

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by: (x) Mail () Pickup
BELLES GRAHAM PROUDFOOT & WILSON (DHW)
4334 Rice Street, Suite 202
Lihue, Kauai, Hawaii 96766
Telephone: (808) 245-4705

TYPE OF DOCUMENT:

KAKELA MAKAI OCEANVIEW SUBDIVISION
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

PARTIES TO DOCUMENT:

DECLARANT: KAKELA MAKAI PARTNERS I, a Hawaii Joint Venture
304 Inverness Way South, #I80
Englewood, Colorado 801 12

TAX MAP KEY FOR PROPERTY:

(4) 2-3-008.051, -053, and -056

KAKELA MAKAI OCEANVIEW SUBDIVISION
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTYNS made this 16th day of February , 2000 by KAKELA MAKAI PARTNERS I, a Hawaii Joint Venture, whose mailing address is 304 Inverness Way South, #180, Englewood, Colorado 80112 (hereinafter referred to as the "Declarant").

ARTICLE I
PURPOSE

Section 1.1 Kakela Makai Oceanview Subdivision. Declarant is the owner of certain real property (the "Property") located at Kalaheo, District of Koloa, County of Kauai, State of Hawaii more particularly described in Exhibit "A" attached hereto and made a part hereof, which is known as the "Kakela Makai Oceanview Subdivision" (the "Subdivision"). Declarant intends to develop the Property as a single-family residential community.

Section 1.2 Purpose of Declaration. The purpose of this Declaration is (i) to create and maintain the Subdivision in a desirable, attractive and safe condition for the benefit of the owners of property within the Subdivision, (ii) to protect, and enhance the quality, value, aesthetics, desirability and attractiveness of the subdivision, (iii) to provide for a Community Association as an entity to hold, maintain, care for and manage the properties and facilities owned by the Association, (iv) to define the duties, powers and rights of the Association, including but not limited to the creation of a method for reviewing and enforcing the design criteria for improvements within the Subdivision, and (v) to define certain duties, land use restrictions and rights of the owners of property within the Subdivision.

Section 1.3 Declaration. The Declarant, for itself and its successors and assigns, and for the mutual benefit and protection of all owners of property in the Subdivision, hereby declares that the Property shall be owned, held, leased, encumbered, conveyed, sold, used, occupied, maintained, and improved subject to the covenants, conditions, restrictions, reservations, exceptions, and other provisions set forth in this Declaration, all of which are established and declared to be for the purpose of enhancing and protecting the quality, value, aesthetics, desirability and attractiveness of the Subdivision.

The provisions of this Declaration are intended to and shall run with the Property and shall be binding upon and shall inure to the benefit of the Property, the Declarant, the Association, and all parties who acquire any right, title or interest in the Property or any part thereof, and their respective heirs, successors, successors in trust, personal representatives, and assigns.

ARTICLE II
DEFINITIONS

Unless otherwise expressly provided herein. the following words, when used in this Declaration or in the Association Bylaws, shall have the following meaning:

Section 2.1 Articles. "Articles" or "Articles of Incorporation" shall mean the Articles of Incorporation of the Kakela Makai Oceanview Community Association, which have been

filed with the Department of Commerce and Consumer Affairs, State of Hawaii, as the same may be amended from time to time.

Section 2.2 Assessment. "Assessment" shall mean a Regular Assessment; Special Assessment, or Owner's Assessment.

Section 2.3 Association. "Association" shall mean the Kakela Makai Oceanview Community Association, a Hawaii nonprofit corporation, its successors and assigns.

Section 2.4 Association Properties. "Association Properties" shall mean all real and personal property, including Improvements, and all Common Areas, now or hereafter owned by the Association or with respect to which the Association holds an easement for the use, care, or maintenance thereof, or for which the Association has a right or duty to maintain, held for the common use and enjoyment of certain of its members as provided herein, and for other purposes as may be permitted by this Declaration.

Section 2.5 Board. "Board" shall mean the board of directors of the Association.

Section 2.6 Budget. "Budget" shall mean a written itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration, prepared pursuant to Section 5.8 of this Declaration.

Section 2.7 Budget Year. "Budget Year" shall mean a year commencing June 1st and ending May 31st.

Section 2.8 Bylaws. "Bylaws" shall mean the Bylaws of the Association that have been or will be adopted by the Board of the Association, as the same may be amended from time to time.

Section 2.9 Common Area. "Common Area" shall mean any portion(s) of the Subdivision designated as Common Area that are owned or maintained by the Association for the common use and enjoyment of the Owners.

Section 2.10 Declaration. "Declaration" shall mean this instrument as it may be amended from time to time.

Section 2.11 Declarant. "Declarant" shall mean Kakela Makai Partners I, a Hawaii Joint Venture, its successors, assigns, and affiliates. A person shall be deemed to be a "successor or assign" of Declarant only if specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Declaration, and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Declaration that are specifically designated in the written instrument.

Section 2.12 Design Committee. "Design Committee" shall mean the committee provided for in Article VI of this Declaration.

Section 2.13 Fund. "Fund" shall mean any account into which the Board shall deposit money paid to the Association and from which disbursements shall be made in the performance of the functions of the Association, as described in Article V of this Declaration.

Section 2.14 Improvement. "Improvement" shall mean all structures and any appurtenances thereto of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, lanais, patio or lanai covers, awnings, painting of any exterior surfaces of any structure, relocation, installation or replacement of windows, additions, walkways, outdoor sculptures or artwork, sprinkler systems, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, dog run and dog houses, recreational equipment, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, basketball courts or poles, light poles, flag poles, signs, exterior tanks, solar equipment, antennas, satellite dishes, and exterior air conditioning.

Section 2.15 Improvement to Property. "Improvement to Property" shall mean any change, alteration, or addition to any property within the Subdivision, and shall include, but not be limited to, those improvements more particularly described in Section 6.2 of this Declaration.

Section 2.16 Lot. "Lot" shall mean a legally subdivided parcel of land located within the Subdivision.

Section 2.17 Owner. "Owner" shall mean the person, including Declarant, or, if more than one, all persons collectively, who hold fee simple title of record to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder. However, the purchaser under an "agreement of sale" or similar installment purchase contract, and not the seller thereunder, shall be deemed as the "Owner" of the Lot described therein unless the agreement or similar contract clearly provides otherwise.

Section 2.18 Operating Fund. "Operating Fund" shall mean the Fund established by the Board for payment of the Association's regular operating costs and expenses, as described in Section 5.3.

Section 2.19 Owner's Assessment. "Owner's Assessment" shall mean a charge against a particular Owner and the Lot owned by the Owner for the purpose of reimbursing the association for expenditures and other costs of the Association in curing any violation, directly attributable to the Owner, of the Declaration or any rules and regulations adopted by the Board or the Design Committee, or as a result of any damage or liability described in Section 4.4 herein, together with any applicable late charges and/or interest as provided in this Declaration.

