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/s/ CARL T. WATANABE  
ASSISTANT REGISTRAR

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Return by Mail ( ) Pickup (X) To:

Brooks Tom Porter & Quitiquit, LLP  
841 Bishop Street, Suite 2125  
Honolulu, Hawaii 96813

Tax Map Key No. (1) 2-3-10-28  
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**MOANA PACIFIC**

**DECLARATION OF CONDOMINIUM PROPERTY REGIME**

**WHEREAS**, KC RAINBOW DEVELOPMENT CO. LLC, a Hawaii limited liability company (the "Developer"), whose mailing address is 615 Piikoi Street, Suite 1111, Honolulu, Hawaii 96814, is the owner in fee simple of the land described in Exhibit "A" attached hereto and made a part hereof (the "Land"); and

**WHEREAS**, the Developer is also the current owner of the lands described herein as "Adjacent Lands"; and

**WHEREAS**, the Developer intends to develop the Land and the improvements thereon as a condominium project known as "MOANA PACIFIC" as more specifically described herein in accordance with plans incorporated herein by reference and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (the "Land Court") as Condominium Map No. 1706 (the "Condominium Map");

**NOW, THEREFORE**, in order to create a condominium project consisting of the Land and all improvements now or hereafter placed thereon (the "Project"), the Developer hereby submits its interest therein to the Condominium Property Regime, established by the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended (the "Act"), and in furtherance thereof makes the following declarations as to divisions, limitations,

restrictions, covenants and conditions, and hereby declares that the Land and all improvements now or hereafter placed thereon are held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to the declarations, restrictions and conditions set forth herein and in the Bylaws of the Association of Apartment Owners of Moana Pacific recorded in the Land Court concurrently herewith, as the same may be amended from time to time, which declarations, restrictions and conditions shall constitute covenants running with the Land, and shall be binding on and inure to the benefit of the Developer, its successors and assigns, and all present and future owners, mortgagees, tenants and occupants of all or any part of the Project and any other person who may use any part of the Project.

1. **Definitions.** The following terms shall have the meanings set forth below:

“Act” means Chapter 514A, Hawaii Revised Statutes, as amended.

“Adjacent Land” means those certain parcels of land adjacent to or in the immediate vicinity of the Project and more particularly described in paragraph 17 of this Declaration.

“Apartment” refers to the Apartments described in paragraph 3 of this Declaration.

“Apartment Owner” or “Owner” means a person or entity owning an Apartment and the common interest appertaining thereto severally or as a cotenant, to the extent of such interest so owned; provided that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by the terms of any lease recorded in the Land Court, a lessee or sublessee of an Apartment shall be deemed to be the Owner of such Apartment to the extent provided in such lease. The vendee of an Apartment pursuant to an agreement of sale recorded in the Land Court (a “recorded Agreement of Sale”) shall have the rights of an Owner, including the right to vote; provided that the vendor may retain the right to vote on matters substantially affecting the vendor’s interest in the Apartment as provided in Section 514A-83 of the Act. Where an Owner is a corporation, trust, limited liability company or partnership, the method for designating the natural person who shall act as and for the Owner is as set forth in the Bylaws. In the event that any interest in an Apartment is transferred to a trustee under a land title-holding trust under which substantially all powers of management, operation and control of the Apartment remain vested in the trust beneficiary or beneficiaries, the beneficiary or beneficiaries of any such trust shall be deemed to be the Owner or Owners of the Apartment 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 an 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 Owner and shall have all of the rights and obligations of ownership.

“Association” means the Association of Apartment Owners of the Project.

“Board of Directors” or “Board” means the Board of Directors of the Association.

**“Bylaws”** means the Bylaws of the Association of Apartment Owners of Moana Pacific, recorded in the Land Court concurrently with this Declaration, as the same may be amended from time to time.

**“Declaration”** means this Moana Pacific Declaration of Condominium Property Regime, as the same may be amended from time to time.

**“Developer”** means KC RAINBOW DEVELOPMENT CO. LLC, a Hawaii limited liability company.

**“Mortgagee of an Apartment”** or **“Apartment mortgagee”** means the holder of a mortgage encumbering the fee title to, or any recorded leasehold interest in, an Apartment.

**“Record,” “recorded”** or **“recordation”** means to record or to be recorded in the Land Court.

**“Rules and Regulations”** means the rules and regulations adopted pursuant to the Bylaws, as the same may be amended from time to time, governing the details of the operation and use of the Project, and certain details regarding the use of the Apartments.

## **2. General Description of the Project.**

2.1 The Project contains two phases, identified herein and on the Condominium Map as “Phase I” and “Phase II”. Notwithstanding that certain parts of the Project are designated as within one Phase or the other, the entire Project, as a whole, shall consist of and include all of the Apartments, Land, premises and appurtenances herein described as Phases I and II.

2.2 Phase I includes a five (5) story parking structure, without basement, identified on the Condominium Map as “Phase I Parking”, and an integrated forty-six (46) story tower, without basement, identified on the Condominium Map as “Phase I Apartment Tower.” The Phase I Parking structure and Phase I Apartment Tower are sometimes hereinafter called the “Phase I Building”. The Phase I Building is constructed principally of steel, aluminum, concrete, glass and allied building materials. The Phase I Building contains 615 assigned limited common element parking stalls, 280 Parking Apartments (100 of which are designated herein as “PA” and will be available for purchase, and 180 of which are designated herein as “LPA” and will initially be reserved for use or sale in connection with a subsequent development on the Adjacent Land, all of which are collectively called the “Phase I Parking Apartments”), 173 Storage Apartments (the “Phase I Storage Apartments”), 356 residential apartments (the “Phase I Residential Apartments”), elevators, lobbies, security areas, mechanical and other utility rooms, stairways, driveways, a sixth level recreation deck, a recreation room, a fitness center and other common elements, all as more particularly described herein and as shown on the Condominium Map. Phase I also includes the land underlying and surrounding the Phase I Building, 14 uncovered guest parking stalls, and entrance and exit driveways from Pensacola Street and Piikoi Street, as shown on the Condominium Map. The Phase I Parking Apartments, the Phase I

Storage Apartments and the Phase I Residential Apartments are sometimes hereinafter referred to collectively as the "Phase I Apartments."

