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Honolulu, Hawaii 96813

FirstAm:
Total No. of Pages: 46

Document Title: DECLARATION OF CONDOMINIUM PROPERTY REGIME
OF KEALI'I BY GENTRY III

Developer: GENTRY KGC, LLC, a Hawaii limited liability company

Property Description: Lots 9 to 11, inclusive, and Lots 13 and 14, as shown on DPP File No. 2017/SUB-168, and further described in Surveyor's Affidavit recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-72140978, and Lot 12-A, as shown on DPP File No. 2019/SUB-44, and further described in Surveyor's Affidavit recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-72140979

This property was previously a portion of Lot 6770, as shown on Map 571 of Land Court Application 1069, now deregistered from the Land Court System by Document No. A-71711038, recorded in the Bureau of Conveyances of the State of Hawaii on August 20, 2019.

TMK No. (1) 9-1-16:228 (portion)

**DECLARATION OF CONDOMINIUM PROPERTY REGIME
OF
KEALI'I BY GENTRY III**

INTRODUCTION:

1. GENTRY KGC, LLC, a Hawaii limited liability company (the "**Developer**"), owns the Land (as defined below) in fee simple.
2. By this Declaration (as defined below), the Developer intends to establish a condominium property regime that consists of the Land and the improvements to be constructed on the Land.
3. The Developer intends to convey or cause the conveyance of separate fee simple apartments created by this Declaration, each together with an appurtenant and undivided interest in the common elements of the condominium property regime created by this Declaration, by way of individual apartment deeds.

NOW, THEREFORE, the Developer hereby makes the following declaration:

DECLARATION:

1. **DEFINITIONS.** Defined terms appear throughout this Declaration with the initial letter of each such term capitalized. Unless the context clearly dictates otherwise, the following terms used in this Declaration are defined as follows:
 - (a) "**Act**" means the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended, and, as applicable, the rules of the Real Estate Commission of the State of Hawaii promulgated pursuant thereto, as amended.
 - (b) "**Apartments**" means the fee simple apartments (defined as "units" in Section 514B-3 of the Act) created by this Declaration, each together with an appurtenant and undivided interest in the common elements of the Project. (In this Declaration, the word "Apartment" shall have the same meaning as "unit" in Section 514B-3 of the Act.)
 - (c) "**Apartment Owners**" or "**Owners**" means "unit owner" as defined in Section 514B-3 of the Act, which includes the Person owning, or the Persons owning jointly or in common, an Apartment in the Keali'i by Gentry III condominium project and the Apartment's appurtenant common interest; provided that to such extent and for such purposes as provided by Recorded lease, including the exercise of voting rights, a lessee of an Apartment shall be deemed to be the Apartment Owner.
 - (d) "**Association**" means the Association of Apartment Owners of Keali'i by Gentry III, consisting of all Owners acting as a group in accordance with the provisions of this Declaration, the Bylaws and the Act; provided that in the event the Project is merged with another condominium project or other condominium projects in accordance with the Declaration of Intent to Develop and Merge, all references to the Association shall mean and refer to the merged association of apartment owners of the entire project, as reconstituted by any such merger or mergers.

(e) **"Board of Directors" or "Board"** means the board of directors of the Association.

(f) **"Bylaws"** means the Bylaws of the Association of Apartment Owners of Keali'i by Gentry III concurrently Recorded with this Declaration in the Bureau of Conveyances of the State of Hawaii (the **"Bureau"**), as may be amended from time to time.

(g) **"Community Park"** means the park described in Section 17D of this Declaration.

(h) **"Condominium Map"** means the plans showing, among other things, the layout, location, Apartment numbers, configuration and elevations of the Apartments in the Project, filed in the Bureau as Condominium Map No. 6189, as amended from time to time.

(i) **"Declaration"** means this Declaration of Condominium Property Regime of Keali'i by Gentry III, as may be amended from time to time.

(j) **"Declaration of Intent to Develop and Merge"** means that certain Declaration of Intent to Develop and Merge; Special Power of Attorney; and Declaration of Reservation of Rights and Easements, Recorded as Document Nos. A-72220862A and A-72220862B, as it may be amended from time to time.

(k) **"Design Alteration Package" or "DAP"** refers to the document for each Apartment that is on file with the City and County of Honolulu's Department of Planning and Permitting, which indicates how much the City will allow the Apartment to be expanded into the Private Yard Area that is appurtenant to the Apartment.

(l) **"Developer"** means Gentry KGC, LLC, a Hawaii limited liability company, the principal place of business and post office address of which is 733 Bishop Street, Suite 1400, Honolulu, Hawaii 96813, the owner in fee simple of the Land, its successors and assigns. All references to "Developer" in this document shall include the successors and assigns. A Person shall be deemed a successor or an assign of the Developer for purposes of this Declaration only if specifically so designated in a duly Recorded written instrument as a successor or an assign of the Developer under this Declaration, and shall be deemed a successor or assign of the Developer only as to the particular rights or interests of the Developer under this Declaration that are specifically designated in the Recorded written instrument.

(m) **"Developer's Reserved Rights"** means those rights reserved unto the Developer as stated in this Declaration, including, but not limited to, those rights specified in Sections 17 to 17D, inclusive.

(n) **"Development Period"** means the period of time during which the Developer has the right to exercise its rights under Sections 17 to 17D of this Declaration. This period started on October 10, 2019, which is the date that the Declaration of Intent to Develop and Merge was Recorded, and shall end upon the earlier of (i) the date when the Developer Records the deed conveying the last unsold Apartment in the Joint Development Area to an unrelated third party, or (ii) the date when the Developer Records a document terminating all of its rights under Sections 17 to 17D of this Declaration.

(o) **"Keali'i by Gentry Common Element Fence"** means and refers to a "Keali'i Vinyl Fence" and a "Retaining Wall" shown on the Condominium Map that is built near, or outside of, the perimeter boundary of the Project and/or the Joint Development Area. Sections of the Keali'i by Gentry Common Element Fence will be built in or around: (i) Lots 1 and 3, near the Kapolei Parkway entrance, which is shown on Sheet T1 of the Condominium Map; (ii) Lots 5 to 8, inclusive, near the "Existing Community, Department of Hawaiian Homelands," which is shown on Sheet T1 of the Condominium Map; (iii) Lot 10, near the Kapolei Golf Course, which is shown on Sheet T1 of the Condominium Map; (iv) Lot 13, near the Kapolei Golf Course; and (v) Lot 14, near the "Drainage Channel," which is shown on Sheet T1 of the Condominium Map. The Keali'i by Gentry Common Element Fence is a common element that will be maintained and repaired by the Association. (Note that the "Existing Fence" separating parts of the Project from parts of the "Existing Community", as shown on the Condominium Map, is owned by DHHL (as defined below) and is not part of the Project.)

(p) **"House Rules"** means the House Rules of the Association of Apartment Owners of Keali'i by Gentry III, as may be amended from time to time.

(q) **"Increment"** means a group of Apartments comprising a condominium "project", as that word is defined in Section 514B-3 of the Act, which Apartments are constructed on one or more legally subdivided lots, and includes the common elements that serve such Apartments, including, without limitation, roadways and utility facilities. An Increment may include one or more Phases of Apartments.

(r) **"Joint Development Agreement"** means that certain Agreement for Issuance of Conditional Use Permit Under Section 21-5.380 of the Land Use Ordinance (LUO), dated October 8, 2019, and Recorded as Document No. A-72210699.

(s) **"Joint Development Area"** means all of the real property subject to the Joint Development Agreement, being Lots 1, 2-A, 3 through 11, inclusive, 12-A, 13 and 14, as such Lots are described in Exhibit "A" to the Declaration of Intent to Develop and Merge. Among other real property, the Joint Development Area includes Lots 9 through 11, 12-A, 13, and 14, which is the real property described in Exhibit "A" to this Declaration. (The words **"Lot"** or **"Lots"** in this Declaration, followed by one or more of the numbers 1, 2-A, 3 through 11, inclusive, 12-A, 13 and/or 14, refers to those lots described in Exhibit "A" to the Declaration of Intent to Develop and Merge and/or in Exhibit "A" to this Declaration, as applicable.)

(t) **"Land"** means the real property described in Exhibit "A" attached to and made a part of this Declaration by this reference, and any appurtenances to such real property. If the Developer adds any real property pursuant to Section 17B of this Declaration, then "Land" shall include the additional real property. If the Developer withdraws any real property pursuant to Section 17B of this Declaration, then "Land" shall not include the withdrawn real property.

(u) **"Mail Center"** means the mail facility described in Section 17D of this Declaration.

(v) **"Majority"** or **"Majority of Apartment Owners"** means the Owners of Apartments to which are appurtenant more than half (or more than fifty percent (50%)) of the total common interests in the Project. References to a specified fraction or percentage of the Apartment Owners means the Owners of Apartments to which are appurtenant that fraction or percentage of the total common interests in the Project.

(w) **"Managing Agent"** means the managing agent appointed by the Association to operate the Project, as described in Section 12 of this Declaration.

(x) **"Mortgage"** means any Recorded or otherwise perfected security instrument in real property, which is not a fraudulent conveyance under Hawaii law, and which is given in good faith and for valuable consideration as security for the performance of an obligation, but shall not include any instrument creating or evidencing solely a security interest arising under the Hawaii Uniform Commercial Code (Hawaii Revised Statutes Chapter 490, as amended).

(y) **"Mortgagee"** means the holder of a note or other interest secured by a Mortgage.

(z) **"Person"** means an individual, corporation, partnership, limited liability entity, association or other legal entity.

(aa) **"Phase"** means a group of Apartments that is constructed at approximately the same time on a legally subdivided lot, and includes the common elements located in the immediate vicinity of such Apartments that serve such Apartments, including, without limitation, roadways and utility facilities. A Phase (i) may comprise all or just some of the Apartments in a condominium "project", as that word is defined in Section 514B-3 of the Act, and (ii) may or may not constitute an Increment.

(bb) **"Privacy Fence"** means and refers to a "Vinyl Fence", a "Vinyl Picket Fence" and a "Vinyl Fence on Retaining Wall" shown on the Condominium Map that is constructed on the boundary of an Apartment's limited common element Private Yard Area. Privacy Fences are limited common elements appurtenant to the Apartment or Apartments served by the Private Yard Area or Private Yard Areas where the Privacy Fence is located.

(cc) **"Private Yard Area"** means and refers to the limited common element land area appurtenant to an Apartment, as shown by diagonal hatching on the Condominium Map. Private Yard Areas do not comprise legally subdivided lots.

(dd) **"Project"** means the condominium project established by this Declaration and the Condominium Map and consisting of the Land, the buildings, landscaping, improvements and structures on the Land (including the Apartments, common elements, and limited common elements) and all easements, rights and appurtenances burdening or benefitting the Land.

(ee) **"Project Documents"** means, collectively, this Declaration, the Bylaws, the Condominium Map, the House Rules and the Declaration of Intent to Develop and Merge.

(ff) **"Record", "Recorded", "Recording", "Recordable" or "Recordation"** means an instrument of record, or the act of recording or causing to be recorded an instrument, with the Bureau and/or the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

2. SUBMISSION TO CONDOMINIUM PROPERTY REGIME. The Developer, as the declarant under this Declaration, hereby submits all of its rights, title and interest in and to the Land and all improvements now existing or to be constructed on the Land to

a condominium property regime established under the Act. The Developer declares that the Land is held and shall be held, owned, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, restrictions, covenants, and conditions set forth in this Declaration and in the Bylaws. This Declaration and the Bylaws shall constitute equitable servitudes, liens, and covenants running with the Land and shall be binding on and inure to the benefit of the Developer, its successors and assigns, and all subsequent owners, lessors, lessees and Mortgagees of all or any part of the Land and their respective heirs, devisees, personal representatives, successors, successors in trust and assigns. All of the provisions of this Declaration are intended to create mutual servitudes upon each Apartment within the Project and to create reciprocal rights among the respective Apartment Owners.

3. **NAME.** The condominium property regime established by this Declaration shall be known as "Keali'i by Gentry III".

4. **DESCRIPTION OF PROJECT.** The Developer plans to develop the Project as follows:

(a) Keali'i by Gentry III, Phase 9 consisting of six two-story buildings, with each building being its own residential Apartment, designated as **Apartments 56 to 61, inclusive**, located on Lot 9, as shown on DPP File No. 2017/SUB-168, as further described in Exhibit "A".

(b) Keali'i by Gentry III, Phase 10 consisting of five two-story buildings, with each building being its own residential Apartment, designated as **Apartments 62 to 66, inclusive**, located on Lot 10, as shown on DPP File No. 2017/SUB-168, as further described in Exhibit "A".

(c) Keali'i by Gentry III, Phase 11 consisting of six two-story buildings, with each building being its own residential Apartment, designated as **Apartments 11 to 16, inclusive**, located on Lot 11, as shown on DPP File No. 2017/SUB-168, as further described in Exhibit "A".

(d) Keali'i by Gentry III, Phase 12 consisting of five two-story buildings, with each building being its own residential Apartment, designated as **Apartments 17 to 21, inclusive**, located on Lot 12-A, as shown on DPP File No. 2019/SUB-44, as further described in Exhibit "A".

(e) Keali'i by Gentry III, Phase 13, where the Community Park and the Mail Center will be, located on Lot 13, as shown on DPP File No. 2017/SUB-168, as further described in Exhibit "A".

(f) Keali'i by Gentry III, Phase 14, where there will be common area landscaping, located on Lot 14, as shown on DPP File No. 2017/SUB-168, as further described in Exhibit "A".

None of the Apartments have basements. The Apartments are comprised of wood frames constructed on concrete slab-on-grade foundations with wood frame interior walls with gypsum board. Exterior walls are sheathed with gypsum board on interior surfaces and sided on exterior surfaces with pre-primed manufactured cementitious siding. Roofs are constructed of engineered wood trusses, plywood sheathing and composition shingles.

5. DESCRIPTION OF APARTMENTS. Fee simple Apartments are hereby established within the underside of the concrete slabs, the outside of the roofs and the outer surfaces of the perimeter walls of each of the twenty-two (22) residential Apartments in the Project. The Apartments are described in more detail in Exhibit "B" (attached hereto and made a part of this Declaration by this reference) and in the Condominium Map.

5.1 Apartment Numbers and Locations. The Apartments are numbered and located as shown on the Condominium Map.

5.2 Layout and Area of Individual Apartments. As shown on the Condominium Map, there are three (3) Apartment types (Plans 1, 2, and 3). The location, Apartment numbers, approximate net living area and descriptions of the rooms for each of the Apartments are shown on the Condominium Map or are listed or described in the attached Exhibit "B".

5.3 Access to Common Elements. Each Apartment has direct access to the common roadways within the Joint Development Area, which common roadways lead to Kapolei Parkway, which is a public road.

