a security interest in, the Association's right to charge and collect Common Expenses from the Owners in an amount equal to all Hospitality Services Fees, interest and late charges, and costs associated with the collection thereof. In the event the Association shall fail to make payments of the Hospitality Services Fee when due, to the extent permitted by applicable law, the Front Desk Unit Owner may enforce the lien hereby granted to secure the payment of such sums as the holder of a security interest may.

To the extent permitted by applicable law, all amounts of the Hospitality Services Fee due and unpaid (including accelerated sums) shall, to the extent notice thereof is filed at the Office, constitute a lien on each Unit in favor of the Front Desk Unit Owner, to the extent of such Unit's pro-rata share of the unpaid Hospitality Services Fee, together with all interest, late charges and collection and enforcement costs thereon or with respect thereto. At the option of the Front Desk Unit Owner, the lien may be foreclosed upon by the Front Desk Unit Owner in like manner as a mortgage of real property, including, but not limited to, by way of power of sale, as specified and in accordance with the provisions of Chapter 667 of the Hawaii Revised Statutes, as amended, and said lien shall extend to cover all money and other proceeds and amounts received on account of a Unit and its use, including all rents, insurance and condemnation proceeds, sales proceeds, cash and non-cash proceeds as defined in Section 490:9-306 of the Hawaii Revised Statutes. The lien and security interest created herein shall be subject and subordinate to first mortgages and security interests given by an Owner in good faith and for value to any prior Owner or to any institutional lender and filed prior to the filing of a notice of lien hereunder by the Front Desk Unit Owner, which mortgages and security interests shall be superior to the Front Desk Unit Owner's lien and security interest. Any Unit Owner may obtain a release of the lien created hereunder by making payment to the Front Desk Unit Owner of such Owner's proportionate annual share of the Hospitality Services Fee for each Unit such Owner owns. Upon receipt of such payment, the Front Desk Unit Owner shall file an appropriate instrument to effectuate the release of said Owner's Unit(s) for the lien provided for in this paragraph.

e. General Excise Tax. The Association shall be responsible for all general excise tax pursuant to Chapter 237 of the Hawaii Revised Statutes (and other applicable taxes) accruing on the Hospitality Services Fee.

f. No Waiver. In order to maintain the First Class Standard of the Project, no Residential Unit Owner shall be relieved of the obligation to pay for the Standard Hospitality Services through the Common Expense by waiving his or her rights to use the Standard Hospitality Services. This Article VII, Section A.1 shall not be amended or terminated without the prior written consent of the Front Desk Unit Owner.

2. A la Carte Services. The Front Desk Unit Owner shall also offer A la Carte Services, which may include more frequent housekeeping services, room service, and/or private concierge services. The Front Desk Unit Owner may, on commercially reasonable terms, bill the cost of any A la Carte Services to the Residential Unit Owner, or may create an incidental account to be paid by any authorized occupant to the Front

Desk Unit Owner for goods and/or services from one or more vendors providing these A la Carte Services at the Project.

B. RESORT AMENITIES. The maintenance and administration of the Resort Amenities shall be vested in the Front Desk Unit Owner, subject to the right of the Front Desk Unit Owner to reimbursement for the expenses incurred for the maintenance, use and upkeep of the Resort Amenities as provided in Article IV, Section I. The Front Desk Unit Owner shall ensure that the maintenance, use and upkeep of the Resort Amenities is consistent with a resort destination operating pursuant to the First Class Standard; provided that the Front Desk Unit Owner may delegate its duties hereunder to the Resort Manager pursuant to the Resort Management Agreement. Without limiting the generality of the foregoing:

1. **Improvements Required by Law.** The Front Desk Unit Owner shall secure, make, build, maintain and repair all sewers, drains, roads, curbs, sidewalks, street lights, parking areas and other improvements that may be required by law to be secured, made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Resort Amenities or any part thereof.

2. **Observance of Laws Concerning Maintenance of the Project.** The Front Desk Unit Owner shall maintain the Resort Amenities in accordance with a First Class Standard, and in a strictly clean and sanitary condition and in accordance with the First Class Standard and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental or community authority during the period that they are applicable to the Project or the use thereof.

3. **Front Desk Unit Owner to Maintain Project in Good Order.** The Front Desk Unit Owner shall well and substantially repair, maintain, amend and keep all Resort Amenities, including, without limitation, the Building Structures, with all necessary repairs and additions thereto in good order and condition and in accordance with the First Class Standard except as otherwise provided herein, and maintain and keep the Resort Amenities in a neat and attractive condition.

4. **Front Desk Unit Owner Not to Permit Waste or Improper Use.** The Front Desk Unit Owner shall not make or suffer any waste or unlawful, improper or offensive use of the Resort Amenities.

5. **Compliance with Maluhia Declaration.** The Front Desk Unit Owner shall maintain and operate the Resort Amenities to comply with all provisions of the Maluhia Declaration, including the obligation to maintain landscaping to mitigate vehicle noise on the Project as provided therein.

6. **Observance of Setbacks.** The Front Desk Unit Owner shall observe any setback lines affecting the Project.

7. **Plans and Specifications for Improvements; Diligent Completion of Construction Projects.** The Front Desk Unit Owner shall not erect or place on the Project any building or structure, including fences and walls, nor make material additions or structural alterations to or exterior changes of any Resort Amenities of the Project, except in accordance with plans and specifications prepared by a State of Hawaii licensed architect and/or engineer and subject to any approvals required under the Master Declaration, and shall complete any such improvements diligently after the commencement thereof. This Section shall not apply to Developer during initial construction or pursuant to its exercise of any reserved rights hereunder.

VIII. COMMON EXPENSES.

Other than those expenses directly attributable to Limited Common Elements, and except as otherwise provided herein, in the Act or the Bylaws, the Common Expenses shall be charged to the Unit Owners, including Developer, in proportion to the Common Interest appurtenant to their respective Units; provided, however, that the Common Expenses attributable to the Hospitality Services Fee shall be payable only by Residential Unit Owners in proportion to the Residential Unit's proportionate Common Interest to all Residential Units. Subject to the Front Desk Unit Owner's right to reimbursement for the maintenance of the Resort Amenities, as set forth in Article IV, Section I, profits and expenses attributable to the Limited Common Elements shall be distributed or charged to the

Owner(s) of the Unit(s) to which such Limited Common Elements are appurtenant; provided that if the Limited Common Element is appurtenant to more than one (1) Unit, the profit or expense attributable to the Limited Common Element shall be distributed or charged to the Owners of the Units in the same proportion as the Common Interests of such Units bear to one another.

The Board, acting on behalf of the Association, shall, from time to time, assess the Common Expenses against all the Units and costs against specific Units, in accordance with the Act, this Declaration and the Bylaws. The assessments shall be levied at such time as the Board adopts the budget for the calendar year in question. The Board shall mail to each Unit Owner, at the address shown in the records of the Association, a written statement setting forth the amount of the assessment against the individual Unit. Except as otherwise provided herein or the Act, all sums assessed by the Association but unpaid for the share of the Common Expenses and other costs chargeable to any Unit constitute a lien on the Unit prior to all other liens, except only: (a) liens for taxes and assessments lawfully imposed by governmental authority against the Unit, and (b) all sums unpaid on mortgages filed prior to the filing of a notice of lien by the Association, and costs and expenses including attorneys' fees provided in such mortgages.

The lien may be foreclosed by action by the Managing Agent or Board, acting on behalf of the Association, in like manner as a mortgage of real property. In any such foreclosure, the Unit Owner shall be required to pay a reasonable rental for the Unit and the Association shall be entitled to the appointment of a receiver to collect the same. The Managing Agent or Board, acting on behalf of the Association, may, unless otherwise prohibited in this Declaration, bid on the Unit at the foreclosure sale, and acquire and hold, lease, mortgage and convey the same. Action to recover a money judgment for unpaid Common Expenses and other assessments shall be maintainable without foreclosing or waiving the lien securing the same.

Prior to foreclosing upon such lien, the Board or Managing Agent shall provide thirty (30) calendar days prior written notice of its intention to foreclose, by mailing such notice, postage prepaid, to the last known address of all persons having an interest in such Unit as shown in a title report pertaining to the Unit, which title report shall be dated not more than sixty (60) calendar days prior to the date of any such notice, including, but not limited to, any holder or insurer of a mortgage of any interest in such Unit.

Unless otherwise provided by law, where the mortgagee of a mortgage of record or other purchaser of a Unit obtains title to the Unit pursuant to the mortgage or as a result of foreclosure of the mortgage, or exercise of the remedies provided in the mortgage, the acquirer of title, his or her successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to the Unit which become due prior to the acquisition of title to the Unit by the acquirer. The unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Unit Owners, including the acquirer, his or her successors or assigns, as applicable.

IX. INSURANCE.

A. **RESORT AMENITIES.** The Front Desk Unit Owner shall at all times keep all improvements of the Resort Amenities (except as provided in this Declaration and as may be permitted by the Act), insured against loss or damage as provided in the Bylaws and in accordance with Section 514B-143 of the Act. The cost of any premium therefor shall be included in the License Fee and thereby shall be assessed to all Unit Owners as a Common Expense. In every case of loss or damage, all insurance proceeds shall be paid to the Front Desk Unit Owner and used as soon as reasonably possible by the Front Desk Unit Owner for rebuilding, repairing or otherwise reinstating the same improvement in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect, subject to any prior approvals required by the Master Declaration, and subject to the First Class Standard. In any event that such insurance proceeds shall be insufficient, the Front Desk Unit Owner shall assess the Association, which shall make up the deficiency and shall charge the same to all Unit Owners as a Common Expense. In any event that there shall be excess insurance proceeds, the same shall be credited to the License Fee for the next calendar year. Notwithstanding the preceding sentence, in the case of loss or damage to the Resort Amenities, if the Association assesses any deficiency in insurance proceeds to the Front Desk Unit Owner, the Front Desk Unit Owner may assess such deficiency to the Association through the License Fee, which shall be charged to each Unit Owner as a Common Expense.

The Front Desk Unit Owner shall provide evidence of such policy required by the terms of this Section to the Association by way of a certificate of insurance, policy of insurance, or such other verification that such policy shall be in effect. In the event that the Front Desk Unit Owner shall fail to obtain such insurance on the Resort Amenities, the Board is hereby authorized to obtain any insurance required by the terms of this Declaration and/or the Bylaws, and to (1) charge the expense to the Front Desk Unit Owner, or (2) deduct the cost of such insurance from the License Fee payable to the Front Desk Unit Owner.

Each Owner appoints the Front Desk Unit Owner, or any Trustee, as attorney-in-fact for the collection and appropriate disposition of the proceeds from any insurance policy, the negotiation of losses and execution of releases of liability and the performance of all other acts necessary to accomplish such things.

B. **UNITS.** Each Unit Owner shall at all times keep such Unit and all improvements in the Unit insured against loss or damage by fire with extended coverage, as provided in the Bylaws. The cost of any premium therefor shall be borne solely by such Unit Owner. In every case of loss or damage, all insurance proceeds shall be used as soon as reasonably possible by the Owner for rebuilding, repairing or otherwise reinstating the Unit in a good and substantial manner according to the original plan and elevations thereof. In any event that such insurance proceeds shall be insufficient, the Owner shall make up the deficiency. Each Unit Owner shall provide evidence of such policy required by the terms of this Section to the Front Desk Unit Owner and the Board by way of a certificate of insurance, policy of insurance or other such verification that such policy shall be in effect. In any event that such Owner shall fail to obtain such insurance on the Unit, the Front Desk Unit or the Board is hereby authorized to obtain any insurance required by the terms of this Declaration and/or the Bylaws, and charge the expense therefor as an expense to such Unit Owner. Such expense shall be secured by a lien on the Unit and may be foreclosed in a like manner to a Common Expense lien.

