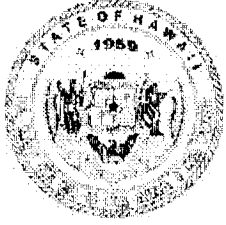


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106 DECL
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STATE OF HAWAII
OFFICE OF THE ASSISTANT REGISTRAR
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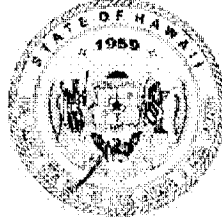
Doc No(s) T - 11447231

on Cert(s) 1174991

Issuance of Cert(s)

Pkg 11768017 VKK

/s/ LESLIE T KOBATA
ASSISTANT REGISTRAR



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

May 5, 2021 8:01 AM

Doc No(s) A - 77950540

Pkg 11768017 OFC

/s/ LESLIE T KOBATA
REGISTRAR

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LAND COURT SYSTEM

me

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL () PICK-UP (X)

TG 202055347-P

Imanaka Asato, LLLC
745 Fort Street, 17th Floor
Honolulu, Hawaii 96813
(808) 521-9500 (CMCF)

DS1

Tax Map Key Nos. (1) 2-3-018: 052-060, 074, 075, and 077
TCT No. 1,174,991

Total Pages: 119

DECLARATION OF CONDOMINIUM PROPERTY REGIME OF
THE PARK ON KE'EAUMOKU

THIS DECLARATION is made this 18th day of March, 2021, by **Keeaumoku Development, LLC**, a Hawaii limited liability company ("**Developer**"), with its principal place of business and post office address at 636 Laumaka Street, Honolulu, Hawaii 96819.

WHEREAS, Developer owns in fee simple the real property identified as TMK Nos. (1) 2-3-018: 052-060, 074, 075, and 077, more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Land**"); and

WHEREAS, there will exist on the Land certain Improvements to be constructed by Developer, which Land and Improvements are depicted on Condominium Map No. 2500 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii ("**Office**") and on Condominium Map No. 6725 recorded at the Bureau of Conveyances of the State of Hawaii ("**Bureau**"), which Condominium Map is incorporated herein by this reference; and

WHEREAS, certain Residential Units in the Project will be initially sold as affordable units and subject to the terms and restrictions more particularly set forth in that certain Interim Planned Development-Transit and Special District Permit No. 2019/SDD-27, as the same may be amended or supplemented ("**Permit**");

NOW, THEREFORE, in order to create a condominium project consisting of the Land and the Improvements, to be known as "**The Park on Ke`eaumoku**" (the "**Project**"), Developer, by this Declaration of Condominium Property Regime of The Park on Ke`eaumoku, referred to hereinafter as the "**Declaration**," does hereby submit the Land and the Improvements and all of its interest therein to a condominium property regime established pursuant to Chapter 514B of the Hawaii Revised Statutes, as amended (the "**Act**"). Developer hereby declares that the Project is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved, subject to the provisions of this Declaration and the Bylaws of the Association of Unit Owners of The Park on Ke`eaumoku (the "**Bylaws**"), filed/recorded concurrently herewith in said Office and at said Bureau, as the provisions of this Declaration and the Bylaws may be amended, from time to time, in accordance with applicable law, and in accordance with the respective provisions of this Declaration and the Bylaws. The provisions of this Declaration and the Bylaws shall constitute covenants running with the land and equitable servitudes and liens thereon, and shall be binding upon and shall inure to the benefit of Developer, the Association, their successors and permitted assigns, and all subsequent owners and lessees of all or any part of the Project and their respective successors, successors in trust, heirs, devisees, personal representatives, executors, administrators, and assigns.

I. USE OF DEFINED TERMS; DEFINED TERMS.

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

B. DEFINED TERMS. As used in this Declaration and the Bylaws, the following terms shall have the following attributed meanings:

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

2. "**ADA**" means the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., as amended, including any and all rules and regulations promulgated thereunder.

3. "**Agreement of Sale**" means an agreement of sale for the sale of a Unit filed in said Office and and/or recorded at said Bureau.

4. "**Alleged Defect**" means a claim, contention, or allegation by a Claimant that any portion of the Project, including, but not limited to, any Unit, is defective, or that Developer or its agents, consultants, contractors, or subcontractors were negligent in the planning, design, engineering, grading, construction, or other development thereof, as further discussed in **Article XLIII** of this Declaration.

5. "**Alternative Allocation**" means an allocation of the Special Costs among or between the Commercial Unit Class and the Residential Unit Class based on a fair and equitable apportionment in accordance with Section 514B-41 of the Act.

