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Transfer Certificate of Title No. 735,144

DECLARATION OF CONDOMINIUM PROPERTY REGIME OF
WAKEA KAI

Condominium Map No. 2309

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WAKEA KAI

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**DECLARATION OF CONDOMINIUM PROPERTY REGIME OF
WAKEA KAI**

THIS DECLARATION OF CONDOMINIUM PROPERTY REGIME OF WAKEA KAI (this "**Declaration**") is made on November 27, 2015, by **L&K INVESTMENTS, LLC**, a Hawaii limited liability company ("**Developer**"). Other capitalized terms used in this Declaration are defined in Section 1.

The Developer desires to establish a condominium property regime including units and common elements in accordance with the plans filed in the Record Office defined below as Condominium Map 2309 (the "**Condominium Map**"), which Condominium Map is incorporated by reference in this Declaration;

NOW, THEREFORE, in order to create a condominium property regime consisting of the Land and the improvements constructed or to be constructed on the Land (the "**Condominium**"), the Land is now submitted to a Condominium Property Regime established under Chapter 514B, Hawaii Revised Statutes, as amended (the "**Act**"), and Developer makes the following declarations as to divisions, limitations, restrictions, covenants and conditions, and declares and agrees that the Land is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, restrictions and conditions contained in this Declaration as the same may be amended from time to time, which declarations, restrictions, and conditions shall constitute covenants and equitable servitudes running with the Land and shall be binding on and for the benefit of the Developer and its successors and assigns, and all subsequent owners, lessees and sublessees of all or any part of the Condominium.

1. **Defined Terms.** The terms used in this Declaration shall have the meanings given to them in the Act, except as otherwise expressly provided in this Declaration. Unless clearly repugnant to the context, the following terms, whenever used in this Declaration, shall be given the following meanings:

1.1 "Association" means the Unit Owners of the Condominium acting together.

1.2 "Board" means the representatives elected pursuant to the Bylaws to make decisions on behalf of the Association.

1.3 "Bylaws" means the Bylaws of the Association dated and recorded in the Record Office concurrently with this Declaration, as amended.

1.4 "Common Elements" means all portions of the Condominium other than the Units.

1.5 "Common Expenses" means the expenses designated as Common Expenses under this Declaration.

1.6 "Common Interest" means each Unit's undivided percentage interest in the Common Elements as described in **Section 5**.

1.7 "Condominium" means the Land, the Units, the Common Elements, the buildings and all other improvements constructed at the Land from time to time, and all easements, rights and appurtenances belonging to them, and all other property with respect to which a condominium property regime shall exist from time to time in accordance with this Declaration.

1.8 "Declaration" means this Declaration of Condominium Property Regime, as amended from time to time.

1.9 "Developer" means L&K INVESTMENTS, LLC, a Hawaii limited liability company, and its successors and assigns as Developer.

1.10 "Eligible Mortgage Holder" means a mortgagee of a Unit that has requested in writing that the Association provide it with written notice of certain matters that may affect the Condominium or the Unit in which it has an interest.

1.11 "Eligible Mortgage Holders' Consent" means the consent of Eligible Mortgage Holders holding mortgages on Units representing the specified percentage of the Common Interest that is appurtenant to Unit subject to mortgages held by Eligible Mortgage Holders.

1.12 "Include" or "including" means, including without limitation.

1.13 "Improvements" means buildings, fences, walls or other improvements, and all alterations, additions or replacements to them.

1.14 "Land" means the real property described on Exhibit A attached hereto and incorporated herein by this reference.

1.15 "Limited Common Element" means portions of the Common Elements use or benefit of which is limited to some but not all Units.

1.16 "Mortgage" means any mortgage (together with the promissory notes secured by the mortgage and security instruments collateral to the mortgage) now or later recorded against any Unit, together with any increase, amendment, extension, refinancing or recasting of those documents.

1.17 "Owner" or "Unit Owner" means a Person owning, or the Persons owning jointly or in common, a Unit and its appurtenant Common Interest, to the extent of such ownership; provided that, to such extent and for such purposes, including the exercise of voting rights, as shall be provided by lease recorded in the Record Office, the lessee of a Unit or interest in it shall be deemed to be the owner of such Unit, and provided further that, so long as the Act so requires, the purchaser of a Unit under a recorded agreement of sale shall have all the rights of a Unit Owner, including the right to vote, provided that the seller may retain such rights to vote on matters substantially affecting its security interest in the Unit, as the Act shall permit on the date the agreement of sale is recorded. Developer is an Owner to the extent and so long as it owns any Unit.

1.18 "Person" means any individual, partnership, corporation, limited liability company, trust, or other form of entity.

1.19 "Record Office" means the Office of the Assistant Registrar of the Land Court of the State of Hawaii and/or the Bureau of Conveyances of the State of Hawaii, as applicable

1.20 "Record" means file or record in the Record Office as applicable.

1.21 "Unit" means a Unit in the Condominium, within the meaning of that term as used in the Act, as designated and described in this Declaration and shown on the Condominium Map.

1.22 "Unit Deed" means the initial condominium unit deed conveying a Unit in the Condominium, together with its appurtenant Common Interest.

2. **Name of the Condominium.** The condominium property regime established by this Declaration shall be known as "WAKEA KAI".

3. **Description of Land.** All of the Land described in **Exhibit A** is submitted to the condominium property regime.

4. **Division of the Condominium.** The Condominium is divided into the following separate freehold estates:

4.1 **Units.** Eight (8) separate freehold estates, designated as Units A, B, C, D, E, F, G and H, respectively, are now established in the spaces within the imaginary vertical surfaces and horizontal planes of each of the eight (8) Units in the Condominium, as shown on the Condominium Map. The eight (8) Units in the Condominium are identified by unit letter on the Condominium Map and are located in the Condominium as shown on the Condominium Map. Each Unit is a three dimensional spatial unit at the approximate location and having the approximate dimensions shown on Sheet 1 of the Condominium Map. Sheet 1 of the Condominium Map shows the perimeter of each Unit, defined by metes and bounds descriptions. The vertical boundaries of each Unit are imaginary surfaces that extend from the perimeter boundaries of the Unit one hundred (100) feet upwards and twenty five (25) feet downwards, as measured from the lowest point of the natural grade surface of each Unit. The metes and bounds of the perimeter boundaries of the Units are attached as **Exhibit B**. The top horizontal boundary of each Unit is defined by an imaginary plane at the top of those vertical boundaries, and the bottom horizontal boundary of each Unit is defined by an imaginary below-ground plane at the bottom of those vertical boundaries. Each Unit is the space bounded by these vertical surfaces and horizontal planes, together with any Improvements within the Unit.

Notwithstanding the limits of the Unit and the Developer's and each Owner's rights to make alterations within the Units or to modify the Units as provided in **Section 16** or in any other section of this Declaration, any improvements installed within the Units must comply with all zoning and building ordinances and codes, all applicable permitting requirements adopted by the City & County of Honolulu, and all private covenants, conditions and restrictions applicable to the Unit, and it may not be possible to install buildings or other improvements within the entire space within the Unit.

Should the descriptions and divisions set forth in this Declaration conflict with the depictions and divisions shown on the Condominium Map, the Condominium Map shall control.

The Condominium Map, however, is intended to show only the layout, location, boundaries, unit numbers and dimensions of the Units and elevations of the Units and is not intended and shall not be deemed to contain or make any other representation or warranty.

4.2 **Common Elements.** One freehold estate is designated in the Common Elements. The Common Elements include:

- (a) the fee simple interest in the portion of the Land below each Unit;
- (b) the airspace above each Unit;
- (c) the common element driveway shown on the Condominium Map, and any retaining walls that support that roadway;
- (d) any common utility conduits or lines within the Condominium's common element driveway or Easements 1, 2 or 3 shown on the Condominium Map, any lighting within the common driveway, any sidewalk or footpath within Easement 1, and any common water meter and irrigation lines used to maintain landscaping along the common driveway;
- (e) the vehicular access easement in favor of the Condominium over portions of the adjoining Lot 7 of Land Court Application No. 1032, as set forth in Section 2.1 of the Declaration of Covenants, Conditions, Restrictions and Easements (5084) Kiai Place) dated January 25, 2007, and Recorded in the Record Office as Land Court Document No. 3949663;
- (f) all improvements for the collection, management, transport, retention, detention and disposal of surface water runoff within the Condominium that is constructed by the Developer, including any such drainage Improvements that are located within the boundaries of a Unit;
- (g) Easement 3 for pedestrian access between Keikilani Circle and the Condominium's common element driveway as shown on the Condominium Map;
- (h) Easement 4 for Landscaping purposes affecting Unit C as shown on the Condominium Map;
- (i) The Project's shared water meter, and all water transmission lines, equipment and apparatus extending from that meter to the submeters assigned to each Unit; and
- (j) Any and all other improvements, apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

4.3 **Limited Common Elements.** The Condominium initially contains no Limited Common Elements.