Any Owner renting or leasing a Residential Unit shall, at such Owner's expense, acquire and maintain in effect with respect to the Residential Unit, (i) bodily injury and property damage liability insurance with a combined single limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) per occurrence, (ii) coverage insuring the contents of the Residential Unit against fire and other casualties, and (iii) any other coverage required under the Declaration or Bylaws. An insurance company acceptable to the Front Desk Unit Owner shall underwrite all such policies. The Association, the Board and the Front Desk Unit Owner shall not be held liable for any damage to or destruction of Owner's property, including but not limited to damage to furniture, equipment, appliances or any other property used or retained by Owner in the Residential Unit, except for damage and destruction caused by the gross negligence or the willful misconduct of the Association, the Board or the Front Desk Unit Owner, respectively. Any and all deductible or co-insurance payments related to a claim by or against Owner shall be the sole responsibility of the Owner. In furtherance of the provisions of this Section, any Owner renting or leasing a Residential Unit in accordance with this Section shall deliver to the Board and the Front Desk Unit Owner certificates of insurance certifying that (a) the above-described insurance coverages are in full force and effect, (b) the Board and the Front Desk Unit Owner will receive at least thirty (30) calendar days advance written notice before any such insurance policy is canceled for any reason, including, without limitation, any failure by Owner to pay any premium or to renew any insurance policy, and (c) to the extent reasonably obtainable, the Front Desk Unit Owner, Developer, and the Association will be named as additional insureds on such policies. Such certificates of insurance will be delivered to the Board and the Front Desk Unit Owner prior to the first rental or lease of the Residential Unit, and on an annual basis thereafter.

X. **UNINSURED CASUALTY.**

In case at any time or times any improvements of the Resort Amenities shall be damaged or destroyed by any casualty not insured against, such improvements shall be rebuilt, repaired or restored unless Owners of Units to which are appurtenant at least eighty percent (80%) of the Common Interest, with the consent of their first mortgagees, if such mortgagees require such consent, affirmatively vote against such rebuilding, repairing or restoration. The Front Desk Unit Owner shall complete any such approved restoration of the Resort Amenities diligently, according to the original plan and elevation thereof, or such modified plans conforming to the laws and ordinances then in effect, subject to any prior approvals required by the Master Declaration, and subject to the First Class Standard. The cost thereof shall be assessed to the Association as a License Fee. The Association shall make up the deficiency and charge such amounts to all Units Owners as a Common Expense. Except for the Resort Amenities, each Unit Owner shall be solely responsible for any restoration of his or her respective Unit and Limited

Common Elements so damaged or destroyed according to the original plan and elevation thereof, or such other plan first approved by the Front Desk Unit Owner. Unless such restoration is undertaken within a reasonable time after such casualty, the Association shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good orderly condition and even grade, and the cost of any such removal and restoration shall be a Common Expense.

XI. ALTERATION OF PROJECT.

A. GENERAL PROVISIONS. Subject to the reserved rights of Developer, the Front Desk Unit Owner and the Commercial Unit Owners, no Unit Owner shall do any work that may jeopardize the soundness and safety of the Project, reduce the value thereof, or impair any easement, as reasonably determined by the Board. Except as otherwise expressly provided in this Declaration, and subject to any approvals required under the Master Declaration, restoration or replacement of the Project or any portion thereof or construction of any additional improvement or structural alteration or addition to any improvement, different in any material respect from the Condominium Map, shall be undertaken by a Unit Owner only pursuant to an amendment of this Declaration in accordance with Article XII below, duly executed pursuant to the provisions thereof, accompanied by the written consent of the holders of all mortgage liens affecting any of the Units involved, and in accordance with complete plans and specifications therefor first approved in writing by the Front Desk Unit Owner. Promptly upon completion of such restoration, replacement or construction, the Owner shall duly file such amendment, together with a complete set of floor plans of the Project as so altered, certified as built by a State of Hawaii registered architect or professional engineer.

B. APPROVAL OF ADDITIONS OR ALTERATIONS TO RESIDENTIAL UNITS. No Residential Unit Owner may make or allow any "nonmaterial additions and alterations," as such term is defined in Section 514B-140 of the Act, to his or her Unit or the Limited Common Elements appurtenant thereto, without the approval of the Board, upon consultation with the Front Desk Unit Owner. No Residential Unit Owner may make or allow any material addition or alteration without first obtaining the written consent of seventy-five percent (75%) of the Unit Owners, the consent of all Unit Owners whose Units or appurtenant Limited Common Elements are directly affected, and the approval of the Board and the Front Desk Unit Owner. The Board may only disapprove a proposed addition or alteration where the Board reasonably believes that the addition or alteration could jeopardize the soundness of the Project or impair any easement, or interfere with or deprive any nonconsenting Owner of the use and enjoyment of part of the Project.

C. NONMATERIAL ADDITIONS OR ALTERATIONS TO RESIDENTIAL UNITS. Notwithstanding the approval requirements set forth in Article XI, Section B, above, a Residential Unit Owner 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, but with notice to the Board and the Front Desk Unit Owner, to make any of the following alterations within his or her Residential Unit, which alterations shall be deemed "nonmaterial additions and alterations" to the Residential Unit: to install, maintain, remove and rearrange partitions (including the party wall between two (2) Units owned by the same Owner) and other structures from time to time within such Unit or Limited Common Element, to finish, alter or substitute any plumbing, electrical or other fixture attached to the ceilings, floors and walls as shall be appropriate for the utilization of such Unit or Limited Common Element by such Owner, and to tile, re-carpet and do or cause to be done such work on the floors of any Unit or Limited Common Element that does not increase the acoustical transfer from such Unit or Limited Common Element. Nothing contained in this paragraph shall authorize any work or alteration that would jeopardize the soundness or safety of any part of the Project, reduce the value thereof, materially adversely affect any other Unit or Limited Common Element, materially alter the uniform external appearance of the Project, materially increase the transfer of sounds, noise, air or smoke to other Units or Resort Amenities, materially affect or impair any easement or rights of any of the other Unit Owners, or materially interfere with or deprive any non-consenting Owner of the use or enjoyment of any part of the Resort Amenities. Moreover, the Front Desk Unit Owner or the Board may limit the dates and times that any alteration or improvement may be undertaken so as to provide the least inconvenience to other Unit Owners.

D. UNIT OWNERS TO EXECUTE AMENDMENT DOCUMENTS IN CERTAIN CASES. In the event that any change or alteration of a Residential Unit pursuant to and in compliance with this Article XI shall alter the depiction of the particular Residential Unit on the Condominium Map or the description thereof in this

Declaration, then the Owner of such Residential Unit shall amend this Declaration and/or the Condominium Map to set forth such approved change or alteration, which amendment(s) may be executed by the Owner of the affected Unit or Units and by no other party, and shall become effective upon the filing thereof in the Office. The provisions of Article XII below notwithstanding, such amendment shall not require the consent or joinder of the Owner of any other Unit or any other person or entity, other than any mortgagee of such Unit or Units which are changed or altered (if the mortgagee requires such consent or joinder). Every Unit Owner and all holders of liens affecting any of the Units of 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 or she shall, if required by law or by any such Owner who shall have changed or altered a Unit as aforesaid, join in, consent to, execute, deliver and file all instruments and documents necessary or desirable to effect the amendment of this Declaration and/or the Condominium Map; and appoints such Owner and his or her assigns his or her attorney-in-fact with full power of substitution to execute, deliver and file such documents and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of any such party.

XII. AMENDMENT OF DECLARATION.

A. **BY UNIT OWNERS.** Except as otherwise provided herein or in the Act, this Declaration may be amended by the affirmative vote or written consent of Owners of Units to which are appurtenant at least seventy-five percent (75%) of the Common Interest, evidenced by an instrument in writing, signed and acknowledged by any two (2) officers of the Association, which amendment shall become effective upon the filing thereof in the Office.

1. **"Changes Material in Nature."** Except as otherwise provided herein or in the Act, and subject to the reserved rights of the Developer, the Front Desk Unit Owner and the Commercial Unit Owners, no amendment to those provisions of this Declaration that are material in nature shall be effective without the written consent of no less than fifty-one percent (51%) of the votes of Units of the Project that are subject to mortgages held by Eligible Mortgage Holders. A change of any of the following would be considered "material in nature:"

- a. voting rights;
- b. increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens or the priority of assessment liens;
- c. reduction in reserves for maintenance, repair and replacement of the Common Elements;
- d. responsibility for maintenance and repairs;
- e. reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use;
- f. redefinition of any Unit boundaries;
- g. convertibility of Units to Common Elements or Common Elements to Units;
- h. expansion or contraction of the Project, or the addition, annexation of property to, or withdrawal of property from the Project;
- i. hazard or fidelity insurance requirements;
- j. imposition of any restrictions on the leasing of Units;
- k. imposition of any restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Unit;

l. a decision by the Association of the Project to establish self-management if professional management had been required previously by the Project documents or by an Eligible Mortgage Holder;

m. restoration or repair of the Project (after damage or partial condemnation) in a manner other than specified in the documents; or

n. any provisions that expressly benefit mortgage holders, insurers, or guarantors.

2. **No Impairment or Diminution of Developer or Front Desk Unit Owner's Rights or Increase of Developer or Front Desk Unit Owner's Obligations.** Notwithstanding any provision of this Declaration to the contrary, or the sale of any of the Units, and in addition to such other approval requirements as are set forth in this Article XII, the prior written approval of Developer or the Front Desk Unit Owner will be required before any amendment that would impair or diminish the rights of, or increase the obligations of, Developer or the Front Desk Unit Owner, respectively. Without limiting the generality of the foregoing, the following actions impairing or diminishing the rights of Developer or the Front Desk Unit Owner, before being undertaken by the Association, shall first be approved in writing by Developer or the Front Desk Unit Owner:

a. Mortgagee Approval. Any amendment or action requiring the approval of mortgagees pursuant to this Declaration;

b. Reduction in Services. Subject to any restrictions contained in the Bylaws regarding limitations on general assessment increases, any significant reduction in the services to be provided to the Association by the Front Desk Unit Owner;

c. Assessments. Alteration in the method of fixing and collecting assessments or any increase in assessments beyond the amounts permitted under the Bylaws;

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

e. Reserved Rights of Developer and Commercial Unit Owners. Any modification of the rights reserved and granted to Developer, the Commercial Unit Owners or the Front Desk Unit Owner herein, including those rights set forth in Articles XVII through XXVI.

Notwithstanding the foregoing, the Owner of any Unit who makes a change or alteration of the Unit pursuant to and in compliance with Article XI, Section C shall file an amendment to this Declaration and/or Condominium Map setting forth such approved change or alteration, without the consent or joinder of any other Owner, person or entity, and shall notify the Board and the Front Desk Unit Owner of such change or alteration as soon as practicable.

B. BY DEVELOPER.

1. **Prior to Project Commencement.** This Declaration may be amended by Developer at any time prior to the closing of the sale of the first Unit provided that any amendment authorized by this Section shall be evidenced by an instrument in writing, signed and acknowledged by Developer.