6. **"Articles of Incorporation"** means the articles of incorporation of the Association, if any, and shall include any lawful amendments thereto.
7. **"Assessment"** means the amount paid or to be paid to the Association monthly in advance by each Owner based on the budget for Common Expenses, or at any other time pursuant to the provisions of the Project Documents. Assessments also include special assessments, regular assessments, and all other amounts that are assessed by and owed to the Association.
8. **"Association"** means the Association of Unit Owners of The Park on Ke`eaumoku.
9. **"Board"** means the Board of Directors of the Association.
10. **"Building Structure"** means the structural framework of the Parking Structure and Towers, including, without limitation, foundations, floor slabs, columns, girders, beams, supports, and the loadbearing perimeter, partition, and party walls, not otherwise defined as part of a Unit.
11. **"Bureau"** means the Bureau of Conveyances of the State of Hawaii.
12. **"Bylaws"** means the Bylaws of the Association and shall include any lawful amendments thereto.
13. **"Capital Improvements Reserve Fund"** means that fund established by the Board pursuant to Article VI, Section 2 of the Bylaws to provide for specific capital improvements to the Project.
14. **"Capital Upgrades"** means the improvement or restoration of a physical asset that will enhance the value and/or increase the useful life thereof.
15. **"Certificate of Occupancy"** means the temporary certificate of occupancy (or the permanent certificate of occupancy where no temporary certificate of occupancy is issued covering the Unit in question) issued by the County Department of Planning and Permitting building official after inspection and prior to occupancy of a building or structure.
16. **"Claimant"** means the Association, Board, or any Owner or Owners claiming, contending, or alleging an Alleged Defect, as further discussed in **Section XLIII.A** of this Declaration.
17. **"Class Common Expense"** means those costs, expenses, and charges payable by a Unit based upon the Class Common Interest allocated to the Unit or Units within the Unit Class, if any, as more particularly described in this Declaration.
18. **"Class Common Interest"** means the Residential Unit Class Common Interest and Commercial Unit Class Common Interest.
19. **"Commercial Director"** means the Director elected by the Commercial Unit Class pursuant to Article III, Section 3 of the Bylaws. The Commercial Director shall be Developer, or the individual appointed by Developer, until Developer no longer owns any Commercial Units in the Project.
20. **"Commercial Director Consent Rights"** means the consent and approval rights of the Commercial Director set forth herein and in the Bylaws. Any consent and approval rights of the Commercial Director granted in this Declaration and the Bylaws shall automatically terminate when (a) Developer no longer owns any Commercial Units in the Project or (b) the Commercial Director terminates all such consent and approval rights in writing, whichever is first to occur. The termination of

such rights shall not affect the rights of the Commercial Unit Class to elect a Commercial Director to represent other Commercial Unit Class rights and interests as the Commercial Director, as set forth in the Declaration and Bylaws.

21. **"Commercial Limited Common Elements"** means those parts of the Limited Common Elements that are reserved for the exclusive use of all Commercial Unit Owners.

22. **"Commercial Tower"** means the four (4) story building with usable rooftop area designated for commercial purposes and depicted on the Condominium Map. Floors are designated consecutively as levels one (1) to and including four (4), plus a usable rooftop area.

23. **"Commercial Unit"** means any of the Units identified as Commercial Units in **Exhibit "B"** of this Declaration and depicted on the Condominium Map.

24. **"Commercial Unit Class"** means and includes all Commercial Units and their respective Owners.

25. **"Commercial Unit Class Common Interest"** means the percentage share assigned to a Commercial Unit within the Commercial Unit Class set forth in **Exhibit "B"** of this Declaration.

26. **"Commercial Unit Class Expense"** means those Common Expenses that, pursuant to this Declaration or the Bylaws, are assessed against the Commercial Units and are payable by all Commercial Unit Owners based on the Commercial Unit Class Common Interest assigned to the Commercial Unit.

27. **"Commercial Unit Limited Common Elements"** means those parts of the Limited Common Elements that are reserved for the exclusive use of one or more, but less than all, of the Commercial Unit Owners.

28. **"Commercial Unit Owner"** means the Owner of a Commercial Unit; provided, however that any person or legal entity or trust that holds such interest solely as security for the performance of an obligation shall not be a Commercial Unit Owner solely by reason of such interest.

29. **"Commission"** means the Real Estate Commission of the State of Hawaii.

30. **"Common Elements"** means those parts of the Project that are defined in this Declaration as Common Elements, being all areas not designated as a "Unit."