Section 2.20 Property. "Property" shall mean the Property described in Exhibit "A" that is also known as the Kakela Makai Oceanview Subdivision.

Section 2.21 Regular Assessment. "Regular Assessment" shall mean, the assessments made for the purpose of covering the portion of the annual costs of operating the Association, including expenses incurred in connection with any authorized function of the Association, that are to be paid by each Owner to the Association for purposes provided herein and charged to such Owner and to the Lot of such Owner.

Section 2.22 Reserve Fund. "Reserve Fund" shall mean the Fund established by the Board for payment of Association costs and expenses not expected to recur on an annual or more frequent basis, including but not limited to normal and anticipated future maintenance and repairs of Association Properties.

Section 2.23 Special Assessment. "Special Assessment" shall mean a charge against each Owner and the Lot owned by that Owner representing a portion of the costs of the Association for maintenance, replacements, major capital repairs, and Improvements, and any other purpose authorized by the Board as provided herein.

Section 2.24 Subdivision. "Subdivision" shall mean the Kakela Makai Oceanview Subdivision, including all phases or stages of development of the same.

ARTICLE III KAKELA MAKAI OCEANVIEW COMMUNITY ASSOCIATION

Section 3.1 General Purposes. The Association is a non-profit corporation charged with the duties and empowered with the rights set forth herein and in its Articles of Incorporation and Bylaws.

Section 3.2 Membership. Every Owner of a Lot in the Subdivision shall be a member of the Association; provided that any such person or entity who holds such interest merely as a security for performance of an obligation shall not be a member. Membership shall be appurtenant to and may not be separated from ownership of any Lot in the Subdivision.

Section 3.3 Declarant's Membership. The Declarant shall remain as a member of the Association until all Common Area, on-site and off-site infrastructure construction in or around the Subdivision, and related development activity, in the sole opinion of the Declarant has been completed. This Section shall not restrict or otherwise be deemed to affect any membership rights the Declarant may have under this Declaration, the Articles of Incorporation, or the Bylaws of the Association.

Section 3.4 Voting. The voting rights of the members shall be as set forth in this Declaration, the Articles of Incorporation and the Bylaws of the Association. All voting rights of any member shall be conditional on that member being current in the payment of his and/or her assessments due to the Association. In no event shall more than one vote be cast with respect to any Lot.

Section 3.5 Duties and Powers. The Association shall have the rights, obligations, duties and powers set forth in the Articles of Incorporation, the Bylaws, and in this Declaration to do and perform each and every one of the following, and any and all things which may be otherwise authorized, required or permitted for the benefit of the Owners and for the maintenance and improvement of the Subdivision:

(a) The Association shall accept all Owners as members of the Association, subject to any restrictions on voting rights of members who are delinquent in their assessment obligations as may be stated herein or in the Bylaws.

(b) The Association shall maintain or provide for the maintenance of Common Areas and Improvements located on the Common Areas, including landscaping if appropriate.

(c) To the extent not assessed to or paid by the Owners, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas.

(d) The Association shall obtain and maintain in force such insurance policies as the Board may deem appropriate.

(e) The Association shall have the power to levy assessments against the Owners (subject to the terms contained in Article V below), and shall take such action, whether or not expressly authorized by this Declaration, the Articles, or the Bylaws, as may reasonably be necessary to enforce the restrictions, limitations, covenants and conditions of this Declaration, the Articles, the Bylaws, and any rules or regulations promulgated pursuant to this Declaration or the Bylaws.

(f) The Association shall have the power to make contracts, to acquire and dispose of property, and to borrow money and encumber the Association Properties to secure any loan made by the Association. The Association may also, in the event that there is a foreclosure of any lien against a Lot, be a purchaser of such foreclosed Lot.

(g) The Association shall have the power to promulgate such rules, regulations and restrictions as may be necessary from time to time in furtherance of the rights, obligations, duties and powers contained herein, in the Articles of Incorporation, and in the Bylaws.

(h) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing any Lot, if for any reason the Owner fails to construct, maintain and repair the Lot as required herein, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such area in violation of Article VI. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration.

(i) The Board shall be required to grant and convey to third parties easements or rights-of-way in, on, over or under any Common Area without payment to the Association when requested by the Declarant.

(j) The Board may from time to time employ the services of a manager to manage the affairs of the Association, and may also employ or retain such other employees or agents related to the accounting, office, or other functions of the Association. The Board may delegate to the manager any of its powers under this Declaration, provided, however, the Board cannot delegate

to such manager the power to execute any contract binding on the Association for a sum in excess of \$2,000.00; nor for the performance of any work or services, which work or services are not to be completed within 60 days; nor the power to sell, convey, mortgage or encumber any property of the Association; nor the power to make Assessments as provided in Article V. The Association shall obtain, or the manager shall provide, and keep in full force and effect at all times a fidelity bond or bonds for any person handling funds of the Association. Each such bond shall name the Association as obligee and shall be not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the manager, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months' aggregate Regular Assessments on all Lots plus reserve funds.

Section 3.6 Liability. No member of the Board shall be personally liable to any Owner, guest, lessee or to any other person, including the Declarant, for any error or omission of the Association, its representatives and employees, or the manager, provided, however, that such member has with actual knowledge possessed by him or her acted in good faith.

ARTICLE IV ASSOCIATION PROPERTIES

Section 4.1 Owner's Rights of Use andd Enjoyment Generally. Unless otherwise provided in this Declaration, all Owners may use and enjoy the benefits of the Association Properties, as may be appropriate to the particular property.

Section 4.2 Right of Association To Regulate Use. The Association, acting through the Board, shall have the power to regulate use of Association Properties by Owners and the public to further enhance the overall rights of use and enjoyment of all Owners.

Section 4.3 No Partition of Association Properties. No Owner shall have the right to partition or seek partition of the Association Properties or any part thereof.

Section 4.4 Liability of Owners for Damage. Each Owner shall be liable to the Association for any damage to Association Properties or for any expense or liability incurred by the Association, to the extent not covered by insurance, caused by the negligence or willful misconduct of such Owner or any person using the Association Properties through such Owner and for any violation by such Owner or any such person of this Declaration or any rule or regulation adopted by the Association. The Association shall have the power, as provided elsewhere in this Declaration, to levy and collect an Owner's Assessment against an Owner, after notice and hearing, to cover the costs and expenses incurred by the Association on account of any such damage or violation of this Declaration, or any such rule or regulation, or for any increase in insurance premiums directly attributable to any such damage or violation.

