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THIS DOCUMENT CONTAINS 82 PAGES

TITLE OF DOCUMENT:

AMENDED AND RESTATED DECLARATION OF  
CONDOMINIUM PROPERTY REGIME  
KIHEI COMMERCIAL CONDOMINIUM II

Condominium Map No. 3285

PARTIES TO DOCUMENT:

DEVELOPER: JS MCA KIHEI LLC, a Nevada limited liability company  
c/o MCA Realty, Inc.  
18818 Teller Avenue, Suite 250, Irvine, California 92612

PROPERTY DESCRIPTION: : DOCUMENT NO(S): 2001-095548  
SEE EXHIBIT "A" : LAND COURT DOCUMENT NO.: N/A  
: TRANSFER CERTIFICATE OF  
: TITLE NO(S): N/A

Tax Map Key: (2) 3-9-045-014

**AMENDED AND RESTATED DECLARATION OF  
CONDOMINIUM PROPERTY REGIME  
KIHEI COMMERCIAL CONDOMINIUM II**

Condominium Map No. 3285

THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME for the KIHEI COMMERCIAL CONDOMINIUM II is made this 31<sup>st</sup> day of January, 2018, by JS MCA KIHEI LLC, a Nevada limited liability company, whose mailing address is c/o MCA Realty, Inc., 18818 Teller Avenue, Suite 250, Irvine, California 92612 (hereinafter called the "Developer").

**W I T N E S S E T H T H A T :**

WHEREAS, pursuant to that certain Declaration of Condominium Property Regime dated May 9, 2001, executed by the Developer's predecessor-in-interest, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-095548 (hereinafter referred to as the "Declaration"), the real property more particularly described in Exhibit "A" attached hereto and made a part hereof, and the Improvements constructed thereon, were submitted to a Condominium Property Regime pursuant to Chapter 514A, Hawaii Revised Statutes, as amended ("Chapter 514A");

WHEREAS, the condominium project known as KIHEI COMMERCIAL CONDOMINIUM II (hereinafter referred to as the "Project"), established pursuant to said Declaration, is more particularly shown and described on Condominium Map No. 3285 filed in said Bureau of Conveyances, and any amendments thereto (hereinafter referred to as the "Condominium Map");

WHEREAS, the Declaration was subsequently amended by those certain instruments dated September 6, 2001, June 27, 2007, and July 1, 2008, respectively, and recorded in the Bureau of Conveyances as Document Nos. 2001-140242, 2007-115382, and 2008-106898;

WHEREAS, originally, the Project consisted of two (2) Units known as Unit A and Unit B;

WHEREAS, KIHEI CC, LLC, a Hawaii limited liability company ("KIHEI CC"), subsequently acquired Unit B, and, pursuant to a reserved right in Section 18.0 of the Declaration, amended the Declaration by the aforementioned instrument dated June 27, 2007, and recorded in the Bureau of Conveyances as Document No. 2007-115382, to subdivide Unit B into seventy-one (71) new Units;

WHEREAS, KIHEI CC transferred its ownership of sixty-one (61) B Units to the Developer pursuant to that certain Limited Warranty Deed dated September 29, 2017, and recorded in the Bureau of Conveyances as Document No. A-64810626;

WHEREAS, KIHEI CC transferred and assigned all of the rights it held, as the previous developer, under the Declaration, By-Laws and Condominium Map to the Developer pursuant to that certain Assignment of Developer's Rights dated September 29, 2017, and recorded in the Bureau of Conveyances as Document No. A-64810628, as amended by that certain Correction to Assignment of Developer's Rights dated November 22, 2017, and recorded in the Bureau of Conveyances as Document No. A-65350699;

WHEREAS, the Developer desires to: (1) make certain revisions and amendments to the Declaration and for the Project to be governed by Chapter 514B, Hawaii Revised Statutes, as amended ("Chapter 514B"), rather than Chapter 514A; and (2) restate the Declaration into one instrument by incorporating all prior recorded Declaration amendments thereto as noted above;

WHEREAS, Section 18.0 of the Declaration and Section 514A-11(11), Hawaii Revised Statutes, provide that the Declaration may be amended pursuant to the vote or written consent of the Owners of Units representing seventy-five percent (75%) of the Common Interest; and in accordance with Section 514B-23(b), Hawaii Revised Statutes, the Declaration may be amended by the vote or written consent of a majority of the Unit Owners to allow the Project to operate under Chapter 514B;

WHEREAS, the Developer, representing forty-two and 2,427/10,000 percent (42.2427%) of the Common Interest, desires to amend the Declaration and the Condominium Map as hereinafter provided, and for the Project to operate under Chapter 514B, and AMERICAN GL PEARL STORAGE 17 (HI) LLC, a Delaware limited liability company ("American GL"), the Owner of Unit A and representing fifty percent (50%) of the Common Interest, by its signature hereto, hereby consents to said amendments and for the Project to operate under Chapter 514B; and

WHEREAS, the Condominium Map is hereby amended by replacing the site map thereof as more particularly described in an instrument recorded concurrently herewith.

