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DECLARATION OF CONDOMINIUM PROPERTY REGIME

OF

ALA MOANA HOTEL CONDOMINIUM

CONDOMINIUM MAP NO. 1728

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**DECLARATION OF CONDOMINIUM PROPERTY
REGIME OF
ALA MOANA HOTEL CONDOMINIUM**

This Declaration of Condominium Property Regime of Ala Moana Resort (this "**Declaration**") is dated June 20, 2005, by Ala Moana Property Development, LLC, a Delaware limited liability company, whose principal place of business and address is 410 Atkinson Drive, Honolulu, Hawaii 96814 ("**Developer**" or "**Declarant**").

WHEREAS,

1. Developer is the owner in fee simple of that certain parcel of land more particularly described in **Exhibit A** attached hereto, upon which is situated the hotel known as the "**ALA MOANA HOTEL**", which contains 2 hotel towers (the Kona Tower and Waikiki Tower), 1154 hotel rooms, and related services such as retail shops, restaurants, meeting rooms, and various amenities including a pool.

2. Developer wishes to establish a condominium property regime to convert the various lodging units, dwelling units, commercial areas, and other areas in the hotel to condominium units.

A. DEFINITIONS. The terms used herein shall have the meanings given to them in the Act and as defined below or as defined elsewhere in this Declaration, except as otherwise expressly provided herein. Unless clearly repugnant to the context, the following terms, whenever used in this Declaration, shall be given the following meanings:

"**Act**" means the "**Condominium Property Act**" codified in Chapter 514A of the Hawaii Revised Statutes, as amended.

"**Antennae Statutes**" means the rules and regulations promulgated by the Federal Communications Commission pursuant Section 207 of the Telecommunications Act of 1996.

"**Apartment**" or "**Unit**" means the Apartments in the Project, within the meaning of the term "apartment" as used in the Act, as designated and described in this Declaration, and includes the individual Apartments making up each of the Apartment Classes. Various Apartments included in the Project are listed in **Exhibit B** and include the following:

"**Banquet Apartment(s)**" or "**Meeting Room Apartment(s)**" means those Apartments delineated on the Condominium Map and described as Banquet Apartments and Meeting Room Apartments on the Condominium Map or this Declaration, all Improvements and Facilities constructed or reconstructed therein, and all Limited Common Elements appurtenant to such Apartment(s). These Apartments are designated for ancillary hotel use, commercial banquet rental use, and such other uses as may be permitted by law as specified in this Declaration. Developer reserves the right to change the designation and use of the Banquet Apartments and Meeting Room Apartments and all Limited Common Elements appurtenant to such Apartment(s), as set forth in this Declaration.

"**Commercial Apartment(s)**" or "**Commercial Unit(s)**" means those Apartments delineated on the Condominium Map and listed in **Exhibit B** as Commercial Apartments, all Improvements and Facilities constructed or reconstructed therein,

and all Limited Common Elements appurtenant to such Apartment(s). These Apartments may include Apartments identified as the Food Service Apartment or Restaurant Apartment, among other labels. As described in this Declaration, these Apartments shall be operated and used only for commercial purposes or uses, subject to the limitations contained in this Declaration, including, without limitation, (a) for retail, office, food and beverage sales, and all commercial and other purposes accessory to the foregoing and (b) for such other purposes as may be permitted under this Declaration and/or approved by Developer. Developer reserves the right to change the designation and use of the Commercial Apartments and the Limited Common Elements appurtenant to such Apartments, as set forth in this Declaration.

"Front Desk Apartment" means the area delineated on the Condominium Map labeled Front Desk Apartment, all Improvements and Facilities constructed or reconstructed therein, including without limitation the Hotel Amenities, and all Limited Common Elements appurtenant to such Apartment. This Apartment may be used for the purpose specified in this Declaration and includes all Improvements and Facilities constructed or reconstructed therein together with a front desk operation and lobby. The Owner of the Front Desk Apartment is sometimes described as the **"Front Desk Owner."**

"Long Term Stay Apartment(s)" means those Apartments that may be or are delineated on the Condominium Map and are identified in **Exhibit B** or an amendment to this Declaration, and which are developed by Declarant in accordance with this Declaration. These Apartments, if and as developed, are or will be designated for residential use. The Long Term Stay Apartments are intended for use for dwelling purposes or long-term residential purposes, and shall not be used for any other purpose. Developer reserves the right to change the designation and use of the Long Term Stay Apartments and all Limited Common Elements appurtenant to such Apartment(s), as set forth in this Declaration.

"Non-Long Term Stay/Vacation Apartments" include all Apartments within the Apartment Classes other than the Hotel Apartment Class, and include without limitation the Office Apartments, the Commercial Apartments, the Banquet Apartments, the Parking Apartment and the Front Desk Apartment.

"Office Apartment(s)" means those Apartments that are delineated on the Condominium Map and labeled Office Apartments or scheduled in **Exhibit B**, all Improvements and Facilities constructed or reconstructed therein, and all Limited Common Elements appurtenant to such Apartment(s). These Apartments are intended for general office or commercial use as specified in this Declaration and not intended for use for dwelling purposes or long-term residential purposes, and shall not be used for such purposes. Developer reserves the right to change the designation and use of the Office Apartments and all Limited Common Elements appurtenant to such Apartment(s), as set forth in this Declaration. These Apartments may specifically be reclassified by Developer and thereafter used as Vacation Apartments, Long Term Stay Apartments, Commercial Apartments as a portion of the Spa Apartment or Front Desk Apartment, as provided in Section H.3 below.

"Parking Apartment" means the area delineated on the Condominium Map labeled Parking Apartment (or Parking Apartment followed by a number, if more than one Parking Apartment) and listed on **Exhibit B**, all Improvements and Facilities constructed or reconstructed therein, and all Limited Common Elements appurtenant to such Apartment. The Parking Apartment includes as a limited common element (i) the basement parking area shown on the Condominium Map, (ii) the Porte Cochere parking area shown on the Condominium Map labeled 1C, and (iii) the On-Street Parking. The basement parking area shown on the Condominium Map is sometimes referred to as the **"Parking Basement."** Reference to the **"Basement"** shall refer to that portion of the limited common element appurtenant to the Parking Apartment located in the basement of the Building. The Owner of the Parking Apartment is sometimes described as the **"Parking Owner."**

"Spa Apartment" or "Recreational Apartment" means the area delineated on the Condominium Map labeled Spa Apartment, all Improvements and Facilities constructed or reconstructed therein, and all Limited Common Elements appurtenant to such Apartment. Developer reserves the right to change the designation and use of the Spa Apartment and all Limited Common Elements appurtenant to such Apartment, as set forth in this Declaration. The Owner of the Spa Apartment is sometimes described as the **"Spa Owner."**

"Vacation Apartment(s)" means those Apartments listed in **Exhibit B** and described as Vacation Apartments. The Vacation Apartments include four (4) types of studios and multiple types of suites. These Apartments are designated for hotel, fractional, and transient vacation rental use as specified in this Declaration. The Vacation Apartments are not intended for use for dwelling purposes or long-term residential purposes, and shall not be used for such purposes. Developer reserves the right to change the designation and use of the Vacation Apartments and all Limited Common Elements appurtenant to such Apartment(s), as set forth in this Declaration.

"Apartment Class" or "Class" means and refers to the Front Desk Apartment Class, the Banquet Apartment Class, the Parking Apartment Class, the Hotel Apartment Class (inclusive of Long Term Stay Apartments and Vacation Apartments), the Office Apartment Class, and the Commercial Apartment Class. Apartments included within the various Classes of Apartments are:

"Banquet Apartment Class" means and includes all of the Banquet Apartments and Meeting Room Apartments.

"Commercial Apartment Class" means and includes all of the Commercial Apartments and the Spa Apartment.

"Front Desk Apartment Class" means and includes the Front Desk Apartment, the Food Service Apartment and the Restaurant Apartment.

"Hotel Apartment Class" means and describes the Vacation and Long Term Stay Apartments (if any) described in this Declaration and all Improvements and Facilities constructed or reconstructed therein, and includes up to 1154 hotel

rooms (lodging and dwelling units) and such Long Term Stay apartments as may be developed by Declarant in accordance with this Declaration.

"Office Apartment Class" means and includes all of the Office Apartments, provided the Office Apartments are so classified and not classified as Vacation or Long Term Stay Apartments, or another Apartment Class. If these Apartments are used and classified as another Apartment Class, the Apartments so classified shall be within such Apartment Class.

"Parking Apartment Class" means and includes the Parking Apartment.

"Apartment Owner" or **"Unit Owner"** or **"Owner"** means a person owning, or the persons owning jointly or in common, an Apartment and the Common Interest appertaining thereto, to the extent of such ownership, or any Ownership Interest, including any person owning a fractional interest arising under a Fractional Ownership Declaration, which includes an undivided interest in an Apartment; provided that the purchaser of an Apartment pursuant to an agreement of sale recorded in the Recording Office and noted on the Transfer Certificate of Title, if applicable, shall have all the rights of an Apartment Owner, including the right to vote, provided that the seller may retain the right to vote on matters substantially affecting the seller's security interest in the Apartment.

"Association" means the Association of Apartment Owners of Ala Moana Hotel Condominium, whose members consist of all Owners of Apartments in the Project.

"Board of Directors" or **"Board"** means the Board of Directors of the Association.

"Building" means and refers to those certain structures located on the Land including the Waikiki Tower (a 36 story tower) and the Kona Tower (a 13 story tower), the 3 story Pedestal Structure (with a "basement" story consisting of the parking garage), and the pedestrian bridge (the **"Pedestrian Bridge"**) connecting the second level of the Pedestal Structure to the parking structure serving the adjacent Ala Moana Center property (which Pedestrian Bridge is reflected on the Condominium Map).

"Building Structure" or **"Structural Elements"** means and includes the structural components of the Building, including all perimeter and party walls, load bearing walls and columns, foundations, footings, floor slabs, girders, beams, supports, elevators, stairs and stairways, exterior walls, exterior glass, lanai railings, the Porte Cochere structure, roofs and all other apparatus and installations existing for common use or providing common support, all structural components existing for common use or providing common support, roofs and ceilings.

"Bureau" means the Bureau of Conveyances of the State of Hawaii, or any successor recording office for the recordation of deeds and other real property documents affecting the Project.

"Bylaws" means those certain Bylaws of the Association of Apartment Owners of Ala Moana Hotel Condominium recorded with this Declaration, as the same may be further amended or restated from time to time.

"Class Director" means the member of the Board elected by his or her Apartment Class.

"Class limited common elements" means the limited common elements set aside and reserved for the use of an Apartment Class, as more particularly described in this Declaration,

all of which may be made subject to an Easement or other rights benefiting Apartments in one or more Apartment Classes.

"Class limited common expense" means those costs, expenses and charges payable by an Apartment Class for the Class limited common elements appurtenant to such Apartment Class based on the Class limited common interest allocable to Apartments within the Class, as more particularly described in this Declaration.

"Class limited common interest" means the percentage share assigned to an Apartment within a single Apartment Class, as described in this Declaration.

"Clean" or **"Cleaning"** means Maintenance, except for reconditioning, refurbishment, reconfiguration, painting, decorating, installation or replacement when necessary or desirable of Facilities or other portions of the Improvements, including the right of access to and the right to add to, and remove from, the Improvements portions of such Facilities for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Declaration.

"Common Elements" means those portions of the Project designated in this Declaration as Common Elements and which are described in **Exhibit C**, including Limited Common Elements, Class limited common elements, all of which are described in **Exhibit D**, and Multi-class limited common elements, as described in **Exhibit E3**. The term will have the same meaning whether it appears in lower case or with initial capitalization.

"Common Expenses" includes the expenses, costs and charges designated as common expenses in this Declaration and all other expenses, costs and charges designated as Common Expenses in this Declaration or in the Bylaws, and the term will have the same meaning whether it appears in lower case or with initial capitalization.

"Common Interest" or **"Common Interests"** means the undivided percent or percentage interest in the Common Elements appurtenant to each Apartment in the Project, calculated in accordance with **Exhibits E1 to E3** and in Section E of this Declaration, and the terms will have the same meaning whether they appear in lower case or with initial capitalization. Common Interests include the **"AOAO Common Interest"**, defined in this Declaration, and the various Class and Multi-class limited common interests, as appropriate.

"Common Walls, Floors and Ceilings" means all common structural and partition walls, floors and ceilings situated on or adjoining an Apartment and forming the walls, floors or ceilings of another Apartment and all common structural and partition walls, floors and ceilings situated on or adjoining an Apartment Class and forming the walls, floors or ceilings of another Apartment Class.

"Condominium Map" means the plans and elevations for the Project recorded as Condominium Map No. 1728, as the same may be amended from time to time.

"Covered Parties" means another Owner, Developer, Developer's real estate broker, agent or attorney, Mortgagee, the architects, engineers, or other design consultants for the Project, the contractor, subcontractors, sub-subcontractors, material suppliers, managing agent, or other persons involved with the Project, and their respective officers, directors, agents, servants, employees, or representatives.

"Declaration" or "CPR Declaration" means this Declaration of Condominium Property Regime for the Ala Moana Hotel Condominium.

"Developer" or "Declarant" means Ala Moana Property Development, LLC, its successors and assigns. A person or entity shall be deemed a successor or assign of Developer only if specifically designated in a duly Recorded written instrument pursuant to this Declaration and only to the extent of particular rights or interests of Developer which are set forth in such Recorded instrument.

"Easements" means all easements granted, reserved, provided for, declared or created pursuant to or in accordance with the terms and provisions of this Declaration, and the term will have the same meaning whether it appears in lower case or with initial capitalization.

"Elevator Cabs" mean the elevator cabs shown on the Condominium Map, bearing Nos. 1 to 15, all of which are Limited Common Elements allocated to one or more Apartment Class.

"Emergency Situation" means a situation impairing or imminently likely to impair structural support of the Building or causing or imminently likely to cause bodily injury to persons or substantial physical damage to the Property or any property in, on, under, within, upon or about the Property, or any other property. The duration of an Emergency Situation shall be deemed to include the time reasonably necessary to remedy the Emergency Situation.

"Facilities" means any annunciators, antennae, beams, boxes, brackets, cabinets, cables (electric, fiber optic or otherwise), caissons, columns, coils, computers, conduits, controls, control centers, cooling towers, couplers, devices, ducts, equipment (including heating, ventilating, air conditioning, and plumbing and sewer equipment) fans, fixtures, footings, foundations, generators, hangers, heat traces, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, starters, structural members, switches, switchboards, systems, tanks, transformers, unfinished floors, utilities, valves, weight bearing walls, wiring, and the like used in providing services from time to time in any part of the Project, including, air conditioning, alarm, antenna, cable, circulation, cleaning, communication, cooling, data transmission, electric, elevator system including cabs, exhaust, heating, lightning protection, natural gas, plumbing, radio, recording, sanitary, security, sensing, telephone, television, transportation, ventilation and water service, and any replacements thereof.

"Firearms" includes "B B" guns, pellet guns, and other firearms of all types, regardless of size.

"Fractional Ownership Declaration" means a Declaration recorded by Developer which creates a plan or program in which the use, occupancy or possession of one or more Apartments circulates among various persons for a period of 60 or more days in any year, for any occupant.

"Front Desk Operator" means the Front Desk Owner or such tenant or agent of the Front Desk Owner, including a Front Desk Operator, to whom the Front Desk Owner delegates its duties under Section U. All restrictions imposed on the Front Desk Owner by this Declaration shall apply with equal force to the Front Desk Operator.

"Furnishings and Appliances" means the furnishings and appliances located within each Vacation and Long Term Stay Apartment which may, but do not necessarily, include, without limitation, outdoor dining chairs, outdoor dining tables, artwork and accessories, upholstered chairs (with and without arms), coffee tables (including any glass or other table top), credenzas

(including any glass or other table top), desks (including any glass or other table top), dining tables (including any glass or other table top), framed mirrors, vanities, night stands (including any glass or other table top), headboards, hide-a-beds, mattresses/box springs, microwave ovens, refrigerators, soft goods (including, without limitation, bedspreads), console tables (including any stone or other table top), standard floor and window coverings and standard wall coverings/paint. The Furnishings and Appliances shall constitute a Limited Common Element appertaining to the Vacation or Long Term Stay Apartment.

"Hazardous Substances" shall include flammables, explosives, radioactive materials, asbestos containing materials (ACMs), polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, petroleum and petroleum products, chlorofluorocarbons (CFCs) and substances declared to be hazardous or toxic under any present or future federal, state or local law, ordinance or regulation.

"Hotel Amenities" means and includes various items within the Front Desk Apartment or Individual limited common elements appurtenant to the Front Desk Apartment, including the Loading Docks, the Porte Cochere area (excluding the Porte Cochere structure, which is included in the Building Structure), trash rooms, if any, all toilet facilities that are not part of an Apartment (other than the Front Desk Apartment) and other amenities identified as Hotel Amenities in this Declaration or on the Condominium Map.

"Hotel Amenity License Fee" means the fee to be paid by the Association in exchange for the use and enjoyment by the owners of Vacation Apartments and Long Term Stay Apartments of the Hotel Amenities. The Hotel Amenity License Fee shall be set forth in an Amenity Use Agreement to be executed by the Front Desk Apartment Owner and the Board of Directors on behalf of the Owners of the Vacation and Long Term Stay Apartments.

"Hotel Operation Program" means the program established by the Front Desk Operator for the management and operation of Vacation and Long Term Stay Apartments as hotel accommodations pursuant to Unit Maintenance and Operation Agreements between the Front Desk Operator and each Owner of a Vacation or Long Term Stay Apartment enrolling in the program. Under the program, the Front Desk Operator will provide various services to those Vacation and Long Term Stay Apartments enrolled therein, including, without limitation, financial administration and accounting, rentals and reservations, marketing and cleaning services.

"Improvements" means all improvements constructed or reconstructed upon the Land, including the Building, Facilities, sidewalks and landscaping in, on or under the Land.

"Increment" means any cluster or clusters of Apartments in the Project together with related Facilities appurtenant thereto as reflected on the Condominium Map, developed and built on an incremental basis, in Declarant's sole discretion, in accordance with this Declaration.

"Individual limited common elements" means the limited common elements set aside and reserved for the use of either (a) a single Apartment or (b) two or more Apartments, but not all of the Apartments in such Apartments' Apartment Class, as more particularly described in this Declaration, all of which may be made subject to an Easement or other rights benefiting Apartments in one or more Apartment Classes.

"Individual limited common expenses" means those costs, expenses and charges payable by an Apartment Owner for the Individual limited common elements appurtenant to the Apartment owned by such Apartment Owner, as more particularly described in this Declaration.

"Institutional Lender" means any commercial bank, trust company, mutual savings bank, savings and loan association, insurance company, pension, welfare or retirement trust fund or system or mortgage or real estate investment trust having a minimum paid up capital and surplus of at least \$5,000,000.

"Invitee" means any person whose presence within the Community is approved by or is at the request of a particular Owner, including, but not limited to, lessees, tenants and the family, guests, employees, licensees, or invitees of Owners, tenants, or lessees.

"Land" means the real property described in **Exhibit A** attached hereto, subject to the encumbrances noted therein.

"Land Court" means the Office of the Assistant Registrar of the Land Court of the State of Hawaii, or any successor recording office for the recordation of deeds and other real property documents affecting the Project.

"Limited Common Elements" means those portions of the Common Elements designated in this Declaration as Limited Common Elements, and the term will have the same meaning whether it appears in lower case or with initial capitalization. "Limited common elements" includes "Class limited common elements", "Individual limited common elements", and "Multi-class limited common elements", as described in this Declaration.

"Limited Common Expenses" means the expenses, costs and charges designated as Limited Common Expenses in Section K of this Declaration, and the term will have the same meaning whether it appears in lower case or with initial capitalization.

"Loading Docks" means the loading docks shown on the Condominium Map.

"LUO" means the City and County of Honolulu Land Use Ordinance.

"Maintain" or **"Maintenance"** means and includes the operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, cleaning, painting, decorating, installation and replacement when necessary or desirable of Facilities or of other portions of the Improvements and includes the right of access to and the right to remove from the Improvements portions of such Facilities for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Declaration.

"Managing Agent" means the agent, if any, employed by the Board of Directors or Developer pursuant to Section J of this Declaration.

"Mortgage" means a mortgage or trust deed in the nature of a mortgage on Developer's interest in the Property (and not just on a Unit or Units therein owned by persons or entities other than Developer) and **"Mortgagee"** means an Institutional Lender who is the holder of such a Mortgage. If the Mortgagee, or any assignee of the Mortgagee, shall acquire any portion of the Project in the course of any foreclosure of the Mortgage or other legal proceeding or by a deed in lieu of foreclosure, the Mortgagee, or such assignee, as applicable, shall be deemed to be an assignee of all of Developer's reserved rights under this Declaration, whether or not such rights

are described as being "exclusive" to Developer; subject, however, to the provisions of Section T.16 of this Declaration.

"Multi-class limited common elements" means those limited common elements set aside and reserved for the use of more than one Apartment Class but not all the Apartment Classes, as more particularly described in this Declaration, all of which may be made subject to an Easement or other rights benefiting Apartments in one or more Apartment Classes.

"Multi-class limited common expenses" means those costs, expenses and charges payable by two or more Apartment Classes for the Multi-class limited common elements appurtenant to such Apartment Classes, as described in this Declaration.

"Multi-class limited common interest" means the percentage share assigned to an Apartments within multiple Apartment Classes that share Multi-class limited common elements, as described in this Declaration.

"On-Street Parking" means and refers to the on-street parking located on Mahukona and Kona Streets (which is reflected on the Condominium Map), and which is more particularly described in that certain exclusive right and easement for parking recorded as Document No. 1074374, and which is labeled on the Condominium Map. The On-Street Parking is a limited common element appurtenant to the Parking Apartment.

"Ownership Interest" means an undivided tenant in common interest in a Vacation Ownership Apartment and the right to use such Apartment annexed to the Fractional Ownership Declaration.

"Parking Facilities" means and refers to collectively the Parking Apartment, the limited common elements appurtenant to the Parking Apartment, the parking stalls, if any, which are limited common elements appurtenant to each of the Long Term Stay Apartments, and all other facilities and equipment located in the Pedestal Structure and used in connection with the operation, leasing and rental of the parking stalls.

"Pedestal Structure" means the three (3) story (atop the "basement" parking garage) building on which the Kona Tower and Waikiki Tower are situated, as more particularly described in this Declaration.

"Percent or percentage of the Apartment Owners" (as specified in this Declaration) means Owners of Apartments to which are appurtenant such specified percent or percentage of the Common Interests.

"Project" or "Property" means and includes the Land, the Building and all other Improvements thereon (including the Apartments and the 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.

"Project Documents" means this Declaration, the Bylaws and the Project Rules, if any.

"Project Rules" or "Association Rules" or "House Rules" means all of the rules and regulations adopted and promulgated from time to time by the Board of Directors in accordance with the Bylaws.

"Record", "Recorded", "Recording", "Recordation" or "Recording" means an instrument of record in, or the act of recording or causing to be recorded an instrument with the Land Court and/or the Bureau, as appropriate (sometimes the **"Recording Office"**).

"Replacement Reserve Fund" means the Replacement Reserve Fund established and maintained pursuant to the Act and Section R of this Declaration.

"Signal Reception Device" means any exterior radio antenna, "C.B." antenna, television antenna, receiving station, satellite dish, or other antenna of any type.

"Sold and recorded" shall mean and refer to the sale of Apartments in the Project, and the recording of the deed in the Recording Office from Developer to any party who is not the assignee or holder of Developer's reserved rights under this Declaration.

"Vacation Ownership Apartments" means each of those Vacation or Long Term Stay Apartments annexed to a Fractional Ownership Declaration and which are designated for hotel, fractional, and transient vacation rental use.

B. SUBMISSION TO CONDOMINIUM PROPERTY REGIME. Subject to the limitations herein contained, including without limitation those relating to the Association's obligation to maintain the common elements, Developer hereby submits all of its right, title and interest in and to the Land and all improvements now located or hereafter constructed on the land to a condominium property regime as established by the Act. Developer declares that such land and improvements 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 Developer, all subsequent owners and lessees of Apartments, all subsequent owners and lessees of all or any part of the Project 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 Apartment and to create reciprocal rights among the Apartment Owners.

C. NAME OF THE COMMUNITY. The condominium property regime established by this Declaration (the **"Community"**) shall be known as Ala Moana Hotel Condominium; provided, however, that, any time prior to the transfer of the last Unit in the Project to a third party, Developer may by Recorded amendment to this Declaration change the name of the condominium property regime and the Association, without the consent or joinder of any Owner or their mortgagee.

D. DESCRIPTION OF THE PROJECT.

1. Land. The land submitted to this condominium property regime is described in **Exhibit A** attached hereto. The Land includes certain easement rights with attendant obligations relating to On-Street Parking and the Pedestrian Bridge permitting access to the parking garage serving the adjacent Ala Moana Shopping Center.

2. Buildings and Apartments.

(a) The Project shall consist of the Apartments included in the Front Desk Apartment Class, the Parking Apartment Class, the Banquet Apartment Class, the Commercial Apartment Class, the Office Apartment Class, to the extent that the Office Apartments are not described in the Condominium Map or used as Vacation or Long Term Stay Apartments, and the Hotel Apartment Class as more fully described in **Exhibit B** attached hereto and shown on the Condominium Map. The Apartment types include, without limitation, the Front Desk Apartment, the Spa Apartment, the Banquet Apartments, the Commercial Apartments, the Office Apartments, the Parking Apartment, the Vacation Apartments, and the Long Term Stay Apartments, among others identified in **Exhibit B** or reflected on the Condominium Map. The Condominium Map is intended only to show the layout, location, and dimensions of the Apartments and elevations of the Apartments and is not intended and shall not be deemed to contain or make any other representation or warranty. All of the Apartments are subject to further division or consolidation into any number of separate Apartments in accordance the provisions of this Declaration.

(b) The descriptions contained in this Declaration or **Exhibit B**, which describe various rooms and areas of the Project, and the designations of such rooms and areas on the Condominium Map, are for identification purposes only, and are not intended and shall not be deemed or construed to limit or define any manner the purposes for which such rooms and areas may be used. Unless otherwise expressly provided in this Declaration, such rooms and areas may be used for any purposes not prohibited under this Declaration or by applicable laws. For example, the use of the words "maintenance room" shall not be deemed to limit the use of the room so labeled to maintenance purposes; such room may be used for any purpose not prohibited under this Declaration or by applicable laws.

(c) The Project consists of a 3 story (atop a "basement" parking garage described as the Coral Level) Pedestal Structure and two high-rise building towers built immediately above the Pedestal Structure. The building tower on the Diamond Head side is called the Waikiki Tower (a 36 story tower including the Pedestal Structure) and the building tower on the Ewa side is called the Kona Tower (a 13 story tower including the Pedestal Structure). The Pedestal Structure consists of the first floor (Plaza Level), the second floor (the Mezzanine Level), and a third floor (the Recreation Deck). The Pedestrian Bridge at the second level of the Pedestal Structure is connected to the parking structure serving the adjacent Ala Moana Center property (which Pedestrian Bridge is reflected on the Condominium Map). The Pedestal Structure is located above the Parking Basement. The Waikiki and Kona Towers contain Vacation, Long Term Stay and Office Apartments as identified on the Condominium Map, as well as the Commercial Apartment on the 36th Floor. The Pedestal Structure contains Commercial, Banquet, Meeting Room, Spa and Front Desk Apartments. The Front Desk Apartment and the Porte Cochere area are located at the Plaza Level (ground floor) of the Pedestal Structure facing Atkinson Drive.

(d) Apartment Classes. The "Hotel Apartment Class" shall mean and comprise all of the Long Term Stay Apartments and Vacation Apartments; the "Office Apartment Class" shall mean and comprise all of the Office Apartments; the "Commercial Apartment Class" shall mean and comprise all of the Commercial Apartments and the Spa Apartment; the "Front Desk Apartment Class" shall mean and comprise all of the Front Desk Apartment, the Food Service Apartment and the Restaurant Apartment; the "Parking Apartment Class" shall mean and comprise the Parking Apartment; and, the "Banquet Apartment Class" shall mean and comprise all of the Banquet and Meeting Room Apartments.

3. Limits of Apartments and Related Matters.

(a) Boundaries of the Apartments. Generally, each Apartment includes all walls, columns and partitions which are not load bearing within the Apartment's perimeter walls, the inner decorated or finished surfaces of all walls, floors, ceilings, doors, door frames and window frames along the perimeters, all windows along the perimeters, the air space within the perimeter, the lanais, if any, shown on the Condominium Map to the inner decorated or finished surfaces of the perimeter walls of such lanais and to the interior edge of the exterior railings or other boundaries of such lanais, the entry court or area, if any, shown on the Condominium Map to the inner decorated or furnished surfaces of the perimeter walls of such entry court or area and to the interior edge of other boundaries of such entry court or area, the exterior storage areas, if any, shown on the Condominium Map, all fixtures originally installed in the Apartment, and all pipes, plumbing (including water heaters), wires, conduits and other utility or service lines and facilities servicing only the Apartment. The Apartments shall not include the undecorated or unfinished surfaces of the perimeter party or non party walls, the undecorated or unfinished surfaces of the doors, door frames and window frames along the perimeters (notwithstanding the obligation of the Owner of the Apartment to maintain the same), the interior load bearing columns, girders, beams and walls, the undecorated or unfinished surfaces of the floors and ceiling surrounding each Apartment, the exterior edge of the exterior railings or other exterior boundaries of the lanais, if any, shown on the Condominium Map, or any pipes, shafts, wires, conduits or other utility or service lines running through a Apartment which are utilized for or serve more than one Apartment, all of which are deemed common elements as provided in this Declaration.

(b) Parking Apartment. There is one (1) Parking Apartment. Generally, Parking Apartment No. 0A includes the Parking Apartment office located in the Parking Basement, to which is appurtenant the parking stalls located in the Parking Basement, the Porte Corchere and the On-Street Parking. The Parking Apartment consists of those areas shown as Parking Apartment on the Condominium Map, and shall be deemed to consist of (1) all the surface of the floors, driveway or street of such areas and (2) all of the space bounded by (i) the surface of the floors or ground of the areas, (ii) the surface of the ceiling above the areas, or if there is no ceiling, the imaginary horizontal plan 7.5 feet above the surface of the floor or ground, and (iii) the surface of the walls on the perimeters of such areas or, if there are no perimeter walls, the imaginary vertical planes along the perimeter of such areas. The Parking Apartment and the limited common element parking stalls appurtenant to the Parking Apartment shall not be deemed to include (a) the walls (or the surfaces of the walls) on the perimeters of such areas, (b) any walls located within such areas, (c) anything beneath the surface of the floors or ground of such areas, (d) the ceilings (or the surface of the ceilings) above such areas, or (e) any areas or ramps outside of such areas which are used for vehicular access to the stalls within the such areas, unless included in the Apartment on the Condominium Map. Each parking stall in the Parking Basement (and by way of definition, the limited common element appurtenant to the Parking Apartment) includes only the surface of the Parking Basement floor up to but not including the marking separating the parking stall from any adjacent parking stall, and shall include the airspace above such surface to a height of seven feet and six inches (7.5 feet), if not otherwise obstructed. If there is a wall or pillar adjacent to a parking stall, the parking stall does not include the wall or pillar. Certain parking stalls have intrusions of Common Elements that are excluded from the parking stall and the Parking Apartment. (The walls, surfaces, ceilings and other areas described in clauses (a) through (d) above are Common Elements of the Project, and the areas and ramps described in clause (e) above are limited common elements appurtenant to the Parking Apartment Class). Pedestrian access to the Parking Facilities includes one (1) elevator (elevator cab no. 15) and lobby stair no. 1 located in the Pedestal Structure.

(c) Non-Long Term Stay/Vacation Apartments. Except as otherwise provided in this Declaration, each of the Non-Long Term Stay/Vacation Apartments consists of the spaces within the exterior perimeter walls (if any) and/or the imaginary vertical planes (where there is no perimeter wall), floors and ceilings of the respective Non-Long Term Stay/Vacation Apartments as shown on the Condominium Map. By way of example, the Front Desk Apartment on the Lobby floor shall extend to the exterior surface of the wall, window or other separation from the Lobby/Building entrance where reflected on the Condominium Map. Where there is no wall or window, the boundary of the Apartment shall be an imaginary plane extending from the floor to the ceiling at the outer boundary of the Apartment as shown on the Condominium Map. Notwithstanding the floor areas set forth on Exhibits to this Declaration and the manner in which such floors areas have been measured, the Non-Long Term Stay/Vacation Apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter or party walls or interior load-bearing walls or partitions, the foundations, columns, girders, beams, floor slabs, support, floors and ceilings surrounding each Non-Long Term Stay/Vacation Apartment or any pipes, wires, vents, shafts, ducts, conduits or other utility or service lines or enclosed spaces for wiring, pipes, air exhaust, or air conditioning running through or otherwise located within such Non-Long Term Stay/Vacation Apartment which are utilized for or serve more than one Non-Long Term Stay/Vacation Apartment, the same being deemed common elements as hereinafter provided. Each Non-Long Term Stay/Vacation Apartment shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter or party walls and/or imaginary vertical planes (where there is no perimeter wall), the inner decorated or finished surfaces of all walls, floors and ceilings, all windows (if any), window frames (if any), louvers (if any), shutters (if any), panels, doors and door frames along perimeters, and all of the fixtures (if any) originally installed therein.

(d) Each Apartment has the approximate net floor area in square feet set forth in the Exhibits or the Condominium Map (the latter of which shall control in the event of a conflict). The net living areas are not limited to the area of an Apartment that is suitable for occupancy. Rather, net living area refers to the floor area of an Apartment. The approximate net floor areas set forth in the Exhibits and the Condominium Map are based on measurements taken from the interior surface of all perimeter walls and/or the imaginary vertical planes (where there is no perimeter wall) as shown on the Condominium Map, except that no reduction has been made to account for interior walls, ducts, vents, shafts, stairways and the like located within the perimeter walls and/or the imaginary vertical planes (where there is no perimeter wall). The floor areas set forth in the Exhibits and Condominium Map are not exact but are approximations based on the floor plans of each of the Apartments. The measurements of each Apartment do not necessarily follow the boundaries of the Apartments in every detail. All calculations performed by Developer's architect calculations shall be conclusive and binding upon all Apartment Owners, and all other interested persons, unless the calculation is clearly and materially wrong.

(e) Each of the Apartments has immediate access to the corridors, stairways, and/or elevators of the Building that lead to the lobby areas and all other common areas of the Project.

4. Common Elements. The common elements include the Land in fee simple and the Limited Common Elements described below, and all other portions of the Project, other than the Apartments, including, specifically, but not limited to, the common elements mentioned 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 which are not included as part of an Apartment, including but not limited to those common elements described in **Exhibit C** and as may be shown on the Condominium Map.

5. Limited Common Elements.

(a) Certain parts of the common elements referred to as the **Limited Common Elements** are hereby designated and set aside for the exclusive or primary use of certain Apartments, and such Apartments shall have appurtenant, easements for the use of such Limited Common Elements. Where an Apartment has a lanai reflected on the Condominium Map, the lanai is a Limited Common Element appurtenant to such Apartment over which the Apartment has an exclusive easement. Certain Limited Common Elements, and the Apartment(s) to which the Limited Common Elements are appurtenant, are described in **Exhibit D**. To the extent parking stalls within the Project are assigned as Limited Common Elements to an Apartment, the Apartment shall have exclusive use of the parking stall, even if the stall is located in a Parking Apartment. The schedule of assigned stalls, if any, will be set forth in **Exhibit D** or in an amendment to this Declaration. Certain parts of the Limited Common Elements are hereby set aside and reserved for (i) the exclusive or primary use of one or more Apartments but not of the entire Apartment Class to which such Apartments belong (such limited common elements being herein sometimes referred to as "**Individual limited common elements**"), (ii) the exclusive or primary use of a single Apartment Class (such limited common elements being herein sometimes referred to as "**Class limited common elements**"), and (iii) the use of more than one Apartment Class but not all of the Apartment Classes (such limited common elements being herein sometimes referred to as "**Multi-class limited common elements**"). Such Apartment or Apartment Class or Classes, as the case may be, shall have appurtenant thereto exclusive or primary easements for the use of such limited common elements. Notwithstanding anything to the contrary set forth or implied herein or in any Exhibits attached hereto, the limited common elements shall not include any of the Structural Elements described in this Declaration which are intended to be common elements. Further, any and all Limited Common Elements (whether Individual, Class, or Multi-Class limited common elements) may be made subject to an Easement or Easements for access or other purposes benefiting Developer or other Apartment Owners, and, as appropriate, such of those Easements described in Section F of this Declaration and each of the rights reserved to Developer or other Apartment Owners in this Declaration.

(b) Each parking stall in the Parking Basement or other location that is designated as a separate Apartment or an exclusive Limited Common Element and assigned to a Long Term Stay Apartment or other Apartment in the Project shall include the surface of the Parking Basement or applicable location's floor up to but not including the marking separating the parking stall from any adjacent parking stall, and shall include the airspace above such surface to a height of seven feet and six inches (7.5 feet). If there is a wall or pillar adjacent to a parking stall, the parking stall does not include the wall or pillar. Certain parking stalls may have intrusions of Common Elements that are excluded from the parking stall.

(c) Individual Limited Common Elements. In addition to those Individual limited common elements identified on **Exhibit D**:

(1) Each Long Term Stay Apartment shall have appurtenant thereto and reserved for its exclusive use the parking stall or stalls assigned to it as set forth in **Exhibit D** or such Amendment to this Declaration that may be filed addressing such assignment of parking stalls; provided, however, that (i) each Long Term Stay Apartment Owner's access to

the stall or stalls assigned to the Owner's Apartment shall be subject to such entry and exit system and rules established from time to time by the Owners of the Parking Apartment, and (ii) each Long Term Stay Apartment shall at all times have appurtenant thereto at least one (1) parking stall.

(2) Each Long Term Stay Apartment shall have appurtenant thereto and reserved for its exclusive use one mailbox located in the mailroom on the Plaza level of the Pedestal Structure, which mailbox is identified by the same number as the Apartment to which it is appurtenant.

(3) Each Vacation Apartment and Long Term Stay Apartment in respect of which the Condominium Map reflects the Apartment has a lanai, the Apartment shall have appurtenant thereto and reserved for its exclusive use the lanai.

(d) Class Limited Common Elements.

(1) The Hotel Apartment Class shall have appurtenant thereto and reserved for its use those common elements more particularly designated as such on the Condominium Map and listed in **Exhibit D**, subject to the limitations and rights reserved to others specified in this Declaration.

(2) The Office Apartment Class shall have appurtenant thereto and reserved for its use those common elements more particularly designated as such on the Condominium Map and listed in **Exhibit D**, subject to the limitations and rights reserved to others specified in this Declaration.

(3) The Parking Apartment Class shall have appurtenant thereto and reserved for its use those common elements more particularly designated as such on the Condominium Map and listed in **Exhibit D**, subject to the limitations and rights reserved to others specified in this Declaration.

(4) The Banquet Apartment Class shall have appurtenant thereto and reserved for its use those common elements more particularly designated as such on the Condominium Map and listed in **Exhibit D**, subject to the limitations and rights reserved to others specified in this Declaration.

(5) The Front Desk Apartment Class shall have appurtenant thereto and reserved for its use those common elements more particularly designated as such on the Condominium Map and listed in **Exhibit D**, subject to the limitations and rights reserved to others specified in this Declaration.

(6) The Commercial Apartment Class shall have appurtenant thereto and reserved for its use those common elements more particularly designated as such on the Condominium Map and listed in **Exhibit D**, subject to the limitations and rights reserved to others specified in this Declaration.

(e) Multi-Class Limited Common Elements. Those Apartment Classes identified in **Exhibit E3** shall have appurtenant thereto and reserved for the exclusive use those common elements more particularly designated as such on the Condominium Map

and described in said **Exhibit E3**, subject to the limitations and rights reserved to others specified in this Declaration.

6. Continuing Rights. Excluding therefrom the rights of Declarant reserved under this Declaration, which rights shall be superior, the Limited Common Elements assigned to an Apartment or an Apartment Class or Classes may not be modified by action of the Board or the Apartment Owners without the consent of the Owner of the affected Apartment or the Owners of the affected Class or Classes.

E. COMMON INTEREST AND INCREMENTAL DEVELOPMENT OF CONDOMINIUMS.

1. Calculation of Common Interest.

(a) AOAO Common Interest. Each Apartment, upon completion of all Increments, shall have appurtenant thereto a Common Interest in all Common Elements, and the same proportionate share in all common profits and expenses of the Project and for all other purposes, except as otherwise provided in this Declaration, as set forth under the heading "AOAO Common Interest" in **Exhibit E1**. Notwithstanding anything provided in this Declaration to the contrary, all voting rights attributable to Apartments annexed to a Fractional Ownership Declaration shall be controlled by the Fractional Ownership Declaration, or other documents creating and governing such fractional plan or program. The Common Interest appurtenant to a particular Apartment has been determined in accordance with HRS § 514A-15(a) to apportion such interests in a fair and equitable manner to reflect the discrete uses and benefits or lack thereof accruing to Apartments within an individual class and to the respective classes, allocating the estimated general benefit received by the Apartment from the operation and maintenance of the common areas and limited common areas and taking into account the continued operation of the Building as a hotel with ancillary uses. In that the primary operational directive for the Project is the continued operation as a hotel, as provided in this Declaration, the common interest and voting power of Apartments in the Hotel Apartment Class has been favorably weighted, recognizing that Apartments and uses within the Office Apartment Class, Commercial Apartment Class, Banquet Apartment Class, Parking Apartment Class and Front Desk Apartment Class are largely ancillary to Apartments and uses within the Hotel Apartment Class. Moreover, the Common Interest appurtenant to individual Commercial Apartments and Banquet Apartments within the Commercial Apartment Class and Banquet Apartment Class, respectively, has, in accordance with HRS § 514A-15(a), been apportioned in a fair and equitable manner to reflect the discrete uses and benefits or lack thereof accruing to such Apartments by virtue of their location within the Property and the access of such Apartment to the general commercial area fronting the lobby or elevators serving such Apartments. Declarant reserves the right to reallocate the Common Interest among the Non-Long Term Stay/Vacation Apartments provided that such reallocation does not affect the Common Interest of any Vacation or Long Term Stay Apartment. The foregoing reallocation shall not constitute a material change under the Act with respect to the Vacation and Long Term Stay Apartments. The common interest assigned to the individual Apartments has been rounded off so that the total of all Common Interests equals 1.0 (100%).

(b) Class Limited Common Interests. In addition to the common interest described in clause (a) above and clause (c) below, each Apartment shall have assigned to it a Class limited common interest, based upon the Apartment Class to which such Apartment belongs. **Exhibit E2** sets forth the limited common interest assigned: (1) to each Vacation and Long Term Stay Apartment in the Hotel Class; (2) to each Office Apartment in the

Office Apartment Class; (3) to each Apartment in the Parking Apartment Class; (4) to each Apartment in the Banquet Apartment Class; (5) to each Apartment in the Commercial Apartment Class; and (6) to each Apartment in the Front Desk Apartment Class. The Common Interest appurtenant to a particular Apartment within each Class has been determined by dividing the approximate total net interior floor area of each such Apartment by the approximate total net interior floor area of all Apartments within the Class, rounded off so that the total of all Common Interests equals 1.0 (100%).

(c) Multi-class Limited Common Interests. In addition to the common interest described in clauses (a) and (b) above, each Apartment Class that has available to it Multi-class limited common elements shall have assigned to the Class a Multi-class limited common interest with respect to such Multi-class limited common elements as set forth in **Exhibit E3**. The common interest appurtenant to a particular Class with respect to the Multi-class limited common elements has been determined by estimating the relative benefit received by the Apartment Class from the Multi-class limited common element or by dividing the approximate total net interior floor area of the Apartments in a particular Class by the approximate total net interior floor area of all Apartments all Classes served by the Multi-class limited common element, rounded off so that the total of all Common Interests equals 1.0 (100%).

2. Reserved.

3. Incremental Development. Declarant reserves the right to improve and include within the Project any number of Vacation, Office, Spa, Front Desk, Banquet, Meeting Room, Commercial, Retail or other Apartments as Declarant, in its sole discretion determines. Additionally, Declarant reserves the right to improve and include within the Project up to one-hundred (100) Long Term Stay Apartments as Declarant, in its sole discretion determines. Declarant will complete improvement of various Classes and Apartments within such Classes in as many separate Increments as Declarant shall determine. Declarant contemplates, however, that the Long Term Stay and Vacation Apartments will be offered on a floor by floor basis or on a multi-floor basis; provided, however, multiple increments may be offered concurrently. Commercial, Banquet and Meeting Room Apartments will be included in certain of the planned Increments. Any other provision in this Declaration to the contrary notwithstanding, Declarant shall have the right (but shall not be obligated) at its sole discretion under this Section E, without being required to obtain the consent or joinder of any person or group of persons, including the Association, any Owner or Mortgagee, any Unit mortgagee, lien holder, purchaser or any other person who may have an interest in the Project or in any Apartment, to develop, construct, transfer, convey and/or sell the Apartments hereunder in increments on a floor by floor basis, or otherwise. Developer may retain all or some of the Apartments and continue those Apartments in hotel use. Upon the completion of any Apartment within an increment, Declarant may, notwithstanding the incompleteness of any other increment(s) or other Apartments in the pending increment, but subject to the Project Documents and the provisions of the sales contract for the sale of such Apartment, thereupon transfer ownership of such Apartment in such increment to the Apartment purchasers.

The rights reserved to Declarant in this Section E are subject to the easements set forth in Section F of this Declaration. Additionally, in the event that Declarant undertakes construction in connection with the improvement of any of the various Classes and Apartments, prior to commencement of such construction, Declarant may, in Declarant's sole discretion, but shall not be obligated to do so (notwithstanding anything to the contrary contained in this Declaration), deposit with the Association evidence of a payment and performance bond or an

irrevocable letter of credit issued by a bank, material house or other entity authorized to do business in the State of Hawaii, naming the Association as a co-obligee, in an amount not less than one hundred percent (100%) of the cost of construction as estimated by Declarant, or in lieu thereof a guarantee issued by Declarant against mechanic's and materialmen's liens.

4. Reserved.

5. Declarant Ownership and Liens. Until the conveyance by Declarant of an Apartment in the Project, Declarant shall for all purposes be deemed the "Apartment Owner" as to such Apartment, regardless of whether such Apartment is located within a completed increment, an increment under construction, or an increment yet to be developed. Liens arising in connection with Declarant's ownership and/or construction of any increment shall not adversely affect the rights of any Owner other than Declarant or the priority of prior mortgages covering Apartments not owned by Declarant.

6. Alterations and Transfers of Common Interest. The percent or percentage of common interest and easements appurtenant to each Apartment shall have a permanent character and shall not be altered except as noted in this Section E. The common interest, voting rights, limited common elements and easements appurtenant to each Apartment and Apartment Class 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 party, to correct typographical or mathematical errors in the statement of such common interests; (b) filed by Declarant, without the joinder of any party, upon the alteration of the Project as permitted pursuant to this Section E, Section F, Section T or otherwise by this Declaration, including, without limitation, the conversion of limited common elements to common elements or Apartments and the reallocation of Common Interests among the affected Apartments or Apartment Classes, as the case may be, as permitted under this Declaration; or (c) upon the action or consent of all Owners of Apartments affected thereby, and the consent of the holders of any mortgage affecting such Apartments as shown in the Association's records of ownership, or who have given the Board notice of their interest. The common interest and appurtenant easements shall not be separated from the Apartment or Class to which they pertain and shall be deemed to be conveyed or encumbered with that Apartment or Class 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 provided in the Act and this Declaration.

7. Survival. If any one or more of the provisions of this Section E shall be declared to be contrary to law, then such provision or provisions shall be null and void and shall be deemed separable from the remaining provisions of this Section E and shall in no way affect the enforceability of any other provision hereof.

8. Future Amendments. Notwithstanding any provision herein to the contrary, this Section E may not be amended without the written consent and joinder of Declarant.

9. Assigns. The rights of Declarant under this Section E shall extend to Declarant and its respective successors and assigns.

F. EASEMENTS. The provisions of this Section F are in addition to any easements described in **Exhibit A** attached hereto and to the exclusive or primary easements herein

designated in the Limited Common Elements. Each Apartment and any Limited Common Elements appurtenant thereto, which are described as primary and are not declared to be exclusive in character under this Declaration, and Common Elements shall have and be subject to the following easements:

1. Non-Exclusive Easement. Each Apartment and any Limited Common Elements appurtenant thereto shall have appurtenant thereto non-exclusive easements in the Common Elements designed for such purposes for ingress to, egress from, utility services for and access, support, maintenance and repair of such Apartment and Limited Common Elements; in the other Common Elements for use according to their respective purposes, subject always to the exclusive or limited use of the Limited Common Elements, if any, as herein provided; and in all other Apartments, Apartment Classes, and their respective Limited Common Elements, and the Building and Building Structure for support. Without limitation of the foregoing, the following perpetual (except as otherwise noted) Easements in portions of Apartments, and their respective Limited Common Elements, located within the Front Desk Apartment Class, Hotel Apartment Class, Banquet Apartment Class, Commercial Apartment Class, Office Apartment Class, and Parking Apartment Class (in this Section, the "**Other Properties**" excluding therefrom only the Benefited Property, hereafter defined) are hereby granted, reserved, declared and created (the term "**Granted**" or "**granted**" as hereinafter used in describing Easements shall be deemed to mean "**granted, reserved, declared and created**") in favor of each and all of the Apartments located within the Front Desk Apartment Class, Hotel Apartment Class, Banquet Apartment Class, Commercial Apartment Class, Office Apartment Class, and Parking Apartment Class (singularly and collectively, as required, the "**Benefited Property**" – e.g., if the Benefited Property is the Hotel Apartment Class, the Hotel Apartment Class have the following Easements over the Other Properties, excluding the Hotel Apartment Class) :

(a) Structural Support. A non-exclusive Easement in the Building and all structural members, footings, caissons, foundations, columns and beams and any other supporting components located in or constituting a part of the Other Properties, for the support and Maintenance of (i) the Benefited Property and (ii) any Facilities located in the Other Properties with respect to which the Owner of the Benefited Property is granted an Easement under this Declaration.

(b) Access to Facilities. A non-exclusive Easement for access to and the use for their intended purposes and Maintenance of all Facilities located in the Other Properties and connected to Facilities located in the Benefited Property (and any replacement thereof) which serve the Benefited Property exclusively with any utilities or other services, including heating, ventilating and air conditioning systems, boilers and hot water systems serving the Benefited Property.

(c) Common Walls. A non-exclusive Easement (i) in all Common Walls, Floors and Ceilings common to the Benefited Property and the Other Properties serving the Benefited Property and (ii) for the use of such Common Walls, Floors and Ceilings.

(d) Encroachments. A non-exclusive Easement permitting encroachments in the event and to the extent that, by reason of the original construction or any reconstruction or replacement authorized by the terms of this Declaration of any part of the Benefited Property or the subsequent settlement or shifting of any part of the Benefited Property, the Benefited Property encroaches or shall hereafter encroach upon any part of the

Other Properties. Such Easement permitting encroachments shall exist only as long as the encroaching portion of the Benefited Property continues to exist.

(e) Access to Apartments. A non-exclusive Easement for ingress and egress by persons, material and equipment over, along and upon the Other Properties, but only to the extent reasonably necessary to obtain access to the Benefited Property from the public ways, to gain access to the Other Properties, to permit Maintenance as required or permitted pursuant to this Declaration, or to the extent reasonably necessary to exercise the Easements for the benefit of the Benefited Property or to provide structural support required by this Declaration.

2. Easements Run with the Land. Easements provided for, declared or created under Section F.1 above shall be binding upon the Other Properties and each Owner of the Other Properties and shall run in favor of and inure to the benefit of and be appurtenant to each Benefited Property and each portion thereof.

3. Easement for Encroachments. If any part of the Common Elements now or hereafter encroaches upon any Apartment or Limited Common Element, or if any Apartment or Limited Common Element 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 shall and does exist for so long as such encroachment continues. In the event any buildings of the Project shall be partially or totally destroyed and then rebuilt or in the event of any shifting, settlement or movement of any portion of the Project, minor encroachments of and parts of the Common Elements or Apartments or Limited Common Elements due to such construction, shifting, settlement or movement shall be permitted and valid easements for such encroachments and the maintenance thereof shall and does exist for so long as such encroachment exists.

4. Association's Right to Enter Apartments and Limited Common Elements. The Association shall have the irrevocable right, to be exercised by the Board of Directors or Managing Agent, to enter any Apartments and/or Limited Common Elements if any, from time to time during reasonable hours as may be necessary for the operation of the Project or at any time for making emergency repairs therein required to prevent damage to any Apartments or Common Elements or for the inspection, repair, painting, resurfacing, maintenance, installation or replacement of any Common Elements.

5. Developer's Sales Activities. Developer and its agents, employees, contractors, licensees, successors, and assigns shall have the right to conduct extensive sales activities on and at the Project, including without limitation, the use of any Apartment owned by Developer, and the Limited Common Elements appurtenant thereto as model Apartments, sales and management offices, and to conduct extensive sales displays and activities until the closing of the sale of the last unsold Apartment in the Project or Ownership Interest in an Apartment. Developer shall also have an exclusive easement over a portion of the Hotel Lobby, labeled as the limited common element 1E on sheet A3.0 of the Condominium Map, determined necessary by Developer for the purpose of creating, maintaining and utilizing for the purposes herein provided, a sales office. Without limitation of the foregoing, these reserved rights and easements include: (a) the right to enter the common areas of the Project for the purpose of showing prospective purchasers Apartments in the Project; (b) the right to place displays, advertising signs, billboards, flags, balloons, banners, lights and spotlights upon the Project (or any portion of the Project, including without limitation, the roof areas, the Building, any lanai, any lobby area or otherwise), and to light the Building or any portion thereof shown on the

Condominium Map in conjunction with sales of Apartments; (c) the right of Declarant to use any Apartment owned or rented by Declarant and that portion of any Lobby area determined appropriate by Declarant for a sales office or for sales or display purposes until all Apartments have been sold; and (d) the right of Declarant to reserve parking areas within the Project for employees, agents and prospective buyers. In the event that Developer's Mortgagee or any successor to or assignee of Developer's Mortgagee shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or by a deed in lieu of foreclosure, such Mortgagee, its successors and assigns, shall be vested with the rights of Developer under this Declaration and without limitation of the foregoing shall have the same right to conduct such extensive sales activities on the Project. Each and every party acquiring an interest in the Project hereby acknowledges that the sales activities may result in noise and nuisances, and consents to such activity by Developer, and further waives, releases and discharges any rights, claims or actions such party may acquire against Developer, its brokers, sales agents, employees and lenders, and their respective successors and assigns as a result of any such activity or activities.

6. Developer's Reserved Rights Concerning Easements. Developer hereby reserves the right to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the Common Elements for any reasonable purpose, which may include, but shall not be limited to, any easements for utilities or for any public purpose. Developer hereby further reserves the right to transfer, cancel, relocate, annex to the Project, or otherwise deal with any easement over, under, across or through any land adjacent to or across the street from the Project, for any reasonable purpose, which reserved right may include, but shall not be limited to, (a) the right to accept and annex to the Project a license, grant of easement, or any other right for the purpose of access and utility service to the Project and to obligate the Association to satisfy the terms and conditions of such license, grant, or other right, (b) the right to effectuate the same purposes set forth above in this Section, and (c) the right to negotiate with any owner of land upon which such easement is located on behalf of the Association and Owners any and all terms and conditions upon which such easement may be relocated, expanded, reduced, modified, or otherwise altered, and to execute, deliver, and record any instruments providing therefor upon or including such terms and conditions as Developer may reasonably determine to be just or appropriate. To the extent that the joinder of any Apartment Owner, lien holder, or other person who may have any interest in the Land or the Project or any Apartment in it may be required in order to validate any act or thing done pursuant to the foregoing reservations, such joinder shall be accomplished by power of attorney from each of the Owners, lien holders, or other such parties, the acquiring or acceptance of ownership in an Apartment or of a lien covering an Apartment or any other interest in the Project or Land subject to this Declaration being a grant of such power and the grant being coupled with an interest, being irrevocable.

7. Developer's Easements Over the Common Elements. Notwithstanding anything provided in this Declaration to the contrary, Developer and the assignee of Developer's reserved rights shall have an easement over the Common Elements of the Project, which easement may be assigned from time to time to anyone whom Developer wishes, including Owners and non-owners, on a permanent or temporary basis, for access over, under, across and through and to utilize the Common Elements of the Project.

8. Developer's Easements to Effect the Subdivision or Consolidation of Apartments. Developer, its agents, employees, consultants, contractors, licensees, successors, Mortgagees and assigns, shall have an easement over, under, upon and through the Common Elements and any Limited Common Elements and through the Apartments or any portion

thereof as may be reasonably necessary to effect the subdivision or consolidation of Apartments, and such easement shall allow Developer, its agents, employees, consultants, contractors, licensees, successors, Mortgagees and assigns, to create and cause dust and other nuisances created by and resulting from any work connected with or incidental to effecting any such subdivision or consolidation provided that any such work is undertaken with the exercise of reasonable diligence.

9. Developer's Easements for Construction and Annexation.

(a) Developer, its agents, employees, consultants, contractors, licensees, successors, mortgagees and assigns, shall have an easement over, under and upon the Project as may be reasonable or appropriate for additional construction, the completion of renovations to the improvements of the Project, and (at the option of Developer) the correction of defects therein. In addition to any other easements reserved to Declarant under this Declaration, in connection with, and to the extent necessary for the development and construction of increments following the transfer of ownership of any Apartment to an individual or entity other than Declarant, Declarant shall have the right to enter upon the Project premises with employees, agents and contractors for all purposes reasonably necessary for or useful to constructing and completing all increments in accordance with this Declaration and the Condominium Map. Such rights shall include, but are not limited to, the following:

(1) An easement over, under and across the common elements of the Project for the purposes of all work connected with or incidental to the development, construction and sale of the Apartments, Ownership Interests or increments; and,

(2) The right in the nature of an easement over and upon the existing buildings and common elements of the Project to create and cause dust, noise, vibration and other nuisances created by and resulting from any work connected with or incidental to the development, construction and sale of the increments, Ownership Interests, or Apartments.

(b) Declarant, its contractors, subcontractors, licensees, mortgagees and assigns, and their respective employees and agents, shall have the right and an easement in favor of Declarant and its successors and assigns is hereby granted at any time and from time to time prior to the thirtieth (30th) anniversary date from the recording of this Declaration, to enter upon, use, remove, replace, add to, or otherwise alter the common elements and the limited common elements of the Project and to do all things reasonably necessary, desirable or useful for designing, developing, constructing or completing any additional increment to the Project, connecting any such additional increment to the utility installations of the Project, and selling the Apartments contained within any such additional or increment, including, but not limited to, the right to consolidate any parcel(s) of land covered hereby with any other parcel(s) of land in connection with the merger of increments; provided that the exercise of the rights granted herein shall not cause any permanent or avoidable interruption in the service of utilities to the Project, and provided further that any person exercising such rights shall use reasonable efforts, without additional cost to Declarant and consistent with maintaining the progress of the design, development, construction, completion and sale of the additional increment, to minimize interference with the Owners' use and enjoyment of the Property. Declarant further reserves the right to grant, for the benefit of the owner or owners from time to time of all or any portion of each of the other Increments, and without the consent or joinder of any party having any interest in the Project, easements over, under, across, along, upon and through the common elements of the Project for ingress and egress purposes, access purposes, electrical, gas,

communications and other utility purposes, sanitary sewer, drainage and drainline, waterline, and flowage purposes, and all other purposes, to the State of Hawaii, the County, the Board of Water Supply of the County, any other appropriate governmental agency, and/or any public or private utility or other corporation, partnership, individual or entity, provided that such easements and rights-of-way do not materially impair or interfere with the use of any Apartment in the Project or the common elements of the Project.

(c) Without limiting the foregoing, anything to the contrary notwithstanding, Declarant shall have the following retained and reserved construction easements:

(i) A non-exclusive easement in all structural members, footings, caissons, foundations, columns and beams and any other supporting components located in or constituting a part of the Project;

(ii) A non-exclusive easement for access to, the right to connect to and the use for their intended purposes and Maintenance, of all Facilities located in the Project including heating, ventilating and air conditioning systems, boilers and hot water systems;

(iii) A non-exclusive easement permitting encroachments in the event and to the extent that, by reason of the original construction or any reconstruction or replacement of any improvements currently located or hereafter constructed on any part of the Project or the subsequent settlement or shifting of any part of the improvements on any portion of the Project;

(iv) A non-exclusive easement in and for the use of all Common Walls, Floors and Ceilings common to the Project;

(v) A non-exclusive easement for ingress and egress of persons and vehicles through, over and along all portions of the Project as they exist on the date this Declaration is Recorded and which, by their nature, currently permit the passage of persons and motor vehicles, respectively, for the purpose of affording access to and egress from the public alleys and streets adjoining the Project; and

(vi) A non-exclusive easement for ingress and egress of persons and vehicles through, over and along all portions of the Project as they exist on the date this Declaration is Recorded to construct and Maintain Facilities therein, provided that the existence of the Facilities when completed does not materially interfere with the use of the Project through or in which the Facilities are constructed for their intended purpose. During construction of the Facilities, Declarant and its contractors may restrict the use of the common areas of the Project as would be normal for the type of construction involved, provided that the common areas of the Project can still be used for the purpose for which they were designed, or reasonable alternative services are available.

(d) The purpose of the easements declared and granted in this Section is to enable Declarant to fully exploit and use the Project or any portion thereof for any lawful purpose whatsoever and to construct thereon any improvements which Declarant is lawfully permitted to construct, and, in connection with such construction, to connect to, rest upon, abut and otherwise receive support for any improvements which may be created, from the improvements currently located on the Project adjoining the area of such improvement and for

ingress and egress through the common areas of the Project as currently enjoyed. Declarant's exercise of rights reserved in this Section are subject to Declarant's agreement to repair at its sole cost, in a good and workmanlike manner and in accordance with all laws any damage caused to the Project by reason of the exercise of the Easements granted by this Section. The Easements granted in this Section are perpetual and may assigned in whole or in part, subject to such limitations as may be determined appropriate by Declarant in Declarant's sole discretion, by Declarant to one or more Owners.

10. Developer's Other Easement Rights. Declarant, and its agents, employees, contractors, licensees, successors, mortgagees and assigns, shall have and there is hereby created an easement over, under and upon the Project to create and cause noise, dust, vibration and other nuisances or annoyances created by or resulting from any work connected with or incidental to the development, renovation, construction and/or sale of any Unit or Ownership Interest or other Improvement to the Project. Each and every Owner or other person acquiring any interest in the Community waives any and all rights, claims or actions that might otherwise be asserted against Declarant, its agents, employees, licensees, successors, mortgagees and assigns, based on any such noise, dust, vibration and other nuisances or annoyances.

11. Association's Right to Grant Easements. The Association shall have the right, exercisable by the Board of Directors, to grant, convey, transfer, cancel, relocate, and otherwise deal with any easements over, under, across, or through the 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 and the Common Elements or any easements for utilities or for any public purpose.

12. Association's Right to Accept, Assign, Cancel, and Relocate Easements. The Association shall have the right, exercisable by the Board of Directors to accept, assign, cancel, relocate, and otherwise deal with any easement over, under, across or through any lands adjacent to and across the street from the Project, for any reasonable purpose, which may include, but shall not be limited to, any of the same purposes set forth in Section F.4 or for the reason that any owner of any such lands adjacent to or across the street from the Project exercises any right to require the relocation of any such easement provided it does not adversely affect Developer's rights and interests therein.

13. Developer's Right to Establish Fractional Ownership Program. Developer shall have the exclusive right to establish a fractional plan with respect to some or all of the Apartments located on Floors 33, 34 and 35 of the Waikiki Tower, but in no event with respect to more than five percent (5%) of the total number of hotel rooms in the Hotel Apartment Class, by recording a Fractional Ownership Declaration and related documents. Developer may choose to annex certain Vacation or Long Term Stay Apartments owned by Developer to the Fractional Ownership Declaration. Any owners association created pursuant to a Fractional Ownership Declaration, together with their respective representatives, managers, licensees and invitees, shall have a non-exclusive easement over, under and upon the Common Elements of the Project for the following purposes only:

(a) the administration, management or operation of the fractional plan;

(b) the use, maintenance, or servicing of Apartments included in the fractional plan; and

(c) the use of any easement reserved or granted in the Fractional Ownership Declaration, or related documents, that allow the association to use the Apartments included in the fractional plan; provided, however, that under no circumstances, may this easement be used, directly or indirectly, for the following purposes: (1) to sell or promote the sale of, or to solicit prospective purchasers of, fractional interests on behalf of anyone other than Developer, or (2) to operate a tour or activity desk or any other business used to sell or promote the sale of fractional, on behalf of any one other than Developer.

14. Cable/Data System. Without limiting any other right reserved or available to Declarant in this Declaration or at law, Declarant hereby reserves the exclusive right to install or have installed a Cable/Data System as defined below and provide the operational rights to such system to the Front Desk Operator or other Commercial Apartment Owner as Declarant shall determine in Declarant's sole discretion. The Cable/Data System, if and when installed, shall be maintained by either a satellite/cable television provider or a telecommunication service provider or both. Declarant reserves the right to grant non-exclusive easements over the Project as necessary to provide cable television and telecommunication services to Owners, or some portion of them, including easements for access, ingress, and egress for installation, maintenance, and removal of any type of cable and telecommunication equipment, including, without limitation, antennae, head end equipment, cable amplifier, line splitting devices, coaxial cable, amplifier housing, and all facilities related thereto (collectively, "**Cable/Data System**"), as well as for the solicitation of sales, marketing, disconnection of service, and subscriber equipment retrieval. Each Apartment and the Project shall be subject to an easement in favor of all other Apartments and in favor of the entity holding the right to provide cable television and telecommunication service to the Project, to provide for the passage through the Apartments and the Common Elements of television and telecommunication connections from any other Apartment to the Cable/Data System, and shall be subject to further easement for the placement and maintenance of such connections. Declarant, on behalf of itself and its successors, assigns, and grantees, hereby acknowledges and agrees that its interest in the Project is subject to the terms of any agreement between Declarant and a satellite/cable television provider or a telecommunication services provider (collectively, the "**Cable Contract**"), and the Association and all Owners shall be subject to all of the limitations, restrictions, reservations, rights, easements, conditions, and covenants set forth in such Cable Contract. Declarant shall be entitled to collect and retain all amounts payable under the Cable Contract or any assignment of Declarant's rights thereunder. Under no circumstances may the Association, any Owner or any other person engage in, exercise, perform or permit any of the activities or rights reserved to Declarant or install, construct or operate any of the antennae, satellite dishes, equipment, facilities, lines or wires described above at or from the rooftop limited common elements without the prior written consent of Declarant (which consent may be withheld in its sole and absolute discretion).