5.4 Limits of Apartments. Each Apartment includes the following:

(a) the perimeter walls, foundations, columns, girders, beams, floors, slabs, footings, supports, stairways, roofs, skylights (if any), ceilings of the building comprising the Apartment;

(b) the walls and partitions within the building comprising the Apartment and all of the space within the walls of such building;

(c) the windows, window frames, louvers, shutters (if any), doors and door frames along the perimeter of and within the building comprising the Apartment;

(d) the garage, entry and lanai (if any), as each is shown on the Condominium Map;

(e) all mechanical and electrical equipment originally installed and utilized for or serving only that one Apartment;

(f) any pipes, wires, vents, shafts, ducts, cables, conduits or other utility or service lines or enclosed spaces for wiring, pipes or air exhaust running through or otherwise located within the Apartment, which are utilized for or only serve the Apartment; and

(g) all of the originally installed fixtures and appliances.

Apartments do not include any pipes, wires, ducts, conduits or other utility or service lines running through an Apartment that are utilized by or serve more than one Apartment, all of which are common elements as described below. An Apartment also does not include the limited common element Private Yard Area that is appurtenant to each Apartment, as described below.

6. **COMMON ELEMENTS.** One fee simple interest is hereby designated in the "common elements", comprised of all portions of the Project other than the Apartments and which include, specifically, but are not limited to:

- 6.1 the Land in fee simple;
- 6.2 all yards, grounds, planting areas, gates, Keali'i by Gentry Common Element Fence, trash collection areas and walkways;
- 6.3 all access lanes, roads, curbs, sidewalks and street lights;
- 6.4 visitor parking stall nos. 5 to 20, inclusive, and 39 to 42, inclusive, as shown on the Condominium Map;
- 6.5 installations for services such as pipes, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations over, under or across the Project, which serve more than one Apartment for services such as power, light, gas, hot water, cold water, sewage, drainage, telephone, radio and television signal distribution, if any;
- 6.6 any apparatus and installations existing for common use, such as tanks, pumps, irrigation lines, motors, fans, compressors, ducts, vents and other such installations and apparatus;
- 6.7 all the benefits inuring to the Land or to the Project from the easements shown on the Condominium Map, listed in Exhibit "A" to this Declaration or otherwise appurtenant to the Land;
- 6.8 the Community Park and the Mail Center;
- 6.9 the land comprising the Joint Development Area in fee simple;
- 6.10 the Access Driveway to R1 Facility (described in Section 9.14 of this Declaration); and
- 6.11 all other parts of the Project necessary or convenient to the Project's existence, maintenance and safety or normally in common use and that are not included in the definition of an Apartment.

In the event that the Project has more visitor parking stalls than is required by applicable laws, ordinances, rules and regulations now or hereafter made by any governmental authority, the Developer shall have the reserved right to Record an amendment to this Declaration to redesignate a particular common element visitor parking stall as a limited common element appurtenant to a particular Apartment.

7. **LIMITED COMMON ELEMENTS.** Certain common elements, called "limited common elements," are designated, set aside and reserved for the exclusive use of certain Apartments, and such Apartments shall have exclusive easements for the use of such limited common elements. The limited common elements are as follows:

7.1 Subject to the right (described below) of the Owner of a Benefitted Apartment (as defined in Section 9.1B) to have limited access to the Private Yard Area appurtenant to an Adjacent Apartment (as defined in Section 9.1B), each Apartment shall have for its exclusive use and enjoyment the front yard area and the Private Yard Area that adjoins the Apartment, as shown on the Condominium Map.

7.2 Each Apartment shall have for its exclusive use and enjoyment the gate leading to the Private Yard Area that adjoins the Apartment, as shown on the Condominium Map.

7.3 Where applicable, each Apartment shall have for its exclusive use and enjoyment the gravel strip that runs along the outside edge of certain portions of the Apartment (the "**Gravel Strip**").

7.4 Each Apartment shall have for its exclusive use and enjoyment the driveway that adjoins the garage of that Apartment, as shown on the Condominium Map; provided, however, that, where two (2) Apartments share a portion of a driveway, the portion of such driveway (the "**Shared Driveway**") that is reasonably needed for ingress to and egress from both Apartments shall be a limited common element appurtenant to both Apartments. To be clear, those portions of the driveway that are not reasonably needed for ingress to and egress from both Apartments shall not be part of the Shared Driveway, but shall, instead, be a limited common element appurtenant to just the other Apartment, it being expected that the length of the Shared Driveway shall terminate where the driveway begins to turn into the garages of the respective Apartments.

7.5 Each Apartment shall have for its exclusive use and enjoyment the walkway that adjoins the entry to the Apartment, as shown on the Condominium Map.

7.6 Each Apartment shall have for its exclusive use and enjoyment the outdoor unit of the air conditioner system, if any, located outside of the Apartment, as shown on the Condominium Map.

7.7 Each Apartment shall have for its exclusive use and enjoyment the Privacy Fence adjacent to the Apartment; provided, however, that, where there are two (2) Apartments whose Private Yard Areas are separated by a Privacy Fence (or by a portion of a Privacy Fence), the Privacy Fence (or the portion of the Privacy Fence separating their Private Yard Areas) shall be a limited common element appurtenant to both Apartments.

7.8 All other common elements of the Project that serve less than all of the Apartments in the Project shall be limited common elements appurtenant to the Apartments that are served by such common elements.

8. COMMON INTEREST. Each Apartment shall have an appurtenant percentage of undivided interest in all of the common elements of the Project (the "percent of common interest"), which is the Apartment Owner's proportionate share in the ownership of the common elements. The percent of common interest appurtenant to each Apartment is shown on the attached Exhibit "B". Except as otherwise provided in this Declaration, the percent of common interest shall also reflect the Owner's proportionate share in all of the common profits and common expenses of the Project and shall be used to calculate the Owner's voting rights in Project-related matters. Notwithstanding the foregoing to the contrary, it is the Developer's intent that all Apartments have the same percent of common interest. In the event it is necessary to allocate varying common interests to the Apartments so that the total of all common interests equals exactly one hundred percent (100%), the common profits and common expenses of the Project and the voting rights of the various Apartments shall, nevertheless, be equally allocated among and/or shared by the Apartments on a pro rata basis (in other words, each Apartment will pay the same amount of common expenses as all of the other Apartments, and each Apartment will have the same allocation of votes as all of the other Apartments). Further, notwithstanding the foregoing to the contrary, until an Apartment has been conveyed by the Developer, the

Developer shall be responsible for all costs associated with that Apartment (and its appurtenant limited common elements).

8.1 Alteration and Transfer of Interest. Except as otherwise provided in this Declaration or the Act, the common interest appurtenant to each Apartment shall be permanent in character and shall not be altered without the consent of all of the affected Apartment Owners, as expressed in a duly Recorded amendment to this Declaration. The common interest shall not be separated from the Apartment to which it appertains and shall be deemed to be conveyed or encumbered with the Apartment even though such common interest is not expressly or correctly mentioned or described in the conveyance or in any other instrument. Ownership of the common elements shall remain undivided and no right shall exist to partition or divide any part thereof, except as otherwise expressed in the Act.

9. EASEMENTS AND DISCLOSURES. The Project, the Apartments and the common elements, including the limited common elements, shall be subject to and/or shall have the benefit of the easements and reservations described below in this Section 9, and the disclosures set forth in this Section 9 apply to the Project and the Apartments.

9.1 Easements for Access, Utilities and Support. Each Apartment shall have appurtenant thereto non-exclusive easements in the common elements for ingress to, egress from, utility services for and support, maintenance and repair of such Apartment (and its appurtenant limited common elements), and shall also have an easement in the other common elements (subject, however, to the exclusive or limited use of the limited common elements) in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other Apartment Owners. In connection therewith, each Apartment Owner shall have an easement in common with the Owners of all of the other Apartments to connect, use, maintain, and repair all pipes, wires, ducts, cables, conduits, and public utility lines and other common elements located in another Apartment and serving such Owner's Apartment. Each Apartment (and its appurtenant limited common elements) shall be subject to an easement for necessary and reasonable access (for maintenance and repair purposes) to any common elements located in the Apartment (or within such limited common elements) in favor of the Owners of all other Apartments served by such common elements.

9.1A Easement for Mailbox Use. Each Apartment shall have an exclusive easement and right to use the mailbox in the Mail Center bearing the same numerical designation as the Apartment.

9.1B Easement to Maintain Exterior of Benefitted Apartment. Where the Private Yard Area of an Apartment (the "**Benefitted Apartment**") directly borders the Private Yard Area of a neighboring Apartment (the "**Adjacent Apartment**"), the Benefitted Apartment shall have a right of access into the Adjacent Apartment's the front yard area and Private Yard Area, including entry through the gate that secures the Adjacent Apartment's Private Yard Area, in order to access the exterior sides of the Benefitted Apartment and the limited common element Gravel Strip appurtenant to the Benefitted Apartment. Each Benefitted Apartment shall have appurtenant thereto, and each Adjacent Apartment (and its Private Yard Area) shall be burdened by, an easement in favor of the Benefitted Apartment, subject to the following conditions: (a) the purpose of the easement is to allow access to the exterior sides of, and to the Gravel Strips appurtenant to, the Benefitted Apartment so that such exterior sides and Gravel Strips can be inspected, maintained and repaired; (b) as more particularly described at the end of this Section 9.1B, the access rights (which include access through the gate) must be exercised at reasonable

times and only upon obtaining the prior verbal or written consent of the Owner or occupant of the Adjacent Apartment, which consent shall not be unreasonably withheld, conditioned or delayed; (c) during the inspection, maintenance and repair of the exterior sides and Gravel Strips of the Benefitted Apartment, the party performing the inspection, maintenance and repair shall have the right to encroach into the front yard area and the Private Yard Area of the Adjacent Apartment as may be reasonably necessary to perform such inspection, maintenance and repair (e.g., for the placement of scaffolding for painting); (d) after such entry, inspection, maintenance or repair, the Owner of the Benefitted Apartment shall be responsible for putting the front yard area and the Private Yard Area of the Adjacent Apartment into the same condition it was in immediately prior to the entry, inspection, maintenance or repair; (e) neither the Owner nor any occupant of the Adjacent Apartment shall be liable for any property damage or personal injury that occurs during or as a result of such entry, inspection, maintenance or repair, unless such damage or injury is caused by the reckless or intentional act of the Owner or occupant of the Adjacent Apartment (or someone acting under their authority); and (f) the Owner of the Benefitted Apartment shall indemnify, defend and hold harmless the Owner and any occupant of the Adjacent Apartment from any costs incurred by, or claims brought against, such Owner or occupant as a result of any such entry, inspection, maintenance or repair unless such damage or injury is caused by the reckless or intentional act of the Owner or occupant of the Adjacent Apartment (or someone acting under their authority). Exercise of the access rights described in subsection (b) above shall be as follows: The Owner of the Benefitted Apartment shall make a verbal or written request to the Owner or occupant of the Adjacent Apartment to grant the Owner of the Benefitted Apartment with access to the exterior sides of, or to the Gravel Strips appurtenant to, the Benefitted Apartment. If access is not granted pursuant to a verbal request, then the Benefitted Owner must send a written request for such access. If the Owner or occupant of the Adjacent Apartment does not respond to a written request for access from the Owner of the Benefitted Apartment within seven (7) days after delivery of such a request from the Owner of the Benefitted Apartment, then the Owner of the Benefitted Apartment shall send another written notice to the Owner or occupant of the Adjacent Apartment, which notice shall state the day, time and length that the Owner of the Benefitted Apartment will need entry into the front yard area and the Private Yard Area of the Adjacent Apartment. No earlier than two (2) days after having delivered the written notice to the Owner or occupant of the Adjacent Apartment of the day, time and length of entry, the Owner of the Benefitted Apartment (and such Owner's agents and contractors) shall have the right to enter the front yard area, through the gate and into the Private Yard Area of the Adjacent Apartment, during daylight hours.

9.2 Easement for Encroachment. In the case of encroachments of common elements upon any Apartment or limited common elements, or in the case of encroachments of limited common elements or any Apartment upon the common elements or any other Apartment or limited common element, a valid easement for such encroachment and the maintenance thereof exists for as long as such encroachment continues; provided, however, that in no event shall an easement for encroachment exist if such encroachment occurred due to the willful and knowing conduct of an Apartment Owner or occupant or the Association.

9.3 Developer's, Board's, Association's Easement for Access. The Developer (during the Development Period), the Board and the Association shall each have the irrevocable right, to be exercised by the Developer (during the Development Period), the Board, the Managing Agent or their respective designees, to have access to and enter each Apartment and any limited common elements from time to time during reasonable hours as may be necessary for the operation of the Project or for the installation, repair, maintenance, or replacement of any common elements or for inspection or testing of an Apartment and/or the

common elements (including the limited common elements) when the Association is the claimant under Hawaii Revised Statutes, Chapter 672E (Contractor Repair Act), or at any time for making emergency repairs that may be necessary to prevent damage to any Apartment or to any of the common elements. Access to each Apartment for normal maintenance must be at reasonable times and upon prior consent of the Apartment Owner.

9.4 Developer's Easement for Sales and Marketing Activities. The Developer reserves, for itself, its agents, employees, contractors, licensees, successors and assigns, the right and an easement, without the consent or joinder of any Person with an interest in the Project, including any other Apartment Owner and/or Mortgagee, to conduct extensive sales, leasing, rental, marketing and other commercial activities on and at the Project relating to the marketing and sale of any apartment in the Joint Development Area, including, without limitation, the right to use any Apartments (and appurtenant limited common elements) owned by the Developer (and any other Apartment (and appurtenant limited common elements), with the express permission of the Owner of such Apartment) and the common elements (excluding limited common elements exclusively appurtenant to Apartments not owned by the Developer) for model apartments, sales, leasing, rental, marketing and other commercial activities, temporary occupancy and management offices, parking and the posting and maintenance of banners, signs, and other advertisements and sales displays relating to such sales, leasing, rental, marketing and other commercial activities. Any temporary sales center located within the Project shall be and is hereby reserved, at no cost or charge, for the exclusive use of the Developer and its agents as an office for sales and other uses. Such uses and activities shall be permitted until the end of the Development Period. Notwithstanding the foregoing, if the Developer's mortgage lender or any successor to or assignee of the Developer's mortgage lender acquires any portion of the Joint Development Area in the course of any foreclosure or other legal proceedings or in the exercise of its mortgage remedies or by an assignment in lieu of foreclosure, then such mortgage lender, its successors and assigns, shall have the right to conduct such extensive sales and marketing activities on the Joint Development Area until all of the Apartments to be developed in the Joint Development Area have been sold to third-party purchasers and deeds conveying title to those Apartments have been Recorded. The Developer shall restore any damage to the common elements that may have been caused through the exercise of the rights reserved above to their condition immediately prior to such exercise.

In connection with the Developer's easement for sales activities, the Developer shall be entitled to receive the following documentation until the end of the Development Period:

- (a) a copy of an approved revised operating budget of the Project and a brief explanation of the changes and the reasons behind them, so that the Developer can submit the revised budget to the Real Estate Commission of the State of Hawaii in compliance with the provisions of the Act;
- (b) a copy of any change in existing policies of the Board of Directors or implementation of any new policies of the Board of Directors, so that the Developer can disclose this information to prospective buyers; and
- (c) a copy of any executed and/or certified copies, if applicable, of any revised or amended Project Documents (e.g., this Declaration, the Bylaws, the House Rules, and the Condominium Map), so that the Developer can submit the same to the Real Estate Commission of the State of Hawaii and to prospective buyers.