NOW, THEREFORE, in consideration of the premises, the Declaration is hereby amended and restated in its entirety as follows:

KNOW ALL MEN BY THESE PRESENTS:

1.0 SUBMISSION TO CONDOMINIUM PROPERTY REGIME.

The Developer's predecessor-in-interest, KCOM CORP., a Hawaii corporation, and VALENTINE PEROFF, JR., husband of Barbara Joanna Peroff, Trustee of the Valentine Peroff, Jr. Revocable Living Trust created by unrecorded Trust Agreement dated July 7, 1989, having all powers under said trust, including full power to sell, convey, exchange, mortgage, lease, assign or otherwise deal with and dispose of all lands of the trust estate and interests therein, hereinafter referred to as "Grantors",

pursuant to that certain Declaration of Condominium Property Regime dated May 9, 2001, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-095548, as amended (the "Declaration"), submitted the Land described herein and the Improvements constructed thereon and also described herein, to a Condominium Property Regime known as "KIHEI COMMERCIAL CONDOMINIUM II" (the "Project"), as originally established by Chapter 514A, Hawaii Revised Statutes, as amended, and in furtherance thereof made certain declarations as to divisions, covenants, restrictions, limitations, conditions and uses to which the Land and Improvements and appurtenances constructed thereon may be put, thereby specifying that said declarations shall constitute covenants to run with the Land and shall be binding on and inure to the benefit of said Grantors, their heirs and assigns.

Notwithstanding the foregoing submission of the Land and the Improvements of the Project to Chapter 514A, Hawaii Revised Statutes, as amended, from and after the date of this instrument, the Project shall operate under Chapter 514B, Hawaii Revised Statutes (the "Act").

## 2.0 DESCRIPTION OF LAND.

The fee simple land is located at 300 Ohukai Road, Kihei, County of Maui, State of Hawaii, and is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference and herein referred to as the "Land".

## 3.0 DESCRIPTION OF PROJECT.

The Project consists of seventy-two (72) commercial units (each a "Unit" and collectively, the "Units") and a total of three hundred five (305) parking stalls situate upon the Land hereinbefore described.

Unit A consists of two (2) buildings, as shown on the Condominium Map and which Unit is described in Section 4.1 below.

Unit A has one hundred and one (101) assigned parking stalls, eighty-four (84) of which are regular stalls, thirteen (13) of which are compact stalls, and four (4) of which are handicapped stalls. Unit A also has two (2) loading stalls.

Units B101 through B116 are located in Building B-1 of the Project, as shown on the Condominium Map and which Units are described in Section 4.1 below.

Units B201 through B228 are located in Building B-2 of the Project, as shown on the Condominium Map and which Units are described in Section 4.1 below.

Units B301 through B327 are located in Building B-3 of the Project, as shown on the Condominium Map and which Units are described in Section 4.1 below.

The B Units have two hundred four (204) appurtenant parking stalls, one hundred fifty-one (151) of which are regular stalls, forty-two (42) of which are compact stalls, and eleven (11) of which are handicapped stalls. The B Units also have two (2) appurtenant loading stalls.

The parking stalls appurtenant to the Units are more particularly described in Exhibit "B" attached hereto and by reference made a part hereof.

The principal materials of which the said buildings are constructed are as follows:

- a. the ground floor slab is of poured reinforced concrete;
- b. the first, second and third floors are of reinforced concrete;
- c. the structural system is concrete with reinforcing steel, glulam beams and concrete exterior; and
- d. the roof is a modified bitumen mineral surface roof system.

Each Unit has immediate access through elevators, stairways, walkways, and driveways of the Project to public streets and to the grounds of the Project that have access to public streets. Kahakulani Place, which is a private road, provides access to public streets from the Project. Section 23.0 herein provides information on the Roadways Declaration which governs the use of Kahakulani Place.

The buildings have been constructed in accordance with plans and specifications certified by Sato & Associates, Inc., and recorded in the Bureau of Conveyances of the State of Hawaii, herein referred to as the "Condominium Map".

### 3.1 DESCRIPTION OF BUILDINGS.

Unit A has a court building with 1, 2 and 3-story areas, and a 3-story center court building. The rest of the Project consists of Buildings B-1 and B-2, each of which is a one-story building, and Building B-3, which is a two-story building.

