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**DECLARATION OF CONDOMINIUM PROPERTY REGIME
OF
HOLOMUA**

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- EXHIBIT "A": Description of Property
- EXHIBIT "B": Description of Buildings, Units
- EXHIBIT "C": Common Interests
- EXHIBIT "D": HHFDC Buy-Back Restrictions
- EXHIBIT "E": HHFDC Shared Appreciation Program

A. DEFINITION OF CERTAIN TERMS

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

1. **"Act"** means the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended, and, as applicable, the rules of the Real Estate Commission promulgated pursuant thereto, as amended.

2. **"Alleged Defect"** shall have the meaning ascribed to it in Section S.2 of this Declaration.

3. **"Alteration"** shall have the meaning ascribed to it in Section L of this Declaration.

4. **"Altering Owner"** shall have the meaning ascribed to it in Section L.3 of this Declaration.

5. **"Arbitration"** shall have the meaning ascribed to it in Section T.2 of this Declaration.

6. **"Arbitration Rules"** means those arbitration rules described in Section T.2 of this Declaration.

7. **"Association"** means the Association of Unit Owners of Holomua consisting of all Unit Owners acting as a group in accordance with this Declaration, the Bylaws and the Act.

8. **"Board of Directors"** or **"Board"** means the board of directors of the Association.

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

10. **"Bylaws"** means the Bylaws of the Association Recorded concurrently with this Declaration, as amended from time to time.

11. **"Cancellation Notice"** shall have the meaning ascribed to it in Section S.5 of this Declaration.

12. **"Chapter 201H"** means Chapter 201H of the Hawaii Revised Statutes, as amended from time to time, and/or Hawaii Administrative Rules, Title 15, Subtitle 14, Chapter 174, as amended from time to time.

13. **"Claimant"** shall have the meaning ascribed to it in Section S.2 of this Declaration.

14. **"Collection Costs"** shall have the meaning ascribed to it in Section I.3 of this Declaration.

15. **"Common Assessments"** means the mandatory maintenance fees to be assessed by the Association against the Unit Owners for the payment of the Common Expenses allocable to the Owners' Units in such manner as set forth in this Declaration and the Bylaws.

16. **"Common Elements"** shall mean those parts of the Project that are defined in Section D.4 of this Declaration.

17. **"Common Expenses"** are defined in Section I.1 of this Declaration.

18. **"Common Interest"** means the undivided interest described in Section F.1 of this Declaration.

19. **"Condominium Map"** means the plans showing the layout, location, unit numbers, and dimensions of the Units and elevations of the buildings of the Project filed in the Bureau as Condominium Map No. 4776, as amended from time to time.

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

21. **"Conference"** shall have the meaning ascribed to it in Section T.2 of this Declaration.

22. **"County"** refers to the City and County of Honolulu.

23. **"Covered Matters"** shall have the meaning ascribed to it in Section T.2 of this Declaration.

24. **"Covered Parties"** shall have the meaning ascribed to it in Section T.2 of this Declaration.

25. **"C.P.I. Adjusted"** means that the figure will be increased or decreased as the C.P.I. Index changes. The amount of the increase or decrease will be equal to the percentage change between (a) the C.P.I. Index published for December of 2008, and (b) the most recent December C.P.I. Index figure.

26. **"C.P.I. Index"** means the U.S. Department of Labor Consumer Price Index for All Urban Consumers – Honolulu. If the U.S. government stops publishing that index, then the most similar index available will be used in its place. The Board will choose the replacement index.

27. **"Cure Process"** shall have the meaning ascribed to it in Section S.1 of this Declaration.

28. **"Declarant"** means KRC Partners LLC, a Hawaii limited liability company, the address of which is 615 Piikoi Street, Suite 808, Honolulu, Hawaii 96814, the owner in fee

simple of the land described in EXHIBIT "A" attached hereto, its successors and assigns. All references to "Declarant" in this document shall include the successors and assigns. A Person shall be deemed a successor or assign of Declarant for purposes of this Declaration only if specifically so designated in a duly Recorded written instrument as a successor or assign of Declarant under this Declaration, and shall be deemed a successor or assign of Declarant only as to the particular rights or interests of Declarant under this Declaration that are specifically designated in the Recorded written instrument.

29. **"Declarant Control Period"** shall have the meaning ascribed to it in Section H.8 of this Declaration.

30. **"Declaration"** means this Declaration of Condominium Property Regime of Holomua, as amended from time to time.

31. **"Dispute"** shall have the meaning ascribed to it in Section T.2 of this Declaration.

32. **"DPR"** shall have the meaning ascribed to it in Section T.2 of this Declaration.

33. **"Hazardous Discharge"** means any event involving the use, deposit, disposal, spill, or release of any Hazardous Material on, within, about, or under the Project.

34. **"Hazardous Material"** means any hazardous or toxic substance, including those substances listed in the United States Department of Transportation Hazardous Materials Table (49 Code of Federal Regulations, Section 172.101), as amended, or by the Environmental Protection Agency as hazardous substances (40 Code of Federal Regulations, Section 302), as amended, and substances that are or become regulated under law, radioactive materials, petroleum and petroleum products, asbestos, organic compounds known as polychlorinated biphenyls, and chemicals known to cause cancer or reproductive toxicity.

35. **"Hazardous Materials Claim"** means:

(a) Any action instituted or threatened with respect to a Unit or the Project pursuant to any Hazardous Materials Law, and

(b) Any and all claims made or threatened by any third party against an Owner or the Association or any other Person seeking damages, contribution, cost recovery, compensation, injunctive relief, or similar relief resulting from a Hazardous Discharge or from the existence of any Hazardous Material on, within, about, or under the Project.

36. **"Hazardous Materials Law"** means any law now existing or hereafter enacted affecting the Project relating to environmental conditions, industrial hygiene, or Hazardous Materials.

37. **"HHFDC"** means the Hawaii Housing Finance and Development Corporation (or its successor entity).

38. **"HHFDC Affordable Units"** means those Units that are subject to Chapter 201H, the HHFDC Buy-Back Restrictions and the HHFDC Shared Appreciation Equity Program.

39. **"HHFDC Buy-Back Restrictions"** is defined in Section U.1.

40. **"HHFDC Shared Appreciation Equity Program"** is described in Section U.2.
41. **"High Expense Alterations"** shall have the meaning ascribed to it in Section L.1 of this Declaration.
42. **"Initial Meeting"** shall have the meaning ascribed to it in Section S.6 of this Declaration.
43. **"Invitee"** means any person other than an Owner or Occupant whose presence within the Project is approved by or is at the request of an Owner or Occupant, including, but not limited to, the family, guests, employees, vendors, customers, licensees, and invitees of Owners or Occupants.
44. **"Land"** means the land described in EXHIBIT "A" to this Declaration, including all easements and other rights appurtenant thereto.
45. **"Limited Common Elements"** shall mean those parts of the Project that are defined in Section D.5 of this Declaration.
46. **"Limited Common Expense"** shall have the meaning ascribed to it in Section I.1 of this Declaration.
47. **"Low-Expense Alterations"** shall have the meaning ascribed to it in Section L.1 of this Declaration.
48. **"Majority of Owners"** means the Owners of Units to which are appurtenant more than fifty percent of the total Common Interests in the Project. References to a certain percentage of the Unit Owners means the Owners of Units to which are appurtenant that percentage of the total Common Interests in the Project.
49. **"Management Agreement"** means the agreement described in Section H.3 of this Declaration.
50. **"Manager"** shall refer to the person, if any, retained by or on behalf of the Board pursuant to Section 5.3(d) of the Bylaws to manage the day-to-day operations of the Project, including a resident manager who maintains a residence at the Project.
51. **"Managing Agent"** means the agent engaged by the Board of Directors or Declarant pursuant to Section H.3 of this Declaration.
52. **"Mediation"** shall have the meaning ascribed to it in Section T.2 of this Declaration.
53. **"Member"** means every person who is entitled to membership in the Association, as provided in Section H.1(a) of this Declaration.
54. **"Membership"** means a membership in the Association.
55. **"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).

56. **"Mortgagee"** means the holder of a note or other interest secured by a Mortgage
57. **"Negotiation"** shall have the meaning ascribed to it in Section T.2 of this Declaration.
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58. **"Notice of Alleged Defect"** shall have the meaning ascribed to it in Section S.3 of this Declaration.
59. **"Occupant"** means and includes an Owner, occupant, tenant, family member, guest, lessee, and any other person who occupies or otherwise uses a Unit or any other part of the Project.
60. **"Owner Meeting"** shall have the meaning ascribed to it in Section S.10 of this Declaration.
61. **"Person"** shall refer to an individual, corporation, partnership, limited liability entity, association or other legal entity.
62. **"Preliminary List of Alleged Defects"** shall have the meaning ascribed to it in Section S.3(a) of this Declaration.
63. **"Project"** shall refer to the Holomua condominium project established by this Declaration and consisting of the Land described in EXHIBIT "A" to this Declaration (as may be amended), and the building, landscaping, improvements, and structures thereon (including the Units, Common Elements, and Limited Common Elements) and all easements, rights, and appurtenances belonging thereto.
64. **"Project Documents"** means this Declaration, the Bylaws, the Condominium Map, and the Project Rules, as each may be amended from time to time.
65. **"Project Rules" or "Rules"** means all of the rules and regulations that may be adopted and promulgated from time to time by the Board of Directors pursuant to the Bylaws; provided, however, that Declarant shall adopt the initial Project Rules on behalf of the Association.
66. **"Property"** means the Land, the building and all other improvements and structures thereon (including the Units, Common Elements, and Limited Common Elements) and all easements, rights, and appurtenances belonging thereto, and all other property with respect to which a Condominium Property Regime shall exist from time to time pursuant to this Declaration.
67. **"Real Estate Commission"** shall refer to the Real Estate Commission of the Department of Commerce and Consumer Affairs of the State of Hawaii, or any successor entity.
68. **"Record," "Recorded," "Recording," "Recordable," or "Recordation"** means an instrument of record, or the act of recording or causing to be recorded an instrument, in the Bureau of Conveyances of the State of Hawaii.

69. **"Request to Meet and Confer"** shall have the meaning ascribed to it in Section S.6 of this Declaration.

70. **"Settlement Offer"** shall have the meaning ascribed to it in Section S.8(b) of this Declaration.

71. **"Surrounding Operations"** shall have the meaning ascribed to it in Section Q.3 of this Declaration.

72. **"Surrounding Use Effects"** shall have the meaning ascribed to it in Section Q.3.

73. **"Unit"** means a part of the Project, designated and described in Section D of this Declaration and as shown on the Condominium Map, including the Common Interest appurtenant thereto, intended for a use permitted under this Declaration and the Act, with an exit to a public road or to a Common Element leading to a public road.

74. **"Unit Deed"** or **"Deed"** shall have the meaning ascribed to it in Section H.3 of this Declaration.

75. **"Unit Owner"** or **"Owner"** means a Person or the Persons owning, jointly or in common, a Unit; provided that:

(a) To such extent and for such purposes, including the exercise of voting rights, as shall be provided by Recorded lease, a lessee of a Unit shall be deemed to be a Unit Owner;

(b) The purchaser of a Unit pursuant to a Recorded agreement of sale shall have all the rights and obligations of a Unit Owner; provided that the seller may retain the right to vote on matters substantially affecting the seller's security interest in the Unit, as provided in the Act; and

(c) In the event that any interest in a Unit is transferred to a trustee under a land title-holding trust under which substantially all powers of management, operation, and control of the Unit remain vested in the trust beneficiary or beneficiaries, the beneficiary or beneficiaries of any such trust shall be deemed to be the Unit Owner to the extent of their interest therein except insofar as the trustee notifies the Association otherwise in writing. A transferee of the beneficial interest in any such trust shall have all of the rights and duties of a Unit Owner when notice of such transfer is given to the Association by the trustee. Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purposes, and the transferor may continue to be recognized by the Association as the Unit Owner and shall have all of the rights and obligations of ownership.

B. SUBMISSION TO CONDOMINIUM PROPERTY REGIME

Declarant hereby submits all of its right, title, and interest in and to the Property, including the Land described in EXHIBIT "A", and all improvements now located or hereafter constructed on the Land to a Condominium Property Regime as established by the Act. Declarant declares that the Land and improvements thereon are owned and shall be 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, which declarations, restrictions, covenants, and conditions shall constitute equitable servitudes, liens, and covenants running with the Land and shall be binding on and shall inure to the benefit of Declarant, all subsequent Unit Owners and Occupants, and their respective heirs, successors, successors in trust, personal representatives, and assigns. All of the provisions of this Declaration are intended to create mutual servitudes upon each Unit and to create reciprocal rights among the Unit Owners and Occupants.

C. PROJECT NAME

The condominium property regime established by this Declaration shall be known as **HOLOMUA**.

D. DESCRIPTION OF THE LAND, BUILDINGS AND UNITS

1. Land. The land submitted to this Condominium Property Regime is described in EXHIBIT "A" attached hereto.

2. Building and Units. The Project shall include 176 Units contained in one building, subject to Declarant's right to increase or decrease the number of Units, as set forth in this Declaration. The Project's building is more fully described in EXHIBIT "B" attached hereto and is shown on the Condominium Map. If the descriptions and divisions set forth in this Declaration conflict with the depictions and divisions shown on the Condominium Map, then the latter shall control. The Condominium Map is intended only to show the layout, location, boundaries, unit numbers, and dimensions of the Units and the elevations and floor plans of the building and is not intended and shall not be deemed to contain or make any other representation or warranty. To the extent that the Condominium Map shows or depicts any detail, feature or configuration of the Project that differs from the Project as constructed, the Condominium Map shall not constitute a representation or warranty by Declarant.

3. Limits of Units. The various Unit types are more particularly described in EXHIBIT "B" to this Declaration. Each Unit shall be deemed to include (a) all walls, columns, and partitions that are not load-bearing within the Unit's perimeter walls, (b) the surface area immediately interior (i.e., towards the interior of the Unit) from the undecorated or unfinished surfaces of all floors, ceilings, doors, door frames, window frames, interior load-bearing columns, girders, beams, and perimeter party or perimeter non-party walls (meaning that the entirety of all paint, wall paper, and floor covering (and, in the case of the floors, everything on top of the foundation or floor slab (whether made of concrete or other material)) is included as part of the Unit), (c) any doors or panels along the perimeter walls of such Unit, (d) all windows, including the glass or other material comprising the window, (e) the air space within the perimeter of the described area, (f) all appliances and fixtures, and replacements thereof, installed in the Unit, (g) all pipes, plumbing, shafts, ducts, pumps, wires, conduits, and other utility or service lines and facilities running through such Unit that are utilized for and serve only that Unit, (h) all cranks, rollers, and other window or sliding door hardware, and (i) all parts and appurtenances of any air conditioning unit that serves only the Unit (even if a portion of the air conditioning unit protrudes outside an exterior wall of the Unit). Anything in the previous sentence to the contrary notwithstanding, the respective Units shall not be deemed to include (u) the lanai shown on the Condominium Map, (v) the foundation or floor slab (whether made of concrete or other material), (w) the sub-surface portions of the ceilings (as opposed to the "surface areas" described above), (x) the sub-surface portions of the interior load-bearing

columns, girders, and beams (as opposed to the "surface areas" described above), (y) any pipes, plumbing, shafts, ducts, pumps, wires, conduits, and other utility or service lines and facilities running through a Unit that are utilized for or serve more than one Unit, or (z) the exterior of any window frames, all of which are deemed Common Elements or Limited Common Elements, as appropriate.

4. Common Elements. The "Common Elements" include the Land described in EXHIBIT "A" in fee simple and the Limited Common Elements described below, and all other portions of the Project, other than the Units, including, specifically, but not limited to, the common elements described in the Act that are actually constructed on the Land, and all other portions of the Project necessary or convenient to its existence, maintenance, and safety or normally in common use and that are not included as part of a Unit, including, but not limited to, those Common Elements described in EXHIBIT "B" and those that may be shown on the Condominium Map.

5. Limited Common Elements. Certain Common Elements, referred to as the "Limited Common Elements", are hereby designated and set aside for the exclusive use of certain Units, and such Units shall have appurtenant, exclusive easements for the use of such Limited Common Elements, subject to such easements and reservations as are set forth in the Project Documents. The Limited Common Elements, and the Unit(s) to which the Limited Common Elements are appurtenant, are described in EXHIBIT "B".

E. OTHER EASEMENTS AND RESERVED RIGHTS

In addition to the easements established as Limited Common Elements and any easements and reserved rights described in EXHIBIT "A" attached hereto or elsewhere in this Declaration, the Units and Common Elements shall have and be subject to the following easements and reserved rights:

1. Ingress/Egress, Support, Etc. Each Unit shall have appurtenant thereto nonexclusive easements in the Common Elements designed for such purposes for ingress to, egress from, utility services for, support of, and maintenance and repair of each such Unit (and its appurtenant Limited Common Elements) and for use of the other Common Elements according to their respective purposes, subject to the exclusive use of the Limited Common Elements as provided in this Declaration. Each Unit shall have an appurtenant easement for support in the other Units and Limited Common Elements in the building.

2. Encroachment. If any part of the Common Elements now or hereafter encroaches upon a Unit or Limited Common Element, or if a Unit now or hereafter encroaches upon another Unit or upon a portion of the Common Elements, then an easement shall exist for such encroachment and its maintenance for so long as the encroachment continues. If the building or other improvements of the Project are partially or totally destroyed and then rebuilt, or if a minor shift or settlement of the building or other improvements occurs, then easements shall exist for minor encroachments by parts of the Common Elements upon a Unit or Limited Common Element or by a Unit upon another Unit or parts of the Common Elements and for their maintenance for so long as the encroachments continue.

3. Declarant, Board, Association Access. Declarant, the Board and the Association shall each have the irrevocable right, exercisable by Declarant, the Board, the Manager, the Managing Agent or their respective designees, to have access to and enter each Unit and/or the

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 a Unit 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 Unit or any of the Common Elements.

4. Utilities. Each Unit Owner shall have an easement in common with the Owners of all of the other Units to connect, use, maintain, and repair all pipes, wires, ducts, cables, conduits, and public utility lines and other Common Elements located in another Unit and serving such Owner's Unit. Each Unit (and its appurtenant Limited Common Elements) shall be subject to an easement for necessary and reasonable access (for maintenance and repair purposes) to (a) any Common Elements located in the Unit (or within such Limited Common Elements) in favor of the Owners of all other Units served by such Common Elements, or (b) another Unit located in the same building in favor of the Owner of such other Unit.

5. Declarant's Rights Regarding Operation, Maintenance, Etc. Declarant shall have the unilateral right to designate, delete, grant, use, convey, transfer, cancel, accept, relocate, and otherwise deal with any easements and/or rights-of-way over, under, across or through the Common Elements of the Project 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 Unit, the Common Elements, any land owned by Declarant (or an affiliate of Declarant) in the vicinity of the Project, or any easements for utilities or for any public or private purpose.

6. Declarant's Rights Regarding Utilities, Access, Etc. Declarant 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 Units still owned by Declarant and the Common Elements of the Project, whether or not for purposes of developing or servicing other lands owned by Declarant (or an affiliate of Declarant) 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, owner's 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 Property and any portion of other lands owned by Declarant (or an affiliate of Declarant) in the immediate 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 Unit that is not owned by Declarant. Declarant 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. Each Owner, by purchasing a Unit, 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 instruments and do such other things as may be necessary or convenient to effect the same, within 10 days of a request by Declarant and without payment of additional consideration by Declarant. Declarant shall have the right, without being required to obtain the consent or joinder of any Unit Owner, lienholder or other Persons, to unilaterally execute, acknowledge, and deliver 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 rights, powers, and privileges granted or reserved by this Section E.6. Any such action shall be deemed taken by Declarant as the true and lawful attorney-in-fact of the respective Unit Owners and lienholders.

7. Sales, Marketing, Etc. Declarant, and its agents, employees, contractors, licensees, successors, and Mortgagees, shall have the right and an easement, without the consent or joinder of any party with an interest in the Project, including any other Unit Owner and/or Mortgagee, to conduct extensive sales, leasing, rental, marketing, and other commercial activities on and at the Project, including the use of any Unit (and appurtenant Limited Common Elements) owned by Declarant (and any other Unit (and appurtenant Limited Common Elements), with the express permission of the Owner of such Unit) and the Common Elements (excluding Limited Common Elements exclusively appurtenant to Units not owned by Declarant) for model units, 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 on the Project (including within the building) shall be and is hereby reserved at no cost or charge for the exclusive use of Declarant and its agents as an office for sales and other uses. Unless Declarant, in its sole discretion, terminates the rights earlier, the rights reserved in this Section E.7 shall continue until 90 days after the closing of the sale of the last Unit in the Project.

8. Punchlist. Declarant and its agents, employees, contractors, licensees, and Mortgagees shall have an easement over, under and upon, and the right to use, any portion of the Project, including the Common Elements, Limited Common Elements, and any Unit, as may be reasonably necessary or convenient for the completion of improvements to and correction of defects and other "punchlist" items in the Project. The rights reserved in this Section E.8 shall continue until thirty-six months after the later of: (a) the Recording of the "as built" verified statement required by Section 514B-34 of the Act, as to improvements covered by such statement; or (b) the "date of completion" of such improvements as defined in Section 507-43(f), Hawaii Revised Statutes; or (c) December 31, 2025.

9. Nuisances Related to Construction, Sale, Etc. Declarant and its agents, employees, contractors, licensees, successors, Mortgagees, and assigns shall have an easement over, under and upon all portions of the Project to create and cause noise, dust, traffic congestion, vibration, odors, and other nuisances or annoyances created by and resulting from any work connected with or incidental to the development, construction, and sale of any Unit or other improvement to the Project. Each and every Owner and other Person acquiring any interest in the Project waives any and all rights, claims, or actions that might otherwise be asserted against Declarant, its agents, employees, contractors, licensees, successors,

Mortgagees, and assigns, based on any such noise, dust, traffic congestion, vibration, odors, and other nuisances or annoyances.

10. Relating to Declarant's Units. Declarant reserves the right (but not the obligation), without obtaining the approval of any Person with an interest in the Project, including any other Unit Owner or Mortgagee, to: (a) transfer the exclusive use rights associated with a Limited Common Element appurtenant to any Unit owned by Declarant to another Unit owned by Declarant or the Association; (b) redesignate and/or convert Limited Common Elements appurtenant to any Unit owned by Declarant to Common Elements, and, upon such redesignation and/or conversion, the Association and/or the other Owners shall accept any such redesignation and/or conversion and shall not have any right to refuse or reject any such redesignation and/or conversion; (c) alter, maintain, repair, and/or replace any Limited Common Element appurtenant to Units owned by Declarant; (d) modify any of the uses associated with any Unit owned by Declarant or the Limited Common Elements appurtenant thereto, provided that any such use complies with applicable law; (e) retain such Units as Declarant in Declarant's sole discretion shall determine; (f) discontinue the use and availability by other Owners of certain Units (and their appurtenant Limited Common Elements) owned by Declarant; and (g) reasonable use of any Unit or other portion of the Project as permitted pursuant to Declarant's easements and reserved rights.

11. Association's Rights Regarding Operation, Maintenance, Etc. The Association shall have the right, exercisable by the Board of Directors, to designate, grant, use, convey, transfer, delete, accept, and otherwise deal with any easements and/or rights-of-way over, under, across or through the Units and the Common Elements of the Project as may be necessary for the operation, care, upkeep, maintenance, or repair of any other Unit, the Common Elements, or any easements for access, for utilities or for any public or private purpose. The rights of the Association referenced in this Section are subject to the proviso that no rights or easements in favor of Declarant can be affected without the written consent of Declarant.

12. Rights of Occupants. Except as otherwise provided in this Declaration, the Bylaws or the Project Rules, anyone who has the right or permission to occupy a Unit also has the right and a license to use the Common Elements and the Limited Common Elements appurtenant to the Unit occupied, to the same extent that the Owner of the Unit would have the right to do so. This includes, for example, a Person who rents or leases a Unit. This right and license are also subject to any limits contained in the rental agreement or lease with the Unit Owner. This right of use and license shall remain in effect only during the time period that the Person has the right to occupy the Unit.

To the extent necessary or required in connection with the reserved rights set forth above in this Section E, the parties benefiting from the reserved rights shall have the unilateral right to amend this Declaration, the Bylaws and/or the Condominium Map to effect the same.

F. COMMON INTEREST

1. Allocation of Undivided Common Interest. Each Unit shall have appurtenant thereto an undivided interest (referred to as the "Common Interest") in all Common Elements of the Project and the same proportionate share in all common profits and Common Expenses of the Project, except as otherwise provided in this Declaration or the Bylaws, and for all other purposes, including voting, as set forth in EXHIBIT "C" attached hereto; provided, however, that,

subject to the right (but not the obligation) of Declarant to temporarily assume all actual Common Expenses of the Project, all common profits and Common Expenses of the Project shall be allocated to and shared among only those Units for which a certificate of occupancy has been issued by the County, proportionate to the Common Interests appurtenant to such Units; provided, however, that if the County does not require certificates of occupancy for Units, then the relevant event shall be the County inspector's conclusion of the final inspection of the Units by signing off on the building permit that permits occupancy of the Units. The Common Interest appurtenant to each Unit is generally determined by dividing the approximate total net interior floor area of each such Unit (excluding the area of the Unit's Limited Common Element lanai) by the approximate total net interior floor area of all Units (excluding the areas of the lanais), and rounding off so that the total of all Common Interests equals 1.00000 (100.000%).

