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/s/ NICKI ANN THOMPSON
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Return by Mail (X) Pickup () to:
Kukui'ula Development Company (Hawaii), LLC
2700 Ke Alaula Street, Suite B
Koloa, HI 96756

Total Pages: 104

Tax Map Key Nos.

Parcel "Y"	(4) 2-6-016: 001 to 056, 058 to 088, and (4) 2-6-016: 092 to 095 (Roadway Lots)
Parcel "M1/M/4"	(4) 2-6-017: 001 to 003, 006 to 035, 039, and 042, and (4) 2-6-017: 036 to 038 (Roadway Lots)
Parcel "M2/M3"	(4) 2-6-017: 043 to 051 (Lots A to J), (4) 2-6-018: 022 to 025, 027 to 030, 032 to 034, 36 to 51, 53 to 55, 061 and 064, and (4) 2-6-018: 056 to 59 (Roadway Lots)
Parcel "CC"	(4) 2-6-019: 001 to 016
Parcel "FF"	(4) 2-6-019: 017
Parcel Club Villas	(4) 2-6-019: 034 through 046 and (4) 2-6-019: 047 (Roadway Lot)
Kainani Villas	(4) 2-6-020: 022
Kainani Neighborhood	(4) 2-6-020: 001 to 021, 023 to 027
Roadway Lots:	(4) 2-6-015: 015 & 016 (Ala Kukui'ula), (4) 2-6-015: 017 (Ala Pualeikukui) and (4) 2-6-019: 019 (Ke Alaula Street)

**SECOND AMENDED AND RESTATED
COMMUNITY CHARTER FOR KUKUI'ULA**

THIS SECOND AMENDED AND RESTATED COMMUNITY CHARTER FOR KUKUI'ULA ("Charter"), is made as of August 5, 2015, by KUKUI'ULA DEVELOPMENT COMPANY (HAWAII), LLC, a Hawaii limited liability company ("Declarant"), whose mailing address is 2700 Ke Alaula Street, Suite B, Koloa, Hawai'i 96756.

WITNESSETH:

A. Declarant recorded that certain Community Charter for Kukui'ula dated May 8, 2006, in the Bureau of Conveyances of the State of Hawaii (the "Bureau") on May 11, 2006 as Document No. 2006-088739 ("Original Charter"), which has previously been amended by those instruments dated June 20, 2006 and recorded in the Bureau on June 22, 2006 as Document No. 2006-115382, dated March 19, 2008 and recorded in the Bureau on March 25, 2008 as Document No. 2008-045848, and dated December 24, 2010 and recorded in the Bureau on December 29, 2010 as Document No. 2010-202737, and amended

and restated by that certain Amended and Restated Community Charter for Kukui'ula, dated September 4, 2012, and recorded in the Bureau on September 6, 2012, as Document No. A-46320954, and further amended by instrument dated February 12, 2013, and recorded in the Bureau on February 20, 2013, as Document No. A-47991323 (the Original Charter, as previously amended and restated, is referred to herein as the **"Amended Charter"**).

B. Declarant also recorded the following Supplements:

1. Supplemental Declaration to Kukui'ula Charter and Declaration of Easements (Parcel M2/M3) dated March 19, 2008, recorded in the Bureau on March 25, 2008, as Document No. 2008-045850 (as amended and restated, is referred to herein as the **"Parcel M2/M3 Supplement"**);

2. Supplemental Declaration to Kukui'ula Charter and Declaration of Easements (Parcel CC) dated January 10, 2011, recorded in the Bureau on January 19, 2011, as Document No. 2011-010183 (as amended, is referred to herein as the **"Parcel CC Supplement"**);

3. Supplement to Amended and Restated Community Charter for Kukui'ula and Declaration of Easements (Parcel FF) dated November 27, 2013, recorded in the Bureau on December 2, 2013, as Document No. A-50840986 (referred to herein as the **"Parcel FF Supplement"**);

4. Supplement to Amended and Restated Community Charter for Kukui'ula and Declaration of Easements (Parcel Club Villas) dated March 4, 2014, recorded in the Bureau on March 10, 2014, as Document No. A-51820590 (as amended referred to herein as the **"Parcel Club Villas Supplement"**);

5. Supplement to Amended and Restated Community Charter for Kukui'ula and Declaration of Easements (Kainani Villas) dated June 30, 2015, recorded in the Bureau on even date, as Document Nos. A-56591117A thru B (the **"Kainani Villas Supplement"**); and

6. Supplement to Amended and Restated Community Charter for Kukui'ula and Declaration of Easements (Kainani Neighborhood) dated July 22, 2015, recorded in the Bureau on even date, as Document Nos. A- 56811067A thru C (the **"Kainani Neighborhood Supplement"**).

C. Pursuant to Section 21.2(a) of the Amended Charter, until termination of the "Declarant Control Period," as such term is defined in the Amended Charter, Declarant may unilaterally amend the Amended Charter for any purpose.

D. Pursuant to Section 2.1 of the Amended Charter, the Declarant Control Period terminates upon the first of the following to occur: (a) when 75% of the total number of Units designated on the Master Plan for property described in the Master Plan, excluding the Units developed within the area known as Koloa Estates, has been conveyed to persons other than builders holding title for purposes of construction and resale; (b) December 31, 2040; or (c) when, in its discretion, the Declarant so determines and declares a termination of the Declarant Control Period in a recorded instrument.

E. As of the date of this Second Amended and Restated Community Charter, none of the foregoing events of termination has occurred and the Declarant Control Period remains in effect.

F. Pursuant to Section 21.1(a) of the Amended Charter, Declarant desires to further amend and restate the Amended Charter and all exhibits thereto so as to read as set forth in this Second Amended and Restated Community Charter for Kukui'ula, while preserving in effect the foregoing Supplements.

NOW THEREFORE, the Amended Charter is hereby further amended, restated, replaced and superseded in its entirety by the attached Second Amended and Restated Community Charter:

SECOND AMENDED AND RESTATED

COMMUNITY CHARTER

FOR

KUKUI'ULA



Kukui'ula

KAUAI'S LIVING GARDEN

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TABLE OF SUPPLEMENTS TO THIS CHARTER

The following Supplements to this Charter were recorded in the Bureau prior to the date of this Second Amended and Restated Community Charter for Kukui'ula:

Description	Date Recorded	Document No.
Parcel M2/M3 Supplement		
Supplemental Declaration to Kukui'ula Charter and Declaration of Easements (Parcel M2/M3)	March 25, 2008	2008-045850
Additional Supplement to Kukui'ula Charter (Confirmation of Annexation and Terms of Supplement – Lot 12 of Parcel M2/M3 and Easements S-3 and D-1)	April 23, 2008	2008-063694
Additional Supplement to Kukui'ula Charter (Notice of Intent to Combine Lots 51 and 52 of Parcel M2/M3)	April 23, 2008	2008-063695
Amended and Restated Supplemental Declaration to Kukui'ula Charter and Declaration of Easements (Parcel M2/M3)	June 27, 2012	A-45610030
Amended and Restated Supplement to Amended and Restated Community Charter for Kukui'ula and Declaration of Easements (Parcel M2/M3)	May 16, 2014	A-52490687
Parcel CC Supplement		
Supplemental Declaration to Kukui'ula Charter and Declaration of Easements (Parcel CC)	January 19, 2011	2011-010183
Amendment to Supplement to Kukui'ula Charter and Declaration of Easements (Attaching Current Description of Lodge Rental Program	February 1, 2011	2011-018277
Second Amendment to Supplement to Kukui'ula Charter and Declaration of Easements	November 2, 2011	2011-180579
Third Amendment to Supplement to Amended and Restated Community Charter for Kukui'ula and Declaration of Easements (Parcel CC)	March 27, 2014	A-51990537
Fourth Amendment to Supplement to Kukui'ula Charter and Declaration of Easements (Parcel "CC")		
Parcel FF Supplement		
Supplement to Amended and Restated Community Charter for Kukui'ula and Declaration of Easements (Parcel FF)	December 2, 2013	A-50840986
Parcel Club Villas Supplement		
Supplement to Amended and Restated Community Charter for Kukui'ula and Declaration of Easements (Parcel Club Villas)	March 10, 2014	A-51820590
First Amendment to Supplement to Amended and Restated Community Charter for Kukui'ula and Declaration of Easements (Parcel Club Villas)	May 5, 2014	A-52380231
Kainani Villas Supplement		
Supplement to Amended and Restated Community Charter for Kukui'ula and Declaration of Easements (Kainani Villas)	June 30, 2015	A-56591117A thru B
Kainani Neighborhood Supplement		
Supplement to Amended and Restated Community Charter for Kukui'ula and Declaration of Easements (Kainani Neighborhood)	July 22, 2015	A- 56811067A thru C

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**SECOND AMENDED AND RESTATED
COMMUNITY CHARTER
FOR
KUKUI`ULA**

PREAMBLE

This Second Amended and Restated Community Charter for Kukui`ula (“**Charter**”) establishes a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of Kukui`ula as a planned resort community which will entail residential, commercial, recreational, historic, archaeological and civic components. In addition, the plan seeks to create substantial and diverse recreational amenities within Kukui`ula consistent with this Charter.

Kukui`ula will be a multi-phased planned resort development offering several different housing products, ranging from custom homes to cottages, villas and condominium developments of varying sizes and styles that will appeal to multiple market segments. The general plan for Kukui`ula provides for a compatible mix of uses that takes advantage of the unique characteristics of the land and the cultural history of the area. By imposing the mutually beneficial restrictions contained within this Charter and accompanying design criteria, the Declarant seeks to preserve the property's character while providing for the development of the community for the benefit of all owners and residents of real property in Kukui`ula (and to a limited extent others, as provided herein). This Charter provides a flexible and reasonable procedure for Kukui`ula's future expansion as the Declarant deems appropriate and provides for its overall development, administration, maintenance, and preservation. An integral part of the development plan is the formation of the Kukui`ula Community Association, a nonprofit Hawai`i corporation, created to own, operate and/or maintain parks and trails, primarily non-recreational features, common property, and community improvements and to administer and enforce this Charter and the other referenced Governing Documents, restrictions and standards established for Kukui`ula.

DECLARATION OF COVENANT

Kukui`ula Development Company (Hawaii), LLC, a Hawai`i limited liability company including its successors and assigns (the “**Declarant**”), by executing and recording this Charter, declares that the property described in Exhibit “A” attached hereto and any additional property made subject to this Charter in the future by amendment or supplement as provided in the following chapters, shall constitute the community of Kukui`ula (the “**Community**”). This Charter shall run with the title to such property, shall govern the development and use of such property, and shall be binding upon the Declarant and the future owners of any portion of the property, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of such property and upon the Kukui`ula Community Association, its successors and assigns (the “**Association**”).

The real property submitted hereto is subject to various land use approvals, restrictions, and conditions imposed by the County of Kaua`i, the Land Use Commission of the State of Hawai`i Supplemental and/or Modified Findings of Fact, Conclusions of Law, and Decision and Order, dated August 8, 2004 that includes the current State Conditions of Approval as of the date of this recordation, and such conditions that have been imposed or may be imposed throughout the course of development of Kukui`ula. These conditions and approvals impose significant obligations and restrictions on the Association, the Declarant, Owners, occupants of Property and others (including, but not limited to tenants, guests and invitees) within Kukui`ula.

This document does not, and is not intended to, create a condominium under the laws of the State of Hawai`i.

Chapter 1

Governing Documents

A community is guided and governed by certain principles that each owner and resident, by choosing to own property or reside in the community, agrees to uphold. Those principles are set forth in the community's governing documents, which serve to tie the community together, give it structure, and provide guidance to all who participate in its growth and evolution.

1.1. Scope and Applicability

Kukui`ula has been established and is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of property in the Community, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising the Community. Such documents, referred to in this Charter as the “**Governing Documents**,” include this Charter and the other documents described in Table 1.1, as they may be amended. All owners and occupants, as well as their tenants, guests, and invitees, are required to comply with the Governing Documents.

1.2. Additional Covenants

The owner of any property within the Community may impose additional covenants on its property with such approval as may be required pursuant to Chapters 17 and 18. If the provisions of any such additional covenants are more restrictive than the provisions of this Charter, the more restrictive provisions control. The Association shall have standing and the power, but not the obligation, to enforce any such additional covenants.

1.3. Conflicts

If there are conflicts between any of the Governing Documents and Hawai`i law, Hawai`i law shall control. If there are conflicts between or

among any of the Governing Documents, then the Articles shall control over the Charter and the By-Laws, and the Charter shall control over the By-Laws and other Governing Documents described in Table 1.1. If there is a conflict between the Governing Documents and any additional covenants recorded on any property within the Community (or the Standards or policies adopted pursuant to any such additional covenants), the Governing Documents shall control.

The Governing Documents may use diagrams and tables to illustrate concepts and assist the reader. If there is a conflict between any diagram and the text of the Governing Documents, the text shall control.

If any court determines that any provision of this Charter is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

1.4. Definitions

Capitalized terms used in the Governing Documents have the meaning described in the paragraph where they first appear in bold print. An index to defined terms may be found at the beginning of this Charter. All other terms used in the Governing Documents have their natural, commonly accepted definitions.

1.5. Interpretation of Certain References

Consent or Approval. All references in the Governing Documents to “**consent**” or “**approval**” shall refer to permission or approval, which unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

GOVERNING DOCUMENTS	
Charter: (recorded)	this Community Charter for Kukui`ula, which creates obligations that are binding upon the Association and all present and future owners of property in the Community and impose easements and restrictions upon the initial property made subject to this Charter
Supplement: (recorded)	a recorded Supplement to this Charter, which may submit additional property to this Charter, create easements over the property described in the Supplement, impose additional obligations or restrictions on such property, designate special areas as described in Chapter 3, or any of the foregoing
Articles: (filed with the State of Hawai`i Department of Commerce and Consumer Affairs)	the Articles of Incorporation of the Kukui`ula Community Association, as they may be amended, which establish the Association as a nonprofit corporation under Hawai`i law
By-Laws: (adopted by the Board of Governors of the Association)	the By-Laws of the Kukui`ula Community Association adopted by its Board of Governors, as they may be amended, which govern the Association's internal affairs, such as voting, elections, meetings, etc.
Design Guidelines: (Declarant adopts)	the design standards and architectural and aesthetics guidelines adopted pursuant to Chapter 5, as they may be amended, which govern new construction and modifications to Units, including structures, landscaping, and other items on Units
Standards: (initial set attached as Exhibit "C")	the standards of the Association adopted and amended by its Board of Governors pursuant to Chapter 7, which regulate use of property, activities, and conduct within Kukui`ula
Board Resolutions: (adopted by the board of governors of the Association)	the resolutions which the Board of Governors adopts to establish Standards, policies, and procedures for internal governance and Association activities and to regulate the operation and use of property which the Association owns or controls
Covenant: (recorded)	the Covenant for The Club at Kukui`ula, as it may be amended, which provides for the administration of the recreational facilities and amenities and various programs and services within Kukui`ula and establishes the rights and obligations of Owners and The Club at Kukui`ula with respect to access, use, and support of the same
Club By-Laws (adopted by The Club's board of directors)	the By-Laws of The Club at Kukui`ula, as they may be amended, which govern The Club's internal affairs, such as membership, board powers and duties, etc.
Club Rules (adopted by The Club's board of directors)	the policies regulating the conduct of members and use of the Club Amenities

Table 1.1 – Governing Documents

Discretion and Determination. All references in the Governing Documents to “discre-

tion” or to the right to “determine” any matter shall refer to the sole and absolute power or right

Governing Documents

to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, any one authorized in the Governing Documents to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

Person. References in the Governing Documents to a “**Person**” or “**Persons**” shall refer to an individual, a corporation, a partnership, a limited liability company, or any other legal entity.

Recording. All references in the Governing Documents to a “**recorded**” legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument recorded or the recording of a legal instrument in the Bureau of Conveyances of the State of Hawai`i, or such other place designated as the official location for recording documents affecting title to real estate in order to make them a matter of public record.

Community-Wide Standard. Where the Governing Documents require compliance with the “**Community-Wide Standard**,” the standard to be applied is the highest of: (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing in the Community; or (b) the minimum standards described in this Charter, the Design Guidelines, the Standards, and Board resolutions. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Board or the Reviewer (as defined in Chapter 5). The Community-Wide Standard may or may not be set out in writing. The Declarant initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as Kukui`ula matures.

Including. When used herein, the terms “**include**” or “**including**” shall not be limiting and are deemed to mean “including without limitation.”

Maintenance. All references in this Charter to “**maintenance**” shall refer to maintenance, repair, and replacement.

1.6. Term and Termination

This Charter, as it may be amended, shall run with the land and bind the Community and be in full force and effect in perpetuity unless terminated as provided in this section. This Charter may be terminated at any time by a recorded instrument signed by at least 75% of the then Owners. In such case, this Charter shall terminate on the date specified in the termination document and the Association shall be dissolved pursuant to the terms set forth in its Articles.

This section shall not permit termination of any easement created in this Charter without the consent of the holder of such easement.

Chapter 2

Roles in Community Administration

Vibrant communities depend upon all of their stakeholders working together to uphold community standards and achieve the vision and goals for the community. The Declarant, the Association, the Owners, the Sub-Developers, and others have a role in the functioning of Kukui`ula and in helping to fulfill that vision. This chapter identifies these parties and describes their roles in administering Kukui`ula.

2.1. The Declarant

The Declarant has established the vision for Kukui`ula and, through the Governing Documents, has set forth the founding principles that will guide Kukui`ula during the initial period of development and sale and thereafter. The Declarant's proposed plan for development of Kukui`ula and adjoining properties is described in the land use plan(s) for Kukui`ula approved by the County of Kaua`i, Hawai`i and/or the Land Use Commission of the State of Hawai`i, as it may be supplemented and amended (the "**Master Plan**"). The Master Plan encompasses all of the property described in Exhibit "A" and in Exhibits "B-1" to "B-7" and a portion of other property described in Exhibit "B," as well as other properties. Exhibit "E" and Exhibit "F," which are attached hereto, represent those Supplements to this Charter applicable to Parcel "Y" and Parcel "M1/M4" (which parcels are described in Exhibit "A"). However, the Declarant is not obligated to submit property shown on the Master Plan to this Charter. In addition, the Declarant may submit property to this Charter that is not shown on the Master Plan.

The Declarant has reserved various rights in the Governing Documents with respect to development and administration and design criteria of Kukui`ula. The Declarant may exercise certain of these rights throughout the "**Development and Sale Period**," which is the period of time during which the Declarant or any Declarant Affiliate owns real property in Kukui`ula or has an unexpired option to expand Kukui`ula pursuant

to Chapter 17. A "**Declarant Affiliate**" is any Person that controls, is controlled by, or is under common control with the Declarant, or any Person that is an owner, a member, a partner, or a shareholder of the Declarant or its members.

Other rights may be exercised only during the "**Declarant Control Period**," which is the period of time that the Declarant is entitled to appoint a majority of the members of the Association's Board of Governors ("**Board**"). It begins on the date of the Association's incorporation and terminates upon the first of the following to occur:

- (a) when 75% of the total number of Units designated on the Master Plan for the property described in the Master Plan, excluding the Units developed within the area known as Koloa Estates, has been conveyed to persons other than Sub-Developers and Speculative Homebuilders;
- (b) December 31, 2040; or
- (c) when, in its discretion, the Declarant so determines and declares a termination of the Declarant Control Period in a recorded instrument.

As provided in the By-Laws, the Declarant has certain approval rights for a limited period as provided in the By-Laws after the termination of the Declarant Control Period.

The Declarant may partially assign its status and rights as the Declarant under the Governing Documents to any Person who takes title to any portion of the property described in Exhibit "A" or "B" for the purpose of development and/or sale or may fully assign to any Person taking title to the remaining undeveloped areas. Such assignment shall be made only in a recorded instrument signed by both parties.

2.2. The Association

The Declarant has established the Association as a mandatory membership owners association responsible for maintaining the Area of Common

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Responsibility, as defined in Section 3.1, and administering the Governing Documents. The Association may exercise all rights and powers which the Governing Documents and Hawai'i law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right or privilege.

2.3. The Board

On most matters, the Association acts through the Board. However, in some instances the Governing Documents or applicable law limits the Board's ability to act without the approval of the Association's members. Unless the Governing Documents or Hawai'i law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility (as defined in Section 3.1), enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members.

In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances) and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be solely judged by, the standards set forth in the By-Laws.

2.4. The Owners

Each Person that holds record title to a Unit, as defined in Section 3.1, is referred to in the Governing Documents as an "Owner." However, a Person who holds title merely as security

for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered an Owner. If a Unit is sold under a recorded contract of sale, and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner.

If a Unit has more than one Owner, Owners shall jointly designate in writing to the Association, one Owner to exercise the voting privileges for that Unit; however, all co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

Every Owner has a responsibility to comply with the Governing Documents and uphold the Community's standards described in this Charter. Each Owner also has an opportunity to participate in the administration of the Community through membership in the Association and through service in various committee and leadership roles, as described in Chapters 3 and 4 and in the By-Laws.

