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P.O. Box 3040
Princeville, Hawaii 96722

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SECOND AMENDED AND RESTATED

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF PRINCEVILLE II

DECLARANT: PRINCEVILLE II COMMUNITY ASSOCIATION
P.O. Box 3040
Princeville, Hawaii 96722

State of Hawaii
County of Kauai

References:

Document No.: 92-069808
Document No.: 92-099303
Document No.: 94-052824

SECOND AMENDED AND RESTATED

DECLARATION OF

COVENANTS, CONDITIONS AND RESTRICTIONS

OF

PRINCEVILLE II

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**SECOND AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
PRINCEVILLE II**

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF PRINCEVILLE II ("**Declaration**") is made this 19th day of June, 2000, by the members of PRINCEVILLE II COMMUNITY ASSOCIATION, a Hawaii nonprofit corporation, ("**Association**"), with reference to the following

RECITALS:

A. On May 5, 1992, PRINCEVILLE CORPORATION, a Colorado corporation authorized to do business in the State of Hawaii ("**Declarant**") caused to be recorded in the Bureau of Conveyances of the State of Hawaii ("**Recorded**"), as Document No. 92-069808 that certain instrument entitled Declaration of Covenants, Conditions and Restrictions of Princeville II ("**Original Declaration**"). Defined terms appear throughout this Declaration with the first letter of each word in the terms capitalized. Unless the context clearly requires otherwise, defined terms shall have the meanings given to them in **Article I** hereof or elsewhere herein.

B. On June 23, 1992, Declarant caused to be Recorded as Document No. 92-099303 that certain instrument entitled Correction to the Declaration of Covenants, Conditions and Restrictions of Princeville II ("**Correction**").

C. On March 28, 1994 Declarant amended and restated the Original Declaration and the Correction and caused to be Recorded as Document No. 94-052824 that certain instrument entitled Amended and Restated Declaration of Covenants, Conditions and Restrictions of Princeville II ("**Amended and Restated Declaration**").

D. The Amended and Restated Declaration covered the real property located in the County of Kauai, State of Hawaii, described on **Exhibit "A"**.

E. **Section 16.2 (b)** of the Amended and Restated Declaration authorizes the members of the Association to amend all or any part of the Amended and Restated Declaration with the affirmative vote or written consent, or any combination thereof, of 75% of each class of Membership of the Association. **Section 16.2** also requires the approval of the Declarant to amend any provision of the Declaration which may remove, revoke or modify any right or privilege of Declarant. All Owners of Lots, other than the Declarant are Class A Members; the Declarant is the sole Class B Member.

F. Class A Members and Class B Member, with the consent of the Declarant, wish to amend and restate the Amended and Restated Declaration as follows:

G. This Declaration imposes upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of the Owners of each portion of the Properties, establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties.

H. It is intended that the Properties be developed by Declarant as a master planned community. Declarant may, but shall not be required to, annex all or part of the **Exhibit "B"** property to the Properties and said additional property so annexed will thereupon be subject to the Declaration.

Notwithstanding the foregoing, each Owner who takes title subject to this Declaration acknowledges that there is no assurance that the proposed development of the Properties will be completed.

Now, therefore, Members of the Association hereby amend, restate and wholly supersede the Amended and Restated Declaration and replace it with this Declaration. The Members hereby declare that all of the property described in **Exhibit "A"** and any additional property subjected to this Declaration shall be held, sold, conveyed, encumbered, leased, occupied, used and improved subject to the following easements, restrictions, covenants and conditions, which are for the purposes of enhancing, protecting and preserving the desirability of and which shall run with the real property subjected to this Declaration. This Declaration shall be binding on and shall inure to the benefit of all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors, successors-in-title and assigns.

Article I. Definitions

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "**Alteration(s)**": any alteration or modification to any Improvement, including but not limited to re-landscaping, repainting, resurfacing, or the application of any material to the exterior surface of any Improvement, or affixing to the exterior surface of any Improvement, any equipment, structure, fenestration, facing, appendage, or similar items, and any outdoor equipment and appurtenance to a Lot, whether permanent or temporary.

1.2 "**Approved Plans**": collectively and individually, plans for any Improvement(s) or Alterations (landscaping, architectural or otherwise) on the Properties which have been approved in writing by the Design Committee.

1.3 "**Area of Common Responsibility**": the Common Area, together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenants, or by contract, become the responsibility of the Association. Approval of a majority of a quorum of Owners, other the Declarant, shall be required in order to authorize the Association to enter into any contract to cause any area to be part of the Area of Common Responsibility.

1.4 "**Articles of Incorporation**" or "**Articles**": the Articles of Incorporation of Princeville II Community Association, as filed with the Director of Commerce and Consumer Affairs, Department of Commerce and Consumer Affairs for the State of Hawaii.

1.5 "**Association**": Princeville II Community Association, a Hawaii nonprofit corporation, and its successors and assigns.

1.6 "**Base Assessment**": assessments levied on all Lots subject to assessment under **Section 8.9** to fund Common Expenses for the general benefit of all Lots, as more particularly described in **Sections 8.1 and 8.3**.

1.7 "**Board of Directors**" or "**Board**": the body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under the Hawaii Nonprofit Corporation Act.

1.8 "**Builder**": any Person which purchases one or more Lots for the purpose of constructing Improvements for later sale to Retail Owners or parcels of land within the Properties for further subdivision, development and/or resale in the ordinary course of such Person's business.

1.9 "**Bureau of Conveyances**": the Bureau of Conveyances of the State of Hawaii, and any successor thereto.

1.10 "**Bylaws**": the Bylaws of Princeville II Community Association incorporated by reference, as they may be amended.

1.11 "**Certificate**": either an instrument or some other form of approval which evidences the Design Committee's approval of an Owner's Improvements or Alterations. In the sole discretion of the Design Committee, a certificate may be in the form of a stamped endorsement of approval affixed to plans approved by the Design Committee and duly executed on behalf of the Design Committee.

1.12 "**Class "B" Control Period**": the period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors as provided in **Section 3.3 of the Bylaws**.

1.13 "**Common Area**": all real and personal property which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term shall include the Exclusive Common Area, as defined below.

1.14 "**Common Expenses**": the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Lots, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by a majority of the total Class "A" Members of the Association.

1.15 "**Community-Wide Standard**": the standard of conduct, maintenance or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the Design Committee.

1.16 "**Declarant**": Princeville Corporation, a Colorado corporation authorized to do business in the State of Hawaii, its successors and assigns, or such other Person to whom Princeville Corporation, its successors or assigns, may assign its rights as Declarant pursuant to **Article XIII**. (For purposes of this definition of Declarant, Princeville Corporation's "successors and assigns" shall not include any Person to whom Princeville Corporation conveys or leases a Lot, unless the rights of Declarant expressly have been assigned to such Person.)

1.17 "**Design Committee**": the committee established in accordance with **Article IX** of this Declaration to administer and enforce architectural and landscaping control within the Properties.

1.18 "**Design Committee Rules**": those architectural and landscaping design guidelines for the Properties which are further described in **Section 9.2** of this Declaration and which are set forth in a separate document entitled "**Design Committee Rules for Princeville II**."

1.19 "**Enforcing Person**": any of the Enforcing Persons identified in **Section 4.3**.

1.20 "**Exclusive Common Area**": a portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods, as more particularly described in **Article II**.

1.21 "**Fiscal Year**": January 1 through December 31 of each year, or such other Fiscal Year as may be adopted by the Board.

1.22 "**Golf Course(s)**": any parcel of land adjacent to or within the Properties which is privately owned by Princeville Corporation, a Colorado corporation, its successors, successors-in-title or assigns, and which is operated as a golf course, and all related and supporting facilities and improvements operated in connection with such golf course.

1.23 "**Government Entity**": any governmental body or agency, or any department thereof.

1.24 "**HRS**": the Hawaii Revised Statutes, as amended.

1.25 "**Improvement(s)**": the Dwellings, buildings, garages, entry features, security facilities, streets, roads, driveways, walkways, parking areas, mailboxes, signs, fences, gates, walls, hedges, plantings, planted trees and shrubs, slope areas, utilities installation, whether below or above ground, pools, exterior lights, and all other structures and landscaping improvements of every kind, nature or description, located within the Properties.

1.26 "**Lot**": a portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon. The term shall include, by way of illustration but not limitation, condominium units, townhouse units, time share units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Areas, common property of any Neighborhood Association or property dedicated to the public. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Lot. In the case of a time share unit, each dwelling unit shall be deemed a separate Lot.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Lots designated for residential use for such parcel on the Master Plan or the site plan approved by Declarant, whichever is more recent, until such time as a subdivision plat or condominium plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall constitute a separate Lot or Lots as determined above and the number of Lots on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

Lots which have been "**Consolidated**" into one (1) Lot as defined in and in accordance with **Paragraph (b)(iii) of Exhibit "C"** to the Declaration shall be considered one (1) Lot for all purposes of this Declaration.

1.27 "**Master Plan**": the land use plan for the development of Princeville II dated June 1989, prepared by Belt Collins & Associates, as it may be amended, which plan includes the property described in **Exhibit "A"** and all or a portion of the property described in **Exhibit "B,"** which Declarant may from time to time anticipate subjecting to this Declaration. Declarant, at its sole discretion, may amend the Master Plan and increase the total number of Lots to be developed if any part of the Properties is rezoned to allow for a higher density. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, develop such properties, nor shall the exclusion of property described in **Exhibit "B"** from the Master Plan bar its later annexation in accordance with **Article VII.**

1.28 "**Member**": a Person entitled to membership in the Association, as provided in **Section 3.2.**

1.29 "**Mortgagee**": a beneficiary or holder of a mortgage.

1.30 **"Neighborhood"**: two or more Lots which share interests other than those common to all Lots, as more particularly described in **Section 3.4**. By way of illustration and not limitation, a condominium townhome development, cluster home development or single-family detached housing development might each be designated as separate Neighborhoods, or a Neighborhood may be comprised of more than one housing type with other features in common. In addition, each parcel of land intended for development as any of the above shall constitute a Neighborhood, subject to division into more than one Neighborhood upon development.

Where the context permits or requires, the term **"Neighborhood"** shall also refer to the Neighborhood Committee, if any, established in accordance with the Bylaws, or the Neighborhood Association established to act on behalf of the Owners within the Neighborhood. Neighborhood boundaries may be established and modified as provided in **Section 3.4**.

1.31 **"Neighborhood Assessments"**: assessments levied against the Lots in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in **Sections 8.1 and 8.4**.

1.32 **"Neighborhood Association"**: any condominium association or other owners' association having concurrent jurisdiction over any Neighborhood.

1.33 **"Neighborhood Expenses"**: the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Owners and occupants of Lots within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize and as may be authorized herein or in Supplemental Declarations applicable to the Neighborhoods.

1.34 **"Owner"**: the record owner (including Declarant, the Association and any Neighborhood Association), whether one or more Persons, of a fee simple title to any Lot which is part of Princeville II. The Articles or Bylaws may classify Owners in different classes.

1.35 **"Person"**: any person, individual or entity (including, without limitation, any trustee, mortgagee, personal representative, corporation (profit or nonprofit), partnership (general or limited), joint venture, association of apartment owners established pursuant to Chapter 514A, HRS, unincorporated association or trust).

1.36 **"Phase"**: all Lots simultaneously subjected to this Declaration by Declarant by its execution and recordation of this Declaration and each Supplemental Declaration in the Bureau of Conveyance; provided, however, the property described in Exhibit "A" to this Declaration shall constitute Phases One and Two.

1.37 **"Princeville II"**: the Properties as described in **Section 1.40**.

1.38 **"Princeville II Rules"**: the rules from time to time in effect, adopted by the Board of Directors.

1.39 **"Private Amenities"**: certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis, use fee basis, or otherwise, and shall include, without limitation, the Golf Course(s).

1.40 **"Properties"**: the real property described in Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with **Article VII**. Exhibit "A" and the Supplemental Declaration which subject additional property to the Declaration, shall provide a legal description of the Common Area, if any.

- 1.41 "**Retail Owner**": an Owner other than Declarant or Builder.
- 1.42 "**Special Assessment**": assessments levied in accordance with **Section 8.6**.
- 1.43 "**Specific Assessment**": assessments levied in accordance with **Section 8.7**.

1.44 "**Supplemental Declaration**": an amendment or supplement to this Declaration filed pursuant to **Article VII** which subjects additional property to this Declaration, and identifies the Common Area within the additional property, if any, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to an instrument filed by (a) Declarant pursuant to **Section 3.4(b)**, which designates Voting Groups; or (b) an Owner pursuant to **Paragraph (b)(iii) of Exhibit "C"** to this Declaration to Consolidate two (2) or more Lots.

1.45 "**Voting Group**": one or more Neighborhoods whose Members vote on a common slate for election of directors to the Board of Directors, as more particularly described in **Section 3.4** or, if the context so indicates, the group of Owners whose Lots comprise such Neighborhoods.

All references in this Declaration to any particular Government Entity, statute, ordinance or governmental approval or permit shall mean any successor thereto or replacement thereof or most nearly comparable substitution therefore.