2. Alterations and Transfers of Common Interest. Except as provided in this Declaration, the Common Interest and easements appurtenant to each Unit shall have a permanent character and shall not be altered except by a Recorded amendment to this Declaration, which, except as otherwise provided in this Declaration, contains the consent of all Owners of Units affected thereby. The Common Interest and appurtenant easements shall not be separated from the Unit to which they appertain and shall be deemed to be conveyed or encumbered with that Unit even though such interest or easements are not expressly mentioned in the conveyance or other instrument. The Common Elements shall remain undivided and the right to partition or divide any part of the Common Elements shall not exist except as may be provided in this Declaration or the Act. Notwithstanding the foregoing, the Common Interest, voting rights, and easements appurtenant to each Unit may be altered (diminished or increased) by a Recorded amendment to this Declaration: (a) as may be determined necessary by Declarant, without the consent of any other Person, to correct any errors or misstatements of fact in the Project Documents and/or the legal description of the Property and/or to correct any typographical or mathematical errors in the statement of Common Interests; (b) upon the action or consent of all Owners of Units affected thereby and the consent of the holders of any Mortgage affecting such Units, if such consent is required under such Mortgage; (c) in the event of a combining of two or more Units into one Unit, as provided in this Declaration; and/or (d) as provided elsewhere in this Declaration.

G. PURPOSES AND RESTRICTIONS AS TO USE

Subject to the rights reserved to Declarant in the Project Documents, the Project and each of the Units are intended for and shall be restricted to the following purposes and uses, which, together with any other restrictions contained in the Project Documents are intended and shall be deemed to be cumulative.

1. Residential Purposes.

(a) The Units shall at all times be occupied and used only for residential purposes in accordance with applicable laws, this Declaration, and the Bylaws, and for no other purposes; provided, however, that the Units may be used for Home-Based Small Businesses (defined in Section G.1(c) below). Except for use as Home-Based Small Businesses, no Unit shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purpose. Notwithstanding anything in the previous sentences to the contrary, Declarant may use any Unit owned by Declarant, or any other Unit with the permission of the Owner, for a model unit, a sales office or such other purposes as Declarant shall deem

appropriate, and the Manager may use the Unit he or she occupies and any office within the Project provided for his or her use in connection with his or her duties as Manager.

(b) The HHFDC Affordable Units shall be subject to an owner-occupancy requirement pursuant to applicable provisions of Chapter 201H.

(c) **"Home-Based Small Business"** shall mean a business that: (i) is operated solely within the Unit incidental to the use of the Unit for residential purposes; (ii) is limited to arts and crafts, the rendition of professional services, or other similar activities; (iii) is operated solely by the Owner, tenant, or lessee of the Unit whose principal residence is the Unit; (iv) is permitted by, and is at all times in compliance with, all applicable laws, regulations, this Declaration, the Bylaws, and the Project Rules; and (v) does not result in (A) the violation of any of the provisions of the Project Documents, (B) any unreasonable increase in the flow of traffic within the Project, (C) any odor, noise, or vibration outside of the Unit, or (D) parking problems within the Project. No Owner or Occupant of a Unit shall regularly bring clients, customers, or other Invitees onto the Project for business purposes. Food catering and commercial food preparation are not included within the definition of Home-Based Small Business, meaning that those businesses are not allowed in any of the Units.

2. Owners' Transfer Rights.

(a) No Timeshares. No Unit or any interest therein shall be sold, transferred, conveyed, leased, occupied, rented, or used for or in connection with any timesharing purpose or under any timesharing plan, arrangement, or program, including without limitation any so-called "vacation license," travel club membership," or "time-interval ownership" arrangement. The term "timesharing" or "timeshare" as used in this Section G.2(a) 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 a Unit 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 Unit may be used as a rooming house or for bed and breakfast purposes.

(b) Owners' Right to Sell, Lease and Transfer. Subject to Section G.2(a) and subject to the HHFDC's use, sale and transfer restrictions affecting the HHFDC Affordable Units, Unit Owners shall have the absolute right, without obtaining the consent or joinder of any other Owners, to sell, lease, rent, or otherwise transfer their respective Units subject to all provisions of the Act and the Project Documents. So long as Declarant owns a Unit in the Project, no "open houses" or other on-Project advertising or marketing shall be permitted with respect to the sale of a Unit that is not owned by Declarant; provided, however, that, subject to applicable HHFDC restrictions, Unit Owners shall be permitted to list their Units for sale in the Multiple Listing Service ("MLS") and to show their Units by appointment to persons responding to the MLS listing.

(c) Lease/Rental of Units. No Unit (or portion thereof) may be leased or rented for an initial term of less than 30 days (or such longer period as may be required by ordinance of the County to avoid classification of the Unit as a "transient vacation unit"). Also, no Owner may rent any Unit in any manner by which the Occupants of the Unit are provided customary hotel or similar services, such as room service, maid service, laundry or linen

service, or bell service. Any lease or rental agreement of a Unit must be in writing, must not be in conflict with the provisions set forth herein, shall be (and shall provide that it is) subject in all respects to the requirements and provisions of the Project Documents, and shall provide that the failure of the lessee or tenant to comply with the terms of the Project Documents shall be a default under the lease or rental agreement. The restrictions set forth above shall not, in and of themselves, prohibit multiple Owners from owning a Unit as joint tenants or tenants in common. If a Unit Owner rents his Unit to any third party, then the Owner shall provide each tenant with a copy of the Project Rules and shall require each tenant to sign a written statement acknowledging that such tenant has received and read the Project Rules and agrees to comply fully therewith. An Owner who rents his Unit shall at all times remain primarily and severally liable to all other Unit Owners and to the Association for any failure on the part of such Owner's tenant(s) to observe and comply with all provisions of this Declaration, the Bylaws, the Project Rules, and all applicable laws. **Anything in this Declaration (including this subsection (c)) to the contrary notwithstanding, no Unit restricted with the HHFDC Buy-Back Restriction or the HHFDC Shared Appreciation Equity Program shall be leased or rented.**

3. No Injury to Project; Overloading. Nothing shall be allowed, done, or kept in any Unit or Common Element (including the Limited Common Elements) of the Project, for any purpose, that would, as reasonably determined by the Board, (a) injure the reputation of the Project, (b) jeopardize the safety or soundness of the building, (c) create a nuisance or interfere with or unreasonably disturb the rights of other Owners and Occupants, (d) overload or impair the floors, walls, or roofs of the building, (e) result in the cancellation of any insurance required for the Project, (f) reduce the value of the Project or the building, or (g) impair any easement; provided, however, that this provision shall not prevent a Unit from being used for a purpose specifically permitted under this Declaration.

4. Rules Regarding Guest Stalls. Use of those parking stalls, if any, that are specifically designated as "guest" stalls and are not otherwise designated as Limited Common Elements appurtenant to any specific Unit, may be governed by rules and regulations that may be adopted in accordance with the Project Documents to assure equitable use of the stalls by Owners and Occupants and their tenants or guests. The Board of Directors may install parking meters, gates, security devices, checkpoints, and other equipment appropriate to this end and may issue stickers or adopt an allocation system.

5. Promotional Purposes. As long as there are Units in the Project that have not been conveyed by Declarant to a third party, Declarant shall have the right to use any of the Project's Common Elements, any Unit that it owns and any Limited Common Elements appurtenant thereto for promotional purposes, and shall have the right to have guests stay in such Units for any length of time; provided that such guests shall abide by and be subject to all of the applicable provisions of the Project Documents. Declarant may grant license rights to the Limited Common Elements appurtenant to any Unit owned by Declarant to the Association or to a third party to the extent permissible under the law. Additionally, Declarant will have the right to utilize any of the Common Elements, any Units that it owns or any Limited Common Element appurtenant thereto as sales offices or as a place that is utilized to provide services to the Owners or other Occupants of the Project, to the extent such use or uses are permitted under applicable law. Declarant shall also have the right to construct a temporary sales center on a portion of the Project and to use such temporary sales center and the surrounding area for sales and marketing purposes.

6. Use of Common Elements. Each Unit Owner may use the Common Elements in accordance with the purpose(s) for which they were intended under this Declaration and without hindering or encroaching upon the lawful rights of the other Unit Owners, subject to:

(a) The rights of other Unit 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 subsection 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 Units 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 Unit Owners for a purpose permitted in this Declaration. Unless the lease is approved by at least 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 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;

(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 Unit Owners for a purpose permitted in this Declaration. The lease or use shall be approved by at least 67% of the Owners, including all directly affected Unit 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;

(g) The right of the Board to enact, amend, repeal, and enforce rules and regulations reasonably restricting and regulating use of the Common Elements, provided that such rules and regulations shall be enacted, amended, repealed, or enforced in accordance with, and shall be consistent with, the terms of the Project Documents and shall not be in derogation of the rights reserved to Declarant in the Project Documents;

(h) The rights reserved to Declarant in this Declaration or in the Bylaws; and

(i) Any agreements entered into by Declarant, by or on behalf of Declarant and/or the Association.

7. Exterior Appearance.

(a) It is intended that the exterior of the Project shall present an attractive and consistent appearance. To that end, the Owners hereby agree that the Board (or, prior to the first election of the Board, Declarant) may (i) regulate the type(s) and color(s) of window coverings (including tinting) that may be used in and outside the Units, and (ii) arrange for the repair or painting (in colors and types of paint determined by the Board) of the lanais, outside doors, windows, trim, fences, railings, perimeter walls, gates and other exterior portions of the Project. Such repair or painting resulting from an Owner's negligence, misuse or neglect, as determined by the Board, shall be at the Owner's expense. All other costs and expenses of such repairs or painting shall be a Common Expense.

(b) No Unit Owner shall, without the prior written consent of the Board and, if Declarant owns any Units in the Project, Declarant, place or permit the placement of any attachment, hanging, projection, or protrusion of any object, garments, or materials of any kind from the roof, lanais, exterior walls, windows, or doors of the Units, or place or permit the placement of any other matter or decoration inside or out of the Unit, which shall be visible from the exterior of the Unit. All curtains, drapes, shutters, blinds, window tinting and window coverings of Units that are visible from the exterior of the Unit shall be standardized to reflect a consistent exterior appearance of the Project. Installation of curtains, drapes, shutters, blinds, window tinting and window coverings that differ from standard type, size, style, and color used in the Project require the prior written consent of the Board and, if Declarant owns any Units in the Project, Declarant. No Unit Owner shall change or alter any of the exterior glass windows, in any way, or change the exterior appearance of the Project in any manner, without the prior written consent of the Board and, if Declarant owns any Units in the Project, Declarant. No Unit Owner shall, without the written consent of the Board, place or permit the placement of any object on or within any portion of the Common Elements.

8. Interiors of Units.

(a) The maintenance, repair and replacement of the interior of each Unit and of the internal installations within each Unit, such as plumbing and lighting fixtures, water, light, power, sewage, telephone, cable television, telecommunications, sanitation, doors, windows, lamps, ventilation fans, and air conditioning and all other appliances, equipment, fixtures and accessories belonging to such Unit, including interior walls and partitions and the inner decorated or finished surfaces of the perimeter walls, floors, and ceilings of such Unit shall be performed by and at the Owner's expense. Each Unit Owner shall be responsible for any damage or loss to any other part of the Project caused by a failure to do so. Notwithstanding the foregoing, the exterior portions of the windows of the Units (including their lanais) that are not accessible without a ladder or stepstool shall be cleaned by the Association and charged to the Unit Owners as a Common Expense against all of the Units. The frequency of such cleaning by the Association shall be determined by the Board.

(b) The Board shall have the right, but not the obligation, from time to time, to direct the Manager or the Managing Agent to enter Units to inspect the components of each Unit's air conditioning equipment located therein, including, without limitation, the controls, valves, piping, vents, ducts, compressor, fan, refrigerant coil and piping, condensate drain pan and piping, and filters, and, in order to prevent damage to the Common Elements or other Units

or for safety reasons, to perform, at the Unit Owner's expense, any required maintenance or repair of that equipment. Maintenance and repair of the air conditioning equipment shall only be by licensed air conditioning repair personnel.

(c) The Board shall have the right, but not the obligation, from time to time, to inspect the washing machine hoses, water heaters and ventilation fan in each Unit and, for safety reasons, for preventative maintenance or in order to protect other Units or the Common Elements from damage, to clean, replace, maintain and repair the same (or to require Owners to do so), all of which shall be at the expense of the Owner of that Unit. The Board may regulate the types of washing machine hoses and water heaters that may be used in the Units.

(d) The Board shall have the right, but not the obligation, from time to time, to direct the Managing Agent or the Manager to enter the Units to spray, fumigate, or otherwise treat the Units to control or eliminate insects and other pests.

9. Lanais.

(a) Each Unit Owner shall be responsible for the care and maintenance of the lanai that is appurtenant to the Owner's Unit. If an Owner does not properly care for or maintain the lanai or otherwise uses the lanai in violation of the Project Documents, then the Manager, on behalf of the Board or the Association, shall have the right to enter the lanai, via the Unit, and summarily abate, remove or alter, at the expense of the Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the Project Documents, and neither the Manager, the Board nor the Association shall be deemed guilty in any manner of trespass.

(b) Except with respect to "coverings" (defined below), if any, installed by or on behalf of Declarant, no awnings, trellises, shades, blinds, screens, louvers, enclosures, coverings, jalousies or other devices ("coverings"), or exhaust vents, wind baffles, or drains shall be erected or placed on the lanais.

(c) The Project Rules may set forth additional provisions relating to the lanais.

10. Generally.

(a) The Board shall have the right and authority to limit or restrict access to and/or use of certain of the Project's Common Elements (e.g., the roof of the building, utility closets/rooms, elevator mechanical rooms, electrical equipment rooms, and other areas that would not ordinarily be open to the public in an apartment or office building, and elevators and stairways not serving an Owner's Unit) to persons authorized by the Board. Such limitation, restriction or authorized access by the Board shall be for the following reasons: (i) to perform inspections, maintenance, or repairs on or to such Common Elements; (ii) to enhance privacy and security for those Owners whose Units are actually served by such Common Elements; and (iii) for such other reasons as the Board shall determine in its reasonable discretion.

(b) No person shall discharge into the Project's sewer system storm drain any Hazardous Material or any toxic or noxious matter in such concentrations as to be detrimental to or endanger the public health, safety or welfare, violate any law, subject any Owner to liability under state or federal law for any clean-up, or cause injury or damage to any portion of the Project or any property outside of the Project.

(c) No Unit Owner or Occupant of a Unit shall, without the prior written consent of the Board or in accordance with the Project Rules, if applicable provisions are stated therein, display any sign or place any other thing in or upon any door, window, wall, or other portion of a Unit or the Common Elements so as to be visible from outside of the Unit; provided, however, that this shall not prevent Declarant from utilizing such signs or displays as it desires in connection with its development, marketing and/or sales activities.

(d) Nothing shall be done within the Units that may be, or may become, an annoyance, disturbance, or nuisance to other Owners or Occupants or the Project, or which shall in any way interfere with the quiet enjoyment of each of the Owners of their respective Unit.

(e) Use of the recreational facilities of the Project (e.g., the activity room, etc.) shall be limited to Declarant, Unit Owners, Occupants of a Unit, and their guests, subject, however, to the relevant provisions of the Project Documents. Guests using the recreational facilities of the Project must at all times be accompanied by a Unit Owner or Occupant of a Unit.

(f) All exterior lighting emanating from a Unit shall be shielded and directed away from other Units, the Common Elements, and any abutting lots. All external lighting within the Project shall be only of the following types: shielded lights; cut-off lights; or indirect lighting. Except with respect to spotlights installed by or on behalf of Declarant or allowed by the Board, spotlights aimed upward or toward abutting lots and spotlighting of structures and landscaping are prohibited.

(g) No emissions from ducts located in any Unit shall be discharged into any other Unit. No odorous matters shall be emitted upon or about the Project in such quantity as to be readily detectable outside the physical boundaries of the space within which the odor was generated. Unless otherwise permitted by the Project Documents, no Owner shall serve food or beverages, cook, barbecue, or engage in similar activities, except within such Owner's Unit and except within the Limited Common Elements appurtenant to such Owner's Unit or the Common Elements designated for such purpose, if any, subject to the provisions of the Project Documents.

(h) Because the Project has no residential dwelling units on the ground floor (and, thus, none with a ground floor entry), the operation of a family child care home within the Project is prohibited; provided, however, that if such prohibition is determined by appropriate judicial or arbitration authority to be contrary to law, then all limitations to operation of family child care homes allowed under Haw. Rev. Stat. Chapter 502C shall apply.

(i) Unless such occupancy restrictions are prohibited by applicable law, occupancy is limited to no more than two persons per bedroom in each Unit, not including children under the age of five years, but in no event shall the number of Occupants per bedroom exceed three, including children under the age of five years.

11. Antennae. Except for rights reserved to Declarant under this Declaration to install such items, no radio station, satellite, or shortwave operators of any kind shall operate from any Unit or any other portion of the Property unless approved by the Board. With the exception of: (a) any master antenna or wireless router maintained by the Association; (b) the cable system maintained by the applicable cable franchisee; or (c) anything installed by or on

behalf of Declarant, no exterior radio antenna, "C.B." antenna, television antenna, receiving station, satellite dish, or other antenna of any type shall be erected or maintained anywhere on the Property. The restrictions and prohibitions set forth in this Section shall be subject to and consistent with rules and regulations promulgated by the Federal Communications Commission, pursuant to Section 207 of the Telecommunications Act of 1996. Normal radio, stereo, high fidelity, and television equipment installation within a Unit is excepted from the provisions of this Section; provided, however, that in no event shall such radio, stereo, high fidelity, television equipment, or other electrical equipment interfere with the use of any such equipment by any other Owner within the Project.

12. Non-Applicability to Declarant. The foregoing provisions of this Section G shall not apply to Units owned by Declarant or to any improvements proposed or made by Declarant in connection with its development, construction, promotion, marketing, sale, or leasing of any Unit or any other portion of the Project. Anything in this Declaration to the contrary notwithstanding, Declarant may use any Unit owned by Declarant, or any other Unit with the permission of the Owner, for a model unit, a sales office, or such other purposes as Declarant shall deem appropriate.

13. Manager's Office. Notwithstanding anything in this Section G to the contrary, the Manager may use his or her designated office in connection with his or her duties as Manager.

H. ASSOCIATION; ADMINISTRATION AND MANAGEMENT OF THE PROJECT

1. Formation, Membership, and Voting Rights. The Association has been, or will be, incorporated as a non-profit corporation to serve as the governing body for all Owners for the protection, improvement, alteration, maintenance, repair, replacement, management, administration, and operation of the Project, the assessment of Owners and the collection of assessments, the payment of losses, the disposition of casualty insurance proceeds, and other matters as provided in the Project Documents. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the benefit of the Owners in accordance with the provisions of the Project Documents.

(a) Members of the Association shall be each Unit Owner (including Declarant). The Owner of a Unit shall automatically be the holder of the Membership in the Association, which Membership shall be appurtenant to the Unit. There shall be one Membership in the Association for each Unit owned in the Project, provided that when more than one person owns a Unit, all such persons shall be considered Members.

(b) All Memberships shall initially belong to Declarant and shall automatically pass with the fee simple title to each Unit.

(c) Each Member shall be obligated promptly, fully, and faithfully to comply with the provisions of the Project Documents.

(d) The Association shall have one class of voting membership and each Owner shall be entitled to such vote as is provided in this Declaration or the Bylaws. When a Unit is owned of Record by two or more Persons, any one of them present at any meeting may exercise the voting rights appurtenant to the Unit in the absence of protest by any other Owners of that Unit. In case of protest, each cotenant shall be entitled to vote a fraction only of such

vote in proportion to the cotenant's share of ownership in such Unit. Joint tenants and tenants by the entirety shall be deemed to have equal ownership interests.

2. Administration. The administration of the Project shall be governed by the Act, the Project Documents, and any agreements, decisions, and determinations lawfully made by Declarant, the Association, the Board of Directors, or the Managing Agent. The right and duty to administer the Project is vested in the Association and the Board of Directors in accordance with this Declaration and the Bylaws. Issues and decisions relating to Common Expenses and to those Common Elements that are not also Limited Common Elements shall be addressed and made by the Board, unless the Act, this Declaration or the Bylaws provide (or unless the Board determines) that the issue or decision should be addressed or made at the Association level.

3. Management. The management and control of the Association's affairs and of the Project's Common Elements shall be the responsibility of the Board of Directors, acting on behalf of the Association; provided, however, that management and operation of the Project and the everyday management of the Association's affairs shall be conducted for the Board and the Association by a responsible, professional corporate managing agent, experienced in the operation of condominium projects and duly registered with the Real Estate Commission, who shall be appointed by the Board of Directors in accordance with this Declaration, the Bylaws and the Act (the "Managing Agent"); provided that the initial Managing Agent has been appointed by Declarant (on behalf of the Association while it is controlled by Declarant); provided, further, that the Management Agreement (defined below) entered into between Declarant and the Managing Agent gives the Board the right to terminate it under and subject to certain conditions. The Managing Agent, which shall be responsive to the direction of the Board pursuant to a written agreement (the "Management Agreement"), shall, at all times, be in compliance with the fidelity bond and other requirements of the Act relating to managing agents. By acceptance of a deed of a Unit, lease or other conveyance of an interest in a Unit ("Unit Deed"), each and every Owner and other Person acquiring such interest, including the holders of mortgage liens on individual Units, acknowledges and consents to, ratifies, and accepts the terms and provisions of the Management Agreement.

4. Rights, Powers and Duties Of The Board. The Board shall have such rights and powers as are delineated in the Act, this Declaration, and in the Bylaws. The Board shall have such duties as are delineated in the Act, this Declaration and the Bylaws. Among the many duties of the Board will be the duty to cause the Association to accept and assume the Association's obligations under and/or to accept assignments of agreements entered into by Declarant on behalf of the Association, including, without limitation, the Management Agreement with the initial Managing Agent.

5. Service of Process. The Managing Agent is authorized to receive service of legal process in all cases provided in the Act. The initial Managing Agent is Hawaiiiana Management Company, Ltd., the address of which is 711 Kapiolani Boulevard, Suite 700, Honolulu, Hawaii 96813. In addition, process may be served upon any member of the Board who has a residence or place of business within the County. Until such time as the Board is elected, Declarant (attention: Mr. David Bierwert), at 615 Piikoi Street, Suite 808, Honolulu, Hawaii 96814, shall serve as agent for service of legal process.

6. No Relief of Responsibility. Nothing in this Section H is intended or shall be deemed to relieve any Owner of its responsibility for such Owner's Unit, or the Limited Common Elements appurtenant thereto, pursuant to and in accordance with the Project Documents.

7. Acceptance of Property by Association. The Association may accept and acquire title to property; provided, however, that the Association is not authorized to acquire or invest in property simply for the purpose of acquiring income or a financial profit, and the Association shall not carry on any business, trade, association, or profession for profit. In accepting or acquiring title to property, the Association shall be authorized to take on debt to help finance payment for the property. Any such debt shall be a Common Expense of the Project.

8. Declarant Control Period. Declarant shall exercise all of the rights and incidents of Membership for a Unit, including voting, until closing of the sale of the Unit occurs; provided, however, that, notwithstanding the foregoing or anything else in this Declaration or the Bylaws to the contrary, Declarant shall control the Association and appoint and remove the officers and members of the Board until expiration of the "Declarant Control Period", which shall be the earlier of: (a) 60 days after conveyance of 75% of the Units to Unit Owners other than Declarant or an affiliate of Declarant; (b) two years after Declarant has ceased to offer Units for sale in the ordinary course of its business; (c) two years after any right to add new Units was last exercised by Declarant; or (d) the day Declarant, after giving written notice to Unit Owners, Records an instrument voluntarily surrendering all rights to control activities of the Association. If Declarant voluntarily surrenders its right to control activities of the Association, then Declarant may require that specified actions of the Association or the Board, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective. As part of the exercise of Declarant's control, Declarant shall be entitled to appoint the initial Managing Agent on behalf of the Association.

I. COMMON EXPENSES, COMMON ASSESSMENTS, SPECIAL ASSESSMENTS, AND RESERVE FUNDS

1. Common Expenses.

(a) Generally. Except as otherwise provided in the Project Documents, all charges, costs, and expenses incurred by the Association for or in connection with the administration, management, and operation of the Project, and all other amounts designated as common expenses under the Act, this Declaration, or the Bylaws, shall constitute "Common Expenses". Except as otherwise provided in the Project Documents, the Board shall from time to time assess Common Expenses against the Units in their respective proportionate share as set forth herein. Common Expenses shall generally be assessed and paid via Common Assessments.

(i) Identification of Common Expenses. Except as otherwise provided in the Project Documents, Common Expenses shall include, without limitation, all charges for real property taxes that are not assessed separately on each Unit, governmental assessments that are not assessed or allocated separately against each Unit; premiums for insurance for the Common Elements or for all of the Units, including fire and other casualty and liability insurance, required or permitted to be maintained by the Association pursuant to this Declaration or the Bylaws, any liability of the Association for loss or damage arising out of or in connection with the Common Elements or any accident, fire or nuisance thereon, special assessments by the Association against all of the Units, costs of maintenance, repair,

rebuilding, replacement and restoration of the Common Elements of the Project, and any additions, alterations or improvements thereto, costs of yard, landscaping, janitorial, security and other similar services for all of the Units and/or serving the Common Elements; wages, accounting, legal and management fees; start-up fees and other necessary expenses of upkeep, maintenance, management, and operation actually incurred on or for the Common Elements, the fee paid to the Managing Agent pursuant to the Management Agreement, the costs associated with the Project's administrative and office staff (including the Manager); and the cost of all utility services (including water, electricity, gas, refuse disposal, sewer, and any similar services), unless such charges, costs and other expenses are separately metered or allocated, and the costs associated with any such separate metering or allocation. The Common Expenses shall also include such amounts as the Board of Directors may deem proper for the payment of any deficit in the common expense assessments for any prior year, for a reserve fund for the operation and maintenance of the Project and a reserve fund for working capital and replacements, repairs and contingencies. The Common Expenses shall also include such amounts as may be required, by regular or special assessment, for the purchase, lease, maintenance, repair and/or use of any Unit for the Manager, the Association, the Board or its designee, corporate or otherwise, on behalf of the Association; provided, however, that prior to such purchase or lease of a Unit, the approval, by vote and/or written consent, of at least 67% of the Owners must be obtained, provided that such approval shall not be required in order to purchase a Unit in a foreclosure proceeding; provided, further, however, that no such vote or written consent shall be required or solicited for the Board and/or the Association to accept the rental, leasing or conveyance of a Unit from Declarant, such acceptance being a mandatory obligation.