15. Equipment Easement Area. Without limiting any other right reserved or available to Declarant in this Declaration or at law, Declarant hereby reserves for its benefit an exclusive easement on and over the whole of the Elevator/Mechanical Roof, the Sloped Waikiki Tower Roof, the Kona Tower Roof, the General Pedestal Roof, and the Back Pedestal Roof, labeled R1, R2, R3, R4 and R5, respectively, on Sheet A3.14 of the Condominium Map ("**Equipment Easement Area**") for the purpose of installation and maintenance of telecommunication and cable transmitting and receiving equipment and all facilities related thereto, satellite and microwave dishes, and other antenna, transmitting, receiving, and relay equipment and devices for use in connection with operations inside and/or outside of the Project, and a non-exclusive easement over the Project as necessary for the purpose of

ingress, egress, and access to such equipment for installation, maintenance, repair, replacement and removal; provided that such easements shall be exercised in a manner that does not unreasonably interfere with or disrupt the operation of the Project and the use thereof by the Owners. Declarant shall be entitled to collect and retain any and all amounts payable pursuant to any agreement for use or lease of the Equipment Easement Area or any assignment of Declarant's rights hereunder. Declarant may exercise the rights reserved in this Section without the joinder or consent of any person or Owner or Owner's mortgagee. Notwithstanding the foregoing, however, (a) all maintenance and repairs to the roof area (including all repairs necessary to correct any water leakage) shall be the responsibility of the Association and the cost of such maintenance and repairs (unless necessitated by any damage to the roof area caused by Developer) shall be a common expense, and (b) the Association shall have the right to enter upon the roof area for the purpose of performing such maintenance and repair to the roof area as may be from time to time required.

16. Non-Exclusive Easements Over the Project for Access to Parking Stalls; Exclusive Right to Unassigned Parking Stalls. Parking stalls that are appurtenant to any Apartment owned or controlled by Declarant, specifically including the parking stalls scheduled as Developer's Reserved Stalls in **Exhibit D**, if any, and any parking stall or stalls denominated by Declarant in an amendment to this Declaration are hereby denominated as "**Declarant Reserved Stalls**" and/or "**Declarant Reserved Parking Stalls**." Declarant hereby reserves for its benefit the right and easement for access, ingress, and egress through the Parking Basement to any parking stalls, including, without limitation, Declarant Reserved Stalls. Declarant further hereby reserves for its benefit the exclusive right to use and/or assign and/or sell Declarant Reserved Stalls to any third party. Declarant may waive this right with respect to any one or more unassigned parking stalls, in which case, the Board shall have the authority to regulate the use of those stalls over which Declarant has waived its control.

17. Storage Areas. Without limiting any other right reserved or available to Declarant in this Declaration or at law, Declarant hereby reserves for its benefit an exclusive right to assign to Owners the right to use any storage area shown on the Condominium Map and bearing a number preceded by "**S-**". This reserved right may be assigned by Declarant to the Association.

18. Easements for Events. Developer and the Front Desk Owner, and their respective agents, employees, contractors, and licensees shall have the right and easement to conduct events in the Common Elements and the Limited Common Elements appurtenant to the Front Desk Apartment. Developer or the Front Desk Owner as the case may be, shall be responsible for any additional cleaning and repairs caused by its exercise of this easement.

19. Easement Over Parking Apartment and their Limited Common Elements. The Owners of Apartments to which are appurtenant Limited Common Elements located in the Parking Basement area reflected on the Condominium Map shall have an easement for access to their Limited Common Elements through the driveways serving the Parking Basement. In the event the Front Desk Owner or Parking Apartment Owner use a portion of those driveways for valet parking as permitted by this Declaration, the Front Desk Owner and/or the Parking Apartment Owner shall make arrangements to provide such access at all times. Vehicular access to and egress from each parking stall in the Project (including, without limitation, all parking stalls which are Individual limited common elements appurtenant to the Long Term Stay Apartments), shall be subject to such entry and exit system and rules established initially by Developer, and amended from time to time by a majority in interest of the Parking Apartment Class. Such entry and exit systems may, without limitation, include the use of gate cards and/or

parking stickers in order to gain access to or egress from the parking stalls or access to or exit from the Parking Facilities, and may require the payment by the users of the parking stalls (provided, however, the Owners of the Long Term Stay Apartments shall be responsible for only that proportionate share of maintenance and operational expense allocable to the parking stall apartment owned by or stall appurtenant to the Long Term Stay Apartment, it being intended that the Parking Apartment Class not profit from use of a stall by an Owner of a Long Term Stay Apartment) for the issuance or replacement of gate cards and stickers, in such amounts as shall from time to time be established by a majority in interest of the Parking Apartment Class. Each user of a parking stall (including the Owners of the Long Term Stay Apartments) shall at all times comply with such entry and exit system and rules from time to time established by the Owners of the Parking Apartment. The members of the Parking Apartment Class and those Owners of Apartments to which a parking stall is an appurtenant limited common element shall cooperate in good faith with one another in coordinating the operation of the Parking Facilities.

20. Access Easements. A non-exclusive Easement is hereby granted to the Association for ingress and egress by persons, material and equipment in the Improvements and the Property, but only to the extent reasonably necessary to permit Maintenance or Cleaning by the Association as required or permitted pursuant to this Declaration, or to the extent otherwise reasonably necessary to exercise the Easement for the benefit of the Association.

21. Reservation of Blanket Easement and Utility Easements. There is hereby created a blanket perpetual easement in the favor of Declarant and its designees (which may include, without limitation, the County, the State of Hawaii and any entity providing utility services) upon, across, over and under the Property for ingress and egress for installing, constructing, replacing, repairing, maintaining and operating all utilities (whether public or private) or facilities of a public use nature, including but not limited to water, sewer, gas, telephone, electricity, cable (including without limitation television cable), mailboxes and access thereto, landscaping, security systems, and communication lines and systems, and in addition thereto for the use of emergency vehicles of all types. By virtue of the easement, it shall be expressly permissible for Declarant and its contractors and/or the providing utility company to construct (including without limitation underground installation) and maintain (including inspect, alter, repair, refurbish and the like) the necessary facilities, wires, circuits, conduits, cables, mailbox pads and stanchions, meters and related appurtenances, facilities and equipment on the Project and to enter upon the Project to accomplish the foregoing and to take readings of any meter relating to the provision of such service. The easements reserved by this Section may be assigned by Declarant to the Association by written instrument, and the Association shall accept the assignment upon such terms and conditions as are acceptable to Declarant, including reservations of rights in favor of Declarant. If the easement is assigned to the Association, the Board shall, upon written request, grant such limited term or perpetual easements as may be reasonably necessary for the development of the Project and/or, in the sole and absolute discretion of Declarant, for any adjacent property. Any utility company using this blanket easement shall use its best efforts to install and maintain the utilities in a manner that will cause the least practicable interference with the uses of the Owners, the Association and Declarant, except on a temporary basis; shall proceed with its installation and maintenance activities as promptly and expeditiously as reasonably possible; and shall restore the surface of the land to its original condition as soon as possible after completion of its work. Should any utility company which furnishes a service covered by the blanket easement request a specific easement by separate Recordable document, either Declarant or the Association shall have, and are hereby given, the right and authority to grant such limited term or perpetual easement upon, across, over, or under any part of the Project, without the joinder of the Owner thereof,

any Mortgagee, or Unit Owner's mortgagee. Without limitation of the foregoing, Declarant reserves unto itself and its successors the right to grant, create, designate, delete, cancel, relocate, realign and reserve limited term and/or perpetual easements and rights of way over, across, under and through any portion of the Project for electrical power and communication utilities, electromagnetic and optical transmission facilities, landscaping, mail delivery and other similar public service purposes, as Declarant in its discretion may from time to time designate, for the benefit of the Project or any portion thereof and the right to grant any such easements to any governmental agencies, public utility or service companies as determined by Declarant without the joinder or consent of the Owner or the Owner's mortgagee. The easements provided for in this Section shall in no way affect, void, extinguish, or modify any other Recorded easement on the Project. Each Owner consents to any such creation, designation, granting, deletion, cancellation, relocation, reassignment, conveyance, transfer, and reservation of easements and/or rights of way as provided above without the necessity of the joinder or consent of the Owner or the Owner's mortgagee, or those claiming by, through or under an Owner, entering into any further agreement respecting such action or document; provided, however, that such Owner and those claiming by, through or under an Owner, agrees to join in an execute such documents and instruments and do such other things as may be necessary or convenient to effect the same promptly at the request of Developer without payment of additional consideration. Upon request by an Owner, Declarant shall execute and Record an estoppel certificate that shall limit the rights provided in this Section so that easements hereunder may only be taken through certain utility corridors as set forth in the estoppel certificate. The rights reserved in this Section shall continue until December 31, 2045.

22. Rules and Regulations. The Easement created under this Section for individual Unit Owners (as opposed to Declarant or the Association) which provides or requires, for its enjoyment, ingress and egress on, over, across or through the Improvements and all Facilities shall be subject (except in an Emergency Situation) to such reasonable limitations, including rules and regulations, as the Owner of the Apartment or Apartment Class over whose Apartment or Apartment Class the easement or easements run, may, from time to time, impose with respect to the use of such Easements, including the establishment of limited hours of the day or days of the week during which such Easements may be used to prevent any unreasonable interference with the use and operation of the applicable portion of the Apartment or Apartment Class, and in order to assure the reasonable security of the applicable portion of the Property, provided, however, that any such limitations shall not preclude or unreasonably restrict enjoyment or exercise of any Easement.

23. Right of Assignment. All rights and easements reserved to Developer in this Declaration may be assigned by Developer at any time, in whole or in part, with or without an Apartment, to any other person, without notice to or the consent or joinder of the Association or any Owner, lien holder or any other person other than Developer's Mortgagees whose prior written consent shall be obtained.

G. RESERVED.

H. PERMITTED USES - GENERALLY.

1. Vacation Apartments. Subject to the limitations specified in Section U, the Vacation Apartments are intended to be, and are designated, for hotel use, and shall be used for only that purpose, unless conveyed to a Fractional Ownership Declaration. The use of any Vacation Apartment annexed to a Fractional Ownership Declaration shall be governed by the provisions of such Declaration to the extent not inconsistent with this Declaration. DEVELOPER

HAS NOT AUTHORIZED ANY AGENT, EMPLOYEE, SALESPERSON OR BROKER TO MAKE ANY REPRESENTATIONS AS TO RENTAL OR OTHER INCOME FROM ANY APARTMENT OR AS TO ANY OTHER ECONOMIC BENEFIT, INCLUDING POSSIBLE ADVANTAGES FROM THE OWNERSHIP OF AN APARTMENT UNDER FEDERAL OR STATE TAX LAWS, TO BE DERIVED FROM THE PURCHASE OF A VACATION APARTMENT IN THE PROJECT. Until Developer closes the sale of all the Vacation Apartments in the Project, no Owner of a Vacation Apartment shall enter into any agreement with any Apartment Owner, purchaser, or lessee of another Vacation Apartment or any other third party in which the Owner of a Vacation Apartment agrees to share rental income from Vacation Apartments in the Project.

2. Long Term Stay Apartments. Subject to the limitations specified in Section U, the Long Term Stay Apartments shall be used and are designated for residential use. The use of any Long Term Stay Apartment annexed to a Fractional Ownership Declaration shall be governed by the provisions of such Declaration to the extent not inconsistent with this Declaration. Subject to all applicable zoning and other laws or regulations governing the use of the Long Term Stay Apartments, the Long Term Stay Apartments may also be used for certain limited business or commercial purposes as permitted by law. The Owners of the Long Term Stay Apartments shall have the right to rent or lease, or otherwise permit the use of their respective Apartment, for any periods of time not less than 30 consecutive days as the Owner may desire; provided, however, the Long Term Stay Apartments shall not be used, leased, rented or any undivided interest therein be transferred for time-sharing purposes or under any time sharing plan, agreement or arrangement as the same is defined under Chapter 514E, Hawaii Revised Statutes, as amended, or any fractional ownership or fractional membership program or plan unless first annexed to a Fractional Ownership Declaration by Developer. If an Owner of a Long Term Stay Apartment desires to make an arrangement for rental or occupancy of his Apartment, then the Owner must make such arrangement without the involvement or participation of Developer. DEVELOPER HAS NOT AUTHORIZED ANY AGENT, EMPLOYEE, SALESPERSON OR BROKER TO MAKE ANY REPRESENTATIONS AS TO RENTAL OR OTHER INCOME FROM ANY APARTMENT OR AS TO ANY OTHER ECONOMIC BENEFIT, INCLUDING POSSIBLE ADVANTAGES FROM THE OWNERSHIP OF AN APARTMENT UNDER FEDERAL OR STATE TAX LAWS, TO BE DERIVED FROM THE PURCHASE OF A LONG TERM STAY APARTMENT IN THE PROJECT. Until Developer closes the sale of all the Long Term Stay Apartments in the Project, no Owner of a Long Term Stay Apartment shall enter into any agreement with any Apartment Owner, purchaser, or lessee of another Long Term Stay Apartment or any other third party in which the Owner of a Long Term Stay Apartment agrees to share rental income from Long Term Stay Apartments in the Project.

3. Office Apartments. Subject to the limitations specified in Section U, the Office Apartments (inclusive of the Limited Common Elements appurtenant to such Apartments), to the extent that they are reflected on the Condominium Map, are intended to be, and are designated, for (a) for office, commercial, retail and accessory purposes, and (b) for other purposes as permitted under applicable law; provided, however, that, to the extent any Office Apartment is utilized for purposes other than for office use, the Owner of such Office Apartment shall be entitled to the rights and privileges afforded to, and shall be subject to all applicable limitations affecting, Commercial Apartment Owners under this Declaration. The Owner of an Office Apartment shall have the right to rent, lease or otherwise permit the use of all or a portion of the Office Apartment for any length or periods of time as the Owner may desire. Declarant may reclassify the character and permitted use of any Apartment within the Office Apartment Class, so that the Apartment may be used for hotel, residential or other purpose permitted by law. Upon such redesignation, the redesignated Apartment will become

an Apartment within the applicable Apartment Class and be subject to the limitations on use of such Apartments as may be specified in this Declaration.

4. Parking Apartment and Parking Facilities. Subject to the limitations specified in Section U, the Parking Apartment, inclusive of the Limited Common Elements appurtenant to such Apartment, shall be used for (a) for parking purposes, (b) to the extent legally permissible, for storage facilities purposes; provided, however, that portion of the Parking Apartment containing parking stalls and consisting of two or fewer stalls, and parking stalls which are limited common elements appurtenant to Apartments, may not be used for storage facilities purposes without the prior written consent of the Board of Directors, and (c) for other purposes as permitted under applicable law. The Owner of a Parking Apartment shall have the right to (i) rent, lease or otherwise permit the use of all or a portion of a Parking Apartment and its Limited Common Elements for any length or periods of time as the Owner may desire and (ii) subject to Section U.18, reconfigure the parking stalls located in the Parking Apartment, including, without limitation, those located within any Limited Common Element appurtenant thereto. The Owners of the Parking Apartment (and the Front Desk Owner should such Owner own or have the right to use parking stalls) may use their parking stalls for valet parking and may permit its valet parking personnel or contractor to park vehicles across the lines between its parking stalls, if permitted by law, but not across any line separating the parking stalls of the Front Desk Owner or the Parking Apartment Owner from the parking stall of any other Owner. If any portion of the Parking Basement driveway or driveway serving as the Atkinson Street access to the hotel is adjacent only to parking stalls of the Front Desk Owner or a Parking Apartment Owner (other than a Long Term Stay Apartment Owner) and no other Owner needs to use that portion of the driveway for access to the other Owners' parking stall, then the Front Desk Owner or the Parking Apartment, as applicable, may permit its valet parking personnel or contractor to park vehicles within that portion of the driveway or any automobile or bus holding area adjacent thereto, if permitted by law.

5. Banquet and Meeting Room Apartments. Subject to the limitations specified in Section U, Apartments within the Banquet Apartment Class, inclusive of the Limited Common Elements appurtenant to such Apartments, are intended to be, and are designated, for general uses ancillary to the operation of a hotel; provided, however, Declarant may reclassify the character and permitted use of any Apartment within the Banquet Apartment Class, so that the Apartment may be used for any commercial, retail, hotel or residential purpose. Upon such redesignation, the redesignated Apartment will become an Apartment within the applicable Apartment Class and be subject to the limitations on use of such Apartments as may be specified in this Declaration.

6. Spa Apartment. Subject to the limitations specified in Section U, the Spa Apartment, inclusive of the Limited Common Elements appurtenant to such Apartment, may be used for any commercial or retail purpose not inconsistent with this Declaration.

7. Commercial Apartments. Subject to the limitations specified in Section U, the Commercial Apartments, inclusive of the Limited Common Elements appurtenant to such Apartments, are intended to be, and shall be, operated and used only for commercial purposes or uses, including, without limitation, (a) for retail, office, food and beverage sales, and all commercial and other purposes accessory to the foregoing and (b) for such other purposes as may be permitted under applicable law, this Declaration, and approved by Developer. The Owner or Owners of the Commercial Apartments shall have the absolute right to rent or lease all or any portion or portions of the Commercial Apartments in connection with such commercial operations or use for any length of time and upon such terms and conditions as such Owner or

Owners shall determine, and to retain the revenues and rents generated from operations. Developer reserves the right to change the use of the Commercial Apartments, to make alterations to the Commercial Apartments and the Limited Common Elements appurtenant thereto and to change the use of the Limited Common Elements, as set forth in, among other provisions, this Declaration, provided, however the alterations to and modification of use of any such Limited Common Element by a Commercial Apartment Owner, other than Developer, shall be subject to the reserved Easement rights and license rights of other Apartment Owner. The Commercial Apartments shall have an appurtenant easement under which the Owner's representatives, vendors, licensees, and invitees have the right, for purposes of the business conducted in the Commercial Apartments, or the Limited Common Elements appurtenant thereto, to do the following things:

(a) to enter the Project using the Common Elements intended for access to and from any nearby roads or streets;

(b) to park motor vehicles in any unassigned parking areas with the consent of the Owner of the applicable Parking Apartment;

(c) to make deliveries using the Loading Dock and any delivery area and any Common Elements connecting the delivery area to the applicable Commercial Apartment or its Limited Common Elements; and

(d) to use the Common Elements for ingress and egress as may be reasonably necessary or convenient in connection with the ordinary course of business operations in the Commercial Apartments and their appurtenant Limited Common Elements.

8. Front Desk Apartment. Subject to the limitations specified in Section U, the Front Desk Operator shall have the right, but not the obligation, to establish in its sole discretion a Hotel Operation Program with respect to Vacation and Long Term Stay Apartments. In connection with the establishment of a Hotel Operation Program, the Front Desk Operator shall have the right to establish room classifications or categories with respect to the Vacation and Long Term Stay Apartments and room rate structures based on such room classifications or categories, in each case based on such criteria as the Front Desk Operator may determine.

NO REPRESENTATIONS ARE MADE WITH RESPECT TO THE EXPECTED OR PROJECTED RENTAL INCOME. THERE IS NO ASSURANCE THAT THE VACATION OR LONG TERM STAY APARTMENTS WILL BE ABLE TO BE RENTED AT ANY PARTICULAR RATE OR FOR ANY PARTICULAR PERIOD OF TIME AND THE RATES AND TOTAL INCOME FROM EACH VACATION OR LONG TERM STAY APARTMENT WILL BE AFFECTED BY, AMONG OTHER THINGS, COMPETITION FROM OTHER LUXURY HOTELS, GUEST PREFERENCES, ECONOMIC CONDITIONS, DESIRABILITY OF LOCATION, SIZE OF UNITS, FREQUENCY OF OWNER OCCUPANCY AND MANY OTHER FACTORS.

9. Use of Common Elements. Subject to the rights reserved by Developer elsewhere in this Declaration or in the Bylaws and subject also to the exclusive or limited use of the Limited Common Elements that may be specified in this Declaration, each Apartment Owner may use the Common Elements in accordance with the purposes for which they were intended without hindering or encroaching upon the lawful rights of the other Apartment Owners, subject to the rights of the Board of Directors:

(a) To change the use of the Common Elements upon the approval of seventy five percent (75%) of the Apartment Owners, provided that the change does not adversely affect (1) Developer's rights and interests in the Common Elements or the Limited Common Elements or (2) the Easements of any Apartment Owner, including Developer, in a Limited Common Element, without first having secured the permission of the adversely affected Owner;

(b) On behalf of the Association, to lease or otherwise use for the benefit of the Association those Common Elements which are not actually used by any of the Apartment Owners for an originally intended special purpose, as determined by the Board so long as it does not adversely affect Developer's rights and interests in the Common Elements; provided that unless the approval of seventy-five percent (75%) of the Apartment Owners is obtained, any such lease shall not have a term exceeding five (5) years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty (60) days' prior written notice; and

(c) Provided it does not adversely affect Developer's rights and interests in the Common Elements or Limited Common Elements, to lease or otherwise use for the benefit of the Association those Common Elements not falling within subparagraph (b) hereinabove, upon obtaining: (1) the approval of seventy five percent (75%) of the Apartment Owners, including all directly affected Owners and all Owners of Apartments to which such Common Elements are appurtenant in the case of Limited Common Elements, and (2) the approval of all mortgagees of record on Apartments with respect to which Owner's approval is required by clause (1) above, if such lease or use would be in derogation of the interest of such mortgagees.

10. Use of Certain Apartments' Limited Common Elements.

(a) Right to Use Front Desk Apartment, Hotel Amenities, Commercial Apartments, Banquet and Meeting Room Apartments and the Spa Apartment. Owners in the Project shall have the following enumerated revocable non-exclusive licenses and privileges to use the Hotel Amenities, the Commercial Apartments, the Banquet and Meeting Room Apartments, the Spa Apartment and the Front Desk Apartment:

(1) Owners in the Project shall have a non-exclusive license to enter areas designated as the Front Desk Apartment and the Commercial Apartments, as those areas may be modified pursuant to the terms of this Declaration, for purposes of accessing their respective Apartments, check-in, check-out, concierge services, patronizing the retail shops, restaurants and concessions located therein.

(2) Owners in the Project, and their invitees, shall have a non-exclusive license to enter and use the meeting room and banquet facilities located in the Banquet and Meeting Room Apartments, subject to the rules and regulations and fees for use thereof established by the owners thereof.

(3) Owners in the Project, and their invitees, shall have a non-exclusive license to enter and use the Hotel Amenities and any facilities therein located, subject to the rules and regulations and fees for use thereof established by the owners thereof.

(4) Neither the Board nor the Association shall have the right to restrict the ability of an Owner to alter or modify any Commercial Apartment, the Front Desk

Apartment, the Hotel Amenities, or the Parking Apartment to the extent provided in this Declaration; provided in all instances, any such modification shall comply with this Declaration.

(5) No Owner shall have the right to use the Spa Apartment or Facilities therein located except on condition of the payment of such fee for service as the Owner of the Spa Apartment may levy for access to the Spa Apartment and its Facilities.

(b) Hotel Amenity License Fee. The rights of Owners of the Vacation and Long Term Stay Apartments to use the Hotel Amenities shall be subject to the rights reserved to the Front Desk Owner in this Declaration and to the payment by the Association of a Hotel Amenity License Fee pursuant to a Hotel Amenity Use Agreement to defray the cost of maintaining and repairing the Hotel Amenities; provided, however, that the Hotel Amenity License Fee shall not exceed the actual expense incurred by the Front Desk Owner in connection therewith, plus an administrative fee not to exceed ten percent (10%) of such actual expense. Each Owner acknowledges and agrees that Declarant, on behalf of the Association, may enter but shall not be obligated to enter into a Hotel Amenity Use Agreement with the Front Desk Owner to provide amenity services, on a non-exclusive basis, to Owners of Apartments in the Hotel Apartment Class, their guest and invitees, and members of the public. Any fees applicable to such agreement shall be charged to the Class limited common expenses. Such agreement shall provide for access of the Owners based on standards and procedures accepted by the Front Desk Operator to limited portions of the Hotel Amenities and to the extent undertaken by the Front Desk Operator, access, on a fee for service or facility basis, to other portions or facilities of the Hotel Amenities. Entry into such operation agreement shall not require the joinder or consent of any Owner, any Mortgagee, or Unit Owner's mortgagee.

(c) Spa Access Fee. Each Owner acknowledges and agrees that Declarant, on behalf of the Association, may enter but shall not be obligated to enter into an operation agreement with an operator of Declarant's choice for operation of the Spa Apartment in order to provide health club services, on a non-exclusive basis, to Owners of Apartments in the Hotel Apartment Class, their guest and invitees, and members of the public. Any fees applicable to such agreement shall be charged to the Class limited common expenses. Such agreement shall provide for access of the Owners based on standards and procedures accepted by the operator to limited portions of the improved Spa Facility and to the extent undertaken by the facility operator, access, on a fee for service or facility basis, to other portions or facilities of the facility. Entry into such operation agreement shall not require the joinder or consent of any Owner, any Mortgagee, or Unit Owner's mortgagee.

(d) Shared Tenant Services. For purposes hereof, "**Shared Tenant Services**" shall mean the providing of telecommunication and/or electronic services where such service is provided jointly to two or more Long Term Stay Apartment Owners only. Prior to entering into any agreement for a Shared Tenant Service to be provided from any person other than Developer, the Front Desk Operator or Owner, or the Association, the Long Term Stay Apartment Owners seeking such Shared Tenant Service ("**STS Solicitor**") shall give written notice to Developer setting forth in reasonable detail (1) the Shared Tenant Service being sought or (2) if a third party has offered to provide a Shared Tenant Service, the name of such offeror and the terms and conditions of such offer. Within sixty (60) days of receipt of such notice, Developer shall have the right to make a written offer to provide such service to the STS Solicitor. If Developer fails to make such offer within such sixty (60) day period or if the STS Solicitor and Developer have not entered into an agreement within thirty (30) days after Developer's offer for Developer to provide such Shared Tenant Service, then in either event, the STS Solicitor shall be free to enter into an agreement with any other provider for such Shared

Tenant Service. In connection with providing such Shared Tenant Service, the provider shall have the non-exclusive right and easement (i) to construct, install, operate, repair, maintain, and/or relocate electronic and telecommunications equipment and facilities on, within or from the Project, excepting the rooftop limited common elements of any Apartment, (ii) to connect such equipment and facilities with or to any transmission or reception facilities, equipment or other point(s) within or outside of the Project, and with the consent of an Apartment Owner through any Apartment owned by such Owner and/or common elements of the Project, (iii) to install lines and wires through and all common element pipes, shafts and conduits running through any of the Apartments with the consent of the Owners thereof and/or the common elements of the Project and through the limited common elements except the rooftop limited common elements, and (iv) to transmit and receive electronic or other communication signals at or from the Project other than at or from the rooftop limited common elements. Under no circumstances may the Association, any Owner or any other person engage in, exercise, perform or permit any of the activities or rights reserved to Declarant or install, construct or operate any of the antennae, satellite dishes, equipment, facilities, lines or wires described above at or from the rooftop limited common elements without the prior written consent of Declarant (which consent may be withheld in its sole and absolute discretion).

Further, the following conditions shall be met before any person shall provide a Shared Tenant Service: (1) the provider shall have agreed to abide by this Declaration, the Bylaws and any Project Rules for the Project; (2) the provider shall have agreed to indemnify and hold harmless the Association and the Apartment Owners against any loss, liability, damage or expense suffered or incurred by the Association and the Apartment Owners (other than the fee charged by the person for providing such service) arising out of or in connection with providing the Shared Tenant Service; (3) the provider shall have agreed to remove, at the request for the Association, all lines, wires and other equipment and facilities utilized by the provider of the Shared Tenant Service upon the expiration or termination of the Shared Tenant Service; and (4) any provider shall have obtained any license (or exemption therefrom) required in order to legally provide the Shared Tenant Service.

I. ADMINISTRATION OF PROJECT.

1. Administration by the Association. Administration of the Project shall be vested in the Association in accordance with the Act and the Bylaws. Operation of the Project and maintenance, repair, replacement and restoration of the Common Elements, and any additions and alterations thereto, shall be in accordance with the provisions of the Act, this Declaration and the Bylaws, and specifically but without limitation the Association shall perform those action specified for the Association to perform in this Section I.

2. Improvements and Observance Required Bylaws. The Association shall make, build, maintain and repair all fences, sewers, drains, roads, driveways, driveway ramps, curbs, sidewalks, easement areas, parking areas not within or appurtenant to a Parking Apartment or the Front Desk Apartment, and other improvements 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 Project or any part thereof. The Association shall keep all Common Elements in a strictly clean 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 Project or the use thereof.

3. Maintenance and Good Repair.

(a) Administration of Common Elements. Except as specifically set forth to the contrary in this Declaration, the Association shall well and substantially repair, Maintain, amend and keep all Common Elements, including without limitation the Building in which the Apartments are located and the Limited Common Elements appurtenant to such Apartments, and the Facilities, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided herein, and maintain and keep the Land and all adjacent land between any street boundary of the Project and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass thereon in good cultivation and replant the same as may be necessary, and repair and make good all defects in the Common Elements herein required to be repaired by the Association, of which notice shall be given by any Owner or Owner's agent, within thirty (30) days after the giving of such notice or such additional period as may be reasonably necessary to complete such work in the exercise of due diligence.

(b) Hotel Amenities. The Front Desk Owner shall Maintain and Clean the Hotel Amenities in a neat and orderly manner to assure that they remain available for use in connection with the hotel operation conducted at the Project. In the event that the Front Desk Owner fails to Maintain and Clean the Hotel Amenities, the Maintenance and Cleaning thereof may be undertaken by the Association at the Front Desk Owner's cost. The Front Desk Owner agrees to make the Hotel Amenities available to Owners of Apartments in other Classes and their respective tenants and occupants and the family members and guests and invitees thereof, subject to reasonable rules, regulations, and fees regarding the use of the Hotel Amenities, but in no event on basis less favorable than such Hotel Amenities are made available to members of the public.

(c) Administration of Limited Common Elements Appurtenant to Commercial Apartments. At the election of the Owner of any Commercial Apartment, with at least thirty (30) days written notice to the Association, and with the approval of the Board of Directors, such Owner may undertake directly to maintain, repair and replace ("direct administration") all or a portion of the Limited Common Elements appurtenant only to that Commercial Apartment. Such Owner may change such election from time to time on at least thirty (30) days written notice to the Association. An Owner of a Commercial Apartment shall continue to pay Common Expenses in accordance with its Common Interest and shall not receive any reduction because of electing direct administration. During any period of direct administration, if the Association holds any reserves for the affected Limited Common Elements, the Association shall make such reserves available to the Owner of the Apartment or Apartments to which such Limited Common Elements are appurtenant, provided, however, such funds shall be used only for the purposes for which they have been reserved. In all instances, the Association shall have the power to terminate direct administration by a Commercial Apartment Owner if the level of maintenance and repair by the Commercial Apartment Owners fails to reach the standard of maintenance and repair of the Common Elements and Limited Common Elements undertaken by the Association.

(d) Maintenance of Lanais. The Owners of Vacation and Long Term Stay Apartments shall clean and perform routine maintenance and repair of their individual lanais but any major maintenance and repair, that if performed inadequately would adversely affect the structural integrity or external appearance of the Project shall be performed by the Association and charged as a Common Expense on the grounds that the work protects the entire Project.

(e) Other Services. Without limitation of the foregoing, the Association shall furnish, or cause to be furnished, as and when necessary, the following services (the cost of the provision of which service shall be Common Expenses of the Association) to the Apartment Owners or Apartment Classes, as specified in the Exhibits, with respect to those portions of the identified in this subsection:

(1) Façade, Entry, Halls and Lanais. Maintenance of (i) the Building façade and the Porte Corchere, (ii) the Atkinson Street entrance drive serving the Porte Corchere and hotel lobby, (iii) the Valet and Taxi Parking area within the Porte Corchere, (iv) all hallways and access ways serving the Project or any portion thereof all of which are shown on the Condominium Map, and (v) any and all lanais serving any Apartment exterior;

(2) Sidewalks, Pedestrian Bridge. Maintenance of (i) sidewalks leading to all street level entrances to the Building, including all public entrances to the Commercial Apartment Class, and (ii) the Pedestrian Walkway connecting the Building to the adjacent parking facility serving the Ala Moana Shopping Center;

(3) Landscaping. Maintenance of exterior landscaping in front of and around the Building;

(4) Water. Arrange for a supply of hot and cold county water reasonably required by the Owners and Maintenance of all water lines entering the Project from the county mains and water supply system;

(5) Roof. Maintenance of the roofs of the Building;

(6) Cleaning. Cleaning the Common Elements and any portion of any other Property not within the exclusive possession of an Owner, tenant or occupant thereof, and not designed for such possession;

(7) Elevators and Elevator Cabs. Maintenance of all elevator shafts, equipment and cabs, no matter where located in the Project;

(8) Utilities and Other Similar Services. Arrange for the provision of electric, gas, sewer and water utility services and, if approved by the Board, local telephone service. Maintenance of: (i) all utility services (e.g., electric, gas, sewer, water, and telephone) not already described, including HVAC systems, boilers and hot water systems serving the Improvements; (ii) the mechanical, electrical, and fire suppression systems in the Building, provided, however, that, other than with respect to the Non-Long Term Stay/Vacation Apartments, the Association shall have no responsibility for the provision of utility services or the Maintenance of such utility services or Facilities where the same serve one Apartment exclusively without feeding or connecting to or from any other utility service or Facilities that serve another Apartment, in which case the Owner of the Apartment served shall Maintain no matter where such utility service or Facility is located; and (iii) solely with respect to the Vacation and Long Term Stay Apartments, all other physical and mechanical components of the Vacation and Long Term Stay Apartments to the extent not included in the foregoing;

(9) Doorman Services. If approved by the Board, hire, supervise and discharge doorman and valet service at the lobby entrance 24 hours a day, seven days a week;

(10) Trash Removal Service. Arrange for the provision of on-floor trash receptacles for the removal of trash for the Vacation and Long Term Stay Apartments;

(11) Security. Arrange for such Building security as determined appropriate by the Board; and

(12) Towel Service. Arrange for the provision of towels at the swimming pool for use by Owners of the Apartments in the Hotel Apartment Class, their guests and invitees, which towels shall bear the logo or insignia of the Front Desk Operator or, if selected by the Front Desk Operator, the Hotel, as agreed upon by the Front Desk Owner and the Association, it being understood and agreed that (i) Declarant, on behalf of the Association, may enter but shall not be obligated to enter into such an agreement with the Front Desk Owner for the rent or purchase of such towels from the Front Desk Owner, (ii) entry into any such agreement shall not require the joinder or consent of any Owner, any Mortgagee, or Unit Owner's mortgagee, and (iii) any fees applicable to any agreement with the Front Desk Owner for the rent or purchase of such towels shall be charged as a Class limited common expense, provided, however, that each Owner of an Apartment in the Hotel Apartment Class shall be separately liable for the replacement cost of such towels borrowed by such Owner, his or her guest or invitee that are not returned, lost or damaged.

(13) Additional Services. Maintenance of Facilities not otherwise described herein which, as designed, constructed, and installed, serve more than one Apartment. Except as expressly provided in this Declaration to the contrary, the Association, at its sole cost and expense, shall Maintain and Clean all portions of the Project for which Maintenance or Cleaning responsibility has not been assigned to a specific Owner, in good and safe order and condition and shall make all repairs or replacements of, in, on, under, within, upon or about such property, whether said repairs or replacement are to the interior or exterior thereof, or structural or non-structural components thereof, or involve ordinary or extraordinary repair or replacements, necessary to keep the same in safe first-class working order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects, fire or other casualty, or otherwise.

(f) Required Structural Improvements. If substitute or additional structural support is required in any portion of the Improvements in which the structural support shall have been reduced or if the structural safety of any portion of the Improvements is endangered other than by reason of a casualty, then the Association shall be responsible for construction of such substitute or additional structural support in accordance with plans and specifications prepared by a professional engineer or architect (the "**Architect**"), which plans and specifications are approved by the Board, provided, however, that the Owner responsible for such reduction or endangerment shall pay all costs and expenses, including any fees and costs of the Architect and all other fees and costs reasonably incurred, in connection with construction of substitute or additional support, and making and enforcing the determination of responsibility. However, if the responsible Owner cannot be determined or if all Owners are responsible, or if none of the Owners is responsible (for example, additional support is required as a result of a design defect in the original construction of the Improvements or if the reduction in structural support giving rise to the need for such construction results from ordinary wear and tear, and/or until the responsible Owner can be determined), the Association shall pay such costs and expenses as a Common Expense. The Association shall commence, within a reasonable time under the circumstances, the construction of such substitute or additional support in accordance with plans and specifications prepared by or approved by a professional

engineer or architect, free of all mechanics' lien claims, and, having commenced such construction, shall proceed diligently to cause the completion of such construction. If the Association and the Owners claimed to be responsible for the impairment of structural support cannot agree within thirty (30) days on the allocation of responsibility among them after having consulted with their respective consultants, then the dispute shall be submitted to arbitration as provided herein. Notwithstanding anything herein to the contrary, the Association shall not be responsible for, or have any liability in connection with, the loss of use of any other portion of the Project during any period of reconstruction.

4. Construction; Bond. The Association shall not erect or place on or within the Project any building or structure, including fences and walls, nor make additions or structural alterations or exterior changes to any common elements of the Project, except in accordance with plans and specifications, including a detailed plot plan prepared by a licensed architect, if so required by the Board of Directors, first approved by such Owners as required by the Act or this Declaration, and shall complete any such improvements with due diligence. Before commencing or permitting construction of any Common Element improvement on the Project where the cost thereof exceeds Twenty-Five Thousand and No/100 Dollars (\$25,000.00), the Association shall obtain a performance and lien payment bond naming as obligees, the Board of Directors, the Association and collectively all Apartment Owners and their respective mortgagees of record, as their respective interests may appear, with a responsible corporate surety authorized to do business in the State of Hawaii, guaranteeing the full and faithful performance of the contract for such construction free and clear of all mechanics' and materialmen's liens for such construction and the payment of all subcontractors, labor and materialmen, including mechanics' and materialmen's liens arising under Section 514A-16 of the Hawaii Revised Statutes, as the same may be amended from time to time, for a penal sum of not less than one hundred percent (100%) of the estimated cost of such construction. The Board may, in its sole discretion, increase the \$25,000.00 limitation from time to time by an amount equal to the percentage increase in the Honolulu Consumer Price Index for all items as published by the Bureau of Labor Statistics of the United States Department of Labor or other successor federal or state agency or department, and adjusted to any new basis and method of computation then applicable. For purposes of this Section, the term "**percentage increase**" shall mean the product of (i) the fraction, the numerator of which is the difference between the Honolulu Consumer Price Index for the first day of the calendar month preceding the calendar month in which the Board shall approve an increase in such dollar limitation and the Honolulu Consumer Price Index for the first day of the calendar month in which this Declaration is Recorded, and the denominator of which is the Honolulu Consumer Price Index for the first day of the calendar month in which this Declaration is Recorded times (ii) \$25,000.00.

5. Setback Lines. The Association shall observe any setback lines affecting the Project and not erect, place or maintain any building or structure within the setback line along such boundary, except as may be permitted by applicable laws.

6. Improper Use. The Association shall not make or suffer any strip or waste or unlawful, improper or offensive use of the Project, nor permit any use of an Apartment that violates the limitations specified in this Declaration.

7. Emergency Repairs. The Association shall have the right, to be exercised by its Board of Directors or Managing Agent, to enter any Apartment or Limited Common Elements appurtenant thereto from time to time during reasonable hours as may be necessary for the operation of the Project or at any time for making emergency repairs therein required to

prevent damage to any Apartments or Common Elements or for the installation, repair or replacement of any Common Elements.

8. Waiver. The Association shall be bound by all waivers, if any, of claims, rights of action and suits against Declarant, its successors and assigns, which may be contained in the Apartment deeds from Declarant to purchasers of Apartments, and the Association shall not bring against Declarant, its successors and assigns, any claim or right of action or suit relating to any of the matters waived by the purchasers in such Apartment deeds.

9. Duty to Accept Property Transferred by Declarant. The Association shall accept and Declarant reserves the absolute right for a period of twenty-five (25) years following the Recordation of this Declaration, which right may be exercised without joinder or consent of any person, the Board of Directors, any Mortgagee, or any Owners or their mortgagees, to convey to the Association title to any property, including all or any portion of any Property annexed to this Declaration, together with any Improvements thereon and personal property and including any Apartment owned by Declarant, as a Common Element of the Project, together with the responsibility to perform any and all duties associated therewith, which, upon conveyance or dedication to the Association, the Association shall maintain at its expense for the benefit of the Owners as provided in this Declaration. Property interests transferred to the Association by Declarant may include any Apartment, any entry monument, any and all utility areas, drainage facilities, or any portion of the Project facilities, any portion of the Common Elements, and may encompass fee simple title, easements, leasehold interests, and licenses to use; provided, however, that any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Association "as-is," "where-is," free and clear of all liens and encumbrances except for the following: (i) the lien for property taxes and assessments not then due and payable; (ii) the terms of this Declaration and the terms of the Supplemental Declaration annexing the property to the Property; (iii) easements, rights-of-way, reservations, covenants, conditions, restrictions, and equitable servitudes, or other non-financial encumbrances as Declarant in its discretion may deem appropriate; and (iv) such financial encumbrances as may be reasonably accepted and assumed by the Association and specifically approved by resolution of the Board. Any property or interest in property transferred to the Association by Declarant shall not impose any unreasonable or special burden on the Association other than the normal burdens of ownership and maintenance of property and the operation of facilities thereon. Each Owner, by accepting title to any portion of the Property and becoming an Owner, is deemed to approve and accept the acquisition by the Association of Common Elements as provided herein, and any common expenses which may relate thereto. The conveyance by Declarant may be without warranty of any kind except as aforesaid and without the benefit of escrow or title insurance, provided, however, the Association may purchase such title insurance, at the Association's expense, as the Association may wish. Without limiting the foregoing, Declarant reserves the right, in Declarant's sole discretion, to transfer any Commercial Apartment, subject to any leases, contracts, and other agreements applicable to the lease, use, and/or operation of such Apartment or area, and, upon transfer, the Association agrees to assume the obligations of Declarant under such leases, contracts, and other agreements.

10. General Maintenance Review; Reserve Study. The Association shall take the following actions:

(a) The Association shall commission and have prepared within the time required under the Bylaws a reserve study addressing the requirements of Section 514A-83.6(j).

(b) The Association, acting through the Board of Directors, shall cause the Hotel Lobby (shown on the Condominium Map) and the corridors serving the Apartments in the Hotel Apartment Class and Commercial Apartment Class to be refurbished re-carpeted, and repainted, at least once every four (4) to five (5) years, or more frequently, if so required.

(c) The Association shall cause all hardscape, paved areas, and private streets within the Project, for which the Association has responsibility, to be inspected at regular intervals as determined appropriate by the Board. At least one such inspection each year shall be done by a licensed and qualified contractor or architect with expertise in the construction and maintenance of such hardscape and paved areas, who shall be required to provide promptly a written report to the Board of Directors. The written reports shall identify any items of maintenance or repair, which either require current action by the Association, or will need further review and analysis. The Board of Directors shall cause any and all necessary or prudent repairs to be promptly undertaken and completed, to prevent avoidable deterioration or property damage. Without limiting the foregoing, the Board of Directors shall cause all asphalt driveways to be sealed and re-stripped at least once every four (4) to five (5) years, or more frequently, if so required. To the extent required, concrete driveways shall be similarly Maintained.

(d) The Board of Directors shall provide Declarant with at least ten (10) days' prior written notice of each such inspection. Declarant shall have the option, in its sole discretion, without obligation, to attend each such inspection.

(e) For period of ten (10) years from the date of this Declaration, the Board of Directors shall promptly deliver to Declarant information copies of all written inspections and reports rendered pursuant to the Association's maintenance and repair responsibilities hereunder (without any obligation whatsoever of Declarant to review such documents or to take any action in connection therewith).

(f) At the option of the Board of Directors, the Association may, but shall not be required to, prepare and maintain preventive maintenance workbooks setting forth the minimum requirements and additional requirements suggested to be deemed necessary by the Board of Directors for the continuing upkeep and maintenance of the common elements, including the limited common elements (including, but not necessarily limited to, the items set forth in this Section). Such preventive maintenance workbooks shall also include requirements for periodic maintenance, repairs, and improvements, not required to be performed monthly, quarterly, or annually, for which Association funds may be used.

11. Owner's Responsibility. Except as provided otherwise set forth in this Declaration, each Apartment Owner, at its sole cost and expense, shall Maintain and Clean its Apartment and appurtenant Limited Common Element, and all utility services and Facilities which exclusively serve the Owner's Apartment, including without limitation all rollers, locks, handles, tracks and appurtenant hardware associated with all windows, doors, all sliding screen doors, and all glass and window screens, in good and safe order and condition and shall make all repairs or replacements of, in, on, under, within, upon or about such Apartment, whether said repairs or replacements are to the interior or exterior thereof, or structural or non-structural components thereof, or involve ordinary or extraordinary repairs or replacements, necessary to

keep the same in safe first-class working order and condition, howsoever the necessity or desirability thereof may arise, and whether or not necessitated by wear, tear, obsolescence, defects or otherwise. Notwithstanding the foregoing, the Association (i) may undertake and perform all such Maintenance and Cleaning as and where required and charge the same as a common expense to the appropriate Apartment Class or Classes and (ii) may make all major repairs (unless undertaken by the Front Desk Operator in connection with the Hotel Operation Program) and replacements of Furnishings and Appliance located in any Vacation or Long Term Stay Apartment and charge the same as a common expense to the Hotel Apartment Class, except to the extent any repair or replacement of Furnishings and Appliances is due to damage caused by the negligence or willful misconduct of the Owner of a Vacation or Long Term Stay Apartment or the Owner's Invitee, in which event such Owner shall be liable for the fees and costs to repair or replace the damaged Furnishings and Appliances.

12. Class Membership and Election of Board. Allocation of membership on the Board of Directors has been established with a view to afford each of the Apartment Classes reasonable representation of its interest in the administration and operation of the Project, taking into account the continued operation of the Building as a hotel with ancillary uses and the primary operational directive for the Project's continued operation as a hotel in accordance with its legal nonconforming use. The Association shall have six (6) classes of membership, each class consisting of all of the Owners of the Apartments within an Apartment Class, so long as there are Apartments in the Office Apartment Class. The Board of Directors shall consist of seven (7) directors, and the Classes shall elect the following number of directors of the Board (the member elected by his or her Class is sometimes referred to herein as a "**Class Director**"):

- Hotel Apartment Class - 2 directors.
- Office Apartment Class - 1 director.
- Parking Apartment Class - 1 director.
- Commercial Apartment Class - 1 director.
- Front Desk Apartment Class - 1 director.
- Banquet Apartment Class - 1 director.

At such time as all of the Office Apartments are re-characterized as another Class of Apartment and transferred to another Apartment Class as permitted by this Declaration, the Association shall have five (5) classes of membership, each class consisting of all of the Owners of the Apartments within an Apartment Class and Board of Directors shall consist of five (5) directors, and the Classes shall elect the following number of directors of the Board:

- Hotel Apartment Class - 1 director.
- Parking Apartment Class - 1 director.
- Commercial Apartment Class - 1 director.
- Front Desk Apartment Class - 1 director.
- Banquet Apartment Class - 1 director.

J. MANAGING AGENT: SERVICE OF LEGAL PROCESS.

1. Managing Agent. Management and operation of the Community shall be performed by a responsible professional Managing Agent duly registered with the Real Estate Commission of the State of Hawaii for the benefit of the Association. The Managing Agent shall be appointed in accordance with the Bylaws by the Board of Directors; provided that the initial Managing Agent shall be appointed by Declarant. The Managing Agent shall at all times be in compliance with the fidelity bond and other requirements of the Act relating to Managing Agents.

2. Service of Process. The Managing Agent is authorized to receive service of legal process in all cases provided in the Act. In addition, process may be served upon any member of the Board who has a residence or place of business within the County, State of Hawaii. Until such time as the Board is elected, any officer of Declarant shall serve as agent for service of legal process.

K. COMMON EXPENSES.

1. Definition of Common Expenses. "**Common Expenses**" shall mean and include all charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration, management, and operation of the Project and all other sums designated as Common Expenses under the Act, this Declaration or the Bylaws, including, without limiting the generality of the foregoing, the following:

(a) the expenses incurred by the Association (including the limited common expenses incurred) in performing the functions and duties specified in Section I with respect to the Common Elements and Limited Common Elements (including, without limitation, Furnishings and Appliances) within the Project;

(b) all charges for taxes (except real property taxes and other such taxes or assessments which are or may hereafter be assessed separately on each Apartment and the Common Interest in the Common Elements appertaining thereto or the personal property or any other interest of the Apartment Owner) and assessments as provided in the Bylaws;

(c) except as otherwise provided in this Declaration, costs of maintenance, repair, rebuilding, replacement and restoration of the Common Elements (and Limited Common Elements (including, without limitation, Furnishings and Appliances) as specified in Section I) and any additions and alterations thereto, any labor, services, materials, supplies and equipment therefor;

(d) any liability whatsoever for loss or damage arising out of or in connection with the Common Elements or any accident, fire or nuisance thereon;

(e) yard, landscaping, janitorial, trash removal or other similar services,

(f) wages, accounting and legal fees, management fees, and other necessary expenses of upkeep, maintenance, management and operation incurred on or for the Common Elements and the Limited Common Elements that are the responsibility of the Association;

(g) the cost of pest control services, whether or not affecting any particular Apartment or Apartments;

(h) any premiums for insurance, including hazard and liability insurance herein required to be maintained by the Association;

(i) the cost of all utility services, including water, electricity, gas (if any), sewer, sewage treatment, telephone and other similar services, unless separately metered; and,

(j) 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.

2. Payment of Common Expenses. Except as otherwise provided herein or in the Bylaws, the Common Expenses shall be charged to the Apartment Owners in proportion to the Common Interests appurtenant to their respective Apartments and the applicable Class and Multi-class limited common expense. Without limitation of the foregoing, such expenses shall be charged as follows:

(a) except in the case of Multi-class limited common expenses, the Common Expenses charged to an Apartment Class shall not include the cost of Maintenance, repair, replacement or improvement to the other Apartment Classes and the Limited Common Elements appurtenant thereto and visa versa;

(b) except in the case of Multi-class limited common expenses and applicable reserves for Multi-class limited common elements, the Common Expenses charged to one Apartment Class shall not include reserve assessments applicable to components of another Apartment Class, and vice versa (e.g., the reserve assessments applicable to components of the Hotel Apartment Class may not be changed to another Apartment Class);

(c) all charges, costs and expenses incurred by the Association which are necessitated by the negligence, misuse or neglect of an Apartment Owner or occupant or any person under either of them shall be charged to such Apartment Owner or the Owner of the Apartment of such occupant, as a special assessment secured by the lien created under this Section; and,

(d) all charges, costs and expenses incurred by the Association only for or in connection with any Apartment or any Limited Common Elements including but not limited to, all costs of Maintenance, repair, replacement, additions and improvements to the Apartments, a Class or multiple Classes or the Limited Common Elements and utility costs arising therefrom shall constitute Limited Common Expenses of the Project for which only the Owner of any such Apartment, Class or multiple Classes shall be liable, or for which only the Owner of the Apartment, Class or Classes to which such Limited Common Elements are appurtenant shall be liable or, if the Limited Common Elements are appurtenant to more than one Apartment, such as in the case of Class limited common elements and Multi-class limited common elements and the resulting Class limited common expenses and Multi-class limited common expenses, the Owners of such Apartments to which such Limited Common Elements are appurtenant shall be severally liable in proportion to the ratio that the Common Interest appurtenant to their respective Apartments, bears to the sum of the Common Interests of all Apartments to which such Limited Common Elements are appurtenant (e.g., the respective Class or Multi-class limited common interest) and as described in Section E.1. of this Declaration (such charges, costs and expenses incurred only for or in connection with any Apartment or Limited Common Element being herein called "**Limited Common Expenses**").

3. Payment of Individual Limited Common Expenses. Without limitation of the foregoing, the Individual limited common expenses shall be charged to the Owner of the Apartment to which the Individual limited common elements are appurtenant, and if there is more than a single Apartment to which such Individual limited common elements are

appurtenant, then such Individual limited common expenses shall be charged to the Owners of such Apartments in the same ratio which the common interests appurtenant to such Apartments bear to the common interests appurtenant to all of the Apartments to which such Individual Common elements are appurtenant. It is recognized that extra costs and work may be incurred to separately account for and charge Apartment Owners for such 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 Apartment to which similar limited common elements are appurtenant, the apparent difference in the amount of the various assessments to Owners if such costs and expense were separately charged rather than being assessed on the basis of each Apartment's common interest, and other relative factors. 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 Apartments, if the Board determines that such a method of assessment would be equitable. Such a determination shall be final and binding on all Apartment Owners in the absence of a clear showing of abuse of discretion by the Board.

4. Payment of Class Limited Common Expenses. The Class limited common expenses shall be charged to all of the Apartment Owners in the Apartment Class to which the Class limited common elements are appurtenant, in proportion to the Class limited common interests assigned to their respective Apartments.

5. Multi-class Limited Common Expense. The Multi-class limited common expenses shall first be allocated among each of the Apartment Classes to which the Multi-class limited common elements are appurtenant, according to the limited common interest assigned to each Class, and then the amount allocated to each Apartment Class shall be charged to all of the Owners within each such Class in proportion to the Class limited common interests assigned to their respective Apartments.

6. Special Adjustments by the Board.

(a) Notwithstanding the method of allocation provided for in Section K.5 above, the allocation of Multi-class limited common expenses between or among the Apartment Classes to which the Multi-class limited common elements are appurtenant may from time to time be adjusted by a majority vote of the Directors at a meeting duly called for the purpose of reviewing such allocation based upon historical operating experience or an engineer's report or upon the report of another professional expert in the area to which such expenses relate, in order that such expenses shall be more fairly and equitably allocated between or among such Apartment Classes.

(b) Notwithstanding the method of allocation provided for in Section K.4 and K.5 above, allocation of Class or Multi-class limited common expenses among Owners of an Apartment Class may from time to time be adjusted by the vote of the majority vote of the Directors at a meeting duly called for the purpose of reviewing such allocation based upon historical operating experience or an engineer's report or upon the report of another professional expert in the area to which such expenses relate, in order that such expenses shall be more fairly and equitably allocated among such Owners.

(c) Any Owner or Apartment Class aggrieved as a result of any adjustments made pursuant to this Section may seek as his or its sole and exclusive remedy arbitration pursuant to this Declaration.

7. No Exemption from Payment of Common Expenses and Limited Common Expenses. No Apartment Owner may exempt himself or herself from liability for such Owner's contribution toward the Common Expenses and Limited Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Apartment.

8. Exclusions from Definition of Common Expense. Common Expense shall not mean and include costs and expenses for the maintenance, repair or restoration of property or fixtures which comprise a portion of an Apartment, regardless of whether such costs and expenses are incidental to or arise out of the maintenance, repair or restoration of Common Elements of the Project, or Limited Common Elements, and such costs and expenses shall be deemed to be the sole responsibility of the affected Apartment Owner or Owners.

9. Assessments and Failure to Pay Assessments. The Board of Directors shall from time to time assess the Common Expenses and Limited Common Expenses against all the Apartments in their respective proportionate shares, and the unpaid amount of such assessments against any Apartment shall constitute a lien against such Apartment prior to all other liens, except only (i) liens for taxes and assessments lawfully imposed by governmental authority against such Apartment and (ii) all sums unpaid on any mortgage of record which was recorded prior to the recordation of a notice of a lien by the Association, and costs and expenses including attorney's fees provided in such mortgages. The lien of the Association for an unpaid assessment may be foreclosed by the Board of Directors or Managing Agent as provided by the Act, provided that thirty (30) days' prior written notice of intention to foreclose shall be mailed, postage prepaid, to all persons having any interest in such Apartment as shown in the Association's record of ownership. When the mortgagee of a mortgage of record or other purchaser of an Apartment acquires title to such Apartment as a result of the remedies provided in the mortgage, foreclosure of the mortgage, or a sale in lieu of foreclosure, such mortgagee or such other purchaser, as the case may be, and their respective heirs, devisees, personal representatives, successors and assigns, shall not be liable for the share of the Common Expenses, Limited Common Expenses, or assessments chargeable to such Apartment which became due prior to such acquisition of title. Such unpaid share shall be deemed Common Expenses collectible from all of the Apartment Owners, including such mortgagee or such other purchaser and their respective heirs, devisees, personal representatives, successors and assigns, who is an Apartment Owner.

10. Default by an Apartment Owner. If an Apartment Owner shall default for a period of thirty (30) days or more in the payment of such Owner's share of the Common Expenses, the Board of Directors may, at its option, so long as such default shall continue, demand and receive from any tenant of the Apartment Owner, the rent due or becoming due from such tenant to the Apartment Owner up to an amount sufficient to pay all sums due from the Apartment Owner, including interest, if any, and any such payment of rent to the Board of Directors by the tenant shall be sufficient discharge of such tenant, as between such tenant and the Apartment Owner to the extent of the amount paid. Any such demand or acceptance of rent from any tenant shall not be deemed to be a consent to or approval of any lease by the Apartment Owner or a release or discharge of any of the obligations of the Apartment Owner hereunder, or an acknowledgement or surrender of any rights or duties hereunder. In the event that the Board of Directors makes demand upon the tenant, the tenant shall not have the right to question the right of the Board of Directors to make such demand, but shall be obligated to make the payments to the Board of Directors as demanded by the Board; provided, however, that the Board of Directors may not exercise this right if a receiver has been appointed to take

charge of the Apartment pending a mortgage foreclosure or if a mortgagee is in possession pending a mortgage foreclosure.

11. Excess Charge for Common Expenses. In the event that assessments received during any year are in excess of the actual expenditures for such year by the Association for Common Expenses, the Board of Directors may, subject to approval by the Apartment Owners at the next annual meeting, determine that such excess shall be:

(a) applied in whole or in part to reduce the assessments for the immediately subsequent year;

(b) designated in whole or in part as a capital contribution to the Association to be used for future capital improvements and replacements;

(c) segregated and held in whole or in part as a "**Custodial Fund**" to be expended solely for specifically designated capital improvements and replacements; or

(d) segregated and added in whole or in part to the Replacement Reserve Fund established hereunder.

The proportionate interest of each Apartment Owner in said capital contributions, Custodial Fund or Replacement Reserve Fund, cannot be withdrawn or separately assigned but shall be deemed to be transferred with such Apartment even though not expressly mentioned or described in the conveyance thereof. In case the Condominium Property Regime hereby created shall be terminated or waived, said capital contribution, Custodial Fund or Replacement Reserve Fund remaining after full payment of all Common Expenses of the Association shall be distributed to all Apartment Owners in proportion to their respective Common Interests except for the Owners of any Apartments then reconstituted as a new condominium property regime.

L. COMPLIANCE WITH DECLARATION AND BYLAWS.

All Apartment Owners, their tenants, families, servants and guests, and any other persons who may in any manner use the Project, or any part thereof, shall be bound by and comply strictly with the provisions of this Declaration and the Bylaws, and all agreements, decisions and determinations of the Association as lawfully made or amended from time to time, and failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board of Directors or Managing Agent on behalf of the Association or, in a proper case, by any aggrieved Apartment Owner; in the event of the failure of any Apartment Owner to comply fully with any of the same within thirty (30) days after written demand therefor by the Association, or such shorter period as otherwise provided in this Declaration, the Association shall promptly give written notice of such failure to the holder of any first mortgage of such Apartment, as shown in the Association's record of ownership or who has given the Board of Directors notice of its interest through the Secretary of the Association or the Managing Agent.

M. INSURANCE.

1. General Provisions. The Association shall at all times maintain the insurance set forth in this Section M, and shall assess the cost of such insurance as Common Expenses to the Apartment Owners,

(a) Each insurance company must be licensed to do business in the State of Hawaii, with a financial performance rating of Class VI or better according to Best's Insurance Report. The only exceptions are for (i) federal flood insurance and other government insurance programs and (ii) insurance not available, or not available at a reasonable price, from a company licensed in Hawaii. If the insurance cannot be obtained from a company having the required Best's rating, or if the Board decides that the cost is too high, then the Association may buy the insurance from any financially sound company of recognized responsibility.

(b) The Board has the right and power to increase coverage or to obtain better terms than those stated in this Section M if the Board decides that it is necessary or is in the best interests of the Association. The Board may also buy other kinds of insurance even if they are not described in this Section M. For example, the Board might buy business interruption insurance.

(c) The Board of Directors shall review not less frequently than annually the adequacy of its entire insurance program and shall adjust its insurance program accordingly; the Board of Directors shall then prepare a report of its conclusions and action taken. Copies of every policy of insurance procured by the Board of Directors and such report of the Board of Directors shall be available for inspection by any Apartment Owner (or purchaser holding a contract to purchase an interest in an Apartment) and the holder of any first mortgage on any Apartment at the office of the Managing Agent.

(d) The Board shall not be liable for any decision it makes in connection with insurance provided the Board is not grossly negligent or acts with willful disregard. Neither Developer nor the Managing Agent shall be liable for insurance decisions absent gross negligence or willful misconduct.

2. Hazard Insurance. The Association shall at all times keep all buildings and Common Elements of the Project, and, whether or not part of the Common Elements, all exterior and interior walls, floors, and ceilings and all exterior glass, in accordance with the as-built plans and specifications, insured against loss or damage by fire and other damages under a condominium special property broad form policy of insurance with an extended coverage endorsement, or such other special form policy of insurance that provides equivalent coverage in an amount sufficient to provide for the full repair or full replacement thereof without deduction for depreciation (but taking into consideration any reasonable deductible), with an inflation guard endorsement and a water damage endorsement, in the name of the Association, as trustee for all Apartment Owners and all mortgagees of record according to the loss or damage to their respective Apartments and appurtenant Common Interest. Such insurance shall be payable in case of loss to such bank or trust company authorized to do business in the State of Hawaii as the Board of Directors shall designate (herein sometimes called the "Trustee") for the custody and disposition as herein provided of all proceeds of such insurance, and the Association shall from time to time cause to be deposited promptly with the Secretary of the Association and with each mortgagee of record with any interest in an Apartment who may have requested the same true copies of such insurance policies or current certificates thereof and promptly notify in writing each such mortgagee of record of any deposit with the Trustee of any proceeds of such insurance, all without prejudice to the right of each Apartment Owner to insure the Apartment for the Apartment Owner's own benefit. Flood insurance shall also be provided under the provisions of the federal Flood Disaster Protection Act of 1973, if the property is located in an identified flood hazard area, with minimum limits equal to the aggregate of the outstanding principal balances of all mortgage loans on Apartments in the Project or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is

less. Except as provided in Section N, 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 Apartments and Common Elements in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as shall be first approved by the Board of Directors as herein provided, and the Association at its Common Expense shall make up any deficiency in such insurance proceeds. Every such policy of insurance shall:

(a) Provide that the liability of the insurer thereunder 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 Apartment Owner;

(b) Provide that coverage shall not be affected, reduced or lost due to (i) any increased danger or hazard on any part of the Project, which is not within the knowledge of the Association, the Board of Directors, the Managing Agent or Apartment Owners collectively, or (ii) any danger of hazard, which the Association, the Board of Directors or all Apartment Owners collectively could not have controlled;

(c) Provide that the policy may not be cancelled or substantially modified by the insurance company without at least sixty (60) days' written notice to the Board of Directors and the Managing Agent. If the insurance company agrees, this notice must also be given to each Apartment Owner (and mortgagee or seller of an Apartment under an agreement of sale) who has requested, in writing, such notice from the insurance company;

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

(e) Contain a waiver by the insurer of any right to deny liability because of vacancy of any Apartment or Apartments;

(f) Provide that the insurance company shall not have the right to require that any part of the Project be restored or replaced, if the Apartment Owners elect otherwise, however, Apartment Owners shall be subject to the standard valuation clause contained in the policy;

(g) Provide that the insurer's agent or broker, at the inception of the policy and on each anniversary date thereof, shall provide the Board of Directors with a written summary, in layman's terms, of the policy. This summary shall include, without limitation, a description of the type of policy, the coverage and limits thereof, the amount of the annual premium, and the renewal dates. Upon receipt of such summary from the insurer, the Board of Directors shall have the summary available for review by Apartment Owners and the holder of any first mortgage on any Apartment;

(h) Contain a standard mortgagee clause which shall:

(1) provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any Apartment in the Project, in their respective order and preference, either named in the policy or on file with the insurer;

(2) provide that non-compliance with the policy terms or conditions by one insured person or entity shall not be imputed to other innocent insured persons or entities;

(3) waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution from the mortgagee; and

(4) provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by the Board of Directors;

(i) If obtainable, be accompanied by the certificate of a licensed insurance broker or agent certifying that the policy complies with and satisfies the requirements of this Section M.2; and

(j) If obtainable, include ordinance and law coverage and appropriate endorsements specifying that a claim will be adjusted on a replacement cost basis with no deduction for depreciation and no requirement that the improvements be rebuilt in whole or in part on the same site or any other site.