All of the above notices and documentation specified in subsections (a) through (c) shall be delivered to the Developer within five (5) business days after the adoption or approval of such documentation by the Association or the Board, and shall be under cover of a written statement signed on behalf of the Board of Directors that the enclosures are the official documents of the Association.

9.5 Developer's Easements for Access. The Developer, its agents, employees, contractors, licensees, successors and assigns shall have an easement for ingress and egress over and across all portions of the Project for the construction of improvements on other portions of the Joint Development Area and to correct any defects and other punchlist items in the common elements or any Apartment and to exercise any of the Developer's Reserved Rights. This easement shall terminate upon the later of (a) the end of the Development Period or (b) one year after the closing of the sale of the last unsold Apartment in the Joint Development Area.

9.6 Developer's Rights Regarding Easements. The Developer does hereby reserve, and shall have, the unilateral right, for itself and its successors and assigns, to and until the later of (a) the end of the Development Period or (b) December 31, 2040, to designate, delete, relocate, realign, use, convey, transfer, cancel, accept, reserve, hold, grant and otherwise deal with any easements and/or rights of way over, under, across, through and on the common elements for any reasonable purpose, which may include, but shall not be limited to, those purposes that are necessary for the operation, care, upkeep, maintenance, or repair of any Apartment, the common elements, any land owned by the Developer (or an affiliate of the Developer) in the vicinity of the Project, or any easements for utilities or for any public or private purpose, provided that such easements and/or rights of way shall not be located on or within any existing structure on the Land and shall not be exercised as to unreasonably disturb, impair or interfere with the normal use and enjoyment of the Land by the Apartment Owners.

Each Person acquiring an interest in the Project consents to such designation, deletion, relocation, realignment, use, conveyance, transfer, cancellation, acceptance, reservation, holding or grant of easements and/or rights of way as provided in this Section 9.6 and to the Recording of amendments to this Declaration and of such other documents as the Developer deems appropriate to effect or note such action. Each Person acquiring an interest in the Project further agrees to execute such documents and do such other things as may be necessary or convenient to effect the same, and appoints the Developer and the Developer's assigns as such Person's attorney-in-fact with full power of substitution to execute such documents and to do such things on such Person's 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 Person; provided that, after the expiration of the Developer's reservation, the Association, through the Board of Directors, and with the prior written consent of the holders of any then-existing easements affected thereby, is authorized to grant, convey, transfer, cancel, relocate and otherwise deal with any and all such public services and utilities easements now or hereafter located on or affecting the Land or the Project without requiring any consideration therefor. To the extent that the joinder of any Apartment Owner, lien holder or other Person who may have any interest in the Land, the Project or any Apartment may be required in order to validate any act or thing done pursuant to the foregoing reservation, such joinder shall be accomplished by power of attorney from each of the Apartment Owners, lien holders or other such Persons, and the acquiring or acceptance of ownership in an Apartment or of a lien on an Apartment or of any other interest in the Project or Land shall be a grant of such power, which grant, being coupled with an interest, is irrevocable.

9.7 Developer's Easement for Noise, Dust and Other Nuisances. The Developer, its agents, employees, contractors, licensees, successors and assigns shall have an easement over, under and upon all portions of the Project to create and cause noise, dust, soot, smoke, odors, surface water runoff, vibrations, traffic congestion and other nuisances, annoyances or hazards in connection with or incidental to (a) the exercise of any of the Developer's easements and other rights described in this Section 9, (b) the development of any portion of the Joint Development Area, and (c) the exercise of the Developer's Reserved Rights as described in this Declaration. By execution of an Apartment deed, agreement of sale, lease, rental agreement, or Mortgage for the Apartment, each Person executing such document waives any and all rights, claims or actions that such Person might have or might accrue in the future against the Developer, its agents, employees, contractors, licensees, successors and assigns as a result of any damage to such Person's real or personal property, or any inconvenience, annoyance or nuisance caused by the Developer's easements and other rights described in this Section 9.

9.8 Association's Easement Rights on Common Elements. The Association has the right, exercisable by the Board, to receive, hold, designate, delete, relocate, realign, use, convey, transfer, accept, reserve, grant and otherwise deal with easements and rights of way over, under and on the common elements and any part thereof, provided that such easements and/or rights of way shall not be located on or within any existing structure on the Land and shall not unreasonably disturb, impair or interfere with the normal use and enjoyment of the Project by any Apartment Owner. During the Development Period, however, the Association must have the written consent of the Developer before it may exercise the right described in this Section.

9.9 Developer's Rights Regarding Utilities, Access, Etc. The Developer shall have a nonexclusive easement for roadway access and utilities purposes over, under, across, along, and upon the roadways that are included in the common elements of the Project, together with the right to designate, delete, grant, convey, transfer, assign, cancel, accept, relocate, realign, reserve and otherwise deal with any easements and rights of way at any time (perpetual or otherwise) for utilities (including, without limitation, water, gas, electric power and communication utilities, electromagnetic and optical transmission facilities), sanitary and storm sewers, drainage, cable television transmission facilities, refuse disposal, landscape development and maintenance, driveways, parking areas, access roadways and other purposes, over, across, under and through any Apartments still owned by the Developer and the common elements of the Project, whether or not for purposes of developing or servicing other lands owned by the Developer (or an affiliate of the Developer) in the vicinity of the Project, including, without limiting the generality of the foregoing, a right of entry to construct, reconstruct, operate, maintain, repair, and relocate such lines, facilities, and appurtenances and to grant, assign, and/or transfer any such easements or rights of way to governmental or quasi-governmental authorities, utility or service companies, owners' associations or other entities and the right to grant, dedicate, designate, use, and enjoy easements and/or rights of way for access purposes appurtenant to any portion of the Land and any portion of other lands owned by the Developer (or an affiliate of the Developer) in the vicinity of the Project. These reserved rights shall be exercised in a manner that will not materially impair or interfere with the use of any Apartment that is not owned by the Developer. The Developer also reserves the right to assign or transfer the rights and obligations of any such easements and rights of way to the Association, which rights and obligations shall be accepted and assumed by the Association, and, upon such assumption, the Developer shall be relieved of such obligations. Each Owner, by purchasing an Apartment, consents to any such

designation, deletion, granting, conveyance, transfer, assignment, cancellation, acceptance, relocation, realignment, and reservation of easements and/or rights of way as provided above without the necessity of any Owner or the Association or those claiming by, through or under an Owner or the Association entering into any further agreement respecting such action or document; provided, however, that such Owner and the Association and those claiming by, through or under an Owner or the Association agree to join in and execute such documents and do such other things as may be necessary or convenient to effect the same within ten (10) days after a request by the Developer and without payment of additional consideration by the Developer. The Developer shall have the right, without being required to obtain the consent or joinder of any Apartment Owner, lien holder or other Persons, to unilaterally execute, acknowledge, and deliver any and all instruments, including, without limitation, all amendments to this Declaration, the Bylaws and the Condominium Map, necessary or appropriate for the purpose of carrying out the provisions and exercising the rights, powers, and privileges granted or reserved by this Section 9.9. Any such action shall be deemed taken by the Developer as the true and lawful attorney-in-fact of the respective Apartment Owners and lien holders.

9.10 Kapolei Heritage Center. The Project is bordered on its Diamond Head side by the Department of Hawaiian Home Lands' Kanehili residential community ("**Kanehili**"), within which is the Kapolei Heritage Center. Noise will originate from the Kapolei Heritage Center in the course of its operations as a community center.

9.11. Kapolei Golf Course; Errant Golf Balls.

(a) The Project directly borders the Kapolei Golf Course (the "**Golf Course**"), which, as of Recording of this Declaration, is owned and operated by HGP LLC, a Hawaii limited liability company. There will be errant or stray golf balls that enter the Project. The errant or stray golf balls will be a safety hazard, which may cause damage to persons, residents and personal property. This hazard will exist for all homes in the Project, even for those homes that do not directly abut the Golf Course. As of the Recording of this Declaration, there is no safety net on the portion of the Golf Course that fronts the Project.

(b) In addition to errant golf balls, there will also be hazards, uses and activities associated with the Golf Course that may cause inconvenience, disturbance, or injuries to persons and/or damage to property within the Project. These other hazards, uses and activities include such things as reservoirs and water hazards, other attractive nuisances located upon or adjacent to the Golf Course, periodic spraying or other treatment with pesticides, insecticides, herbicides, fungicides and fertilizers, surface water runoff, the proximity of current or future Golf Course restroom and maintenance facilities to certain Apartments (which may result in an increased amount of noise and odors, additional lighting, and increased pedestrian and golf cart traffic), the operation (including possible overspray) of sprinkler and other irrigation systems during the day and at night, the possible use from time to time of outdoor speakers and the operation of golf carts and noisy power equipment, such as lawnmowers, compressors, tractors and irrigation pumps and motors, on or adjacent to the Golf Course at various times, including weekends and early morning and late evening hours, other noise, dust and unpleasant odors, and daily activities of maintaining, operating and using the Golf Course. Irrigation of the Golf Course may be with water from storm retention basins or reclaimed water from the Honouliuli Wastewater Treatment Plant. Any reclaimed water is required to be treated according to State Department of Health guidelines. Tournaments and other special events held on the Golf Course

may also impact the Project, resulting in additional noise, traffic and pollution due to attendance by large crowds for extended periods of time.

(c) No Apartment Owner in the Project will have an ownership interest in the Golf Course, a right to use any portion of, or facilities in, the Golf Course or a right to enter the Golf Course by virtue of owning an Apartment at the Project.

(d) By ownership of an Apartment, each Apartment Owner waives any rights or claims that the Apartment Owner may otherwise have against the current and any future owners/operators of the Golf Course based on the foregoing hazards and conditions.

(e) The provisions of this Section 9.11 are for the benefit of the owners and operators of the Golf Course, and may not be amended, released or waived without the written consent thereof.

9.12 25-Foot-Wide Waterline Easement. As shown on the Condominium Map, portions of the Private Yard Areas of most of the Apartments, as well as portions of Lot 13 (where the Community Park and the Mail Center will be located), Lot 14 (where there will be common element landscaping) and one of the Project's roadways, are encumbered by a 25-foot-wide waterline easement (the "**25-Foot Waterline Easement**").

(a) Pursuant to that certain Grant and Relinquishment of Easements, dated July 7, 1992, recorded as Land Court Document No. 1930328 (the "**Navy Grant of Easement**"), the United States of America, acting through the Department of the Navy (the "**Navy**"), has a perpetual, non-exclusive easement over the 25-Foot Waterline Easement for the operation, maintenance, repair, replacement and removal of water line facilities, together with rights of access to and from the 25-Foot Waterline Easement.

(b) The Navy Grant of Easement (i) states that no tree or structure of any kind (including any building foundation) shall be erected or placed within the 25-Foot Waterline Easement and no stockpiling of any material is allowed within the 25-Foot Waterline Easement, but (ii) also states that roads, walks, curbs or appurtenances thereof and grass, shrubs and similar plants and utility equipment can be installed within the 25-Foot Waterline Easement, provided such uses do not unreasonably interfere with the exercise by the Navy of its rights under the Navy Grant of Easement.

(c) Every Apartment Owner whose Private Yard Area is encumbered by the 25-Foot Waterline Easement and the Navy Grant of Easement must comply with the terms and conditions of the Navy Grant of Easement as it relates to the portion of the Private Yard Area that is encumbered by the 25-Foot Waterline Easement. Such compliance may mean the removal, at the Apartment Owner's cost, of anything located within the 25-Foot Waterline Easement that violates the terms of the Navy Grant of Easement, even if the Apartment Owner was not responsible for the placement of the violating item within the 25-Foot Waterline Easement. Such compliance may also mean allowing the Navy to gain access to and from the 25-Foot Waterline Easement by traversing over portions of the Apartment Owner's Private Yard Area that are not encumbered by the 25-Foot Waterline Easement.

(d) With respect to those common elements (excluding Private Yard Area limited common elements) that are encumbered by the 25-Foot Waterline Easement and the Navy Grant of Easement, the Association must comply with the terms and conditions of the

Navy Grant of Easement as it relates to such common elements. Such compliance may mean the removal, at the Association's cost, of anything located within the 25-Foot Waterline Easement that violates the terms of the Navy Grant of Easement, even if the Association was not responsible for the placement of the violating item within the 25-Foot Waterline Easement. Such compliance may also mean allowing the Navy to gain access to and from the 25-Foot Waterline Easement by traversing over portions of the common elements that are not encumbered by the 25-Foot Waterline Easement.

9.13 15-Foot-Wide Waterline Easement. Portions of the Joint Development Area (including Lot 11 and Lot 14 and a portion of the Project's roadways) are encumbered by a 15-foot-wide waterline easement (the "**15-Foot Waterline Easement**").

(a) Apartment Owners whose Private Yard Areas may be encumbered by the 15-Foot Waterline Easement may be required to remove, at the Apartment Owner's cost, anything located within the 15-Foot Waterline Easement that interferes with the use of the 15-Foot Waterline Easement by Persons with rights over it, even if the Apartment Owner was not responsible for the placement of the item within the 15-Foot Waterline Easement.

(b) With respect to those common elements (excluding Private Yard Area limited common elements) that are encumbered by the 15-Foot Waterline Easement, the Association may be required to remove, at the Association's cost, anything located within the 15-Foot Waterline Easement that interferes with the use of the 15-Foot Waterline Easement, even if the Association was not responsible for the placement of the item within the 15-Foot Waterline Easement.

9.14 Access Driveway to R1 Facility. Sheet S3 of the Condominium Map shows, between Apartment 14 to the west and Apartments 15 and 16 to the east, an area called "Access Driveway to R1 Facility". The Access Driveway to R1 Facility is part of Lot 11 and is within pre-existing Easement 11059 (as shown on Land Court Map No. 1642). Access Driveway to R1 Facility leads into the Golf Course, and provides vehicular access for the Board of Water Supply to access its Recycle Water (R1) Facility located within the Golf Course. As a common element of the Project, Access Driveway to R1 Facility (including the gate leading to the Golf Course) will be maintained and repaired by the Association.

10. PURPOSES OF AND RESTRICTIONS AS TO USE OF APARTMENTS AND THE PROJECT. Each Owner of an Apartment shall have the absolute right to sell, lease or otherwise transfer such Apartment, or such Owner's undivided interest in the Apartment, subject to all provisions of the Act, this Declaration and the Bylaws. No Apartment Owner shall sell, lease or otherwise transfer less than the entire Apartment and its appurtenant interest in the common elements, except by way of a transfer of an undivided interest in the Apartment. Any lease of an Apartment shall be in writing and shall be subject to the provisions of this Declaration, the Bylaws and the Act.