(ii) Responsibility. Each Unit Owner shall be severally liable for payment of the Common Expenses (via the assessment and payment of Common Assessments) allocable to their Unit in proportion to the Common Interest appurtenant to such Owner's Unit; provided, however, that all common profits and Common Expenses of the Project shall be allocated to and shared among only those Units for which a certificate of occupancy has been issued by the County, proportionate to the Common Interests appurtenant to such Units; provided, however, that if the County does not require certificates of occupancy for Units, then the relevant event shall be the County inspector's conclusion of the final inspection of the Units by signing off on the building permit that permits occupancy of the Units.

(iii) Limited Common Element Charges. The foregoing to the contrary notwithstanding, Unit Owners shall be charged for costs and expenses incurred with respect to Limited Common Elements (defined as "Limited Common Expenses") as follows: Each Unit Owner shall be charged all costs and expenses (including, but not limited to, maintenance, repair, replacement, additions, and improvements) of each Limited Common Element appurtenant to his or her Unit. If a Limited Common Element is appurtenant to two or more Units, all of such costs and expenses shall be charged to and divided among each of the Owners of such Units in the proportion that the Common Interest appurtenant to each Unit bears to the total Common Interest of all such Units to which such Limited Common Element is appurtenant. It is recognized that extra costs and work may be incurred to separately account for and charge Unit Owners for costs and expenses relating to the Limited Common Elements and that such extra costs and work may not be justified when taking into account the amount of the cost or expense, the difficulty of segregating such costs and expenses, the number of Units to which similar Limited Common Elements are appurtenant, the apparent difference in the amount of the various assessments to Unit Owners if such costs and expenses were separately charged rather than being assessed on the basis of each Unit's Common Interest, and other

factors that the Board deems relevant. Accordingly, the Board may decide by resolution to assess certain types of costs and expenses of Limited Common Elements or to assess all costs and expenses of certain similar Common Elements to all Owners in accordance with the Common Interest appurtenant to their respective Units, if the Board determines, in good faith with due regard to the fiduciary duty owed by the Board to all Owners, that such a method of assessment would be equitable. Such a determination shall be final and binding on all Unit Owners in the absence of a clear showing of abuse of discretion by the Board.

(iv) Owner Maintenance Responsibility. The preceding provisions are not intended to and shall not relieve the Owners of their responsibilities for Limited Common Elements appurtenant to their respective Units as provided in other provisions of this Declaration and the Bylaws. Notwithstanding the foregoing, all costs and expenses of maintaining, repaving, and/or restriping the parking stalls (including those that are Limited Common Elements to the Units) shall be charged collectively to all of the Unit Owners as Common Expenses, to be paid as Common Assessments, unless the maintenance, repaving and/or restriping of one or more parking stalls is necessitated by the act or neglect of an Owner or Occupant of a Unit, in which case the Board can decide to charge the costs of such maintenance, repaving, and/or restriping to the applicable Owner as a special assessment.

(b) Expenses Not Considered Common Expenses. Taxes, governmental assessments, and other charges or expenses that are or may hereafter be assessed or charged separately on each Unit (or less than all the Units) or personal property or other interest of a Unit Owner (or less than all the Unit Owners), including real property taxes and charges for utilities or other services that are separately metered or separately chargeable or attributable to an individual Unit (or less than all the Units) and special assessments against less than all the Units, shall be assessed on and collected from the individual Units, shall be paid by the individual Unit Owners and, if necessary, in such amounts as shall be calculated by the Board with the advice of an engineer, certified public accountant or other consultant. Such charges and expenses shall not be Common Expenses of the Project and no payment thereof shall be considered payment toward Common Expenses, but such amounts shall, together with all costs and expenses for collection thereof, including reasonable attorneys' fees, constitute a lien on the Unit or Units served, which may be foreclosed in the same manner as Common Expenses.

(c) Special Assessments. In addition to the regular assessment of Common Assessments to pay for Common Expenses, the Board may, from time to time, make special assessments, in the same manner as the assessment of Common Assessments, to cover those Common Expenses not covered by regular monthly assessments. All charges, costs, and expenses incurred by the Association that are necessitated by or result from the negligence, misuse, excessive use, or neglect of an Owner or Occupant of a Unit or any person claiming under either of them shall be charged to such Owner or the Owner of the Unit of such Occupant, as a special assessment. (As an example, but without limitation, if the Association incurs costs to repair or maintain a portion of the Property that one or more, but less than all, of the Unit Owners is supposed to repair or maintain, then such costs shall be charged to such Owner or Owners as a special assessment.) The Board may also make special assessments against the Owner of one or more Units to collect any amount owed by a Unit Owner under the provisions of the Act or the Project Documents. Each Unit Owner shall be obligated to pay, and shall be liable for payment of, such special assessments as may be assessed against such Owner's Unit.

(d) Payment of Assessments and Charges. Regular assessments of Common Assessments shall be payable in monthly or such other installments as may be determined by the Board. Declarant shall fix the rate of regular installments of Common Assessments until such rate shall be re-determined by the Board. Special assessments and costs, expenses and fees recoverable by the Association under Section 514B-157 of the Act and the provisions of the Project Documents, and any penalties and late charges, shall be payable upon request therefor, as from time to time made by the Board or the Managing Agent.

2. Utility Expenses. The cost and expense of utility services to any Unit or Limited Common Element that are separately metered, sub-metered or check-metered (and any cost of reading or otherwise administering the meters) shall be paid by the Unit Owner(s) or the Owner(s) of the Unit(s) to which such Limited Common Element is appurtenant, payable directly to the utility company if a separate bill is rendered or to the Association on demand. Unless otherwise determined by the Board, all utility expenses not separately metered, sub-metered, check-metered or allocated shall be assessed against, and paid by, the Unit Owners in proportion to the total Common Interests.

3. Creation of Lien and Personal Obligation to Pay Assessments. Each Unit Owner, by acceptance of a Unit Deed or other conveyance of an interest in a Unit and/or title thereto, whether or not it shall be so expressed in such Unit Deed, is deemed to covenant and agree to pay to the Association the Common Assessments (and special assessments) assessed against the Unit to pay the Unit's share of Common Expenses and other charges, as may be established and collected from time to time, as provided in this Declaration and the Bylaws. The unpaid amount of all assessments against a Unit, including Common Assessments and special assessments, together with interest thereon, penalties, fines, late charges, attorneys' fees, court costs, and other costs of collection thereof (collectively, "Collection Costs"), assessed against a Unit shall constitute a lien against such Unit that may be foreclosed by the Board or the Managing Agent as provided for in the Bylaws and/or in the Act, provided that 30 days' prior written notice of intention to foreclose shall be mailed, postage prepaid, by first class mail and by an express mail service that provides proof of delivery, to the Unit Owner and all other Persons having any interest in such Unit as shown on the Association's record of ownership, including Mortgagees of Record. Said lien shall constitute a lien prior to all other liens, except (a) all sums unpaid to HHFDC under the HHFDC Shared Appreciation Equity Program pursuant to Chapter 201H, (b) liens established by the use, sale and transfer restrictions of the HHFDC Buy-Back Restrictions and/or the HHFDC Shared Appreciation Equity Program in favor of HHFDC, as established and/or set forth in Chapter 201H, (c) liens for taxes and assessments lawfully imposed by governmental authority against the Unit, and (d) all sums unpaid on any Mortgage that was Recorded prior to the Recordation of a notice of lien by (or on behalf of) the Association, and costs and expenses (including attorneys' fees) provided in such Mortgage. Upon receipt of such notice, any Mortgagee of Record shall be entitled to pay all unpaid amounts of any such assessment and the Board, acting on behalf of the Association, shall accept such payment in satisfaction thereof and thereupon release and discharge the lien securing the payment thereof. The Managing Agent, acting on behalf of the Association and as directed by the Board, shall be entitled to bid on a Unit at foreclosure sale and to acquire, hold, lease, mortgage and convey such Unit. An action to recover a money judgment for unpaid Common Assessments, special assessments and Collection Costs shall be maintainable without foreclosing or waiving the lien securing such amounts. Each described assessment and fee, together with such Collection Costs, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment fell due.

4. Purchase By Mortgagee. Except as provided in the Act, this Declaration or the Bylaws, when a Mortgagee of Record or other purchaser of a Unit acquires title to such Unit as a result of a forfeiture or as a result of foreclosure and sale or a conveyance in lieu of foreclosure, the party acquiring title in such manner shall not be liable for any share of Common Expenses that became due prior to such acquisition of title. Except as provided in the Act, this Declaration or the Bylaws, the unpaid share of Common Expenses shall become Common Expenses to be collected from all Unit Owners, including such Mortgagee or such other purchaser and their respective heirs, successors, legal representatives, and assigns.

The Mortgagee of Record or other purchaser of the Unit shall be deemed to acquire title and shall be required to pay the Unit's share of the Common Expenses upon the first to occur of: (a) 36 days after an order confirming the sale to the purchaser has been filed with the court; (b) 60 days after a hearing at which the court grants the motion to confirm the sale to the purchaser; (c) 30 days after the public sale in a nonjudicial power of sale foreclosure pursuant to Section 667-5 of the Hawaii Revised Statutes, as amended; or (d) upon the Recording of the Unit Deed or other instrument conveying title in the Unit to the purchaser.

5. No Exemption From Liability. No Unit Owner may be exempt from liability for the Unit Owner's share of the Common Expenses or Common Assessments by waiver of the use or enjoyment of any of the Limited Common Elements or Common Elements or by abandonment of the Owner's Unit.

6. Working Capital. A working capital fund shall be established to meet unforeseen expenditures, to purchase any additional equipment or services, and/or for such other purposes as the Board may deem proper from time to time, including, without limitation, to supplement or cover a deficit in Common Assessments for the current or any prior year. The initial funds comprising the working capital fund shall be obtained by assessing each initial Unit Owner an amount equal to two months of the estimated share of Common Assessments for each Unit, which shall not be considered an advance payment of Common Assessments. Declarant shall not be required to pay such assessment for unsold Units.

7. Reserve Funds. The Board shall establish and maintain reserve funds in accordance with the provisions of the Act and the Bylaws to provide protection for the payment of common utilities, insurance, maintenance, repair, restoration, and replacement of the Common Elements and the furniture, fixtures, and mechanical equipment thereof, and other expenses of administration and management of the Project and such other regular and ongoing expenses or recurring liabilities as the Board may reasonably foresee. The amounts of such reserve funds shall be considered a Common Expense and shall be assessed to the Owners as provided in Section 1.1(a) above. Such reserve funds shall meet the requirements set forth in the Bylaws and the Act. The Board may also establish reserves for unexpected contingencies and liabilities and such contingency reserves may from time to time be increased or decreased at the discretion of the Board. The amount of such contingency reserves shall be considered a Common Expense and shall be assessed to the Owners as provided in Section 1.1(a) above. Any amount of the collected Common Assessments that is allocated, used or to be used for capital improvements, or any other capital expenditure, shall not be deemed income to the Association but shall be credited upon the books of the Association to paid-in surplus as a capital contribution by the Owners.

The proportionate interest of each Owner in all reserve funds of the Association shall not be withdrawn or assigned separately but shall be deemed to be transferred with such

Unit even though not mentioned or described expressly in the instrument of transfer or conveyance. If the Condominium Property Regime established hereby is terminated or waived, the funds remaining after the full payment of all Common Expenses of the Association shall be distributed to all Owners in proportion to their respective Common Interests, except for Owners of Units reconstituted as a new Condominium Property Regime, in which case the proportionate share of such Owners shall be transferred to the association of such new Condominium Property Regime.

J. INSURANCE

The Association, as a Common Expense, shall at all times maintain, for the benefit of the Project, insurance against loss or damage by fire and other casualty, as shall be provided in the Bylaws (including Article 7) and/or required by the Act or other applicable law. Except as may be provided in the Bylaws or this Declaration, in every case of such loss or damage, all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing, or otherwise reinstating the damaged or destroyed property covered by the insurance in a good and substantial manner as provided in this Declaration and the Bylaws. The Association, as a Common Expense, shall also maintain such other insurance as may be required by the Bylaws or the Act. Further, each Unit Owner shall be required to maintain such liability insurance as may be required by the Bylaws.

K. RESTORATION AFTER CASUALTY

If any part of the Project shall be damaged or destroyed by fire or other casualty, then the provisions in Section 9 of the Bylaws shall be consulted and adhered to, which provisions are incorporated herein by this reference.

L. ALTERATIONS TO THE PROJECT

1. Alterations to Common Elements.

(a) Generally. Except as otherwise expressly provided in this Declaration to the contrary, the repair, alteration, modification, reconstruction, restoration, improvement, addition, or replacement (collectively, an "Alteration") of any portion of the Common Elements (but excluding Limited Common Elements) or construction of any additional building or other structure or structural alteration, improvement, or addition thereto, different in any material respect from the Condominium Map, as it then exists, shall be undertaken by the Association only pursuant to an amendment of this Declaration and the Condominium Map. Anything in this Declaration or the Bylaws to the contrary notwithstanding, no Alteration of the Common Elements shall materially and adversely affect the value of any Unit or materially and adversely affect the right of any Unit Owner to use and enjoy such Owner's Unit without the prior written approval of the affected Unit Owner. Unit Owners shall be permitted to make, without the permission of the Board, a limited number of holes or other penetrations into the Common Element walls and ceilings surrounding their Units, provided such holes or penetrations are less than two inches deep, are for a reasonable purpose to improve their Units, and do not jeopardize the soundness, safety, or structural integrity of any part of the Project.

(b) Low-Expense/Nonmaterial Alterations. Whenever in the judgment of the Board the Common Elements shall require an Alteration that costs less than Fifty Thousand Dollars (\$50,000.00) (C.P.I. Adjusted) and is a "nonmaterial addition and alteration" (as defined

in §514B-140 of the Act) ("Low-Expense Alteration"), the Association may proceed with such Alteration and shall assess all Owners for the cost thereof as a Common Expense. With respect to Low-Expense Alterations, the amendment to this Declaration and the Condominium Map required by subsection (a) above shall be duly executed by two officers of the Board and, during the Declarant Control Period, by Declarant, and shall be in accordance with complete plans and specifications therefor first approved in writing by the Board. Promptly upon completion of such Low-Expense Alteration, such amendment shall be duly Recorded and filed of record, together with a complete set of floor plans of the Project as so altered, certified as-built by a licensed architect, engineer, or surveyor.

(c) High-Expense/Material Alterations. Whenever in the judgment of the Board the Common Elements shall require an Alteration that costs Fifty Thousand Dollars (\$50,000.00) or more (C.P.I. Adjusted) or is not a "nonmaterial addition and alteration" (as defined in §514B-140 of the Act) ("High-Expense Alteration"), the Association may proceed with such Alteration only after obtaining approval of Declarant, if Declarant owns a Unit in the Project, and at least 67% of the Unit Owners and after authorizing an assessment of all Owners for the cost thereof as a Common Expense. With respect to High-Expense Alterations, the amendment to this Declaration and the Condominium Map required by subsection (a) above shall be duly executed by or pursuant to the affirmative vote of at least 67% of the Unit Owners, by two officers of the Board, and, during the Declarant Control Period, by Declarant and shall be in accordance with complete plans and specifications therefor first approved in writing by the Board. The foregoing notwithstanding, such approval and voting by the Association shall not be required (i) for any Alterations covered by available insurance proceeds held in the name of the Association, or (ii) for any Alterations required by law or to insure public health or safety, or (iii) in the event of an emergency threatening immediate and substantial damage to persons or property, or (iv) for any Alterations anticipated in the Association's budget and for which reserve funds have been allocated in accordance with the requirements of the Bylaws and the Act. Promptly upon completion of such High-Expense Alteration, such amendment shall be duly Recorded and filed of record, together with a complete set of floor plans of the Project as so altered, certified as-built by a licensed architect, engineer, or surveyor.

(d) Alterations to Limited Common Elements. The cost of any Alterations performed on any Limited Common Elements shall be charged to the Owners of Units to which such Limited Common Elements are appurtenant.

2. Alterations to Units. The provisions of this Section L.2 apply to Alterations made to the Units or to Limited Common Elements appurtenant to the Units.

(a) Alterations Permitted. Notwithstanding anything to the contrary contained in this Declaration, including, without limitation, Section L.1, and except as otherwise provided by law, each Unit Owner shall have the following rights:

(i) Additions or Alterations Solely Within a Unit or Limited Common Element Not Requiring Board Approval. Each Unit Owner shall have the right, at any time and from time to time, at such Unit Owner's sole cost and expense, and without the consent of any other Person (unless governmental agencies require such consent), except Declarant, if Declarant owns a Unit in the Project, to make any of the following Alterations solely affecting and solely within, as applicable, the Owner's Unit or Limited Common Elements over which such Owner has sole control: (A) to install, maintain, remove, and rearrange partitions and other non-structural walls from time to time within such Unit or Limited Common Element as long as not

readily visible from outside of the Unit or the Limited Common Element; (B) to finish, change, alter, or substitute any plumbing, electrical, or other fixtures attached to the ceilings, floors, or walls as shall be appropriate for the utilization of such Unit or Limited Common Element by such Owner or the Occupants thereof, provided there is no adverse effect on other Units or Limited Common Elements; (C) to paint, paper, panel, plaster, tile, finish, carpet, re-carpet, and otherwise change the appearance of any walls, floors, or ceilings of the Unit or Limited Common Element not readily visible from outside of the Unit or the Limited Common Element, subject to limitations on installation and replacement of hard floor surfaces in certain Units set forth in this Declaration and/or the Project Rules, and do or cause to be done such other work on the interior surfaces of the ceilings, floors, and walls of such Unit or Limited Common Elements; (D) to install, remove, rearrange, paint, finish, change, alter or substitute counters and cabinets within such Unit as long as not readily visible from outside of the Unit; and (E) to make Alterations to the Unit or Limited Common Elements that are not readily visible from outside of the Unit or the Limited Common Element to facilitate handicapped accessibility within the Unit or Limited Common Element.

(ii) Alterations to a Unit or Limited Common Element Requiring Board Approval. Each Unit Owner, only with the written consent of the Board of Directors (which consent shall not be unreasonably withheld), Declarant, if Declarant owns a Unit in the Project, and appropriate agencies of the State of Hawaii and the County (if such agencies so require), and with the written consent of all other Owners directly affected (as determined by the Board), shall have the right, at any time and from time to time, at such Unit Owner's sole cost and expense, and without the consent of any other Person, to make Alterations to the Unit or Limited Common Elements over which such Owner has sole control that are not covered under subsection (i) above or that are not "nonmaterial additions and alterations" (as defined in §514B-140 of the Act), including, without limitation, Alterations adversely affecting other Units or Limited Common Elements, Alterations that are readily visible from outside of the Unit or the Limited Common Element, and installation or replacement of hard floor surfaces beyond what was installed by Declarant.

(iii) Combining of Adjacent Units. A Unit Owner who owns two adjacent Units that are on the same level of the building and are separated by a Common Element wall shall have the right, at any time and from time to time at such Owner's sole cost and expense, and with the written consent of the Board of Directors (which consent shall not be unreasonably withheld), appropriate agencies of the State of Hawaii and the County (if such agencies so require), Declarant (if Declarant owns a Unit in the Project), and all other Owners directly affected (as determined by the Board), to alter or remove all or portions of the intervening wall, if (A) the structural integrity of the building is not thereby adversely affected, and (B) the finish of the Common Element then remaining is then restored to a condition substantially comparable to that of the Common Element prior to such alterations, and (C) all construction activity necessary to any such alteration or removal shall be completed within a reasonable period of time after the commencement thereof, subject to extension for delays beyond the control of the Owner or its contractors, in which case any such construction activity shall be completed in such additional time as may be reasonably necessary in the exercise of due diligence (as determined by the Board). The Owner may install a door or doors to such opening or openings in the intervening Common Element, may seal hallways, and may make other reasonable Alterations approved by applicable governmental authorities. Before the termination of the common ownership of any such adjacent Units, if the intervening wall shall have been altered or removed pursuant to the foregoing provisions and/or any entry to hallways sealed, the Owner of the Units shall be obligated to restore such intervening wall, floor, ceiling,

and/or hallway entries to substantially the same condition they existed prior to such alteration or removal. The combining of adjacent Units shall not affect, or otherwise require the alteration of, the Common Interest allocable to any Unit. (As used above, "adjacent Units" does not include Units that are located above and beneath one another on different floors.)

(iv) No Division of Units. Other than Declarant and Units owned by Declarant, no Unit Owner shall divide a Unit into two or more Units; provided that this shall not prevent an Owner who had previously combined such Owner's adjacent Units (pursuant to subsection (iii) above) from restoring the adjacent units to substantially the same condition they existed prior to such combination.

(b) Prohibited Alterations. Nothing contained in Section L.2(a) shall authorize any Alteration that would: (i) jeopardize the soundness, safety, or structural integrity of any part of the Project; (ii) reduce the value of the Project or any Unit (unless authorized by the Owner of the affected Unit(s)); (iii) unreasonably interfere with or disturb the rights of other Owners (other than temporary inconveniences during the Alteration); (iv) materially increase the transfer of sounds, air, odors, or smoke to other Units or the Common Elements; (v) significantly increase the rate of fire insurance on the building or the contents of the building to an extent that all Unit Owners would be materially affected; (vi) affect or impair any easement or rights of any of the other Owners; or (vii) interfere with or deprive any non-consenting Owner of the use or enjoyment of those Common Elements used or available for use by such non-consenting Owner; subject, however, to the exclusive use of the Limited Common Elements. Further, nothing in this Section L shall prohibit the Board from effecting such changes within a Unit or Limited Common Element, or to require the same, in order that the building may continue to comply with applicable laws, including any fire code requirements.

(c) Board Approval Required. Anything in this Declaration, the Bylaws or the Rules to the contrary notwithstanding and in addition to the Alterations described in subsections (a)(ii) and (iii) above, none of the following actions can be taken by Persons other than Declarant without the prior written consent of the Board and Declarant (if Declarant owns a Unit in the Project): (i) Alterations that affect (or may affect) a structural component of any part of the Project; (ii) Alterations to a Unit's interior or exterior that are readily visible from the exterior of the Unit; (iii) Alterations to Common Elements; and (iv) any penetration by more than two inches of an exterior wall, an area separation wall, a floor, a roof or a ceiling. As examples, but without limitation, the following shall require the prior written approval of the Board and Declarant (if Declarant owns a Unit in the Project): the installation of any replacement or additional air conditioning units (aside from what was originally included in the Unit); the placement of exterior signs; and the installation of wiring or other devices for electrical or telephone installations that protrude through Common Element walls, Common Element windows or the ceiling above a Unit by more than two inches.

(d) General Requirements for Alterations.

(i) Approval Procedures. With respect to Alterations that require approval of the Board, the Board shall have the right and authority to establish such procedures that it deems appropriate for Owners to follow before any such Alteration to a Unit, to the Unit's Limited Common Elements or to the Common Elements can commence. The Board shall also have the right to form an architectural review committee to process any Alteration to a Unit or the Unit's Limited Common Elements. Further, the Board shall have the right to effect such

changes within a Unit or Limited Common Element, or to require the same, in order that the building may continue to comply with applicable laws, including any fire code requirements.

(ii) Performance and Labor and Materials Payment Bond. With respect to Alterations that require approval of the Board, if the Alterations have an estimated cost of more than \$100,000 (C.P.I. Adjusted), then the Owner of the Unit shall obtain a performance and labor and materials payment bond (or other form of security acceptable to the Board), naming as obligees the Board, the Association and collectively all Unit Owners and their respective Mortgagees, as their interests may appear, for a penal sum of not less than 100% of the estimated cost of such construction.

(iii) Plans and Specifications. With respect to Alterations that require approval of the Board, all plans and specifications for any such Alterations shall be prepared by a Hawaii-licensed architect or professional engineer and conform with all applicable laws and ordinances, and all Alterations, the cost of which is expected to exceed \$100,000 (C.P.I. Adjusted), shall be undertaken by a building contractor licensed in the State of Hawaii.

(iv) Insurance. During the entire course of any physical Alteration that requires approval of the Board, the Owner making such Alteration will cause to be maintained at such Owner's expense builder's all-risk insurance in an amount not less than the estimated cost of construction. The Association and the other Unit Owner(s) shall be named as additional insureds.

(v) Certain Alterations Must Be Completed Within a Reasonable Time. All construction activity relating to any Alterations affecting the exterior of the building or otherwise readily visible from outside the Unit or Limited Common Element being altered shall be completed within a reasonable period of time after the commencement thereof, subject to extension for delays beyond the control of the Owner or its contractors, in which case any such construction activity shall be completed in such additional time as may be reasonably necessary in the exercise of due diligence (as determined by the Board).