3. Liability Insurance. The Board of Directors, on behalf of the Association and at its Common Expense, shall also effect and maintain at all times comprehensive general liability insurance, covering all Apartment Owners, the Board of Directors, the Association, the Managing Agent and its employees, and the employees of the Association with respect to the Project in a responsible insurance company authorized to do business in Hawaii and having a financial rating by Best's Insurance Reports of Class A VI or better, with minimum limits of not less than TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) for personal injury to or death of any number of persons in any one accident or occurrence and ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) for property damage (which liability insurance for personal injury and property damage may be written in a combination of General Liability and Umbrella Liability policies), or such higher limits as the Board of Directors may from time to time establish with due regard to then prevailing prudent business practice in the State of Hawaii as reasonably adequate for the protection of the Board of Directors, the Association, all Apartment Owners' Common Interests in the Project, the Managing Agent and its employees and the employees of the Association, and from time to time cause to be deposited promptly with each mortgagee of record of any interest in an Apartment current certificates of such insurance, all without prejudice to the right of any Apartment Owners to maintain additional liability insurance for their respective Apartments. Any such policy of insurance shall:

(a) Provide that non-compliance with the policy terms or conditions by one insured person or entity shall not be imputed to other innocent insured persons or entities;

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

(c) Contain a "**severability of interest**" endorsement precluding the insurer from denying the claim of an Apartment Owner because of negligent acts of the Board of Directors, the Association, the Managing Agent or any other Apartment Owner; and

(d) Not be cancelled or substantially modified by the insurance company without at least sixty (60) days' written notice to the Board of Directors and the Managing Agent. If the insurance company agrees, this notice must also be given to each Apartment Owner (and mortgagee or seller of an Apartment under an agreement of sale) who has requested, in writing, such notice from the insurance company.

4. Directors' and Officers' Liability Insurance. The Association, at its Common Expense, may also procure and maintain directors' and officers' liability insurance covering the directors and officers of the Association with respect to their actions and activities as directors and officers of the Association, in any insurance company authorized to do business in the State of Hawaii with minimum limits as established by the Board of Directors, and shall from time to time deposit promptly with the Secretary of the Association current certificates of any such insurance. Any such policy of insurance shall provide that the insurer or its agent or broker, at the inception of the policy and on each anniversary date thereof, shall provide the Board of Directors with a written summary in laymen's terms, of the policy. This summary shall include, without limitation, a description of the type of policy, the coverage and limits thereof, the amount of the annual premium and the renewal dates. Upon receipt of such summary from the insurer, the Board of Directors shall have the summary available for review by Apartment Owners and the holder of any first mortgage on any Apartment.

N. INSURED DAMAGE OR DESTRUCTION.

1. Damage to One Apartment. If the Project is damaged by fire or other casualty which is insured against and said 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 Trustee for payment of the contractor employed by the Board of Directors to rebuild or repair such Apartment and/or said Limited Common Elements, including paint, floor covering and fixtures, 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 so damaged.

2. Damage to More than One Apartment. If such damage extends to two or more Apartments and/or the Limited Common Elements appurtenant thereto, or to any other Common Elements, the Board of Directors shall thereupon contract to repair or rebuild the damaged portions of the buildings, including all Apartments and Limited Common Elements so damaged, as well as the Common Elements, in accordance with plans and specifications therefor which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board of Directors and any mortgagee of record of any interest in an Apartment directly affected thereby; provided that in the event said modified plan eliminates any Apartment and such Apartment is not reconstructed, the 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 (less the proportionate share of said Apartment in the cost of debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds.

3. Insufficient Insurance Proceeds. All insurance proceeds shall be paid by the 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 Section N. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding any Common Elements, other than any Limited Common Elements, the Board of Directors shall levy, as soon as reasonably possible following the determination of the amount of such insufficiency, a special assessment on the Owners of all Apartments in proportion to their respective Common Interests. Any costs in excess of the insurance proceeds for the repairing and/or rebuilding of any Apartment or Limited Common Element appurtenant thereto (but not including any Common Elements within any Apartment) shall be specially assessed against the Owner of such Apartment and said special assessment shall be secured by the lien created under Section K of this Declaration.

4. Payments for Repair Work. The cost of all repair work (as estimated by the Board of Directors) shall be paid out from time to time or at the direction of the Board of Directors as the work progresses, but subject to the following conditions:

(a) An architect or engineer (who may be an employee of the Board of Directors) shall be in charge of the work.

(b) Each request for payment shall be made on seven (7) days' prior notice to the 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 of Directors for payments by the Board of Directors to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or 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 Trustee, the sum requested does not exceed the value of the work done to the date of such certificate.

(c) Each request shall be accompanied by waivers of liens satisfactory to the 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 Trustee, that no mechanics' or other lien or instrument for the retention of title has been filed with respect to the premises for any part of the work not discharged of record.

(d) 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.

(e) The fees and expenses of the Trustee, as determined by the Board of Directors and the Trustee, shall be paid by the Association as Common Expenses, and such fees and expenses may be deducted from any proceeds at any time in the hands of the Trustee.

(f) Such other conditions not inconsistent with the foregoing as the Trustee may reasonably request.

5. Any Remaining Insurance Proceeds. Upon completion of the work and payment in full therefor, any remaining proceeds of insurance then or thereafter in the hands of the Board of Directors or the Trustee shall be paid or credited to all of the Owners of the

Apartments and the holders of any mortgage on the Apartments, as their interests may appear, in proportion to the respective Common Interests appurtenant to each Apartment.

6. Waiver of Subrogation. To the extent that any loss, damage or destruction to any building or other property is covered by insurance procured by the Board of Directors, the Board of Directors shall have no claim or cause of action for such loss, damage or destruction against any Apartment Owner or tenant. To the extent that any loss, damage or destruction to the property of any Apartment Owner or tenant is covered by insurance procured by such Owner or tenant, such Owner or tenant shall have no claim or cause of action for such loss, damage or destruction against the Board of Directors, the Association, the Managing Agent or any other Apartment Owner or any person claiming under any of them.

O. CONDEMNATION.

1. General Provisions. In case at any time or times the Project or any part thereof shall be taken or condemned by any entity having the power of eminent domain, or shall be sold to such entity under threat of condemnation, all compensation and damages payable for or on account of such taking shall be payable to a condemnation trustee, who shall be a bank or trust company designated by the Board of Directors doing business in the City and County of Honolulu, State of Hawaii. The Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related to the actual or threatened condemnation of the Project or any part thereof.

2. Division of Proceeds Between Apartments. Any proceeds will be allocated between the Apartment Owners (a) pursuant to a final court decision or (b) absent such a decision, a qualified real estate appraiser will divide the proceeds among the Apartments based on the value of each Apartment and its common interest. Such appraiser shall be a member of the American Institute of Real Estate Appraisers, or of a successor organization. If the appraiser who acted on behalf of the apartment owners in the condemnation proceedings is so qualified, then such appraiser shall be responsible for allocating the remaining condemnation aware among the Apartments. If there was no such appraiser, or if that appraiser is not qualified, or if there was more than one appraiser, then the Board shall select an appraiser subject to the right of the Apartment Owners to elect, by a majority vote, to require that a panel of three appraisers make the decision. The Apartment Owners shall make such election within fifteen days after the Board announces the appointment of the appraiser, whereupon the Board must choose three appraisers and the decision of any two of them will decide how to divide the proceeds.

3. Condemnation or Termination of the Whole Project. If the whole project is taken or so much of it is taken that the Association decides to terminate the condominium property regime, then the condemnation trustee must pay the condemnation proceeds as follows: (a) the trustee shall pay to Developer and to its Mortgagee, if any, Developer's share of the proceeds for Developer's reserved rights; and (b) the trustee must pay to each Apartment Owner and the Owner's lender, as their interest may appear, the share of the proceeds for the Owner's Apartment as provided in Section O.2.

4. Partial Condemnation.

(a) If only part of the Project is taken and if the Association does not decide to terminate the condominium property regime, then the condemnation trustee must pay

to Developer and to its Mortgagee, if any, Developer's share of the proceeds for Developer's reserved rights. The remainder of the proceeds shall be distributed as follows:

(1) Removal of Apartment. If an Apartment or its Limited Common Elements are eliminated or a portion of the same is eliminated such that the remainder cannot be repaired or rebuilt in a manner that is satisfactory to the Apartment Owner, the condemnation trustee will pay to the Owner and to any lender having a mortgage on the Apartment, as their interests may appear and in full satisfaction of their interests in the Apartment, the share of the proceeds allocable to that Apartment and its Limited Common Elements, after first deducting from those proceeds that Apartment's share of the cost of debris removal. The Association must amend this declaration to remove the Apartment and to adjust the common interests of the remaining Apartments.

(2) Repair and Restoration. In all other cases, the Association must repair and restore the remaining improvements according to their design just before the taking. If this cannot be done, then the Association must repair or restore the remaining improvements according to a new design. The new design must comply with all laws then in effect. Any changed plans and specifications must first be approved by the Board and by any lender having a mortgage on each Apartment remaining after the taking. If there are not enough proceeds to pay the cost of the repairs and restoration, the Association must pay the shortfall as common expense. The Board is expressly authorized to pay the shortfall using money in the Replacement Reserve Fund. If this is not enough, then the Board must (i) determine the remaining amount of the shortfall and (ii) charge a special assessment to the Owners of all Apartments except any Apartments eliminated as provided in subsection (1) above. Each Apartment will pay a percentage of the special assessment equal to the percentage of the common expenses that it will be paying after the removal of any Apartments being eliminated as provided in subsection (1) above.

(3) Excess Condemnation Proceeds. "Excess proceeds" are proceeds remaining after paying (i) all amounts payable to Owners and lenders of removed Apartments, (ii) the costs of debris removal, and (iii) the costs to repair and restore the remainder of the Project. Each Apartment (including Apartments eliminated under subsection (1) above) will each receive a percentage of the excess proceeds equal to the percentage of the common expenses that it paid before the condemnation.

(4) Removal of Debris. Unless restoration or replacement is undertaken within a reasonable time after such taking, condemnation or sale, the Association at its common expense must remove all remains of the improvements on the remaining Land and restore the site to good orderly condition and even grade.

P. UNINSURED CASUALTY; PARTIAL RESTORATION; AND DETERMINATION AGAINST RESTORATION.

1. Uninsured Casualty. In case at any time or times any improvements of the Project shall be substantially damaged or destroyed by any casualty not herein required to be insured against, such improvements shall, to the extent permitted by law, be rebuilt, repaired or restored unless Apartment Owners owning eighty percent (80%) or more of the Apartments in number and eighty percent (80%) of the Apartment Owners vote to the contrary. Any such restoration of the Common Elements shall be completed diligently by the Association at its Common Expense and the Apartment Owners shall be solely responsible for any restoration of their respective Apartments so damaged or destroyed, according to the original plans and

elevation thereof, or such other plan first approved by the Board of Directors, and the mortgagees of record of any interest in an Apartment directly affected thereby. Unless such restoration is undertaken within a reasonable time after such casualty, the Association at its Common Expense shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good orderly condition and even grade.

2. Partial Restoration. Restoration of the Project with less than all of the Apartments after any casualty or condemnation may be undertaken by the Association, except where required by law, only pursuant to an amended declaration, duly adopted by the affirmative vote of not less than eighty percent (80%) of the Apartment Owners, including at least eighty percent (80%) of the Owners of Apartments that will not be restored, and by all holders of liens affecting all or any part of the Project, by (a) removing the Project from the condominium property regime established by the execution and recordation of this Declaration, (b) reconstituting all of the remaining Apartments and Common Elements to be restored as a new condominium property regime, and (c) providing for payment to the Owner of each Apartment not to be restored the agreed value of such Apartment and its Common Interest. Where restoration with less than all of the Apartments after casualty or condemnation is required by law, such restoration may be undertaken provided the Owner of each Apartment not to be restored is paid the agreed value of such Apartment and its Common Interest.

3. Determination Against Restoration in the Event of an Insured Casualty or Condemnation. Except as otherwise provided in Section P.1 or P.2, in the event of an insured casualty or the condemnation of any part or all of the Project, the Project shall be repaired, rebuilt and restored as provided in Section N hereof in the case of an insured casualty, and as provided in Section O hereof in the case of condemnation, unless, within ninety (90) days after such a casualty or condemnation, it is determined by the affirmative vote of eighty percent (80%) of the Apartment Owners (including eighty percent (80%) of the Apartment Owners of the damaged or condemned Apartments) that the Project will not be so repaired, rebuilt or restored.

Q. ALTERATION OF PROJECT.

1. Consent Required for Alteration of the Project. Except as otherwise provided by the federal Fair Housing Act (42 U.S.C. Sec. 3601 et seq.) as amended by the Fair Housing Amendments Act of 1988, and the Americans With Disabilities Act, as amended, 42 U.S.C. §§ 12101 et seq., including any and all rules and regulations promulgated thereunder and the rules and regulations promulgated thereunder, as the same may be amended from time to time in the future and except as otherwise provided herein, restoration or replacement of the Project or any building or other structure thereof or construction of any additional building or other structure or structural alteration or addition thereto, shall be undertaken by the Association or any Apartment Owner only subject to the limitations specified in this Declaration, including without limitation the Hotel Use Section of this Declaration, and (i) pursuant to an amendment of this Declaration, duly executed by or pursuant to a vote or the written consent of seventy-five percent (75%) of the Apartment Owners together with the consent of all Apartment Owners whose Apartments or the Limited Common Elements appurtenant thereto are directly affected (as determined in a reasonable manner by the Board of Directors) and (ii) in accordance with complete plans and specifications therefor first approved in writing by the Board of Directors, and (iii) promptly upon completion of such restoration, replacement, construction, alteration or addition the Association shall duly record or file of record such amendment together with a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer; PROVIDED, HOWEVER, that:

(a) the foregoing action of the Apartment Owners and their consent shall not apply to or be required for **"nonmaterial structural additions to the common elements"** as defined in Section 514A-89 of the Act, which shall require approval only by the Board and a majority of the Apartment Owners;

(b) the foregoing action of the Board, Apartment Owners and their consent shall not apply to or be required for alterations permitted pursuant to the rights and easements reserved to Developer or specific Apartment Owner(s) set forth in this Declaration, including without limitation, the easements set forth in Section F above and the reserved rights set forth in Section T, all of which rights may be exercised without the consent of the Board or any other person;

(c) the foregoing action of the Board, Apartment Owners and their consent shall not apply to or be required for alterations undertaken pursuant to the rights reserved to Developer and the Apartment Owners set forth in this Section Q;

(d) any alterations or additions in respect of any Apartment shall be subject to the limitations specified in the Hotel Use Section of this Declaration and shall require only the written approval thereof, including the plans therefor, by (i) the Owner of the Apartment in question, (ii) the holders of first mortgage liens affecting such Apartment (if the lien holders require such approval), (iii) by the appropriate agencies of the State of Hawaii and the City and County of Honolulu (if such agencies so require), and (iv) with respect to alterations or additions to those Apartments identified as "ADA Accessible Apartments" on **Exhibit B**, the written approval of Developer; provided, however, that upon completion of the alterations or additions, the Owner of the affected Apartment shall duly record an amendment to this Declaration together with the approved plans showing only such alterations and alterations made to the Apartment, and such amendment need only be executed by the Apartment Owner and its lien holder, if required by the lien holder;

(e) the Front Desk Owner may from time to time install, maintain, move or rearrange the reception desk, non-loadbearing partitions, and other nonstructural improvements within the Front Desk Apartment and the elements contained within the Front Desk Apartment, and such improvements shall not be considered an alteration or addition to the Front Desk Apartment, but if the Front Desk Owner is not Developer, then Developer's prior written approval of the plans will be required for any modification occurring prior to December 31, 2010; and

(f) any change or addition to the Project shall comply in all respects with this Declaration and the Hotel Use Section as well as all applicable governmental codes, statutes, ordinances and rules and regulations, or with all variances granted therefrom; provided, however, alterations by Developer need not comply with the Hotel Use Section of this Declaration.

2. Additions or Alterations Solely Within an Apartment or Limited Common Element. Notwithstanding anything to the contrary contained herein, an Owner or Owners (if there be more than one Owner of an Apartment) of an Apartment shall have the right, subject to the limitations specified in the Hotel Use Section of this Declaration and subject further to the Easements and other rights and licenses reserved for the benefit of other Apartment Owners, at any time and from time to time at such Owner's or Owners' sole cost and expense, and without the necessity of the consent or joinder of any other Apartment Owner, to make any of the following alterations solely within the Apartment and its appurtenant Limited Common Element,

which such Owner or Owners control: (i) to install, maintain, remove and rearrange partitions and other structures from time to time within such Apartment; (ii) to finish, alter or substitute any plumbing, electrical or other fixtures attached to the ceilings, floors and walls as shall be appropriate for the utilization of such Apartment by such Owner or Owners or the tenants or lessees thereof (provided, however, that with respect to any item connecting to a common facility, such as electrical or plumbing such undertaking shall be first approved by the Board, and may be made subject to such reasonable conditions as the Board may impose); (iii) to tile, finish, re-carpet, and do or cause to be done such work on the floors of any Apartment; and (iv) to install optional kitchenettes in Apartment Type Suites C, D and E as shown on the Condominium Map; provided, however, that nothing contained in this paragraph shall authorize any work or alteration which would jeopardize the soundness or safety of any part of the Project, reduce the value thereof, materially adversely affect any other Apartment, materially alter the uniform external appearance of the Project, materially affect or impair any easement or rights of any of the other Apartment Owners or materially interfere with or deprive any non-consenting Owner or Owners of the use or enjoyment of any part of the Common Elements or right of access over or through the Apartment's Limited Common Elements; provided, further, that, notwithstanding anything to the contrary in this Section or otherwise in this Declaration, no Owner or Owners (if there be more than one Owner of an Apartment) of a Vacation Apartment or Long Term Stay Apartment shall be permitted to change the existing lock access system on the entry door to such Owner's Apartment, it being understood and agreed that, in the event the Owner of a Vacation Apartment or Long Term Stay Apartment violates this provision, (i) Declarant shall have the right to enter the Apartment of such Owner for the purpose of changing the lock access system back to the standard lock access system and (ii) such Owner shall be liable for all fees and costs incurred by Declarant in connection therewith. Notwithstanding the foregoing prohibition regarding the existing lock access system, an Owner of a Vacation Apartment or Long Term Stay Apartment shall be permitted to install at such Owner's sole cost and expense a supplemental locking mechanism on the entry door to such Owner's Apartment, provided that such Owner immediately provides a key to such supplemental locking mechanism to the Front Desk Operator, it being understood and agreed that if the Association, Managing Agent or Front Desk Operator is required to forcibly enter such Owner's Apartment due to the failure of such Owner to provide a key to the supplemental locking mechanism to the Front Desk Operator, such Owner (a) will be liable for all fees and costs incurred by the Front Desk Operator, Managing Agent and/or Association in connection therewith and (b) shall indemnify and hold the Front Desk Operator, Managing Agent and/or Association harmless from and against any and all cost and expense attributable thereto. Further, nothing in this paragraph shall prohibit the Board from effecting such changes within an Apartment or Limited Common Element, or to require the same, in order that the Building and other improvements of the Project may continue to comply with applicable law, including any fire or building code requirements.

3. Connection between Apartments.

(a) The Owner of any two or more adjacent Apartments separated by a common element which is a wall may, with the consent of all mortgagees of record of any interest in such Owner's Apartments and subject to the limitations specified in the Hotel Use Section of this Declaration, alter or remove all or portions of the intervening wall (and, if the Owner so desires, install a door within the opening created by such removal), if the structural integrity of the common elements or any other Apartment in the Project will not thereby be adversely affected and if the finish of the common element then remaining is placed in a condition substantially comparable to that of the common element prior to such alterations. As used above, "adjacent Apartments" shall not include Apartments that are located above or

beneath one another on different floors. For purposes hereof "alterations" shall include without limitation, installing a door therein which shall be similar in appearance to other doors visible along the hallway, so the Owner will have the exclusive use of such hallway area). Notwithstanding the foregoing, however, the Owner of the adjoining Apartments, excepting Developer, may not exclusively use or make alterations or additions within any portion of the hallway that provides access to such the adjacent Apartments.

(b) Prior to commencing any such alteration or removal, the Apartment Owner shall provide to the Board (i) a certification in form and content reasonably satisfactory to the Board signed by a duly registered Hawaii architect or engineer, that such alteration or removal will not adversely affect the structural integrity of the common elements or any other Apartment in the Project, (ii) satisfactory evidence that all governmental approvals required for such alteration or removal have been duly obtained, and (iii) if the cost of such alteration or removal, as reasonably determined by the Board or Directors, should exceed the sum of \$10,000, the Board of Directors may require that the Owner provide evidence satisfactory to the Board of Directors of sufficient financing to complete such alteration or removal or, in lieu thereof, require that the Owner obtain a performance and lien payment bond, naming as obliges the Board of Directors and the Association and collectively all Apartment Owners and their respective mortgagees of record, as their interests may appear, for a penal sum of not less than one hundred percent (100%) of the estimated cost of such alteration or removal. Such alteration or removal may be undertaken without the necessity of and amendment to this Declaration or the Condominium Map and, except as otherwise provided in this Section, without the consent or joinder of the Association, the Board or any other person.

(c) If any intervening wall between adjacent Apartments shall have been altered or removed pursuant to the foregoing provisions, then prior to the termination of the common ownership of such adjacent Apartments, the Owner of such Apartments shall restore such intervening wall to substantially the same condition in which the same existed prior to such alteration or removal.

(d) Notwithstanding any alteration or additions permitted under this Section, such shall not affect the common interest or limited common interest allocable to any Apartment.

4. Subdivision of Non-Long Term Stay/Vacation Apartments. The Owner of any Non-Long Term Stay/Vacation Apartment may, with the consent of all mortgagees of record of any interest in such Apartment and except as otherwise provided herein (including the limitations specified in the Hotel Use Section of this Declaration), without the consent or joinder of the Board, the Association, any other Apartment Owner or any other person, from time to time subdivide such Apartment (the "Original Apartment") into any number of separate Apartments of the same Class type (the "Resulting Apartments") and, except with respect to a Parking Apartment, may create walls, partitions, doors, foyers, corridors or vestibules between the Resulting Apartments, and may allocate any Individual limited common elements appurtenant to the Original Apartment to the Resulting Apartments, upon the following terms and conditions:

(a) The structural integrity of the common elements and all other Apartments in the Project shall not be thereby adversely affected.

(b) The Owner of the Original Apartment shall execute and file in the Recording Offices (without the necessity of the consent or joinder of the Association, the Board,

any other Apartment Owner or any other person), and promptly deliver to the Board of Directors a true and correct filed copy of, an amendment to this Declaration which contains the following:

(i) a description of the layout, location, dimensions and apartment number of each of the Resulting Apartments,

(ii) a description of the limited common elements appurtenant to the Resulting Apartments,

(iii) the percentage of the common interest appurtenant to, and Class limited common interests assigned to, each Resulting Apartment (the sum of which common interests and Class limited common interests, as applicable, shall equal the common interest and the Class limited common interest, respectively, appurtenant to the Original Apartment), and

(iv) an amendment to the Condominium Map which accurately depicts the layout, location, apartment numbers, and dimensions of the Resulting Apartments.

(c) Upon the completion of any construction relating to the subdivision of the Original Apartment, the Owner of the Original Apartment shall file in the Recording Offices, and promptly deliver to the Board of Directors a true and correct filed copy of, a statement of a registered architect or engineer, certifying that the amendment described in clause (b) (iv) above accurately depicts the Resulting Apartments, as built.

(d) Prior to commencing any construction relating to the subdivision of the Original Apartment, the Apartment Owner shall deliver to the Board a certificate, in form and content reasonably satisfactory to the Board, signed by a duly registered Hawaii architect or engineer, that the proposed work will not adversely affect the structural integrity of the common elements or any other Apartments in the Project.

(e) Such modifications shall not impair any Apartment Owner's right of access to their respective Apartment from a public way; provided, however, no impairment shall be found to exist or to have occurred if reasonable alternate access is provided as part of the proposed alteration.

(f) The Resulting Apartments shall not be assigned apartment numbers which are the same as the apartment number of any other Apartment in the Project.

5. Developer's Reserved Rights Regarding Alterations. Notwithstanding any other provision in this Declaration to the contrary, prior to the time that all Apartments in the Project have been sold and recorded and the filing by Developer of the "**as built**" verified statement required by Section 514A-12 of the Act, Developer shall have the right, without the approval, consent or joinder of any Apartment Owner or the Owner's mortgagee, (a) to make alterations in the Project (and/or to amend this Declaration and the Condominium Map accordingly) which change the configuration of, alter the number of rooms of, decrease or increase the size of, or change the location of any Apartment (and the Limited Common Elements appurtenant thereto) in the Project which is not sold and recorded, (b) to exercise any of the rights reserved to Developer in this Declaration, (c) to make other alterations in the Project (and to amend this Declaration and the Condominium Map accordingly) which make minor changes in any Apartment in the Project or the Common Elements which do not affect the physical location, design or size of any Apartment which has been sold and recorded, or (d) to

make alterations to the common elements within the Project permitted by this Declaration and to amend this Declaration or Condominium Map accordingly; PROVIDED, HOWEVER, that as to (a) above, any such changes shall be reflected in an amendment to this Declaration. As used herein the term "**sold and recorded**" shall mean and refer to the sale of Apartments in the Project, and the recording of the deed in the Recording Office from Developer to any party who is not the assignee or holder of Developer's reserved rights under this Declaration.

R. REPLACEMENT RESERVE FUND. The Board of Directors shall establish and maintain the Replacement Reserve Fund as required by Section 514A-83.6 of the Act, as amended, by the assessment of and payment by all Apartment Owners in equal monthly installments of their respective proportionate shares of such annual amount as required by the Act for the upkeep, repair, replacement of those parts of the Common Elements, including, but not limited to roofs, walls, decks, paving, and equipment, and such other limited common elements that the Association is obligated to maintain. The Replacement Reserve Fund may from time to time be increased or reduced by the Board of Directors pursuant to the Act. The proportionate interest of each Apartment Owner in the Replacement Reserve Fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with such Apartment even though not expressly mentioned or described in the conveyance thereof. In case the Condominium Property Regime hereby created shall be terminated, the Replacement Reserve Fund remaining after full payment of all Common Expenses of the Association shall be distributed to all Apartment Owners in proportion to their respective Common Interests, excluding Owners of any Apartments then reconstituted as a new condominium property regime. In the event additional Apartments are created and annexed to the Project, the account of each Apartment Owner with respect to funds in the Replacement Reserve Fund shall be subject to adjustment as set forth otherwise in this Declaration.

S. AMENDMENT OF DECLARATION.

1. Amendment of this Declaration by Apartment Owners. Except as otherwise provided herein or in the Act, this Declaration may be amended by vote or written consent of seventy-five percent (75%) of the Apartment Owners, subject to securing the consent of an affected Owner where so specified in this Declaration, and shall be effective only upon the recordation in the Recording Office of an instrument setting forth such amendment and the votes or written consent obtained, and duly executed by the proper officers of the Association. If any provision of this Declaration is considered an amendment hereof and, pursuant to this Declaration, (a) the vote or written consent of the Apartment Owners is required, and (b) such vote or written consent of the required percent or percentage of Apartment Owners has not been obtained, then such provision shall not be effective and the provision as originally written shall prevail, until any such requisite vote or consent is obtained. In any event, the validity and enforceability of the other provisions of this Declaration shall remain unaffected.

2. Amendment of this Declaration by Developer to Record an As-Built Certificate. Notwithstanding the foregoing and notwithstanding the recordation in the Recording Office of any or all Apartment deeds conveying any or all of the Apartments to any person, Developer hereby reserves the right to successively amend this Declaration (including the Bylaws and, when applicable, the Condominium Map), without the consent, approval or joinder of the Association, persons then owning or leasing the Apartments, to file the "**as built**" verified statement (with plans, if applicable) required by Section 514A-12, Hawaii Revised Statutes, as amended, (a) so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed or being filed simultaneously with such amendment fully and accurately depict the layout, location, Apartment

numbers and dimensions of the Apartments as built or (b) so long as any plans filed therewith involve only changes to the layout, location, Apartment numbers, dimensions of or other changes to the Apartments and Common Elements as built which Developer is permitted to make in accordance with this Declaration.

3. Amendment of this Declaration by Developer for Other Reasons.

Notwithstanding the foregoing and until the recordation in the Recording Office of Apartment deeds covering all of the Apartments in the Project (including all interests therein) in favor of parties, other than Developer or any party acquiring all or substantially all of Developer's Apartments in the Project through purchase, foreclosure, or otherwise, Developer hereby reserves the right to amend this Declaration, the Bylaws and the Condominium Map, without the approval, consent or joinder of the Association, any purchaser or Owner of any Apartment, any Owner of an Ownership Interest under a Fractional Ownership Declaration, or any other party with any interest in the Apartment (including any tenant) (a) to correct typographical errors, (b) to reflect alterations undertaken by Developer as permitted by Section E or F or modifications permitted pursuant to Developer's Reserved Right pursuant to Section T or Q, and (c) as may be required by (i) law, (ii) the Real Estate Commission of the State of Hawaii, (iii) any title insurance company issuing a title insurance policy on the Project or any of the Apartments or any interest therein, (iv) any Institutional Lender lending funds on the security of the Project or any of the Apartments or any interest therein, or (v) any governmental agency of any state, territory, possession or foreign country or other foreign jurisdiction as a condition precedent to the marketing or sale of Apartments or Ownership Interests in any such jurisdiction.

4. Votes Required.

The percent or percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percent or percentage of affirmative votes prescribed for the action to be taken under that clause. For example, if this Declaration expressly states that eighty percent (80%) of the Apartment Owners must concur with a proposal to remove any part of the Project from the condominium property regime, then the vote or written consent of eighty percent (80%) of all of the Apartment Owners (not just that percentage of a quorum present at a meeting called for the purpose of taking such vote) is necessary to amend this provision regardless of the percent or percentage prescribed in the general provision pertaining to amendments of this Declaration.

5. No Impairment or Diminishment of Declarant's Rights.

Any provision of this Declaration to the contrary notwithstanding, and in addition to such other approval requirements as are set forth in this Section S, the prior written approval of Declarant will be required before any amendment which would impair or diminish the rights of Declarant to complete the Project or sell or lease Apartments therein in accordance with this Declaration shall become effective. Notwithstanding any other provisions of this Declaration, until such time as Declarant no longer owns any Apartment in the Project, the following actions, before being undertaken by the Association, shall first be approved in writing by Declarant:

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

(b) Reduction in Services. Any significant reduction of Association maintenance or other services;

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

(d) Responsibility for Repairs. Reduction in the level of, or change in allocation of, responsibility for maintenance of and repairs to all or any portion of the Common Element subject to this Declaration, or any other maintenance obligations of the Association set forth in this Declaration;

(e) Common Elements. Conveyance or declaration by the Association of all or any portion of the Common Elements;

(f) Improvements to and Maintenance of Common Elements. Modification to Improvements to the Common Elements or to the level or frequency of maintenance of the Common Elements;

(g) Enforcement of this Declaration. Alteration in the method of enforcing the provisions of this Declaration; or

(h) Declarant's Reserved Rights. Any modification of the rights reserved and granted to Declarant herein with respect to development or sale of the Property.

6. Consent Requirements. No amendment of any provision contained in this Declaration or in the Bylaws that grants or reserves rights in favor of Commercial Apartment Owners shall be effective unless approved, signed, and acknowledged by the Commercial Apartment Owners. Any amendment to the provisions of this Declaration that are for the benefit of a class or multiple classes shall also require the express written consent and joinder of at least sixty-five percent (65%) of all the owners of such class or classes.

T. DEVELOPER'S RESERVED RIGHTS.

1. Board Approval. Notwithstanding the provisions contained elsewhere in this Declaration, Developer reserves for a period of twenty-five (25) years from the date of this Declaration the rights listed in this Section T for itself and each Owner where so specified (including Developer to the extent it is an Owner), which reserved rights may be exercised by Developer and, where so indicated, by an Owner, without the approval of the Board or any other party with an interest in the Project, including other Owners or their mortgages.

2. Reserved Rights Generally with Respect to the Apartments and the Limited Common Elements. Notwithstanding anything provided to the contrary and without limitation of Developer's easement rights, Developer shall have the reserved right, but not the obligation, to: (a) transfer the exclusive use rights associated with a Limited Common Element appurtenant to any Apartment owned by Developer to another Apartment; (b) convert Limited Common Elements appurtenant to any Apartment owned by Developer to Common Elements, and upon such conversion, the Association shall accept any such conversion, and shall not have any right to refuse or reject any such conversion; (c) alter, maintain, repair, demolish and/or replace any Limited Common Element appurtenant to the Apartments owned by Developer; (d) create any number, alter, maintain, repair, demolish and/or replace any of the Apartments owned by Developer; (e) modify any of the uses associated with any Apartment owned by Developer or the Limited Common Elements appurtenant thereto, provided that any such use complies with applicable law; (f) retain (as provided in this Declaration) such Apartments as Developer in Developer's sole discretion shall determine; (g) discontinue the use and availability of certain Apartments owned by Developer, excluding only the Front Desk

Apartment or replacement therefor; and (h) use any Apartment or other portion of the Project as permitted pursuant to Developer's easement rights.

3. Reserved Right to Subdivide and Consolidate Apartments. Notwithstanding anything provided to the contrary, and except as otherwise provided by law:

(a) Developer shall have the reserved right, without obtaining the approval of any party with an interest in the Project, including any other Apartment Owner and/or mortgagee, to: (i) alter the floor plan of any Apartment which it owns at any time provided that the Common Interest appurtenant to the Apartment shall not change; (ii) cause the subdivision of any Apartment which it owns at any time to create two or more Apartments provided that the total Common Interest appurtenant to the newly created Apartments shall equal the Common Interest appurtenant to the original Apartment; and (iii) convert certain portions of any existing Apartment owned by Developer to Limited Common Element or Common Element status or any Common Element or any Limited Common Element to Apartment status to facilitate any subdivision or consolidation (described below). In any such situation, the total Common Interest appurtenant to the newly created Apartment or Apartments shall equal the Common Interest appurtenant to the original Apartment or Apartments.

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

(c) Developer, in the process of consolidating Apartments that it owns, shall have the right to convert that area between Apartments or any common area hallway or other common area feature adjacent thereto into an Apartment (as opposed to the same remaining a Common Element) for so long as such Apartments shall remain consolidated or shall continue to be commonly used or owned.

(d) Developer shall have the reserved right, without obtaining the approval of any party with an interest in the Project, including any other Apartment Owner and/or mortgagee, to modify the classification of an Apartment or newly created Apartment that it owns (whether or not resulting from the consolidation and subdivision of an existing Apartment or the conversion of a Limited Common Element) and transfer such Apartment to a Class other than the Class to which such Apartment had originally been assigned.

4. Reserved Right to Create New Apartments. Notwithstanding anything provided to the contrary, and except as otherwise provided by law, Developer shall have the right, without obtaining the approval of any party with an interest in the Project, including any other Owner and/or mortgagee, to convert a Limited Common Element appurtenant to such Apartment or Apartments owned by Developer, or any portion thereof, into a separate

Apartment of the Project. In such event, Developer shall have the right, without obtaining the approval of any party with an interest in the Project, including any other Owner and/or mortgagee, to alter the physical aspects of the Limited Common Element at Developer's expense in connection with such conversion, including building such structures as may be necessary or appropriate, provided that: (a) the structural integrity of the Project is not thereby affected; (b) the finish of the Apartment is consistent with the quality of other Apartments in the Project and any remaining portion of the Limited Common Element not converted to an Apartment, if any, is restored, to the extent feasible, to a condition substantially compatible with that of the Limited Common Element prior to such conversion; and (c) all construction activity necessary to any such conversion shall be completed within a reasonable period of time after the commencement thereof, subject to delays beyond the control of Developer or its contractors, whether caused by strikes, the unavailability of construction materials or otherwise, in which case any such construction activity shall be completed in such additional time as may be reasonably necessary in the exercise of due diligence. Developer shall also have the reserved right to designate certain Common Elements or Limited Common Elements of the Project as Limited Common Elements appurtenant to the newly-created Apartment; provided that there is no material adverse effect on the remainder of the Project. Any such alteration associated with such conversion shall comply in all respects with all applicable governmental codes, statutes, ordinances and rules and regulations.

5. Reserved Right to Convey Apartments and Limited Common Elements to Association. Developer shall have the reserved right, but not the obligation, to convey Apartments that are owned by Developer and free of liens to the Association and to redesignate Limited Common Elements appurtenant to Apartments owned by Developer to Limited Common Elements appurtenant to Apartments owned by the Association and to the extent necessary or required, to amend this Declaration and the Condominium Map to effect the same.

6. Reserved Right to Annex Land. Developer shall have the right, but not the obligation, to develop or to acquire additional parking facilities ("**Additional Facilities**"), whether or not located on land immediately adjacent to the Land but in the same vicinity as the Project and to merge such Additional Facilities with the Project so as to permit the use of the Additional Facilities as common elements of the Project by all Owners of Apartments in the Project or as limited common elements of the Project by some but not all of the Owners of Apartments in the Project. In connection with the development or acquisition of the Additional Facilities, Developer shall have the right to enter into, and bind the Association to, any form of necessary conditional use permit and/or joint development agreement with the City and County of Honolulu, including, without limitation, any amendments, modifications, and/or supplements thereto.

7. Reserved Right to Approve Alterations. Developer shall have the right, but not the obligation, to approve any alteration of any kind that affects or may affect the appearance of all or any portion of the Project.

8. Reserved Right to Amend Declaration and Condominium Map. In connection with Developer's exercise of Developer's reserved rights set forth in this Section T, Developer shall have the right to amend this Declaration and the Condominium Map.

(a) The amendment to this Condominium Declaration shall describe (i) any additional buildings, the number of stories and any basements and the principal materials used in construction, (ii) the apartment number of the new Apartment, its location, approximate area, number of rooms, percentage interest in common element, and another other information

needed to properly identify the Apartment, (iii) any new common elements, (iv) any additional or newly designated Limited Common Elements appurtenant to the new Apartment, (v) any additional restrictions on use not otherwise set forth in this Declaration, and (vi) any other information that Developer deems necessary or appropriate or is required by law.

(b) The amendment to the Condominium Map shall (i) include the floor plans and elevations of any new building or buildings, (ii) include, if new Apartments are created, the layout, location, apartment numbers and dimensions of the new Apartments, and (iii) be accompanied by a certificate signed by a registered architect or professional engineer pursuant to Section 514A-12 of the Act.

(c) The right to amend this Declaration to effect the reserved rights of Developer shall remain in effect as long as Developer retains ownership of one or more Commercial Apartments.

9. Reserved Right to Amend Recorded Deeds. Developer shall have the reserved right to amend any recorded deed or other document conveying or encumbering an Apartment or interest in an Apartment so that it conforms to amendments made to this Declaration or the Condominium Map, or Developer may record a new deed for that purpose or record an appropriate amendment to this Declaration, Bylaws and/or Condominium Map and note such instrument on the certificate of title issued for any Apartment. For example, if Developer creates new apartments in the Hotel Amenities Area or on any adjacent lands, it may need to adjust the common interest of each existing apartment as set forth in Section E.1. In that event, Developer may amend the declaration or deeds for existing Apartments to reflect the change in the common interest or it may issue replacement deeds reflecting the new common interest of each Apartment.

10. Reserved Right to Modify Project to Comply with Law. Developer shall have the reserved right, to effect such modifications to the Apartments and Common Elements in the Project and/or to execute, record and deliver any amendments to this Declaration, the Condominium Map as well as the Bylaws and rules and regulations promulgated thereunder, as may be necessary or required to effect compliance by the Project, the Association, the association created under a Fractional Ownership Declaration, or by Developer with laws which apply to the Project, including, without limitation, the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq., including any and all rules and regulations promulgated thereunder, and the Americans With Disabilities Act, as amended, 42 U.S.C. §§ 12101 et seq., including any and all rules and regulations promulgated thereunder.

11. Reserved Right to Establish Special Use Program. Developer, its successors and assigns, shall have the reserved right to establish a program at the Project whereby non-owners of Apartments (as well as any Owners of Ownership Interests in the Project who do not have current use rights) have the right to utilize the Spa Apartment, including any recreational amenities thereof. Such a program may involve, without limitation, the use of certain Developer-controlled areas for check-in/check-out purposes, the provision of certain services and other purposes.

12. Reserved Right Regarding Sales and Marketing Activities. Without limiting any other provision of this Declaration, Developer shall have all the rights specified in this Declaration to conduct extensive sales, leasing, rental and other marketing activities and to use the Project and any portion thereof, in the manners specified in this Declaration, without the consent or joinder of any Owner or the Owner's mortgagee, in such efforts.

13. Reserved Right to Refinance. Developer shall have the reserved right, but not the obligation, to refinance the mortgage described in Exhibit A to this Declaration. Each Owner acknowledges that Developer may borrow additional or substitute money from a construction lender to add to or replace the existing loan secured by the mortgage described in Exhibit A for the development of the Project. To secure such loan, Developer may grant to the lender security interests covering Developer's interest in the Land and the Project. Each Owner acknowledges and agrees that all security interests obtained by the lender in connection with such loan, as well as any extensions, renewals and modifications thereof, shall be and remain at all times, until the recordation of the deed for the Unit and the Unit's release from the security for the loan, a first lien or charge on the Project. Each Owner hereby intentionally waives, relinquishes and subordinates the priority or superiority of any lien or other legal or equitable interest arising under any agreement with Developer in favor of the lien or charge on the Project and the Unit of the security interests of the lender, including but not limited to any lien, mortgage or charge securing a loan made to finance the costs of construction and other costs during such construction and any and all advances therefor, whether contractual or voluntary, until the recordation of the deed for the Unit and the Unit's release from the security for the loan.

14. Reserved Right re Licenses and Permits. Each Owner acknowledges and agrees that Declarant, on behalf of the Association, may seek or has obtained certain licenses and permits from the applicable planning department of the County relating to common area maintenance and such other licenses and permits necessary or convenient to the operation of the Project as a condominium hotel. To the extent that any such licenses or permits have not been issued to the Association, Declarant and its agents, employees, contractors, licensees, successors, mortgagees and assigns, reserve the right to transfer to the Association any and all obligations in connection with such licenses and permits. In connection with such licenses and permits, the Association shall have the responsibility to comply at all times now and in the future with all Department of Planning and Permitting regulations relating thereto and any other applicable statutes, ordinances and rules and regulations of Federal, State or County agencies. Neither the Association nor any Owner shall take any actions that may in any way undermine the Association's obligations to comply with such regulations. Each Owner and the Association shall execute any and all documents required by Declarant in Declarant's sole discretion to transfer, if required, any applicable license(s) to the Association. Each Owner shall indemnify and hold harmless Declarant, its successors and assigns, from and against any and all claims and demands for damages in connection with the Association's fulfillment of its obligations in respect of the foregoing licenses and permits.

15. Reserved Right to Record Restrictive Covenant Regarding On-Street Parking. Developer shall have the reserved right, but not the obligation, to record a restrictive covenant against title to the Property providing that the On-Street Parking will be available to hotel guests and users as long as hotel use continues at the Project.

16. Consent to Exercise of Developer's Reserved Rights. Each and every party acquiring an interest in the Project, by such acquisition: (a) consents to the exercise by Developer or other Apartment Owner, as the case may be, of each and every right reserved to such Owner or Developer set forth in this Declaration, including without limitation, Sections F, Q, S, T and U of this Declaration, such consent constituting the consent required by Section 514A-89 of the Act with respect to structural alterations and additions to the Project, and to the execution, delivery and recording (if necessary) of any and all documents necessary to effect the same, including any amendment or amendments of this Declaration and the Condominium Map; (b) agrees to execute, deliver and record such documents and instruments and do such

other things as may be necessary or convenient to effect the same; and (c) appoints Developer and its assigns as such party's or parties' attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and to do such things on such party's or parties' behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of such reserved rights of Developer, and shall not be affected by the disability of such party or parties. In connection with the foregoing subsection (c), each and every party acquiring an interest in the Project, by such acquisition, agrees to sign, have notarized, deliver, and record a special power of attorney in the form attached as Exhibit F (with any changes needed to record it).

17. Assignment of Reserved Rights. Notwithstanding anything stated herein to the contrary, every Owner of an Apartment in the Project or of a Vacation Ownership Apartment and all holders of liens affecting any of the Apartments and each and every other party acquiring an interest in the Project, in any Vacation Ownership Apartment or in the Land, or any party thereof, by acquiring such Apartment, lien or other interest, consents to and recognizes: (a) the right of Developer to assign, in whole or in part, the rights reserved to them in this Declaration, (b) upon any such assignment, Developer shall be relieved of any and all liability arising after the assignment, (c) any assignee of Developer shall thereafter be recognized as such under this Declaration, (d) the right of Developer to also transfer its rights as Developer as collateral for a loan, in which event the assignee lender shall not have the rights and obligations as "**developer**" until it (i) forecloses on the loan or obtains a deed in lieu of foreclosure and takes title to Developer's interest in the Project, and (ii) records an instrument declaring itself to be "**Developer**".

U. HOTEL USE; RESTRICTIONS GENERALLY.

1. Purposes and Uses. The Project is currently located in the Ala Moana BMX-3 Commercial zoning district. The current zoning for the Project does not permit hotel use and the hotel is operated, to the best of Developer's knowledge, as a nonconforming hotel use. Developer is informed that residential and commercial uses are permitted in this zoning district. Developer is also informed that the hotel structure is legally nonconforming structure in that the floor area exceeds what is permitted under current codes. The City and County of Honolulu Land Use Ordinance (the "**LUO**") as currently in effect defines a hotel, dwelling unit, lodging unit and kitchen in Sec. 21-10.1 as follows:

(a) "**Hotel**" means "a building or group of buildings containing lodging and/or dwelling units in which 50 percent or more of the units are lodging units. A hotel includes a lobby, clerk's desk or counter with 24-hour clerk service and facilities for registration and keeping of records relating to hotel guests."

(b) "**Dwelling unit**" means "a room or rooms connected together, constituting an independent housekeeping unit for a family and containing a single kitchen. Two or more essentially separate structures, except for a token connection, such as a covered walkway or a trellis, do not constitute a single dwelling unit. Unless specifically permitted in use regulations, a dwelling unit shall not include a unit used for time sharing or a transient vacation unit as defined in [the LUO]."

(c) "**Lodging unit**" means "a room or rooms connected together, constituting an independent living unit for a family which does not contain any kitchen. Unless specifically permitted in use regulations, '**lodging unit**' shall not include a unit used for time sharing or a transient vacation unit as defined in [the LUO]."

(d) **"Kitchen"** means "a kitchen facility for a housekeeping unit that exists when there is, on the premises of the housekeeping unit, an item from all three of the following categories:

- (1) Fixtures, appliances or devices for heating or cooking food;
- (2) Fixtures, appliances or devices for washing utensils used for dining and food preparation and/or for washing and preparing food;
- (3) Fixtures, appliances or devices for refrigeration of food."

The LUO further provides in Sec. 21-4.110(c)(2) that "[a]ny nonconforming use that is discontinued for any reason for 12 consecutive months, or for 18 months during any three-year period, shall not be resumed; however, a temporary cessation of the nonconforming use for purposes of ordinary repairs for a period not exceeding 120 days during any 12-month period shall not be considered a discontinuation."

2. Hotel Use - Abandonment. If the Project fails to meet any part of the definition of a hotel under the LUO, its current use as a hotel will become unlawful and Developer makes no representations as to whether any other use would be lawful given the age of the Building, limited parking and any other relevant factors. Therefore, a primary purpose of this Section U is to continue the status of the Project as a nonconforming hotel use. The Project and each of the Apartments are intended for and shall be restricted to the following purposes and uses and shall be subject to such other limitations on use and restrictions as are set forth in this Declaration:

(a) Generally. Each Vacation Apartment shall be occupied and used only for the uses permitted in the applicable sections of this Declaration. An Owner may rent his Apartment to any third party for any period subject to applicable zoning and any rules promulgated under the zoning, provided that the rental agreement is in writing. The Owner shall provide each rental tenant with a copy of the Project Rules and shall make a copy of this Declaration and Bylaws, as amended, available for the tenant's review. A copy of any rental agreement for a period exceeding a thirty (30) day period shall be provided to the Association. An Owner who rents his Apartment shall at all times remain primarily and severally liable to all other 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 other applicable laws.

(b) Vacation Apartments. All Vacation Apartments shall be used only as hotel rooms (dwelling units or lodging units as defined by the LUO) as provided in this Declaration. No Owner or occupant of a lodging unit shall place or maintain in the Apartment any fixture, appliance or devices of any kind for heating or cooking food, including any oven, toaster oven, microwave oven, toaster, rice cooker or hotplate. Excluding the rights reserved to Developer, no Owner or occupant of any Apartment in the Project shall do anything that will increase the number of dwelling units in the Project or decrease the number of lodging units. Because of the importance of maintaining the required ratio of lodging units to dwelling units, in the event that any Owner or occupant of a lodging unit breaches this use restriction and does not cure the breach within twenty-four (24) hours after notice from the Board to do so, the Board shall have a right of access to the lodging unit to remove the offending fixture, appliance or device and by accepting a deed to the lodging unit Apartment or taking occupancy of the

Apartment, all Owners and occupants waive any claim for trespass or otherwise in connection with such entry or removal. Without limitation of the foregoing, excepting only the rights reserved by Developer, no Vacation Apartment may be included in a travel club or time share operation except as specifically approved by the Board and Declarant.

(c) Front Desk Apartment.

(1) The Front Desk Apartment shall at all times include a clerk's desk or counter with twenty-four (24) hour clerk service and facilities for registration and keeping of records relating to hotel guests. The remainder of the Front Desk Apartment may be used for any commercial purpose permitted by zoning and other applicable laws to the extent permitted by this Declaration, provided that such use does not cause the Project to lose its status as a nonconforming hotel use.

(2) The Front Desk Operator shall at all times arrange for the issuance of card keys for the front doors of all Vacation and Long Term Stay Apartments to control access to the Apartments and shall issue such card keys to Vacation and Long Term Stay Apartment Owners. As used in this Section "**Front Desk Operator**" means the Front Desk Owner or such tenant or agent of the Front Desk Owner to whom the Front Desk Owner delegates its duties under this Section. The Owner of the Front Desk Apartment and Front Desk Operator each agrees to conduct its business, and to cause their tenants, licensees and occupants to conduct their operations, at all times in a reputable manner, maintaining at all times a full staff of experienced and qualified employees for efficient operation in a proper and workmanlike manner.

(3) The Front Desk Operator shall provide Apartment access card keys to the Association, free of charge, for access to the Vacation and Long Term Stay Apartments when such access is permitted by this Declaration, the Bylaws or the Act.

(4) The Front Desk Operator shall administer guest and Owner access to the Vacation and Long Term Stay Apartments and may charge a reasonable fee to the guests or invitees of an Owner of a Vacation or Long Term Stay Apartment for issuance of card keys, check-in and check-out service, and replacement of lost card keys. The fee charged to the guests or invitees of Owners of Vacation or Long Term Stay Apartments for this service shall not exceed the equivalent indirect fee levied by the Front Desk Operator to participants in the hotel operation administered by the Front Desk Operator and shall be levied on a non-discriminatory basis. The Front Desk Operator is strictly prohibited from charging a fee to any Owner of a Vacation or Long Term Stay Apartment for issuance of card keys and check-in and check-out service, when such Owner is personally occupying his or her Unit.

(5) The Front Desk Operator may arrange to provide one or more Apartments within the Hotel Apartment Class with sundries, mini-bar and related services in respect of the operation of the hotel for such fees and on such terms as the Front Desk Operator and the Owner of the Vacation or Long Term Stay Apartment may agree.

(6) The Front Desk Operator shall arrange to provide for the provision of a Cable/Data System to the Vacation and Long Term Stay Apartments (providing internet cable service, and pay for view movies) for an on demand-use cost and assess reasonable fees for the provision of such service. The fee charged to the Owners of Vacation and Long Term Stay Apartments for this service shall not exceed the equivalent indirect fee levied by the Front Desk Operator to participants in the Hotel Operation Program and shall be

levied on a non-discriminatory basis, provided, however, the monthly fee levied by the Front Desk Operator for providing internet cable service to any such Apartment being occupied on a long term basis by its Owner shall not exceed the monthly fee levied by a local franchised operator for the equivalent service.

(7) The Front Desk Operator shall arrange to provide for the provision of a hotel operator assisted and direct connection long distance telephone service with appropriate in-room facilities to the Vacation and Long Term Stay Apartments for an on demand-use cost and assess reasonable fees for the provision of such service. The fee charged to the Owners of Vacation Apartments for this service shall not exceed the equivalent indirect fee levied by the Front Desk Operator to participants in the Hotel Operation Program and shall be levied on a non-discriminatory basis.

(8) The Front Desk Operator shall arrange to provide for the provision of customary hotel housekeeping services and trash removal services to the Vacation and Long Term Stay Apartments as such Apartments are used and occupied by guests or invitees of the Owners of the Apartment, or the Owner to the extent elected by the Owner of such Apartments and the Front Desk Operator may charge reasonable fees for the provision of such service.

3. Repair Limitation. Insofar as the hotel structure is nonconforming under current LUO codes and restrictions, repairs and improvements requiring a building permit from the City and County that are undertaken annually may be restricted in their dollar volume based on the nature of use (and the assessment of that use by the City and County of Honolulu) of the portion of the structure being repaired, modified, or improved. Under no circumstances shall collective repairs undertaken in any given 12 month period exceed the dollar limitation specified in the LUO.

4. Vacation and Long Term Stay Advertising and Rental Restrictions. The Owner of a Vacation or Long Term Stay Apartment may rent and advertise their respective Units for rent only subject to the limitations provided in this Section or otherwise in this Declaration. In that regard:

(a) the Association may, by appropriate vote, prohibit voice or print rental advertisements by an Owner of a Long Term Stay or Vacation Apartment from identifying or referring to the Project by name or referring to the Project as or containing any of the following terms: the "Ala Moana Hotel," the "Ala Moana Hotel Condominium," or the "Ala Moana Condominium";

(b) no voice or print rental advertisement by an Owner of a Long Term Stay or Vacation Apartment may identify or refer to the Front Desk Operator or Owner by name or trademark;

(c) any advertisement or listing of any lodging unit for a period of more than thirty (30) days, where permitted by law, shall specify that the lodging unit is a lodging unit and contains no kitchen; and

(d) any rental agreement for a Unit shall contain a copy of Section U.1, U.2, U.3 and this Section U.4, and shall require the tenant to comply with the rental agreement.

5. Safety and Soundness. 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 Owners, or which will increase the rate of the hazard insurance on the Project or the contents of the Project, or which will reduce the value of the Project.

6. Signs, etc. The Owner of any Apartment will not, without the prior written consent of the Board, display any sign or place any other thing in or upon any doors, windows, walls or other portions of the Apartment or the Common Elements so as to be visible from the exterior. This restriction shall not apply to: (a) signs displayed by Developer for sales purposes; (b) signs installed by the Front Desk Apartment Owner within the Limited Common Element for the Front Desk Apartment; or (c) signs identifying the business of a Commercial Apartment, provided that the Board may establish sign design guidelines in the Project Rules.

7. Use of Common Elements. Except as otherwise provided in this Declaration, 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.

8. Specific Use Restrictions for Non-Long Term Stay/Vacation Apartments. Notwithstanding anything contained herein to the contrary, the Non-Long Term Stay/Vacation Apartments and the Owners thereof, shall be subject to the following restrictions as to the use of their Apartments:

(a) With the exception of Developer, the Owners of the Non-Long Term Stay/Vacation Apartments shall not use or occupy their Apartments, or permit the use or occupancy of their Apartments, for any purpose or in any manner which:

(i) is not in keeping with the hotel operation of the building,

(ii) engages in a commercial liquor store use for off premise consumption which devotes more than twenty-five percent (25%) of the entire display space of the Apartment to the display of intoxicants, exclusive of wine and beer, (which intoxicants must be only first class, high grade spirits), or sells intoxicants (except wine, beer, and items used in cooking) in containers holding less than one-fifth of a gallon, or

(iii) operates a cinema/movie theater, bowling alley, skating rink, video game room, amusement gallery or amusement arcade, pool hall, funeral home or store selling caskets, facility for industrial or manufacturing uses, pet grooming or veterinary medicine; or

(iv) operates a real estate sales, property management, or property rental business, concierge service, or a business for the on-site sales of Apartments and Ownership Interests, except with the express written permission of Developer.

(b) The Owner of the Non-Long Term Stay/Vacation Apartments shall, at their respective expenses, obtain and maintain at all times, all licenses and permits necessary for their or their tenants', lessees', or occupants' operations from the Front Desk Apartment or Commercial Apartment as appropriate and shall post or display in a prominent place in their respective Apartments such permits and/or notices as required by law.

(c) The operations conducted in the Commercial Apartments shall be of a quality not less than those of the Ala Moana Shopping Center, which is in the immediate vicinity of the Building. The Owners of the Commercial Apartments each agree to conduct its business, and to cause their tenants, licensees and occupants to conduct their operations, at all times in a reputable manner, maintaining at all times a full staff of experienced and qualified employees for efficient operation in a proper, workmanlike and dignified manner.

(d) The Owners of the Commercial Apartments shall not operate or be open for business between the hours of 2:00 A.M. and 5:00 A.M., without prior written consent from the Association.

(e) The Association reserves the right at all times to approve the design, location and size of any and all canopies, signs, pictures, advertisements or notices the Owner of the Non-Long Term Stay/Vacation Apartments either places inside the Building (where same are visible from outside the Building) or outside the Building, such approval not to be unreasonably withheld, delayed or conditioned. Without limiting the generality of the foregoing, no signs shall contain any strobe lights, moving parts or day-glow colors unless approved by the Association. At the request of the Association, an Owner of a Non-Long Term Stay/Vacation Apartments, at its cost, shall remove any and all signs, pictures, advertisements and notices installed by such Owner which are not in existence on the date hereof and which the Association, in its reasonable judgment, shall consider objectionable or injurious to the Building. Further, no Owner or lessee shall employ an advertising medium which can be heard or experienced outside of the Apartment, including, without limiting the generality of the foregoing, flashing lights, searchlights, loudspeakers, phonographs, compact disc players, radios, or television. No Owner or lessee shall distribute, or cause to be distributed, any handbills or other advertising device in the Common Elements or Property or on the public sidewalks or streets adjacent to the Project.

(f) Commercial Invitees and Lessees; Insurance. An Owner of a Non-Long Term Stay/Vacation Apartment shall be responsible for compliance by such Owner's commercial invitees and lessees, and such Owner's lessees' invitees, with the provisions of this Declaration, the Bylaws, and any rules made by the Board. The Owner of a Non-Long Term Stay/Vacation Apartment and such Owner's lessee shall maintain a policy or policies of public liability insurance in an amount which is reasonable for the use of such Apartment, naming the Association as an additional insured, and shall demonstrate proof of such insurance to the Board upon request.

(g) Utility Usage. Declarant may install electrical or other utility service submeters to measure the use of such service by each or any Non-Long Term Stay/Vacation Apartment, including, without limitation, gas service and/or water submeters or flow meters relating to the chilled water system in each or any Non-Long Term Stay/Vacation Apartment to measure water usage for each of the individual Apartments. In such case, the Association will be responsible for the payment of this bill to the service provider, and each Apartment Owner will be responsible for paying its share of such utility service bill plus service charges to the Association. In the event that no submeters are installed for utilities provided to Non-Long Term Stay/Vacation Apartments, the Board may apportion such use equitably among the users of such utilities based on the area of the users' apartments or on such engineering interpretation and consultation as the Board determines appropriate. If an Owner of a Non-Long Term Stay/Vacation Apartment fails to pay any amounts when due, such Owner will be responsible for any penalties or delinquent amounts levied by the service provider. Additionally, the Association shall have the right to cure any failure by the Owner of a Non-Long Term

Stay/Vacation Apartment ("**Defaulting Owner**") to pay the amounts due to the service provider. If the Association elects to cure such default, then the Defaulting Owner will be responsible for reimbursing the Association. If the Defaulting Owner fails to reimburse the Association, the Association will be entitled to impose a special assessment as provided in this Declaration, may enter the Apartment to shut off water, electrical or other utility service to the Defaulting Owner's Apartment, or may pursue any other remedies as provided in this Declaration. Each Non-Long Term Stay/Vacation Apartment Owner shall also have the obligation to maintain, repair, and replace the submeter providing service to such Owner's Apartment. If the Owner of a Non-Long Term Stay/Vacation Apartment fails to maintain such meters or submeters, the Association shall be entitled to maintain, repair, and replace the meter and charge the cost thereof to such Owner or pursue any other remedies provided under this Declaration.

9. Environmental Matters. No Owner will cause or permit to occur (i) any violation by it or its agents, contractors, and invitees of any present or future federal, state or local law, ordinance or regulation related to environmental conditions in or about the Improvements or (ii) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any "**Hazardous Substances**" (as hereinafter defined) in or about the Improvements, or the transportation to or from the Improvements of any Hazardous Substances in violation of any applicable law. Each Owner, at its expense, shall comply with each present and future federal, state and local law, ordinance and regulation related to environmental conditions in or about the portion of the Project owned by it or related to the use thereof, including all reporting requirements and the performance of any cleanups required by any governmental authorities. Each Owner shall indemnify, defend and hold harmless the other Owners, and their agents, contractors and employees, from and against all fines, suits, claims, actions, damages, liabilities, costs and expenses (including reasonable attorneys' and consultants' fees) asserted against or sustained by any such person arising out of or in any way connected with the indemnifying Owner's failure to comply with its obligations under this Section, which obligations shall survive the expiration or termination of this Declaration. As used in this Section, "**Hazardous Substances**" shall include flammables, explosives, radioactive materials, asbestos containing materials (ACMs), polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, petroleum and petroleum products, chloroflorocarbons (CFCs) and substances declared to be hazardous or toxic under any present or future federal, state or local law, ordinance or regulation.

10. Special Restrictions Applicable to All Apartments. Without limiting the application of any other provision of this Declaration, no use or operation shall be made, conducted, or permitted on or with respect to all or any part of the Project, which use or operation violates applicable laws or the provisions of this Declaration. No Apartment shall be used for any of the following activities or purposes:

(a) any distillation or refinery facility (excepting therefrom any microbrewery or similar business that may be operated in the Non-Long Term Stay/Vacation Apartments);

(b) any dumping of garbage or refuse, except in places designated for disposal by the Board;

(c) except with the express written consent of Developer, any meeting place or place of public assembly;

(d) any pool hall, game arcade, betting facility (including off-track betting) or video or games arcade;

(e) any indecent or pornographic uses, massage parlor (which for purposes of this prohibition shall not be defined to include the operation of a beauty parlor or day spa in which massage therapies are offered as an ancillary services to customers), for the sale of nude, erotic or pornographic adult entertainment, books, magazines, videos and other similar products, peepshow store, or any other similar store or club; and any business devoted to sale of articles and merchandise normally used or associated with illegal or unlawful activities, including, without limitation, the sale of paraphernalia used in connection with marijuana, cocaine, or other controlled drugs or substances;

(f) any gymnasium or martial arts studio;

(g) any tattoo parlors or body piercing establishments;

(h) any laundromat (provided, however that nothing herein shall prohibit the operation of a dry cleaning business which does not include a self-service laundromat provided such store is a "drop off" for dry cleaning and actual dry cleaning is conducted at a site outside the Project), secondhand surplus store, bankruptcy sale; or

(i) any discount or thrift stores.

11. Window Coverings. All window coverings shall be of a neutral color, harmonious with and not conflicting with the color scheme of the exterior wall surface of an Apartment. Window tinting and window coverings, which differ from that described above shall be subject to the approval of the Board.

12. Animals. No animals, livestock, reptiles, insects, poultry, or other animals of any kind shall be kept in any Apartment except as is permitted by, and in accordance with, the Bylaws.

13. No Mechanics' Liens. No Owner shall cause or permit any mechanic's lien to be filed against any portion of the Common Elements or other Apartment for labor or materials alleged to have been furnished or delivered to the such Owner's Apartment or any for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner for such cost of discharge.

14. Offensive Conduct; Nuisances. No noxious or offensive activities shall be conducted within the Project. Nothing shall be done on or within the Project that may be or may become an annoyance or nuisance to the residents of the Project, or that in any way interferes with the quiet enjoyment of occupants of Apartments or which may create a nuisance or injure the reputation of the Building. 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 Rules, no Owner shall serve food or beverages, cook, barbecue, or engage in similar activities, except within such Owner's Apartment and except within the Limited Common Elements appurtenant to such Owner's Apartment or Common Elements designated for such purpose by the Association, if any, subject to the provisions of the Project Rules.

15. Noise and Vibration. No person shall produce, or allow to be produced, noise or building shaking vibration at such levels as will be offensive to other Owners.

16. Outside Drying and Laundering. No exterior clotheslines shall be erected or maintained or hung on balconies or railings within the Project and there shall be no exterior drying or laundering of clothes or any other items on any Limited Common Element or Association Property.

17. Toxic or Noxious Matter. No person shall discharge into the Project's sewer system storm drain 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 and federal law for any clean up, or cause injury or damage to neighboring property or business elsewhere on the Project.

18. Parking.

(a) Parking Apartment Restrictions. Each Parking Apartment Owner shall be prohibited from reducing (i) the total number of parking stalls appurtenant to such Owner's Parking Apartment and (ii) the total number of handicap parking stalls appurtenant to such Owner's Parking Apartment. Handicap parking stalls shall not be modified without the written approval of Developer.

(b) Project Rules Respecting Parking. Declarant has the exclusive right to use and/or assign and/or unassigned parking stalls that are not appurtenant to any specific Apartment, including Declarant's Reserved Stalls. If Declarant waives this right with respect to any one or more unassigned parking stalls, use of those unassigned parking stalls, if any, may be governed by Project Rules adopted in accordance with the Bylaws to assure equitable use of the stalls by all Owners. 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. Without limiting the foregoing, the Board may establish additional regulations as it deems appropriate in its sole discretion with regard to any of the parking areas not assigned to individual Apartments, including, without limitation, designating "**residential guest parking**," "**commercial 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, in its discretion, whether there is a violation of the parking and vehicular restrictions set forth in this Declaration or established by the Board, and, if such noncompliance is determined by the Board to exist, the Board shall have the power to enforce all parking and vehicle use regulations applicable to the Property, including the power to remove violating vehicles from any of the Property pursuant to law and the right to specially assess any Apartment Owner violating such parking and vehicle use regulations.

19. Lanais. Without limiting the generality of any other provision of this Declaration, the following provisions shall apply to lanais:

(a) Use of Lanais. Lanais shall be used only as outdoor living areas containing patio furniture, potted plants, and other similar outdoor furnishings that comply with the standards governing the appearance of such items as set forth in the Project Rules. Said furnishings shall be equipped with protective leg caps or other devices to prevent damage to the floor of the lanais. No Improvement shall be nailed, bolted, or otherwise attached to the floor,

walls, or any other portion of the lanais. No hanging screens, banners, or wind chimes and no other accoutrement (other than plants), which may be visible from any other Apartments, the Common Elements, or Association Property are permitted on any portion of the lanais. Unless placed by Declarant, any plants placed on lanais must be approved by the Board, must have sufficiently large receptacles to contain all drainage from such plants, and must not be allowed to collect condensates or moisture between the receptacles and the floor of the lanais.