2.3. Phase II includes a five (5) story parking structure, without basement, identified on the Condominium Map as "Phase II Parking", and an integrated forty-six (46) story tower, without basement, identified on the Condominium Map as "Phase II Apartment Tower." The Phase II Parking structure and Phase II Apartment Tower are sometimes hereinafter called the "Phase II Building". The Phase II Building is constructed principally of steel, aluminum, concrete, glass and allied building materials. The Phase II Building contains 612 assigned limited common element parking stalls, 88 Parking Apartments which are designated herein as "PA" and will be available for purchase (the "Phase II Parking Apartments"), 144 Storage Apartments (the "Phase II Storage Apartments"), 356 residential apartments (the "Phase II Residential Apartments"), elevators, lobbies, security areas, mechanical and other utility rooms, stairways, driveways, a sixth level recreation deck, a recreation room, a fitness center and other common elements, all as more particularly described herein and as shown on the Condominium Map. Phase II also includes the land underlying and surrounding the Phase II Building and 16 uncovered guest parking stalls (the "Phase II Guest Stalls"). Ingress and egress to and from the Phase II Parking structure is over and across driveways that are part of Phase I, as shown on the Condominium Map. The Phase II Parking Apartments, the Phase II Storage Apartments and the Phase II Residential Apartments are sometimes hereinafter referred to collectively as the "Phase II Apartments."

2.4 The Phase I Parking structure and the Phase II Parking structure are sometimes hereinafter referred to collectively as the "Parking Structures." The Phase I Apartment Tower and the Phase II Apartment Tower are sometimes hereinafter referred to collectively as the "Apartment Towers." The Phase I Building and the Phase II Building are sometimes hereinafter referred to collectively as the "Buildings."

3. **The Apartments.** The Phase I Residential Apartments and the Phase II Residential Apartments are sometimes hereinafter referred to collectively as the "Residential Apartments." The Phase I Parking Apartments and the Phase II Parking Apartments are sometimes hereinafter referred to collectively as the "Parking Apartments." The Phase I Storage Apartments and the Phase II Storage Apartments are sometimes hereinafter referred to collectively as the "Storage Apartments." All of the Residential Apartments, Parking Apartments and Storage Apartments are sometimes hereinafter referred to collectively as the "Apartments."

3.1 There are hereby established one thousand three hundred ninety-seven (1,397) freehold estates in the Apartments, each individual Apartment comprising one (1) separate freehold estate. The different Apartment types are described in Exhibit "B" attached hereto and made a part hereof. The Apartment numbers, approximate net living areas (exclusive of lanais) and approximate lanai areas of the Residential Apartments and the approximate net floor areas of the Parking Apartments and the Storage Apartments are shown in Exhibit "C" attached hereto and made a part hereof. The limited common element parking stall assignments and the common interests appurtenant to the Apartments are also shown in Exhibit "C".

3.2 The approximate areas of the Residential Apartments set forth in Exhibit "C" are "net living areas" based on measurements taken from the interior surfaces of all perimeter walls, except that no reduction is made to account for interior walls, ducts, vents, shafts, and the like located within the perimeter walls. The areas of the Residential Apartments set forth in Exhibit "C" are not exact but are approximations based on the floor plans of each type of Residential Apartment. The measurements of the Residential Apartments set forth in Exhibit "C" may not follow the designation of the limits of the Residential Apartments (the legally designated areas of the Residential Apartments) set forth below and the net living areas set forth in Exhibit "C" may be greater than the floor areas of the Residential Apartments as so designated and described below.

3.3 The approximate areas of the Parking Apartments set forth in Exhibit "C" are "net floor areas" based on measurements taken from the floor surface boundaries of the Parking Apartments as described in paragraph 3.7 below.

3.4 The approximate areas of the Storage Apartments set forth in Exhibit "C" are "net floor areas" based on measurements taken from the interior surfaces of all perimeter walls, except that no reduction is made to account for interior walls, ducts, vents, shafts, and the like located within the perimeter walls. The areas of the Storage Apartments set forth in Exhibit "C" are not exact but are approximations based on the floor plans of each Storage Apartment. The measurements of the Storage Apartments set forth in Exhibit "C" may not follow the designation of the limits of the Storage Apartments (the legally designated areas of the Storage Apartments) set forth below and the net living areas set forth in Exhibit "C" may be greater than the floor areas of the Storage Apartments as so designated and described below.

3.5 Each Residential Apartment has immediate access (through common element elevators and stairways) to the entries of the Project leading to other common elements and a public street. Each Parking Apartment has immediate access (through common element driveways) to a public street. Each Storage Apartment has immediate access (through common element walkways, elevators and stairways) to the entries of the Project leading to other common elements and a public street.