(e) Withholding of Board or Declarant Approval. Where applicable, the Board may withhold its approval to any request for an Alteration based upon: the terms of this Declaration or the Bylaws; the potential or perceived effect such proposed Alteration may have on the appearance, safety or integrity of the Project; considerations of applicable zoning and other requirements; or the terms of any permits, agreements or authorizations pursuant to which the Project has been designed and constructed. Declarant may withhold its approval to any request for an Alteration for any reason within its sole discretion.

3. Amendment To Declaration and Condominium Map. In the event of an Alteration pursuant to and in compliance with this Section L that alters (a) the depiction of the particular Unit(s) or Limited Common Elements as they may be shown on the Condominium Map, (b) the description thereof in the Declaration, or (c) the Limited Common Elements appurtenant to a Unit, then, the provisions of Section R of this Declaration to the contrary notwithstanding, the Unit Owner or Owners making the change shall amend this Declaration and, if applicable, the Condominium Map to set forth such change or alteration, which amendment(s) shall be executed by the Owner or Owners of the affected Unit or Units and such other Persons as may be required above, but shall not require execution by any other Person, and such amendment(s) shall become effective upon the Recordation thereof; provided, however, that all required consents to the Alteration have been obtained and not repealed. Every Unit Owner, as Unit

Owners and as Members of the Association and, if applicable, the Board of Directors, all holders of liens affecting any of the Units of the Project, and each and every other party acquiring an interest in the Project or any part thereof, by acquiring such Unit, lien, or other interest: (y) consents to and agrees that he, she, or it shall, if required by law or by any such Owner who shall have changed or altered a Unit as aforesaid (the "Altering Owner"), join in, consent to, execute, deliver, and Record all instruments and documents necessary or desirable to effect the amendment of this Declaration and/or the Condominium Map; and (z) appoints the Altering Owner and the Altering Owner's assigns his, her, or its attorney-in-fact and/or agent with full power of substitution to execute, deliver, and Record such documents and to do such things on his, her, or its behalf, which grant of such power, being coupled with an interest, is irrevocable and, being a durable power of attorney and/or agency, shall not be affected by the disability of any such party. Alterations made by or on behalf of Declarant shall not require the vote or consent of the Board or any other Person.

4. Alterations by Declarant. The provisions of Section L.1 through L.3 above shall not apply to Alterations or other modifications that are made by or on behalf of Declarant. Declarant's right to make Alterations and other modifications to the Project is set forth in this Section L.4.

(a) Declarant's Reserved Rights. Any other provision in this Declaration to the contrary notwithstanding and without limiting any other provision in this Declaration, prior to (i) the time that the fee simple interest in all Units in the Project have been sold and the conveyance thereof Recorded, and (ii) the Recording by Declarant of the "as built" statement (with plans, if applicable) required by Section 514B-34 of the Act with respect to all Units in the Project, Declarant shall have the right, from time to time, without being required to obtain the consent or joinder of any Person or group of Persons, including the Association, any Unit Owner, or any Mortgagee, lienholder, Unit purchaser, or any other Person who may have an interest in the Project, to do the following:

(i) Pre-Closing Alterations. To make Alterations or other modifications in the Project (and, if appropriate, to amend this Declaration and the Condominium Map accordingly) that change the Unit type of, change the floor plan of (including, without limitation, establishing a new floor plan), change the configuration of, decrease or increase the size of, or change the location of any Unit and/or the Limited Common Elements appurtenant thereto, the conveyance of which has not been Recorded.

(ii) Post-Closing Alterations. To make other Alterations or other modifications in the Project (and, if appropriate, to amend this Declaration and the Condominium Map accordingly) that make minor changes in any Unit in the Project or in the Common Elements, which do not affect the physical location, design or size of any Unit the conveyance of which has not been Recorded.

(b) Division of Units.

(i) With respect to any Unit owned by Declarant, Declarant shall have the right to divide such Unit (or to consolidate and divide such consolidated Units) to create two or more separate Units and thereby possibly increase the number of Units in the Project. Such division of Units by Declarant shall occur by, and the newly created Units shall be deemed a part of the Project for all purposes upon: (a) amending the Condominium Map and EXHIBIT "B" and EXHIBIT "C" hereto to reflect such division; (b) amending relevant provisions

of this Declaration and/or the Bylaws to (1) designate which Limited Common Elements appurtenant to the divided Unit(s) shall be appurtenant to the Units resulting from such division, (2) convert, as Declarant shall deem appropriate, portions of the divided Unit(s) to Common Element or Limited Common Element status to facilitate such division, and (3) allocate, as Declarant shall deem appropriate, the Common Interest of the divided Unit(s) among the newly created Units; and (c) making such other amendments to the Project Documents as Declarant deems necessary or appropriate to effectuate the division of the Unit. The amendments to the Project Documents need only be executed by Declarant.

(ii) The newly created Units shall have the right to use the Common Elements in the Project to the same extent and subject to the same limitations as are imposed upon a Unit as though the newly created Units had been developed as part of the original Project.

(iii) Until the conveyance by Declarant of a newly created Unit thereby added to the Project, Declarant shall for all purposes be deemed the "Unit Owner" as to such newly created Unit, and no other Unit Owner, Mortgagee, lienholder, Unit purchaser, or any other Person (other than Declarant and the holder of any Mortgage covering the newly created Unit) shall have any legal or equitable interest in such newly created Unit and the Common Interest appurtenant thereto. Additionally, in connection with the creation of the newly created Units, Declarant shall have the right: to assign and re-assign parking stalls, except for parking stalls that may have already been conveyed by Declarant to a Unit Owner; to enter upon the Project with employees, agents, and contractors for all purposes reasonably necessary for or useful to constructing and completing the newly created Units; to connect the newly created Units to utilities of the Project; and to market and sell the newly created Units. Declarant may apply for and obtain from the Real Estate Commission effective dates for one or more amended public reports describing the changes made in the Project pursuant to the terms of this Section L.

(c) Consolidation of Units. With respect to any two adjacent Units owned by Declarant, Declarant shall have the right, at any time and from time to time at Declarant's sole cost and expense, to consolidate such Units into a single Unit and thereby decrease the number of Units in the Project, provided that the Common Interest appurtenant to the newly created Unit shall equal the sum of the Common Interests of the Units being consolidated. Such consolidation shall occur by: (i) amending the Condominium Map and EXHIBIT "B" and EXHIBIT "C" hereto to reflect such consolidation; (ii) amending relevant provisions of this Declaration and the Bylaws to designate the Common Interests of the previously separate Units to the consolidated Unit; and (iii) making such other amendments to this Declaration, the Bylaws, the Condominium Map, and other Project Documents as Declarant deems necessary or appropriate to effectuate the consolidation of the Units. In no event shall any such amendment affect the Common Interest appurtenant to any Units other than the consolidated Units. The amendments to this Declaration, the Bylaws and the Condominium Map referenced herein need only be executed by Declarant.

5. Exemptions For Persons With Disabilities. Notwithstanding anything to the contrary contained in the Bylaws, this Declaration or the Project Rules, Owners shall be permitted to make reasonable Alterations to their Units and/or the Common Elements, at their expense (including the cost of obtaining any required bonds), if such Alterations are necessary to enable the use and enjoyment of their Units and/or the Common Elements, as the case may be, by persons with disabilities, provided that any Unit Owner with a disability desiring to make

such Alterations shall make such request, in writing, to the Board. The written request shall set forth, with specificity and in detail, the nature of the request and the reason that the requesting party needs to make such Alterations. 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 60 days of the Board's receipt thereof, or within 60 days of the Board's receipt of additional information reasonably required in order to consider such request, whichever shall last occur. Nothing contained in this Section L.5 shall exempt an Owner from making all amendments to the Bylaws, this Declaration or the Condominium Map necessitated by any changes authorized under this Section L.

6. Emergency Alterations. The foregoing notwithstanding, any requirements set forth above for obtaining approvals or votes by the Board, the Association or other Unit Owners before an Alteration can take place shall be suspended for: (a) Alterations required by law or to insure public health or safety; or (b) Alterations required in the event of an emergency threatening immediate and substantial damage to persons or property.

7. Maintenance Expenses for Common Elements Converted to Limited Common Elements. Any part of the Common Elements of the Project that, because of the alterations as provided for in this Section L, serves or is used by exclusively one or more, but not all, Units shall become a Limited Common Element appurtenant to and for the exclusive use of such Unit or Units, among the Limited Common Elements listed in EXHIBIT "B", and any costs in connection therewith shall be borne as provided in Section I.1 of this Declaration. Documentation of the conversion of such Common Elements to the status of Limited Common Elements need only be by such amendments to the Condominium Map and this Declaration as may be required under this Section L, executed by such parties as provided in this Section L.

M. COMPLIANCE WITH PROJECT DOCUMENTS; SCOPE OF ENFORCEMENT; COOPERATION

1. Compliance Required. The Association, all Unit Owners, Occupants, Invitees, Mortgagees, families, agents, employees, servants, contractors and guests, and any other Persons who may in any manner use the Project, shall be bound by and comply strictly with the provisions, conditions and restrictions 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. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages (to the extent permitted under Section T of this Declaration) or injunctive relief or both, under the dispute resolution proceedings of Section T of this Declaration, maintainable by Declarant, the Managing Agent, the Board (on behalf of the Association), or, in a proper case, by any aggrieved Unit Owner.

2. Enforcement. Except as otherwise set forth in this Declaration, the Bylaws or the Project Rules, Declarant, 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 Association (via the Board or the Managing Agent) shall have the exclusive right to the enforcement of assessment liens. 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. Except as otherwise set forth in this Declaration, the Bylaws or the Project Rules, each Owner shall have standing to initiate the dispute resolution proceedings under Section T on their own behalf (and at their own expense) to enforce the terms and conditions 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. 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.~~

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 against any Owner; (b) foreclosing a lien on any Owner's Unit; and (c) subject to the applicable provisions of Section T of this Declaration, enforcing provisions of the Project Documents or the Act against any Owner, shall be promptly paid on demand to the Association by the Unit Owner and if not so paid shall be assessed as a special assessment that can be foreclosed upon; provided that the Association shall promptly pay on demand to the Unit Owner those costs and expenses, including reasonable attorneys' fees, incurred by the Unit Owner as a result of claims made by the Association that are not substantiated.

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 of the Mortgagees 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 and Section 514B-111 of the Act.

5. Obligation of Good Faith and Mutual Cooperation. Each Unit Owner, by acquiring a Unit in the Project, 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 Unit 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 Unit or the use of or obligations with respect to the Owner's Unit and provided the Unit Owner is not required to incur any costs related thereto, the Unit 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 T below.

N. RIGHTS OF MORTGAGEES AND GUARANTORS

1. Notices of Action. A Mortgagee and guarantor of the Mortgage on any Unit 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 Unit securing its Mortgage;

(b) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit 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.

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 51% of the Common Interests appurtenant to the Units that are subject to Mortgages.

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 Unit pursuant to its Mortgage in the case of payment to the Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

4. Amendments to Declaration. As set forth in Section N.1 of this Declaration, amendments to this Declaration of a material adverse nature to Mortgagees must be agreed to by Mortgagees that represent at least 51% of the Common Interest of Units 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 60 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

O. HAZARDOUS MATERIALS; ENVIRONMENTAL ISSUES

1. Restriction on Use. An Owner shall not cause or permit any Hazardous Material to be generated, used, transported, stored or disposed of upon, in or about his or her Unit or the Common Elements, except in a manner that complies with all applicable Hazardous Materials Laws.

2. Notices. An Owner shall give written notice to the Board of Directors and the Managing Agent within two business days after the Owner learns or first has reason to believe that (a) a Hazardous Discharge has occurred, or (b) a Hazardous Materials Claim has been made by any governmental agency or third person, or (c) any report, notice or complaint has been made to or filed with any governmental agency concerning the presence, use or disposal of any Hazardous Material at the Project. The notice shall be accompanied by copies of (x) all permits, licenses, and proofs of disclosure to governmental agencies pertaining to the Hazardous Material that is the subject of the claim, (y) any material safety data sheets pertaining to such substances that are required by applicable law, and (z) any claim, report, complaint, notice, warning or other communication that is in the possession of or is reasonably available to the Owner. The Association shall have the right to join and participate, as a party, if it so elects, in any actions initiated in respect of any Hazardous Materials Claim.

3. Indemnity. If the generation, use, transportation, storage, or disposal of Hazardous Materials by an Owner, or by anyone using the Project through the Owner, results in contamination of a Unit or any portion of the Common Elements, then the Owner shall indemnify, defend and hold harmless Declarant, the State of Hawaii, HHFDC, the Association, the Board of Directors and all other Owners from (a) all damages, including foreseeable and unforeseeable consequential damages, diminution in value of a Unit, losses and damages for the loss or restriction on use of a Unit, any part of the Common Elements or of any amenity of the Project, (b) sums paid in settlement of claims, (c) all reasonable expenses, including attorneys' fees, consultant fees and expert fees that arise as a result of any investigation by the Association, or the defense of Hazardous Materials Claims (whether or not a formal administrative or legal action is filed) by the Association or any Owner, and (d) all costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restorative work required by any governmental agency because of a Hazardous Material present in the soil or ground water on or under the Unit or the Common Elements.

4. Cleanup.

(a) By an Owner. Without limiting the generality of the foregoing, if the presence of any Hazardous Material at a Unit or the Common Elements caused or permitted by an Owner, or by anyone using the Project through the Owner, results in any contamination of the Project, then the Owner shall promptly take all actions at the Owner's sole expense as are necessary to return the Project to the condition existing prior to the Hazardous Discharge; provided that the Board's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Project.

(b) By the Association. If the presence of any Hazardous Material on the Common Elements results in any contamination of the Common Elements, then the Association shall promptly take all actions as are necessary to clean up and restore the Common Elements in accordance with all Hazardous Materials Laws, and all Owners shall be severally liable for the cost of any such cleanup and restoration as a Common Assessment to the extent such costs are not chargeable to the Owners of one or more Units, as provided in this Declaration, and are not reimbursed to the Association by those Owners.

5. Condition of Land. Each Owner understands and acknowledges that the Land of the Project has been graded, had soil removed and added to reach its finished height and form, and contains (or may contain) expansive soils, and, as a result, may be subject to subsidence, settlement or expansion. Each Owner also understands and acknowledges that standard construction techniques and applicable designs for the Unit's building's foundation slab may result in a degree of non-structural cracking or "spider" cracking within the slab and that certain slabs will contain contraction joints. Except as expressly set forth herein, Owner is relying and will rely solely upon Owner's own inspection and investigation of the land of the Project and surrounding properties, and is not relying and will not rely in any way upon any representations, statements, warranties, or other information or material furnished by Declarant's representatives, whether oral or written, express or implied. Without limiting the generality of the foregoing, Owner assumes all risks associated with the condition of the Land, the nature of the soils making up the Land and of any Hazardous Materials on, about, around, under, over or within the Project, including all risks of (a) any and all enforcement, clean up, or other governmental or regulatory actions instituted or threatened pursuant to any Hazardous Materials

laws affecting the Project, (b) all claims made or threatened by any third party against the Owner or the Project relating to damage, contribution, compensation, loss or injury resulting from any Hazardous Materials, and (c) the Owner discovering any occurrence or condition on the Land or any land adjoining or in the vicinity of the Project that might result in the Owner or the Project being made subject to restrictions on ownership, occupancy, transferability or use of the Project pursuant to any applicable Hazardous Materials Laws.

6. Other Environmental Issues. Mold, mildew and mold spores (collectively, "mold") are present throughout the environment and residential dwelling construction is not, and cannot be, designed to exclude all mold. All mold is not necessarily harmful, but certain strains of mold have been shown to have adverse health effects in susceptible persons. The most common effects are allergic reactions, including skin irritation, watery eyes, runny nose, coughing, sneezing, congestion, sore throat and headache. Individuals with suppressed immune systems may risk infections. Moisture is the only mold growth factor that can really be controlled in a residential setting. By minimizing moisture, an Owner can reduce or eliminate mold growth. Owners should take positive steps to reduce or eliminate the occurrence of mold growth and thereby minimize any possible adverse effects that may be caused by mold. Such positive steps include, but are not limited to the following:

- a. Check Items. Before bringing items into the Unit, check for signs of mold. Potted plants (roots and soil), furnishings or stored clothing and bedding material, as well as many other household goods, could already contain mold growth. Avoid storing organic material on lanais or in damp areas.
- b. Vacuuming and Cleaning. Regular vacuuming and cleaning will help reduce mold levels. Mild bleach solutions and most tile cleaners are effective in eliminating or preventing mold growth.
- c. Humidity. Keep humidity in the Unit low. Ventilate kitchens and bathrooms by opening windows, using exhaust fans, or running air conditioning to remove excess moisture in the air and to facilitate evaporation of water from wet surfaces. Maintain and properly service each air conditioning unit to keep it in full working condition.
- d. Clean Spills. Promptly clean up spills, condensation and other sources or moisture. Thoroughly dry any wet surfaces or material. Do not let water pool or stand in the Unit. Promptly replace any materials that cannot be thoroughly dried, such as drywall or insulation.
- e. Leaks. Inspect for leaks on a regular basis. Look for discolorations or wet spots. Repair any leaks promptly. Inspect condensation pans (refrigerators and air conditioners) for mold growth. Take notice of musty odors and any visible signs of mold.
- f. Water Intrusion. Seek to prevent water intrusion into the Unit by regular caulking and painting and keeping lanais and windows closed during inclement weather.
- g. Clean Affected Areas. Should mold develop, thoroughly clean the affected area with a mild solution of bleach. Should the mold growth be severe, call on the services of a qualified professional cleaning service.

7. Declarant, State Not Liable. By taking title to a Unit, each Owner acknowledges and agrees that neither Declarant, the State of Hawaii nor HHFDC will be liable for damages of any type, including actual, special, incidental or consequential damages based on any legal theory whatsoever, including, but not limited to, strict liability, breach of express or implied warranty, negligence or any other legal theory with respect to the presence and/or existence of mold unless caused by the recklessness or willful misconduct of Declarant, the State of Hawaii or HHFDC, respectively. By taking title to a Unit, each Owner, on behalf of itself and the Occupants of and Invitees to the Unit, releases the State of Hawaii, HHFDC, Declarant, and Declarant's officers, directors, partners, managers, members, affiliates, subsidiaries, parents, successors and assigns from and against any and all claims, actions, damages, causes of action, liabilities and expenses (including, without limitation, attorneys' fees and costs of enforcing this indemnity) for property damage, injury or death resulting from the exposure to mold and from any loss of resale value due to the presence and/or existence of mold.

8. Survival. The obligations under this Section O shall survive the termination of the ownership of a Unit in the Project.

P. ASSIGNMENT OF RIGHTS BY DECLARANT

Declarant may, without the consent or approval of the Association, the Board, any Unit Owner, any Mortgagee, or any other Person, and in Declarant's sole discretion, transfer or assign all or any portion of Declarant'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 an 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 Declarant 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 Declarant under this Declaration, and shall be deemed a transferee, successor or assign of Declarant only as to the particular rights or interests of Declarant under this Declaration that are specifically designated in the Recorded written instrument. No deed of the Property in whole or part and no Unit Deed shall transfer or assign any of Declarant'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 Declarant.

Q. PROJECT AND RELATED MATTERS

1. Sound/Noise. Each Owner, by taking title to a Unit, understands and acknowledges that although the Project and the Unit will be built in substantial compliance with the approved plans and specifications, in any multi-family dwelling, sound may be audible between units, particularly where the sound level of the source is sufficiently high and the background noise in a nearby unit is very low. Due to the proximity of one Unit to another and of Units to Common Elements, various noises inherent in the ownership of a Unit within a residential condominium project (including plumbing, impact, vibration, elevator operation, adjacent neighbors, and other types of noises) may result, to which certain Owners may be especially sensitive and which may prove a nuisance for some. Further, the Project is located in a busy commercial and residential area where noise levels may exceed ordinary noise level standards for residential-zoned areas. Each Owner, by taking title to a Unit, agrees to accept

the Unit subject to sound impacts from the surrounding area, from nearby Units, and from Common Element areas and to accept responsibility for minimizing noise transmission from their Unit and adhering to rules, regulations, and laws that are designed to minimize noise transmission. Each Owner acknowledges that, notwithstanding the unacceptability of these noise levels, neither Declarant nor any of its officers, directors, affiliates, successors-in-title, or assigns shall be held liable for any nuisance, personal injury, illness, or any other loss or damage caused by noise or vibrations.

2. Ongoing Construction and Surrounding Activities. Each Owner, in purchasing or otherwise taking title to a Unit, does so with the express understanding and acknowledgment that the Project and/or the Unit may be affected by the ongoing surrounding development, which includes multi-family residential, commercial, recreational, and other types of development, by various hazards, and by noise, dust, smoke, soot, ash, odor, noxious vapors, surface water runoff, or other adverse environmental conditions, and that construction and sales activities by Declarant and others and the construction activities undertaken on surrounding properties may result in noise, dust, vibration, and other nuisances, disturbances, annoyances, hazards, and effects and may also result in temporary conditions of inconvenience to the Owner, such as increased traffic congestion and impairment of access to the Project. Each Owner hereby accepts these circumstances and any nuisance, inconvenience, irritation, or annoyance that the Owner may experience as a result of such activities and conditions and agrees to suffer and permit all actions and consequences incidental to such ongoing development, construction, and sales activities. Each Owner further covenants and agrees to assume all risk of any property damage, personal injury, or loss in property value arising from such development, construction, and sales activities and to hold harmless the State of Hawaii, HHFDC, Declarant and Declarant's members, managers, directors, officers, agents, related or affiliated entities, successors and assigns, from and against any and all liability, claims, losses, damages, or expenses, including attorneys' fees, occasioned by such property damage or personal injury to the property or person of the Owner, or the Owner's tenants, lessees, family, servants, guests, invitees, licensees, employees, Occupants of the Unit or other persons who may occupy or otherwise use the Project or any Unit.

3. Nuisances Related to Surrounding Operations. Without in any manner limiting the preceding provisions of this Section Q, each Owner, in purchasing or otherwise taking title to any Unit, does so with the express understanding and acknowledgment that the Project and the Owner's Unit may be periodically affected by various hazards and by adverse environmental conditions, including, but not limited to, those attributable to winddrift and other weather factors (the "Surrounding Use Effects") created by or attributable to historical, existing, and prospective surrounding construction, development, commercial, vehicular and other non-residential uses and activities, and specifically approves all of those uses and activities, which include, but are not limited to: (a) noise, odors, lighting, and other nuisances associated with nearby residential and commercial uses; (b) the items described above in this Section Q; and (c) real estate development, construction, grading, improvement, and maintenance of adjacent and surrounding properties (collectively the "Surrounding Operations").

4. Assumption of Risk, Waiver of Claims, Hold Harmless and Defend. Without limiting the effect of any of the foregoing provisions of this Section Q, each Owner, by taking title to a Unit, hereby covenants and agrees, on behalf of such Owner, and the tenants, lessees, family, servants, guests, invitees, licensees and employees of the Owner and the Occupants of the Owner's Unit: (a) to accept any nuisance, inconvenience, irritation, or annoyance that the Owner or such other Person claiming through the Owner may experience as a result of the

activities and conditions described in this Declaration, and agrees to suffer and permit all actions and consequences incidental to such activities and conditions; (b) to assume and does hereby assume any and all risks associated with the Surrounding Operations and the annoyances, inconveniences, Surrounding Use Effects, and other nuisances thereby created, as well as with the ongoing construction and sales activities; (c) to waive and does hereby expressly waive all rights to make any claim against the State of Hawaii, HHFDC, Declarant and any of Declarant's related entities, affiliates, successors-in-title, or assigns, arising out of or in connection with the ongoing construction and sales activities, the Surrounding Operations and the annoyances, inconveniences, Surrounding Use Effects, and other nuisances thereby created, the clean-up or remediation of the same, including but not limited to (i) any claim for damages attributable thereto or for the design or the placement of improvements to the Project, any Unit or the surrounding property, or any part thereof, or related or adjacent facilities or to the orientation of the Unit as it relates to exposure to sun or wind, (ii) any and all claims, demands, actions, lawsuits, proceedings, fines, penalties, damages, liabilities, judgments, awards, expenses, and costs (including attorneys' fees and costs) that may arise out of or may directly or indirectly be attributable to the condition of the Land, the soils thereon and therein, and the use, generation, manufacture, treatment, handling, refining, production, storage, release, discharge, disposal, or presence of any Hazardous Material on, about, around, over or within the Project, or (iii) claims for the abatement or elimination thereof (such waiver, however, shall not include claims arising out of or in connection with the recklessness and/or willful misconduct of such entities); (d) to indemnify and hold harmless the State of Hawaii, HHFDC, Declarant and any of Declarant's related entities, affiliates, successors-in-title or assigns, and their respective successors and assigns, from and against any and all claims, demands, actions, lawsuits, proceedings, fines, penalties, damages, liabilities, judgments, awards, expenses and costs (including attorneys' fees and costs) that may arise out of or may directly or indirectly be attributable to any and all of the foregoing Surrounding Operations, Surrounding Use Effects, and ongoing construction and sales activities; and (e) to defend the State of Hawaii, HHFDC, Declarant and any of Declarant's related entities, affiliates, successors-in-title or assigns, and their respective affiliates, successors and assigns, against any and all claims, demands, actions, lawsuits, proceedings, fines, penalties, damages, liabilities, judgments, awards, expenses and costs (including attorneys' fees and costs) that may arise out of or may directly or indirectly be attributable to any and all of the foregoing Surrounding Operations, Surrounding Use Effects and ongoing construction and sales activities.