(b) Limitations on Use. Lanais shall not be used for storage of any type, including, without limitation, boxes, tools, exercise and sports equipment, bicycles, cleaning utensils and supplies, or other household items. Lanais shall be maintained in a clean, neat, and sanitary condition at all times, and nothing shall be placed on Lanais so as to render them unsightly or offensive to the other Owners or to any other property in the vicinity of the Project or its occupants. No dust, dirt, or other substances shall be shaken, swept, or thrown from or hosed off the lanais on or into any Common Elements. Any item which in the opinion of the Board or the Board is unsightly or offensive shall be removed from the lanais upon receipt of written notice of such determination from the Board or the Board. No Owner shall change or alter the surface or exterior of any lanais without the consent of the Board.

20. Rights of Persons with Disabilities. Subject to the provisions of this Declaration, each Owner shall have the right to modify the Owner's Apartment and the Board has the right to modify the route over the Common Elements leading to the front door of the Apartment, at the Owner's sole cost and expense, in order to facilitate access to the Apartment by persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to such persons. The rights granted by this Section are further subject to the following conditions: (i) the modifications shall be consistent with applicable building code requirements; (ii) the modifications shall be consistent with the intent of otherwise applicable provisions of this Declaration pertaining to safety or the aesthetic integrity of the Project; (iii) the modifications which are external to the Apartment shall not prevent reasonable passage by other Owners or Invitees on the Project, and shall be removed by the Owner when the Apartment is no longer occupied by persons requiring those modifications; (iv) any Owner who intends to modify an Apartment pursuant to this Section shall submit their plans and specifications to the Board for review to determine whether the modifications comply with the provisions of this Declaration; and (v) any change in the exterior appearance of an Apartment shall be in accordance with the provisions of this Declaration and all applicable provisions of law. Any Owner with a disability desiring such a modification shall make such request, in writing, to the Board. That request shall set out, with specificity and in detail, the nature of the request and the reason that the requesting party needs to be granted such the modification. The Board shall not unreasonably withhold or delay its consent to such request and the Board shall not deny approval of the proposed modifications under this Section without good cause.

21. ADA Accessible Apartments. No Owner of an Apartment identified as an "ADA Accessible Apartment" on **Exhibit B** shall modify such Apartment without the written approval of Developer.

22. Compliance with Laws, Etc. Nothing shall be done or kept in any Apartment or in the Common Elements or the Property that might increase the rate of, or cause the cancellation of, insurance for the Project, or any portion of the Project. No Owner shall permit anything to be done or kept in his or her Apartment that violates any law, ordinance, statute, rule, or regulation of any local, county, state, or federal body, including any laws,

ordinances, or statutes pertaining to the use or storage of any hazardous, contaminated, or toxic materials.

23. Antennae. Except for rights reserved to Declarant under this Declaration to install such items, no radio station, satellite, or short-wave operators of any kind shall operate from any Apartment or any other portion of the Property unless approved by the Board. With the exception of any master antenna maintained by the Association or the cable system maintained by applicable cable franchisee, no exterior radio antenna, "C.B." antenna, television antenna, receiving station, satellite dish, or other antenna of any type (collectively, "**Signal Reception Device**") shall be erected or maintained anywhere in the Property, without the approval of the Board. In considering whether to approve any such application and what conditions, if any, to impose thereon, the Board may consider any clearly defined safety objective, the impact of any such Signal Reception Device upon Project aesthetics and uniformity of appearance, and any potential structural damage arising from such Signal Reception Device, provided that any restriction imposed by the Committee shall be reasonable and consistent with rules and regulations promulgated by the Federal Communications Commission pursuant Section 207 of the Telecommunications Act of 1996 (collectively, the "**Antennae Statutes**"). In reviewing an application for approval to install a Signal Reception Device, the Board shall apply the same standards, criteria, and guidelines to such application as applicable to any other proposed exterior improvement to any Apartment and shall not impose any differential or discriminatory requirements applicable only to a proposed Signal Reception Device. In granting approval of the installation of any such Signal Reception Device, the Board may further condition such approval upon compliance with any reasonable restrictions authorized by the Antennae Statutes. All satellite dishes approved by the Board for installation on the Project shall be black. Normal radio, stereo, high fidelity, and television equipment installation within an Apartment are excepted from the provisions of this Section; provided, however, 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.

24. Firearms and Fireworks. The display and discharge of firearms or fireworks in the Common Elements, including the Limited Common Elements, is prohibited; provided that the display of lawful firearms in the Common Elements is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Elements to or from the Owner's Apartment. The term "**firearms**" includes "**B B**" guns, pellet guns, and other firearms of all types, regardless of size.

25. Submission of Design Approach and Laboratory Impact Isolation Tests for Initial and Replacement Hard Surface Floors.

(a) The Owner of any Apartment above the fourth floor of any structure wishing to install a hard surface floor must submit to the Board such plans and specifications regarding the flooring and the noise mitigation contemplated, together with a test report from a qualified acoustical testing laboratory clearly showing that the Impact Isolation Class of the flooring, underlayment and method of construction selected has a minimum rating of IIC 55.

(b) No flooring installation or construction shall be permitted until the information required is submitted to and approved by the Board, unless the Board determines in their prudent judgment that the requirement should be waived. Submission of the required materials to the Board shall be for the purpose of documenting the location and design of any

hard surface flooring within the Project and to ensure that such flooring is designed and installed in a manner to mitigate the transmission of noise and is installed in a professional manner and with reference to appropriate standards. Installation of any hard surface flooring without compliance with each of the requirements set forth in this Declaration shall constitute a violation of this Declaration, and subject the violating Owner to all remedies provided herein or by applicable law for such violation, including, without limitation, the levy of fines by the Association until such violation is removed from the Apartment. Approval of the Board is not an assurance or guarantee that noise will not be transmitted to other Apartments. In addition, and notwithstanding any Owner's compliance with the requirements of imposed by the Board, if, following installation of any such hard surface floor, the Owner of the Apartment located beneath such installation lodges a reasonable and verifiable complaint with the Board concerning the sound impact of such flooring on the complaining Owner's Apartment, the Owner installing such hard surface flooring shall, upon notice from the Board, given in the Board's sole discretion, cover at least eighty percent (80%) of the hard surface flooring within such Owner's Apartment with carpeting in order to mitigate the impact to the complaining Owner, and the failure of the Owner notified by the Board to comply with the Board's requirement within sixty (60) days after receipt of that notice shall constitute a violation of this Declaration and subject the violating Owner to all remedies provided by this Declaration or applicable law.

26. Water Supply System. No individual water supply or water softener system shall be permitted in any Apartment unless such system is designed, located, constructed, and equipped in accordance with the requirements, standards, and recommendations of any applicable water district, the locality in which the Property is located, and all other applicable governmental authorities.

27. Sound Attenuation. In any high-rise lodging or dwelling, sound may be audible between Apartments, particularly where the sound level of the source is sufficiently high and the background noise in an adjacent Apartment is very low. Each Owner shall endeavor to minimize any noise transmission from his or her Apartment, and shall adhere to any of the rules and regulations set forth in the Project Rules that are designed to minimize noise transmission. To minimize the noise transmission from an Apartment, each Owner (other than Declarant) shall adhere to the following:

(a) No holes or other penetrations shall be made in Common Element or Limited Common Element walls without the permission of the Board. No penetrations of any sort shall be made in the ceiling of any Apartment. Acoustical sealant shall be packed around the point of penetration of all pictures and other items hung from the wall that require nailing or screwing.

(b) No modifications shall be made to any Apartment that would result in a reduction in the minimum impact insulation class of the Apartment.

(c) Loudspeakers for music reproduction and television shall not be supported from or contact Common Element or Limited Common Element walls or ceilings and shall be elevated from the floor by a proper acoustic platform.

28. Roof Access Restrictions. Owners and Invitees shall not at any time or for any reason whatsoever enter upon or attempt to enter upon: (i) the roof of the Project; (ii) any portion of the Common Elements used by the Association for management, administrative, or security purposes; or (iii) utility closets and electrical or mechanical rooms, without the prior approval of the Board.

29. Storage Areas. Storage areas, if any, shall be used only for the storage of personal property. In no event shall the storage areas be used for the storage of any Hazardous Materials or any other noxious, toxic, or odorous substances. Except as set forth herein, no assigned parking stall may be sold, transferred, assigned to, or retained in the ownership of any person not an Owner, and no parking stall or storage space may be rented or leased to a non Owner except in connection with the rental or lease of an Apartment; provided, however, these limitations shall not apply to Developer, the Front Desk Owner or the Owner of a Parking Apartment to which parking stalls may be appurtenant.

30. Furnishings and Appliances Restrictions Applicable to Long Term Stay and Vacation Apartments. Owners of the Long Term Stay Apartments and Vacation Apartments are prohibited from removing, replacing or substituting any of the Furnishings and Appliances in such Owner's Apartment, it being understood and agreed that, in the event the Owner of a Vacation Apartment or Long Term Stay Apartment violates this provision, such Owner shall be separately liable for all fees and costs incurred by the Association to restore the Furnishings and Appliances removed, replaced or substituted.

31. Indemnification. Each Owner shall be liable to the remaining Owners for any damage to the Common Elements and the Property that may be sustained by reason of the negligence of that Owner or the Owner's Invitees. Each Owner, by acceptance of the deed to an Apartment, agrees for himself or herself and for the Owner's Invitees to indemnify each and every other Owner, and to hold each Owner harmless from, and to defend such Owner against, any claim of any person for personal injury or property damage occurring within the Apartment of that particular Owner and within any Limited Common Elements appurtenant to the Owner's Apartment, unless the injury or damage occurred by reason of the negligence of any other Owner.

32. Non-Applicability to Declarant. The foregoing provisions of Section U shall not apply to Apartments 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 Apartment or any other portion of the Project.

33. PROTECTION OF HOTEL STATUS. NO MATTER WHAT ELSE THIS DECLARATION SAYS, NO ALTERATION WILL BE PERMITTED THAT WILL REDUCE THE NUMBER OF LODGING UNITS IN THE PROJECT OR INCREASE THE NUMBER OF DWELLING UNITS AS DEFINED IN THE LUO.

V. OTHER DISCLOSURES AND LIMITATIONS ON LIABILITY.

1. Zoning Compliance; Variance. The Project contains existing structures being converted by this Declaration to condominium status. As required by Section 514A-11(13) of the Act, Developer declares, to the best of its knowledge, and based on statements set forth in that certain letter dated June 15, 2005 from Henry Eng, FAICP, Director of Planning and Permitting of the City and County of Honolulu (the "**Zoning Compliance Letter**"), which is or will be on file with the Real Estate Commission:

(a) The Project is in compliance with all zoning and building ordinances and codes applicable to the Project, except as provided in this Section or otherwise in this Declaration.

(b) The variances listed in the Zoning Compliance Letter have been granted from the applicable ordinances or codes to achieve such compliance.

(c) As a result of the adoption or amendment of certain ordinances or codes, the Project presently contains legal nonconforming uses and structures as described in the Zoning Compliance Letter.

2. No Warranties. Developer is developing the Project but it is not the general contractor. Developer makes no warranties, express or implied, about the Apartments or the Project, or about consumer products or anything else installed or contained in the Apartments or the Project. This includes, but is not limited to, warranties of merchantability, habitability, workmanlike construction, fitness for a particular purpose, or sufficiency of design. All rights and interests in the Project are sold by Developer "as is" and "where is", with all defects, whether visible or hidden, and whether or not known. This means, among other things, that Developer does not have to fix any defect no matter what causes it or when it is discovered. Each Owner and every other interested person waives and releases any and all rights and claims such person may have, now or in the future, against Developer, its representatives, successors and assigns for (i) any defects in the Apartments or the Project or any consumer products or anything else things installed or contained in the Apartments or the Project, and (ii) for injury to persons or property arising from any such defects. This means that Developer will not have to pay for any injury or damage to people or things as a result of any defect. Finally, without limiting the other parts of this Section, nothing in the condominium map is intended to be or is a representation or warranty by Developer.

3. Disclaimer of Representations Regarding Development Plans. Notwithstanding anything to the contrary in this Declaration, Declarant makes no warranties or representations whatsoever that any development plans reflected by any maps or sales literature for the development of the Community can or will be carried out, or that any land now owned or hereafter acquired by Declarant is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect. Nothing in this Declaration shall be construed to prevent Declarant from modifying its intentions or plans for the Property or any portion thereof as it relates to property owned by Declarant, or from developing, dedicating or conveying portions of the Property, including roadways, for other uses. Any and all subdivision maps for the Community, and any and all general plan maps or development plans or depictions of proposed improvements to areas surrounding the Property are intended to show only the layout, location, and dimensions of the Lots and are not intended to be and do not constitute any representation or warranty by Declarant. No warranty or representation whatsoever is being made that any of those depictions or any other plans presently envisioned for the development of the properties adjacent to, surrounding, or in the vicinity of Community can or will be carried out, or that any land now owned or hereafter acquired by Declarant is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use or developed in accord with any particular phasing plan or timetable or that if such land is once used for a particular use, such use will continue in effect.

4. Security. The Association, Developer, and the Managing Agent each have the right, but not the duty to take steps designed to make the Project safer than it otherwise might be. The Association, Developer, the Managing Agent, and each of their representatives, are not in any way to be considered insurers or guarantors of safety or security

within the project, nor can any of them be held liable for any loss or damage by reason of failure to provide adequate or effective safety or security measures. Neither the Association nor Developer nor the Managing Agent make any representation or warranty that any fire protection, burglar alarm, or other safety or security system or measures, including anything intended to limit access to the Project: (i) will be effective in all cases and cannot be compromised or circumvented; (ii) will prevent all losses; (iii) will limit access to the Project; or (iv) will provide the detection or protection which it is designed or intended to provide. Each Owner and every other interested person acknowledges, understands, and agrees that the Association, Developer and the Managing Agent are not insurers and that each person using the Project assumes all risks of personal injury, death, or loss or damage to Project property resulting from the acts of third parties.

5. Excess Noise. Each Owner acknowledges that the Project may be in an area in which noise levels exceed noise level standards promulgated by the State of Hawaii and that the Project is located within an area in which noise levels exceed noise level standards for residential zoned areas promulgated by the Department of Health, State of Hawaii. Due to the proximity of one Apartment to another, various noises (including plumbing, impact, vibration, adjacent neighbors, and "other" types of noises) or odors inherent in the ownership of an Apartment within a condominium Project may result, to which Owner may be especially sensitive and which may prove an inconvenience for some. 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 which is caused by noise, odors, or vibrations.

6. Adjacent Uses. Each Owner understands and acknowledges that the Apartments are affected by each of those circumstances and uses as described in this Declaration including without limitation, the following: (a) the land of the Project may have been used previously for commercial and industrial operations; (b) noise levels in the Project may exceed noise level standards for residential-zoned areas promulgated by the State Department of Health, and that these noise levels may not be acceptable to some individuals; (c) the Project is located near or adjacent to properties used for the commercial and industrial purposes; (d) further development of residential (multi-family, single family and affordable), commercial, recreational and public communities (including without limitation roads, and similar activities) may be ongoing and may continue directly adjacent to Owner's Apartment and within the vicinity of the Project for a considerable period of time after Owner has occupied the Property; (e) to the extent specially trained animals are permitted in the Project as required by law, there are or may be a variety of pets within the Project that may not be acceptable to some individuals or may create a nuisance; (f) aboveground and underground radio transmission wires, high voltage electric lines and microwave telecommunications facilities are located within and around the Project, which lines purportedly may emit electric and magnetic fields; (g) the Project and the Property may be periodically affected by various hazards and by noise, dust, smoke, earthshock, soot, ash, odor, mold or mold spores, noxious vapors, the presence and/or transmission of pollutants or other hazardous materials, surface water runoff, or other adverse environmental conditions, including but not limited to those resulting from winddrift and other weather factors (collectively, the "**Project Use Effects**") created or exacerbated by or attributable to the Project Uses and the historical, existing, and prospective surrounding construction, development, residential, industrial and commercial and other non-residential uses and activities. Each Owner specifically approves all of the foregoing uses, circumstances and activities, including changes in use due to zoning changes, other governmental authorization or otherwise.

7. Ongoing Construction and Surrounding Activities. Each Owner, in purchasing or otherwise taking title to an Apartment, does so with the express understanding and acknowledgment that the Project and/or the Apartment may be affected by the ongoing surrounding development, which includes multi-family and single family residential, commercial, recreational, and other types of development, various hazards and by noise, dust, smoke, soot, ash, odor, noxious vapors, surface water runoff, or other adverse environmental conditions, described in this Declaration, and that construction and sales activities by Declarant and the construction and sales 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 Declarant, its 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, or other persons who may occupy or otherwise use the Project or any Apartment.

8. Condition of Land. Each Owner and the Association understands and hereby acknowledges that the land of the Project may have been used previously for commercial, industrial or other purposes. 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 Seller or its 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 hazardous materials on, about, around, under, over or within the Project, including all risks of (i) any and all enforcement, clean up, or other governmental or regulatory actions instituted or threatened pursuant to any hazardous material laws affecting the Project, (ii) all claims made or threatened by any third party against Owner or the Project relating to damage, contribution, compensation, loss, or injury resulting from any hazardous materials, and (iii) Owner's discovery of any occurrence or condition on the Land of the Project or any land adjoining or in the vicinity of the Project which might result in Owner or the Property being made subject to restrictions on ownership, occupancy, transferability, or use of the Property or the Project pursuant to any applicable hazardous materials laws. As used herein, the term "**hazardous materials**" includes, but is not limited to, any and all radioactive materials, asbestos, polychlorinated biphenyl (PCB's), chemicals which cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, and other hazardous substances or materials listed, described or defined in 40 CFR Part 302, as amended from time to time.

9. Other Environmental Issues. Mold and mold spores are present throughout the environment, and Apartment construction is not, and cannot be, designed to exclude mold spores. This fact is especially relevant in building of the age of the Project. 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 be controlled in a residential setting. By minimizing moisture, an Owner can reduce or eliminate mold growth. Although the Center for Disease Control states that a causal link between the presence of toxic mold and serious health conditions has not been proven, the 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 by, without limitation, doing the following:

(a) Check Items. Before bringing items into the Apartment, 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 the humidity in the Apartment low. Vent clothes dryers to the outdoors. Ventilate kitchens and bathrooms by opening the windows, by using exhaust fans, or by running the air conditioning to remove excess moisture in the air, and to facilitate evaporation of water from wet surfaces. Maintain and properly service your air conditioning system, furnaces, heat pumps, and humidifiers attached to furnaces to keep them in full working condition.

(d) Clean Spills. Promptly clean up spills, condensation, and other sources of moisture. Thoroughly dry any wet surfaces or material. Do not let water pool or stand in the Apartment. 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 Apartment 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. First, test to see if the affected material or surface is color safe. Porous materials, such as fabric, upholstery, or carpet should be discarded. Should the mold growth be severe, call on the services of a qualified professional cleaner.

10. Declarant Not Liable. Owner acknowledges and agrees that Declarant will not be liable for any 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 molds, mildew, and/or microscopic spores unless caused by the sole negligence or willful misconduct of Declarant. Owner, on behalf of itself and its family members, tenants, invitees and licensees, hereby releases Declarant and its officers, directors, partners, members,

affiliates, subsidiaries, parent, 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 microscopic spores, mold, and/or mildew and from any loss of resale value due to the presence and/or existence of mold, mildew, and/or microscopic spores.

11. Nuisances Related to Adjacent Properties. Without in any manner limiting the foregoing provisions of this Section or any provision of this Declaration, each Owner, in purchasing or otherwise taking title to any Apartment, does so with the express understanding and acknowledgment that the Project and the Owner's Apartment may be periodically affected by various hazards and by noise, dust, smoke, earthshock, soot, ash, odor, mold and mold spores, noxious vapors, transmission of pollutants or other hazardous materials, surface water runoff, or other adverse environmental conditions, including but not limited to those attributable to winddrift and other weather factors (the "**Project Use Effects**") created by or attributable to the location of the Apartment, modifications of adjacent Apartments permitted under this Declaration, as well as historical, existing, and prospective surrounding construction, development, various industrial and commercial uses, and other nonresidential uses and activities, and specifically approves all of those uses and activities, which include, but are not limited to: (a) the items described in this Declaration; (b) real estate development and other changes in use (due to zoning changes or other governmental authorization or otherwise), construction, grading, improvement, and maintenance of adjacent and surrounding properties, including roadways; (c) schools, churches, parks, commercial, recreational, and related facilities and other features common to urban environments; (d) pest management, weed and fungus control, operations and events; (e) presence of aboveground and underground radio transmission wires and high voltage electric lines within and around the Project, which lines purportedly may emit electric and magnetic fields; (f) the location of adjacent commercial area and beach parks and the activities occurring at those locations; and (g) commute and off-hours (non-peak) traffic and parking (collectively, the "**Project Uses**"). Each Owner hereby covenants and agrees that the Owner, and the tenants, lessees, family, servants, guests, invitees, licensees, and employees of the Owner, assumes any and all risks associated with such Project Uses and the annoyances, inconveniences, Project Use Effects, and nuisances created thereby, and expressly waives all rights to any claim against Declarant, its successors and assigns, arising out of or in connection with such activities, annoyances, inconveniences, and nuisances, including but not limited to (i) any right to seek damages attributable thereto or for the design or the placement of improvements to the Project, any Apartment, or the surrounding property, or any part thereof, or related or adjacent facilities or (ii) the abatement or elimination thereof. Such waiver, however, shall not include claims arising out of or in connection with the gross negligence and/or willful misconduct of such entities.

12. Assumption of Risk, Waiver of Claims, Hold Harmless, and Defend. Without limiting the effect of any of the foregoing provisions of this Section, each Owner hereby covenants and agrees, on behalf of such Owner, and the tenants, lessees, family, servants, guests, invitees, licensees, and employees of the Owner: (a) to accept any nuisance, inconvenience, irritation, or annoyance which the Owner or such other person claiming through the Owner may experience as a result of the activities and conditions described in this Declaration, including, specifically, the circumstances and/or conditions contained in this Section and the presence of mold in the Apartment 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 Project Uses and the annoyances, inconveniences, Project 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 Declarant and any of its related entities, affiliates, successors-in-title, or assigns, arising out of or in connection with the ongoing construction and sales activities, the Project Uses, and the annoyances, inconveniences, Project 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, the Apartment, or the surrounding property, or any part thereof, or related or adjacent facilities or to the orientation of the Apartment as it relates to exposure to sun, salt spray, 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) which may arise out of or may directly or indirectly be attributable to the condition of the Property, 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 Property, (iii) claims for the abatement or elimination thereof (such waiver, however, shall not include claims arising out of or in connection with the gross negligence and/or willful misconduct of such entities); (d) to indemnify and hold harmless Declarant and any of its respective 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) which may arise out of or may directly or indirectly be attributable to any and all of the foregoing Project Uses, Project Use Effects and ongoing construction and sales activities; and (e) to defend Declarant and any of its respective 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) which may arise out of or may directly or indirectly be attributable to any and all of the foregoing Project Uses, Project Use Effects and ongoing construction and sales activities.

13. Views. Views from an Apartment 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, and each Owner, by accepting title to an Apartment or Ownership Interest in an Apartment 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) completion of the Project and the future development of land adjacent to or in the vicinity of the Project by Declarant or others may have a detrimental effect on the views from the Apartment and other parts of the Project and (b) there are no view easements or rights appurtenant to the Project or the Apartment.

14. Additional Parking. Parking in driveways servicing the garage area of the Project or any access to the Project is prohibited, except as expressly permitted by this Declaration.

W. CLAIMS AND LITIGATION.

1. Limitation on Liability. Notwithstanding anything to the contrary in this Declaration, each Owner, by accepting title to any Apartment or any other portion of the Property and becoming an Owner, for itself and any person claiming through such Owner, and others who may acquire an interest in any portion of the Property, acknowledges and agrees on behalf of the Owner and the Association that neither Developer (including without limitation any assignee of the interest of Developer hereunder) nor any officer, director, member, manager, partner, or shareholder of Developer (or of Developer's successor or assignee) shall have any

personal liability to the Association or to any Owner or other person, arising under, in connection with, or resulting from (including, without limitation, resulting from action or failure to act) this Declaration or the Association.

2. Negotiation, Mediation and Arbitration.

(a) No Judicial or Administrative Proceedings. Except as specifically permitted by law or in this Section, no judicial or administrative (inclusive of arbitration) proceeding shall be commenced or maintained by the Association or any Owner, individually or collectively.

(b) Negotiation, Mediation and Arbitration.

(1) Each Owner on behalf of Owner, Owner's successors and assigns, agrees that there shall be no right to litigate in respect of the Covered Matters, hereinafter defined, and in the event 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 this Declaration (and any and all rules, regulations, and Supplemental Declarations promulgated pursuant to the foregoing, and the enforcement thereof), the design, orientation of the improvements to the Apartment and related facilities, or the Project, the development, construction, quality, sales, marketing, disclosures concerning, financing, delivery of the Project or any Apartment, or any other aspect of or activity with respect to the Project or the Land (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, or statute, including, without limitation, any dispute over (i) the disposition of any deposits hereunder, (ii) breach of contract, (iii) negligent or intentional misrepresentation or fraud, (iv) nondisclosure, (v) breach of any alleged duty of good faith and fair dealing, (vi) allegations of latent or patent construction defects, or (vii) any other matter arising from or related to the interpretation of any term or provision of this Declaration, or any defense going to the formation or validity of this Declaration, or any provision of this Declaration, 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 arbitrated pursuant to the Federal Arbitration Act and subject to the procedures set forth in this Paragraph ("**Arbitration**" or "**arbitration**"), after it shall have first been submitted to the process of "**Negotiation**" and "**Mediation**" 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 another Owner, Developer, Developer's real estate broker, agent or attorney, the architects, engineers, or other design consultants for the Project, Mortgagee, the contractor, subcontractors, sub-subcontractors, material suppliers, managing agent, or other persons involved with the Project, and their respective officers, directors, agents, servants, employees, or representatives (the "**Covered Parties**"), provided that such person(s) has entered into an agreement or otherwise agree to negotiate, mediate, and/or arbitrate such disputes; or if such claim or cause of action is filed jointly and severally against other parties, it shall be subject to mediation and arbitration with respect to those parties that have agreed to arbitration, regardless of whether other parties are bound to or are willing to submit to arbitration as herein provided. Any dispute concerning the interpretation or the enforceability of this Paragraph, including, without limitation, its revocability or voidability for any cause, any challenges to the enforcement or the validity of this Declaration, or this Paragraph, or the scope of arbitrable issues under this Paragraph, and any defense relating to the enforcement of this Paragraph, including, without limitation, waiver, estoppel, or laches, shall be decided by an arbitrator in accordance with this Paragraph 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 Apartment, 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 Paragraph and not by a court of law.

(2) In respect of all Covered Matters, the Owner agrees to participate in a period of good faith negotiation (the "**Negotiation**"). Each Owner recognizes that the Negotiation process must be completed before the Mediation and/or Arbitration process described in this Paragraph can begin. As such, the claimant Owner must first give written notice to the Covered Party describing the nature of the Dispute and a description of what the Owner believes ought to be done to resolve the Dispute. Owner must also propose a date and time for a conference, which date must fall on a business day between fifteen (15) and twenty (20) 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 (5) business days of this 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 Covered Party's representative to the Conference. Prior to the Conference, 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 claimant's representatives, if any) and Covered Party's representatives shall confer together to resolve the Dispute for a maximum period of two (2) 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, the parties shall jointly state in writing the issues that have been resolved and the issues, if any, that remain unresolved and will require Mediation and Arbitration.

(3) In the event that the parties have completed Negotiation as required by this Paragraph but failed to resolve the entire Dispute, then, if either of the parties wishes to pursue the Dispute further, the unresolved aspects of the Dispute shall be resolved, if possible, by mediation conducted with the assistance of a single mediator approved by Dispute Prevention and Resolution, Inc., or if not then in existence, the American Arbitration Association ("**DPR**") in accordance with its rules or the rules of the approved mediator in effect at the time of the initiation of the mediation (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 County where the Property is located. The parties shall share equally the expense of the mediator.

(4) In the event that the parties have completed Negotiation and Mediation as required by this Paragraph but failed to resolve the claim, then, if any one of the parties wishes to pursue the Dispute further, the unresolved aspects of the Dispute shall be submitted to binding arbitration by and pursuant to the rules of DPR in effect at the time of the initiation of the arbitration subject to the limitations set forth herein, provided, however, no arbitration may be commenced until Developer is provided access to the Apartment or Common Element, which is subject to the Dispute and a reasonable opportunity to cure the alleged defect. Developer shall be provided a minimum of thirty (30) days to exercise its right to repair or remedy any alleged defect or damage, without a waiver of any right by Developer to seek recovery of the cost of such effort, following notice of the claimant's intent to proceed to arbitration of a Dispute. Any counterclaim a Covered Party may have against a claimant shall also be resolved in the context of and by Arbitration. The following provisions shall apply to any arbitration commenced by the parties:

(i) Each Owner, the Association and Developer expressly agree and acknowledge that this Declaration involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 U.S.C. §1, et seq.) now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation, or judicial rule. Accordingly, any and all Disputes shall be arbitrated, which arbitration shall be mandatory and binding. To the extent that any state or local law, ordinance, regulation, or judicial rule shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding.

(ii) This Section W shall inure to the benefit of, and be enforceable by, Developer's subcontractors, agents, vendors, suppliers, design professionals, insurers, and any other person(s) whom Owner contends is responsible for any alleged defect in or to the Land or the Apartment or any improvement or appurtenance thereto.

(iii) In the event any Dispute is submitted to Arbitration, each party shall bear its own attorneys' fees and costs (including expert costs) for the Arbitration.

(iv) The decision of the arbitrator shall be final and binding. Owner, the Association, and Developer expressly agree that an application to confirm, vacate, modify, or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in the county in which the Land is located.

(v) The participation by any party in any judicial proceeding concerning this Section W or any matter arbitrable hereunder shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this Paragraph. Any counterclaim a Covered Party may have against a claimant shall also be resolved in the context of and by Arbitration.

(vi) Except as otherwise agreed by the parties pursuant to Developer's limited warranty or as required by applicable law, the administration and/or arbitrator fees charged by the arbitration service shall be borne pro rata by the parties to the arbitration; provided, however, the administration and/or arbitrator fees and any other fees and costs of the arbitration shall ultimately be borne as determined by the arbitrator.

(vii) The arbitrator appointed to serve shall be a neutral and impartial individual.

(viii) The venue of the arbitration shall be in the county where the Property is located unless the parties agree in writing to another location. No punitive damages shall be awarded in any claim against Developer or any other Covered Parties, no award of attorneys' fees or for damages attributable to emotional distress or a multiple of actual damages based upon any theory of law may be made or awarded in any claim against or Dispute involving Developer or any of the other Covered Parties, all of which are expressly waived by the Association and each Owner. No award of consequential or incidental damages shall be awarded. The arbitrator may award equitable relief pursuant to any Arbitration instituted to enforce this Declaration or any Supplemental Declaration.

(ix) If any provision of this Section W shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

(x) In the event the foregoing arbitration provision is held not to apply or is held invalid, void, or unenforceable in its entirety for any reason, Owner, the Association and Developer agree that all Disputes shall be tried before a judge in a court of competent jurisdiction without a jury. The judge in such court of competent jurisdiction shall have the power to grant all legal and equitable remedies and award compensatory damages. Developer, the Association and Owner each hereby waive and covenant not to assert their constitutional right to trial by jury of any Disputes, including, but not limited to, Disputes relating to construction defects, misrepresentation, or Developer's failure to disclose material facts. Developer, the Association, and Owner hereby covenant and agree that their mutual waiver of jury trial shall be binding upon their respective successors and assigns and upon all persons and entities asserting rights or claims or otherwise acting on behalf of Developer or Owner or their successors and assigns.

3. Rights of Owner to Dispute Assessments. Notwithstanding the provisions of Section W.2, an Owner who pays the Association the full amount of assessments claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If the Owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration as provided above; provided, however, that an Owner may only file for arbitration if all amounts claimed by the Association have been paid in full on or before the date of filing. If the Owner fails to keep all Association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the Owner pays all Association assessments within thirty (30) days of the date of suspension, the Owner may ask the arbitrator to recommence the arbitration proceedings. If the Owner fails to pay all Association assessments by the end of the thirty (30) day period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The Owner shall be entitled to a refund of any amounts paid to the Association that are not owed.

4. Rights of Association and Developer. Notwithstanding the provisions of Section W.2, the Association and/or Developer may proceed by litigation in connection with: (a) 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 (b) counterclaims brought by the Association in proceedings instituted against it. No actions to enforce the provisions of this Declaration, any Supplemental Declaration, and/or any duly adopted rules or regulations, Bylaws or the Project Rules, if any adopted by the Board, shall be commenced by the Association except on the affirmative vote of sixty six percent (66%) of the total votes of the Board, and shall proceed only by arbitration in accordance with the provisions of this Section W. Actions or proceedings of any kind other than those described in Section W.3 shall be commenced or prosecuted by the Association only upon the affirmative vote of not less than seventy five percent (75%) of the Owners at a meeting duly called for that purpose. All such approved actions shall then proceed by the arbitration process outlined in this Section W.

X. OTHER PROVISIONS.

1. No Third Party Rights. This Declaration is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person as a third party

beneficiary (except any Mortgagee) under any statutes, laws, codes, ordinances, rule, regulations, orders, decrees or otherwise.

2. Consent, Power of Attorney, Waiver. By acceptance of a deed, lease or other conveyance of an interest in a Apartment, each and every Owner or other person or entity acquiring such interest, including the holders of mortgage liens on individual Apartments, consents to the rights reserved to Developer 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 Apartments, 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 Developer, with full right of substitution, as the attorney in fact of such Owner or acquiring party to execute such documents and to do such things on such Owner's or acquiring party's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period(s) of Developer's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or acquiring party.

3. Transfer of Declarant's Rights. Any or all of the rights, reservations and easements of Declarant may be transferred to any other person, provided that the transfer shall not enlarge a right or reservation beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by Declarant and Recorded.

4. Invalidity. If any provision of this Declaration shall be declared invalid, all other provisions of this Declaration shall continue in full force and effect as if the invalid provision had not been included.

5. Incorporation of Exhibits. Exhibits A, B, C, D, E1, E2, E3, and F attached to this Declaration are incorporated herein by reference.

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

7. Owners May Incorporate. All of the rights, powers, obligations and duties of the Apartment Owners imposed by this Declaration and the Bylaws may be exercised and enforced by a nonprofit membership corporation formed by the Apartment Owners under the laws of the State of Hawaii for the purposes herein set forth. The formation of such corporation shall in no way alter the covenants, conditions and restrictions set forth in this Declaration or in the Bylaws, and the Articles of Incorporation and Bylaws of such corporation shall be subordinated to and controlled by this Declaration and the Bylaws of the Association. Any action taken by such corporation in violation of any or all of the covenants, conditions and restrictions contained in this Declaration or in the Bylaws of the Association shall be void and of no effect.

8. Interpretation and Captions. In case any provision of this Declaration shall be held invalid, such invalidity shall not render invalid any other provision hereof which can be given effect. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or any provision hereof. Except for judicial construction, the Association, by the Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any

adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the provisions hereof.

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

10. References to Declaration in Deeds. Deeds to and instruments affecting any Apartment or any part of the Project may contain the provisions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, all of the provisions hereof shall be binding upon the grantee, Owner or other person claiming through any instrument and such person's heirs, executors, administrators, successors and assigns as though set forth in full in such instrument.

[SIGNATURE ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed on the day and year first above written.

ALA MOANA PROPERTY DEVELOPMENT, LLC, a
Delaware limited liability company

By ALA MOANA HOLDINGS, LLC, a Delaware
limited liability company, its sole member



By: Rafael Baez
Its: Authorized Signatory

"Developer"

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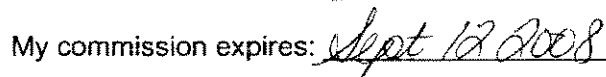
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Notary Public, State of Hawaii

My commission expires: Sept 12 2008



SCHEDULE OF EXHIBITS

Exhibit A	Description of Land
Exhibit B	Description of Apartments
Exhibit C	Description of Common Elements
Exhibit D	Description of Limited Common Elements
Exhibit E1	Description of Common Interests (AOAO Common Interests)
Exhibit E2	Description of Common Interests (Apartment Class Common Interests)
Exhibit E3	Description of Multi-Class Common Elements and Interests
Exhibit F	Form of Special Power of Attorney

EXHIBIT A

DESCRIPTION OF LAND

All of that certain parcel of land situate at Kalia, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

PARCEL 1:

Lot 18, area 132,664 square feet, more or less, as shown on Map 11, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 48 of Hawaiian Land Company, Limited;

PARCEL 2:

TOGETHER WITH, and subject to the terms and provisions, including the failure to comply with any of the covenants, conditions and reservations, contained therein, the easements as reserved and excepted in instrument dated June 30, 1981, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1074374, in favor of Dillingham Corporation, a Hawaii corporation, its successors and assigns,

"as owner from time to time of Lot 18, area 132,664 square feet, as shown on Map 11, filed with Land Court Consolidation No. 48, being land described in Certificate of Title No. 124,795, and its and their lessees and licensees, an exclusive right and easement for 80 parking spaces or stalls in Lots 4 and 5" (as shown on Map 1 of Consolidation No. 65) "east of Keeaumoku Street as used at the date hereof, and a nonexclusive easement for all pedestrian and vehicle ingress and egress, road and utility purposes over, across, along, upon and under Lots 1, 3, 4, 5 and 6" (as shown on Map 1 of Consolidation No. 65), "and an exclusive easement to maintain and use the pedestrian and service access overpass structure over said Lot 4 (as shown on Map 1 of Consolidation No. 65), with the right of support for the same."

NOTE:

The pedestrian and service access overpass structure over said Lot 4 is now designated as Easement "3", as shown on Map 9 of Land Court Consolidation No. 65, as set forth by Land Court Order No. 63088, filed June 28, 1982.

Designation of Easement "4" affecting Lot 4, which begins on Mahukona Street (Lot 4, Consolidation 65) across from the Ala Moana Americana Hotel as it is now built and provides overhead parking and ramps for ingress and egress, all in an existing structure, as shown on Map 9, as set forth by Land Court Order No. 63088, filed June 28, 1982.

Being the land described in Certificate of Title No. 721,230 issued to Ala Moana Property Development, LLC, a Delaware limited liability company.

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

2. Covenants, conditions, restrictions, reservations, agreements, obligations, exceptions and other provisions as contained in the following:

INSTRUMENT: DEED
Dated: June 30, 1981
Document No. 1074374
As amended by Land Court Order No. 80681, filed October 14, 1986.

3. Covenants, conditions, restrictions, reservations, agreements, obligations, exceptions and other provisions as contained in the following:

INSTRUMENT: DECLARATION OF RESTRICTIVE COVENANT
Dated: October 3, 1988
Document No. 1584617

4. MORTGAGE

Mortgagor: ALA MOANA PROPERTY DEVELOPMENT, LLC, a Delaware limited liability company, registered to do business in the State of Hawaii
Mortgagee: SFT I, INC., a Delaware corporation
Dated: October 22, 2004
Document No. 3183444

5. FINANCING STATEMENT

Debtor: ALA MOANA PROPERTY DEVELOPMENT, LLC, a Delaware limited liability company, registered to do business in the State of Hawaii
Secured Party: SFT I, INC., a Delaware corporation
Recorded: October 22, 2004
Document No. 2004-216190

6. ASSIGNMENT AND ASSUMPTION OF LANDLORD'S INTEREST IN TENANT LEASES

Assignor: AZABU U.S.A. CORPORATION, a Hawaii corporation
Assignee: ALA MOANA PROPERTY DEVELOPMENT, LLC, a Delaware limited liability company, registered to do business in the State of Hawaii
Recorded: October 22, 2004
Document No. 2004-216189

7. Encroachments and other matters shown on or disclosed by the Survey Map dated September 10, 1996, revised October 20, 2004, prepared by Erik S. Kaneshiro, Licensed Professional Land Surveyor, Certificate No. 9826, with Austin, Tsutsumi & Associates, Inc.

END OF EXHIBIT A

EXHIBIT B

DESCRIPTION OF APARTMENTS

A. BUILDING DESCRIPTION

The Project consists of a three-story (atop a "basement" parking garage described as the Coral Level) Pedestal Structure and two high-rise building towers built immediately above the Pedestal Structure. The building tower on the Diamond Head side is called the Waikiki Tower (a 36 story tower including the Pedestal Structure) and on the building tower on the Ewa side is called the Kona Tower (a 13 story tower including the Pedestal Structure). The Pedestal Structure consists of the first floor (Plaza Level), the second floor (the Mezzanine Level), and a third floor (the Recreation Deck). The Pedestrian Bridge at the second level of the Pedestal Structure is connected to the parking structure serving the adjacent Ala Moana Center property (which Pedestrian Bridge is reflected on the Condominium Map). The Pedestal Structure is located above the Parking Basement. The Waikiki and Kona Towers contain Vacation, Long Term Stay and Office Apartments as identified on the Condominium Map, as well as the Commercial Apartment on the 36th Floor. The Pedestal Structure contains Commercial, Banquet, Meeting Room, Spa and Front Desk Apartments. The Front Desk Apartment and the Porte Cochere area are located at the Plaza Level (ground floor) of the Pedestal Structure facing Atkinson Drive. The Building is constructed principally of wood, steel metal studs, cementitious material, precast concrete, aluminum, glass, steel, drywall, flooring, and windows.

B. APARTMENT SUMMARY

1. Summary of Apartments by Type

Apartment Type	Quantity	Number of Bedrooms & Baths	Floor Levels	Approximate Net Living Area (Sq. Ft.)	Approximate Net Lanai Area (Sq. Ft.)	Approximate Total Area (Sq. Ft.)
A	9	Studio/ 1	5-13	246	N/A	246
B	270	Studio/ 1	5-13	246	N/A	246
C	751	Studio/1	6-32, 34-35	297	48	345
D	57	Studio/1	6-32, 34-35	301	56	357
Suite A	3	2/2.5	33,34	1915	(4) 56 each (1) 48 sq.ft.	2187
Suite B	3	2/2.5	34	1148	(4) 48 each	1340
Suite C	1	1/1	33	534	(2) 48 each	630
Suite D	3	1/1	33	581	(2) 48 each	667
Suite E	57	1/1	6-32, 34-35	503	56	559
Banquet 2A	1	N/A	Mezzanine	N/A	N/A	
Banquet 2B	1	N/A	Mezzanine	N/A	N/A	
Banquet 2D	1	N/A	Mezzanine	N/A	N/A	
Banquet 2G	1	N/A	Mezzanine	N/A	N/A	
Commercial 1A	1	N/A	Plaza	N/A	N/A	
Commercial 1B	1	N/A	Plaza	N/A	N/A	
Commercial 1D	1	N/A	Plaza	N/A	N/A	
Commercial 1F1	1	N/A	Plaza	N/A	N/A	
Commercial 1F2	1	N/A	Plaza	N/A	N/A	

Commercial 1F3	1	N/A	Plaza	N/A	N/A	
Commercial 1F4	1	N/A	Plaza	N/A	N/A	
Commercial 1F5	1	N/A	Plaza	N/A	N/A	
Commercial 1L	1	N/A	Plaza	N/A	N/A	
Commercial 2J	1	N/A	Mezzanine	N/A	N/A	
Commercial 3C	1	N/A	Recreation Deck	N/A	N/A	
Commercial 3H	1	N/A	Recreation Deck	N/A	N/A	
Commercial 36A	1	N/A	36	N/A	N/A	
Front Desk 1G	1	N/A	Plaza	N/A	N/A	
Spa 3B-1	1	N/A	Recreation Deck	N/A	N/A	
Parking 0A	1	N/A	Coral	N/A	N/A	
Office 2E	1	N/A	Mezzanine	N/A	N/A	
Office 2E-1	1	N/A	Mezzanine	N/A	N/A	
Office 4A	1	N/A	4	N/A	N/A	

2. Location and Numbering of Apartments

Each Vacation and Long Term Stay Apartment in the Waikiki Tower, other than suite types, is designated by floor level, from levels 6 through 32, 34, and 35, followed by a number, as a general matter, from 1 through 5, 7 through 24, and 26 through 32 (e.g., 601, 602, 603, 604, 605, 607, 608, etc.). Each suite type E Vacation and Long Term Stay Apartment in the Waikiki Tower is designated by floor level, from levels 6 through 32, and 35, followed by the number 7 or 26 (e.g., 607, 626, 707, 726, etc.). Each other suite type (i.e., suite types A through D) Vacation and Long Term Stay Apartment in the Waikiki Tower is designated by floor level, levels 33 and 34, followed by a number. The numbers and locations of the Vacation and Long Term Stay Apartments are more fully illustrated on the Condominium Map.

Each Vacation and Long Term Stay Apartment in the Kona Tower is designated by floor level, from levels 5 through 13, followed by a number from 33 through 63 (e.g., 533, 534, 535, 536, 537, etc.). The numbers and locations of the Vacation and Long Term Stay Apartments are more fully illustrated on the Condominium Map.

Each Banquet Apartment, Commercial Apartment and Office Apartment, and the Parking Apartment, Spa Apartment and Front Desk Apartment are designated by floor level, from levels 0 through 4, and 36, followed by an assigned letter and, in some cases, an additional number (e.g., 1A, 1B, 1D, 1F1, 1F2, etc.). The numbers and locations of each Banquet Apartment, Commercial Apartment and Office Apartment, and the Parking Apartment, Spa Apartment and Front Desk Apartment are more fully illustrated on the Condominium Map.

3. Access to Common Elements

Each of the Apartments has immediate access to the corridors, stairways, and/or elevators of the Building that lead to the lobby areas and all other common areas of the Project.

4. Description of Floor Plans

A. Description of Vacation Apartments

Apartment Types A and B: These apartment types consist of studio units located in the Kona Tower with a bedroom area, one (1) bathroom and closet. Certain of these units may contain kitchenette areas as reflected on the Condominium Map. They contain a net living area of approximately 246 square feet. There are 279 type A and B units in the Building. The general configuration of the units is reflected in the Condominium Map.

Apartment Type C: These apartment types consist of studio units located in the Waikiki Tower with a bedroom area, one (1) bathroom and closet. Certain of these units may contain kitchenette areas as reflected on the Condominium Map. These units contain a net living area of approximately 297 square feet, together with a lanai of approximately 48 square feet, for a total area of approximately 345 square feet. There are 751 type C units in the Building. The general configuration of the units is reflected in the Condominium Map.

Apartment Type D: These apartment types consist of studio units located in the Waikiki Tower with a bedroom area, one (1) bathroom and closet. Certain of these units may contain kitchenette areas as reflected on the Condominium Map. These units contain a net living area of approximately 301 square feet, together with a lanai of approximately 56 square feet, for a total area of approximately 357 square feet. There are 57 type D units in the Building. The general configuration of the units is reflected in the Condominium Map.

Apartment Type Suite A: These apartment types are located in the Waikiki Tower and consist of three (2) bedrooms, two and one-half (2 1/2) bathrooms, a living room, kitchenette, breakfast room, dining room and bar. These units contain a net living area of approximately 1915 square feet, and have five (5) lanais with a total area of 272 square feet, for a total area of approximately 2187 square feet. There are three (3) type Suite A units in the Building. The general configuration of the units is reflected in the Condominium Map.

Apartment Type Suite B: These apartment types are located in the Waikiki Tower and consist of one unit with two (2) bedrooms, two and one-half (2 1/2) bathrooms, a living room and kitchenette. This unit contains a net living area of approximately 1148 square feet, and has four (4) lanais with a total area of 192 square feet, for a total area of approximately 1340 square feet. There are three (3) type Suite B units in the Building. The general configuration of the units is reflected in the Condominium Map.

Apartment Type Suite C: This apartment type is located in the Waikiki Tower and consists of one (1) bedroom and one (1) bathroom, with a parlor/sitting room. This unit contains a net living area of approximately 534 square feet, together with two (2) lanais with a total of approximately 96 square feet, for a total area of approximately 630 square feet. This unit may contain a kitchenette area as reflected on the Condominium Map. There is one (1) Suite C unit in the Building. The general configuration of the units is reflected in the Condominium Map.

Apartment Type Suite D: These apartment types are located in the Waikiki Tower and consist of one (1) bedroom and one (1) bathroom, with a parlor/sitting room. Certain of these units may contain kitchenette areas as reflected on the Condominium Map. These units contain a net living area of approximately 581 square feet, together with two (2) lanais of approximately 48 square feet each, for a total area of approximately 667 square feet. There are three (3) Suite D

units in the Building. The general configuration of the units is reflected in the Condominium Map.

Apartment Type Suite E: These apartment types are located in the Waikiki Tower and consist of one (1) bedroom and one (1) bathroom, with a parlor/sitting room. Certain of these units may contain kitchenette areas as reflected on the Condominium Map. These units contain a net living area of approximately 503 square feet, together with a lanai of approximately 56 square feet, for a total area of approximately 559 square feet. There are 57 Suite E units in the Building. The general configuration of the units is reflected in the Condominium Map.

B. Description of Commercial Apartments

Commercial Apartment 1A is located on the Plaza Level and has a net floor area of approximately 5,160 square feet and may be improved or modified as determined by Developer.

Commercial Apartment 1B is located on the Plaza Level and consists of two unfinished rooms (one enclosed and one open to the Porte Corchere). The net floor area of Apartment 1B is approximately 7,960 square feet and may be improved or modified as determined by Developer.

Commercial Apartment 1D is located on the Plaza Level and consists of one unfinished room. The net floor area of Apartment 1D is approximately 6,472 square feet and may be improved or modified as determined by Developer.

Commercial Apartment 1F1 is located on the Plaza Level and has a net floor area of approximately 4,547 square feet and may be improved or modified as determined by Developer.

Commercial Apartment 1F2 is located on the Plaza Level and has a net floor area of approximately 774 square feet and may be improved or modified as determined by Developer.

Commercial Apartment 1F3 is located on the Plaza Level and has a net floor area of approximately 2,414 square feet and may be improved or modified as determined by Developer.

Commercial Apartment 1F4 is located on the Plaza Level and has a net floor area of approximately 3,352 square feet and may be improved or modified as determined by Developer.

Commercial Apartment 1F5 is located on the Plaza Level and has a net floor area of approximately 100 square feet and may be improved or modified as determined by Developer.

Commercial Apartment 1L is located on the Plaza Level and has a net floor area of approximately 3,425 square feet and may be improved or modified as determined by Developer.

Commercial Apartment 2J is located on the Mezzanine Level and consists of multiple unfinished rooms. This Apartment has a net floor area of approximately 8,444 square feet and may be improved or modified as determined by Developer.

Commercial Apartment 3C is located on the Recreation Level and consists of one unfinished room. This Apartment has a net floor area of approximately 8,680 square feet and may be improved or modified as determined by Developer.

Commercial Apartment 3H is located on the Recreation Level and consists of multiple unfinished rooms. This Apartment has a net floor area of approximately 937 square feet and may be improved or modified as determined by Developer.

Commercial Apartment 36A is located on the 36th Floor of the Waikiki Tower and consists of multiple unfinished rooms. This Apartment has a net floor area of approximately 8,714 square feet and may be improved or modified as determined by Developer.

C. Description of Banquet Apartments

Banquet Apartment 2A is located on the Mezzanine Level and has a net floor area of approximately 9,060 square feet and may be improved or modified as determined by Developer.

Banquet Apartment 2B is located on the Mezzanine Level and has a net floor area of approximately 5,736 square feet and may be improved or modified as determined by Developer.

Banquet Apartment 2D is located on the Mezzanine Level and has a net floor area of approximately 4,263 square feet and may be improved or modified as determined by Developer.

Banquet Apartment 2G is located on the Mezzanine Level and has a net floor area of approximately 1,480 square feet and may be improved or modified as determined by Developer.

D. Description of Spa Apartment

Spa 3B-1 is located on the Recreation Level and consists of one unfinished room. This Apartment has a net floor area of approximately 3,326 square feet and may be improved or modified as determined by Developer.

E. Description of Office Apartments

Office Apartment 2E is located on the Mezzanine Level and has a net floor area of approximately 7,695 square feet and may be improved or modified as determined by Developer.

Office Apartment 2E-1 is located on the Mezzanine Level and has a net floor area of approximately 4,620 square feet and may be improved or modified as determined by Developer.

Office Apartment 4A is located on the 4th Level (3rd Floor) and has a net floor area of approximately 7,837 square feet and may be improved or modified as determined by Developer.

F. Description of Front Desk Apartment

The Front Desk Apartment is labeled Apartment 1G on the Condominium Map and is located on the Plaza Level. It has been improved as reflected on the Condominium Map and may be further improved as determined by the Developer. The Front Desk Apartment has a net floor area of approximately 4,789 square feet.

G. Description of Parking Apartment

Parking Apartment 0A is located on the Basement Level and has a net floor area of approximately 730 square feet and consists of an unfinished room. This Apartment may be improved or modified as determined by Developer. This apartment has appurtenant to it, among other items, approximately 299 numbered parking stalls, storage areas, and bike and moped parking areas located in the Parking Basement and 20 unnumbered parking stalls (10 valet stalls, 8 loading stalls, and 2 compact stalls) in the Porte Cochere area and the metered stalls reflected on Condominium Map Sheet A1.0. The parking stalls in the Parking Basement may be re-stripped and this Apartment may be improved or modified as determined by Developer.

5. ADA Accessible Apartments

The following Vacation and/or Long Term Stay Apartments are fully accessible to persons with disabilities under the Americans With Disabilities Act: 601, 612, 616, 701, 712, 801, 804, 811, 932, 1132, 1232, 1412, 1414, 1416, 1432, 1511, 1516 and 1532.

END OF EXHIBIT B

EXHIBIT C

DESCRIPTION OF COMMON ELEMENTS

One freehold estate is hereby designated in all remaining portions of the Project, herein called the "Common Elements," including specifically, but not limited to, the following items:

1. The Land in fee simple and any appurtenances thereto as described on Exhibit A.
2. The structural components of the Building, including all perimeter and party walls, load bearing walls and columns, foundations, footings, floor slabs, girders, beams, supports, elevators, stairs and stairways, exterior walls, exterior glass, lanai railings, the Porte Corchere structure, roofs and all other apparatus and installations existing for common use or providing common support, all structural components existing for common use or providing common support, roofs and ceilings, including without limitation all perimeter doors, door frames, door handles, door lock set, windows, window frames, and all hardware associated therewith, and the undecorated or unfinished interior surfaces thereof; whether at the perimeter of the building structure or at the perimeter of an Apartment.
3. All yards, grounds and landscaping, and all trash enclosures within the Project, excluding special trash assessments for particular commercial uses which will be separately assessed.
4. All driveways, parking areas as shown on the Condominium Map, access lanes, paved areas, ramps, loading areas and walkways within the Project, to the extent such areas are not otherwise designated as Apartments on the Condominium Map or as a Limited Common Element appurtenant to an Apartment.
5. All amenities and improvements, including, without limitation, the pool and pool deck areas, the fitness room and the laundry facilities depicted on the Condominium Map, to the extent such areas are not otherwise designated as Apartments on the Condominium Map or as a Limited Common Element appurtenant to an Apartment.
6. All cables, conduits, ducts, trash chute, sewer lines, electrical equipment, door lock controller equipment, wiring, pipes, catch basins and other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one Apartment for services such as power, light, water, gas, sewer, storm water, refuse, cable television and television signal distribution.
7. All unimproved areas, laundry rooms, ice machine areas, maintenance, equipment, Building Engineering area, Association employee lunch and break areas, storage areas and other similar areas which are not part of an Apartment or designated as a Limited Common Element appurtenant to an Apartment.
8. All other apparatus and installations existing for common use, such as tanks, pumps, motors, fans, air-conditioning units including fan coil equipment located within an Apartment, compressors, ducts, shafts, vents, water heating and

distribution equipment, fire suppression equipment and other such installations and apparatus, to the extent not designated as a Limited Common Element appurtenant to an Apartment.

9. All toilet facilities that are not part of an Apartment or the Limited Common Elements appurtenant to an Apartment.
10. Elevator Cab No. 15.
11. All interior areas of the Project necessary or desirable for the operation and maintenance of the Building and accessory thereto, including, without limitation, the lobby areas and guest telephone areas, to the extent such areas are not otherwise characterized and defined in the Declaration as Apartments or designated as a Limited Common Element appurtenant to an Apartment.
12. All other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use; and
13. All other areas designated on the Condominium Map as "Common Elements", or that are not designated as an Apartment or as a Limited Common Element appurtenant to an Apartment.

END OF EXHIBIT C

EXHIBIT D

DESCRIPTION OF LIMITED COMMON ELEMENTS

Without limitation of designations specified in the Declaration and as determined appropriate by the Board of Directors of the Association, certain parts of the Common Elements, herein referred to as the "Limited Common Elements" are hereby designated and set aside for the use of certain Apartments, and such Apartments shall have appurtenant, easements for the use of such Limited Common Elements, subject to the limitations and rights reserved to others specified in the Declaration, as follows:

A. Individual Limited Common Elements

1. Furnishings and Appliances, but excluding fixtures, located within a Vacation or Long Term Stay Apartment shall be a Limited Common Element appurtenant to such Apartment and shall be for the use of such Apartment.
2. Where an Apartment has a lanai reflected on the Condominium Map, the lanai is a Limited Common Element appurtenant to such Apartment over which the Apartment has an exclusive easement, from the exterior surface of all perimeter walls which separate the interior of the Apartments from the lanais to the interior edge of the exterior railings or other boundaries of the lanais. All net lanai floor areas are not exact but are approximations based on the floor plans of the subject lanais and the Apartments to which they are appurtenant.
3. To the extent that any fan coil equipment is located with an Apartment, the Apartment shall have use of such equipment.
4. To the extent that any air handler equipment is located with an Apartment, the Apartment shall have use of such equipment.
5. Back of House, as reflected on the Condominium Map as 1A-1, shall be for the use of Commercial Apartment 1A.
6. Back of House, as reflected on the Condominium Map as 1M, shall be for the use of the Front Desk Apartment 1G.
7. Back of House, as reflected on the Condominium Map as 2M, shall be for the use of the Front Desk Apartment 1G.
8. Restaurant Lanai, as reflected on the Condominium Map as 1B1, shall be for the use of Commercial Apartment 1B.
9. Pool Deck, as reflected on the Condominium Map as 3A, shall be for the use of the Apartments in the Hotel Apartment Class.
10. Storage Facility, as reflected on the Condominium Map as 3B-3, shall be for the use of the Spa Apartment 3B-1.
11. Deck, as reflected on the Condominium Map as 3B-2, shall be for the use of the Apartments in the Hotel Apartment Class.
12. Back of House, as reflected on the Condominium Map as 4E, shall be for the use of Office Apartment 4A.
13. Back of House, as reflected on the Condominium Map as 36C, shall be for the use of Commercial Apartment 36A.
14. Lobby, as reflected on the Condominium Map as 36B, shall be for the use of Apartment Commercial 36A.
15. Restrooms, as reflected on the Condominium Map as 36E, shall be for the use of Commercial Apartment 36A.
16. Housekeeping, as reflected on the Condominium Map as 1J, shall be for the use of the Front Desk Apartment 1G.

17. Employee Lockers, as reflected on the Condominium Map as 2F, shall be for the use of the Front Desk Apartment 1G.
18. Telephone Room as reflected on the Condominium Map as 2H, shall be for the use of the Front Desk Apartment 1G.
19. Cafeteria as reflected on the Condominium Map as 2I, shall be for the use of the Front Desk Apartment 1G.
20. Elevator Cab Nos. 13 and 14 shall be for the use of Commercial Apartment 3C, Commercial Apartment 2J, and Front Desk Apartment 1G.
21. Parking Stalls, as reflected on the Condominium Map as 0B and 1C, and the metered stalls reflected on Condominium Map Sheet A1.0, shall be for the use of Parking Apartment 0A.
22. Service Spaces, as reflected on the Condominium Map as 4B, shall be for the use of the Front Desk Apartment 1G.
23. Storage and Vending, as reflected on the Condominium Map as 5B, shall be for the use of the Front Desk Apartment 1G.
24. Linen as reflected on the Condominium Map as 5C, shall be for the use of the Front Desk Apartment 1G.
25. Storage and Vending, as reflected on the Condominium Map as KT (Kona Tower)-B, Typical Floor Plans Levels 6-13, shall be for the use of the Front Desk Apartment 1G.
26. Janitor, as reflected on the Condominium Map as WT (Waikiki Tower)-D, Typical Floor Plans Levels 6 & 13, 7-12, 14-32 & 35, shall be for the use of the Front Desk Apartment 1G.
27. Service (Laundry on 6th Level Only), as reflected on the Condominium Map as WT (Waikiki Tower)-F, Typical Floor Plans Levels 6 & 13, shall be for the use of the Front Desk Apartment 1G.
28. Service (Laundry on 13th Level Only), as reflected on the Condominium Map as WT (Waikiki Tower)-G, Typical Floor Plans Levels 6 & 13, shall be for the use of the Front Desk Apartment 1G.
29. Service Space, as reflected on the Condominium Map as WT (Waikiki Tower)-E, Typical Floor Plans Levels 7-12, 14-32 & 35, shall be for the use of the Front Desk Apartment 1G.
30. Linen/Storage, as reflected on the Condominium Map as WT (Waikiki Tower)-C, Typical Floor Plans Levels 6 & 13, 7-12, 14-32 & 35, shall be for the use of the Front Desk Apartment 1G.
31. Linen/Storage, as reflected on the Condominium Map as 33C, 34C, shall be for the use of the Front Desk Apartment 1G.
32. Janitor, as reflected on the Condominium Map as 33D, 34D, shall be for the use of the Front Desk Apartment 1G.
33. Service, as reflected on the Condominium Map as 33F, 34F, shall be for the use of the Front Desk Apartment 1G.
34. On-floor trash receptacles shall be for the use of the Vacation and Long Term Stay Apartments.

B. Multi-Class Limited Common Elements

Without limitation of designations specified in the Declaration and as determined appropriate by the Board of Directors of the Association, the following Limited Common Elements shall be for the use of the Apartments to which they are appurtenant unless otherwise indicated, subject to the limitations and rights reserved to others specified in the Declaration:

1. The water chill system for the Project (inclusive of electrical, system maintenance and replacement).
2. The corridors on Levels 5 through 35 of the Waikiki Tower and Levels 5 through 13 of the Kona Tower, which corridors shall be for the primary use of the Hotel Apartment Class and the Front Desk Apartment.
3. Elevators (and corresponding elevator lobbies) identified as Elevator Cab Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 on the Condominium Map.
4. Hotel Lobby/Registration, as reflected on the Condominium Map as 1E.
5. Loading Area, as reflected on the Condominium Map as 1H.
6. Restrooms, as reflected on the Condominium Map as 1N.
7. Lobby and Circulation, as reflected on the Condominium Map as 2K.
8. Restrooms, as reflected on the Condominium Map as 2L.
9. Restrooms, as reflected on the Condominium Map as 3E.
10. 3rd Level Lobby, as reflected on the Condominium Map as 3F.
11. 4th Level Lanai & Lobby, as reflected on the Condominium Map as 4C.
12. Service Lobby, as reflected on the Condominium Map as 4D.
13. Lobby and Corridor, as reflected on the Condominium Map as 5A and KT (Kona Tower)-A, Typical Floor Plans Levels 6-13.
14. Service Lobby, as reflected on the Condominium Map as WT (Waikiki Tower)-A, Typical Floor Plans Levels 6 & 13, 7-12, 14-32 & 35.
15. Lobby and Corridor, as reflected on the Condominium Map as WT (Waikiki Tower)-B, Typical Floor Plans Levels 6 & 13, 7-12, 14-32 & 35.
16. Service Lobby, as reflected on the Condominium Map as 33A and 34A.
17. Lobby, as reflected on the Condominium Map as 33B and 34B.
18. Engineering, as reflected on the Condominium Map as 1K.
19. Engineering, as reflected on the Condominium Map as 36D.
20. Pump Room/Mechanical Room, as reflected on the Condominium Map as 2C.