3.6 Each Residential Apartment shall be deemed to include: (i) all the walls and partitions which are not load-bearing within its perimeter walls, (ii) the interior decorated or finished surfaces of all walls, floors and ceilings, including floor coverings, (iii) any doors and door frames, windows or panels along the perimeters, window frames, (iv) all fixtures originally installed therein, and (v) the decorated or finished surface of the floor, walls (if any) and ceiling of the lanai(s) appurtenant to the Apartment, the railing (if any) of such lanai(s) and the lanai air space. The Residential Apartments shall not be deemed to include: (a) the undecorated or unfinished surfaces of the perimeter walls, the interior load-bearing walls, or the party walls, (b) the undecorated or unfinished surfaces of the floors and ceilings surrounding each Residential Apartment, and (c) any pipes, shafts, wires, conduits or other utility or service lines running through such Apartment which are utilized for or serve more than one Apartment, the same being deemed common elements as hereinafter provided.

3.7 Each Parking Apartment shall be deemed to include a rectangular floor surface area of between approximately 134.5 and 153 square feet (as shown on Exhibit "C") bounded on the ends and sides by marked parallel lines (or, in some cases, by a wall or other permanent monument boundary), as shown on the Condominium Map. Each Parking Apartment shall include the airspace enclosed by imaginary vertical planes extending upward from each of the floor surface boundary lines (or other permanent monument boundaries) to a height of eight (8) feet, or to one inch below the surface of the ceiling immediately above the Parking Apartment, whichever is lower. The Parking Apartments shall not be deemed to include the underlying slab except for its surface, nor any part of the ceiling immediately above said Parking Apartments, nor any pipes, conduits, wires, or other mechanical installations penetrating the Parking Apartments' air space.

3.8 Each Storage Apartment shall be deemed to include: (i) all the walls and partitions which are not load-bearing within its perimeter walls, (ii) the interior decorated or finished surfaces of all walls, floors and ceilings, (iii) any doors and door frames in the perimeter walls, and (iv) all fixtures originally installed therein. The Storage Apartments shall not be deemed to include: (a) the undecorated or unfinished surfaces of the perimeter walls, the interior load-bearing walls, or the party walls, (b) the undecorated or unfinished surfaces of the floors and ceilings surrounding each Storage Apartment, and (c) any pipes, shafts, wires, conduits or other utility or services lines running through such Storage Apartment which are utilized for or serve more than one Apartment, the same being deemed common elements as hereinafter provided.

3.9 Should the descriptions and divisions set forth in this Declaration conflict with the depictions and divisions shown on the Condominium Map, the Condominium Map shall control. The Condominium Map, however, is intended to show only the layout, location, Apartment numbers and dimensions of the Apartments and elevations of the buildings and is not intended and shall not be deemed to contain or make any other representation or warranty.

4. **Common Elements.** One (1) freehold estate is hereby established in all other parts of the Project, which are common elements. The common elements include, but are not limited to:

- (a) The Land, in fee simple, and any easements appurtenant thereto;
- (b) The limited common elements described in paragraph 5 below;
- (c) All foundations, columns, girders, beams, supports, perimeter walls, load-bearing walls, roofs, stairs and stairways, elevator cars, shafts, doors and related equipment, pumps, ducts, pipes, wires, conduits, or other utility or service lines located outside of the Apartments and which are utilized for or serve more than one Apartment, and generally all equipment, apparatus, installations and personal property existing for common use in any part of the Buildings or located on the Land;
- (d) All pipes, wires, ducts, conduits or other utility or service lines running through an Apartment which are utilized by or serve more than one Apartment;

(e) All recreational facilities and other amenities of the Project, including, but not limited to, the swimming pool, picnic/barbeque areas and jogging paths located on the sixth level recreation deck of the Phase I Parking structure, the tennis courts, putting green, golf driving range and jogging path located on the sixth level recreation deck of the Phase II Parking structure, the recreation room and fitness center located on the sixth floor of the Phase I Apartment Tower, and the recreation room and fitness center located on the sixth floor of the Phase II Apartment Tower, all as more particularly shown on the Condominium Map;

(f) All lobbies, elevators, driveways and other common ways, all covered and uncovered parking and loading spaces (excluding, however, the Parking Apartments), all storage areas not located within an Apartment (excluding, however, the Storage Apartments), all landscaping, courtyards, fences, gates, retaining walls, mailboxes, trash areas, utility and maintenance rooms and facilities, accessory equipment areas, including electrical and mechanical rooms or facilities located on the Land or within the Buildings and serving more than one Apartment;

(g) All other improvements on the Land that are not part of any Apartment.

5. **Limited Common Elements.** Certain of the common elements are hereby set aside and reserved for the exclusive use of certain of the Apartments, and such Apartments shall have appurtenant thereto exclusive easements for the use of such limited common elements as follows:

5.1 Each Apartment shall have appurtenant thereto as limited common elements all pipes, wires, ducts, conduits or other utility or service lines located within or running through the Apartment and utilized by or serving only that Apartment.

5.2 Each Residential Apartment shall have appurtenant thereto as a limited common element the parking stall(s) designated as appurtenant to the Apartment on Exhibit "C" attached hereto and made a part hereof.

5.3 Each Residential Apartment shall have appurtenant thereto as a limited common element the mailbox designated with the Apartment's number and located in the ground floor mail area of the Building in which the Apartment is located.

5.4 The Residential Apartments, as a group, shall have appurtenant thereto as limited common elements all recreational amenities and facilities located on the sixth level recreation deck of the Phase I Parking Structure and the Phase II Parking Structure, including (but not limited to) the swimming pool, picnic/barbeque areas, jogging paths, tennis courts, putting green and golf driving range located thereon.

5.5 The Phase I Residential Apartments, as a group, shall have appurtenant thereto as limited common elements all parts of the Phase I Apartment Tower that are not part of any Apartment, from (and including) the sixth floor through (and including) the roof of the Phase I Apartment Tower.