31. **"Common Expenses"** means and includes all charges, costs, and expenses whatsoever incurred by the Association for and in connection with the administration, management, and operation of the Project, including but not limited to: (a) all charges for taxes (except real property taxes and other such taxes that are or may hereafter be assessed separately on each Unit and the Common Interest in the Common Elements appertaining thereto, or the personal property or any other interest of the Owner); (b) the cost of insurance, including property and other casualty and liability insurance maintained by the Association; (c) any liability whatsoever for loss or damage arising out of or in connection with the Project or any fire, accident, or nuisance thereon; (d) a sum for reserve purposes; (e) wages, accounting, and legal fees; (f) management fees and start-up fees; (g) other necessary expenses of the Project; (h) the cost of all utility services, including water, electricity, gas, garbage disposal, telephone, telecommunications, and any other similar services (unless separately metered, assessed, or otherwise separately attributable to each Unit or a group of Units; and (i) the Commercial Unit Class Expenses and Residential Unit Class Expenses. The Common Expenses may also include such amounts

as the Board may deem proper to make up any deficit in the Common Expenses for any prior year. The Common Expenses may also include such amounts as may be required, by special assessment, for the purchase or lease of any Unit by the Association, as permitted under the Act or the Bylaws.

32. **"Common Interest"** means the undivided percentage interest in all Common Elements of the Project set forth in this Declaration and discussed in **Section III.A** of this Declaration and set forth in **Exhibit "B"** of this Declaration, which percentage interest is appurtenant to a Unit. The Common Interest appurtenant to a Unit may not be altered or transferred, except as expressly set forth in this Declaration.

33. **"Community Systems"** means photovoltaic systems and central telecommunication receiving and distribution systems and services (e.g., cable television, high speed data/internet/intranet services, cellular telephone, satellite television, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, and shall be construed broadly to encompass all present and future forms of photovoltaic and communication technology.

34. **"Condominium Management Agreement"** means that certain instrument entered into or to be entered into between the Association and the Managing Agent for management and administration of the Association, the Common Elements, the Limited Common Elements (except for the physical management of the Limited Common Elements solely appurtenant to one (1) or more Commercial Units to the exclusion of any Residential Unit), and the property of the Association, if any.

35. **"Condominium Map"** means the maps referenced above and filed in the Office and recorded at the Bureau, as the same may be duly amended from time to time. The Condominium Map sets forth: (a) a site plan for the Project, depicting the location, layout, and access to a public road of all buildings included or anticipated to be included in the Project, and depicting access for the Units to a public road or to a Common Element leading to a public road; (b) elevations and floor plans of all buildings in the Project; (c) the layout, location, boundaries, unit numbers, and dimensions of the Units; (d) a parking plan for the Project, showing the location, layout, and stall numbers of all parking stalls included in the Project; (e) the layout, location, and other identifying information of the Limited Common Elements; and (f) a description to identify any land area that constitutes a Limited Common Element. The Condominium Map does not constitute a representation or warranty by Developer.

36. **"Consolidated Lot"** means the parcel of land created upon the consolidation of the Land with another parcel(s) of land.

37. **"County"** means the City and County of Honolulu, State of Hawaii.

38. **"D&O Policy"** means the policy insuring, to the extent allowed by law, each person who is or was a Director, Officer, agent, or employee of the Association and each person who is or was a Representative of the Managing Agent against all liability in connection with any claim made against him or her as a result of his or her holding that position, including, without limitation, any claim that would be covered under employment practices liability insurance, which the Board is required to buy and maintain, as further discussed in **Section XII.E** of this Declaration.

39. **"Declaration"** means this Declaration of Condominium Property Regime of The Park on Ke'eaumoku, together with any lawful amendments hereto.

40. **"Developer"** means Keeaumoku Development, LLC, a Hawaii limited liability company, and shall also include any of its permitted successors and assigns.

41. **"Developer Control Period"** means the period in which Developer shall have the right to appoint and remove Officers and Directors, as further discussed in **Article XLIV**.
42. **"Developer's Reserved Rights"** means those rights of Developer enumerated in **Articles XIX through XXXVI**, which can be unilaterally exercised by Developer without the consent or joinder of any other party.
43. **"Development Period"** means the period starting on the date this Declaration is filed in said Office and recorded at said Bureau and ending upon the earlier of (a) December 31, 2041, (b) the date Developer no longer owns any interest in the Project, or (c) the date Developer files/records a document in said Office and at said Bureau relinquishing all of Developer's Reserved Rights.
44. **"Director"** means a member of the Board and includes the Commercial Director and Residential Directors.
45. **"Dispute"** means and includes any and all actions, claims, or disputes between or among the Parties with respect to, arising out of, or relating to this Declaration, as further discussed in **Section XL.A** of this Declaration.
46. **"Dispute Notice"** means the written notice provided by one party to a dispute to another party, as discussed in **Section XL.B** of this Declaration.
47. **"DPR"** means Dispute Prevention and Resolution, Inc., any successor thereto, or any other entity offering mediation and/or arbitration services that is acceptable to the Parties.
48. **"Eligible Mortgage Holder"** means a first mortgagee of a Unit that is to receive timely written notice of proposed amendments to the Project Documents, as provided in the Bylaws.
49. **"Facade Sign"** is defined in Section X.I of this Declaration.
50. **"FHA"** means the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*, as amended by the Fair Housing Amendments Act of 1988, and the rules and regulations adopted thereunder, as the same may be amended from time to time.
51. **"House Rules"** means the administrative rules and regulations promulgated by the Board that govern the operation and use of the Project, as the same may be amended or supplemented from time to time.
52. **"Improvements"** means improvements that exist or will exist on the Land and shall also include those improvements made by Owners (including Developer) and/or the Association from time to time.
53. **"Insurance Trustee"** means the bank or trust company, doing business in the State of Hawaii, selected by the Board to have custody and control of insurance proceeds, as further discussed in **Section XIII.I**.
54. **"Interested Person"** means any person who has any interest in the Project or who has the right to use the Project or any part of it, including each Owner, each Lender, and any Person who has the legal right or permission to use the Project or any part of it.
55. **"Land"** means the real property described in **Exhibit "A"** attached hereto.
56. **"Lender"** means the mortgagee of a filed/recorded Mortgage on a Unit. It also includes the beneficiary of a deed of trust encumbering a Unit.