Article II. Property Rights

2.1 **Common Area**. Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Area, subject to:

- (a) This Declaration, the Bylaws and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to occupants of Lots and their guests, and rules limiting the number of guests who may use the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the Bylaws or rules of the Association after notice and a hearing pursuant to **Section 3.23 of the Bylaws**;
- (e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to **Section 4.8**;
- (f) The right of the Board to impose reasonable membership requirements. The Board may charge reasonable membership admission or other fees for the use of any recreational facility situated upon the Common Area upon a vote of 51% of the total Class "A" votes;
- (g) The right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

(h) The right of the Association, acting through the Board, to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(i) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "**Exclusive Common Areas**," as more particularly described in **Section 2.2**.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees and social invitees, subject to reasonable Board regulation. An Owner who leases his or her Lot or sells his or her Lot pursuant to **Section 3.2** shall be deemed to have assigned all such rights to the respective lessee or vendee of such Lot.

2.2 Exclusive Common Area. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners, occupants and invitees of Lots within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, roads, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement and insurance of Exclusive Common Areas shall be assessed as a Neighborhood Assessment against the Owners of Lots in those Neighborhoods to which the Exclusive Common Area is assigned.

Initially, Declarant shall designate any Exclusive Common Area as such and shall assign the exclusive use thereof in the deed conveying the Common Area to the Association or on the plat of survey relating to such Common Area; provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Exclusive Common Area to additional Lots and/or Neighborhoods, so long as Declarant has a right to subject additional property to this Declaration pursuant to **Section 7.1**. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned upon a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) to which the Exclusive Common Areas are assigned, if applicable, and within the Neighborhood(s) to which the Exclusive Common Areas are to be assigned. As long as Declarant owns any property described in **Exhibit "A" or "B"** for development and/or sale, any such assignment or reassignment shall also require Declarant's consent.

The Association may, upon approval of a majority of the Owners of the Neighborhood(s) to which certain Exclusive Common Areas are assigned, permit Owners of Lots in other Neighborhoods to use all or a portion of such Exclusive Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Areas.

2.3 Private Amenities. Access to and use of the Private Amenities is strictly subject to the rules and procedures of the respective Owners of the Private Amenities, and no Person gains any right to enter or to use those facilities by virtue of membership in the Association or ownership or occupancy of a Lot.

All Persons, including all Owners, are hereby advised that no representations or warranties, either written or oral, have been or are made by Declarant or any other Person with regard to the nature or size of improvements to, or the continuing ownership or operation of the Private Amenities. No purported representation or warranty, written or oral, in conflict with this Section shall be effective without an amendment to this Declaration executed or joined into by Declarant or the owner(s) of the Private Amenity(ies) which are the subject thereof.

The ownership or operational duties of and as to the Private Amenities may change at any time and from time to time by virtue of, but without limitation, (a) the sale to or assumption of operations

by an independent entity, (b) conversion of the membership structure to an "equity" club or similar arrangement, whereby the members of a Private Amenity or an entity owned or controlled thereby become the owner(s) and/or operator(s) of the Private Amenity, or (c) the conveyance of a Private Amenity to one or more affiliates, shareholders, employees or independent contractors of Declarant. No consent of the Association, any Neighborhood Association or any Owner shall be required to effectuate such a transfer or conversion.

Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined by their respective owners. Such owners shall have the right from time to time, in their sole and absolute discretion and with notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether.

2.4 No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the Properties or such portion thereof have been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.5 Condemnation. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the approval of at least 67% of the total Class "A" votes in the Association and of Declarant, as long as Declarant owns any property described in Exhibit "A" or "B" of the Declaration) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking Declarant, so long as Declarant owns any property described in Exhibit "A" or "B" of this Declaration, and Members representing at least 75% of the total Class "A" votes in the Association, shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Sections 6.5 and 6.6 regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board may determine.

2.6 Construction Activity. Construction activity by Declarant and by other Lot Owners and/or contractors may continue on the other Lots in the Properties or the other property identified in Exhibit "B" after the Owner has occupied the Lot and that this activity may result in noise, dust and other annoyances to Owner; provided, however, an Owner's access to and enjoyment of his or her Lot shall not be unreasonably limited. The Owner accepts the foregoing conditions set forth as well as any inconvenience or annoyance which Owner may experience as a result of such conditions.

Article III. Association Function, Membership and Voting Rights

3.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and Princeville II Rules regulating use of the Properties. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Committee Rules. The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles and Hawaii law.

In the event that the Association as a corporate entity is dissolved, then unless otherwise provided for by the Association, a nonprofit, unincorporated association governed by the Bylaws shall, forthwith and without further action or notice, be formed and succeed to all the rights, duties, privileges, assets, benefits and obligations of the Association.

3.2 Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in **Section 3.3** and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association.

An Owner may, by written instrument, assign all of the Owner's rights of membership in the Association (including voting rights) to any vendee purchasing the Owner's Lot under a recorded agreement of sale; provided, however, that no such assignment shall (a) relieve the Owner from any of the Owner's obligations or liability under this Declaration (including the Owner's personal liability for the payment of any assessments levied against the Owner's Lot), (b) diminish or impair any liens created under this Declaration upon the Owner's fee simple title to the Owner's Lot or the priority of such liens, or (c) diminish or impair any rights of any Enforcing Person under this Declaration. An assignment of an Owner's rights of membership pursuant to the preceding sentence shall be effective only upon the Board of Director's receipt of written notice of such assignment and a true and correct copy of the recorded agreement of sale.

No membership shall be terminated, forfeited or transferred and no Member shall be expelled, except upon transfer of the Owner's entire interest in the Owner's Lot; provided, however, that upon execution and delivery of a valid agreement of sale of any Lot, the vendor's membership, including voting rights adhering thereto, shall be considered as having been temporarily transferred to the vendee, such transfer becoming permanent upon subsequent delivery of a deed in compliance with the terms of said agreement of sale.

3.3 Voting. The Association shall have two classes of membership, Class "A" and Class "B."

(a) **Class "A".** Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under **Section 3.2**; there shall be only one vote per Lot.

(b) **Class "B".** Class "B" Members shall be Declarant and any Builder who are Owners. Class "B" Members shall be entitled to three votes for each Lot owned. Unless otherwise specified in this Declaration, the Bylaws or an agreement between Declarant and a Builder, the vote for each Lot owned by Builders shall be exercised by Declarant. The Class "B" membership shall cease and be converted to Class "A" membership upon the earlier of the following:

- (i) When 75% (2,256 Lots) of the total number of Lots proposed by the Master Plan are owned by Retail Owners;
- (ii) 45 years after the date on which this Declaration was filed with the Bureau of Conveyances; or
- (iii) When, in its discretion, Declarant so determines.

From and after the happening of these events, whichever occurs first, the Class "B" Members shall be deemed to be Class "A" Members entitled to one vote for each Lot in which it holds the interest required for membership under **Section 3.2**. Declarant shall have a right to disapprove actions of the Board and committees as provided in **Section 3.18 of the Bylaws**.

(c) Exercise of Voting Rights. In any situation in which a Member is entitled to exercise the vote for his or her Lot and there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it. The exercise of voting rights of Owners of time share Lots shall be in accordance with the Supplemental Declaration or declaration of covenants applicable to such Owners' Neighborhoods.

3.4 Neighborhoods and Voting Groups.

(a) Neighborhoods. Every Lot shall be located within a Neighborhood. In the discretion of the Owner(s) and developer(s) of each Neighborhood, the Lots within a particular Neighborhood may be subject to additional covenants and/or the Lot Owners may all be members of a Neighborhood Association in addition to being Members of the Association. However, a Neighborhood Association shall not be required except in the case of a condominium or as otherwise required by law. The Owners of Lots within any Neighborhood which does not have a Neighborhood Association may elect a Neighborhood Committee, as described in **Section 5.3 of the Bylaws**, to represent the interests of such Owners. The Neighborhood Committee may, with the approval of 75% of the Owners within such Neighborhood, form a Neighborhood Association if the Board determines that the maintenance obligations of such Neighborhood is overly burdensome.

Any Neighborhood may request that the Association provide a higher level of service or special services for the benefit of Lots in such Neighborhood and, upon the affirmative vote, written consent, or a combination thereof, a majority of Owners of Lots within the Neighborhood, the Association shall provide the requested services. The cost of such services shall be assessed against the Lots within such Neighborhood as a Neighborhood Assessment pursuant to **Sections 8.1 and 8.4**.

Exhibit "A" to this Declaration, and each Supplemental Declaration filed to subject additional property to this Declaration: (1) shall initially assign the property described therein to a specific Neighborhood by name, which Neighborhood may be then existing or newly created; and (2) may specify additional covenants, conditions, restrictions and easements applicable to property identified therein. Declarant may unilaterally amend this Declaration or any Supplemental Declaration to redesignate Neighborhood boundaries; provided, however, two or more Neighborhoods shall not be combined without the consent of Owners of a majority of the Lots in the affected Neighborhoods.

The Owner(s) of a majority of the total number of Lots within any Neighborhood may at any time petition the Board to divide the property comprising the Neighborhood into two or more Neighborhoods or to combine two or more Neighborhoods into one Neighborhood. Such petition shall be in writing and shall include a plat of survey of the entire parcel which indicates the boundaries of the proposed Neighborhood(s) or otherwise identifies the Lots to be included within the proposed Neighborhood(s). Such petition shall be granted upon the filing of all required documents with the Board unless the Board denies such application in writing within 30 days of receipt. The Board may deny an application only upon determination that: (i) there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods in the case of a Neighborhood division application, or (ii) there is a reasonable basis for distinguishing between the two or more Neighborhoods proposed to be consolidated into one Neighborhood in the case of a Neighborhood consolidation application. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

(b) Voting Groups. Declarant may designate Voting Groups consisting of one or more Neighborhoods for the purpose of electing directors to the Board, in order to promote representation on the Board for various groups having dissimilar interests and to avoid a situation in which the Members of similar Neighborhoods are able, due to the number of Lots in such Neighborhoods, to elect the entire Board, excluding representation of others. Following termination of the Class "B" Control Period, the number of Voting Groups within the Properties shall not exceed the total number of directors to be elected by the Members pursuant to the Bylaws. The Members representing the Neighborhoods within each Voting Group shall vote on a separate slate of candidates for election to the Board, with each Voting Group being entitled to elect the number of directors specified in **Section 3.5 of the Bylaws**.

Declarant shall establish Voting Groups, if at all, no later than the date of expiration of Declarant's right to annex property pursuant to **Article VII**, by filing with the Association and in the Bureau of Conveyances a Supplemental Declaration identifying the Lots within each Voting Group. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to the expiration of Declarant's right to annex property pursuant to **Article VII**.

After expiration of Declarant's right to annex property pursuant to **Article VII**, the Board shall have the right to file or amend such Supplemental Declaration upon the vote of a majority of the total number of directors. Neither recordation nor amendment of such Supplemental Declaration shall constitute an amendment to this Declaration, and no consent or approval of any Person shall be required except as stated in this paragraph.

Until such time as Voting Groups are established, all of the Properties shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been filed, any and all portions of the Properties which are not assigned to a specific Voting Group shall constitute a single Voting Group.

Article IV. Rights and Obligations of the Association

4.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order and repair, consistent with this Declaration and the Community-Wide Standard.

4.2 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate located within the properties described in Exhibit "A" or "B," personal property, and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed.

Declarant shall, with respect to any Common Area it conveys or transfers to the Association in accordance with this Section, be liable for any liabilities, including taxes and assessments (or installments thereof, if payable in installments) which may have accrued as to such Common Area prior to the date of conveyance or transfer to the Association. The Association shall fulfill, satisfy and discharge any obligations and duties connected with or related to such Common Area from and after the date of such conveyance or transfer, and shall indemnify, defend and hold harmless Declarant from any liability, claim, loss, demand ("**Indemnified Claims and Expenses**") connected with or relating to such Common Area or asserted against or incurred by Declarant after the date such Common Area has been conveyed or transferred to or otherwise acquired by the Association, to the extent such Indemnified Claims and Expenses are not attributable to Declarant's negligence or willful misconduct; provided, however, that the Association's obligation to indemnify, defend and hold harmless Declarant hereunder shall not apply

to any Indemnified Claims and Expenses which were the result of an identifiable event which occurred prior to the date of such conveyance or transfer, as opposed to being the result of a defect inherent in the condition of the property being conveyed or transferred.

4.3 Enforcement. The Association may impose sanctions for violations of this Declaration, the Bylaws or Princeville II Rules in accordance with procedures set forth in the Bylaws, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, in accordance with **Section 3.23 of the Bylaws**, the Association may exercise self-help to cure violations, and may suspend any services it provides to the Lot of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. The Board may seek relief in any court for violations or to abate nuisances.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit the County of Kauai to enforce applicable ordinances on the Properties for the benefit of the Association and its Members.

The Association (acting through the Board), any Owner or any Person to whom the Owner's rights of membership have been assigned pursuant to **Section 3.2**, Declarant and any Neighborhood Association (collectively referred to as "**Enforcing Persons**") shall have the right to exercise any remedy at law or in equity for the enforcement of this Declaration.

No Enforcing Person, nor any other Person, shall have any liability whatsoever if it or any other Enforcing Person elects not to enforce any of the provisions of this Declaration or if it or any other Enforcing Person undertakes such enforcement and thereafter terminates enforcement activities or does not succeed in such enforcement activities.