2.5. Sub-Developers and Speculative Homebuilders

Much of the responsibility and credit for helping to create Kukui'ula rests with the "Sub-Developers" -- those Persons who are engaged in the business of developing land and/or constructing dwellings for resale and who enter into a written agreement with the Declarant specifically designating such Persons as "Sub-Developers" as defined herein, and who either:

(a) purchase one or more parcels of land from Declarant (or from a third party in a transaction which Declarant has specifically approved in writing) for further development into more than one Unit for resale in the ordinary course of their development and home building business; or

(b) are hired/retained by Declarant for the purposes of constructing improvements on property owned by Declarant.

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The term “Sub-Developer,” as used herein, shall not include Persons who take title to a subdivided lot served by roads and utilities installed or to be installed by or on behalf of Declarant (a “**Finished Lot**”), notwithstanding that such Person may intend to construct a home on the Finished Lot for resale (“**Speculative Homebuilder**”).

Except as otherwise expressly provided in this Charter or in the Covenant, Sub-Developers and Speculative Homebuilders have the same rights and responsibilities as Owners during the time that they own Units for construction and resale, including the financial obligations to the Association set forth in Chapter 12 of this Charter. The Declarant may extend to Sub-Developers and any Speculative Homebuilder any of the rights it has reserved under the Governing Documents with respect to development, marketing, and sale of property in Kukui`ula.

2.6. Neighborhood Associations

Portions of Kukui`ula will be developed under a condominium form of ownership or may have special requirements that lead the Declarant or a Sub-Developer to establish a separate condominium or homeowners association to administer additional covenants applicable to that particular area (“**Neighborhood Association**”). However, nothing in this Charter requires the creation of a Neighborhood Association, and the jurisdiction of any Neighborhood Association shall be subordinate to that of the Association.

Neighborhood Associations, if any, shall be responsible for administering the additional covenants applicable to the property within their jurisdiction and for maintaining, in accordance with the Community-Wide Standard, any property which it owns or which its covenants designate as being for the common benefit of its members.

2.7. Mortgagees

If a Unit is made subject to a mortgage or other form of security instrument affecting title to a Unit (“**Mortgage**”), then the holder or ben-

eficiary of that Mortgage (“**Mortgagee**”) also has an interest in the administration of Kukui`ula. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Chapter 16.

2.8. The Club at Kukui`ula

The Declarant has created The Club at Kukui`ula (“**The Club**”) as a vehicle for owning, operating, maintaining, promoting, and overseeing recreational facilities and amenities and managing community programs within Kukui`ula. While the Association is created primarily to manage the common property and enforce restrictions and standards established for Kukui`ula, The Club exists to provide a means for each Owner and resident of Kukui`ula (and to a limited extent others, as provided herein) to participate in, benefit from, and support the primary recreational amenities, services, programs, and activities offered within Kukui`ula, subject to and as described in the Covenant. It is the Declarant's intent that the Association and The Club work together and cooperate in performing these complementary roles within Kukui`ula and for The Club to have certain access rights to the membership records maintained by the Association, as well as the property owned and/or maintained and managed by the Association, and for the Association to have similar such access rights to the membership records maintained by The Club, as well as the property owned and/or maintained and managed by The Club, as necessary to carry out their respective missions.

The Club's affairs are administered by The Club's board of governors selected as provided in the Club By-laws. The Club has the rights and responsibilities described in the Club By-laws, and its articles of incorporation, and in the Covenant. The Association and all Owners are subject to the Covenant and to The Club's jurisdiction.

Chapter 3

Community Structure and Organization

Kukui`ula consists or will consist of subdivided lots, referred to as Units, which are intended for the exclusive use of the Owner and other occupants of such parcel, as well as property that is intended for common use. Units may be assigned to one or more Neighborhoods to permit the Association to provide special services and benefits to particular areas of Kukui`ula.

3.1. Designation of Properties Comprising Kukui`ula

Units. The Governing Documents collectively refer to the homes and home sites in Kukui`ula as “**Units**.” A Unit is a portion of Kukui`ula depicted in a recorded subdivision map or condominium instrument, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as a residence for a single family. The term “**Unit**” refers to the land, if any, which is part of the Unit, as well as to any structures or other improvements on the Unit. An unsubdivided parcel of land is considered a single Unit until such time as a subdivision map or condominium instrument is recorded subdividing it into more than one Unit.

Association Amenities. Any property or facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit are referred to as the “**Association Amenities**” and are individually referred to as an “Association Amenity.” The Association Amenities include all property, together with the facilities situated thereon, which is designated or identified as “**Common Area**” or as a roadway lot on a subdivision map approved by the County of Kaua`i and executed by the Declarant, or in the Supplement by which the property is submitted to the terms of this Charter, or in any other recorded instrument signed by the Declarant designat-

ing such property as Common Area or as an Association Amenity, and the Association shall be deemed to hold use rights therein, whether or not conveyed to the Association. The Association Amenities also include any property that the Association holds under a lease and any easements in favor of the Association.

Archaeological/Biological Sites. Burial grounds, endangered plant and animal life, lava tubes, or other historically and archaeologically significant sites “**Archaeological/Biological Preserve Sites**” or “**AB Sites**” exist on various Units and portions of Association Amenities within Kukui`ula and may be set aside for preserving historical, archeological, or biological areas and habitat, or upland and steep slope areas. AB Sites can include areas dedicated as wildlife habitat to mitigate the environmental effects of constructing the Community or areas avoided pursuant to federal permitting requirements. While preserved for the mutual benefit of the Community and residents of Kaua`i, the use of these areas may be restricted in accordance with deed restrictions placed on those areas or other mechanisms to ensure preservation of the areas in their natural state. AB Sites may be included as Association Amenities of Kukui`ula.

Limited Association Amenities. Certain portions of the Association Amenities may be designated as “**Limited Association Amenities**” or individually as a “**Limited Association Amenity**” and assigned for the exclusive use or primary benefit of a Neighborhood or less than all Units. Limited Association Amenities might include such things as entry features, recreational facilities, lakes, and landscaped medians and cul-de-sacs, among other things.

The Declarant may designate property as Limited Association Amenities and assign it to

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particular Units on the recorded subdivision map depicting such property, in the deed conveying such property to the Association, in the Supplement by which the property is submitted to the terms of this Charter, or in any other recorded Supplement designating such property by reference to the recorded subdivision map of such property. At any time during the Development and Sale Period, the Declarant may assign use of the same Limited Association Amenity to additional Units.

Area of Common Responsibility. All of the properties and facilities for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility, are collectively referred to in the Governing Documents as the “**Area of Common Responsibility**,” regardless of who owns them. The Area of Common Responsibility includes all of the Association Amenities and may also include Units or portions of Units and property and/or parks dedicated to the public, such as public rights-of-way, and any property which Declarant constructs or improves for the benefit of the Owners and the surrounding community. The initial Area of Common Responsibility is described in Section 9.2.

3.2. Neighborhoods

Units that are not condominiums may also be part of one or more “**Neighborhoods**” in which the Units share Limited Association Amenities or receive special benefits or services from the Association that it does not provide to all Units within Kūkui’ula without the formation of a separate Neighborhood Association. A Unit may be assigned to more than one Neighborhood, depending on the number and types of special benefits or services it receives. A Neighborhood may be comprised of Units of more than one housing type and may include Units that are not contiguous.

The Declarant may initially designate Neighborhoods (by name or other identifying designa-

tion) and assign Units to a particular Neighborhood either in Exhibit “A” or in a Supplement. During the Development and Sale Period, the Declarant may unilaterally amend this Charter or any Supplement to change Neighborhood boundaries.

In addition, the Board may, by resolution, designate Neighborhoods and assign Units to them upon petition of Owners of at least 67% of the Units affected by the proposed designation pursuant to Section 10.2.

The Owners of Units within each Neighborhood may elect a “**Neighborhood Committee**” in accordance with the By-Laws to serve as a communications liaison on behalf of the Owners only with respect to the Neighborhood services and benefits that the Association provides. References to Neighborhoods in the Governing Documents shall also refer to such Neighborhood Committees, if appropriate from the context.

Chapter 4

Association Membership and Voting Rights

The Association is an entity through which each Owner can participate in the governance and administration of the Community. While many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation, the membership and voting rights vested in the Owners allow the Owners to participate in administration of the Community and influence the outcome of major decisions.

4.1. Membership

The Association initially has two classes of membership: the Owner Membership, which is comprised of all Owners, including Sub-Developers, and the Declarant Membership, which consists solely of a single member, known as the Declarant.

(a) Owner Membership. Every Owner is automatically a member of the Association. However, there shall be only one membership in the Association per Unit. However, if a Unit has more than one Owner, all co-Owners of the Unit shall share the privileges of such membership, except for voting, which shall be exercised by the same individual designated to exercise such voting rights for the co-owned Unit in The Club as set forth in the Covenant and the By-Laws of The Club at Kukui`ula.

(b) Declarant Membership. The Declarant holds the sole Declarant Membership. The Declarant Membership shall terminate two years after expiration of the Declarant Control Period, or on such earlier date as the Declarant determines and declares in a recorded instrument

4.2. Voting

Each Unit is assigned one equal vote, except that no vote shall be exercised for any property exempt from assessment under Section 12.8.

Further, during such time as there is a Declarant Membership, no vote shall be exercised for Units that the Declarant owns; rather, the Declarant's consent shall be required for various actions of the Board, the membership, and committees, as specifically provided elsewhere in the Governing Documents.

If there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Association's Secretary in writing prior to the vote being taken in accordance with Section 4.1(a). Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

Chapter 5

Architecture, Landscaping, and Aesthetic Standards

Kukui`ula derives its unique character from a mix of compatible architectural styles and from the cooperation of all Sub-Developers and Owners in upholding minimum design, landscaping, and aesthetic standards. This chapter explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on Units.

5.1. General

All site work, dwellings, landscaping, other structures, improvements, and other items placed on a Unit in a manner or location visible from outside of any existing structures on the Unit (collectively the “**Improvements**”) are subject to standards for design, landscaping, and aesthetics adopted pursuant to this chapter and the approval procedures set forth in this chapter, except as this chapter or the Design Guidelines may otherwise specify.

In order to preserve the natural environment and to protect the natural landscape and resources within Kukui`ula, all Improvements to a Unit shall be confined to the allowable building area of the Unit (“**Building Setback**”). In addition, the Declarant may include as part of the Building Setback, a limitation on the height of all Improvements and/or landscaping for the Unit, which height limit shall be as described in the plot plan attached to the deed for the Unit or, if inadvertently omitted from the deed or plot plan, shall be as described or shown in the Design Guidelines. The height limit shall be based on the mean sea level as of the date the Unit was submitted to this Charter. The Building Setback (including any height limitations) for each Unit shall be determined by the Declarant in its sole and absolute discretion.

No Improvements shall be made to a Unit, and the Declarant, its designee, or the DRC, as defined below, shall not review an application under Section 5.3(b), until Declarant determines the Building Setback. Only the Declarant, in its sole and absolute discretion, may modify the Building Setback. All areas of a Unit outside the Building Setback shall remain undisturbed and shall remain in their natural state unless specifically permitted or required in writing by the Declarant or the DRC or unless selective clearing or other changes to the natural landscape are mandated by any duly authorized governmental agency.

No prior approval is necessary to repaint the exterior of existing structures using the most recently approved color scheme or to rebuild or restore any damaged structures in a manner consistent with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior of screened porches, lanais, and any other portions of a structure and all landscaping visible from outside of the structure do require prior approval.

Any dwelling constructed on a Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect unless the Declarant or its designee in its sole discretion otherwise approves.

Approval under this chapter is not a substitute for any approvals or reviews required by the County of Kaua`i or any municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

Even if not specifically prohibited in the Design Guidelines, approval under this chapter of

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any Improvements may be denied if such Improvements are contrary to federal, state, or local laws or ordinances. Approval may also be denied if such Improvements encroach upon any area outside the Building Setback for the Unit or, if applicable, exceed the Building Setback height limit.

This chapter shall not apply to the design and construction activities or to the Association's activities undertaken by the Declarant or the Association during the Declarant Control Period.

5.2. Design Review Authority

(a) Declarant. The Declarant shall have exclusive authority to review and act upon all applications for review of proposed Improvements until the later of: (i) the expiration of the Development and Sale Period; or (ii) such time as all Units planned for the property described in Exhibits "A" and "B" and annexed to the Charter have been improved with dwellings for which certificates of occupancy have been issued. The Declarant may designate one or more persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, the Declarant and its designee act solely in the Declarant's interest and owe no duty to any other Person.

From time to time, the Declarant may exercise any or all of its rights under this chapter by delegating to other Persons acting thru a committee, including a Declarant appointed committee that will transition to the committee pursuant to Section 5.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to: (i) the Declarant's right to revoke such delegation at any time and reassume its prior control; and (ii) the Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable. So long as the Declarant has any rights under this chapter, the jurisdiction of others shall be limited to such matters as the Declarant specifically delegates.

(b) Design Review Committee. Upon the Declarant's delegation of authority pursuant to Section 5.2(a), or upon expiration or termination of the Declarant's rights under this chapter, the Board shall appoint a Design Review Committee ("**Design Review Committee**" or "**DRC**") to assume jurisdiction over matters within the scope of the delegated authority or this chapter, respectively. The DRC shall consist of at least three, but not more than seven, persons, who shall serve and may be removed and replaced in the Board's discretion. DRC members need not be Owners or representatives of Owners. The DRC may, but need not, include architects, engineers, or similar professionals. The Association may compensate DRC members in such manner and amount, if any, as the Board may determine appropriate.

Until expiration of the Declarant's rights under this chapter, the DRC shall notify the Declarant in writing within three business days of any action (*i.e.*, approval, partial approval, or disapproval) it takes under this chapter. A copy of the application and any additional information the Declarant may require shall accompany the notice. The Declarant shall have 10 business days after receipt of such notice to veto any such action, in its discretion, by written notice to the DRC.

Unless and until such time as the Declarant delegates all or a portion of its reserved rights to the DRC appointed pursuant to this subsection or the Declarant's rights under this chapter terminate, the Association shall have no jurisdiction over architectural matters.

(c) Reviewer. For purposes of this chapter, the entity having jurisdiction in a particular case shall be referred to as the "**Reviewer**."

(d) Fees; Assistance. The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals

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review any application. The Board may include the compensation of such persons in the Association's annual operating budget.

5.3. Guidelines and Procedures

(a) Design Guidelines. The Declarant shall prepare the initial Design Guidelines, which may contain general provisions applicable to all of Kukui`ula as well as specific provisions that vary among uses, housing types, or locations within Kukui`ula. In addition, the Declarant may create specific provisions recorded in Supplements to this Charter applicable to Neighborhoods within Kukui`ula to specify minimum and maximum house sizes and requirements for the construction of guest houses as well as to create additional review provisions for dwellings not meeting such requirements. The Design Guidelines are intended to provide guidance to Owners, Sub-Developers, and contractors regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval. Approval under the Design Guidelines is not a substitute for any approvals or reviews required by the County of Kaua`i or any municipality, governmental agency or entity having jurisdiction over architectural or construction matters. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

The Declarant shall have sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 5.2(a). The Declarant's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the DRC appointed under Section 5.2(b), unless the Declarant also delegates the power to amend to the DRC. Upon termination or delegation of the Declarant's right to amend, the DRC may amend the Design Guidelines with the Board's consent.

Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may add or eliminate requirements previously imposed or otherwise make the Design Guidelines more or less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and their contractors upon request. In the Declarant's discretion, such Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time. No part of the Design Guidelines may be reproduced, modified, posted or distributed in any form or manner without the prior written permission of the Declarant.

(b) Procedures. Unless the Design Guidelines provide otherwise, no activities described in Section 5.1 may begin on any property within the Community until an Owner submits a request for approval and such request is approved by the Reviewer. No application shall be deemed complete unless it is in writing and contains all fees and information required in the Design Guidelines for the type of activity proposed ("**Completed Application**").

In reviewing each Completed Application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular Improvements.

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The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to review so long as they are made in good faith and in accordance with required procedures.

The Reviewer may permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. The Reviewer may: (i) approve the Completed Application with or without conditions; (ii) approve a portion of the Completed Application and disapprove other portions; or (iii) disapprove the Completed Application.

The Reviewer shall notify the applicant in writing of the final determination on any Completed Application no later than 30 business days after its receipt of the Completed Application; provided that with respect to any DRC determination subject to the Declarant's veto right under Section 5.2(b), the Reviewer shall notify the applicant within 40 business days of its receipt of the Completed Application.

If the Reviewer fails to respond in a timely manner, approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall permit construction in a manner inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 5.5.

As part of any approval, the Reviewer may require that construction commence within a specified time period. Unless otherwise provided as part of any approval or purchase agreement as provided in Section 5.3, construction of Improvements must commence within 90 days from the date approval is granted under Section 5.3. If construction does not commence within the required period, unless the Reviewer grants an extension, the approval shall expire and the Owner must reapply for approval before commencing any activities. Once construction is

commenced, it shall be diligently pursued to completion. All work shall be completed within two years of commencement unless otherwise specified in the notice of approval, any Supplement to this Charter, or unless the Reviewer, in its discretion, grants an extension in writing. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association or the Declarant.

Notwithstanding the above, with respect to the initial construction of a dwelling on a Unit, Declarant, in a purchase contract or other agreement governing the purchase of a Unit, may specify required time periods for commencement and completion of construction, which periods shall be controlling. In addition, with respect to such initial construction, Declarant may reserve in conveyance documents the option to repurchase the Unit from the Owner if the construction does not commence or is not completed within the time period described above or as Declarant otherwise requires. Declarant's repurchase option is subject to any existing Mortgage affecting the Units.

Notice for purposes of this chapter shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Hand delivery, facsimile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

The Reviewer may exempt certain activities from the application and approval requirements of this chapter if in the opinion of the Reviewer such activities are undertaken in compliance with the Design Guidelines and the Community-Wide Standard.

(c) Appeals Process. After the Board appoints the DRC, applicants may appeal disapprovals of applications to the Board. To request an appeal, the applicant must submit to the Board's Secretary a copy of the original applica-

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tion, the notification of the disapproval of the application, and a letter requesting an appeal no later than 15 days after the delivery of the notification of disapproval. The appeal request shall also contain a response to any specific concerns or reasons for disapproval listed in the notification of disapproval. The Board may: (i) affirm the DRC's decision; (ii) affirm a portion and overturn a portion of the DRC's decision; or (iii) overturn the DRC's entire decision. The Board shall notify the applicant and the DRC in writing of its decision no later than 30 days after its receipt of the request for appeal with all required information. The Board's decision shall include a description of its reasons for overturning the DRC's decision. During the appeal process the Owner shall not commence any of the activities outlined in the application.

5.4. No Waiver of Future Approvals

The individuals acting as Reviewer under this chapter will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. In such cases, the Reviewer may elect not to require changes to objectionable features. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.5. Variances

The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures when it determines that circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations justify such a variance, however, the Reviewer shall under no circumstances be obligated to grant variances. No variance shall:

(a) be effective unless in writing; (b) be contrary to this Charter; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires the Declarant's written consent during the Development and Sale Period and, thereafter, requires the Board's written consent.

5.6. Limitation of Liability

This chapter establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of Kukui'ula; it does not create any duty to any Person. Review and approval of any application pursuant to this chapter may be based purely on aesthetic considerations in the sole judgment of the Reviewer. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all dwellings are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners.

The Declarant, the Association, its officers, the Board, any committee, and member of any of the foregoing shall not be liable for: (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not the Declarant has approved or featured such contractor as a Sub-Developer; or (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Association shall defend and indemnify the Board, the DRC, and the members of each, as provided in the By-Laws.

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5.7. Archaeological/Biological Preserve Sites

The Declarant has conducted a survey of Kukui`ula in a reasonable effort to identify all AB Sites within Kukui`ula. As a result of the survey, numerous AB Sites have been identified (“**Identified Sites**”); however some AB Sites may exist within Kukui`ula that have not been identified (“**Undiscovered Sites**”). AB Sites may be located on Units as well as under Units in portions of lava tubes and caves. AB Sites may impact the manner in which an Owner may improve his or her Unit.

The Identified Sites known as of the date of this Charter have been designated for preservation and are depicted on the Master Plan. Identified Sites may not be disturbed or removed. The Association shall be obligated to protect and preserve Identified Sites as required by the United States Fish and Wildlife Service regulations and any other comparable regulations of agencies or boards of the State of Hawai`i at the time this Charter is recorded. Protection and preservation of the Identified Sites may require the construction of berms, walls, gates, and barriers, the installation of signs, plants, and other landscaping, and monitoring of Identified Sites; provided, any such construction or installation shall meet all federal, state, and local requirements and any other restrictions placed upon Identified Sites in any applicable recorded instrument. The cost of protecting and preserving the Identified Sites shall be a Common Expenses (as defined in Chapter 12) of the Association.