57. "**Liability Policy**" means the commercial general liability insurance and commercial umbrella insurance the Board is required to buy and maintain, as further discussed in **Section XII.D** of this Declaration.

58. "**Limited Common Element Expense**" means all costs, charges, and expenses incurred by the Association directly attributable to one or more designated Units for any Limited Common Elements appurtenant thereto.

59. "**Limited Common Elements**" means those Common Elements that are designated in this Declaration as reserved for the exclusive use of one or more Units to the exclusion of other Units. No amendment of this Declaration materially and adversely affecting the Limited Common Elements appurtenant to a Unit or Units, or in any way limiting the use thereof, shall be effective without the consent of the Owner or Owners of the Unit or Units to which said Limited Common Element is appurtenant.

60. "**Liona Tower**" means the forty-four (44) story building located off of Liona Street and depicted on the Condominium Map. Floors are designated consecutively as levels one (1) to and including forty-four (44).

61. "**Majority**" means the Owners to which are appurtenant more than fifty percent (50%) of the Common Interest or Class Common Interest with respect to the Residential Unit Class and Commercial Unit Class.

62. "**Managing Agent**" means an entity or individual employed or retained by the Association from time to time pursuant to the Condominium Management Agreement.

63. "**Mortgage**" when used as a noun, means a filed and/or recorded mortgage, deed of trust, mortgage deed or similar instrument encumbering a Unit given as collateral for a loan. When use as a verb, it means making a Unit subject to a mortgage or deed of trust.

64. "**Notice of Alleged Defect**" means a Claimant's notice to Developer of the specific nature of an Alleged Defect as further discussed in **Section XLIII.B** of this Declaration.

65. "**Occupancy Restrictions**" means those limitations on the use and occupancy of the Residential Units, as more particularly described in **Section VI.C.4** of this Declaration.

66. "**Occupant**" means any person other than an Owner occupying a Unit, including, but not limited to, a family member, invitee, guest, tenant, employee, agent, contractor, or customer.

67. "**Office**" means the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

68. "**Officer**" means an officer of the Association.

69. "**Owner**" means a Person owning severally or as a co-tenant (co-owner), a Unit and the Common Interest appurtenant thereto, to the extent of the interest so owned; provided that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by the terms of any applicable lease documents, a lessor, lessee, or sublessee of a Unit or interest therein shall be deemed the Owner of such Unit to the extent permitted in such lease. The vendee of a Unit pursuant to an Agreement of Sale shall have the rights of an Owner, including the right to vote; provided that the vendor may retain the right to vote on matters substantially affecting the vendor's security interest in the Unit as provided in Section 514B-124 of the Act. Where the Owner is a guardian, trustee, corporation, partnership, limited liability company, or other entity, the method for designating the natural person who

shall act as and for the Owner is as set forth in the Bylaws and, as to land trusts, in **Article XVII** of this Declaration. For so long as Developer owns unsold Units in the Project (or to the extent that Developer shall reacquire any Units in the Project), Developer shall have the rights of an Owner, including the right to vote, and shall assume the duties of an Owner as said rights and duties relate to said unsold Units (or reacquired Units), subject, however, to the provisions of the Act.

70. **"Parking Structure"** means the twelve (12) story building depicted on the Condominium Map, which includes, without limitation, the parking stalls, loading stalls and areas, storage rooms (if any), ramps, and drive aisles and through areas that serve the Project and the Residential Limited Common Element Recreational Deck located on the rooftop thereof. Floors are designated consecutively as levels one (1) to and including twelve (12), including level 2.5, and the rooftop.