### 4.0 DIVISION OF PROJECT.

The Project is hereby divided into the following separate freehold estates described in Section 4.1 of this Declaration:

#### 4.1 DESCRIPTION OF UNITS.

Unit A contains one (1) court building with one, two and three story areas, and one (1) three story center court building, for a total of approximately 114,446 sq. ft. Unit A also contains three (3) elevators and eight (8) stairways.

With respect to Buildings B-1, B-2 and B-3, freehold estates are hereby designated in each of the Units within said Buildings; provided, however, that 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; provided, further, that the Condominium Map is intended only to show the layout, location, Unit numbers and dimensions of the Units and elevations of the Buildings and is not intended to contain any other representation or warranty.

The approximate net area (exclusive of parking areas) and percentage common interest of each Unit in the Project and the parking stall(s) appurtenant to each Unit in Buildings B-1, B-2 and B-3, if any, are set forth in Exhibit "B" attached hereto and made a part hereof for all purposes. All areas set forth in Exhibit "B" were computed by measuring from the interior surface of the Unit perimeter walls; no reduction was made to account for interior walls, ducts, shafts and the like, located within the perimeter walls.

Each Unit in Buildings B-1 and B-2 consists of one (1) room and one (1) restroom (sink and toilet or the stub out provisions for construction of a restroom). Each Unit in Building B-3 consists of one (1) room.

All of the Units in Buildings B-1, B-2 and B-3 are individually referred to as a "B Unit" and collectively referred to as the "B Units".

4.2 NUMBER AND UNIT LOCATION OF UNITS. The Units are as shown on the Condominium Map and are numbered as follows:

Unit A is located in the north section of the Project, as more fully shown on the Condominium Map.

The Unit numbers and locations of the Units in each of Buildings B-1, B-2 and B-3 are more fully shown on the Condominium Map. Building B-1 is located in the southeast portion of the Project. There are sixteen (16) Units in Building B-1 of the Project, which Units are numbered from "B101" to "B116", beginning at the northern end of the building and proceeding south.

Building B-2 is located in the south portion of the Project. There are twenty-eight (28) Units in Building B-2 of the Project, which Units are numbered from "B201" to "B228", beginning at the northwestern end of the building and proceeding south from numbers "B201" to "B214". Unit "B215" begins at the northeastern end of the building and proceeds south from numbers "B215" to "B228".

Building B-3 is located in the southwest portion of the Project. There are a total of twenty-seven (27) Units on the two (2) floors of Building B-3 of the Project, which Units are numbered from "B301" through "B314" on the first floor and "B315" through "B327" on the second floor, beginning at the northern end of the building and proceeding south.

#### 4.3 LIMITS OF UNITS.

a. Unit A. Unit A includes, but is not limited to, the exterior finished surfaces of all exterior walls, roofs, doors, windows and appurtenant structures and also includes all foundations, underpinnings, doors, roofs, windows, structure and other appurtenances, including the parking stalls and driveways appurtenant to Unit A, as shown on the Condominium Map. Unit A, shown in gray-scale on the Condominium Map, shall also include an area below and above the surface of the Land to the extent needed for reconstruction or construction purposes as permitted by law and regulations.

b. B Units. Each B Unit shall be deemed to include: (a) all of the walls and partitions which are not load-bearing within its perimeter or party walls; (b) the inner decorated or finished surfaces of all walls, floors and ceilings surrounding each Unit; (c) the perimeter doors, including but not limited to entry doors and roll-up doors, door frames, thresholds, door handles, door lock sets and all other door mechanisms, the sky-lights and all frames and hardware associated therewith, and all glass windows and panels, and all frames and hardware associated therewith; (d) all pipes, shafts, vents, ducts, pumps, conduits, wires and other utility or service lines running through such Unit which are utilized for and serve only that Unit; and (e) all equipment and fixtures installed therein, including, but not limited to any suspended ceilings and/or raised flooring.

Each B Unit shall not be deemed to include: (i) the perimeter or party walls, or the undecorated or unfinished interior surfaces thereof; (ii) the roofs of Buildings B-1, B-2, and B-3, subject to any Developer's reserved rights set forth in Section 18.0; (iii) the floors and ceilings surrounding each Unit (except for the decorated or finished surfaces thereof), or the undecorated or unfinished surfaces of the floors and ceilings surrounding each Unit; (iv) the interior load-bearing walls and columns, if any, or the undecorated or unfinished surfaces thereof; or (v) any pipes, shafts, ducts, vents, pumps, conduits, wires or other utility or service lines running through such Unit which are utilized for or serve more than one Unit, the same being deemed Common Elements as hereinafter provided.