END OF EXHIBIT D

EXHIBIT E1

DESCRIPTION OF COMMON INTERESTS (AOAO COMMON INTERESTS)

Apartment No. **/Type	Living Area	# Units	Approx. Total Area	Unit Type Ltd. Common Interest	Individual Unit Ltd. Common Interest
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Hotel Apartment Class

A	246	9	2,214	0.005832843	0.0006481
B	246	270	66,420	0.174985277	0.0006481
C	345	751	259,095	0.486718309	0.0006481
D	357	57	20,349	0.036941336	0.0006481
Suite A	2187	3	6,561	0.00883764	0.0029459
Suite B	1340	3	4,020	0.0073647	0.0024549
Suite C	630	1	630	0.00098196	0.0009820
Suite D	667	3	2001	0.00294588	0.0009820
Suite E	559	57	31863	0.055971722	0.0009820

Commercial Apartment Class

1A	5,160.00	1	5,160	0.01491602	0.01491602
1B	7,960.00	1	7,960	0.01463362	0.01463362
1D	6,472.00	1	6,472	0.02000593	0.02000593
1F1	4,547.00	1	4,547	0.012132941	0.012132941
1F2	774.00	1	774	0.00043027	0.00043027
1F3	2,414.00	1	2,414	0.00536781	0.00536781
1F4	3,352.00	1	3,352	0.011180344	0.011180344
1F5	100.00	1	100	0.000444723	0.000444723
1L	3,425.00	1	3,425	0.001395488	0.001395488
2J	8,444.00	1	8,444	0.004694054	0.004694054
3B-1	3,326.00	1	3,326	0.006713098	0.006713098
3C	8,680.00	1	8,680	0.015693173	0.015693173
3H	937.00	1	937	0.000689321	0.000689321
36A	8,714.00	1	8,714	0.019376594	0.019376594

Banquet Apartment Class

2A	9,060.00	1	9,060	0.01798804	0.0179880
2B	5,736.00	1	5,736	0.011388454	0.0113885
2D	4,263.00	1	4,263	0.008463909	0.0084639
2G	1,480.00	1	1,480	0.002938444	0.0029384

Office Apartment Class

2E	7,695.00	1	7,695	0.015277921	0.0152779
2E 1	4,620.00	1	4,620	0.009172709	0.0091727
4A	7,837.00	1	7,837	0.015559853	0.0155599

Front Desk Apartment Class

1G	4,789.00	1	4,789	0.009508247	0.0095082
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Parking Apartment Class

Coral Level	730.00	1	730	0.001449367	0.0014494
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TOTAL			503,668.00		
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Apartment Class		
Hotel	0.780579668	0.780579668
Commercial	0.127673388	0.127673388
Banquet	0.040778846	0.040778846
Office	0.040010483	0.040010483
Front Desk	0.009508247	0.009508247
Parking	0.001449367	0.001449367

TOTAL	1	1
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** The Apartment numbers for the Vacation and Long Term Stay Apartments are as follows:

Apartment Type	Vacation Apartment Number
A (9)	537, 637, 737, 837, 937, 1037, 1137, 1237, 1337
B (270)	533, 534, 535, 536, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 633, 634, 635, 636, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 733, 734, 735, 736, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 833, 834, 835, 836, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 933, 934, 935, 936, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 1033,

	1034, 1035, 1036, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1133, 1134, 1135, 1136, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1233, 1234, 1235, 1236, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1333, 1334, 1335, 1336, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363
C (751)	601, 602, 603, 604, 605, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 628, 629, 630, 631, 632, 701, 702, 703, 704, 705, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 728, 729, 730, 731, 732, 801, 802, 803, 804, 805, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 828, 829, 830, 831, 832, 901, 902, 903, 904, 905, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 928, 929, 930, 931, 932, 1001, 1002, 1003, 1004, 1005, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1028, 1029, 1030, 1031, 1032, 1101, 1102, 1103, 1104, 1105, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1128, 1129, 1130, 1131, 1132, 1201, 1202, 1203, 1204, 1205, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1228, 1229, 1230, 1231, 1232, 1301, 1302, 1303, 1304, 1305, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1328, 1329, 1330, 1331, 1332, 1401, 1402, 1403, 1404, 1405, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1428, 1429, 1430, 1431, 1432, 1501, 1502, 1503, 1504, 1505, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1528, 1529, 1530, 1531, 1532, 1601, 1602, 1603, 1604, 1605, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1628, 1629, 1630, 1631, 1632, 1701, 1702, 1703, 1704, 1705, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1728, 1729, 1730, 1731, 1732, 1801, 1802, 1803, 1804, 1805, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1828, 1829, 1830, 1831, 1832, 1901, 1902, 1903, 1904, 1905, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1928, 1929, 1930, 1931, 1932, 2001, 2002, 2003, 2004, 2005, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2028, 2029, 2030, 2031, 2032, 2101, 2102, 2103, 2104, 2105, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2128, 2129, 2130, 2131, 2132, 2201, 2202, 2203, 2204, 2205, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2228, 2229, 2230, 2231, 2232, 2301, 2302, 2303, 2304, 2305, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2328, 2329, 2330, 2331, 2332, 2401, 2402, 2403, 2404, 2405, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2428, 2429, 2430, 2431, 2432, 2501, 2502, 2503, 2504, 2505, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2528, 2529, 2530, 2531, 2532, 2601, 2602, 2603, 2604, 2605, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2628, 2629, 2630, 2631, 2632, 2701, 2702, 2703, 2704, 2705, 2709, 2710, 2711, 2712, 2713, 2714, 2715, 2716, 2717, 2718, 2719, 2720, 2721, 2722, 2723, 2724, 2728, 2729, 2730, 2731, 2732, 2801, 2802, 2803, 2804, 2805, 2809, 2810, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2824, 2828, 2829, 2830, 2831, 2832, 2901, 2902, 2903, 2904, 2905, 2909, 2910, 2911, 2912, 2913, 2914, 2915, 2916, 2917, 2918, 2919, 2920, 2921, 2922, 2923, 2924, 2928, 2929, 2930, 2931, 2932, 3001, 3002, 3003, 3004, 3005, 3009, 3010, 3011, 3012, 3013, 3014, 3015, 3016, 3017, 3018, 3019, 3020, 3021, 3022, 3023, 3024, 3028, 3029, 3030, 3031, 3032, 3101, 3102, 3103, 3104, 3105, 3109, 3110, 3111, 3112, 3113, 3114, 3115, 3116, 3117, 3118, 3119, 3120, 3121, 3122, 3123, 3124, 3128, 3129, 3130, 3131, 3132, 3201, 3202, 3203, 3204, 3205, 3209, 3210, 3211, 3212, 3213, 3214, 3215, 3216, 3217, 3218, 3219, 3220, 3221, 3222, 3223, 3224, 3228, 3229, 3230, 3231, 3232, 3401, 3402, 3403, 3404, 3405, 3409, 3410, 3411, 3412, 3413, 3414, 3415, 3416, 3417, 3418, 3419, 3420, 3421, 3422, 3429, 3430, 3431, 3432, 3501, 3502, 3503, 3504, 3505, 3509, 3510, 3511, 3512, 3513, 3514, 3515, 3516, 3517, 3518, 3519, 3520, 3521, 3522, 3523, 3524, 3528, 3529, 3530, 3531, 3532
D (57)	608, 627, 708, 727, 808, 827, 908, 927, 1008, 1027, 1108, 1127, 1208, 1227, 1308, 1327, 1408, 1427, 1508, 1527, 1608, 1627, 1708, 1727, 1808, 1827, 1908, 1927, 2008, 2027, 2108, 2127, 2208, 2227, 2308, 2327, 2408, 2427, 2508, 2527, 2608, 2627, 2708, 2727, 2808, 2827, 2908, 2927, 3008, 3027, 3108, 3127, 3208, 3227, 3408, 3508, 3527

Suite A (3)	3307, 3326, 3426
Suite B (3)	3313, 3319, 3331
Suite C (1)	3315
Suite D (3)	3301, 3303, 3317
Suite E (57)	607, 626, 707, 726, 807, 826, 907, 926, 1007, 1026, 1107, 1126, 1207, 1226, 1307, 1326, 1407, 1426, 1507, 1526, 1607, 1626, 1707, 1726, 1807, 1826, 1907, 1926, 2007, 2026, 2107, 2126, 2207, 2226, 2307, 2326, 2407, 2426, 2507, 2526, 2607, 2626, 2707, 2726, 2807, 2826, 2907, 2926, 3007, 3026, 3107, 3126, 3207, 3226, 3407, 3507, 3526

END OF EXHIBIT E1

EXHIBIT E2

DESCRIPTION OF COMMON INTERESTS (APARTMENT CLASS COMMON INTERESTS)

Hotel Apartment Class

Apartment Type	Living Area	# Units	Approx. Total Area	Limited Common Interest	Individual Unit Limited Common Interest
A	246	9	2,214	0.00747245	0.000830272
B	246	270	66,420	0.224173502	0.000830272
C	345	751	259,095	0.623534444	0.000830272
D	357	57	20,349	0.047325517	0.000830272
Suite A	2187	3	6,561	0.011321894	0.003773965
Suite B	1340	3	4,020	0.009434912	0.003144971
Suite C	630	1	630	0.001257988	0.001257988
Suite D	667	3	2,001	0.003773965	0.001257988
Suite E	559	57	31,863	0.071705329	0.001257988
TOTAL	6577	1154	393,153	1	0.014013989

Commercial Apartment Class

Apartment Type	Living Area	# Units	Approx. Total Area	Limited Common Interest	Individual Unit Limited Common Interest
1A	5,160.00	1	5,160		0.116829511
1B	7,960.00	1	7,960		0.114617623
1D	6,472.00	1	6,472		0.156696165
1F1	4,547.00	1	4,547		0.095031089
1F2	774.00	1	774		0.003370082
1F3	2,414.00	1	2,414		0.042043298
1F4	3,352.00	1	3,352		0.087569884
1F5	100.00	1	100		0.003483289
1L	3,425.00	1	3,425		0.010930143
2J	8,444.00	1	8,444		0.036766115
3B-1	3,326.00	1	3,326		0.052580247
3C	8,680.00	1	8,680		0.122916559
3H	937.00	1	937		0.005399098
36A	8,714.00	1	8,714		0.151766899
TOTAL	64,305.00	13	64,305		1

Banquet Apartment Class

Apartment Type	Living Area	# Units	Approx. Total Area	Limited Common Interest	Individual Unit Limited Common Interest
2A	9,060.00	1	9,060		0.441112031

2B	5,736.00	1	5,736		0.279273577
2D	4,263.00	1	4,263		0.207556356
2G	1,480.00	1	1,480		0.072058036
TOTAL	20,539.00	4	20,539		1

Office Apartment Class

Apartment Type	Living Area	# Units	Approx. Total Area	Limited Common Interest	Individual Unit Limited Common Interest
2E	7,695.00	1	7,695		0.381847956
2E 1	4,620.00	1	4,620		0.229257642
4A	7,837.00	1	7,837		0.388894403
TOTAL	20,152.00	1	20,152		1

Front Desk Apartment Class

Apartment Type	Living Area	# Units	Approx. Total Area	Limited Common Interest	Individual Unit Limited Common Interest
1G	4,789.00	1	4,789		1
TOTAL	4,789.00	1	4,789		1

Parking Apartment Class

Apartment Type	Living Area	# Units	Approx. Total Area	Limited Common Interest	Individual Unit Limited Common Interest
Coral Level	730.00	1	730		1
TOTAL	730.00	1	730		1

Multi-Class Allocations

Apartment Class	Total Living Area			Class Limited Common Interest
Hotel	393,153.00	1	393,153	0.780579668
Commercial	64,305.00	1	64,305	0.127673388
Banquet	20,539	1	20,539	0.040778846
Office	20,152.00	1	20,152	0.040010483
Front Desk	4,789.00	1	4,789	0.009508247
Parking	730.00	1	730	0.001449367
TOTAL	503,668.00	6	503,668.00	1

END OF EXHIBIT E2

EXHIBIT E3

DESCRIPTION OF MULTI-CLASS COMMON ELEMENTS AND INTERESTS

503,668.00 Total Sq. Feet

	Commercial Apartment Class	Banquet Apartment Class	Front Desk Apartment Class	Hotel Apartment Class	Office Apartment Class	Parking Apartment Class
Total Square Footage	64,305.00	20,539.00	4,789.00	393,153.00	20,152.00	730.00
Water Chill System	0.4	0.028095	0.0065508	0.53778854	0.0275656	
Elevator Cab 1-12	0.127859	0.040838	0.009522	0.78171266	0.0400686	
Lobby (1E)	"	"	"	"	"	
Lobby and Circulation (2K)	"	"	"	"	"	
3rd Level Lobby (3F)	"	"	"	"	"	
Engineering (1K)	"	"	"	"	"	
Engineering (36D)	"	"	"	"	"	
Pump Room/Mechanical Room (2C)	"	"	"	"	"	
Loading Area (1H)	"	"	"	"	"	
Restrooms(1N, 2L, 3E)	"	"	"	"	"	
Service Spaces (4B)	"	"	"	"	"	
Service Lobbies (4D)	"	"	"	"	"	
4th Level Lobby (4C)	"	"	"	"	"	
Service Lobby (WT (Waikiki Tower)-A, Typical Floor Plans Levels 6 & 13, 7-12, 14-32 & 35)	"	"	"	"	"	
Waikiki and Kona Tower Corridors	"	"	"	"	"	
Lobby and Corridor (WT (Waikiki Tower)-B, Typical Floor Plans Levels 6 & 13, 7-12, 14-32 & 35)	"	"	"	"	"	
Lobby and Corridor (5A and KT (Kona Tower)-A, Typical Floor Plans Levels 6-13)	"	"	"	"	"	
Service Lobby (33A, 34A)	"	"	"	"	"	
Lobby (33B, 34B)	"	"	"	"	"	

Glass Cleaning		0.0120043	0.98799572	
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END OF EXHIBIT E3

**EXHIBIT F
FORM OF SPECIAL POWER OF ATTORNEY**

RETURN BY MAIL () PICK-UP () TO:

This document contains
____ pages

TMK No. () ____ CPR No.: ____

ID No.(s): _____

Certificate of Title No. _____

Apartment No. _____

SPECIAL POWER OF ATTORNEY

By signing below, you appoint Ala Moana Property Development, LLC, with its principal place of business and post office address at 410 Atkinson Boulevard, Honolulu, Hawaii 96814 ("Developer"), as your true and lawful attorney-in-fact to do any and all acts and things which Developer deems necessary or convenient to the exercise by Developer of the Developer's Reserved Rights under the Condominium Documents.

1. Definitions.

A. Record. In this document, "record", "recorded" and "recording" refer to recording in the Office of the Assistant Registrar of the Land Court of the State of Hawaii or the Bureau of Conveyances of the State of Hawaii, whichever is appropriate. All document numbers are Land Court Document numbers unless otherwise stated.

B. CONDOMINIUM. In this document, "Condominium" means the Ala Moana Hotel Condominium condominium property regime.

C. CONDOMINIUM DOCUMENTS. The Condominium Documents consist of: (1) the Declaration of Condominium Property Regime of Ala Moana Hotel Condominium recorded as Document No. _____.

(the "Declaration"); (2) the Bylaws of the Association of Apartment Owners of Ala Moana Hotel Condominium recorded as Document No. _____; (3) any House Rules of the Association of Apartment Owners of Ala Moana Hotel Condominium; and (4) any amendments and supplements to any of those documents. The description of the "Land" contained in the Declaration, as it may be amended from time to time, is hereby made a part of this document.

D. DEVELOPER'S RESERVED RIGHTS. "Developer's Reserved Rights" means those rights reserved to Developer in the Condominium Documents, including, without limitation, as set forth in Sections C (Name of the Community), F.5 (Developer's Sales Activities), F.6 (Developer's Reserved Rights Concerning Easements), F.13 (Developer's Right to Establish Fractional Ownership Program) and T (Developer's Reserved Rights) of the Declaration.

E. Incorporation of Defined Terms. All other capitalized terms used herein without definition shall have the meanings given to them in the Declaration.

2. Description of Reserved Rights.

A. RIGHTS RESERVED UNDER THE CONDOMINIUM DOCUMENTS. The description of the Developer's Reserved Rights as set forth in the Condominium Documents, including, without limitation, Sections C (Name of the Community), F.5 (Developer's Sales Activities), F.6 (Developer's Reserved Rights Concerning Easements), F.13 (Developer's Right to Establish Fractional Ownership Program) and T (Developer's Reserved Rights) of the Declaration, is made a part of this power of attorney. The Developer's Reserved Rights include, among other things, all of the following rights:

(i) the right, any time prior to the transfer of the last Unit in the Project to a third party, by Recorded amendment to the Declaration, to change the name of the condominium property regime and the Association, without the consent or joinder of any Owner or their mortgagee (see Section C of the Declaration (Name of the Community));

(ii) the right to conduct extensive sales activities on and at the Project, including without limitation, the use of any Apartment owned by Developer, and the Limited Common Elements appurtenant thereto as model Apartments, sales and management offices, and to conduct extensive sales displays and activities until the closing of the sale of the last unsold Apartment in the Project or Ownership Interest in an Apartment (see Section F.5 of the Declaration (Developer's Sales Activities));

(iii) the right to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the Common Elements for any reasonable purpose, which may include, but shall not be limited to, any easements for utilities or for any public purpose (see Section F.6 of the Declaration (Developer's Reserved Rights Concerning Easements));

(iv) the right to transfer, cancel, relocate, annex to the Project, or otherwise deal with any easement over, under, across or through any land adjacent to or across the street from the Project, for any reasonable purpose, which reserved right may include, but shall not be limited to, (a) the right to accept and annex to the Project a license, grant of easement, or any other right for the purpose of access and utility service to the Project and to obligate the Association to satisfy the terms and conditions of such license, grant, or other right, (b) the right to effectuate the same purposes set forth above in this Section, and (c) the right to negotiate with any owner of land upon which such easement is located on behalf of the Association and Owners any and all terms and conditions upon which such easement may be relocated, expanded, reduced, modified, or otherwise altered, and to execute, deliver, and record any instruments providing therefor upon or including such terms and conditions as Developer may reasonably determine to be just or appropriate (see Section F.6 of the Declaration (Developer's Reserved Rights Concerning Easements));

(v) the exclusive right to establish a fractional plan with respect to some or all of the Apartments located on Floors 33, 34 and 35 of the Waikiki Tower, but in no event with respect to more than five percent (5%) of the total number of hotel rooms in the Hotel Apartment Class, by recording a

Fractional Ownership Declaration and related documents (see Section F.13 of the Declaration (Developer's Right to Establish Fractional Ownership Program));

(vi) the right, but not the obligation, to (a) transfer the exclusive use rights associated with a Limited Common Element appurtenant to any Apartment owned by Developer to another Apartment, (b) convert Limited Common Elements appurtenant to any Apartment owned by Developer to Common Elements, and upon such conversion, the Association shall accept any such conversion, and shall not have any right to refuse or reject any such conversion, (c) alter, maintain, repair, demolish and/or replace any Limited Common Element appurtenant to the Apartments owned by Developer, (d) create any number, alter, maintain, repair, demolish and/or replace any of the Apartments owned by Developer, (e) modify any of the uses associated with any Apartment owned by Developer or the Limited Common Elements appurtenant thereto, provided that any such use complies with applicable law, (f) retain (as provided in the Declaration) such Apartments as Developer in Developer's sole discretion shall determine, (g) discontinue the use and availability of certain Apartments owned by Developer, excluding only the Front Desk Apartment or replacement therefor, and (h) use any Apartment or other portion of the Project as permitted pursuant to Developer's easement rights (see Section T.2 of the Declaration (Reserved Rights Generally with Respect to the Apartments and the Limited Common Elements));

(vii) except as otherwise provided by law (see Section T.3 of the Declaration (Reserved Right to Subdivide and Consolidate Apartments));

(a) the reserved right, without obtaining the approval of any party with an interest in the Project, including any other Apartment Owner and/or mortgagee, to (1) alter the floor plan of any Apartment which it owns at any time provided that the Common Interest appurtenant to the Apartment shall not change, (2) cause the subdivision of any Apartment which it owns at any time to create two or more Apartments provided that the total Common Interest appurtenant to the newly created Apartments shall equal the Common Interest appurtenant to the original Apartment, and (3) convert certain portions of any existing Apartment owned by Developer to Limited Common Element or Common Element status or any Common Element or any Limited Common Element to Apartment status to facilitate any subdivision or consolidation;

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

(c) in the process of consolidating Apartments that it owns, the right to convert that area between Apartments or any common area hallway or other common area feature adjacent thereto into an Apartment (as opposed to the same remaining a Common Element) for so long as such Apartments shall remain consolidated or shall continue to be commonly used or owned; and

(d) the reserved right, without obtaining the approval of any party with an interest in the Project, including any other Apartment Owner and/or mortgagee, to modify the classification of an Apartment or newly created Apartment that it owns (whether or not resulting from the consolidation and subdivision of an existing Apartment or the conversion of a Limited Common Element) and transfer such Apartment to a Class other than the Class to which such Apartment had originally been assigned;

(viii) except as otherwise provided by law, the right, without obtaining the approval of any party with an interest in the Project, including any other Owner and/or mortgagee, to convert a

Limited Common Element appurtenant to such Apartment or Apartments owned by Developer, or any portion thereof, into a separate Apartment of the Project (see Section T.4 of the Declaration (Reserved Right to Create New Apartments));

(ix) the reserved right, but not the obligation, to convey Apartments that are owned by Developer and free of liens to the Association and to redesignate Limited Common Elements appurtenant to Apartments owned by Developer to Limited Common Elements appurtenant to Apartments owned by the Association and to the extent necessary or required, to amend the Declaration and the Condominium Map to effect the same (see Section T.5 of the Declaration (Reserved Right to Convey Apartments and Limited Common Elements to Association));

(x) the right, but not the obligation, to develop or acquire additional parking facilities ("Additional Facilities"), whether or not located on land immediately adjacent to the Land but in the same vicinity as the Project and to merge such Additional Facilities with the Project so as to permit the use of the Additional Facilities as common elements of the Project by all Owners of Apartments in the Project or as limited common elements of the Project by some but not all of the Owners of Apartments in the Project (see Section T.6 of the Declaration (Reserved Right to Annex Land));

(xi) in connection with the development or acquisition of the Additional Facilities, the right to enter into, and bind the Association to, any form of necessary conditional use permit and/or joint development agreement with the City and County of Honolulu, including, without limitation, any amendments, modifications, and/or supplements thereto (see Section T.6 of the Declaration (Reserved Right to Annex Land));

(xii) the right, but not the obligation, to approve any alteration of any kind that affects or may affect the appearance of all or any portion of the Project (see Section T.7 of the Declaration (Reserved Right to Approve Alterations));

(xiii) in connection with Developer's exercise of Developer's reserved rights set forth in Section T of the Declaration, Developer shall have the right to amend the Declaration and the Condominium Map (see Section T.8 of the Declaration (Reserved Right to Amend Declaration and Condominium Map));

(xiv) the reserved right to amend any recorded deed or other document conveying or encumbering an Apartment or interest in an Apartment so that it conforms to amendments made to the Declaration or the Condominium Map, or Developer may record a new deed for that purpose or record an appropriate amendment to the Declaration, Bylaws and/or Condominium Map and note such instrument on the certificate of title issued for any Apartment (see Section T.9 of the Declaration (Reserved Right to Amend Recorded Deeds));

(xv) the reserved right, to effect such modifications to the Apartments and Common Elements in the Project and/or to execute, record and deliver any amendments to the Declaration, the Condominium Map as well as the Bylaws and rules and regulations promulgated thereunder, as may be necessary or required to effect compliance by the Project, the Association, the association created under a Fractional Ownership Declaration, or by Developer with laws which apply to the Project, including, without limitation, the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq., including any and all rules and regulations promulgated thereunder, and the Americans With Disabilities Act, as amended, 42 U.S.C. §§ 12101 et seq., including any and all rules and regulations promulgated thereunder (see Section T.10 of the Declaration (Reserved Right to Modify Project to Comply with Law));

(xvi) the reserved right to establish a program at the Project whereby non-owners of Apartments (as well as any Owners of Ownership Interests in the Project who do not have current use rights) have the right to utilize the Spa Apartment, including any recreational amenities thereof (see Section T.11 of the Declaration (Reserved Right to Establish Special Use Program));

(xvii) without limiting any other provision of the Declaration, all the rights specified in the Declaration to conduct extensive sales, leasing, rental and other marketing activities and to use the Project and any portion thereof, in the manners specified in the Declaration, without the consent or joinder of any Owner or the Owner's mortgagee, in such efforts (see Section T.12 of the Declaration (Reserved Right Regarding Sales and Marketing Activities));

(xviii) the reserved right, but not the obligation, to refinance the mortgage described in Exhibit A to the Declaration (see Section T.13 of the Declaration(Reserved Right to Refinance));

(xix) each Owner acknowledges and agrees that Developer, on behalf of the Association, may seek or has obtained certain licenses and permits from the applicable planning department of the County relating to common area maintenance and such other licenses and permits necessary or convenient to the operation of the Project as a condominium hotel. To the extent that any such licenses or permits have not been issued to the Association, Developer and its agents, employees, contractors, licensees, successors, mortgagees and assigns, reserve the right to transfer to the Association any and all obligations in connection with such licenses and permits (see Section T.14 of the Declaration (Reserved Right re Licenses and Permits)); and

(xx) the reserved right, but not the obligation, to record a restrictive covenant against title to the Property providing that the On-Street Parking will be available to hotel guests and users as long as hotel use continues at the Project (see Section T.15 of the Declaration (Reserved Right re Licenses and Permits)).

B. LIMITATIONS ON DEVELOPER'S RESERVED RIGHTS. The Developer's Reserved Rights with respect to the Condominium are subject to the limitations stated in the Condominium Documents. This power of attorney is subject to the same limits.

C. TRANSFER OF RESERVED RIGHTS. Developer may transfer its rights as the "Developer" under the Condominium Documents. If so, you: (i) agree and consent to the transfer of the special rights of the "Developer"; and (ii) agree to recognize the person to whom the rights are transferred as a "Developer" to the extent provided in the recorded document transferring those rights; and (iii) agree to recognize such person as the "Developer" under this power of attorney.

3. Nature of the Power of Attorney.

You give and grant to Developer full power, authority and discretion to do and perform any and all acts and things whatsoever that Developer alone may deem necessary or convenient in connection with the exercise of the rights reserved by Developer under the Condominium Documents and/or the Vacation Plan Documents, all as fully for all intents and purposes as you might or could do if you were personally present. You here and now approve, ratify and confirm all that Developer lawfully does or causes to be done using this power of attorney.

Without limiting the general description of Developer's powers and authority, you expressly give Developer full power to sign, deliver and record all documents that Developer deems necessary or convenient to the exercise of the Developer's Reserved Rights. This includes but is not limited to signing and recording one or more amendments to the Condominium Documents, the Vacation Plan Documents, or to any deed. It also includes signing and recording documents that designate, grant, lease, convey, transfer, cancel, relocate or otherwise deal with any easements over, under, across or through the common elements of the Condominium, or that transfer, cancel, relocate and otherwise deal with any easement or license in favor of the Condominium or its land, or to accept any easements or licenses over, under, across or through any part of the land that is being deleted from the Condominium. It also includes adding a property description to this document and making other changes to this power of attorney if necessary or convenient to have it recorded.

This power of attorney will be effective when you sign it. It is coupled with an interest and cannot be revoked. It will not be affected by your disability. If more than one person signs as "you", it will not be affected by the disability of any or all of them. You give Developer "full power of substitution." This means that Developer may substitute someone else for Developer as your attorney-in-fact.

By signing below, you agree to all of the things stated above.

"You"

STATE OF _____)
) ss:
COUNTY OF _____)

On this ____ day of _____, 20__, before me personally appeared _____, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of _____

My Commission expires: _____

END OF EXHIBIT F



L-816 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED
AUG 31, 2005 03:29 PM

Doc No(s) 3320699
on Cert(s) 721,230



/s/ CARL T. WATANABE
ASSISTANT REGISTRAR

20 1/1 Z1

RETURN BY MAIL ☐ PICKUP XX TO:

Case, Bigelow & Lombardi (DML)
737 Bishop Street, Suite 2600
Honolulu, HI 96813

Total Pages: 10

Tax Map Key No.: (1) 2-3-38: 02

AMENDMENT TO DECLARATION OF CONDOMINIUM PROPERTY REGIME
OF ALA MOANA HOTEL CONDOMINIUM

(CONDOMINIUM MAP NO. 1728)

On this 31st day of August, 2005, Ala Moana Property Development, LLC, a Delaware limited liability company, the address of which is 410 Atkinson Drive, Honolulu, Hawaii 96814 ("Declarant"), does hereby amend that certain Declaration of Condominium Property Regime of Ala Moana Hotel Condominium recorded in the Land Court of the State of Hawaii as Document No. 3286879, and noted on Certificate of Title No. 721,230 ("Declaration"), as the same may be further amended.

RECITALS:

A. By Declaration, Declarant submitted certain land and improvements, as described in the Declaration, to a condominium property regime (hereinafter, the "Community"), with the plans therefor filed as Condominium Map No. 1728 in said Land Court ("Condominium Map").

B. Pursuant to Sections E.1(a), S.3 and T.8 of the Declaration, Declarant has the right to amend the Declaration.

C. Declarant has not conveyed any apartments in the Community.

D. Declarant desires to amend and restate Exhibits E.1 and E.2 of the Declaration to correct typographical errors.

AMENDMENT:

A. Pursuant to the rights reserved to Declarant in Sections E.1(a), S.3 and T.8 of the Declaration, Declarant hereby amends the Declaration by deleting Exhibits "E.1" and "E.2" to the Declaration and substituting therefor the revised Exhibits "E.1" and "E.2" being filed herewith, which revised Exhibits "E.1" and "E.2" shall supercede Exhibits "E.1" and "E.2" to the Declaration.

B. Except as amended by this instrument, the Declaration shall continue in full force and effect as first written.

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DECLARANT has duly executed this instrument as of the date first referenced above.

ALA MOANA PROPERTY DEVELOPMENT, LLC, a
Delaware limited liability company

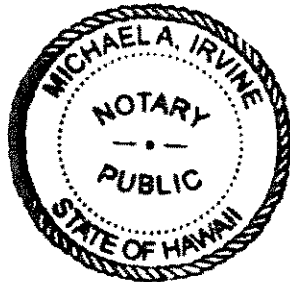
By ALA MOANA HOLDINGS, LLC, a Delaware
limited liability company, its sole member



By: Rafael Baez
Its: Authorized Signatory

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

On 8-30-2005, 2005 before me personally appeared **Rafael Baez**, to me personally known, who, being by me duly sworn, 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.



Michael A. Irvine
Notary Public, State of HAWAII
Type or print name: MICHAEL A. IRVINE

My commission expires: 4-11-09

EXHIBIT E1**DESCRIPTION OF COMMON INTERESTS (AOAO COMMON INTERESTS)**

Apartment No.*/Type	Living Area	# Units	Approx. Total Area	Unit Type Common Interest	Individual Unit Common Interest
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Hotel Apartment Class

A	246	9	2,214	0.0058329	0.0006481
B	246	270	66,420	0.174987	0.0006481
C	345	751	259,095	0.4867231	0.0006481
D	357	57	20,349	0.0369417	0.0006481
Suite A	2187	3	6,561	0.0088377	0.0029459
Suite B	1340	3	4,020	0.0073647	0.0024549
Suite C	630	1	630	0.000982	0.0009820
Suite D	667	3	2001	0.002946	0.0009820
Suite E	559	57	31863	0.055974	0.0009820

Commercial Apartment Class

1A	5,160.00	1	5,160	0.01491602	0.01491602
1B	7,960.00	1	7,960	0.01463362	0.01463362
1D	6,472.00	1	6,472	0.019996544	0.019996544
1F1	4,547.00	1	4,547	0.012132941	0.012132941
1F2	774.00	1	774	0.00043027	0.00043027
1F3	2,414.00	1	2,414	0.00536781	0.00536781
1F4	3,352.00	1	3,352	0.011180344	0.011180344
1F5	100.00	1	100	0.000444723	0.000444723
1L	3,425.00	1	3,425	0.001395488	0.001395488
2J	8,444.00	1	8,444	0.004694054	0.004694054
3B-1	3,326.00	1	3,326	0.006713098	0.006713098
3C	8,680.00	1	8,680	0.015693173	0.015693173
3H	937.00	1	937	0.000689321	0.000689321
36A	8,714.00	1	8,714	0.019376594	0.019376594

Banquet Apartment Class

2A	9,060.00	1	9,060	0.0179880	0.0179880
2B	5,736.00	1	5,736	0.0113885	0.0113885
2D	4,263.00	1	4,263	0.0084639	0.0084639
2G	1,480.00	1	1,480	0.0029384	0.0029384

Office Apartment Class

2E	7,695.00	1	7,695	0.0152779	0.0152779
2E 1	4,620.00	1	4,620	0.0091727	0.0091727
4A	7,837.00	1	7,837	0.0155599	0.0155599

Front Desk Apartment Class

1G	4,789.00	1	4,789	0.0095082	0.0095082
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Parking Apartment Class

Coral Level	730.00	1	730	0.0014494	0.0014494
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TOTAL		1177	503,668.00		
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Apartment Class

Hotel	0.7805891	0.7805891
Commercial	0.127664	0.127664
Banquet	0.0407788	0.0407788
Office	0.0400105	0.0400105
Front Desk	0.0095082	0.0095082
Parking	0.0014494	0.0014494

TOTAL	1	1
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** The Apartment numbers for the Vacation and Long Term Stay Apartments are as follows:

Apartment Type	Vacation Apartment Number
A (9)	537, 637, 737, 837, 937, 1037, 1137, 1237, 1337
B (270)	533, 534, 535, 536, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 633, 634, 635, 636, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 733, 734, 735, 736, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 833, 834, 835, 836, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 933, 934, 935, 936, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 1033, 1034, 1035, 1036, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1133, 1134, 1135, 1136, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149,

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C (751)	601, 602, 603, 604, 605, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 628, 629, 630, 631, 632, 701, 702, 703, 704, 705, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 728, 729, 730, 731, 732, 801, 802, 803, 804, 805, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 828, 829, 830, 831, 832, 901, 902, 903, 904, 905, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 928, 929, 930, 931, 932, 1001, 1002, 1003, 1004, 1005, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1028, 1029, 1030, 1031, 1032, 1101, 1102, 1103, 1104, 1105, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1128, 1129, 1130, 1131, 1132, 1201, 1202, 1203, 1204, 1205, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1228, 1229, 1230, 1231, 1232, 1301, 1302, 1303, 1304, 1305, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1328, 1329, 1330, 1331, 1332, 1401, 1402, 1403, 1404, 1405, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1428, 1429, 1430, 1431, 1432, 1501, 1502, 1503, 1504, 1505, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1528, 1529, 1530, 1531, 1532, 1601, 1602, 1603, 1604, 1605, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1628, 1629, 1630, 1631, 1632, 1701, 1702, 1703, 1704, 1705, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1728, 1729, 1730, 1731, 1732, 1801, 1802, 1803, 1804, 1805, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1828, 1829, 1830, 1831, 1832, 1901, 1902, 1903, 1904, 1905, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1928, 1929, 1930, 1931, 1932, 2001, 2002, 2003, 2004, 2005, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2028, 2029, 2030, 2031, 2032, 2101, 2102, 2103, 2104, 2105, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2128, 2129, 2130, 2131, 2132, 2201, 2202, 2203, 2204, 2205, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2228, 2229, 2230, 2231, 2232, 2301, 2302, 2303, 2304, 2305, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2328, 2329, 2330, 2331, 2332, 2401, 2402, 2403, 2404, 2405, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2428, 2429, 2430, 2431, 2432, 2501, 2502, 2503, 2504, 2505, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2528, 2529, 2530, 2531, 2532, 2601, 2602, 2603, 2604, 2605, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2628, 2629, 2630, 2631, 2632, 2701, 2702, 2703, 2704, 2705, 2709, 2710, 2711, 2712, 2713, 2714, 2715, 2716, 2717, 2718, 2719, 2720, 2721, 2722, 2723, 2724, 2728, 2729, 2730, 2731, 2732, 2801, 2802, 2803, 2804, 2805, 2809, 2810, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2824, 2828, 2829, 2830, 2831, 2832, 2901, 2902, 2903, 2904, 2905, 2909, 2910, 2911, 2912, 2913, 2914, 2915, 2916, 2917, 2918, 2919, 2920, 2921, 2922, 2923, 2924, 2928, 2929, 2930, 2931, 2932, 3001, 3002, 3003, 3004, 3005, 3009, 3010, 3011, 3012, 3013, 3014, 3015, 3016, 3017, 3018, 3019, 3020, 3021, 3022, 3023, 3024, 3028, 3029, 3030, 3031, 3032, 3101, 3102, 3103, 3104, 3105, 3109, 3110, 3111, 3112, 3113, 3114, 3115, 3116, 3117, 3118, 3119, 3120, 3121, 3122, 3123, 3124, 3128, 3129, 3130, 3131, 3132, 3201, 3202, 3203, 3204, 3205, 3209, 3210, 3211, 3212, 3213, 3214, 3215, 3216, 3217, 3218, 3219, 3220, 3221, 3222, 3223, 3224, 3228, 3229, 3230, 3231, 3232, 3401, 3402, 3403, 3404, 3405, 3409, 3410, 3411, 3412, 3413, 3414, 3415, 3416, 3417, 3418, 3419, 3420, 3421, 3422, 3429, 3430, 3431, 3432, 3501, 3502, 3503, 3504, 3505, 3509, 3510, 3511, 3512, 3513, 3514, 3515, 3516, 3517, 3518, 3519, 3520, 3521, 3522, 3523, 3524, 3528, 3529, 3530, 3531, 3532
D (57)	608, 627, 708, 727, 808, 827, 908, 927, 1008, 1027, 1108, 1127, 1208, 1227, 1308, 1327, 1408, 1427, 1508, 1527, 1608, 1627, 1708, 1727, 1808, 1827, 1908, 1927, 2008, 2027, 2108, 2127, 2208, 2227, 2308, 2327, 2408, 2427, 2508, 2527, 2608, 2627, 2708, 2727, 2808, 2827, 2908, 2927, 3008, 3027, 3108, 3127, 3208, 3227, 3408, 3508, 3527
Suite A (3)	3307, 3326, 3426

Suite B (3)	3313, 3319, 3331
Suite C (1)	3315
Suite D (3)	3301, 3303, 3317
Suite E (57)	607, 626, 707, 726, 807, 826, 907, 926, 1007, 1026, 1107, 1126, 1207, 1226, 1307, 1326, 1407, 1426, 1507, 1526, 1607, 1626, 1707, 1726, 1807, 1826, 1907, 1926, 2007, 2026, 2107, 2126, 2207, 2226, 2307, 2326, 2407, 2426, 2507, 2526, 2607, 2626, 2707, 2726, 2807, 2826, 2907, 2926, 3007, 3026, 3107, 3126, 3207, 3226, 3407, 3507, 3526

END OF EXHIBIT E1

EXHIBIT E2

DESCRIPTION OF COMMON INTERESTS (APARTMENT CLASS COMMON INTERESTS)

Hotel Apartment Class

Apartment Type	Living Area	# Units	Approx. Total Area	Limited Common Interest	Individual Unit Limited Common Interest
A	246	9	2,214	0.00747	0.000830272
B	246	270	66,420	0.22417	0.000830272
C	345	751	259,095	0.62353	0.000830272
D	357	57	20,349	0.04733	0.000830272
Suite A	2187	3	6,561	0.01132	0.003773964
Suite B	1340	3	4,020	0.00944	0.003144971
Suite C	630	1	630	0.00126	0.001257988
Suite D	667	3	2,001	0.00377	0.001257988
Suite E	559	57	31,863	0.07171	0.001257988
TOTAL	6577	1154	393,153	1	0.014013987

Commercial Apartment Class

Apartment Type	Living Area	# Units	Approx. Total Area	Limited Common Interest	Individual Unit Limited Common Interest
1A	5,160.00	1	5,160		0.116829511
1B	7,960.00	1	7,960		0.114617622
1D	6,472.00	1	6,472		0.156696165
1F1	4,547.00	1	4,547		0.095031088
1F2	774.00	1	774		0.003370082
1F3	2,414.00	1	2,414		0.042043297
1F4	3,352.00	1	3,352		0.087569883
1F5	100.00	1	100		0.003483288
1L	3,425.00	1	3,425		0.010930142
2J	8,444.00	1	8,444		0.036766114
3B-1	3,326.00	1	3,326		0.052580246
3C	8,680.00	1	8,680		0.122916558
3H	937.00	1	937		0.005399097
36A	8,714.00	1	8,714		0.1517669071
TOTAL	64,305.00	14	64,305		1

Banquet Apartment Class

Apartment Type	Living Area	# Units	Approx. Total Area	Limited Common Interest	Individual Unit Limited Common Interest
2A	9,060.00	1	9,060		0.441112031

2B	5,736.00	1	5,736	0.279273577
2D	4,263.00	1	4,263	0.207556356
2G	1,480.00	1	1,480	0.072058036
TOTAL	20,539.00	4	20,539	1

Office Apartment Class

Apartment Type	Living Area	# Units	Approx. Total Area	Limited Common Interest	Individual Unit Limited Common Interest
2E	7,695.00	1	7,695		0.381847956
2E 1	4,620.00	1	4,620		0.229257642
4A	7,837.00	1	7,837		0.388894402
TOTAL	20,152.00	3	20,152		1

Front Desk Apartment Class

Apartment Type	Living Area	# Units	Approx. Total Area	Limited Common Interest	Individual Unit Limited Common Interest
1G	4,789.00	1	4,789		1
TOTAL	4,789.00	1	4,789		1

Parking Apartment Class

Apartment Type	Living Area	# Units	Approx. Total Area	Limited Common Interest	Individual Unit Limited Common Interest
Coral Level	730.00	1	730		1
TOTAL	730.00	1	730		1

Multi-Class Allocations

Apartment Class	Total Living Area			Class Limited Common Interest
Hotel	393,153.00	1	393,153	0.7805891
Commercial	64,305.00	1	64,305	0.127664
Banquet	20,539	1	20,539	0.0407788
Office	20,152.00	1	20,152	0.0400105
Front Desk	4,789.00	1	4,789	0.0095082
Parking	730.00	1	730	0.0014494
TOTAL	503,668.00	6	503,668.00	1

END OF EXHIBIT E2

Ala Moana Hotel Condominium, AOAO
Insurance Summary
Date Prepared: September 26, 2005

Insurance Associates, Inc.
800 Bethel Street, Suite #200
Honolulu, HI 96813

Agent: Sue Savio
Direct Line: 808-526-9271
Direct Fax: 808-792-5371
E-mail: sue@ia-hawaii.com

Coverage	Limits	Term	Policy Period	Annual Premium	Insurance Company	Comments
Property Building Replacement Cost Business Personal Property Building Ordinance/Increased Cost of Construction Deductible (all other perils excluding hurricane) Hurricane Deductible (2% of the building value)	\$ 180,000,000 \$ 2,000,000 \$ 2,000,000 \$ 5,000 \$ 3,600,000	Annual	09/09/05 - 09/09/06	\$168,390 1 \$ 1,390	Fireman's Fund Insurance Company	Including TRIA Earthquake
Comprehensive General Liability General Aggregate Products and Completed Operations Aggregate Personal & Advertising Injury Each Occurrence Fire Damage (any one fire) Medical Expense (any one person) Hired/Non-Owned Automobile (occurrence)	\$ 2,000,000 \$ 2,000,000 \$ 1,000,000 \$ 1,000,000 \$ 50,000 \$ 5,000 \$ 1,000,000	Annual	09/09/05 - 09/09/06	\$ 54,319	Fireman's Fund Insurance Company	
Commercial Umbrella Each Occurrence Liability Aggregate Limit Retained Limit	\$ 25,000,000 \$ 25,000,000 \$ 0	Annual	09/09/05 - 09/09/06	\$ 32,424	Chubb Insurance Company	Provides coverage above the Directors' & Officers' Policy
Boiler and Machinery Covered Amount Deductible	\$ 180,000,000 \$ 5,000	Annual	09/09/05 - 09/09/06	\$ 9,798	Fireman's Fund Insurance Company	
Directors' and Officers' Liability Each Occurrence General Aggregate Deductible	\$ 2,000,000 \$ 2,000,000 \$ 1,000	Annual	09/09/05 - 09/09/06	\$ 5,656	Great American Insurance Company	Includes coverage for the Management Company
Fidelity Bond Deductible	\$ 100,000 \$ 1,000	Annual	09/09/05 - 09/09/06	\$ 459	Great American Insurance Company	
Flood Insurance Covered Amount Deductible	\$ 144,000,000 \$ 5,000	Annual	09/09/05 - 09/09/06	\$ 203,095	National Flood Insurance Program	

This summary is a brief outline of your insurance policies and is a matter of information only. It does not amend, extend or alter the coverage's afforded by the companies. You must refer to the provisions found in your policies for the details of your coverage's, terms, conditions and exclusions that apply.



L-645 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED
JUN 24, 2005 11:00 AM

Doc No(s) 3286880
on Cert(s) 721,230



/s/ CARL T. WATANABE
ASSISTANT REGISTRAR

48 2/2 Z1

Return by Mail ☒ Pickup ☐

Case Bigelow & Lombardi (DML)
737 Bishop Street, Suite 2600
Honolulu, Hawaii 96813

Total Pages: 48

Tax Map Key No.: (1) 2-3-38:02

BYLAWS OF THE
ASSOCIATION OF APARTMENT OWNERS OF
ALA MOANA HOTEL CONDOMINIUM

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**BYLAWS OF THE
ASSOCIATION OF HOME OWNERS OF
ALA MOANA HOTEL CONDOMINIUM**

1. INTRODUCTORY PROVISIONS

1.1 Definitions. The terms used in these Bylaws shall have the meanings given to them in the Declaration (as hereinafter defined) and in Chapter 514A, Hawaii Revised Statutes, as amended, except as otherwise expressly stated herein or clearly required by the context. All definitions used in the Declaration shall be incorporated by this reference.

1.2 Adoption of Bylaws. Developer has established a condominium property regime by the execution and Recordation of the Declaration affecting the land described in Exhibit "A" attached hereto. Developer declares that the Land constituting such condominium property regime is owned and shall be owned, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to the declarations, restrictions, and conditions set forth in these Bylaws, all of which are declared to be in furtherance of the plan set forth in the Declaration, and are established for the purpose of enhancing and preserving the value, desirability and attractiveness of the Land and the Project. These Bylaws shall constitute equitable servitudes, liens and covenants running with the Land and all Apartments and shall be binding on and shall inure to the benefit of all Persons having or acquiring any right, title or interest in any portion of the Land.

1.3 Conflicts. These Bylaws are intended to comply with the Act. In case of any conflict between the provisions of these Bylaws and those of Hawaii law, the Act or the Declaration, then the provisions of Hawaii law, the Act or the Declaration, as the case may be, shall control.

1.4 Application. All present and future Owners, lessees, mortgagees, purchasers under agreements of sale, tenants and occupants of Apartments and their guests, patrons, customers, other business invitees and employees, and any other Persons who may use any part of the Project in any manner are subject to the Project Documents, as each or any of them may be amended from time to time. The acceptance of a Deed or other conveyance, or the entry into a rental agreement of an Apartment, or the act of occupying an Apartment, shall constitute an agreement that the Project Documents, as they may be amended from time to time, are accepted, ratified and will be strictly complied with.

2. ASSOCIATION OF OWNERS

2.1 Membership. All Owners shall constitute the Association. Each Owner shall become a member of the Association upon acquiring title to an Apartment. The Association shall have the following six (6) Classes of membership, as described in the Declaration: the Hotel Apartment Class, the Office Apartment Class, the Parking Apartment Class, the Commercial Apartment Class, the Banquet Apartment Class and the Front Desk Apartment Class, so long as there is an Apartment included within the Office Apartment Class. At such time as the Office Apartment Class no longer includes any Apartments, the Association shall have five (5) classes of membership as described in the Declaration. The Owner of any Apartment upon acquiring title thereto shall automatically become a member of the Association and of the Class to which such Owner's Apartment belongs, and shall remain a member of the Association and such Class or Classes until such ownership ceases for any reason, at which

time such Owner's membership in the Association and such Class (or Classes) shall automatically cease. Membership shall terminate only when ownership of the Apartment ceases for any reason, and shall terminate automatically upon such transfer of ownership of the Apartment. It is intended that the Association qualify as an Apartment Owner's Association under Section 520 of the Internal Revenue Code of 1986, as amended.

2.2 Meetings of the Association.

(a) First Meeting. Developer or the Managing Agent shall call the first meeting of the Association no later than one hundred eighty (180) days after Recordation of the first Deed, if at that time at least forty percent (40%) or more of the Apartments in the Project have been sold and Recorded. If forty percent (40%) of the Apartments in the Project are not sold and Recorded at the end of one year from the date the first conveyance is Recorded, an annual meeting shall be called as soon as practicable upon the request in writing of at least ten percent (10%) of the Owners. At such meeting, a Board of Directors will be elected to serve until the next annual meeting. The term "sold and recorded" means the sale of an Apartment and the Recording of the Deed. Notwithstanding anything to the contrary contained in these Bylaws, Developer shall be entitled to vote and act on all matters as the Association and the Board of Directors until such time as the first meeting of the Association or the sale of an Apartment is Recorded, whichever occurs later.

(b) Annual Meetings. Annual meetings of the Association shall be held within ninety (90) days following the close of the fiscal year of the Association on such date as the president of the Association (herein the "**President**") may designate. If the President shall fail to designate such date by the forty-fifth day following the close of the fiscal year, then the annual meeting shall be held on the third Tuesday in the third calendar month following the close of the fiscal year. Each annual meeting shall be a general meeting and any business within the powers of the Association, without special notice of such business, may be transacted except as limited by law, the Declaration or these Bylaws. The Board (by resolution) or a majority of all of the Owners (by petition) may establish meetings in addition to annual meetings at semi-annual, quarter-annual or other regular intervals.

(c) Special Meetings. Special meetings of the Association may be called by the President or by any two (2) directors or by a petition to the Secretary of the Association or the Managing Agent signed by not less than twenty-five percent (25%) of the Owners. Upon receipt of the call for a meeting, the Secretary or the Managing Agent shall send notice of the meeting to all Owners. If the Secretary or Managing Agent does not send out the notices for the special meeting within fourteen (14) days of the receipt of a proper call for a meeting, the Person or petitioners calling for the meeting may send them. The meeting shall be held at the time and place specified in such call, or if unspecified, at any reasonable time within forty-five (45) days from the date the call was received. Except as provided otherwise in these Bylaws or by law, only such business shall be transacted at any special meeting as shall have been indicated by a specific or general description in the notice of the meeting. A special meeting and procedures adopted for the removal and replacement of directors shall be conducted in accordance with the provisions of these Bylaws pertaining to the removal, replacement and election of directors.

(d) Special Meeting Upon Merger. Anything in these Bylaws to the contrary notwithstanding, in the event that the Project is merged with an additional phase or increment, a special meeting of the Association shall be called and held within ninety (90) days following the

date of any of such merger. At such meeting, a new Board of Directors for the Association, as reconstituted by any such merger, shall be elected to replace the existing Board.

(e) Adjournment. Any meeting of the Association may be adjourned to a time not less than forty-eight (48) hours from the time the original meeting was called, to such place and time as may be determined by majority vote of the Owners present at the meeting, either in Person or by proxy, and whether or not a quorum is present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

(f) Place of Meetings. All meetings of the Association shall be held at the address of the Project or elsewhere within the State of Hawaii convenient to the Owners as designated by the Board.

2.3 Notice of Meetings. The notice of every meeting of the Association shall state whether it is an annual or special meeting, the date, time and place of the meeting, the items on the agenda for the meeting, and shall include a standard proxy form authorized by the Association, if any, and any other information permitted or required to be given by these Bylaws. Notice of each meeting, whether annual or special, shall be given at least fourteen (14) days but no more than sixty (60) days before the date of the meeting. If notice is given pursuant to the provisions of these Bylaws, the failure of any Owner to receive actual notice of a meeting shall not invalidate the meeting or any proceedings taken at the meeting. If a Vacation Ownership Apartment is part of a fractional plan, notice to all Owners of a single fractional interest in such Apartment may be given by providing notice to any one of the Owners of the fractional interest in such Apartment.

2.4 Waiver of Notice. The presence of an Owner or Apartment mortgagee, in Person or by proxy, at any meeting shall constitute a waiver of any required notice to that Owner or mortgagee unless an Owner shall at the opening of such meeting object to the holding of the meeting because of the failure to comply with the provisions of this Section. Except as otherwise provided by law, an Owner automatically waives notice of any Association meeting if the Owner fails to file a written objection with the Secretary or Managing Agent within thirty (30) days after the Owner receives written notice of any action taken at an Association meeting.

2.5 Quorum. Except as otherwise provided in these Bylaws, the presence in Person or by proxy of a majority of Owners shall constitute a quorum at all meetings of Owners.

2.6 Acts of Association. The vote of a majority of the Owners present at a meeting at which a quorum shall be present shall be the acts of the Association and binding upon all Owners for all purposes unless the Declaration or these Bylaws requires a different percentage.

2.7 Voting.

(a) Who Is Entitled To Vote. Except with respect to those matters requiring the voting by Classes, each Owner shall be entitled to that percentage of the total vote of all of the Owners equal to the percentage of the common interest appurtenant to the Owner's Apartment. With respect to those matters requiring the voting by Classes, each Apartment shall have a vote equal to its Class limited common interest as set forth in the Declaration. Votes allocated to any area which constitutes a common area under Section 514A-13(h) of the Act shall not be cast at any Association meeting, whether or not it is so designated in the Declaration. Votes may be cast in Person or by proxy. A personal representative, guardian,

conservator, or trustee may vote the percentage of vote for any Apartment owned or controlled by such Person in such capacity, provided that such Person shall first have presented evidence satisfactory to the Association that such Person owns or controls the Apartment in such capacity. When an Apartment is owned of record by two (2) or more Persons, any one of them present at any meeting may exercise the voting rights appurtenant to the Apartment in the absence of protest by any other Owners. 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 Apartment. Notwithstanding anything to the contrary provided herein, Developer shall be entitled to vote and act on all matters as the Association and the Board of Directors until such time as the first meeting of the Association or conveyance of an Apartment of the Project, whichever occurs later. Thereafter, Developer, as the Owner of any unsold Apartments, shall be entitled to vote the interest of each such Apartment.

(b) Votes of Owners of Apartments subject to a Fractional Declaration. Notwithstanding the foregoing, the board of directors of a fractional owners association, acting pursuant to a special power of attorney and/or proxy granted to it, may cast the vote of any Apartment included in the fractional plan documents; provided that if for any reason the means set forth for casting votes in the fractional plan documents is deemed to be invalid, then the vote of the Apartment will be determined by vote of the majority of the undivided interests voting, in person or by proxy, with respect to that Apartment. In the event of a tie vote, one-half of the vote allocated to the Apartment will be counted in favor of and one-half against the matter at issue. The purpose and intent of this Section is to assure the operation of the Association notwithstanding the likelihood that the Owners of fractional interests in the Apartments may not vote or participate in Association affairs as actively as the Act or the Project Documents may require.

(c) Voting for Directors. Directors shall be elected by cumulative voting. The total number of votes that each Owner of an Apartment may cast in an election for Class Directors is determined by multiplying the votes that Owner is entitled to vote on a noncumulative basis multiplied by the number of directors to be elected. Each Owner of an Apartment is entitled to cumulate the Owner's votes and give all of them to one nominee or to distribute such votes among any or all of the nominees. Subject to the provisions of Section 3.1 of these Bylaws, the nominees receiving the highest number of votes on a cumulative basis, up to the total number of directors to be elected, shall be deemed elected.

2.8 Proxies and Pledges.

(a) Requirements. The authority given by any Owner to another Person to represent the Owner at meetings of the Association must be in writing and contain at least the following: (i) the name of the Association; (ii) the date of the meeting of the Association; (iii) the printed name and signature of the Person or Persons giving the authority; (iv) the Apartment or Apartments for which the proxy is given; (v) the printed name of the Person to whom the proxy is given; and (vi) the date the proxy is given. No proxy shall be irrevocable unless coupled with a financial interest in the Apartment represented. A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunications, or other reproduction shall be a complete reproduction of the entire original proxy.

(b) A proxy may designate any Person or the Board of Directors as an entity as proxy and may be limited as the Apartment Owner indicates. To be valid, a proxy must be delivered to the Secretary of the Association or the Managing Agent, if any, no later than 4:30

p.m. on the second business day prior to the date of the meeting to which it pertains. Any one of two or more Persons owning an Apartment may give or revoke a proxy for the entire vote of such Apartment, or if so specified in the proxy, for a share of such vote in proportion to the share of ownership of the Person or Persons giving the proxy. Proxies may be given to the Board of Directors; provided that the proxy form shall contain a box wherein the owner may indicate that the owner wishes the vote be shared with each Board member receiving an equal percentage. Proxy forms which are not marked shall be considered a choice by the owner that the vote be made on the basis of the preference of the majority of the Board.

(c) A proxy given by a co-owner or co-owners for only a share of an Apartment's vote may be exercised to cast the entire vote for such Apartment in the absence of protest by another co-owner or the holder of a proxy from another co-owner. In case of a protest, each co-owner or holder of a proxy from a co-owner, as the case may be, shall be entitled to only a share of such Apartment's vote in proportion to the respective shares of ownership in such Apartment. Any provision hereof to the contrary notwithstanding, the standard proxy form, if any, which accompanies a notice of meeting: (i) shall be valid only for the meeting to which such notice pertains and its adjournment, if any; (ii) may designate any Person as proxy; and (iii) may be limited to the Apartment Owner's desires as indicated.

(d) Limitations On Proxy Votes. A director who uses Association funds to solicit proxies shall not cast any of these proxy votes for the election or reelection of directors at any Association meeting unless the proxy form specifically authorizes such a vote, and the Board first posts notice of its intent to solicit proxies in prominent locations within the Project at least thirty (30) days prior to its solicitation of proxies. Any Owner has seven (7) days from the time the Board posts notice to request Association funds to solicit proxies accompanied by a statement. The statement shall not exceed one hundred (100) words and shall disclose the Owner's qualifications to serve on the Board and the reasons for wanting proxies. The Board shall promptly mail to all Owners a proxy form containing either (i) the names of all Owners who requested the use of Association funds to solicit proxies, together with their statements, or (ii) without any names but accompanied by a list of names of all Owners who have requested the use of Association funds for soliciting proxies and their statements.

(e) A Managing Agent employed by the Association shall not solicit any proxies for its use, nor shall the Managing Agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. Voting rights transferred or pledged in a mortgage, deed of trust, lease or agreement of sale of any Apartment or interest therein, a true copy of which is filed with the Secretary, shall be exercised only by the Person designated in such instrument unless a written release or other termination signed by the parties is filed with the Secretary. A director shall not cast any proxy vote at any Board meeting. No Board of Directors or member of the Board shall use Association funds to solicit proxies; except for the distribution of proxies as set forth in Section 514A-82(b)(4) of the Act, provided that this shall not prevent an individual member of the Board from exercising his or her right as an Apartment Owner under the above-stated limitations.

(f) Termination. Unless limited by this Section or the terms of the proxy, a proxy shall continue until revoked by a writing filed with the Secretary or by the death or incapacity of the Owner. Any one of two (2) or more Persons owning an Apartment may revoke a proxy for the entire vote of such Apartment or if so specified in the proxy, for a share of such vote in proportion to the share of ownership of the Person or Persons giving such proxy. A proxy given by a co-owner for only a share of an Apartment's vote in proportion to the share of ownership of such co-owner shall be revocable only by such co-owner.

2.9 Order and Conduct of Business. The order of business at all meetings of the Association shall be generally as follows:

- (a) Roll call;
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of Board of Directors;
- (f) Reports of committees (if any);
- (g) Election of inspectors of election (when required);
- (h) Election of members of the Board of Directors (when required);
- (i) Appointment of auditor;
- (j) Unfinished business; and
- (k) New business.

All meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order.

2.10 Candidates for Election to Board of Directors. Each candidate for election or reelection to the Board of Directors may submit to the Board, for distribution to each member of the Association prior to the election, a personal biography which shall include a disclosure of any significant business connection, financial or otherwise, with any current insurer or the Managing Agent of the Project.

2.11 Prohibited Acts of Association Employees. No employee of the Association shall engage in selling or renting Apartments in the Project, except Association-owned Apartments, unless such activity is approved by an affirmative vote of sixty-five percent (65%) of the Owners.

2.12 Rights of Developer. Notwithstanding anything to the contrary provided herein, Developer shall be entitled to vote and/or act on all matters as the Association and the Board of Directors until the first meeting of the Association.

3. BOARD OF DIRECTORS

3.1 The Board.

(a) **Powers and Duties.** The affairs of the Association, except as otherwise provided by the Act, the Declaration, or these Bylaws, shall be conducted and managed by a Board. If required by the Act, each director shall owe the Association a fiduciary duty in the performance of the director's responsibilities, but if permitted by the Act, each director shall be required to comply with the lesser standard of the business judgment rule applicable to directors of for profit corporations.

(b) **Number and Qualification.** So long as there is an Apartment within the Office Apartment Class, the affairs of the Association shall be governed by a Board of Directors

composed of seven (7) persons who shall be selected by and from the Apartment Classes as follows:

Two (2)	directors by and from the Hotel Apartment Class,
One (1)	director by and from the Office Apartment Class,
One (1)	director by and from the Parking Apartment Class,
One (1)	director by and from the Front Desk Apartment Class,
One (1)	director by and from the Commercial Apartment Class, and
One (1)	director by and from the Banquet Apartment Class.

At such time as there is no longer an Office Apartment Class, the affairs of the Association shall be governed by a Board of Directors composed of five (5) persons who shall be selected by and from the Apartment Classes as follows:

One (1)	director by and from the Hotel Apartment Class,
One (1)	director by and from the Parking Apartment Class,
One (1)	director by and from the Front Desk Apartment Class,
One (1)	director by and from the Commercial Apartment Class, and
One (1)	director by and from the Banquet Apartment Class.

If the Office Apartment Class ceases to exist during the term of its sitting Class Director, such Class Director shall resign from the Board within thirty (30) days of the termination of the Office Apartment Class. Concurrently with the resignation of the sitting Office Apartment Class Director, the Hotel Apartment Class Director then having the shortest remaining term of office shall also resign such director's position, which position will not be refilled.

(c) Subject to the limitation of Section 2.7(c), all directors shall be either Owners, co-Owners, or vendees under an agreement of sale. An officer of a corporate Owner, the general partners of a general or limited partnership Owner, and the fiduciary or officer of a fiduciary Owner, respectively, shall be deemed to be Owners for the purposes of this Section. There shall not be more than one representative on the Board of Directors from any one Apartment. No resident manager or employee of the Managing Agent shall serve on the Board. For so long as Developer shall own an Apartment or Apartments within the Project, and for a period of two (2) years thereafter, Developer may appoint a non-voting "ex-officio" member of the Board of Directors. Developer shall not exercise this right, however, should Developer's representative serve as an elected member of the Board of Directors. Any ex-officio member of the Board of Directors may be excluded from executive sessions of the Board of Directors upon a majority vote of the Board of Directors. Any ex-officio member shall have all rights, privileges and protection as an elected member of the Board as provided under these Bylaws, with the sole exception that such ex-officio member shall be non-voting.

3.2 Election and Term of Office. Each Class of directors shall be elected by the vote only of those Apartment Owners within the Class represented by such directors. Such voting shall be by cumulative voting by secret ballot at each annual Association meeting and any special Association meeting called for that purpose. Directors shall hold office for a period of three (3) years and until their respective successors have been elected thereafter, subject to removal as herein provided, except that at the first annual Association meeting: (a) the director from the Hotel Apartment Class receiving the highest number of votes shall serve for a term of three (3) years and the director from the Hotel Apartment Class receiving the next highest number of votes shall serve for a term of one (1) year; (b) the directors from the Office Apartment Class and Parking Apartment Class receiving the highest number of votes shall

serve for a term of three (3) years; (c) the directors from the Front Desk Apartment Class and Commercial Apartment Class receiving the highest number of votes shall serve for a term of two (2) years; (d) the director from the Banquet Apartment Class receiving the highest number of votes shall serve for a term of one (1) year; and (e) all other directors shall be elected for a term of three (3) years.

3.3 Inspectors for Voting and Elections. Before any meeting of the Association pursuant to which voting will take place, the Board shall appoint inspectors of the voting at the meeting, including the voting for the election of directors. The number of inspectors will be either one (1) or three (3). The inspector or inspectors will: (a) determine (i) the number of votes that may be cast and (ii) the authenticity, validity and effect of proxies, pledges and other documents purporting to give a Person the right to represent, act and vote for an Owner; (b) receive votes, ballots and consents; (c) hear and determine all challenges, questions and conflicts relating in any way to the right to cast votes; (d) count and tabulate all votes and consents; (e) decide when the polls will close; (f) determine the results of all votes and elections; (g) do other acts that may be proper to conduct the vote or election with fairness to all Owners; and (h) perform such duties impartially, in good faith, to the best of his, her or their ability and as quickly as practical. The decision, act or certificate of a majority of inspectors, if there are three (3), or of the single inspector will be effective. Any facts stated in any effective report or certificate shall be presumed to be accurate.

3.4 Nomination for Election to the Board. The Board will appoint a committee to nominate Owners for election to the Board at each annual meeting. This committee will make their selections at least sixty (60) days before the date of each such meeting. The list of nominees must also include any qualified Person nominated in any petition signed by at least five percent (5%) of the Owners and received by the Board sixty (60) days before the meeting. This list of nominees must be sent to each Owner. If the list is prepared before the notice of meeting is sent, it must be sent with the notice. Each Person nominated must be placed on the ballot at the meeting. At the meeting, however, any Owner present may nominate any other qualified Person for director, and the Person so nominated must be added to the ballot.

3.5 Removal. At any regular or special meeting of the Association duly called, any one or more of the directors may be removed with or without cause by vote of a majority of Apartment Owners of the Class represented by that director and a successor shall then and there be elected from and by the Class represented by the director who was removed for the remainder of the term to fill the vacancy thus created; provided that an individual director shall not be removed (unless all of the directors representing such Class are removed) if Owners of such Class having sufficient votes to elect one director by cumulative voting present at such meeting in person or by proxy, shall vote against said removal. Such removal and replacement shall be in accordance with all applicable requirements and procedures in these Bylaws for the removal and replacement of directors, including, but not limited to, any provisions relating to cumulative voting. Any director whose removal has been proposed by the Apartment Owners shall be given an opportunity to be heard at such meeting.

If such removal and replacement is to occur at a special Association meeting, the call for such meeting shall be by the President or by a majority of the Board or by a petition to the Secretary or Managing Agent signed by not less than twenty-five percent (25%) of the Apartment Owners of the Class represented by the director whose removal or replacement is sought as shown in the Association's record of ownership; provided that if the Secretary or Managing Agent does not send out the notices for the special meeting within fourteen (14) days of receipt of the petition, then the petitioners shall have the authority to set the time, date and

place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of these Bylaws. Except as otherwise provided in the Act, such meeting and the procedures adopted for the removal and replacement from office of directors shall be scheduled, noticed and conducted in accordance with these Bylaws.

3.6 Vacancies. Vacancies in the Board caused by any reason other than removal of a director by the director's Apartment Class shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a director for the remainder of the term of the member whose vacancy he filled and until a successor is elected thereafter. Any director appointed by the Board to fill the vacancy shall be selected from the Class of Owners represented by the director who has vacated the position. Death, incapacity or resignation of a director, or if a director ceases to qualify for office as set forth above, shall cause his office to become vacant. Any director who has three consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment for more than sixty (60) days may be removed by a majority vote of the directors present at a regular or special meeting at which a quorum is present and a successor may be elected by the Board in the manner described above.

3.7 Meetings of the Board of Directors.

(a) Annual Meetings. An organizational meeting of the Board and each annual meeting thereafter shall be held at the place of and immediately following the annual meeting of the Association. No separate notice other than the notice of the annual meeting of the Association shall be necessary for such meeting. At such meeting the Board shall elect the officers of the Association for the ensuing year.

(b) Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Board. The Board shall meet at least once a year in addition to the annual meeting. Developer, when acting as the Board as provided in Section 2.2(a), may act without a formal meeting, call or notice.

(c) Special Meetings. Special meetings of the Board may be called by the President and will be called by the Secretary promptly upon the written request of at least twenty-five percent (25%) of the Owners.