10.1 General Limitations on the Use of Apartments. No Apartment Owner shall use the Owner's Apartment or its appurtenant limited common elements for any purpose or in any manner that will: (a) injure the reputation of the Project; (b) jeopardize the soundness of the Project or any portion thereof; (c) interfere with or unreasonably disturb the rights of other Owners and occupants; (d) reduce the value of the Project; (e) increase the insurance rate or result in the cancellation of insurance on any of the Apartments or their contents; or (f) invalidate

or otherwise jeopardize the warranty on any portion of the Project. The House Rules provide further guidance regarding the use of the Apartments.

10.2 Apartment Owner's Responsibility - Generally. Except as otherwise specifically provided in this Declaration or in any agreement with the Association, the performance and cost of all maintenance, repair and replacement of each Apartment and such Apartment's limited common elements (including the front yard area and Private Yard Area appurtenant to such Apartment) shall be the sole responsibility of the Owner of the Apartment. Each Owner shall maintain the exterior appearance of the Owner's Apartment and the limited common elements (including the front yard area and Private Yard Area) appurtenant to the Owner's Apartment in a state of good repair and in a neat and attractive condition, consistent with the surrounding areas and in accordance with the provisions of this Declaration. Each Owner is responsible for the control of pests (termites, insects, rodents, and the like) in and around the Owner's Apartment and the limited common elements (including the front yard area and Private Yard Area) appurtenant to the Owner's Apartment.

10.3 Grading and Drainage. Each Owner shall maintain the grade and ground cover of the Owner's front yard area and Private Yard Area so as to prevent soil erosion and excessive water run-off onto any neighboring front yard area and Private Yard Area and to prevent the ponding of any water on the Owner's front yard area and Private Yard Area. Further, no Owner shall alter the existing drainage pattern on any front yard area and Private Yard Area. Each Owner shall be responsible for keeping all swales, ditches and drainage ways within the Owner's front yard area and Private Yard Area free of debris, open and in good operating condition.

10.4 Landscaping. All front yard areas and Private Yard Areas shall be landscaped in compliance with this Declaration and the House Rules, which landscaping shall be maintained in a neat and attractive manner. If, after thirty (30) days following written demand from the Association, the Board or the Managing Agent, an Owner fails to maintain, repair and/or restore the landscaping on the front yard area and/or Private Yard Area in a neat and attractive manner, then the Board or the Managing Agent may, at their respective option, perform the work and the costs incurred to perform the work shall be specially assessed against the Owner. Any sums not paid by the Owner on demand shall be a lien against the Owner's Apartment, subject to foreclosure.

10.5 Private Yard Areas that Directly Abut a Benefitted Apartment.
Neither the Owner nor any occupant of an Adjacent Apartment shall:

(a) unreasonably prevent access to the exterior sides of a Benefitted Apartment or to a Benefitted Apartment's Gravel Strip when such access is impeded by a fence and/or gate enclosing a portion of the Adjacent Apartment's Private Yard Area and when the Owner of the Benefitted Apartment has complied with the terms of Section 9.1B of this Declaration;

(b) cause or allow any trees, shrubbery or other vegetation belonging to such Owner or occupant or pertaining to the Adjacent Apartment to interfere with the access to, or the inspection, maintenance or repair of, the exterior sides of the Benefitted Apartment or the Benefitted Apartment's limited common element Gravel Strip;

(c) keep or allow any items on any portion of the Benefitted Apartment's Gravel Strip;

(d) attach anything to the Benefitted Apartment or allow any items (including any trees, shrubbery or other vegetation) belonging to an Owner or occupant of an Adjacent Apartment to touch any portion of the Benefitted Apartment;

(e) perform or allow any landscaping, grading or other work that would or could (i) prevent proper drainage of the Benefitted Apartment or its limited common element front yard area and Private Yard Area, (ii) promote soil erosion, attract termites or other insects, (iii) undermine the integrity of the foundation of the Benefitted Apartment, or (iv) disturb any portion of the Benefitted Apartment's Gravel Strip;

(f) cause or allow water from a hose or from the Adjacent Apartment's irrigation system to come into contact with any portion of the Benefitted Apartment or the Benefitted Apartment's limited common element Gravel Strip;

(g) cause or allow any offensive contact (including, but not limited to, pounding or bouncing of objects) with the Benefitted Apartment; or

(h) cause or allow any activity by household pets or other animals that would tend to cause damage to any portion of the Benefitted Apartment or the Benefitted Apartment's limited common element Gravel Strip.

10.6 Residential Use. Apartments shall be occupied and used only as residential dwellings for the Apartment Owners, their families, tenants and social guests. The foregoing notwithstanding, nothing shall prevent a person from pursuing his or her legal occupation if such person also uses the Apartment as his or her principal residence and does not conduct business in a manner that creates additional congestion or traffic. All garages shall be used for parking operational vehicles only and for incidental storage. No Apartment, garage or any portion thereof shall be leased for transient or hotel purposes, which are defined herein as (a) rental for any period of less than thirty (30) days or (b) any rental in which the occupants of the Apartments are provided customary hotel services, such as room services for food and beverage, maid service, laundry and linen or bellboy service. Neither the Apartments in the Project nor any interest therein shall be sold, transferred, conveyed, leased, occupied, rented or used for or in connection with any time-sharing purpose or under any time-sharing plan, arrangement or program, including, without limitation, any so-called "vacation license", "travel club membership" or "time interval ownership" arrangement. The term "time-sharing" as used herein shall be deemed to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess an Apartment or Apartments in the Project rotates among various Persons on a periodically recurring basis according to a fixed or floating interval or period of time, whether by way of deed, lease, association or club membership, license, rental or use agreement, co-tenancy agreement, partnership or otherwise and whether or not registered or required to be registered under Chapter 514E, Hawaii Revised Statutes, as amended. No Apartment may be used as a rooming house or for bed and breakfast purposes. Except for the foregoing, the Owner of an Apartment shall have the absolute right to lease such Apartment.

10.7 Developer's Right to Use Its Apartments for Sales Purposes.

Notwithstanding any other provision to the contrary contained in this Declaration, the Bylaws or

the House Rules, the Developer has the right to use any Apartment that it owns or leases for promotional purposes or in connection with the initial sales of the Apartments in the Project.

10.8 Exceptions for Persons With Disabilities. Notwithstanding any other provision to the contrary contained in this Declaration, the Bylaws or the House Rules, Owners or occupants with disabilities shall be allowed reasonable exemptions from this Declaration, the Bylaws and the House Rules when necessary to enable them to use and enjoy their Apartments and the common elements, provided that any such Owner or occupant shall first make such request in writing to the Board. The request shall specifically set forth the nature of the request and the reason that the requesting party needs to be granted such an exemption. The Board shall not unreasonably withhold or delay its consent to such request. Any such request shall be deemed to be granted if not denied in writing within forty-five (45) days after the Board's receipt of the request, or within forty-five (45) days after the Board's receipt of additional information reasonably required by the Board in order to consider such request, whichever shall occur later.

10.9 Use of Common Elements. Each Apartment Owner may use the common elements in accordance with the purposes permitted under this Declaration, subject to:

- (a) the rights of other Apartment Owners to use the common elements;
- (b) any Owner's (or Owners') exclusive right to use of the limited common elements, as provided in this Declaration;
- (c) the right of the Owners to amend this Declaration to change the permitted uses of the common elements; provided that, subject to Section 514B-140(c) of the Act:
 - (i) changing common element open spaces or landscaped spaces to other uses shall not require an amendment to this Declaration; and
 - (ii) minor additions to or alterations of the common elements for the benefit of individual Apartments are permitted if the additions or alterations can be accomplished without substantial impact on the interests of other Owners in the common elements, as reasonably determined by the Board;
- (d) any rights reserved in this Declaration to amend this Declaration to change the permitted uses of the common elements;
- (e) the right of the Board, on behalf of the Association, to lease or otherwise use for the benefit of the Association those common elements that the Board determines are not actually used by any of the Apartment Owners for a purpose permitted in this Declaration. Unless the lease is approved by at least sixty-seven percent (67%) of the Owners, the lease shall have a term of no more than five years and may be terminated by the Board or the lessee on no more than sixty (60) days prior written notice; provided that the requirements of this paragraph shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by Section 514B-140(d) of the Act; and
- (f) the right of the Board, on behalf of the Association, to lease or otherwise use for the benefit of the Association those common elements that the Board determines are actually used by one or more Apartment Owners for a purpose permitted in this Declaration. The lease or use shall be approved by at least sixty-seven percent (67%) of the Owners, including all directly affected Apartment Owners that the Board reasonably determines actually use the common elements, and the Owners' Mortgagees; provided that the requirements of this paragraph shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by Section 514B-140(d) of the Act.

10.10 Use of Roadways. No vehicle belonging to an Owner or to an Owner's family member, tenant, guest, employee or service or delivery person shall be stopped or parked in such a manner so as to prevent the exit from or entrance to any portion of the Project. To help ensure the safe use of the Project's roadways, the Board shall establish appropriate speed limits for driving on the Project's roadways.

10.11 Privacy Fences.

(a) Owners and residents may not remove the Privacy Fences and gate appurtenant to their Apartment and each Owner (i) shall be responsible, at the Owner's cost, to maintain, repair, reconstruct and replace as necessary the Privacy Fences and gate appurtenant to the Owner's Apartment (the "**Fence Maintenance Obligation**"), and (ii) shall, to the extent required, have a right in the nature of an easement over the adjacent front yard area, Private Yard Area and common element area to perform such Fence Maintenance Obligation. Any maintenance, repair, reconstruction or replacement of Privacy Fences and/or gate must be in a style and with material as close as is reasonably possible to the original style and material of the Privacy Fence and/or gate. No additions or alterations shall be made to Privacy Fences and/or gates except as permitted pursuant to this Section 10.11.

(b) The constructed placement and location of Privacy Fences and gates within the Project, together with the encroachments resulting therefrom, are specifically authorized by this Declaration. A Privacy Fence and/or gate may not be demolished or relocated by the Owner of an Apartment served by the Privacy Fence and/or gate, except (i) in accordance with the terms of this Declaration, and (ii) with the written consent of the Owner of the other Apartment (if any) served by the Privacy Fence. Owners of the Private Yard Areas that share a Privacy Fence on a common boundary have a mutual Fence Maintenance Obligation to maintain, repair, reconstruct and replace the common Privacy Fence in a neat and attractive manner and as directed by the Association. The cost of such maintenance, repair, reconstruction and replacement, as required, shall be shared equally by such Owners. Each Privacy Fence shall constitute a "party wall" and, to the extent not inconsistent with the provisions of this Section 10.11, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(c) If a Privacy Fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner of a Private Yard Area where part of a Privacy Fence is located may restore the entire Privacy Fence. The Owner of the other Private Yard Area where the other part of the Privacy Fence is located shall contribute one-half (1/2) of the cost of such restoration, without prejudice, however, to the right of either Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions. The right of any Owner to contribution from any other Owner under this Section 10.11 shall be appurtenant to the Apartment and shall pass to such Owner's successors-in-title.

(d) Should an Owner fail to pay such Owner's share of the cost to maintain, repair, restore or replace the Privacy Fence serving such Owner's Private Yard Area within thirty (30) days following a demand therefor by the other Owner whose Private Yard Area is served by the Privacy Fence and who advanced such sum, the Board, at the request of the advancing Owner and upon the receipt of proof of such advance, shall specially assess the non-paying Owner therefor, which shall be a lien on the non-paying Owner's Apartment, subject to all the rights of

the Association, including foreclosure of such lien, set forth in and in accordance with this Declaration, the Bylaws and the Act.

(e) If, after thirty (30) days following a written demand from the Association, the Board or the Managing Agent, an Owner or Owners fails to maintain, repair, reconstruct or replace a Privacy Fence that is dilapidated or destroyed, then the Board or the Managing Agent may, at their respective option, perform the work and the costs incurred to perform the work shall be specially assessed against the Owner or Owners. Any sums not paid by the Owner or Owners on demand shall be a lien against the Owner's Apartment or the Owners' Apartments, subject to foreclosure.

10.12 Gravel Strips. Owners and occupants of Apartments that have a Gravel Strip running along the outside edge of certain portions of the Apartment shall keep and maintain the Gravel Strip in good and proper condition, and shall neither remove nor allow the removal of any portion of the Gravel Strip.

10.13 Shared Driveways.

(a) Except as authorized pursuant to the terms of this Declaration, Owners and occupants of Apartments that have a Shared Driveway as an appurtenant limited common element may not remove or otherwise alter the Shared Driveway, and the Owner of each such Apartment (i) shall be responsible for one-half (1/2) of all costs to maintain, repair, reconstruct and replace, as necessary, the Shared Driveway (the "**Shared Driveway Maintenance Obligation**"), and (ii) shall, to the extent required, have a right in the nature of an easement over the Shared Driveway to perform such Shared Driveway Maintenance Obligation. Any maintenance, repair, reconstruction or replacement of the Shared Driveway must be in a manner and with material as close as is reasonably possible to the original manner and material of the Shared Driveway. No additions or alterations shall be made to a Shared Driveway except as permitted pursuant to this Section 10.13.

(b) A Shared Driveway may not be altered by the Owner of an Apartment served by the Shared Driveway, except (i) in accordance with the terms of this Declaration, and (ii) with the written consent of the Owner of the other Apartment served by the Shared Driveway. Owners of the Apartments that share a Shared Driveway have a mutual Shared Driveway Maintenance Obligation to maintain, repair, reconstruct and replace the Shared Driveway in a neat and attractive manner and as directed by the Association. The cost of such maintenance, repair, reconstruction and replacement, as required, shall be shared equally by such Owners. The general rules of law regarding shared driveways and liability for property damage due to negligence or willful acts or omissions shall apply.

(c) If a Shared Driveway is destroyed or damaged by a casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner of an Apartment where a Shared Driveway is located may restore the entire Shared Driveway. The Owner of the other Apartment that has the Shared Driveway as an appurtenant limited common element shall contribute one-half (1/2) of the cost of such restoration, without prejudice, however, to the right of either Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions. The right of any Owner to contribution from any other Owner under this Section 10.13 shall be appurtenant to the Apartment and shall pass to such Owner's successors-in-title.

(d) Should an Owner fail to pay such Owner's share of the cost to maintain, repair, restore or replace the Shared Driveway serving such Owner's Apartment within thirty (30) days following a demand therefor by the other Owner whose Apartment is served by the Shared Driveway and who advanced such sum, the Board, at the request of the advancing Owner and upon the receipt of proof of such advance, shall specially assess the non-paying Owner therefor, which shall be a lien on the non-paying Owner's Apartment, subject to all the rights of the Association, including foreclosure of such lien, set forth in and in accordance with this Declaration, the Bylaws and the Act.

(e) If, after thirty (30) days following a written demand from the Association, the Board or the Managing Agent, an Owner or Owners fails to maintain, repair, reconstruct or replace a Shared Driveway that is dilapidated or destroyed, then the Board or the Managing Agent may, at their respective option, perform the work and the costs incurred to perform the work shall be specially assessed against the Owner or Owners. Any sums not paid by the Owner or Owners on demand shall be a lien against the Owner's Apartment or the Owners' Apartments, subject to foreclosure.