2. **Amendment to File "As-Built" Statement.** Notwithstanding any provision of this Declaration to the contrary and notwithstanding the sale of any of the Units, Developer acting alone, without the consent or joinder of any Owner, lienholder or other person, may amend this Declaration (a) to file the "as built" verified statement (with plans, if applicable) required by Section 514B-34 of the Act, so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed fully and accurately depict the layout, location, Unit numbers and dimensions of the Units as built, or, so long as any plans filed therewith involve only immaterial changes to the layout, location, Unit numbers, or dimensions of

the Units substantially as built; or (b) to bring the Project and the Project Documents into compliance with the laws and rules of any state or country in which Developer intends to market or sell Units.

3. Compliance with Laws and Lender Requirements and Correction of Errors.

Notwithstanding any provision of this Declaration to the contrary and notwithstanding the sale of any of the Units, Developer acting alone, without the consent or joinder of any Owner, lienholder or other person, may amend this Declaration in order (a) to bring the Project and the Project Documents into compliance with the laws and rules of any state or country in which Developer intends to market or sell Units; and (b) to comply with any requirements that may reasonably be imposed by any takeout, permanent or secondary market lender, including, without limitation, any institutional mortgage lender or any governmental or quasi-governmental agency including, without limitation, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development or the Veterans Administration; and (c) to correct typographical or technical errors. Each and every party acquiring an interest in the Project, by such acquisition, consents to such amendments as described in the preceding sentence and 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 and appoints Developer and its assigns his or her attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on his or her 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 the disability of such party or parties.

4. Amendments Affecting First Mortgages.

Notwithstanding any provision of this Declaration to the contrary, any amendment affecting any provision of this Declaration which is for the express benefit of holders or insurers of first mortgages on Units shall require the approval of Eligible Mortgage Holders on Units to which at least seventy-five percent (75%) of the votes of Units subject to mortgages held by such Eligible Mortgage Holders are allocated, together with such other approvals as may be required in this Article XII; provided, however, that any mortgage holder shall be deemed to consent to any proposed amendment to this Declaration where said Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives written notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt."

C. AMENDMENTS BINDING. Any amendment made pursuant to the provisions of this Article XII shall be binding upon every Owner and every Unit whether the burdens thereon are increased or decreased, and such amendment shall be effective upon its filing with the Office.

XIII. PARTIAL RESTORATION.

Restoration of the Project with less than all of the Units after casualty or condemnation may be undertaken by the Front Desk Unit Owner only (a) pursuant to an amendment to this Declaration, duly executed by or pursuant to the affirmative vote or written consent of Owners of Units to which are appurtenant not less than eighty percent (80%) of the Common Interest and consented to in writing by all holders of first mortgage liens affecting any of the Units of the Unit Owners executing or voting for such amendment to this Declaration, (b) by removing the Project from the condominium property regime established hereby, (c) by reconstituting all of the remaining Units and Common Elements to be restored as a new condominium property regime, and (d) by providing for the payment to each Owner of a Unit not to be restored of the agreed value of such Unit and its Common Interest, which payment shall include, without prejudice to the generality of the foregoing, all of the insurance proceeds or condemnation award payable for or on account of such Units and the Unit Owners' proportionate share of any General Operating Reserve without deduction for the cost of such restoration, except for the Unit Owners' proportionate share of the cost of debris removal.

XIV. TERMINATION.

Except as provided in Section 514B-47 of the Act, the Project shall not be abandoned, terminated or removed from the condominium property regime created by this Declaration and the Act without the prior written approval of the Front Desk Unit Owner and all mortgagees of record who may have an interest in the Project.

XV. LAND TRUSTS.

In the event title to any Unit and its appurtenant Common Interest is transferred to a trustee under a land title holding trust under which substantially all powers of management, operation and control of the Unit remain vested in the trust beneficiary or beneficiaries, the trust estate and the beneficiaries thereunder from time to time shall be liable for and shall pay all Common Expenses and all other charges, costs and expenses assessed against such Unit or the Owner thereof pursuant to this Declaration, the Bylaws, the Resort Rules, the House Rules or the Act. No claim for payment of Common Expenses or other charges, costs or expenses shall be made against any such trustee personally, and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any such lien or assessment, but the amount thereof shall constitute a lien on the Unit as provided in this Declaration, the Bylaws, and the Act, notwithstanding any transfer of beneficial interest under such trust.

XVI. COMPLIANCE BY OWNERS.

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

In the event any Unit Owner fails to comply fully with any of the foregoing within thirty (30) days after written demand therefor by the Association, the Front Desk Unit Owner or the Resort Manager, the Association, the Front Desk Unit Owner or the Resort Manager shall have sixty (60) days to give written notice of such Owner's failure to the holder, insurer or guarantor of any mortgage of such Unit, as shown in the Association's record of ownership or who has given the Board notice of its interest through the Secretary or the Managing Agent.

Notwithstanding the foregoing, no notice shall be necessary where immediate action is necessary to: (a) prevent damage to any Unit or Limited Common Element; (b) abate any nuisance or any dangerous, unauthorized, prohibited, or unlawful activity; (c) protect the property rights of any Owner; or (d) prevent the death or injury of any Owner or other person at the Project.

All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association, the Front Desk Unit Owner or the Resort Manager for:

- A. Collecting any delinquent assessments against any Owner's Unit;
- B. Foreclosing any lien thereon;
- C. Enforcing any provision of this Declaration, the Bylaws, the Resort Rules, the House Rules or the Act; or
- D. Complying with rules and regulations of the Commission

shall be promptly paid on demand to the Association, the Front Desk Unit Owner or the Resort Manager by the Unit Owner; provided, that if the claims upon which the Association, Front Desk Unit Owner or the Resort Manager takes any action are not substantiated, all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Unit Owner as a result of the action of the Association, the Front Desk Unit Owner or the Resort Manager, shall be promptly paid on demand to the Unit Owner by the Association, the Front Desk Unit Owner or the Resort Manger, as applicable.

XVII. RESERVED RIGHT TO GRANT AND RECEIVE EASEMENTS.

Notwithstanding anything herein provided to the contrary, Developer does hereby reserve the right unto itself, its successors and assigns, to and until December 31, 2026, to delete, cancel, relocate, realign, reserve, designate, grant and receive any and all easements and rights of way over, under, through, across and upon the Resort Amenities and other Limited Common Elements, or involving adjacent parcels of land, deemed necessary or desirable in Developer's sole discretion, including, but not limited to, easements and/or rights of way for utilities, any public-type facility (e.g. for mail delivery), fire lane access, sanitary and storm sewers, retention ponds, cable television, refuse disposal, parking areas, including public parking areas, driveways, roadways, sidewalks, access rights to adjacent parcels of land, maintenance of and access to any burial or cultural preserve land area, public or other access to open space or any private park area, a public bicycle path and/or sidewalk easement, and other similar purposes; provided that such easements and/or rights of way shall not be located on or within any existing structure of the Project and shall not be exercised so as to unreasonably disturb, impair or interfere with the normal use and enjoyment of the Project by the Unit Owners; and provided that Developer shall have the right to negotiate and agree to such terms with respect to such easements and rights of way as Developer deems appropriate in its sole discretion; and further provided that in the event the exercise of this right materially and adversely impacts the Commercial Unit(s), Developer shall obtain the prior written consent of the Commercial Unit Owner(s) so impacted, which consent shall not be unreasonably withheld or delayed. In the event that Developer assigns to the Association any rights it acquires, whether the same constitute easement rights or otherwise, the Association shall assume such rights, and shall indemnify, defend and hold Developer harmless from any loss incurred by Developer as a result of any claim made against Developer pursuant to any agreement with a third party.

XVIII. RESERVED RIGHT TO ALTER, SUBDIVIDE AND CONSOLIDATE UNITS.

Notwithstanding anything provided to the contrary, and except as otherwise provided by law:

A. Developer shall have the reserved right, without obtaining the approval of any party with an interest in the Project, including any other Owner and/or mortgagee, to: (1) alter the floor plan of any Unit which it owns at any time, and in any manner Developer deems appropriate, in its absolute discretion, provided that the Common Interest appurtenant to the Unit shall not change; (2) cause the subdivision of any Unit which it owns at any time to create two or more Units provided that the total Common Interest appurtenant to the newly-created Units shall equal the Common Interest appurtenant to the original Unit; (3) convert certain portions of any existing Unit to Limited Common Element status to facilitate any subdivision; and (4) recalculate the Common Interest appurtenant to each Unit upon such subdivision and/or consolidation; provided that the total Common Interest appurtenant to the newly-created Units shall equal the Common Interest appurtenant to the original Unit.

B. If Developer is the owner of any two or more Units separated by a party wall, floor or ceiling, Developer shall have the right, without obtaining the approval of any party with an interest in the Project, including any other Owner and/or mortgagee, to consolidate two or more Units that are so separated, to later subdivide such Units once consolidated, and to alter, remove or restore all or portions of the intervening wall, floor or ceiling at Developer's expense, provided that: (1) the structural integrity of the Project is not thereby affected, (2) the finish of the Limited Common Element then remaining is restored to a condition substantially compatible with that of the Limited Common Element prior to such alteration, and (3) all construction activity necessary to any such alteration or removal shall be completed within a reasonable period of time after the commencement thereof, subject to delays beyond the reasonable control of Developer or its contractors, whether caused by strikes, the unavailability of construction materials or otherwise, in which case any such construction activity shall be completed in such additional time as may be reasonably necessary in the exercise of due diligence.

C. Developer, in the process of consolidating Units, shall have the right to convert that area between Units to a Unit (as opposed to the same remaining a Limited Common Element) for so long as such Units shall remain consolidated or shall continue to be commonly used or owned.

Any such alteration, subdivision or consolidation of Unit(s) as provided above shall be effective provided that:

1. Developer shall file or cause to be filed an amendment to this Declaration describing the Unit(s) in question and setting forth at least: (a) a description of the newly-formed Unit(s); (b) in the case of the consolidation of Units by Developer, the undivided percentage interest appurtenant to the newly-formed Unit, which shall be calculated by adding together the undivided percentage interests for the Units to be consolidated; or (c) in the case of the subdivision of a Unit by Developer, the undivided percentage interest appurtenant to each of the newly-formed Units, which shall equal the total of the undivided percentage interest appurtenant to the original Unit.

2. Developer shall file or cause to be filed an amendment to the Condominium Map for the Unit(s) being altered and/or expanded, subdivided or consolidated to show an amended floor plan, as necessary, together with a verified statement of registered architect or professional engineer, in the manner required by Section 514B-34 of the Act, that said Condominium Map, as so amended, is consistent with the plans of the altered and/or expanded Unit(s) as filed with the government official having jurisdiction over the issuance of permits for the construction of buildings in the County, and that to the best of the architect's or engineer's knowledge, the Condominium Map, as so amended, depicts the layout, location, Unit numbers, and dimensions of the Units substantially as built; and

3. Any such alteration shall comply in all respects with all applicable governmental codes, statutes, ordinances and rules and regulations, or with all variances granted therefrom.

Developer expressly reserves the right to amend the aforesaid Declaration and Condominium Map to effect any subdivision or consolidation of Units or alterations to floor plans at any time or times prior to December 31, 2026, and Developer may, without being required to obtain the consent or joinder of any Owner, lienholder or other persons, execute and file amendments to this 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 Developer. To the extent permitted by applicable law, this Article XVIII shall not be amended without the prior written consent of Developer.