5. Urban-Related Activities. Each Owner, in purchasing or otherwise taking title to a Unit, does so with the express understanding and acknowledgment that the Project is located in a busy, urban area and that numerous activities take place in and around the area that may be considered nuisances to the Owner. Those activities include, but are not limited to, traffic and the operation of restaurants, gas stations, convenience stores and other commercial establishments. Such activities and events may from time to time bring upon the Project, or result in, smoke, loud noises, loud music, bright lights, traffic congestion and other nuisances. Each Owner accepts the foregoing conditions, as well as any inconvenience or annoyance that the Owner may experience as a result of such conditions, and waives any rights, claims or actions that the Owner might otherwise have against Declarant as a result of such circumstances, including, without limitation, any right to make any claim for injury to persons or property attributable thereto, and any right to require that such conditions be corrected or eliminated.

6. Views Not Assured. Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view

plane from the Project or any Unit, and each Owner, by accepting title to or an ownership interest in a Unit, for himself/herself and/or the family, lessees, tenants and guests of such Owner and Owner's successors and assigns, acknowledges and agrees that: (a) views, if any, that may exist from a Unit may be lost or changed due to the maturing and/or changing of the landscaping within the Project; (b) completion of the Project and the future development or re-development of land adjacent to or in the vicinity of the Project (by Declarant or others) may have a detrimental effect on the views, if any, from the Unit and other parts of the Project; and (c) there are no view easements or rights appurtenant to the Project or the Unit.

R. AMENDMENT OF THIS DECLARATION AND THE CONDOMINIUM MAP

1. Except as otherwise expressly provided in this Declaration or in the Act, this Declaration and/or the Condominium Map may be amended by the affirmative vote and/or written consent of the Owners holding not less than 67% of the Common Interest of the Project, and shall be effective only upon the Recording of an instrument setting forth such amendment and vote and/or consent, duly executed by all of the consenting Owners or any two officers of the Association; provided, however, that amendments of a material adverse nature to Mortgagees must be agreed to by Mortgagees that represent at least 51% of the Common Interest of Units that are subject to Mortgages; and provided further that an amendment to any of the provisions of this Declaration that are for the express benefit of Declarant shall also require the express written consent and joinder of Declarant, together with such other approval requirements as set forth in this Section R. Implied approval by a Mortgagee to a proposed amendment to this Declaration or the Condominium Map shall be assumed when such Mortgagee fails to submit a response to a written proposal for such amendment within 60 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. Subject to the Owner-approval requirements set forth above and any other requirements set forth in this Declaration, any two officers may prepare, execute, certify, and Record an amendment to this Declaration and/or the Condominium Map on behalf of the Association.

2. Any provision of this Section R or otherwise of this Declaration to the contrary notwithstanding (except the Mortgagee approval requirements, if applicable, and except the HHFDC approval requirements set forth in Section R.7 below), and until the Recording of Unit conveyances or agreements of sale with respect to all of the Units in the Project in favor of Persons other than Declarant, Declarant may amend this Declaration, the Bylaws and/or the Condominium Map, without the approval, consent or joinder of any Person or group of Persons, including the Association, any Unit Owner or any Mortgagee, Occupant, lienholder, Unit purchaser, or any other Person who may have an interest in the Project, to make such amendments (a) to correct any misstatements of fact in the Project Documents, to correct typographical errors, to correct mathematical errors in the statement of Common Interests or to correct errors in the legal description of the Land, (b) as may be required by law, by the Real Estate Commission, by the County, by HHFDC, by any title insurance company issuing a title insurance policy on the Project or any of the Units, by any institutional lender lending funds on the security of the Project or any of the Units, or by any governmental agency (including, without limitation, FNMA and/or FHLMC), and (c) to conform the Declaration to updated requirements or standards of any governmental or quasi-governmental agency (including, without limitation, HHFDC, FNMA and/or FHLMC). Except as otherwise provided in this Declaration and/or the Bylaws, no amendment that would change the Common Interest appurtenant to a Unit (except to correct mathematical errors as described above) or substantially and adversely change the design, location or size of a Unit or building in which it is located shall be made without the

consent to such amendment by the Owner and the holder of a first mortgage, if any, on such Unit.

3. Any provision of this Section R to the contrary notwithstanding (except the HHFDC approval requirements set forth in Section R.7 below), Declarant may amend this Declaration (and when appropriate the Condominium Map) without the approval, consent or joinder of any Person or group of Persons, including the Association, any Unit Owner or any Mortgagee, Occupant, lienholder, Unit purchaser or any other Person who may have an interest in the Project or in any Unit, to file a certification of a licensed architect, engineer, or surveyor certifying that the final Recorded Condominium Map fully and accurately depicts the layout, location, boundaries, dimensions and numbers of the Units substantially as built, or that any revised plans being filed simultaneously with the amendment involve only immaterial changes to the layout, location, boundaries, dimensions and numbers of the Units substantially as built or such other changes as Declarant is permitted to make pursuant to this Declaration.

4. Any provision of this Section R to the contrary notwithstanding (except the HHFDC approval requirements set forth in Section R.7 below), Declarant may amend this Declaration (and when appropriate the Condominium Map) as provided in Section L.4 of this Declaration without the approval, consent or joinder of any Person or group of Persons, including the Association, any Unit Owner or any Mortgagee, lienholder, Unit purchaser or any other Person who may have an interest in the Project or in any Unit.

5. Any provision of this Declaration to the contrary notwithstanding (except the HHFDC approval requirements set forth in Section R.7 below), any amendment affecting any provision of this Declaration which is for the express benefit of Declarant, including without limitation, the reserved rights set forth in Sections E, L, P, Q, R, S and T, shall require the written consent and joinder of Declarant, together with such other approval requirements as set forth in this Section R.

6. Subject to Section 514B-23 of the Act, the Association at any time may, by a resolution adopted by the Board, restate this Declaration or the Bylaws to amend the Declaration 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.

7. Before Declarant can make any amendment to this Declaration and/or the Condominium Map that includes a "material change" (as that term is defined in Section 514B-3 of the Act), Declarant must get the written approval of the HHFDC (which approval can be made part of the amendment or be in a separate document); provided, however, that the HHFDC shall provide a written response to Declarant's request for consent to the amendment within 10 business days after such request was delivered to the HHFDC.

S. ALLEGED DEFECTS; RIGHT OF DECLARANT TO CURE

1. It is Declarant's intent that all improvements constructed or renovated in the Project be built or made in compliance with all applicable building codes and ordinances and that such improvements be of a quality that is consistent with good construction and development practices for similar projects. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, issues may arise as to whether an alleged defect exists and Declarant's responsibility therefor. It is Declarant's intent to resolve all disputes and claims regarding "Alleged Defects" (as defined below) amicably, and

without the necessity of time-consuming and costly litigation or even the dispute resolution process described in Section T below. Accordingly, the Association, Board, and all Owners are and shall be bound by the claim resolution procedures set forth in this Section S (collectively, the "Cure Process").

2. In the event that the Association, the Board or any Owner or Owners (each a "Claimant") claim, contend, or allege that any portion of a Unit, the Common Elements, and/or any other improvements constructed on the Land are defective or that Declarant or other "Covered Parties" (as defined in Section T.2 below) were negligent or are otherwise liable for defects in the planning, design, engineering, grading, construction, installation, management, or other development thereof (an "Alleged Defect"), Declarant hereby reserves the right and an easement for itself and all other applicable Covered Parties to inspect, evaluate, repair, replace, and/or otherwise cure such Alleged Defect as set forth herein.

3. In the event that a Claimant discovers any Alleged Defect, the Claimant shall, within five days of discovery of the Alleged Defect, attempt to contact Declarant by telephone to discuss the Alleged Defect. If the Claimant does not receive adequate resolution of the Alleged Defect via the telephone call to Declarant, then the Claimant shall, within 20 days of discovery of the Alleged Defect, deliver a written notice (the "Notice of Alleged Defect") to Declarant. Alleged Defects affecting more than one Unit shall be filed by the Association as Claimant and one written notice for one claim shall be delivered to Declarant. The Notice of Alleged Defect shall include all of the following:

(a) A preliminary list of Alleged Defects citing in reasonable detail the characteristics, nature, extent, and possible causes of the Alleged Defects (a "Preliminary List of Alleged Defects");

(b) The Claimant's answers to a survey or questionnaire distributed to the Owners by Declarant to determine the nature and extent of the Alleged Defects, if such a survey has been conducted or questionnaire has been distributed;

(c) A summary of the results (or the actual results) of testing conducted by or on behalf of the Claimant to determine the nature and extent of the Alleged Defects, if such testing has been conducted and such results are available; and

(d) Originals or copies of any photographs or samples of the Alleged Defect taken by or on behalf of the Claimant.

4. The Notice of Alleged Defect shall, upon delivery to Declarant, commence a period of time not to exceed 60 days, unless the Claimant and Declarant agree to a longer period, during which the Claimant and Declarant shall either, in accordance with the requirements of this Section, attempt to resolve the issue or attempt to agree to submit it to the dispute resolution process set forth in Section T of this Declaration.

5. Except as provided in this Section S, the Notice of Alleged Defect shall, upon mailing, toll all statutory and contractual limitations on actions against all parties who may be responsible for the defects claimed, whether named in the Notice or not, including claims for indemnity applicable to the claim, for a period of 150 days or a longer period agreed to in writing by Claimant and Declarant; provided, however, that at any time, Declarant may give written notice (the "Cancellation Notice") to cancel the tolling of the limitations period provided in this

subsection. Upon delivery of the Cancellation Notice, the Claimant and Declarant shall be relieved of any further obligation to satisfy the claim resolution procedures set forth in this Section S (thereby allowing the parties to pursue the dispute resolution process set forth in Section T), except that the Claimant shall not be relieved of the obligations under Section S.11, below, and if the Association is a Claimant, then the Association shall not be relieved of the obligations under Section S.10, below. The tolling of all applicable limitations periods shall cease 60 days after a Cancellation Notice is delivered to the Claimant.

6. Within 25 days of the date the Claimant delivers the Notice of Alleged Defect to Declarant, Declarant may request in writing (the "Request to Meet and Confer") to meet and confer with the Claimant, if Claimant is an Owner, or with the Board, if Claimant is the Association, and to inspect the Alleged Defect and conduct testing, including testing that may cause physical damage to any property within the Project, in order to evaluate the Alleged Defect. If Declarant does not make a timely Request to Meet and Confer, the Claimant and Declarant shall be relieved of any further obligation to satisfy the claim resolution procedures set forth in this Section S (thereby allowing the parties to pursue the dispute resolution process set forth in Section T); provided, however, that the Claimant shall not be relieved of the obligations of Section S.11, below, and if the Association is a Claimant, then the Association shall remain obligated to satisfy the requirements of Section S.10, below. Unless Declarant and the Claimant otherwise agree, the meeting (the "Initial Meeting") shall take place no later than 10 days from the date of the Request to Meet and Confer at a mutually agreeable time and place. If the Association is a Claimant, then the Association shall provide to all members of the Board notice of the time and place of the Initial Meeting pursuant to the provisions of the Bylaws relating to meetings of the Board. The discussions at the Initial Meeting shall be privileged communications and shall not be admissible in evidence in any arbitration proceeding or civil action unless Declarant and the Claimant consent in writing to their admission. The Initial Meeting shall be for the purpose of discussing all of the following:

- (a) the nature and extent of the Alleged Defects;
- (b) proposed methods of correction, to the extent there is sufficient information or, if not, to determine the need for further investigation;
- (c) proposals for submitting the issue to the dispute resolution process set forth in Section T below; and
- (d) requests from Declarant to inspect the Alleged Defects and conduct testing.

7. Inspection and Testing.

(a) If the Claimant has conducted inspection and testing prior to the date it sent the Notice of Alleged Defect to Declarant, then the Claimant shall, at the earliest practicable date after the Initial Meeting, but no later than five days after the Initial Meeting, make available to Declarant for inspection and testing at least those areas inspected or tested by the Claimant. Declarant shall have the right (but not the obligation), upon reasonable notice to the Claimant and the Owners of Units upon which Declarant intends to enter and during normal business hours, to enter onto or into, as applicable, the relevant portions of the Project, including, without limitation, any Unit or other improvement within the Project, for the purposes of inspection and testing (including testing that may cause physical damage to any property in

the Project) in order to evaluate the Alleged Defect. Each Owner and the Association shall make such areas available to Declarant for such inspection and testing.

(b) The inspection and testing, if any, shall be completed within 30 days from the date the Claimant makes such areas available for inspection and testing, unless the Claimant and Declarant agree in writing to a longer period or unless such inspection and testing cannot reasonably be completed within such time. If Declarant does not timely complete the inspection and testing, the Claimant and Declarant shall be relieved of any further obligation to satisfy the claim resolution procedures set forth in this Section S (thereby allowing the parties to pursue the dispute resolution process set forth in Section T); provided, however, that the Claimant shall not be relieved of the obligations under Section S.11, below, and if the Association is a Claimant, the Association shall remain obligated to satisfy the requirements of Section S.10, below. In conducting such inspection and testing, Declarant shall be entitled to take any actions it deems reasonable and necessary under the circumstances.

(c) Declarant shall pay all costs of inspection and testing that are requested by Declarant and shall, within a reasonable time period, restore the inspected property to the condition that it was in immediately prior to such testing and inspection. The results of the inspection and testing shall not be admissible in evidence in any arbitration proceeding or civil action unless Declarant consents to their admission.

8. Within 60 days of receiving the results of the inspection and testing or within 60 days of the Initial Meeting, if no inspection and testing are conducted pursuant to subsection 7, Declarant shall submit to the Claimant the following:

(a) If Declarant desires a meeting, a request to meet with the Claimant if the Claimant is an Owner, or with the Board if the Claimant is the Association, to discuss a written settlement offer;

(b) A written settlement offer ("Settlement Offer") and an explanation of the reasons for the terms of the Settlement Offer, which may include an offer to submit the issue to the dispute resolution process set forth in Section T below; and

(c) A summary of the results of the inspection and testing, if any, conducted by Declarant; provided, however, that if the Claimant provided Declarant with actual test results pursuant to Section S.3(c) above, Declarant shall also provide the Claimant with actual test results.

If Declarant does not timely submit the items required by this Section S.8, then the Claimant shall be relieved of any obligations to meet and confer with Declarant about the Settlement Offer. Otherwise, the Claimant or the Board, as the case may be, shall meet and confer with Declarant about the Settlement Offer no less than 10 days after Declarant submits the items described in subsection 8 above to the Owner or the Board, as the case may be.

9. At any time after the Notice of Alleged Defect is delivered to Declarant, the Claimant and Declarant may agree in writing to modify or excuse any of the time periods or other obligations imposed by this Section S. Except for the notice required pursuant to Section S.10 below, all notices, requests, statements, or other communications required pursuant to this section shall be delivered by certified mail, return receipt requested.

10. If the Claimant is the Association, then the Association shall comply with either Section S.10(a) or Section S.10(b) below. The failure of the Association to comply with this Section S.10 shall be a procedural deficiency to an action for damages by the Association against Declarant.

(a) If the Board rejects the Settlement Offer, then the Board shall hold a meeting (the "Owner Meeting"), open to every Owner, no less than 15 days before the Association initiates the dispute resolution process of Section T below. No less than 15 days before the Owner Meeting is held, a written notice shall be sent to each Owner specifying all of the following:

(i) that a meeting will take place to discuss issues that may lead to the initiation of dispute resolution process on behalf of the Association;

(ii) the time and place of the Owner Meeting;

(iii) the options that are available to address the issues, including the commencement of the dispute resolution process in accordance with Section T, and a statement of the various alternatives that are reasonably foreseeable by the Association to pay for those options, and whether such payments are expected to be made from the use of funds currently within the Association's account, from increases in maintenance fees, or from the imposition of special assessments;

(iv) the complete text of any Settlement Offer, Declarant's explanation of the reasons for the terms of the Settlement Offer, and any offer by Declarant to submit the issue to the dispute resolution process set forth in Section T;

(v) the Preliminary List of Alleged Defects provided by the Association to Declarant, a list of any other documents provided by the Association to Declarant pursuant to this Section, and information about where and when Owners may inspect those documents;

(vi) a complete and accurate description of Declarant's attempts to correct the Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect; and

(vii) the estimated cost to repair such Alleged Defect.

The discussions at the Owner Meeting, the contents of the notice of the Owner Meeting, and the items required to be specified in such notice are privileged communications and are not admissible in evidence in any arbitration proceeding or civil action unless Declarant and the Board consent to their admission.

(b) If, pursuant to Sections S.5, S.6, and S.7 above, the Association is relieved of its obligation to satisfy the requirements of this Section S, other than this Section S.10(b) and Section S.11 below, then the Association may commence the dispute resolution process set forth in Section T below.

11. Any funds received by a Claimant as a result of any judgment or award in connection with any legal action, cause of action, proceeding, reference, or arbitration against Declarant or any other Covered Party alleging damages (a) for the costs of repairing or

replacing any Alleged Defect, (b) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (c) for any consequential damages resulting from such Alleged Defect, shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. In the event the Association recovers any funds from Declarant or any other Covered Party to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's general operating account, unless at least 67% of the Owners vote to allocate or distribute the remaining funds otherwise.

12. As soon as is reasonably practicable after the Association and Declarant (or other Covered Party) have entered into a settlement agreement or the matter has otherwise been resolved regarding Alleged Defects in the Common Elements, where the defects giving rise to the dispute have not been corrected, the Association shall, in writing, inform only the Owners whose names appear on the records of the Association that the matter has been resolved, by settlement agreement or other means, and disclose all of the following:

(a) A general description of the defects that the Association reasonably believes, as of the date of the disclosure, will be corrected or replaced;

(b) A good faith estimate, as of the date of the disclosure, of when the Association believes that the defects identified in Section S.12(a) will be corrected or replaced;

(c) The status of the claims for Alleged Defect that were not identified in Section S.12(a), whether expressed in a Preliminary List of Alleged Defects sent to each Owner or otherwise claimed and disclosed to the Owners. The Association may amend the disclosures required pursuant to this Section S.12, and any amendments shall supersede any prior conflicting information disclosed to the Owners.

13. Nothing set forth in this Section shall be construed to impose any obligation on Declarant to inspect, repair, or replace any item or Alleged Defect for which Declarant is not otherwise obligated to do under applicable law. The right of Declarant to enter, inspect, repair, and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing signed by Declarant and Recorded.

14. Any dispute concerning the interpretation or the enforceability of this Section, any challenges to the enforcement or the validity of this Section, and any defense relating to the enforcement of this Section, including, without limitation, waiver, estoppel, or laches, shall be decided by an arbitrator in accordance with Section T below and not by a court of law.

15. Utilization of all or part of the Cure Process by Declarant and any other applicable Covered Parties shall not result in a waiver of any right by Declarant or such applicable Covered Parties to seek recovery of the costs related to the Cure Process.

16. Anything in this Section S to the contrary notwithstanding, Declarant and/or any other Covered Party responding to a claim of an Alleged Defect by a Claimant may, at any time, by written notice to the Claimant, waive the Cure Process set forth in this Section S and have the matter proceed directly to the dispute resolution process set forth in Section T below.

T. DISPUTE RESOLUTION

1. Limitation on Liability. Notwithstanding anything to the contrary in this Declaration, each Owner, by accepting title to any Unit, acknowledges and agrees on behalf of the Owner, the Board and the Association that neither Declarant nor any officer, agent, principal, employee, director, member, manager, partner or shareholder of Declarant (or of Declarant's successor or assignee) shall have any personal liability to any Owner, the Board, the Association or other Person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration.

2. Negotiation, Mediation and Arbitration.

(a) Except as specifically permitted in this Section T.2 or elsewhere in this Declaration, no judicial or administrative (inclusive of arbitration) proceeding shall be commenced or maintained by the Managing Agent, the Board, the Association or any Owner, individually or collectively, or Declarant, nor shall any lis pendens or notice of pendency of action be filed or recorded.

(b) Negotiation, Mediation and Arbitration.

(i) Each Owner, on behalf of such Owner and the Owner's successors and assigns, and in his or her capacity as a member of the Association and/or the Board, and Declarant agree that there shall be no right to litigate in respect of the Covered Matters, hereinafter defined, and in the event the Board, the Association, Declarant or any Owner or any other Person with an interest in the Project shall have any claim or cause of action arising out of or in any way related to (A) the Project Documents or the enforcement thereof, (B) the design or orientation of the Project, a Unit or of the improvements to a Unit as they relate to adjacent or nearby properties and/or exposure to the Sun, the wind and other elements, (C) the development, construction, quality, sales, marketing, disclosures concerning, financing or delivery of the Common Elements, the Project, any Unit or the improvements to a Unit, (D) warranties, if any, (E) the reservations with respect to, or limitations on, use or purpose of the Project, the Common Elements, any Unit or any improvements thereto, or (F) the agreements, decisions, and determinations of the Board and/or the Association or the enforcement thereof, or (G) any other aspect of or activity with respect to the Common Elements, the Project or a Unit (herein collectively the "Covered Matters"), against any of those Persons hereinafter defined as Covered Parties, such claim or cause of action (a "Dispute"), whether such Dispute is based on contract, tort, common law or statute, including, without limitation, any Dispute over (1) the disposition of any deposits, (2) breach of contract, (3) negligent or intentional misrepresentation or fraud, (4) nondisclosure, (5) breach of any alleged duty of good faith and fair dealing, (6) allegations of latent or patent construction defects, or (7) any other matter arising from or related to the interpretation of any term or provision of this Declaration or the Bylaws, or any defense going to the formation or validity of this Declaration or the Bylaws, or any provision of this Declaration or the Bylaws, including, without limitation, allegations of unconscionability, fraud in the inducement, or fraud in the execution, whether such Dispute arises before or after the close of escrow, shall be submitted and resolved according to the process of "Negotiation", "Mediation" and "Arbitration" defined and described below. Any such claim or cause of action shall be subject to Negotiation, Mediation and Arbitration regardless of whether the claim is against an Owner, the Association, Declarant, Declarant's real estate brokers, agents, or attorneys, the architects, engineers, or other consultants for the Project, the contractor, subcontractors, sub-subcontractors, material suppliers, the Managing Agent or other Persons involved with the Project, and their respective

officers, directors, agents, members, principals, servants, employees, representatives, successors or assigns (the "**Covered Parties**"), provided that such Person(s) has entered into an agreement or otherwise agrees to negotiate, mediate and/or arbitrate such disputes; or if such Dispute is filed jointly and severally against other parties, it shall be subject to Negotiation, Mediation and Arbitration whether or not such other parties are willing to submit to Negotiation, Mediation and Arbitration as herein provided. Any Dispute concerning the interpretation or the enforceability of this Section, including, without limitation, its revocability or voidability for any cause, any challenges to the enforcement or the validity of this Declaration, the Bylaws or this Section, and any defense relating to the enforcement of this Section, including, without limitation, waiver, estoppel, or laches, shall be decided by an arbitrator in accordance with this Section and not by a court of law. Further, in the event that a Dispute is raised between the parties after an Owner's acquisition of the Owner's Unit, whether such Dispute is related to, or arises from, an act, omission or other event occurring prior to such acquisition, such Dispute shall be decided by an arbitrator in accordance with this Section and not by a court of law.

(ii) In respect of all Covered Matters that (where applicable) are not resolved by the Cure Process (described in Section S above), the Owner, Declarant, the Board, and/or the Association shall participate in a period of good faith negotiation (the "**Negotiation**"). Each Owner, the Board, the Association and Declarant recognizes that, following the Cure Process, if applicable, the Negotiation process must be completed before the Mediation and/or Arbitration process described in this Section can begin. As such, following the Cure Process, if applicable, the claimant Owner, Board or Association must first give written notice to the Covered Party describing the nature of the Dispute and a description of what the Owner, the Board or the Association believes ought to be done to resolve the Dispute. The Owner, the Board or the Association must also propose a date and time for a conference, which date must fall on a business day between twenty and thirty days after the date the Claimant sends the foregoing notice to the Covered Party (the "**Conference**"), unless mutually extended by the parties. The Conference shall be held at a mutually agreed-upon location. Within five business days of the Conference notice, the Covered Party shall provide a follow-up notice to the claimant confirming the time of the Conference and stating the name and title of the Covered Party's representative to the Conference. At least five days before the Conference is scheduled to take place, claimant will, in good faith, discuss with the Covered Party's representative and consider possible resolutions of the claim. At the Conference, the claimant (and the claimant's representatives, if any) and the Covered Party's representatives shall confer together to resolve the Dispute for a maximum period of two hours, although the parties may extend or adjourn the meeting by mutual agreement. If, as a result of the Conference, the Dispute or certain issues in the Dispute have been resolved, then the parties shall set forth in a single, signed, written document the issues that have been resolved and the issues, if any, that remain unresolved and will require Mediation and, if necessary, Arbitration. If the parties do not sign such a document within 15 days after the end of the Conference (or such other period as the parties may agree in writing), then the parties will be deemed to have completed the Negotiation process and those parts of the Dispute that have not been resolved, as set forth in a document signed by the parties, will be deemed unresolved and subject to Mediation and, if necessary, Arbitration.