11. ADMINISTRATION OF THE PROJECT. Administration of the Project shall be vested in the Association of Apartment Owners of Keali'i by Gentry III, consisting of all Apartment Owners in the Project. An Owner of an Apartment shall automatically be a member of the Association upon becoming the Owner of an Apartment. Each Owner shall remain a member of the Association until such Owner no longer owns an Apartment. The Association (through the Board or otherwise) shall have the power to enact resolutions, rules and regulations, and to amend and repeal the same from time to time, which resolutions, rules and regulations may reasonably restrict and regulate the use of the Apartments and the common elements. Any such resolutions, rules or regulations shall be consistent with the terms of this Declaration, the Bylaws and the Act.

Except as otherwise provided in this Declaration with respect to limited common elements, operation of the Project and the maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto, shall be according to the provisions of the Act, this Declaration and the Bylaws and shall include, but shall not be limited to, the following:

11.1 Association to Maintain and Repair Infrastructure Improvements. The Association shall make, build, maintain and repair all sewers, drains, roads, curbs, sidewalks, street lights and other improvements within the Project that may be required by law to be made, built, maintained and repaired in connection with or for the use of the Project. The costs for such work by the Association shall be charged to and allocated among the Owners as provided in this Declaration, the Bylaws or the Act.

11.2 Association to Comply With All Governmental Rules and Regulations. The Association shall keep the common elements of the Project in a strictly clean and sanitary condition and shall observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority during the period that such laws, ordinances, rules and regulations are applicable to the Project.

11.3 Time Frame for Repairs. The Association shall repair, maintain and keep the common elements of the Project in good order and condition. Any and all defects in the common elements of the Project must be repaired by the Association within thirty (30) days after

any Apartment Owner or the Owner's agent gives notice of such defect, or within such additional time as may be reasonably necessary to complete such work diligently. Except as otherwise set forth in this Declaration, each Apartment Owner shall be responsible for repairing, maintaining and keeping in good order and condition the Apartment Owner's Apartment, limited common element Private Yard Area and the other limited common elements appurtenant to the Owner's Apartment.

11.4 Private Drainage System. The Project uses a private drainage system that connects to the City and County of Honolulu's municipal drainage system. As such, federal regulations prohibit the following from being discharged into the drainage system used by the Project:

- (a) domestic wastewater;
- (b) industrial wastewater;
- (c) any debris, refuse or solid waste or yard waste;
- (d) chlorinated swimming pool water;
- (e) wastewater from vehicle and equipment cleaning; and
- (f) oil and petroleum products.

Owners are prohibited from discharging any of the above into the drainage system used by the Project.

The Association is solely responsible for the maintenance and upkeep of the Project's drainage system. The Association shall cooperate with the Developer by assuming the Developer's Drainage Connection License(s) for the Joint Development Area. By assuming the Developer's Drainage Connection License(s), the Association shall also assume the City and County of Honolulu's National Pollutant Discharge Elimination System permit(s) (the "NPDES Permit") and shall be responsible for enforcing the terms and conditions of the NPDES Permit as it relates to the Project.

11.5 Bonding Requirements. Before the Association commences or permits construction of any improvement on the Project costing in excess of TEN THOUSAND DOLLARS (\$10,000.00), the Association must obtain a bond or certificate naming as obligees, collectively, all Apartment Owners and their respective Mortgagees, as their interests may appear, in a penal sum not less than ONE HUNDRED PERCENT (100%) of the cost of such construction with a surety authorized to do business in the State of Hawaii, guaranteeing performance and completion of such construction free and clear of all mechanics' and materialmen's liens and liens in lieu of mechanics' and materialmen's liens arising under the Act or other applicable laws.

11.6 No Unlawful Use of the Project. The Association must not make or suffer any strip or waste or unlawful, improper or offensive use of any portion of the Project.

11.7 Setback Requirements. The Association shall observe any setback lines affecting the Project and shall not erect, place, or maintain any building or structure whatsoever except approved fences or walls between any street boundary of the Project and the setback lines along such boundary, except as allowed by the Joint Development Agreement and not in violation of the Navy Grant of Easement.

11.8 Requirements for New Structures. The Association shall not erect or place on the Project any building or structure, including fences and walls, or make additions or structural alterations to, or exterior changes of, any common elements of the Project, except according to plans and specifications, including detailed plot plans, prepared by a licensed architect and approved by a Majority of Apartment Owners (or such fraction or percent as required by law or this Declaration), and by all of the Owners whose Apartments or limited common elements are directly affected by such erection or placement and except as allowed by the Joint Development Agreement and not in violation of the Navy Grant of Easement. Such approval shall be evidenced by Recordation of an amendment to this Declaration and/or the Condominium Map. The Developer's prior written consent to such amendment(s) will be required during the Development Period.

11.9 Association to Assume Certain Obligations Under License Agreement. The Developer and the State of Hawaii, Department of Hawaiian Home Lands ("DHHL") are parties to that certain License No. 825 (Non-Exclusive License Easement for Driveway and Utility Connections), dated November 7, 2018 ("**License No. 825**"). The term of License No. 825 is 10 years, from November 7, 2018 to November 7, 2028, but renews on a month-to-month basis until the roadways within Kanehili have been dedicated to the City and County of Honolulu.

(a) Pursuant to Section 10(b) of License No. 825, after the Developer has completed its obligations under Sections 7(a), 7(b) and 7(c) of License No. 825, the Developer has the right to delegate or assign to the Association (i) the Developer's remaining obligations under License No. 825 (which include (A) the obligation to pay DHHL a monthly roadway maintenance contribution in the amount of \$1,100.00 per month, starting in November of 2028 and ending when the roadways within Kanehili have been dedicated to the City and County of Honolulu, (B) the obligation to pay 20% of the costs to maintain and repair roads and sewer lines at Kanehili, on an ongoing basis, until the roadways within Kanehili have been dedicated to the City and County of Honolulu and (C) to cooperate with DHHL and use best efforts to support DHHL's completion of the roadway dedication), and (ii) the Developer's non-exclusive license rights under Section 1 of License No. 825, provided that the Developer may retain such non-exclusive license rights as the Developer deems necessary. Upon an assignment of the Developer's obligations under License No. 825 to the Association, the Developer will be released from any further obligations under License No. 825 arising after the date of the assignment.

(b) The Association shall accept and assume the Developer's delegation or assignment to the Association of the Developer's remaining obligations under License No. 825, and the Association shall indemnify, defend and hold the Developer harmless from any loss incurred by the Developer as a result of any claim made against the Developer regarding such obligations under License No. 825 that arise after the delegation or assignment.

(c) Each Apartment Owner, by taking title to an Apartment, consents to such delegation, assignment, acceptance and assumption without the necessity of any Apartment Owner or the Association or those claiming by, through or under an Apartment Owner or the Association entering into any further agreement respecting such action or document; provided, however, that such Apartment Owner and the Association and those claiming by, through or under an Apartment Owner or the Association agree to join in and execute such documents and instruments and do such other things as may be necessary or convenient to effect the same, within 10 days after a written request by the Developer and without payment of additional consideration by the Developer.

12. MANAGING AGENT AND SERVICE OF PROCESS. Operation of the Project shall be conducted for the Association by a responsible corporate Managing Agent appointed by the Association in accordance with the Bylaws. The Developer appoints Hawaiiana Management Company, Ltd., the principal place of business and post office address of which is 711 Kapiolani Boulevard, Suite 700, Honolulu, Hawaii 96813, as the initial Managing Agent. The initial Managing Agent is hereby designated as the exclusive agent to receive service of process until the Board of Directors and officers of the Association are appointed or elected. Once the Board of Directors is appointed or elected, process may be served upon any member of the Board of Directors who has a residence or place of business within the City and County of Honolulu, Hawaii.

13. COMMON PROFITS AND EXPENSES. The common profits of the Project shall be distributed among, and the common expenses shall be charged to, the Apartment Owners, including the Developer, in proportion to the common interest appurtenant to their respective Apartments, except as otherwise provided in this Declaration or in the Bylaws; provided, however, that, pursuant to the Act, the Developer shall have the right, but not the obligation, to temporarily assume the payment of all the actual common expenses in the Project until the Developer sends the Apartment Owners the written notice described in Section 13.3 below. No Apartment Owner may exempt himself, herself or itself from liability for common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of said Owner's Apartment.

13.1 Definition of Common Expenses. The term "common expense" means and includes the expenses to operate the Project and all sums designated as common expenses under the Act, this Declaration or the Bylaws. Except as otherwise provided in the Act, this Declaration or the Bylaws, the common expenses include, without limitation, (a) all costs and expenses for labor, services, materials, utility services and equipment, (b) all liability for loss or damage arising out of or in connection with the common elements, including any accident, fire, or any nuisance, (c) the premiums for the insurance policies that are required for the Project, (d) the cost of all utility services, including water, electricity, garbage disposal and any other similar services, unless separately metered, sub-metered or allocated, and (e) all costs and expenses, if any, incurred by or on behalf of the Association with respect to the Mail Center, the Community Park and the visitor parking stalls. As set forth in Section 514B-4 of the Act, real property taxes and special assessments assessed against the various Apartments shall not be common expenses of the Project.

13.2 Definition of Limited Common Expenses. The term "limited common expenses" means and includes all charges, assessments, costs and expenses unique to a particular Apartment or group of Apartments that includes fewer than all of the Apartments in the Project. Limited common expenses shall be assessed against and allocated to the appropriate Apartment or group of Apartments. Where more than one Apartment is responsible for and/or incurs a limited common expense, the limited common expense shall be evenly divided among such Apartments. The Developer shall be solely responsible for all of the reasonable costs and expenses for an Apartment (and its appurtenant limited common elements) until the Developer conveys its interest in such Apartment.

13.3 Commencement of Assessments. Each Apartment Owner shall be assessed and responsible for applicable limited common expenses and for the Owner's Apartment's share of the common expenses of the Project and shall be severally liable for

payment of those common expenses. Pursuant to Section 514B-41(b) of the Act, assessments for each Apartment will start on the date the certificate of occupancy has been issued for the Apartment by the City and County of Honolulu. The first installment of common expenses for an Apartment will be prorated from the date that the certificate of occupancy was issued for the Apartment. The foregoing notwithstanding, pursuant to the Act, the Developer may decide to assume all the actual common expenses in the Project and to delay the commencement of assessments against the other Apartment Owners until the Developer sends the Apartment Owners a written notice that, after a specified date, the Apartment Owners shall be obligated to pay for the portions of common expenses that are allocated to their respective Apartments. The written notice shall be mailed to the Apartment Owners, the Association and the Managing Agent at least thirty (30) days before the specified date. All subsequent assessments will be payable in advance in monthly installments on the first day of each month or at any other time as the Board shall determine.

13.4 Basis for Assessments. An Apartment Owner will pay for the common expenses and limited common expenses incurred in connection with the Owner's Apartments only if a certificate of occupancy has been issued for the Apartment. Common expenses will be allocated among the Apartment Owners on a per unit basis. As such, the common expenses will be divided equally among all of the Apartments for which a certificate of occupancy has been issued for that Apartment. The Developer will be responsible for all costs associated with an Apartment (and its appurtenant limited common elements) until a certificate of occupancy has been issued for that Apartment.

13.5 Expenses Due to Negligence. Notwithstanding the foregoing, all charges, costs and expenses incurred by the Association that are necessitated by the negligent, reckless or intentional conduct of an Apartment's Owner or occupant shall be charged to the Owner of the Apartment as a limited common expense or special assessment, which shall be secured by the lien described in the Bylaws.

14. DAMAGE AND DESTRUCTION.

14.1 Rebuilding by the Association in the Event of an Insured Casualty. The Association shall maintain such property (hazard) insurance as is required by the Act and the Bylaws. If, at any time, any common elements of the Project (excluding limited common elements) are damaged or destroyed by any casualty insured against in accordance with the Act and the Bylaws (an "**insured casualty**"), then the Association shall hire one or more contractors to rebuild or repair the damaged improvements, unless the Apartment Owners elect to not rebuild, in accordance with the provisions of Section 14.3 of this Declaration. The Association will rebuild and repair the improvements according to their design just before the damage occurred. If such rebuilding or repair cannot be performed (e.g., if changes in the law prevent it), then the Association will rebuild or repair the improvements according to a new design, which must comply with all applicable laws then in effect. The plans and specifications for such new design must first be approved by the Board.

14.2 Shortfall of Insurance Proceeds. If there are not enough insurance proceeds to pay the full cost to repair and/or rebuild the damaged common element improvements, then the Association can pay the shortfall from the Association's replacement reserve fund. If there is not enough money in the replacement reserve fund, then the Association must (a) determine the amount of the remaining shortfall, and (b) charge a special assessment to all of the Apartments in the Project. The special assessment will be allocated among the

Apartments on a per unit basis. If an Apartment Owner does not pay the full cost to repair and/or rebuild the Owner's Apartment or its limited common element(s), then the Association shall charge a special assessment to the applicable Apartment Owner for any costs incurred by the Association for repairing and/or rebuilding such Apartment or its limited common elements.

14.3 Election to Not Rebuild after an Insured Casualty. In the event of an insured casualty of all or any part of the Project's common elements (excluding the limited common elements), the Association shall cause the rebuilding, repairing or restoration of the damaged improvements (as provided in this Section 14), unless seventy-five percent (75%) or more of the Apartment Owners vote against rebuilding, repairing or otherwise restoring the improvements. If the Project is merged with other condominium projects in the Joint Development Area, as provided for in Section 17A of this Declaration, then the vote to not rebuild must be by at least seventy-five percent (75%) of the Apartment Owners in the Joint Development Area. The vote shall be taken at a meeting of the Association held prior to the commencement of the rebuilding, repairing or other restoration of the improvements and prior to the later of (a) ninety (90) days after the loss or damage has occurred, or (b) thirty (30) days after the insurance loss has been finally adjusted. During the Development Period, the Developer's written consent shall also be required for any election to not rebuild the improvements.

If an election is made by an Apartment Owner to not rebuild, repair or restore the Owner's Apartment or its limited common elements, then the Apartment Owner's insurance proceeds shall be used first to remove all remains of the Apartment and its limited common elements and to restore the site to a good orderly condition and grade. Thereafter, the part of the remaining balance of the insurance proceeds that is allocable to that Apartment shall be paid to the Owner and/or to any lender having a Mortgage on that Apartment, according to their respective interests.

14.4 Release of Claims. To the extent that the Association's insurance covers any loss, damage or destruction to any part of the Project, the Association and the Owners will have no claim or cause of action for that loss, damage or destruction against the Developer, the Managing Agent, the Association or any of their representatives, or against any Apartment Owner (except for any special assessment charged under Section 14.2 of this Declaration) or any Person under any of them.