An Owner, its licensees, guests, invitees, agents, employees, contractors, and representatives, and any other Person may be prevented by law from entering any area where lava tubes are present. In an effort to preserve and protect lava tubes, the Declarant may install devices to restrict access to any area where lava tubes are present including, but not limited to, gates at the entrances to such lava tubes. The costs of maintaining the gates or other devices shall be a

Common Expense (as defined in Chapter 12) of the Association. Vegetation shall not be removed, trimmed or otherwise maintained within an AB Site unless such removal, trimming or maintenance is in compliance with deed restrictions or other use restrictions applicable to the AB Site. For example, an AB Site may be subject to a general prohibition against removal of native vegetation, including dead or dying vegetation. However, the same restrictions may allow for removal of non-native species and may also allow removal of certain specified vegetation for controlling fire risks.

The Association may facilitate workshops and educational activities for Owners to raise awareness of the significance and need for preservation of AB Sites and provide for participation of community groups from the Kaua`i area to help develop independent programs for historic preservation. The cost of maintaining such protection and preservation measures shall be a Common Expense (as defined in Chapter 12) of the Association.

Prior to undertaking any Improvements on a Unit, the Owner shall take into account any Identified Sites adjacent to the Unit when designing and constructing Improvements on the Unit. The existence and location of any Identified Sites adjacent to a Unit shall be considered by the Reviewer in evaluating an application for approval.

Under no circumstances may any Owner, Sub-Developer, or their licensees, guests, invitees, agents, employees, contractors, representatives, or any other Person deposit construction waste, refuse, or any other material on or in any AB Site; damage, disrupt, or destroy an AB Site; or remove material of any kind from an AB Site. In the event of such a violation, significant civil and criminal penalties may be imposed under federal, state, and/or local law. In addition, such violation shall be subject to an enforcement action as described in Chapter 8, and the Association may impose sanctions as set forth therein.

Architecture, Landscaping, and Aesthetic Standards

In the unlikely event that an Owner discovers the existence of an Undiscovered Site after commencing construction of an Improvement, the Owner shall cease construction and notify the Association immediately of the existence and location of the Undiscovered Site. The Owner shall then grant the Declarant, during the Declarant Control Period, and thereafter the Association, its agents, employees, and any government officials and inspectors access to the site to conduct any required evaluation, testing, data recovery, preservation, and mitigation that may be required.

Neither the Association nor the Declarant gives any warranty or makes any representations that all AB Sites that exist within Kukui`ula have been discovered. Undiscovered Sites may affect the manner in which Units within Kukui`ula may be developed. Neither the Association nor the Declarant shall have any liability for any damages, increased construction costs, or delays caused by the existence of, or the discovery of, an AB Site within a Unit.

The Declarant reserves the right to designate and grant easements for preservation, access, and other purposes over any Unit affected by an Undiscovered Site. The Owner of each Unit affected by an Undiscovered Site will be required to comply with federal, state, and county laws and regulations regarding the AB site.

5.8. Construction of Improvements

Construction of Improvements should be conducted expeditiously with the least possible disturbance to the Unit. Construction of any and all Improvements within Kukui`ula, including any dwelling to be constructed on any Unit, may be undertaken only by general contractors who are duly licensed by the State of Hawai`i. The Declarant, in the Design Guidelines, may impose additional provisions regarding the construction of Improvements within Kukui`ula including, but not limited to, special review processes for particular Units, and special standards

and requirements applicable to Sub-Developers within Kukui`ula.

Each Owner shall maintain his/her Unit in a neat and orderly condition before, during, and after any construction on the Unit and shall take all reasonable dust control measures to alleviate the generation of dust. No garbage, trash or debris shall be placed or kept on any Unit, except in covered containers of a type, size and style that are approved in writing by the Reviewer. Owners shall keep roadways, easements, and other property within Kukui`ula clear of trash and materials related to construction of the Units.

5.9. Limited Improvement Areas

The Declarant reserves the right to designate certain areas within any of the expansion property described in Exhibit "B" (whether subject to this Charter) as subject to restrictions on Improvements and/or landscaping similar to Building Setbacks even if such areas are not Units under this Charter ("**Limited Improvement Areas**"). In addition to such restrictions, the Declarant may impose other conditions on such Limited Improvement Areas that may vary from the provisions of this Charter, including provisions on the amendment to, and enforcement of, such restrictions affecting the Limited Improvement Areas. The designation, restrictions, and conditions affecting the Limited Improvement Areas shall be set forth in a Supplement to this Charter and/or in a declaration of covenants affecting the property that has any Limited Improvement Areas. The provisions of any Supplement for Units referring to view impairment or related matters are subject to the provisions of this Section 5.9.

Chapter 6

Maintenance, Repair, and Replacement

One of the benefits of owning property in Kukui`ula is the commitment among neighbors to maintain their property in a neat, attractive, and well-landscaped condition to enhance the overall beauty and aesthetic appeal of the community. This chapter describes the Owners' responsibilities for maintenance and repair of their Units and for insuring their Units against property damage so that funds will be available for repair and restoration if needed.

6.1. Maintenance by Owners

Upon taking title to the Unit, each Owner shall maintain his or her Unit, including all structures, landscaping and other Improvements comprising the Unit, in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to (and accepted by, if necessary) the Association or a Neighborhood Association pursuant to this Charter, any Supplement, or by law.

In addition, each Owner shall be responsible for maintaining and irrigating the landscaping, if any, lying between any Unit boundary and any wall, fence, or curb located on an Association Amenity or any public or private right-of-way within 10 feet of any Unit boundary.

6.2. Maintenance by Association

The Association shall have the right, but not the obligation, to maintain, or cause to be maintained, on behalf of the Owner of a Unit, the landscaping of the Unit and the landscaping, if any, lying between any Unit boundary and any wall, fence, or curb located on an Association Amenity or any public or private right-of-way within 10 feet of any Unit boundary. Such maintenance shall be done in accordance with the

Community-Wide Standard and shall include, but is not limited to, the following:

(a) a Unit prior to the Owner's construction of Improvements on the Unit, including mowing and maintenance of the vacant Unit to maintain the Community-Wide Standard;

(b) all landscaping installed as part of the initial construction on the Unit; and

(c) operation, maintenance, repair, and replacement, as necessary, of any irrigation equipment installed as part of the initial construction of the Unit (including, without limitation, any sprinklers, pumps, wells, water lines, and time clocks, wherever located) serving the Unit, except that the Association shall have no responsibility for any sprinklers or other irrigation equipment installed by the Owner or occupant of any Unit. Any irrigation system installed by the Owner or occupant of the Unit shall be independent of and not be connected in any way to the irrigation equipment installed as part of the initial construction of the Units.

If the Association undertakes to perform the maintenance and services under this section, the costs associated with the maintenance and repair of the Unit shall be assessed against the Unit utilizing these services as provided in Chapter 12.

6.3. Maintenance by Neighborhood Association

A Neighborhood Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

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Any Neighborhood Association shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Association Amenity or any public or private right-of-way lying between the boundary of its common property and any wall, fence, or curb located on the Association Amenity or any public or private right-of-way within 10 feet of its boundary. A Neighborhood Association shall not remove trees, shrubs, or similar vegetation, other than with respect to the removal of weeds for control of fire risks from this area without prior approval pursuant to Chapter 5 and in full compliance with any applicable AB Site restrictions and limitations.

The Association may assume maintenance responsibility for property in any Neighborhood, either upon designation of the Neighborhood pursuant to Section 2.6 or upon the Board's determination, pursuant to Chapter 8, that the level and quality of maintenance then being provided by the Neighborhood Association is not consistent with the Community-Wide Standard. Such maintenance shall be assessable against all Units in the benefited Neighborhood as a Neighborhood Assessment, as provided in Section 12.2(c). The Association need not treat all similarly situated Neighborhood Associations the same.

6.4. Responsibility for Repair and Replacement

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable Improvements on his or her Unit, less a reasonable deductible, unless either a Neighborhood Association (if any) or the Association carries such in-

urance (which they may but are not obligated to do). If the Association assumes responsibility for insuring a Unit, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner.

Within two months after any damage to or destruction of a structure on a Unit, the Owner shall complete all repairs or reconstruction on the Unit in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to Chapter 5 unless the Board, in its discretion, agrees to extend such period. In the alternative, if the Owner decides not to repair or reconstruct the structure, the Owner shall clear the Unit of debris and maintain it in a neat and attractive landscaped condition consistent with the Community-Wide Standard. Such work to clear the debris shall be completed within three months of any damage to or destruction of a structure on a Unit. The Owner shall pay any costs that insurance proceeds do not cover.

Additional recorded covenants applicable to any Neighborhood Association or Neighborhood may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Units and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

This section shall also apply with respect to common property of the Neighborhood Association in the same manner as if the Neighborhood Association was an Owner and the common property was a Unit.

6.5. Maintenance and Repair of Party Walls and Similar Structures

Each wall, fence, driveway, or similar structure built as part of the original construction on the Units that serves and/or separates any two adjoining Units or a Unit and Common Area shall be considered a party structure. The cost of reasonable repair and maintenance of a party

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structure shall be shared equally by the Owners who make use of the party structure.

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 thereafter 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.

The right to and the obligation of contribution for party walls and similar structures between Owners, or between an Owner and the Association as provided in this section, shall be appurtenant to the land and shall pass to such Owner's successor-in-title.

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 to any party structure. Any dispute concerning a party structure shall be subject to the provisions of Chapter 19.

Chapter 7

Use and Conduct

In order to maintain a harmonious environment that encourages respect for and courtesy among neighbors and minimizes the potential for disputes, this chapter sets forth basic standards regarding use, occupancy, and transfer of interests in Units. In addition, it provides a procedure by which the Board and the membership can adopt and change rules regulating use, conduct, and activities within Kukui`ula to address particular needs and desires of Kukui`ula over time.

7.1. Use, Occupancy, and Transfer of Interests in Units

(a) Residential and Related Uses. Units may be used only for residential and limited business-related purposes, except as the Declarant may otherwise authorize with respect to construction, marketing, and sale activities of the Declarant and of Sub-Developers it designates. A business activity shall be considered “limited” and “related” to a residential use and thus permitted under this section only if conducted by a person or persons residing in the Unit and only if the business activity:

(i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;

(ii) complies with applicable zoning requirements;

(iii) does not involve regular visitation of the Unit by employees who do not reside in the Unit, clients, customers, suppliers, or other business invitees, or door-to-door solicitation within Kukui`ula; and

(iv) is consistent with Kukui`ula's residential character and does not constitute a nuisance or a hazardous or offensive use, or threaten

the security or safety of others, as the Board determines in its discretion.

“**Business**” shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

In addition, other types of businesses may be operated out of specified “live/work” residential Units; provided, such Units must be within a Neighborhood designated by Declarant for business uses. Such business use shall be subject to the Standards, which may include specific requirements, such as hours of operation, signage, and visitation of the Unit.

Leasing a Unit or Units for residential purposes in accordance with this Charter and any applicable Supplement shall not be considered a prohibited “business” within the meaning of this subsection. This provision shall not preclude an institutional lender from leasing a Unit upon taking title following foreclosure of its security interest in the Unit or upon acceptance of a deed in lieu of foreclosure. Further, this provision is not intended to permit anything that is otherwise restricted or prohibited by the local ordinances or zoning codes. Notwithstanding the above, the Declarant reserves all rights to manage and restrict the manner in which Units are marketed and leased within the Community.

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For purposes of this Charter, the terms “Lease” and “Leasing” shall refer to the regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service, or gratuity.

(b) Leasing. Any dwelling that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased. In addition, any detached structure designed for use as a guest house approved pursuant to Chapter 5 may not be leased separate from the main dwelling. Further, the Owner may not lease the main dwelling and move into the Guest House. Leases shall have a minimum lease term of 30 consecutive days unless a shorter rental period is expressly authorized by any Supplement applicable to the Unit. Minimum lease terms may vary by Neighborhood. The Standards may require that Owners use Board-approved lease forms (or include specific lease terms), require the use of licensed “leasing/management” companies, and may impose a reasonable review and administrative fee in connection with the Declarant's or Board's review of a lease.

All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.

Within 10 days of a lease being signed and in no event later than the commencement of the lease period, the Owner of the leased Unit shall notify the Association's managing agent of the lease and provide any additional information the Association's managing agent may reasonably require. The Owner must give the tenant copies of the Governing Documents. In addition to, but consistent with this subsection, the Associa-

tion or the Board may adopt Standards governing leasing and subleasing.

(c) Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Association's managing agent or the Board as it so determines 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 Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Association's managing agent (or the Board, if applicable) receives such notice, notwithstanding the transfer of title.

(d) Subdivision and Combination of Units. No Person other than the Declarant and Sub-Developers whom the Declarant may authorize shall subdivide, combine, or otherwise change the boundary lines of any Unit or Units without the Board's prior written approval and, during the Development and Sale Period, the Declarant's prior written approval, which may be granted or withheld in the Board's and Declarant's discretion, respectively. Any such action that is so approved shall be effective only upon recording of a subdivision map or other legal instrument reflecting the subdivision, combination, or new boundaries of the affected Unit(s) as approved, and written notice to the Association accompanied by a copy of the recorded instrument. The Board may condition its approval on modifications to the proposed Unit boundaries as well as payment to the Association of any assessments and other charges then owed on the affected Unit(s). In addition, if any Owner other than Declarant or a Sub-Developer authorized by Declarant combines two or more Units in accordance with this subsection (d) and thereafter desires to re-subdivide the resulting Unit into two or more Units, the Board may condition its approval of such re-subdivision on payment to the Association of an amount equal to the assess-

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ments that would have been due on the property comprising such Unit during the period between the combination and re-subdivision if the combination had never occurred, less the assessments actually assessed on such property during that period.

Two or more adjacent Units owned by the same Person shall continue to be treated as separate Units for purposes of voting and assessment unless and until formally combined in compliance with this subsection (d), even though such Units may be improved with a single dwelling.

Upon the recordation of the subdivision map or other legal instrument subdividing a Unit, the subdivided Units shall be treated as separate Units for purposes of voting and assessment. Upon the recordation of the consolidation map or other legal instrument amending a subdivision map to combine two or more Units, the combined Units shall thereafter be considered a single Unit for purposes of voting and assessment.

All costs of and any liability from any subdivision, combination, or other boundary line change under this subsection (d) shall be the sole burden of the Owner of the affected Units.

(e) *Timesharing/Fractional Ownership Programs.* Unless otherwise permitted in limited areas of the community pursuant to a recorded Supplement to the Charter, no Unit shall be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, unless the Declarant establishes such program or the Declarant grants its written approval. However, neither the Declarant nor the Association shall be responsible or liable for any taxes or other fees associated with an Owner's rental of its Unit, if permitted.

(f) *The Lodge Program at Kukui`ula.* The Declarant reserves the right to designate in a

recorded Supplement or Supplements to this Charter groups of Units that shall be eligible to participate, at the election of the Owner, in a lodging program operated by The Club or its designee by which Units are made available for rental on a short-term basis (which may include nightly rentals) affording the Lodge Program guests, during the term of their rental, access to and use of the Club Amenities (as defined in Chapter 14 and which were existing as of the commencement date of the Program) and other amenities and services, which may include a variety of hospitality, food and beverage, recreational, administrative, transportation and other services ("**Lodge Program**" or "**Lodge Rental Program**"). Those Units participating in the Lodge Program shall not be subject to the lease restrictions contained in this chapter while participating. However, they may fall within the TVR designation described in Section 7.1(g) if designated as such in a recorded subdivision map for Kukui`ula and/or in a Supplement.

Only Units which the Declarant identifies in a recorded Supplement to the Charter as eligible to participate in the Lodge Program ("**Eligible Units**") may be placed into the Lodge Program, and then subject to the terms of participation described in Exhibit "G" to this Charter, as it may be amended in accordance with this terms (the "**Lodge Program Terms**"). During the Development and Sale Period, Declarant shall have the right, by recording or amending a Supplement to the Charter, to designate Eligible Units and, with the consent of the Owner of any Eligible Unit, to remove any Unit's eligibility to participate in the Lodge Program.

The costs and expenses associated with the Lodge Program's operations shall be borne by the Owners of the participating Units and shall not be assessed against the Owners of other Units.

Use of the Club Amenities and The Club's services by Lodge Program guests shall be subject to the Covenant and the Club Rules, which are subject to change.

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(g) *Transient Vacation Rentals.* Notwithstanding the prohibition of business activities in Section 7.1(a), the Declarant declares that those Units described in Exhibit “D” attached hereto, and any additional Units designated for transient vacation rental use on a recorded subdivision map for Kukui`ula and/or in a Supplement, are designated as a “**Transient Vacation Rental**” or “**TVR**” for the purpose of creating areas for the potential use as rental homes within Kukui`ula. The Declarant may unilaterally amend Exhibit “D” from time to time to identify additional Units which have been designated as TVR by a recorded subdivision map or Supplement.

Any Units designated as a TVR may be rented for a minimum of a one week period (defined for purposes of this paragraph as any seven-consecutive-day period) and if so rented shall not be subject to the leasing provisions set forth in Section 7.1(b); provided, any TVR that is rented shall be rented only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately rented, and an Owner may not subject his or her Unit into a program as described in Section 7.1(e). Except for Units in The Lodge Program, or as otherwise designated by Declarant in its sole discretion, no TVR may be rented for less than the seven-day minimum as set forth herein. In addition, any detached structure designed for use as a “guest house” approved pursuant to Chapter 5 may not be rented separately or occupied by a separate tenant from the main dwelling.

The Board, through the imposition of specific Standards may require that Owners use Board-approved management companies and rental forms (or include specific rental terms) and may impose a reasonable review and administrative fee in connections with the Declarant's or Board's review of a management company's rental agreement or forms. Prior to an Owner entering into a rental management agreement with an approved company, the Owner of the TVR shall notify the Board or the Association's managing

agent of the agreement and provide any additional information the Board may reasonably require.

Neither the Declarant nor the Association shall be responsible or liable for any taxes, or other fees, as well as any local TVR registration requirements (if any are imposed) associated with an Owner's rental of its Unit. All rental agreements shall be in writing and shall disclose that the renters and all occupants of the TVR are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the rental agreement. The Board may also adopt additional Standards regarding the rental and use of a TVR.

7.2. Rulemaking Authority and Procedures

The Governing Documents establish a framework of covenants and conditions that govern Kukui`ula. The initial Standards attached as Exhibit “C” are a part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting Kukui`ula. Therefore, the Board and the Owners are authorized to change the Standards in accordance with the following procedures, subject to the limitations set forth in Section 7.3. An amendment or alteration of the Standards shall not be considered an amendment to the Charter, and shall not be governed by Chapter 21.

(a) *Board Authority.* Subject to the notice requirements in Section 7.2(c) and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its members, the Board may adopt new Standards and modify or rescind existing Standards by majority vote of the Board at any Board meeting.

(b) *Membership Authority.* Subject to the notice requirements in Section 7.2(c), the Owners representing at least 67% of the votes in

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the Association may also adopt new Standards and modify or rescind existing Standards at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Standard was adopted. However, as long as the Declarant Membership exists, any such action shall also be subject to the Declarant's approval.

(c) *Notice.* The Board shall send notice to all Owners concerning any proposed Standard change at least 10 business days prior to the meeting of the Board or the Owners at which such action is to be considered. At any such meeting, the Owners shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

This notice requirement does not apply to administrative and operating policies that the Board may adopt relating to the Association Amenities, such as hours of operation of a recreational facility, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Standards.

(d) *Effective Date.* A Standards change adopted under this section shall take effect 30 days after the date on which written notice of the approved Standards change is mailed to the Owners, unless the Board determines otherwise.

(e) *Conflicts.* No action taken under this section shall have the effect of modifying or repealing the Design Guidelines or any provision of this Charter other than the Standards. In the event of a conflict between the Design Guidelines and the Standards, the Design Guidelines shall control. In the event of a conflict between the Standards and any provision of this Charter (exclusive of the Standards), the Charter shall control.

7.3. Protection of Owners and Others

Except as may be set forth in this Charter (either initially or by amendment) or in the initial Standards set forth in Exhibit "C," all Standards shall comply with the following provisions:

(a) *Similar Treatment.* Similarly situated Units shall be treated similarly; however, the Standards may vary by Neighborhood.

(b) *Displays.* No Standard shall abridge an Owner's right to display political, religious, or holiday symbols and decorations on his or her Unit of the kinds normally displayed in residential neighborhoods. However, the Association may adopt time, place, and manner restrictions for such displays to the extent visible from outside structures on the Unit, including reasonable limitations on size, style, placement, timing, and number, which may be amended from time to time. Nothing herein shall restrict the Association's ability to adopt or amend Standards (consistent with any Design Guidelines addressing signage adopted pursuant to Chapter 5) restricting signage, which may include a partial or total prohibition of advertising in residential areas by Persons other than the Declarant or Sub-Developers. The Association shall have the right to remove any sign, billboard, or other advertising structure that does not comply with the Charter or any Standard. Removal shall not subject the Association to any liability. The Association may require standardized signage that must be rented for a fee from the Association with respect to sale and leasing opportunities for a Unit.