4.4 Implied Rights; Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws, the Articles or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Governmental Interests. So long as Declarant owns any property described in **Exhibit "A" or "B,"** Declarant may designate sites within the Properties owned by Declarant for fire, police, utility facilities, public schools and parks, and other public facilities. The sites may not include Common Areas.

4.6 Indemnification. The Association shall indemnify every officer, director and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director or committee member.

The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bath faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate

general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7 Limitation of Liability. No member of the Board or officer of the Association shall be personally liable to any Owner or any other Person for any error or omission of the Association or the Board, or their representatives, employees, agents and contractors, the Design Committee or the manager; provided that such member or officer has not acted in bad faith or engaged in willful misconduct.

4.8 Dedication of Common Areas. The Association may dedicate portions of the Common Areas to the County of Kauai or to any Government Entity.

4.9 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. NEITHER THE ASSOCIATION, DECLARANT NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SECURITY SYSTEM, IF OFFERED, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT AND ANY SUCCESSOR DECLARANT, ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTIES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS RESULTING FROM ACTS OF THIRD PARTIES.

4.10 Powers of the Association Relating to Neighborhoods. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association or Neighborhood Committee which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association or Neighborhood Committee in connection with any of its obligations and responsibilities. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association or Neighborhood Committee, and (b) require that a proposed budget include certain items and that specific expenditures be made.

Any action required by the Association in a written notice pursuant to the foregoing paragraph to be taken by a Neighborhood Association or Neighborhood Committee shall be taken within the reasonable time frame set by the Association in such written notice. If the Neighborhood Association or Neighborhood Committee fails to comply with the requirements set forth in such written notice, the Association shall have the right to effect such action on behalf of the Neighborhood Association or Neighborhood Committee.

To cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association, the Association shall assess the Lots in such Neighborhood for their pro rata share of any expenses incurred by the Association in taking such action in the manner provided in Section 8.7. Such assessments may be collected as a Specific Assessment hereunder and shall be subject to all lien rights provided for herein.

4.11 Covenant to Share Cost to Maintain Park Facility. As of January 1, 1995, the Association shall pay one-half of all costs appropriately allocable for the maintenance and operation of a park facility, developed on Lot 1, area 7.015 acres, of File Plan 2056, situated at Princeville, Kauai, Hawaii, to the owner of such park facility. Members of the Association shall have the right to use the recreational

facilities constructed thereon. The owner of such park facility shall have the responsibility over the park facility and its management. Notwithstanding any provision to the contrary, all Association costs associated with the park facility shall be a Common Expense to be allocated among all Lot Owners as part of the Base Assessment.

Article V. Maintenance

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) All Common Area;
- (b) All landscaping and other flora, parks, signage, structures and improvements, including any private streets, bike and pedestrian pathways/trails, situated upon the Common Area;
- (c) Landscaping, sidewalks, street lights and signage within public rights-of-way within or abutting the Properties, and landscaping and other flora within any public utility easements and open space easements within the Property (subject to the terms of any easement agreement relating thereto); and
- (d) Such portions of any additional property included within any Area of Common Responsibility as may be directed by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association.

The Association may assume maintenance responsibility for property within any Neighborhood, in addition to that designated by any Supplemental Declaration, either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Lots within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association may maintain other property which it does not own, including, without limitation, publicly owned property, open space easements held by nonprofit entities and other property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots in the manner of and as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants or agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Lots within the Neighborhood(s) to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

5.2 Owner's Responsibility. Each Owner shall maintain his or her Lot and all structures, parking areas and other improvements comprising the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such

maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with **Section 8.7**. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3 Neighborhood's Responsibility. Upon the Board's resolution, the Owners of Lots within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and open space between the Neighborhood and adjacent public roads and private streets within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated the same.

Any Neighborhood Association whose common property:

(a) Is adjacent to any portion of the Common Area upon which a wall is constructed, other than a wall which forms part of a building, shall maintain that portion of the Common Area between the wall and the Neighborhood Association's property line;

(b) Fronts on any roadway within the Properties shall maintain the landscaping on that portion of the Common Area or right-of-way between the property line and the nearest curb of such roadway; provided, however, there shall be no right to remove trees, shrubs or similar vegetation from this area without prior approval pursuant to **Article IX**.

Any Neighborhood Association having any responsibility for maintenance of property within such Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If it fails to do so, the Association may perform such responsibilities and assess the costs against all Lots within such Neighborhood as provided in **Section 8.7**.

5.4 Standard of Performance. Maintenance, as used in this Article, shall include, without limitation, repair and replacement, as needed, as well as such other duties, which may include irrigation, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants.

Notwithstanding anything to the contrary contained herein, the Association and/or an Owner and/or a Neighborhood Association shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.5 Party Walls and Similar Structures.

(a) **General Rules of Law to Apply.** Each wall, fence, driveway or similar structure built as a part of the original construction on the Lots which serves and/or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) **Sharing of Repair and Maintenance.** All Owners who make use of the party structure shall share the cost of reasonable repair and maintenance of such structure equally.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners subsequently use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of an Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

Article VI. Insurance and Casualty Losses

6.1 Association Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect if reasonably available the following types of insurance:

(a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. In addition, the Association may, upon request of a Neighborhood, and shall, if so specified in a Supplemental Declaration applicable to the Neighborhood, obtain and continue in effect property insurance covering risks of direct physical loss on a special form basis for all insurable improvements in the Neighborhood. If risks of direct physical loss on a special form basis is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full insurable replacement cost of the insured property. Costs of property insurance obtained by the Association on behalf of a Neighborhood shall be charged to the Owners of Lots within the benefitted Neighborhood as a Neighborhood Assessment;

(b) Commercial general liability policy on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability policy shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury and property damage;

(c) Workers compensation insurance and employers liability insurance if and to the extent required by law;

(d) Directors and officers liability coverage, including the members of the Design Committee, Neighborhood Committees and any other committee of the Association;

(e) Fidelity insurance covering all persons responsible for handling Association funds in an amount determined by its best business judgment but not less than one-sixth of the annual Base Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation; and

(f) Such additional insurance as the Board, in its best business judgment, determines advisable.

The Association shall have no insurance responsibility for any part of property of any Private Amenity.

6.2 Association Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be familiar with insurance replacement costs in the County of Kauai, Hawaii area.

All Association policies shall provide for a certificate of insurance to be furnished to each Member insured, to the Association and to the Neighborhood Association, if any.

Except as otherwise provided in **Section 6.1** with respect to property within a Neighborhood, premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment. However, premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefitted unless the Board reasonably determines that other treatment of the premiums is more appropriate.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with **Section 3.23 of the Bylaws**, that the loss is the result of the negligence or willful conduct of one or more Owners, their guests, invitees or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots in accordance with **Section 8.7**.

(a) All insurance coverage obtained by the Board shall:

(i) Be written with a company authorized to do business in the State of Hawaii;

(ii) Be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Area shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Neighborhood Association, if any, the Owners of Lots within the Neighborhood and their Mortgagees, as their interests may appear;

(iii) Not be brought into contribution with insurance purchased by individual Owners, occupants or their Mortgagees;

(iv) Contain an inflation guard endorsement; and

(v) Include an agreed amount endorsement if the policy contains a co-insurance clause.

(b) In addition, the Board shall be required to use reasonable efforts to secure insurance policies providing the following:

(i) A waiver of subrogation as to any claims against the Association's Board, officers, employees and its manager, the Owners and their tenants, servants, agents and guests;

(ii) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) An endorsement precluding cancellation, invalidation, suspension or non-renewal by the insurer on account of any one or more individual Owners or on account of any

curable defect or violation, without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(iv) An endorsement excluding individual Owners' policies from consideration under any "other insurance" clause;

(v) An endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification or non-renewal;

(vi) A cross liability provision;

(vii) A provision vesting the Board with exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss; and

(viii) A provision listing the Lot Owners as additional insureds under the policy.

6.3 Owner's Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full insurable replacement cost on its Lot(s), less a reasonable deductible, unless either the Neighborhood in which the Lot is located or the Association carries such insurance (which they are not obligated to do hereunder).

Each Owner shall deposit with the Board (a) the policy or policies of insurance (or certificates thereof), said policies to require 30 days' notice to the Board of any proposed cancellation, expiration or change in material terms thereof, and (b) the receipt of every premium so paid or, in lieu thereof, proof of premium payment satisfactory to the Board. Every policy shall be made payable in case of loss or damage to the parties as their interests may appear.

Each Owner further covenants and agrees that in the event of damage to or destruction of the dwelling unit or any other structures on or comprising his or her Lot, he or she shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with **Article IX** of this Declaration. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lots within such Neighborhood, and the standards for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed.

Unless waived by the Board, each Owner shall at all times keep in full force and effect a policy or policies of general liability insurance with respect to the Owner's Lot in such amounts as may be from time to time established by the Board; provided, however, that such limits shall not in any way limit the Owner's liability or be construed as a representation of sufficiency to protect the Owner fully. Said policy or policies shall: (a) name the Owner, the Association and Declarant as insureds, (b) contain a provision waiving all rights of subrogation of the insurer against the Association, Declarant and all Owners, (c) require 30 days notice to the Association and Declarant of any proposed cancellation, expiration or change in material terms thereof. Said policy or policies (or certificates thereof) shall be deposited promptly with the Board.

Each Owner is hereby notified that all Owners are free to pursue any insurance required under this Declaration from any insurance company authorized to do business in the State of Hawaii.

6.4 Damage and Destruction.

(a) Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the total Class "A" votes and Declarant, as long as Declarant owns any property described in Exhibits "A" and "B" of the Declaration, decide within 60 days after the loss not to repair or reconstruct.

Any damage to or destruction of the common property of any Neighborhood Association shall be repaired or reconstructed unless the Owners representing at least 75% of the total vote of the Neighborhood Association decide within 60 days after the damage or destruction not to repair or reconstruct. If the Neighborhood Association's covenants, if any, require a greater percentage of Owners within the Neighborhood to approve, then such provision shall control.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60 day period, then the period shall be extended for not more than 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area or common property of a Neighborhood Association shall be repaired or reconstructed.

(c) If determined in the manner described above that the damage or destruction to the Common Area or to the common property of any Neighborhood Association shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and maintained by the Association or the Neighborhood Association, as applicable, in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

6.5 Disbursement of Proceeds. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association or the Neighborhood Association, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

6.6 Repair and Reconstruction. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Specific Assessments against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1.

Article VII. Annexation and Withdrawal of Property

7.1 Annexation Without Approval of Membership. Declarant may unilaterally annex to the provisions of this Declaration all or portions of the real property described in Exhibit "B" until all property described in Exhibit "B" is annexed to this Declaration, or 40 years after the recording of this Declaration, whichever occurs first.

Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibit "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Nothing

in this Declaration shall be construed to require Declarant or any successor to annex or develop any of the property set forth in **Exhibit "B"** in any manner whatsoever.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Bureau of Conveyances describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Such Supplemental Declaration shall not require the consent of the Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

7.2 Annexation With Approval of Membership. The Association or Declarant may subject any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of 67% of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with **Section 7.1**.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Bureau of Conveyances describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by any two officers of the Association and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3 Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of removing property then owned by Declarant, its affiliates, or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in Declarant's plans for the Properties, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

7.4 Additional Covenants and Easements. Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than Declarant. In addition, any Supplemental Declaration annexing additional property may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to such additional property in order to reflect the different character and intended use of such property.

7.5 Amendment. This Article shall not be amended without the prior written consent of Declarant so long as Declarant owns any property described in **Exhibit "A" or "B."**

Article VIII. Assessments

8.1 Creation of Assessments. The Association is hereby authorized to levy assessments against each Lot for Association expenses as the Board may specifically authorize from time to time. There shall be four types of assessments for Association expenses: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots; (b) Neighborhood Assessments for Neighborhood Expenses benefitting only Lots within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in **Section 8.6**; and (d) Specific Assessments as described in **Section 8.7**. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties is deemed to covenant and agree to pay these assessments.

All assessments (except as otherwise provided in **Section 8.7(b)**), together with interest from the due date of such assessment at a rate determined by the Association (not to exceed the highest rate allowed by Hawaii law), late charges, costs and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in **Section 8.10**. Each such assessment, together with interest, late charges, costs and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. If more than one Person owns a Lot or interest therein, all such Persons shall be jointly and severally liable for the payment of all assessments, sums, interest, late charges and costs of collection. Upon a transfer of title to a Lot, the grantee shall not be liable for any assessments and other charges due at the time of conveyance unless expressly assumed by him or her. A first Mortgagee who obtains title to a Lot by exercising the remedies of a power of sale or a judicial foreclosure involving a default under the first mortgage shall extinguish the lien for unpaid assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each Fiscal Year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

No Owner may exempt himself or herself from liability for assessments by nonuse of the Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or the Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

8.2 Declarant's and Builder's Obligation for Assessments. Declarant and Builders are subject to the payment of assessments against Lots which they own; provided, however, any Lot that they own which does not include a structural improvement for human occupancy shall be exempt from payment of that portion of any such assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of the structural improvements. The exemption may include, but is not necessarily limited to: (a) roof replacement; (b) exterior maintenance; (c) walkway and carport lighting; (d) refuse disposal; (e) cable television; and (f) domestic water supplied to Lots. This exemption from the payment of assessments attributed to Lots shall be in effect only until the earliest of the following events: (a) a notice of completion of the structural improvements has been recorded; (b) occupancy or use of the dwelling unit on a Lot; or (c) completion of all elements of the residential structures which the Association is obliged to maintain.