(d) Open and Executive Sessions. All meetings of the Board, other than executive sessions, shall be open to all Owners, and Owners who are not directors may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board votes otherwise. The Board, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or litigation in which the Association may become involved or orders of business of a similar nature. The nature of all business to be considered in executive session shall first be announced in open session. Whenever practicable, notice of all Board meetings shall be posted by the resident manager, if any, or a member of the Board in prominent locations within the Project seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board.

(e) Attendance By Telephone. Members of the Board or of any committee may participate in a meeting by means of a conference telephone or similar communication equipment by which all Persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in Person at such a meeting.

(f) Conduct of Meetings. All meetings of the Board shall be conducted in accordance with the most current edition of Robert's Rules of Order.

3.8 Notice. Fourteen (14) days prior written notice of regular meetings of the Board, if practicable, and at least three (3) business days prior written notice of special meetings shall be given to each director, either personally or by telephone or facsimile transmission, and shall state the time, place and purpose of such meeting.

3.9 Waiver of Notice. A director may waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance at a meeting shall constitute a waiver of notice of the time, place and purpose of the meeting. If all the directors are present at a meeting of the Board, notice shall not be required and any business may be transacted at such meeting.

3.10 Quorum of Board of Directors. At all meetings of the Board, a majority of the total number of directors established by these Bylaws shall constitute a quorum for the transaction of business. The votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board. A director may not cast a proxy at any meeting. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.11 Conflicts of Interest. A director may not vote at any meeting on any issue in which such director has a conflict of interest. A director who has a conflict of interest concerning any issue before the Board shall disclose the nature of the conflict of interest to the Board prior to the vote on that issue at the meeting of the Board, and the minutes of the meeting shall record the fact that a disclosure was made. The determination of whether a conflict of interest exists as to a particular director or directors shall be determined by a majority of the non-interested directors, which determination shall be conclusive and binding on all parties. If abstentions for such a reason would result in less than a majority being able to vote, the directors who do not abstain shall appoint one or more Persons as temporary directors to vote on the matter in question.

3.12 Compensation. Directors shall not receive any compensation from the Association for acting as such other than a reasonable fee for attendance at the meetings of the Board as set by the Owners at the annual meeting. The directors may expend Association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State of Hawaii, all other travel expenses incurred under this subsection shall be subject to the requirements of Section 514A-82(b) (10) of the Act.

3.13 Fidelity Bonds. The Board shall require that the Managing Agent and all directors, officers, trustees, employees, and volunteers responsible for handling funds belonging to or administered by the Association furnish adequate fidelity bonds naming the Association as the insured and providing coverage in such amounts as the Board deems adequate, but in no event in any amount less than any minimum amount required under Section 514A-95(a)(3) of the Act. The premiums on such bonds, if paid by the Association, shall constitute a common expense. Every such bond shall:

(a) provide that the bond(s) may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least sixty (60) days prior written notice to the Board, the first mortgagees of record with respect to any Apartment or any interest therein and every other Person in interest who shall have requested such notice; and

(b) contain a waiver of any defense based upon the exclusion of Persons who serve without compensation from any definition of the term "employee" or similar term, and, by appropriate endorsement, provide coverage for any such Persons not otherwise covered.

3.14 Project Documents. The Association shall, at its expense, provide all Board members with a current copy of the Declaration, these Bylaws, any Project Rules in effect and, annually, a copy of the Act.

3.15 Fiduciary Duty. Each director shall have a fiduciary duty to the Association in the performance or discharge of his or her responsibilities as a director.

4. OFFICERS

4.1 Designation and Qualification. The principal officers of the Association shall be the President, Vice President, Secretary and Treasurer, all of whom shall be elected by the Board. The Board may appoint such other officers as in its judgment may be necessary. The President and Vice President shall, but no other officers need, be members of the Board. One individual may hold no more than one office. An Owner shall not act as both an officer of the Association and an employee of the Managing Agent.

4.2 Election of Officers. The officers of the Association shall be elected annually by the Board and shall hold office at the pleasure of the Board.

4.3 Removal. Any officer may be removed with or without cause by the affirmative vote of a majority of the Board. Vacancies may be filled by the Board at any regular meeting or at a special meeting of the Board called for such purpose.

4.4 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. Subject to the control of the Board, the President shall have all the general powers and duties which are incident to the office of president of a corporation organized under the laws of the State of Hawaii, including, but not limited to the power to appoint committees from among Owners as the President may, in his or her discretion, decide to be appropriate to assist in the conduct of the affairs of the Association. The President shall also have such other powers and duties as may be provided by these Bylaws or assigned from time to time by the Board.

4.5 Vice President. The Vice President shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to act temporarily in the place of the President. The Vice President shall also have such other powers and duties as may be assigned from time to time by the Board or by the President.

4.6 Secretary. The Secretary shall attend and keep the minutes of all meetings of the Owners and the Board, shall maintain and keep a continuous and accurate record of the ownership of all Apartments, shall have charge of such books and papers as the Board may direct, keep the minute book wherein resolutions shall be recorded, and shall in general perform all the duties incident to the office of secretary of a corporation organized under the laws of the

State of Hawaii. Duties of the Secretary may be delegated to the Managing Agent or to an assistant secretary subject to the Secretary's supervision.

4.7 Treasurer. The Treasurer shall be responsible for the keeping of full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data and reports. The Treasurer shall be responsible for the deposit of all moneys and other valuable effects of the Association in such depositories as may be designated by the Board of Directors; and shall, in general, perform all the duties incident to the office of treasurer of a corporation organized under the laws of the State of Hawaii. Duties of the Treasurer may be delegated to the Managing Agent subject to the Treasurer's supervision.

4.8 Compensation. No Person shall receive any compensation from the Association for acting as an officer but may be reimbursed for actual expenses incurred in the course of performing such officer's duties.

4.9 Auditor. The Association shall appoint annually a certified public accountant or accounting firm as auditor, who shall not be an officer of the Association nor own any interest in any Apartment, to audit the books and financial records of the Association as required by law or these Bylaws, or directed additionally by the Board.

4.10 Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.11 General - Committees. Committees to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present are hereby authorized. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall be composed of such persons as may be appointed by the Board, and shall operate in accordance with the terms of the resolution of the Board of Directors or with rules adopted by the Board of Directors.

4.12 Class Committees. In addition to other committees as provided above, there shall be a separate committee representing each of the Classes. Each Class committee shall consist of three (3) members; provided, however, by vote of at least fifty percent (50%) of the Owners within a Class, the number of members may be increased to five (5). Members of each Class committee shall be elected by the vote of the Owners within the respective Class at each annual meeting of the Association. For purposes of such election, each Owner within a Class shall have a vote equal to the Class limited common interest assigned to his Apartment, as set forth in the Declaration. Class committee members shall be elected for a term of one (1) year or until their successors are elected. It shall be the responsibility of the Class committee to advise the Board on any issue affecting the Class which it represents, but the Class committee shall not have the power or authority to bind the Board of Directors to any course of action.

The Class committee shall conduct themselves in accordance with and subject to and in compliance with Sections 2 and 3 of these Bylaws. For purposes of Class committee compliance with such sections, all references in such sections to the "Board of Directors" shall mean the Class committee, and all references to "directors" shall mean the members of the Class committee. Each Class committee shall elect a chairman from among its members who

shall preside at its meetings and who shall be responsible for transmitting any and all communications of the Class committee to the Board of Directors.

5. ADMINISTRATION

5.1 Management. The Board of Directors shall have the powers and duties necessary for the management and operation of the Project and administration of the affairs of the Association and may do all acts and things except those which may not be delegated by the Association to the Board of Directors by the Act, the Declaration or these Bylaws. Such powers and duties of the Board of Directors include, without limitation, the following:

(a) To contract and incur liabilities in connection with the exercise of any of the powers and duties of the Board;

(b) To have custody and control over all funds of the Association, open bank accounts on behalf of the Association and designate the signatories of those accounts;

(c) To keep books of accounts and records with respect to the Project as provided in the Act and these Bylaws;

(d) To maintain, repair, replace and restore the common elements and make any additions and alterations thereto;

(e) To make additions, alterations and improvements to the Project and repair and restore the Project in accordance with the provisions of the Act, the Declaration or these Bylaws after damage or destruction by fire or other casualty or as a result of condemnation;

(f) To purchase, maintain and replace any equipment and provide all water and utility services required for the common elements;

(g) To provide each Apartment with all water, sewer, electricity and other utility services the Board shall deem necessary, either at the expense of such Apartment or as a common expense, as determined by the Board;

(h) To purchase or provide all other materials, supplies, furniture, labor and services required by these Bylaws or by law, or which the Board, in its discretion, deems necessary or appropriate for the proper operation and maintenance of the Project, or which are used in common or jointly by the common elements and Apartments, in each case to the extent such goods and services shall not be otherwise provided;

(i) To have access to each Apartment from time to time during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs therein necessary to prevent damage to the common elements or to another Apartment or Apartments;

(j) To maintain and repair any Apartment or Limited Common Element if such maintenance or repair is necessary, in the discretion of the Board, to protect the common elements, limited common elements or any other portion of the Project and if the Owner or Owners of the Apartment shall have failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity of maintenance or repair shall have been delivered by the Board to the Owner or Owners. The Board shall levy a special

assessment against such Apartment for the cost of such maintenance or repair and any attorneys' fees and other expenses incurred in levying and collecting such special assessment;

(k) To employ, supervise and dismiss such personnel as may be necessary for the operation, repair, maintenance and replacement of the common elements;

(l) To procure legal, accounting, and management services necessary or proper for the operation of the Project or the interpretation, enforcement or implementation of the Declaration, these Bylaws and any other material documents affecting the Project;

(m) To obtain and maintain in effect all policies of insurance and bonds as may be required or authorized by the Declaration, these Bylaws, the Board or the Act;

(n) To cause to be prepared and to approve a budget covering the itemized estimated income of the Project, if any, from all sources and the estimated cost of maintaining and operating the Project during the ensuing fiscal year, including the reserves established by these Bylaws and any other reasonable reserves for such purposes, less any surpluses from the operation of prior years, if any;

(o) To prepare and approve a schedule of monthly assessments against each Owner for such Owner's proportionate share of such estimated cost of maintaining and operating the Project for such ensuing year and to levy and collect all monthly and special assessments of the common expenses and other charges payable by the Owners;

(p) To pay all common expenses which the Association is required to pay pursuant to these Bylaws or by law or which in the Board's opinion shall be necessary or proper for the operation and maintenance of the Project or for the enforcement of these Bylaws, provided that if any such payment is required because of the particular actions of negligence by any Owner, the cost thereof shall be specially assessed to that Owner;

(q) To pay and discharge any lien, encumbrance, tax or assessment levied against all or any portion of the Project which may in the opinion of the Board constitute a lien against the Project or against the common elements or limited common elements rather than merely against the interest of particular Owners. If one or more Owners are responsible for the existence of any such lien, they shall be jointly and severally liable for the cost of discharging such lien and for the costs incurred by the Board by reason of such lien;

(r) To enforce the provisions of the Project Documents and establish, assess and collect such penalties and fines and any interest as the Board deems appropriate with respect to such enforcement, including penalties, fines and interest for failure or refusal to pay on demand all costs and expenses required to be paid hereunder; provided that such penalties, fines and interest are not inconsistent with the law or the provisions of these Bylaws or the Declaration. The unpaid amount of such penalties and fines against any Owner shall constitute a lien against the Owner's interest in the Owner's Apartment which may be foreclosed by the Board or the Managing Agent in the same manner as provided in the Act for the foreclosure of a lien for common expenses;

(s) To notify all Persons having any interest in any Apartment according to the Association's record of ownership of delinquency exceeding sixty (60) days in the payment of any assessment against such Apartment;

(t) From time to time to adopt and amend and enforce Project Rules which govern the details of the operation and use of the Project, provided, however, that no such

Project Rules shall be effective if disapproved by a resolution of the Association adopted at a meeting duly called for such purpose. Nothing herein shall be construed to require that a meeting of the Association be called for the purpose of approving or disapproving Project Rules adopted by the Board of Directors;

(u) To grant easements and to enter into leases or licenses of and related to the common areas and elements described in H.R.S. 514A-13(d)(2) and common elements not intended for special purpose for periods exceeding five (5) years but not exceeding twenty (20) years, without the requirement to (i) secure the approval of the Apartment Owners, or (ii) make such grants or such leases or licenses subject to termination on sixty (60) days notice as described in H.R.S. 514A-13(d)(2); provided, however, the Board may lease or otherwise use for the benefit of the Association portions of the common elements which are not actually used for an originally intended special purpose, as determined by the Board of Directors, unless the approval of seventy-five percent (75%) of the Owners is obtained; provided such lease shall not have a term of more than five years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty (60) days' written notice;

(v) To lease or otherwise use for the benefit of the Association those common elements not falling within subsection (u) above, upon obtaining (i) the approval of seventy-five percent (75%) of the Owners, including all directly affected Owners and all Owners of Apartments to which such common elements are appurtenant in the case of a limited common element, and (ii) approval of all mortgagees of record on Apartments with respect to which Owner approval is required by (i) above, if such lease or use would be in derogation of the interest of such mortgagees;

(w) To purchase, lease or otherwise acquire any Apartment in the Project in the name of the Board of Directors or its nominee, corporate, trust or otherwise, on behalf of the Association and thereafter sell, lease, mortgage, vote the common interests appurtenant to and otherwise hold or deal with such Apartment. The Board of Directors may organize corporations to act as nominees of the Board of Directors in acquiring title to or leasing of Apartments on behalf of the Association;

(x) To purchase any Apartment in the Project at foreclosure or other judicial sales in the name of the Board of Directors or its nominee, corporate, trust or otherwise, on behalf of the Association;

(y) Subject to any approval requirements and spending limits contained in the Declaration and these Bylaws, to borrow money with or without security to be used by the Association for the repair, replacement, maintenance, operation or administration of the common elements of the Project, or the making of any additions, alterations or Improvements thereto. The cost of such borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to such borrowing, shall be a common expense of the Project; provided that Owners representing fifty percent (50%) of the common interest and Apartments give written consent to such borrowing, having been first notified of the purpose and use of the funds;

(z) To delegate its powers and duties to the Managing Agent, and to committees, agents, officers, representatives and employees;

(aa) To grant an easement across the common elements for any "reasonable purpose," which term shall include, but shall not be limited to, those purposes which are

necessary to the operation, care, upkeep, maintenance and repair of any Apartment, the common elements or any limited common elements in the Project;

(bb) To keep, or cause the Managing Agent to keep, an accurate and current list of members of the Association and their current addresses and names and addresses of the vendees under agreements of sale, if any; and

(cc) On behalf of the Association, to enter into one or more agreements or contracts with the association(s) of Apartment Owners of a condominium Project or condominium communities adjacent to or in the vicinity of the Project as necessary or convenient to provide for the joint satisfaction of insurance requirements, on-site management functions and other items of common interest between the Association and such other association(s), as may be desirable in the interest of efficiency and/or economy for the provision of such items. In such event, the joint expenses relating to such shared items shall be allocated among the participating associations based on the relative total net living floor area of all Apartments in each of the participating condominium communities, or in such other manner as may be reasonably determined fair and appropriate by the Board and the other participating associations.

5.2 Employment of a Managing Agent. Except as otherwise provided in the Declaration with respect to the initial Managing Agent, the Board (on behalf of the Association) shall at all times employ a responsible company duly registered with the Real Estate Commission and licensed to do business in the State of Hawaii as Managing Agent to manage and control the Project, subject at all times to direction by the Board and subject also to the primary rights and responsibility of the Association, with such administrative functions as shall be delegated by the Board. The compensation of the Managing Agent shall be determined by the Board.

The Managing Agent shall have such powers and duties as may be necessary or proper in connection with (a) supervision of the immediate management and operation of the Project, (b) maintenance, repair, replacement and restoration and any additions or alteration of the common elements, (c) the purchase, maintenance and replacement of any equipment, (d) provision for utilities services to the buildings and the various Apartments, (e) employment, supervision and dismissal of such personnel as it deems necessary for the maintenance and operation of the Project, (f) execution of contracts with others for the furnishing of such services as it deems proper for the Project, (g) preparation of a proposed budget and schedule of assessments, (h) collection of all assessments and payment of all bills, (i) purchase of such insurance as is contemplated by these Bylaws, (j) custody and control of all funds, (k) maintenance of books and records on a cash basis, and (l) preparation of financial reports.

Developer, or such Managing Agent as Developer may designate, shall act as the initial Managing Agent for the Project. If the initial management contract is for a term of more than one year, it shall provide that it may be terminated by either party at the end of the first year or at any time thereafter upon not less than ninety (90) days written notice; however, if Developer or a division, subsidiary or affiliate of Developer acts as the first Managing Agent, such management contract shall be subject to termination by either party thereto on not more than sixty (60) days written notice. The termination of any initial management contract shall be without payment of any termination fee to the Managing Agent. In no event shall the management contract be for a term exceeding three years and any such management contract shall be subject to termination, without penalty, by either party thereto on not more than ninety (90) days written notice. No decision by the Board of Directors to terminate professional management of the Project may be made without the prior written consent of at least sixty-five

percent (65%) of the institutional holders of first mortgages on Apartments (based upon one vote for each such first mortgage).

The Board of Directors may in its discretion limit any of the powers granted to the Managing Agent in these Bylaws or grant additional powers to the Managing Agent.

5.3 Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by such officer or officers as shall be provided by general or special resolution of the Board or, in the absence of any such resolution applicable to such instrument, by the President and the Vice President, or by the President or the Vice President and the Treasurer or the Secretary.

5.4 Deposits of Association Funds. The funds of the Association shall be deposited in financial institutions in the State of Hawaii whose deposits are insured by an agency of the United States, held by a corporation authorized to do business under Haw. Rev. Stat. Ch. 406, or invested in obligations of the United States government. The funds in the general operating account of the Association shall not be commingled with funds of other activities such as lease rent collections and rental operations, nor shall the Managing Agent commingle any Association funds with its own funds. For purposes of this Section, lease rent collections and rental operations shall not include the rental or leasing of common elements conducted on behalf of the Board of Directors. Association funds shall not be transferred by telephone between accounts. Directors shall not spend Association funds for their travel, directors' fees and per diem, unless a Majority of Owners approve of these expenses.

5.5 Books and Records of Account.

(a) Financial Records. The Board of Directors will maintain or cause to be maintained accurate and complete books of account and other financial records on a cash basis in accordance with recognized accounting practices. The records shall include, without limiting the generality of the foregoing, detailed and accurate records in chronological order of all receipts and expenditures of the Association, specifying and itemizing all expenses paid or incurred in connection with the maintenance, repair, restoration and replacement of the common elements and any other expenses incurred, all vouchers authorizing payment of such expenses and monthly statements showing the total current delinquent amount of unpaid assessments for common expenses.

(b) Annual Statements. Within ninety (90) days after the end of each fiscal year of the Association, the Board will render or cause to be rendered to each Owner a balance sheet and a statement of all receipts and disbursements, including assessments received and receivable, during the preceding year.

(c) Audit. The Association shall require an annual audit of the Association's financial accounts and no less than one yearly unannounced verification of the Association's cash balance by an independent public accountant. A copy of the annual audit shall be made available to each Apartment Owner in accordance with the requirements set forth in section 514A-96(b) of the Act.

5.6 Record of Ownership. The Board of Directors or the Managing Agent under the direction and supervision of the Board will keep an accurate and current record of the names and addresses of members of the Association, their tenants, mortgagees, and vendees under agreements of sale, and each Owner's common interest. Every Owner and purchaser under an agreement of sale shall promptly cause to be duly Recorded and filed with the Association the

instrument conveying the Owner's interest in an Apartment to him or other evidence of the Owner's title or interest in an Apartment. The Secretary shall maintain all such information in the record of ownership of the Association. Each Owner shall pay the Association or the Managing Agent on demand a service charge in an amount fixed from time to time by the Board (but not more than \$125.00) for the registration on the records of the Association of a change in the ownership of an Apartment.

5.7 Minutes of Meetings. The Association shall maintain minutes of all meetings of the Board of Directors, the Association and their committees. The minutes shall include the recorded vote of each Board member on all motions except those voted on in executive session.

5.8 Location and Inspection of Books and Records.

(a) Location. All of the Association's books and records shall be kept at the Project or at such other convenient place within the State of Hawaii as the Board shall designate, and in accordance with the requirements of the Act. The Board of Directors shall establish reasonable rules with respect to notice to be given to the custodian of the records by an Owner desiring to make inspection, the hours and days of the week when such inspection may be made and the payment of the cost of reproducing copies of documents so requested.

(b) Inspection of Financial Records and Minutes. The financial records of the Association, including the vouchers and monthly statements of unpaid assessments, and the minutes of meetings of the Board of Directors and the Association shall be available for examination and copying by Owners, mortgagees or their duly authorized representatives, at cost, at reasonable and convenient hours on business days as set by the Board of Directors. A copy of the financial records and the minutes will be mailed to any Owner upon the Owner's written request. The Association shall mail to any holder of a mortgage on any interest in an Apartment a copy of the annual audited financial statement of the Association within ninety (90) days following the end of a fiscal year of the Association, upon written request and payment of a fee equal to the cost of reproduction and postage. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts or copies of the documents at the director's own expense.

(c) Members List. Each Owner shall promptly file with the Board of Directors a true and complete copy, as Recorded, of each Deed, lease, mortgage, agreement of sale, assignment or other instrument whereby such Owner acquires, encumbers or disposes of an interest in an Apartment. The Board or Managing Agent, under direction of the Board, shall keep an accurate and current list of members of the Association and their current addresses and the names and addresses of the vendees under agreements of sale, if any. The list shall be maintained at a place designated by the Board and a copy shall be available at cost to any member of the Association as may be provided in the Project Rules or, in any event, to any member who furnishes to the Managing Agent or the Board of Directors an affidavit stating that the list will be used by the Owner personally and only for the purpose of soliciting votes or proxies or providing information to other Owners with respect to Association matters and that the list will not be used or furnished to any other Person for any other purpose.

5.9 Representation. The Board may represent the Association or any two or more Owners in any action, suit, hearing or other proceeding affecting the Association, the common elements or more than one Apartment, and on its or their behalf may institute, defend, intervene in, prosecute and settle any such actions, suits and proceedings, without prejudice to the rights

of any Owners individually to appear, to sue or be sued. Service of process on two or more Owners in any such action, suit or proceeding may be made on the President.

5.10 Liability and Indemnity of the Board of Directors and Officers. The directors and officers of the Association shall not be liable to the Owners for any mistake of judgment or otherwise except for their own gross negligence or willful misconduct. The Association shall indemnify each director and officer of the Association against all costs, expenses and liabilities which may be incurred by or imposed on him in connection with any claim, action, proceeding, investigation or inquiry made, instituted or threatened in which such Person may be involved as a party or otherwise by reason of such Person's being or having been a director or officer of the Association, or by reason of any past or future action taken, authorized or approved by such director or officer or any omission to act as a director or officer, whether or not such Person continues to be such director or officer at the time of the incurring or imposition of such costs, expenses or liabilities. Such costs, expenses or liabilities shall include judgments, amounts paid in compromise settlements and amounts paid for services of counsel and other related expenses except those costs, expenses and liabilities as shall relate to matters as to which such officer or director shall be finally adjudged to be, or shall be, liable by reason of gross negligence or willful misconduct toward the Association in the performance of such Person's duties as a director or officer. In the absence of a final adjudication of the existence or nonexistence of a director's or officer's liability to the Association, the determination of whether a director or officer has acted with gross negligence or willful misconduct may be made (i) by the Board of Directors by a majority vote or a quorum consisting of disinterested directors, or (ii) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel selected by the Board of Directors, or (iii) if a quorum of disinterested directors so directs, by a majority vote of the Owners. The foregoing right of indemnification shall not be exclusive of other rights which any director or officer may have and shall inure to the benefit of the heirs and personal representatives of each director or officer.

6. BUDGETS, RESERVES AND ASSESSMENTS

6.1 Budget for Common Expenses.

(a) Before the start of each fiscal year of the Association, the Board shall prepare, or have prepared, and adopt an annual operating budget in accordance with Section 514A-83.6 of the Act. At a minimum, the budget shall include the following:

(i) the estimated revenues, operating expenses and working capital requirements of the Association and the Apartment Classes for the upcoming year;

(ii) information as to whether the budget has been prepared on a cash or accrual basis;

(iii) the total replacement reserves (as defined in Section 514A-83.6(j) of the Act) of the Association and the Apartment Classes as of the date of the budget;

(iv) the estimated replacement reserves the Association will require to maintain the Project based on a reserve study conducted by the Association;

(v) a general explanation of how the estimated replacement reserves are computed;

(vi) the amount the Association must collect for the fiscal year to fund the estimated replacement reserves;

(vii) an estimate of the maintenance reserves the Association must collect in accordance with applicable provisions in the Declaration;

(viii) an amount which the Board deems appropriate to make up all or a portion of any deficiency from a prior year; and

(ix) the amount of surplus from the prior year, if any, which shall be used to pay common expenses in the upcoming year.

(b) The proposed allocation of assessments between the Apartment Classes shall be determined as required under the Declaration. For the fiscal year beginning after the Association's first annual meeting and for each fiscal year thereafter, the Association shall assess the Owners to fund a minimum of fifty percent (50%) of the estimated replacement reserves for the applicable fiscal year, except that incremental funding of replacement reserves may be implemented in accordance with rules specifically promulgated by the Real Estate Commission pursuant to Section 514A-83.6(b) of the Act. Estimated replacement reserves shall be computed by a formula based on the estimated life and the estimated capital expenditure or major maintenance (as such terms are defined in Section 514A-83.6(j) of the Act) required for each part of the Project and shall include: (i) adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and (ii) separate, designated reserves for each part of the Project for which capital expenditures or major maintenance will exceed \$10,000.00. Due to the varying maintenance and replacement obligations as between Apartment Classes, separate designated reserves shall be established for those elements of the Classes and their respective Limited Common Elements to be maintained and replaced by the Apartment Class Owners and such Owners shall be separately assessed therefore. The common expenses assessed to the Commercial Apartments shall not include reserve assessments applicable to components of the Vacation and Long Term Stay Apartments, and vice versa. Parts of the Project for which capital expenditures or major maintenance will not exceed \$10,000.00 may be aggregated in a single designated maintenance reserve. Neither Developer, the Association, the Managing Agent, any Apartment Owner, nor any director, officer or employee of the Association who makes or participates in a good faith effort to calculate the estimated replacement reserves for the Association shall have any personal liability if such estimate subsequently proves to be incorrect.

(c) Upon review and adoption by the Board, the budget shall be distributed to the Owners and shall constitute the basis of the Association's common expenses for the year which shall be collected from the Owners by regular assessment. The budget shall be sent to each Owner, and, if practical, each year's budget shall be sent at least thirty days before the annual meeting of the Association, provided that the budget for the first fiscal year of the Association need not be sent. The Association's annual financial statement shall also be sent out as the Board shall direct, and, if practical, shall be sent out at least thirty (30) days before the annual meeting of the Association. Such financial statement must include a statement of all receipts and expenditures determined on a cash basis and a statement of all Association funds and other assets, including without limitation all reserve accounts.

(d) The Board may, but shall not be required to, adjust the budget during any year in the event of surplus funds or projected surplus funds, but no Owner will have a right to a

refund of any assessment already paid or the right not to pay any assessment due but unpaid as a result of any such adjustment in the budget. At the annual meeting each year, the Association shall adopt a resolution that any surplus funds collected from the Owners for common expenses but left over after the end of the previous year shall be used to pay common expenses, excluding any capital Improvements, in the next year. For this purpose, each Owner irrevocably appoints the President his proxy and attorney-in-fact to adopt such a resolution.

(e) A copy of the Association's annual operating budget shall be furnished to the Real Estate Commission upon its request as part of the Association's registration with the Real Estate Commission under Section 514A-95.1 of the Act.

6.2 Supplemental Budget. The Association's expenditures in any given fiscal year may not exceed by more than twenty percent (20%) the total annual operating budget for that fiscal year, except in an emergency situation, as defined in Section 514A-83.6(j) of the Act. If an emergency situation arises or the Association experiences significant revenue shortfalls due to unpaid assessments, and the Association does not have, or the Board projects that it will not have, sufficient funds to pay common expenses on a current basis, the Board shall prepare or have prepared a revision of the estimated common expenses for that year. The increased expense or revenue shortfall amounts of such revision shall be established by Board resolution as a supplemental budget for that year. Such supplemental budget resolution shall contain written findings as to the necessity of the extraordinary expenses and why the expenses were not or could not have been reasonably foreseen in the budgeting process and shall be distributed to the Owners before any special assessment is made based on such supplemental budget.

6.3 Notice of Increase in Maintenance Fees or Special Assessment. The Board shall send to all Owners thereby affected written notice of any increase in the regular assessment or any special assessment for common expenses at least thirty (30) days before the effective date of such increase or special assessment.

6.4 Owner's Payments for Common Expenses. Each Owner shall be liable for and pay a share of the common expenses in proportion to the common interest appurtenant to such Owner's Apartment Class common interest or multi-class common interest. However, all costs and expenses of any Limited Common Element will be charged to the Owner of the Apartment to which the Limited Common Elements is appurtenant, including all costs of maintenance, repair, replacement, additions and improvements to such Limited Common Element. Regular assessments and special assessments arising from any supplemental budget shall be charged to each Owner accordingly. Each assessment duly made by the Board pursuant to the Declaration or these Bylaws shall be the separate, distinct and personal obligation of each Owner assessed as of the date of assessment and shall constitute a lien on the Owner's Apartment as provided in the Declaration, these Bylaws and the Act. When an Apartment is owned by more than one Person, the obligation shall be joint and several among the co-Owners. Each Owner shall pay the assessments against such Owner's Apartment for common expenses at such times and in such amounts as established by the Board, provided, however, that Owners who are required by the terms of a first mortgage to make payments to the mortgagee for transmittal to the Board shall be permitted to do so. Each Owner shall also be liable for and shall pay all other amounts chargeable to such Owner in accordance with the Declaration and these Bylaws, and all such amounts shall be charged to such Owner as a special assessment, and shall constitute a lien on the Owner's Apartment as provided in the Declaration, these Bylaws and the Act. No Apartment Owner may exempt himself from liability for contribution towards common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of the Apartment.

6.5 Payment as Agent. Each Owner, as principal, shall be liable for the Owner's proportionate share of the common expenses. The Board, on behalf of the Owners, will pay or cause to be paid all common expenses and shall be responsible, as agent for each Owner, only to collect the funds for the payment of the common expenses and transmit the payments to third Persons to whom such payments must be made.

6.6 Due Date of Assessments. Regular and special assessments of common expenses shall be payable in monthly installments, unless otherwise determined by the Board, on the first day of each month, commencing with respect to each Apartment on the first day of the first month following the issuance by the appropriate county agency of a certificate of occupancy for such Apartment. The first regular installment of common expenses shall be prorated for each Apartment from the date of issuance of such certificate of occupancy. Special assessments for common expenses may be made payable in a lump sum or in installments as the Board shall determine. Special assessments for other charges to an Owner shall be due on the date the next regular assessment is due or on such other date as the Board shall determine.

6.7 Taxes and Assessments. Each Owner shall be obligated to have the real property taxes for the Owner's Apartment and appurtenant common interest separately assessed by the proper governmental authority and any other taxes which now are or may hereafter be assessed by law on each Apartment and its limited common interest or the personal property or other interest of the Owner. Each Owner shall be obligated to pay the amount of the taxes so determined. Each Owner shall execute such documents and take such actions as may be reasonably specified by the Board to facilitate compliance with the proper governmental authority regarding such taxes and assessments. Each Owner shall pay the Owner's proportionate share of any assessment by the Board for any taxes or assessments, if any, assessed against the Land as a whole or any part of the common elements as a whole and not separately. If, in the opinion of the Board, any taxes or assessments may be assessed on the entire Land or any part of the common elements pending separate assessment of the individual apartments, the Board may pay such taxes or assessments and shall in a fair and equitable manner allocate such taxes and assessments to (a) the common elements, exclusive of the limited common elements, in which event such allocated share of the taxes or assessments shall be deemed to be a common expense and payable by all Apartment Owners as such, (b) the Individual limited common elements, in which event such allocated share of the taxes or assessments shall be deemed to be Individual limited common expenses and payable as such by the Owners of the Apartments to which such Individual limited common elements are appurtenant, (c) the Class limited common elements, in which event such allocated share of the taxes or assessments shall be deemed Class limited common expenses and payable as such by the Apartment Class to which such Class limited common elements are appurtenant, (d) the Multi-class limited common elements, in which event such allocated share of the taxes or assessments shall be deemed Multi-class limited common expenses and payable as such by the Apartment Classes to which such Multi-class limited common elements are appurtenant and (e) the Apartments, in which event such allocated share of the taxes or assessments shall be deemed an expense of the Apartments and payable as such by the Owners thereof. In the event the Association receives a refund of any tax or assessment which tax or assessment has been allocated in the manner provided in the preceding sentence, such refund shall be allocated in the same manner, including, without limitation, any refund to the Apartments for the benefit of the then-Apartment Owner. Notwithstanding anything in the budget to the contrary, future assessments may be required for the payment of real property taxes.

6.8 Utility Expenses.

(a) If the cost of utility services to the any Apartment or its Limited Common Element(s) are separately metered or check metered, then, assuming the utility company provides separate bills for such Apartment and/or its limited common elements, the Owner of the Apartment shall be responsible for the payment of the bill directly to the utility company. Otherwise, the cost of the utility services to such separately metered Apartment and/or its limited common elements will be added to the Apartment's assessment for common expenses. For all utility expenses to the Apartments and/or their limited common elements that are not separately metered or check metered, the Board will allocate a proportionate share of the utility expenses to each of the Apartments as a common expense equal to the common interest appurtenant to each Apartment.

(b) For all utility expenses to a Commercial Apartment, the Spa Apartment and/or their respective limited common elements that are not separately metered or check metered the Board will fairly and equitably allocate to such Apartment the cost of utility services that are not separately metered or check metered based upon estimated consumption and cost of utilities. If the Owner of any such Apartment disputes the board's allocation, the Owner may require that the matter be submitted to arbitration. If the arbitrator's allocation is not more than ten percent (10%) different from the board's allocation, then the owner must pay the costs of the arbitration and the board's legal fees and costs. Otherwise, the Association must pay the costs of the arbitration and the owner's legal fees and costs.

(c) The cost of utility services for the common elements is a common expense. Notwithstanding any provision to the contrary contained herein, for any Vacation Ownership Apartment included in a fractional or timeshare plan, the Board will collect and pay taxes, assessments and costs of utility services in the same manner as common expenses and will continue to do so unless the fractional owners association or timeshare owners association requests otherwise. All such sums paid for or on account of the Vacation Apartments included in the fractional or timeshare plan will be charged to the owners of those Apartments in accordance with the formula or method for allocating expenses among owners of fractional or timeshare interests stated in the Vacation Ownership Declaration, the Time Share Declaration or the other documents governing the fractional or timeshare plan.

(f) All such sums paid for or on account of the Vacation Apartments that are not included in a fractional or timeshare plan will be charged to those Apartments.

(g) All such sums paid for or on account of an Apartment or class or multi-class and the Limited Common Elements appurtenant thereto will be charged to the Owner of such Apartment or class or multi-class, as appropriate. The Owner of such Apartments must pay the amounts actually charged to that Apartment. To the extent that the taxes or assessments are separately assessed or utility services separately metered or check metered, the Board may direct or permit the Commercial Apartment Owner to pay those costs directly to the taxing authority or utility company in lieu of having the Association collect and pay those amounts.

6.9 Default in Payment of Assessments. Any assessment not paid within ten (10) days after the due date thereof shall be subject to a late charge as may from time to time be established in the Project Rules, but not in excess of Fifty Dollars, to defray the costs to the Association of additional record keeping and reporting, and shall accrue interest at the rate of twelve percent (12%) per annum from the due date until paid. Any unpaid assessment shall constitute a lien on the Apartment for which the assessment was made which lien shall have the priority and standing in regard to other liens as provided by law, in particular Section 514A-90(a) of the Act.

In the event of a default or defaults in payment of any such assessment or assessments and in addition to any other remedies the Board may have under the Project Documents or by law, the Board may enforce each such obligation as follows:

(a) By suit to enforce such assessment obligations provided that each such suit must be authorized by a majority of a quorum of the Board at a regular or special meeting thereof and any such suit may be instituted by any one member of the Board or by the Managing Agent, if the latter is so authorized in writing. Each such action shall be brought in the name of the Board, and the Board shall be deemed to be acting on behalf of all the Owners. Any judgment rendered in any such action shall include all costs and expenses incurred by the Association in collecting the assessment, including reasonable attorneys' fees. Upon full satisfaction of any such judgment, it shall be the duty of the Board to authorize any two members thereof, acting in the name of the Board, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

(b) At any time after the occurrence of the default, the Board or the Managing Agent (acting upon the authorization of the majority of the Board at any regular or special meeting) may give a notice to the defaulting Owner (with a copy to the mortgagee of such Owner if such mortgagee has furnished its name and address to the Board) stating the date of the delinquency, the amount of the delinquency and making demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the Board may prepare and Record on behalf of the Association a claim of lien against the Apartment of such delinquent Owner. Such claim of lien shall state: (i) the name of the delinquent Owner; (ii) a designation of the Apartment against which the claim of lien is made; (iii) the amount claimed to be due and owing (after the allowance of any proper offset); (iv) that the claim of lien is made pursuant to the terms of these Bylaws and the Act; and (v) that a lien is claimed against such Apartment in an amount equal to the net amount of the stated delinquency plus any accrued interest and costs of collection, including attorneys' fees, if any. Such claim of lien shall be signed and acknowledged by any two or more members of the Board or by the attorney for the Board or by the Managing Agent and shall be dated as of the date of execution. Upon Recordation of a duly executed original or copy of such claim of lien, the Board shall have and may exercise all available remedies. Said remedies include, but are not limited to, foreclosure of the lien in a like manner as to the foreclosure of a mortgage of real property, including foreclosure under power of sale, as provided for in Chapter 667, Hawaii Revised Statutes, and such other rights as may be exercised by the Board pursuant to HRS 514-A-90, including without limitation 514A-90(e). The Owner of an Apartment against which the lien of the Association is foreclosed shall pay a reasonable rental for such Apartment and the plaintiff in such a foreclosure shall be entitled to a receiver to collect such rental. Each default shall constitute a separate basis for a claim of lien, but a single claim of lien may be filed with respect to more than one default.

6.10 Fractional Interests. With respect to Vacation and Long Term Stay Apartments included as part of a fractional plan, then to the extent permitted by law, the Board shall have the option, but not the obligation to treat each fractional interest as if it was a separate apartment for such purposes as the Board chooses. This means, among other things, that: (a) each owner of a fractional interest will be liable only for assessments charged to the owner or to his or her fractional interest; (b) owners of other fractional interest in the same apartment will be liable only for assessments charged to their fractional interest and they will not be jointly and severally liable for assessments charged to the owners of other fractional interest in the same Apartment; (c) co-owners of a single fractional interest will be jointly and severally liable for all assessments charged to their fractional interest; (d) the Association will have a lien on each

owner's fractional interest for the amount of any assessments charged to that owner's fractional interest, but the lien on one fractional interest will be separate from the lien on any other fractional interest in the same Apartment; (e) the Association may foreclose its lien on one owner's fractional interest without foreclosing its lien on any other fractional interest in the same Apartment; (f) the Association may file a lawsuit against the owner of one fractional interest without filing a lawsuit against the owners of any other fractional interest in that same Apartment; and (g) the Association may file a notice of lien on one fractional interest without filing a notice of lien on any other fractional interest in that same Apartment.

6.11 Collection from Tenants and Agents. If an Owner shall default in the payment of any assessment, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner occupying that Owner's Apartment, the rent as it becomes due or the net amounts due to the Owner under any contract between the Owners and a rental agent up to an amount sufficient to pay all sums due from the Owner, including interest and costs of enforcement, if any. Any such payment to the Board by a tenant or rental agent shall be a full and sufficient discharge of the tenant or agent as between the tenant or agent and the Owner to the extent of the amount so paid. No such demand or acceptance of rent from any tenant or agent shall be deemed to be an approval of any lease by the Owner or a release or discharge of any of the obligations of the Owner remaining unpaid or unperformed or an acknowledgment of surrender of any rights or duties hereunder. Neither the tenant nor the rental agent shall have the right to question the right of the Board to make such demand, but shall be obligated to make such payments to the Board as demanded. The Board may not exercise this right if a receiver has been appointed to take charge of an Apartment or if a mortgagee is in possession pending a mortgage foreclosure.

6.12 Disputed Assessments; Notices; Dispute Resolution.

(a) No Owner shall withhold any assessment claimed by the Association. An Owner who disputes the amount of an assessment may request a written statement clearly indicating:

(i) the amount of common expenses included in the assessment, including the due date of each amount claimed;

(ii) the amount of any penalty, late fee, lien filing fee and any other charges included in the assessment;

(iii) the amount of attorneys' fees and costs, if any, included in the assessment;

(iv) that under Hawaii law, the Owner has no right to withhold assessments for any reason;

(v) that the Owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of the Association's assessment, provided that the Owner immediately pays the assessment in full and keeps assessments current; and

(vi) that payment in full of the assessment does not prevent the Owner from contesting the assessment or receiving a refund of amounts not owed.

(b) An Owner who pays the Association the full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve any

disputes concerning the amount or validity of the Association's claim. If the Owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under Part IV of the Act; provided that an Owner may only file for arbitration if all amounts claimed by the Association have been paid in full on or before the date of filing. If the Owner fails to keep all Association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the Owner pays all Association assessments within thirty (30) days of the date of suspension, the Owner may ask the arbitrator to recommence the arbitration proceedings. If the Owner fails to pay all Association assessments by the end of the thirty (30)-day period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The Owner shall be entitled to a refund of any amounts paid to the Association which are not owed.

6.13 Liability for Unpaid Assessments Upon Sale. In the event of voluntary conveyance of an Apartment, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments for common expenses assessed against the grantor up to the time of the conveyance; provided, however, that the grantor or the grantee may obtain a certificate as provided in Section 6.14 below, and except as to the amount of subsequently dishonored checks mentioned in such certificate as having been received within the thirty (30)-day period immediately preceding the date of such certificate, the grantee shall not be liable for, nor shall the Apartment conveyed be subject to, any lien for any unpaid assessments against the grantor in excess of the amount set forth in the certificate.

6.14 Certificate of Unpaid Assessments. Any Owner (and his or her mortgagee or any purchaser of an interest in his or her Apartment) shall be entitled to a certificate from the Board or the Managing Agent setting forth the amount of any due and unpaid assessments with respect to the Owner's Apartment or setting forth that all assessments due are paid, if such is the case, within fifteen (15) days after written request and upon payment of a reasonable fee. If any claim of lien is Recorded and thereafter the Board shall receive payment in full of the amount claimed to be due and owing, including accrued interest and costs of enforcement, then upon demand of the Owner or the Owner's successor, and the payment of a reasonable fee, the Board, acting by any two members, shall execute, acknowledge and deliver a release of lien in Recordable form. A certificate regarding unpaid assessments executed and acknowledged or made under penalty of perjury by any two members of the Board or the Managing Agent shall be conclusive upon the Board and the Association in favor of any and all Persons who rely thereon in good faith as to the matters therein contained, except as to the amount of subsequently dishonored checks mentioned in such certificate as having been received within the thirty (30)-day period immediately preceding the date of such certificate.

6.15 Waiver. The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of the Owner hereunder, or to exercise any right or option herein contained, or to serve any notice, or to institute any action or summary proceeding, shall not be construed as a waiver or a relinquishment for the future of such covenant or option or right, but such covenant or option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by an Owner with or without knowledge by the Board of the breach of any covenant hereof shall not be deemed a waiver of such breach.

6.16 Late Fees. The Association may deduct and apply portions of common expenses payments received from an Owner to unpaid late fees only in accordance with Section 514A-15.1 of the Act.

7. MAINTENANCE, USE, ALTERATIONS AND ADDITIONS

7.1 Maintenance and Repair of Apartments and Limited Common Elements. Each Owner shall at his or her own expense at all times keep the Owner's Apartment, the appurtenant Limited Common Elements and all fixtures and equipment installed in the Owner's Apartment in good order, repair and condition. Each Owner shall be responsible for the maintenance, repair and replacement of all plumbing and lighting fixtures, windows, water heating, cooling or heating equipment, appliances and similar equipment installed in the Owner's Apartment and not part of the common elements. Notwithstanding the foregoing, the street facing exterior windows of the Apartments may be cleaned by the Association and charged as a common expense or a limited common expense, as may be deemed appropriate by the Board. Each Owner shall perform promptly all repair and maintenance work, the omission of which would adversely affect any common elements or any other Apartment. It is intended that the exterior of the buildings will have a uniform appearance and that the Project will be maintained as a first class vacation ownership resort. To that end, the Board alone may arrange for painting or repair of the lanais, lanai ceilings, patios, outside doors, windows, trim, walls, railings and other exterior parts of any buildings, even if they are limited common elements or part of the apartments. The Board may also choose the type and color of paint to be used and the Board may assess each Owner for his or her proportionate share of the painting and repairs or the Board may use reserve funds for such exterior maintenance. Notwithstanding the foregoing, the cost of painting and repairs due to negligence, misuse or neglect of an Owner or other occupant may be charged to the applicable Apartment Owner as a special assessment. No awnings, shades, jalousies or other device, nor any lanai enclosure, shall be erected or placed on the lanais so as to be visible from the exterior without prior written permission from the Board or in accordance with the Project Rules, if applicable provisions are stated therein. Every Apartment Owner and occupant must (a) reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishings, and equipment owned by the Association caused by that Owner or occupant or by any person using the Project with their permission (except for normal wear and tear), and (b) give to the Managing Agent notice of any such loss or damage or other defect in the Project promptly after discovering it. The provisions of this section do not apply to the Limited Common Elements of the Commercial Apartment to the extent that the Owner of such Apartment elects to maintain the exterior of those elements itself.

7.2 Maintenance and Repair of Common Elements. Except as provided otherwise in the Declaration or these Bylaws, all maintenance, repairs and replacements of the common elements shall be made only by or at the direction of the Board of Directors and be charged to all the Owners as a common expense, except: (i) the costs of maintenance, repairs and replacements necessitated by the negligence, misuse or neglect of an identified Apartment Owner shall be charged to such Apartment Owner as a special assessment; and (ii) all costs of maintenance, repair, replacement, additions and Improvements to any limited common element shall be charged to the Owner(s) of the Apartment or Apartments to which such limited common element is appurtenant. The Association waives any claim against and shall indemnify Developer, and any of its agents and the contractor if the recommended maintenance is not performed by the Association. Except as otherwise provided in these bylaws or in the declaration, all maintenance, repairs and replacements of Limited Common Elements appurtenant to the Commercial Apartment, whether located inside or outside the Apartment, will be made by or at the direction of the Owner of the Commercial Apartment.

7.3 Use of Project.

(a) All Apartments shall be used only for such purposes as provided in the Declaration.

(b) No fires, including barbecue fires, shall be allowed in any part of any Apartment or the common elements, except that barbecuing only to the extent permitted by the County fire code shall be permitted on lanais, in private patios or yard areas and in such portions of the common elements as the Board may designate from time to time by resolution or in the Project Rules. Barbecuing shall include, but shall not be limited to, the broiling of any food items over a charcoal fire, gas grill or electrical grill.

(c) Every Owner and occupant shall at all times keep his or her Apartment in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority or the Association applicable to the Project. The lanais may not be used for storage of any boxes, equipment, supplies, or materials of any kind.

(d) All Owners and occupants shall exercise care so as not to make excess noise especially in the use of musical instruments, radios, televisions and other devices with sound amplification that may disturb other occupants.

(e) No dogs, cats, livestock or poultry, or animals of any kind shall be allowed or kept in any part of the Project, except for specially trained animals that must be permitted on the Project pursuant to the Americans with Disabilities Act or any other law. For purposes of this section, "specially trained animals" means certified guide dogs, signal dogs, service animals and other animals specially trained to assist handicapped people. Any animal permitted to accompany an Owner pursuant to this Section shall be kept on a leash when they are not in the Owner's Apartment and any animal being or causing a nuisance or an unreasonable disturbance to any other occupant of the Project may be permanently removed therefrom promptly upon notice given by the Board or Managing Agent. Owners shall be responsible for the immediate and proper disposal of all fecal matter of their pets.

(f) No Owner or occupant shall make or suffer any strip of waste or unlawful, improper or offensive use of his or her Apartment, any limited common element appurtenant thereto or any other part of the Project, nor shall any Owner or occupant alter or remove any furniture, furnishings or equipment from the common elements.

(g) The Owner or occupant of any Apartment, 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 an Apartment or the common elements so as to be visible from the outside.

(h) No garments, rugs or other objects shall be hung from the windows, lanais or facades of any Apartment or other part of the Project. No rugs or other objects shall be dusted or shaken from the windows or lanais of any Apartment or other part of the Project or cleaned by beating or sweeping onto any exterior part of the Project. No refuse, garbage or trash of any kind shall be thrown, placed or kept on any common elements of the Project outside of the disposal facilities provided for such purposes.

(i) No Owner or occupant shall, without the written approval of the Board or in accordance with the Project Rules, if applicable provisions are stated therein, install any wiring for electrical installations, television antenna, machines or air conditioning units, or other

equipment or appurtenances whatsoever on the exterior of any Apartment or protruding through the walls, windows or roof thereof.

(j) No Owner or occupant shall place, store or maintain in the landings, stairways, walkways, sidewalks, parking areas, driveways, roads, grounds or other common elements of similar nature any furniture, packages or objects of any kind or otherwise obstruct transit through such common elements.

(k) No Owner or occupant shall permit any Person who has not obtained the age of majority and who is residing or visiting with him or her to loiter or play in any common areas of the Project which the Board may designate as a non-play area.

(l) Draperies and other window treatments visible from the exterior of the Long Term Stay and Vacation Apartments shall be permitted only in accordance with the Project Rules.

(m) No awnings, shades, jalousies or other device shall be erected or placed on or projecting from the exterior of any Vacation or Long Term Stay Apartment, so as to be visible from the outside without prior written permission from the Board or in accordance with the Project Rules, if applicable provisions are stated therein. The Owners of the Commercial Apartments are excluded from this prohibition with respect to the Commercial Apartments and the Limited Common Elements appurtenant thereto.

(n) Nothing shall be allowed, done or kept in any Apartment or common element of the Project which would overload or impair the floors, walls or roofs thereof, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association.

(o) No Apartment Owner or occupant shall install any garbage disposal in any Vacation or Long Term Stay Apartment except that the garbage disposals installed in one-bedroom and two-bedroom apartments may be replaced when necessary by garbage disposals which do not place any greater stress on the plumbing system.

7.4 Service Elevator. During regular business hours, the service elevator (Cab No. 10 as indicated on the Condominium Map) shall be used by Apartment Owners of the Office Apartment Class, Commercial Apartment Class, Front Desk Apartment Class; provided, however, that the Apartment Owners of the Hotel Apartment Class may use the service elevator with the written permission of the Office Apartment Class or its designated representative. During all other hours, priority in the use of the service elevator shall be given to Apartment Owners of the Hotel Apartment Class.

8. RESTORATION

8.1 Determination to Reconstruct or Repair. If a building in the Project is damaged by fire or other casualty which is insured against, the Board of Directors shall, to the extent permitted by law, contract to repair the damage and restore the building, including any Apartments and Common Elements. Where the Declaration permits Owners to decide not to repair and restore the damaged property, the Board of Directors shall immediately contract to repair and restore the damaged Apartments and Common Elements unless the specified percentage of Owners decide within ninety (90) days after the casualty or condemnation occurs. All costs of repair and restoration of the Apartments and the common elements shall be paid from the proceeds of insurance, and if the casualty is uninsured or the insurance proceeds are insufficient for the restoration, the deficiency shall be paid out of the Replacement Reserve

Fund; provided, however, that the Apartment Owners shall be solely responsible for such deficiency as it related to the restoration of their respective Apartment. If the reserve fund is inadequate, the Board of Directors shall levy a special assessment on the appropriate Owners in accordance with the common interest appurtenant to their Apartments.

8.2 Notice to Owners. As promptly as possible after any casualty which requires the Owners to decide whether to repair and restore any damage or destruction, the Board of Directors shall notify all Owners of the nature and extent of the damage, the estimated cost to repair or restore, the amount of insurance proceeds and the estimated amount of assessments required to pay the excess of the cost of reconstruction or repair over the amount of insurance proceeds, and any other information deemed relevant by the Board of Directors. Notice shall also be given of a meeting of Owners to decide the question of restoration. An Owner's approval or disapproval may be expressed by vote or in writing filed with the Association at or prior to the meeting. The expense of such determination shall be a common expense.

8.3 Plans and Specifications. Any reconstruction or repair shall be substantially in accordance with the plans and specifications for the Improvements existing immediately prior to the casualty, and if restoration to such design is not permissible under applicable laws and regulations then in force, then such reconstruction or repair shall be 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. If one or more Apartments are eliminated from the Project, the common interests and other rights of the Owners of Apartments in the modified Project shall be adjusted in an amendment of the Declaration, provided that the common interest of any Owner shall not be altered without the Owner's consent. The Owner of any eliminated Apartment shall be discharged from all obligations under the Project Documents upon the amendment of the Declaration. Alternatively, if the Declaration is not amended so as to discharge the Owners of eliminated Apartments of all such obligations and to adjust equitably the common interest appurtenant to those Apartments not eliminated, the Owner of any eliminated Apartment may convey the Owner's interest to the Board of Directors for the benefit of all other Owners and thereby be discharged from all such obligations under the Project Documents.

8.4 Construction Contract. The Board shall contract to repair or rebuild the damaged portions of the Land, including all Apartments so damaged as well as the common elements, in accordance with the approved plans and specifications. If the damage is only to those parts of an Apartment for which the responsibility of maintenance and repair is that of the Owner, then the Owner shall be responsible for reconstruction and repair after casualty.

8.5 Disbursement of Funds. The funds for payment of costs of repair and restoration, which shall consist of proceeds of insurance and funds collected by the Association from assessments against Owners, shall be disbursed in the following manner:

(a) In the event a decision is made not to repair or rebuild all or any lesser number of the damaged or destroyed Apartments, the Trustee shall pay to the Owner and any mortgagee of each Apartment eliminated, as their interests may appear, the portion of the insurance proceeds allocable to their respective Apartment, less the proportionate share of the cost of debris removal. The Owner of any eliminated Apartment may, in addition to the Owner's allocable share of insurance proceeds, receive such reimbursement as the Board deems appropriate. The remaining insurance proceeds shall be paid by the Trustee to the contractor employed for such work in accordance with the terms of the construction contract and the terms of this Section 8.5. When such funds are exhausted, the Association, or if an Owner shall be

responsible for costs in excess of insurance proceeds, then that Owner, shall disburse the funds to the contractor.

(b) The cost of the work (as estimated by the Board) 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 or engineer (who may be an employee of the Board) shall be in charge of the work when the cost of repairs is in excess of \$10,000.00.

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

(iii) Each request shall be accompanied by waivers of liens satisfactory to the Trustee and the Board covering that part of the work for which payment or reimbursement is being requested and by a search of title prepared by a licensed abstractor or other evidence satisfactory to the Trustee showing that no mechanics' or materialmen's or other lien or instrument for the retention or encumbrance of title shall have been filed since the commencement of the reconstruction work and permitted to remain undischarged of record with respect to the Land or any part of the work.

(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 for occupancy of the premises.

(v) The fees and expenses of the Trustee shall be paid by the Association as common expenses and such fees and expenses may be deducted from any proceeds at any time in possession of the Trustee.

(vi) Such other conditions not inconsistent with the foregoing as the Trustee may reasonably request.

(c) The first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. Upon the completion and payment in full of the work, any remaining balance in a construction fund shall be paid or credited to the Owners (or to the holder of any mortgage on an Apartment) in proportion to their respective common interests.

(d) To the extent that any loss, damage or destruction to the buildings or other property 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 or lessee. To the extent that any loss, damage or destruction to the property of any Owner or lessee is covered by insurance procured by such Owner or lessee, such Owner or lessee shall have no claim or

cause of action for such loss, damage or destruction against the Board, the Managing Agent, any other Owner, or the Association.

8.6 Directions to Trustee. The Trustee may rely upon a certificate of the Association made by its President and Secretary stating whether the damaged property is to be reconstructed or repaired. The Trustee shall not be required to determine whether sums paid by Owners upon assessments shall be deposited by the Association with the Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Board or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund nor to determine the payee nor the amount to be paid. Instead, the Trustee may rely upon a certificate of the Association made by its President and Secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided that when a mortgagee is required by this instrument to be named as payee, the Trustee shall also name the mortgagee as payee of any distribution of insurance proceeds to an Owner.

9. MORTGAGES AND MORTGAGEES

9.1 Notice to Board of Directors. An Owner who mortgages the Owner's interest in an Apartment shall notify the Board of the name and address of the Owner's mortgagee and file a conformed copy of the mortgage with the Association within ten (10) days after execution of the mortgage. The Board of Directors shall maintain such information in a book entitled "Mortgagees of Apartments".

9.2 Notice of Default. When giving notice to an Owner of a default in paying common expenses or other default in the performance of any obligation under the Project Documents or any other document of the Association, the Board of Directors shall send a copy of such notice to each holder of a mortgage on the Owner's Apartment or interest therein whose name and address has been furnished to the Board of Directors.

9.3 Examination of Books. Each holder of a mortgage on an Apartment shall be permitted to examine the books of account and records of the Association at reasonable times on business days, and each such mortgagee shall have the right to require the submission to it of annual reports and other financial data which may be required to be submitted to an Owner.

9.4 Mortgage Protection.

(a) The liens in favor of the Association on any Apartment and its appurtenant interest in the common elements shall be subject and subordinate to the rights of the holder of any indebtedness secured by any Recorded mortgage of such Apartment made for value, provided that after the foreclosure of any such mortgage there shall be a lien upon the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed to such Apartment if falling due after the date of such foreclosure sale.

(b) All taxes, assessments and charges which may become liens prior to the first mortgage under the laws of the State of Hawaii shall relate only to the individual Apartments and not to the Project as a whole.

(c) The Declaration and these Bylaws shall not give an Owner priority over any rights of first mortgagees of Apartments pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Apartments and/or common elements.

(d) No amendment to this Section 9 shall affect the rights of the holder of any Recorded first mortgage who does not join in the execution thereof, if such mortgage was Recorded prior to the Recording of such amendment.

(e) Any holder, insurer or guarantor of a first mortgage of an Apartment whose interest appears in the record of ownership or who has otherwise delivered a written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the Apartment number) shall be entitled to:

(i) Prior written notice of any proposed amendment to the Declaration or these Bylaws effecting a change in (1) the boundaries of an Apartment, (2) the common interest pertaining to the Apartment, or (3) the purposes to which the Apartment, the limited common elements appurtenant thereto or the common elements are restricted;

(ii) Prior written notice of any proposed termination of the Project;

(iii) Timely written notice of any actual or threatened condemnation or eminent domain proceeding affecting the Project or any portion thereof;

(iv) Timely written notice of any significant damage or destruction to the common elements or to an Apartment on which there is a first mortgage held, insured or guaranteed by such holder;

(v) A copy of any bond required to be posted before commencing or permitting construction of any improvements on or to the Land;

(vi) Timely written notice of all meetings of the Association (the holder or insurer of a first mortgage being permitted to designate a representative to attend all such meetings);

(vii) Notice of any default by the Owner of the Apartment involved which is not cured within sixty days;

(viii) Upon request therefor, a certificate of any then unpaid assessments for common expenses due from the Owner of the Apartment involved, as provided in Section 6.13 above;

(ix) A copy of all pleadings filed in any lawsuit, administrative proceedings or other action affecting the Land, or any portion thereof, upon specific written request and at such Person's expense; and

(x) Prior written notice of any proposal to subdivide, encumber, sell or transfer the common elements or any part thereof, provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the Project shall not be deemed a transfer within the meaning of this subsection.

(f) Unless at least seventy-five percent (75%) of the Owners have given their prior written approval and the approval by the eligible holders for first mortgages on Apartments to which at least fifty-one percent (51%) of the votes of Apartments subject to mortgages held by such eligible holders are allocated has been obtained, the Association shall not be entitled to:

- (i) By act or omission, seek to abandon or terminate the Project;
- (ii) Change the common interest appurtenant to any individual Apartment;
- (iii) Partition or subdivide any Apartment;
- (iv) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements, provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the Project shall not be deemed a transfer within the meaning of this subsection;
- (v) Use condemnation proceeds or hazard insurance proceeds for losses to the Land or any part thereof (whether to Apartments or to common elements) for other than the repair, replacement or reconstruction of same;
- (vi) Materially amend any provision of the Declaration or these Bylaws, or to add material provisions thereto, which establish, provide for, govern or regulate any of the following:
 - (1) Voting;
 - (2) Assessments, assessment liens or subordination of such liens;
 - (3) Reserves for maintenance, repair and replacement of the common elements;
 - (4) Insurance or fidelity bonds;
 - (5) Right to use of the common elements;
 - (6) Responsibility for maintenance and repair of the Project;
 - (7) Expansion or contraction of the Project or the addition, annexation or withdrawal of Land to or from the Project;
 - (8) Boundaries of any Apartment;
 - (9) The interests in the common elements or limited common elements;
 - (10) Convertibility of Apartments into common elements or of common elements into Apartments;
 - (11) Leasing of Apartments;
 - (12) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Apartment;
 - (13) Establishment of self-management by the Association;

provided, however, that this subsection (f) shall not apply to any actions taken pursuant to rights expressly reserved to Developer in the Project Documents.

9.5 Right of First Refusal Not Applicable. In the event that there shall be any "right of first refusal" to purchase any Apartment by the Association, any first mortgagee who obtains title to an Apartment pursuant to the remedies provided in a mortgage or foreclosure of the mortgage or deed in lieu of foreclosure shall be exempt from such "right of first refusal".

9.6 Unpaid Common Expenses or Assessments. Any first mortgagee who obtains title to an Apartment pursuant to the remedies provided in a mortgage or foreclosure of the mortgage shall not be liable for such Apartment's unpaid common expenses and assessments which accrue prior to the acquisition of title to such Apartment by the mortgagee. The unpaid share of common expenses or assessments shall be deemed to be collectible from all of the Owners, including an acquirer of such Apartment and his or her successors and assigns.

9.7 Release of Information. The Board may provide any information available to it pertaining to an Apartment or the Project to the first mortgagee of an Apartment and such mortgagee may provide any information to the Board regarding the mortgagor, the mortgagor's loan and the status of such loan.

9.8 Eligible Holders. As used in these Bylaws, an "eligible holder, insurer or guarantor" shall mean a holder, insurer or governmental guarantor of a first mortgage on an Apartment which has requested notice in accordance with Section 10.7 of these Bylaws.

10. GENERAL AND MISCELLANEOUS PROVISIONS

10.1 Project Rules. Developer may initially establish and the Board may thereafter adopt, amend or repeal Project Rules as the Board may deem necessary to govern the conduct, use and operation of the Project, including the Apartments, common elements and limited common elements. Each Owner agrees that the Owner's rights under this instrument shall be in all respects subject to the Project Rules. Each Owner agrees to obey the Project Rules as the same may be promulgated from time to time and shall see that the Project Rules are faithfully observed by the Owner's invitees, guests, employees and tenants. The Project Rules shall uniformly apply to and be binding upon all occupants of the Apartments.

10.2 Amendment of Bylaws.

(a) Vote or Consent Requirements. Except as otherwise expressly provided in the Declaration, these Bylaws or in the Act, these Bylaws may be amended in any respect not inconsistent with law or the Declaration by the affirmative vote or written consent of not less than sixty-five percent (65%) of all of the Owners, provided that each of the particulars set forth in Section 514A-82 of the Act shall always be embodied in the Bylaws, and provided further that an amendment to the provisions of these Bylaws which are for the express benefit of holders or insurers of first mortgages on Apartments shall require the approval of eligible holders of first mortgages on Apartments to which there are allocated at least fifty-one percent (51%) of the votes allocated to all Apartments subject to first mortgages held by such eligible holders, together with the vote of not less than sixty-seven percent (67%) of all of the Owners, and provided further that an amendment to the provisions of these Bylaws which are for the express benefit of Developer shall also require the express written consent and joinder of Developer, together with such other approval requirements as set forth in this Section 10.2(a); and further provided any such amendment to the provisions of those Bylaws that are for the benefit of a

class or multiple classes shall also require the express written consent and joinder of at least sixty-five percent (65%) of all the owners of such class or classes.

(b) Proposed Amendments. Proposed amendments to these Bylaws with the rationale for the proposal may be submitted to the Owners either by the Board of Directors or by a volunteer Owner's committee. If a volunteer Owner's committee desires to submit a proposal to the Owners, it shall first submit the proposal to the Board of Directors with the rationale for the proposal and a petition supporting the proposed Bylaws signed by not less than twenty-five percent (25%) of the Owners. Within fourteen (14) days from the receipt of the proposal, the rationale, and the petition by the Board, the Board shall mail to the Owners for approval without change the proposed amendments to these Bylaws, the rationale for the proposal, ballots for voting, and the Board's comments, if any, concerning the proposal.

(c) Adoption of Committee's Proposal. If the Board fails to mail the proposed amendments to these Bylaws, rationale, and ballots for voting to the Owners within fourteen (14) days of the receipt of the petition by the Board, then the Owner's committee may mail such items to the Owners, and the vote thus taken will be valid, provided the Owner's committee has complied with all other applicable rules on voting for Bylaws amendments. The results of such vote shall be presented to the officers of the Association who shall promptly execute such documents as shall be necessary to permit the amendments to be Recorded.

(d) When Amendments Are Effective. An amendment to the Bylaws shall be effective only upon the Recording of such amendment.

10.3 Abatement and Enjoinment of Violations by Apartment Owners. The violation of any Project Rules adopted by the Board, or the breach of any of these Bylaws or the breach of any provision of the Declaration, shall give the Board the right, in addition to any other right set forth in the Declaration or these Bylaws:

(a) to enter the Apartment and/or limited common elements appurtenant thereto, in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the appropriate Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the Project Documents, and the Board shall not be deemed guilty in any manner of trespass; or

(b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, and all costs, including attorneys' fees, shall be paid by the appropriate Owner upon demand.