#### 4.4 COMMON ELEMENTS.

The Common Elements consist of the General Common Elements and the Limited Common Elements. The General Common Elements include:

- a. The Land described in Exhibit "A".
- b. The common driveway between Unit A and Buildings B-1, B-2 and B-3 as shown on the Condominium Map (the "Common Driveway").
- c. Any common water meter, common waterline or any other utility installations serving Unit A and any other Unit.

d. Any and all other apparatus and installations of common use and all other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use.

e. All portions of the Project other than the Units, and any other interests in real estate for the benefit of the Unit Owners that are subject to this Declaration.

#### 4.5 LIMITED COMMON ELEMENTS.

The Limited Common Elements are hereby designated, set aside and reserved for the exclusive use of certain Units, and such Units shall have appurtenant exclusive easements for the use of such Limited Common Elements as set forth herein. The Limited Common Elements reserved for the exclusive use of the respective Units consist of Unit Limited Common Elements, Unit A Limited Common Elements, and B Unit Limited Common Elements:

a. Unit Limited Common Elements. The Unit Limited Common Elements include 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.

b. Unit A Limited Common Elements. The Unit A Limited Common Elements include any Common Elements which are rationally related to only Unit A, and such Unit A Limited Common Elements shall be appurtenant to and for the exclusive use of Unit A. The A Unit Limited Common Elements include:

(1) The trash enclosure immediately to the southeast of Unit A, as shown on the Condominium Map, shall be appurtenant to and for the exclusive use of Unit A.

(2) Any landscaping, curbs or set back area along the perimeter of Unit A.

c. B Unit Limited Common Elements. The B Unit Limited Common Elements include those parts of the Limited Common Elements which are rationally related to only the B Units and such B Unit Limited Common Elements shall be appurtenant to and for the exclusive use of such B Units. The B Unit Limited Common Elements include:

(1) The building structure of Building B-1, including all perimeter or party walls and the undecorated or unfinished surfaces thereof, any load-bearing walls and columns, and the undecorated or unfinished surfaces thereof, all structural components such as foundations, floor slabs, columns, girders, beams, supports, halls, corridors, exterior stairs and stairways, main walls, roofs and ceilings, unless specifically assigned otherwise herein, shall be appurtenant to and for the exclusive use of the B Units in Building B-1.



(2) The building structure of Building B-2, including all perimeter or party walls and the undecorated or unfinished surfaces thereof, any load-bearing walls and columns, and the undecorated or unfinished surfaces thereof, all structural components such as foundations, floor slabs, columns, girders, beams, supports, halls, corridors, exterior stairs and stairways, main walls, roofs and ceilings, unless specifically assigned otherwise herein, shall be appurtenant to and for the exclusive use of the B Units in Building B-2.

(3) The building structure of Building B-3, including all perimeter or party walls and the undecorated or unfinished surfaces thereof, any load-bearing walls and columns, and the undecorated or unfinished surfaces thereof, all structural components such as foundations, floor slabs, columns, girders, beams, supports, halls, corridors, exterior stairs and stairways, main walls, roofs and ceilings, unless specifically assigned otherwise herein, shall be appurtenant to and for the exclusive use of the B Units in Building B-3.

(4) The parking stalls shown in Exhibit "B".

(5) The driveways leading from the Common Driveway to the B Units.

(6) Any access lanes, ramps, landscaped areas, sidewalks, walkways, and common grounds serving the B Units.

(7) The assigned mailboxes.

(8) The trash enclosure immediately to the southeast of Building B-3 shall be appurtenant to and for the exclusive use of the B Units in Buildings B-1, B-2 and B-3.

(9) The two (2) loading stalls immediately adjacent to Building B-2 shall be appurtenant to and for the exclusive use of the B Units in Buildings B-1, B-2 and B-3.

(10) The four (4) restrooms located within Building B-3 shall be appurtenant to and for the exclusive use of the B Units located in Building B-3.

(11) Any other Common Element which is rationally related to only the B Units shall be deemed a B Unit Limited Common Element appurtenant to and for the exclusive use of the B Units to which it is rationally related.

The Developer hereby reserves the right, pursuant to Section 26.0 herein below, to install or construct a lift or elevator for Building B-3, and such lift or elevator shall then become a B Unit Limited Common Element appurtenant to and for the exclusive use of the B Units located on the second floor of Building B-3. Notwithstanding the forgoing, the Developer shall not have the obligation to install or construct such a lift or elevator.

