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GENTRY KALAELOA, LLC – Attn: KS
733 Bishop Street, Suite 1400
Honolulu, Hawaii 96813

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Document Title: DECLARATION OF INTENT TO DEVELOP AND MERGE; SPECIAL
POWER OF ATTORNEY; AND RESERVATION OF RIGHTS AND
EASEMENTS

Parties: GENTRY KALAELOA, LLC

Property Description: Lot 13047-C, Lot 13047-D and Lot 13047-E, each as shown on
DPP FILE No. 2019/SUB-160

[Ka‘ulu]

TMK Nos.: (1) 9-1-013-197 (Lot 13047-C); -198 (Lot 13047-D); -199 (Lot 13047-E)

DECLARATION OF INTENT TO DEVELOP AND MERGE; SPECIAL POWER OF ATTORNEY; AND RESERVATION OF RIGHTS AND EASEMENTS

This Declaration of Intent to Develop and Merge; Special Power of Attorney; and Reservation of Rights and Easements (this "**Declaration of Merger**") is made on July 21, 2023 (the "**Effective Date**"), by GENTRY KALAELOA, LLC, a Hawaii limited liability company (the "**Developer**"), the principal place of business and post office address of which is 733 Bishop Street, Suite 1400, Honolulu, Hawaii 96813.

A. RECITALS.

1. The Developer is the owner in fee simple of certain real property situated at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, as described in the attached Exhibit "A" ("**Lot 13047-C**").

2. Pursuant to that certain unrecorded Purchase and Option Agreement effective as of August 25, 2021, as amended, a Memorandum of which is recorded in the Bureau of Conveyances of the State of Hawaii (the "**Bureau**") as Document No. A-79150864, the Developer has the exclusive right and option (the "**Option Right**") to acquire from HCHP1 LLC, a Delaware limited liability company ("**HCHP**"), successor in interest to Hunt Communities Hawaii LLC, a Hawaii limited liability company, the fee simple interest in those certain parcels of real property situated at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii that are described in the attached Exhibit "B" (Item I being "**Lot 13047-E**", and Item II being "**Lot 13047-D**").

3. The Developer has exercised the Option Right with respect to Lot 13047-E and, as such, will acquire fee simple title to Lot 13047-E on or before September 21, 2023. Upon the Developer's acquisition of fee simple title to Lot 13047-E, Lot 13047-E will be subject to this Declaration of Merger.

4. The Developer may exercise the Option Right with respect to Lot 13047-D and, if so exercised, will acquire fee simple title to Lot 13047-D not more than 20 days after the Developer exercises the Option Right with respect to Lot 13047-D. If the Developer acquires fee simple title to Lot 13047-D, then, upon such acquisition of fee simple title to Lot 13047-D, Lot 13047-D will be subject to this Declaration of Merger.

5. The Developer intends to improve a portion of Lot 13047-C by constructing thereon certain improvements, and intends to submit such land and improvements to one or more condominium property regimes (or projects) established under the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended (the "**Act**"), to be known as Ka'ulu by Gentry (the "**Project**").

6. The Developer may, but is not obligated to, (a) improve other portions of Lot 13047-C and/or other land adjacent to or in the vicinity of Lot 13047-C, including Lot 13047-E and Lot 13047-D (if the Option Right for Lot 13047-D is exercised by the Developer), by constructing thereon certain improvements, and (b) submit such land and improvements to one or more separate condominium property regimes (or projects) established under the Act (all or any one or more of such separate condominium property regimes (or projects) are referred to herein as the "**Additional Increments**").

7. The Developer desires to reserve the right, in its sole and absolute discretion, to effect an administrative merger or mergers of any two or more of the Project and the Additional Increments such that the use of the respective common elements, the respective common expenses, and the management of the respective affairs of the merged increments are shared, and the administration of the merged

increments is unified under one integrated association of unit owners, but the ownership interests of the unit owners in the Project and the Additional Increments are not altered or affected.

8. The Developer further desires to reserve the right, in its sole and absolute discretion, (a) to encumber Lot 13047-C and the Project with non-exclusive easements and rights of way in favor of the Additional Increments so that the owners and occupants of the units in the Additional Increments have the right to use the common elements of the Project as if those common elements were part of the Additional Increments, and (b) to encumber the Additional Increments with non-exclusive easements and rights of way in favor of Lot 13047-C and the Project so that the owners and occupants of the units in the Project have the right to use the common elements of the Additional Increments as if those common elements were part of the Project.