Notwithstanding the above, the Association may not prohibit the outdoor display of an American flag by an Owner on such Owner's Unit if the flag is displayed in a manner consistent with the federal flag code, except that no flag shall be displayed from any balcony or courtyard railing or be permitted to flutter or rustle such that it may be heard by the occupants of other Units. The Board may enact reasonable rules regulating

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the placement and manner of displaying American flags and may limit the size of any flag to the extent consistent with such code.

(c) Household Composition. No Standard shall interfere with an Owner's freedom to determine household composition, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on Unit size and facilities and its fair share use of the Association Amenities. In addition, the composition of all households shall comply with local zoning regulations or ordinances, as may exist currently and as may be supplemented with an amendment from time to time.

(d) Activities within Dwellings. No Standard shall interfere with the activities carried on within a dwelling, except that the Association may prohibit activities not normally associated with residential property, and it may restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, that are illegal, or that are an unreasonable source of annoyance.

(e) Allocation of Burdens and Benefits. No Standard shall alter the allocation of financial burdens among the various Units or rights to use the Association Amenities 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 Association Amenities available, from adopting generally applicable standards for use of Association Amenities, or from denying use privileges to those who are delinquent in paying assessments, abuse the Association Amenities, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Chapter 12.

(f) Abridging Existing Rights. No Standard shall require that an Owner dispose of personal property kept in or on a Unit in compliance with the Standards in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Standard.

(g) Reasonable Rights to Develop. No Standard may unreasonably interfere with the Declarant's ability to develop, market, and sell property in Kukui`ula, nor shall any Standard unreasonably interfere with the exercise of any rights reserved to the Declarant in this Charter.

(h) Interference with Club Amenities. No Standard may unreasonably interfere with the use, ownership, appearance, or operation of any Club Amenity, as defined in Chapter 14.

(i) Animals and Pets. No animals, livestock, or poultry of any kind other than usual and common household pets shall be raised, bred, or kept on any part of a Unit; provided, a household pet shall specifically not include a parrot or any other household birds, which shall be specifically prohibited in any Unit. No animal described as a pest or prohibited from importation under Hawai'i law may be kept in Kukui`ula. Except as the Board may otherwise permit in its discretion, **no more than two usual and common household pets may be kept in any Unit.** Animals may not be kept, bred, or maintained for any commercial purpose and any animal which endangers the health or safety of, or unreasonably disturbs, Owners or occupants of other Units or otherwise creates a nuisance is prohibited. Pet owners are responsible for cleaning up after their pets on all portions within Kukui`ula.

If an Owner or occupant fails to abide by the restrictions or rules applicable to pets, in addition to any other sanctions which may be imposed under the Charter, the Board may bar or otherwise provide for the removal of such Owner's or

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occupant's pet from Kukui'ula. Except in the case of a pet which, in the Board's discretion, endangers the health or safety of any person, the Board shall provide an Owner or occupant of a Unit with seven days written notice and an opportunity for a hearing in accordance with the By-Laws prior to requiring the permanent removal of the pet from the Unit. Without the necessity of prior notice or an opportunity for a hearing, the Board (i) may require or otherwise provide for the immediate and permanent removal of any pet from the Unit which, in the Board's discretion, endangers the health or safety of any person, and (ii) may require or otherwise provide for any pet, which, in the Board's discretion, (a) is creating a nuisance (such as a barking dog), to be kept within the Unit and if outside of the Unit, to be kept on a leash or otherwise under the complete physical control of a human being, or (b) is materially disruptive to be immediately removed from the Unit and placed in a temporary facility until a hearing on a permanent removal of the pet from the Unit, as described above.

Notwithstanding any provision to the contrary contained herein, certified guide dogs and signal dogs and other such animals specially trained and actually used to assist handicapped individuals shall be permitted within Kukui'ula and shall be permitted within the Association Amenities if such animal is on a leash. However, such animals shall not be kept, bred, or used for commercial purposes.

(j) Use of Balconies and Lanais. Balconies and lanais shall be used only for the purposes intended and shall not be used for hanging garments, towels, flags, signs, or other objects, or for cleaning rugs or other household items. Attaching flags, flagpoles, banners, or other items to railings is prohibited. Astro turf is prohibited on balconies and lanais. Balconies and lanais shall be kept in a clean and neat condition at all times.

The Board may enact reasonable and customary rules (which may include limitations on the hours of use) governing the use, volume, or type of television and stereos, telephones, cooking facilities, and other things on balconies or lanais. All furniture, furnishings, umbrellas, and other materials to be kept on a balcony or a lanai shall be of neutral colors that are harmonious with the external colors of the Improvement(s) on the Unit. The Board may establish additional Standards relating to furnishings and other things on balconies or lanais. Any items not specifically permitted under such Standards shall be subject to the Board's prior approval.

The term balcony or lanai, as used in this subparagraph, shall include any courtyard, deck, or patio assigned to a Unit as a Limited Association Amenity.

7.4 Owners' Acknowledgment and Notice to Purchasers

By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Standards, which may change from time to time. All Unit purchasers are hereby notified that the Association may have adopted changes to the Standards and that such changes may not be set forth in a recorded document. A copy of the current Standards and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

Chapter 8

Compliance and Enforcement

The covenants, standards, and rules set forth in the Governing Documents are for the benefit of all Owners and occupants of the Community. However, if they are to have any real meaning, there must be a commitment by the Owners in the Community to comply with them and there must be a mechanism in place to enforce that compliance in the event that someone fails or refuses to do so. This chapter sets forth the obligation to comply and the remedies available to the Association for noncompliance.

8.1. Compliance

Every Owner, occupant, tenant, and visitor to a Unit must comply with the Governing Documents and shall be subject to sanctions for violations as described in this chapter. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the occupants, tenants, guests, or invitees to their Units, and for any damage to the Area of Common Responsibility that such Persons may cause.

8.2. Remedies for Non-Compliance

The Association, the Declarant and every affected Owner shall have the right, but not the obligation, to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may impose sanctions for violation of the Governing Documents, including those sanctions listed below and any others described elsewhere in the Governing Documents.

(a) Sanctions Requiring Prior Notice and Hearing. After written notice and an opportunity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Unit. In the event that any occupant, tenant,

guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; provided, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(ii) suspend an Owner's right to vote (except that no hearing is required if the Owner is more than 90 days delinquent in paying any Base or Special Assessment);

(iii) suspend any Person's right to use any Association Amenity (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation (except that no hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed the Association); provided, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iv) suspend services the Association provides (except that no hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association);

(v) exercise self-help or take action to abate any violation of the Governing Documents in a non-emergency situation (including removing personal property that violates the Governing Documents);

(vi) without liability to any Person, preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Chapter 5, including the Design Guidelines, from continuing or performing any further activities in Kukul'ula;

Compliance and Enforcement

(vii) levy Specific Assessments to cover costs the Association incurs in bringing a Unit into compliance with the Community-Wide Standard or other requirements under the Governing Documents; and

(viii) record a notice of violation with respect to any Unit on which a violation exists.

(b) Other Sanctions. The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) exercise self-help or take action to abate a violation on a Unit in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) exercise self-help or take action to abate a violation on the Association Amenities under any circumstances;

(iii) require an Owner or a Neighborhood Association, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit or on the Neighborhood Association's property, respectively, that is in violation of the Community-Wide Standard or other requirements under the Governing Documents and to restore the property to its previous condition;

(iv) enter the property and exercise self-help to remove or cure a violating condition, subject to the limitations set forth in Section 13.5, if an Owner or Neighborhood Association fails to take action as required pursuant to Section 8.2(b)(iii) within 10 days after receipt of a written request to do so, and any such entry shall not be deemed a trespass; or

(v) bringing suit at law for monetary damages or in equity to stop or prevent any violation, or both.

(c) Additional Powers Relating to Neighborhood Associations. In addition to the foregoing sanctions, the Association shall have the power to veto any action that a Neighborhood Association proposes to take if the Board reasonably determines the proposed action 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 in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefore.

A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy Specific Assessments to cover the costs, as well as an administrative charge and sanctions.

8.3. Board Decision to Pursue Enforcement Action

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary, discriminatory, or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

(a) the Association's legal position is not strong enough to justify taking any or further action;

(b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(c) although a technical violation may exist or may have occurred, it is not of such a material

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nature as to be objectionable to a reasonable person or to justify expending the Association's resources and the matter is not likely to adversely affect other Owners; or

(d) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

8.4. Attorneys' Fees and Costs

In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

8.5. Enforcement of Ordinances

The Association, by contract or other agreement, may enforce applicable city and county ordinances within Kukui`ula. In addition, the County of Kaua`i or any other governmental entity with jurisdiction over Kukui`ula may enforce ordinances within Kukui`ula.

Chapter 9

Property Management

One of the Association's primary functions is maintaining property and facilities for the common benefit of the Owners and residents of Kukui`ula. This chapter establishes the Association's obligation to accept property that the Declarant designates as Association Amenities or Limited Association Amenities and to maintain, operate, and insure it, along with certain other properties, for the benefit of Kukui`ula.

9.1. Acceptance and Control of Association Property

(a) Transfers and Conveyances by the Declarant. The Declarant and its designees may transfer or convey to the Association interests in real or personal property within or for the benefit of Kukui`ula, and the Association shall accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests, including AB Sites. In addition, the Declarant and its designees may transfer to the Association, and the Association shall accept, such personal property as the Declarant or its designees may choose to transfer to it.

Upon the Declarant's written request, the Association shall reconvey to the Declarant any unimproved real property that the Declarant originally conveyed to the Association for no payment, to the extent conveyed in error or needed to make minor adjustments in property lines or accommodate changes in the development plan.

(b) Management and Control. The Association is responsible for management, operation, and control of the Association Amenities, subject to any covenants set forth in the deed or other instrument transferring the property to the Association. The Association may enter into leases, licenses, or operating agreements with respect to

portions of the Association Amenities, for payment or no payment, as the Board deems appropriate. The Association may permit use of Association Amenities by persons other than Owners and occupants of Units and may charge use fees, in such amount as the Board may establish, for such use, provided that such use does not conflict with existing easements or other restrictions against use, such as restrictive covenants applicable to AB Sites.

9.2. Maintenance of Area of Common Responsibility

The Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility includes, but is not limited to:

(a) the Association Amenities and all Improvements and structures situated thereon;

(b) private streets within Kukui`ula, upon acceptance of such maintenance obligations by the Association, whether or not they have been deeded to the Association, and landscape medians, curb and gutters, street lights, street signs, and sidewalks not maintained as a portion of a Club Amenity, as defined in Chapter 14, and located within or along the rights-of-way within or abutting Kukui`ula to the extent that responsible governmental authorities do not maintain it to the Community-Wide Standard;

(c) greeter houses (if any, the existence of which is not guaranteed by Declarant), entry, or other features directing vehicular and pedestrian access to Kukui`ula and any related Improvements provided that the same shall be installed in a manner consistent with the Community-Wide Standard and the Design Guidelines.

Property Management

Any such features shall not be deemed as any representation by the Declarant as to the feature's effectiveness or adequacy;

(d) property within Kukui'ula designated as a conservation district (unless such maintenance possibility is assigned to others by the Declarant, in which event the Association's role shall be limited to payment of taxes and insurance costs); however, such maintenance shall be regulated by the State of Hawai'i;

(e) community parks, greenspace areas, community garden areas (if any), hiking and biking trails (excluding The Club's golf cart paths) lakes (excluding the lakes owned by The Club), and public access areas within Kukui'ula, including any open space or green space areas adjacent to the bay or ocean;

(f) such portions of any additional property or facilities not located within the Club Amenities, as defined in Chapter 14, as may be dictated or designated by the Declarant, this Charter, any Supplement, or any covenant or agreement for maintenance entered into by, or otherwise binding on the Association from time to time; and

(g) any property and facilities that the Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its members. The Declarant shall identify any such property and facilities by written notice to the Association, and they shall remain part of the Area of Common Responsibility until the Declarant revokes such privilege of use and enjoyment by written notice to the Association.

In addition to the Association's maintenance of AB Sites, the Royal Order of Kamehameha, a non-profit organization that as of the date of this Charter maintains the "Prince Kuhio Park," a defined AB Site located north of Lawai Road and adjacent to the Community, may also participate in the operation and maintenance of such AB Site.

The Association shall also be responsible for proper functioning of the stormwater drainage system and/or the central collection and treatment system serving Kukui'ula, including maintenance, repair and replacement, as needed, of pipes, culverts, and other structures and equipment comprising the system, but not including any drainage system utilized for the benefit of The Club as set forth in Chapter 14; provided, the Association and The Club may enter into a joint agreement for the maintenance and upkeep of such systems. It shall have no responsibility for landscaping or other maintenance of Units burdened by stormwater drainage easements unless otherwise specifically set forth in a Supplement or in a recorded agreement or subdivision map.

The Association may maintain other property it does not own, including, without limitation, Units, property dedicated to the public, or property owned or maintained by a Neighborhood Association, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property it does not own, except to the extent that it has been negligent in performing its maintenance responsibilities.

9.3. Discontinuation of Operation

The Association shall maintain the Association Amenities in continuous operation unless the Declarant, during the Development and Sale Period, and Owners representing 75% of the total votes in the Association, consent in writing to discontinue such operation. If the property is a Limited Association Amenity, any discontinuation shall also require the approval in writing of at least 75% (or such higher percentage as a Supplement may require) of the Owners to whom such Limited Association Amenity is assigned. This section shall not apply to restrict the Board's ability to establish reasonable operating hours, which may vary by season, or to preclude tempo-

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rary closures or interruptions in operation as the Board may determine appropriate to perform maintenance or repairs.

9.4. Restoring Damaged Improvements

In the event of damage to or destruction of portions of the Area of Common Responsibility for which the Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall repair or reconstruct damaged improvements on Association Amenities unless the Declarant, during the Development and Sale Period, and Owners representing at least 75% of the total votes in the Association, decide within 60 days after the loss not to repair or reconstruct. If the damage is to a Limited Association Amenity or Units within a Neighborhood, any decision not to restore the damaged improvements shall also require the approval of at least 75% of the Owners of Units in the affected Neighborhood. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. No Mortgagee shall have the right to participate in determining whether the damage or destruction to an Association Amenity shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall retain and place in a capital improvements account for the benefit of all Owners, or the Owners of Units within the affected Neighborhood, as appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Owners, levy Special Assessments, as provided in Chapter 12, to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 11.4.

9.5. Relationships with Other Properties

The Association may contract with the owner of any neighboring property or Club Amenity to provide for sharing of costs associated with: (a) maintenance and operation of mutually beneficial properties or facilities; or (b) provision of mutually beneficial services, including, but not limited to, the provision of water or the construction of beneficial recreational lands including parks, trails, etc.

9.6. Cooperation with The Club

The Association shall cooperate with The Club on all matters involving The Club's obligations and responsibilities under the Covenant, to allow both entities to carry out their respective obligations. For example, to the extent feasible, the Association shall permit reasonable use of Association Amenities by The Club, charter clubs (if applicable), and other volunteer groups operated by or through The Club for the offices, programs, activities, membership records and services and, as the Board deems reasonably appropriate and financially feasible in its discretion, incorporate The Club's suggestions for community operations, which may come from The Club's surveys and focus groups or otherwise.

Chapter 10

Provision of Services

The Association is a vehicle for providing a variety of services for the benefit of Kukui`ula at large and individual Units. This chapter describes some of the services the Association may provide and the mechanism by which it may provide varying levels and types of services to different areas of Kukui`ula.

10.1. Provision of Services to Units

The Association may arrange for or provide services to Owners and their Units, directly or through contracts with the Declarant or other third parties. The Association may enter into bulk service agreements by which a particular service is provided to all Units, or it may offer various services at the option of each Owner, or both. By way of example and not limitation, such services might include such things as cable television, utilities, trash collection, landscape maintenance, pest control, caretaker services and technology or other services.

Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit as a Common Expense or Neighborhood Expense pursuant to Chapter 12.

The Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the

Governing Documents requiring the Association to provide such services.

10.2. Provision of Services to Neighborhoods

(a) *Neighborhoods Designated by the Declarant.* The Association shall provide services to Units within any Neighborhood designated by the Declarant pursuant to Section 3.2 as required by the terms of any Supplement applicable to the Neighborhood.

(b) *Neighborhoods Designated by Board.* In addition to Neighborhoods which the Declarant may designate pursuant to Section 3.2, any group of Owners may petition the Board to designate their Units as a Neighborhood for the purpose of receiving from the Association: (i) special benefits or services which are not provided to all Units; or (ii) a higher level of service than the Association otherwise provides. Any such petition shall be signed by Owners of a majority of the Units within the proposed Neighborhood. Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Neighborhood of such terms and the initial fees for providing the requested service, which may include a reasonable administrative charge. If Owners of at least 67% of the Units within the proposed Neighborhood approve the proposal in writing, the Board shall designate the Units as a Neighborhood and include the fees for such service as a line item in the Neighborhood budget pursuant to Section 12.2(c).

10.3. Community Technology

(a) *Community Systems.* Without limiting the generality of Sections 10.1 and 10.2, the

Provision of Services

Association is specifically authorized, but not obligated, to provide, or to enter into contracts with other Persons to provide, central telecommunication receiving and distribution systems (*e.g.*, cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Community (“**Community Systems**”). Any such contracts may provide for installation, operation, management, maintenance and upgrades or modifications to the Community Systems as the Board determines appropriate. The Association shall have no obligation to utilize any particular provider(s). However, except for cause (as defined by written agreement with the provider), the Association may not, without the Declarant's consent, terminate or refuse to renew any contract entered into during the Declarant Control Period.

(b) Opportunities for Community Interaction. In recognition of the opportunities offered through computers, the Internet, and continuing advancements in the high technology fields, the Association may, as a Common Expense, provide for or offer services which make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Association may sponsor a community cable television channel, create and maintain a community intranet or Internet home page, maintain an “online” newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and residents to interact and participate in Association-sponsored activities. To the extent Hawai'i law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means.

Chapter 11

Association Insurance

The Association is responsible for insuring against various types of risks, including property damage, personal injury, and liability. This chapter describes the minimum types and amounts of coverage that the Association must obtain, the specific requirements for such policies, and the handling of deductibles and premiums for such insurance.

11.1. Required Coverages

The Association shall obtain and maintain in effect the following insurance coverage, to the extent commercially reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering against all risks of direct physical loss referred to as a “Special Form – Covered Cause of Loss” or comparable coverage by whatever name denominated for all insurable improvements on

(i) the Association Amenities;

(ii) other portions of the Area of Common Responsibility, to the extent that the Association has responsibility for repair or replacement in the event of a casualty; and

(iii) any Neighborhood, to the extent specified or authorized by any applicable Supplement.

If such coverage is not generally available at reasonable cost, then “broad form” coverage may be substituted. The limits of Association property insurance policies shall be sufficient to cover the full insurable replacement cost of the insured improvements under current building ordinances and codes and shall exclude undeveloped land. Included in such policy shall be Ordinance/Law coverage and Hurricane/Windstorm coverage

for the Association, including storm surge protection when reasonably available.

In addition, if a Supplement so specifies, the Association shall obtain and maintain property insurance on the insurable improvements within a Neighborhood, which insurance shall comply with the above requirements.

(b) Comprehensive commercial general liability insurance, including medical payments insurance, 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, such coverage shall be in an amount determined by the Board in the exercise of its business judgment, but with a combined single limit of not less than \$2,000,000.00 covering all occurrences commonly insured against for death, bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

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

(d) Following the Declarant Control Period, Directors and officers liability coverage, including coverage for the Association; governors; officers; committee members, if any; employees; managing agent, if any; and the Declarant in such amounts as the Board may determine, but not less than \$1,000,000.00 per occurrence (if reasonably available);

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(e) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-sixth of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation;

(f) Earthquake, wind, and flood damage coverage, of and to the extent required by law, and or appropriate for an Association based in Kaua'i;

(g) Automobile liability insurance for all owned, non-owned, and hired vehicles of the Association with a minimum limit of \$500,000.00 combined single limit per accident; and

(h) Such other insurance as the Board may determine to be necessary and to the extent commercially reasonably available.

The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Kaua'i area. In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this section requires.

11.2. Deductibles

The Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 11.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense, as such terms are defined in Chapter 12, 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 the By-Laws, that the loss is the result of the negligence or willful misconduct 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 Units as a Specific Assessment pursuant to Chapter 12.

11.3. Policy Requirements

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to any Owner.

To the extent available at commercially reasonable cost and terms, all Association insurance shall:

(a) be written with a company authorized to do business in Hawai'i, which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(b) be written in the name of the Association. All policies shall be for the benefit of the Association and its members, except that policies on a Limited Association Amenity shall be for the benefit of the Owners of Units within the Neighborhood to which the Limited Association Amenity is assigned and their Mortgagees, as their interests may appear;

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) contain an inflation guard endorsement;

(e) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(f) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Association;

Association Insurance

(g) provide a waiver of subrogation against any Owner or household member of an Owner; and

(h) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Association and allowance of a reasonable time to cure the defect or violation.