10.4 Penalties for Violations. The violation by any Owner of any of the covenants, conditions and restrictions set forth in the Declaration, these Bylaws or the Project Rules shall give the Board the right, in addition to other rights set forth in the Declaration or these Bylaws, to assess a reasonable fine against such Owner; provided that if any such violation continues for a period of ten (10) days after notice of violation has been given to such Owner, such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties. The unpaid amount of such fines against any Owner shall constitute a lien against his interest in his Apartment which may be foreclosed by the Board or the Managing Agent in the same manner as provided in the Declaration, these Bylaws or the Act for unpaid common expenses. No penalty may be imposed under this Section 10.4 until the Owner accused of any such violation has been afforded the right to have a hearing before the Board or a committee designated by the Board to conduct such hearing, or has waived such right in writing. Each

such Owner shall have the right to be heard in Person, by submission of a written statement, or through a spokesperson, at any such hearing.

10.5 Litigation. It is specifically intended that all disputes or controversies as described in Section R of the Declaration, except those described in Sections 5.15.1(r) and 6.9 of these Bylaws be resolved by alternative dispute resolution methodologies. The Board, absent an affirmative vote or written consent of not less than seventy-five percent (75%) of the Owners, shall not commence any litigation (except as specifically permitted pursuant to Sections 5.15.1(r) and 6.9 of these Bylaws. In advance of the limitation of arbitration permitted pursuant to the Declaration, the Board shall first engage in non-binding mediation in an effort to resolve any dispute or controversy.

10.6 Attorneys' Fees and Expenses of Enforcement. All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for:

- (a) Collecting any delinquent assessments from any Apartment Owners;
- (b) Asserting and/or foreclosing any lien thereon; and
- (c) Enforcing any provision of the Declaration, these Bylaws, the Rules and Regulations, the Act or the rules and regulations of the Commission;

against an Apartment Owner, such Apartment Owner's employees, tenants, guests, or invitees, shall be promptly paid on demand by such Apartment Owner to the Association, provided that if the claims upon which the Association takes any action are not substantiated; all costs and expenses, including reasonable attorneys' fees, incurred by such Apartment Owner as a result of the action of the Association shall be promptly paid on demand to such Apartment Owner by the Association.

10.7 Attorneys' Fees and Expenses of Owner. If any claim by an Owner is substantiated in any action against the Association, any of its officers or the Board to enforce any provision of the Declaration, these Bylaws, the Rules and Regulations or the Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by such Owner shall be awarded to such Owner; provided that no such award shall be made in any derivative action unless:

- (a) the Owner first shall have demanded and allowed reasonable time for the Board to pursue such enforcement; or,
- (b) the Owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board would have been fruitless.

10.8 Manner of Giving Notices. All notices permitted or required to be given under these Bylaws, the Declaration or the Act must be in writing and may be delivered either personally or by mail. All notices mailed to Owners shall be sent by registered or certified mail to the Owner or Owners at the address furnished in writing from time to time to the Association, or if no address has been furnished, to the Apartment. All notices to the Board may be personally delivered to a director or may be sent by registered or certified mail or facsimile transmission to the office of the Managing Agent or to such other address as the Board may hereafter designate from time to time by notice in writing to all Owners and mortgagees of Apartments. All notices to mortgagees of Apartments shall be sent by registered or certified mail to their respective addresses, as designated by them from time to time in writing, to the Board. All notices given by mail shall be deemed to have been given twenty-four hours after

being deposited in the United States mail, postage prepaid, except notices of changes of address which shall be deemed to have been given when received.

10.9 Owners May Incorporate. All of the rights, powers, obligations and duties of the Association imposed hereunder may be exercised and enforced by a nonprofit membership corporation or limited liability company, formed under applicable laws for the purposes herein set forth. Such a corporation shall be formed upon the approval of at least seventy-five percent (75%) of the Owners. The formation of the corporation shall in no way alter the terms, covenants and conditions set forth herein, and the Articles and Bylaws of the corporation shall be subordinated hereto and controlled hereby. Any action taken by said corporation which is in violation of any or all of the terms, covenants or conditions contained herein shall be void and of no effect.

10.10 Indemnifications. In no event shall the Board, the Association, the managing agent or the resident manager be or be deemed to be liable for any loss, damage or injury to persons or property caused by or arising in connection with any Owner's, occupant's or guest's guide dog, signal dog or other service animal. By acquiring an interest in an Apartment in the Project, each Owner agrees to indemnify, defend and hold harmless the Board, the Association, the managing agent and the resident manager against any claim or action at law or in equity arising out of or in any way relating to such Owner's or such Owner's occupant's or guest's guide dog, signal dog or other service animal.

10.11 Exemption for Occupants with Disabilities. Notwithstanding anything to the contrary contained in the Governing Documents occupants with a disability shall: (a) be permitted to make reasonable modifications to their Apartments and/or the common elements, at their expense, (including the cost of obtaining any bond, required by any of the governing documents or the Act in connection with such modifications) if such modifications are necessary to enable them to use and enjoy their Apartments and/or the common elements, as the case may be; and (b) be allowed reasonable exemptions from the Governing Documents, when necessary to enable them to use and enjoy their Apartments and/or the common elements, provided that any occupant with a disability desiring to make such modifications or 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 make such modification or 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.

10.12 Subordination. These Bylaws are subordinate and subject to all provisions of the Act and the Declaration and any amendments thereto, which shall control, in that order, in case of any conflict. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in the Declaration or the Act.

10.13 Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws, or the intent of any provisions hereof.

10.14 Gender. The use of a pronoun of any gender in these 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.

10.15 Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

10.16 Interpretation. The provisions of these Bylaws shall be liberally construed to effectuate the purpose of creating a uniform condominium complex whereby the Owners shall carry out and pay for the operation and maintenance of the Project as a mutually beneficial and efficient establishment.

10.17 Severability. The provisions of these Bylaws shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

10.18 Incorporation of Exhibit. Exhibit "A" attached to these Bylaws is incorporated into these Bylaws by this reference.

CERTIFICATE OF ADOPTION

The undersigned Developer and Owner of all Apartments in the Project hereby adopts the foregoing as the Bylaws of the Association of Apartment Owners of Ala Moana Hotel Condominium as of June 20, 2005.

ALA MOANA PROPERTY DEVELOPMENT, LLC,
a Delaware limited liability company

By ALA MOANA HOLDINGS, LLC, a Delaware
limited liability company, its sole member



By: Rafael Baez
Its: Authorized Signatory

"Developer"

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

On this 20 day of June, 2005, before me appeared Robert Bacz, 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.

Debra Wurtz
Notary Public, State of Hawaii
Type or print name: DEBRA WURTZ
My commission expires: Sept 12 2008

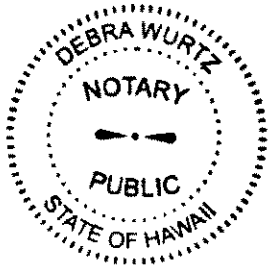


EXHIBIT "A"

PROPERTY DESCRIPTION

All of that certain parcel of land situate at Kalia, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

PARCEL 1:

Lot 18, area 132,664 square feet, more or less, as shown on Map 11, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 48 of Hawaiian Land Company, Limited;

PARCEL 2:

TOGETHER WITH, and subject to the terms and provisions, including the failure to comply with any of the covenants, conditions and reservations, contained therein, the easements as reserved and excepted in instrument dated June 30, 1981, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1074374, in favor of Dillingham Corporation, a Hawaii corporation, its successors and assigns,

"as owner from time to time of Lot 18, area 132,664 square feet, as shown on Map 11, filed with Land Court Consolidation No. 48, being land described in Certificate of Title No. 124,795, and its and their lessees and licensees, an exclusive right and easement for 80 parking spaces or stalls in Lots 4 and 5" (as shown on Map 1 of Consolidation No. 65) "east of Keeaumoku Street as used at the date hereof, and a nonexclusive easement for all pedestrian and vehicle ingress and egress, road and utility purposes over, across, along, upon and under Lots 1, 3, 4, 5 and 6" (as shown on Map 1 of Consolidation No. 65), "and an exclusive easement to maintain and use the pedestrian and service access overpass structure over said Lot 4 (as shown on Map 1 of Consolidation No. 65), with the right of support for the same."

NOTE:

The pedestrian and service access overpass structure over said Lot 4 is now designated as Easement "3", as shown on Map 9 of Land Court Consolidation No. 65, as set forth by Land Court Order No. 63088, filed June 28, 1982.

Designation of Easement "4" affecting Lot 4, which begins on Mahukona Street (Lot 4, Consolidation 65) across from the Ala Moana Americana Hotel as it is now built and provides overhead parking and ramps for ingress and egress, all in an existing structure, as shown on Map 9, as set forth by Land Court Order No. 63088, filed June 28, 1982.

Being the land described in Certificate of Title No. 721,230 issued to Ala Moana Property Development, LLC, a Delaware limited liability company.

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

2. Covenants, conditions, restrictions, reservations, agreements, obligations, exceptions and other provisions as contained in the following:

INSTRUMENT: DEED
Dated: June 30, 1981
Document No. 1074374
As amended by Land Court Order No. 80681, filed October 14, 1986.

3. Covenants, conditions, restrictions, reservations, agreements, obligations, exceptions and other provisions as contained in the following:

INSTRUMENT: DECLARATION OF RESTRICTIVE COVENANT
Dated: October 3, 1988
Document No. 1584617

4. MORTGAGE

Mortgagor: ALA MOANA PROPERTY DEVELOPMENT, LLC, a Delaware limited liability company, registered to do business in the State of Hawaii
Mortgagee: SFT I, INC., a Delaware corporation
Dated: October 22, 2004
Document No. 3183444

5. FINANCING STATEMENT

Debtor: ALA MOANA PROPERTY DEVELOPMENT, LLC, a Delaware limited liability company, registered to do business in the State of Hawaii
Secured Party: SFT I, INC., a Delaware corporation
Recorded: October 22, 2004
Document No. 2004-216190

6. ASSIGNMENT AND ASSUMPTION OF LANDLORD'S INTEREST IN TENANT LEASES

Assignor: AZABU U.S.A. CORPORATION, a Hawaii corporation
Assignee: ALA MOANA PROPERTY DEVELOPMENT, LLC, a Delaware limited liability company, registered to do business in the State of Hawaii
Recorded: October 22, 2004
Document No. 2004-216189

7. Encroachments and other matters shown on or disclosed by the Survey Map dated September 10, 1996, revised October 20, 2004, prepared by Erik S. Kaneshiro, Licensed Professional Land Surveyor, Certificate No. 9826, with Austin, Tsutsumi & Associates, Inc.

8. Covenants, conditions, restrictions, reservations, agreements, obligations, exceptions and other provisions as contained in the following:

INSTRUMENT: DECLARATION OF CONDOMINIUM PROPERTY REGIME OF
ALA MOANA HOTEL CONDOMINIUM

Dated: June 20, 2005

Document No. 3286879

END OF EXHIBIT "A"

MAINTENANCE, USE, ALTERATIONS AND ADDITIONS

1 Maintenance and Repair of Apartments and Limited Common Elements. Each Owner shall at his or her own expense at all times keep the Owner's Apartment, the appurtenant Limited Common Elements and all fixtures and equipment installed in the Owner's Apartment in good order, repair and condition. Each Owner shall be responsible for the maintenance, repair and replacement of all plumbing and lighting fixtures, windows, water heating, cooling or heating equipment, appliances and similar equipment installed in the Owner's Apartment and not part of the common elements. Notwithstanding the foregoing, the street facing exterior windows of the Apartments may be cleaned by the Association and charged as a common expense or a limited common expense, as may be deemed appropriate by the Board. Each Owner shall perform promptly all repair and maintenance work, the omission of which would adversely affect any common elements or any other Apartment. It is intended that the exterior of the buildings will have a uniform appearance and that the Project will be maintained as a first class vacation ownership resort. To that end, the Board alone may arrange for painting or repair of the lanais, lanai ceilings, patios, outside doors, windows, trim, walls, railings and other exterior parts of any buildings, even if they are limited common elements or part of the apartments. The Board may also choose the type and color of paint to be used and the Board may assess each Owner for his or her proportionate share of the painting and repairs or the Board may use reserve funds for such exterior maintenance. Notwithstanding the foregoing, the cost of painting and repairs due to negligence, misuse or neglect of an Owner or other occupant may be charged to the applicable Apartment Owner as a special assessment. No awnings, shades, jalousies or other device, nor any lanai enclosure, shall be erected or placed on the lanais so as to be visible from the exterior without prior written permission from the Board or in accordance with the Project Rules, if applicable provisions are stated therein. Every Apartment Owner and occupant must (a) reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishings, and equipment owned by the Association caused by that Owner or occupant or by any person using the Project with their permission (except for normal wear and tear), and (b) give to the Managing Agent notice of any such loss or damage or other defect in the Project promptly after discovering it. The provisions of this section do not apply to the Limited Common Elements of the Commercial Apartment to the extent that the Owner of such Apartment elects to maintain the exterior of those elements itself.

2 Maintenance and Repair of Common Elements. Except as provided otherwise in the Declaration or these Bylaws, all maintenance, repairs and replacements of the common elements shall be made only by or at the direction of the Board of Directors and be charged to all the Owners as a common expense, except: (i) the costs of maintenance, repairs and replacements necessitated by the negligence, misuse or neglect of an identified Apartment Owner shall be charged to such Apartment Owner as a special assessment; and (ii) all costs of maintenance, repair, replacement, additions and Improvements to any limited common element shall be charged to the Owner(s) of the Apartment or Apartments to which such limited common element is appurtenant. The Association waives any claim against and shall indemnify Developer, and any of its agents and the contractor if the recommended maintenance is not performed by the Association. Except as otherwise provided in these bylaws or in the declaration, all maintenance, repairs and replacements of Limited Common Elements appurtenant to the Commercial Apartment, whether located inside or outside the Apartment, will be made by or at the direction of the Owner of the Commercial Apartment.

3 Use of Project.

Ala Moana Hotel Condominium Bylaws
27295-14 / 381155.7 / 6-17-05

escription: Honolulu, HI Land Court 3286880 .
rder: Misc-Acc 003 Comment:

(a) All Apartments shall be used only for such purposes as provided in the Declaration.

(b) No fires, including barbecue fires, shall be allowed in any part of any Apartment or the common elements, except that barbecuing only to the extent permitted by the County fire code shall be permitted on lanais, in private patios or yard areas and in such portions of the common elements as the Board may designate from time to time by resolution or in the Project Rules. Barbecuing shall include, but shall not be limited to, the broiling of any food items over a charcoal fire, gas grill or electrical grill.

(c) Every Owner and occupant shall at all times keep his or her Apartment in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority or the Association applicable to the Project. The lanais may not be used for storage of any boxes, equipment, supplies, or materials of any kind.

(d) All Owners and occupants shall exercise care so as not to make excess noise especially in the use of musical instruments, radios, televisions and other devices with sound amplification that may disturb other occupants.

(e) No dogs, cats, livestock or poultry, or animals of any kind shall be allowed or kept in any part of the Project, except for specially trained animals that must be permitted on the Project pursuant to the Americans with Disabilities Act or any other law. For purposes of this section, "specially trained animals" means certified guide dogs, signal dogs, service animals and other animals specially trained to assist handicapped people. Any animal permitted to accompany an Owner pursuant to this Section shall be kept on a leash when they are not in the Owner's Apartment and any animal being or causing a nuisance or an unreasonable disturbance to any other occupant of the Project may be permanently removed therefrom promptly upon notice given by the Board or Managing Agent. Owners shall be responsible for the immediate and proper disposal of all fecal matter of their pets.

(f) No Owner or occupant shall make or suffer any strip of waste or unlawful, improper or offensive use of his or her Apartment, any limited common element appurtenant thereto or any other part of the Project, nor shall any Owner or occupant alter or remove any furniture, furnishings or equipment from the common elements.

(g) The Owner or occupant of any Apartment, 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 an Apartment or the common elements so as to be visible from the outside.

(h) No garments, rugs or other objects shall be hung from the windows, lanais or facades of any Apartment or other part of the Project. No rugs or other objects shall be dusted or shaken from the windows or lanais of any Apartment or other part of the Project or cleaned by beating or sweeping onto any exterior part of the Project. No refuse, garbage or trash of any kind shall be thrown, placed or kept on any common elements of the Project outside of the disposal facilities provided for such purposes.

(i) No Owner or occupant shall, without the written approval of the Board or in accordance with the Project Rules, if applicable provisions are stated therein, install any wiring for electrical installations, television antenna, machines or air conditioning units, or other

equipment or appurtenances whatsoever on the exterior of any Apartment or protruding through the walls, windows or roof thereof.

(j) No Owner or occupant shall place, store or maintain in the landings, stairways, walkways, sidewalks, parking areas, driveways, roads, grounds or other common elements of similar nature any furniture, packages or objects of any kind or otherwise obstruct transit through such common elements.

(k) No Owner or occupant shall permit any Person who has not obtained the age of majority and who is residing or visiting with him or her to loiter or play in any common areas of the Project which the Board may designate as a non-play area.

(l) Draperies and other window treatments visible from the exterior of the Long Term Stay and Vacation Apartments shall be permitted only in accordance with the Project Rules.

(m) No awnings, shades, jalousies or other device shall be erected or placed on or projecting from the exterior of any Vacation or Long Term Stay Apartment, so as to be visible from the outside without prior written permission from the Board or in accordance with the Project Rules, if applicable provisions are stated therein. The Owners of the Commercial Apartments are excluded from this prohibition with respect to the Commercial Apartments and the Limited Common Elements appurtenant thereto.

(n) Nothing shall be allowed, done or kept in any Apartment or common element of the Project which would overload or impair the floors, walls or roofs thereof, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association.

(o) No Apartment Owner or occupant shall install any garbage disposal in any Vacation or Long Term Stay Apartment except that the garbage disposals installed in one-bedroom and two-bedroom apartments may be replaced when necessary by garbage disposals which do not place any greater stress on the plumbing system.

4 Service Elevator. During regular business hours, the service elevator (Cab No. 10 as indicated on the Condominium Map) shall be used by Apartment Owners of the Office Apartment Class, Commercial Apartment Class, Front Desk Apartment Class; provided, however, that the Apartment Owners of the Hotel Apartment Class may use the service elevator with the written permission of the Office Apartment Class or its designated representative. During all other hours, priority in the use of the service elevator shall be given to Apartment Owners of the Hotel Apartment Class.

--- PREPARED FOR ---
410 ATKINSON DRIVE
HONOLULU, HI

96814

PAGE: A- 1

ALA MOANA HOTEL CONDO
STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR PERIOD ENDED 12/31/2005

--- PREPARED BY ---
HAWAIIANA MANAGEMENT CO., LTD.

BLD ACCT: 452 CORP NO:00	CURRENT MONTH		YEAR TO DATE		FISCAL BEG: 1	
	ACTUAL	BUDGET	VAR	BUD %	ACTUAL	VAR
CASH RECEIPTS:						
5100 MAINTENANCE FEES	240,055.46	575,471	-335,416	41.7	1,170,455.03	2,301,884
5135 SPECIAL ASSESSMENTS-RPT	396,429.83	0	396,430		1,869,782.56	0
5216 START UP FEES	174,715.32	0	174,715		878,498.78	0
5290 INTEREST FROM CHECKING	86.17	0	86		127.98	0
TOTAL CASH RECEIPTS	811,286.78	575,471	235,816	141.0	3,978,864.35	2,301,884
CASH DISBURSEMENTS:						
UTILITIES:						
6010 ELECTRICITY	.00	166,000	-166,000		.00	664,000
6020 TELEVISION	.00	4,700	-4,700		.00	18,800
6030 WATER/SEWER	.00	32,000	-32,000		.00	128,000
6050 GAS	.00	500	-500		.00	2,000
6060 TELEPHONE	.00	4,692	-4,692		.00	18,768
6061 INTERNET	.00	4,200	-4,200		.00	16,800
TOTAL UTILITIES	.00	212,092	-212,092	.0	.00	848,368
CONT CONTRACTS:						
6223 CONTRACT-WINDOW CLEANING	.00	1,688	-1,688		.00	6,752
6230 CONTRACT-ELEVATOR	.00	9,643	-9,643		.00	38,572
6240 CONTRACT-GROUNDS	.00	8,200	-8,200		.00	32,800
6280 CONTRACT-PEST CONTROL	.00	2,950	-2,950		.00	11,800
6300 CONTRACT-REFUSE	.00	7,500	-7,500		.00	30,000
6312 CONTRACT-SECURITY	.00	20,455	-20,455		.00	81,820
6320 CONTRACT-FIRE SYSTEMS	.00	5,583	-5,583		.00	22,332
6370 CONTRACT-EQUIPMENT MAINT	.00	8,333	-8,333		.00	33,332
TOTAL CONT CONTRACTS	.00	64,352	-64,352	.0	.00	257,408

ALA MOANA HOTEL CONDO
STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR PERIOD ENDED 12/31/2005

BLD ACCT: 452 CORP NO:00		CURRENT MONTH		YEAR TO DATE		FISCAL BEG: 1	
		ACTUAL	BUDGET	VAR	BUD %	ACTUAL	BUDGET
BUILDING MAINTENANCE:							
6500	BLDG. REPAIRS & MAINT	.00	2,000	-2,000		.00	8,000
6570	PLUMBING	.00	1,000	-1,000		.00	4,000
6690	MISC SUPPLIES PURCHASES	.00	5,000	-5,000		.00	20,000
	TOTAL BUILDING MAINTENANCE	.00	8,000	-8,000	.0	.00	32,000
							-32,000
							.0
PROFESSIONAL SERVICES:							
6810	ADMIN SUPPLIES & SVCS	1,178.43	2,000	-822		1,671.52	8,000
6850	MANAGEMENT SERVICES	10,795.16	6,000	4,795		12,715.37	24,000
6870	AUDIT/PUBLIC ACCOUNTING	.00	417	-417		.00	1,668
6880	LEGAL FEES	.00	1,000	-1,000		.00	4,000
6910	LICENSES	.00	167	-167		.00	668
	TOTAL PROFESSIONAL SERVICES	11,973.59	9,584	2,390	124.9	14,386.89	38,336
							-23,949
							37.5
PAYROLL & BENEFITS:							
7022	PAYROLL-ENGINEER	.00	6,500	-6,500		.00	26,000
7024	PAYROLL-MAINTENANCE	.00	44,356	-44,356		.00	177,424
7030	PAYROLL-JANITORIAL	.00	56,000	-56,000		.00	224,000
7100	PAYROLL TAXES	.00	0	0		.00	0
7240	PAYROLL-CONCIERGE	.00	3,577	-3,577		.00	14,308
7241	PAYROLL-TELECOMM'TN	.00	10,089	-10,089		.00	40,356
	TOTAL PAYROLL	.00	120,522	-120,522	.0	.00	482,088
							-482,088
							.0
OTHER EXPENSES:							
7310	INSURANCE-PROPERTY	54,209.20	16,104	38,105		162,627.60	64,416
7320	INSURANCE-FLOOD	.00	8,525	-8,525		.00	34,100
7325	INSURANCE-D & O	.00	471	-471		.00	1,884
7340	INSURANCE-UMBRELLA	.00	2,702	-2,702		.00	10,808
7550	MISCELLANEOUS EXPENSE	.00	0	0		6.66	0
							98,212
							-34,100
							-1,884
							-10,808
							7

--- PREPARED FOR ---
410 ATKINSON DRIVE
HONOLULU, HI.

96814

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ALA MOANA HOTEL CONDO
STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR PERIOD ENDED 12/31/2005

--- PREPARED BY ---
HAWAIIAN MANAGEMENT CO., LTD.

BLD ACCT: 452 CORP. NO:00	CURRENT MONTH				YEAR TO DATE			
	ACTUAL	BUDGET	VAR	BUD %	ACTUAL	BUDGET	VAR	FISCAL BEG: 1
7556 ANENITIES-SPA ACCESS	.00	9,075	-9,075		.00	36,300	-36,300	
7557 ANENITIES-POOL MAINT	.00	9,780	-9,780		.00	39,120	-39,120	
7558 ANENITIES-PARKING	.00	5,000	-5,000		.00	20,000	-20,000	
7720 STATE G.E. TAX	.00	17	-17		.00	68	-68	
TOTAL OTHER EXPENSES	54,209.20	51,674	2,535	104.9	162,634.26	206,696	-44,062	78.7
TOTAL OPERATING EXPENSES	66,182.79	466,224	-400,041	14.2	177,021.15	1,864,896	-1,687,875	9.5
OPERATING SURPLUS/DEFICIT	745,103.99	109,247	635,857	682.0	3,741,843.20	436,988	3,304,855	856.3
CAPITAL IMPR & MAJOR REP & REPL:								
TOTAL CAP IMPR & MAJOR REP & RE	.00	0	0	.0	.00	0	0	.0
TOTAL CASH DISBURSMENTS	66,182.79	466,224	-400,041	14.2	177,021.15	1,864,896	-1,687,875	9.5
CHANGE IN SECURITY DEPOSITS	.00	0	0		.00	0	0	
CHANGE TO TOTAL CASH & RESERVE	745,103.99	109,247	635,857		3,741,843.20	436,988	3,304,855	

--- PREPARED FOR ---
410 ATKINSON DRIVE
HONOLULU, HI

96814

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ALA MOANA HOTEL CONDO
RESERVE STATEMENT
AS OF 12/31/2005

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HAWAIIANA MANAGEMENT CO., LTD.

BLD NUM: 452 CORP. NO: 00

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INDIVIDUAL RESERVES BY ACCOUNT

--- PREPARED FOR ---
440 ATKINSON DRIVE
HONOLULU, HI

96814

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ALA MOANA HOTEL CONDO
RESERVE STATEMENT
AS OF 12/31/2005

--- PREPARED BY ---
HAWAIIAN MANAGEMENT CO., LTD.

BLD NO: 452 CORP. NO: 00

FISCAL BEG: 1 PAGE: A- 5

	RESERVES BY INSTITUTION		
	BEGINNING BALANCE	TRANSFERS TO/(FROM)	ENDING BALANCE
TOTAL RESERVES	.00	.00	.00
OPERATING ACCOUNT	2,996,739.21	745,103.99	3,741,843.20
TOTAL CASH & RESERVES	2,996,739.21	745,103.99	3,741,843.20
TOTAL ASSOC. CASH & RESERVES	2,996,739.21	745,103.99	3,741,843.20

MEMO:



Hawaiiiana Management Company, Ltd.
Pacific Park Plaza, Suite 700
711 Kapiolani Boulevard
Honolulu, Hawaii 96813
Tel: (808) 593-9100
Fax: (808) 593-6333

CONDOMINIUM, CO-OP AND PUD
DISCLOSURE CHECK-LIST
(FOR LENDERS)

The following information contained in this disclosure statement is current as of this date. Certain elements of information contained in this disclosure are subject to change at any time in the future.

PROJECT NAME: ALA MOANA HOTEL CONDOMINIUM

APARTMENT NO: 700 TMK: (1)-2-3-038-002

ADDRESS: 410 Atkinson Drive, Honolulu, HI 96814

1. MANAGEMENT OF THE ASSOCIATION

- A. Has the Homeowner's Association been in control of the operations of the project for more than two (2) years?
NO
- B. The property is managed by: HAWAIIANA MANAGEMENT CO, LTD
711 Kapiolani Blvd., Suite 700, Honolulu, Hawaii 96813

*NOTE: This Property/Association is managed by a professional management company. If a lender desires evidence of the relationship between the property and the Management Company, a Certificate or Affidavit signed by an officer will be provided as proof attesting to this relationship. A copy of the Management agreement will not be provided.

2. FINANCIAL

- A. Percentage of apartment owners more than one (1) month delinquent in maintenance fees: 0%
- B. Number of foreclosures in the project during the past twelve (12) months: NONE
- C. Any special assessments being currently charged to each unit: NONE

CONDOMINIUM, CO-OP AND PUD
DISCLOSURE CHECK-LIST FOR LENDERS
Page Two

3. OCCUPANCY

- A. Total number of units in the complex: 1,154 hotel, 21 commercial.
- B. Owner Occupancy percentage: 0%
- C. To the best of our knowledge, the following number of units have been sold to bonafide purchasers other than the developer(s). approximately 750
- D. Does any single entity, individual or group own more than 10% of the total units in the project: YES, the developer.
- E. Is any part of the building used for commercial purposes? YES, 21 commercial units.
- F. Is a majority of the units in this complex operated on time share basis? NO
- G. Does the project operate a hotel or rental pool? YES, "Owner's Relations" office (on the property) handles rentals.
- H. Are units in the project owned fee simple rather than leasehold? YES

4. LEGAL

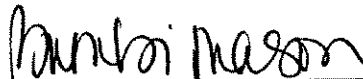
- A. Is there any existing litigation? Not to my knowledge.
- B. Is the project subject to phasing or add-ons not yet completed? YES, in process of conversion to condominium.
- C. Is the Board of Directors' approval required of purchasers? NO

5. INSURANCE

- A. Insurance Carrier: INSURANCE ASSOCIATES
Name of Agent: Sue Savio Phone: 526-9271

Dated: January 12, 2006

FOR THE BOARD OF DIRECTORS
ALA MOANA HOTEL CONDOMINIUM



Bambi Mason
Management Executive
HAWAIIANA MANAGEMENT COMPANY, LTD.

96814

ALA MOANA HOTEL CONDO

ANNUAL BUDGET
FOR PERIOD ENDED 12/31/2005

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HAWAIIANA MANAGEMENT CO., LTD.

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96814

ALAMOANA HOTEL CONDO
ANNUAL BUDGET
FOR PERIOD ENDED 12/31/2005

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--- PREPARED FOR ---
 410 ATKINSON DRIVE
 HONOLULU, HI 96814

ALA MOANA HOTEL CONDO
ANNUAL BUDGET
FOR PERIOD ENDED 12/31/2005

--- PREPARED BY ---
 HAWAIIAN MANAGEMENT CO., LTD.
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LINE	BLD ACCT. 452													
		1ST QUARTER			2ND QUARTER			3RD QUARTER			4TH QUARTER			ANNUAL
		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
OTHER NON-OPER EXP		0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL OTH NON-OPER EXP		0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL CASH DISBURSMENTS		0	0	0	0	0	0	0	0	466,224	466,224	466,224	466,224	1,864,896
CHANGE TO TOTAL CASH & RESERVE		0	0	0	0	0	0	0	0	109,247	109,247	109,247	109,247	436,988

FOOTNOTES:

COMMUNITY ASSOCIATIONS INSTITUTE (CAI) RESERVE STUDY STANDARDS

What is a Reserve Study?

A Reserve Study is made up of two parts, 1) the information about the physical status and repair/replacement cost of the major common area components the association is obligated to maintain (Physical Analysis), and 2) the evaluation and analysis of the association's Reserve balance, income, and expenses (Financial Analysis). The Physical Analysis is comprised of the Component Inventory, Condition Assessment, and Life and Valuation Estimates. The Component Inventory should be relatively "stable" from year to year, while the Condition Assessment and Life and Valuation Estimates will necessarily change from year to year. The Financial Analysis is made up of a finding of the client's current Reserve Fund Status (measured in cash or as Percent Funded) and a recommendation for an appropriate Reserve contribution rate (Funding Plan).

Physical Analysis	Financial Analysis
Component Inventory	Fund Status
Condition Assessment	Funding Plan
Life and Valuation Estimates	

Reserve Study Contents

The following is a list of the minimum contents to be included in the Reserve Study.

- A summary of the association's number of units, physical description, and Reserve Fund financial condition.
- A projection of Reserve Starting Balance, recommended Reserve contributions, projected Reserve expenses, and projected ending Reserve Fund Balance for a minimum of 20 years.
- A tabular listing of the Component Inventory, component quantity or identifying descriptions, Useful Life, Remaining Useful Life, and Current Replacement Cost.
- A description of methods and objectives utilized in computing the Fund Status and development of the Funding Plan.
- Source(s) utilized to obtain component Repair or Replacement cost estimates.
- A description of the Level of Service by which the Reserve Study was prepared.
- Fiscal year for which the Reserve Study is prepared.

Levels of Service

The following three categories describe the various types of Reserve Studies, from exhaustive to minimal.

I. Full: A Reserve Study in which the following five Reserve Study tasks are performed:

- Component Inventory
- Condition Assessment (based upon on-site visual observations)
- Life and Valuation Estimates
- Fund Status
- Funding Plan

II. Update, With-Site-Visit/On-Site Review: A Reserve Study update in which the following five Reserve Study tasks are performed:

- Component Inventory (verification only, not quantification)
- Condition Assessment (based on on-site visual observations)
- Life and Valuation Estimates
- Fund Status
- Funding Plan

III. Update, No-Site-Visit/Off-Site Review: A Reserve Study update with no on-site visual observations in which the following three Reserve Study tasks are performed:

- Life and Valuation Estimates
- Fund Status
- Funding Plan

Disclosures

The following are the minimum disclosures to be included in the Reserve Study.

General: Description of other involvement(s) with the association that could result in actual or perceived conflicts of interest.

Physical Analysis: Description of how thorough the on-site observations were performed: representative sampling vs. all common areas, destructive testing or not, field measurements vs. drawing take-offs, etc.

Financial Analysis: Description of assumptions utilized for interest and inflation, tax, and other outside factors.

Personnel Credentials: State or organizational licenses or credentials carried by the individual responsible for Reserve Study preparation or oversight.

Update Reports: Disclosure of how the current work is reliant on the validity of prior Reserve Studies.

Completeness: Material issues which, if not disclosed, would cause a distortion of the association's situation.

Reliance on Client Data: Information provided by the official representative of the association regarding financial, physical, quantity, or historical issues will be deemed reliable by the consultant. The reserve study will be a reflection of information provided to the consultant and assembled for the association's use, not for the purpose of performing an audit, quality/forensic analyses, or background checks of historical records.

Reserve Balance: The actual or projected total presented in the reserve study is based upon information provided and was not audited.

Component Quantities: For Update With-Site-Visit and Update No-Site-Visit Levels of Service, the client is considered to have deemed previously developed component quantities as accurate and reliable.

Reserve Projects: Information provided about reserve projects will be considered reliable. Any on-site inspection should not be considered a project audit or quality inspection.

Terms and Definitions

CASH FLOW METHOD: A method of developing a Reserve Funding Plan where contributions to the Reserve fund are designed to offset the variable annual expenditures from the Reserve fund. Different Reserve Funding Plans are tested against the anticipated schedule of Reserve expenses until the desired Funding Goal is achieved.

COMPONENT: The individual line items in the Reserve Study, developed or updated in the Physical Analysis. These elements form the building blocks for the Reserve Study. Components typically are: 1) Association responsibility, 2) with limited Useful Life expectancies, 3) predictable Remaining Useful Life expectancies, 4) above a minimum threshold cost, and 5) as required by local codes.

COMPONENT INVENTORY: The task of selecting and quantifying Reserve Components. This task can be accomplished through on-site visual observations, review of association design and organizational documents, a review of established association precedents, and discussion with appropriate association representative(s).

COMPONENT METHOD: A method of developing a Reserve Funding Plan where the total contribution is based on the sum of contributions for individual components. See "Cash Flow Method."

CONDITION ASSESSMENT: The task of evaluating the current condition of the component based on observed or reported characteristics.

CURRENT REPLACEMENT COST: See "Replacement Cost."

DEFICIT: An actual (or projected) Reserve Balance less than the Fully Funded Balance. The opposite would be a Surplus.

EFFECTIVE AGE: The difference between Useful Life and Remaining Useful Life. Not always equivalent to chronological age, since some components age irregularly. Used primarily in computations.

FINANCIAL ANALYSIS: The portion of a Reserve Study where current status of the Reserves (measured as cash or Percent Funded) and a recommended Reserve contribution rate (Reserve Funding Plan) are derived, and the projected Reserve income and expense over time is presented. The Financial Analysis is one of the two parts of a Reserve Study.

FULLY FUNDED: 100% Funded. When the actual (or projected) Reserve balance is equal to the Fully Funded Balance.

FULLY FUNDED BALANCE (FFB): Total Accrued Depreciation. An indicator against which Actual (or projected) Reserve balance can be compared. The Reserve balance that is in direct proportion to the fraction of life "used up" of the current Repair or Replacement cost. This number is calculated for each component, then summed together for an association total. Two formulas can be utilized, depending on the provider's sensitivity to interest and inflation effects. Note: Both yield identical results when interest and inflation are equivalent.

$$\text{FFB} = \text{Current Cost} \times \text{Effective Age} / \text{Useful Life}$$

or

$$\text{FFB} = (\text{Current Cost} \times \text{Effective Age} / \text{Useful Life}) + [(\text{Current Cost} \times \text{Effective Age} / \text{Useful Life}) / (1 + \text{Interest Rate})^{\text{Remaining Life}}] - [(\text{Current Cost} \times \text{Effective Age} / \text{Useful Life}) / (1 + \text{Inflation Rate})^{\text{Remaining Life}}]$$

FUND STATUS: The status of the reserve fund as compared to an established benchmark such as percent funding.

FUNDING GOALS: Independent of methodology utilized, the following represent the basic categories of Funding Plan goals:

- **Baseline Funding:** Establishing a Reserve funding goal of keeping the Reserve cash balance above zero.
- **Full Funding:** Setting a Reserve funding goal of attaining and maintaining Reserves at or near 100% funded.
- **Statutory Funding:** Establishing a Reserve funding goal of setting aside the specific minimum amount of Reserves required by local statutes.
- **Threshold Funding:** Establishing a Reserve funding goal of keeping the Reserve balance above a specified dollar or Percent Funded amount. Depending on the threshold, this may be more or less conservative than "Fully Funding."

FUNDING PLAN: An association's plan to provide income to a Reserve fund to offset anticipated expenditures from that fund.

FUNDING PRINCIPLES:

- Sufficient Funds When Required
- Stable Contribution Rate over the Years
- Evenly Distributed Contributions over the Years
- Fiscally Responsible

LIFE AND VALUATION ESTIMATES: The task of estimating Useful Life, Remaining Useful Life, and Repair or Replacement Costs for the Reserve components.

PERCENT FUNDED: The ratio, at a particular point of time (typically the beginning of the Fiscal Year), of the actual (or projected) Reserve Balance to the Fully Funded Balance, expressed as a percentage.

PHYSICAL ANALYSIS: The portion of the Reserve Study where the Component Inventory, Condition Assessment, and Life and Valuation Estimate tasks are performed. This represents one of the two parts of the Reserve Study.

REMAINING USEFUL LIFE (RUL): Also referred to as "Remaining Life" (RL). The estimated time, in years, that a reserve component can be expected to continue to serve its intended function. Projects anticipated to occur in the initial year have "zero" Remaining Useful Life.

REPLACEMENT COST: The cost of replacing, repairing, or restoring a Reserve Component to its original functional condition. The Current Replacement Cost would be the cost to replace, repair, or restore the component during that particular year.

RESERVE BALANCE: Actual or projected funds as of a particular point in time that the association has identified for use to defray the future repair or replacement of those major components which the association is obligated to maintain. Also known as Reserves, Reserve Accounts, Cash Reserves. Based upon information provided and not audited.

RESERVE PROVIDER: An individual who prepares Reserve Studies.

RESERVE STUDY: A budget planning tool that identifies the current status of the Reserve fund and a stable and equitable Funding Plan to offset the anticipated future major common area expenditures. The Reserve Study consists of two parts: the Physical Analysis and the Financial Analysis. "Our budget and finance committee is soliciting proposals to update our Reserve Study for next year's budget."

RESPONSIBLE CHARGE: A reserve specialist in responsible charge of a reserve study shall render regular and effective supervision to those individuals performing services that directly and materially affect the quality and competence rendered by the reserve specialist. A reserve specialist shall maintain such records as are reasonably necessary to establish that the reserve specialist exercised regular and effective supervision of a reserve study of which he was in responsible charge. A reserve specialist engaged in any of the following acts or practices shall be deemed not to have rendered the regular and effective supervision required herein:

1. The regular and continuous absence from principal office premises from which professional services are rendered; except for performance of field work or presence in a field office maintained exclusively for a specific project;
2. The failure to personally inspect or review the work of subordinates where necessary and appropriate;
3. The rendering of a limited, cursory or perfunctory review of plans or projects in lieu of an appropriate detailed review;
4. The failure to personally be available on a reasonable basis or with adequate advance notice for consultation and inspection where circumstances require personal availability.

SPECIAL ASSESSMENT: An assessment levied on the members of an association in addition to regular assessments. Special Assessments are often regulated by governing documents or local statutes.

SURPLUS: An actual (or projected) Reserve Balance greater than the Fully Funded Balance. See "Deficit."

USEFUL LIFE (UL): Total Useful Life or Depreciable Life. The estimated time, in years, that a reserve component can be expected to serve its intended function if properly constructed in its present application or installation.

HAWAII'S AMENDMENT TO ALLOW CASH FLOW ANALYSIS

HB 70

"Cash flow plan" means a twenty-year projection of an association's future income and expense requirements to fund fully its replacement reserves requirements each year during that twenty-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that twenty-year period, except in an emergency.

Courtesy of Armstrong Consulting, Inc.

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1	1	Project Definition
2	1	Analysis Definition
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4	1	Cash Flow Projections Graph
5	1	Projected Expenditures
6	1	Accountant's Report
7	1	Component Summary

Ala Moana Hotel Condominium

PROJECT DEFINITION REPORT

6/03/2005

Project Information

Project: Ala Moana Hotel Condominium
Address: 410 Atkinson Drive
City: Honolulu
State: HI
Zip: 96814-0000

Project Date: 1/01/1969
Number of Phases: 0
Number of Units: 1154
Number of Models: 0

Property Description

The subject property is defined as the Ala Moana Hotel and is located at 410 Atkinson Drive in Honolulu, Hawaii. The property consist of a high-rise multi-use tower including hotel, commercial retail space, restaurants and conference meeting rooms. The project contains a total of 1,154 hotel units.

The high-rise building is a thirty-six story concrete frame structure. The first four floors include a parking garage, hotel lobby, front desk, conference room, retail and restaurant space. Floors five through thirty-five include hotel units, common area internal hallway corridors, elevator lobbies and back of house service areas. The thirty-sixth floor contains a restaurant/bar facility. Upper floor access is provided by nine guest elevators and five service elevators.

Amenities include a recreation deck at the building's 4th floor. The recreation deck includes a swimming pool and fitness/spa area. The property was completed in approximately 1969 and was considered to be in average condition upon the site visit conducted on October 21, 2004.

*This study is comprised of those components that are only association with the AOA as delineated and/or allocated by the client.

Ala Moana Hotel Condominium

ANALYSIS DEFINITION REPORT

Analysis 1

Project Information

Project: Ala Moana Hotel Condominium
Address: 410 Atkinson Drive
City: Honolulu
State: HI
Zip: 96814-0000

Project Date: 1/01/1969
Analysis Date: 1/01/2005
Number of Phases: 0
Number of Units: 1154
Number of Models: 0

Analysis Parameters

Rate of Inflation: 3%
Rate of Return on Investment: 2%
Beginning Funds: \$1,000,000.00
Loan/Special Assessment: No

Deferred Expenditures: No
Contingency: 0%
Contingency Time: None

Annual Contribution Factors

	2015:	4.4%	2025:	4.4%	
2006:	4.4%	2016:	4.4%	2026:	4.4%
2007:	4.4%	2017:	4.4%	2027:	4.4%
2008:	4.4%	2018:	4.4%	2028:	4.4%
2009:	4.4%	2019:	4.4%	2029:	4.4%
2010:	4.4%	2020:	4.4%		
2011:	4.4%	2021:	4.4%		
2012:	4.4%	2022:	4.4%		
2013:	4.4%	2023:	4.4%		
2014:	4.4%	2024:	4.4%		

Additional Analysis Information

Analysis 1 indicates the recommended contribution rate into reserves based on the above stated parameters. The analysis period utilized is 25 years and the average rate of return on reserve funds invested is projected at 2%. The inflation rate estimated for reserve components is 3% per year. The building is undergoing conversion from hotel to an AOA. Planned transfer to reserves from sales through escrow is \$1,000,000 and is utilized as the reserve fund balance as of January 1, 2005. Utilizing these analysis parameters, the recommended reserve funding level for the 2005 fiscal year is \$1,311,000. It will be necessary to increase reserve contributions at an annual rate of 4.4% to adequately fund future projected reserve expenditures.

Based on discussions with the client, this annual reserve contribution assumes that several building components will be replaced and/or renovated and will be considered new or in good condition as of January 1, 2005. These components include but are not limited to exterior painting, concrete spalling, lanai railings, main lobby area, hallway corridors, elevator lobbies, elevator machinery, elevator cab interiors and air handlers. Please review the above financial parameters and the entire report for accuracy.

Ala Moana Hotel Condominium
CASHFLOW PERCENT FUNDED SUMMARY PROJECTIONS

Analysis 1

Year	Beginning Balance	Contribution	Average/ Unit/Mo	Interest Earned	Expenditures	Ending Balance
2005	1,000,000.00	1,311,000.00	94.67	34,480.95	0.00	2,345,480.95
2006	2,345,480.95	1,368,684.00	98.84	62,272.99	0.00	3,776,437.94
2007	3,776,437.94	1,428,906.10	103.19	83,720.17	401,127.00	4,887,937.21
2008	4,887,937.21	1,491,777.97	107.73	111,325.22	179,208.00	6,311,832.40
2009	6,311,832.40	1,557,416.20	112.47	142,019.09	118,179.00	7,893,088.69
2010	7,893,088.69	1,625,942.51	117.41	171,430.08	279,616.00	9,410,845.28
2011	9,410,845.28	1,697,483.98	122.58	158,837.44	3,686,914.00	7,580,252.70
2012	7,580,252.70	1,772,173.28	127.97	157,263.34	747,473.00	8,762,216.32
2013	8,762,216.32	1,850,148.90	133.60	145,197.33	3,006,908.00	7,750,654.55
2014	7,750,654.55	1,931,555.45	139.48	138,305.04	1,943,011.00	7,877,504.04
2015	7,877,504.04	2,016,543.89	145.62	154,875.83	1,359,586.00	8,689,337.76
2016	8,689,337.76	2,105,271.82	152.03	193,903.17	221,543.00	10,766,969.75
2017	10,766,969.75	2,197,903.78	158.72	134,390.67	7,807,583.00	5,291,681.20
2018	5,291,681.20	2,294,611.55	165.70	107,144.13	1,223,596.00	6,469,840.88
2019	6,469,840.88	2,395,574.46	172.99	156,356.79	18,610.00	9,003,162.13
2020	9,003,162.13	2,500,979.74	180.60	184,862.41	1,196,873.00	10,492,131.28
2021	10,492,131.28	2,611,022.85	188.55	104,788.98	7,266,054.00	5,941,889.11
2022	5,941,889.11	2,725,907.86	196.84	111,002.68	1,915,582.00	6,863,217.65
2023	6,863,217.65	2,845,847.81	205.51	96,269.13	5,453,064.00	4,352,270.59
2024	4,352,270.59	2,971,065.11	214.55	98,284.83	1,088,309.00	6,333,311.53
2025	6,333,311.53	3,101,791.97	223.99	106,779.15	2,806,086.00	6,735,796.65

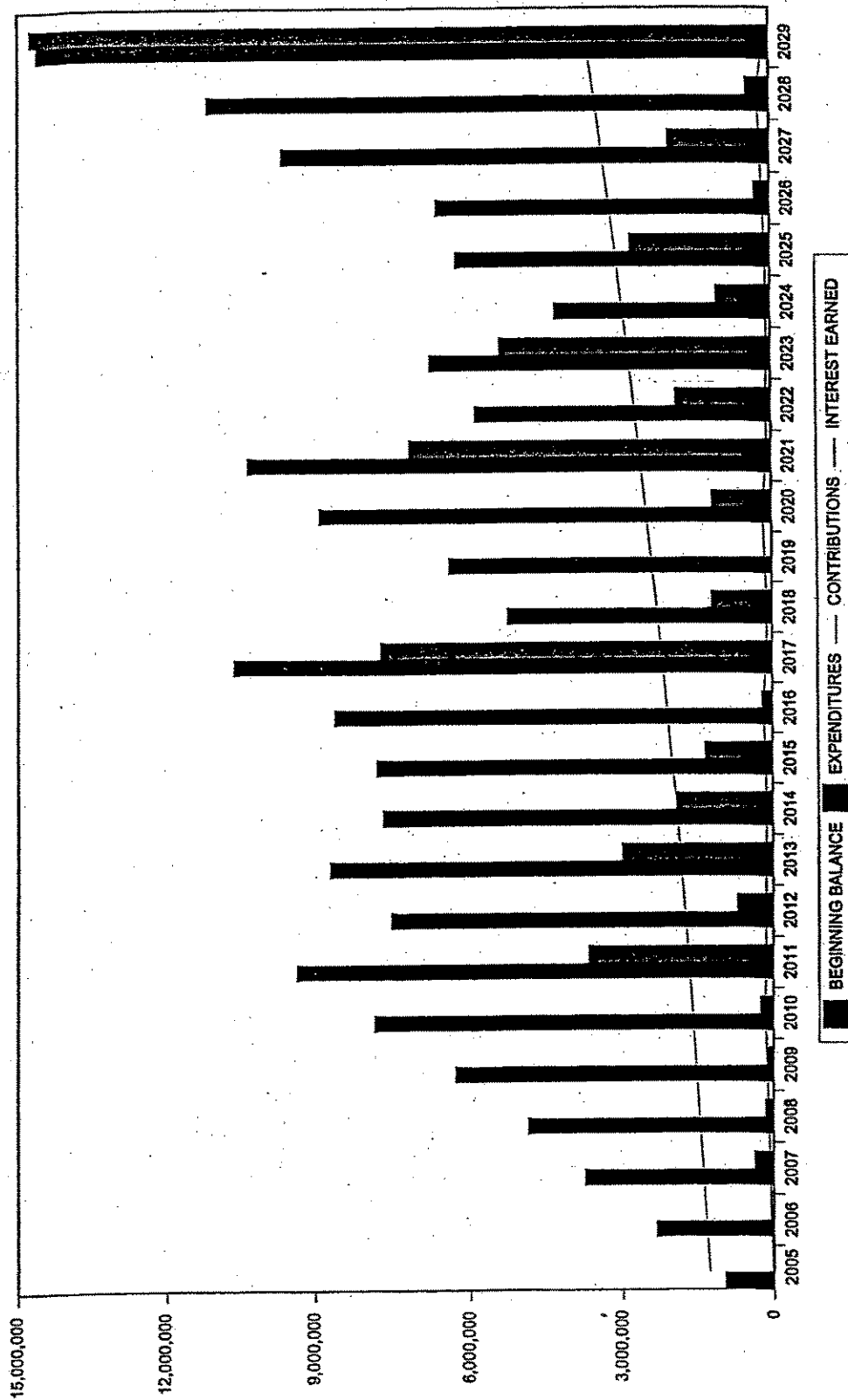
Ala Moana Hotel Condominium
CASHELOW PERCENT FUNDED SUMMARY PROJECTIONS

Analysis 1

Year	Beginning Balance	Contribution	Average/ Unit/Mo	Interest Earned	Expenditures	Ending Balance
2026	6,735,796.65	3,238,270.82	233.84	164,797.14	321,554.00	9,817,310.61
2027	9,817,310.61	3,380,754.74	244.13	194,152.97	2,025,920.00	11,366,298.32
2028	11,366,298.32	3,529,507.95	254.87	257,990.55	493,148.00	14,660,648.82
2029	14,660,648.82	3,684,806.30	266.09	124,148.70	14,784,083.00	3,685,520.82
Totals:		57,634,949.04		3,394,598.78	58,344,027.00	

Ala Moana Hotel Condominium CASHFLOW PROJECTIONS GRAPH

Analysis 1



PROJECTED EXPENDITURES

Analysis 1

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
A/C-Elevator Mech. Room (Waikiki)										32,629
Air Handler-Corridors (Kona)										97,887
Air Handler-Corridors (Waikiki)										293,661
Carpet Flooring - 1st Floor Lobby									144,961	
Carpet Flooring - 2nd Floor Lobby									99,249	
Carpet Flooring - Kona Tower									180,378	
Carpet Flooring - Waikiki Tower									563,372	
Carpeting-Hotel Room								732,348		
Exhaust Fans										
Fire Alarm System Upgrade			395,716							
Fire Extinguisher - Kona									1,267	
Fire Extinguisher - Waikiki									5,702	
Furnishings-Lobby									128,714	
Furniture-Pool Deck									44,350	
Hot Water Storage-14th Floor					67,531					
Hot Water Storage-Roof-1					28,138					
Hot Water Storage-Roof-2					22,510					
Paint - Building Exterior										
Paint Interior - Lobby (1st/2nd FL)									866,727	
Paint Interior - Waikiki Tower									63,357	
Pump - Fire Sprinkler Booster Pump							29,851		77,853	
Pumps/Filters Water Feature				3,825						
Roofing - Built Up (4th Floor)						182,933				
Roofing - Built Up (Kona Tower)				175,383						
Roofing - Gutters (Waikiki Tower)										6,656
Roofing - Pitch & Gravel (4th Fl)										
Roofing - WP Membrane (38th Fl)								15,127		
Unit-Chair-Dining Outdoor							181,394			

PROJECTED EXPENDITURES

Analysis 1

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Unit-Chair-Upholstered Armless							163,462			
Unit-Chair-Upholstered W/Arms							380,939			
Unit-Hide A Bed							231,184			
Unit-Mattress/Box Spring-Double							789,100			
Unit-Mattress/Box Spring-King							61,298			
Unit-Mattress/Box Spring-Queen							187,009			
Unit-Microwave Oven									200,761	
Unit-Soft Goods							1,597,377			
Unit-Table-Dining Outdoor							85,300			
Wall Coverings/Paint-Hotel Room										1,512,178
Window Treatments									632,217	
Totals			401,127	179,208	118,179	279,616	3,886,914	747,473	3,006,908	1,943,011

PROJECTED EXPENDITURES

Analysis 1

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
A/C-Elevator Mech. Room (Waikiki)										43,851
Bathrooms Public-Refurbish						130,908				
Boilers - Roof (1,000 MBH)							144,466			
Carpet Flooring - 1st Floor Lobby							183,633			
Carpet Flooring - 2nd Floor Lobby							125,726			
Carpet Flooring - Kona Tower							228,497			
Carpet Flooring - Waikiki Tower							713,663			
Carpeting-Hotel Room				874,717						1,044,458
Chiller-HVAC (800 Ton)										
Cooling Tower-HVAC (400 Ton)							1,926,217			
Elevator Cab Refurbish							1,605,181			
EMS-Digital System Controller	151,235						321,036			
Fire Extinguisher - Kona							1,605			
Fire Extinguisher - Waikiki							7,223			
Furnishings-Corridors-Kona			7,131							
Furnishings-Corridors-Waikiki			40,646							
Furnishings-Lobby							160,518			
Furniture-Pool Deck							56,181			
Generator - Emergency Back Up			221,543							
Heat Pump-Liquid							321,036			
Ice Machines-Corridors-Kona			84,178							
Ice Machines-Corridors-Waikiki			192,535							
Paint - Building Exterior						1,065,965				
Paint Interior - Kona Tower	26,470									
Paint Interior - Lobby (1st/2nd FL)							80,259			
Paint Interior - Service/BOH	165,055									
Paint Interior - Waikiki Tower							98,622			
Pump-Domestic Water Booster	114,267									

PROJECTED EXPENDITURES

Analysis 1

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Pump/Motor-Chill Water (100 hp)							80,259			
Pump/Motor-Condenser Water (60 hp)							64,207			
Pump/Motor-Condenser Water (7.5 hp)							12,039			
Pump/Motor-Hot Water Circ (20 hp)							72,233			
Pumps, Filters, Chlorinators-Pool	6,049									
Pumps/Filters Water Feature				5,141						
Roofing - Built Up (2nd FL Club)									24,522	
Roofing - Built Up (Loading Dock)				88,138						
Roofing - Built Up (Walkiki Tower)				255,600						
Roofing - Gutters (Walkiki Tower)							8,186			
Roofing - WP Membrane (36th Flr)					18,610					
Unit-Artwork & Accessories			279,207							
Unit-Chair-Dining Outdoor			216,658						258,702	
Unit-Chair-Upholstered Armless			195,240						233,127	
Unit-Chair-Upholstered W/Arms			454,996						543,288	
Unit-Coffee Table-Round 30"			98,305							
Unit-Credenza/Desk-64"			1,026,725							
Unit-Dining Table-Round 30"			235,505							
Unit-Framed Mirrors			199,434							
Unit-Glass For Coffee Table			9,326							
Unit-Glass For Credenza			42,862							
Unit-Glass For Dining Table			19,348							
Unit-Glass For Night Stands			27,327							
Unit-Headboard-Double			565,444							
Unit-Headboard-King			38,549							
Unit-Headboard-Queen			136,235							
Unit-Hide A Bed			276,128						329,711	
Unit-Mattress/Box Spring-Double			942,505						1,125,401	

PROJECTED EXPENDITURES

Analysis 1

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Unit-Mattress/Box Spring-King			73,215						87,422	
Unit-Mattress/Box Spring-Queen			199,477						238,186	
Unit-Microwave Oven							254,393			
Unit-Mirror-Full Length Framed									106,450	
Unit-Mirror-Vanity Framed									106,450	
Unit-Night Stands-Double Rm			218,186							
Unit-Night Stands-King/Queen Rm			207,658							
Unit-Refrigerator	192,628									
Unit-Soft Goods			1,907,915						2,278,150	
Unit-Stone Top For Console Table			9,562							
Unit-Table-Dining Outdoor			101,883						121,654	
Wall Coverings/Paint-Hotel Room								1,915,582		
Wallpaper (Corridors)-Kona Tower	167,501									
Wallpaper (Corridors)-Waikiki Tower	536,381									
Washers/Dryers-Guest Laundry			21,393							
Window Treatments							800,874			
Totals	1,359,586	221,543	7,807,583	1,223,596	18,810	1,198,873	7,266,054	1,915,582	5,453,064	1,088,309

PROJECTED EXPENDITURES

Analysis 1

	2025	2026	2027	2028	2029
Bathrooms Employees-Refurbish	101,172				
Carpet Flooring - 1st Floor Lobby					232,689
Carpet Flooring - 2nd Floor Lobby					159,313
Carpet Flooring - Kona Tower					289,539
Carpet Flooring - Waikiki Tower					904,315
Concrete Spall/Railing Repairs					
Elevator Cab Refurbish	203,248				
Exhaust Fans					
Fire Alarm System Upgrade			714,918		
Fire Extinguisher - Kona					2,034
Fire Extinguisher - Waikiki					9,153
Furnishings-Corridors-Kona					10,170
Furnishings-Corridors-Waikiki					57,969
Furnishings-Lobby					203,400
Furniture-Pool Deck					71,190
Hot Water Storage-14th Floor					122,040
Hot Water Storage-Roof-1					50,850
Hot Water Storage-Roof-2					40,880
Ice Machines-Corridors-Kona					91,530
Ice Machines-Corridors-Waikiki					274,589
Lighted Exit Signs - Kona	14,634				
Lighted Exit Signs - Waikiki	14,634				
Lighting-Battery Back Up-Kona	30,352				
Lighting-Battery Back Up-Waikiki	45,527				
Lighting-Ceiling Fixtures-Waikiki	12,466				
Lighting-Wall Sconce-Kona	45,527				
Lighting-Wall Sconce-Waikiki	136,582				
Paint - Building Exterior					
				1,311,002	

PROJECTED EXPENDITURES

Analysis 1

	2025	2026	2027	2028	2029
Paint Interior - Kona Tower	35,573				
Paint Interior - Lobby (1st/2nd FL)					101,700
Paint Interior - Service/BOH	221,820				
Paint Interior - Walkiki Tower					124,969
Pool Deck Finish Replacement	451,661				
Pumps, Filters, Chlorinators-Pool	8,130				
Pumps/Filters Water Feature			6,910		
Roofing - Built Up (4th Floor)			311,524		
Roofing - Built Up (Kona Tower)		298,666			
Roofing - Gutters (Walkiki Tower)			10,068		
Roofing - Pitch & Gravel (4th Fl)			164,646		
Roofing - WP Membrane (36th Flr)		22,888			
Unit-Artwork & Accessories					398,200
Unit-Chair-Dining Outdoor					308,994
Unit-Chair-Upholstered Armless					278,448
Unit-Chair-Upholstered W/Arms					648,907
Unit-Coffee Table-Round 30"					140,201
Unit-Credenza/Desk-64"					1,464,298
Unit-Dining Table-Round 30"					335,873
Unit-Framed Mirrors					284,429
Unit-Glass For Coffee Table					13,300
Unit-Glass For Credenza					61,129
Unit-Glass For Dining Table					27,593
Unit-Glass For Night Stands					38,973
Unit-Headboard-Double					806,426
Unit-Headboard-King					54,978
Unit-Headboard-Queen					194,296
Unit-Hide A Bed					393,809

PROJECTED EXPENDITURES

Analysis 1

	2025	2026	2027	2028	2029
Unit-Mattress/Box Spring-Double					1,344,185
Unit-Mattress/Box Spring-King					104,418
Unit-Mattress/Box Spring-Queen					284,490
Unit-Microwave Oven					322,353
Unit-Night Stands-Double Rm					311,187
Unit-Night Stands-King/Queen Rm					296,158
Unit-Refrigerator	258,952				
Unit-Soft Goods					2,721,035
Unit-Stone Top For Console Table					13,836
Unit-Table-Dining Outdoor					145,304
VCT Flooring - Service/BOH	279,849				
Wallpaper (Corridors)-Kona Tower	225,108				
Wallpaper (Corridors)-Waikiki Tower	720,851				
Washers/Dryers-Guest Laundry					30,510
Window Treatments					1,014,823
Totals	2,806,086	321,554	2,025,920	493,148	14,784,083

Ala Moana Hotel Condominium
ACCOUNTANT'S REPORT

Analysis 1

1/01/2005 - 12/31/2005

Component	Remaining Life (yr/mo)	Future Cost	Assigned Reserves	2005 Contribution Requirement	2005 Assigned Interest Earned	2005 Funding Requirement
A/C-Elevator Mech. Room (Waikiki)	09/00	32,629	1,382	1,812	48	1,860
Air Handler-Corridors (Kona)	09/00	97,887	33,103	43,398	1,141	44,539
Air Handler-Corridors (Waikiki)	09/00	293,661	99,309	130,193	3,424	133,617
Bathrooms Employees-Refurbish	20/00	101,172	0	0	0	0
Bathrooms Public-Refurbish	15/00	130,908	0	0	0	0
Boilers - Roof (1,000 MBH)	16/00	144,466	12,214	16,012	421	16,433
Carpet Flooring - 1st Floor Lobby	08/00	144,961	0	0	0	0
Carpet Flooring - 2nd Floor Lobby	08/00	99,249	0	0	0	0
Carpet Flooring - Kona Tower	08/00	180,378	0	0	0	0
Carpet Flooring - Waikiki Tower	08/00	563,372	0	0	0	0
Chiller-HVAC (800 Ton)	16/00	1,926,217	162,847	213,492	5,615	219,107
Concrete Spall/Railing Repairs	20/00	0	0	0	0	0
Cooling Tower-HVAC (400 Ton)	16/00	1,605,181	135,706	177,910	4,679	182,589
Elevator Cab Refurbish	10/00	151,235	0	0	0	0
EMS-Digital System Controller	16/00	321,036	27,141	35,582	936	36,518
Exhaust Fans	04/00	0	0	0	0	0
Fire Alarm System Upgrade	02/00	395,716	151,353	198,424	5,219	203,643
Fire Extinguisher - Kona	08/00	1,267	0	0	0	0
Fire Extinguisher - Waikiki	08/00	5,702	0	0	0	0
Furnishings-Corridors-Kona	12/00	7,131	0	0	0	0
Furnishings-Corridors-Waikiki	12/00	40,646	0	0	0	0

Ala Moana Hotel Condominium
ACCOUNTANT'S REPORT

Analysis 1

1/01/2005 - 12/31/2005

Component	Remaining Life (yr/mo)	Future Cost	Assigned Reserves	2005 Contribution Requirement	2005 Assigned Interest Earned	2005 Funding Requirement
Furnishings-Lobby	08/00	126,714	0	0	0	0
Furniture-Pool Deck	08/00	44,350	0	0	0	0
Generator - Emergency Back Up	11/00	221,543	59,316	77,763	2,045	79,808
Heat Pump-Liquid	16/00	321,036	27,141	35,582	936	36,518
Hot Water Storage-14th Floor	04/00	67,531	25,691	33,681	886	34,567
Hot Water Storage-Roof-1	04/00	28,138	10,705	14,034	369	14,403
Hot Water Storage-Roof-2	04/00	22,510	8,564	11,227	295	11,522
Ice Machines-Corridors-Kona	12/00	84,178	0	0	0	0
Ice Machines-Corridors-Waikiki	12/00	192,535	0	0	0	0
Lighted Exit Signs - Kona	20/00	14,634	0	0	0	0
Lighted Exit Signs - Waikiki	20/00	14,634	0	0	0	0
Lighting-Battery Back Up-Kona	20/00	30,352	0	0	0	0
Lighting-Battery Back Up-Waikiki	20/00	45,527	0	0	0	0
Lighting-Ceiling Fixtures-Waikiki	20/00	12,466	0	0	0	0
Lighting-Wall Sconce-Kona	20/00	45,527	0	0	0	0
Lighting-Wall Sconce-Waikiki	20/00	136,582	0	0	0	0
Paint Interior - Kona Tower	10/00	26,470	0	0	0	0
Paint Interior - Lobby (1st/2nd FL)	08/00	63,357	0	0	0	0
Paint Interior - Service/BOH	10/00	165,055	0	0	0	0
Paint Interior - Waikiki Tower	08/00	77,853	0	0	0	0
Pool Deck Finish Replacement	20/00	451,661	0	0	0	0