9. The Developer further desires to put owners of units in the Project and the Additional Increments on notice that, by taking title to such units, they are granting the Developer a special power of attorney to effect all or any of the rights reserved by the Developer in this Declaration of Merger.

The Developer now makes the following declaration, reservations, easements and statements:

B. DECLARATION OF MERGER.

1. Submittal to Declaration of Merger.

a. Lot 13047-C. The Developer hereby submits Lot 13047-C, all improvements constructed or to be constructed thereon, and the Developer's interest in Lot 13047-C and such improvements to this Declaration of Merger. The Developer further declares and agrees that Lot 13047-C and the improvements constructed or to be constructed thereon will be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, limitations, restrictions, easements, covenants and conditions set forth in this Declaration of Merger, as it may be amended from time to time, all of which are declared and agreed to be in furtherance of a plan for the development, improvement and sale of condominium units in the Project and the Additional Increments, and are established for the purposes of enhancing and perfecting the value, desirability and attractiveness of Lot 13047-C and for the mutual benefit of the owners of any interest therein. All of the declarations, restrictions, limitations, easements, covenants, and conditions set forth in this Declaration of Merger constitute covenants running with the land and will be binding on and for the benefit of the Developer and its successors and assigns, and all subsequent owners, lessees, sublessees and all parties having or acquiring any right, title or interest in all or any part of Lot 13047-C and the improvements constructed or to be constructed thereon, and their respective heirs, devisees, personal representatives, successors, successors-in-trust and assigns.

b. Lot 13047-E. Upon the Developer's acquisition of fee simple title to Lot 13047-E, Lot 13047-E, (i) all improvements constructed or to be constructed thereon, and the Developer's interest in Lot 13047-E and such improvements will immediately and automatically be made subject to this Declaration of Merger, (ii) Lot 13047-E and the improvements constructed or to be constructed thereon will be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, limitations, restrictions, easements, covenants and conditions set forth in this Declaration of Merger, as it may be amended from time to time, all of which are declared and agreed to be in furtherance of a plan for the development, improvement and sale of condominium units on Lot 13047-E, and will be established for the purposes of enhancing and perfecting the value, desirability and attractiveness of Lot 13047-E and for the mutual benefit of the owners of any interest therein, and (iii) all of the declarations, restrictions, limitations, easements, covenants, and conditions set forth in this Declaration of Merger will constitute covenants running with the land and will be binding on and for the benefit of the Developer and its successors and assigns, and all subsequent owners, lessees, sublessees

and all parties having or acquiring any right, title or interest in all or any part of Lot 13047-E and the improvements constructed or to be constructed thereon, and their respective heirs, devisees, personal representatives, successors, successors-in-trust and assigns.

c. Lot 13047-D. If the Option Right for Lot 13047-D is exercised by the Developer, then, upon the Developer's acquisition of fee simple title to Lot 13047-D, Lot 13047-D, (i) all improvements constructed or to be constructed thereon, and the Developer's interest in Lot 13047-D and such improvements will immediately and automatically be made subject to this Declaration of Merger, (ii) Lot 13047-D and the improvements constructed or to be constructed thereon will be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, limitations, restrictions, easements, covenants and conditions set forth in this Declaration of Merger, as it may be amended from time to time, all of which are declared and agreed to be in furtherance of a plan for the development, improvement and sale of condominium units on Lot 13047-D, and will be established for the purposes of enhancing and perfecting the value, desirability and attractiveness of Lot 13047-D and for the mutual benefit of the owners of any interest therein, and (iii) all of the declarations, restrictions, limitations, easements, covenants, and conditions set forth in this Declaration of Merger will constitute covenants running with the land and will be binding on and for the benefit of the Developer and its successors and assigns, and all subsequent owners, lessees, sublessees and all parties having or acquiring any right, title or interest in all or any part of Lot 13047-D and the improvements constructed or to be constructed thereon, and their respective heirs, devisees, personal representatives, successors, successors-in-trust and assigns.