5. **Common Interest.** Each Unit shall have the following appurtenant, undivided percentage interest in the Common Elements of the Condominium, which shall be the Unit's "Common Interest" for purposes of this Declaration:

Unit	Common Interest Percentage
A	2%
B	14%
C	14%
D	14%
E	14%
F	14%
G	14%
H	14%

100%

Except as provided in **Section 13**, each Unit's Common Interest shall be the basis for determining its proportionate share in all common profits and expenses of the Condominium and for all other purposes, including voting.

6. **Description of Buildings.** Initially the Condominium contains no buildings. This Declaration does not impose any obligation on the part of any Unit Owner to construct buildings or other Improvements within the Unit Owner's Unit.

7. **Operation of the Condominium.** The Owners of the Units, acting through the Association, shall manage the Condominium in accordance with the Bylaws.

8. **Easements.** In addition to any easements described in **Exhibit A**, the Condominium shall be subject to the Easements set forth in this Section.

8.1 **Support Easements.** Each Unit shall have an appurtenant nonexclusive easement in the Common Elements and each other Unit for support.

8.2 **Encroachments of Common Elements.** If any part of the Common Elements now or hereafter encroaches upon any Unit, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. In the event that the Common Element Improvements in the Condominium shall be partially or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Common Element Improvements, minor encroachments (as determined by the Board) of any parts of the Common Elements due to such construction, shifting, settlement or movement shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist.

8.3 Utility Easements. Units D, E, F, and G are subject to Easement 1 for underground utility purposes as shown on the Condominium Map. Units A, B, and C are subject to Easement 2 for underground utility purposes as shown on the Condominium Map. Units A and B are subject to Easement 3 for underground utility purposes as shown on the Condominium Map. Each of these utility easements run in favor of and benefit all Units in the Condominium. Each Unit Owner shall upon request grant or join in any grants of easement over these Easements required by Hawaiian Electric Company, Hawaiian Telcom, or any other utility providers in order to provide utility service to any other Unit.

8.4 Pedestrian Park Access Easement. Units C, D, E, F, G, and H shall have a non-exclusive easement for pedestrian access to and from Keikilani Circle over Easement 3 shown on the Condominium Map located within Units A and B. This easement may be used only by residents of the Project and their guests, an users of the easement shall refrain from making noise unreasonably disturbing to residents of Units A and B.

8.5 Landscaping Easement 4. Landscaping Easement Number 4 effecting Unit C as shown on the Condominium Map is an easement in favor of the Association for purposes of installing and maintaining landscaping and irrigation along the Condominium's common driveway.

8.6 Emergency Vehicle Turnaround Easement 5. Unit H is subject to Easement 5, which is the area required by the City & County of Honolulu for an emergency vehicle turnaround area. No Units are granted any rights to use, drive or park on Easement 5.

8.7 Additional Easements. The Association may grant additional easements over the Common Elements and over a Unit, with the consent of the Owner of the Unit. A Unit Owner may grant easements through, over and under the Owner's Unit, without requiring the consent or joinder of the Owner of any other Unit.

8.8 Easement for Repairs. The Association shall have the right, to be exercised by its Board or its managing agent, without liability to any Owner for trespass or other consequential damage, to enter each Unit from time to time during reasonable hours as may be appropriate for the operation of the Condominium or maintenance and repair of the Common Elements, or, at any time, for making emergency repairs therein which may be necessary to prevent damages to any Common Element.

8.9 Developer's Easement for Sales and Marketing of the Condominium. Developer, its brokers, sales agents, representatives and other related persons shall have the right to conduct extensive sales activities at the Condominium, including the use of any Unit owned or leased by Developer and the Common Element sales, leasing, management and construction offices, parking and extensive sales displays and activities, the posting and maintenance of signs and other advertisements relating to such sales activities, and to install, maintain, locate, relocate, and reconfigure such structures, displays, advertising signs, flags, sales desks, kiosks, sales, leasing, management and/or construction offices, and parking areas for employees, agents, and prospective buyers, as may be necessary or convenient for the development of the Condominium or any component thereof. In the event that Developer's mortgage lender, if any, or any successor to or assignee of Developer's mortgage lender shall acquire any portion of the Condominium in the course of any foreclosure or other legal proceeding or in the exercise of the mortgage remedies or

by a deed or an assignment in lieu of foreclosure, such mortgage lender, its successors and assigns, shall have the same rights as Developer to conduct such sales activities on the Condominium.

9. **Alteration and Transfer of Interests.** Except as otherwise expressly provided in this Declaration, the Common Interest and easements appurtenant to each Unit shall have a permanent character. The Common Interests shall not be altered without the consent of all Owners of Units affected by the alteration as expressed in an amendment to this Declaration duly recorded in the Record Office, shall not be separated from the Unit to which they appertain, and shall be deemed to be conveyed, leased or encumbered with such Unit even though not expressly mentioned or described in the conveyance or other instrument. The Common Elements shall remain undivided, and no right shall exist to partition or divide any part of the Common Elements.

10. **Use & Operation.**

10.1 **Permitted Uses.** Each Unit may be used for any purpose permitted by applicable zoning and other laws, and the terms of the initial Unit Deed for each Unit. Notwithstanding the foregoing, each Unit shall be limited to a single dwelling unit.

10.2 **Leasing.** Units and the dwellings constructed therein may be freely rented or leased, subject only to the restrictions, if any, in City & County of Honolulu ordinances or other applicable laws. Any Owner leasing all or any part of its Unit shall at all times remain primarily and severally liable to all other Unit Owners and to the Association for any failure on the part of such Owner's tenant(s) to observe and comply with this Declaration and applicable laws.

10.3 **Compliance with Laws and Recorded Covenants.** All Owners shall at all times comply with all applicable laws and with the terms and conditions set forth in this Declaration, the Bylaws, and the Declaration of Covenants, Conditions, Restrictions and Easements (5084) Kiai Place) dated January 25, 2007, and Recorded in the Record Office as Land Court Document No. 3949663.

10.4 **Trespass & Nuisance.** The Owners of each Unit shall be liable to the Owners of the other Unit for trespass, nuisance or other causes of action for persons or materials that enter one Unit from the other Unit to the same extent that they would be if the Units were subdivided lots.

10.5 **Prohibition of Unauthorized Uses and Activities.** No Owner shall do or suffer or permit to be done anything to any Unit or elsewhere on the Project which will (i) jeopardize the safety or soundness of the Project, (ii) create a nuisance or interfere with or unreasonably disturb the rights of other Owners and occupants, (iii) result in the cancellation of any Association insurance required for the Project by the Declaration or Bylaws, or (iv) result in the increase in premiums of any Association insurance required for the Project by the Declaration or Bylaws without the prior written consent of the Board.

10.6 **Common Driveway.** The Condominium's common driveway may be used only for access to and from the Units. Vehicle, boats, trailers or other personal property may not be parked or stored in the driveway. No Owners shall make alterations to the driveway or other Common Elements, including the Common Element lighting and landscaping.

10.7 **Pets and Other Animals.** Owners may keep a reasonable number of dogs, cats or other conventional household pets, so long as they are kept inside the Owner's dwelling unit and not allowed to roam the Condominium off-leash. No pigs, livestock, chickens, roosters or other poultry, or other animals whatsoever shall be allowed or kept in any part of the Condominium. No animals including pets may be kept, bred or used for any commercial purpose.

11. Administration of Condominium.

11.1 **Association Obligations.** Except as otherwise provided in this Declaration, the Association shall be responsible for administration of the Condominium's Common Elements, and the maintenance and repair, additions, alterations and replacements to the Improvements of the Common Elements, if any, in accordance with the applicable provisions of the Act and this Declaration.

11.2 **Unit Owner's Obligations.** The Owner of each Unit, and not the Association, shall be responsible to keep the Owner's Unit, including all Improvements in the Unit, and the Unit's appurtenant Limited Common Elements (if any), in good order and condition and in compliance with all applicable laws and regulations.