In addition, the Board shall secure insurance policies that list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's governors, officers, employees, and manager;

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

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

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

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss.

lar Neighborhood shall be a Neighborhood Expense, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

11.4. Insurance Premiums

Premiums for all Association insurance shall be a Common Expense, except that premiums for property insurance on Units within, or Limited Association Amenities assigned to, a particu-

Chapter 12

Association Finances

This chapter provides for various types of funding to cover expenses that the Association incurs or expects to incur in exercising its authority and performing its responsibilities under the Governing Documents. The primary source of funding is the assessments which this chapter authorizes the Association to levy against the Units and collect from the Owner of each Unit. Assessments are secured by a lien on each Unit as described in this chapter.

12.1. Association Expenses

(a) Common Expenses. Except as the Governing Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Area of Common Responsibility, and otherwise for the general benefit of the Owners, are considered “**Common Expenses.**” Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate.

Common Expenses shall not include any expenses incurred during the Declarant Control Period for initial development or original construction costs unless Owners representing a majority of the total vote in the Association approve such expenditure. Payments due under leases of capital improvements such as street lights shall not be considered an initial development or original construction cost.

The characterization of a particular expense as a Common Expense shall not preclude the Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to

this Charter, any Supplement, or any other recorded covenants or agreements.

(b) Neighborhood Expenses. All expenses which the Association incurs or expects to incur in connection with the ownership, maintenance, and operation of Limited Association Amenities, or in providing other benefits and services to a Neighborhood, including any operating reserve or reserve for repair and replacement of capital items maintained for the benefit of the Neighborhood, are considered “**Neighborhood Expenses.**” Neighborhood Expenses may include a reasonable administrative charge in such amount as the Board deems appropriate, provided that any such administrative charge is applied at a uniform rate per Unit among all Neighborhoods receiving the same service.

12.2. Budgeting for and Allocating Association Expenses

(a) Preparation of Budget. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. In addition, the Board shall prepare a separate budget for each Neighborhood reflecting the estimated Neighborhood Expenses that the Association expects to incur for the benefit of such Neighborhood in the coming year.

The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Neighborhood Expense of the Neighborhood for which the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected

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useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units (including amounts to which the Association is entitled pursuant to any covenant or agreement to share costs), and the amount to be generated through the levy of Base Assessments and Neighborhood Assessments pursuant to Sections 12.1(b) and (c).

After assessments have commenced, the Board shall prepare and review at least annually a reserve budget for the Area of Common Responsibility. The budgets shall 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 include in the Common Expense budget adopted pursuant to this section, as appropriate, a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period, which amounts shall be approved by the Declarant during the Development and Sale Period. The amount of such capital reserve contribution in any year shall not exceed 50% of the recommended reserve amount.

(b) Calculation of Base Assessments. The total budgeted Common Expenses, less any surplus in the Common Expense budget from prior years and any income anticipated from sources other than assessments against the Units, shall be allocated equally among all Units subject to assessment under Section 12.5 and levied as a “**Base Assessment.**”

If the total collected Base Assessments allocated to the Units, do not cover the Common Expense Budget for any given year, the Declarant

may, but shall not be obligated to, advance the necessary funds to cover or subsidize the costs of the Common Expense budget (in addition to any amounts paid by the Declarant at its option under Section 12.6(b)). Any such payments may be treated as a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such payments and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such shortfall in the Common Expense budget in any year shall not obligate the Declarant to continue payment of such amounts in future years, unless otherwise provided in a written agreement between the Association and the Declarant. Notwithstanding the above, upon request of the Declarant, in lieu of the payment of the Base Assessment, the Association shall charge the Sub-Developer or the Speculative Homebuilder, as applicable, a fee for the impact of its construction on the Association Amenities.

(c) Calculation of Neighborhood Assessments. The total Neighborhood Expenses budgeted for each Neighborhood, less any surplus in such Neighborhood budget from prior years, shall be allocated among all Units in the Neighborhood that are subject to assessment under Section 12.5 and levied as a “**Neighborhood Assessment.**” Unless otherwise specified in any Supplement applicable to a Neighborhood, Neighborhood Assessments shall be set at a uniform rate per Unit in the Neighborhood, except that:

(i) the Neighborhood Assessment levied on a Unit owned by a Sub-Developer shall not include any share of the costs of maintaining structures and/or landscaping on such Unit until the structure and exterior façade of a home have been constructed on the Unit and installation of landscaping as approved pursuant to Chapter 5 is substantially complete, and thereafter shall not include any portion of the Neighborhood Assessment intended for landscape maintenance so

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long as the Sub-Developer maintains the landscaping on such Unit; and

(ii) any portion of a Neighborhood Assessment intended for landscape maintenance, exterior maintenance of structures, insurance on structures, or replacement reserves that pertain to particular structures may be levied on each of the benefited Units in proportion to the benefit received, as the Board may reasonably determine.

(d) Notice of Budget and Assessment; Right to Disapprove. The Board shall send a copy of each applicable budget, together with notice of the amount of the Base Assessment and any Neighborhood Assessment to be levied pursuant to such budgets, to each Owner at least 30 days prior to the due date of the assessments to be levied pursuant to such budget. The Common Expense budget shall automatically become effective unless disapproved at a meeting by the Owners representing at least 75% of the total votes in the Association and by the Declarant Member, if such exists. Each Neighborhood budget shall automatically become effective unless disapproved at a meeting by Owners of at least 67% of the Units within the Neighborhood, except that the right to disapprove amounts included in a Neighborhood budget shall apply only to those line items which are attributable to services or benefits requested by the Neighborhood and shall not apply to any item which the Governing Documents require to be assessed as a Neighborhood Expense.

There shall be no obligation to call a meeting for the purpose of considering any budget except, in the case of the Common Expense budget, on petition of the Owners as provided for special meetings in the By-Laws, and in the case of a Neighborhood budget, on petition of Owners of at least 67% of the Units within the Neighborhood. Any such petition must be presented to the Board within 20 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect, increased by 20%, provided Hawai'i law does not mandate otherwise, until a new budget is determined.

(e) Budget Revisions. The Board may revise the budget and adjust the Base Assessment or Neighborhood Assessments anytime during the year, subject to the same notice requirements and rights to disapprove set forth in Section 12.2(d).

12.3. Special Assessments

The Association may levy "Special Assessments" to cover Common Expenses or Neighborhood Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget. Except as otherwise specifically provided in this Charter, any Special Assessment for Common Expenses in excess of 20% of the amount of the Common Expense budget shall require the affirmative vote or written consent of Owners representing more than 50% of the votes attributable to Units subject to assessment under Section 12.5 and shall be allocated equally among all such Units. Any Special Assessment for Neighborhood Expenses in excess of 20% of the annual budgeted amount shall require the affirmative vote or written consent of Owners representing more than 50% of the total votes allocated to Units in the benefited Neighborhood and shall be allocated in the same manner as Neighborhood Assessments under Section 12.2(c). In addition, as long as the Declarant membership exists, any Special Assessment shall also require the Declarant's written consent. Special Assessments shall be payable in such manner and at such times as the Board determines and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

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12.4. Specific Assessments

The Association may levy “**Specific Assessments**” against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Unit upon request of the Owner pursuant to any menu of optional services which the Association may offer (which might include the items identified in Section 10.1). Specific Assessments for optional services may be levied in advance of the provision of the requested service;

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment under this subsection; and

(c) to cover the Unit's pro rata share of any costs that the Association incurs in bringing the Neighborhood of which the Unit is a part into compliance with the provisions of the Governing Documents; however, the Board must give prior written notice to the Owners of Units in the Neighborhood and an opportunity for such Owners to be heard before levying any such assessment.

12.5. Authority to Assess Owners; Time of Payment

The Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this chapter and elsewhere in the Governing Documents. Except as otherwise provided in this Charter or in a recorded Supplement, the obligation to pay assessments to the Association shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this

Charter; or (b) the month in which the Board first determines a budget and levies assessments pursuant to this chapter, whichever is later. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit. Upon written notice from Declarant to the Association, the Association shall treat any Unit owned by a Sub-Developer as if it were owned by Declarant and subject to the Declarant's election under Section 12.6 with respect to Base Assessments and Special Assessments, until the Unit is improved with a dwelling and either conveyed to a third party or first occupied for residential or lodging purposes, whichever first occurs.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and may impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, one-twelfth (1/12th) of the annual Base Assessment and any annual Neighborhood Assessment shall be due and payable in advance on the first day of each month. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

If an Owner is delinquent in paying any amounts due to the Association, payments received shall be applied first to unpaid attorneys' fees and costs which the Association is entitled to assess against the Owner and the Owner's Unit pursuant to this Charter, then to outstanding late charges, then to fines, then to any miscellaneous charges on the Owner's account, then to the principal amount of any assessments due, in the order levied.

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12.6. Obligation for Assessments

(a) *Personal Obligation.* By accepting a deed or entering into a contract to purchase any Unit, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of interest set at 18% per annum or such higher rate as the Board may establish, subject to the limitations of Hawai'i law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges, interest, or fees due at the time of conveyance.

The Board's failure 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 at the rate established for the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

No Owner may exempt himself or herself from liability for assessments by non-use of Association Amenities, abandonment of his or her Unit, or non-use of services provided to all Units or to all Units within the Neighborhood to which the Unit is assigned. 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 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.

Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate signed by an Association officer 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.

(b) *Declarant's Financial Obligations to Association.* The Declarant shall be liable for assessments on any Units it owns that are subject to assessment under this section, except that during the Declarant Control Period, the Declarant may satisfy its obligation to pay Base Assessments and Special Assessments for Common Expenses on Units it owns either by paying such assessments in the same manner as any other Owner, or by paying: (i) any shortfall under the Common Expense budget resulting from events other than failure of other Owners to pay their assessments; and (ii) any budgeted contributions to reserves in accordance with the Common Expense budget. Unless the Declarant otherwise notifies the Board in writing at least 30 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. After termination of the Declarant Control Period, the Declarant shall pay Base Assessments on any Units it owns that are subject to assessment under Section 12.6 in the same manner as any other Owner liable for such assessments.

Regardless of the Declarant's election under this section, any of the Declarant's financial obligations to the Association may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

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 the Declarant or other entities for payment of common expenses. The Declarant's payment of assessments may be reduced or abated by the

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agreed value of any such services or materials provided by the Declarant, in accordance with any such contract or agreement with the Association.

12.7. Lien for Assessments

The Association shall have a lien against each Unit to secure payment of assessments, as well as interest, late charges (subject to the limitations of Hawai'i law), and costs of collection (including attorneys' fees and expenses) when such amounts are not paid in the time, amount, or manner required. 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 recorded Mortgage made in good faith and for value having first priority over any other Mortgages on the Unit.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien.

The Association may conduct the sale and bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit 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 Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged to such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pur-

suing any and all remedies allowed by law to enforce the lien.

Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 12.5, including such acquirer, its successors and assigns.

12.8. Exempt Property

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

- (a) All Association Amenities and such portions of the Declarant's property as included in the Area of Common Responsibility;
- (b) Any property dedicated to and accepted by any governmental authority or public utility;
- (c) Property owned by any Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common;
- (d) Property designated as the "Kukui'ula Bay Park" or public beach access; and
- (e) Property owned by The Club.

In addition, the Declarant and/or the Association may, by resolution, grant exemptions to certain Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Charter for purposes listed in Section

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501(c) of the Internal Revenue Code. Further, for a limited period of time the Declarant may elect in its sole discretion to initially pay for some or all of the Base Assessment (but not the Capital Start-Up Fee) for certain Units not owned by Declarant during the very early stages of development. The effective date for the commencement of full Association Assessments or any portion thereof during this period shall be set forth in the Association's Schedule of Fees, the Purchase Contract with the Declarant and provided for in the Annual Budget.

12.9. Capitalization of Association

The initial Owner of each Unit (including Sub-Developers) other than the Declarant shall, immediately upon taking title to the Unit or upon the Unit being made subject to this Charter, whichever is later, make a one-time contribution to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Unit for the year in which such contribution is due ("**Capital Start-Up Fee**"). The Capital Start-Up Fee shall be in addition to, not in lieu of, the annual Base Assessment and any Neighborhood Assessment levied on the Unit and shall not be considered an advance payment of such assessments. The Capital Start-Up Fee shall be due and payable to the Association for its use in covering initial start-up expenses, operating expenses, establishment of initial reserve accounts, and other expenses which it incurs pursuant to this Charter and the By-Laws, as the Board may determine appropriate. Notwithstanding the above, upon request of the Declarant, the Association shall allow a Sub-Developer to defer payment of the Capital Start-Up Fee on any Unit which it owns until the Unit is improved with a dwelling and either conveyed to a third party or first occupied for residential or lodging purposes, whichever first occurs.

12.10. Administrative Use and Consumption Fees

The Declarant and/or the Board may charge reasonable and customary use, consumption, and activity fees to any Person using Association services or facilities and may determine the amount and method of determining such fees, which remain subject to change. Different fees may be charged to different classes of users (*e.g.*, Owners and non-Owners).

12.11. The Club's Ability to Collect Assessments

During the Declarant Control Period, for administrative convenience, the Declarant may arrange for The Club to act as the Association's agent for collection of Base Assessments and other fees charged by the Association, collecting such amounts at the same time it collects its own fees and charges, as more particularly described in the Covenant. The Declarant or its successors or assigns may at any time discontinue such arrangement upon notice to the Association and the Owners, in which event Owners shall pay all such assessments and fees directly to the Association commencing on the date set forth in such notice.

Chapter 13

Easements

The easements created in this chapter establish the rights of Owners to use the Association Amenities and create various rights for the benefit of Owners, the Declarant, the Association, and others over property within Kukui`ula. Some of these rights are related to development and construction within Kukui`ula and on adjacent property, while others relate to the rights of the Association to come upon property of others to fulfill its responsibilities and the interrelationships between Kukui`ula and the owners of adjacent property.

13.1. Easements in the Association Amenities

The Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Association Amenities, subject to:

(a) The Governing Documents and any other applicable covenants, restrictions, easements, or other recorded instruments affecting the Common Area;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) Certain Owners' rights to the exclusive use of those portions of the Association Amenities designated "Limited Association Amenities";

(d) The Board's right to:

(i) adopt standards regulating Association Amenities use and enjoyment, including rules limiting the number of guests who may use the Association Amenities, and to charge use fees for such use;

(ii) suspend an Owner's right to use Association Amenities;

(iii) dedicate or transfer all or any part of the Association Amenities, subject to such approval requirements as may be set forth in this Charter;

(iv) permit use of any Association Amenities, at such charge or no charge as the Board may determine appropriate, for the purpose of offering and conducting classes or other activities for interested Owners and occupants, whether offered on a for profit or nonprofit basis; and

(v) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(e) Any restrictions or limitations on access to and use of the AB Sites or any conservation areas designated by the Declarant as being subject to restrictions.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

13.2. Easements of Encroachment

The Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Association Amenity (except an AB Site) and between adjacent Units 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 two feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an encroachment easement exist if the encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement. As AB Sites are

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protected under federal or state permit requirements, the Declarant has no authority to grant reciprocal appurtenant easements of encroachment for these areas.

13.3. Easements for Utilities, Etc.

(a) Installation and Maintenance. The Declarant reserves for itself and grants to the Association, The Club, and all utility providers perpetual, non-exclusive easements throughout Kukui'ula (but not through a structure) to the extent reasonably necessary to:

(i) install, remove, maintain, replace and repair lighting fixtures, related electrical lines and other related utilities and infrastructure, other Community Systems, security and similar systems, and drainage systems as determined by the Declarant to serve Kukui'ula and which are consistent to the Design Guidelines;

(ii) install walkways, pathways and trails, street lights, civil defense sirens, and signage on property the Declarant, The Club, or the Association owns or within public rights-of-way or easements reserved for such purpose on a recorded subdivision map;

(iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; and

(iv) access and read utility meters.

Notwithstanding the above, the Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) Specific Easements. The Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements consistent with Section 13.3(a) as it deems necessary to develop the property described in Exhibits "A" and "B." The location of the specific easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in Sections 13.3(a) and (b) shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing immediately prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

13.4. Easements to Serve Additional Property

The Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Association Amenities 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 Charter. This easement includes, but is not limited to, a right of ingress and egress over the Association Amenities for construction of roads and for connecting and installing utilities on such property. The Person exercising such easement rights shall be responsible for any damage caused to the Association Amenities as a result of their actions in connection with development of such property.

If the above easement grants permanent access to any property which is not submitted to this Charter, the Declarant, or its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance that the Association provides for the benefit of the easement holder. The shared maintenance costs may include maintenance to or along any roadway providing access to the benefited property.

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13.5. Easements for Maintenance, Emergency, and Enforcement

By this Charter, the Declarant grants to the Association easements over Kukui`ula as necessary to enable the Association to fulfill its maintenance responsibilities under Sections 6.2, 6.3, and 9.2 and its enforcement rights under Chapter 8. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. In the case of single family detached dwellings, such right shall be limited to entry onto the exterior portions of a Unit, not into dwellings on Units. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. Entry upon any Unit for such purpose shall not be deemed a trespass.

13.6. Easements for Water Feature Maintenance and Flood Water

The Declarant, The Club, and the Association reserve for themselves, and their respective successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon any water features or retention basins/ponds located within the Area of Common Responsibility to: (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. The Declarant, The Club, the Association, and their respective successors, assigns, and designees shall have an access easement over and across any portion of Kukui`ula which abuts or contains water features or retention ponds, to the extent reason-

ably necessary to exercise their rights under this section.

The Declarant, The Club, and the Association further reserve for themselves, and their respective successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Association Amenities and Units (but not the dwellings thereon) adjacent to or within 100 feet of water feature, retention ponds, and drainage areas within Kukui`ula, in order to: (a) temporarily flood and back water upon and maintain water over such property; (b) alter in any manner and generally maintain the water feature, retention ponds, and drainage areas within the Area of Common Responsibility; and (c) maintain and landscape the slopes, shoreline, and banks pertaining to such areas. All Persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make the Declarant, the Association, The Club, or any other Person liable for damage resulting from flooding due to weather events or other natural occurrences. The right to maintain a drainage area may be limited by state or federal environmental laws governing work in watercourses, including the Clean Water Act, 33 U.S.C. Section 1344, and local floodplain ordinances.

13.7. Easements for Golf Course

Kukui`ula is burdened with an easement permitting golf balls unintentionally to come upon areas adjacent to or in the vicinity of a golf course, and for golfers at reasonable times and in a reasonable manner to come upon the Association Amenities, or the common property of a Neighborhood Association. The existence of this easement shall not relieve golfers of liability for damage to persons or property 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 ex-

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ercise of this easement: the Declarant; the Association or its members (in their capacities as such); The Club, its successors, successors-in-title to the golf course, or assigns; 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.

The Club, as the owner and/or operator of the golf course within or adjacent to Kukui`ula, its agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Association Amenities reasonably necessary to the operation, maintenance, repair, and replacement of its golf course.

Any portion of Kukui`ula immediately adjacent to any golf course is hereby burdened with a non-exclusive easement in favor of the adjacent golf course for overspray of water from the irrigation system serving such golf course. **Under no circumstances shall the Association, The Club, or the owner of such golf course be held liable for any property damage or personal injury to individuals or animals resulting from such overspray or the exercise of this easement.**

The Club or any future owner of any portion of the golf course within or adjacent to Kukui`ula, its successors and assigns, shall have a perpetual, exclusive easement of access over Kukui`ula for the purpose of retrieving golf balls from bodies of water within the Association Amenities lying reasonably within range of golf balls hit from its golf course.

13.8. Easements for Public Access to Shoreline

Each Owner acknowledges that as a condition of development of Kukui`ula and pursuant to Hawai`i law, the public must be granted improved access to "Kukui`ula Bay Park." Therefore, the Declarant reserves for the public the right to use those portions of Kukui`ula for access to, and use of the Kukui`ula Bay Park as designated by the Declarant on the Master Plan. The

Association shall have no authority to restrict or change the public's right to access.

To ensure access to the Kukui`ula Bay Park, a parking area shall be constructed and provided for the public and thereafter maintained by the Association or The Club.

The public shall have a passive right to utilize the Kukui`ula Bay Park for recreational purposes and shall not be charged a fee for such use.

13.9. Easements for Archaeological/ Biological Sites

The Declarant reserves for itself, the Association, and any governmental authority as required or deemed necessary, a nonexclusive perpetual easement over the Association Amenities and Units to: (a) travel to and from the AB Sites; and (b) inspect, evaluate, perform data recovery, maintain and preserve the AB Sites identified within Kukui`ula from time to time. Such easement shall affect only such portions of the Association Amenities and Units as the Declarant or the Association, as the case may be, deem reasonably necessary for such purposes.