XIX. RESERVED RIGHT TO CONVERT LIMITED COMMON ELEMENTS TO UNITS.

Notwithstanding anything provided to the contrary, and except as otherwise provided by law:

A. Developer shall have the right, without obtaining the approval of any party with an interest in the Project, including any other Owner and/or mortgagee, to convert a Limited Common Element appurtenant to such Unit or Units owned by Developer, or any portion thereof, into a separate Unit of the Project. In such event, Developer shall have the right, without obtaining the approval of any party with an interest in the Project, including any other Owner and/or mortgagee, to alter the physical aspects of the Limited Common Element at Developer's expense in connection with such conversion, including building such structures as may be necessary or appropriate, provided that: (1) the structural integrity of the Project is not thereby affected, (2) the finish of the Unit is consistent with the quality of other Units in the Project and any remaining portion of the Limited Common Element not converted to a Unit, if any, is restored, to the extent feasible, to a condition substantially compatible with that of the Limited Common Element prior to such conversion, and (3) all construction activity necessary to any such conversion shall be completed within a reasonable period of time after the commencement thereof, subject to delays beyond the control of Developer or its contractors, whether caused by strikes, the unavailability of construction materials or otherwise, in which case any such construction activity shall be completed in such additional time as may be reasonably necessary in the exercise of due diligence.

B. Developer shall have the reserved right to designate certain Limited Common Elements of the Project as Limited Common Elements appurtenant to the newly-created Unit; provided that there is no material adverse effect on the remainder of the Project.

Any such conversion of a Limited Common Element into a Unit or Units as provided above shall be effective provided that:

1. Developer shall file or cause to be filed an amendment to this Declaration describing the Unit(s) in question and setting forth at least: (a) a description of the newly-formed Unit(s), and (b) the Common Interest appurtenant to the newly-formed Units and existing Units, which shall be calculated and/or recalculated by

dividing the approximate net living area of each individual Unit by the total net living area of all Units within the Project, including any newly formed Units. Developer may adjust the Common Interest to assure that the total of all Common Interests equals one hundred percent (100%).

2. Developer shall file or cause to be filed an amendment to the Condominium Map to show the floor plans and elevations for the newly-created Unit, as necessary, together with a verified statement of registered architect or professional engineer, in the manner required by Section 514B-34 of the Act, that said Condominium Map, as so amended, is consistent with the plans of the newly-created Unit(s) as filed with the government official having jurisdiction over the issuance of permits for the construction of buildings in the County, and that to the best of the architect's or engineer's knowledge, the Condominium Map, as so amended, depicts the layout, location, Unit number(s), and dimensions of the Unit(s) substantially as built; and

3. Any such alteration associated with such conversion shall comply in all respects with all applicable governmental codes, statutes, ordinances and rules and regulations.

The right to amend the aforesaid Declaration and Condominium Map to effect the conversion of any Limited Common Element into a Unit and the alterations to floor plans shall occur at any time or times prior to December 31, 2026, and Developer may, without being required to obtain the consent or joinder of any Owner, lien holder or other persons, execute, deliver 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 foregoing rights, powers or privileges. Each and every party acquiring an interest in the Project, by such acquisition, consents to such conversion of Limited Common Elements, to the recalculation of the Common Interests appurtenant to each Unit upon such conversion, if necessary, and to the filing of any documents necessary to effect the same in said Office; 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; and appoints Developer and its assigns his 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 service of process legal papers) as to legal proceedings in the Land Court, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved right, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Unit or any interest therein, whether by deed, mortgage, or any other instrument of conveyance. To the extent permitted by applicable law, this Article XIX shall not be amended without the prior written consent of Developer.

XX. RESERVED RIGHT TO RECHARACTERIZE AND REDESIGNATE LIMITED COMMON ELEMENTS.

Developer and the Front Desk Unit Owner shall have the reserved right, to amend this Declaration to (1) recharacterize all or a portion of certain Limited Common Elements as may be appurtenant to a Unit owned by Developer or the Front Desk Unit Owner as being Common Elements of the Project, thus giving up or waiving the exclusive use of any such area or areas; or (2) redesignate all or a portion of certain Limited Common Elements as may be appurtenant to any Unit owned by Developer or the Front Desk Unit Owner, to another Unit or Units. Upon recharacterization of any Limited Common Element to a Common Element of the Project, the Association shall be required to maintain such areas at its expense for the benefit of all Unit Owners, and the cost of maintaining such areas shall be assessed to all Unit Owners as a Common Expense.

The right to amend the Declaration to effect such recharacterization or redesignation of any Limited Common Element appurtenant to a Unit shall occur at any time or times prior to December 31, 2026, and Developer or the Front Desk Unit Owner may, without being required to obtain the consent or joinder of any Owner, lienholder or other persons, execute, deliver and file any deed and/or amendments to this Declaration or to the Condominium Map, and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers or privileges.

XXI. COMMERCIAL UNIT OWNERS' RIGHT TO ALTER UNITS.

Each Unit Owner acknowledges that the Commercial Units must be afforded flexibility in altering the Commercial Units to respond to changing market conditions. Accordingly, notwithstanding anything provided to the contrary and except as otherwise provided by law, Commercial Unit Owners shall have the reserved right, without obtaining the approval of any party with an interest in the Project, including any other Owner, but subject to approval of the Front Desk Unit Owner, which may be withheld in the Front Desk Unit Owner's sole and absolute discretion, to alter the floor plans of the Commercial Units; provided, however, that the net living area of the Commercial Unit shall not be increased or decreased by more than fifty percent (50%) of the net living area of the original floor plan of the Commercial Unit so altered, as set forth in Exhibit "B" attached hereto; provided further that the alteration of the Commercial Unit shall not cause the Commercial Unit to encroach upon any other Unit or Limited Common Element appurtenant to any other Unit. The Common Interest attributable to said Unit shall not change due to any such increase or decrease in net living area. To the extent the approval of the Board is required by law, the Board's right to disapprove of any such addition or alteration of the Commercial Unit shall be limited to proposed additions or alterations that the Board reasonably determines could jeopardize the soundness or safety of the Project, impair any easement, or interfere with or deprive any nonconsenting Owner of the use or enjoyment of any part of the Project.

Any such alteration of a Unit as provided above shall be effective provided that:

A. An amendment to this Declaration describing the Unit and setting forth at least a description of the newly-formed Commercial Unit shall be filed in said Office;

B. An amendment to the Condominium Map for the Commercial Unit shall be filed in said Office to show an amended floor plan of the Unit, together with a certification of registered architect or professional engineer, in the manner required by Section 514B-34 of the Act, that said Condominium Map, as so amended, fully and accurately depicts the layout, location, boundaries, dimensions and number of Units, substantially as built; and

C. Any such alteration shall comply in all respects with all applicable governmental codes, statutes, ordinances and rules and regulations, or with all variances granted therefrom.

The Commercial Unit Owners may, without being required to obtain the consent or joinder of any Owner, lienholder or other persons, but subject to the approval of the Front Desk Unit Owner as provided above, 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 such Commercial Unit Owners. Each and every party acquiring an interest in the Project, by such acquisition, consents to the right reserved to the Commercial Unit Owners as set forth herein, the permitted actions taken by the Commercial Unit Owners pursuant hereto, and to the filing of any documents necessary to effect the same in said Office; 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; and appoints each Commercial Unit Owner and its respective assigns his or her attorneys-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 service of process legal papers) as to legal proceedings in the Land Court, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved right, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Unit or any interest therein, whether by deed, mortgage, or any other instrument of conveyance. To the extent permitted by applicable law, this Article XXI shall not be amended without the prior written consent of the Commercial Unit Owners.

XXII. RESERVED RIGHTS REGARDING SPECIAL MANAGEMENT AREA PERMITS AND OTHER PERMITS.

Developer shall have the reserved right, to and until December 31, 2026: (1) to amend the Project Documents, including, without limitation, this Declaration, (2) to enter into any agreements, including without limitation, to declare and subject the Land and Improvements to restrictive covenants, (3) to designate and grant easements, (4) to secure any other governmental permits, and (5) to do all things necessary and convenient to satisfy

the requirements of any land use or other permits pertaining to the Project, including, without limitation, the Special Management Area Permit No. SM1 2005/0035 and Shoreline Setback Variance No. SSV 2005/0004, issued by the County, as the same may be amended or modified, and to execute, file and deliver any and all documents necessary to effect the same, including, but not limited to, any amendments to this Declaration and to the Condominium Map.

XXIII. RESERVED RIGHT TO CONVEY PROPERTY TO THE ASSOCIATION.

Developer and the Front Desk Unit Owner shall have the reserved right, but not the obligation, without joinder or consent of any person, the Board, or any Owners or their mortgagees, to convey to the Association, and the Association shall accept, title to any property owned by Developer or the Front Desk Unit Owner, including, without limitation, the Front Desk Unit or any portion thereof or any or all of the Commercial Units, together with the responsibility to perform any and all duties associated therewith. Upon conveyance or dedication to the Association, the Association shall maintain at its expense for the benefit of the Owners, and the cost of maintaining such areas shall be assessed to all Unit Owners as a Common Expense. Any property or interest in property transferred to the Association by Developer or the Front Desk Unit Owner shall, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Association "as is," "where is," free and clear of all liens and encumbrances except for the following: (a) the lien for property taxes and assessments not then due and payable; (b) the terms of this Declaration; (c) easements, rights-of-way, reservations, covenants, conditions, restrictions, and equitable servitudes, or other non-financial encumbrances as Developer or the Front Desk Unit Owner, in its discretion may deem appropriate; and (d) such financial encumbrances as may be reasonably accepted and assumed by the Association and specifically approved by resolution of the Board. Developer and the Front Desk Unit Owner shall have the further right to redesignate Limited Common Elements appurtenant to Units owned by Developer or the Front Desk Unit Owner as Limited Common Elements appurtenant to Units owned by the Association, if any, and to the extent necessary or required, to amend this Declaration and the Condominium Map to effect the same.

The right to convey such Units, and, to the extent necessary, to amend this Declaration and the Condominium Map to effect the same shall occur at any time or times prior to December 31, 2026, and Developer and the Front Desk Unit Owner may, without being required to obtain the consent or joinder of any owner, lienholder or other persons, execute, deliver and file any deed and/or amendments to this Declaration and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers or privileges.

Notwithstanding the foregoing, the conveyance of any such Unit to the Association may be subject to the terms and conditions of any license, lease or other agreement made by and between Developer or the Front Desk Unit Owner, as owner of such Unit, and any third party to utilize, manage, operate or otherwise deal with the Unit and/or the Limited Common Elements appurtenant thereto; provided, that the Association shall not be liable for any obligations of Developer or the Front Desk Unit Owner under such agreement(s) arising prior to such conveyance to the Association. The Association shall accept and assume such title, rights and obligations, and shall indemnify, defend and hold Developer and the Front Desk Unit Owner harmless from any loss incurred by Developer or the Front Desk Unit Owner as a result of any claim made against Developer or the Front Desk Unit Owner pursuant to any agreement with a third party arising after such conveyance.

XXIV. RESERVED RIGHT TO CONDUCT SALES ACTIVITIES.

To and until December 31, 2026, Developer does hereby reserve the right unto itself, its brokers, sales agents and other related persons, to conduct extensive sales activities at the Project, including the use of any Unit owned by Developer and its appurtenant Limited Common Elements, and the Resort Amenities, 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, billboards, 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 proper development and disposition of Units by sale, resale, lease, or otherwise, and the right, but not the obligation, to provide ongoing maintenance, operation, service, construction and repairs to individual Units, until the earlier to occur of (a) December 31, 2026, or (b) the closing of the sale of the last unsold Unit in the Project. In the event that Developer

is unable to sell all of the Units on or before December 31, 2026, Developer shall have the right to conduct sales activities on the Project until the closing of the sale of the last unsold Unit of the Project, provided that such sales are conducted in an unobtrusive manner which will not unreasonably interfere with the use, possession and aesthetic enjoyment of the Project by the Unit Owners. Such sales activities may include the initial sale and resale of Units. 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 successor and assigns, shall have the right to conduct such extensive sales activities on the Project until at least ninety-five percent (95%) of all of the Units in the Project have been sold and Unit Deeds therefor filed, notwithstanding the foregoing. Each and every party acquiring an interest in the Project, by such acquisition, acknowledges that the sales activities may result in noise, and nuisances, and consents to such activity by Developer, and further waives, releases and discharges any rights, claims or actions such party may acquire against Developer, its brokers, sales agents, employees and lenders, and their respective successors and assigns as a result of any such activity or activities.