11.3 **Developer Control Period, Transition Date.** The Developer Control Period shall run from the recordation of this Declaration until the Transition Date. The Transition Date shall be the earliest of: (i) the end of the first meeting of the Association pursuant to Section 102(a) of the Act and Section 2.6.1 of the Bylaws; (ii) the date sixty (60) days after conveyance of 75% of the Common Interest appurtenant to all Units which may be created under this Declaration to Owners other than Developer; (iii) two (2) years after the last conveyance of a Unit, or (iv) the day the Developer, after giving written notice to Owners, records an instrument voluntarily surrendering all rights to control activities of the Association. Developer may voluntarily surrender the right to appoint and remove officers and members of the Board before the termination of the Developer Control Period, but in that event, Developer may require, for the duration of the Developer Control Period, that specified actions of the Association or Board, as described in a recorded instrument executed by Developer, be approved by Developer before they become effective.

11.4 **Developer Power to Appoint Board and Officers.** During the Developer Control Period, the Developer shall have the right and duty to appoint and remove all members of the Board and all Officers. During the Developer Control Period, the Board shall consist of three (3) members, who shall have all powers accorded to members of the Board under the Act, this Declaration and the Bylaws, including the power to vote proxies given to the Board for the first meeting of the Association.

11.5 **Developer May Assume Actual Expenses.** Developer may elect to initially assume all actual Common Expenses in the Condominium. Any Developer's assumption of all actual Common Expenses will terminate upon Developer's mailing to each Owner and to the Managing Agent written notice that after a specified date, not less than thirty (30) days after mailing of such notice, each Owner will be responsible for Common Expenses in proportion to such Owner's respective shares of the Common Interest.

11.6 Developer Transfer of Association Documents. Not later than sixty (60) days following the Transition Date, the Developer shall deliver to the Association all property of the Owners and of the Association held or controlled by the Developer, including: the Declaration with all amendments thereto; the current Bylaws; the current Association Rules (if any); all minute books, insurance records, financial records or other records of the Association; all Association funds and tangible property; all leases, contracts or other written obligations of the Association; all warranties still in effect relating to elements for which the Association has a duty of repair or maintenance.

11.7 Association Right to Terminate Developer Contracts after Transition Date. For a period of 180 days following the Transition Date and upon giving ninety (90) days prior notice to the other party, the Board shall have the power to terminate, without penalty, agreements entered into during the period of Developer Control, including: (i) any management contract, employment contract, or lease of recreational or parking areas or facilities (excluding a lease of parking stalls or areas to an Owner or lessee of a Unit); (ii) any contract or lease between the Association and the Developer or an affiliate of a Developer; or (iii) any contract, lease or agreement that is not bona fide or was unconscionable to the Unit Owners at the time entered into under the circumstances then prevailing.

12. Service of Process. Service of legal process upon the Association may be made upon any member of the Board of the Association. Developer is designated as the agent to receive service of process until such time as the Developer designates a successor agent to receive service of process.

13. Common Expenses.

13.1 General. All charges, costs and expenses, if any, incurred by the Association for or in connection with the administration of the Condominium, including all charges for taxes (except real property taxes and such other taxes which are now or may later be assessed separately on each Unit and its appurtenant Common Interest or the personal property or any other interest of the Unit Owner), assessments, insurance, any liability whatsoever for loss or damage arising out of or in connection with the Common Elements or any accident, fire or nuisance on the Common Elements, costs of repair, reinstatement, rebuilding, replacement, and restoration of any Improvements (if any) in the Common Elements and all other sums designated as Common Expenses under applicable provisions of the Act and this Declaration shall constitute Common Expenses for which Unit Owners shall be severally liable as provided in this **Section 13**. However, all charges, costs and expenses incurred by the Association which are necessitated by the negligence, misuse or neglect of a Unit Owner or occupant or any Person under either of them shall be charged to such Unit Owner or the Unit Owner of the Unit of such occupant, as a special assessment secured by the lien created under this **Section 13**.

13.2 Allocation Among Unit Owners. Common Expenses of the Condominium shall be allocated as follows:

13.2.1 Common Expenses incurred to maintain, repair, and insure the Condominium's common driveway to Kiai Place, the retaining walls supporting that driveway, and any landscaping, irrigation or lighting along that driveway, shall be allocated to Units B, C, D, E, F, G and H only, and Unit A shall bear nor part of those Common Expenses. Unit B shall be allocated

14.2% of those Common Expenses, and Units C, D, E, F, G, and H shall each be allocated 14.3% of those Common Expenses.

13.2.2 Municipal water and sewer charges shall be allocated between the Units based on their proportionate water usage as determined by the submeters assigned to each Unit, provided that Units (if any) that have their own, separate water meter shall pay only the water and sewer charges for that meter and shall not bear any portion of the water and sewer charges assessed with respect to the Project's shared water meter.

13.2.3 All other Common Expenses shall be allocated to each Unit based on its Common Interest.

13.3 Lien and Enforcement. The Association shall prepare an annual budget and assess the Common Expenses to the Unit Owners on an annual or other periodic basis. Any assessed but unpaid Common Expenses shall be secured by a lien having the same priority as provided in Section 514B-146 (a) and (b) of the Act, except that the mortgages having priority over assessments shall be limited to first mortgages to banks or other institutional lenders. The lien may be foreclosed in the manner provided in Section 514B-146(a) of the Act and assessments not recovered in such foreclosure may be assessed against the Units in accordance with Section 514B-146(b) of the Act.

14. **Insurance.**

14.1 **Common Elements.** The Association shall carry such insurance on the Common Elements as the representatives of the Unit Owners or the Board shall determine. Premiums for such agreed insurance on the Common Elements shall be a Common Expense.

14.2 **Unit Owners.** Each Unit Owner, and not the Association, shall be responsible for insuring its Unit, all Limited Common Elements appurtenant to its Unit, all of the Owner's Improvements in the Unit and all contents for the Unit Owner's own benefit and at the Unit Owner's own expense. The Owner of each Unit, and not the Association, shall be responsible for maintaining liability insurance with respect to loss, damage, injury or death occurring within the Owner's Unit and its Limited Common Elements.

15. **Casualty.**

15.1 **Common Elements.** In the event that any Improvements to the Common Elements are damaged or destroyed by any casualty, the Improvements shall be rebuilt, repaired or restored unless the Unit Owners vote unanimously not to rebuild, repair or restore.

15.2 **Units & Limited Common Elements.** Each Unit Owner will determine whether or not to rebuild any Improvements within its Unit only to its Unit that are damaged or destroyed by any casualty. Any such restoration or repair and any demolition will be at the Unit Owner's expense. Any Improvements within a Unit or its Limited Common Elements that are not restored or repaired shall be demolished and removed from the Land if the damage is visible from the exterior of the Improvement or if necessary for safety.

16. **Improvement of the Condominium Units & Changes to the Condominium.**

16.1 **Permits.** It is the overriding intent of this Declaration that each Unit Owner be able to develop and use its Unit for one (1) single family dwelling unit and ancillary Improvements, independently of the other Units and Owners, as if each Unit was a separately subdivided lot. Accordingly, each Unit Owner shall have the right to apply for, pursue and secure all governmental permits, entitlements, exemptions and approvals with respect to its Unit that the Owner deems necessary or convenient to the development of one (1) single family dwelling unit within its Unit, an attached or detached garage, and other Improvements ancillary to the construction or use of the dwelling unit including without limitation retaining walls and driveways (collectively "**Permits**"). Except as specifically provided in this Declaration, Permits shall pertain to and affect only the Unit of the Owner applying for the Permit (the "**Applicant Owner**"), and no Permit conditions or requirements may encumber, apply to, or affect another Owner or its Unit without the consent of that Owner. The Applicant Owner shall bear all expenses of any Permits it elects to secure, and shall indemnify and hold harmless the other Owner(s) from any costs or liabilities relating to or resulting from any Permit that the Applicant Owner secures. Except as specifically provided in this Declaration, each Owner shall be solely responsible for complying with all conditions and requirements of the Permits it applies for or secures. No Owner shall oppose before any governmental authority the Permit application of another Owner made lawfully and in accordance with this Section 16.

16.2 **Right to Make Improvements.** No matter what any other provision in this Declaration says, the Owner of a Unit from time to time may make the Improvements described in Section 16.1 within the Owner's Unit, subject only the restrictions in Section 16.3. In each case, prior to constructing any Improvements the Owner shall obtain all required Permits for the planned Improvements and any approvals from any other Person whose approval is required under any recorded covenants, conditions or restrictions applicable to the Unit. The plans for the proposed Improvements shall also be submitted to the Board for purposes of verifying their compliance with the restrictions contained in Section 16.3. Otherwise, the Board, the Association, and the Owners of the other Units shall have no right to review, approve or disapprove any Improvements to or within a Unit except as required by the Act or this Declaration. To the maximum extent possible, the Developer and the Unit Owners waive or opt out of any provision of the Act requiring such consent. All Improvements shall be constructed in accordance with the approvals granted by the State of Hawaii and City & County of Honolulu and all applicable laws. All Improvements shall be deemed a part of the Unit in which they were constructed.