14.5 Uninsured Casualty. This Section 14.5 shall apply to any common element improvements of the Project that are damaged or destroyed by any casualty that is not insured against. In such event, the improvements shall be rebuilt, repaired or restored unless seventy-five percent (75%) or more of the Apartment Owners decide not to rebuild, repair or restore the improvements. If the Project is merged with other condominium projects in the Joint Development Area, as provided for in Section 17A of this Declaration, then the vote to not rebuild, repair or restore must be by at least seventy-five percent (75%) of the Apartment Owners in the Joint Development Area. During the Development Period, the Developer's written consent shall also be required for any election to not rebuild, repair or restore the improvements. Unless the decision has been made to not rebuild, repair or restore, the Association shall diligently work to rebuild, repair or restore the common elements, except for the limited common elements, and will pay the cost thereof as a common expense. Unless such rebuilding, repairing or restoring is undertaken within a reasonable time after such casualty, the Association at its common expense shall remove all remains of the damaged and destroyed common element improvements and restore the site to good orderly condition and even grade. The Apartment

Owners shall be solely responsible for any rebuilding, repairing or restoring of their respective Apartments (and appurtenant limited common elements), according to the original plans and elevations reflected in the Condominium Map, or according to such other plans approved according to this Declaration.

15. CONDEMNATION. If there is a taking in condemnation or by eminent domain of part or all of the Project, then all compensation payable for or on account thereof shall be payable to a condemnation trustee, who shall be designated by the Board and who shall be a bank or trust company doing business in the State of Hawaii (the "**Condemnation Trustee**"). Each Apartment Owner other than the Developer gives the Association a special power of attorney to represent the Owner in any proceedings, negotiations, settlements or agreements related to any actual or threatened condemnation of the Project or any part of it. The Developer may represent itself with respect to any right or claim it may have to proceeds payable for the Developer's Reserved Rights or with respect to any Apartments owned by the Developer.

15.1 Division of Proceeds Between the Developer and the Owners. If all or any part of the Project is taken or is sold under threat of condemnation before the end of the Development Period, then the condemnation proceeds must first be divided between the Developer and the Apartment Owners. The Developer will be entitled to receive all proceeds payable to or on account of the loss of the Developer's Reserved Rights. This includes, for example, but is not limited to (a) the right to all proceeds paid for any part of the Land that the Developer has the right to withdraw under Section 17B of this Declaration, and (b) the right to all proceeds paid for any improvements made by the Developer to serve any Phases or Increments to be built in the future. The amount payable to the Developer under this Section 15.1 shall be based upon the court's final decision as to such allocation, if such a decision is made. If a court has not made such a decision, then the amount payable to the Developer shall be based upon the value of the Developer's Reserved Rights, as determined by a qualified appraiser pursuant to Section 15.2 of this Declaration. After payment to the Developer as set forth above, the balance of the condemnation proceeds shall be payable to the Apartment Owners or shall be used by the Condemnation Trustee as set forth in Section 15.3 of this Declaration. The amounts allocable to the various Apartment Owners affected by the condemnation action shall be determined by the court (if the court has made such a determination) or by a qualified appraiser, as set forth in Section 15.2 of this Declaration.

15.2 Determination by Qualified Appraiser. If the allocation of condemnation proceeds shall be made by an appraiser, then such determination shall be made by a real estate appraiser who must be a member of the American Institute of Real Estate Appraisers (a "**qualified appraiser**"). If a single qualified appraiser acted on behalf of the Developer and the Association in the condemnation proceedings, then such appraiser shall act as the appraiser to make the determinations under this Section 15. If more than one appraiser represented the Developer and/or the Association, then the Board and the Developer shall choose an appraiser. If they are unable to agree upon a single appraiser within ten (10) days after request to do so is made by either party, then they shall each appoint an appraiser within fifteen (15) days thereafter, and the two appointed appraisers shall select a third appraiser. If either party fails to choose an appraiser on time, then the appraiser chosen by the other party will make the determination on its own. Otherwise, the decision of any two appraisers will decide how much to pay the Developer and/or how much to pay to each Apartment Owner. The costs of the appraiser(s) will be divided equally among the parties involved in the condemnation.

15.3 Partial Taking. If only part of the Project is taken, and if the Association does not decide to terminate the condominium property regime, then the Condemnation Trustee must (a) pay to the Developer the Developer's share of the condemnation proceeds for the value of the Developer's Reserved Rights, as provided in Section 15.1 of this Declaration, and (b) use the rest of the proceeds in the manner set forth below. The Condemnation Trustee shall arrange for the repair and restoration of the buildings and improvements according to the Condominium Map on file immediately prior to such condemnation. If such repair and restoration according to the Condominium Map on file is not permissible under the laws then in force, then repair and restoration shall be according to such modified plan as is previously approved by the Board. If a partial taking occurs in which any Apartment is eliminated or not restored, then the Condemnation Trustee shall disburse the portion of the proceeds of such award allocable to the Apartment, less the Apartment's proportionate share of the cost of debris removal, to the Owner of the Apartment and the Owner's Mortgagee, if any, as their interests may appear, in satisfaction of their interests in the Apartment. The Condemnation Trustee shall disburse the remainder of the proceeds of such award to the contractor engaged in such repair and restoration in appropriate progress payments. If such proceeds are insufficient to pay the costs, then the Board is expressly authorized to pay such excess costs from the reserve fund(s), provided that, if the reserve fund(s) is/are insufficient for this purpose, then the Board shall levy a special assessment on the Owners of the Apartments in proportion to their common interests. If sums are received in excess of the cost of repairing and restoring the remaining buildings and improvements, then such excess proceeds shall be divided among the Owners of the Apartments according to their common interests.

16. ALTERATIONS TO APARTMENTS AND THE PROJECT. Except as otherwise provided for in this Declaration or the Bylaws, neither the Association nor any individual Apartment Owner shall construct any additional structure or make any structural alterations or additions to an existing structure without first (a) obtaining the affirmative vote or written consent of at least sixty-seven percent (67%) of the Apartment Owners and (b) Recording an amendment to this Declaration and the Condominium Map to reflect such change. This provision shall not apply to the Developer during the Development Period, when the Developer is exercising Developer's Reserved Rights. This provision shall also not apply to the extent it conflicts with the City and County of Honolulu's number of approved dwellings in the Project, or any provision of the federal Fair Housing Act (42 U.S.C. Sec 3601, et seq), as the same has been amended and may be further amended from time to time.

16.1 Optional Floor Plans Shown on the Condominium Map.

Notwithstanding the foregoing, an Apartment Owner may add any optional floor plan shown on the Condominium Map for that Apartment's particular floor plan without amending the Condominium Map, provided the Apartment Owner first obtains written approval from the Board and any necessary governmental permits and approvals. The Board 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) days after the Board's receipt thereof or within forty-five (45) days after the Board's receipt of additional information reasonably required by the Board in order to consider such request, whichever shall occur last.

16.2 Compliance with Design Alteration Package and Navy Grant of Easement. Notwithstanding any other provision in this Declaration to the contrary, an Apartment Owner need only obtain the consent of the Board and any necessary governmental permits and approvals for changes to the layout of an Apartment or alterations to an Apartment

that (a) comply with the Design Alteration Package for the Apartment that is on file with the City and County of Honolulu's Department of Planning and Permitting, (b) comply with the Navy Grant of Easement if the Apartment or its Private Yard Area is subject to the 25-Foot Waterline Easement and the change or alteration involved anything being installed or placed within the 25-Foot Waterline Easement, and (c) comply with all other relevant easement-related requirements and restrictions. Upon obtaining the necessary approvals and completing the construction of the changes or alterations, the Apartment Owner shall Record an amendment to this Declaration and to the Condominium Map that includes a revised set of floor plans describing and showing the changes and/or alterations to the Apartment. The amendment need only be signed by the Apartment Owner and an officer of the Board.

16.3 Solar Energy Devices. The installation, maintenance and repair of any "solar energy device" (as defined in the Act) within any portion of the Project must be in compliance with the Act, Hawaii Revised Statutes Section 196-7, as may be amended from time to time ("Section 196-7"), this Section of the Declaration and any additional rules relating to solar energy devices that may be adopted by the Board. The installation of any solar energy device must be performed by a duly licensed Hawaii contractor, and the solar energy device shall be registered with the Managing Agent within 30 days after installation. The Board shall have the right to adopt additional rules relating to the installation, maintenance and repair of solar energy devices within the Project, provided such rules are in compliance with the Act and Section 196-7.

17. DEVELOPER'S RESERVED RIGHTS. The Developer's Reserved Rights described in this Declaration (including in Sections 17 to 17D, inclusive) are necessary and/or helpful to the development of the Project. The Developer, at the Developer's sole discretion, may exercise the Developer's Reserved Rights separately, in one or more combinations, at one or more times, or not at all. Except as otherwise stated in this Declaration, the Developer may exercise the Developer's Reserved Rights unilaterally and until the expiration of the Development Period.

The Developer may exercise any of the Developer's Reserved Rights stated in this Declaration (including, without limitation, the Developer's Reserved Rights set forth in Sections 17 through 17D, inclusive) without being required to obtain the approval, consent, or joinder of anyone else and without the knowledge of anyone else. This includes, but is not limited to, the Association, any lender, any Apartment Owner or any other Person who may have an interest in any part of the Project. The Developer shall have the unilateral right to execute, acknowledge and Record any and all instruments, including, without limitation, all amendments to the Project Documents, necessary or appropriate for the purpose of carrying out the provisions and exercising the Developer's Reserved Rights. When a Person acquires an interest in an Apartment or in any other part of the Project, said Person automatically:

(a) takes said Person's interest subject to the Developer's Reserved Rights and each and every exercise and/or assignment of them;

(b) acknowledges, approves, consents to, agrees to and accepts: (i) the Developer's Reserved Rights and the exercise of them from time to time; (ii) that such exercise may change the Project; (iii) that such exercise may result in the recalculation of the common interest of some or all Apartments; and (iv) that the Developer can file and/or Record any and all documents that the Developer deems necessary or convenient to the exercise of its rights, including, but not limited to, any amendment to the Project Documents;

(c) agrees, promptly after being asked to do so, to join in, consent to, sign, have notarized, deliver and Record all documents and do all other things that the Developer in its sole discretion determines to be necessary or convenient to the exercise of the Developer's Reserved Rights or to accomplish the purpose for which those rights were reserved (as determined by the Developer); and

(d) appoints the Developer as said Person's attorney-in-fact with full power of substitution to execute such documents and do such other things on said Person's behalf as may be necessary or convenient to the exercise of the Developer's Reserved Rights or to accomplish the purpose for which those rights were reserved (as determined by the Developer), which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of any such Person. The Developer cannot use its power of attorney under this Section 17 to waive or release any right an Owner or other interested Person might have under the Act, to cancel the purchase of an Apartment, or to mortgage an Owner's Apartment.

17A. THE DEVELOPER'S RESERVED RIGHT TO EFFECT MERGER. Any other provision in this Declaration or the Bylaws to the contrary notwithstanding, the Developer reserves and shall have the right to effect one or more administrative mergers of the Project with some or all of the Increments or other condominium projects built within the Joint Development Area, pursuant to and in accordance with the terms of the Declaration of Intent to Develop and Merge. All of the provisions of the Declaration of Intent to Develop and Merge are incorporated into and made a part of this Declaration and shall govern in the event of a conflict with the provisions of this Declaration or any of the other Project Documents. The allocations of maintenance fees and votes among the Apartments in the Merged Project (as defined in the Declaration of Intent to Develop and Merge) shall be as described in the Declaration of Intent to Develop and Merge.

17A.1 Reserved Right to Review and Approve Project Documents. Pursuant to the terms of the Declaration of Intent to Develop and Merge, the Developer reserves the right to review and approve, using its reasonable discretion, any and all amendments to any or all of the Project Documents to ensure that, subject to the exceptions allowed by and authorized in the Declaration of Intent to Develop and Merge, the Project Documents are generally similar, in form and substance, to the condominium documents of any other condominium project created within the Joint Development Area so that the Developer is able to effect an administrative merger of the various condominium projects.

17B. THE DEVELOPER'S RESERVED RIGHT TO ADD and/or WITHDRAW LAND. Any other provision in this Declaration or the Bylaws to the contrary notwithstanding, the Developer shall have the right, but not the obligation, at its sole discretion, at any time and from time to time, to unilaterally add real property to and/or withdraw real property from the Project and the effect of this Declaration, the Condominium Map and the Bylaws by amending this Declaration, the Bylaws, the Condominium Map and/or any other documents that the Developer deems necessary or convenient to effect such addition or withdrawal.

17B.1 Effect of Withdrawal of Land. Upon a withdrawal of real property from the Project and this Declaration, and with no further action required, the withdrawn property shall cease to be a part of the Project or subject to this Declaration, the Bylaws, or the Act, and no Apartment Owner, Mortgagee, lien holder, Apartment purchaser or any other Person who may have an interest in the Project or in any Apartment (other than the Developer and the then-current holder of any Mortgage still in effect covering the Land prior to the Recording of this

Declaration) shall have any legal or equitable interest in the withdrawn real property. It is the intent of this provision that, upon such withdrawal, legal title to the withdrawn real property will be vested solely in the Developer. If deemed necessary to effect the intent of this Section 17B, each Apartment Owner, Mortgagee, lien holder and any other Person who may have an interest in the Project or any Apartment shall, within 10 days after a written request by the Developer, unconditionally quitclaim and/or release its interest, if any, in the withdrawn real property to the Developer or to the Developer's designee.

17B.2 Developer's Rights With Respect to Withdrawal of Land. In exercising the rights set forth in this Section 17B, the Developer may at any time: (a) execute, file and process to final approval an application with the City and County of Honolulu for the legal subdivision of the withdrawn land from the balance of the Land covered by this Declaration; (b) execute and Record a petition and any supporting documentation necessary or convenient for such subdivision; (c) execute and Record any amendments to this Declaration, the Condominium Map and the Bylaws to facilitate, describe and show the withdrawal of real property from the Project and this Declaration; and (d) apply for and obtain from the Real Estate Commission of the State of Hawaii an effective date for one or more public reports (or amendments thereto) in connection with the withdrawal of real property from the Project and this Declaration. The withdrawn real property shall be deemed deleted from the Project and this Declaration for all purposes upon the Recordation in the Bureau of an amendment to this Declaration and/or the Condominium Map that sets forth the withdrawal of the real property.

17B.3 Limits on Developer's Reserved Right to Add or Withdraw Land. The Developer's reserved rights in this Section 17B are subject to the following terms and conditions:

(a) The addition or withdrawal of land shall not affect the layout, location, dimensions or structure of any Apartment that has been sold and the conveyance thereof Recorded.

(b) The addition or withdrawal of land shall not change or reapportion the relative common interests of any Apartments that have been sold and the conveyance thereof Recorded.

(c) The withdrawn land shall not include any land upon which an Apartment that has been sold and the conveyance thereof Recorded is directly located.