5.6 The Phase II Residential Apartments, as a group, shall have appurtenant thereto as limited common elements all parts of the Phase II Apartment Tower that are not part of any Apartment, from (and including) the sixth floor through (and including) the roof of the Phase I Apartment Tower.

5.7 Any other common element of the Project that is rationally related to a single Apartment shall be deemed a limited common element appurtenant to and for the exclusive use of that Apartment, it being the intent of this paragraph 5 to apportion rights to use and obligations to repair and maintain all common elements as equitably as reasonably possible among the various Apartments.

6. **Common Expenses and Costs and Expenses Relating to Limited Common Elements.** All provisions of the Bylaws relating to common expenses, limited common expenses and the rights and remedies of the Association in connection therewith are hereby incorporated into this Declaration by reference.

6.1 Each Apartment Owner shall be liable for a proportionate share of all costs, expenses, assessments, taxes and charges described in the Bylaws as "common expenses." The method of determining and collecting common expenses shall be as set forth in the Bylaws. All sums chargeable as common expenses to any Apartment but unpaid shall constitute a lien on such Apartment, which lien shall have such priority and may be foreclosed by the Association as provided in the Bylaws and in the Act.

6.2 Each Apartment Owner shall be liable for all costs and expenses, including, but not limited to, costs for maintenance, repair, replacement, additions and improvements to, any of the limited common elements of the Project appurtenant to such Owner's Apartment, and all such costs and expenses (if not charged directly to the Apartment owner by the person(s) to whom such sums are owed) shall be charged to such Owner by the Association as an individual limited common expense.

6.3 If a limited common element is appurtenant to more than one Apartment, all costs and expenses arising in connection with such limited common element shall be charged to the Owners of all Apartments to which the limited common element is appurtenant as a general limited common expense. Each such Owner's share of the costs and expenses shall be determined by dividing the common interest appurtenant to such Owner's Apartment by the aggregate common interests appurtenant to all Apartments to which the limited common element is appurtenant, and multiplying the resulting percentage by the aggregate costs and expenses arising in connection with the limited common element.

6.4 All sums arising in connection with any limited common element and charged to or assessed against an individual Apartment but unpaid shall constitute a lien on such Apartment, which lien shall have such priority and may be foreclosed by the Association as provided in the Bylaws and in the Act.



6.5 Any expense which cannot be separately identified or attributed to a limited common element shall be charged to all the Owners as a common expense.

7. **Percentage of Undivided Interest in Common Elements.** Each Apartment shall have appurtenant thereto an undivided percentage interest in the common elements of the Project and in all common profits and expenses of the Project, and for all other purposes, including voting. The undivided percentage interests appurtenant to the Apartments are as shown on Exhibit "C" attached hereto and made a part hereof. All references herein or in the Bylaws to the vote or consent of a specified percentage of the Apartment Owners shall mean the Owners of Apartments to which are appurtenant such percentage of the common interests. The common interests are computed based upon the formula explained in Exhibit "C".

8. **Other Easements and Rights.** In addition and subject to the easements established in the limited common elements, the Apartments and/or the common elements shall also have or be subject to the following easements and rights:

8.1 Each Apartment shall have appurtenant thereto non-exclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for, and support, maintenance, and repair of such Apartment; in the other common elements for use according to their respective purposes for which they are intended without hindering or encroaching upon the lawful rights of the other Apartment Owners; and in all other Apartments and common elements for support.

8.2 If any part of the common elements now or hereafter encroaches upon any Apartment or limited common element or if any Apartment now or hereafter encroaches upon any other Apartment or upon any portion of the common elements, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist; provided, however, that if an encroachment is caused, directly or indirectly, by the intentional act or neglect of any Apartment Owner, the Board, in its sole discretion, may demand that such Owner take such steps as are necessary to remove the encroachment, and the Apartment Owner shall be liable for all expenses, costs and fees arising in connection with such removal. In the event that any building shall be partially or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any portion of any building, encroachments upon any part of the common elements or any Apartment due to the same shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist for so long as such encroachment exists.

8.3 The Association shall have the irrevocable right, to be exercised by the Board of Directors, to have access to each Apartment and any limited common elements from time to time during reasonable hours as may be necessary for the operation or maintenance of the Project, including any Apartment, or at any time for making emergency repairs therein necessary to prevent damage to the common elements or to any other Apartment.

8.4 The Association shall have the right, to be exercised by the vote of a majority of a quorum of the Board, to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements 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 which are necessary to the operation, care, upkeep, maintenance or repair of any apartment, the common elements or any easements for utilities or for any public purpose.

8.5 The Association shall have the right, to be exercised by the vote of a majority of a quorum of the Board, to transfer, cancel, relocate and otherwise deal with any easement over, under, across or through any lands adjacent to the Project, which may be appurtenant to the Land of the Project, for any reasonable purpose, which may include, but shall not be limited to, any of the same purposes set forth in the preceding subparagraph 8.4 of this paragraph 8 or for the reason that any owner of any such lands adjacent to the Project exercises any right to require the relocation of any such easement.

8.6 The Developer, its agents, employees, contractors, licensees, successors and assigns, shall have (and the Developer hereby reserves) easements over and upon the Project, including the common elements, as may be reasonably necessary for the completion of the Project and the sale of all Apartments in the Project. These easements shall include (but not be limited to) the right to use model apartments, sales and management offices, parking stalls and sales displays and shall continue for so long as the Developer or the Developer's successor or assign retains any interest in any Apartment in the Project.