16.3 **Setbacks, Height Limits and Other Restrictions on Improvements.** All Improvements shall be subject to the following restrictions:

16.3.1 No Improvements may be constructed within Easements 1, 2, or 3 as shown on the Condominium Map.

16.3.2 Improvements within each Unit shall be subject to the boundary setbacks set forth in the following table. The numbers in this table indicate the number of feet that the setback extends into the Unit from the referenced Unit boundary. Except for driveways and for fences and walls that do not exceed six (6) feet in height above the natural or finish grade of the Unit, no Improvements may be constructed within the designated setback from the Unit' boundaries. Where

no setback is designated in this table, Improvements will be only be subject to any applicable City & County of Honolulu Ordinance, any restriction set forth in the Unit Deed for that Unit and/or any other Recorded restrictive covenant.

Unit	Makai (South) Setback	Mauka (North) Setback	Koko Head (East) Setback	Ewa (West) Setback
A	-	7.5	10	10
B	10	10	10	10
C	10	10	10	-
D	10	-	10	-
E	10	-	7.5	10
F	10	-	10	7.5
G	10	-	7.5	10
H	-	-	-	7.5

16.3.3 For the benefit of the other Units in the Project, all Improvements, trees and other landscaping at Units A, B and C shall be subject to the following height restrictions:

(a) No improvements, trees or other landscaping on Unit A may exceed a horizontal plane at an elevation ten (10) feet above Unit A's Mauka boundary, measured at that boundary's highest point on natural grade.

(b) Generally, no improvements, trees or other landscaping on Units B or C may exceed a horizontal plane at an elevation ten (10) feet above surface of the Project's shared driveway, measured at the highest point of the driveway. But, in order to accommodate a pitched-roof building on each of those Units, a portion of the roof of a building on Units B or C may exceed that horizontal plane by up to five (5) feet, so long as portion of the roof exceeding that plane is no more than 27 feet wide on Unit B or 16.5 feet wide on Unit C, measured on the Northerly elevation of those roofs.

16.3.4 All Improvements shall be designed and constructed to avoid interference with the retaining walls and drainage structures constructed by the Declaration. Due to this restriction, all dwellings and other structures within Units B and C may not be utilize slab on grade construction and, instead, must use post and pier or micropile foundation supports.

16.3.5 All dwellings and other structures shall be designed and constructed to manage their own rooftop drainage with a catchment system or green roof.

16.4 **Amendment of the Condominium Upon Completion of Improvements.** Upon completion of any dwelling, structure or other Improvements within or to a Unit, the Unit Owner shall record an amendment to the Declaration and Condominium Map's description of the Unit in accordance with Sections 32, 33 and 34 of the Act to include a description of such dwelling, structure or, if and to the extent required by the Act, other Improvements. At the Unit Owner's option, that amendment may also amend the Declaration to specify that such Improvements, or portions thereof, shall thereafter be the Unit for all purposes under this Declaration. In that case the amendment must specify the boundaries of the reconfigured Unit (which may not exceed the boundaries of the Unit as originally configured when this Declaration was first made), and all portions of the original Unit not included within such boundaries shall be deemed a Common Element of the Condominium and a Limited Common Element appurtenant only to that Unit. No such amendment shall change the Common Interest appurtenant to the Unit or its rights or obligations under this Declaration. Such an amendment may be executed and recorded by the Unit Owner without joinder by the Association or any other Unit Owner.

16.5 **Cooperation & Limited Power of Attorney.** If and to the extent that the legal or regulatory requirements for Permit issuance or the exercise of any other right set forth in this Section 16 require the joinder, consent or other action of another Owner (a "**Cooperating Owner**"), that Cooperating Owner shall upon written request promptly take the required action at no charge to the Owner seeking the Permit or other action. However, the Cooperating Owner shall not under any circumstances be required to pay any amount, to incur any material expense or liability, to change, restrict, surrender, limit, or otherwise impair the use of its Unit of Improvements thereon, or to dedicate or convey its Unit or any portions thereof or interests therein to any governmental authority or other Person, and if the Cooperating Owner reasonably determines that any such impact on the Cooperating Owner is threatened or likely it may suspend or terminate its cooperation unless and until the Applicant Owner provides reasonable assurance that the impact will not occur or that the Applicant Owner will bear the full cost and burden of it. The Applicant Owner shall indemnify, defend (with counsel acceptable to the Cooperating Owner) and hold the Cooperating Owner harmless from and against any cost, liability, claims or actions incurred or asserted in connection with its cooperation in the Applicant Owner's permitting process. The Applicant Owner shall also reimburse the Cooperating Owner for any costs including reasonable legal fees it incurs in providing cooperation requested by the Applicant Owner.

Each Owner hereby appoints the other Owner as its attorney-in-fact with full power of substitution, to take such actions as the Cooperating Owner is required to take under this Section, which grant of such power, being coupled with an interest, is irrevocable, and shall not be affected by the disability of such party or parties, and which grant of such power shall be binding upon any assignee of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any such assignee or successor-in-interest upon any transfer of any Unit or any interest in it, whether by deed, mortgage, lease, agreement of sale, or any other instrument of conveyance. Notwithstanding the foregoing, the Applicant Owner may not exercise this power of attorney unless it has first requested in writing that the Cooperating Owner take the action required under this Section and the Cooperating Owner has failed or refused to do so within fourteen (14)

days of the date of the request. Further, this power of attorney may not be used to bind the Cooperating Owner or its Unit to any obligation, expense, or liability which the Cooperating Owner is not required to incur under this Section. Any Owner exercising this power of attorney shall indemnify, defend and hold harmless the appointing Owner from all claims, liabilities and expenses resulting from exercise of this power of attorney.

17. **Amendment of Declaration.**

17.1 **General.** Except as otherwise provided herein or in the Act, this Declaration may be amended by affirmative vote of Owners of Units to which at least sixty-seven percent (67%) of the Common Interest is appurtenant. Notwithstanding the foregoing: (i) the vote or written consent of the Owners of Units to which are appurtenant not less than sixty-seven percent (67%) of the Common Interest, and (ii) Fifty-One Percent (51%) Eligible Mortgage Holders' Consent shall be required to make any amendment to this Declaration that is of a material adverse nature to mortgagees. The failure of an Eligible Mortgage Holder to respond within sixty (60) days of mailing of a written request for such consent that is mailed, postage prepaid, registered or certified mail, return receipt requested, to the last known address of such mortgagee, shall be deemed to constitute a consent. Notwithstanding the foregoing and notwithstanding the sale of any of the Units, the Developer acting alone may amend this Declaration to: (i) file the "as built" verified statement, required by Section 514B-34(a) of the Act, of a licensed architect, engineer or surveyor certifying that the Condominium Map theretofore filed, as amended by the revised pages (if any) filed with the amendment, fully and accurately depicts the layout, location, boundaries, dimensions and Unit numbers of the Units substantially as built; and (ii) exercise the rights reserved to the Developer in Article 18 or elsewhere in this Declaration. Further, no amendment affecting Developer's rights and reservations under this Declaration shall be effective without Developer's consent. Any amendment to this Declaration shall be effective only upon the Recording in the Record Office of an instrument setting out the amendment. That instrument shall state the vote, written consent or right hereunder by which the amendment is made, and shall be duly executed by the Unit Owners, or by the proper officers of the Association if it has been incorporated.

17.2 **Unit Owners' Rights to Amend.** In addition to amendments under **Section 17.1** each Unit Owner shall have the right to amend this Declaration (and, when applicable, the Condominium Map) and record that amendment in the Record Office, without the approval, consent or joinder of any Persons then owning or leasing any Unit, or any other Person, to make such amendments necessary or appropriate to reflect such alterations to the Unit which the Unit Owner is permitted to make in accordance with **Section 16**, including filing the "as-built" amendment to the Condominium Map for the Improvements the Owner makes. If necessary the amending Unit Owner may use the power of attorney provided in **Section 16.5** in order to effect the amendment.

17.3 **Developer's Rights to Amend.** No matter what else this Declaration says, Developer shall have the right (but not the obligation) to amend this Declaration (and the Condominium Map and Bylaws, if appropriate) without the consent or joinder of any Unit owner, lienholder or other person or entity, for the purpose of meeting any requirement imposed by (i) any applicable law, or (ii) any governmental or quasi-governmental agency, (iii) for the purpose of meeting any requirement imposed by any title insurance company issuing a title insurance policy on the Condominium or any of the Units, or (iv) as necessary to implement Developer's exercise of the

reserved rights set forth in Section 18. However, except as provided in **Section 16.4**, no amendment may be made which would change the size; configuration; Common Interest; permitted uses; Limited Common Elements; substantive rights, obligations or covenants; or appurtenant easements of a Unit for which a Unit Deed has been recorded without the consent of the Owner of the Unit.