Declarant and Builders shall be also exempt from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of any Common Area that is not complete at the time assessments commence. Any exemption from the payment of assessments attributed to Common Area facilities shall be in effect only until the earlier of the following events: (a) a notice of completion of the Common Area has been recorded; or (b) the Common Area has been placed into use.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials, with Declarant or other entities for payment of Common Expenses subject to **Section 3.24 of the Bylaws**. Declarant's payment of assessments may be reduced or abated by the agreed value of any such services or materials provided by Declarant in accordance with any such contract or agreement with the Association.

8.3 Computation of Base Assessment. The Board shall prepare a budget covering the estimated Common Expenses during the coming year pursuant to the terms and provisions set forth in **Section 3.20(f) of the Bylaws**. The budget shall include a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in **Section 8.5**.

The Base Assessment shall be levied equally against all Lots subject to assessments and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment under **Section 8.9** on the first day of the Fiscal Year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the Fiscal Year.

So long as Declarant has the right unilaterally to annex additional property pursuant to **Article VII**, Declarant may, but shall not be obligated to, reduce the Base Assessment for any Fiscal Year by payment of a subsidy (in addition to any amounts paid by Declarant under **Section 8.2**), which may be either a contribution, an advance against future assessments due from Declarant or a loan, in Declarant's discretion. Any such subsidy and the nature thereof shall be conspicuously disclosed as a lien item in the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall, under no circumstances, obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner not less than 45 nor more than 60 days prior to the beginning of the Fiscal Year for which it is to be effective.

8.4 Computation of Neighborhood Assessments. The Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year pursuant to the terms and provisions set forth in **Section 3.20(f) of the Bylaws**. The Board shall be entitled to set such budget only to the extent that this Declaration, any Supplemental Declaration or the Bylaws specifically authorize the Board to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Association and, in such case, any additional costs shall be added to such budget. Such budget shall include a capital contribution establishing a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood.

Neighborhood Expenses shall be allocated equally among all Lots within the benefitted Neighborhood; provided, however, if so specified in the Supplemental Declaration applicable to such Neighborhood or if so directed by petition signed by a majority of the Owners within the Neighborhood, any portion of the assessment intended for exterior maintenance of structures, insurance on structures or replacement reserves which pertain to particular structures shall be levied on each of the benefitted Lots in proportion to the benefit received.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to each Owner of a Lot in the Neighborhood not less than 45 nor more than 60 days prior to the beginning of the Fiscal Year.

8.5 Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets, the expected life of each asset and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments or Neighborhood Assessments, as appropriate, over the budget period.

8.6 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted subject to the limitations set forth in **Section 8.8**. Such Special Assessment may be levied against the entire membership if such Special Assessment is for Common Expenses, or against the Lots within any Neighborhood if such Special Assessment is for Neighborhood Expenses in the manner set forth in **Section 8.4**. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the Fiscal Year in which the Special Assessment is approved.

8.7 Specific Assessments. The Board shall have the power to levy Specific Assessments against a particular Lot or Lots constituting less than all Lots within the Properties or within a Neighborhood, as follows:

(a) To cover the costs, including overhead and administrative costs, of providing benefits, items or services to the Lot or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, handyman service, pool cleaning, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) To cover costs incurred in bringing the Lot into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the Bylaws or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their licensees, invitees or guests; provided, however, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying in Specific Assessment under this subsection (b).

The Association may also levy a Specific Assessment against any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the Bylaws and rules, provided the Board gives the Members from such Neighborhood prior written notice and an opportunity to be heard before levying any such assessment.

8.8 Limitation of Increases of Assessments. Notwithstanding any provision to the contrary, and except for assessment increases necessary for emergency situations or to reimburse the Association pursuant to **Section 8.7**, the Board may not impose a Base Assessment, Neighborhood Assessment or Specific Assessment that is more than 20% greater than each of those assessments for the immediately preceding Fiscal Year, nor impose a Special Assessment which in the aggregate exceeds 5% of the budgeted Common Expenses or Neighborhood Expenses, as the case may be, for the current Fiscal Year, without a majority vote of a quorum of Owners which are subject to the applicable assessment at a meeting of the Association.

For purposes of this Section, "quorum" means more than 50% of the total voting power of the Association who are subject to the applicable assessment. For purposes of this Section, the term Base Assessment or Neighborhood Assessment shall be deemed to include the amount assessed against each Lot plus a pro rata allocation of any amounts the Association received through any subsidy or maintenance agreement, if any, in effect for the year immediately preceding the year for which the assessment is to be increased.

An emergency situation is any one of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible where a threat to personal safety on the Properties is discovered; or
- (c) An extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible which could not have been reasonably foreseen by the Board in preparing and distributing the pro forma budget pursuant to **Section 8.3**. However, prior to the imposition or collection of such an assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Such resolution shall be distributed to the Members with the notice of such assessment.

8.9 Date of Commencement of Assessments. Subject to **Section 8.1**, the obligation to pay the assessments provided for herein shall commence as to all Lots within each Phase on the earlier of: (a) the first day of the month following the first conveyance of a Lot in the Phase to a Retail Owner; or (b) the first day of the month following conveyance of the Common Area in the Phase to the Association. The first annual Base Assessment shall be adjusted according to the number of days remaining in the Fiscal Year at the time assessments commence on the Lot.

8.10 Lien for Assessments. All assessments authorized in this Article shall constitute a lien against the Lot against which they are levied until paid unless otherwise specifically precluded in this Declaration. The lien shall also secure payment of interest, late charges (subject to the limitations of Hawaii law) and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments and other levies which by law would be superior, and (b) the lien or charge of any first mortgage of record (meaning any recorded mortgage with first priority over other mortgages) made in good faith and for value. The Association may enforce such lien, when delinquent, by suit, judgment and foreclosure.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under **Section 8.9**, including such acquirer, its successors and assigns.

8.11 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

8.12 Capitalization of Association. Upon acquisition of record title to a Lot by the first Retail Owner, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Lot for that year. For purposes of this Section, the term Base Assessment shall be deemed to include the amount assessed against each Lot plus a pro rata allocation of any amounts the Association received through any subsidy or maintenance agreement, if any. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and of the Bylaws.

8.13 Exempt Property. The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments and Special Assessments:

- (a) All Common Area;
- (b) All property dedicated to and accepted by any Government Entity or public utility; provided, however, that should such Government Entity or public utility thereafter convey, license, lease, sublease, assign or transfer its interest or rights in such property to any Person who is not a Government Entity or public utility, such property automatically shall be subject to assessments, unless otherwise exempt by this Section; and
- (c) Any property owned by a Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common.

In addition, Declarant shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for Section 501(c) status under the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

Article IX. Architectural Standards

9.1 Design Committee.

(a) Preamble. No Improvements or Alterations shall be made except in compliance with this Declaration and the Design Committee Rules and upon approval of the Design Committee.

Any Owner may remodel, paint or redecorate the interior of structures on his or her Lot without approval. However, Improvements or Alterations to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to Design Committee approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme.

It is the intention of Declarant to provide, through the establishment of the Design Committee and the exercise of authority granted to the Design Committee including, but not limited to, the Design Committee's review and approval of plans which are submitted (from time to time) for

proposed Improvements and Alterations in Princeville II, a means by which this Declaration and the Design Committee Rules will be administered and enforced for proper development and operation of the Properties. The Design Committee Rules shall not be amended, modified, changed or waived in any manner, without the prior written approval of the Declarant as long as the Declarant owns any property described in Exhibits "A" and "B". Notwithstanding any other provision(s) in this Declaration, the Declarant shall have the right at any time and from time to time, to delegate or assign for designated periods or for the term of such rights to the Board all or some of its rights concerning the Design Committee Rules, in which case and during such time the Board shall have the right to exercise the same.

(b) Establishment of the Design Committee. There is hereby established the Design Committee. The Design Committee shall consist of not less than three (3) nor more than five (5) members, selected as provided in this Declaration.

(c) Initial Members. All of the rights, powers and duties of the Design Committee as designated by Declarant are hereby delegated to the Design Committee established hereby.

(d) Term of Office. The term of each Design Committee member shall be for a period of three (3) years or until the appointment of his/her successor. Any new member appointed to replace a member who has died, resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired, may be reappointed.

(e) Appointment, Removal and Resignation. The Declarant shall have the right to appoint, remove, augment or replace all members of the Design Committee until ninety percent (90%) of the total number of Lots proposed by the Master Plan have been conveyed to Retail Owners ("**Committee Transfer Date**"); provided, however:

(i) After the sale of 30% of the total number of Lots proposed by the Master Plan have been conveyed to Retail Owners, the Board shall be entitled to appoint one (1) member of the Design Committee, who shall be a Retail Owner (if one (1) is able and willing to serve); and

(ii) After the sale of 50% of the total number of Lots proposed by the Master Plan have been conveyed to Retail Owners, the Design Committee shall be increased to five (5) members, and the Board shall be entitled to appoint two (2) members of the Design Committee, who shall be Retail Owners (if two (2) are able and willing to serve). The remaining three (3) members shall be appointed by the Declarant.

After the Committee Transfer Date, the Board shall have the right to appoint four (4) members of the Design Committee and the Declarant shall have the right to appoint one (1) member of the Design Committee. All appointments by the Board shall be for a three (3) year term.

Any members appointed by the Board shall serve and may be removed and replaced in the sole discretion of the Board. Any member of the Design Committee may at any time resign from the Design Committee by giving written notice thereof to the Declarant, if, pursuant to this subsection, Declarant has the right to appoint a successor to such member, or, if Declarant does not have the right, to the Board. All members of the Design Committee who are appointed by the Board shall be Members of the Association and Owners of Lots or representatives of Declarant designated by Declarant. Members of the Design Committee who are appointed by Declarant are not required to be Members of the Association.

(f) Design Committee Membership. The Board shall make a current list of the Design Committee members available to the Owners by maintaining such list at the office of either the Association or the Manager.

9.2 Design Committee Rules. The Declarant shall adopt the initial Design Committee Rules which may include general provisions applicable to all of the Project as well as specific guidelines for each Neighborhood. The Design Committee Rules shall set forth, among other things, the standards, restrictions, regulations, conditions, limitations, procedures and guidelines for architectural and landscape design and items to be included in plans and specifications, as well as requirements for building construction, height, profiles, landscaping and lot maintenance, building setbacks, lot coverage, walls and fences, placement of buildings, siting and view planes, parking, color schemes, exterior finishes and materials and similar provisions applicable to the construction and Improvements on the Lots. The Design Committee Rules, which interpret or complement the provisions of this Declaration insofar as they relate to matters within the jurisdiction of the Design Committee, shall be deemed incorporated into this Declaration by reference and shall have the same force and effect as if they were set forth in full herein.

Subject to Declarant's right to approve pursuant to **Section 9.1.(a)** of this Declaration, the Design Committee, by majority vote, shall have the exclusive authority to amend and repeal the general provisions of the Design Committee Rules. Notwithstanding any provisions in the Declaration or Design Committee Rules, the Declarant shall have the right unilaterally to amend the Design Committee Rules to provide specific architectural guidelines applicable only to certain Neighborhoods at the time the property to which the Design Committee Rules apply is annexed to the jurisdiction of the Association. Any amendments to the Design Committee Rules shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

Each prospective purchaser of a Lot should become familiar with the contents of the Declaration and Design Committee Rules before executing any agreement for the purchase of a Lot. The Design Committee shall maintain a copy of the Design Committee Rules on file at all times, and the Design Committee shall provide each Owner with a copy of the Design Committee Rules upon written request.

9.3 Meetings and Compensation. The Design Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of a majority of the then authorized number of Design Committee members shall constitute the act of the Design Committee unless the unanimous decision of the Design Committee is specifically required under any provision of (a) this Declaration and (b) the Design Committee Rules. The Design Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. The members of the Design Committee may receive reimbursement of expenses as may be authorized from time to time by the Declarant prior to the Committee Transfer Date and the Board thereafter. Notwithstanding any provision in this Declaration, Bylaws or Articles, the Design Committee members appointed by the Declarant prior to the Committee Transfer Date who are licensed engineers, architects, land planners or other licensed professionals may receive such compensation as may be authorized by the Association.

9.4 Duties. It shall be the duty of the Design Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms of this Declaration, to administer the Design Committee Rules, to insure that any Improvements and Alterations constructed or installed on the Properties by anyone other than the Declarant conform to the Approved Plans, to perform other duties delegated to it by the Declarant within the time periods set forth in this Declaration, and to carry out all other duties imposed upon it by this Declaration and the Design Committee Rules. The Design Committee, in its own name or on behalf of the Association, may exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction of Improvements or Alterations on the Properties or any portion thereof.

9.5 Operation of the Design Committee. The Design Committee shall function as follows:

(a) Submittal of Documents and Materials. The Design Committee may require the submission of any or all documents required under the Design Committee Rules and such additional documents which it determines to be reasonably appropriate to the activity for which its consent and approval is requested. The Design Committee Rules shall set forth the procedure for submission of the required documents.