2. **Reservation to Effect an Administrative Merger.** The Developer has and reserves the right, in its sole and absolute discretion, to cause and effect an administrative merger of any two or more of the Project and the Additional Increments into a single condominium project (the "**Merged Project**") and to execute and record one or more Certificates of Administrative Merger (as described below) and all other instruments as the Developer deems necessary or appropriate for the purpose of effecting the administrative merger. The Developer reserves the right to effect an administrative merger more than once, and an administrative merger may occur with respect to any two or more of the Project and the Additional Increments, at the same or at different times, and an administrative merger with respect to any two or more of such phases or increments will not affect the right of the Developer to merge another phase, phases, increment or increments at a later date or dates, subject to all of the provisions of this Declaration of Merger. The declarations of condominium property regime for each of the Additional Increments will contain provisions and conditions for such administrative merger(s) of condominium projects. The Developer may effect the administrative mergers as set forth in this Declaration of Merger without the further act, consent or joinder of any unit owner, lien holder or any other persons, provided that any such merger is accomplished within thirty (30) years from the date this Declaration of Merger is recorded in the Bureau.

3. **Requirements to Effect Merger.** The following requirements must be met to effect an administrative merger:

a. **Declaration; Bylaws; Condominium Map.** The Developer will have, with respect to each phase or increment to be merged, recorded in the Bureau a declaration of condominium property regime and bylaws and filed a condominium map, complying with the applicable requirements of the Act. Each such declaration of condominium property regime and bylaws (as each may be amended from time to time) will be generally similar, in form and substance, for each phase or increment to be merged, with appropriate modifications or differences for the physical description of the land included in each phase or increment and easements and other encumbrances affecting the land, the number and description of the units in each phase or increment, the description of the common elements and limited common elements in each phase or increment, reserved development and other rights and obligations affecting the units and common elements in each phase or increment, the common interest appurtenant to the units in each phase or increment, and such other modifications and differences as the Declarant may

determine to be required, desired or advisable in its discretion, including to comply with the Act or other applicable laws or with the requirements of the Real Estate Commission of the State of Hawaii or any institutional lender; provided, however, that if there are any conflicts or differences between the respective declarations of condominium property regime and/or bylaws (other than the appropriate project-specific modifications described above), then the provisions of the later-recorded document will control.

b. **Construction.** Construction of the units and common elements described in the declaration of condominium property regime for each of the phases or increments to be merged will have been substantially completed.

c. **Certificate of Administrative Merger.** The Developer will have recorded a "Certificate of Administrative Merger," which certificate contains: (i) a certification that the requirements of subsections 3.a and 3.b above have been satisfied; and (ii) a statement that an administrative merger with respect to the increments to be merged has, by the recording of the Certificate of Administrative Merger, become effective.

4. **Effect of an Administrative Merger.** The administrative merger will become effective on the date (the "**Administrative Merger Date**") that is the earlier of (a) a date certain set forth in the Certificate of Administrative Merger, or (b) the date the Certificate of Administrative Merger is recorded in the Bureau. From and after the Administrative Merger Date, the following consequences will ensue:

a. **Use of Common Elements.** Each residential unit in the Merged Project will have appurtenant thereto perpetual, nonexclusive easements and rights to use and enjoy the common elements of each of the merged phases or increments to the same extent and subject to the same limitations as are imposed upon residential units in each of such phases or increments as though the merged phases or increments had been developed as a single condominium project. Each residential unit in the Merged Project will have appurtenant thereto a perpetual, non-exclusive easement in the common elements of each of the merged phases or increments for the installation, maintenance and repair of any pipe, cable or other conduits for utility services such as power, light, gas, water, sewage, drainage, telephone, radio and television signal distribution. Each residential unit in the Merged Project will have appurtenant thereto a perpetual, non-exclusive easement in the common elements of each of the merged phases or increments for roadway and visitor parking stall purposes.