18. **Developer's Reserved Rights.**

18.1 **Grant of Easements.** Developer reserves the right from time to time to designate and grant or accept any and all easements for access, electrical, gas, telephone, cable television, communications and other utility purposes, easements for sanitary sewer, drainage and drainline, waterline, irrigation and flowage purposes, and easements for all other purposes over, under, across, along, upon and through the Land, and to take such actions (which shall include the execution, acknowledgment, delivery and filing of any instruments) as Developer considers necessary or desirable in connection with the same, including the obtaining of all necessary governmental approvals of subdivision maps; petitioning the Land Court to designate such easements; and recording surveyor's certifications of metes and bounds descriptions. Developer also reserves the right to grant to, create and/or accept on behalf of the Association or individual Units easements and rights of way in favor of the Land, the Project or any Unit for any such purposes over parcels adjoining or near the Land as Developer deems necessary or appropriate for the development or use of the Project. All such easements and rights of way may be in favor of one or more Unit Owners, the Association, Developer, any governmental entity, any public or private utility company, any owner of lands adjacent to or near the Land or any interest therein, or any other person or entity, and may be on such terms and conditions as the Developer may determine in Developer's reasonable discretion, provided that such easements, their use, relocation, realignment, or cancellation shall not materially impair or interfere with the use of any Unit.

18.2 **Changes to Units and Common Elements.** Notwithstanding anything herein to the contrary, Developer reserves the right to amend this Declaration, the Bylaws, the Condominium Map and related condominium documents at any time to reflect the location and configuration of the Common Element Improvements as-built, to change the layout, configuration, boundaries and permitted uses of any Units, to consolidate adjoining units, to change the Improvement setbacks and height limits applicable to Units, or to change the layout, configuration and boundaries of the Common Elements. This right includes the power to convert portions of a Unit into Common Elements or Limited Common Elements, and to convert Common Elements or Limited Common Elements into Units or portions of Units. This right also includes the right to designate shared driveways between Units B and C, Units D and E and Units F and G, which may be Common Elements, Limited Common Elements or easements. Prior to the recording of a Unit Deed for the affected Unit, Developer may execute and record each such amendment unilaterally and without requiring the consent or joinder of any person; after the recording of a Unit Deed for the affected Unit the Developer may execute and record each such amendment provided that the Owner of the Unit and the Owner's mortgagee consent in writing.

18.3 **Subdivision, Withdrawal of Portions of the Land, and Annexation of Additional Land.** Developer shall have the reserved right to subdivide, consolidate, and resubdivide the Land, to add additional land to the Land (including without limitation Lot 7 of Land Court Application 1032), and to amend the Declaration and Condominium Map to withdraw portions of the Land from

the Condominium (including, without limitation, the entirety of the Land comprising Unit A), and to convey said withdrawn areas to a third party as it deems appropriate free and clear of this Declaration and the Bylaws. In connection with such right, Developer shall have the further reserved right to enter and go upon the Land to do all things necessary or proper to effectuate such subdivision and withdrawal and conveyance, including, without limitation, making surveys to undertake a reasonable realignment of boundaries of the Land to define the areas to be withdrawn, filing and recording any necessary file plan or subdivision map and related subdivision documentation and to facilitate the granting, reserving, adding, deleting, receiving, realigning, and/or relocating of easements and/or rights of way as described in Section 18.1; and provided further that Developer specifically reserves the right, whether or not in connection with its right to subdivide, withdraw and convey hereunder, to grant easements for access, driveway, parking and other purposes over the Condominium in favor of the withdrawn portion(s) of the Property, if any, in the event the same shall be withdrawn from the operation of this Declaration. Upon the exercise of said reserved rights, Developer shall at its expense and without being required to obtain the consent or joinder of any Unit Owner or lien holder, execute and Record in the Recording Office any instruments necessary to effectuate such exercise, including grants of easements or amendments to the Declaration or Condominium Map: (i) describing the withdrawn or added land and any improvements thereon; (ii) describing the realigned boundaries of the Land; (iii) where applicable and appropriate, granting, reserving or relocating easements over, under and on the Common Elements, as permitted above; and (iv) in case of withdrawal of Unit A from the Project, reallocating its appurtenant two percent Common Interest to any Unit then owned by Developer or, absent any such Unit, to Unit H.

18.4 Required Amendments. Developer reserves the right to make, at any time prior to the recordation of a Unit Deed for the last Unit in the Project (including Units that may be added pursuant to Article 17), amendments to the Declaration, the Bylaws, or the Condominium Map that are required by law, by the Real Estate Commission, by a title insurance company, by a mortgage lender, by any governmental agency, or to conform this Declaration to amendments to the Act or any other statute, ordinance, rule or regulation enacted by any governmental authority, or to implement the rights of Developer under this Declaration, provided that such amendments shall not substantially change the size, configuration or permitted use of any Unit for which a Unit Deed has been recorded without the consent of the Owner of such Unit.

18.5 Reserved Right to Enter Into Development Agreements and Encumbrances. Developer reserves the right to apply for and secure any such permits or governmental approvals as Developer deems necessary or desirable to develop the Project, and to create or agree to such recorded restrictions, covenants, and agreements as may be required in connection with such permits and approvals, including without limitation unilateral agreements and joint development agreements, provided that such restrictions, covenants and agreements shall not substantially prohibit the use of the Units for the principal uses permitted under this Declaration without the consent of the Owner of the affected Unit.

18.6 Expansion of the Project to Include Additional Unit. Developer shall have the reserved right to reduce or increase the Units in the Project. In exercising this reserved right, Developer may elect, without limitation, to annex as a Unit the land currently identified as Lot 7 of Land Court Application 1032, or portions thereof. In connection with the exercise of this reserved

right, the Developer may create, modify or eliminate Units, provided that no Unit for which a Unit Deed has been recorded shall be modified or eliminated without the consent of the Unit's Owner.

18.6.1 Exercise of Reserved Right. The expansion of the size of the Project shall take effect upon the Recording in the Record Office of:

(a) An amendment to this Declaration (or an amendment and restatement thereof) confirming the Developer's election to increase the size of the Project and setting forth: (i) the description of each additional Unit and the uses, if any, to which they are restricted, (ii) the undivided percentage Common Interest appurtenant to each Unit (including the revised Common Interest appurtenant to the Units existing prior to such amendment), (iv) a description of any additional Common Elements, (v) a description of any additional or newly designated Limited Common Elements, if any, stating to which Units their use is reserved, (vi) any easements relevant to the new Units not already provided for in this Declaration, (vii) such amendments to the various definitions set forth in this Declaration as Developer determines are necessary or desirable to effect the modification or increase of the size of the Project, and (viii) such other matters as the Developer deems necessary or appropriate or as are required by law to effect the modification or increase of the size of the Project and/or the operation of the Project. If one or more Units are added to the Project, the Common Interest appurtenant to each Unit in the expanded Project shall be calculated as follows: (1) Unit A's Common Interest shall not change; (2) the aggregate 98% Common Interest appurtenant to Units B through H shall be divided in equal shares among those Units and the new Unit(s) added to the Project, with any odd amount assigned to the new Unit(s). For example, if all or part of Lots 7 of Land Court Application 1032 is made a Unit in the Project, that Unit and Units B through H shall each be assigned a Common Interest of 12.25% (i.e., 98% divided by 8 Units).

(b) An amendment to the Condominium Map showing a composite site plan for the Project including such additional or amended floor plans and elevations as may be necessary or appropriate, together with the verified statement of a licensed architect, surveyor or engineer as required by the Act.

(c) Any such other documents or instruments, including amendments to the Bylaws (or an amendment and restatement thereof) or any permits or development agreements that Developer determines are necessary, desirable or required by law to effect the modification or increase of the size of the Project.