8.7 The Developer hereby reserves for itself, its successors in interest and assigns, the right, without the joinder or consent of any other party, including any Apartment Owner, Apartment purchaser, mortgagee, lienholder, or any other person or entity whatsoever, to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across, or through the common elements (including the limited common elements) for any reasonable purpose, which may include, but shall not be limited to, those purposes which are necessary to the operation, care, upkeep, maintenance or repair of any Apartment or the common elements or any easements for utilities or for any public purpose; provided, however, that in exercising its rights under this paragraph, the Developer shall not do anything or permit anything to be done which shall unreasonably interfere with the use of the affected common or limited common element for its originally intended purpose, unless such action is required to ensure the public health, safety or welfare or to comply with any governmental rule, regulation, law or ordinance. The rights set forth in this paragraph shall continue for a period of twelve (12) months following recordation of the last apartment deed transferring title to an Apartment to any person or entity other than the Developer, a party related to the Developer or the Developer's successor in interest.

8.8 Each of the rights reserved in this paragraph 8 includes the right to execute and cause to be recorded in the Land Court any and all legal documents and other instruments required by law to accomplish the tasks for which such rights are reserved, including (but not limited to) one or more amendments to this Declaration, the Bylaws and/or the Condominium Map as may be necessary to reflect changes to the Project or the Land caused by or otherwise related to the exercise of the rights reserved herein. Any such instrument or amendment need only be signed by the person or entity that is entitled under this paragraph 8 to exercise such rights, without the joinder or consent of any other party, including any Apartment Owner, Apartment purchaser, mortgagee, lienholder, or any other person or entity whatsoever.

8.9 To the extent that the joinder or consent of any Apartment Owner may be required in order to confirm, effectuate or exercise any easements or rights granted or reserved to the Developer, or to validate any act or thing done pursuant to such easements, rights and reservations of the Developer, or to execute and record any instruments or amendments to any instruments (including, but not limited to, this Declaration, the Bylaws and/or the Condominium Map) such joinder or consent may be executed and given by the Developer as the attorney-in-fact for, and in the name and stead and on behalf of, such Apartment Owner. Each Apartment Owner, by acquiring or accepting the ownership of an Apartment or any other interest in the Project or any Apartment, thereby (i) appoints the Developer as such Owner's attorney-in-fact as aforesaid, such appointment being coupled with an interest and being irrevocable, and (ii) agrees that such Owner shall, promptly upon the Developer's request and for no further consideration, execute, acknowledge and deliver to the Developer such instruments as the Developer may require to evidence or confirm such joinder or consent.

8.10 If the Project is found not to be in compliance with any federal, state or local law in effect at any time while the Developer retains any interest in the Project, the Developer shall have the right (but not the obligation), at its election, at any time thereafter to enter the Project and make such modifications to the common elements as are necessary, in the Developer's judgment, to bring the Project into compliance with the applicable laws. This right shall include, but shall not be limited to, the right to cause noise, dust and other disturbances and nuisances incidental to modifying the common elements as required; provided, however, that the Developer or any party performing such work on behalf of the Developer shall make reasonable efforts to minimize such disturbances and nuisances.

## 9. Alteration and Transfer of Interests.

9.1 Except as otherwise provided in this Declaration, the undivided interest in the common elements and other easements appurtenant to each Apartment shall have a permanent character, and shall not be altered without the consent of all of the Apartment Owners affected, expressed in an amendment to this Declaration duly recorded in the Land Court, which amendment shall contain the consent thereto by the holders of any first mortgage on such Apartments as shown in the Association's record of ownership, or who shall have given the Board notice of their interest through the Secretary of the Association or the managing agent (if any), and shall not be separated from the Apartment to which they appertain, and shall be deemed to be conveyed, leased or encumbered with such Apartment even though such interest or easements are not expressly mentioned or described in the conveyance or other instrument. Except as otherwise provided in this Declaration, the common elements and each Apartment shall remain undivided, and no right shall exist to partition or divide any portion of the common elements or any Apartment except as provided in the Act and as otherwise expressly provided herein. This Declaration and the Condominium Property Regime created hereby cannot be terminated except in accordance with the Act and the provisions of this Declaration and the Bylaws.

9.2 Any provision of this Declaration to the contrary notwithstanding, Apartment Owners shall have the right to change the designation of parking stalls that are

appurtenant to their respective Apartments by amendment of this Declaration and the respective Apartment Deeds (if necessary) to show the new numbers of the parking stalls appurtenant to such Apartments and to delete the numbers of the old parking stalls; provided, however, that each Residential Apartment shall at all times have at least one (1) parking stall as an appurtenant limited common element. Each owner of an Apartment to which is appurtenant a designated handicap parking stall shall be required to exchange such stall for a non-handicap stall under the following conditions:

(a) A person with a disability has purchased or intends to purchase an Apartment in the Project which does not have a handicap stall appurtenant thereto; and

(b) Such person's disability would interfere with the person's full use and enjoyment of the Apartment unless a handicap stall were made appurtenant thereto, and the Owner of the Apartment to which the handicap stall is appurtenant does not have a disability which requires the availability of a handicap stall; and

(c) The handicap stall to be exchanged is in the parking area for the same Phase in which the disabled person's Apartment is located; and

(d) The person who will acquire the handicap stall will assign to the Owner of the Apartment to which the handicap stall is appurtenant a parking stall appurtenant to the disabled person's Apartment and in the parking area for the same Phase in which the other Owner's Apartment is located, or such other stall as both parties shall agree to assign and accept in exchange for the handicap stall.

9.3 The amendment(s) required to effect changes in designated parking stalls pursuant to the foregoing subparagraph 9.2 need only be signed and approved by the Owners (and their respective mortgagees, if the mortgagees so require) of the Apartments whose parking stalls are being changed. The amendment(s) shall become effective only upon recordation in the Land Court, and a copy of each amendment, showing recordation data, shall be promptly delivered to the Association through the Secretary or the managing agent.