Section 4.5 Association Duties upon Damage or Destruction. In the event of damage to Association Properties by fire or other casualty or in the event any governmental authority shall require any repair, reconstruction, or replacement of any Association Properties, the Association shall have the duty to repair, reconstruct, or replace the same. Any insurance proceeds payable by reason of damage or destruction of Association Properties by fire or other

casualty shall be paid to the Association and shall be used, to the extent necessary, to pay the costs of repair, reconstruction, or replacement. If funds from insurance proceeds or reserves for replacement are insufficient to pay all costs of repair, reconstruction, or replacement of Improvements damaged or destroyed, or if the Association is required to make repairs, replacements, or improvements by governmental authorities, the Association may, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement, or improvement, levy a Special Assessment in accordance with Section 5.13, or if an Owner or group of Owners is liable for such damage, levy an Owner's Assessment in accordance with Section 5.14 against the responsible Owner or group of Owners to provide the additional funds necessary. Repair, reconstruction, or replacement of Association Properties shall be done under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Association may use the excess for future maintenance, repair, improvement, and operation of other Association Properties.

Section 4.6 Association Powers in the Event of Condemnation. If any Association Properties or interests therein are taken under exercise of the power of eminent domain or by private purchase in lieu or under threat thereof, the award in condemnation or the price payable shall be paid to the Association, except to the extent payable to any other person with an interest in such property, including any mortgagee of such property. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners or other persons therein. Any award or funds received by the Association shall be held by the Association as a reserve for further maintenance, repair; reconstruction, or replacement of Association Properties or may be used for improvements or additions to, or operation of, Association Properties. No Owner shall be entitled to as a party or otherwise in any condemnation proceedings affecting Association Properties.

Section 4.7 Title to Association Properties on Dissolution of Association. In the event of dissolution of the Association, the Association Properties shall, to the extent permitted by law and reasonably possible, be conveyed or transferred to an appropriate public, governmental or quasigovernmental agency or organization, or to a nonprofit corporation, association, trust, or other organization, to be used, in any such event, for the common benefit of Owners for similar purposes for which the particular Association Property was held by the Association. To the extent the foregoing is not possible or appropriate, the Association Properties shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Owners in proportion to the number of Lots owned by such Owner in the Subdivision.

ARTICLE V ASSOCIATION BUDGETS AND FUNDS; ASSESSMENTS

Section 5.1 Funds To Be Established. The Association shall establish and maintain the following separate Funds: (a) an Operating Fund; and (b) a Reserve Fund. The Funds shall be established as one or more savings or checking accounts at any financial institution in which deposits are insured by an agency of the federal government, each of which accounts shall be held in trust for the Owners. Notwithstanding anything else to the contrary herein, in no event shall the Association be required to refund any surplus funds of the Association remaining after

payment of or provision for common expenses, or any prepayment of or provision for reserves, or to apply any such surplus against any Owner's future Regular Assessment.

Section 5.2 Establishment of Other Funds. The Association may establish other Funds as and when needed. Nothing herein shall limit, preclude, or impair the authority of the Association to establish other Funds for specified purposes authorized by this Declaration. If the Association establishes any additional Funds, the Board shall designate an appropriate title for the Fund to distinguish it from other Funds maintained by the Association.

Section 5.3 Deposit of Regular Assessments to Funds. Money collected by the Association as Regular Assessments shall be deposited in the Funds in accordance with the following provisions: (a) there shall be deposited to the Operating Fund that portion of the Regular Assessments that, according to the Association Budget for the Budget Year, was budgeted for operating costs and expenses; and (b) there shall be deposited to the Reserve Fund that portion of the Regular Assessments that was budgeted for the Reserve Fund.

Section 5.4 Other Deposits to Funds. The Association shall deposit money received by the Association from sources other than Regular Assessments in the Fund determined by the Board to be most appropriate. For example, an Owner's Assessment shall be deposited to the Fund from which the costs and expenses were or will be paid that form the basis for the Owner's Assessment; and Special Assessments for capital repairs, maintenance, replacements, and improvements shall be deposited to the Fund from which such capital costs have been or will be paid. Interest and late charges received on account of delinquent Assessments may be allocated among the Funds in the same proportions as the delinquent Assessments were allocated or, at the discretion of the Board, may be allocated to any one or more of the Funds.

Section 5.5 Disbursements From Funds. All amounts deposited in the Funds shall be used solely for the common benefit of all the Owners for purposes authorized by this Declaration. Disbursements from particular Funds shall be limited to specific purposes as follows: (a) disbursements from the Operating Fund may be made for such purposes as are necessary or proper under this Declaration, except those purposes for which disbursements are to be made from other Funds; and (b) disbursements from the Reserve Fund shall be made solely for purposes of funding those functions that are not expected to recur on an annual or more frequent basis.

Section 5.6 Authority for Disbursements. The Board shall have the authority to make, or to authorize an agent to make, disbursements of any money in a Fund.

Section 5.7 Funding of Reserve Fund. The Board, in budgeting and levying Assessments, shall endeavor, whenever possible, to fund the Reserve Fund by regularly scheduled payments, included as part of the Regular Assessments, rather than by Special Assessments. Money in the Reserve Fund may be used in the discretion of the Board, from time to time, for any purpose for which a Regular or Special Assessment may be used.

Section 5.8 Annual Budgets. The Board shall cause to be prepared, at least sixty days prior to the commencement of each Budget Year, a Budget for such Budget Year, including a reasonable provision for contingencies and deposits into the Operating and Reserve Funds. The Budget shall show, in reasonable detail, the categories of expenses and the amount of expenses in each Fund, and shall reflect any expected income of the Association for the coming Budget Year, any expected surplus from the Budget Year, and any existing surplus in any Reserve Fund. The Budget may include an amount for contingencies and amounts deemed necessary or desirable for deposits to create, replenish, or add to the proper Reserve Fund for major capital repairs, replacements, and improvements for Association Properties. Within thirty days after the adoption of any Budget, the Board shall cause a copy of the Budget or a summary of it to be distributed to each Owner, shall cause a copy of the Budget to be posted at the principal office, if any, of the Association, and shall set a date for a meeting of the Owners to consider ratification of the Budget to be held not less than 14 nor more than 60 days after mailing or other delivery of the Budget or a summary of it. Such meeting may be concurrent with the annual meeting of Owners as provided in the Bylaws. Unless at that meeting a majority of the Owners entitled to vote reject the Budget, the Budget shall be deemed ratified, whether or not a quorum is present. In the event the Budget is rejected, the periodic Budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent Budget proposed by the Board. In the event the Association does not have an address for any Owner, such posting shall be deemed delivery to such Owner. If the Association publishes a newsletter for Owners, the Budget or a summary shall be published in the newsletter. The Association shall make copies of the Budget available to any Owner requesting a copy of the same upon payment of the reasonable copying expense.

Section 5.9 Regular Assessments. For each Budget Year, the Association may levy Regular Assessments against Owners of the Lots. Each Owner shall be obligated to pay the Regular Assessments levied against and allocated to such Owner and the Lot of such Owner, as hereinafter provided.

Section 5.10 Apportionment of Regular Assessments. For purposes of assessing the Regular Assessments, each Lot shall constitute one Lot regardless of size, value, location, or use of such Lot. The Owner (including the Declarant) of each subdivided Lot that is incorporated into the Subdivision during the Budget Year shall pay an equal share of the Regular Assessments for that Budget Year. Any unsubdivided parcels located within the Subdivision which comprise a future phase of the Subdivision or which are intended to be incorporated into the Subdivision, but which have not yet been granted final residential lot subdivision approval by the County of Kauai, shall be excluded from Regular Assessments.