(iii) If the Negotiation process has been completed as required by this Section, but the entire Dispute has not been resolved, then, if any of the parties wishes to pursue the Dispute further, the unresolved aspects of the Dispute shall be resolved, if possible, by confidential mediation conducted with the assistance of a single mediator in accordance with the Mediation Rules, Procedures, and Protocols of Dispute Prevention & Resolution, Inc. (or, if that entity no longer exists, such other dispute resolution service reasonably agreeable to all

parties) ("DPR") then in effect (the "**Mediation**"). Any counterclaim a Covered Party may have against a claimant shall also be a subject of (and an attempt shall be made to resolve the same in the context of and by) Mediation. Any Mediation shall be conducted in the City and County of Honolulu, and shall be governed by the laws of the State of Hawaii. The parties shall share equally the expense of the mediator. Unless all parties agree otherwise, the mediation hearing shall not exceed two eight-hour sessions and the mediator shall not expend more than five hours in pre-hearing preparation (including review of submissions) and five hours in post-hearing matters. In other words, unless all parties agree otherwise, the mediator's total hours shall not exceed 26. If the mediator is to render any sort of post-hearing report or decision and such report or decision is not filed with DPR within 15 days after the end of the last mediation hearing, then the Mediation process will be deemed completed and those parts of the Dispute that have not been resolved, as set forth in a document signed by the parties, will be deemed unresolved and subject to Arbitration.

(iv) If the Negotiation and Mediation processes have been completed as required by this Section, but the entire Dispute has not been resolved, then, if any of the parties wishes to pursue the Dispute further, the unresolved aspects of the Dispute shall, except as provided below, be resolved by a single arbitrator by confidential arbitration in accordance with DPR's Arbitration Rules, Procedures, and Protocols ("**Arbitration Rules**") then in effect and with Chapter 658A of Hawaii Revised Statutes (the "**Arbitration**"). If the unresolved aspects of the Dispute involve a claim or cause of action with a monetary value of One Million Dollars (\$1,000,000.00) or more (as alleged by the claimant), then the Arbitration shall be conducted by a panel of three arbitrators (collectively, referred to as an "arbitrator") selected in accordance with DPR's Arbitration Rules, and the decision of a majority of such arbitrators shall be binding. No arbitration may be commenced until Declarant and any other applicable Covered Parties are provided access to the Unit, Limited Common Element, or Common Element that is subject to the Dispute and given an opportunity to cure the alleged defect pursuant to the Cure Process described in Section S above. Any counterclaim a Covered Party may have against a claimant shall also be resolved in the context of and by Arbitration. Any Arbitration shall be conducted in the City and County of Honolulu, and shall be governed by the laws of the State of Hawaii.

(v) Except as otherwise set forth in any applicable agreements or provided by law, no special, consequential, punitive, speculative or indirect damages, no damages attributable to emotional distress or a multiple of actual damages based upon any theory of law and no award of attorneys' fees shall be sought, made, or awarded in any claim against or Dispute involving Declarant or any of the other Covered Parties and each Covered Party specifically waives such damages and awards. The parties agree to give up any right they may have to bring a class-action lawsuit or class arbitration, or to participate in either as a claimant. The parties agree to give up any right they may have to consolidate the arbitration of a Dispute with the arbitration(s) of others. The arbitrator may award costs, including expert witness fees and fees of the arbitrator, to the prevailing party. Additionally, the arbitrator may award equitable relief pursuant to any Arbitration instituted as a result of or to enforce this Declaration. The arbitrator shall faithfully apply the substantive law of the County and the State, or applicable federal law, in all matters and shall give due consideration to all procedural and evidentiary laws and rules. In the event that there is a conflict between any provisions in the arbitration statute(s) of the County or the State and those of the federal government, the provisions of the federal arbitration statute(s) shall control, to the extent not inconsistent with this Section.

(vi) Any arbitration award shall not be considered final unless and until the arbitration award contains a decision with respect to all issues put before the arbitrator and, additionally, the arbitrator has determined all collateral issues. Furthermore, no decision of the arbitrator shall be considered final until the tenth day subsequent to the date of service of the arbitration award of the arbitrator upon the parties. Service of the arbitration award shall be made on the same date upon all parties. Unless all parties agree otherwise, the arbitration hearing shall not exceed two eight-hour sessions and each arbitrator shall not expend more than eight hours in pre-hearing preparation (including review of submissions) and ten hours in post-hearing matters (including preparation of written decisions). In other words, unless all parties agree otherwise, each arbitrator's total hours shall not exceed 34. The written decision of the arbitrator shall be filed with DPR within 20 days after the end of the last arbitration hearing. The award rendered by the arbitrator shall be final and a judgment may be entered upon it in accordance with H.R.S. Chapter 658A in the Circuit Court of the First Circuit, State of Hawaii.

(vii) Notwithstanding the provisions of this Section T.2, (a) disputes with an Owner regarding amount or validity of any assessment shall be resolved in accordance with Section 6.12 of the Bylaws, and (b) the Association (including the Board on behalf of the Association) may proceed by litigation, with majority Board approval, in connection with: (y) the imposition and collection of assessments by the Association, including foreclosure actions necessitated by the failure of an Owner to pay the required assessments; or (z) counterclaims brought by the Association in court proceedings instituted against it.

(viii) Except with respect to those actions described in subsection (vii) above, no actions or proceedings of any kind (including crossclaims) shall be commenced by the Association or the Board against the Covered Parties except upon the affirmative vote of two-thirds of the Board and the affirmative vote of not less than 67% of the Owners.

(ix) Any documents of assignment, lease or conveyance of any Unit or other interest in the Project shall be deemed to incorporate the provisions of this Section T, as if the same were fully set forth in any such document.

3. Miscellaneous.

(a) Issues of arbitrability shall be determined in accordance with the federal substantive and procedural laws relating to arbitration. Each party shall bear its own attorneys' fees associated with Negotiation, Mediation, and Arbitration, and, unless otherwise set forth herein, other costs and expenses shall be borne as provided by the rules of (or used by) DPR.

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

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

(d) No party, witness, or arbitrator may disclose the facts of the underlying dispute or the contents or results of any negotiation, mediation, or arbitration hereunder without

prior written consent of all parties, unless and then only to the extent required to enforce or challenge the negotiated agreement or the arbitration award, as required by law, or as necessary for financial and tax reports and audits.

(e) Unless such a limitation is otherwise specifically prohibited by law, no party may bring a claim or action, regardless of form, arising out of or related to this Declaration, any Alleged Defects, or other claims relating to the Project, including any claim of fraud, misrepresentation, or fraudulent inducement, more than one year after the cause of action accrues, unless the injured party cannot reasonably have discovered the basic facts supporting the claim within one year, in which event the claim or action cannot be brought more than one year after the injured party should reasonably have discovered the basic facts supporting the claim.

U. HHFDC RESTRICTIONS

1. Chapter 201H HHFDC Buy-Back Restrictions. The HHFDC Affordable Units are subject to the provisions of Chapter 201H (the "HHFDC Buyback Restrictions"). The HHFDC Buy-Back Restrictions provide, among other things, for a first option in favor of HHFDC to purchase a HHFDC Affordable Unit for a period of 10 years from the date the HHFDC Affordable Unit was first conveyed by Declarant to a third-party buyer if the Owner of the HHFDC Affordable Unit desires to sell or transfer the HHFDC Affordable Unit or if the Owner of such Unit violates a covenant that requires the Owner to occupy the HHFDC Affordable Unit. For each HHFDC Affordable Unit, after the first conveyance of the HHFDC Affordable Unit by Declarant to a qualified purchaser (pursuant to the HHFDC Buy-Back Restrictions) (called "Declarant's Initial Conveyance"), and continuing thereafter (a) until the HHFDC Buy-Back Restrictions are released by HHFDC, or (b) until the 10th year from the date of Recordation of the Deed of Declarant's Initial Conveyance, whichever shall first occur, all conveyances of the HHFDC Affordable Unit shall be subject to the HHFDC Buy-Back Restrictions, and each such subsequent conveyance of the HHFDC Affordable Unit shall incorporate the HHFDC Buy-Back Restrictions and shall contain the covenant of the grantee thereunder to observe and perform the HHFDC Buy-Back Restrictions. The HHFDC Buy-Back Restrictions are attached as EXHIBIT "D" to this Declaration and are made a part hereof. The HHFDC Buy-Back Restrictions will also be incorporated into the Unit Deed of each HHFDC Affordable Unit as an exhibit thereto. By acceptance of a Unit Deed, all Owners of HHFDC Affordable Units will be deemed to have acknowledged and agreed that they (y) have read, reviewed, approved and accepted all of the terms and conditions of the HHFDC Buy-Back Restrictions, and (z) accept title to their respective Unit subject to the HHFDC Buy-Back Restrictions.

2. HHFDC Shared Appreciation Equity Program. For each HHFDC Affordable Unit, after Declarant's Initial Conveyance of the Unit and continuing thereafter until the restrictions under the HHFDC Shared Appreciation Equity Program are released by HHFDC or terminate under certain foreclosure circumstances as provided in the HHFDC Shared Appreciation Equity Program, all conveyances of that HHFDC Affordable Unit shall be subject to the restrictions of the HHFDC Shared Appreciation Equity Program. Upon any sale, non-permitted transfer, rental or non-owner-occupancy of the HHFDC Affordable Unit by the Unit Owner, HHFDC shall be entitled to HHFDC's share of the appreciation in value of the HHFDC Affordable Unit. The terms and conditions of the HHFDC Shared Appreciation Equity Program, pursuant to Chapter 201H, and Hawaii Administrative Rules, Title 15, Subtitle 14, Chapter 174, Subchapter 9, are described in EXHIBIT "E" attached

hereto and made a part hereof, and will be incorporated into each HHFDC Affordable Unit's Deed as an exhibit thereto. A Memorandum of the HHFDC Shared Appreciation Equity Program Agreement will also be Recorded at the Bureau against title to each HHFDC Affordable Unit. By acceptance of a Unit Deed, each HHFDC Affordable Unit Owner will be deemed to have acknowledged and agreed that they have read, reviewed, approved and accepted all of the terms and conditions of the HHFDC Shared Appreciation Equity Program and that they accept title to the Unit subject to the HHFDC Shared Appreciation Equity Program.

3. Liability for HHFDC Buy-Back Restrictions and Shared Appreciation Equity Program. By acceptance of a Unit Deed, each Owner of a HHFDC Affordable Unit acknowledges and agrees that such Owner is obligated to comply with the terms and conditions of the HHFDC Buy-Back Restrictions and the HHFDC Shared Appreciation Equity Program. Declarant shall not be responsible or liable: (a) for the administration of the HHFDC Buy-Back Restrictions or the HHFDC Shared Appreciation Equity Program; (b) for the observance or performance by HHFDC of its obligations or for the enforcement by HHFDC of its rights under the HHFDC Buy-Back Restrictions or the HHFDC Shared Appreciation Equity Program; (c) for any actions taken by HHFDC or the failure of HHFDC to take any action in connection with the HHFDC Buy-Back Restrictions or the HHFDC Shared Appreciation Equity Program; or (d) for the obligations of, or to otherwise comply with, the HHFDC Buy-Back Restrictions or the HHFDC Shared Appreciation Equity Program.

4. Owner Indemnities. Each Owner shall indemnify, defend and hold Declarant, its agents, successors and assigns, harmless from and against any and all liability, claims, losses, damages, expenses and costs, including attorneys' fees, incurred by or through the Owner arising out of or resulting from the administration, observance, performance and enforcement of or the failure to administer, observe, perform or enforce HHFDC's Buy-Back Restrictions and the HHFDC Shared Appreciation Equity Program, or any term or provision thereof. Further, each Owner shall indemnify, defend and hold the State of Hawaii, HHFDC and their officers, employees, and agents harmless from and against any and all liability, claims, losses, damages, expenses and costs, including attorneys' fees, incurred by or through the Owner arising out of or resulting from Declarant's development of the Project.

V. MISCELLANEOUS

1. Consent, Power of Attorney. By acceptance of a Unit Deed, each and every Owner or other Person or entity acquiring an interest in a Unit, including the holders of Mortgage liens on individual Units, consents to all of the rights reserved to Declarant in this Declaration, including, but not limited to, the right to prepare, execute, file, process and Record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Condominium Map and the Bylaws. By such acceptance, each and every Owner or party acquiring such interest, including the holders of Mortgage liens on individual Units, agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of Declarant with full power and right of substitution, as the attorney-in-fact of such Owner or acquiring party to execute, deliver, file and Record such documents and instruments and to do such things on such Owner's or acquiring party's behalf, and to receive or send any legal notices required by Hawaii Revised Statutes, Chapter 501, and to receive service of process as to legal proceedings in the Bureau; and such appointment, being coupled with an interest, shall be irrevocable for the specific period(s) of Declarant's

reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or acquiring party; which grant of such power shall be binding upon any assign of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Unit or any interest therein, whether by deed, mortgage, or any other instrument of conveyance. Without limitation to the generality of the rights reserved unto Declarant hereunder, Declarant will have the right to execute, deliver and file any amendment to this Declaration or to the Condominium Map, the Bylaws, and/or the Project Rules, any easement instrument, any deed, any amendment to a Unit Deed, assignment of rights or interest, any necessary amendments in the Bureau to note any recalculated Common Interest appurtenant to any Unit, or such other document or instrument that may be necessary or appropriate to permit Declarant to exercise its rights pursuant to the provisions of this Declaration.

2. Transfer of Limited Common Elements.

(a) Unit Owners (including Declarant) shall have the right to transfer or exchange a Limited Common Element (including a parking stall) that is appurtenant only to the Owner's Unit to another Unit in the Project by a written document expressly providing: (i) that the document is an amendment to this Declaration; and (ii) the identification of the Limited Common Element being transferred or exchanged, the Unit to which the Limited Common Element was appurtenant prior to the transfer, and the Unit to which the Limited Common Element is being transferred and to which it will be appurtenant as a Limited Common Element. Any such document need only be executed by the Owner of the Unit whose Limited Common Element is being transferred or exchanged (and that Owner's Mortgagee(s), if any and if required by such Mortgagee(s)) and by the Owner of the Unit receiving the Limited Common Element (and that Owner's mortgagee(s), if any and if required by such Mortgagee(s)), and shall be effective upon Recording. A copy of such document, bearing Recordation data, shall be promptly delivered to the Association, via the Managing Agent.

(b) Declarant shall have and hereby reserves the right: (i) by way of an amendment to this Declaration executed only by Declarant and duly Recorded, to sell, lease and/or convey or otherwise designate any parking stall not designated herein as a Limited Common Element to be appurtenant to and/or for the exclusive use of any Unit in the Project as a Limited Common Element for that Unit or for use by Persons not part of the Project; (ii) to designate any parking stall not designated herein as a Limited Common Element for use as a guest parking stall for the Project; (iii) to use, or allow others to use, as Declarant shall deem appropriate, any parking stall not designated herein as a Limited Common Element; and (iv) by way of an amendment to this Declaration executed only by Declarant and duly Recorded, to assign or change, from time to time, the assignments of individual parking stalls to individual Units that have not been conveyed by Declarant.

3. Project Rules Respecting Parking. Declarant has the exclusive right to use and/or assign unassigned parking stalls that are not appurtenant to any specific Unit. Unless and until Declarant exercises this right with respect to any one or more unassigned parking stalls, use of those unassigned parking stalls, if any, or those parking stalls, if any, designated as "guest" stalls may be governed by rules and regulations adopted in accordance with the Project Documents to assure equitable use of the stalls among the Owners, Occupants and Invitees of the Units. The Board may, with respect to the parking stalls used in connection with the Units, hire parking attendants, install parking meters, gates, security devices, checkpoints, and other equipment appropriate to this end and may issue stickers or adopt an allocation

system. Without limiting, but subject to, the foregoing, the Board may establish additional regulations relating to any of the unassigned parking stalls, including designating "guest parking", "parking", and "no parking" areas thereon. Any parking areas shall be subject to such further reasonable control and use limitations as the Board may establish. The Board shall determine whether there is a violation of the parking and vehicular restrictions set forth in the Project Documents or otherwise established by the Board. If such noncompliance is determined by the Board to exist, then the Board shall have the power to enforce all parking and vehicle use regulations applicable to the Project, including the power to remove violating vehicles from the Project.

4. Security. Declarant shall not in any way be considered an insurer or guarantor of security within or relating to the Project, including any common areas or facilities in which the Association may have an interest or obligation, and Declarant shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Each Unit Owner, for such Owner and for the Occupants of and Invitees to the Unit, as well as the family, lessees, tenants and guests of such Owner and Occupants of the Unit, acknowledges and understands that neither Declarant nor the Board are insurers of the safety or well being of Owners, Occupants or Invitees of the Project or their property, and that each Unit Owner assumes all risks for loss or damage to persons, the Units, the Common Elements and environs of the Project, and to the contents of improvements located thereon, and further acknowledges that neither Declarant nor the Board has made any representations or warranties nor has any Unit Owner or Occupant of or Invitee to the Project relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to the security of the Project and the surrounding areas, or any security measures undertaken within the Project or the surrounding areas.

4. Exemptions for Persons With Disabilities. Notwithstanding anything to the contrary contained in this Declaration, the Bylaws or the Project Rules, Owners with disabilities shall be allowed reasonable exemptions from this Declaration, the Bylaws and the Project Rules when necessary and as appropriate to enable them to use and enjoy their Units, the Limited Common Elements over which they have rights and/or the Common Elements, provided that any Owner with a disability desiring such an exemption shall make such request in writing to the Board of Directors. That request shall set forth, with specificity and in detail, the nature of the request and the reason that the requesting party needs to be granted such an exemption. The Board of Directors 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 30 days of the Board's receipt thereof or within 30) days of the Board's receipt of additional information reasonably required by the Board in order to fully consider such request, whichever shall last occur.

5. Invalidity and Changes in Law. If any provision of this Declaration shall be declared invalid, void, or unenforceable by appropriate authority, all other provisions of this Declaration shall continue in full force and effect as if the invalid provision had not been included. In the event of a change in statutory law applicable to this Project occurring after the Recording of this Declaration, such change in law shall control over the provisions of this Declaration and the Bylaws only to the extent the legislative body enacting such change in law expressly provides that the provisions of such change in law shall control over provisions to the contrary in preexisting condominium documents.

6. Incorporation of Exhibits. Exhibits "A", "B", "C", "D" and "E" attached to this Declaration are incorporated herein by reference.

7. Incorporation of Condominium Map. The Condominium Map is incorporated herein by reference.

8. Other Terms. Terms that are used in this Declaration but are not otherwise defined shall have the meaning given to those terms by the Act, if defined therein.

9. Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development of a condominium project similar in nature to the Project.

10. Conflicts. This Declaration is intended to comply with the Act. In case of any conflict between the provisions of this Declaration and those of Hawaii law or the Act, then the provisions of Hawaii law or the Act, as the case may be, shall control. In case of any conflict between the provisions of this Declaration and those of the Bylaws, then the provisions of this Declaration shall control.

11. Non-Liability of Declarant. Each Owner, by acceptance of a Unit Deed shall be deemed to have agreed that Declarant shall have no liability whatsoever resulting from any term or provision hereof having been held to be unenforceable in whole or in part.

12. Grantees Subject to This Declaration. Each grantee of a conveyance of a Unit or purchaser under a contract or agreement of sale of a Unit, by accepting the deed or contract of sale or agreement of purchase, accepts the same subject to all of the limitations, restrictions, conditions and covenants, and agreements set forth in this Declaration, and agrees to be bound by the same.

13. Captions; Headings. Captions given to various sections in this Declaration, and terms used for definition purposes herein, are for convenience and reference purposes only and are not intended to and shall not modify or affect the meaning, construction, or interpretation of any of the substantive provisions hereof.

14. Gender. The use of a pronoun of any gender in this Declaration or the Bylaws shall be deemed to include the other gender and the use of the singular shall be deemed to include the plural whenever the context requires.


15. Scope of Declarant. Whenever, in this Declaration, "Declarant" is to be released, indemnified or have claims against it waived, the release, indemnification and waiver shall also apply to Declarant's officers, directors, agents, members, principals, employees, successors and assigns.

[Signature Page Follows]

Declarant has executed this Declaration as of FEB 18 2009.

KRC PARTNERS LLC,
a Hawaii limited liability company

By KRC Partners Holdings LLC,
a Hawaii limited liability company
Its Manager

By 
Name: DAVID L. BEERWERT
Title: MANAGER

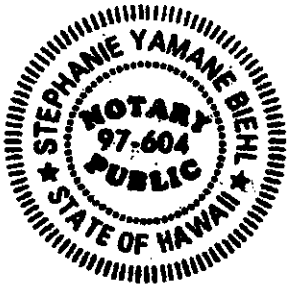
Declarant

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

On this 18th day of February, 2009, before me personally appeared David L. Bierwert, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Further, I certify, as of this date, as follows:

Date of Document: February 18, 2009
Number of Pages: 90
Document Description: Declaration of Condominium
Property Regime of Holomua
Jurisdiction/Judicial Circuit Where Signed: First Circuit



Stephanie Biehl
Type or print name: Stephanie Yamane Biehl
Date: February 18, 2009
Notary Public, in and for said County and State
My commission expires: October 19, 2011

TMK Nos.: (1) 2-4-006-017 (AS TO PARCEL FIRST)
(1) 2-4-006-018 (AS TO PARCEL SECOND)

EXHIBIT "A"

PARCEL FIRST:

That certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 177 to P. J. Gulick) situate, lying and being on the east side of Kalakaua Avenue between Beretania Street and Young Street, City and County of Honolulu, State of Hawaii, and being more particularly described as follows:

Beginning at a pipe on the east side of Kalakaua Avenue, said point of beginning located by true azimuth traverse from a Government Survey Street Monument set near the north corner of Beretania and Punahou Streets as follows:

- | | | | |
|-----|------|---------|--|
| (a) | 111° | 12' | 494.45 feet; |
| (b) | 3° | 15' | 280.60 feet to the above described initial point, and thence running by azimuths measured clockwise from true South: |
| 1. | 183° | 15' | 58.84 feet along the east side of Kalakaua Avenue to a pipe; |
| 2. | 290° | 09' 30" | 178.06 feet along the remainder of Grant 177 to P.J. Gulick to a pipe; |
| 3. | 21° | 44' 30" | 127.79 feet along same to a pipe; |
| 4. | 108° | 46' 30" | 11.01 feet along the northeast side of Young Street to a pipe; |
| 5. | 201° | 44' 30" | 75.10 feet along the remainder of Grant 177 to P.J. Gulick to a pipe; |
| 6. | 108° | 46' 30" | 148.32 feet along same to the point of beginning and containing an area of 10,052 square feet, more or less. |

TOGETHER WITH an easement for ingress and egress to and from Beretania Street, eleven (11) feet wide, as set forth in Partition Deed dated October 28, 1944, recorded in the Bureau of Conveyances, State of Hawaii, in Book 1884, Page 387, said easement being more particularly described therein.

PARCEL SECOND:

That certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 177 to P. J. Gulick) situate, lying and being on the east side of Kalakaua

Avenue between Beretania Street and Young Street, City and County of Honolulu, State of Hawaii, and being more particularly described as follows:

Beginning at a pipe on the northwest corner of this piece of land and on the east side of Kalakaua Avenue, said point of beginning located by true azimuth traverse from a Government Survey Street Monument set near the north corner of Beretania and Punahou Streets as follows:

-
- | | | | | | |
|-----|------|-----|-----|--------|---|
| (a) | 111° | 12' | | 494.45 | feet; |
| (b) | 3° | 15' | | 162.92 | feet to the above described initial point, and thence running by azimuths measured clockwise from true South: |
| 1. | 291° | 12' | | 185.67 | feet along the remainder of Grant 177 to P.J. Gulick; |
| 2. | 201° | 44' | 30" | 99.01 | feet along the remainder of Grant 177 to P.J. Gulick; |
| 3. | 291° | 12' | | 11.00 | feet along the southwest side of Beretania Street to a concrete post marked "+"; |
| 4. | 21° | 44' | 30" | 151.75 | feet along the remainder of Grant 177 to P.J. Gulick; |
| 5. | 110° | 09' | 30" | 178.06 | feet along the remainder of Grant 177 to P.J. Gulick; |
| 6. | 183° | 15' | | 58.84 | feet along the east side of Kalakaua Avenue to the point of beginning and containing an area of 11,287 square feet, more or less. |

TOGETHER WITH an easement for ingress and egress to and from Young Street, eleven (11) feet wide, as set forth in Partition Deed dated October 28, 1944, recorded in the Bureau of Conveyances, State of Hawaii, in Book 1884, Page 387, said easement being more particularly described therein.

Being the same lands (Parcels First and Second) conveyed to KRC Partners LLC, a Hawaii limited liability company, by Warranty Deed dated December 18, 2007, recorded in the Bureau as Document No. 2007-223914.

END OF EXHIBIT "A"

EXHIBIT "B"

HOLOMUA

DESCRIPTION OF BUILDING:

The Project shall contain one 23-story building (without basements) containing a total of 176 Units, as shown on the Condominium Map. The building shall be constructed principally of concrete, steel, glass, and related building materials.

DESCRIPTION OF UNITS:

The Project shall contain 176 Units. The Units will be constructed according to 14 different basic floor plans (or unit types), subject, however, to the right of Declarant to change the floor plans or create new floor plans pursuant to this Declaration.

Unit 804

One-story Unit, containing 2 bedrooms, 2 bathrooms, living/dining room, kitchen, laundry area and closets. Unit 804 contains a net living area of approximately 739 square feet, plus a Limited Common Element lanai of approximately 569 square feet. The Condominium Map shows the floor plan of Unit 804. There is one Unit 804 in the Project.

Unit 806

One-story Unit, containing 2 bedrooms, 2 bathrooms, living/dining room, kitchen, laundry area and closets. Unit 806 contains a net living area of approximately 744 square feet, plus a Limited Common Element lanai of approximately 538 square feet. The Condominium Map shows the floor plan of Unit 806. There is one Unit 806 in the Project.