The Developer during the Development Period shall have the reserved right to designate, in its sole discretion, any of the Unassigned B Unit Stalls listed in Exhibit "B" as being for the exclusive use of one or more B Units, and to modify the assignment, in its sole discretion, of any of the Assigned B Unit Stalls listed in Exhibit "B" owned by the Developer, as long as such designation or modification does not cause any B Unit or the Project to violate the applicable County of Maui parking requirements. The Board, subject to the Developer's reserved rights herein and with the consent of the Developer during the Development Period, shall also have the right to designate any of the Unassigned B Unit Stalls listed in Exhibit "B" as being customer, employee, or handicap parking stalls for the B Units. Such designations or modifications shall be accomplished by an amendment to this Declaration.

The Owners of B Units in Buildings B-1, B-2 and B-3 and their respective patrons and employees shall also have the exclusive right to use the Additional Parking Stalls more particularly described in Section 25.0 herein below. The Developer during the Development Period shall have the reserved right to designate, in its sole discretion, any of the Additional Parking Stalls as being for the exclusive use of one or more B Units as long as such designation does not cause any B Unit or the Project to violate the applicable County of Maui parking requirements. Notwithstanding the foregoing, no Additional Parking Stalls shall be allocated to a B Unit to comply with applicable parking requirements of the County of Maui, unless: (a) the Owner of the particular B Unit in question first obtains the written approval of the Parking Lot Owner referred to in Section 25.0 below, and (b) the use of that B Unit is otherwise permitted under this Declaration.

Subject to the Developer's reserved right in Section 18.0.b. herein, if requested by the Owner of a B Unit, the Board shall have the right, in its sole discretion, to allow an Owner of a B Unit to use a portion of the roof immediately above such Owner's B Unit for such ancillary facilities as shall be allowed by the laws of the State of Hawaii and any applicable County of Maui ordinances and codes; provided, however, that such Owner shall comply with any requirements of the Board in connection with the installation of such ancillary facilities. Furthermore, during the Development Period, any installation by Owners of ancillary facilities on the roofs of the B Buildings shall be subject to the Developer's prior written consent.

Except as otherwise provided herein, all costs of every kind pertaining to each Limited Common Element, including, but not limited to, costs of maintenance, repair, replacements, additions and improvements, shall be charged to and borne entirely by the Owner(s) of the Unit(s) to which it is appurtenant. Any expense which cannot be separately identified or attributed to a Limited Common Element shall be charged as a Common Expense. All costs of every kind pertaining to a Unit A Limited Common Element, including, but not limited to, costs of maintenance, repair, replacements, additions and improvements, shall be a Unit A Class Expense and payable by the Owner of Unit A based on the Unit A Owner's Unit A Class Common Interest, unless otherwise provided herein. All costs of every kind pertaining to a B Unit Limited Common Element, including, but not limited to, costs of maintenance, repair,

replacements, additions and improvements, shall be a B Unit Class Expense and payable by the Owners of the B Units based on each B Unit Owner's B Unit Class Common Interest, unless otherwise provided herein.

4.6 ALLOCATION OF EXPENSES RELATING TO THE GENERAL COMMON ELEMENTS AND THE LIMITED COMMON ELEMENTS BETWEEN UNIT A AND THE B UNITS; LITIGATION; DAMAGE, DESTRUCTION, OR CONDEMNATION.

The following provisions of this Section 4.6 shall take precedence over any contradictory provision in this Declaration or the By-Laws.

a. General. The Common Expenses shall be the costs and expenses incurred in connection with the General Common Elements. The Unit A Owner has sole responsibility for Unit A and the Unit A Limited Common Elements and, by its proportionate share only, for the General Common Elements; and the B Unit Owners have sole responsibility for their respective B Unit and the B Unit Limited Common Elements and, by their proportionate share only, for the General Common Elements. Accordingly, the Unit A Owner is responsible for (i) all costs associated with Unit A, (ii) its Percentage Class Common Interest shown on Exhibit "B" as to expenses for Unit A Limited Common Elements, and (iii) its Percentage Common Interest shown on Exhibit "B" for the Common Expenses; and shall have no liability for the costs and expenses of the B Units and the B Unit Limited Common Elements. The B Unit Owners have sole responsibility for (i) all costs associated with their respective B Unit, (ii) their Percentage Class Common Interest shown on Exhibit "B" as to B Unit Limited Common Elements, and (iii) their Percentage Common Interest shown on Exhibit "B" for the Common Expenses; and shall have no liability for the costs and expenses of Unit A and the Unit A Limited Common Elements.