17C. THE DEVELOPER'S RESERVED RIGHT TO SUBDIVIDE AND/OR CONSOLIDATE LAND. Any other provision in this Declaration to the contrary notwithstanding, the Developer shall have the right, but not the obligation, at its sole discretion, at any time and from time to time to unilaterally subdivide any portion of the Land and/or consolidate any portion of the Land with other land (and to re-subdivide the consolidated lands if appropriate) in order to effect the addition and/or withdrawal of real property as described in Section 17B of this Declaration by amending this Declaration, the Bylaws, the Condominium Map and/or any other document that the Developer deems necessary or appropriate to effect such subdivision and/or consolidation.

17D. COMMUNITY PARK, MAIL CENTER and VISITOR PARKING STALLS. The Project is part of the Joint Development Area, which was designed to operate as a cohesive,

integrated condominium community. As set forth in the Declaration of Intent to Develop and Merge, the Project and other condominium projects developed in the Joint Development Area will share certain common infrastructure, including, but not limited to, systems for potable water, irrigation, drainage, sewer and electricity, visitor parking areas and roadways. Except as otherwise provided in the Project Documents or the Declaration of Intent to Develop and Merge, the use and cost of maintaining, repairing and operating the shared infrastructure and facilities are to be shared among all owners in the Joint Development Area on a per-unit basis.

17D.1 Community Park and Mail Center. The Developer reserves the right to design and construct a park (the "**Community Park**") on a portion of the Project within Lot 13. The Developer also reserves the right to design and construct a mail pavilion to serve as a centralized mail station for the Project and for the rest of the Joint Development Area (the "**Mail Center**"). The Mail Center will also be within a portion of Lot 13. The Community Park and the Mail Center will be available for use by the residents of the Apartments in the Project and by all the other residents in the Joint Development Area. The several associations of apartment owners within the Joint Development Area, including the Association, shall have the duty and obligation to maintain the Community Park and the Mail Center at the common expense of all of the owners of apartments within the Joint Development Area. This duty and obligation may be delegated to a single association of apartment owners should the several associations be merged as described in Section 17A of this Declaration. Upon the merger of this Project with other condominium projects (the "**merged condominium project**"), the owners and occupants of the apartments in the merged condominium project will have the right to use the common elements of the merged condominium project, which common elements include the Community Park and the Mail Center.

17D.2 Scenario If Future Merger Does Not Include the Entire Joint Development Area. If the Developer does not merge certain other condominium projects within the Joint Development Area with this Project pursuant to Section 17A of this Declaration, then the Association will be obligated to allow the residents of the other condominium projects within the Joint Development Area to use the Community Park and the Mail Center in the same manner and to the same extent as residents of the Project. Each condominium project using the Community Park and the Mail Center that is not merged with the Project may be charged a usage fee equal to that condominium project's proportionate share of the costs attributable to the Community Park and the Mail Center, allocated on a per unit basis.

17D.3 Rights, Easements and Obligations of the Condominium Projects in the Joint Development Area. There shall exist the following rights, easements and obligations:

(a) If there is a merger of the Association with the other associations of apartment owners in the Joint Development Area, then each apartment in the Joint Development Area shall have a non-exclusive right, in common with all other apartments in any existing or future condominium projects within the Joint Development Area, to use the Community Park and the Mail Center, as well as a non-exclusive easement for ingress and egress to and from the Community Park and the Mail Center over the various condominium projects within the Joint Development Area.

(b) If the Project is merged with other condominium projects within the Joint Development Area, then, upon such merger, each apartment in the Joint Development Area shall have a non-exclusive right, in common with all other apartments within the Joint Development

Area, to use the Mail Center and a non-exclusive easement over the Project and the rest of the Joint Development Area for ingress and egress to and from the Mail Center.

(c) Each Apartment in the Project and each apartment in the other condominium projects in the Joint Development Area will have an exclusive easement to use the mailbox in the Mail Center that has the same numerical designation as the Apartment or the apartment. Such easement is not a limited common element, but is a permanent easement appurtenant to a particular Apartment or apartment and shall be conveyed or assigned together with the Apartment or apartment to which it is appurtenant, whether or not reference is made to such easement in the document conveying the Apartment or apartment. The Developer reserves the right to Record the necessary documentation, including, without limitation, amendments to this Declaration, the Bylaws and the Condominium Map to effect this easement.

(g) Certain parking stalls in the Project and in other condominium projects in the Joint Development Area are visitor parking stalls that are available for use by visitors to any or all of the apartments in the Joint Development Area.

17E. DEVELOPER'S ASSOCIATION CONTROL PERIOD. Separate and apart from the Development Period and the Developer's Reserved Rights described in this Declaration (including in Sections 17 to 17D, inclusive), the Developer shall exercise all of the rights and incidents of Association membership for an Apartment, including voting, until closing of the sale of the Apartment occurs; provided, however, that, notwithstanding the foregoing or anything else in this Declaration or the Bylaws to the contrary, pursuant to Section 514B-106(d) of the Act, the Developer shall control the Association and appoint and remove the officers and the members of the Board until expiration of the "**Developer's Association Control Period**", which shall be the earlier of: (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Apartments to Apartment Owners other than the Developer or an affiliate of the Developer; (b) two (2) years after the Developer has ceased to offer Apartments for sale in the ordinary course of its business; (c) two (2) years after any right to add new Apartments was last exercised by the Developer; or (d) the day the Developer, after giving written notice to Apartment Owners, Records an instrument voluntarily surrendering all rights to control activities of the Association. If the Developer voluntarily surrenders its right to appoint and remove the officers and members of the Board before termination of the Developer's Association Control Period, then the Developer may require, for the balance of the Developer's Association Control Period, that specified actions of the Association or the Board, as described in a Recorded instrument executed by the Developer, be approved by the Developer before they become effective. As part of the exercise of the Developer's control of the Association, the Developer shall be entitled to appoint the initial Managing Agent on behalf of the Association.

18. AMENDMENT OF DECLARATION.

18.1 Votes Required to Amend This Declaration. Except as otherwise provided in this Declaration or in the Act, this Declaration and (if necessary) the Condominium Map may be amended by the affirmative vote or written consent of at least sixty-seven percent (67%) of the Apartment Owners and shall be effective only upon Recording an instrument setting forth such amendment and vote or written consent, duly executed by such Apartment Owners or by the proper officers of the Association. However, at any time prior to Recording of the first Apartment deed conveying an Apartment to a party other than the Developer, the Developer may amend this Declaration (including the Bylaws, the Condominium Map and the exhibits to this Declaration) in any manner, without the approval, consent or joinder of any

Apartment purchaser or anyone else. Further, this Section 18 and any other provision or section in this Declaration that give the Developer any right, authority or reservation can be amended only if, in addition to the foregoing vote or written consent of the Apartment Owners, the Developer or its successors or assigns gives its written consent to such amendment.

18.2 Amendments Requiring the Developer's Consent. An amendment to any provision of this Declaration that is for the express benefit of the Developer shall require the express written consent and joinder of the Developer, together with such other applicable approval requirements, if any, that are set forth in this Section 18. Subject to the Owner-approval requirements set forth above and any other requirements set forth in this Declaration, any two officers of the Board may prepare, execute, certify, and Record an amendment to this Declaration, the Bylaws and/or the Condominium Map on behalf of the Association. The requirement for two officers to execute documents does not apply to the Developer when the Developer is exercising any of the Developer's Reserved Rights.

18.3 The Developer's Ability to Amend this Declaration. Notwithstanding the foregoing and notwithstanding the sale or conveyance of any of the Apartments, the Developer may unilaterally amend this Declaration (and, when applicable, the Condominium Map) without the approval, consent or joinder of Persons then owning the Apartments or of any Mortgagee of an Apartment in order to:

- (a) Record the "as-built" statement (with plans, if applicable) required by Section 514B-34 of the Act, (i) as long as such amendment is accompanied by a certification of a licensed architect, engineer or surveyor certifying that the Recorded Condominium Map, as amended, fully and accurately depicts the layout, location, boundaries, dimensions and numbers of the Apartments substantially as built, or (ii) as long as the plans being filed simultaneously therewith involve only confirmation of the selection of construction options to the layout, location and dimensions of the Apartment as built, or any change in any Apartment number;
- (b) update or correct the legal description of the Land, including substituting a file plan description of the Land in place of a metes and bounds description of the Land;
- (c) correct misstatements of fact, typographical errors and/or mathematical errors;
- (d) exercise any of the Developer's Reserved Rights described in this Declaration; and
- (e) comply with the law or with requirements imposed by the Real Estate Commission of the State of Hawaii or any other governmental agency (including, without limitation, FNMA and/or FHLMC), by any title insurance company issuing title insurance on the Project or any of the Apartments and/or by any institutional lender lending funds on the security of the Project or any of the Apartments.

18.4 Restatement of the Declaration. The Association at any time may, by a resolution duly adopted by the Board, restate this Declaration and/or the Bylaws to amend this Declaration and/or the Bylaws for the reasons set forth in Section 514B-109(b) of the Act, subject, however, to the requirements of Section 514B-109(b) of the Act.

19. COMPLIANCE WITH PROJECT DOCUMENTS; ENFORCEMENT.

19.1 Compliance. All Apartment Owners, their successors and assigns, tenants of such Owners, employees of Owners or tenants, and any other Persons who may in any manner use any part of the Project are subject to the provisions of the Act and to the provisions of this Declaration, the Bylaws and the House Rules, and to all agreements, decisions and determinations lawfully made by the Board and the Association. Failure to comply with any of the Project Documents shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Managing Agent or the Board of Directors on behalf of the Association or, in a proper case, by an aggrieved Apartment Owner.

19.2 Enforcement. Except as otherwise set forth in this Declaration, the Bylaws or the House Rules, the Managing Agent and the Board, on behalf of the Association, shall have the right, but not the obligation, to enforce the provisions of the Project Documents and all agreements, decisions, and determinations of the Board and the Association as lawfully made or amended from time to time. The Managing Agent and the Board, on behalf of the Association, shall also have the right to enforce assessment liens against the Apartments. Failure by the Board to enforce any provision of the Project Documents shall in no event be deemed a waiver of the right to do so thereafter. No Owner may bring an action or proceeding on behalf of the Association or on behalf of another Owner. Any judgment, award, or other recovery on behalf of the Association shall be payable only to the Association as a realization of the Association. The limitations, restrictions, conditions, and covenants set forth in the Project Documents constitute a general scheme for (a) the maintenance, protection, and enhancement of the value of the Project, and (b) the benefit of all Owners and occupants. Each remedy provided for in this Declaration shall be cumulative and not exclusive. The result of or condition caused by any violation of any of the provisions of the Project Documents is and shall be deemed a nuisance.

19.3 Recovery of Costs. All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for (a) collecting delinquent assessments or other charges (including utility charges) against any Owner, (b) foreclosing a lien on any Owner's Apartment, and (c) enforcing provisions of the Project Documents or the Act against any Owner shall be promptly paid on demand to the Association by the Apartment Owner; provided that the Association shall promptly pay on demand to the Apartment Owner those costs and expenses, including reasonable attorneys' fees, incurred by the Apartment Owner as a result of claims made by the Association that are not substantiated.

19.4 Compliance Excused by Court. The First Circuit Court of the State of Hawaii may excuse compliance with any of the provisions referenced in Section 514B-111(a) of the Act that are in this Declaration or the Bylaws if the Court finds that the provision unreasonably interferes with the Association's ability to manage the common elements, administer the Project, or carry out any other function set forth in this Declaration or the Bylaws, and that compliance is not necessary to protect the legitimate interests of the members or lenders holding security interests. The Board, on behalf of the Association, shall, by certified mail, provide all Owners with notice of the date, time, and place of any court hearing to be held pursuant to this Section 19.4 and Section 514B-111 of the Act.

19.5 Obligation of Good Faith and Mutual Cooperation. Each Apartment Owner, by acquiring an Apartment, acknowledges and agrees that such Owner shall have an obligation to act in good faith and mutual cooperation with respect to the Project, the Association

and the other Apartment Owners. In that respect, if something needs to be done that is reasonable and necessary, but the Project Documents do not address (i.e., are silent on) the act that needs to be done, then, provided the act will not have a material and adverse effect on the Owner, the Owner's Apartment or the use of or obligations with respect to the Owner's Apartment, and provided the Apartment Owner is not required to incur any costs related thereto, then the Apartment Owner agrees to cooperate, in good faith, in the performance of the desired act. If, despite such good faith mutual cooperation, an agreement cannot be reached with respect to the act that needs to be done, then the matter shall be submitted to the dispute resolution process set forth in Section 22 of this Declaration.

20. LATENT DEFECTS. So long as the Developer owns one or more of the Apartments, the Developer will take no action that would adversely affect the rights of the Association or of any Apartment Owner with respect to assurances made by third parties against latent defects in the Project or other rights assigned to the Association, if any, by reason of the establishment of this condominium property regime.

21. SECURITY. Neither the Developer nor the Association shall be considered in any way an insurer or guarantor of security within the Project, and each Apartment Owner agrees not to hold the Developer or the Association liable for any loss or damage such Apartment Owner or anyone else may suffer by reason of a failure to provide adequate security or from the ineffectiveness of any security measures undertaken at the Project. Each Apartment Owner assumes the risk of injury, loss or damage that may arise due to a failure to provide adequate security or from the ineffectiveness of any security measures undertaken at the Project. By acquiring an interest in an Apartment in the Project, each Apartment Owner acknowledges and agrees that neither the Developer nor the Association has made any representations or warranties, either express or implied, about any security measures at the Project, and such Apartment Owner has not relied upon any such representations or warranties.

22. MANDATORY MEDIATION/ARBITRATION OF DISPUTES INVOLVING THE DEVELOPER.

22.1 If any dispute or claim arises in connection with or relates to the design, development, construction, sale, marketing, financing or any other activity or matter relating to the Project between one or more Apartment Owners and/or the Association on one side and the Developer on the other side (a "**Dispute**"), then the parties must first attempt to resolve a Dispute by negotiation and then by mediation. If the parties are unable to resolve a Dispute by negotiation and mediation, then (a) any unresolved Dispute shall be resolved by arbitration before a single arbitrator administered by Dispute Prevention and Resolution, Inc., or another dispute resolution group acceptable to all parties, (b) the parties voluntarily, knowingly and intelligently waive their right to a jury trial, and (c) judgment upon the arbitrator's award may be entered in any court having jurisdiction thereof. If all parties agree, then the person serving as mediator may also serve as arbitrator for a Dispute. Each party shall be responsible for the administrative fees incurred by that party, and the arbitrator's and mediator's compensation shall be shared equally by the parties. The prevailing party, if any, shall be entitled to an award of reasonable attorney's fees, and the arbitrator shall be the sole judge in determining the reasonableness of attorney's fees to be awarded and in determining which party is the prevailing party. The parties and the mediator and arbitrator shall keep the content and results of any mediation or arbitration confidential. The arbitration may not be consolidated with other arbitration proceedings unless all parties agree to such consolidation.