Ala Moana Hotel Condominium
ACCOUNTANT'S REPORT

Analysis 1

1/01/2005 - 12/31/2005

Component	Remaining Life (yr/mo)	Future Cost	Assigned Reserves	2005 Contribution Requirement	2005 Assigned Interest Earned	2005 Funding Requirement
Pump - Fire Sprinkler Booster Pump	06/00	29,851	9,591	12,573	331	12,904
Pump-Domestic Water Booster	10/00	114,267	24,154	31,666	833	32,499
Pump/Motor-Chill Water (100 hp)	16/00	80,259	6,785	8,896	234	9,130
Pump/Motor-Condenser Water (60 hp)	16/00	64,207	5,428	7,116	187	7,303
Pump/Motor-Condenser Water (7.5 hp)	16/00	12,039	1,018	1,334	35	1,369
Pump/Motor-Hot Water Circ (20 hp)	16/00	72,233	6,107	8,006	211	8,217
Pumps, Filters, Chlorinators-Pool	10/00	6,049	0	0	0	0
Pumps/Filters Water Feature	03/00	3,825	1,132	1,484	39	1,523
Roofing - Built Up (2nd FL Club)	18/00	24,522	0	0	0	0
Roofing - Built Up (4th Floor)	05/00	182,933	57,999	76,036	2,000	78,036
Roofing - Built Up (Kona Tower)	03/00	175,383	61,788	81,004	2,131	83,135
Roofing - Built Up (Loading Dock)	13/00	88,138	10,353	13,572	357	13,929
Roofing - Built Up (Waikiki Tower)	13/00	255,600	30,023	39,360	1,035	40,395
Roofing - Gutters (Waikiki Tower)	02/00	5,411	1,634	2,142	56	2,198
Roofing - Pitch & Gravel (4th Fl)	05/00	96,683	29,519	38,700	1,018	39,718
Roofing - WP Membrane (36th Flr)	07/00	15,127	0	0	0	0
VCT Flooring - Service/BOH	20/00	279,849	0	0	0	0
Wallpaper (Corridors)-Kona Tower	10/00	167,501	0	0	0	0
Wallpaper (Corridors)-Waikiki Tower	10/00	536,381	0	0	0	0
Washers/Dryers-Guest Laundry	12/00	21,393	0	0	0	0
Totals:		10,647,118	1,000,003	1,310,999	34,481	1,345,480

Ala Moana Hotel Condominium

COMPONENT SUMMARY REPORT

Analysis 1

Description	Starting Date	Useful Life (yr/mo)	Adj. Life (yr/mo)	Sched. Rpl. (mo/yr)	Recur	Current Cost	Future Cost
Building Exterior Renovation							
Concrete Spall/Railing Repairs	1/01/2005	20/00	00/00	01/05	Y	0	0
Paint - Building Exterior	9/01/2005	07/00	+00/04	09/05	Y	684,000	697,681
Sub Total:						684,000	697,681
Elevators							
Elevator Cab Refurbish	1/01/2005	10/00	00/00	01/05	Y	112,500	112,500
Elevator Modernize-Mech (Cable)	1/01/2005	30/00	00/00	01/05	Y	1,800,000	1,800,000
Elevator Modernize-Mech (Hydraulic)	1/01/2005	30/00	00/00	01/05	Y	225,000	225,000
Escalators - Major Repairs & Clean	1/01/2005	25/00	00/00	01/05	Y	50,000	50,000
Sub Total:						2,187,500	2,187,500
Fire/Life Safety							
Fire Alarm System Upgrade	1/01/1986	20/00	+01/00	01/07	Y	373,000	395,716
Generator - Emergency Back Up	1/01/1986	30/00	00/00	01/16	Y	160,000	221,543
Pump - Fire Sprinkler Booster Pump	1/01/1986	25/00	00/00	01/11	Y	25,000	29,851
Sub Total:						558,000	647,110
Fire/Life Safety - Corridors							
Fire Extinguisher - Kona	1/01/2005	08/00	00/00	01/05	Y	1,000	1,000
Fire Extinguisher - Waikiki	1/01/2005	08/00	00/00	01/05	Y	4,500	4,500
Lighted Exit Signs - Kona	1/01/2005	20/00	00/00	01/05	Y	8,100	8,100
Lighted Exit Signs - Waikiki	1/01/2005	20/00	00/00	01/05	Y	8,100	8,100
Lighting-Battery Back Up-Kona	1/01/2005	20/00	00/00	01/05	Y	16,800	16,800

Ala Moana Hotel Condominium
COMPONENT SUMMARY REPORT

Analysis 1

Description	Starting Date	Useful Life (yr/mo)	Adj. Life (yr/mo)	Sched. Rpl. (mo/yr)	Recur	Current Cost	Future Cost
Lighting-Battery Back Up-Waikiki	1/01/2005	20/00	00/00	01/05	Y	25,200	25,200
Sub Total:						63,700	63,700
Furniture							
Furniture-Pool Deck	1/01/2005	08/00	00/00	01/05	Y	35,000	35,000
Sub Total:						35,000	35,000
Furniture/Equipment - Corridors							
Furnishings-Corridors-Kona	1/01/2005	12/00	00/00	01/05	Y	5,000	5,000
Furnishings-Corridors-Waikiki	1/01/2005	12/00	00/00	01/05	Y	28,500	28,500
Ice Machines-Corridors-Kona	1/01/2005	12/00	00/00	01/05	Y	45,000	45,000
Ice Machines-Corridors-Waikiki	1/01/2005	12/00	00/00	01/05	Y	135,000	135,000
Washers/Dryers-Guest Laundry	1/01/2005	12/00	00/00	01/05	Y	15,000	15,000
Sub Total:						228,500	228,500
Interior Finishes - Corridors							
Carpet Flooring - Kona Tower	1/01/2005	08/00	00/00	01/05	Y	142,350	142,350
Carpet Flooring - Waikiki Tower	1/01/2005	08/00	00/00	01/05	Y	444,600	444,600
Paint Interior - Kona Tower	1/01/2005	10/00	00/00	01/05	Y	19,690	19,690
Paint Interior - Service/BOH	1/01/2005	10/00	00/00	01/05	Y	122,780	122,780
Paint Interior - Waikiki Tower	1/01/2005	08/00	00/00	01/05	Y	61,440	61,440
VCT Flooring - Service/BOH	1/01/2005	20/00	00/00	01/05	Y	154,900	154,900
Wallpaper (Corridors)-Kona Tower	1/01/2005	10/00	00/00	01/05	Y	124,600	124,600

Ala Moana Hotel Condominium
COMPONENT SUMMARY REPORT

Analysis 1

Description	Starting Date	Useful Life (yr/mo)	Adj. Life (yr/mo)	Sched. Rpl. (mo/yr)	Recur	Current Cost	Future Cost
Wallpaper (Corridors)-Waikiki Tower	1/01/2005	10/00	00/00	01/05	Y	399,000	399,000
Sub Total:						1,469,360	1,469,360
Interior Finishes-Bathrooms							
Bathrooms Employees-Refurbish	1/01/2005	20/00	00/00	01/05	Y	56,000	56,000
Bathrooms Public-Refurbish	1/01/2005	15/00	00/00	01/05	Y	84,000	84,000
Sub Total:						140,000	140,000
Interior Finishes-Hotel Room							
Carpeting-Hotel Room	1/01/2006	06/00	00/00	01/06	Y	595,464	613,328
Wall Coverings/Paint-Hotel Room	1/01/2006	08/00	00/00	01/06	Y	1,158,616	1,193,374
Window Treatments	8/01/2005	08/00	00/00	08/05	Y	490,450	498,931
Sub Total:						2,244,530	2,305,633
Lighting - Corridors							
Lighting-Ceiling Fixtures-Service	1/01/2005	25/00	00/00	01/05	Y	4,500	4,500
Lighting-Ceiling Fixtures-Waikiki	1/01/2005	20/00	00/00	01/05	Y	6,900	6,900
Lighting-Recessed Downlight-Kona	1/01/2005	25/00	00/00	01/05	Y	15,750	15,750
Lighting-Recessed Downlight-Waikiki	1/01/2005	25/00	00/00	01/05	Y	47,250	47,250
Lighting-Wall Sconce-Kona	1/01/2005	20/00	00/00	01/05	Y	25,200	25,200
Lighting-Wall Sconce-Waikiki	1/01/2005	20/00	00/00	01/05	Y	75,600	75,600
Sub Total:						175,200	175,200

Ala Moana Hotel Condominium
COMPONENT SUMMARY REPORT

Analysis 1

Description	Starting Date	Useful Life (yr/mo)	Adj. Life (yr/mo)	Sched. Rpl. (mo/yr)	Recur	Current Cost	Future Cost
Lobby							
Carpet Flooring - 1st Floor Lobby	1/01/2005	08/00	00/00	01/05	Y	114,400	114,400
Carpet Flooring - 2nd Floor Lobby	1/01/2005	08/00	00/00	01/05	Y	78,325	78,325
Furnishings-Lobby	1/01/2005	08/00	00/00	01/05	Y	100,000	100,000
Paint Interior - Lobby (1st/2nd FL)	1/01/2005	08/00	00/00	01/05	Y	50,000	50,000
Sub Total:						342,725	342,725
Mechanical							
A/C-Elevator Mech. Room (Waikiki)	1/01/2004	10/00	00/00	01/14	Y	25,000	32,629
Air Handler-Corridors (Kona)	1/01/1969	30/00	+15/00	01/14	Y	75,000	97,887
Air Handler-Corridors (Waikiki)	1/01/1969	30/00	+15/00	01/14	Y	225,000	293,661
Boilers - Roof (1,000 MBH)	1/01/2001	20/00	00/00	01/21	Y	90,000	144,466
Chiller-HVAC (800 Ton)	1/01/2001	20/00	00/00	01/21	Y	1,200,000	1,926,217
Cooling Tower-HVAC (400 Ton)	1/01/2001	20/00	00/00	01/21	Y	1,000,000	1,605,181
EMS-Digital System Controller	1/01/2001	20/00	00/00	01/21	Y	200,000	321,036
Exhaust Fans	1/01/1969	20/00	+20/00	01/09	Y	0	0
Heat Pump-Liquid	1/01/2001	20/00	00/00	01/21	Y	200,000	321,036
Hot Water Storage-14th Floor	1/01/1969	20/00	+20/00	01/09	Y	60,000	67,531
Hot Water Storage-Roof-1	1/01/1969	20/00	+20/00	01/09	Y	25,000	28,138
Hot Water Storage-Roof-2	1/01/1969	20/00	+20/00	01/09	Y	20,000	22,510
Pump-Domestic Water Booster	1/01/1995	20/00	00/00	01/15	Y	85,000	114,267
Pump/Motor-Chill Water (100 hp)	1/01/2001	20/00	00/00	01/21	Y	50,000	80,259
Pump/Motor-Condenser Water (60 hp)	1/01/2001	20/00	00/00	01/21	Y	40,000	64,207

Ala Moana Hotel Condominium
COMPONENT SUMMARY REPORT

Analysis 1

Description	Starting Date	Useful Life (yr/mo)	Adj. Life (yr/mo)	Sched. Rpl. (mo/yr)	Recur	Current Cost	Future Cost
Pump/Motor-Condenser Water (7.5 hp)	1/01/2001	20/00	00/00	01/21	Y	7,500	12,039
Pump/Motor-Hot Water Circ (20 hp)	1/01/2001	20/00	00/00	01/21	Y	45,000	72,233
Pumps/Filters Water Feature	1/01/1998	10/00	00/00	01/08	Y	3,500	3,825
Sub Total:						3,351,000	5,207,122
Pool							
Pool Deck Finish Replacement	1/01/2005	20/00	00/00	01/05	Y	250,000	250,000
Pumps, Filters, Chlorinators-Pool	1/01/2005	10/00	00/00	01/05	Y	4,500	4,500
Sub Total:						254,500	254,500
Roofing							
Roofing - Built Up (2nd FL Club)	1/01/2005	18/00	00/00	01/05	Y	14,400	14,400
Roofing - Built Up (4th Floor)	1/01/1990	18/00	+02/00	01/10	Y	157,800	182,933
Roofing - Built Up (Kona Tower)	1/01/1990	18/00	00/00	01/08	Y	160,500	175,383
Roofing - Built Up (Loading Dock)	1/01/2000	18/00	00/00	01/18	Y	60,000	88,138
Roofing - Built Up (Waikiki Tower)	1/01/2000	18/00	00/00	01/18	Y	174,000	255,600
Roofing - Clay Tile (Hut)	1/01/2005	35/00	+01/00	01/05	Y	45,500	45,500
Roofing - Clay Tile (Waikiki Tower)	1/01/2005	35/00	00/00	01/05	Y	239,250	239,250
Roofing - Gutters (Waikiki Tower)	1/01/2000	07/00	00/00	01/07	Y	5,100	5,411
Roofing - Pitch & Gravel (4th Fl)	1/01/1992	18/00	00/00	01/10	Y	83,400	96,683
Roofing - WP Membrane (36th Flr)	1/01/2005	07/00	00/00	01/05	Y	12,300	12,300
Sub Total:						952,250	1,115,598

Ala Moana Hotel Condominium
COMPONENT SUMMARY REPORT

Analysis 1

Description	Starting Date	Useful Life (yr/mo)	Adj. Life (yr/mo)	Sched. Rpl. (mo/yr)	Recur	Current Cost	Future Cost
Unit Appliances							
Unit-Microwave Oven	5/01/2005	08/00	00/00	05/05	Y	155,944	158,482
Unit-Refrigerator	5/01/2005	10/00	00/00	05/05	Y	141,942	143,333
Sub Total:						298,886	301,815
Unit Furniture							
Unit-Artwork & Accessories	5/01/2005	12/00	00/00	05/05	Y	193,872	195,772
Unit-Chair-Dining Outdoor	5/01/2005	06/00	00/00	05/05	Y	150,440	151,915
Unit-Chair-Upholstered Armless	5/01/2005	06/00	00/00	05/05	Y	135,568	136,897
Unit-Chair-Upholstered W/Arms	5/01/2005	06/00	00/00	05/05	Y	315,934	319,031
Unit-Coffee Table-Round 30"	5/01/2005	12/00	00/00	05/05	Y	68,260	68,929
Unit-Credenza/Desk-64"	5/01/2005	12/00	00/00	05/05	Y	712,923	719,911
Unit-Dining Table-Round 30"	5/01/2005	12/00	00/00	05/05	Y	163,527	165,130
Unit-Framed Mirrors	5/01/2005	12/00	00/00	05/05	Y	138,480	139,837
Unit-Glass For Coffee Table	5/01/2005	12/00	00/00	05/05	Y	6,476	6,539
Unit-Glass For Credenza	5/01/2005	12/00	00/00	05/05	Y	29,762	30,054
Unit-Glass For Dining Table	5/01/2005	12/00	00/00	05/05	Y	13,434	13,566
Unit-Glass For Night Stands	5/01/2005	12/00	00/00	05/05	Y	18,975	19,161
Unit-Headboard-Double	5/01/2005	12/00	00/00	05/05	Y	392,625	396,474
Unit-Headboard-King	5/01/2005	12/00	00/00	05/05	Y	26,767	27,029
Unit-Headboard-Queen	5/01/2005	12/00	00/00	05/05	Y	94,597	95,524
Unit-Hide A Bed	5/01/2005	06/00	00/00	05/05	Y	191,734	193,613
Unit-Mattress/Box Spring-Double	5/01/2005	06/00	00/00	05/05	Y	654,444	660,859

Ala Moana Hotel Condominium
COMPONENT SUMMARY REPORT

Analysis 1

Description	Starting Date	Useful Life (yr/mo)	Adj. Life (yr/mo)	Sched. Rpl. (mo/yr)	Recur	Current Cost	Future Cost
Unit-Mattress/Box Spring-King	5/01/2005	06/00	00/00	05/05	Y	50,838	51,336
Unit-Mattress/Box Spring-Queen	5/01/2005	06/00	00/00	05/05	Y	138,510	139,868
Unit-Mirror-Full Length Framed	5/01/2005	18/00	00/00	05/05	Y	61,903	62,510
Unit-Mirror-Vanity Framed	5/01/2005	18/00	00/00	05/05	Y	61,903	62,510
Unit-Night Stands-Double Rm	5/01/2005	12/00	00/00	05/05	Y	151,508	152,993
Unit-Night Stands-King/Queen Rm	5/01/2005	12/00	00/00	05/05	Y	144,191	145,604
Unit-Soft Goods	5/01/2005	06/00	00/00	05/05	Y	1,324,792	1,337,778
Unit-Stone Top For Console Table	5/01/2005	12/00	00/00	05/05	Y	6,639	6,704
Unit-Table-Dining Outdoor	5/01/2005	06/00	00/00	05/05	Y	70,744	71,437
Sub Total:						5,318,846	5,370,981
Grand Total:						18,303,997	20,542,425

EXHIBIT L

CERTAIN ENVIRONMENTAL REPORTS

See attached.

AARON WRIGHT

August 25, 2004

Mr. Mark Vogt
iStar Financial, Inc.
3480 Preston Ridge Road, Suite 575
Alpharetta, GA 30005

RE: Phase I Environmental Site Assessment of
Ala Moana Condo and Hotel
410 Atkinson Drive
Honolulu, Honolulu, Hawaii 96814
Aaron & Wright Project No. 041786T.DCA

Dear Mr. Vogt:

AARON & WRIGHT TECHNICAL SERVICES (Aaron & Wright) has completed a Phase I Environmental Site Assessment (ESA) of the above referenced property. The assessment was conducted in accordance with American Society for Testing and Materials (ASTM) *Standard Guide for Environmental Site Assessments: Phase I Environmental Site Assessment Process* E 1527-00, Standard & Poor's *Environmental Criteria*, the scope of work provided by the Client, and generally accepted industry standards.

Aaron & Wright certifies that to the best of its knowledge this report is true and accurate. We hope you find the report complete and informative. Please do not hesitate to contact us if you have any questions or if we can be of further service to you.

Sincerely,

AARON & WRIGHT TECHNICAL SERVICES

Donald Allen
Project Manager

Richard Dagnall
President

AARON & WRIGHT TECHNICAL SERVICES
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EXHIBIT 1.

1.0 EXECUTIVE SUMMARY

1.1 Property Summary

Property Name: Ala Moana Condo and Hotel
Property Address: 410 Atkinson Drive
City /County/State/Zip Code: Honolulu, Honolulu, Hawaii 96814
Property Usage: Lodging

Based upon the walk-through of the subject property conducted by Aaron & Wright, the following immediate needs or capital expenditures are recommended.

IMMEDIATE NEEDS		
REPAIR ITEM	COST BASIS	ESTIMATED COST
Upgrade/Refurbish Elevators (12)	Allowance	\$1,140,000
Provide air-conditioning in the elevator rooms	Allowance	\$50,000
Provide Design Build services to upgrade HVAC and associated systems	Confirmed bid to management	\$4,466,316
Related work not included in above (drywall and supervision)	Management's Allowance	\$550,000
Clean air handling system and ducting	Lump Sum Allowance	\$115,200
Repair concrete spalling	Allowance	\$75,000
Remediate the fungal/mold growth	Allowance	\$1,000,000
	TOTAL	\$7,396,516

Based upon the inspection and analysis of the subject property conducted by Aaron & Wright, the following table summarizes the replacement reserves anticipated for the subject property.

Ala Moana Condo and Hotel
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PHYSICAL NEEDS RESERVE SUMMARY				
TERM	UNINFLATED RESERVE	ANNUAL COST PER ROOM	INFLATED RESERVE	ANNUAL COST PER ROOM
10 YEAR	\$3,443,500	\$299	\$3,945,423	\$343
12 YEAR	\$4,887,500	\$354	\$5,909,927	\$428

1.2 Property Description

The subject property consists of an irregular-shaped parcel of land totaling 3.0455 acres. It is improved with a single hotel building totaling 608,273 square feet (SF) and containing 1,152 guest rooms. The building has a semi-subterranean parking garage; a first floor consisting of a lobby, registration desks, restaurants, shops, a porte cochere as the entrance and service areas; a second floor consisting of offices, ballrooms, meeting rooms and service areas, and the third floor consisting of the swimming pool, fitness area, restaurants and service areas. The building has two towers. The Waikiki (west) Tower is thirty-eight stories tall with 873 guest rooms on the fourth through thirty-fifth floors, a restaurant on the thirty-sixth floor, mechanical spaces on the thirty-seventh and thirty-eighth floors and radio/TV antennas mounted on the roof. The Kona (east) Tower is thirteen stories tall with 379 guest rooms on the fourth through thirteenth floors. The building, which was constructed in 1969 and 1970, is of reinforced poured-in-place concrete construction with a combination of decorative poured-in-place concrete and concrete masonry unit exterior walls and flat membrane roofs with some pitched ceramic tile decorative roofs. The building covers the entire site, except for some landscaped slopes and drives at the entrance on the first floor level. Landscape planters are placed throughout the exposed exterior portions of the building up through the third floor pool/exercise areas. Two fountains are located on the front entrance slope along Atkinson Drive and an elevated pedestrian ramp across Mahukona Street provides direct access to the Ala Moana Shopping Center from the second floor of the Waikiki Tower.

1.3 General Physical Condition

Property management has been proactive in replacing various fixtures and finishes that are visible to the public through a renovation program. Property management has not, however, been proactive in replacing various back of house/infrastructure building systems that are in need of upgrade/repair or do not operate at all. Therefore, the property is in poorer condition than would normally be anticipated for a hotel complex that is 34 years old.

General Condition: Fair to Good
 Level of Maintenance: Fair
 Expected Remaining Useful Life: 30 to 35 years

Ala Moana Condo and Hotel
 410 Atkinson Drive
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Recent Capital Improvements:

- Replaced roofing on third floor section in 2002

Planned Capital Improvements:

- Renovate elevators
- Renovate air conditioning and ventilating systems
- Repairing concrete spalling and stucco cracking
- Cleaning air handling equipment and ducting
- Remediating mold and associated repairs

1.4 Recommendations & Discussion

Aaron & Wright observed that some of the passenger elevators were not operating forcing hotel staff to use service elevators to get guests to their rooms. Management was aware of the problem, had hired a firm to keep the elevators operational and was developing the scope of work for repairs and upgrades to the elevators and related equipment. To date, life safety control panel, wiring, hoist cable and controller replacement appear to be the major concerns, with refurbishing of other elements and providing conditioned air to be included in the upgrades. Aaron & Wright recommend continuation of the service contract to keep the elevators operational and proceeding with the prospective elevator upgrades/alterations including providing air conditioning for the elevator rooms. An estimated cost for these repairs can not be determined until the elevator engineer's report is concluded and reviewed, and a cost allowance has been provided for the assessment and repairs.

Aaron & Wright observed that none of the seven supply air fans in the semi-subterranean parking garage were operational and recommends either replacing the inoperable supply air fans or installing an exhaust system with a CO/humidity sensor control system. This work is included in Management's bid in the Immediate Needs Table.

Aaron & Wright observed problems with the conditioned air systems at the hotel. Management was aware of these problems. A study by a mechanical engineer had just been completed identifying the extent of the problems. The report indicated that three built-up air handlers located on the thirty-seventh floor of the Waikiki Tower and one built-up air handler located on the sixteenth floor of the Kona Tower that provide conditioned air to guest corridors were not operational and that five air handling units located on the first floor that provide conditioned air to the public areas, restaurants and service areas were in poor condition with the effectiveness of the temperature controls in question. The report further indicated that the guest room fan coil units did not have automatic temperature controls, operating on manual fan speed controls only and that chilled water piping insulation was old and ineffective. A subsequent report identified the cost to make corrections. Aaron & Wright recommends replacing the inoperable air handlers, repairing the air handlers in poor condition and the related work as identified in the September 26, 2004 bid by the Leis Company. This work is included in Management's bid in the Immediate Needs Table.

Aaron & Wright observed extensive evidence of dust in air handling units and ducting and recommends cleaning the air handlers/fans, vents and ducts. An estimated cost for this cleaning can not be determined

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until the full extent of the problem is identified so a cost allowance has been provided for the assessment and subsequent repairs.

Aaron & Wright observed concrete spalling at the top two floors of the Waikiki Tower and around the third floor pool. Management was aware of these problems. A study by a structural engineer was underway at the time of Aaron & Wright's visit to identify the extent of the problem. Based on the extent of spalling observed, Aaron & Wright recommends that repairs be made immediately following the structural engineer's evaluation of the building. An estimated cost for these repairs can not be determined until the engineer's report is concluded and reviewed so a cost allowance has been provided.

Aaron & Wright observed significant evidence of suspected mold in guest room air handling units (AHUs), tower hallway AHUs, back of house ceiling mounted air diffusers and restaurant ceiling acoustic panels. Suspected mold was also observed on wallpaper and on the acoustical ceilings of guest rooms. Mold was reported to also be evident in the mechanical spaces on the second and third floors and on chilled water risers in stairwells. The source of the mold is suspected to be due to high humidity and maintenance deficiencies of air conditioning/air handling equipment throughout the spaces resulting in reduced air movement throughout the building. Management was aware of these problems. A Building Fungal Evaluation has been completed identifying the extent of the mold throughout the hotel. Aaron & Wright recommends that property management should repair the source of the moisture infiltration/buildup supporting the mold growth. The site should be remediated. Any damaged materials in these areas should be removed and replaced. Subsequent to addressing the moisture issue, the identified areas of mold should be properly cleaned and sanitized. In addition to the remediation of the affected areas, testing for mold after the remediation should be conducted. An estimated cost for these repairs was not included in the evaluation so a cost allowance has been provided.

No other building components or systems were identified that would require additional investigation. No additional investigation is warranted prior to finalizing the immediate needs estimates or the physical needs reserves estimates. A detailed physical needs reserve calculation is provided in the table below.

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Is Moana Condo and Hotel

10 Alakoa Drive

Honolulu, Honolulu, Hawaii 96814

Aaron & Wright Project No. 041786T.DCA

PHYSICAL NEEDS RESERVE TABLE

Loan Term Plus Two Years

Age of Property: 34

No. of Buildings: 1

Guest Rooms 1152

Property Usage: Lodging

Property Age	Year of Loan												Beyond loan term		Total	
	35	36	37	38	39	40	41	42	43	44	Total	1-10	11	12	Total	
Item	Units in Term	%	Unit Cost	EUL												
Property grounds/Improvements/Amenities/Auxiliary structures																
Asphalt seal & stripe	240,000		\$0.10/sf	5-7												
Asphalt overlay	6,034		\$0.58/sf	20-25			12,000					24,000			24,000	
Concrete striping	0		\$3.75/space	5-7		3,500						3,500			3,500	
Concrete maintenance	2		lump sum	10-15		4,000						0			0	
Pool reline	1		\$7,500/each	10-15							7,500	4,000	4,000		8,000	
Frame and building envelope																
Roof (flat)	8,000		\$4.50/sf	15-20												
Roof maintenance	1		lump sum	NA		36,000						36,000			36,000	
Exterior painting/caulking	2		lump sum	6-8								0	5,000		5,000	
Stucco patching	2		lumpsum	Varies								600,000	600,000		1,200,000	
												50,000	50,000		100,000	
Interior Finishes/Floors/Appliances/Furnishings																
Common/staff area finishes	3		lump sum	6-8				20,000				40,000		20,000	60,000	
Common/staff area flooring	840,000		\$4.00/sf	Varies				280,000				560,000		280,000	840,000	
Common/staff area fixtures/furnishings	2		lump sum	10-15				25,000				25,000		25,000	50,000	
Guest room carpeting	1,200	104 %	\$400/room	5-7	40,000	40,000	40,000	40,000	40,000	40,000	40,000	400,000	40,000	40,000	480,000	
Guest room vinyl or ceramic	1,200	104 %	\$100/room	10-15	10,000	10,000	10,000	10,000	10,000	10,000	10,000	100,000	10,000	10,000	120,000	
Room appliances	600	52%	\$700/bed	10-15	35,000	35,000	35,000	35,000	35,000	35,000	35,000	350,000	35,000	35,000	420,000	
Room Hard Goods	600	52%	\$1,500/room	10-15	75,000	75,000	75,000	75,000	75,000	75,000	75,000	750,000	75,000	75,000	900,000	
Room Soft Goods	600	52%	\$500/room	5-7	25,000	25,000	25,000	25,000	25,000	25,000	25,000	250,000	25,000	25,000	300,000	

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PHYSICAL NEEDS RESERVE TABLE													
Moana Condo and Hotel													
Age of Property: 34													
No. of Buildings: 1													
Loan Term Plus Two Years													
Guest Rooms 1152													
Property Usage: Lodging													
Property Age	35	36	37	38	39	40	41	42	43	44	Total	Beyond loan term	Total
Year of Loss	1	2	3	4	5	6	7	8	9	10	1-10	11	1-12
Remodeling/Mechanical/Electrical													
Commercial Water Heaters	0	\$3,000/each	10-15								0		0
Boiler overhaul	3	\$5,000/each	15-20	5,000	5,000	5,000					15,000		15,000
Commercial Kitchen Equipmt	1	ump sum	15-20			75,000					75,000		75,000
Ice Machines	33	\$2,500/each	10-15	7,500	7,500	7,500	7,500	7,500	7,500	7,500	67,500	7,500	82,500
Commercial Washers	3	\$25,000/each	15-20								0	75,000	75,000
Commercial Dryers	4	\$20,000/each	15-20							40,000	80,000		80,000
Washers coin-op	10	\$300/each	10-15					1,500	1,500		3,000		3,000
Dryers coin-op	10	\$300/each	10-15					1,500	1,500		3,000		3,000
Totals	185,000	236,000	244,500	522,500	847,500	205,000	267,500	495,500	195,500	244,500	3,443,500	592,500	4,887,500
Inflation Factor 3.0%	1,000	1,0300	1,0609	1,0927	1,1255	1,1593	1,1941	1,2299	1,2668	1,3048		1,3439	1,3842
Total (Inflated)	185,000	243,080	259,390	570,950	953,869	237,651	319,409	609,403	247,654	319,017	\$3,945,423	\$1,144,345	\$5,909,927
Cost Guest Rooms	\$161	\$211	\$225	\$496	\$828	\$206	\$277	\$529	\$215	\$277	\$3,425	\$993	\$5,130
Annual Cost per Unit over term											\$343		\$428

* Costs provided by property management ** Items anticipated to last beyond their EUL based on regular maintenance and past experience.

Building Fungal Evaluation

Prepared for:

CRESCENT HEIGHTS

1189 Waimanu Street
Honolulu, Hawaii

Ala Moana Hotel
410 Atkinson Drive
Honolulu, Hawaii

85-05028.00
September 1, 2004

Clayton Group Services, Inc.
970 North Kalanoe Avenue
Suite C-316
Kailua, Hawaii 96734
808.531.6708

EXHIBIT L

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Appendices

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- B Laboratory Analytical Results

1.0 INTRODUCTION

Mr. Perry Raanan, Senior Project Manager for Crescent Heights, authorized Clayton Group Services, Inc. (Clayton) to perform a building fungal evaluation of the Ala Moana Hotel located at 410 Atkinson Drive in Honolulu, Hawaii.

Clayton understands that Crescent Heights requested this evaluation as part of their due diligence efforts for the hotel. The purpose of this evaluation was to identify existing or potential building-related conditions that could have a negative effect on indoor air quality. Clayton also understands that Crescent Heights plans to renovate many areas of hotel including the replacement of air handler units (AHUs), vinyl wall coverings and carpeting. Crescent Heights has begun removal of these items on a voluntary basis since the State of Hawaii does not have any regulatory requirements regarding indoor air quality.

The scope of Clayton's services was described in the August 4, 2004 proposal addressed to Mr. Raanan, which also included the terms and conditions under which the work was performed (Clayton Proposal No. 05-HI-0213).

Mr. Errol Gard, Industrial Hygienist with Clayton, performed the evaluation from August 9 through 18, 2004. Mr. Dennis Miho, Chief Engineer for the facility, provided escorts for building access and information during the evaluation.

In conducting this evaluation, Clayton performed the following tasks:

- Conducted an inspection of 48 representative guest rooms; selected at random as available, to identify readily apparent and visibly moldy, water-stained, or otherwise damaged building materials. Guest corridors were also included in the visual inspection.
- Conducted a fungal evaluation of the heating, ventilating and air-conditioning (HVAC) systems serving the 48 guest rooms and corridors. This included inspection of the condition of accessible, representative air system components, internal insulation, condensate drain pans, filters and cooling coils.
- Conducted a fungal evaluation of facility common areas and back-of-house regions. Emphasis placed on air handling units (AHUs) and supply duct systems that deliver conditioned air to these regions.

- Performed direct-reading measurements of carbon dioxide, carbon monoxide, temperature, particle size, relative humidity, and moisture content testing of selected building materials.
- Collected 25 bulk samples of suspect visible fungi for laboratory analysis.
- Provided quality control oversight for limited AHU remediation performed during the course of this evaluation.

Data associated with this project is presented in Appendices A (Laboratory Analytical Results) and B (Photographs).

2.0 FACILITY DESCRIPTION

The subject property, currently owned by Azabu USA Corporation, is 132,664 square feet in area and is improved with the Ala Moana Hotel. The 38-story hotel building, constructed in 1969, occupies the entire property and includes 1,152 guest rooms.

The bottom floor of the building (Coral Level) primarily consists of parking areas. The first floor includes the main lobby, shops, three restaurants (Tsukasa Japanese Restaurant, Hawaiian Hut, and Plantation Café) and Rumours Night Club, as well as back-of-house areas such as the Housekeeping, Security and Engineering departments. The mezzanine level and second floor include lobby areas, offices, banquet/conference rooms, kitchen areas, and back-of-house areas. The third floor includes offices, maintenance and storage areas, employee locker rooms, swimming pool, fitness center, and two restaurants (Royal Garden Chinese Restaurant and Ginger Terrace Café). Two guest room wings are located above the third floor, including the 13-story Kona Tower and the high-rise Waikiki Tower. Aaron's restaurant/cocktail lounge occupies the 36th floor, and mechanical equipment rooms occupy the 37th and 38th floors of the Waikiki Tower.

The hotel complex is located in a resort and shopping district of Honolulu. Similar resort and commercial businesses are located within close proximity to the subject building. The Pacific Ocean is located to the south of the subject property.

3.0 OBSERVATIONS AND DISCUSSION

Clayton's observations and discussions are based on the following: (1) inspection of the guest rooms, corridors, back-of-house areas, and associated ventilation systems, (2) bulk sample collection of suspect fungal growth, and (3) direct-read measurement for indoor air parameters and moisture content of selected building materials.

Clayton's evaluation included 48 guest rooms selected at random to reflect conditions throughout the hotel. Clayton inspected the following guest rooms:

- Waikiki Tower: Room Numbers 602, 610, 704, 825, 901, 911, 1120, 1311, 1405, 1410, 1509, 1523, 1715, 1728, 1732, 1821, 1830, 2020, 2021, 2103, 2129, 2303, 2320, 2401, 2430, 2625, 2631, 2728, 2832, 2919, 3210, 3214, 3317, 3319 and 3530
- Kona Tower: Room Numbers 536, 544, 737, 850, 933, 1056, 1057, 1139, 1235, 1240, 1334 and 1348, plus the Hospitality Suite and Human Resources suite of offices on the 4th floor

3.1 HOTEL BACKGROUND AND OBSERVATIONS

Based on information provided by building maintenance escorts, there has been no reported roof leaks associated with the roofing membrane (roofing felt). A chilled water pipe failure from the rooftop chiller plant occurred approximately five years ago, allowing water to flow from the roof to the ground floor. However, the flow was confined to a concrete fire escape stairwell. Other reported leaks in the building occurred within guest rooms from sink and tub overflow. Clayton was also informed that an employee had complained about mold at the front desk office area of the hotel. Based on the complaint, Management had the air ducts cleaned in April of 2004. Clayton reviewed documents provided by Crescent Heights regarding work performed at the building. Based on review of these documents, there are no known reports of complaints from guests regarding indoor air quality.

Guest room floor treatments include short pile carpeting and sheet vinyl flooring. Interior partition walls are vinyl-clad gypsum wallboard and concrete. According to Mr. Raanan, all original carpet, vinyl wall coverings, and guest room furnishings within the hotel will be replaced. Bathroom walls are comprised of painted and vinyl-clad gypsum wallboard, with ceramic tile forming the bathtub enclosure. All guest rooms have sliding glass doors to the exterior. Ceilings are comprised of asbestos-containing, spray-applied acoustical plaster on a concrete substrate, or painted gypsum ceiling board. Most back-of-house functional spaces contain resilient or ceramic tile floors, painted gypsum board and concrete block walls, and suspended/affixed ceiling panels, or bare concrete ceilings.

Clayton's inspection resulted in the following observations:

- Water staining and suspect microbial growth was observed on vinyl wallpaper and underlying wallboard in many guest rooms and corridors inspected by Clayton.

- Moisture testing within most rooms inspected revealed moisture in gypsum wallboard in the vicinity of the AHUs, with visible microbial observed on the vinyl wallpaper and underlying wallboard. Elevated moisture readings were measured in wallboard located next to the ceramic bathtub enclosure in guest bathrooms.
- Water-damaged areas of spray-applied acoustical ceiling plaster containing asbestos were observed in many rooms inspected by Clayton.
- Clayton observed water leaking from the kitchens and mechanical rooms into the lower floors. Clayton also noted areas of water damage on the gypsum ceilings of the guest corridors. Areas with notable damage were located at the end of the return diffusers within the Waikiki Tower, and above many ice-machine units.
- Supply air diffuser grills in most guest rooms, kitchens, and back-of-house areas were noted as dirty with suspect microbial growth.
- Exhaust fans for the parking garage were not operational.
- Carpeting within the guest rooms was observed in fair to poor condition.
- Porous furnishings, undersides of chairs and armoires, and drapes were visibly free of suspect microbial growth.

Clayton did not observe sources of chemical contaminants in the building that would be considered atypical of a comparable (hotel) environment.

3.2 HEATING, VENTILATING AND AIR-CONDITIONING SYSTEM

The heating, ventilation and air-conditioning system (HVAC) is the primary means of providing filtered and tempered outdoor air to interior portions of the building. ASHRAE Standard 62-2001, *Ventilation for Acceptable Indoor Air Quality*, guidelines recommend that a continuous airflow of at least 30 cubic feet per minute (cfm) of outdoor (fresh) air be delivered to hotel bedrooms and living room during all occupied periods. Without sufficient outdoor air ventilation, contaminants generated indoors (such as tobacco smoke, volatile organic compounds [VOCs] and human bioeffluents) may not be diluted enough to prevent annoyance and discomfort complaints among occupants.

3.2.1 Description - Guest Rooms

The majority of the 1,152 guest rooms within both towers are equipped with a floor-mounted chilled water fan coil unit. All floor-mounted units were readily accessible, positioned against the perimeter wall. Floor-mounted units have the filter element close to the floor, with air drawn up, pushed past the coil and then diffused through the top of the unit. Three guest rooms, located at the end of each floor of the Waikiki Tower, are equipped with above-ceiling units. The access hatch to these units is located in the ceilings of the entry foyer. The above-ceiling units are designed for the air to cross a filter element mounted in the foyer ceiling, drawn into the above ceiling plenum, across the cooling coil and out into the room space through a vertically-mounted wall diffuser just below ceiling height. Fresh air makeup to all guest room units is provided by AHUs that service the guest corridors, coupled with air provided indirectly via open sliding glass doors.

Clayton noted that each guest room includes a bathroom exhaust fan that operates continuously (24 hours per day), creating a strong negative pressure environment relative to the outside air when the sliding-glass door is open. Adequately conditioned make-up air should be provided to the room to prevent the space from being under negative pressure. This condition reduces unfiltered/unconditioned air (and moisture) from entering into the building.

3.2.2 Observations - Guest Rooms

Clayton conducted a visual inspection of the air-handlers within 48 guest rooms. Clayton noted that most filters in the rooms inspected were dirty and clogged with debris. Filter elements appeared to fit well within mounting frames. Supply fans were uniformly and heavily encrusted with dirt and debris. Clayton could not inspect the upside coil surfaces due to the position of the supply fans. Observable coil surfaces had light to heavy debris deposition. Condensate pans were inspected and noted as corroded and filled with water containing bioslime and debris. Condensate water was observed overflowing in many of the units. Interior linings of the AHUs were noted with debris and suspect visible fungal growth. Algae and microbial growth was observed on chilled water pipe insulation and exposed pipefittings that are connected to the AHUs. The conditions in the rooms need to be addressed to prevent future damage to building materials and mechanical systems.

Interior portions of the above-ceiling fan coil units were not accessible. Condensation leakage was observed from units whose return grills were accessed from the corridor. According to maintenance personnel, condensate leakages from guest AHUs are common. Clayton also noted visible microbial growth on many of the return grills inspected.

3.2.3 Description – Back of House

Clayton conducted an inspection of back of house areas including mechanical rooms and 28 AHUs that service lobbies, conference rooms, corridors, and back-of-house operational areas.

Large AHUs are located on the roofs of the towers within mechanical rooms. These mechanical rooms were designed to serve as mixing chambers for fresh and recycled air. After mixing, the air is passed through a filter bank and is blown through cooling coils. This processed cool air is then returned back into the corridors of the building. Although these rooms were free of stored supplies and furnishings, microbial growth was observed on most of the exposed chilled water pipe jacketing and on vibration joint cloth at duct seams in these mechanical rooms.

According to maintenance personnel, the large AHUs that provide conditioned, fresh air to room corridors have not operated properly for over five years. Based on information provided to Clayton, service corridors in the Waikiki Tower are the only regions receiving adequate conditioned, fresh make-up air. Clayton noted that the unit supplying conditioned make-up air to the Kona Tower has approximately 30% of its coil capacity functioning.

A roof-mounted chiller plant (approximately 5 years old) chills coolant water to 43 degrees Fahrenheit (°F), pumps the cooled water through the chilled water piping system throughout the hotel. The water is returned to have excess heat dissipated through a roof-mounted cooling tower, and then pumped back to the chiller plant. Clayton inspected the cooling tower and found the unit as clean and the water as clear.

3.2.4 Observations – Back of House

Clayton's inspection of back-of-house AHUs and ducting revealed that many of the fresh air intake vents were clogged with dirt and debris (bird and insect parts). Many of the vents were boarded up to conserve energy and to keep birds out.

Inspection of the interior AHU mixing chambers revealed dirt with suspect microbial growth on intake damper fins. Several filter mount racks were deteriorated. In some instances, AHUs had rolled filter elements placed in front of intakes as additional filtration. Coils were noted in fair condition. However, debris and microbial growth was evident on several coils inspected. Internal insulation was observed as damaged with microbial growth in many of the AHUs inspected. According to the maintenance escort, condensate pans in the back-of-house areas routinely leak. Leakage from these corroded AHUs pans has impacted areas of ceiling located below the unit. Bioslime and dirt was observed in many of the condensate pans inspected in the back-of-house.

During Clayton's assessment it was noted that Crescent Heights had begun repair and remediation of three AHUs located at the back of house.

The following table summarizes AHUs inspected by Clayton, which includes locations observations and comments:

Air Handling Unit Summary Table

AHU No. Inspected	Location	Observations and Comments
2201	First Floor Areas	This unit is scheduled for replacement
2301	First Floor Areas	This unit is scheduled for replacement
2401	First Floor Areas	This unit is scheduled for replacement
2501	First Floor Areas	This unit is scheduled for replacement
2601	First Floor Areas	This unit is scheduled for replacement
2701	Rumors Nightclub	Coil completely clogged with debris. Cabinet leaks. Entire system needs complete cleaning. Cleaning of these items is in progress.
2801	Plantation Cafe	Condensate pan leaks. Debris and slime in interior. Insulating lining deteriorated. Has new coil. Entire system needs complete cleaning. Cleaning of these items is in progress.
2901	Hawaiian Hut	Condensate pan leaks. Heavy debris in unit interior. Coil in good condition. Heavily corroded cabinet panel needs to be replaced. Entire system needs complete cleaning. Cleaning of these items is in progress.
3401	Plantation Cafe Kitchen	No filtration. Coil destroyed. Cabinet completely corroded. Ducting to unit heavily damaged. Duct system needs complete cleaning. This unit is scheduled for replacement

AHU No. Inspected	Location	Observations and Comments
1602	Old Personnel Office/Employee Locker Rooms	Duct system needs complete cleaning. This unit is scheduled for replacement
1702	Ilima Room	Duct system needs complete cleaning. This unit is scheduled for replacement.
1802	Azabu Office Suite	Duct system needs complete cleaning. This unit is scheduled for replacement
1902	Conference Rooms	Entire chassis heavily corroded. Heavy interior debris deposition. Coil installed 3 years previous. Duct system(s) need complete cleaning. This unit is scheduled for replacement
2002	2 nd Floor Lobby	Entire chassis heavily corroded. Condensate does not drain properly- sanitary line problems. Duct system needs complete cleaning. This unit is scheduled for replacement
2102	Executive Offices	Entire chassis heavily corroded. Fan condition marginal. Condensate does not drain properly-sanitary line problems. Duct system needs complete cleaning. This unit is scheduled for replacement
3002	Cantina	Coil deteriorated. Chassis in fair condition. Dampers not functioning. Needs new cabinet panel. Entire system needs complete cleaning. Clearing of these items is in progress.
3102	PBX/Battery Room	Has new coil. Chassis completely corroded. Condensate pan leaks heavily. Duct system needs complete cleaning. This unit is scheduled for replacement
3202	Main Kitchen	Needs new coil. Dampers not functioning. Needs new cabinet panel. Drain line issued. Entire system needs complete cleaning.
3302	Dishwashing Room/Main Kitchen	Needs new coil. Dampers not functioning. Needs new insulating lining. Entire system needs complete cleaning.

AHU No. Inspected	Location	Observations and Comments
1303	HBII	Good condition. AHU cleaned 8/16/04. Duct system needs complete cleaning.
1403	HBI	Good condition. AHU cleaned 8/16/04. Duct system needs complete cleaning.
1503	Royal Garden Restaurant	Needs new interior insulation. Otherwise in good condition. AHU cleaned 8/16/04. Duct system needs complete cleaning.
0415	Kona Tower Guest Corridors	Heavy soot in fresh air plenum. Operating at 1/3 capacity. Clean remaining supply fan. Entire duct system needs complete cleaning.
3535	Aaron's Restaurant	Coil heavily corroded. Fresh air inlet blocked. Heavy interior debris deposition. Fan seems out of balance. Chassis in fair condition. Repair deficiencies. Entire duct system needs complete cleaning.
3735	Aaron's Restaurant	Completely inaccessible. Heavy microbial growth on cabinet indicates deteriorated insulating lining. Supply temperature 70°F per gauge-coil could be blocked with debris. Fan motor condition marginal. This unit is scheduled for replacement
0136	Waikiki Tower Guest Corridors/Ewa End	Not operational. Has new coil. Needs motor mount. Duct system needs complete cleaning. This unit is scheduled for repair
0236	Waikiki Tower Service Corridors	Needs filter mount frame. Needs new fan. New motor. New coil. Duct system needs complete cleaning.

ABE No. Inspected	Location	Observations and Comments
0336	Waikiki Tower Guest Corridors/Diamond Head End	Has not operated for 5 years. Filter rack destroyed. Motor capability unknown. Entire system needs replacement. <i>NOTE: Concrete block wall forming mechanical room enclosure structurally unsound. Wall moves with hand pressure. Duct system needs complete cleaning. This unit is scheduled for replacement.</i>

3.3 DIRECT READ MEASUREMENTS

Clayton conducted direct-reading environmental measurements in accessed guest rooms and selected indoor locations, with comparison to the outdoor air. Measurements of carbon dioxide (CO₂), carbon monoxide (CO), temperature, and relative humidity were conducted using a calibrated TSI Q-TRAK™ Model 8551 monitor. Measurements were conducted from August 9 through 18, 2004, and are discussed in the sections that follow.

3.3.1 Temperature and Relative Humidity

The outdoor air temperature was 83.8°F at 7:45 hours, 89.2°F at 13:05 hours and 88.7°F at 15:50 hours on August 12, 2004. Indoor dry bulb temperature measurements ranged from 70.1°F to 78.6°F in guest rooms, and 71.4.1°F (HBI) to 76.7°F (Housekeeping Offices) in common area/back-of-house regions. These measurements met the recommended indoor temperature lower and upper limits for occupant comfort of 68.5°F to 79°F (ASHRAE Standard 55-1992). This range covers the limits set for both heating and cooling seasons, which is appropriate for Hawaii's mild outdoor air temperature.

Indoor relative humidity levels ranged from 44.6% to 76.9%. The outdoor relative humidity level was 73.0% at 7:45 hours, and 69.7% at 15:50 hours.

Clayton considers the broad range of relative humidity from 30% to 60% as most acceptable for occupant comfort in indoor environments. Relative humidity levels above 60% can promote microbial growth. Humidities below 20% are may be uncomfortable because of the effect of dry air on both the mucous membranes and the skin.

Relative humidity levels recorded in the building were above recommended ranges. Upon completion of the scheduled repair, cleaning and replacement of the HVAC units within the building, relative humidity levels are likely to decrease below 60%.

3.3.2 Carbon Dioxide

The results of air measurements indicated that:

- Indoor CO₂ levels were recorded ranging from 370 parts per million (ppm) in vacant guest rooms (several found with sliding doors open), to 589 ppm measured in the Catering Offices with six hotel personnel present.
- Outdoor CO₂ average concentrations were measured at 340 ppm.

According to ASHRAE Standard 62-2001, CO₂ concentrations below 1,180 ppm (700 ppm plus the average outdoor concentration) in occupant breathing zones generally indicate that adequate outdoor ventilation air is distributed to the occupied indoor spaces in sufficient volumes to dilute this product of human respiration. Indoor measurements indicated CO₂ levels were within the ASHRAE-recommended limits.

3.3.3 Carbon Monoxide

Measured CO concentrations within selected office areas and in the outdoor air were 0 to 2 ppm. The accuracy of the direct-reading instrument is ± 3 ppm. According to the building escort, complaints regarding exhaust fume have been made by personnel working in the Azabu office. An investigation of the complaints revealed that tour busses routinely idle in the parking lot near the fresh air inlet for the AHU servicing the Azabu office and Ilima Room.

CO is a colorless, odorless, toxic gas produced by the incomplete combustion of solid, liquid and gaseous fuels. In the absence of indoor sources, indoor CO levels are usually equal to outdoor concentrations. ASHRAE Standard 62-1999 recommends an upper limit for CO of 9 ppm as an 8-hour average, and 35 ppm as a 1-hour average.

3.3.4 Particle Counting

Clayton performed direct-read measurements for particles at selected indoor locations and in the outdoor air throughout the assessment. Clayton measured airborne respirable particulate concentrations using a *Climet* direct-reading dust/aerosol monitor. The *Climet* unit measures airborne particulate matter in two particle size ranges: (1) particles greater (>) than 0.5 microns (μm) per cubic foot (p/cft), and (2) particles greater than 5.0 microns p/cft.

Outdoor particle count measurements taken during the course of the assessment ranged from 1,395 to 2,368 p/cft at >5.0 microns. Concentrations of particles >0.5 microns ranged from 93,217 to 111,666 p/cft.

Indoor particle count measurements of particles >5.0 microns ranged from 384 to 9,410 p/cft (Room 2728).

Indoor particle count measurements of particles >0.5 ranged from 27,948 to 788,626 p/cft. Values above ambient particle concentrations suggest indoor contamination. These levels are likely to be reduced upon renovation of the building's ventilations system.

3.3.5 Moisture Content Survey

Clayton used a Testo 606 moisture meter to measure the moisture content of gypsum board partition walls at representative locations within each guest room.

The Testo moisture meter scales are calibrated for wood, plaster, and concrete. Because the meter does not present a scale calibrated for gypsum board, Clayton recorded measurements as shown on the plaster/concrete scale, which ranges from 0 to 2%. Clayton's measurements are not to be interpreted as the actual moisture content of the gypsum board, but as a relative moisture reading with 0 percent indicating a dry condition.

Direct reading measurements of 1.6% to 2.0% were common in the gypsum wallboard adjacent to the guest room AHUs, and at cove base of the partition wall next to the shower ceramic tile enclosure. Measurements of 1.2% to 1.6% were common on the partition walls at the head of the beds and on walls enclosing chilled water piping.

The measurements from these areas indicate that these building materials have elevated moisture content, which can promote fungal growth. Fungal growth was observed in several locations where moisture readings were collected.

4.0 FUNGAL SAMPLING AND ANALYTICAL RESULTS

Clayton collected a total of 25 samples for fungal analysis, to include direct microscopic analysis for total fungal structures, and cultured analysis for viable propagules. Sampling methods included bulk sampling and swab sampling. Clayton submitted the samples collected to PK-Jarvis Microbiology, LLC (PK-Jarvis) located in Novi, Michigan, for analysis. PK-Jarvis is an American Industrial Hygiene Association (AIHA) EMLAP-accredited laboratory.

4.1 BULK (SOURCE) SAMPLING

From August 11 through August 18, 2004, Clayton collected 25 bulk material samples of interior finishes and internal air handler components. These samples were collected from areas that either (1) exhibited suspect or visible fungal growth, or (2) appeared to be water stained. The bulk sample numbers, type, location and components are described in the table on the following page.

Bulk Sample Locations

Sample No.	Sample Type	Sample Location	Component
AMH-2201-S-01	Swab	AHU 2201	Supply Duct-Dust Plume
AMH-2102-B-02	Bulk	AHU 2102	Supply Chamber Lining
AMH-3302-B-03	Bulk	AHU 3302	Chilled Water Pipe Jacket
AMH-3530-B-04	Bulk	Guest Room 3530	AHU Lining
AMH-3530-S-05	Swab	Guest Room 3530	Condensate Pan
AMH-3317-S-06	Swab	Guest Room 3317	Gypsum Wallboard Soffit
AMH-2832-B-07	Bulk	Guest Room 2832	AHU Lining
AMH-2728-B-08	Bulk	Guest Room 2728	Supply Diffuser
AMH-2401-S-09	Swab	Guest Room 2401	AHU Coil
AMH-1821-S-10	Swab	Guest Room 1821	Gypsum Wallboard-Bathroom
AMH-602-B-11	Bulk	Guest Room 602	AHU Lining
AMH-3535-S-12	Swab	AHU 3535	Condensate Pan
AMH-3535-B-13	Bulk	AHU-3535	Supply Chamber Lining
AMH-3535-S-14	Swab	AHU 3535	Cabinet Exterior
AMH-0236-B-15	Bulk	AHU 0236	Filter Element
AMH-0236-B-16	Bulk	AHU 0236	Chilled Water Pipe Jacket

Sample No.	Sample Type	Sample Location	Component
AMH-0236-S-17	Swab	AHU 0236	Supply Duct-Dust Plume
AMH-437-B-18	Bulk	Hospitality Suite - 4 th Floor	Gypsum Wallboard Pipe Enclosure
AMH-437-S-19	Swab	Hospitality Suite - 4 th Floor	Carpet Stain
AMH-2701-B-20	Bulk	AHU 2701 (Rumour's)	Mixing Chamber Lining
AMH-2701-S-21	Swab	AHU 2701 (Rumour's)	Upstream Coil
AMH-610-S-22	Swab	Guest Room 610	Sheet Vinyl Stain Bathroom
AMH-Batt-S-23	Swab	Battery Room	Supply Diffuser
AMH-Lanai-S-24	Swab	Lanai Conference Room	Supply Diffuser
AMH-FSR-B-25	Bulk	Food Storage Room	Ceiling Tile-Damaged Ceiling Area

4.2 BULK SAMPLE ANALYTICAL RESULTS

Clayton collected 12 bulk samples, and 13 swab samples for a total of 25 samples. All were subject to direct microscopic analysis and culture analysis for viable fungal propagules.

The samples were being analyzed at the laboratory at the time of this draft report. Results will be included in Clayton's final report.

5.0 AIR HANDLING UNIT REMEDIAL OVERSIGHT

On August 16, 2004, Clayton conducted oversight and final visual clearance of air handling unit remediation activity. Cleaning activities were conducted on AHU 1303 (servicing Hawaii Ballroom II (HBII)), AHU 1403 servicing Hawaii Ballroom I (HBI), and AHU 1503 servicing the Royal Garden Restaurant. Following remediation, Clayton conducted a visual inspection of each area. In addition to the visual inspection, validation sampling was conducted using a laser particle counter.

Validation sampling in conjunction with a visual inspection is an acceptable clearance tool to document that proper engineering controls were implemented during remedial activities. Concentrations of indoor particles are compared with out door concentrations prior to area re-occupancy.

Measurements in the work area were obtained during AHU interior vacuuming operations to represent a "worst case scenario" exposure. Interior control and outdoor particle concentrations were then measured for comparison. All work area (indoor) particle concentrations were recorded well below outdoor particle concentrations following remediation in these areas.

6.0 CONCLUSIONS AND RECOMMENDATIONS

Clayton conducted an inspection of 48 guest units, guest corridors, 4th Floor Human Resources suite of offices, Hospitality Suite, and back-of house air handling systems and interior finishes. Fungal growth was identified in many of the areas inspected. Most of the AHU system components throughout the property are original. Affected materials and components observed during the inspection included:

- Many of the AHUs inspected showed conditions that warrant replacement. These conditions include dirt and corroded internal components, standing water with bioslime in condensate pans, deteriorated internal lining and visible microbial growth.
- Fresh air intake vents in many of the units inspected were clogged with dirt or have been scaled.
- Water staining with fungal growth was observed on vinyl wallpaper and underlying wallboard in many guest rooms and corridors inspected by Clayton.
- Moisture testing within most rooms inspected revealed moisture in gypsum wallboard in the vicinity of the AHUs. Elevated moisture readings were measured in wallboard located next to the ceramic bathtub enclosure in guest bathrooms. Visible microbial growth was observed in many of these areas inspected.
- Water-damaged spray-applied acoustical ceiling plaster containing asbestos were observed in many rooms inspected by Clayton.
- Clayton observed water leaking from the kitchens and mechanical rooms into the lower floors. Clayton also noted areas of water damage on the gypsum ceilings of the guest corridors. Areas with notable damage were located at the end of the return diffusers within the Waikiki Tower, and above many ice-machine units.

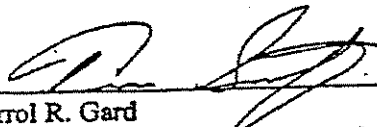
- Supply air diffuser grills in most guest rooms, kitchens, and back-of-house areas were noted as dirty with suspect microbial growth.
- Indoor relative humidity levels ranged from 44.6% to 76.9%. Clayton considers the broad range of relative humidity from 30% to 60% as most acceptable for occupant comfort in indoor environments. Relative humidity levels above 60% can promote microbial growth. Relative humidity levels recorded in the building were above recommended ranges.
- Carpeting within the guest rooms was observed in fair to poor condition.

Clayton presents the following recommendations to Crescent Heights for their consideration and to assist them in their efforts to improve overall indoor air quality at the resort:


- Continue to implement the replacement of AHUs located throughout the property that were installed when the building was constructed in 1969. Replace all AHU components as deemed appropriate. Thoroughly clean the coils, fans and condensate pans of remaining units. Replace insulating liners where required. Clean all duct systems.
- Provide at least 30 cubic feet per minute of outdoor air to each area of the hotel.
- Remediate visible fungal growth on vinyl wall coverings and underlying wallboard located near the AHUs and bathroom demising walls in the guest rooms of the building.
- Remove vinyl wall covering and replace with a breathable material or cover with latex paint to prevent conditions suitable for fungal growth.
- Remedial work should require protocols to minimize aerosolization and dissemination of dirt/debris. Workers performing this work should be equipped with minimum personal protective equipment (PPE) for skin, mucous membrane, and respiratory protection.
- Remove rust and debris from the condensate drain pans. Clean the drain pans and coils at regular intervals on an as-needed basis. The units should be turned off during cleaning, and any detergents used should be thoroughly rinsed from the pans before reactivating the units.
- Implement a routine maintenance program for the AHUs to include periodic filter changes and visual inspection of other components for buildup of dust/debris. Periodically clean AHUs to prevent the buildup of dirt/debris that may become reservoirs or amplifiers of microbial growth.

- Clean or replace affected sections of chilled water pipe insulation with visible fungal growth.
- Clean dust, dirt and debris from return and supply diffusers and ceiling areas throughout the space.
- Remove and replace the stained, discolored and fungally contaminated wall and ceiling materials.
- Once the AHUs have been replaced, duct systems cleaned, contaminated building materials removed and replaced, and the building mechanical systems are re-commissioned, it is recommended that the services of a qualified test-and-balance firm be used to measure bathroom exhaust fan effect upon the current negative pressure envelope.

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September 1, 2004



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Completion Date: Built 1969 /Conversion 2005

Name of Property: ALA MOANA HOTEL CONDOMINIUM

All references hereafter to the word "Property" shall refer to the above.

Property Address: 410 Atkinson Drive, Honolulu, HI 96914

Property Tax Map Key: (1)2-3-038-002

This property is managed by a licensed real estate broker. ☒ Yes ☐ No. If a licensed real estate broker, is managing agent registered with the Real Estate Commission as a Condominium Managing Agent? ☒ Yes ☐ No.

Name of Managing Agent: HAWAIIANA MANAGEMENT COMPANY, LTD.

Managed by this Managing Agent since: September 12, 2005

Managing Agent provides (Check those services that apply):

- ☐ Administrative Management Services
- ☒ Fiscal Management Services
- ☐ Physical Management Services
- ☐ Other Management Services -

A. GENERAL & LEGAL

Total number of units: 1,154 hotel, 21 commercial Number of guest parking stalls available: 0 (total stalls for project =319)

If applicable, what percentage of Condominium Apartments has been sold and conveyed (excluding to the Developer)? Approximately 65%.

If applicable, what approximate percentage of Condominium Apartments is owner-occupied? 0 %.

Approximately how many foreclosures have been filed by the Board of Directors during the past twelve (12) months? 0.

What approximate percentage of owners is more than one month delinquent in maintenance fees? 0%.

****If answer is "yes", using the SAME number below, describe in the space provided.****

Yes	No	NTMK (Not to my knowledge)		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(1)	Within the past year, has the Board of Directors had discussions with the lessor regarding the purchase of the leased fee interest in the land? <input checked="" type="checkbox"/> Property is Fee Simple.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(2)	Is this Property subject to phasing or development of additional increments?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(3)	Has the Owners Association or Corporation been in control of the operations of the Property for less than two (2) years?
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(4)	Are there any lawsuits, arbitration or mediation actions affecting this Property and/or Association other than delinquent owner maintenance fees? Attorney for Association of Apartment Owners: _NOTE: Any attorney fees or other costs incurred for further answering this inquiry shall not be at the expense of the Association of Apartment Owners, nor of the Managing Agent.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(5)	If property is a Condominium, does any single entity, individual or partnership own more than 10 percent of the common interest of this property?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(6)	Are any Association or Corporation approvals required for transfer of Ownership?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(7)	Is a resident manager's apartment a part of the common elements, or is one owned by the Association or Corporation (does not apply to Planned Unit Developments)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(8)	Is a time share operation existing at this Property? Name of operator
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(9)	Is there a hotel, transient vacation rental operation, or other organized rental program at the Property? Name of operator?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(10)	Are there commercial apartments, lots or commercial use of the common areas or common elements at the Property?

Number of Questions answered "YES" and Explain:

(#2, 3, 5) New project conversion from hotel to condo. Developer owns units not yet sold.

(# 9) "Owner's Relations" office (on property) handles rentals.

(#10) 21 commercial units.

B. INSURANCE

Name of Insurance Company or Agency/Broker: INSURANCE ASSOCIATES

Name of Insurance Agent: Sue Savio

Phone: 538-6938

***Certificate of Insurance should be requested directly from the insurance agent.**

****If answer is "yes", using the SAME number below, describe in the space provided.****

Yes	No	NTMKN	Note: In case of Planned Unit Development, questions #13 to #15 apply to common areas only.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(11) Is the Property located in a designated Flood Hazard Zone?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(12) Is this Property covered by Flood Insurance?
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(13) Is this Property located in a tsunami inundation area?

Number of Questions answered "YES" and Explain:

(12) National Flood Insurance program

C. FINANCIAL

Financial statements are prepared monthly and are on a cash basis.

Apartment maintenance fees include:

- ☒ Water & Sewer
- ☒ Hot Water
- ☒ Electricity
- ☒ Gas
- ☐ Air Conditioning
- ☒ Cable TV Signal
- ☐ Parking
- ☐ Recreation/Community Association Dues
- ☐ Lease Rent
- ☐ Real Property Tax
- ☒ Other: Refuse Collection
- ☐ Other:

****If answer is "yes", using the SAME number below, describe in the space provided.****

Yes No NTMK

- | | | | | |
|--------------------------|-------------------------------------|--------------------------|------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | (14) | Has the Association or Corporation Board of Directors approved a maintenance fee increase, special assessment, or loan? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | (15) | Are any special assessments or loans in effect at this time? |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | (16) | Are any assessments required to be paid in full at the time of conveyance of ownership? |

Number of Questions answered "YES" and Explain:

D. PROPERTY CONDITION

- ☐ There is Reserve Plan Data for any major repairs required or planned with respect to the common elements/common areas of the Property.
- ☒ There is no Property Reserve Study available.

E. DISCLAIMER

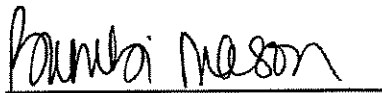
While not guaranteed, the information contained in this Property Information Form is based on information reasonably available to the Managing Agent at the time this form was completed. It has been provided by the Managing Agent at Owner/Seller's request and is believed to be current and correct to the best of the Managing Agent's knowledge at the time this form was completed. All persons relying upon the information contained herein are advised that the information provided cannot be considered a substitute for a careful inspection of the Property and the Property's governing documents, meeting minutes, financial documents and other documentation; and that they should refer to qualified experts in the various professional fields, including but not limited to attorneys, Certified Public Accountants, architects, engineers, contractors and other appropriate professionals for a detailed evaluation of areas where additional clarification or information is desired. The person or entity completing the form is doing so only as an accommodation to the parties and shall not be held liable for any errors or omissions whatsoever. The person or entity completing this form is not required to and has not completed any special investigation, and is only reporting facts already known to that person or entity or readily available. Specifically and without limitation, the person or entity completing the form

has not reviewed any records except official records of meetings in the possession of that person or entity and only for the current year. Where the answer to a question is not applicable, unknown or is otherwise unanswerable, it has been marked "NTMK". Where the Managing Agent has marked "NTMK" or "NO" in response to a question concerning property condition, it must be recognized that this does not mean there may not be a defect which an expert could discover or the passage of time would reveal. Likewise, a problem could be more serious than the Managing Agent, the Association, the Corporation or its Board of Directors knows. All such persons having access to this Property Information Form understand and acknowledge that this Property Information Form is not a warranty or guaranty of any kind by the Managing Agent, the Association or its Board of Directors.

On-site Manager: None at this time
Phone:

Date: January 12, 2006

FOR THE BOARD OF DIRECTORS
ALA MOANA HOTEL CONDOMINIUM

A handwritten signature in cursive script, reading "Bambi Mason", is written over a horizontal line.

Bambi Mason
Management Executive
HAWAIIANA MANAGEMENT COMPANY, LTD.