The Board shall diligently determine what costs and expenses are Common Expenses, Unit A Class Expenses and B Unit Class Expenses, using existing separate County and private meters and, if needed where practicable, shall request all vendors to segregate their billing for services in accordance with the services rendered to and in connection with Unit A, the Unit A Limited Common Elements, the B Units, the B Unit Limited Common Elements, and the General Common Elements. As an illustration, the Managing Agent shall be required to apportion its fee for services provided to the General Common Elements, Unit A and the B Units, and their respective Limited Common Elements. While there is only one Unit A Owner, all proxies and the expenses associated with proxies shall be a Unit B Class Expense. All other expenses that do not benefit the Unit A Owner shall be a B Unit Class Expense. The Unit A Owner shall be liable to pay its Percentage Common Interest for the cost of insurance premiums in connection with the General Common Elements and the insurer contracted by the Association shall either issue separate policies or allocate the premiums accordingly. Pursuant to Section 514B-148 of the Act, the Association is required to maintain funds as replacement reserves for the upkeep, repair, or replacement of those parts of the property that the Association is obligated to maintain. Accordingly, there shall be no requirement for the Association to collect any replacement reserve funds for the Unit A

Limited Common Elements. The Unit A Owner has the sole responsibility for the Unit A improvements and not the Association; and, the Unit A Owner shall be liable to the Association to pay its Common Interest share for the maintenance, repair, and replacement costs for and to fund reserves only for the General Common Elements; and all other insurance premiums, repair, maintenance, and restoration costs and reserve requirements shall be B Unit Class Expenses. The costs and expenses of purchasing and thereafter dealing with any B Unit shall be a Unit B Limited Common Expense.

Without limiting the generality of the foregoing, the Association shall, in accordance with this Declaration, the By-Laws, and the Act, prepare a budget with the following separate categories and will allocate expenses in accordance with this budget:

(1) Common Expenses for the Unit A and the B Units shall include Insurance for Directors and Officers, Insurance Bond, Kihei Commercial Roadway Association Dues, Kihei Utilities Association dues and fees, if any (pursuant to Declaration of Covenants, Conditions and Restrictions described in Exhibit A, and as more particularly described in Section 23.0 b. herein), Legal Fees involving matters relating to the General Common Elements (and excluding legal fees for collecting Limited Common Element Expenses from the B Unit Owners and other excluded matters described below), an allocated twenty percent (20%) of the Management Fees for as long as there is only one Unit A, Miscellaneous Expenses, Professional Fees-Tax Prep/Audit (excluding fees for Limited Common Elements), Water-Irrigation System, Liability Insurance for General Common Elements, and Reserves for the General Common Elements. To the extent any Unit A Class Expense is not reflected in this budget, the Unit A Owner may pay such Unit A Class Expense directly.

(2) B Unit Limited Common Element Expenses for Buildings B-1, B-2 and B-3 shall include Electricity, Fire System Maintenance and Telephone, General Repairs and Maintenance, Pest Control, Gate Maintenance and Repairs, Miscellaneous Repairs, Property and Liability Insurance, Janitorial, Landscaping, an allocated eighty percent (80%) of the Management Fees for as long as there is only one Unit A, Parking Lot Maintenance, Refuse, Reserve-Long Term Replacement, Water and Sewage, Insurance-parking private lot and Reserve. This allocation of Common Expenses set forth in this Section shall take precedence over any inconsistent or contradictory provision in this Declaration and the By-Laws.

Where the Board is required to determine the costs and expenses as between the Unit A Class Expense and the B Unit Class Expense, and is permitted by the terms of this Declaration or the By-Laws to do so in the Board's discretion, the B Unit Board members shall owe a fiduciary duty to the owner(s) of Unit A to do so reasonably and in good faith and in conformance with the principles expressed in this Section.

In the event that Unit A is subdivided as provided in Section 28 herein, any increase in the Management Fees directly attributable to the creation of Subdivided Unit A Units (as that term is defined in Section 28), shall be a Unit A Class Expense and paid

for by the Owners of the Subdivided Unit A Units in accordance with their respective Class Common Interest.

b. Litigation.

(1) Litigation involving the General Common Elements. All costs and expenses or prosecuting and/or defending against litigation involving a third-party claimant or initiated by the Association with respect to the General Common Elements shall be a Common Expense. The costs of proceedings initiated against a contractor, vendor, or supplier of goods and/or services in which the goods and/or services involved the General Common Elements shall be a Common Expense.

(2) Litigation Not Involving the B Units. To the extent any litigation or other claim proceeding whether initiated by the Association or does not involve the General Common Elements or any of the B Units and/or the B Unit Limited Common Elements or a B Unit Owner and involves only Unit A and/or the Unit A Limited Common Elements or a Unit A Owner, all costs and expenses of prosecuting and/or defending against such litigation or proceeding shall be a Unit A Class Expense. The costs and expenses of all judicial and other proceedings initiated by the Association to enforce the provisions of this Declaration (including collection of assessments and foreclosure of liens) where a B Unit Owner is not a defendant against whom enforcement is sought and a Unit A Owner is a defendant shall be a Unit A Class Expense. The costs of all such proceedings initiated against a contractor, vendor, or supplier of goods and/or services in which the goods and/or services involved only Unit A and/or the Unit A Limited Common Elements, shall be a Unit A Class Expense.