Section 5.11 Supplemental Regular Assessments. If at any time and from time to time during any Budget Year the Regular Assessments prove inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a supplemental Regular Assessment in the amount of such actual or estimated inadequacy which shall be assessed to the Owners in the manner set forth in this Article V.

Section 5.12 Payment of Assessments. Regular Assessments shall be due and payable at such times and installments, if any, as the Board shall determine in its sole and absolute

discretion. Notice of the amount of the Regular Assessments shall be given to each Owner on or before May 1 of each Budget Year.

Section 5.13 Special Assessments. In addition to Regular Assessments, the Board may, subject to the provisions of this section, levy Special Assessments for the purpose of raising funds not otherwise provided under the Budget from Regular Assessments to construct or reconstruct, repair, or replace capital improvements upon Association Properties, including necessary personal property related thereto; to add to the Association Properties; to provide for necessary facilities and equipment to offer the services authorized in this Declaration; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. The Board shall not levy special Assessments without the approval of the Owners owning at least two-thirds of the Lots subject to the Special Assessment who are entitled to vote. The Association shall notify Owners in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable. The owners shall pay any such Special Assessment in the manner so specified.

Section 5.14 Owner's Assessments. The Board may, subject to the provisions hereof, levy an Assessment against any Owner if the negligent or willful failure of the Owner or any person claiming through or under the Owner to comply with this Declaration, the Articles, the Bylaws, or any rules and regulations adopted by the Association shall have resulted in the expenditure of funds by the Association to cause such compliance including, but not limited to, court costs and attorneys' fees. Such Assessment shall be known as an Owner's Assessment and shall be levied only after notice to the Owner and an opportunity for the Owner to be heard by the Board. The amount of the Owner's Assessment shall be due and payable to the Association thirty days after notice to the Owner of the decision of the Board that the Owner's Assessment is owing.

Section 5.15 Late Charges and Interest. If any Regular Assessment, Special Assessment, or Owner's Assessment or any installment thereof is not paid within thirty days after it is due, the Owner obligated to pay the Assessment may be required to pay a reasonable late charge to be determined by the Board. Any Assessment or installment of an Assessment that is not paid within thirty days after the date of any Notice of Default given under Section 5.17 and prior to the Recordation of a Notice of Lien under Section 5.20 shall bear interest from the date of Recordation of the Notice of Lien at the rate of ten percent (10%) per annum or the highest rate allowed under Hawaii law, whichever is less.

Section 5.16 Attribution of Payments. If any installment payment of a Regular Assessment is less than the amount assessed and the payment does not specify the Fund or Funds into which it should be deposited, the receipt by the Association from that Owner shall be credited in the following order of priority: (a) to the Reserve Fund until that portion of the Regular Assessment has been satisfied; and (b) to the Operating Fund. In each of the foregoing cases, receipts shall be credited first to interest, attorneys' fees and other costs of collection, and next to principal reduction, satisfying the oldest obligations first followed by more current obligations, in accordance with the foregoing order of priority.

Section 5.17 Notice of Default. If any Assessment or any installment thereof is not paid

within thirty days after its due date, the Board may mail a Notice of Default to the Owner and to each mortgagee of the Lot who has requested a copy of the Notice. The Notice shall specify: (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date, not less than thirty days from the date the Notice is mailed to the Owner, by which such default must be cured; and (d) that failure to cure the default on or before the date specified in the Notice may result in acceleration of the balance of the Assessment or the installments of the Assessment for the then current Budget Year, if applicable, and the filing and foreclosure of the lien for the Assessment against the Lot of the Owner. If the delinquent Assessment and any late charges or interest thereon are not paid in full on or before the date specified in the Notice, the Board, at its option, may declare all of the unpaid balance of the Assessment to be immediately due and payable without further demand, if applicable, and may enforce the collection of the Assessment and all charges and interest thereon in any manner authorized by law or this Declaration, subject to the protection afforded to mortgagees under this Declaration.

Section 5.18 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct, and personal debt and obligation of the Owner against whom the same is assessed. In the event of a default payment of any Assessment or installment thereof, whether Regular, Special, or Owner's, the Board may, in addition to any other remedies provided under this Declaration or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided.

Section 5.19 Lawsuit To Enforce Assessments. The Board may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charges, interest, and other costs of enforcement, including reasonable attorneys' fees in the amount the Court may adjudge, against the defaulting Owner.

Section 5.20 Lien to Enforce Assessments. Each Owner, by acceptance of Lot ownership, whether or not it shall be so expressed in any purchase or sale agreement, deed or lease, shall be deemed to covenant and agree to pay the Assessments described herein to the Association. If the Owner does not pay such Assessment or any installment thereof when due, the entire amount of the Assessment not paid, all late charges and interest as authorized herein, and all costs of collection incurred by the Association shall be and become a lien upon the Lot of such Owner upon recordation of a Notice of Lien with the Hawaii Bureau of Conveyances. Such lien shall be subject to and subordinate to the lien of any then-existing mortgage of record on the Lot of such Owner. A foreclosure of any such paramount lien, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, shall extinguish the lien as to payments of Assessments which became due prior to such sale, transfer or conveyance, but no such sale, transfer or conveyance shall relieve such Lot or the purchaser or transferee thereof from responsibility for Assessments thereafter becoming due. The Association's Assessment lien may be foreclosed through suit by the Association in like manner as a mortgage of real property, and the Association shall have power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the Lot.

Section 5.21 Estoppel Certificate. Upon the written request of any Owner or any person with, or intending to acquire, any right, title, or interest in the Lot of such Owner, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to the Lot and the Owner thereof, and setting

forth the amount of any Assessment levied against such Lot that is not yet due and payable. Such statement shall, with respect to the person to whom it is issued, be conclusive against the Association and all persons for all purposes that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied. The Association shall be entitled to a reasonable fee as a condition to issuing such a certificate.

Section 5.22 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or Board is not properly exercising its duties and powers under this Declaration.

Section 5.23 Exempt Areas. All Association Properties and any portions of the Subdivision as may be conveyed or dedicated to and accepted by a public utility or governmental agency shall be exempt from Assessments.

ARTICLE VI DESIGN STANDARDS AND CONTROLS

Section 6.1 Approval of Improvements Required. The approval of the Design Committee shall be required for any Improvement to Property on any Lot, except (a) any improvement to Property made by the Declarant; (b) where approval is not reasonably required to carry out the purposes of this Declaration; and (c) where prior approval of Improvements to Property may be waived or certain Improvements to Property may be exempted in writing or under written guidelines or rules promulgated by the Design Committee.