The Declarant further reserves for itself and the Association the right to grant nonexclusive easements over the Association Amenities and Units to: (a) travel to and from such AB Sites; (b) inspect, evaluate, perform data recovery, maintain and preserve such AB Sites; and/or (c) perform traditional, cultural and/or religious practices at such AB Sites, to any Person who is or may be entitled under federal and Hawai`i law to exercise any such rights.

Such easements shall affect only such portions of the Association Amenities and Units as the Declarant or the Association, as the case may be, deems reasonably necessary for such purposes and may be subject to such reasonable terms, conditions and restrictions that the Declarant or the Association may impose consistent with federal and Hawai`i law. Some AB Sites are Identified Sites; however, Undiscovered Sites may exist. The Undiscovered Sites may be located on Units or in lava tubes or caves beneath Units.

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The Declarant reserves for itself and the Association the right to grant additional easements or modify existing easements under this section for additional AB Sites that are Undiscovered Sites and to comply with federal and Hawai'i law or the requirements of any governmental or quasi-governmental entity that has jurisdiction over matters involving such AB Sites.

Due to the sensitive nature of this type of easement, the potential exists for conflict between Persons using easements pursuant to this section and Owners. In order to avoid or eliminate any potential conflicts that may arise, an environment of mutual respect between Persons using the easements and Owners must prevail. Owners should exercise caution and mandate that their contractors and all subcontractors use caution to avoid disturbance of AB Sites. No Owner or occupant of a Unit or contractor shall take any action to prevent or hinder access to AB Sites. Persons utilizing easements pursuant to this section should do so in a careful, considerate and conscientious manner and take reasonable steps to avoid disturbing Owners. The Association, The Club, and the Declarant shall not have any liability for any damages, increased construction costs, or delays caused by the existence of, or the discovery of, an AB Site or the designation or use of an easement related to such AB Site.

13.10. Easement for Drainage

Kukui'ula is burdened with a perpetual and nonexclusive easement over, through, and across Kukui'ula as necessary to accommodate drainage from or across property adjacent to Units in its currently existing and natural pattern and flow, or as the pattern or flow may be altered by any of the Declarant's landscaping activities undertaken pursuant to Section 13.6. The Declarant reserves the right to designate additional drainage easements over, through, and across Kukui'ula including, but not limited to, portions of Units.

Each Owner assumes all liability for damage to persons or property caused by interference with the flow of drainage from, over, through, or across such Owner's Unit in connection with

Owner's activities on all or any part of such Unit, and agrees to indemnify, defend, and hold harmless the Declarant and the Association from and against any liability, claim, demand, action, or suit arising out of, or in connection with, any such interference with drainage.

13.11. Easement for Maintenance of Units

The Declarant reserves for itself and the Association, an easement of ingress and egress over each of the Units necessary for the purpose of maintaining and repairing landscaping on such Units. The Declarant and the Association shall have the right to exercise this easement of the entire area of a Unit until the Owner of such Unit completes construction of a dwelling on the Unit.

13.12. Easements for The Club

The Declarant grants to The Club a perpetual, non-exclusive easement of access over the Association Amenities as reasonably necessary or convenient to allow The Club to construct, maintain, repair, or replace any Improvements located on property within Kukui'ula owned and/or operated by The Club.

13.13. Easements for Access and Utility Extensions

(a) The Declarant grants to each Owner (and all agents, employees, contractors, visitors, licensees, and invitees of such Owner) a perpetual, non-exclusive easement upon, over, under, and across a specified portion of the Association Amenities or Limited Association Amenities, as approved by Reviewer, if any, that separates the Owner's Unit from any right-of-way that adjoins such Association Amenities or Limited Association Amenities, for the purposes of: (a) installing driveway improvements and providing pedestrian and vehicular access over such driveway improvements to, from, and between the Owner's Unit and such right-of-way; provided that installation of driveway improvements and vehicular access shall be limited to only that portion of such Association Amenities or Limited Association

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Amenities upon which driveway improvements have been approved by the Reviewer and designed and constructed in accordance with the Design Guidelines; and (b) constructing, using, maintaining, repairing, and replacing underground public utility lines that extend utility service from any connection located in the adjoining right-of-way to the Improvements located on the Unit, but only in a manner consistent with utility plans approved by the Reviewer as such utility plans may be amended from time to time.

(b) Without limiting the foregoing, the Declarant grants to each Owner (and all agents, employees, contractors, visitors, licensees, and invitees of such Owner) a perpetual, non-exclusive easement for ingress, egress, and access purposes (including vehicular and pedestrian access) and for underground utility purposes on, over, under, and across Lots 18 and 19 of Kukui'ula Large Lot Subdivision III (known as Ala Kalanikaumaka Street and Western Bypass Road) and Lots 15 and 16 of Kukui'ula Large Lot Subdivision III (known as Ala Kukui'ula Street); provided, however, in the event that all or any portion of such lots are conveyed to the State of Hawai'i, the County of Kaua'i, or another governmental or quasi-governmental authority and dedicated to public use, this easement shall immediately terminate as to the lots or portion thereof as is so conveyed and dedicated.

(c) All work associated with the exercise of the easements created in subsections (a) and (b) of this Section shall be performed so as to minimize interference with the use and enjoyment of the Association Amenities or Limited Association Amenities and any Improvements located thereon. Upon completion of the work permitted by this section, the Person exercising the easement shall restore the Association Amenity or Limited Association Amenity, to the extent reasonably possible, to the condition existing immediately prior to commencement of the work. The Person exercising such easement rights shall be responsible for any damage caused to the Association Amenity or Limited Association Amenity as a result of their actions. The Owner exercising

this easement shall be responsible for maintenance and repair of all driveway Improvements installed in the exercise of the easement. Any conveyance or encumbrance of any portion of the Association Amenity affected by the foregoing easement shall be subject to the easement.

13.14. Easements for Outparcels

The Declarant grants to Alexander and Baldwin, Inc., A&B Properties, Inc., McBryde Sugar Company Limited, Kukui'ula Development Company, LLC, Kauai Coffee Company, Inc., and Kukui'ula South Shore Community Services, LLC, a perpetual, non-exclusive easement for access, ingress, and egress over such private roadways and Association Amenities within Kukui'ula as are necessary for the provision of utilities, drainage, and to gain access by the most direct route available to the parcels of land adjacent or partially surrounded by Kukui'ula that are not part of Kukui'ula and are not owned by the Declarant. This easement shall be exercised with a minimum degree of interference with the rights of Owners and occupants of Units to the quiet enjoyment of their Units and the Association Amenities and with the Declarant's right to site and expand the utility, drainage, and roadway system throughout Kukui'ula. Such use shall be limited to access in accordance with regular vehicular traffic on such roadways and shall not be used as an access point for the development or construction of surrounding lands.

Any Person granted such easement shall not be required to share the cost associated with the maintenance of the roadways; provided, costs associated with any damage or destruction caused by the owner or occupants of such parcels of land, as well as their guests, invitees, and licensees shall be recoverable from such owner, and all costs associated with the exercise of such easements shall be the responsibility of the owner.

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13.15. Easements for Agricultural Uses

Each Owner and occupant acknowledges that portions of property adjacent to Kukui`ula may be utilized for agricultural uses. An easement is hereby reserved over Association and Club Amenities and Units (whether developed or undeveloped) within Kukui`ula for the benefit of the Declarant, its designees, authorized agents, successors and assigns and Kukui`ula Development Company (Hawaii), LLC, a Hawai`i limited liability company, the grantor of the property to the Declarant, its designees, authorized agents, successors, and assigns for agricultural use and related activities conducted by the Declarant or Kukui`ula Development Company (Hawaii), LLC or their designees, authorized agents, successors, and assigns. Such easement shall include, but not be limited to, the transmission, discharge, or emissions of surface water runoff, noise, vibration, smoke, soot, dust, exhaust, noxious vapors, odors, and other substances that are created as a result of activities incidental to one or more of the following: (a) cultivation of flowers, trees, plants, vegetables, fruits, foliage, forage, and other agricultural products; and (b) buildings and uses including but not limited to storage facilities, roadways, and maintenance facilities that are normally considered necessary and appropriate for the uses described in this section. Each Owner and occupant further acknowledges that the Declarant shall not be held liable for any nuisance, personal injury, illness, or any other loss or damage that is caused by the presence and operation of agricultural uses within Kukui`ula as set forth in Section 15.11.

13.16. Easements for Use of Golf Cart Paths

Each Owner shall have a right and nonexclusive easement of access and use over those golf cart paths within Kukui`ula which are owned and/or operated by The Club and designated by The Club as available for use by its members; provided, such easement shall only permit operation of golf carts made available by or otherwise approved by The Club and shall be subject to

such rules and regulations as The Club may adopt with respect to its cart paths and as the Association may adopt with respect to operation of golf carts within Kukui`ula generally, including, but not limited to, rules regulating hours of use, permitted users, speed limits, required installation of speed controls, and parking restrictions. In addition, any privately-owned golf cart driven upon any street within Kukui`ula, if permitted by the Association's rules, shall be licensed, insured, and equipped in accordance with Hawai`i law.

Each Owner agrees that any golf cart owned or operated by such Owner shall be operated only by a licensed driver, in a safe and prudent manner, and in accordance with any and all governmental regulations and rules of the Association and The Club. Each Owner agrees, on behalf of itself and its family members, and all persons authorized to operate any golf cart owned by such Owner, to accept all risks associated with the use and operation of any golf cart within Kukui`ula and releases the Declarant, the Association, The Club and their officers, directors and employees from liability for, and agrees to indemnify the Declarant, the Association, and their officers, directors and employees against, all losses incurred as a result of (i) any injury or property damage arising out of or in any way connected with the golf cart's operation, regardless of whether the Owner was operating the golf cart at the time of the incident (except to the extent that the damage or injury arises out of the gross negligence or reckless conduct of an indemnified party); and (b) the Owner's or operator's failure to comply with any applicable federal, state, or local laws in the course of operating such golf cart. Persons using a privately-owned golf cart will be held fully responsible for any and all damage caused by the misuse of the golf cart and shall reimburse the Association (and The Club, as applicable) for any and all damages by reason of misuse, including, without limitation, damage to other golf carts and to the Association or the Club Amenities, as applicable.

Chapter 14

The Club at Kukui`ula

Recreational amenities and facilities located within or in the vicinity of Kukui`ula are or shall be privately owned and operated by The Club and not the Association. These facilities are not part of the Association Amenities of Kukui`ula. This chapter explains the right of The Club to determine the Owners' use of these facilities. It also establishes certain rights for the benefit of The Club.

14.1. General

Any property and facilities located within, adjacent to, or near Kukui`ula which The Club owns and/or operates for recreational and related purposes are “**Club Amenities**” and are individually referred to as a “**Club Amenity**.” The Club Amenities may include, without limitation, recreational and fitness amenities; spa, dining, and sport facilities; any golf course, and other recreational property and activities that are so located, and any related and supporting facilities and improvements.

Rights of use and access to the Club Amenities are subject to the terms of the Covenant, the Club By-Laws, and the standards, policies, and rules established by The Club pursuant to the Covenant and the Club By-Laws (collectively, the “**Club Governing Documents**”), as well as the terms of any agreement entered into between The Club and an authorized user of the Club Amenities. Persons who are not Owners have been or may be granted rights to access and use the Club Amenities as set forth in the Covenant. Nothing herein or in the Club Governing Documents shall be construed as granting exclusive rights to use any Club Amenities to Owners or residents of Units in Kukui`ula.

Each Unit shall be subject to the Covenant and shall be allocated one Plantation Membership that allows use of all the Club Amenities subject

to the terms of the Club Governing Documents, including requirements for the payment of assessments and fees, and The Club's right to sanction Owners for failure to comply with any of the foregoing, which sanctions may include, among other things, suspension of the privilege of using the Club Amenities.

The Owner(s) of each Unit shall be responsible for paying assessments to The Club for such period of time as they hold title to the Unit, regardless of such Owner's use or nonuse of the Club Amenities during such time, except as otherwise provided in the Covenant with respect to Units owned by the Declarant, affiliates of the Declarant, and Sub-Developers. Each Owner's right to use the Club Amenities shall continue so long as such Owner owns a Unit in Kukui`ula, subject to the Club's Governing Documents.

In addition to the rights and privileges of Plantation Membership associated with the ownership of a Unit as set forth in Section 4.2(a) of the Covenant, Owners shall have the opportunity, with others as authorized in the Covenant and subject to availability, to apply to purchase a Golf Membership granting additional privileges with respect to the golf course and golf-related facilities of The Club (“**Golf Membership**”). The number of Golf Memberships is limited and thus approval is not guaranteed and remains in the sole discretion and control of The Club. Golf Membership entitles the Golf Member to enjoy all of the privileges of Plantation Membership along with the additional right of priority tee times through advance reservation privileges (with priority over Plantation Members who have not purchased a Golf Membership) and without the payment of green fees (but with the payment of cart fees), as more fully specified in Club Governing Documents.

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No Person, by virtue of acquiring a membership in The Club, acquires any ownership interest, beneficial interest, or other vested interest whatsoever in the Club Amenities. An Owner has only the privilege of using and enjoying the Club Amenities in accordance with the Club Governing Documents, which are subject to change from time to time.

The obligation to pay assessments to The Club and the benefits of use shall run with the title to the Unit and shall be binding on and inure to the benefit of all subsequent Owners of the Unit.

14.2. Changes in Club Amenities

All Persons, including Owners, are hereby advised that no representations or warranties have been or are made by the Declarant, The Club, the Association, any Sub-Developer, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Club Amenity. No purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Club Amenity.

14.3. View Impairment

Neither the Declarant, the Association, or The Club, guarantees or represents that any view over and across any Club Amenity from Units adjacent to the Club Amenity will be preserved without impairment. Neither the Declarant nor The Club shall have any obligation to prune or thin trees or other landscaping, and each shall have the right, in their sole and absolute discretion, to add or remove trees and other landscaping from the Club Amenities from time to time. In addition, The Club may, in its sole and absolute discretion, change the location, configuration, size, and elevation of the trees, bunkers, fairways and greens from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for

the passage of light and air are hereby expressly disclaimed. Notwithstanding the foregoing, the provisions of Section 5.9 apply to certain Limited Improvement Areas.

14.4. Rights of Access and Parking

There is hereby established for the benefit of The Club, its members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within Kukui'ula reasonably necessary to travel between the entrance to Kukui'ula and the Club Amenity and over those portions of Kukui'ula (whether Association Amenities or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Club Amenity. Without limiting the generality of the foregoing, members, guests, and invitees of The Club shall have the right to park their vehicles on the roadways located within Kukui'ula at reasonable times before, during, and after tournaments and other similar functions held by The Club or at a Club Amenity to the extent that The Club has insufficient parking to accommodate such vehicles and such parking is not in violation of applicable local, state, or federal laws.

14.5. Design Control

The Reviewer shall not approve any improvement to any portion of Kukui'ula which is adjacent to or otherwise in the direct line of sight of any Club Amenity without giving The Club and the owner of the Club Amenity, if not The Club, at least 15 days' prior written notice of its intent to approve the same together with copies of the request and all other documents and information finally submitted in such regard. The Club and other owner of any Club Amenity, if not The Club, shall then have 15 days to respond in writing approving or disapproving the proposal, stating in detail the reasons for any disapproval, which shall be in the sole discretion of such owner of the Club Amenity. The failure

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of The Club or the owner of any Club Amenity to respond to the notice within the 15-day period shall constitute a waiver of the owner's right to object to the matter.

14.6. Limitations on Amendments

In recognition of the fact that the provisions of this chapter are for the benefit of The Club and the owner of any Club Amenity, no amendment to this chapter, and no amendment in derogation of any other provisions of this Charter benefiting any Club Amenity, may be made without the written approval of The Club or the owner of the Club Amenity. However, the foregoing shall not apply to the Declarant's amendments.

14.7. Cooperation

It is the Declarant's intention that the Association and The Club shall cooperate to the maximum extent possible in the operation of Kukui'ula and the Club Amenities. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines.

Chapter 15

Disclosures and Waivers

This chapter discloses some important information about Kukui`ula for the benefit of prospective purchasers of property in Kukui`ula. Each Owner, by accepting a deed to property in Kukui`ula, also accepts and agrees to the matters set forth in this chapter.

ALL OWNERS AND PROSPECTIVE PURCHASERS OF UNITS IN THE COMMUNITY ARE ENCOURAGED TO INVESTIGATE INDEPENDENTLY THE FOLLOWING MATTERS AND ARE HEREBY DEEMED TO HAVE CONSTRUCTIVE NOTICE THEREOF:

15.1. Facilities and Services Open to the Public

Certain facilities and areas within or immediately adjacent to Kukui`ula (but under the ownership and/or maintenance control of the Association) may be subject to access for use and enjoyment by the public. Such facilities and areas may include, by way of example: greenbelts, community garden areas, hiking and biking trails and paths, the "Community Park" and/or the "Kukui`ula Bay Park," historical sites, and other neighborhood spots conducive to gathering and interaction, roads, sidewalks, access areas, and medians. The Declarant may designate such facilities and areas as open to the public at the time the Declarant makes them a part of the Area of Common Responsibility, or the Board may so designate at any time thereafter, subject to existing restrictions and limitations, such as deed restrictions which limit public access in perpetuity. In addition, such facilities may be improved with additional lighting, and the public's use of these facilities may cause additional noise that impacts Kukui`ula.

15.2. No Guarantee of Safety and Security

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security

of their property in Kukui`ula. The Association may, but shall not be obligated to, maintain or support certain activities within Kukui`ula designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, neither the Association nor the Declarant shall in any way be considered insurers or guarantors of safety or security within Kukui`ula, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to Kukui`ula, 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 shall be responsible for informing any tenants and other occupants of such Owner's Unit, that the Association, its Board and committees, and the Declarant are not insurers or guarantors of security or safety and that each Person within Kukui`ula assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

15.3. Changes in Master Plan

Each Owner acknowledges that Kukui`ula is a planned resort community, the development of which is likely to extend over many years, and agrees that neither the Association nor any Neighborhood Association shall engage in, or use Association funds to support, any protest, challenge, or other form of objection to: (a) changes in uses or density of property within Kukui`ula; or (b) changes in the Master Plan as it relates to

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property outside Kukui`ula, without the Declarant's prior written consent.

15.4. View Impairment

Neither the Declarant nor the Association guarantee or represent that any view over and across the Units, any open space within Kukui`ula, or any Association Amenity will be preserved without impairment. The Declarant, Declarant Affiliates, and the Association, shall have no obligation to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Association (with respect to the Association Amenities) has the right to add or remove trees and other landscaping from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air. Notwithstanding the foregoing, the provisions of Section 5.9 apply to certain Limited Improvement Areas.

15.5. Notices and Disclaimers as to Community Systems

Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. The Declarant, Declarant Affiliates, the Association, or any of their respective successors or assigns shall not be liable for, and no Community System or service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

15.6. Ongoing Construction Activities

Construction activity by the Declarant, The Club, Sub-Developers designated by the Declarant, or other Owners will continue within Kukui`ula, as well as on properties, including the golf course, adjacent to and within Kukui`ula for

an extended period of time. Such construction activity shall include the use of construction vehicles and heavy equipment for construction purposes that may result in the transmission, discharge, or emission of surface water, runoff, smoke, noise, dust, odors, noxious vapors, chemicals, vibrations, and other annoyances, as well as pose certain risks of injury to an Owner and his/her guests and visitors, and may limit the Owner's access to portions of Kukui`ula. The Declarant and The Club shall have an easement over and upon each Owner's Unit and over Kukui`ula to construct Improvements for Kukui`ula and for the transmission, discharge, or emission of surface water runoff, smoke, noise, dust, noxious vapors, odors, chemicals, vibrations, or other substances or nuisances over Kukui`ula which are created by or result from such construction activities. The Declarant and The Club may do such things as may be reasonably required in connection with the construction of such Improvements, including, but not limited to, grading; excavating; depositing fill material; installing drainage systems; and installing sewer, water, electrical, gas, telephone, and or Community Systems.

15.7. Additional Notices and Disclaimers Related to Recreation Facilities

Portions of Kukui`ula are presently intended to be developed and operated as a golf course and other recreational amenities. The purpose of this section is to provide notice to Owners of Units adjacent to any portion of a golf course or other recreation-related facilities of certain matters and conditions that may affect their use and enjoyment of their property. Each Owner by acquiring a Unit acknowledges, accepts, and assumes the risk of the special benefits and burdens associated with the proximity of the Owner's Unit to golf course facilities or recreation-related facilities. The Declarant, The Club, and any other owner or operator of any golf course or recreation facility adjacent to or located within the boundaries of Kukui`ula and each and every member, guest, user, employee, or agent of any

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such recreation facility, disclaims any liability for personal injury or property damage resulting in any way, all or in part, from any of the following items set forth in subparagraphs (a) through (e) inclusive, and each Owner accepts such disclaimer and agrees to release and waive any claims that the Owner or any guest, invitee, employee, or contractor of Owner may have as a result of the following items:

(a) Errant Golf Balls. Each Owner acknowledges that ownership of property adjacent or in proximity to a golf course results in certain foreseeable detriments and risks, including, without limitation, the risk of damage or injury from errant golf balls, that some Units due to location will experience a greater volume of errant golf balls than other Units, and that an Owner's use and enjoyment of his or her Unit may be limited as a result. Each Owner accepts the detriments and expressly assumes the risks of owning property adjacent or in proximity to a golf course and agrees that the Declarant, The Club, the owner or manager of a golf course, the Association, or any of their successors or assigns shall not be liable to the Owner or to anyone claiming any loss, damage, or personal injury; destruction of property; trespass; or any other alleged wrong or entitlement to remedy based upon or arising out of the location or proximity of the Owner's Unit to a golf course. Each Owner hereby agrees to indemnify and to hold harmless the Declarant, any Declarant Affiliates, the owner of any golf course, the Association, and their respective successors and assigns for, from, and against any and all claims by the Owner or his or her invitees arising from errant golf balls, including, without limitation, personal or property damage or injury.