18.6.2 Rights Incident to Exercise of this Reserved Right. Subject to the provisions above and in furtherance of the rights reserved to Developer hereunder, Developer, its successors and assigns, and their respective contractors and subcontractors, and their respective employees and agents, shall have the right and an easement to enter upon and use the Common Elements of the Project and do all things reasonably necessary, desirable or useful for developing such additional Units and any improvements therein connecting the same to the utility installations of the Project, and selling the Units, upon and subject to the following terms and conditions:

(a) Developer shall have the right, without notice to, or the approval, consent or joinder of, the Association, any Owner, or any other person, to add, delete, relocate, realign, reserve and grant all easements and rights-of-way and to otherwise make alterations in and

use the Common Elements for such development and construction, and to designate Limited Common Elements over, under and on the Common Elements, necessary or desirable with respect to the annexation or development of additional Units, including but not limited to easements and rights-of-way for utilities, sanitary and storm sewers, refuse disposal, driveways, parking areas and roadways; provided, that such easements, rights-of-way and limited common elements, upon completion, shall not unreasonably and materially impair the use of any existing Unit;

(b) Every Unit owner and all holders of liens affecting any of the Units in the Project and each and every other party acquiring an interest in the Project or any part thereof, by acquiring such Unit, lien or other interest, consents to and agrees that he/she/it shall, if required by law or by Developer, join in, consent to and execute all instruments and documents necessary or desirable to effect the granting of easements and/or rights-of-ways and/or covenants or restrictions affecting the Common Elements or Limited Common Elements and/or the designation of Limited Common Elements or recharacterization of Common Elements provided for hereinabove; and appoints the Developer and its assigns as attorney-in-fact with full power of substitution to execute such documents and to do such things on his/her/its behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights and shall not be affected by disability of any such party.

(c) The Developer, its contractors and subcontractors, and their respective employees and agents, shall not cause any interruption in utility service other than a temporary interruption in the service of utilities to the Project and shall use reasonable efforts without additional cost to the Developer and consistent with maintaining the progress of the design, development, construction, completion and sale, to minimize interference with the Unit owners' use and enjoyment of the Project.

18.6.3 Effect of Exercise of This Reserved Right. Developer is under no obligation to develop any additional Units or otherwise expand the size of the Project. However, if Developer should, in its sole discretion, elect to develop any Units and expand the size of the Project, upon the recording of the necessary amendments or other documents as hereinabove provided, the following consequences shall result:

(a) This Declaration, the Bylaws, the Condominium Map, and the Administrative Rules, as any of them may be amended from time to time, shall be the Declaration, Bylaws, Condominium Map and Administrative Rules applicable to the expanded or modified Project.

(b) Except as otherwise provided in the Declaration amendment implementing the expansion of the Project, the Developer shall for all purposes be deemed the owner of the newly created Units and the undivided percentage interest and other rights and easements appurtenant to such Units from the effective date of the recordation of the necessary amendments or other documents as hereinabove provided.

(c) All Owners of newly created Units shall have the right to use the Common Elements of all of the Project (but not Limited Common Elements not appurtenant to those Units) to the same extent and subject to the same limitations as are imposed upon all Owners

of the initial Units in the Project, except as otherwise provided in the recorded documents creating such Units.

(d) Each Unit added to the Project shall have appurtenant thereto an undivided Common Interest in the Common Elements of the expanded Project. Each Unit's undivided percentage Common Interest shall constitute such Unit's proportionate interest in the common profits and common expenses of the expanded Project and such Unit's proportionate representation for all other purposes, including voting in the Project; provided, however, that newly added Units shall not be assessed for Common Expenses nor shall they have any obligation with respect to debts or obligations incurred prior to the creation of the Unit.

(e) There shall be only one Association, one Board and one Managing Agent for the entire Project. If the Association has already held its initial meeting at that time, then notwithstanding any provision in any document, no later than one hundred eighty (180) days following the recording of a Unit Deed for a newly added Unit, a special meeting of the Association of owners of the expanded Project shall be held to elect a new Board of Directors to replace the existing Board of Directors. The procedure for calling and holding such meeting as well as the number of Directors to be elected shall be as provided in the Bylaws.

18.7 Amendment to Recorded Documents. The Developer reserves the right to amend, modify, supplement, cancel, terminate or release (in whole or in part) any easements, restrictions, covenants, agreements or other documents or instruments recorded on title to the Real Property, on such terms and conditions as the Developer may determine in Developer's reasonable discretion.

18.8 Special Power of Attorney to Exercise Developer's Rights. Each and every party acquiring an interest in the Condominium, any Unit or the Land by such acquisition consents to the rights reserved by Developer under this **Section 18** and elsewhere in this Declaration and:

18.8.1 acknowledges and agrees that the activities in connection with the Subdivision may result in noise and nuisances and consents to such activity by Developer and its assigns;

18.8.2 consents to the actions contemplated by this **Section 18** including to the granting or reception of easements and rights-of-way provided in this **Section 18**, and to every other act taken by or right reserved to Developer under this **Section 18** and elsewhere in this Declaration;

18.8.3 agrees to execute, deliver and record such documents and instruments and to do such other things as may be necessary or convenient in the reasonable opinion of Developer to effect the same, including any subdivision, consolidation or permit applications, any amendments of this Declaration or the Condominium Map, and any grant of easements or amendments to them; and appoints Developer and its assigns as its attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and to do such things on its behalf, which grant of such power, being coupled with an interest, is irrevocable, and shall not be affected by the disability of such party or parties, and which grant of such power shall be binding upon any assignee of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any such assignee or successor-in-interest upon any transfer of any Unit or any

interest in it or lien over it, whether by deed, mortgage, lease, agreement of sale, or any other instrument of conveyance;

18.8.4 consents to the recording in the Record Office of any and all documents that in the reasonable opinion of Developer are necessary or useful to effect Developer's reserved rights, including any easements and any amendments of this Declaration, Condominium Map or any Unit Deed; and

18.8.5 further waives, releases and discharges any rights, claims or actions that such party may acquire against Developer, any of its affiliates, or any of employees and lenders, and their respective successors and assigns as a result of any such activity or activities.

18.9 Assignment of Developer's Rights. The rights reserved to Developer in this Declaration shall be fully assignable by Developer to any person, and Developer may assign or mortgage or grant a security interest in whole or in part in any rights reserved to Developer in this Declaration by a recorded instrument specifically assigning or mortgaging or granting a security interest in such rights, but such rights shall be held by only one person or entity at any time. Every Owner of a Unit in the Condominium and all holders of liens affecting any of the Units and each and every other party acquiring an interest in the Condominium or in the Land or any part of it, by acquiring such Unit, lien or other interest, consents to any such assignment by Developer, and, to the extent designated by Developer, agrees to recognize any assignee as the "Developer" under this Declaration.

18.10 Developer's Rights as Owner. Developer's reserved rights under this Section 18 are without limitation to the rights Developer has as an Owner under Section 16 with respect to any Units that Developer Owns. To the extent Developer has any such rights under Section 16 they shall be deemed reserved rights of the Developer for purposes of Section 18.3 and Section 514B-87, Hawaii Revised Statutes.

19. Dispute Resolution. The following provisions shall apply in the event that a dispute arises out of this Declaration or regarding the Condominium.

19.1 Notice. The parties agree to have any dispute arising out of this Declaration or regarding the Condominium decided under binding arbitration as provided by Hawaii law and in this **Section 19**, and are giving up any rights they might possess to have the dispute litigated in court. If any party refuses to submit to arbitration after agreeing to this provision, the refusing party may be compelled to arbitrate under the authority of the Hawaii statutes.

19.2 Arbitration of Disputes, Controversies and Claims. Except as provided in this **Section 19** or elsewhere in this Declaration, any dispute, controversy or claim arising out of or relating to this Declaration, including, but not limited to, any dispute regarding whether such disputes, controversies, or claims are subject to arbitration, and any action sounding in tort or breach of any duty or obligation shall be resolved by arbitration conducted only in the manner set forth in this **Section 19**.

19.3 Selection of Arbitrator(s).

19.3.1 At any time that a matter which is to be resolved by arbitration pursuant to this **Section 19** is unresolved, any party may appoint an arbitrator, who need not be a disinterested person but who shall have at least five (5) years of experience in the subject matter of the arbitration, and give written notice to any other party of such appointment. Within twenty (20) days after receipt of such notice, the other party shall either agree that the arbitrator thus appointed shall be the sole arbitrator of the dispute or shall appoint a second arbitrator, who need not be a disinterested person but who shall have at least five (5) years of experience in the subject matter of the arbitration, and give written notice of such appointment to the original party. The two arbitrators (if appointed) shall appoint a third arbitrator and give written notice thereof to both parties. If there are more than two parties to the arbitration, and the parties fail to agree upon the arbitrators within twenty (20) days after one party gives notice to the others of its selection of an arbitrator, then any party shall have the right to request any judge of the First Circuit Court of the State of Hawaii to make such selection, as provided in Chapter 658A, Hawaii Revised Statutes, as amended, or any successor statute ("**Chapter 658A**").