Section 6.2 "Improvement to Property" Defined. An "Improvement to Property" requiring approval of the Design Committee shall mean and include, without limitation, (a) the construction, installation erection, or expansion of any building, structure, or other Improvement, including utility facilities, landscaping, and fences; (b) the demolition or destruction, by voluntary action, of any building, structure, or other Improvement; (c) the grading, excavation, filling, or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, or change of drainage pattern; and (d) any change or alteration of any previously approved Improvement to Property, including any change of exterior appearance, color, or texture.

Section 6.3 Membership of Committee. The Design Committee shall consist of three members, all of whom shall be initially appointed by Declarant. Declarant shall have the continuing right to appoint and remove all three members during the Appointment Period (as hereinafter defined). The Association shall have the right to appoint and remove such members after the expiration of the Appointment Period. During the Appointment Period Declarant shall give the Association written notice of the appointment or removal of any member of the Design Committee. The "Appointment Period" shall mean the period of time commencing as of the date of recordation of this Declaration and continuing until the earliest to occur of the following events: (a) when all Lots within the Subdivision have been conveyed to persons other than Declarant; or (b) when, in its sole and absolute discretion, Declarant voluntarily relinquishes such right. Members of the Design Committee may be but need not be Owners of Lots. After expiration of the Appointment Period, members of the Design Committee to be appointed by the

Association shall be appointed by the Board. Members of the Design Committee appointed by the Board may be removed at any time by the Board and shall serve for such terms as may be designated by the Board or until resignation or removal by the Board. After the expiration of the Appointment Period, the Association may at any time and from time to time change the authorized number of members of the Design Committee, but the number of members of the Design Committee shall not be less than three.

Section 6.4 Submission of Plans. Except as provided in Section 6.1, prior to commencement of work to accomplish any proposed Improvement to Property, the person proposing to make such Improvement to Property (the "Applicant") shall submit to the Design Committee such descriptions, surveys, plot plans, drainage plans, elevation drawings, landscaping plans, fencing plans, construction plans, specifications and samples of materials and colors as the Design Committee shall reasonably request (including such numbers thereof as are reasonably requested) showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvements to Property. The Applicant shall be entitled to receive a receipt for the same from the Design Committee or its authorized agent. The Design Committee may require submission of additional plans, specifications, or other information prior to approving or disapproving the proposed Improvement to Property. Until receipt by the Design Committee of all required materials in connection with the proposed Improvement to Property, the Design Committee may postpone review of any materials submitted for approval.

Section 6.5 Criteria For Approval. The Design Committee shall approve any proposed Improvement to Property only if it deems in its reasonable discretion that the Improvement to Property in the location indicated will not be detrimental to the appearance of the surrounding areas of the Subdivision as a whole; that the appearance of the proposed Improvement to Property will be in harmony with the surrounding areas of the Subdivision; that the Improvement to Property will not detract from the beauty, wholesomeness, and attractiveness of the Subdivision or the enjoyment thereof by Owners; that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the Association; that the proposed Improvement to Property does not affect the drainage plan for the Subdivision or any portion thereof; and, regarding landscaping on any Lot, that no landscaping will be allowed which may unreasonably interfere with or unreasonably and adversely affect reasonable view planes from other Lots in the Subdivision. The Design Committee may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the Design Committee may deem appropriate, and, without limiting the generality of the foregoing statement, the Design Committee may impose reasonable height limitations on any landscaping or other Improvements which may unreasonably interfere with or unreasonably and adversely affect reasonable view planes from other Lots in the Subdivision.

Section 6.6 Design Standards. The Design Committee may issue standards or rules (the "Design Standards") relating to the procedures, materials to be submitted, fees for review, and additional factors that will be taken into consideration in connection with the review of any proposed Improvement to Property including, but not limited to, landscaping and fencing design standards. The Design Standards may specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part because strict application of such limitations or restrictions would be unreasonably or unduly harsh under the circumstances. The Design Standards may waive the requirement for

approval of certain Improvements to Property or exempt certain Improvements to Property from the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Declaration.

Section 6.7 Design Review Fee. The Design Committee may, in the Design Standards, provide for the payment of a fee to accompany each request for approval of any proposed Improvement to Property. The Design Committee may provide that the amount of the fee shall be uniform for similar types of any proposed Improvement to Property or that the fee shall be determined in any other reasonable manner, such as based upon the estimated cost of the proposed Improvement to Property. The Design Committee may further provide that the amount of any design review fee include engineering or architectural consultant, photocopying, and other fees reasonably incurred by the Association in reviewing any proposed Improvement to Property.

Section 6.8 Decision of Committee. Any decision of the Design Committee shall be made within thirty days after receipt by the Design Committee of all materials required by the Design Committee, unless such time period is extended by mutual agreement. The decision shall be in writing. If the decision is not to approve a proposed Improvement to Property, the reasons for disapproval shall be stated. The decision of the Design Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Design Committee.

Section 6.9 Prosecution of Work After Approval. After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible and in complete and strict conformity with the description of the proposed Improvement to Property, any materials submitted to the Design Committee in connection with the proposed Improvement to Property, and any conditions imposed by the Design Committee; provided that within ninety days after approval of any proposed Improvement, or within such longer period as may be approved in writing by the Design Committee, the Owner shall complete the installation of any landscaping and gardening approved in conjunction with the approval of the proposed Improvements. Failure to complete the proposed Improvement to Property within eighteen (18) months after the date of approval, or such longer or shorter period as specified in writing by the Design Committee, or to complete the Improvement to Property in accordance with the description and materials furnished to, and the conditions imposed by, the Design Committee, shall constitute noncompliance with the requirements for approval of Improvement to Property.

Section 6.10 Notice of Completion. Upon completion of the Improvement to Property, the Applicant may give written notice of completion to the Design Committee. Until the date of receipt of such notice of completion, the Design Committee shall not be deemed to have knowledge of completion of such Improvement to Property.

Section 6.11 Inspection of Work. The Design Committee or its duly authorized representative shall have the right to inspect any Improvement to Property prior to or after completion provided that the right of inspection shall terminate thirty days after the Design Committee shall have received a notice of completion from Applicant..

Section 6.12 Notice of Noncompliance. If, as a result of inspections or otherwise, the Design Committee finds that any Improvement to Property has been made without obtaining the

approval of the Design Committee or was not made in complete and strict conformity with the description and materials furnished to, and any conditions imposed by, the Design Committee or was not completed within eighteen (18) months after the date of approval by the Design Committee or such longer or shorter period as specified in writing by the Design Committee, the Design Committee shall notify the Applicant in writing of the noncompliance. If any such notice is given, it shall be given within thirty days after the Design Committee receives a notice of completion from the applicant. The notice of noncompliance shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

Section 6.13 Appeal To Board of Finding of Noncompliance. If the Design Committee gives any notice of noncompliance, the Applicant may appeal to the Board by giving written notice of such appeal to the Board and the Design Committee within twenty days after receipt of the notice of noncompliance by the Applicant. If, after a notice of noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Design Committee shall request a finding of noncompliance by the Board by giving written notice of such request to the Association and the Applicant within sixty days after delivery to the Applicant of a notice of noncompliance from the Design Committee. In either event, the Board shall hear the Owner in accordance with the provisions of the Bylaws for notice and hearing, and the Board shall decide whether or not there has been such noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same.