71. **"Parties"** means, for the purposes of **Article XL** of this Declaration, Owners, the Association, Board, Managing Agent, Developer, and their respective Representatives.

72. **"Permit"** means the Interim Planned Development-Transit and Special District Permit No. 2019/SDD-27, as the same may be amended or supplemented.

73. **"Person"** means any natural person or any corporation, partnership, limited liability partnership, joint venture, trust, limited liability company, or other legal entity.

74. **"Policy"** means the policy of property insurance the Association is required to buy and maintain, as further discussed in **Section XII.B** of this Declaration.

75. **"Prohibited Litigation"** means litigation instituted by a Party prior to observing the procedures set forth in **Sections XL.B** and **XL.C** of this Declaration.

76. **"Project"** means the condominium project established pursuant to this Declaration, including the Land and Improvements, and shall include any lands and/or improvements annexed to the condominium property regime by Developer, and exclude any lands and/or improvements withdrawn by Developer in accordance with this Declaration.

77. **"Project Documents"** means this Declaration, the Condominium Map, the Bylaws, the House Rules, and the Articles of Incorporation, if any, as the same may be amended.

78. **"Project Lender"** means the lender or lenders providing Developer with financing for the construction of the Project and includes all successors and assigns of such lender(s).

79. **"Project Quality Standard"** means the standard required to maintain and operate the Project in a condition and at a quality level no less than that which existed at the time that the Project was initially completed (ordinary wear and tear excepted). The Project Quality Standard may evolve as development of the Project progresses and industry standards for similar projects in the community evolve. All of the elements of the Project Quality Standard need not be set out in writing since such evaluation may require the exercise of subjective judgment and cannot be reduced to written criteria. This definition may not be amended without the prior written consent of the Commercial Director, which consent may be withheld in its sole discretion.

80. **"Property"** means the Land, together with the Improvements.

81. **"Rail Effects"** means noise, dust, vibration, traffic congestion, and/or other inconveniences or nuisances associated with the development, construction, and operation of the future rail route by the County.

82. **"Recreational Amenities"** means those recreational amenities located on the Recreational Deck on the roof of the Parking Structure and the dog park located on level 1 of the Parking Structure available for the use and enjoyment of the Residential Unit Owners.

83. **"Recreational Deck"** means the portion of the roof of the Parking Structure, which is comprised of certain Recreational Amenities, as depicted on the Condominium Map. The Recreational Deck and the Recreational Amenities located thereon are Residential Limited Common Elements.

84. **"Representative"** means a Person's shareholders, directors, officers, members (in the case of a limited liability company), managers, trustees, agents, employees, and independent contractors.

85. **"Resident Manager"** means the manager that may reside at the Project appointed and employed and/or contracted by the Managing Agent or the Board, if any.

86. **"Resident Manager Unit"** means that certain Residential Unit retained initially by Developer to be used for the Resident Manager.

87. **"Residential Director"** means each Director elected by the Residential Unit Class pursuant to Article III, Section 3 of the Bylaws.

88. **"Residential Limited Common Elements"** means those parts of the Limited Common Elements that are reserved for the exclusive use of all Residential Unit Owners.

89. **"Residential Towers"** means collectively, the Liona Tower and the Rycroft Tower.

90. **"Residential Unit Class"** means and includes all Residential Units in the Project.

91. **"Residential Unit Class Common Interest"** means the percentage share assigned to a Residential Unit within the Residential Unit Class, as set forth in **Section III.B** and **Exhibit "B"** of this Declaration.

92. **"Residential Unit Class Expense"** means those Common Expenses that, pursuant to this Declaration or the Bylaws, are assessed against the Residential Units and are payable by each Owner of a Residential Unit based on such Owner's Residential Unit Class Common Interest.

93. **"Residential Unit Limited Common Element"** means those parts of the Limited Common Elements that are reserved for the exclusive use of one or more, but less than all, of the Residential Unit Owners.

94. **"Residential Unit Owner"** means the Owner of a Residential Unit; provided however, that any Person that holds such interest solely as security for the performance of an obligation shall not be a Residential Unit Owner solely by reason of such interest.

95. **"Residential Unit"** means any of the Units identified as Residential Units in **Exhibit "B"** of this Declaration and depicted on the Condominium Map.

96. **"Rycroft Tower"** means the fort-four (44) story building located off of Rycroft Street and depicted on the Condominium Map. Floors are designated consecutively as levels one (1) to and including forty-four (44).

97. **"SHPD"** means the State of Hawaii Historic Preservation Division.

98. **"Site Manager"** means the manager appointed and employed and/or contracted by the Managing Agent or the Board to manage, on-site, the operation of the Project. The Site Manager may be the same manager as the Resident Manager, if any.