19.3.2 The third arbitrator shall be a disinterested person who has at least five (5) years of experience in matters pertaining to the matter sought to be arbitrated. No person may be selected as the third arbitrator if that person represented or was employed by any party to the arbitration or any other person involved in the dispute within the 5-year period prior to such selection.

19.3.3 If a party fails to appoint its arbitrator as provided in this **Section 19**, the first arbitrator selected shall proceed alone to determine the dispute in the manner herein provided. If, within twenty (20) days after appointment of the second arbitrator, the two arbitrators appointed by the parties shall fail to appoint a third arbitrator, the two arbitrators shall give the parties written notice of such failure, and if the parties fail to agree upon the selection of a third arbitrator within ten (10) days after receipt of such notice, then either party shall have the right to request any judge of the First Circuit Court of the First Circuit of the State of Hawaii to make such selection as provided in Chapter 658A.

19.3.4 In the event of the failure, refusal or inability of any arbitrator to act, a new arbitrator shall be appointed in his or her stead, which appointment shall be made in the same manner as hereinbefore provided for the appointment of the arbitrator so failing, refusing or unable to act.

19.4 **Time for Hearing.** The arbitrator or arbitrators so appointed shall promptly fix a time and place in Honolulu, Hawaii, for hearing the dispute to be arbitrated. Unless the parties mutually agree otherwise, the time for the hearing shall be no later than sixty (60) days after the appointment of the final arbitrator, subject to any extensions granted by a majority of the arbitrators for good cause; provided, however, that any extension which would set the hearing more than six (6) months from the date that the final arbitrator is appointed must be consented to in writing by both parties. The arbitrators shall give both parties written notice of the time and place for the hearing at least fifteen (15) days prior to the date so fixed.

19.5 Arbitration Process.

19.5.1 The arbitration shall be conducted in accordance with Chapter 658A, and the arbitrator(s) shall have all the powers and duties prescribed by Chapter 658A. Judgment may be entered upon such decision and award as provided in Chapter 658A.

19.5.2 The arbitrators shall conduct the hearing and determine the matter in accordance with the Commercial Rules and under the auspices of Dispute Prevention & Resolution, Inc., Honolulu, Hawaii 96813 ("**DPR**"); provided, however, that if DPR shall not be in business, arbitration shall be conducted in accordance with the Commercial Rules and under the auspices of the American Arbitration Association, if it then maintains an office in Honolulu, or such other organization that maintains an office in Honolulu, as the parties may agree on; and provided, further, that if there is any conflict or inconsistency between the terms of this **Section 19** and said Commercial Rules, this **Section 19** shall govern.

19.5.3 The parties shall each be entitled to present evidence and argument to the arbitrators and to be represented by counsel. Other than the production of documents, the parties must agree, in their sole discretion, to further discovery.

19.5.4 No matter what else this **Section 19** says the arbitrators shall have the right only to interpret and apply the terms, covenants, agreements, provisions, conditions or limitations of this Declaration, and may not change any such terms, covenants, agreements, provisions, conditions or limitations or deprive any party to this Declaration of any right or remedy expressly or impliedly provided in this Declaration.

19.5.5 The arbitration award shall be in writing and shall be acknowledged or approved by a majority of the arbitrators in like manner as a deed for the conveyance of real estate and delivered to one of the parties. A copy of the arbitration award shall be delivered to the other party. The written determination shall include findings of fact and conclusions of law. The determination of a majority of the arbitrators shall determine the question arbitrated, or any other matters to be decided by the arbitrators, and such determination shall be final, binding and conclusive upon the parties.

19.5.6 Unless the parties mutually agree in writing otherwise, if two of the three arbitrators shall fail to reach an agreement and the determination of the matter in question within thirty (30) days after the final hearing on the matter, or within then (10) days shall fail to reach an agreement and the determination of any other matters to be decided by the arbitrators, upon written demand of either party to the other, the matter shall be decided by three (3) new arbitrators, who shall be appointed and shall proceed in the manner set forth in this **Section 19**, and the process shall be repeated until a decision is finally reached by two of the three arbitrators selected.

19.6 **Modification of Time Schedule.** The parties may mutually agree in writing to modify the time schedule set forth above.

19.7 **Costs of Arbitration.** Each party shall be responsible for the fees of the arbitrator it appointed, and the costs and fees of its counsel and experts. The parties shall equally share the fees of the third arbitrator and all other costs and expenses of the arbitration proceedings.

Notwithstanding the foregoing, the arbitration award shall include an award of all proper costs and expenses of such arbitration including, without limitation, costs, witness fees, attorney's fees and the fees of the arbitrators to the substantially prevailing party.

19.8 **Provisional Remedies.** No provision of this **Section 19** limits the rights of any party to exercise self-help remedies legally available or to obtain provisional or ancillary remedies from a court of competent jurisdiction before, after or during the pendency of any arbitration or other proceeding. The exercise of such a remedy does not waive the right of either party to resort to arbitration and shall not constitute a default in proceeding with arbitration.

20. **Mortgagee Protections.** Eligible Mortgage Holders, insurers or guarantors of the mortgage on any Unit shall have the right to timely written notice of (a) any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit covered by its mortgage; (b) any 60-day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds a mortgage; (c) a lapse, cancellation or material modification of any insurance policy maintained by the Association; and (d) any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders; provided, however, that such notice shall only be required if the mortgage holder, insurer or guarantor sends a written request for this information to the Association, stating both its name and address and the unit number or address of the unit on which it has (or insures or guarantees) a mortgage.

21. **Conflicts; Changes in Law.** In the event of any conflict or inconsistency between the provisions of the Act and this Declaration, and in the event that the Unit Owners have no power under the Act to opt out of such provisions, the provisions of the Act shall prevail. In the event any change in the Act shall result in a conflict or inconsistency between the provisions of the Act and this Declaration, the provisions of the Act shall prevail only to the extent required by law. If a change in the Act provides that "except as provided in the Declaration" or similar words a provision of the Act shall apply, then this Declaration shall be deemed to contain such an exception.

22. **Binding Effect.** The terms of this Declaration and all easements granted under this Declaration shall constitute covenants and equitable servitudes running with the Land and the Units, shall be binding upon and inure to the benefit of the Developer, the Owners of any Unit and their respective successors and assigns.

23. **Mortgage Subordination.** Any Mortgage affecting any portion of the Condominium shall at all times be subject and subordinate to the terms of this Declaration, regardless of the order of recording, and any party foreclosing any such Mortgage or acquiring title by deed in lieu of foreclosure or trustee sale shall acquire title subject to all of the terms and provisions of this Declaration. This provision shall not however invalidate any provision in a Mortgage requiring the mortgagor to obtain the consent of the mortgagee to any action that can be taken by the mortgagor acting alone under this Declaration. For example, as between the mortgagor or the mortgagee the mortgagor may have an obligation to obtain the mortgagee's consent before constructing Improvements on the Unit.

24. **Allocations in the Event of Condemnation or Termination.** No matter what else this Declaration says, and notwithstanding the Units' respective Common Interests in the Condominium, if all or any portion of a Unit, any Improvements within a Unit, or any land area that is a Limited

Common Element appurtenant only to that Unit is taken or condemned by any authority or conveyed under threat of condemnation, all compensation and damages payable for or on account of the Unit, Improvements or Limited Common Element shall be payable to the Owner of the Unit. In the event the Condominium is terminated by operation of law and the Land is sold, then notwithstanding the Common Interest appurtenant to each Unit the proceeds of such sale shall be allocated between the Unit Owners based on the proportionate value of the land area included within their respective Units (or designated as Limited Common Elements appurtenant only to their Units) and any Improvements thereon.

25. **Unpaid Sums.** Interest on any sums due but unpaid shall bear interest at the rate of one percent (1%) per month from the date due until the date paid.

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

27. **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 which may occur.

28. **Captions.** The captions in this Declaration 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 the intent of any of its provisions.

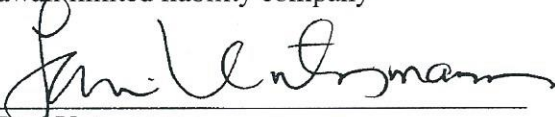
29. **Compliance with Zoning and Building Ordinances and Codes.** The Developer declares subject to the penalties set forth in Section 514B-69 of Act that this Condominium conforms to the existing underlying county zoning for the Condominium, zoning and building ordinances and codes and all applicable permitting requirements adopted by the county in which the Condominium is located, all in accordance with Sections 514B-5 and 32(a)(13) of the Act.