Unit 808

One-story Unit, containing 2 bedrooms, 2 bathrooms, living/dining room, kitchen, laundry area and closets. Unit 808 contains a net living area of approximately 752 square feet, plus a Limited Common Element lanai of approximately 540 square feet. The Condominium Map shows the floor plan of Unit 808. There is one Unit 808 in the Project.

Unit Type 01

One-story Unit, containing 1 bedroom, 1 bathroom, living/dining room, kitchen, laundry area and closets. Each Type 01 Unit contains a net living area of approximately 546 square feet, plus a Limited Common Element lanai of approximately 38 square feet. The Condominium Map shows the floor plan of the Type 01 Units. There are 16 Type 01 Units in the Project.

Unit Type 02

One-story Unit, containing 1 bedroom, 1 bathroom, living/dining room, kitchen, laundry area and closets. Each Type 02 Unit contains a net living area of approximately 354 square feet, plus a Limited Common Element lanai of approximately 32 square feet. The

Condominium Map shows the floor plan of the Type 02 Units. There are 16 Type 02 Units in the Project.

Unit Type 03

One-story Unit, containing 2 bedrooms, 1 bathroom, living/dining room, kitchen, laundry area and closets. Each Type 03 Unit contains a net living area of approximately 693 square feet, plus a Limited Common Element lanai of approximately 42 square feet. The Condominium Map shows the floor plan of the Type 03 Units. There are 16 Type 03 Units in the Project.

Unit Type 04

One-story Unit, containing 2 bedrooms, 2 bathrooms, living/dining room, kitchen, laundry area and closets. Each Type 04 Unit contains a net living area of approximately 739 square feet, plus a Limited Common Element lanai of approximately 42 square feet. The Condominium Map shows the floor plan of the Type 03 Units. There are 15 Type 04 Units in the Project.

Unit Type 05

One-story Unit, containing 2 bedrooms, 2 bathrooms, living/dining room, kitchen, laundry area and closets. Each Type 05 Unit contains a net living area of approximately 701 square feet, plus a Limited Common Element lanai of approximately 37 square feet. The Condominium Map shows the floor plan of the Type 05 Units. There are 16 Type 05 Units in the Project.

Unit Type 06

One-story Unit, containing 2 bedrooms, 2 bathrooms, living/dining room, kitchen, laundry area and closets. Each Type 06 Unit contains a net living area of approximately 744 square feet, plus a Limited Common Element lanai of approximately 47 square feet. The Condominium Map shows the floor plan of the Type 06 Units. There are 15 Type 06 Units in the Project.

Unit Type 07

One-story Unit, containing 1 bedroom, 1 bathroom, living/dining room, kitchen, laundry area and closets. Each Type 07 Unit contains a net living area of approximately 619 square feet, plus a Limited Common Element lanai of approximately 50 square feet. The Condominium Map shows the floor plan of the Type 07 Units. There are 16 Type 07 Units in the Project.

Unit Type 08

One-story Unit, containing 2 bedrooms, 2 bathrooms, living/dining room, kitchen, laundry area and closets. Each Type 08 Unit contains a net living area of approximately 752 square feet, plus a Limited Common Element lanai of approximately 36 square feet. The Condominium Map shows the floor plan of the Type 08 Units. There are 15 Type 08 Units in the Project.

Unit Type 09

One-story Unit, containing 1 bedroom, 1 bathroom, living/dining room, kitchen, laundry area and closets. Each Type 09 Unit contains a net living area of approximately 524 square feet, plus a Limited Common Element lanai of approximately 38 square feet. The Condominium Map shows the floor plan of the Type 09 Units. There are 16 Type 09 Units in the Project.

Unit Type 10

One-story Unit, containing 1 bedroom, 1 bathroom, living/dining room, kitchen, laundry area and closets. Each Type 10 Unit contains a net living area of approximately 513 square feet, plus a Limited Common Element lanai of approximately 30 square feet. The Condominium Map shows the floor plan of the Type 10 Units. There are 16 Type 10 Units in the Project.

Unit Type 11

One-story Unit, containing 2 bedrooms, 1 bathroom, living/dining room, kitchen, laundry area and closets. Each Type 11 Unit contains a net living area of approximately 705 square feet, plus a Limited Common Element lanai of approximately 33 square feet. The Condominium Map shows the floor plan of the Type 11 Units. There are 16 Type 11 Units in the Project.

ORIGINAL FIXTURES AND ADDITIONS:

In its original condition, each Unit will have carpet flooring in the bedroom(s), living/dining room and hallways, ceramic tile flooring in the kitchen and bathroom(s). Each Unit, in its original condition, will also have a washer/dryer, refrigerator, cook-top range/oven, disposal, water heater, individual air conditioning wall units (one in the living/dining room and one in either the master bedroom (for 2-bedroom Units) or the single bedroom (for 1-bedroom Units), ceiling fans, and window coverings for certain windows.

LOCATION AND NUMBERING OF UNITS:

Each Unit shall be designated by a 3- or 4-digit number, which identifies the Unit's relative location within the building. The first digit of the 3-digit numbered Units and the first and second digits of the 4-digit numbered Units identify the floor where the Unit is located; provided, however, that, because there is no floor identified as the 13th floor, Units beginning with "14" through "24" are actually located on the 13th through 23rd floors, respectively.

ACCESS TO COMMON ELEMENTS:

Each Unit in the Project has immediate access to Common Elements that lead to a public road.

UNIT SCHEDULE:

Unit No.	Unit Type	Approx. Net Interior Floor Area* (Sq. Ft.)	Parking Stall(s)
801	01	546	626
802	02	354	519c
803	03	693	433
804	804	739	434
805	05	701	112c
806	806	744	501
807	07	619	627
808	808	752	502
809	09	524	631
810	10	513	108
811	11	705	614
901	01	546	621
902	02	354	518c
903	03	693	427
904	04	739	609
905	05	701	309HC
906	06	744	432
907	07	619	431
908	08	752	507HC
909	09	524	307HC
910	10	513	509
911	11	705	622
1001	01	546	615
1002	02	354	517c
1003	03	693	416
1004	04	739	420
1005	05	701	114c
1006	06	744	421
1007	07	619	616
1008	08	752	422
1009	09	524	620
1010	10	513	415
1011	11	705	113c
1101	01	546	611
1102	02	354	528c
1103	03	693	411
1104	04	739	412
1105	05	701	119c
1106	06	744	413
1107	07	619	612
1108	08	752	414
1109	09	524	613
1110	10	513	410
1111	11	705	120c
1201	01	546	606
1202	02	354	529c

Unit No.	Unit Type	Approx. Net Interior Floor Area* (Sq. Ft.)	Parking Stall(s)
1203	03	693	404
1204	04	739	405
1205	05	701	230c
1206	06	744	406
1207	07	619	608
1208	08	752	408
1209	09	524	610
1210	10	513	403
1211	11	705	118c
1401	01	546	603
1402	02	354	530c
1403	03	693	333
1404	04	739	334
1405	05	701	228c
1406	06	744	401
1407	07	619	604
1408	08	752	402
1409	09	524	605
1410	10	513	332
1411	11	705	229c
1501	01	546	426
1502	02	354	419c
1503	03	693	322
1504	04	739	326
1505	05	701	207HC
1506	06	744	327
1507	07	619	601
1508	08	752	331
1509	09	524	602
1510	10	513	409HC
1511	11	705	217c
1601	01	546	532
1602	02	354	418c
1603	03	693	315
1604	04	739	316
1605	05	701	330c
1606	06	744	320
1607	07	619	533
1608	08	752	321
1609	09	524	534
1610	10	513	314
1611	11	705	219c
1701	01	546	526
1702	02	354	417c
1703	03	693	311
1704	04	739	407HC
1705	05	701	607HC
1706	06	744	312

Unit No.	Unit Type	Approx. Net Interior Floor Area* (Sq. Ft.)	Parking Stall(s)
1707	07	619	527
1708	08	752	313
1709	09	524	531
1710	10	513	310
1711	11	705	329c
1801	01	546	520
1802	02	354	428c
1803	03	693	304
1804	04	739	305
1805	05	701	629c
1806	06	744	306
1807	07	619	521
1808	08	752	308
1809	09	524	522
1810	10	513	303
1811	11	705	630c
1901	01	546	231c
1902	02	354	429c
1903	03	693	233
1904	04	739	234
1905	05	701	617c
1906	06	744	301
1907	07	619	515
1908	08	752	302
1909	09	524	516
1910	10	513	232
1911	11	705	628c
2001	01	546	216
2002	02	354	430c
2003	03	693	221
2004	04	739	222
2005	05	701	619c
2006	06	744	226
2007	07	619	513
2008	08	752	227
2009	09	524	514
2010	10	513	220
2011	11	705	618c
2101	01	546	210
2102	02	354	319c
2103	03	693	212
2104	04	739	425
2105	05	701	702
2106	06	744	424
2107	07	619	511
2108	08	752	423
2109	09	524	512
2110	10	513	211

Unit No.	Unit Type	Approx. Net Interior Floor Area* (Sq. Ft.)	Parking Stall(s)
2111	11	705	701
2201	01	546	202
2202	02	354	318c
2203	03	693	204
2204	04	739	325
2205	05	701	704
2206	06	744	324
2207	07	619	508
2208	08	752	323
2209	09	524	510
2210	10	513	203
2211	11	705	703
2301	01	546	127
2302	02	354	317c
2303	03	693	129
2304	04	739	225
2305	05	701	706
2306	06	744	224
2307	07	619	505
2308	08	752	223
2309	09	524	506
2310	10	513	128
2311	11	705	705
2401	01	546	109
2402	02	354	328c
2403	03	693	111
2404	04	739	126
2405	05	701	710
2406	06	744	125
2407	07	619	503
2408	08	752	124
2409	09	524	504
2410	10	513	110
2411	11	705	708

*The approximate net interior floor area of each Unit as set forth above is measured from the interior surface of the Unit's perimeter walls and includes all of the walls, columns, shafts and partitions within its perimeter walls, whether load-bearing or non-load-bearing and whether among the Common Elements or not. THE AREAS SHOWN ARE APPROXIMATE ONLY. THE ACTUAL AREA OF A PARTICULAR UNIT AS BUILT MAY VARY SOMEWHAT FROM THE FIGURE SHOWN ABOVE.

Note: If a parking stall is marked with a "c" on the list above, then it is a parking stall that is "compact" in size. If a parking stall is marked with an "HC" on the list above, then it is a parking stall that is handicapped accessible. A parking stall not marked with a "c" or an "HC" on the list above is a parking stall that is regular (or "standard") in size. Any additional "c" or "HC" markings appearing on the list above are for informational purposes only and do not constitute

part of the legal identification of a parking stall, the sole means of legal identification being the numerical designation of the parking stall.

COMMON ELEMENTS:

The Common Elements of the Project shall specifically include, but are not limited to, the following, some of which are also Limited Common Elements:

1. The land described in Exhibit "A" (as may be amended), in fee simple.
2. All structural components of the building, such as the foundation, girders, columns, beams, floor slabs, supports, main walls, parapet walls, load-bearing walls, floors, ceilings (except the immediate interior surface area of such walls, floors and ceilings), roof, exterior stairs and stairways, landings, railings and other building appurtenances.
3. All yards, trees, grounds, gardens, planters, plants, landscaping, barbecue areas, refuse facilities, and recreational amenities not located within a Unit.
4. All sidewalks, walkways, walkway railings, elevators, pathways, retaining walls, entry gates, entry monuments, driveways, roads, parking areas and parking stalls.
5. The entry area outside the entry door of each Unit.
6. All ducts, electrical equipment, vents, shafts, lines, conduits, cables, transformers, wiring, pipes and other central and appurtenant transmissions facilities and installations over, under and across the Project to the point of their respective connections to the Units that are utilized by or serve more than one Unit for services such as, but not limited to, those providing power, light, water, irrigation, gas, sewer, refuse, drainage, telephone, and radio and television signal distribution, if any.
7. All areas, rooms, spaces, structures, housings, chutes, shafts or facilities of the Project within or outside of the building that are for common use or that serve more than one Unit, such as electrical, telephone, maintenance, service, elevator, security, machine, mechanical and equipment rooms and the equipment, machinery and facilities therein.
8. All the benefits, if any, inuring to the Land or to the Project from all easements, if any, shown on the Condominium Map or listed in Exhibit "A" to this Declaration.
9. Any and all apparatus and installations existing for common use by more than one Unit, and any and all other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use.
10. All other parts of the Project not included in the definition of a Unit.

LIMITED COMMON ELEMENTS:

Certain Common Elements, called "Limited Common Elements", are designated and set aside for the exclusive use of certain Units, and, subject to exceptions set forth in this Declaration, such Units shall have appurtenant thereto easements for the exclusive use of such Limited Common Elements as follows:

1. Parking Stalls:

Each Unit shall have appurtenant to it, as a Limited Common Element, the exclusive right to use the parking stall(s) as designated above, located as shown on the Condominium Map, or such other parking stall as may be described by amending this Declaration.

2. Mailboxes:

~~Each mailbox or mail slot bearing the same identification as a Unit (or otherwise~~
appurtenant to a Unit) is a Limited Common Element appurtenant to that Unit.

3. Lanais:

Certain Units shall have, as a Limited Common Element, the lanai that is appurtenant to the Unit, the location of which is depicted on the Condominium Map, from the exterior surface of all perimeter walls that separate the interior of the Units from the lanais to the interior edge of the exterior railings or other boundaries of the lanais. Notwithstanding anything to the contrary contained in the Project Documents, even though each lanai is a Limited Common Element appurtenant to and for the exclusive use of its respective Unit, the Association shall be responsible for maintenance and repair of the area from the exterior edge of the exterior railings or other boundaries of the lanais and for any structural repair for the lanais.

EXHIBIT "C"**HOLOMUA****COMMON INTERESTS**

Unit Type (Number of Units)	Unit Numbers	Undivided Common Interest of Each Unit*
01 (16)	801, 901, 1001, 1101, 1201, 1401, 1501, 1601, 1701, 1801, 1901, 2001, 2101, 2201, 2301, 2401	0.004953 (0.4953%)
02 (16)	802, 902, 1002, 1102, 1202, 1402, 1502, 1602, 1702, 1802, 1902, 2002, 2102, 2202, 2302, 2402	0.003211 (0.3211%)
03 (16)	803, 903, 1003, 1103, 1203, 1403, 1503, 1603, 1703, 1803, 1903, 2003, 2103, 2203, 2303, 2403	0.006286 (0.6286%)
04 (15)	904, 1004, 1104, 1204, 1404, 1504, 1604, 1704, 1804, 1904, 2004, 2104, 2204, 2304, 2404	0.006704 (0.6704%)
05 (16)	805, 905, 1005, 1105, 1205, 1405, 1505, 1605, 1705, 1805, 1905, 2005, 2105, 2205, 2305, 2405	0.006359 (0.6359%)
06 (15)	906, 1006, 1106, 1206, 1406, 1506, 1606, 1706, 1806, 1906, 2006, 2106, 2206, 2306, 2406	0.006749 (0.6749%)
07 (16)	807, 907, 1007, 1107, 1207, 1407, 1507, 1607, 1707, 1807, 1907, 2007, 2107, 2207, 2307, 2407	0.005615 (0.5615%)
08 (15)	908, 1008, 1108, 1208, 1408, 1508, 1608, 1708, 1808, 1908, 2008, 2108, 2208, 2308, 2408	0.006822 (0.6822%)
09 (16)	809, 909, 1009, 1109, 1209, 1409, 1509, 1609, 1709, 1809, 1909, 2009, 2109, 2209, 2309, 2409	0.004753 (0.4753%)
10 (16)	810, 910, 1010, 1110, 1210, 1410, 1510, 1610, 1710, 1810, 1910, 2010, 2110, 2210, 2310, 2410	0.004653 (0.4653%)
11 (16)	811, 911, 1011, 1111, 1211, 1411, 1511, 1611, 1711, 1811, 1911, 2011, 2111, 2211, 2311, 2411	0.006395 (0.6395%)
804 (1)	804	0.006704 (0.6704%)
806 (1)	806	0.006749 (0.6749%)
808 (1)	808	0.006822 (0.6822%)

* The common interests for the Units may change (increase or decrease) in connection with:
(i) a change by Declarant in the Unit floor plan(s) for any or all of the Units; and (ii) an increase or decrease in the number of Units in the Project (e.g., if Declarant divides a Unit into two Units).

EXHIBIT "D"

HHFDC'S USE, SALE AND TRANSFER RESTRICTIONS

Section 201H-47, Hawaii Revised Statutes - Real Property; restrictions on transfer; waiver of restrictions.

(a) The following restrictions shall apply to the transfer of real property developed and sold under this chapter, whether in fee simple or leasehold:

- (1) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, the Hawaii Housing Finance and Development Corporation ("corporation") shall have the first option to purchase the real property at a price that shall not exceed the sum of:
 - (A) The original cost to the purchaser, as defined in rules adopted by the corporation;
 - (B) The cost of any improvements added by the purchaser, as defined in rules adopted by the corporation; and
 - (C) Simple interest on the original cost and capital improvements to the purchaser at the rate of one percent a year.
- (2) The corporation may purchase the real property either:
 - (A) By conveyance free and clear of all mortgages and liens; or
 - (B) By conveyance subject to existing mortgages and liens.

If the real property is conveyed in the manner provided in subparagraph (A), it shall be conveyed to the corporation only after all mortgages and liens are released. If the real property is conveyed in the manner provided in subparagraph (B), the corporation shall acquire the property subject to any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller; and any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing.

The corporation's interest created by this subsection shall constitute a statutory lien on the real property and shall be superior to any other mortgage or lien except for:

 - (i) Any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller;
 - (ii) Any mortgage insured or held by a federal housing agency; and
 - (iii) Any mortgage or lien created for any other purpose, provided that the corporation has previously consented to it in writing.

The amount paid by the corporation to the seller shall be the difference, if any, between the purchase price determined by paragraph (1)(A) to (C), and the total of the outstanding principal balances of the mortgages and liens assumed by the corporation.
- (3) A purchaser may refinance real property developed and sold under this chapter provided that the purchaser shall not refinance the real property, within ten years from the date of purchase, for an amount in excess of the purchase price as determined by paragraph (1)(A) to (C).
- (4) After the end of the tenth year from the date of purchase, or execution of an agreement of sale, the purchaser may sell the real property and sell or assign the property free from any price restrictions; provided that the purchaser shall be required to pay to the corporation the sum of:
 - (A) The balance of any mortgage note, agreement of sale, or other amount owing to the corporation;
 - (B) Any subsidy or deferred sales price made by the corporation in the acquisition, development, construction, and sale of the real property, and any other amount expended by the corporation not counted as cost under Section

201H-45 but charged to the real property by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs;

- (C) Interest on the subsidy or deferred sales price, if applicable, and any other amount expended at the rate of seven per cent a year computed as to the subsidy or deferred sales price, if applicable, from the date of purchase, or execution of the agreement of sale, and as to any amount expended, from the date of expenditure; provided that the computed interest shall not extend beyond ~~thirty years from the date of purchase, or execution of the agreement of sale, of~~ the real property; and provided further that if any proposed sale or transfer will not generate an amount sufficient to pay the corporation the sum as computed under this paragraph, the corporation shall have the first option to purchase the real property at a price which shall not exceed the sum as computed under paragraph (1) and (2); and
 - (D) The corporation's share of appreciation in the real property as determined under rules adopted pursuant to chapter 91 when applicable; and
 - (5) Notwithstanding any provision above to the contrary, pursuant to rules adopted by the corporation, the subsidy or deferred sales price described in paragraph (4)(B) and any interest accrued pursuant to subsection (4)(C) may be paid, in part or in full, at any time.
- (b) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, and if the corporation does not exercise the option to purchase the real property as provided in subsection (a), then the corporation shall require the purchaser to sell the real property to a "qualified resident" as defined in section 201H-32, and upon the terms that preserve the intent of this section and sections 201H-49 and 201H-50, and in accordance with rules adopted by the corporation.
 - (c) The corporation may waive the restrictions prescribed in subsection (a) or (b) if:
 - (1) The purchaser wishes to transfer title to the real property by devise or through the laws of descent to a family member who would otherwise qualify under rules established by the corporation; or
 - (2) The sale or transfer of the real property would be at a price and upon terms that preserve the intent of this section without the necessity of the State repurchasing the real property; provided that, in this case, the purchaser shall sell the unit or lot and sell or assign the property to a person who is a "qualified resident" as defined in Section 201H-32; and provided further that the purchaser shall pay to the corporation its share of appreciation in the unit as determined in rules adopted pursuant to chapter 91 when applicable.
 - (d) The corporation may release the restrictions prescribed in subsection (a) or (b) if the real property is financed under a federally subsidized mortgage program and the restrictions would jeopardize the federal government's ability to recapture any interest credit subsidies provided to the homeowner.
 - (e) The restrictions prescribed in this section and sections 201H-49 to 201H-51 shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder or other party becomes the owner of the real property pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced; or when a mortgage is assigned to a federal housing agency. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering real property or leasehold interest encumbered by the first option to purchase in favor of the corporation, prior to commencing mortgage foreclosure proceedings, shall notify the corporation in writing of:
 - (1) Any default of the mortgagor under the mortgage within ninety days after the occurrence of the default, and

- (2) Any intention of the mortgagee to foreclose the mortgage under chapter 667; provided that the mortgagee's failure to provide written notice to the corporation shall not affect the holder's rights under the mortgage. The corporation shall be a party to any foreclosure action, and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record; provided that the person in default shall be entitled to an amount which shall not exceed the sum of amounts determined pursuant to subsection (a)(1)(B) and (C).
- (f) ~~The provisions of this section shall be incorporated in any deed, lease, agreement of sale, or any other instrument of conveyance issued by the corporation. In any sale by the corporation of real property for which a subsidy or deferred sales price was made by the corporation, the amount of the subsidy or deferred sales price described in subsection (a)(4)(B), a description of the cost items that constitute the subsidy or deferred sales price, and the conditions of the subsidy or deferred sales price shall be clearly stated at the beginning of the contract document issued by the corporation.~~
- (g) This section need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.
- (h) The corporation is authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants.

Section 201H-48, Hawaii Revised Statutes - Exception of current owners in corporation projects.

The corporation may allow a person who is a current owner of a multi-family dwelling unit in a project sponsored by the corporation to apply for the purchase of a larger dwelling unit in a project sponsored by the corporation if the applicant's current family size exceeds the permissible family size for the applicant's current dwelling unit, as determined by prevailing county building or housing codes. The applicant shall be required to sell the applicant's current dwelling unit back to the corporation. Notwithstanding any law to the contrary, any applicant, as it pertains to for-sale housing, shall be a "qualified resident" who:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is at least eighteen years of age;
- (3) Is domiciled in the State and shall physically reside in the dwelling unit purchased under this chapter;
- (4) In the case of purchase of real property in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase; and
- (5) Except for the applicant's current residence, meets the following qualifications:
 - (A) Is a person who either oneself or together with the person's spouse or a household member, does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes, or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to the land; and
 - (B) Is a person whose spouse or a household member does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes, or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land, except when husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71.

Section 201H-49, Hawaii Revised Statutes - Real Property; restrictions on use.

- (a) Real property purchased under this chapter shall be occupied by the purchaser at all times during the ten-year restriction period set forth in section 201H-47, except in hardship circumstances

where the inability to reside on the property arises out of unforeseeable job or military transfer, a temporary educational sabbatical, serious illness of the person, or in other hardship circumstances as determined by the corporation on a case-by-case basis.

The corporation may waive the owner-occupancy requirement for a total of not more than ten years after the purchase of the dwelling, during which time the dwelling unit may be rented or leased. Waivers may be granted only to qualified residents who have paid resident state income taxes during all years in which they occupied the dwelling, who continue to pay resident state income taxes during the waiver period, and whose inability to reside on the property does not stem from a natural disaster. The ten year owner-occupancy requirement shall be extended by one month for every month or fraction thereof that the owner-occupancy requirement is waived.

The corporation shall adopt rules under chapter 91 to implement the letter and spirit of this subsection and to prescribe necessary terms and conditions. The rules shall include:

- (1) Application and approval procedures for the waivers;
- (2) Exceptions authorized by this subsection;
- (3) The amounts of rents that may be charged by persons allowed to rent or lease a dwelling unit; and
- (4) Schedules of fees needed to cover administrative expenses and attorney's fees.

No qualified resident who fails to reoccupy a dwelling unit after any waiver period shall receive more than the maximum to which the person would be entitled under section 201H-47. Any person who disagrees with the corporation's determination under this section shall be entitled to a contested case proceeding under chapter 91.

- (b) From time to time the corporation may submit a verification of owner-occupancy form to the purchaser. Failure to respond to the verification in a timely manner or violation of subsection (a) shall be sufficient reason for the corporation, at its option, to purchase the unit as provided in subsection 201H-47(a)(1), (2), or (4), as applicable.
- (c) Any deed, lease, agreement of sale, or other instrument of conveyance issued by the corporation shall expressly contain the restrictions on use prescribed in this section.
- (d) The restrictions prescribed in subsection (a) shall terminate and shall not attach in subsequent transfers of title if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.
- (e) Subsections (a) to (c) need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.
- (f) The corporation shall be authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants.

Section 201H-50, Hawaii Revised Statutes - Restrictions on use, sale, and transfer of real property; effect of amendment or repeal.