XXV. RESERVED RIGHT TO CONSTRUCT THE PROJECT IN PHASES.

Developer shall have the reserved right, but not the obligation to, develop the Project in two or more phases, which may constitute separate projects for marketing and sales purposes to and until December 31, 2026 (or such other date as may be established by Developer in its sole discretion). Developer shall be under no obligation to construct any Unit or buildings in the Project until such time as Developer has submitted to the Commission such information and documentation as required pursuant to Section 514B-92 of the Act, as amended, for the use of purchase deposits to pay Project costs. Developer shall have the right to amend the description of any Unit or buildings described in this Declaration at any time until such time as a Unit Deed has been filed in said Office covering such Unit.

In the event that Developer develops the Project in phases, subject to Developer's right to pay actual costs pursuant to Section 514B-41 of the Act, as amended, each Unit's share of the Common Expenses shall be calculated based on such Unit's Common Interest set forth in Exhibit "B;" provided that Developer reserves the right to calculate each Unit's share of the Common Elements based on the number of Units which have then been constructed. If such method of calculation is chosen, each Unit's share of Common Expenses shall be calculated based on a fraction, the numerator of which shall be such Unit's Common Interest set forth in Exhibit "B" and the denominator of which shall be an aggregate Common Interest set forth in Exhibit "B" of all Units for which a Certificate of Occupancy has been issued. As Certificates of Occupancy are issued for additional Units in the Project, the shares of Common Expenses for the foregoing Units will be adjusted to reflect the additional Units. Developer shall have the absolute right to adjust the Common Interest in its discretion in order to assure that the total Common Interest of all Units of the Project in aggregate equals one hundred percent (100%).

In connection with the foregoing right to construct and market in phases, Developer reserves the right to file any amendments to the Declaration, Bylaws and/or Condominium Map for the Project to describe any changes to the Unit or Common Elements therein described at any time, notwithstanding the lease, sale or conveyance of any or all of the Units in the Project, and Developer may execute, file and deliver any such amendment to the Declaration, Bylaws and/or Condominium Map for the Project and to such Unit Deeds as may have been issued, and any and all other instruments necessary or desirable, to exercise any of the rights and/or privileges herein without having to obtain the consent or joinder of any other Owner, lienholder or any other persons.

XXVI. RESERVED RIGHT TO COMPLY WITH RESORT LICENSE AGREEMENT.

To and until December 31, 2026, Developer does hereby reserve the right, unto itself, its successors and assigns, without obtaining the approval of any party with an interest in the Project, to amend the Project Documents, including, but not limited to, this Declaration, to rename the Project, and to impose restrictions on the use of the Project name, and make any other changes to the Project Documents as may be required by the Resort License Agreement, and to execute, file and deliver any and all documents necessary to effect the same.

XXVII. ASSIGNMENT OF RESERVED RIGHTS.

Notwithstanding anything stated herein to the contrary, the rights reserved to Developer in this Declaration shall be fully and freely assignable by Developer in whole or in part to the Front Desk Unit Owner, or any other person. Any assignment of the rights reserved to Developer shall be in writing, executed by both Developer and the assignee of Developer's rights, and shall be filed in said Office. Every Owner of a Unit in the Project and all holders of liens affecting any of the Units 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 any such assignment by Developer, and, to the extent designated by Developer, agrees to recognize any assignee as the "Developer" under this Declaration; 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; and appoints Developer and its assigns his or her 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 Chapter 501 of the Hawaii Revised Statutes, and to receive service of process (legal papers) as to legal proceedings in the Land Court, 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 upon any transfer of any Unit or any interest therein, whether by deed, mortgage, or any other instrument of conveyance.

XXVIII. CONSENT TO DEVELOPER, COMMERCIAL UNIT OWNERS AND FRONT DESK UNIT OWNER'S RESERVED RIGHTS; APPOINTMENT OF DEVELOPER AND ASSOCIATION AS ATTORNEY-IN-FACT.

Each and every party acquiring an interest in the Project, by such acquisition, consents to all of the rights reserved unto Developer, Commercial Unit Owners and/or the Front Desk Unit Owner as set forth in this Declaration, including, but not limited to those rights as set forth in Articles XVII through XXVI, above, the permitted actions taken by Developer, Commercial Unit Owners or Front Desk Unit Owner pursuant thereto, and to the filing of any and all documents necessary to effect the same in said Office; 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; and appoints Developer, Commercial Unit Owners and Front Desk Unit Owner and their assigns his or her attorney-in-fact with full power of substitution to execute, deliver and file such documents and instruments and to do such things on his or her behalf, and to receive or send any legal notices required by Chapter 501 of the Hawaii Revised Statutes, and to receive service of process (legal papers) as to legal proceedings in the Land Court, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Unit or any interest therein, whether by deed, mortgage, or any other instrument of conveyance. Without limitation to the generality of the rights reserved unto Developer, Commercial Unit Owners and Front Desk Unit Owner hereunder, Developer, Commercial Unit Owners and Front Desk Unit Owner will have the right to execute, deliver and file any amendment to this Declaration or to the Condominium Map, Bylaws, Resort Rules and/or the House Rules, any easement instrument, any deed, any amendment to a Unit Deed, certificate of merger, assignment of rights or interest, any necessary land court petitions with the Office to note any recalculated common interest appurtenant to any Unit, or such other document or instrument that may be necessary or appropriate to permit Developer, Commercial Unit Owners and Front Desk Unit Owner to exercise their respective rights pursuant to the provisions of this Declaration. To the extent permitted by applicable law, whether or not expressly stated therein, Article IV, Section I, Article VI, Section A.1, Article VII, Section A, Article XVIII, Article XIX and Article XXI shall not be amended without the prior written consent of Developer, Commercial Unit Owners and/or Front Desk Unit Owner, as applicable.

XXIX. DISCLOSURES AND LIMITATIONS ON LIABILITIES.

A. NONLIABILITY AND INDEMNIFICATION.

1. **General Limitation.** Except as specifically provided in the Project Documents or as required by law, no right, power, or responsibility conferred on the Board or the Front Desk Unit Owner by the Project Documents shall be construed as a duty, obligation or disability charged upon the Front Desk Unit Owner or any of its agents, employees, the Board, any member of the Board or any other officer, employee, agent or

committee member of the Association. The Association, its members, Directors, officers, agents and committee members, and the Board are subject to the insulation from liability provided for directors of corporations by the laws of the State of Hawaii to the fullest extent provided by such laws. Members of the Board are not personally liable to the victims of crimes occurring on the Project.

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

3. **Indemnification of Front Desk Unit Owner and Resort Manager.** Notwithstanding anything to the contrary contained herein, all Unit Owners agree to defend, indemnify and hold harmless the Front Desk Unit Owner, the Resort Manager, and their respective officers, directors, employees and agents, from and against, and properly reimburse it for, any and all liability, cost, damages, expense or deficiency resulting from, arising out of, or in connection with the negligent acts of such Unit Owner.

B. **SECURITY DISCLAIMER.** The Association, the Front Desk Unit Owner and/or the Resort Manager may, but shall not be obligated to maintain or support certain activities within the Project designed to make the Project safer than it might otherwise be.

Neither the Association, the Front Desk Unit Owner, the Resort Manager nor Developer shall in any way be considered insurers or guarantors of security within the Project, and neither the Association, the Front Desk Unit Owner, the Resort Manager, Developer, nor any successor Developer shall be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of security measures undertaken. All Owners and occupants of any Unit, tenants, guests and invitees of any Owner, as applicable, acknowledge that the Association the Board, the Front Desk Unit Owner, the Resort Manager, Developer or any successor Developer do not represent or warrant that any fire protection system or other security system designated or installed according to the guidelines established by Developer or the Association may not be compromised or circumvented, that any fire protection or burglar alarm systems or other security systems will prevent loss by fire, smoke, burglary, theft, hold-up, terrorism or otherwise, nor that fire protection or burglar alarm systems or other security systems will in all cases provide the detection or protection for which the system was designed or intended. Each Owner, his or her family, agents, transient guests, or other occupants of any Unit, as applicable, acknowledges and understands that the Front Desk Unit Owner, the Resort Manager, the Association, its Board and committees, Developer, and any other successor to Developer is not an insurer, and that each Owner, his or her family, agents, transient guests, or other occupants of a Unit assume all risks for loss or damage to persons, Units and the contents of Units, and further acknowledges that the Front Desk Unit Owner, the Resort Manager, the Association, its Board and committees, Developer, or any successor Developer have made no representations or warranties nor has any Owner, his or her family, agents, transient guests, long-term guests, or other occupants of a Unit relied upon any representation or warranty, expressed or implied, including any warranty of merchantability as to the fitness of any alarm systems or other security systems recommended or installed, or any security measure undertaken within the Project.

C. **NONLIABILITY FOR SQUARE FOOTAGE CALCULATION.** Each Owner, by acceptance of a deed or other conveyance of a Unit, understands and agrees that there are various methods for calculating the square footage of a Unit, and that depending on the method of calculation, the quoted square footage of the Unit may vary by more than a nominal amount. For the purposes of this Declaration, the square footage of each Unit, as set forth in Exhibit "B" is referred to as the "net living area" of the Unit, which is generally determined by measuring the area between the perimeter and party walls of each Unit, and includes the area occupied by the non-load bearing walls and load-bearing walls located between the perimeter and party walls. Additionally, as a result of field construction, other permitted changes to the Unit, and settling and shifting of Improvements, the actual net

living area of the Unit may also be affected. By accepting title to the Unit, the applicable Unit Owner(s) shall be deemed to have conclusively agreed to accept the size and dimensions of the Unit, regardless of any variances in the square footage from that which may have been disclosed at any time prior to closing, whether included as part of Developer's promotional materials or otherwise. Without limiting the generality of the Section, Developer does not make any representation or warranty as to the actual size, dimensions (including ceiling heights), square footage or net living area of any Unit, and each Unit Owner shall be deemed to have fully waived and released any such warranty and claims for losses or damages resulting from any variances between any represented or otherwise disclosed square footage or net living area and the actual square footage or net living area of Units.

D. NONLIABILITY FOR MOLD DEVELOPMENT. Molds, mildews, toxins and fungi may exist and/or develop within the Unit and/or the Project. Each Owner is hereby advised that certain molds, mildews, toxins and/or fungi may be, or if allowed to remain for a sufficient period may become, toxic and potentially pose health risk. By acquiring title to a Unit, each Owner shall be deemed to have assumed the risks associated with molds, mildew, toxins and/or fungi and to have released Developer and the Front Desk Unit Owner from any and all liability resulting from the same.