99. **"Special Costs"** means certain costs that are to be apportioned pursuant to an Alternative Allocation between and/or among the Commercial Unit Class and Residential Unit Class based on a fair and equitable apportionment in accordance with Section 514B-41 of the Act.

100. **"Subdivided Lots"** mean those separate parcels of land created upon the subdivision of the Land.

101. **"Subdivided Units"** mean those new Units created upon the subdivision of a Unit.

102. **"The Park on Ke`eaumoku"** shall be the name of the Project established by the submission of the Land and Improvements to a condominium property regime under the terms and conditions set forth in this Declaration.

103. **"Towers"** means the Liona Tower, Rycroft Tower, and Commercial Tower.

104. **"Unit"** means a part of the Project, as described in this Declaration and as shown on the Condominium Map, intended for a use permitted under the Act, with an exit to a public street or highway, or to a Common Element leading to a public street or highway, and includes the individual Units making up each of the Unit Classes. The Units included in the Project are listed in **Exhibit "B"** and include the Commercial Units and the Residential Units.

105. **"Unit Class"** means and refers to the Commercial Unit Class and Residential Unit Class.

106. **"Unit Class Expense"** means those costs, expenses, and charges payable by a Unit based on the Class Common Interest allocable to the Unit or Units within the Unit Class, as more particularly described in this Declaration.

107. **"Unit Deed"** means the legal instrument signed by Developer conveying an interest in a Unit and an undivided interest in the Common Elements, in fee simple, to an Owner, subject, however, to the encumbrances and reservations identified therein.

108. **"Unit Limited Common Element"** means those parts of the Limited Common Elements that are reserved for the exclusive use of one (1) or more, but less than all, of the Units in a Unit Class.

II. DESCRIPTION AND DIVISION OF THE PROJECT.

A. **DESCRIPTION OF THE PROJECT.** The Project is depicted on the Condominium Map and consists of two (2) forty-four (44) story buildings, the Liona Tower and the Rycroft Tower, each to be used for residential, commercial, recreational, and/or such other purposes permitted under this Declaration; a four (4) story building with usable rooftop area, the Commercial Tower, to be used for commercial, recreational, and/or other purposes permitted under this Declaration; and a twelve (12) story building, the Parking Structure, to be used for parking, residential, commercial, recreational, and/or such other purposes permitted under this Declaration. The Project includes:

1. **COMMERCIAL UNITS.** Thirty (30) Commercial Units located on levels one (1) and two (2) of the Residential Towers, on levels two (2) through four (4) and the usable rooftop area of the Commercial Tower, and on level one (1) of the Parking Structure and identified on the Condominium Map and in **Exhibit "B"** as Commercial Unit Nos. L-101, L-102, L-201 through L-210, R-101 through R-109, R-201 through R-205, and C-201 through C-501.

2. **RESIDENTIAL UNITS.** Nine hundred seventy two (972) Residential Units, four hundred eighty-six (486) of which are located in the Liona Tower and four hundred eighty-six (486) of which are located in the Rycroft Tower, comprised of the Unit types set forth in **Exhibit "B,"** attached hereto and incorporated herein by reference.

3. **COMMON ELEMENTS.** The Common Elements identified in **Section II.C** below.

B. DESCRIPTION OF THE UNITS. One thousand two (1,002) freehold estates are hereby designated in the spaces within the perimeter and party walls, windows, doors, floors, and ceilings of each of the Units of the Project, which spaces are designated on the Condominium Map and are described as follows:

1. **UNIT DESIGNATIONS, NUMBERS, AND LOCATIONS.** The unit types, designations, numbers, and locations are shown on the Condominium Map and are further identified in **Exhibit "B"** attached hereto and incorporated herein by this reference.

2. **UNIT AREAS, LAYOUTS, DIMENSIONS, NET LIVING AREAS/FLOOR AREAS.** The Unit areas, layouts, dimensions, and net living areas are shown on the Condominium Map and are further described in **Exhibit "B"** attached hereto and incorporated herein by this reference. The Condominium Map is intended only to show: (a) the location of, layout of, and access to a public road from the Towers and Parking Structure and access for the Units to a public road or to a Common Element leading to a public road; (b) elevations and floor plans of the Towers and Parking Structure; (c) the layouts, locations, boundaries, unit numbers, and dimensions of the Units; (d) a parking plan for the Project showing the locations, layouts, and stall numbers of all parking stalls included in the Project; (e) the layouts, locations, and other identifying information of the Limited Common Elements; and (f) a description to identify any land area that constitutes a Limited Common Element. The Condominium Map is not intended and shall not be deemed to contain or make any representation or warranty whatsoever. The descriptions contained in this Declaration and **Exhibit "B"** that describe the various rooms and areas of the Project and the designations of 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 in any manner the purposes for which such rooms and areas may be used. Unless expressly restricted in this Declaration, such areas may be used for any purpose not prohibited by applicable law.