(3) Litigation Not Involving Unit A. To the extent any litigation or other claim proceeding involving a third-party claimant or initiated by the Association does not involve the General Common Elements or Unit A or the Unit A Limited Common Elements, all costs and expenses of prosecuting and/or defending against such litigation or proceeding shall be a B Unit Class Expense. The costs and expenses of all judicial and other proceedings initiated by the Association to enforce the provisions of this Declaration (including collection of assessments and foreclosure of liens) where the Unit A Owner is not the defendant against whom enforcement is sought, shall be a B Unit Class Expense. The costs of all such proceedings initiated against a contractor, vendor, or supplier of goods and/or services in which the goods and/or services involved only the B Units and/or the B Unit Limited Common Elements, shall be a B Unit Class Expense.

(4) Vote to Commence Litigation. Any vote to commence any such proceedings involving the General Common Elements or involving both the Unit A Owner and the B Unit Owners shall require the vote of Owners of Units to which are appurtenant at least seventy-five percent (75%) of the Common Interest. Any vote to commence such proceedings not involving the B Unit Owners shall not require a vote by the B Unit Owners, but shall require the vote of seventy-five percent (75%) of the Unit A Class Common Interest. Any vote to commence such proceedings not involving the

Unit A Owner shall not require a vote by the A Unit Owner, but shall require the vote of seventy-five percent (75%) of the B Unit Class Common Interest. At the meeting where any such vote is taken, or in the written material distributed to the Owners, if the vote is to be taken by written consent, the Board shall fully disclose to the Owners, information on the grounds for the lawsuit, the estimated costs and duration and likelihood of recovery, and the possible potential consequences, including any effect on the ability to obtain financing for the Units, increases in assessments, depletion of reserves, etc.

c. Damage, Destruction, or Condemnation.

(1) Unit A. In the event of damage or destruction (whether the insurance proceeds are sufficient or insufficient or there is no insurance) or in the event of a partial taking of all or part of Unit A, the Owner of Unit A shall have the sole right to decide whether and when to repair, rebuild, or restore Unit A. There will be no time limit as to when such a decision is to be made. Due to the unique nature of this Project and Unit A, the provisions of Section 514B-47(a)(2) of the Act with respect to substantial damage or destruction to the Common Elements shall not apply to partial condemnation, damage, or destruction to Unit A and the Unit A Limited Common Elements, which damage does not involve a material part of the B Units, the B Unit Limited Common Elements, or the General Common Elements. In such case, the Owner of Unit A may unilaterally decide when and if to rebuild and repair Unit A and the Unit A Limited Common Elements, and pending such determination, the property shall not be subject to partition; provided, however, that pending such determination, the Unit A Owner shall remain responsible for all costs and expenses of Unit A, the Unit A Limited Common Elements, and its proportionate share of the General Common Elements.

(2) B Units. In the event of damage or destruction (whether the insurance proceeds are sufficient or insufficient or there is no insurance) or in the event of a partial taking of all or part of the B Units, the B Unit Owners (in accordance with Sections 14.0 and 16.0 herein) shall have the sole right to decide whether and when to repair, rebuild, or restore the B Units. There will be no time limit as to when such a decision is to be made. Due to the unique nature of this Project, the provisions of Section 514B-47(a)(2) of the Act with respect to substantial damage or destruction to the Common Elements shall not apply to partial condemnation, damage, or destruction to the B Units and the B Unit Limited Common Elements, which damage does not involve a material part of Unit A, the Unit A Limited Common Elements, or the General Common Elements. In such case, the B Unit Owners (in accordance with Sections 14.0 and 16.0 herein) may unilaterally decide when and if to rebuild and repair the B Units and the B Unit Limited Common Elements, and pending such determination, the property shall not be subject to partition; provided, however, that pending such determination, the B Unit Owners shall remain responsible for all costs and expenses of the B Units, the B Unit Limited Common Elements, and their proportionate share of the General Common Elements.

(3) Supplemental Provisions. Pursuant to Section 514B-32(b) of the Act, the provisions in this Section 4.6 c. and Sections 14.0 and 16.0 are intended to be consistent with the Act and in accordance with the provisions of Section 514B-47 of the Act that expressly gives precedence to the provisions of the Declaration with respect to dividing proceeds among Unit Owners.