(b) Conditions to Approval. The Design Committee, before approving any submitted Improvement or Alteration plans, may require that changes be made to comply with the requirements of this Declaration, the Design Committee Rules and such additional requirements as the Design Committee may, in its discretion, impose as to structural and/or cosmetic features of any proposed Improvement or Alteration (including roofing materials), the type, composition and material used, or other features or characteristics, thereof, not expressly covered by any provisions of this Declaration or the Design Committee Rules, including the location of any proposed Improvement or Alteration with respect to the topography and finished ground elevation. The Design Committee may also require that the exterior finish and color, and the architectural style or character of any proposed Improvement or Alteration which constitutes a building or structure shall be such as in the sole and absolute discretion of the Design Committee shall be deemed suitable in view of the general architectural style, quality and character of existing Improvements or Alterations within the Properties.

The Design Committee may also impose conditions as part of any Approved Plan including without limitation time limitations for the completion of Improvements or Alterations, or require changes to be made which in its discretion are required to insure that the proposed Improvement or Alteration will not detract from the appearance or character of the Properties and other Improvements or Alterations or otherwise create any condition unreasonably disadvantageous to other Owners or detrimental to the Properties as a whole.

(c) No Presumed Approval. If the Design Committee fails to mail its Certificate with regard to any matter submitted to it hereunder within 60 days after submission of all materials required by the Design Committee to be submitted to it (the "Initial Review Period"), it shall be conclusively presumed that the Design Committee has disapproved the specific matters as to which approval was sought in the submission. It shall thereupon be the duty of the members of the Design Committee, forthwith upon the request of the submitting party, to notify the submitting party of such disapproval.

(d) Presumed Approval. If a matter is not approved by the Design Committee during the Initial Review Period, the Owner may resubmit the matter to the Design Committee. If after the second submittal the Design Committee fails to mail its Certificate or a letter rejecting the proposed Improvement or Alteration or describing modifications necessary for approval with regard to any matter submitted to it hereunder within 60 days after submission of all materials required by the Design Committee to be submitted to it in connection with such second submittal, it shall be conclusively presumed that the Design Committee has approved the specific matters as to which approval was sought in the submission. It shall thereupon be the duty of the members of the Design Committee, forthwith upon the request of the submitting party, to sign and acknowledge the Certificate evidencing such approval.

(e) Review Fee. As a condition precedent to the Design Committee's consideration of or action upon any material or matter submitted to it hereunder, the Design Committee may charge the Owner making such submittal a fee fixed by the Design Committee from time to time for each set of plans, specifications, drawings or other material so submitted to cover expenses that will be incurred by the Design Committee in connection with its review. Notwithstanding any other provisions in this Declaration, until the requisite fee shall have been paid to the Design Committee as provided in this Declaration, any material delivered to the Design Committee shall not be considered to have been submitted to the Design Committee for the purposes of this Declaration.

(f) Minutes of Actions. All actions of the Design Committee shall be noted in the minutes of the Board.

(g) Recording of Certificates. No Certificate of the Design Committee shall be recorded by the Design Committee or any member thereof, but the same may be recorded by the party submitting the material concerning which the Certificate was made.

(h) Sole Discretion. All action by the Design Committee authorized in this Declaration shall be within its sole discretion.

(i) Exception for Declarant. The provisions of this Article shall not apply with respect to the construction by Declarant of any Improvements or Alterations within the Properties.

(j) Advisors to Design Committee. The Design Committee shall, from time to time or as a continuing service, have the right to employ professional advisors for the purpose of reviewing submitted plans and have the right to rely on said advisors and be able to charge Lot Owners for said services.

(k) Nonliability; Indemnity. Notwithstanding any other provision in this Declaration, except for Approved Plans for which a Certificate has been issued by the Design Committee, any other approval by the Design Committee shall not, in any way, shape or form, be construed or interpreted to represent that any Improvement or Alteration or use thereof complies with the provisions of this Declaration. Each and every Owner is solely responsible for any noncompliance of this Declaration caused directly or indirectly by any Improvement or Alteration or the use thereof not completed in accordance with the Approved Plans. For example, if a neighbor complains or makes a claim involving the Improvement or Alteration made pursuant to Approved Plans, for whatever reason, including noncompliance with a use restriction or another provision in this Declaration, the Owner of such Improvement or Alteration, and not the Design Committee, shall be solely responsible for any liability, potential or actual, created by such Improvement or Alteration or use thereof. Each Owner, as a condition to obtaining any approval under this Article, agrees to fully indemnify, defend and protect the Declarant, the Association, the Design Committee and all of their representatives against and from any and all claims, lawsuits and disputes related in any way to any approval and/or approved or disapproved Improvement or Alteration.

9.6 Performance of Work. The performance of any construction, alteration or repair of any Improvement or Alteration approved by the Design Committee shall be performed strictly in accordance with the requirements established by the Design Committee.

Upon the completion of any Improvement or Alteration, the Owner shall give written notice thereof to the Design Committee. Within 60 days after receipt of such notice, the Design Committee, or its duly authorized representative, may inspect the completed Improvement or Alteration in order to determine whether it was constructed, erected or installed in substantial compliance with the Approved Plans. If, however, the Design Committee shall inspect the completed Improvement or Alteration and determine that such Improvement or Alteration was not constructed, erected or installed in substantial compliance with the Approved Plans, it shall notify the Owner in writing of such noncompliance within ten (10) business days after the date of the inspection, specifying the particulars of noncompliance.

In the event the Owner has failed to remedy any alleged noncompliance within 30 days, or such other reasonable period established by the Design Committee, from the date the Owner is notified of such noncompliance, the Design Committee shall notify the Board. Upon receipt of notification of noncompliance from the Design Committee concerning any Owner, the Board and/or the Declarant shall have legal standing to commence and prosecute legal proceedings against any Owner to correct such

noncompliance in addition to any other remedies it may have pursuant to this Declaration and applicable law.

9.7 Access to Properties. All members of the Design Committee, or any other agent or employee of the Board or the Declarant, shall at all reasonable hours have the right of access to any part of the Properties, and to any Improvements and Alterations being built thereon, for the purpose of inspection relative to compliance with this Declaration and the Design Committee Rules.

9.8 Waiver. The approval or disapproval by the Design Committee of any plans, specifications, drawings, grading plans, heights, or any other matters submitted for approval or consent shall not be deemed to be a waiver by the Design Committee of its right to approve, disapprove, object or consent to any of the features or elements embodied therein when the same features or elements are embodied in other plans for other portions of the Project, specifications, drawings or other matters submitted to the Design Committee.

9.9 Liability. Neither the Association, the Board, the Design Committee, the Declarant nor any of its members or professional employees or advisors shall be responsible for any defects in any building, structure or other Improvement or Alteration erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications, color scheme, or other material approved by them or any conditions or requirements that they may have imposed with respect thereto, nor shall the Association, the Board, the Design Committee, the Declarant or any of its members or professional employees or advisors have any liability for the inability of anyone to obtain a building permit for the construction or alteration of any Dwelling, building or other Improvement or Alteration pursuant to plans and specifications approved by the Design Committee.

9.10 Security Deposit. The Design Committee may condition its approval of any Improvements or Alterations on the posting of a security deposit in an amount specified by the Design Committee, or other security satisfactory to the Design Committee, to be used to insure that any damage or destruction of the Properties resulting from the construction or installation of the Improvements or Alterations shall be repaired. Upon completion of such Improvements or Alterations and repair by the Owner of any damage to the Properties resulting therefrom, such security deposit shall be returned. The posting of security shall not relieve any Owner from liability for damage or destruction of the Properties caused by the Owner or the Owner's agents or contractors and such liability shall not be limited to the amount of such security.

9.11 Variance. The Design Committee may authorize variances from compliance with any requirements of the Design Committee Rules when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Design Committee from denying a variance in the same or in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the cost of compliance, or the terms of any financing shall not be considered a hardship warranting a variance.

9.12 Enforcement. Any Improvement or Alteration placed or made in violation of this Declaration or the Design Committee Rules shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such Improvement or Alteration and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially comply

with approved plans or the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against such Owner's Lot and collected as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration and the Design Committee Rules may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in the Bylaws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph, and the Owner shall hold them harmless from any such liability.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Declaration and the Design Committee Rules and the decisions of the Committee.

Article X. Use Restrictions and Rules

10.1 Plan of Development; Applicability; Effect. Declarant has established a general plan of development for the Properties under this Declaration in order to protect all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs and desires within the community. The Properties are subject to Design Committee Rules as set forth in **Article IX** and other covenants governing land development, architectural and design control, individual conduct and uses of or actions upon the Properties. This Declaration, including the Initial Use Restrictions attached hereto as **Exhibit "C"** and incorporated by this reference, and the Princeville II Rules adopted by the Board or the Members establish affirmative and negative covenants, easements and restrictions on the Properties.

All provisions of this Declaration and any rules shall apply to all Owners, occupants, tenants, guests and invitees of any Lot. Any lease on any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of this Declaration, the Bylaws and the Princeville II Rules.

10.2 Authority to Promulgate Use Restrictions and Princeville II Rules.

(a) Subject to the terms of this Article and in accordance with its duty of care and undivided loyalty to the Association and its Members, the Board may adopt Princeville II Rules which modify, cancel, limit, create exceptions to, or expand the Initial Use Restrictions set forth on **Exhibit "C."** The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Any such rules shall become effective after compliance with **subsection (c)** of this Section unless such rules are disapproved at a meeting by Members representing at least 67% of the total Class "A" votes and by Declarant, so long as Declarant owns any property described in **Exhibit "A" or "B."** The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition of the Members as required for special meetings of Members as set forth in **Section 2.4 of the Bylaws.** If a meeting to consider disapproval of a rule is requested by the Members prior to the effective date of such rule, the rule may not become effective until after such meeting is held.

(b) Alternatively, the Members at a meeting duly called for such purpose may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions and previously

adopted rules by a vote of Members representing 67% of the total Class "A" votes and the approval of Declarant, so long as Declarant owns any property described in Exhibit "A" or "B."

(c) At least 30 days prior to the effective date of any action under subsection (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner specifying the effective date of such rule. The Association shall provide, without cost, a copy of the Use Restrictions and rules then in effect to any requesting Member or Mortgagee.

10.3 Owners' Acknowledgment. All Owners are subject to the Use Restrictions and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Board and/or the Members may add, delete, modify, create exceptions to, or amend the Use Restrictions in accordance with Sections 10.2, 10.3 and 16.2 .

Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Restrictions and rules may change from time to time.

10.4 Rights of Owners. Except as may be specifically set forth in the Initial Use Restrictions, neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Religious and Holiday Displays. The rights of Owners and occupants to display religious and holiday signs, symbols and decorations on their Lots of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place and manner restrictions regulating displays which are visible from outside the Lot.

(c) Household Composition. No rule shall interfere with the freedom of occupants of dwelling units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each dwelling unit on the basis of the size and facilities of the dwelling unit and its fair share use of the Common Area.

(d) Activities Within Lot. No rule shall interfere with the activities carried on within the confines of Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that: (i) create a danger to the health or safety of occupants of other Lots; (ii) generate excessive noise or traffic; (iii) create unsightly conditions visible outside the Lot; (iv) block the views from other Lots; or (v) create an unreasonable source of annoyance.

(e) Pets. The Association may adopt reasonable rules designed to minimize damage and disturbance to other Owners and occupants, including rules requiring damage deposits, waste removal, leash controls, noise controls, pet occupancy limits based on size and facilities of the Lot, and fair share use of the Common Area; provided, however, any rule prohibiting the keeping of ordinary household pets shall apply prospectively only and shall not require the removal of any pet which was being kept on the Properties prior to the adoption of such rule. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance. No Owner shall be permitted to raise, breed or keep animals, livestock or poultry of any kind for commercial or business purposes.

(f) Allocation of Burdens and Benefits. Except as permitted by **Section 2.2**, the initial allocation of financial burdens and rights to use Common Areas among the various Lots shall not be changed to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the use of the Common Areas available, from adopting generally applicable rules for use of Common Areas, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in **Article VIII**.

(g) Alienation. No rule shall prohibit the leasing or transferring of any Lot, or require consent of the Association or Board for leasing or transferring of any Lot; provided, however, the Association or the Board may require a minimum lease term of up to 12 months.

(h) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop in accordance with the Master Plans, including, but not limited to, the rights of Declarant as set forth in **Article XIII**.

(i) Abridging Existing Rights. Any rule which would require Owners to dispose of personal property being kept on the Properties shall apply prospectively only and shall not require the removal of any property which was being kept on the Properties prior to the adoption of such rule and which was in compliance with all rules in force at such time unless otherwise required to be removed by law.

The limitations in this **Section 10.4** shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with **Section 16.2**.

Article XI. Easements

11.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant or the Association.

11.2 Easements for Utilities, Etc. There are hereby reserved unto Declarant, so long as Declarant owns any property described on **Exhibit "A" or "B"** of this Declaration, the Association and the designees of each (which may include, without limitation, County of Kauai, Hawaii and any utility) access and maintenance easements upon, across, over and under all of the Properties to the extent reasonably necessary for the purpose of installing, replacing, repairing and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Properties. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities or utilities over, under or through any existing dwelling on a Lot, and any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably

interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

Declarant specifically grants to the local water supplier, electric company and natural gas supplier easements across the Properties for ingress, egress, installing, reading, replacing, repairing and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitted entry into the dwelling on any Lot, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board or Declarant.