10. **Purposes and Uses.** The Project and each of the Apartments are intended for and shall be restricted to the following purposes and uses:

10.1 Each Residential Apartment shall be occupied and used only for residential purposes, each Parking Apartment shall be used exclusively for the parking of motor vehicles, and each Storage Apartment shall be used exclusively for storage purposes. An Apartment Owner may rent his Apartment to any third party for any period permitted by applicable zoning and any rules promulgated thereunder, provided that the rental agreement is in writing. The Owner shall provide each rental tenant with a copy of the Rules and Regulations and shall make a copy of the Bylaws, as amended, available for the tenant's review. An Owner who rents his Apartment shall at all times remain primarily and severally liable to all other Apartment 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 Rules and Regulations, and all other applicable laws. In no event shall any Apartment or any interest

therein be sold, transferred, conveyed, leased, occupied, rented or used for or in connection with any time-sharing purpose or under any time-sharing plan, arrangement or program, including without limitation any so-called "vacation license," "travel club membership" or "time interval ownership" arrangement. The term "time-sharing" as used herein shall be deemed to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess an Apartment or Apartments in the Project rotates among various persons on a periodically recurring basis according to a fixed or floating interval or period of time, whether by way of deed, lease, association or club membership, license, rental or use agreement, cotenancy agreement, partnership or otherwise, and whether or not registered under Chapter 514E, Hawaii Revised Statutes, as amended. No Apartment may be used as a rooming house or for bed and breakfast purposes. Other than the foregoing restrictions, the Owners of the respective Apartments shall have the absolute right to lease the same, provided that such lease is in writing and is expressly made subject to the covenants and restrictions contained in this Declaration, the Bylaws and the Rules and Regulations.

10.2 No Owner will suffer anything to be done or kept in an Apartment or elsewhere in the Project which would jeopardize the soundness of the Project, or which will interfere with or unreasonably disturb the rights of other Apartment Owners, or which will increase the rate of the hazard insurance on the Project or the contents thereof, or which will reduce the value of the Project.

10.3 The Owner of any Apartment will not, without the prior written consent of the Board of Directors, display any sign or place any other thing in or upon any doors, windows, lanais, walls or other portions of the Apartment or the common elements so as to be visible from the exterior, provided, however, that this restriction shall not apply to signs displayed by the Developer for sales purposes prior to the completion of sales of all Apartments in the Project.

10.4 Except as otherwise provided in section 514A-13 of the Act and in the Bylaws, the common elements shall be used only for the purposes for which they are designed and intended.

11. **Exemptions for Persons with Disabilities.** Notwithstanding anything to the contrary contained in this Declaration, the Bylaws or the Rules and Regulations, Owners with disabilities shall be allowed reasonable exemptions from this Declaration, the Bylaws and the Rules and Regulations, when necessary and as appropriate to enable them to use and enjoy their Apartments 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 forty-five (45) days of the Board's receipt thereof, or within forty-five (45) days of the Board's receipt of additional information reasonably required by the Board in order to consider such request, whichever shall last occur.

12. **Service of Process.** Allen H. Y. Leong, Esq., whose post office address is 615 Piikoi Street, Suite 1111, Honolulu, Hawaii 96814, is hereby designated as the agent to receive

service of process until such time as the Board of Directors and officers of the Association are elected, at which time and thereafter process may be served upon any officer of the Association.

13. **Administration of Project.** The administration of the Project shall be governed by the Act, this Declaration, the Bylaws, the Rules and Regulations, the Apartment Deed conveying to each Owner his interest in his Apartment, and all other applicable federal, state or local laws, rules and regulations. Each Apartment Owner shall comply strictly with this Declaration, the Bylaws, the Rules and Regulations, the Apartment Deed and all applicable laws. Apartment Owners acting for any purposes in connection with the common elements for the government, operation or administration of the Project and in accordance with the Declaration, the Rules and Regulations and the Bylaws, shall be deemed to be acting as the Association, and specifically but without limitation the Association shall:

(a) Make, build, maintain and repair all fences, drains, roads, curbs and sidewalks which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the common elements or any part thereof;

(b) Keep all common elements in a strictly clean, orderly and sanitary condition, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the common elements or the use thereof;

(c) Well and substantially repair, maintain, amend, and keep all common elements with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided herein or in the Bylaws;

(d) Not at any time make or suffer any strip or waste or unlawful or improper or offensive use of the common elements; and

(e) Observe and perform all of the limitations, restrictions, covenants and conditions to be observed and performed under this Declaration, the Bylaws and the Rules and Regulations.

14. **Insurance.**

14.1 **Commercial Property Insurance.** The Board, on behalf of the Association, shall at all times keep the common elements of the Project and, whether or not part of the common elements, all exterior and interior walls, floors, ceilings, cabinets, appliances, wall coverings, floor covering, permanently installed fixtures and built-in fixtures, as installed, insured against loss, destruction and damage by all perils of direct physical damage by a commercial property insurance policy or policies written on the Insurance Service Office (commonly referred to as "ISO") "Special Form" used in the State of Hawaii or its equivalent, with an amount of coverage equal to 100% of the replacement cost of such Buildings and improvements of the Project and including the following endorsements: (1) replacement cost coverage and (2) agreed amount, all such coverage being with such deductibles as the Board shall deem appropriate; and additionally the Board may cause to be purchased a difference-in-