[Signature Page Follows]


The Developer has signed this Declaration as of the date in the introductory paragraph.

L&K INVESTMENTS, LLC,
a Hawaii limited liability company

By


Lori Untermann
Its Member

By


Kent Untermann
Its Member

"Developer"

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

On this 24 day of November, 2015, before me personally appeared Lori Untermann, 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.



(Official Stamp or Seal)

Lai Kin Kwong

Notary Public, State of Hawaii

Printed Name: Lai Kin Kwong

My commission expires: 4-6-2018

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Declaration of Condominium
Property Regime of Wakea Kai

Doc. Date: _____ or Undated at time of notarization.

No. of Pages: 29

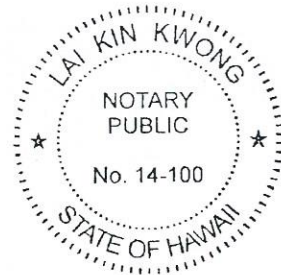
Jurisdiction: First Circuit
(in which notarial act is performed)

Lai Kin Kwong
Signature of Notary

11/24/15

Date of Notarization and
Certification Statement

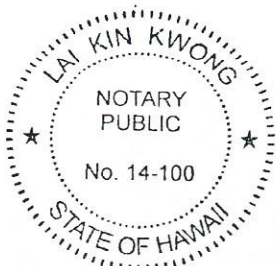
Lai Kin Kwong
Printed Name of Notary



(Official Stamp or Seal)

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

On this .24 day of November, 2015, before me personally appeared Kent Untermann, 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.



(Official Stamp or Seal)

Lai Kin Kwong
Notary Public, State of Hawaii
Printed Name: Lai Kin Kwong
My commission expires: 4-6-2018

NOTARY CERTIFICATION STATEMENT

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Lai Kin Kwong
Signature of Notary

11/24/15
Date of Notarization and
Certification Statement

Lai Kin Kwong
Printed Name of Notary



(Official Stamp or Seal)

EXHIBIT A

Land Description

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

LOT 2, area 126,663 square feet, more or less, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 134 of Marie Byrne Jennings.

Being land(s) described in **Transfer Certificate of Title No. 735,144** issued to L & K INVESTMENTS, LLC, a Hawaii limited liability company, and being the land conveyed to L & K Investments, LLC, a Hawaii limited liability company by Warranty Deed dated February 8, 2005, and recorded in said Office as Land Court Document No. 3230837.

Together with an easement for access to Kiai Place and for underground utilities over a portion of Lot 7 of Land Court Application 1032 as set forth in Declaration of Covenants, Conditions, Restrictions and Easements (5084) Kiai Place) dated January 25, 2007, and Recorded in the Record Office as Land Court Document No. 3949663.

EXHIBIT B

Legal Description of Unit Perimeter Boundaries

UNIT A

Beginning at the Southwesterly corner of this Unit, the Northerly side of Keikilani Street and the Southeasterly corner of Lot 84, the coordinates of said point of beginning referred to Government Survey Triangulation Station KOKOHEAD being 5,564.27 feet North and 18,604.58 feet West and measured clockwise from TRUE North:

1. 165° 37' 45" 120.00 feet;
2. 255° 37' 45" 60.97 feet;
3. 345° 37' 45" 120.00 feet;
4. 75° 39' 00" 60.97 feet to the point of beginning and containing an area of 7,317 square feet, more or less.

UNIT B

Beginning at the Southwesterly corner of this Unit, the Southeasterly side of Unit C and the Northerly side of Lot 84, the coordinates of said point of beginning REFERRED TO Government Survey Triangulation Station KOKOHEAD being 5,668.10 feet North and 18,682.80 feet West and measured clockwise from TRUE North:

1. 165° 38' 00" 79.18 feet;
2. Thence on a curve to the right with a radius of 278 feet the azimuth and distance being:
251° 36' 04" 51.09 feet;
3. Thence on a curve to the right with a radius of 40.00 feet the azimuth and distance being:
316° 22' 38" 40.92 feet;
4. 255° 38' 00" 28.00 feet;
5. Thence on a curve to the right with a radius of 28.00 feet the azimuth and distance being:
188° 49' 34" 30.46 feet;
6. 345° 37' 45" 75.07 feet;
7. 75° 37' 45" 110.97 feet to the point of beginning and containing an area of 8,101 square feet, more or less.

UNIT C

Beginning at the Southwesterly corner of this Unit, the Northerly property line of Lot 81 and the Easterly property line of Lot 7 the coordinate of said point of beginning referred to Government Triangulation Station KOKOHEAD being 5,623.63 feet North and 18,856.37 feet West and measured clockwise from TRUE North:

1. 173° 38' 00" 22.02 feet;
2. Thence on a curve to the left with a radius of 102 feet the azimuth and distance being:
242° 43' 45" 70.89 feet;
3. Thence on a curve to the right with a radius of 278 feet the azimuth and distance being:
234° 24' 33" 114.80 feet;
4. 345° 38' 00" 79.18 feet;
5. 75° 37' 45" 179.18 feet to the point of beginning and containing an area of 8,587 square feet, more or less.

UNIT D

Beginning at the Southwesterly corner of this Unit, the Westerly property line of Lot 7 and the Northerly side of the Common Element the coordinates of said point of beginning referred to Government Triangulation Station KOKOHEAD being 5,665.49 feet North and 18,861.04 feet West and measured clockwise from TRUE North:

1. 173° 38' 00" 193.90 feet;
2. 251° 19' 00" 55.25 feet;
3. 34° 38' 00" 168.25 feet;
4. Thence on a curve to the left with a radius of 298 feet the azimuth and distance being:
45° 54' 32" 30.71 feet;
5. Thence on a curve to the right with a radius of 82 feet the azimuth and distance being:
62° 43' 45" 56.84 feet to the point of beginning and containing an area of 12,587 square feet, more or less.

UNIT E

Beginning at the Southwest corner of this unit, the Southwest corner of Unit D and on the North side of the "Common Element" the coordinates of said point of beginning referred to Government Survey Triangulation Station KOKOHEAD being 5,712.91 feet North and 18,788.46 feet West and measured clockwise from TRUE North:

1. 165° 38' 00" 168.25 feet;
2. 251° 19' 00" 68.50 feet;
3. 345° 38' 00" 148.30 feet;
4. Thence on a curve to the left with a radius of 298 feet the azimuth and distance being:
55° 27' 08" 72.77 feet to the point of beginning and
containing an area of 10,625 square feet, more or
less.

UNIT F

Beginning at the Southwest corner of this unit, the Southeast corner of Unit E and the North side of the "Common Element" the coordinates of said point of beginning referred to Government Survey Triangulation Station KOKOHEAD 5,754.18 feet North and 18,728.52 feet West and measured clockwise from TRUE North:

1. 165° 38' 00" 148.30 feet;
2. 251° 19' 00" 68.50 feet;
3. 3145° 38' 00" 145.44 feet;
4. Thence on a curve to the left with a radius of 298 feet the azimuth and distance being:
68° 56' 24" 68.77 feet to the point of beginning and
containing an area of 9,728 square feet, more or
less.

UNIT G

Beginning at the Southwest corner of this Unit, the Southeast corner of Unit F and the North side of the "Common Element" the coordinates of said point of beginning referred to Government Survey Triangulation Station KOKOHEAD being 5,783.09 feet North and 18,665.41 feet West and measured clockwise from TRUE North:

1. 165° 38' 00" 141.11 feet;
2. 251° 19' 00" 5.58 feet;

- | | | | | | |
|----|------|-----|-----|--------|--|
| 3. | 243° | 00' | 00" | 66.30 | feet; |
| 4. | 345° | 38' | 00" | 156.03 | feet; |
| 5. | 75° | 38' | 00" | 70.26 | feet to the point of beginning and containing an area of 10,402 square feet, more or less. |

UNIT H

Beginning at the Southeast corner of this Unit, the East boundary of Lot 1 the coordinates of said point of beginning referred to Government Survey Triangulation Station KOKOHEAD being 5,829.22 feet north and 18,356.35 feet West and measured clockwise from TRUE North:

- | | | | | | |
|----|------|-----|-----|--------|--|
| 1. | 75° | 38' | 00" | 210.93 | feet; |
| 2. | 165° | 38' | 00" | 32.00 | feet; |
| 3. | 75° | 38' | 00" | 29.65 | feet; |
| 4. | 165° | 38' | 00" | 146.02 | feet; |
| 5. | 243° | 00' | 00" | 246.55 | feet; |
| 6. | 345° | 38' | 00" | 241.95 | feet to the point of beginning and containing an area of 51,871 square feet, more or less. |