b. **Allocation of Maintenance Fees and Votes.** The merged phases or increments will each bear a share of the total common expenses (as the term "common expenses" is defined in the respective declarations of condominium property regime for the merged phases or increments) of the Merged Project, treating the merged phases or increments as one project for this purpose. The share of common expenses for each phase or increment will be a fraction, the numerator of which will be the approximate total net living area of all of the residential units in the respective phase or increment (excluding lanais, exterior storage areas, other limited common element areas and garages), and the denominator of which will be the approximate total net living area of all residential units in the Merged Project (excluding lanais, exterior storage areas, other limited common element areas and garages). For purposes of this Declaration of Merger, the approximate net living areas will be as reflected in the respective declarations of condominium property regime for each phase or increment to be merged (as such declarations may be amended from time to time). Each residential unit's share of the common expenses of the Merged Project will be the product of the common interest appurtenant to such residential unit (as set forth in the declaration of condominium property regime (as may be amended) covering the residential unit) multiplied by the fractional share of common expenses allocated to the phase or increment in which the residential unit is located. (Common expenses are not allocated to parking stall units.) Each of the merged phases or increments will have the same share of the total votes of the Merged Projects as the share set forth above for the sharing of common expenses, except that common interests for any parking stall units will be factored in for determining total votes. As such, each unit owner's vote

in the Merged Association (as defined below) will be the product of the common interest appurtenant to the owner's unit multiplied by the fractional share of the common expenses allocated to the phase or increment in which the owner's unit is located.

b. **Association of Unit Owners.** The associations of unit owners of each of the merged increments or phases that were created via their respective declarations of condominium property regime and bylaws will be merged into a single association covering the entire Merged Project, which association will be known as the "Association of Unit Owners of Ka'ulu by Gentry" (the "**Merged Association**"). After an administrative merger, the Merged Association will have all of the powers and obligations vested in the associations of unit owners of the merged increments or phases.

c. **Incorporation of Associations.** If the association of unit owners of one of the merged increments or phases is incorporated prior to an administrative merger, then the unit owners in the other merged increment(s) or phase(s) will, upon an administrative merger, automatically become members of the association of unit owners of the already incorporated increment or phase. If the association of unit owners of two or more of the merged increments or phases is incorporated prior to an administrative merger, then the associations of unit owners of the already incorporated merged increments or phases will, upon administrative merger, take the appropriate steps to (i) merge the corporations into one corporation or consolidate the corporations into a new corporation, and (ii) have the unit owners in the unincorporated merged increment(s) or phase(s), if any, become members of the association of unit owners of the entity that survives the aforementioned merger or consolidation.

d. **Name of Merged Project.** From and after the Administrative Merger Date, the merged increments or phases will be treated for purposes of administration, use and sharing of common expenses as though they had been developed as a single condominium project. The Merged Project will be known as Ka'ulu by Gentry.

e. **Single Association and Board.** Upon the recordation of a Certificate of Administrative Merger in the Bureau, a single association of unit owners will govern the Merged Project. Within one hundred twenty (120) days after the Administrative Merger Date, a special meeting of all of the owners of units in the Merged Project will take place to elect a new board of directors to replace the existing boards of directors and to govern the entire Merged Project. The procedure for calling and holding the special meeting and all other meetings of the Merged Association and of the new board of directors will be as set forth in the bylaws for the Project and the Additional Increments. Until the new board of directors is elected, the existing boards of directors, acting jointly, will have full authority to conduct the affairs of the Merged Project. The number of directors of the Merged Association will be subject to the same limitations set forth in each of the respective bylaws for each increment, provided that in no event will the number of directors of the Merged Association be less than nine (9) when the number of units in the Merged Project exceeds one hundred (100), unless sixty-seven percent (67%) or more of all unit owners vote by mail ballot or at a special or annual meeting to reduce the minimum number of directors. At the special meeting to elect the new board, one-third (1/3) of the directors will be elected for one (1) year, one-third (1/3) will be elected for two (2) years and one-third (1/3) will be elected for three (3) years. If the special meeting is to be held more than six (6) months prior to the next annual meeting of the Merged Association, then the terms of the directors will be calculated as if they had been elected at the previous annual meeting of the Merged Association. If the special meeting is to be held six (6) months or less prior to the next annual meeting of the Merged Association, then the terms of the directors will be calculated as if they were elected at the next annual meeting of the Merged Association and no election need be held at such next annual meeting.

f. **One Managing Agent.** There will be only one managing agent for the Merged Project. The managing agent for the Project as of the Administrative Merger Date will be the managing agent for the Merged Project, provided such managing agent is then qualified, able and willing to act in such capacity. The contract for the managing agent will provide: (i) that the managing agent will act for

the Merged Project on the same terms and conditions and for the same or lesser fee per unit; and (ii) that if, as of the Administrative Merger Date, the managing agent should be unqualified, unable or unwilling to act as the managing agent for the Merged Project, then the contract then in effect with such managing agent will automatically terminate; provided, however, that such managing agent will continue in its capacity as the managing agent for such period, not exceeding sixty (60) days, as determined in the discretion of the Board of Directors of the Merged Project, as will be necessary to effect an orderly transition of duties and authority to the new managing agent.