conditions policy to include flood, earthquake, backup of sewers, broad collapse coverage, and building ordinance coverage with deductible amounts and a limit of liability determined to be prudent by the Board. If the Project is located in a special flood hazard area as delineated on flood maps issued by the Federal Emergency Management Agency, the Association shall also procure a policy of flood insurance that complies with the requirements of the National Flood Insurance Program and the Federal Insurance Administration. The Association shall purchase the insurance required under this paragraph 14.1 from an insurance company authorized to do business in Hawaii and having a rating by Best's Insurance Reports of Class A- or better, in the name of the Association for the benefit of all Owners and their mortgagees according to the loss or damage to their respective Apartments and appurtenant common interest and payable in case of loss in excess of \$100,000 to such bank, trust company or managing agent authorized to do business in the State of Hawaii as the Board may designate, as trustee (the "Insurance Trustee"), for the custody and disposition as herein provided of all proceeds of such insurance, without prejudice to the right of each Owner to insure his Apartment for his own benefit. Subject to the provisions of paragraph 15.2 of 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 Building in a good and substantial manner according to the original plans and elevations thereof or such modified plans conforming to laws and ordinances then in effect as shall be first approved as herein provided, and the Association at its common expense shall make up any deficiency (including deductible amounts) in such insurance proceeds. All premiums on the policy or policies required under this paragraph 14.1 shall be borne by the Owners of the Apartments in proportion to their undivided interests in the common elements. Every such policy of insurance shall, unless unobtainable:

(a) Provide that the liability of the insurer thereunder shall be primary and shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration or contribution by reason of, any other insurance obtained by or for any Owner;

(b) Contain no provision relieving the insurer from liability for loss occurring while the hazard to any building is increased, whether or not within the knowledge or control of the Board, or because of any breach of warranty or condition or any other act or neglect by the Board or any Owner or any other persons under either of them;

(c) Provide that such policy and the coverage thereunder may not be cancelled, reduced or substantially modified (whether or not requested by the Board) except by the insurer giving at least thirty (30) days' prior written notice thereof to the Board, every mortgagee of an Apartment, and any other person in interest who shall have requested such notice of the insurer;

(d) Contain a waiver by the insurer of any right of subrogation to any right of the Board or any of the Owners against any of them or any other persons under them;

(e) Contain a provision waiving any right of the insurer to repair, rebuild or replace if a decision is made pursuant to this Declaration or the Bylaws not to reinstate, rebuild, or restore the damaged or destroyed improvements;

(f) Require the insurance carrier, at the inception of the policy and on each anniversary date thereof, to provide the Board with a written summary of the policy, including the type of policy, a description of the coverage and limits thereof, amount of annual premium, and renewal dates; and the summary shall be in layman's terms and the Board shall provide a copy thereof to each Owner;

(g) Contain a standard mortgage clause on ISO commercial property form which shall, unless unobtainable:

(i) Name the holder of any mortgage affecting any Apartment whose name shall have been furnished to the Board and to the insurer and provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any Apartment of the Project, in their respective order and preference, whether or not named therein;

(ii) Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board or the Owners or any persons under them;

(iii) Provide that, without affecting any protection afforded by such mortgage clause, any proceeds payable under such policy shall be payable to the Insurance Trustee for the Owners and their mortgagees as their respective interests may appear.

14.2 **Liability Insurance.** The Board, on behalf of the Association, shall also effect and maintain at all times, to the extent reasonably available, commercial general liability insurance, including coverage for premises/operations, independent contractors, contractual liability, personal injury, employees as additional insureds, broad form property damage, covering all Owners with respect to the Project, in an insurance company authorized to do business in Hawaii, with combined single limits of liability for bodily injury and property damage of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate or such higher limits as the Board may from time to time establish with due regard to the prevailing prudent business practice in the State of Hawaii as reasonably adequate for the protection of the Association, the Board, all Owners, the managing agent and employees of the Association, without prejudice to the right of any of the Owners to maintain additional liability insurance for their respective Apartments and limited common elements. All premiums on the policy or policies required under this paragraph 14.2 shall be borne by the Owners of the Apartments in proportion to their undivided interests in the common elements. Each such policy, unless unobtainable, shall:

(a) Contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in any Building, whether within the control or knowledge of the Board, or because of any breach of warranty or condition caused by any Owner or by any act or neglect of the Owner or tenant of an Apartment;



(b) Provide that the policy and its coverage may not be cancelled, reduced or substantially modified (whether or not requested by the Board) except by the insurer giving at least thirty (30) days' prior written notice thereof to the Board, all Owners and their mortgagees and every other person in interest who shall have requested such notice of the insurer; and

(c) Contain a waiver by the insurer of any subrogation to any right of the Board, the managing agent or any Owner against any of them or any other person under their control;

(d) Contain a "severability of interest" clause precluding the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

**14.3 Liability Insurance for Members of the Board and Officers of the Association.** The Board, on behalf of the Association at its common expense, may effect and maintain liability insurance covering members of the Board and officers of the Association with minimum coverage in such amounts as shall be determined by the Board. Any such insurance policy shall require the insurance carrier, at the inception of the policy and on each anniversary date thereof, to provide the Board with a written summary of the policy, including the type of policy, a description of the coverage and limits thereof, amount of annual premium, and renewal dates; and the summary shall be in layman's terms and the Board shall provide a copy thereof to each Apartment Owner.

**14.4 Review of Insurance Program.** The Board shall review not less frequently than annually the adequacy of its entire insurance program and shall report in writing its conclusions and action taken on such review to the Owner of each Apartment and to the holder of any mortgage on any Apartment who shall have requested a copy of such report. At the request of any mortgagee of any interest in any Apartment, the Board shall furnish to such mortgagee a copy of the property and liability policies referred to in this paragraph 14.