- (a) Restrictions on the use, sale, and transfer of real property shall be made as uniform as possible in application to purchasers of all real property, and restrictions shall be conformed with agreement of the purchaser to reflect change or repeal made by any subsequent legislative act, ordinance, rule, or regulation. Purchasers shall be permitted at their election to sell or transfer real property subject to restrictions in effect at the time of their sale or transfer.
- (b) The corporation, any department of the State, or any county housing agency maintaining restrictions, through contract, deed, other instrument, or by rule, shall notify purchasers of any substantial change in restrictions made by law, ordinance, rule, or regulation not more than one hundred eighty days after a change in restrictions, and the notice shall clearly state the enacted or proposed new provisions, the date or dates upon which they are to be effective, and offer to each purchaser of real property constructed and sold prior to the effective date an opportunity to modify

the existing contract or other instrument to incorporate the most recent provisions. The public notice shall be given at least three times, in a newspaper of general circulation, in the State for state agencies and at least three times in a county newspaper for county agencies.

- (c) For all purchasers of real property prior to June 25, 1990, where the restrictions on use and transfer of property apply for a period of time, the period of time shall not be increased beyond the date calculated from the date of original purchase.
- (d) No purchaser shall be entitled to modify the restrictions on use, transfer, or sale of the real property, without the written permission of the holder of a duly-recorded first mortgage on the dwelling unit and the owner of the fee simple or leasehold interest in the land underlying the unit, unless the holder of the first mortgage or the owner is an agency of the State or its political subdivisions.
- (e) This section shall apply to all real property developed, constructed, and sold pursuant to this chapter and similar programs in the State or its political subdivisions and which are sold on the condition that the purchaser accepts restrictions on the use, sale, or transfer of interest in the real property purchased.
- (f) The provisions of this section shall be incorporated in any deed, lease, instrument, rule, or regulation relating to restrictions on use, sale, or transfer of dwelling units, entered into after June 20, 1977.
- (g) The restrictions of this section shall terminate as to a particular real property and shall not attach in subsequent transfers of title of that real property if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

Section 201H-51, Hawaii Revised Statutes - Corporation's right to repurchase or rent real property; authority to seek recovery.

- (a) Notwithstanding any provisions to the contrary, during the period in which the restrictions in section 201H-47 are in effect, the following provisions shall apply when dwelling units developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial construction defect, or when vacant lands developed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial soil defect:
 - (1) The corporation shall have the right, but not the obligation, to repurchase a dwelling unit or land which has a defect, regardless of whether or not the owner wishes to sell; provided that such repurchases shall be in accordance with the following provisions:
 - (A) The corporation may repurchase a dwelling unit or land if:
 - (i) The dwelling unit or land is deemed unsafe by the county building department;
 - (ii) The defects are irreparable; or
 - (iii) In the opinion of the corporation, the defect is of such magnitude that it will take longer than a year to repair.
 - (B) The corporation's purchase price shall be based on the formula set forth in Section 201H-47(a)(1);
 - (C) After repairs to the unit or land are completed, the former owner shall have the first right of refusal to repurchase the real property;
 - (D) The corporation shall give preference in all other projects of the corporation to all owners whose real property is repurchased by the corporation under this subsection, and the corporation may waive certain eligibility requirements for these owners; and
 - (E) If the corporation exercises its right to purchase defective real property against an owner's wishes pursuant to this paragraph, the corporation shall provide relocation assistance to that owner as provided in chapter 111;
 - (2) If the corporation does not opt to purchase defective real property, the corporation shall also have the right, but not the obligation, to enter into a contract to repair a dwelling unit

- which has a construction defect or land which has a soil defect. During the period that the real property is being repaired, the corporation shall rent that real property from the owner for an amount not to exceed the owner's present mortgage payments; and
- (3) If the corporation does not execute either a contract to repurchase the real property or an agreement to repair and rent the real property within ninety days after written notice is given to the corporation of a construction defect, the owner may pursue any other available legal remedies.

For the purposes of this subsection, "substantial construction defect" includes but is not necessarily limited to: structural defects such as shifting foundations and bearing walls; structural deficiencies due to the use of defective or undersized materials; and defects affecting the health and safety of occupants; and "substantial soil defect" means shifting, sliding, or sinking ground of such degree as to affect the dwelling unit on the land or the health and safety of the occupants of the land.

- (b) If moneys are expended by the corporation pursuant to subsections (a)(1) and (2), the corporation shall have the authority to take necessary legal action against the developer, co-developer, general contractor, and their subcontractors, consultants, and other parties notwithstanding any provisions to the contrary in chapter 657.
- (c) If real property developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, is found to have a substantial construction or soil defect, the corporation shall have the right, but not the obligation, to file or caused to be filed a legal action on behalf of or by, the owner or lessee of the real property for the recovery of damages or for injunctive relief against the developer, co-developer, general contractor, and their subcontractors, consultants, and other parties notwithstanding any provisions to the contrary in chapter 657. Additionally, notwithstanding any provision of rule 23 of the Hawaii rules of civil procedure, the corporation may file or cause to be filed a legal action brought under this subsection as a class action on behalf of or by at least two owners or lessees of real property that have similar substantial construction or soil defects.
- (d) Nothing in this chapter shall be construed so as to diminish the rights or remedies of the corporation otherwise provided under common law, by statute or by contract.
- (e) The corporation shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.
- (f) This section shall not apply to a particular real property and shall not apply after subsequent transfers of title of that real property if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.
- (g) If any subsection, sentence, clause, or phrase of this section, or its application to any person or transaction or other circumstances, is for any reason held to be unconstitutional or invalid, the remaining subsections, sentences, clauses, and phrases of this section, or the application of this section to other persons or transactions or circumstances, shall not be affected. The legislature hereby declares that it would have passed this section and each subsection, clause, or phrase thereof, irrespective of the fact that any one or more subsections, sentences, clauses, or phrases of this section, or its application to any person or transaction or other circumstance, be declared unconstitutional or invalid.

END OF EXHIBIT "D"

EXHIBIT "E"

HOLOMUA
Project

Project Model No. _____

Apt. No. _____

**THE HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION'S
SHARED-APPRECIATION PROGRAM**

PLEASE READ THIS DOCUMENT CAREFULLY

The apartment ("Home") which you are purchasing is part of a residential condominium ("Project") known as HOLOMUA, which is being developed by KRC Partners LLC ("Developer") with assistance from the **Hawaii Housing Finance and Development Corporation ("HHFDC")**. HHFDC provided such assistance to Developer to further the interest of the State of Hawaii by providing affordable housing opportunities to its people.

For the opportunity which HHFDC has created to enable you to purchase the Home for less than its current fair market value, you are agreeing to pay to HHFDC a share of the net appreciation which you realize or are deemed to have realized if and when you sell or transfer the Home.

SUMMARY OF THE SHARED APPRECIATION PROGRAM

This is a summary of HHFDC's Shared Appreciation Program ("Program"). You should read this entire document carefully. The terms which are in quotations (" ") are defined below.

When you purchase the Home, the deed will contain your agreement to pay HHFDC a share of any "Net Appreciation" which you realize or are deemed to have realized if and when you sell or transfer the Home.

This document describes what constitutes a sale or transfer of the Home and how the "Net Appreciation" will be determined.

Based on "Your Original Purchase Price" and the "Original Fair Market Value" for the Home, you will be entitled to _____% of the Net Appreciation, and HHFDC will be entitled to _____% of the Net Appreciation if you should later sell or transfer the Home.

This means, as an example only, that if you should later sell or transfer the Home and realize or are then deemed to have realized a Net appreciation of \$_____, HHFDC's share of the "Net Appreciation" will be _____% of that amount or approximately \$_____.

1. MEANING OF WORDS

A. "Original Fair Market Value" means the amount of \$_____, which represents the fair market value of the Home (as built but without any additional or upgraded improvements that you may have ordered) as determined by

- () a Federal Housing Administration ("FHA") appraisal
- () an appraisal obtained by HHFDC.

B. "Your Original Purchase Price" means the amount of \$_____, which represents the basic purchase price for which you are purchasing the Home from Developer but which does not include the cost or value of any additional or upgraded improvements that you may have ordered.

If the Original Fair Market Value is based on the appraisal obtained by HHFDC and is higher than the FHA appraisal (if a FHA appraisal is also obtained), you will have the right and option to either (i) complete the purchase of the Home regardless of the difference in the appraisals or (ii) not to complete the purchase of the Home for that reason, any earnest money deposit which you have paid will be returned to you less any actual expenses for which you are responsible to pay and you will not incur any cancellation penalty.

C. "HHFDC's Percentage Share" means _____%, which represents the percentage that results from the following calculation:

Original Fair Market Value minus Your Original Purchase Price

divided by

Original Fair Market Value

rounded to the nearest one percent.

D. "Your Percentage Share" means _____% which represents the difference between 100% minus HHFDC's Percentage Share.

FOR FHA GRADUATED MORTGAGE ONLY: If the home was financed with a FHA graduated payment mortgage, any recovery of any accrued negative amortization shall be first collected from the sale of the home, including your share of the net appreciation, and if not fully paid from your proceeds, then any balance due for the negative amortization may be collected from the State's share of the net appreciation.

E. "Fair Market Value" means the fair market value of the Home as determined by an appraisal obtained and performed in the manner described below in Section 3, if and when you subsequently sell or transfer the Home.

F. "Net Appreciation" means the result of the following calculation:

Fair Market Value of the Home
minus Your Original Purchase Price

2. HHFDC'S SHARE OF THE NET APPRECIATION DUE ON SALE OR TRANSFER OF THE HOME

Except for a "Permitted Transfer", as that term is defined below, you agree that if and when all or any part of or interest in the Home is sold or transferred or if you shall be divested of title or any interest in the Home, in any manner, voluntarily or involuntarily, including a judicial or non-judicial foreclosure sale, HHFDC will immediately be entitled to be paid a share of the Net Appreciation equal to:

HHFDC's Percentage Share X the Net Appreciation

You agree to give HHFDC written notice as soon as you have reached an agreement or understanding for the sale or transfer of the Home together with the specific terms of such sale or transfer. You shall pay HHFDC's Percentage Share of the Net Appreciation on the effective date of such sale or transfer. If HHFDC's share of the Net Appreciation is not paid when due, interest on HHFDC's share of the Net Appreciation will accrue at the simple annual rate of 12% until paid. In addition, HHFDC will be entitled to be paid reasonable attorneys' fees and costs to enforce its rights hereunder. The obligation to pay HHFDC's share of the Net Appreciation will survive any Permitted Transfer with respect to you and to any person or entity who acquires any interest in the Home as a result of Permitted Transfer.

A sale or transfer of the Home will be deemed to have taken place upon the occurrence of any one of the following events:

- A. When you sell or transfer the Home or any legal or beneficial right, title or ownership interest in the Home, including by way of an agreement of sale or a lease with an option to purchase the Home;
- B. When you no longer use the Home as your principal residence, but continue to retain legal and/or equitable title to the Home; or
- C. When you rent the Home or any part of the Home to someone else, but continue to retain legal and/or equitable title to the Home.

HHFDC may, but is not required to, extend the time by when HHFDC's Share of the Net Appreciation will become due and payable for a period not exceeding one year if the Home is covered by a First Mortgage (as that term is defined below in Section 7, which is insured or held by FHA).

HHFDC may extend the time when HHFDC's Share of Net Appreciation will become due and payable for a period not exceeding a total of ten years if the transfer is temporary and occurs:

- (i) When you no longer use the Home as your principal residence, but continue to retain legal and/or equitable title to the Home; or
- (ii) When you rent the Home or any part of the Home to someone else, but continue to retain legal and/or equitable title to the Home; and

HHFDC determines, in HHFDC's sole discretion, that the temporary transfer is necessary because of adverse circumstances involving you, such as, an unforeseen job or military transfer, a temporary educational sabbatical, a serious illness or other hardship circumstances as determined by the HHFDC. The extension may be provided if you are a qualified resident who pays resident state income taxes during the period you own the Home and will continue to pay resident state income taxes during the temporary extension period. You must notify and obtain HHFDC's consent prior to the temporary transfer. If you fail to reoccupy the Home as your principal residence at the end of the extension period, HHFDC's Share of Net Appreciation will be immediately due and payable.

The following transfers ("Permitted Transfers") will not result in HHFDC's share of the Net Appreciation becoming due and payable. However, you must still notify HHFDC and obtain HHFDC's consent prior to a Permitted Transfer.

- A. The creation of a lien or other encumbrance which does not relate to a transfer of rights of occupancy in the Home provided that the total amount of all liens and other encumbrance which are secured by the Home must not exceed 80% of the sum of
 - (i) Your Original Purchase Price plus
 - (ii) Your Original Percentage Share of the Net Appreciation, as determined by an appraisal obtained by HHFDC at your cost and expense.For example, based on the amounts shown in the hypothetical example on page 6 below as Your Original Purchase Price and Your Percentage Share of the Net Appreciation, the total amount of all liens and other encumbrances, including the first mortgage loan cannot exceed \$ 262,400.00 (which is 80% of the sum of the hypothetical amounts shown as Your Original Purchase Price and Your Percentage Share of the Net Appreciation).
- B. A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
- C. A transfer to a relative resulting from your death;
- D. A transfer where your spouse or children become an owner of the Home;
- E. A transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which your spouse becomes an owner of the Home; and
- F. A transfer into an inter vivos trust in which you are and remain the primary

beneficiary and which does not relate to a transfer of rights of occupancy in the Home. This means that you must continue to use the Home as your principal residence after the transfer.

However, if the first mortgage is guaranteed or held by the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC"), (i) the foregoing Permitted Transfers may result in your being required to make immediate payment in full of all sums secured by such a first mortgage unless prohibited by federal laws; and (ii) with respect to a transfer described above in (c), (d) and (e), the mortgage may require the transferee to occupy the Home as the transferee's principal residence as a condition for not exercising any right to require you to make immediate payment in full of all sums secured by such a first mortgage.

3. DETERMINATION OF FAIR MARKET VALUE BY APPRAISAL

Whenever it shall become necessary to determine the Net Appreciation, HHFDC will select an appraiser who has any of the qualifications set forth below and who shall prepare a written appraisal of the Fair Market Value of the Home within 45 calendar days after you have given HHFDC written notice that you will be selling or transferring the Home together with the terms of such sale or transfer. The appraisal shall be based on the original floor plan and improvements and lot size when you buy the Home together with the terms of such sale or transfer. The appraisal shall be based on the original floor plan and improvements and lot size when you buy the Home. The appraisal shall not include the value of any improvements which you may have added to the Home after the date of the Deed. Items of repair and maintenance shall not be considered to be improvements. You will pay the cost of HHFDC's appraisal.

HHFDC will send to you by first class mail a copy of the written appraisal no later than 10 business days after the appraisal has been completed together with a notice informing you that you may procure an independent appraisal within 45 calendar days if you dispute HHFDC's appraisal.

If you do not dispute HHFDC's appraisal, that appraisal will be used to determine the Fair Market Value of the Home. If you dispute HHFDC's appraisal, you may at your own expense procure an appraisal by an independent appraiser who has any of the qualifications set forth below. You must send a copy of your appraisal to HHFDC within the earlier of (i) 10 business days after it has been completed or (ii) 45 calendar days after you have received HHFDC's appraisal. If your appraisal is lower than HHFDC's appraisal, the Fair Market Value of the Home will be taken to be one-half the sum of the two appraisals. If your appraisal is not lower, HHFDC's appraisal will govern.

All appraisals will be made only by an appraiser having one or more of the following qualifications: (i) State of Hawaii licensed appraiser, or (ii) State of Hawaii certified appraiser.

4. CANCELLATION OF HHFDC'S RIGHT TO A SHARE OF THE NET APPRECIATION

Subject to the provisions of Section 7 below, HHFDC's right to be paid a share of the Net Appreciation will continue in full force and effect and will constitute a lien on the Home until one or both of the following events have occurred:

- (i) You have sold or transferred the Home; and
- (ii) HHFDC has been fully paid its share of the Net Appreciation and any other amounts which you are obligated to pay to HHFDC.

Thereafter, HHFDC will sign and cause to be recorded a document which need only be signed by HHFDC and which acknowledges that your obligation to pay HHFDC a share of the Net Appreciation has been fully satisfied.

5. SALE OR TRANSFER OF THE HOME TO HHFDC PURSUANT TO THE HAWAII REVISED STATUTES, SECTION 201H-47

The provisions of the Program will not apply if HHFDC exercises, pursuant to Hawaii Revised Statutes Section 201H-47, HHFDC's first option to purchase the Home during the restriction period after you have purchased the Home. HHFDC's first option is described in Section I of Exhibit "B".

If you elect to pay all or any part of HHFDC's share of Net Appreciation in advance without having to sell or transfer the Home and HHFDC exercises its option to purchase the Home, all funds received by HHFDC will be reimbursed to you with no interest.

6. PAYMENT OF HHFDC'S PERCENTAGE SHARE OF NET APPRECIATION IN ADVANCE

You may elect to pay all or any part of HHFDC's share of the Net Appreciation at any time and in advance without having to sell or transfer the Home. If you pay only a part of HHFDC's share of the Net Appreciation in advance, Your Original Purchase Price will be increased after the payment has been made for the purpose of making any later calculation to determine the balance of HHFDC's share of the Net Appreciation. Your original Purchase Price, as increased, will be referred to as "Your Adjusted Purchase Price", which will be equal to the sum of:

Your Original Purchase Price
plus Partial Payment Amount divided by HHFDC's Percentage Share
plus Any prior increase(s) to Your Original Purchase Price

Your Adjusted Purchase Price will be substituted for the "Your Original Purchase Price" for any subsequent calculation of the Net Appreciation Under Section 1, F above.

7. FIRST MORTGAGEE PROTECTION

The foregoing provisions shall not apply with respect to:

- A. The first purchase money mortgage ("First Mortgage"), if any, which is being placed on the Home to enable you to finance the purchase of the Home.
- B. The first purchase money mortgagee ("First Mortgagee") named in the First Mortgage, including the first purchase money mortgagee's successors and assigns.
- C. The rights of the First Mortgagee to foreclose or take title pursuant to the remedies in the First Mortgage, to accept a deed in lieu of foreclosure in the event of your default, as mortgagor under the First Mortgage, or to sell or lease the Home acquired by the First Mortgagee.
- D. Any person or persons acquiring the Home as a result of foreclosure or by a deed in lieu of foreclosure of the First Mortgage or any successor, transferee, or assignee of such person or persons.

You must provide notice to HHFDC of the First Mortgage and to cause the holder of the First Mortgage to provide written notice to HHFDC of any default under the First Mortgage. However, if the First Mortgage is (i) insured or held by FHA or (ii) guaranteed or held by FNMA or FHLMC, your failure to cause the holder of the First Mortgage to provide written notice to HHFDC of any default under the First Mortgage or any failure of the holder of the First Mortgage to provide such written notice shall not affect such holder's rights under this paragraph 7.

HHFDC will subordinate any lien or contingent lien rights that HHFDC may have under the program to the lien of the First Mortgage. Any holder of the First Mortgage or any person who acquires legal title to the home as a result of a foreclosure or a deed in lieu of foreclosure of the First Mortgage shall acquire legal title free of such lien or contingent lien rights that HHFDC may have under the program. The provisions of the program shall be null and void upon a conveyance of the Home through a foreclosure sale or a deed in lieu of foreclosure.

8. TAX CONSEQUENCES

The program may have income tax or estate planning consequences depending upon your personal financial and tax situation. For further information, you should consult with your own accountant, attorney, or other financial adviser and discuss any tax consequences which might affect you.

9. HYPOTHETICAL EXAMPLE AND WORKSHEET

A. Hypothetical Example: The following is a hypothetical example of how the Program works. The amounts for the following (i) Original Fair Market, (ii) Your Original Purchase Price, and (iii) Fair Market Value are only assumptions. The example assumes that the price for which you sell the Home is equal to the Fair Market Value of the Home.

(1)	Original Fair Market Value		\$300,000
(2)	Your Original Purchase Price		240,000
(3)	HHFDC's Percentage Share		20%
	$\frac{\$300,000 - \$240,000}{\$300,000}$	$= \frac{\$60,000}{\$300,000}$	
	(Original Fair Market Value)	(Your Original Purchase Price)	(Original Fair Market Value)
	[A. (1)]	[A. (2)]	[A. (1)]
(4)	Your Percentage Share		80%
	$100\% - 20\%$		
	[A. (3)]		
(5)	Fair Market Value (at subsequent sale or transfer)		350,000
(6)	Net Appreciation		110,000
	Fair Market Value of the Home [A. (5)]	\$350,000	
	<u>Minus</u> Your Original Purchase Price [A. (2)]	<240,000>	
(7)	HHFDC's Share of the Net Appreciation		22,000
	$20\% \times \$110,000$		
	[A. (3)]	[A. (6)]	
(8)	Your Share of the Net Appreciation		88,000
	$80\% \times \$110,000$		
	[A. (4)]	[A. (6)]	

If you made a partial payment of \$10,000 toward HHFDC's share of the Net Appreciation in advance.

(9)	Your Adjusted Purchase Price would be		290,000
	Your Original Purchase Price [A. (2)]	\$240,000	
	<u>plus</u> \$10,000 divided by 20% [A. (3)]	50,000	
(10)	Net Appreciation (if you later sell)		60,000
	Fair Market Value of the Home [A. (5)]	\$350,000	
	- Your Adjusted Purchase Price [A. (9)]	290,000	
(11)	HHFDC's Share of the Net Appreciation		12,000
	$20\% \times \$60,000$		
	[A. (3)]	[A. (10)]	

B. Worksheet:

You can use the following worksheet to see how the Shared Appreciation Program works. To do so, you must estimate the amounts for the following items: (i) Original Fair Market, (ii) Your Original Purchase Price, and (iii) Fair Market Value. Assume that the price for which you sell the Home is equal to the Fair Market Value of the Home.

(1)	Original Fair Market Value		\$ _____
(2)	Your Original Purchase Price		_____
(3)	HHFDC's Percentage Share		_____ %
	\$ _____	-	\$ _____ = \$ _____ divided by \$ _____
	(Original Fair Market Value)	(Your Original Purchase Price)	(Equity) (Original Fair Market Value)
	[B. (1)]	[B. (2)]	[B. (1)]
(4)	Your Percentage Share		_____ %
	100%	-	_____ %
			[B. (3)]
(5)	Fair Market Value (at subsequent sale or transfer)		<u>350,000</u>
(6)	Net Appreciation		_____
	Fair Market Value of the Home [B. (5)]		\$ _____
	<u>Minus</u> Your Original Purchase Price [B. (2)]		< _____ >
(7)	HHFDC's Share of the Net Appreciation		_____
	_____ %	X	\$ _____
	[B. (3)]		[B. (6)]
(8)	Your Share of the Net Appreciation		_____
	_____ %	X	\$ _____
	[B. (4)]		[B. (6)]

If you made a partial payment of \$10,000 toward HHFDC's share of the Net Appreciation in advance.

(9)	Your Adjusted Purchase Price would be		_____
	Your Original Purchase Price [B. (2)]		\$ _____
	<u>plus</u> \$10,000 divided by 20% [B. (3)]		_____
(10)	Net Appreciation (if you later sell)		_____
	Fair Market Value of the Home [B. (5)]		\$ _____
	- Your Adjusted Purchase Price [B. (9)]		_____
(11)	HHFDC's Share of the Net Appreciation		_____
	_____ %	X	\$ _____
	[B. (3)]		[B. (10)]

10. NOTICE AND ACKNOWLEDGEMENT

By signing below, you agree and admit, as follows:

- A. You have read this document.
- B. You understand that if you sell or transfer the Home, HHFDC will be entitled to be paid immediately its share of the appreciation or equity in the Home.

You understand when a sale or transfer of the Home has or will be deemed to have taken place.

- C. If the Home is sold or transferred and you do not pay HHFDC its share of the Net Appreciation in the Home, HHFDC may take legal action which may result in the foreclosure sale of the Home.
- D. If the First Mortgage is insured or held by FHA, FHA may not be able to help you.
- E. You understand that the Home you are purchasing will be encumbered by the Shared Appreciation Equity (SAE) Program as a deed restriction.
- F. You understand that the SAE Program may limit additional financing that can be secured by the Home.

During HHFDC's buyback restriction period, HHFDC will consent to additional financing and subordinate the SAE Program under the following conditions:

- 1. When the total loan amount to be secured by the Home does not exceed your original purchase price.
- 2. When the total loan amount to be secured by the Home exceeds your original purchase price, the loan funds that exceed your original purchase price will be used for the following purpose:
 - a). Certain new refinancing/mortgage loan closing costs.
 - b). Payment of deferred interest amount from the original FHA graduated mortgage loan.
 - c). Certain property capital improvements.
 - d). Payment of subsidy, deferred land value or deferred sales price.
 - e). Payment of HHFDC's share of Net Appreciation of the Home under the SAE Program.
- 3. And, except for item 2.(e) above, the total liens and encumbrances (including mortgages) does not exceed 80% of the sum of your share of appreciation of the property plus your original purchase price for the Home.

After the end of HHFDC's buyback restriction period, you may obtain additional financing without any limitation on the use of the loan funds, provided that, the total liens and encumbrances to be secured by the Home does not exceed 80% of the sum of your original purchase price plus your share of appreciation in the Home.

- G. You understand that you must notify HHFDC in writing when you intend to pay all or part of HHFDC's share of Net Appreciation. If full payment will be made due to a sale of the Home, the terms and conditions of the sale will need to be provided.

HHFDC will select an appraiser who will prepare a written appraisal report. HHFDC will compute the share of Net Appreciation amount that is due and payable and notify you in writing within 45 days of receipt of your notification to pay HHFDC's share of Net Appreciation.

Buyer's Signature

Buyer's Signature

Buyer's Signature

Buyer's Signature