(b) Pesticides and Fertilizers. Pesticides, fertilizers, and other chemicals will be utilized in connection with the golf course and other recreation facilities, and the Owners acknowledge, accept the use, and assume the risk of such pesticides, fertilizers, and chemicals.

(c) Overspray. Owners, particularly Owners of Units abutting any golf course, may experience "overspray" from the golf course irrigation system, and the Owners acknowledge, accept, and assume the risk of such "overspray." Water used to irrigate any golf course may be untreated irrigation water, and may include pesticides, fertilizers, and herbicides.

(d) Noise and Light. Owners, particularly Owners of Units in proximity to any clubhouse, sales office, welcome center, recreational facility, or maintenance facility, may be exposed to lights, traffic, noise, or activities resulting from use of the clubhouse for dining and entertainment and use of the parking lot, and the Owners acknowledge, accept, and assume the risk of such light, noise, or activities.

(e) Maintenance. Golf courses require daily maintenance, including mowing, irrigation, and grooming, during early morning and evening hours, as well as on holidays and weekends, including without limitation the use of tractors, blowers, pumps, compressors, and utility vehicles. Owners, particularly Owners of Units in proximity to any golf course, will be exposed to the noise and other effects of such maintenance, and the Owners acknowledge, accept, and assume the risk of such noise and effects (including the use of pesticides).

15.8. National Tropical Botanical Garden

Each Owner acknowledges that Kukui'ula is adjacent to and surrounds the "**National Tropical Botanical Garden**" and its accompanying visitor center. As such, each Owner further acknowledges that the visitor center is a public facility open for tours and scheduled bus shuttles. Each Owner further acknowledges that the National Tropical Botanical Garden, and its invited and paying guests shall have the right to access the adjacent gardens through the use of roadways and paths within Kukui'ula, and each Owner accepts and assumes the risk of such additional noise, traffic, and related effects. Each Owner

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further acknowledges that ownership or leasing of a Unit does not entitle any Owner, tenant, or their guests to access rights to the Lawai Bay or the Lawai Valley from any point within Kukui`ula.

15.9. Conservation Districts

Owners and the Association acknowledge that certain property within Kukui`ula has been designated on the Master Plan as a “**Conservation District**” by the State of Hawai`i and the County of Kaua`i. An Owner, the Association, or The Club shall not alter, disturb, destroy, or replace any landscaping within any Conservation District or erect any Improvements without obtaining a Conservation District Use Permit from the State of Hawai`i Department of Land and Natural Resources.

15.10. Use of Reclaimed Water for Irrigation Purposes

Each Owner acknowledges that the development and operation of Kukui`ula include the construction of a wastewater treatment plant and the implementation of water conservation techniques, when and where feasible and/or as required by Hawai`i law. As part of the development of Kukui`ula, the Declarant will cause the construction of a new wastewater treatment, collection, and disposal system designed to service the residents and businesses within Kukui`ula, and each Owner shall be required to connect to the wastewater treatment plant. Owners will not be permitted to utilize a septic tank or any other individual sewage disposal system.

Each Owner of a Unit adjacent to or in the vicinity of the wastewater treatment plant acknowledges that their Unit may be affected by noise, lighting, odors, and other nuisances typically associated with a wastewater treatment plant.

In addition, the Association, but not an Owner, has the right, but not the obligation, to use recycled or reclaimed water to irrigate the Area of Common Responsibility. The Association reserves the right to designate the areas of application of such water in its sole discretion. However, there is no assurance as to the continued availability of recycled or reclaimed water for irrigation purposes from non-potable wells or the “Lawai ditch system,” and the Association, as part of its maintenance responsibility under Section 9.2, may be required to acquire or develop new irrigation sources for such use.

15.11. Agricultural Activities

Each Unit and the Improvements thereon, may be affected periodically by various hazards and by noise, dust, smoke, heat, earthshock, soot, ash, odor, noxious vapors, agricultural chemicals, transmission of pollutants or other hazardous materials, surface water runoff, or other adverse environmental conditions created by or attributable to surrounding agricultural, and other non-residential uses and activities, including, but not limited to:

- (a) cane milling, burning, harvesting, tending, as well as fertilization and pest and weed control;
- (b) growing, harvesting, and processing of agricultural products;
- (c) cattle and other livestock grazing, and
- (d) irrigation of any and all surrounding lands with reclaimed water, treated effluent, or other non-potable water sources.

15.12. Natural Hazards

Each Owner and the Association acknowledge that Kukui`ula is located within an area that may be subject to natural disasters such as hurricanes, tsunamis, earthquakes, flash floods, and high surf. Each Owner acknowledges, accepts, and assumes the risk of natural disasters associated with the

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location and ownership of his or her Unit. In addition, each Owner acknowledges that warning sirens and devices used for notification of natural hazards may be located within Kukui`ula.

15.13. Blasting and Other Activities

All Owners, occupants, and users of Units are hereby placed on notice that the Declarant, Declarant Affiliates, and/or their agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may, from time to time, conduct blasting, excavation, construction, and other activities within Kukui`ula, which may cause windblown dust and other nuisances typically associated with such activities. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of a Unit or Kukui`ula generally, the Owners and all occupants and users of Units acknowledge, stipulate, and agree (a) that such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon, or allow their pets, children, or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the Unit where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that the Declarant, any Declarant Affiliate, and all of their agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (d) that any purchase or use of any portion of a Unit has been and will be made with full knowledge of the foregoing; and (e) that this acknowledgment and agreement is a material inducement to the Declarant or its Declarant Affiliates to sell, convey, lease, and/or allow the use of Units.

15.14. Adjacent Affordable Housing

Each Owner acknowledges that, as a condition of approval for the development of Kukui`ula, certain affordable housing units have been or will be built in the area adjacent to Kukui`ula. Each Owner by purchasing a Unit within Kukui`ula acknowledges the development of the affordable housing, and shall in no way hold the Declarant or any Declarant Affiliate liable for or bring a lawsuit or other claim against the Declarant or any Declarant Affiliate based on the existence, construction, and development of such affordable housing.

15.15. Community Facilities District

Each Owner acknowledges that a community facilities district has been formed to finance certain infrastructure benefiting the Community. The community facilities district has issued special tax bonds for this purpose, which bonds are secured by a special tax levied against property within Kukui`ula. The special tax payable by an Owner constitutes a continuing lien on such Owner's Unit. Each Owner further acknowledges that Kukui`ula is a planned resort community, the development of which is likely to extend over many years, and that the infrastructure, and the cost of financing such infrastructure, may change from time to time.

Therefore, by the acceptance of a deed or other conveyance or mortgage, leasehold, license or other interest in land within Kukui`ula, each Owner hereby acknowledges that it has received constructive notice of, and assents to, assessment by and future modifications of the community facilities district. Each Owner hereby further agrees to assign to Declarant all of its rights to file a written protest against the future modification of such community facilities district, which right Declarant may exercise at its sole discretion.

Chapter 16

Rights of Lenders

In order to enhance each Owner's ability to obtain financing for the purchase of his or her Unit, this chapter sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies which guarantee and insure mortgage loans made by institutional lenders.

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units. The provisions of this chapter apply to both this Charter and to the By-Laws, notwithstanding any other provisions contained therein.

16.1. Notices of Action

An institutional holder, insurer, or guarantor of a first Mortgage which provides a 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 Unit 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 Kukui`ula or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder; and

(b) Any delinquency in the payment of assessments or charges owed by a Unit 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 Governing Documents relating to such Unit or the Owner or occupant 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.

16.2. No Priority

No provision of this Charter or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Association Amenities.

16.3. Notice to Association

Upon request, each Owner shall be obligated to furnish to the Association and The Club the name and address of the holder of any Mortgage encumbering such Owner's Unit.

16.4. Failure of Mortgagee to Respond

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

16.5. Construction of Chapter 16

Nothing contained in this chapter shall be construed to reduce the percentage vote that must otherwise be obtained under this Charter, the By-Laws, or Hawai`i law for any of the acts set out in this chapter.

Chapter 17

Expansion of Kukui`ula

Due to the need to pace development to the needs of Kukui`ula and the market demand for Units or Association Amenities, Kukui`ula may be developed in phases. The Declarant or the Association may expand the initial property submitted to the Charter as set forth in this chapter.

17.1. Expansion by the Declarant

Due to the need to pace development to the needs of Kukui`ula and the market demand for Units, Kukui`ula may be developed in phases. From time to time, the Declarant may submit to the terms of this Charter all or any portion of the property described in Exhibit "B" by recording a Supplement describing the additional property to be submitted. The Declarant may record such a Supplement without the consent of any Person except the owner of such property, if not the Declarant.

The Declarant's right to expand Kukui`ula under this section expires when all property described in Exhibit "B" has been submitted to this Charter or 30 years after this Charter is first recorded, whichever is earlier. Until then, the Declarant may transfer or assign, in whole or in part, this right to any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be described in a recorded instrument executed by the Declarant.

Nothing in this Charter shall require the Declarant or any successor to submit additional property to this Charter or to develop any of the property described in Exhibits "A" and "B" in any manner whatsoever.

17.2. Additional Covenants and Easements

Any Supplement that the Declarant records may impose additional covenants and easements on the property described in such Supplement, such as covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Neighborhood Assessments. Such provisions may be included in a Supplement submitting new property to this Charter or may be set forth in a separate Supplement applicable to property previously submitted to this Charter. If someone other than the Declarant owns the property, then the Supplement must be signed by such owner evidencing such owner's consent. Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Charter as it applies to the property described in the Supplement, in order to reflect the different character and intended use of such property.

17.3. Effect of Filing a Supplement

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to this Charter shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Charter.

Chapter 18

Additional Rights Reserved to the Declarant

This chapter reserves various rights to the Declarant, in addition to those specifically reserved elsewhere in the Governing Documents, in order to facilitate the Declarant's development and sale of property in Kukui`ula, to enable the Declarant to respond to Owners' concerns, and to protect various property rights and other interests of the Declarant.

18.1. Withdrawal of Property

During the Development and Sale Period, the Declarant may amend this Charter to remove any unimproved portion of Kukui`ula from the coverage of this Charter, provided such withdrawal does not reduce the total number of Units then subject to the Charter by more than 10%. “**Unimproved**” means that no permanent structure has yet been completed on the property. Such amendment shall not require the consent of any Person other than the owner(s) of the property to be withdrawn, if not the Declarant. If the property is an Association Amenity, the consent of the Association to such withdrawal is hereby granted.

18.2. Marketing and Sales Activities; Special Community and Lodge Program Events

Notwithstanding anything in the Governing Documents to the contrary, the Declarant, The Club, and their respective designees or assigns may construct, use, and maintain upon portions of the Association Amenities and the Club Amenities and other property they own or manage as provided by the Governing Documents, such facilities and activities as, in the Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Units and/or for the enjoyment of its Owners, Lodge Program guests, prospective purchasers, tenants, and Declarant's guests. Such permitted facilities and activities may include, but shall not be lim-

ited to, business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events at varying frequencies as so determined in the Declarant's or Club Operator's discretion (e.g., luaus, outdoor weddings, concerts, golf tournaments, and festivals), and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, the Declarant and its employees, agents, and designees may park vehicles in designated parking areas. The rights of any Declarant designee or assign under this section are subject to the Declarant's approval.

Each Owner acknowledges that such events and activities may result in nuisances, inconveniences, or hazards to persons and property on or in the vicinity of such events and activities, and each Owner shall indemnify and hold harmless the Declarant, the Association, The Club, and their respective officers and directors, in their capacities as such, from any liability relating to such issues to persons using the Owner's Unit, including attorneys' fees, arising from or incidental to such activities.

18.3. Right to Make Improvements, Remap

(a) The Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Association Amenities for the purpose of making, constructing, and installing such improvements to the Association Amenities and to the Exhibit “B” property as it deems appropriate.

(b) In addition, during the Development and Sale Period, the Declarant may remap property that it owns and convert Units it owns into Association Amenities.

Additional Rights Reserved to the Declarant

18.4. Right to Approve Changes in Kukui`ula Standards

During the Development and Sale Period, no amendment to or modification of any Standards or Design Guidelines shall be effective without prior notice to and the written approval of the Declarant.

18.5. Exclusive Rights to Use Name of Development

The name "Kukui`ula" and all similar or derivative names, along with all associated trademarks entity names, domain names, and logos, are the proprietary federal and state registered trade names and service marks of the Declarant or a Declarant Affiliate. No Person shall use such trade names, entity names, or service marks regardless of their ownership of a Unit within Kukui`ula for advertising or any other purpose in any promotional material, whether printed, audio, video, or otherwise, in any signage, or in any logo or depiction without the prior written consent of the Person who owns such mark. In addition, any name or logo to be used in connection with or displayed on any Unit, and any sales, rental, or other materials or documentation related to the use of the Unit, shall be subject to the Declarant's prior written consent and shall not contain copyrighted information from the Declarant's website or its logos in such sales materials. Such approval may be given or withheld in Declarant's discretion and may be subject to such terms and conditions as Declarant deems appropriate.

Notwithstanding the above, the Association, The Club, and the Declarant's designated brokerage entity, shall be entitled to use the word "Kukui`ula" in their respective names or related facilities. Other use by the Association, The Club, any Owner or occupant is subject to the restrictions contained herein.

18.6. Community Systems

The Declarant reserves for itself, Declarant Affiliates, and their respective successors and assigns, a perpetual right and easement over all property in Kukui`ula to install and operate such

Community Systems as the Declarant, in its discretion, deems appropriate to serve any portion of Kukui`ula. Such right shall include, without limitation, the Declarant's right to select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems services in the region. The Declarant also has the right to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable.

Notwithstanding the above, there is no guarantee or representation that any particular Community System will be made available.

18.7. Easement to Inspect and Right to Correct

The Declarant and each Sub-Developer reserve for themselves and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within Kukui`ula, including Units, and a perpetual nonexclusive easement of access throughout Kukui`ula to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes. Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of his or her Unit.

18.8. Right to Notice of Design or Construction Claims

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Kukui`ula in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless the

Additional Rights Reserved to the Declarant

Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection.

THE HAWAII CONTRACTOR REPAIR ACT CONTAINS IMPORTANT REQUIREMENTS WHICH MUST BE FOLLOWED BEFORE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION IS FILED AGAINST A CONTRACTOR WHO DESIGNED, REPAIRED, OR CONSTRUCTED A HOME OR FACILITY.

THE HAWAII CONTRACTOR REPAIR ACT REQUIRES DELIVERY OF WRITTEN NOTICE OF THE ALLEGED CONSTRUCTION DEFECTS TO THE CONTRACTOR AT LEAST 90 DAYS PRIOR TO FILING A LAWSUIT OR OTHER ACTION. THEREAFTER, SUCH CONTRACTOR MUST BE GIVEN AN OPPORTUNITY TO REPAIR AND/OR PAY FOR THE CORRECTION OF ANY SUCH CONSTRUCTION DEFECTS. THERE IS NO REQUIREMENT THAT AN OWNER MUST ACCEPT SUCH AN OFFER FROM A CONTRACTOR.

THE HAWAII CONTRACTOR REPAIR ACT CONTAINS STRICT DEADLINES AND PROCEDURES, WHICH MAY BE MODIFIED FROM TIME TO TIME AND ARE OUTSIDE OF DECLARANT'S CONTROL. FAILURE TO ADHERE TO SUCH REQUIREMENTS MAY NEGATIVELY IMPACT AN OWNER'S ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

18.9. Right to Transfer or Assign the Declarant's Rights

Any or all of the Declarant's special rights and obligations set forth in this Charter or the By-Laws may be transferred in whole or in part to other Persons. However, such a transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Charter or the By-Laws. No such transfer or

assignment shall be effective unless it is in a recorded instrument the Declarant signs. The foregoing sentence shall not preclude the Declarant from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to the Declarant in this Charter where the Declarant does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless necessary to evidence the Declarant's consent to such exercise.

18.10. Termination of Rights

The rights contained in this chapter shall not terminate until the earlier of (a) termination of the Development and Sale Period; or (b) the Declarant's recording of a written statement that all sales activity within Kukui'ula has ceased.

18.11. Additional Covenants and Restrictions

During the Development and Sale Period, no one other than the Declarant may record any additional covenants or restrictions affecting any portion of Kukui'ula without the Declarant's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

18.12. Exclusion of Declarant's Other Properties

By accepting a deed to a Unit, each Owner specifically acknowledges that nothing contained in this Charter shall in any way, either expressly or by implication, restrict, limit, or otherwise affect the use or disposition by Declarant or any Declarant Affiliate of any property either of them owns, whether contained within or contiguous to Kukui'ula. Declarant and any Declarant Affiliate shall have full, free, and unrestricted use of its other lands, notwithstanding any incompatibility of such use with restrictions this Charter imposes upon the Units. By accepting a deed to a Unit, each Owner, specifically and expressly disclaims any reciprocal negative easement in any property Declarant or any Declarant Affiliate owns.

Chapter 19

Dispute Resolution and Limitation on Litigation

From time to time, disputes may arise between Owners, or between an Owner and the Association, the Declarant, or others involved in Kukui`ula. This chapter commits the parties involved in any such dispute to work together in an attempt to resolve the dispute without litigation, in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Association's membership before the Association can engage in certain types of litigation that could result in significant legal and related costs, time, and effort to Kukui`ula.

19.1. Agreement to Encourage Resolution of Disputes Without Litigation

(a) The Declarant, the Association, and their officers, governors, and committee members, all Persons subject to this Charter, and any Person not otherwise subject to this Charter who agrees to submit to this chapter (collectively, “**Bound Parties**”), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving Kukui`ula without the related time, efforts, and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in Section 19.1(b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 19.2 in a good faith effort to resolve such Claim.

(b) As used in this chapter, the term “**Claim**” shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of Improvements within Kukui`ula, other than matters of aesthetic judgment under Chapter 5, which shall not be subject to review and shall not be subject to this chapter.

(c) The following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 19.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Charter (relating to creation and maintenance of community standards);

(iii) any suit that does not include the Declarant, The Club, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iv) any dispute which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 19.2; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 19.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this chapter.

Dispute Resolution and Limitation on Litigation

19.2. Dispute Resolution Procedures

(a) **Notice.** The Bound Party asserting a Claim (“**Claimant**”) against another Bound Party (“**Respondent**”) shall give written notice (“**Notice**”) by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

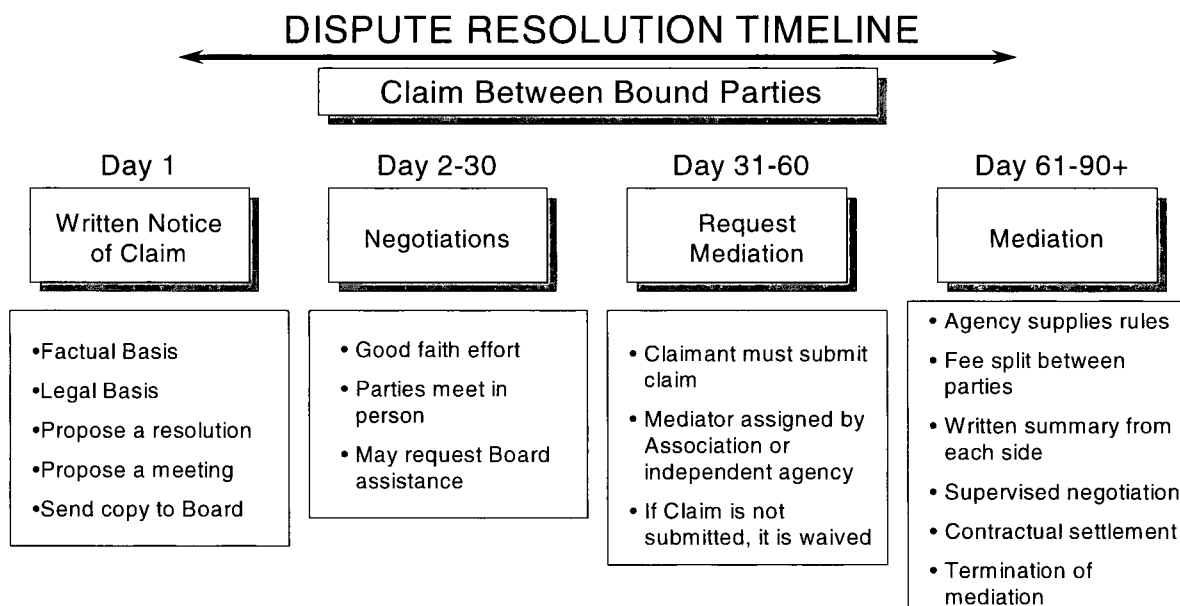
(b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolu-

tion of the Claim.