#### 5.0 COMMON INTEREST; CLASS COMMON INTEREST.

a. Common Interest. Each Unit shall have appurtenant thereto an undivided percentage interest in all Common Elements of the Project as shown in Exhibit "B" attached hereto, herein called the Common Interest, and the same proportionate share in all common profits and Common Expenses of the Project, and for all other purposes, except as otherwise provided in this Declaration, including, but not limited to, voting; and the Common Interest shall be subject to adjustment as provided in this Declaration.

b. Class Common Interest. In addition to the Common Interest, each Unit shall have assigned to it, for administrative purposes, a Class Common Interest as set forth in Exhibit "B" attached hereto, based upon the Unit Class to which such Unit belongs; that being either the Unit A Class or the B Unit Class. All Owners of Units in a Unit Class shall have the right to vote his or her Class Common Interest with respect to matters requiring voting by Unit Class, and each Unit in a Unit Class shall be responsible for its proportionate share of all Class Common Expenses of the Project, if any. The Developer shall have the absolute right to adjust the Class Common Interest in its discretion in order to ensure that the total B Unit Class Common Interest for the B Units in the aggregate equals one hundred percent (100%), provided that the proportion of each B Unit Owner's Class Common Interest shall remain the same in proportion to the other Owners within the B Unit Class.

6.0 EASEMENTS. In addition to any easements established as Limited Common Elements and any easements and reserved rights described in this Declaration, the Units and the Common Elements shall also have, as an appurtenance, or be subject to, as the case may be, the following easements:

a. Easements in the Common Elements and Other Units for Access and Support. Each Unit shall have appurtenant thereto nonexclusive easements in the Common Elements, including the Limited Common Elements, designed for such purposes as ingress to, egress from, utility services for, and support, maintenance, and repair of such Unit; in the other Common Elements for use according to their respective purposes, subject always to the exclusive use of the Limited Common Elements as provided herein; and in the other Units in the building in which such Unit is located for support; subject to the provisions of Section 514B-38 of the Act.

b. Easement for Encroachments. If any part of the Common Elements now or hereafter encroaches upon any Unit or Limited Common Element, or if any Unit encroaches upon the Common Elements or upon any other Unit, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. In

the event that a Unit shall be partially or totally destroyed and then rebuilt, or in the event of any shifting, settlement, or movement of any part of the Project, encroachments of any part of the Common Elements, Units, or Limited Common Elements due to such construction, shifting, settlement, or movement shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist for so long as such encroachment continues.

c. Easement through Project Grounds. The B Units shall have appurtenant thereto, nonexclusive easements for access throughout all driveways, access lanes, ramps, landscaped areas, sidewalks, walkways, hallways, and grounds of the Project that is/are part of the B Unit Limited Common Elements to the extent that such easements are necessary for ingress to and egress from such Units and to and from any Limited Common Element areas appurtenant to such Units or the B Unit Limited Common Elements.

d. Easement for Vendors, Employees, Customers, and Guests. The Units shall have an appurtenant easement for use by its vendors, licensees, and invitees for purposes of the business conducted in the Units or their appurtenant Limited Common Elements (1) to come onto the Project areas intended for access to and from any nearby roads, streets, or highways, (2) to make deliveries using any delivery area and any Common Elements necessary to get from the delivery area to the Unit or its Limited Common Elements, (3) to go to and from the Unit and its Limited Common Elements using the walkways and sidewalks intended for such purpose, and (4) as otherwise may be reasonably necessary to operate and manage the services from the Units and the Limited Common Elements. The Limited Common Element areas are intended for general use by the Units' vendors, licensees, and invitees, and by the general public for accessing and patronizing the Units.

e. Easement for Access to Units. The Association shall have the irrevocable right, but not the duty, to be reasonably exercised by the Board and/or the Managing Agent, or any of their successors, assigns, agents, employees, contractors, subcontractors, and other authorized personnel, to enter each B Unit and/or its Limited Common Elements from time to time during reasonable hours as may be appropriate for the operation or maintenance of the Project or for the inspection, repair, painting, resurfacing, maintenance, installation, or replacement of any Common Elements, or for any other purpose reasonably related to the exercise of the rights and obligations under this Declaration, or, without notice, at any time for (1) making emergency repairs therein necessary to prevent damage to any B Unit or appurtenant Limited Common Element, (2) abating any nuisance or any dangerous, unauthorized, prohibited, or unlawful activity, (3) protecting the property rights of any Owner, or (4) preventing death or serious bodily injury to any Owner, or other Occupant or invitee therein.

Pursuant to this right, the Association shall also have the right to reasonably enter and have access to certain B Unit Limited Common Elements for maintenance and upkeep. The Association shall give any affected B Unit Owner at least one (1) week prior notice of such required access and arrange times during reasonable hours