11.3 Easements to Serve Additional Property. Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities and drainage systems on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property.

11.4 Easements for Golf Course(s).

(a) Every Lot and the Common Area and the common property of any Neighborhood Association are burdened with an easement permitting golf balls unintentionally to come upon such Common Area, Lots or common property of a Neighborhood and for golfers at reasonable times and in a reasonable manner to come upon the Common Area, common property of a Neighborhood, or the exterior portions of a Lot to retrieve errant golf balls; provided, however, if any Lot is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: Declarant; the Association or its Members (in their capacity as such); Princeville Corporation, its successors, successors-in-title to the Golf Course(s) or assigns; any successor Declarant; any builder or contractor (in their capacities as such); any officer, director or partner of any of the foregoing, or any officer or director of any partner.

(b) The owner of the Golf Course(s), its respective agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Areas reasonably necessary, with or without the use of maintenance vehicles and equipment, for the operation, maintenance, repair and replacement of the Golf Course(s).

(c) The Properties immediately adjacent to the Golf Course(s) are hereby burdened with a non-exclusive easement in favor of the Golf Course(s) for overspray of water from any irrigation system serving the Golf Course(s). Under no circumstances shall the Association or the owners of the Golf Course(s) be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(d) The owner of the Golf Course(s), its respective agents, successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving

golf balls from bodies of water within the Common Areas lying reasonably within range of golf balls hit from the Golf Course(s).

(e) The owner of the Golf Course(s), its respective agents, successors and assigns, as well as its guests, invitees, employees and authorized users of the Golf Course(s), shall at all times have a right and non-exclusive easement of access and use over all roadways and golf cart paths, if any, located or to be located within the Properties reasonably necessary to travel to and from the Golf Course(s) and the right to park their vehicles on the streets within the Properties at reasonable times before, during and after golf tournaments and other similar functions held at the Golf Course(s).

(f) The owner of the Golf Course(s), its respective agents, successors and assigns, shall have a perpetual, non-exclusive easement, to the extent reasonably necessary, over the Properties for the installation, operation, maintenance, repair, replacement, monitoring, and controlling of irrigation systems and equipment, including, without limitation, wells, pumps and pipelines serving all or portions of the Golf Course(s).

(g) The owner of the Golf Course(s), its respective agents, successors and assigns, shall have a perpetual, non-exclusive easement, to the extent reasonably necessary, over the Properties for the installation, maintenance, repair, replacement and monitoring of utility lines, wires, drainage pipelines and pipelines serving all or any portions of the Golf Course(s).

(h) The Properties are hereby burdened with easements in favor of the Golf Course(s) for natural drainage or storm water runoff from the Golf Course(s).

(i) The Properties are hereby burdened with easements in favor of the Golf Course(s) for golf cart paths serving the Golf Course(s). Under no circumstances shall the Association or the owners of the Golf Course(s) be held liable for any damage or injury resulting from the exercise of this easement.

(j) The owner of the Golf Course(s), its respective agents, successors and assigns, as well as its guests, invitees, employees and authorized users of the Golf Course(s), shall at all times have a right and non-exclusive easement of access and use of the golf cart paths located within the Properties.

11.5 Easements for Cross-Drainage. Every Lot and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties; provided, however, no Person shall alter the natural drainage on any Lot so as to materially increase the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner of the affected property.

11.6 Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons, to perform maintenance pursuant to **Article V** hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws and rules, which right may be exercised by any member of the Board, the Association, officers, agents, employees and managers, and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

11.7 Easements for Maintenance and Enforcement. Authorized agents of the Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Lot to (a) perform its maintenance responsibilities under **Article V**, and (b) make inspections to ensure compliance with this Declaration, any Supplemental Declaration, Bylaws and rules. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to and permission from the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

The Association also may enter a Lot to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Declaration, any Supplemental Declaration, the Bylaws or the rules. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Benefitted Assessment.

Article XII. Mortgage Provisions

The following provisions are for the benefit of holders, insurers and guarantors of first mortgages on Lots in the Properties. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

12.1 Notices of Action. An institutional holder, insurer or guarantor of a first mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the street address of the Lot to which its mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first Mortgage held, insured or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or Bylaws relating to such Lot or the Owner or Occupant which is not cured within 60 days. Notwithstanding this provision, any holder of a first mortgage is entitled to written notice upon request from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or Bylaws which is not cured within 60 days;

(c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

12.2 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.3 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Lot.

Article XIII. Declarant's Rights

Any or all of the special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be assigned, delegated, conveyed or transferred to other Persons; provided, however, (1) that the assignment, delegation, conveyance or transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the Bylaws; and (2) that there shall at all times be only one Declarant who shall be the sole Person authorized to give any consents or approvals required or requested of Declarant under this Declaration as Declarant, or to enforce this Declaration as Declarant or take any other action as Declarant hereunder. No such assignment, delegation, conveyance or transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Bureau of Conveyances. The Association shall accept all or any part of Declarant's rights, privileges, powers, interest and obligations hereunder assigned, delegated, conveyed or transferred to the Association by Declarant, which shall be effective upon the recording by Declarant of a notice of such assignment, delegation, conveyance or transfer.

Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in **Exhibit "B"** in any manner whatsoever.

So long as construction and initial sales of Lots shall continue, Declarant and Builders authorized by Declarant may maintain and utilize portions of the Common Area which, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities. Declarant's or Builder's unilateral right to use any portion of the Common Area for purposes stated in this paragraph shall not be exclusive and shall not unreasonably interfere with use of such Common Areas by Owners unless the use of the Common Area or any portion thereof is leased pursuant to a lease agreement with the Association providing for payment of reasonable rent, which has been approved by a majority of a quorum of the Owners.

No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Declarant.

This Article may not be amended without the written consent of Declarant. The rights contained in this Article shall terminate upon the earlier of: (a) 40 years after the conveyance of a Lot to a Retail Owner; or (b) upon recording by Declarant of a written statement that all sales activity has ceased. Thereafter, Declarant or Builders may continue to use the Common Areas for purposes stated in this paragraph only pursuant to a rental or lease agreement between Declarant or such Builder and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas.

Article XIV. Golf Course(s)

14.1 Ownership and Operation of Golf Course(s). All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant or any other Person with regard to the continuing existence, ownership or operation of the Golf Course(s), if any, and no purported representation or warranty in such regard, either written or oral, shall ever be effective without an amendment to this Declaration executed or joined into by Declarant. Further, the ownership and/or operation of the Golf Course(s), if any, may change at any time and from time to time by virtue of, but

without limitation, (a) the sale to or assumption of operations of the Golf Course(s) by an independent entity or entities; (b) the creation or conversion of the ownership and/or operating structure of the Golf Course(s) to an equity club or similar arrangement whereby the Golf Course(s) or the rights to operate it are transferred to an entity which is owned or controlled by its members; or (c) the transfer of ownership or control of the Golf Course(s) to one or more affiliates, shareholders, employees or independent contractors of Declarant. No consent of the Association, any Neighborhood Association or any Owner shall be required to effectuate such transfer or conversion.

14.2 Right to Use. Neither membership in the Association nor ownership or occupancy of a Lot shall confer any ownership interest in or right to use the Golf Course(s). Rights to use the Golf Course(s) will be granted only to such Persons, and on such terms and conditions, as may be determined from time to time by the owner of the Golf Course(s). The owner of the Golf Course(s) shall have the right from time to time, in its sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Golf Course(s), including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the provisions of any outstanding membership documents.

14.3 View Impairment. Neither Declarant, the Association nor the owner or operator of the Golf Course(s) guarantees or represents that any view over and across the Golf Course(s) from adjacent Lots will be preserved without impairment. The owner of the Golf Course(s), if any, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the Golf Course(s) from time to time. In addition, the owner of the Golf Course(s) may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens on the Golf Course(s) from time to time. Any such additions or changes to the Golf Course(s) may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

14.4 Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the owner of the Golf Course(s), no amendment to this Article, and no amendment in derogation of any rights reserved or granted to the owner of the Golf Course(s) by other provisions of this Declaration, may be made without the written approval of the owner of the Golf Course(s). The foregoing shall not apply, however, to amendments made by Declarant.

14.5 Jurisdiction and Cooperation. It is Declarant's intention that the Association and the owner of the Golf Course(s) shall cooperate to the maximum extent possible in the operation of the Properties and the Golf Course(s). Each shall reasonably assist the other in upholding the Community-Wide Standard. The Association shall have no power to promulgate rules and regulations affecting activities on or use of the Golf Course(s).

Article XV. Arbitration

Whenever this Declaration requires or permits a dispute or disagreement to be submitted to arbitration, such arbitration shall be conducted in accordance with Chapter 658, HRS and the following provisions. The dispute or disagreement shall be submitted to one arbitrator selected from the panels of arbitrators of the American Arbitration Associations, and the decision of the arbitrator shall be final, conclusive and binding upon the parties. The losing party in such arbitration (as determined by the arbitrator) shall pay for all costs and expenses of the arbitration, including the prevailing party's reasonable attorneys' fees, unless the arbitrator determines that there is no losing party, in which event each party shall pay the costs of its own witnesses and attorneys and the costs of the arbitrator shall be paid equally

by the parties. The arbitrator's award shall be arrived at expeditiously, in writing, and final, conclusive and binding upon all parties to the arbitration, and may be entered as an order or judgment of the Fifth Circuit Court, State of Hawaii, unless such award is vacated, modified or corrected pursuant to Chapter 658, HRS. Except as set forth above (and in the event of any conflict, the provisions of this Article shall control), the arbitration shall be conducted in accordance with the then applicable Rules of the American Arbitration Association unless otherwise mutually agreed by the parties.

Notwithstanding any provision in this Declaration to the contrary, Chapter 421J-13, HRS entitled "Mediation of Disputes" shall be applicable.

Article XVI. General Provisions

16.1 Duration. This Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of 55 years from the date this Declaration is recorded in the public records. After such time, this Declaration shall be automatically extended for successive periods of 10 years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding each extension, agreeing to amend, in whole or in part, or terminate this Declaration, in which case this Declaration shall be amended or terminated as specified therein.

16.2 Amendment.

(a) By Declarant. Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; or (iii) required by an institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to make, purchase, insure or guarantee mortgage loans on the Lots; or (iv) otherwise necessary to satisfy the requirements of any governmental agency.

(b) By Owners. This Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of 75% of each class of Membership. After conversion of the Class "B" membership to Class "A" membership, the Declaration may be amended by the vote or written consent of Members representing at least (a) 75% of the total voting power of the Association; and (b) 75% of the total voting power of the Association other than Declarant.

In addition, the approval requirements set forth in Article XIII hereof shall be met if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the Bureau of Conveyances unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

16.3 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

16.4 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

16.5 Cumulative Effect; Conflict. The covenants, restrictions and provisions of this Declaration shall be cumulative with those of any Neighborhood and the Association may, but shall not be required to, enforce the covenants, conditions and provisions of any Neighborhood; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, bylaws, rules and regulations, policies or practices adopted or carried out pursuant thereto, those of any Neighborhood shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens of assessments created in favor of the Association.

16.6 Use of the Words "Princeville II". No Person shall use the words "Princeville II" or any derivative, or any other term which Declarant may select as the name of this development or any component thereof, in any printed or promotional material without Declarant's prior written consent. However, Owners may use the words "Princeville II" in printed or promotional matter solely to specify that particular property is located within the Properties and the Association shall be entitled to use the words "Princeville II" in its name.

16.7 Compliance. Every Owner and occupant of any Lot shall comply with this Declaration, the Bylaws and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Lot Owner(s).

16.8 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

16.9 Attorneys' Fees. In the event of an action instituted to enforce any of the provisions contained in this Declaration, the Articles of Incorporation or the Bylaws, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Specific Assessment with respect to the Lot(s) involved in the action. Notwithstanding any provision in this Declaration to the contrary, Chapter 421J-10, HRS shall be applicable.

16.10 Joint and Several Liability. If an Owner consists of more than one Person, all of the obligations of the Owner under this Declaration shall constitute the joint and several obligation of all such persons. The obligations of more than one Owner under this Declaration shall constitute the joint and several obligation of all such Owners. Each Owner shall be liable for all acts and omissions of such

Owner's guests, invitees, agents, employees, customers and contractors, and their failure to comply with the provisions of this Declaration.

16.11 Interpretation; No Waiver. The provisions hereof shall be construed and enforced under the laws of the State of Hawaii and shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of Princeville II. The headings of paragraphs, sections and Articles herein are inserted only for ease of reference and shall not define or limit the scope or intent of any provision of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce thereafter said provision or to enforce any other provision hereof. No acceptance of any assessment paid by any Owner shall be deemed to be a waiver of any breach by such Owner of any provision of this Declaration or a waiver of any rights of any Enforcing Person or any other Person under this Declaration, or be construed as any agreement or representation by any Enforcing Person that such Owner is in compliance with the provisions of this Declaration.