Section 6.14 Correction of Noncompliance. If the Board determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than twenty days from the date of receipt by the Applicant of the ruling of the Board. If the Applicant does not comply with the Board ruling within such period, the Board may, at its option, record a Notice of Noncompliance against the Lot on which the noncompliance exists, may enter upon such property and remove the noncomplying Improvement to Property, or may otherwise remedy the noncompliance, and the Applicant shall reimburse the Association, upon demand, for all expenses incurred therewith. If the Applicant or Owner does not promptly repay such expenses to the Association, the Board may levy an Owner's Assessment against the Owner of the Lot for such costs and expenses. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies that the Association may have at law, in equity, or under this Declaration. The Applicant and Owner of the Lot shall have no claim for damages or otherwise on account of the entry upon the property and removal of the noncomplying Improvement to Property.

Section 6.15 No Implied Waiver or Estoppel. No action or failure to act by the Design Committee or by the Board shall constitute a waiver or estoppel with respect to future action by the Design Committee or the Board with respect to any Improvement to Property. Specifically, the approval of the Design Committee of any Improvement to Property shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement to Property or any similar proposals, plans, specifications, or other materials submitted with respect to any other Improvement to Property.

Section 6.16 Committee Power to Grant Variances. The Design Committee may authorize variances from compliance with any of the provisions of this Declaration, including

restrictions upon height, size, floor area, or placement of structures or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Design Committee. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, zoning ordinances, height limitations, and setback lines or requirements imposed by any governmental authority having jurisdiction.

Section 6.17 Meetings of Committee. The Design Committee shall meet from time to time as necessary to perform its duties. The Design Committee may from time to time, by resolution in writing adopted by a majority of its members, designate a Committee Representative (who may be but need not be one of its members) to take any action or Perform any duties for or on behalf of the Design Committee, except the granting of approval to any Improvement to Property and granting of variances. Decisions of the Committee Representative within the authority of such Committee Representative or the written consent or vote of a majority of the members of the Design Committee shall constitute the action of the Design Committee.

Section 6.18 Records of Actions. The Design Committee shall report in writing to the Board all final actions of the Committee, and the Board shall keep a permanent record of such reported actions.

Section 6.19 Estoppel Certificates. The Board shall, upon the reasonable request of any interested person and after confirming any necessary facts with the Design Committee, furnish a certificate with respect to the approval or disapproval of any Improvement to Property or with respect to whether any Improvement to Property was made in compliance herewith. Any person, without actual notice to the contrary, shall be entitled to rely on the contents of the certificate with respect to all signatories of the certificate. The Association shall be entitled to a reasonable fee as a condition to issuing such a certificate.

Section 6.20 Nonliability of Committee. No liability shall be imposed upon the Design Committee, any member of the Committee, any Committee Representative, the Association, any member of the Board, or Declarant for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the Design Committee unless due to the willful misconduct of the party to be held liable. In reviewing any matter, the Design Committee shall not be responsible for reviewing, nor shall its approval of an Improvement to Property be deemed approval of, the Improvement to Property from the standpoint of safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations.

Section 6.21 Construction Period Exception. During the course of actual construction of any permitted structure or Improvement to Property, and provided construction is" proceeding

with due diligence, the Design Committee shall temporarily suspend the provisions contained in this Declaration as to the property upon which the construction is taking place to the extent necessary to permit such construction, provided that, during the course of any such construction, nothing is done that will result in a violation of any of the provisions of this Declaration upon completion of construction, or which will constitute a nuisance or unreasonable interference with the use and enjoyment of other property.

ARTICLE VII LAND USE REGULATIONS

Section 7.1 Lots shall be used for private residential purposes. Guest houses and additional dwelling units, both as defined by the County of Kauai Comprehensive Zoning Ordinance, shall be allowed if they conform to existing State and County ordinances and if the architectural design of the guest house and/or additional dwelling unit is consistent and/or compatible, in the determination of the Design Committee, with the design of the main dwelling on the Lot. In addition, in-home businesses or occupations not involving the servicing of customers or employees shall be allowed, provided such activities are conducted solely within the residence and do not create or result in any nuisance or any unreasonable, unwarranted, or unlawful use or interference with rights of Owners or of the public, including, but not limited to, unreasonable or unwarranted use or interference with public streets, rights of way or sidewalks, excessive traffic or parking requirements, or in any other offensive or noxious activities. The main dwelling and any additional dwelling unit constructed on each Lot shall be subject to the following minimum and maximum size requirements, and shall also be subject to review and approval by the Design Committee:

Main Dwelling – a single story main dwelling shall have not less than 1,250 square feet of living area (excluding lanais, garages, and other non-living areas), and a two story main dwelling shall have not less than 1,600 square feet of living area.

Additional Dwelling Unit – an additional dwelling unit which is a free-standing dwelling (i.e., not incorporated under the same roof as the main dwelling) shall contain no more than 750 square feet, including covered and non-covered lanais. Any additional dwelling unit that is constructed under the same roof as the main dwelling on the Lot shall be subject only to such size and other requirements and limitations as may be applicable under County or State law, statute, ordinance, or rule, and such other requirements and limitations as may be imposed by this Declaration, the Design Standards, and the Design Committee.

Section 7.2 Each Lot and any and all Improvements from time to time located thereon shall be maintained by the Owner thereof in good and clean condition and repair and in such manner as not to create a fire, safety or health hazard to the Subdivision or any part thereof, all at such Owner's sole cost and expense.

Section 7.3 No exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the homesite, and Improvements thereon, shall be placed or used upon any Lot.

Section 7.4 No animals shall be maintained on any Lot other than a reasonable number of generally recognized house pets kept for the Owner's personal pleasure and not for sale, breeding, or other commercial purposes. No livestock, poultry, rabbits or other animals whatsoever shall be maintained on any Lot. No pigeons or other fowl, other than canaries, parakeets and other songbirds, shall be maintained on any Lot. No animals or fowl shall be permitted which are a nuisance to neighbors.

Section 7.5 No house trailer, mobile home, tent, or similar facility or structure shall be kept, placed or maintained upon any Lot at any time, provided however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction or improvement of a permanent home or homes on the Lot.

Section 7.6 No truck of more than one (1) ton capacity shall be kept, placed or maintained upon any Lot in such manner that such truck is visible from the adjoining streets and neighboring property, provided, however, that the provisions of this paragraph shall not apply to construction equipment maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of any home or homes on the Lot.

Section 7.7 No accessories, structures or buildings shall be constructed, placed or maintained upon any Lot prior to the construction of the main structure of the residence, provided, however, that the provisions of this section shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of the main structure of the residence.