g. **Funds for Major Repairs.** Any funds reserved for the purpose of making major repairs or replacements to the Project or to any of the Additional Increments will remain intact in a separate account for the Project or the Additional Increment, as then constituted, or otherwise isolated and identified as pertaining only to the Project or the applicable Additional Increment, and will be expended solely for such purposes before funds from any other source are so expended or before such funds are expended for any other purpose. The interest in such reserve funds of each residential unit owner in the Project or the Additional Increment will be equal to such owner's common interest in the Project or the applicable Additional Increment prior to the merger, and such interest will not be separated from the residential unit to which it appertains, and will be deemed to be conveyed with such residential unit even though not expressly mentioned or described in the instrument of conveyance. Other reserve funds will be consolidated and maintained as a single fund for the Merged Project. If necessary so that the interest in such other reserve funds attributable to each residential unit in the Merged Project is equal to the undivided interest representing that residential unit's share in the "common expenses" for the Merged Project, the Board of Directors of the Merged Project will make adjustments to the account of each residential unit owner by (i) refund in whole or in part, and/or (ii) credit in whole or in part against future assessments, and/or (iii) special assessments or series of assessments, and/or (iv) any other means consistent with generally accepted accounting principles; provided, however, that the Board of Directors of the Merged Project will make such adjustments without charging any residential unit owner a special assessment for reserves in any one month that exceeds more than twenty percent (20%) of the monthly assessment for other common expenses, after excluding any assessment for reserves.

h. **Liens.** Notwithstanding anything provided in this Declaration of Merger to the contrary, the Project and each Additional Increment will be deemed a distinct and separate "project" for purposes of Section 514B-43 of the Act, with the effect that subsequent to substantial completion of the Project and of each Additional Increment and the recording of the first unit deed conveying a unit in the Project and in each Additional Increment to a third-party purchaser, and, thereafter, while the Project or the Additional Increment remains the subject of a condominium property regime, no lien will arise or be created against the common elements of the Project or of an Additional Increment. No lien that may arise as a result of work done or materials furnished to the Project or to an Additional Increment will encumber or affect any unit created in any other increment constituting part of the Merged Project or the common interest appurtenant thereto, or the land area designated for such increment, whether or not such unit is owned by the Developer.

5. **Ownership.** Except as otherwise provided in this Declaration of Merger, an Administrative Merger will only affect the administration and use of the merged increments and the sharing of common expenses, and will not affect the ownership of units and common elements in the respective increments.

6. **Developer as Owner.** Except to the extent that the same may have been previously conveyed by the Developer, the Developer will for all purposes be deemed the owner of the newly merged units and the common interests and other rights and easements appurtenant to such units prior to and from the Administrative Merger Date, until the units are conveyed to other parties.

7. **Interpretation of Condominium Documents.** For the purposes of administration and use of the Merged Project, upon the recordation of a Certificate of Administrative Merger, all of the units

in the Merged Project will be treated as though they were all included in a single condominium project created by a single recording of a declaration of condominium property regime covering the Merged Project, and the declarations of condominium property regime for each of the merged increments will be construed as one document applicable to the entire Merged Project, except to the extent otherwise expressly provided in any document. Any properly adopted amendment to a provision in one of the respective declarations that relates to the administration of the Merged Project will only apply to the Merged Project upon the majority vote of the unit owners in the Merged Association. The same will be true of the respective bylaws and project rules of the separate condominium projects. Where the declarations, bylaws or project rules of the separate condominium projects conflict or are inconsistent, such conflicts and inconsistencies will be resolved in favor of the provisions contained in the declaration, bylaws and project rules for the most recently established condominium project. The Developer also reserves the right to record an amended and restated declaration and/or bylaws for the Merged Project that would incorporate all of the separate declarations and bylaws for the Project and each of the Additional Increments. Upon an administrative merger, the specified voting percentages required to amend the declaration of condominium property regime and the bylaws for the Merged Project will refer to and mean the specified percentage of the total vote in the Merged Project.