3. **ACCESS TO PUBLIC STREETS OR HIGHWAYS.** Except as may be limited by the terms of this Declaration, each Unit has immediate access through the elevators, stairways, walkways, and driveways of the Project to public streets and to the grounds of the Project that have access to public streets.

4. **LIMITS OF UNITS.** The Units shall be deemed to include: (i) all interior walls, doors, windows, window frames, and partitions that are not load-bearing and that are located within the space bounded by the Unit's perimeter walls, including furred walls and chase areas, but not the perimeter walls themselves (ii) the interior decorated or finished surfaces of all doors, door frames, columns, and window frames of perimeter and party walls, (iii) the interior decorated or finished surfaces of all floors and ceilings, (iv) all lath, furring, wallboard, plasterboard, plaster, paneling, tile, wallpaper, paint, finished flooring, and any other materials constituting the finished interior decorated surfaces of such walls and

columns, interior doors, interior door and window frames, and floors and ceilings, (v) the air space surrounded by such walls, doors, door and window frames, floors and ceilings, (vi) all fixtures (if any) originally installed in the Unit, and any replacements thereof, and (vii) any pipes, shafts, wires, conduits, ducts, or other utility or service lines running through such Unit that are utilized for or service only that Unit. Each Residential Unit shall **not** be deemed to include the following: (a) the undecorated and unfinished surfaces of perimeter and party walls and doors, door frames, windows and window frames and any exterior surfaces thereof, (b) the interior load-bearing walls and columns and their undecorated or unfinished surfaces, (c) any door or window frames located in the interior load-bearing walls and their undecorated or unfinished surfaces, (d) any balconies, or walls, floors, and/or ceilings partially surrounding any balcony, (e) any pipes, shafts, wires, conduits, ducts, or other utility or service lines running through such Unit that are utilized for or service more than one Unit, and (f) any Common Elements as hereinafter provided.

Developer shall have the right to adjust the boundaries and/or square footages of the Units and the descriptions of the perimeter boundaries set forth on the Condominium Map as necessary to correct discrepancies and/or errors in the descriptions or areas; provided that Developer shall record and/or file an amendment to this Declaration to reflect such modification; and further provided that Developer need not recalculate and readjust Common Interests of the Units impacted for such corrections to the areas.

C. **COMMON ELEMENTS.** One freehold estate is hereby designated in all portions of the Project not otherwise defined as a "Unit," herein called the "Common Elements." The Common Elements shall include specifically, but shall not be limited to, the following:

1. The Land in fee simple and any other appurtenances thereto described in **Exhibit "A"**; subject, however, to the rights of Developer herein affecting the Land;
2. The Building Structure;
3. All fans, vents, shafts, drains, sewer lines, water lines, pipes, generators, cables, conduits, ducts, electrical equipment, water pumps, fire pumps and other equipment, telecommunication equipment, security equipment, cooling tower(s), HVAC, wiring and other central and appurtenant transmission facilities and installations on, above, over, under and across the Project to the point of their respective connections to Improvements comprising a part of the Units, which serve all of the Units and their appurtenant Limited Common Elements, including, without limitation, those providing electricity, light, gas (if any), water, air conditioning, sewer, refuse, drainage, irrigation, telephone, security, and radio and television signal distribution (if any), unless otherwise designated herein or on the Condominium Map;
4. All hallways, stairways, corridors, areas or rooms, including, without limitation, areas or rooms housing the items described in paragraph 3, above, storage rooms and areas, mechanical equipment, maintenance and utility rooms and areas, restrooms, trash rooms, areas and receptacles, and apparatus and installations existing for common use by or for the common benefit of all Units and/or the Common Elements appurtenant to all Units, and not otherwise designated as a Unit herein or on the Condominium Map;
5. The driveway leading from Rycroft Street to level 1 of the Parking Structure ("**Rycroft Driveway**") and the driveway leading from Liona Street to level 1 of the Parking Structure, and any signage, decorative façade, or Improvement attached to said driveways;

6. All sidewalks and exterior common walkways on level 1 of the Project, including, without limitation, any landscaping thereon, designated as "Common Element" on the Condominium Map;

7. The bicycle spaces designated with a "S" and located on level 1 of the Parking Structure, adjacent to level 1 of the Liona Tower, and adjacent to level 1 of the Rycroft Tower, all designated as "Common Element" on the Condominium Map;

8. The exterior surfaces of the Parking Structure and Towers, including, without limitation, any louver, trellis, screening, paneling, signage, decorative façade, or Improvement attached thereto; provided, however, that the Recreational Deck on the roof of the Parking Structure and any Limited Common Element louver, trellis, screening, paneling, signage, decorative façade, or Improvement attached thereto shall be Residential Limited Common Elements;