**14.5 Waivers of Subrogation.** To the extent that any loss, damage or destruction to any building or any common elements is covered by insurance procured by the Board, the Board shall have no claim or cause of action for such loss, damage or destruction against any Owner. To the extent that any loss, damage or destruction to the property of any Owner is covered by insurance procured by such Owner, such Owner shall have no claim or cause of action for such loss, damage or destruction against the Board, the managing agent, any resident manager, any other Owner or the Association. All policies of insurance referred to in this paragraph 14 shall contain appropriate waivers of subrogation by the insurers.

**14.6 Substitute Coverage.** Any insurance coverage specified in this paragraph 14 shall be subject to availability with responsible insurance companies authorized to do business in the State of Hawaii. Where such coverage is not available, or is not available at a reasonable cost, then the Board shall substitute such other insurance coverage as is acceptable to institutional lenders for apartments in projects similar in construction, location and use.

15. **Insured Casualty and Uninsured Casualty.**

15.1 **Insured Casualty.**

(a) **Collection of Insurance Proceeds.** In the event of any damage to all or any portion of the Project by fire or other casualty which is insured against, the Board of Directors shall take all reasonable steps necessary to collect the insurance proceeds and deposit the same with the Insurance Trustee at the earliest practicable date and, except as otherwise provided herein, to cause all rebuilding or repairing work to be undertaken and completed as hereinafter provided as promptly as may be reasonably possible in the circumstances.

(b) **Insured Casualty to Single Apartment and Limited Common Elements.** If any portion of the Project is damaged by fire or other casualty which is insured against and such damage is limited to a single Apartment and/or the limited common elements appurtenant thereto, all of the insurance proceeds shall be used by the Insurance Trustee for payment of the contractor employed by the Board of Directors to rebuild or repair such Apartment and/or limited common elements (including paint, floor covering, fixtures, and mechanical, electrical and air conditioning equipment therein which are deemed to be common elements as provided herein) in accordance with the original plans and specifications therefor, or if reconstruction in accordance with said plans and specifications is not permissible under the laws then in force, in accordance with such modified plans and specifications as shall be previously approved by the Board of Directors and any mortgagee of record of any interest in the Apartment or limited common elements so damaged.

(c) **Other Insured Casualty.** If any insured-against damage to the Project should occur other than the damage described in paragraph 15.1(b) of this Declaration, the Board of Directors shall thereupon contract to repair or rebuild the damaged portions of the Project (including paint, floor covering, fixtures, and any mechanical, electrical and air conditioning equipment therein which are deemed to be common elements as provided herein), in accordance with the original plans and specifications therefor, or if reconstruction in accordance with said plans and specifications is not permissible under the laws then in force, in accordance with such modified plans and specifications as shall be previously approved by the Board of Directors, and the mortgagee of record of any interest in an Apartment directly affected thereby. In the event said modified plans and modifications eliminate any Apartment or its appurtenant limited common elements and such Apartment or limited common elements are not reconstructed, the Insurance Trustee shall pay the Owner of said Apartment and any mortgagee of record of any interest in said Apartment, as their interests may appear, the portion of said insurance proceeds allocable to said Apartment and limited common elements (less the proportionate share of said Apartment in the cost of debris removal) and shall disburse the balance of the insurance proceeds as hereinafter provided for the disbursement of insurance proceeds.

(d) **Insufficient Insurance Proceeds.** The insurance proceeds shall be paid by the Insurance Trustee to the contractor employed for such work, in accordance with the terms of the contract for such construction and in accordance with the terms of this paragraph 15. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding,

then the Board of Directors shall levy, as soon as reasonably possible following the determination of the amount of such insufficiency, a special assessment (i) with respect to the repairing and/or rebuilding of the common elements, exclusive of limited common elements, against the Owners of all Apartments, except for Apartments being eliminated from the Project, in proportion to their common interests, (ii) with respect to the repairing and/or rebuilding of an Apartment, against the Owner of such Apartment, (iii) with respect to the repairing and/or rebuilding of any limited common element, against the Owners of all Apartments to which such limited common element is appurtenant. In the case of limited common elements appurtenant to more than one Apartment, each such Apartment's share of the special assessment shall be determined by dividing the common interest appurtenant to such Apartment by the aggregate common interests appurtenant to all Apartments to which the limited common element is appurtenant, and multiplying the resulting percentage by the total amount of the special assessment for the limited common element. All of the foregoing special assessments shall be secured by the lien created under section 7.5 of the Bylaws.

(e) **Disbursement of Insurance Proceeds.** The cost of the work (as estimated by the Board of Directors) shall be paid out from time to time or at the direction of the Board as the work progresses, but subject to the following conditions:

(i) An architect, engineer, construction manager or other qualified person designated by the Board (who may be employees of the Board) shall oversee the work;

(ii) Each request for payment shall be made on seven (7) days' prior notice to the Insurance Trustee and shall be accompanied by a certificate to be made by such architect or engineer stating that all of the work completed has been done in compliance with the approved plans and specifications and that the sum requested is justly required to reimburse the Board for payments by the Board to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services of materials for the work (giving a brief description of such services or materials), and that when added to all sums previously paid out by the Insurance Trustee the sum requested does not exceed the value of the work done to the date of such certificate;

(iii) Each request shall be accompanied by waivers of liens satisfactory to the Insurance Trustee, covering that part of the work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Insurance Trustee, that there has not been filed with respect to the premises any mechanics' or other lien or instrument for the retention of title with respect to any part of the work not discharged of record;

(iv) The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the premises legal;

(v) The fees and expenses of the Insurance Trustee as determined by the Board of Directors and the Insurance Trustee shall be paid by the Association