22.2 Any negotiation, mediation and arbitration concerning a Dispute shall take place only in Honolulu, Hawaii. Any lawsuit filed to enforce an arbitration award or otherwise must be brought only in the courts of the State of Hawaii, including the United States District Court in Honolulu, and nothing shall be done to (a) defeat the jurisdiction of a Honolulu negotiation, mediation and arbitration or of those courts or (b) try to get a change of venue (in other words, to have the negotiation, mediation, arbitration or lawsuit transferred to another city or state or another jurisdiction).

22.3 The foregoing to the contrary notwithstanding, if any of the parties to a Dispute have a contractual relationship (e.g., the sales contract by which the Developer sold an Apartment to an Owner) that requires them to follow different procedures to resolve a particular Dispute, then such different procedure shall be followed.

23. CHANGES IN LAW. If any law that applies to the Project changes after this Declaration and the Bylaws are Recorded, then the change in law will control over the provisions of this Declaration and the Bylaws only to the extent that said law expressly provides that the changes in law will control over inconsistent provisions in existing Project Documents.

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

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

26. RIGHTS OF ACTION. Nothing in this Declaration or in the Bylaws shall abridge the right of an aggrieved Apartment Owner or the Association to bring and maintain an action against another Apartment Owner or the Association, as the case may be, for failure to comply with the provisions of the Act, this Declaration, the Bylaws, the House Rules or any other rules and regulations or decisions of the Association or the Board that have been duly made pursuant to authority granted to the Association or the Board in this Declaration, the Bylaws or the House Rules.

27. CAPTIONS. The captions used in this Declaration are used 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 provision in this Declaration.

28. RIGHTS OF MORTGAGEES AND GUARANTORS.

28.1 Notices of Action. A Mortgagee and guarantor of the Mortgage on any Apartment in the Project will be entitled to timely written notice of:

(a) any condemnation or casualty loss that affects either a material portion of the Project or the Apartment securing its Mortgage;

(b) any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Apartment on which it holds its Mortgage;

(c) a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

(d) any proposed action that requires the consent of a specified percentage of Mortgagees.

28.2 Termination of Condominium Property Regime. Any action to terminate the condominium property regime after substantial destruction or condemnation occurs or for other reasons may only occur upon approval of Mortgagees that represent at least fifty-one percent (51%) of the common interests appurtenant to the Apartments that are subject to Mortgages.

28.3 First Mortgagees' Rights Confirmed. No provision of this Declaration or of the Bylaws gives or shall be construed as giving any Owner or other Person priority over any rights of the first Mortgagee of any Apartment pursuant to its Mortgage in the case of payment to the Apartment Owner of insurance proceeds or condemnation awards for losses to or a taking of Apartments and/or common elements.

28.4 Amendments to Declaration. Any other provision in this Declaration to the contrary notwithstanding, in addition to obtaining the necessary votes or consents specified in Section 18 of this Declaration, proposed amendments to this Declaration that are of a material adverse nature to Mortgagees must be agreed to by Mortgagees that represent at least fifty-one percent (51%) of the common interest of Apartments that are subject to Mortgages. Implied approval by a Mortgagee to a proposed amendment to this Declaration shall be assumed when such Mortgagee fails to submit a response to a written proposal for such amendment within sixty (60) days after such Mortgagee receives proper notice of the proposal, provided the notice was delivered by certified mail, with a "return receipt" requested.

29. ASSIGNMENT OF RIGHTS BY DEVELOPER. The Developer may, without the consent or approval of the Association, the Board, any Apartment Owner, any Mortgagee, or any other Person, and in the Developer's sole discretion, transfer or assign all or any portion of the Developer's rights under this Declaration to third Persons, in whole or part, either directly or as security for financing relating to the development of the Project; provided, however, that such rights shall not be transferred except by a Recorded instrument expressly referencing the rights contained in this Declaration that are being transferred or assigned. A Person shall be deemed a transferee, successor or assign of the Developer for purposes of this Declaration if such Person is a successor by merger and otherwise only if specifically so designated in a duly Recorded written instrument as a transferee, successor or assign of the Developer under this Declaration, and shall be deemed a transferee, successor or assign of the Developer only as to the particular rights or interests of the Developer under this Declaration that are specifically designated in the Recorded written instrument. No deed of the Land in whole or part and no deed of an Apartment shall transfer or assign any of the Developer's rights under this Declaration unless reference is expressly made to said transfer or assignment. Once transferred or assigned, the transferee, successor or assignee may have and exercise all of the rights under the provisions of this Declaration so transferred or assigned, but only to the extent so transferred or assigned by the Developer.

30. DEPARTMENT OF VETERANS AFFAIRS FINANCING. To the extent that any provision in this Declaration, the Bylaws or any deed conveying an Apartment from the

Developer to an Apartment Owner is inconsistent with the requirement(s) of guaranteed or direct loan programs of the United States Department of Veterans Affairs, as set forth in chapter 37 of title 38, United States Code, or part 36 of title 38, Code of Federal Regulations ("**DVA Financing**"), such provision shall not apply to any Apartment that is: (a) encumbered by DVA Financing; or (b) owned by the Department of Veterans Affairs.

31. CONSTRUCTION.

31.1 The provisions of this Declaration and the Bylaws shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Project under the provisions of applicable laws, including the Act. To the extent such provisions affect or pertain to this Declaration, the Bylaws and the Project, the provisions of the Act shall be liberally construed to effectuate the intent of this Declaration.

31.2 The use of the singular shall be deemed to include the plural whenever the context shall so require. The use of the plural shall be deemed to include the singular whenever the context shall so require.

31.3 The terms "herein," "hereof" or "hereunder" or similar terms used in this Declaration refer to this entire Declaration and not to the particular provision in which the terms are used.

31.4 When the term "including" is used in this Declaration, it shall not be interpreted as a term of limitation, but shall mean "including, but not limited to".

31.5 When, in this Declaration, a Person reserves or is given or granted a right to do something, the Person shall not be obligated to exercise that right, even if a term such as "but is not obligated" or "but not the obligation" does not accompany the reservation, giving or granting of the right.

31.6 References to "days" in this Declaration mean calendar days unless otherwise specified. References to "business days" means those non-weekend days that are not recognized as holiday days by the government of the State of Hawaii.

31.7 When used in this Declaration, the words "and/or" shall be deemed to mean one, some or all of the listed items.

Remainder of page intentionally left blank.

The undersigned has executed this Declaration of Condominium Property Regime of Keali'i by Gentry III on February 23, 2021.

GENTRY KGC, LLC,
a Hawaii limited liability company

By: Gentry Homes, Ltd., a Hawaii corporation
Its Member

By: *Andrew Kamikawa*

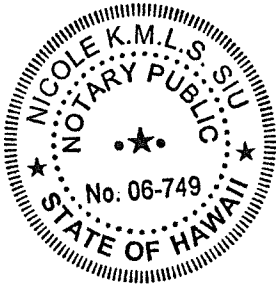
Name: Andrew Kamikawa

Title: Vice President

"Developer"

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

On February 23, 2021, before me personally appeared **ANDREW KAMIKAWA**, to me personally known, who, being by me duly sworn and affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity, and acknowledged the instrument to be the free act and deed of the corporation.



[Handwritten Signature]

Name: Nicole K.M.L.S. Siu

Notary Public, State of Hawaii

My commission expires: December 3, 2022

(Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Declaration of Condominium Property Regime of Keali'i by Gentry III

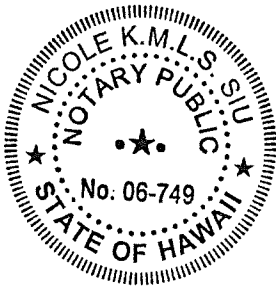
Document Date: February 23, 2021

No. of Pages: 46

Jurisdiction (in which notarial act is performed): First Circuit

[Handwritten Signature]

February 23, 2021
Date of Notarization and
Certification Statement



(Stamp or Seal)

Nicole K.M.L.S. Siu
Printed Name of Notary

EXHIBIT "A"

Description of the Land

ALL of those certain parcels of land situate at Honouliuli, District of Ewa, Island of Oahu, City and County of Honolulu, State of Hawaii, described as follows:

Lot 9, 0.974 acre;

Lot 10, 1.097 acres;

Lot 11, 1.069 acres;

Lot 13, 1.963 acres; and

Lot 14, 0.927 acre, all as shown on DPP File No. 2017/SUB-168 and further described in Surveyor's Affidavit recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-72140978, which descriptions are incorporated into this Declaration by reference; and

Lot 12-A, 0.860 acre, as shown on DPP File No. 2019/SUB-44 and further described in Surveyor's Affidavit recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-72140979, which description is incorporated into this Declaration by reference.

TOGETHER WITH non-exclusive easements for access and utility purposes, over, through, under, and across the following lots:

Lot 1, 0.614 acre;

Lot 3, 0.647 acre;

Lot 4, 0.974 acre,

Lot 5, 0.974 acre,

Lot 6, 0.974 acre,

Lot 7, 0.974 acre, and

Lot 8, 0.974 acre, all as shown on DPP File No. 2017/SUB-168 and further described in Surveyor's Affidavit recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-72140978, which descriptions are incorporated into this Declaration by reference, and

Lot 2-A, 0.601 acre, as shown on DPP File No. 2019/SUB-44 and further described in Surveyor's Affidavit recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-72140979, which description is incorporated into this Declaration by reference, but subject to the provisions of this Declaration.

All of the property described in this Exhibit "A" was previously a portion of Lot 6770, as shown on Map 571 of Land Court Application 1069, which was deregistered from the Land Court System by Document No. A-71711038, recorded in the Bureau of Conveyances of the State of Hawaii on August 20, 2019.

END OF EXHIBIT "A"

EXHIBIT "B"

APARTMENT DESCRIPTIONS

Apt. No.	Plan Type	Approximate Net Living Area (sq. ft.)	Approximate Net Covered Entry (sq. ft.)	Approximate Net Garage Area (sq. ft.)	Common Interest (%)
11	Plan 1-A	2,005	99	410	4.500%
12	Plan 3-R	2,154	159	436	4.575%
13	Plan 1	2,005	99	410	4.500%
14	Plan 2-A	2,041	59	431	4.550%
15	Plan 3-A	2,154	159	436	4.575%
16	Plan 2	2,041	59	431	4.550%
17	Plan 3	2,154	159	436	4.575%
18	Plan 2	2,041	59	431	4.550%
19	Plan 1	2,005	99	410	4.500%
20	Plan 3-AR	2,154	159	436	4.575%
21	Plan 2-AR	2,041	59	431	4.550%
56	Plan 3-R	2,154	159	436	4.575%
57	Plan 2-AR	2,041	59	431	4.550%
58	Plan 1-R	2,005	99	410	4.500%
59	Plan 3	2,154	159	436	4.575%
60	Plan 2-A	2,041	59	431	4.550%
61	Plan 1	2,005	99	410	4.500%
62	Plan 3-AR	2,154	159	436	4.575%
63	Plan 2-R	2,041	59	431	4.550%
64	Plan 1-AR	2,005	99	410	4.500%
65	Plan 2-A	2,041	59	431	4.550%
66	Plan 3-R	2,154	159	436	4.575%

* The Developer has the reserved right to make adjustments to the common interests of individual Apartments as may be necessary so that the total of all the common interests equals exactly one hundred percent (100%).

NOTE: An "A" next to the plan number above designates an alternate façade treatment, as shown on the alternate exterior elevation plan drawings on the Condominium Map for a particular Apartment type. An "R" next to the plan number above designates a reverse floor plan.

DESCRIPTIONS OF FLOOR PLANS

Plan 1

Plan 1 is a two-story, four-bedroom, three-bath home with approximately 2,005 square feet of net interior living space. A downstairs fourth bedroom increases access. An upstairs loft adds additional living area. Central air conditioning, open-cell foam insulation, low-e dual-pane windows, and a digital thermostat are standard features. Kitchen includes solid surface countertops with stainless-steel undermount sink and stainless-steel GE slide-in cooktop/oven w/hood, microwave and dishwasher. Wall-to-wall carpet in all bedrooms and living areas, tile in all bathrooms and choice of laminate wood or tile in entry and kitchen are included. Master bath includes dual vanity with solid surface countertop and undermount sinks and solid-surface surrounds in master shower. Laundry room with cabinets and utility sink is standard. A 120-gallon solar water heater is included and located in the attached two-car garage with automatic opener and two remotes. The front driveway provides two additional parking spaces. Front- and rear-yard landscaping will be installed by Developer and must be maintained by the Apartment

Owner. Vinyl privacy yard fencing with two gates is a standard feature and must be maintained by the Apartment Owner. Plan 1 has an optional, rear lanai off the master bedroom, which is available as an upgrade feature.

Plan 2

Plan 2 is a two-story, four-bedroom, three-bath home with approximately 2,041 square feet of net interior living space. A downstairs fourth bedroom increases access. An upstairs loft adds additional living area. Central air conditioning, open-cell foam insulation, low-e dual-pane windows, and a digital thermostat are standard features. Kitchen includes solid surface countertops with stainless-steel undermount sink and stainless-steel GE slide-in cooktop/oven w/hood, microwave and dishwasher. Wall-to-wall carpet in all bedrooms and living areas, tile in all bathrooms and choice of laminate wood or tile in entry and kitchen are included. Master bath includes dual vanity with solid surface countertop and undermount sinks and solid-surface surrounds in master shower. Laundry room with cabinets and utility sink is standard. A 120-gallon solar water heater is included and located in the attached two-car garage with automatic opener and two remotes. The front driveway provides two additional parking spaces. Front- and rear-yard landscaping will be installed by Developer and must be maintained by the Apartment Owner. Vinyl privacy yard fencing with two gates is a standard feature and must be maintained by the Apartment Owner. Plan 2 has an optional, rear lanai off the master bedroom, which is available as an upgrade feature.

Plan 3

Plan 3 is a two-story, four-bedroom, three-bath home with approximately 2,154 square feet of net interior living space. A downstairs fourth bedroom increases access. An upstairs loft adds additional living area. Central air conditioning, open-cell foam insulation, low-e dual-pane windows, and a digital thermostat are standard features. Kitchen includes solid surface countertops with stainless-steel undermount sink and stainless-steel GE slide-in cooktop/oven w/hood, microwave and dishwasher. Wall-to-wall carpet in all bedrooms and living areas, tile in all bathrooms and choice of laminate wood or tile in entry and kitchen are included. Master bath includes dual vanity with solid surface countertop and undermount sinks and solid-surface surrounds in master shower. Laundry room with cabinets and utility sink is standard. A 120-gallon solar water heater is included and located in the attached two-car garage with automatic opener and two remotes. The front driveway provides two additional parking spaces. Front- and rear-yard landscaping will be installed by Developer and must be maintained by the Apartment Owner. Vinyl privacy yard fencing with two gates is a standard feature and must be maintained by the Apartment Owner.

NOTE: The sizes and configurations of the fenced Private Yard Areas reflected on the Condominium Map are approximations only. Actual sizes and configurations may vary due to the placement and location of utilities and due to varying terrain surrounding each building.

END OF EXHIBIT "B"