Section 7.8 No trailer, vehicle or boat shall be constructed, reconstructed or repaired upon any Lot in such a manner that such construction, reconstruction or repair is visible from neighboring properties, nor shall any vehicle not in good operating condition be maintained upon any Lot so as to be visible from any adjoining streets, provided that nothing in this paragraph shall prevent an Owner from performing minor maintenance work and minor repairs on his or her own trailer, vehicle or boat in his or her garage.

Section 7.9 No garbage or trash shall be permitted on any Lot except in closed receptacles screened from view from any adjoining street; and no accumulated waste plant materials will be permitted on any Lot, except as part of an established compost pile maintained in such a manner as not to be visible from neighboring property.

Section 7.10 No open storage of trailers, boats, vehicles, furniture, fixtures, appliances and other goods and chattels will be permitted. These items may only be stored in an enclosed garage. No outside clothes lines or other outside clothes drying or airing facilities shall be permitted except within a fenced service yard and not visible from neighboring property.

Section 7.11 No Owner shall permit any exterior fires whatsoever, except contained barbecue fires, and shall not permit any conditions on the Owner's Lot which creates a fire hazard.

Section 7.12 No Owner shall violate or permit the violation on the Owner's Lot of any applicable law or ordinance pertaining to zoning, buildings, fires, signs or other matter relating to the use and development of the Lot.

Section 7.13 No garage shall be used for other than the parking of vehicles and boats, unless the me be enclosed so as not to be visible from neighboring property by a partition, wall, door or screen-normally kept closed. Specifically, and without limiting the generality of the foregoing, no garage not so enclosed shall be used for laundry or for storage purposes.

Section 7.14 No noxious or offensive activity shall be carried on upon any common area or any residential Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. All occupants shall exercise extreme care about making noises and in the use of musical instruments, radios, televisions, and amplifiers that may disturb other occupants.

Section 7.15 Each-dwelling unit on a Lot shall have a minimum of at least one enclosed two-car garage with garage door. Each dwelling shall have a paved driveway suitable for off street parking for at least two cars, excluding the space(s) in the garage. Carports will not be allowed.

Section 7.16 There shall be no exterior TV or radio antennas permitted on any Lot. An Owner may seek permission from the Design Committee for locating a satellite dish on a Lot, and the Design Committee may grant permission after review of placement and its visual effect on surrounding Lots.

Section 7.17 No advertising sign or billboard except one of not more than five square feet "For Sale" sign per lot shall be erected, placed or permitted to remain on any Lot; provided, however, the foregoing covenant shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings, if any of the Declarant, its agents and assigns during the construction and sale period of the Subdivision.

Section 7.18 Condominiumization of Lots in the Subdivision pursuant to Hawaii Revised Statutes Chapter 514A or any successor or related statute is prohibited; no CPR or other similar method of establishing or creating separate ownership interests for separate dwellings or guest houses on any Lot is authorized under any circumstance.

ARTICLE VIII DECLARANT'S RIGHTS AND RESERVATIONS

Section 8.1 Period of Declarant's Rights and Reservations. Declarant shall have, retain, and reserve certain rights as hereinafter set forth with respect to the Association and the Association Properties from the date hereof until: (a) the time that the last Lot within the Subdivision has been sold and conveyed by Declarant to persons other than Declarant; (b) the date which is twenty years from recordation of this Declaration, whichever event occurs first. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of proper@ by Declarant to the Association whether or not specifically stated therein and in each deed or other instrument by which any property within the Subdivision is conveyed

by Declarant. The rights, reservations, and easements hereinafter set forth shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of this Declaration. Declarant's consent to any one such amendment shall not be construed as consent to any other amendment.

Section 8.2 Right to Construct Additional Improvements. Declarant shall have and hereby reserves the right, but shall not be obligated to, construct additional Improvements on Association Properties at any time and from time to time in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Association and Owners, so long as such construction does not directly result in an increase in the then current Regular Assessments applicable to a Lot by more than twenty percent. If any construction of additional Improvements would have such effect, Declarant may nevertheless construct such additional Improvements so long as Declarant agrees to directly subsidize the Association for the excess expenses. Declarant shall convey or transfer such Improvements to the Association, and the Association shall be obligated to accept title to, care for, and maintain the same as Association Properties as elsewhere provided in this Declaration.

Section 8.3 Declarant's Rights of Use for Promotion and Marketing. Declarant shall have and hereby reserves rights to reasonable use of Lots owned by Declarant and to reasonable use of the Association Properties and services offered by the Association in connection with the promotion, development, construction of Improvements and marketing of the Subdivision. Without limiting the generality of the foregoing, Declarant may erect and maintain on any part of such Lots and the Association Properties such signs, temporary buildings, and other structures as Declarant may reasonably deem necessary or proper in connection with the promotion, development, construction of Improvements and marketing of real property within the Subdivision. Declarant may maintain sales offices and management offices, and model dwellings, all of which may be located on any Lot and relocated to any other Lot within the Subdivision. Declarant may also use vehicles and equipment on Association Properties for promotional purposes; may permit prospective purchasers of property within the boundaries of the Subdivision who are not Owners to use Association Properties at reasonable times and in reasonable numbers; and may refer to the Association Properties and to the Association and services offered by the Association in connection with the promotion, development, construction of Improvements and marketing of property within the boundaries of the Subdivision.

Section 8.4 Declarant's Rights to Complete Development of the Subdivision. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete development of property within the boundaries of the Subdivision; to construct or alter Improvements on any property owned by Declarant within the Subdivision, including temporary buildings; to maintain model homes, temporary buildings, construction trailers, sales trailers or offices for construction or sales purposes, or similar facilities, on any property owned by Declarant or owned by the Association within the Subdivision; or to post signs incidental to development, promotion, development, construction of Improvements, marketing, or sales of property within the boundaries of the Subdivision. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals: (a) to excavate, cut, fill, or grade any property owned by Declarant or to construct, alter, demolish, or replace any Improvements on any property owned by Declarant; b) to use any structure on any property

owned by Declarant as a construction site, model home, or real estate sales office in connection with the sale of any property within the boundaries of the Subdivision; or (c) to require Declarant to seek or obtain the approval of the Design Committee or of the Association for any such activity or Improvement to Property on any property owned by Declarant. Nothing in this Declaration shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration.

Section 8.5 Declarant's Approval of Conveyances or Changes in Use. Until Declarant as lost the right to appoint the members of the Design Committee, the Association shall not, without first obtaining the written consent of Declarant, which consent shall not be unreasonably withheld, convey, change, or alter the use of Association Properties, mortgage the Association Properties, or use Association Properties other than solely for the benefit of the Owners or as specifically allowed hereunder.

Section 8.6 Declarant's Rights to Grant and Create Easements. Declarant shall have and hereby reserves the right to grant or create or be the beneficiary of temporary or permanent easements, licenses, rights of entry, and permits located in, on, under, over, and across (a) Lots owned by Declarant, and (b) Association Properties, for access, utilities, drainage; water, and other purposes incident to development and sale of portions of the Subdivision.