E. ADDITIONAL DISCLOSURES. Without limiting any other provision in this Declaration, the Association and, by acquiring title to a Unit, or by possession or occupancy of a Unit, each Owner for itself and for the Owner's tenants, employees, family members, guests and other invitees, shall conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following:

1. **Rights of Front Desk Unit Owner.** Each Unit Owner specifically acknowledges and agrees that the Front Desk Unit Owner shall have the right, in its sole discretion, to (a) select a Resort Manager to manage and/or operate the Front Desk Unit; (b) to change such Resort Manager from time to time; and (c) to change the name of the Project at any time as may be required by the Resort License Agreement or otherwise. Each Unit Owner specifically acknowledges and agrees that neither Developer, the Front Desk Unit Owner nor any of their respective agents or representatives have made any representations, warranties, guaranties or other claims of any kind regarding the identity of the Resort Manager for the Front Desk Unit or if a Resort Manager will be hired to operate and manage the Front Desk Unit. Developer and the Front Desk Unit Owner expressly disclaim any representations, warranties, guaranties or other claims of any kind regarding the same.

2. **No Representations Regarding Rentals.** Each Residential Unit Owner specifically acknowledges and agrees that neither Developer, the Front Desk Unit Owner, the Resort Manager, nor any of their respective agents or representatives have made any representations, warranties, guaranties or other claims of any kind regarding (a) any rental income, if any, that may be obtained by a Residential Unit Owner from renting a Residential Unit; or (b) any rental programs that may be currently available, or in the future made available, for participation by Residential Unit Owners. Developer, the Front Desk Unit Owner and the Resort Manager expressly disclaim any representations, warranties, guaranties or other claims of any kind regarding any rental programs and hereby notify any purchaser of a Residential Unit that any rental program that may become available in which a Residential Unit Owner might desire to participate will most likely place severe restrictions on a Residential Unit Owner's rights to use said Owner's Residential Unit, including imposing blackout periods or other date restrictions on use of the Residential Unit that are in addition to restrictions and requirements imposed by this Declaration.

3. **Condominium Living.** Living in a multi-story, multi-building condominium project entails living in very close proximity to other persons, business, and hotels, with attendant limitations on solitude and privacy. Although walls, floors and ceilings have been designed to meet applicable building codes, Owners will hear noise from adjacent Units within the Project, including, but not limited to, noise from showers, bathtubs, sinks, toilets or other sources of running water and/or plumbing fixtures. Also, Owners may hear noise from such items as the pool, vacuum cleaners, stereos or televisions, or from people running, walking, exercising or socializing. Finally, Owners can expect to hear substantial levels of sound, music, noise, odors, vibrations and other nuisances from retail, commercial and hotel developments in the vicinity of the Project. Owners may also experience light entering the Residential Units from commercial lighting in the vicinity and from street lights located in close proximity to the window and doors for the Units. Each Residential Unit Owner specifically acknowledges and agrees that Residential Units may be rented to transient guests on each floor that Residential Units are located.

4. **Noise.** The Association and Developer have no control over the transmission of noise, light or odors from adjacent retail/entertainment, commercial and hotel developments, and the potential effect of such noise, light or odors on Units within the Project.

5. **Views.** Each Owner acknowledges that (a) there are no protected views in the Project, and the Units are not assured the existence or unobstructed continuation of any particular view, (b) any view from the Unit is not intended as part of the value of the Unit, and is not guaranteed, and Developer makes no representation or warranty regarding the effect of the view on the value of a Unit, and (c) any future development, construction, landscaping, growth of trees or other installation of improvements by Developer, the Front Desk Unit Owner, other Owners or owners of other property in the vicinity of the Project, may impair the view from the Residential Unit, and each Owner consents to such view impairment.

6. **Neighboring Developments.** Certain portions of land (the "Neighboring Developments") outside, abutting and/or near the Project may be subject to redevelopment, and in the future may or will be developed by third parties over whom Developer has no control. The Association and Developer have no jurisdiction over future Neighboring Developments, and, accordingly, there is no representation as to the nature, use or architecture of any future development or improvements on Neighboring Developments. Any such use, development and/or construction on Neighboring Developments may result in noise, dust, or other "nuisance" to the Project or Owners, and each Unit Owner acknowledges the same.

7. **Public Beach.** Each Owner acknowledges that the Project abuts a public beach. As such, a Building Structure may be exposed to salt, water and sand from the ocean, which may increase the amount and nature of maintenance required in future years. Although security systems exist within the Project, the beach area is not covered by such systems, and is subject to patrol by local law enforcement agencies, and not by the Association, the Front Desk Unit Owner, or Developer, or any private security service. Access to the beach from adjoining areas cannot be physically restricted by law. Based upon these factors, there can be no guarantee of security with respect to activities on the beach, and Seller has no control over the noise emanating from the public's use of the beach.

XXX. ALTERNATIVE DISPUTE RESOLUTION.

In the event of the occurrence of any controversy or claim arising out of, or related to, this Declaration or to any alleged construction or design defects pertaining to the Resort Amenities or to the Improvements in the Project ("dispute"), provided that the dispute cannot be resolved by negotiation, the parties to the dispute agree to submit the dispute to mediation by a mediator mutually selected by the parties in the City and County of Honolulu, State of Hawaii. If the parties are unable to agree upon a mediator, then the mediator shall be appointed by Dispute Prevention and Resolution, Inc. ("DPR"). In any event, the mediation shall take place within thirty (30) days of the date that a party gives the other party written notice of its desire to mediate the dispute. If the dispute is not resolved through mediation, the dispute shall be resolved by arbitration pursuant to this Article and the then-current rules and under the supervision of DPR. The duties to mediate and arbitrate hereunder shall extend to any officer, employee, shareholder, principal, partner, agent, trustee-in-bankruptcy, affiliate, subsidiary, third-party beneficiary, or guarantor of all parties making or defending any claim which would otherwise be subject to this Article.

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

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

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

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

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

No party may bring a claim or action, regardless of form, arising out of or related to this Declaration or to any construction or design defects claims pertaining to the Resort Amenities or to the Improvements of the Project, including any claim of fraud, misrepresentation, or fraudulent inducement, more than one (1) year after the cause of action accrues, unless the injured party cannot reasonably discover the basic facts supporting the claim within one (1) year.

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

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

XXXI. EXEMPTIONS FOR PERSONS WITH DISABILITIES.

Notwithstanding anything to the contrary contained in this Declaration, the Bylaws, the Resort Rules or the House Rules, Owners with disabilities shall be allowed reasonable exemptions from this Declaration, the Bylaws, the Resort Rules and the House Rules, when necessary and as appropriate to enable them to use and enjoy their Units the appurtenant Limited Common Elements and/or the Resort Amenities, provided that any Owner with a disability desiring such an exemption shall make such request, in writing, to the Front Desk Unit Owner. That request shall set forth, with specificity and in detail, the nature of the request and the reason that the requesting party needs to be granted such an exemption. The Front Desk Unit Owner shall not unreasonably withhold or delay its consent to such request, and any such request shall be deemed to be granted if not denied in writing, within forty-five (45) calendar days of the Front Desk Unit Owner's receipt thereof, or within forty-five (45) calendar days of the Front Desk Unit Owner's receipt of additional information reasonably required by the Front Desk Unit Owner in order to consider such request, whichever shall last occur.

XXXII. COMPLIANCE WITH COUNTY ZONING AND BUILDING LAWS.

The Project is in compliance with all zoning and building ordinances and codes of the County, and all other County permitting requirements applicable to the Project pursuant to Section 514B-5 of the Act, subject to the provisions in that certain Special Management Area Permit and Shoreline Setback Variance described herein.

XXXIII. MASTER DECLARATION.

The Project is subject to the Master Declaration, as the same may be amended and/or supplemented from time to time, and all rules and regulations promulgated thereunder, including, without limitation, any design restrictions and the design review process set forth therein, if applicable. By acquiring an interest in the Project, each Owner agrees to observe and comply with all covenants, conditions, restrictions and other requirements to which the Project is subject under the Master Declaration, including the payment of such sums as may be assessed pursuant to such Master Declaration. Further, Developer shall have the reserved right, to and until December 31, 2026, without the consent of any Owners or such Owners' mortgagees, to amend this Declaration and to enter into any agreements and to grant easements and to do all things necessary and convenient to effect and implement the purposes of the Master Declaration, and to execute, file and deliver any and all documents necessary to effect the same, including, but not limited to, any amendments to this Declaration and to the Condominium Map.

XXXIV. DEVELOPER'S RIGHT TO CURE ALLEGED DEFECTS.

It is Developer's intent that all improvements constructed or made by Developer in the Project be built or made in compliance with all applicable building codes and ordinances and that such improvements be of a quality that is consistent with the First Class Standard. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Developer's responsibility therefor. It is Developer's intent to resolve all disputes and claims regarding Alleged Defects (as defined below) amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association, Board and all Owners shall be bound by the following claim resolution procedure:

A. **DEVELOPER'S RIGHT TO CURE.** In the event that the Association, Board or any Owner or Owners (collectively, "Claimant") claim, contend or allege that any portion of the Project, including, but not limited to, any Unit, and/or any Improvements, are defective or that Developer or its agents, consultants, contractors or subcontractors were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "Alleged Defect"), Developer hereby reserves the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

B. **NOTICE TO DEVELOPER.** In the event that a Claimant discovers any Alleged Defect, Claimant shall, within a reasonable time after discovery, notify Developer in writing, at the address specified at the beginning of this Declaration, or such other address at which Developer maintains its principal place of business, of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

C. **RIGHT TO ENTER, INSPECT, REPAIR, AND/OR REPLACE.** Within a reasonable time after the receipt by Developer of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by Developer, as part of Developer's reservation of right, Developer shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, any Unit, and/or any Improvements or other portion of the Project for the purposes of inspecting and, if deemed necessary by Developer, repairing and/or replacing such Alleged Defect. In conducting such inspection, repairs and/or replacement, Developer shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

D. **LEGAL ACTIONS.** No Claimant shall initiate any legal action, cause of action, proceeding, reference or arbitration against Developer alleging damages (1) for the costs of repairing or the replacement of any Alleged Defect, (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, unless and until (a) Claimant has delivered to Developer a Notice of Alleged Defect and (b) Developer has, within ninety (90) days after its receipt of such Notice of Alleged Defect, either (i) failed to repair or replace such Alleged Defect or (ii) if such Alleged Defect cannot reasonably be repaired or replaced within such ninety (90) day period, failed to commence such repair or replacement of the Alleged Defect and, thereafter, failed to pursue diligently such repair or replacement to completion. In the event Developer shall fail to repair or replace such Alleged Defect as set forth in the preceding sentence, the parties agree to submit the matter to Alternative Dispute Resolution as set forth in Article XXX, herein.

E. NO ADDITIONAL OBLIGATIONS; IRREVOCABILITY AND WAIVER OF RIGHT.

Nothing set forth in this Article shall be construed to impose any obligation on Developer to inspect, repair or replace any item or Alleged Defect for which Developer is not otherwise obligated to do under applicable law. The right of Developer to enter, inspect, repair, and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and filed by Developer with the Office.

F. WAIVER. Notwithstanding anything to the contrary in this Declaration, Developer hereby disclaims any representations and warranties in respect of, shall have no continuing liability to any Owner for, any design or construction defects (whether known or unknown) relating to the Project, including latent defects.

XXXV. RIGHT TO APPOINT AND REMOVE THE OFFICERS AND MEMBERS OF THE BOARD; DEVELOPER CONTROL PERIOD.

Notwithstanding anything contained in this Declaration or the Bylaws to the contrary, Developer shall have the right to appoint and remove officers and members of the Board for a certain period of time (the "Developer Control Period"). The Developer Control Period shall terminate no later than the earlier of the following: (a) sixty (60) days after the conveyance of seventy-five percent (75%) of the Common Interest appurtenant to Units that may be created to Unit Owners other than Developer or an affiliate of Developer; (b) two (2) years after Developer has ceased to offer Units for sale in the ordinary course of business; (c) two (2) years after any right to add Units was last exercised; or (d) the day Developer, after giving written notice to Unit Owners, records an instrument voluntarily surrendering all rights to control the 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.