8. **Special Assessments Due to Merger.** Upon an administrative merger, the Developer may, but need not, require the residential unit owners in the Project and/or in all or any of the Additional Increments to make contributions, in addition to their normal prescribed share of the common expenses, to the replacement reserves, the general operating account, and/or any other accounts of the Merged Project. The Developer may provide that such contributions will be made in a lump sum amount or in installments over a period of time. In setting the amount and terms of such contributions, the Developer may, but need not, consider (a) the amount of replacement reserves, the amounts in the general operating accounts, and/or the amounts in any other accounts of the respective projects, accumulated prior to the merger, and (b) the condition of the various buildings and units. The amounts and terms of the contributions to be made by the residential unit owners in a project will be as fairly determined by the Developer, in the Developer's sole and absolute discretion, and will be set forth in a notice by the Developer to the residential unit owners or to the Board of Directors of the Merged Project. The Developer will have no obligation to collect such contributions from the unit owners. Collection of such contribution amounts will be the responsibility of the Board of Directors, which may, in its discretion, elect to instruct the managing agent of the Merged Project to administer the collection of the contribution amounts. Delinquent amounts of such contributions will constitute a lien against the delinquent residential unit owner's interest in such owner's unit, which lien may be foreclosed by the Board of Directors of the Merged Project, or by the managing agent, in the same manner as provided in the Act for unpaid common expenses.

9. **Limit of Liability.** The unit owners in one condominium project will not be assessed, or obligated to pay, any debts, expenses, costs or other obligations of the unit owners in any other condominium project that are outstanding as of, or were otherwise incurred prior to, the Administrative Merger Date.

10. **Amendment of Condominium Documents by the Developer.** To protect its right to merge as set forth in this Declaration of Merger, the Developer reserves the right to review and approve, in its reasonable discretion, any and all amendments to any declaration of condominium property regime, any bylaws of an association of unit owners and the project rules of any condominium project created on Lot 13047-C and on Lot 13047-E (after the Developer acquires fee simple title to Lot 13047-E) and on Lot 13047-D (after the Developer acquires fee simple title to Lot 13047-D if the Option Right for Lot 13047-D is exercised by the Developer) for a period of thirty (30) years after the date this Declaration of Merger is recorded or until all of the condominium projects that have been built on Lot 13047-C and on Lot 13047-E (after the Developer acquires fee simple title to Lot 13047-E) and on Lot 13047-D (after the Developer acquires fee simple title to Lot 13047-D if the Option Right for Lot 13047-D is exercised

by the Developer) have either been merged or released from this Declaration of Merger, whichever occurs earlier. The purpose and basis of such review and approval will be to ensure that the declarations, bylaws and project rules of the various condominium projects on Lot 13047-C and on Lot 13047-E (after the Developer acquires fee simple title to Lot 13047-E) and on Lot 13047-D (after the Developer acquires fee simple title to Lot 13047-D if the Option Right for Lot 13047-D is exercised by the Developer) remain in such forms that the Developer is able to effect an administrative merger of the various condominium projects.

11. **No Obligation to Effect Merger.** The Developer intends to effect an administrative merger of some or all of the condominium projects created on Lot 13047C and on Lot 13047-E (after the Developer acquires fee simple title to Lot 13047-E) and on Lot 13047-D (after the Developer acquires fee simple title to Lot 13047-D if the Option Right for Lot 13047-D is exercised by the Developer). However, circumstances may change such that a merger may not take place. The Developer reserves the right to change development plans and is not required to develop any of the Additional Increments or to merge them with the Project or with any other condominium project. Nothing in this Declaration of Merger is to be construed as a representation, warranty or agreement by the Developer that any or all of the Project or the Additional Increments will be developed or that an administrative merger of any or all of such projects will occur. Further, nothing in this Declaration of Merger is to be construed to (a) require the Developer to (i) develop the Project or any of the Additional Increments or (ii) merge such projects, or (b) prohibit the Developer from dealing freely with Lot 13047-C or with Lot 13047-E (after the Developer acquires fee simple title to Lot 13047-E) or with Lot 13047-D (after the Developer acquires fee simple title to Lot 13047-D if the Option Right for Lot 13047-D is exercised by the Developer) at its discretion.