The undersigned certifies and declares under penalty of perjury that:

(a) He is the President of Princeville II Community Association, a Hawaii nonprofit corporation; and

(b) The statements contained in the foregoing Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Princeville II are true of his or her own knowledge; and

(c) This declaration was executed on June 1, 2000, at Princeville, Hawaii.

PRINCEVILLE II COMMUNITY ASSOCIATION



William F. Fortner, President

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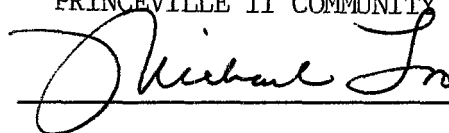
The undersigned certifies and declares under penalty of perjury that:

(a) He is the Secretary of Princeville II Community Association, a Hawaii nonprofit corporation; and

(b) The statements contained in the foregoing Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Princeville II are true of his or her own knowledge; and

(c) This declaration was executed on June 1, 2000, at Princeville, Hawaii.

PRINCEVILLE II COMMUNITY ASSOCIATION



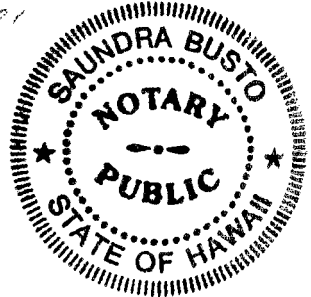
Michael Y. M. Loo, Secretary
MICHAEL Y. M. LOO

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STATE OF HAWAII)
) SS.
COUNTY OF KAUAI)

On this 1st day of June, 2000, before me appeared WILLIAM F. FORTNER, to me personally known, who being by me duly sworn did say that he is the President of PRINCEVILLE II COMMUNITY ASSOCIATION, a Hawaii non-profit corporation, and that the seal affixed to the foregoing instrument is the seal of said corporation and that said instrument was signed and sealed in behalf of PRINCEVILLE II COMMUNITY ASSOCIATION by authority of its Board of Directors, and he acknowledged said instrument to be the free act and deed of said corporation.

Saundra Busto
Saundra Busto
Notary Public, State of Hawaii
My commission expires: 12-9-01



STATE OF HAWAII)
) SS.
COUNTY OF KAUAI)

On this 1st day of June, 2000, before me appeared MICHAEL Y.M. LOO , to me personally known, who being by me duly sworn did say that he is the Secretary of PRINCEVILLE II COMMUNITY ASSOCIATION, a Hawaii non-profit corporation, and that the seal affixed to the foregoing instrument is the seal of said corporation and that said instrument was signed and sealed in behalf of PRINCEVILLE II COMMUNITY ASSOCIATION by authority of its Board of Directors, and he acknowledged said instrument to be the free act and deed of said corporation.

Saundra Busto
Saundra Busto
Notary Public, State of Hawaii
My commission expires: 12-9-01

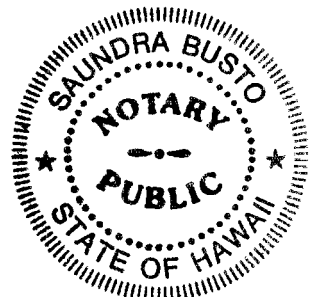


EXHIBIT "A"

LAND INITIALLY SUBMITTED

All of those certain parcels of land situated at Hanalei, Halelea, Kauai, Hawaii, described as follows:

FIRST: Lots 1 to 94, inclusive, of Part A of File Plan 2063, filed in the Bureau of Conveyances of the State of Hawaii.

The land classification of Lots 1-89 is "**Single-Family Residential Lot,**" as defined in the County of Kauai Comprehensive Zoning Ordinance. Notwithstanding **Section 16.2**, Declarant may, with the approval of the County of Kauai, unilaterally amend the land classification for Lots 1-16 and 90 identified above.

Phase One:

Neighborhood: The Residences on Queen Emma's Bluffs – Lots 17-89, 91, 92 and 93.

Phase Two:

Neighborhood: The Residences on Queen Emma's Bluffs II – Lots 1-16, 90 and 94.

Restrictions Applicable to Lots Within Phases One and Two:

A. The County of Kauai, as a condition of approval of the development plan for the Residences on Queen Emma's Bluffs, has required additional covenants, conditions, restrictions and easements to be placed on Lots 1-94 of Part A, as shown on File 2063. Declarant, in order to comply with Condition 1 of County of Kauai Ordinance No. PM-137-85, recorded in the Bureau of Conveyances against Lots 1-94 of Part A of File Plan 2063, a Declaration of Restrictive Covenants and a Supplemental Declaration of Restrictive Covenants as document nos. 92-67205 and 93-100758, respectively. For convenience of the Owners subject to such additional covenants, conditions, restrictions and easements, they have been consolidated and are set forth in this Exhibit "A" as follows:

1. No structure constructed on said Lots shall be visibly obtrusive when viewed from the Anini shoreline or will unreasonably interfere with the viewplane from the Anini shoreline towards the mountains.

2. No structure constructed on said Lot shall be higher than that permitted under the applicable ordinances, rules, regulations or codes of the County of Kauai. The minimum rear yard setback for Lots 46 to 51, inclusive, shall be 30 feet from the rear property line. The rear property shall mean the property line closest to the bluff.

3. Two-story residences constructed on Lots 46 to 51, inclusive, shall comply with the 25-foot height limit of the North Shore Development Plan Ordinance of the County of Kauai. The floor area of the second story shall not be more than two-thirds of the gross floor area of the first floor. The second story shall be set back from the first story. The roof shall be designed in such a manner as not to produce an excessive amount of massing.

4. The slopes fronting the Lot shall be landscaped with shrub to help the fill slopes blend with the greenery of the bluffs. The Association shall keep the shrub watered and well cared for

in good growing condition and will maintain the landscaped slopes in an attractive condition. In the event of damage to the landscaping, the Association of the Lot shall promptly take corrective measure including replacement of the shrub.

5. All landscape plans, prepared by a landscape architect duly licensed as such by the State of Hawaii, are required and must be approved by the Design Committee. Plans shall indicate an irrigation system, drainage system, and planting design and material list. Landscaping-work on the Lot shall be done within twenty-four (24) months following the transfer of the Lot from Declarant to an Owner.

Landscaping shall consist of at least the planting of not less than five trees.

The Owner shall keep the trees well watered and cared for in good growing condition. In the event of damage to the trees, the Owner shall promptly replace them.

6. All exterior building alterations and all installation of exterior floodlights on Lots 46 to 51, inclusive, shall be subject to the design review of the Planning Director of the County of Kauai

7. Changing of exterior colors shall be subject to the review and approval of the Planning Director of the County of Kauai.

8. The landscaping on Lots 46 to 51, inclusive, shall be maintained by the Owner and replaced, if damaged, within 30 days with the same type of plant and of the same size.

9. No indirect lighting shall be permitted in the landscaped area of the subdivision.

10. Use of mirrored glass shall not be allowed.

11. No flat roofs shall be permitted over habitable areas.

12. The conditions and restrictions herein set forth shall be effective from the date of the Declaration, and are to run with the land until such conditions and restrictions are removed or modified by a written instrument approved by the State of Hawaii Land Use Commission, or its successor and recorded in the Bureau of Conveyances of the State of Hawaii.

13. In the event of any conflict between or among the provisions set forth in this Exhibit "A" and the Declaration, the provisions set forth in this Exhibit "A" shall control.

B. Lots 1-94 of Part A of File Plan 2063 shall also be subject to the following additional covenants, conditions, restrictions and easements:

1. Landscape Easements. Landscape easements as shown on File Plan 2063 are reserved to Declarant and its assignee. Declarant shall have the exclusive right to landscape the easement areas. The Association shall maintain, operate, administer, repair, replace the landscaping within the easement areas. The easement areas shall be considered Common Area and shall be landscaped, improved and maintained in a superior manner and condition, consistent with a first-class resort development. Declarant and the Association shall have the right to enter upon each Lot which is subject to a landscape easement or adjacent to the Landscape Easement Areas, without any notice to or consent of the Owner of the Lot, for the purpose of performing any and all construction, replacement and maintenance within said easement areas.

2. Landscape Controls. All Lots in The Residences on Queen Emma's Bluffs Neighborhood shall be subject to landscape controls necessary to mitigate viewplane obstruction from abutting Lots. The Design Committee shall determine the primary view resource(s) to be preserved and shall establish landscaping criteria to be adhered to by all Owners in said subdivision; provided, however, that the following shall apply to all Lots on which residences were or will be constructed by Declarant.

(i) The landscaping provided with each of said dwelling unit shall be preserved and maintained by each Lot Owner. No shrub or tree higher than six feet high shall be planted or relocated without the approval of the Design Committee.

(ii) The Owners of Lots 46 to 51 shall not alter or remove any landscaping provided on their Lots. Maintenance of such existing landscaping is allowed to preserve the primary views from each affected Lot. Such maintenance shall not include denuding foliage so as to expose the building frame or siding.

(iii) Trees taller than six feet will be allowed provided that such trees will not obstruct the established primary views from the abutting Lots.

(iv) Existing plants or shrubs may be replaced with a similar variety or type of plants as approved by the Design Committee.

(v) Penalty for violation of the foregoing provisions will entail restoration by the Owner upon a finding by the Design Committee that in fact a violation has been committed, or in the alternative, restoration and/or maintenance work to be contracted by the Association with associated costs to be borne by the Owner.

3. Sight Distance. All Lots subject to easement for sight distance purpose shall be landscaped so as to permit safe sight across the street corners. No hedge, shrubbery, natural growth or fence which is higher than three feet shall be placed or permitted to remain within the easement area designated for sight distance purpose.

4. Retaining Wall. The Association shall have and it is granted an easement over that portion of a Lot on which a retaining wall was or will be constructed by Declarant. The Association shall, at its own cost and expense, maintain, repair and replace the retaining wall. The Association is also granted the right to enter upon the affected Lot for the purpose of maintaining, repairing and replacing the wall.

EXHIBIT "B"

LAND SUBJECT TO ANNEXATION

Parcel I:

1. Hanalei Plantation Road; Tax Map Key Numbers 5-4-4-28.
2. Tax Map Key Numbers 5-4-25-14.
3. Lot 28, Unit VIII; Tax Map Key Numbers 5-4-25-13.
4. Lot 19, F.P. 1600; Tax Map Key Numbers 5-4-20-19.
5. Govt. Road Reserve, Land Patent 15,658; Tax Map Key Numbers 5-4-5-__.

Parcel II:

1. Parcel 2 and Postponement Area 1; Tax Map Key Numbers 5-3-6-14; 1,113.632 acres.
2. Tax Map Key Numbers 5-3-6-17.
3. Anini, 12,717 sq.ft.; Tax Map Key Numbers 5-3-6-13.

Parcel III:

1. Halelea Forest Reserve; Tax Map Key Numbers 5-2-1-4.
2. Lot 23A (Portion of Lot 23, F.P. 1574); Tax Map Key Numbers 5-3-1-2.
3. Lot 27 (Portion of Lot 23, F.P. 1574); Tax Map Key Numbers 5-3-1-16.
4. Portion of Postponement Area 2 (Kalihiwai); Tax Map Key Numbers 5-3-1-8.
5. Tax Map Key Numbers 5-3-1-9.
6. Tax Map Key Numbers 5-3-1-15.
7. Tax Map Key Numbers 5-3-6-2.
8. Tax Map Key Numbers 5-3-6-13.

Parcel IV:

1. Remainder Lot; Tax Map Key Numbers 5-3-1-11.
2. Hanalei Taro Land; Tax Map Key Numbers 5-4-3-1.
3. Tax Map Key Numbers 5-4-4-29; 2,466 square feet.
4. Portion of Lot 4-A; Tax Map Key Numbers 5-4-4-32.

Others:

1. Hotel Site; Tax Map Key Numbers 5-4-4-35.
2. Moody; Tax Map Key Numbers 5-4-4-1, TCT 271,331
Lot 5-B, Map 10, Land App. 1724
3. Amfac Hotel Site; Tax Map Key Numbers 5-4-11-4.
4. Stark Property, Lot 4, Land Court App. 1724, etc.; Tax Map Key Numbers 5-4-4-13, 5-4-4-2.
5. Song Property; Tax Map Key Numbers 5-5-1-5.

EXHIBIT "C"

INITIAL USE RESTRICTIONS

(a) General. The Properties shall be used only for residential, recreational and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for Declarant or the Association consistent with this Declaration and any Supplemental Declaration). Any Supplemental Declaration may impose stricter standards than those contained in these Initial Use Restrictions and the Association shall have standing and the power to enforce such standards.

(b) Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board:

(i) Posting of signs, billboards, posters or circulars of any kind (including, but not limited to, commercial or political signs), except for:

(A) Directional signs established by Declarant or the Association;

(B) Such signs as may be required for legal proceedings;

(C) Residential identification signs of a combined total face area of 144 square inches or less for each Lot;

(D) During the time of construction of any improvement, one job identification sign not larger than 18 by 24 inches in height and width and having a face area not larger than three square feet;

(E) Signs advertising Lots "for sale" which signs shall be of customary and reasonable dimensions and of a professional type and signified appearance, and which signs shall be placed only in such location(s) as designated by the Board in its sole discretion. If at the time of any such desired use, the Association is providing for sale signs for the use of Owners, the sign provided by the Association shall be used; and

(F) Signs, billboards and other advertising devices or structures used by Declarant in connection with the development, advertising and sale of the Lots therein.