Section 8.7 Declarant's Rights to Convey Additional Property to Association. Declarant shall have and hereby reserves the right, but shall not be obligated to, convey additional real property and Improvements thereon to the Association at any time and from time to time in accordance with this Declaration, so long as any conveyance does not directly result in an increase in the the11 current Regular Assessments applicable to a Lot by more than twenty percent, unless Declarant agrees to directly subsidize the Association for the excess expenses.

Section 8.8 Declarant's Right to Assign Rights. Declarant shall have and hereby reserves the right to assign and transfer all or any portion of Declarant's rights, privileges, powers, interest and obligations hereunder to the Association or to any successor designated by the Declarant.

Section 8.9 Declarant's Right to Dedicate for Public Use. Declarant shall have and hereby reserves the right to dedicate any drainage, access, utility or similar portion of the Association Properties to public use where such use will have the effect of transferring the responsibility and maintenance of the dedicated use to the governmental authority or private utility accepting the said property. However, Declarant is not authorized to dedicate any portion of the Association Properties that are maintained for the use and enjoyment solely of the Owners (such as a community swimming or recreational facility).

ARTICLE IX DURATION AND AMENDMENT OF DECLARATION

Section 9.1 Term of Declaration. Unless amended as herein provided, each provision contained in this Declaration shall continue and remain in full force and effect until December 31, 2050, and thereafter shall be automatically extended for successive periods of ten years each unless terminated by the vote, taken by written ballot, of Owners holding at least seventy-five percent (75 %) of the votes of members of the Association entitled to vote at a duly constitute

meeting of the Association. In the event this Declaration is terminated, the termination shall be evidenced by a Termination Agreement, or ratification thereof, executed by the requisite number of Owners. The Termination Agreement shall specify a date after which the Termination Agreement will be void unless recorded before such date. The Termination Agreement shall be recorded, and the termination of this Declaration shall be effective upon such recordation.

Section 9.2 Amendment by Declarant. Until the first Lot subject to this Declaration has been conveyed by Declarant by a recorded deed, any of the provisions, covenants, conditions, and restrictions contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth the amendment or termination or restatement of this Declaration.

Section 9.3 Amendment by Owners. Except as otherwise provided in this Declaration, including this Section and Sections 8.1 and 9.4, and subject to provisions contained elsewhere in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, or restriction contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by Owners holding at least seventy-five percent (75%) of the votes of the Association entitled to vote present in person or by proxy at duly constituted meetings of the Association; except that until Declarant has sold and conveyed all Lots within the Subdivision, any such amendment or repeal shall not be made except upon approval of the amendment or repeal by Owners holding at least ninety percent (90%) of the votes of the Association entitled to vote present in person or by proxy at duly constituted meetings of the Association. The approval of any duly adopted amendment or repeal shall be evidenced by certification by the Owners of their own votes to the Board. The amendment or repeal shall be effective upon the recordation of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been duly adopted by the Owners. Any amendment to the Declaration made hereunder shall be effective only when recorded.

ARTICLE X MORTGAGEE'S RIGHTS

Section 10.1 Special Rights of First Mortgagees. Any first mortgagee (meaning a mortgage with first priority over other mortgages) of a mortgage encumbering any Lot in the Subdivision, upon filing a written request therefore with the Association, shall be entitled to: (a) written notice from the Association of any default by the mortgagor of such Lot in the performance of the mortgagor's obligations under this Declaration, the Articles, Bylaws, or any rules or regulations adopted by the Association or the Design Committee, which default is not cured within sixty days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association including any annual financial statement within ninety days following the end of any fiscal year of the Association; (d) receive written notice of all meetings of the Association; (e) designate a representative to attend any meeting of the Association; (f) receive thirty days' written notice prior to the effective date of any proposed material amendment to this Declaration, the Articles, or Bylaws;(g) receive written notice if the Association receives notice or otherwise learns of any damage to the Association Pro\$erties if the cost of

reconstruction exceeds \$100,000, and (h) receive written notice if the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Association Properties.

Section 10.2 First Mortgagee Right to Pay Taxes and Insurance Premiums. Any first mortgagee shall be entitled to pay any taxes or other charges that are in default and that may or have become a charge against any of the Association Properties and may pay any overdue premiums on hazard insurance policies for any Association Properties. The first mortgagee making such payments shall be entitled to immediate reimbursement there for from the Association.

ARTICLE XI MISCELLANEOUS PROVISIONS

Section 11.1 Construction. All of the limitations, restrictions, covenants and conditions contained herein shall be liberally construed together to promote and effectuate the fundamental concepts as set forth in Article I of this Declaration.

Section 11.2 Severability . The limitation, restrictions, covenants and conditions of this Declaration shall be deemed independent and severable and the invalidity or partial invalidity of any such limitations, restrictions, covenants or conditions shall not affect the validity or enforceability of any other provision of this Declaration.

Section 11.3 Attorneys' Fees. In any action brought, by the Declarant, the Association, and/or the Design Committee to enforce the provisions hereof, whether legal or equitable, the Declarant, the Association, and/or the Design Committee shall be entitled to reasonable attorneys fees as fixed by the court if it is the prevailing party to the action.

Section 11.4 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail or telephone. If served by mail, each notice shall be sent postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the Lot of such person if no address has been given to the Association. Each notice shall be deemed given, if not actually received earlier, by 5:00 p.m. on the third business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

Section 11.5 Enforcement of Declaration. Declarant, the Association (acting by authority of the Board), and any Owner of the Association entitled to vote shall have the right to enforce any or all of the provisions, covenants, conditions and restrictions contained in this Declaration against any property within the Subdivision and the Owner thereof. The right of enforcement shall include the right to bring an action for damages as well as an action to enjoin any violation of any provision of this Declaration.

Section 11.6 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, or restriction contained in this Declaration, whether by act or omission, is

hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by a person entitled to enforce the provisions hereof.

Section 11.7 Violations of Law. Any violation of any federal, state, or local law, ordinance, rule, or regulation pertaining to the ownership, occupation, or use of any property within the Subdivision is hereby declared to be a violation of this Declaration and shall be subject to any and all enforcement procedures set forth herein.

Section 11.8 Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

Section 11.9 Limitation on Liability. The Association, Board, Design Committee, Declarant, and any member, agent, or employee of any of the same shall not be liable to any person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

Section 11.10 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Subdivision, or any Improvement thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

Section 11.11 Governing Law. This Declaration shall be construed and governed under the laws of the State of Hawaii.

Section 11.12 Conflicts. In the event of a conflict between the provisions of this Declaration and the Association's Articles or Bylaws, the provisions of this Declaration shall supersede and control.

Section 11.13 Declaration To Run With Land. This Declaration and the restrictions, covenants and conditions contained herein shall be deemed to run with the land and shall inure to and be binding upon all property subject hereto and upon each person or entity who now owns or who hereafter acquires ownership or any right, title or interest in any Property which is subject to the Declaration.