12. **Release of Declaration of Merger.** Any other provision in this Declaration of Merger to the contrary notwithstanding, the Developer, at its sole discretion, will have the unilateral right, but will not be obligated, to release any subdivided portion of Lot 13047-C or of Lot 13047-E (after the Developer acquires fee simple title to Lot 13047-E) or of Lot 13047-D (after the Developer acquires fee simple title to Lot 13047-D if the Option Right for Lot 13047-D is exercised by the Developer) from this Declaration of Merger. The Developer may exercise such right at any time and from time to time without being required to obtain the consent or joinder of any person or group of persons, including any association, any unit owner or any mortgagee, lien holder, any unit purchaser or any other person who may have an interest in Lot 13047-C, in Lot 13047-E, in Lot 13047-D or in any unit.

C. RESERVATION OF EASEMENTS AND RIGHTS OF WAY

1. The Developer hereby reserves the unilateral right, in its sole and absolute discretion, to encumber Lot 13047-C and the Project with non-exclusive easements and rights of way in favor of the Additional Increments (including Lot 13047-E (after the Developer acquires fee simple title to Lot 13047-E) and Lot 13047-D (after the Developer acquires fee simple title to Lot 13047-D if the Option Right for Lot 13047-D is exercised by the Developer)) so that the owners and occupants of the units in the Additional Increments have the right to use the common elements of the Project as if those common elements were part of the Additional Increments.

2. The Developer hereby further reserves the unilateral right, in its sole and absolute discretion, to encumber the Additional Increments (including Lot 13047-E (after the Developer acquires fee simple title to Lot 13047-E) and Lot 13047-D (after the Developer acquires fee simple title to Lot 13047-D if the Option Right for Lot 13047-D is exercised by the Developer)) with non-exclusive easements and rights of way in favor of Lot 13047-C and the Project so that the owners and occupants of the units in the Project have the right to use the common elements of the Additional Increments as if those common elements were part of the Project.

D. SPECIAL POWER OF ATTORNEY.

The Developer has the absolute and unilateral right, notwithstanding the lease, sale or conveyance of any or all of the units in the Project or any of the Additional Increments, and without being required to obtain the consent or joinder of any unit owner, lien holder or any other persons, (1) to effect an administrative merger in accordance with the provisions of this Declaration of Merger, (2) to execute, process, file and record the Certificate of Administrative Merger and any and all other instruments necessary or appropriate for the purpose of effecting the merger of increments or phases as contemplated by this Declaration of Merger, and (3) to execute, process, file and record any and all instruments necessary or appropriate for the purpose of reserving, granting, assigning, designating, deleting, or otherwise dealing with the easements and rights-of-way reserved in this Declaration of Merger. Any such action will be deemed taken by the Developer as the true and lawful attorney-in-fact of the respective unit owners. Each and every party acquiring an interest in Lot 13047-C and Lot 13047-E (after the Developer acquires fee simple title to Lot 13047-E) and Lot 13047-D (after the Developer acquires fee simple title to Lot 13047-D if the Option Right for Lot 13047-D is exercised by the Developer), by such acquisition: consents to all such mergers of increments and reservations and grants and to the execution, delivery and recordation of such documents as may be necessary to effect the same; agrees to execute such documents and do such other things as may be necessary or convenient to effect the same; and appoints the Developer and its assigns the party's attorney-in-fact with full power of substitution to execute, acknowledge, deliver and record such documents and to do such things on the party's behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights and will not be affected by the disability of any such party.

E. MISCELLANEOUS

1. Severability.

(a) If any provision of this Declaration of Merger is declared invalid or unenforceable by a court of law with appropriate jurisdiction or by other applicable authority, then such provision will be deemed modified to the extent necessary to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision will not impair or affect in any manner the validity, enforceability or effect of any other provision of this Declaration of Merger, and this Declaration of Merger will continue in full force and effect and be construed and enforced as if such provision had not been included, or had been modified as provided above, as the case may be, to the full extent permissible by law.

(b) Any other provision in this Declaration of Merger or in the various declarations and bylaws to the contrary notwithstanding, if it is determined by a court of law with appropriate jurisdiction or by other applicable authority that the declarations of condominium property regimes and/or the bylaws of the Project and the Additional Increments cannot be treated as one declaration and/or one bylaws (for whatever reason), then the declarations, bylaws, and associations of the respective increments will remain separate. In such event, Sections 4.c, 4.d, 4.e, 4.f, 4.g and 4.h above will not apply, but Sections 4.a, 4.b and 4.i will continue to apply in all events. This means that even though there will be separate declarations, bylaws, and associations governing each increment, each unit in each of the increments will always have appurtenant thereto nonexclusive easements and rights to use and enjoy the common elements of each of the increments, and the increments will each bear a share of the total common expenses of all of the increments.