(ii) Parking of commercial vehicles, recreational vehicles, mobile homes, boats or other watercraft, or other oversized vehicles, stored vehicles or inoperable vehicles in places other than enclosed garages;

(iii) Further subdividing of a Lot, except by Declarant or a Builder with the approval of Declarant. No Lot shall be subjected to a Condominium regime, other than by Declarant; provided, however, an Owner of two (2) or more contiguous single family Lots may consolidate them into one (1) Lot, provided, such Owner: (a) obtains the approval of the County and the Declarant, as long as the Declarant owns any property within Exhibit "A" and "B" to this Declaration; and (b): either (i) records or files a map to consolidate the Lots with the Bureau of Conveyances or (ii) records and/or files all necessary documents with the County of Kauai and all applicable governmental entities which permanently consolidates the Lots into one (1) Lot ("Consolidation" or "Consolidate"). Upon Consolidation

of the Lots, they shall become one (1) Lot for all purposes of this Declaration. The approval of the Board shall be required once Declarant's right to approve terminates.

(iv) Active use of ponds, creeks or other bodies of water within the Properties or within any Golf Course(s), except that the owner of the Golf Course(s), and its agents, successors and assigns, shall have the exclusive right and easement to retrieve golf balls from bodies of water within the Common Areas which are within range of golf balls hit from the Golf Course(s). The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of ponds, creeks or other bodies of water within or adjacent to the Properties;

(v) Operation of a timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its successors and assigns may operate such a program with respect to Lots which it owns;

(vi) No planting or placing of materials upon easement areas reserved for Declarant for installation and maintenance of utilities and drainage facilities, which may damage or interfere with the installation and maintenance of such utilities or which may obstruct or retard the flow of water through drainage channels in such easement areas;

(vii) Activities which materially disturb or destroy the vegetation, wildlife or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(viii) Any construction, erection or placement of ornamentation or other objects or equipment, permanently or temporarily, on the outside portions of the Lot, whether such portion is improved or unimproved;

(ix) Construction and maintenance of any fence or other improvements or other obstruction which interrupt the natural drainage of the land;

(x) Construction activities which will obstruct or interfere with the rights of Declarant, other Owners, occupants or authorized Persons to use and enjoy the Common Areas, or annoy them by unreasonable noises or otherwise. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration unless they are in violation of the Design Committee Rules; provided, however, Lots and Common Areas are kept in a neat and tidy condition during construction periods, trash and debris are not permitted to accumulate, and supplies of brick, block, lumber and other building materials are piled only in such areas as may be approved by the Design Committee. In addition, any construction equipment and building materials stored on the Properties during construction of improvements may be stored only in areas approved by the Design Committee, which also may require screening of the storage areas. The Board, at its sole discretion, shall have the right to determine the existence of any unreasonable construction activities under this Declaration;

(xi) Raising, breeding or keeping of animals, livestock or poultry of any kind, except that a reasonable number of dogs, cats or other usual and common household pets, may be permitted in a Lot. However, those pets which are permitted to roam free or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Lots shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Each Owner shall be absolutely liable

to each and all remaining Owners, their families, guests and invitees, and to the Association for any and all damage to person or property caused by any pets or other animals, livestock, birds, fish or poultry brought upon or kept upon any Lot or the Common Area by such Owner, members of his family, guests or invitees, and each Owner shall comply with such reasonable rules and regulations governing the keeping of pets which may be adopted by the Association from time to time. The Board may conclusively determine, in its sole discretion, whether a particular animal or fowl is generally recognized as a household pet or yard pet, or constitutes a nuisance, or whether the number of pets on any Lot is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained herein;

(xii) Any business, trade, garage sale, moving sale, rummage sale or similar activity, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as: (A) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (B) the business activity conforms to all zoning requirements for the Properties; (C) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Properties; and (D) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board;

This paragraph shall not apply to any activity conducted by Declarant or a Builder approved by Declarant with respect to its development and sale of the Properties or its use of any Lots which it owns within the Properties, including the operation of a timeshare or similar program.

The leasing of a Lot shall not be considered a business or trade within the meaning of this subsection. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity or emolument. Lots may be leased only in their entirety. No fraction or portion may be leased. No structure on a Lot other than the primary residential dwelling shall be leased or otherwise occupied for residential purposes, except that any Lot comprised of more than one acre of land may make residential use of such a structure for an ancillary use such as in-law suite or nanny suite, but not for independent leasing. There shall be no subleasing of Lots or assignment of leases unless prior written approval is obtained from the Board. All leases shall be in writing.

No transient tenants may be accommodated in a Lot and all leases shall be for an initial term of no less than 30 days, except: (A) with the prior written consent of the Board, or (B) as initially authorized by Declarant in Exhibit "A" or a Supplemental Declaration.

Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, Bylaws, and the rules and regulations. The Board may adopt reasonable rules regulating leasing and subleasing.

(xiii) Any noxious or offensive activity which may be or become a nuisance, or cause embarrassment, disturbance or annoyance to other Owners in Princeville II. Without limiting any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the improvements, shall be placed or used without the Design Committee's prior approval;

(xiv) Overnight parking of vehicles of any type whatsoever on any portion of the private streets. No Owner shall do anything which will in any manner prevent the private streets from at all times being free and clear of all obstructions and in a safe condition for vehicular use;

(xv) Activities which in any manner alter, modify or interfere with the grades, slopes or drainage on any Lot or on the Common Area without the express written permission of the Design Committee and then only to the extent and in the manner specifically approved. No structure, plantings or other material shall be placed or permitted to remain on or within any slopes nor shall any other activities be undertaken by the Association or by any other person which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels;

(xvi) Parking of automobiles or other vehicles outside of a garage if there is space for such automobile or vehicle in such garage and no garage shall be used for any purpose which would preclude parking of at least two automobiles therein. The use of carports in lieu of garages is specifically prohibited. No dwelling shall be constructed or maintained on a Lot without a garage large enough to contain at least two standard size automobiles;

(xvii) Any activity conducted within any Lot which interferes with television or radio reception in Princeville II;

(xviii) Occupancy of any dwelling unit until the same is completed and made to comply with this Declaration and the Design Committee Rules. Any improvement which is partially or totally destroyed, or damaged, by fire, earthquake or otherwise, shall be removed, repaired or replaced within a reasonable time after such destruction or damage occurs and subject to the requirements of this Declaration, by the then Owner or Owners of that portion of the Lot or Lots upon which the destroyed or damaged improvement was or is located. All work of construction, removal or repair of any improvement upon any Lot shall be prosecuted diligently and continuously from the time of commencement thereof until the same shall be fully completed, except to the extent prevented by strikes, lockouts, boycotts, the elements, war, inability to obtain materials, acts of God or similar causes;

(xix) Camping upon any Lot;

(xx) Hunting or discharging of firearms on any Lot;

(xxi) Blasting or discharging of explosives upon any Lot except with the Design Committee's prior approval;

(xxii) Starting of fires outside of the dwelling unit, except barbecue and incinerator fires contained within facilities or receptacles and in areas first approved by the Design Committee for such purposes. However, the Owner of a single-family residential Lot unless prohibited by a Supplemental Declaration which such Lot is subject to, shall be permitted to have barbecue fires without the Design Committee's approval. No Owner shall permit any condition which creates a fire hazard or is in violation of any fire prevention regulations;

(xxiii) Occupancy of a Lot by more than a single family. For purposes of this restriction, a "single family" shall be defined as permitted adults, as defined below, together with (i) any persons under the age of 18 in the legal custody of any permitted adult or residing with the permitted adult with the written permission of the adult having legal custody of such person; and (ii) the household employees of such housekeeping unit. For purposes of this restriction, "permitted adults" shall mean (i) any number of adults related by blood, adoption or marriage plus one additional adult, or (ii) one adult

per bedroom in the Lot plus one additional adult. An "adult" shall be defined as any person 18 years of age or older.

(c) **Prohibited Conditions.** The following shall be prohibited within the Properties:

- (i) Towers, windmills or aerials on any Lot;
- (ii) Sprinkler or irrigation systems or wells of any type which draw upon water from creeks, ponds or other ground or surface waters within the Properties; except that Declarant, the Association and the Golf Course(s) shall have the right to collect and divert storm water runoff from streets and other hard surfaces for irrigation and other purposes;
- (iii) Open garage doors visible from any Lot or the Common Area. Garage doors shall remain closed at all times except when entering and exiting the garage;
- (iv) Excessive exterior lighting on any Lot. The Board shall in its sole discretion determine whether any exterior lighting is excessive; and
- (v) Landscaping, including the natural plant life on the Lot which is not irrigated and maintained consistent with the Community Wide Standard or maintained in such manner to cause shifting or erosion of soils;
- (vi) Garbage or trash visible from a Lot or the Common Area. Garbage and trash in containers approved by the Association rules may be temporarily visible from a Lot or Common Area prior to pickup;
- (vii) Refuse pile, garbage or unsightly objects, including but not limited to clotheslines, refuse containers, woodpiles, storage areas, and machinery and equipment, placed or accumulated anywhere on the Property unless obscured from view of Common Area by a fence or appropriate screen approved by the Design Committee. All rubbish, trash and garbage shall be placed in containers and regularly removed from each Lot and shall not be allowed to accumulate thereon;
- (viii) Temporary buildings, structures, outhouses, sheds, tents or trailers of any kind, except as expressly otherwise provided herein. Temporary structures or trailers may be erected or placed on any land during a reasonable period of construction for use as a construction office and supply shelter, but in no event as a residence. The temporary construction structures or trailers shall remain upon the land only during the period of construction of permanent improvements thereon and must be removed within 30 days after completion of such construction. Any surplus material from construction must be removed within that 30 days;
- (ix) Outside clotheslines or other outside clothes washing, drying or airing facilities visible from another Lot or Common Area;
- (x) Outside toilet facilities, other than self-contained portable toilet units used during construction or for special events and beachfront toilet facilities. All permanent plumbing fixtures (other than fixtures for incoming water), dishwashers, garbage disposal, toilets or sewage disposal system shall be connected to a sewage system approved by the appropriate governmental authorities;
- (xi) Fences of any kind on any Lot except with the Design Committee's prior approval;

(xii) Hedges, shrubbery, natural growth or fences which are higher than three feet located within easement areas designated for sight distance purposes;

(d) Exceptions. The restrictions set forth in the Use Restriction shall not and do not apply to any of the following:

(i) Any act done or proposed to be done upon the Properties, or any condition created thereon, by any governmental agency or entity, or the agents or employees of any Governmental Entity acting in the scope of their authority as such agents or employees;

(ii) Any act done or proposed to be done upon the Properties, or any condition created thereon, by any utility company (including, but not limited to, companies furnishing electric, gas, water, telephone, cable television and/or sewer service to all or parts of the Properties), or the agents or employees of any such company, which act could be done by such company were this Declaration not made;

(iii) Any act done or proposed to be done upon the Properties, or any condition created thereon, by Declarant, or its successors, assigns, agents, employees or contractors, in connection with the marketing and sales by Declarant of the Lots, or in the course of planning for, preparing the Properties for and/or construction upon the Properties or any Lot of streets, utilities, recreational and residential buildings, security systems, and all other original improvements, or in connection with the exercise of any easement reserved by Declarant in **Article XI** hereof;

(iv) Any act done or proposed to be done upon the Properties, or any condition created thereon, which act or condition has been approved in advance by the Board or the Design Committee acting within its authority as set forth in **Article IX** of this Declaration;

(v) Any act done or proposed to be done upon the Properties, or any condition created thereon, by any Person pursuant to court order, or the order of any public officer or public agency; provided, however, that the orders contemplated in this subparagraph are only those which are the result of action initiated by public officers or agencies and which embody mandatory requirements with penalties for non-performance, and are not those orders which result from the application of private parties or are merely permissive.

(vi) Any installation of an Authorized Antennae on a Lot by an Owner subject to the requirements set forth in this subsection. For purposes of this Section, an "**Authorized Antenna**" means (a) an antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, (b) an antenna that is designed to receive video programming service, including multichannel multi point distribution service, instructional television fixed service, and local multi point distribution service, that is one meter or less in diameter or diagonal measurement, or (c) an antenna that is designed to receive television broadcast signals. The installation of an Authorized Antenna shall be subject to the following requirements:

(A) The proposed location for installation of an Authorized Antenna may be reviewed by the Board in order to ensure that the visibility of the Authorized Antenna is minimized with respect to other Owners. Such review by the Board shall not (1) unreasonably delay or prevent installation maintenance or use of an Authorized Antenna, (2) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (3) preclude reception of an acceptable quality signal.

(B) If an Owner proposes to install an Authorized Antenna on the property of another Owner, such installation must be approved in advance by the Board of the Association.

(C) The Board may adopt additional restrictions on installation or use of an Authorized Antenna as a part of the Association's Rules and Regulations so long as such restrictions do not (1) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (2) unreasonably increase the cost of installation maintenance or use of an Authorized Antenna, or (3) precludes reception of an acceptable quality signal.

(D) The Board may prohibit the installation of an Authorized Antenna if the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of managers, agents or employees of the Association and other Owners.