XXXVI. GENERAL PROVISIONS.

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

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

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

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

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

F. CONSTRUCTIVE NOTICE AND ACCEPTANCE; INCORPORATION OF DECLARATION INTO DEEDS. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and provision contained in this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Project. Any deed or other instrument by which all or any portion of the Project is conveyed, whether by fee, easement, leasehold interest or otherwise, shall be subject to the provisions of this Declaration and any instrument of conveyance shall be

deemed to incorporate the provisions of this Declaration, whether or not such instrument makes reference to this Declaration.

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

H. **ATTORNEYS' FEES AND COSTS.** If any party shall bring an action or proceeding (including, but not limited to, any cross-complaint, counter-claim, third party claim or arbitration proceeding) against an Owner, the Managing Agent or the Resort Manager, by reason of the alleged breach or violation of any provision hereof, or for the enforcement of any provision hereof, or to interpret any provision hereof, or otherwise arising out of this Declaration, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of such action or proceeding, including, but not limited to, its actual attorneys' fees, which shall be payable by the non-prevailing party whether or not such action or proceeding is prosecuted to judgment or award. For the purposes of this Declaration, the term "attorneys' fees" shall mean the fees and expenses of counsel to the parties hereto, which may include fees incurred with respect to post-judgment motions, contempt proceedings, garnishment, levy, debtor and third-party examinations, discovery, bankruptcy, litigation, and may include expenses such as printing, photostating, duplicating, facsimiles, filing fees, air freight charges and fees billed for law clerks, paralegal and other persons not admitted to the bar but performing services under the supervision of an attorney, all of which shall be deemed to have accrued upon the occurrence of the act or omission giving rise to the incurrence of such fees.

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

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

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

L. **CONFLICT OF PROVISIONS.** In the event of any conflict between this Declaration and any of the Project Documents (other than this Declaration) this Declaration shall control. In the event of any conflict between the Bylaws and the House Rules or Resort Rules, the Bylaws shall control. In the event of any conflict between the House Rules and the Resort Rules, the Resort Rules shall govern any matter dealing with the Resort Amenities and the House Rules shall govern any matter dealing with the Project generally.

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

XXXVII. **INVALIDITY AND CHANGES IN LAW.**

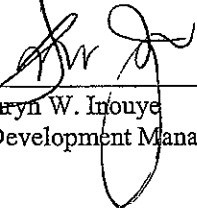
The invalidity of any provision of this Declaration for any reason shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and, in such event, all of the other provisions of this Declaration shall continue in full force and effect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

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

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IN WITNESS WHEREOF, the undersigned have executed these presents this 9 day of November, 2006.

WAILEA HOTEL & BEACH RESORT, L.L.C.,
a Delaware limited liability company

By 

Kathryn W. Inouye
Its Development Manager

“Developer”

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 9th day of November, 2006, before me appeared KATHRYN W. INOUYE, to me personally known, who being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

L.S.

Evelyn S. Kubota

Name: Evelyn S. Kubota
Notary Public of and for such State Hawaii
My commission expires: APR 9 2008

EXHIBIT "A"

All that certain parcel of land situate at Honuaula, District of Makawao, Island and County of Maui, State of Hawaii, described as follows:

LOT 217, area 15.578 acres, more or less, as shown on Map 31, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1804 of Matson Navigation Company.

Together with easement across Lots 19, 23 and 24, terminating December 31, 2030, as provided in instrument dated July 30, 1976, filed as Land Court Document No. 775421.

Being land(s) described in Transfer Certificate of Title No. 669,405 issued to WAILEA HOTEL & BEACH RESORT, L.L.C., a Delaware limited liability company.

END OF EXHIBIT "A"

EXHIBIT "B"

**Unit Numbers, Unit Types, Number of Bedrooms and Bathrooms, Approximate Net Living Area,
Approximate Net Lanai Area, Percentage Common Interest**

Unit Number	Unit Type	Bedrooms/ Bathrooms	Approximate Net Living Area	Approximate Net Lanai Area	Percentage Common Interest
A200	2B	2/3	2,153	290	0.586511%
A201	2B	2/3	2,153	290	0.586511%
A202	2B	2/3	2,153	290	0.586511%
A203	3B1	3/3.5	2,946	290	0.802537%
A300	2B	2/3	2,153	290	0.586511%
A301	2B	2/3	2,153	290	0.586511%
A302	2B	2/3	2,153	290	0.586511%
A303	3B1	3/3.5	2,946	290	0.802537%
A400	2B	2/3	2,153	290	0.586511%
A401	2B	2/3	2,153	290	0.586511%
A402	2B	2/3	2,153	290	0.586511%
A403	3B1	3/3.5	2,946	290	0.802537%
B100	2C	2/2.5	2,255	289	0.614297%
B103	1E	1/2	1,342	364	0.365582%
B200	3B1	3/3.5	2,946	290	0.802537%
B201	2B	2/3	2,153	290	0.586511%
B202	2B	2/3	2,153	290	0.586511%
B203	2B	2/3	2,153	290	0.586511%
B300	3B1	3/3.5	2,946	290	0.802537%
B301	2B	2/3	2,153	290	0.586511%
B302	2B	2/3	2,153	290	0.586511%
B303	2B	2/3	2,153	290	0.586511%
B400	3B1	3/3.5	2,946	290	0.802537%
B401	2B	2/3	2,153	290	0.586511%
B402	2B	2/3	2,153	290	0.586511%
B403	2B	2/3	2,153	290	0.586511%
C100	1C	1/1	1,070	182	0.291485%
C101	1C	1/1	1,070	182	0.291485%
C102	1C	1/1	1,070	182	0.291485%
C103	1C	1/1	1,070	182	0.291485%
C108	1C	1/1	1,070	182	0.291485%
C109	1C	1/1	1,070	182	0.291485%
C110	1C	1/1	1,070	182	0.291485%
C111	1C	1/1	1,070	182	0.291485%
C112	1C	1/1	1,070	182	0.291485%
C113	1C	1/1	1,070	182	0.291485%
C200	1A	1/1	1,064	182	0.289850%
C201	1A1	1/1	1,056	182	0.287671%
C202	1A	1/1	1,064	182	0.289850%
C203	1A1	1/1	1,056	182	0.287671%
C204	1A	1/1	1,064	182	0.289850%

Unit Number	Unit Type	Bedrooms/ Bathrooms	Approximate Net Living Area	Approximate Net Lanai Area	Percentage Common Interest
C205	1A	1/1	1,064	182	0.289850%
C206	1B	1/2	988	246	0.269147%
C207	1B	1/2	988	163	0.269147%
C208	1A	1/1	1,064	182	0.289850%
C209	1A	1/1	1,064	182	0.289850%
C210	1A1	1/1	1,056	182	0.287671%
C211	1A	1/1	1,064	182	0.289850%
C212	1A1	1/1	1,056	182	0.287671%
C213	1A	1/1	1,064	182	0.289850%
C300	1A	1/1	1,064	182	0.289850%
C301	1A1	1/1	1,056	182	0.287671%
C302	1A	1/1	1,064	182	0.289850%
C303	1A1	1/1	1,056	182	0.287671%
C304	1A	1/1	1,064	182	0.289850%
C305	1A	1/1	1,064	182	0.289850%
C306	1B	1/2	988	246	0.269147%
C307	1B	1/2	988	163	0.269147%
C308	1A	1/1	1,064	182	0.289850%
C309	1A	1/1	1,064	182	0.289850%
C310	1A1	1/1	1,056	182	0.287671%
C311	1A	1/1	1,064	182	0.289850%
C312	1A1	1/1	1,056	182	0.287671%
C313	1A	1/1	1,064	182	0.289850%
C401	3C	3/3	1,996	364	0.543742%
C403	3C	3/3	1,996	364	0.543742%
C404	1A	1/1	1,064	182	0.289850%
C405	1A	1/1	1,064	182	0.289850%
C406	1B	1/2	988	246	0.269147%
C407	1B	1/2	988	163	0.269147%
C408	1A	1/1	1,064	182	0.289850%
C409	1A	1/1	1,064	182	0.289850%
C410	3C	3/3	1,996	364	0.543742%
C412	3C	3/3	1,996	364	0.543742%
C506	1B	1/2	988	246	0.269147%
C507	1B	1/2	988	163	0.269147%
D100	4A	4/4.5	3,336	349	0.908779%
D101	2A	2/3	2,254	420	0.614025%
D200	4A	4/4.5	3,336	440	0.908779%
D201	2A	2/3	2,254	269	0.614025%
E100	2A	2/3	2,254	433	0.614025%
E101	3A	3/4	2,714	355	0.739336%
E102	3A	3/4	2,714	355	0.739336%
E103	3A	3/4	2,714	355	0.739336%
E200	2A	2/3	2,254	269	0.614025%
E201	3A	3/4	2,714	355	0.739336%
E202	3A	3/4	2,714	355	0.739336%

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Unit Number	Unit Type	Bedrooms/ Bathrooms	Approximate Net Living Area	Approximate Net Lanai Area	Percentage Common Interest
E203	3A	3/4	2,714	355	0.739336%
F200	1C	1/1	1,070	182	0.291485%
F201	1C	1/1	1,070	182	0.291485%
F202	1A	1/1	1,064	182	0.289850%
F300	1A	1/1	1,064	182	0.289850%
F301	1A	1/1	1,064	182	0.289850%
F302	1A	1/1	1,064	182	0.289850%
F400	1A	1/1	1,064	182	0.289850%
F401	1A	1/1	1,064	182	0.289850%
F402	1A	1/1	1,064	182	0.289850%
G100	3A	3/4	2,714	355	0.739336%
G101	3A	3/4	2,714	355	0.739336%
G102	3A	3/4	2,714	355	0.739336%
G103	2A	2/3	2,254	337	0.614025%
G200	3A	3/4	2,714	355	0.739336%
G201	3A	3/4	2,714	355	0.739336%
G202	3A	3/4	2,714	355	0.739336%
G203	2A	2/3	2,254	269	0.614025%
H100	2A	2/3	2,254	432	0.614025%
H101	4A	4/4.5	3,336	349	0.908779%
H200	2A	2/3	2,254	269	0.614025%
H201	4A	4/4.5	3,336	440	0.908779%
J201	1C	1/1	1,070	182	0.291485%
J202	1C	1/1	1,070	182	0.291485%
J203	1A	1/1	1,064	182	0.289850%
J300	1A	1/1	1,064	182	0.289850%
J301	1A	1/1	1,064	182	0.289850%
J302	1A	1/1	1,064	182	0.289850%
J303	1A	1/1	1,064	182	0.289850%
J400	1A	1/1	1,064	182	0.289850%
J401	1A	1/1	1,064	182	0.289850%
J402	1A	1/1	1,064	182	0.289850%
J403	1A	1/1	1,064	182	0.289850%
K100	1C	1/1	1,070	182	0.291485%
K101	1C	1/1	1,070	182	0.291485%
K102	1C	1/1	1,070	182	0.291485%
K103	1C	1/1	1,070	182	0.291485%
K104	1C	1/1	1,070	182	0.291485%
K105	1C	1/1	1,070	182	0.291485%
K106	1C	1/1	1,070	182	0.291485%
K108	1C	1/1	1,070	182	0.291485%
K109	1C	1/1	1,070	182	0.291485%
K110	1C	1/1	1,070	182	0.291485%
K200*	1A	1/1	1,064	182	0.289850%
K201*	1A	1/1	1,064	182	0.289850%
K202	1A	1/1	1,064	182	0.289850%