2. Amendment of this Declaration of Merger. This Declaration of Merger cannot be amended without the express written consent of the Developer for a period of thirty (30) years after the

date this Declaration of Merger is recorded or until all of Lot 13047-C and Lot 13047-E (after the Developer acquires fee simple title to Lot 13047-E) and Lot 13047-D (after the Developer acquires fee simple title to Lot 13047-D if the Option Right for Lot 13047-D is exercised by the Developer) has been developed and all of the condominium projects built on Lot 13047-C and on Lot 13047-E (after the Developer acquires fee simple title to Lot 13047-E) and on Lot 13047-D (after the Developer acquires fee simple title to Lot 13047-D if the Option Right for Lot 13047-D is exercised by the Developer) have either been merged or released from this Declaration of Merger, whichever occurs earlier.

3. **Assignment.** The rights of the Developer under this Declaration of Merger will extend to the Developer and its successors and assigns. A person or entity will be deemed a successor or assign of the Developer only if specifically so designated in a recorded instrument as a successor or assign of the Developer under this Declaration of Merger.

4. **Master Association Documents.** The Developer will have the unilateral right, without the joinder or consent of any party with an interest in the Project, the Additional Increments, or the Merged Project, including any unit owner, any mortgagee, or any other person, to subordinate this Declaration of Merger to the terms and conditions of one or more of the documents governing the Master Association (as that term is defined in the Project's Declaration of Condominium Property Regime).

[signature page follows]

The Developer has signed this Declaration of Merger as of the Effective Date.

GENTRY KALAELOA, LLC,
a Hawaii limited liability company

By: Andrew Kamikawa

Name: Andrew Kamikawa

Title: Vice President

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

On July 21, 2023, before me appeared ANDREW KAMIKAWA, to me personally known, who, being by me duly sworn or 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.



Frances Souza

Name: Frances Souza

Notary Public, State of Hawaii

My commission expires: November 20, 2024

(Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Declaration of Intent to Develop and Merge; Special Power of Attorney; and Reservation of Rights and Easements

Document Date: July 21, 2023

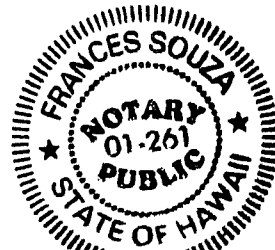
No. of Pages: 15

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

Frances Souza

Signature of Notary

July 21, 2023
Date of Notarization and
Certification Statement



(Stamp or Seal)

Frances Souza
Printed Name of Notary

EXHIBIT "A"

All of that certain parcel of land (being a portion of Lot 13047, shown on Map 957 of Land Court Application No. 1069, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-72090613) situate, lying and being at Honouliuli, Ewa, City and County of Honolulu, State of Hawaii, being Lot 13047-C (DPP FILE NO. 2019/SUB-160), area 452,798 square feet, more or less, being a portion of said Lot 13047, and thus bounded and described in Affidavit recorded as Document No. A-79770205.

END OF EXHIBIT "A"

EXHIBIT "B"

ITEM I

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, being a portion of the land(s) described in deregistered Transfer Certificate of Title No. 1,149,473, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-72090613, described as follows:

LOT 13047-E, area 472,915 square feet, as shown on Subdivision Map 2019/SUB-160, approved by the Department of Planning and Permitting, City and County of Honolulu, on August 13, 2021.

Lot 13047-E is subject to a Memorandum of Option Rights, dated August 25, 2021, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-79150864.

ITEM II

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, being a portion of the land(s) described in deregistered Transfer Certificate of Title No. 1,149,473, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-72090613, described as follows:

LOT 13047-D, area 372,695 square feet, as shown on Subdivision Map 2019/SUB-160, approved by the Department of Planning and Permitting, City and County of Honolulu, on August 13, 2021.

Lot 13047-D is subject to a Memorandum of Option Rights, dated August 25, 2021, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-79150864.

END OF EXHIBIT "B"