9. The open area park located at the corner of Rycroft Street and Keeaumoku Street ("**Park**");

10. All of the Limited Common Elements described in **Section II.D** below; and

11. All other areas of the Project that are not described as a Unit or a part thereof.

D. LIMITED COMMON ELEMENTS. The Limited Common Elements are hereby designated, set aside and reserved for the exclusive use of certain Units, or groups of Units, and such Units shall have appurtenant thereto exclusive easements for the use of such Limited Common Elements, unless otherwise set forth in this Declaration. The responsibility to maintain, clean, upkeep, repair, replace, alter, improve and/or add to the Residential Limited Common Elements and Residential Unit Limited Common Elements (excepting any Residential Unit Limited Common Element solely appurtenant to one Residential Unit) shall be the Association's, as set forth in this Declaration. The responsibility to clean, upkeep, repair, replace, alter, improve and/or add to Commercial Limited Common Elements and Commercial Unit Limited Common Elements shall be the responsibility of the Commercial Unit Owner(s) who owns the Commercial Unit(s) to which such Limited Common Elements are appurtenant. The costs and expenses of every description pertaining to such Limited Common Elements shall be the responsibility of the Owner(s) of Unit(s) to which such Limited Common Elements are appurtenant. If there is more than one Unit to which the Limited Common Element is appurtenant, then the cost thereof shall be charged to each Owner in proportion to the Common Interest or Class Common Interest, as applicable, appurtenant to each respective Unit.

1. COMMERCIAL LIMITED COMMON ELEMENTS. The Commercial Limited Common Elements include those parts of the Limited Common Elements reserved for the exclusive use of all Commercial Unit Owners and include the following:

a. Those portions of any pipes, drains, cables, conduits, chutes, flues, ducts, wires, vents, shafts, other utility or service lines, sewage treatment equipment and facilities (if any), supporting apparatus, electrical equipment, electrical closets, storage rooms, communications rooms, pump rooms, HVAC, air conditioning and/or heating equipment and any appurtenant pipes or ducts, or other central and appurtenant transmission facilities and installations over, under, and across the Limited Common Elements appurtenant only to the Commercial Units; any other fixtures that serve only the Commercial Units or the Limited Common Elements appurtenant thereto and serve none of the Residential Units or the Limited Common Elements appurtenant thereto;

- b. All utility, maintenance and work rooms, closets and facilities, storage, trash, electrical, mechanical and telecommunication rooms, fire protection and security rooms, accessory equipment areas, storage areas, and other support areas, and the equipment therein, and restrooms, hallways, corridors, and stairways that service only the Commercial Units or the Limited Common Elements appurtenant thereto;
- c. The ramp leading from the Rycroft Driveway to level 3 of the Parking Structure, including the interior walls, ceilings, and floors thereof and any signage, decorative façade, or Improvement attached thereto;
- d. The drive aisles and through areas located on levels 1 through 2.5 of the Parking Structure and the interior surfaces of the walls, ceilings, and floors of levels 1 through 2.5 of the Parking Structure, and any signage, decorative façade, or Improvement attached thereto;
- e. Any Improvements located in or on levels 1 through 2.5 of the Parking Structure, including, without limitation, any elevator servicing levels 1 and 2 of the Parking Structure, unless otherwise described herein or designated on the Condominium Map;
- f. The parking stalls located on levels 1 through 2.5 of the Parking Structure and designated as "Commercial Limited Common Element" on the Condominium Map, including, without limitation, the electric vehicle parking stalls and charging stations installed therein (if any) designated as "Commercial Limited Common Element" on the Condominium Map and located on said levels 1 through 2.5 and the car share parking stalls located on level 1 of the Parking Structure and;
- g. All loading stalls on levels 1 and 2 of the Parking Structure and level 1 of the Rycroft Tower;
- h. The bicycle spaces located on levels 1 through 2.5 of the Parking Structure, designated with an "L" and depicted on the Condominium Map as "Commercial Limited Common Element";
- i. The drop off stalls designated on the Condominium Map as "Commercial Limited Common Element";
- j. The lobby and mail room located on level 1 of the Commercial Tower;
- k. The elevators, elevator vestibules, and elevator lobbies and stairways located in the Commercial Tower;
- l. The trash rooms and chutes, if any, that service only the Units in the Commercial Tower or the Limited Common Elements appurtenant thereto;
- m. The commercial office located on level 2 of the Liona Tower;
- n. Any portion of the roofs of the Towers and the mechanical equipment areas or stairways thereon servicing only the Commercial Units and/or the Limited Common Elements appurtenant thereto; and
- o. Any other area described as "Commercial Limited Common Element" herein or on the Condominium Map.