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Unit Number	Unit Type	Bedrooms/ Bathrooms	Approximate Net Living Area	Approximate Net Lanai Area	Percentage Common Interest
K203	1A1	1/1	1,056	182	0.287671%
K204	1A	1/1	1,064	182	0.289850%
K205	1A	1/1	1,064	182	0.289850%
K206	1A	1/1	1,064	182	0.289850%
K207	1A	1/1	1,064	182	0.289850%
K208	1A	1/1	1,064	182	0.289850%
K209	1A	1/1	1,064	182	0.289850%
K210	1A	1/1	1,064	182	0.289850%
K300	1A	1/1	1,064	182	0.289850%
K301*	1A1	1/1	1,056	182	0.287671%
K302	1A	1/1	1,064	182	0.289850%
K303	1A1	1/1	1,056	182	0.287671%
K304	1A	1/1	1,064	182	0.289850%
K305	1A	1/1	1,064	182	0.289850%
K306	1A	1/1	1,064	182	0.289850%
K307	1A	1/1	1,064	182	0.289850%
K308	1A	1/1	1,064	182	0.289850%
K309	1A	1/1	1,064	182	0.289850%
K310	1A	1/1	1,064	182	0.289850%
K401	3C	3/3	1,996	364	0.543742%
K403	3C	3/3	1,996	364	0.543742%
K407	1A	1/1	1,064	182	0.289850%
L200	3B1	3/3.5	2,946	290	0.802537%
L201	3B1	3/3.5	2,946	290	0.802537%
L300	3B1	3/3.5	2,946	290	0.802537%
L301	3B1	3/3.5	2,946	290	0.802537%
L400	3B1	3/3.5	2,946	290	0.802537%
L401	3B1	3/3.5	2,946	290	0.802537%
M200	3B1	3/3.5	2,946	290	0.802537%
M201	3B3	3/3.5	2,697	290	0.734705%
M202	3B2	3/3.5	2,735	372	0.745057%
M203	3B1	3/3.5	2,946	290	0.802537%
M300	3B1	3/3.5	2,946	290	0.802537%
M301	3B3	3/3.5	2,697	290	0.734705%
M302	3B2	3/3.5	2,735	372	0.745057%
M303	3B1	3/3.5	2,946	290	0.802537%
M400	3B1	3/3.5	2,946	290	0.802537%
M401	3B3	3/3.5	2,697	290	0.734705%
M402	3B2	3/3.5	2,735	372	0.745057%
M403	3B1	3/3.5	2,946	290	0.802537%
N200	3B1	3/3.5	2,946	290	0.802537%
N201	3B2	3/3.5	2,735	372	0.745057%
N202	3B3	3/3.5	2,697	290	0.734705%
N203*	3B1	3/3.5	2,946	290	0.802537%
N300	3B1	3/3.5	2,946	290	0.802537%
N301	3B2	3/3.5	2,735	372	0.745057%

EXHIBIT "B"
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Unit Number	Unit Type	Bedrooms/ Bathrooms	Approximate Net Living Area	Approximate Net Lanai Area	Percentage Common Interest
N302	3B3	3/3.5	2,697	290	0.734705%
N303	3B1	3/3.5	2,946	290	0.802537%
N400	3B1	3/3.5	2,946	290	0.802537%
N401	3B2	3/3.5	2,735	372	0.745057%
N402	3B3	3/3.5	2,697	290	0.734705%
N403	3B1	3/3.5	2,946	290	0.802537%
Q100	1D	1/1	1,140	137	0.310554%
Q101	2D	2/2.5	2,052	208	0.558997%
Q200	3B1	3/3.5	2,946	290	0.802537%
Q201	3B1	3/3.5	2,946	290	0.802537%
Q300	3B1	3/3.5	2,946	290	0.802537%
Q301	3B1	3/3.5	2,946	290	0.802537%
Q400	3B1	3/3.5	2,946	290	0.802537%
Q401	3B1	3/3.5	2,946	290	0.802537%
CU1			1,796		0.489268%
CU2			3,341		0.910141%
CU3			7,960		2.168429%
CU4			3,105		0.845851%
CU5			3,665		0.998404%
Total			367,086	48,480	100.000000%

* These Units are fully accessible under the Americans with Disabilities Act, 42 U.S.C. §§ 12181 *et seq.*

1. **Location of Units**

a. **Residential Units.** One hundred ninety-three (193) Residential Units located within the Project and located in four (4) two-story buildings, two (2) three to four-story buildings and seven (7) four-story buildings. There are twelve (12) Residential Units located in Building A, fourteen (14) Residential Units located in Building B, fifty (50) Residential Units located in Building C, four (4) Residential Units located in Building D, eight (8) Residential Units located in Building E, nine (9) Residential Units located in Building F, eight (8) Residential Units located in Building G, four (4) Residential Units located in Building H, eleven (11) Residential Units located in Building J, thirty-five (35) Residential Units located in Building K, six (6) Residential Units located in Building L, twelve (12) Residential Units located in Building M, twelve (12) Residential Units located in Building N and eight (8) Residential Units located in Building Q.

b. **Commercial Units.** Five (5) Commercial Units located within the Project and identified on the Condominium Map as: "Commercial Unit 1" or "CU-1" or the "Front Desk Unit", located on level 3 of Building A.2 and depicted on the Condominium Map; "Commercial Unit 2" or "CU-2" or the "Lobby Bar", located on level 3 of Building A.2 and depicted on the Condominium Map; "Commercial Unit 3" or "CU-3" or the "Spa", located on level 3 of Building A.2 and depicted on the Condominium Map; "Commercial Unit 4" or "CU-4" or the "Specialty Restaurant", located on level 2 of Building A.2 and depicted on the Condominium Map; and "Commercial Unit 5" or "CU-5" or the "Pool Restaurant", on level 1 of Building F and depicted on the Condominium Map.

2. **Layout of Residential Units.** All Residential Units are single story units with an approximate net living area and approximate net lanai area as set forth in the Condominium Map. The Residential Units shall include the following:

- a. Unit Type "1A". All type "1A" units include one (1) bedroom, one (1) bathroom, a living room, a kitchen, a foyer and a laundry room, all as depicted on the Condominium Map. Units C204, C205 and K207 shall include a plunge pool. Units C200, C202, C208, C209, C211, C213, C304, F300, F301, F302, J300, J301, J302, J303, K200, K202, K204, K205, K208, K209, K210 and K307 shall include an outdoor shower.
- b. Unit Type "1A1". All type "1A1" units include one (1) bedroom, one (1) bathroom, a living room, a kitchen, a foyer and a laundry room, all as depicted on the Condominium Map.
- c. Unit Type "1B". All type "1B" units include one (1) bedroom, two (2) bathrooms, a living room, a kitchen, a foyer and a storage room, all as depicted on the Condominium Map. Units C206 and C207 shall include a plunge pool.
- d. Unit Type "1C". All type "1C" units include one (1) bedroom, one (1) bathroom, a living room, a kitchen, a foyer and a laundry room, all as depicted on the Condominium Map. Except Units F200 and F201, which shall not include plunge pool, the remaining type "1C" units shall include a plunge pool.
- e. Unit Type "1D". Unit type "1D" includes one (1) bedroom, one (1) bathroom, a living room, a kitchen, a foyer and a laundry room, all as depicted on the Condominium Map.
- f. Unit Type "1E". Unit type "1E" includes one (1) bedroom, two (2) bathrooms, a living room, a kitchen, a foyer and a laundry room, all as depicted on the Condominium Map.
- g. Unit Type "2A". All type "2A" units include two (2) bedrooms, three (3) bathrooms, a living room, a kitchen, a foyer, an entertainment room and a laundry room, all as depicted on the Condominium Map. Units D101, E100, G103 and H100 include a plunge pool and extended lanai.
- h. Unit Type "2B". All type "2B" units include two (2) bedrooms, three (3) bathrooms, a living room, a kitchen, a foyer and an entertainment room, all as depicted on the Condominium Map.
- i. Unit Type "2C". Unit type "2C" includes two (2) bedrooms, two and one-half (2.5) bathrooms, a living room, a kitchen, a foyer, a den and a laundry room, all as depicted on the Condominium Map.
- j. Unit Type "2D". Unit type "2D" includes two (2) bedrooms, two and one-half (2.5) bathrooms, a living room, a kitchen, a foyer, a study and a laundry room, all as depicted on the Condominium Map.
- k. Unit Type "3A". All type "3A" units include three (3) bedrooms, four (4) bathrooms, a living room, a kitchen and an entertainment room, all as depicted on the Condominium Map. Units E101, E102, E103, G100, G101 and G102 include a plunge pool.
- l. Unit Type "3B1". All type "3B1" units include three (3) bedrooms, three and one-half (3.5) bathrooms, a living room, a kitchen, an entertainment room, a laundry room and an office, all as depicted on the Condominium Map.
- m. Unit Type "3B2". All type "3B2" units include three (3) bedrooms, three and one-half (3.5) bathrooms, a living room, a kitchen, an entertainment room, a laundry room and an office, all as depicted on the Condominium Map.
- n. Unit Type "3B3". All type "3B3" units include three (3) bedrooms, three and one-half (3.5) bathrooms, a living room, a kitchen, an entertainment room, a laundry room and an office, all as depicted on the Condominium Map.

o. Unit Type "3C". All type "3C" units include three (3) bedrooms, three (3) bathrooms, a living room, a kitchen, a foyer and a laundry room, all as depicted on the Condominium Map.

p. Unit Type "4A". All type "4A" units include four (4) bedrooms, four and one-half (4.5) bathrooms, a living room, a dining room, a kitchen, a foyer, an entertainment room and a laundry room, all as depicted on the Condominium Map. Units D100 and H101 shall include a plunge pool and an outdoor shower.

3. **Layout of Commercial Units.**

a. Commercial Unit 1/CU1 (Front Desk). Commercial Unit 1 includes the arrival lobby, hotel services area, concierge services area and condominium services area, as depicted on the Condominium Map.

b. Commercial Unit 2/CU2 (Lobby Bar). Commercial Unit 2 includes the lobby bar, as depicted on the Condominium Map.

c. Commercial Unit 3/CU3 (Spa). Commercial Unit 3 includes the reception and retail area, men's and women's locker rooms, showers and lounge areas, as depicted on the Condominium Map.

d. Commercial Unit 4/CU4 (Specialty Restaurant). Commercial Unit 4 includes the covered dining area and bar, as depicted on the Condominium Map.

e. Commercial Unit 5/CU5 (Pool Restaurant). Commercial Unit 5 includes the covered dining area, bar and private dining area as depicted on the Condominium Map.

4. **Determination of Approximate Net Living Area.**

The approximate net living area of each Residential Unit in the Project was determined by measuring the area between the perimeter and party walls of each Residential Unit, and includes the area occupied by the non-load bearing and load-bearing walls located between said perimeter and party walls. The approximate net living area of each Commercial Unit was determined by measuring the area between the perimeter and party walls (if any) and/or the imaginary vertical planes (where there is no perimeter wall) of the respective Commercial Unit as depicted on the Condominium Map, and includes the area occupied by the non-load bearing and load-bearing walls located between said perimeter or party walls (if any) and/or the imaginary vertical plans (where there is no perimeter wall), as shown on the Condominium Map.

5. **Common Interest**

The common interest attributable to each unit was calculated by dividing the approximate net living area of each individual unit by the total net living area of all units within the Project. In order to permit the common interest for all units to equal exactly one hundred percent (100%), the common interest attributable to CU1 was increased by .000009%.