(c) **Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Kaua'i area. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant



Dispute Resolution and Limitation on Litigation

shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall pay an equal share of the mediator's fees.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, including any confidentiality requirement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

19.3. Initiation of Litigation by Association

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Owners representing 75% of the total votes in the Association other than the Declarant, except that no such approval shall be required for actions or proceedings:

(a) initiated during the Declarant Control Period;

(b) initiated to enforce the provisions of this Charter, including collection of assessments and foreclosure of liens;

(c) initiated to challenge *ad valorem* taxation or condemnation proceedings;

(d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies to the Association; or

(e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

Chapter 20

Changes in the Association Amenities

Various influences and circumstances within and outside Kukui`ula may give rise to a need or desire to make changes in the ownership of or rights to use Association Amenities. This chapter explains the procedures for dealing with matters such as changing use rights in Association Amenities or Limited Association Amenities, partition of the Association Amenities, and condemnation.

20.1. Assignment and Reassignment of Limited Association Amenities

The Board may designate a portion of the Association Amenities as Limited Association Amenities, and may reassign Limited Association Amenities, upon approval of the Board and the vote of Owners representing a majority of the total votes in the Association, including a majority of the votes attributable to Units to which the Limited Association Amenities is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassignment shall also require the Declarant's written consent.

Upon approval of a majority of Owners of Units to which any Limited Association Amenities is assigned, the Association may permit Owners of other Units to use all or a portion of such Limited Association Amenities upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Limited Association Amenities.

20.2. Condemnation

If any part of the Association Amenities shall be taken by any authority having the power of condemnation or eminent domain, or conveyed, in lieu of and under threat of condemnation, by the Board acting on the written direction of Owners representing at least 67% of the total

votes in the Association and of the Declarant, during the Development and Sale Period, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. If any part of any Limited Association Amenities shall be taken by any authority having the power of condemnation or eminent domain, or conveyed, in lieu of and under threat of condemnation by the Board acting on the written direction of Owners representing at least 67% of the votes of Owners subject to assessments therefore, and of the Declarant, during the Development and Sale Period, such Owners shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Association Amenities on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Association Amenities to the extent available, unless within 60 days after such taking the Declarant, during the Development and Sale Period, and Owners representing at least 75% of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 9.4 regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Association Amenities, 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

Changes in the Association Amenities

used for such purposes as the Board shall determine.

20.3. Partition

Except for any action initiated by the Declarant, the Association Amenities shall remain undivided, and no Person shall bring any action to partition any portion of the Association Amenities without the written consent of all Owners and Mortgagees.

20.4. Transfer or Dedication of Association Amenities

The Association may dedicate portions of the Association Amenities to the County of Kaua'i, Hawai'i, or to any other local, state, or federal governmental or quasi-governmental entity.

Chapter 21

Termination and Amendment of the Charter

As Kukui`ula matures and grows, the rules by which it is governed must be flexible enough to adapt to changes in the development plan, as well as changes in the needs and desires of Kukui`ula that inevitably will occur. This chapter sets out procedures by which either the Declarant or the Owners as a group may amend this Charter to address such changes.

21.1. Term and Termination

This Charter shall be effective for a minimum of 90 years from the date it is recorded. After 90 years, this Charter shall be extended automatically for successive 10-year periods unless at least 75% of the then Owners sign a document stating that the Charter is terminated and that document is recorded within the year before any extension. In such case, this Charter shall terminate on the date specified in the termination document.

If any provision of this Charter would be unlawful, void, or voidable by reason of any rule restricting the period of time that covenants can affect title to property, that provision shall expire 90 years after the date the Charter is recorded.

This section shall not permit termination of any easement created in this Charter without the consent of the holder of such easement.

21.2. Amendment

(a) By the Declarant. In addition to specific amendment rights granted elsewhere in this Charter, until termination of the Declarant Control Period, the Declarant may unilaterally amend this Charter for any purpose.

Thereafter, until termination of the Development and Sale Period, the Declarant may unilaterally amend this Charter for any other purpose, provided the amendment has no material

adverse effect upon the rights of more than 2% of the Owners.

Thereafter, the Declarant may unilaterally amend this Charter if such amendment is necessary: (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any 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 make, purchase, insure, or guarantee mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state, or federal governmental agency. However, any amendment under this paragraph shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

(b) By Owners. Except as otherwise specifically provided above and elsewhere in this Charter, this Charter may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing 75% of the total votes in the Association, including 75% of the total votes held by Owners other than the Declarant and, in the case of any amendment to Exhibits "D," "E," or "F," at least 51% of the total votes held by Owners of Units described in such Exhibit. In addition, during the Development and Sale Period, any such amendment shall also require the Declarant's written consent.

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.

Termination and Amendment of the Charter

(c) *Validity and Effective Date.* No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Declarant Member without the written consent of the Declarant or the Declarant Member, respectively (or the assignee of such right or privilege). In addition, the approval requirements set forth in Chapter 16 shall be met, if applicable.

If an Owner consents to any amendment to this Charter or the By-Laws, it will be conclusively presumed that such Owner has the authority 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.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment. 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 Charter.

(d) *Exhibits and Supplements.* Exhibits "A," "B," "D," "E," and "F" are incorporated by this reference, and amendment of such exhibits shall be governed by this chapter. Exhibit "C" is incorporated by this reference and may be amended under Chapter 7 or pursuant to Sections 21.1 and 21.2. Exhibit "G" is attached for informational purposes only and may be amended only as provided in that exhibit; the provisions of Section 21.2(a) and (b) shall not apply to amendments to Exhibit "G." Any Supplement to this Charter may be amended in the same manner as the Charter or in any manner specified in such Supplement; provided, if the Supplement sets forth specific requirements or limitations on amendments, any amendment to the Supplement shall comply with such requirements and limitations

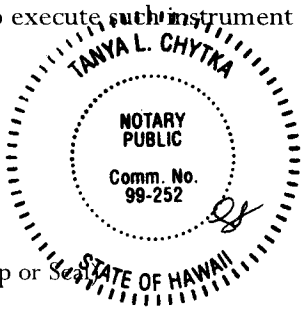
THIS SECOND AMENDED AND RESTATED COMMUNITY CHARTER FOR KUKUI'ULA is made by Kukui'ula Development Company (Hawaii), LLC, a Hawai'i limited liability company, as the Declarant, and in witness thereof, it has executed this Charter this 5th day of AUGUST, 2015.

DECLARANT: Kukui'ula Development Company (Hawaii), LLC, a Hawai'i limited liability company

By: [Signature]
Name: RICHARD L. ALBRECHT
Its: PRESIDENT

STATE OF HAWAII)
) ss.
COUNTY OF KAUA'I)

On this 3rd day of August, 2015, before me appeared RICHARD L. ALBRECHT, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person and in the capacity shown, having been duly authorized to execute such instrument in such capacity.



[Signature]
Name TANYA L. CHYTKA
Notary Public, State of Hawai'i
My commission expires: May 23, 2019

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description: Second Amended and Restated Community Charter for Kukui'ula	
Doc. Date: <u>undated</u>	
No. of Pages: <u>95</u>	Jurisdiction: Fifth Circuit (in which notarial act is performed)
<u>[Signature]</u>	<u>8/3/15</u>
Signature of Notary	Date of Notarization and Certification Statement
<u>TANYA L. CHYTKA</u>	
Printed Name of Notary	(Official Stamp or Seal)

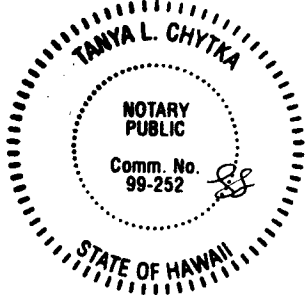


EXHIBIT “A”

Initial Property

Exhibit “A-1”

Parcel “M1/M4”: Residential Lots 1 through 3, 6 through 35, Roadway Lots 36 through 38, and Remnant Lots 39 and 42, all as described in that certain document titled, “Kukui‘ula Residential Subdivision, Phase IIA, Lots 1 through 42 and Easements S-1 through S-3 and D-1,” recorded in the Bureau of Conveyances of the State of Hawaii (the “**Bureau**”) on August 2, 2006, as Document No. 2006-140563, and containing the certification of Erik S. Kaneshiro, Licensed Professional Land Surveyor, Certificate No. 9826.

Note: Exhibit “A-1” of this Charter originally described Lot 2, excluding Lots 40 and 41.

Lot 2 was originally subdivided into 42 lots: 35 residential lots, 3 interior roadway lots, 2 open space lots comprising the Neighborhood known as Parcel “M1/M4” and 2 large lots. The 2 large lots (referred to as Lots 40 and 41) were subsequently subdivided and are part of the Neighborhood known as Parcel “M2/M3” and submitted to this Charter by the original Parcel M2/M3 Supplement. Residential Lots 4 and 5 of Parcel “M1/M4” were consolidated and resubdivided and are now a part of Parcel “M2/M3” pursuant to an amendment and restatement of the Parcel M2/M3 Supplement. Accordingly, as of the date of this Second Amended and Restated Community Charter for Kukui‘ula, Parcel “M1/M4” is now comprised of 38 lots, being 33 residential lots, 3 interior roadway lots, and 2 open space lots.

Exhibit “A-2”

Parcel “Y”: Residential Lots 1 through 88, Open Space Lots 89 through 91, and Roadway Lots 92 through 95, described in that certain document titled, “Kukui‘ula Residential Subdivision, Phase I, Lots 1 through 95, Easements AU-1 through AU-4, D-1 through D-3, S-1 through S-3, E-1 through E-14, SD-1 through SD-4, ED-1, L-1, L-2 and PT-1 through PT-3,” recorded in the Bureau on October 4, 2006, as Document No. 2006-181721, and containing the certification of Erik S. Kaneshiro, Licensed Professional Land Surveyor, Certificate No. 9826. Residential Lots 56 and 57 were subsequently consolidated into Lot A.

Exhibit “A-3”

Roadway Lots:

Lot 15 (containing 4.138 acres, more or less) and Lot 16 (containing 5.262 acres, more or less) (Lots 15 and 16 together known as Ala Kukui‘ula Street) and Lot 17 (containing 2.283 acres, more or less and known as Ala Pualeikukui Street), all as described in that certain document titled, “Revised Kukui‘ula Large Lot Subdivision, III, Lots 1 through 19 and Easements 1 through 12,” recorded in the Bureau as Document No. 2006-140562 on August 2, 2006, and containing the certification of Erik S. Kaneshiro, Licensed Professional Land Surveyor, Certificate No. 9826.

EXHIBIT "B"

Expansion Property

Note to clerk and title examiners:

This Charter is not intended to create an encumbrance on title to the property described in this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplement in accordance with Chapter 17.

Land which may be made subject to the Charter includes any and all of the following:

- A. Any and all land at any time described in Exhibit "A" or otherwise subject to the coverage of the Charter, but which has since been withdrawn from the Charter.
- B. Any and all land on the Island of Kauai within one (1) mile of any land from time to time subject to the coverage of the Charter.
- C. Any and all of Lot 1, Lot 3, Lot 11, Lot 13, Lot 14, Lot 40 or Lot 41 described in Exhibits "B-1" through "B-7," respectively, below, and made a part hereof.

Exhibit "B-1"

Lot 1 (containing 139.867 acres, more or less) described in that certain document titled, "Revised Kukui'ula Large Lot Subdivision, III, Lots 1 through 19 and Easements 1 through 12," recorded in the Bureau of Conveyances of the State of Hawaii (the "**Bureau**") on August 2, 2006, as Document No. 2006-140562, and containing the certification of Erik S. Kaneshiro, Licensed Professional Land Surveyor, Certificate No. 9826 (the "**Large Lot Subdivision III Map**").

Exhibit "B-2"

Lot 3 (containing 93.868 acres, more or less) described in the Large Lot Subdivision III Map.

Exhibit "B-3"

Lot 11 (containing 93.258 acres, more or less) described in the Large Lot Subdivision III Map.

Exhibit "B-4"

Lot 13 (containing 186.418 acres, more or less) described in the Large Lot Subdivision III Map.

Exhibit "B-5"

Lot 14 (containing 273.295 acres, more or less) described in the Large Lot Subdivision III Map.

Exhibit "B-6"

Lot 40 (containing 1,159,732 square feet, more or less) described in that certain document titled, "Kukui'ula Residential Subdivision, Phase IIA, Lots 1 through 42 and Easements S-1 through S-3 and D-1," recorded in the Bureau on August 2, 2006, as Document No. 2006-140563, and containing the certification of Erik S. Kaneshiro, Licensed Professional Land Surveyor, Certificate No. 9826 (the "**Large Lot Subdivision IIA Map**").

Exhibit "B-7"

Lot 41 (containing 723,396 square feet, more or less) described in the Large Lot Subdivision IIA Map.

EXHIBIT "C"

Initial Standards

The following shall apply to all of Kukui`ula until such time as they are amended, modified, repealed or limited by rules of the Association pursuant to this Charter.

1. **Restricted Activities.** Unless expressly authorized by, and then subject to such conditions as may be imposed by the Board, the following activities are prohibited within Kukui`ula:

(a) Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages, or parking of any vehicles in a manner that results in use or access to any sidewalk being impaired; provided, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit, the Club Amenities, or the Association Amenities, and such vehicles, equipment, and other items may be parked in a driveway for a period not to exceed 24 hours as reasonably necessary to allow it to be washed and cleaned. Residents, guests, tenants and invitees shall also have the right to incidental on-street parking of their vehicles on the roadways located within Kukui`ula at reasonable times to the extent the Unit temporarily has insufficient parking to accommodate such additional vehicles and such parking is not in violation of any applicable local, state, or federal laws, ordinances (including emergency access easements) or zoning stipulations. "Storage" of vehicles on the street or driveway (*i.e.*, leaving a vehicle unmoved for a period exceeding 24 hours) is prohibited. The Board has the authority to implement reasonable additional rules governing parking on the private streets within the Community.

(b) Any activity that emits foul or obnoxious odors outside the Unit or creates noise or other conditions that tend to disturb the peace or threaten the safety of the occupants of other Units;

(c) Any activity that violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(d) Pursuit of hobbies or other activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

(e) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Association Amenities or to the occupants of other Units;

(f) Outside burning of trash, leaves, debris, or other materials;

(g) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(h) Use and discharge of firecrackers and other fireworks;

(i) Accumulation of rubbish, trash, or garbage except between regular garbage pick-ups, and then only in approved containers;

(j) Discharge of firearms, including “B-B” guns, and other firearms of all types and sizes,; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(k) On-site storage of fuel, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment;

(l) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within Kukui`ula or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(m) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Chapter 5;

(n) Any installation on the outside portion of the Unit, whether such portion is improved or unimproved of satellite dishes and antennas, except that:

(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter; or

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, “**Permitted Antennas**”) shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. The Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Kukui`ula, should any master system or systems be utilized by the Association and require such exterior apparatus;

(o) Signs, posters, billboards, or balloons, flagging, and other advertising devices or displays, that are not owned or maintained by the Association, The Club, the Declarant, or any other applicable governmental agencies (including, but not limited to, signs advertising any real estate for sale, for rent, or for lease; open house signs, signs advertising garage sales, estate sales, or offering household items for sale; commercial signs; and political signs) , except that the following may be permitted upon approval in accordance with the procedures set forth in Chapter 5 of the Charter, subject to any applicable ordinances and subject to compliance with the Design Guidelines regulating the location, size, number, materials, and other criteria related thereto:

(i) Signs required by legal proceedings;

(ii) No more than one (1) nameplate or similar sign identifying the Owner of the Unit and no more than one (1) sign identifying the Unit as being protected by a security system and identifying the security monitoring service, if any;

(iii) Signs on Units which have not yet been occupied identifying the Sub-Developer, Architect, and other contractors associated with the construction of the dwelling on such Unit, and signs depicting new custom homes under construction on any Unit;

(iv) Entry monuments and community identification signage maintained by a Neighborhood Association on its common property;

(v) Such other signs as may be specifically authorized by and in compliance with the Design Guidelines or otherwise approved pursuant to Chapter 5 of the Charter;

(p) Use of electric or motorized vehicles on trails and paths not designated for such use, including hiking and/or biking trails and paths within Kukui`ula, use of an Owner's privately-owned golf carts (as opposed to The Club's golf carts) within the designated golf cart trails or paths, and the use of non-licensed golf carts outside of The Club's golf course;

(q) Erection of clotheslines or outdoor drying of clothes, linens, or similar household items on the exterior portions of a Unit in any location which is visible from any other Unit, or from any street, Association Amenity, or Club Amenity; provided, if there is no such outdoor location on a Unit which is improved with a single family residential structure or townhome, then a clothesline or similar device for outdoor clothes drying may be erected in the least visible outdoor location on the Unit other than the front yard or a side yard facing a street. No clothing, linens, and other items shall be placed on any clothesline before sunrise or allowed to remain on such clothesline after sundown;

(r) Placement of aluminum foil, reflective film, or similar treatment on windows or glass doors;

(s) Quarrying, or mining operation of any kind upon or in any Unit; tunnels, mineral excavations, and shafts on any Unit; and other structures designed for use in boring for oil or natural gas upon any Unit;

(t) Mail boxes, other than those general community boxes utilized by the U.S. Postal Service for delivery within Kukui`ula;

(u) Disposal of hazardous or toxic materials or chemicals, used motor oil, or items other than normal household refused within Kukui`ula;

(v) Lighting and/or decorations on a Unit which, in the Board sole and absolute discretion, constitutes a nuisance or an unreasonable source of annoyance to the occupants of other Units. Except for lights and decorations within the interior of a Unit that are not displayed in a window, lights and decorations that are erected or displayed on the exterior of a Unit to be visible from other Units in commemoration or celebration of publicly observed holidays may not be displayed more than six weeks in advance of that specific holiday and must be removed within 30 days after the holiday has ended.

(w) No Owner shall permit any thing or condition to exist upon any Unit or other area which shall induce, breed or harbor diseases or insects;

(x) Carport sales, garage sales, flea markets, and similar activities involving the outdoor display and sale of goods;

(y) Attempting to direct, supervise, or in any manner to assert any control over the employees of the Association;

(z) Vacating or leaving a Unit unoccupied for any extended period unless, prior to the departure of the Unit's occupants, unless:

(i) a responsible firm or individual is designated to care for the Unit and such firm or individual is capable of responding to any notice of any issue concerning the Unit within a 24-hour period; and

(ii) the Association is provided the name of said firm or individual; and

(aa) Construction of a guest house, unless in accordance with the Design Guidelines and procedures set forth in Chapter 5 of the Charter.

2. Prohibited Conditions. The following shall be prohibited at Kukui`ula:

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Kukui`ula (including those further restrictions set forth in Section 7.2 of the Charter);

(b) Structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair

(c) Additional dwelling unit that includes full kitchen facilities (“ADUs”) that do not comply with the zoning ordinance's prohibition on ADU's or the further restrictions set forth in the Design Guidelines;

(d) Dog runs and animal pens of any kind, if such structures are visible from an adjacent Unit and not approved by the Design Review Committee;

(e) Temporary structures, including, without limiting the generality thereof, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, and any prefabricated or relocated structure used as a residence, either temporarily or permanently. This restriction shall not be interpreted to limit the right of the Declarant or any Sub-Developer to use trailers or outbuildings as sales offices, selection center offices, construction offices, or material storage facilities; and

(f) Air-conditioning apparatus on the ground in front of a dwelling and any air-conditioning apparatus or evaporative cooler attached to any front wall or any window of a dwelling.

EXHIBIT “D”

Units Designated as Transient Vacation Rentals

Parcel “Y”: Units (residential lots) described in that certain document titled, “Kukui‘ula Residential Subdivision, Phase I, Lots 1 through 95, Easements AU-1 through AU-4, D-1, through D-3, S-1 through S-3, E-1 through E-14, SD-1 through SD-4, ED-1, L-1, L-2 and PT-1 through PT-3,” recorded in the Bureau on October 4, 2006, as Document No. 2006-181721, and containing the certification of Erik S. Kaneshiro, Licensed Professional Land Surveyor, Certificate No. 9826. Units (residential lots) 56 and 57 were subsequently consolidated into Unit (residential lot) A.

Such additional Units as have been or may be designated from time to time by amendment or Supplement to this Charter.

EXHIBIT "E"

Parcel "Y" Supplement to the Charter

Declarant desires to submit Parcel "Y" to additional covenants and restrictions. In addition, Declarant desires to designate Parcel "Y" (created as of the recordation date of this Charter) as a Neighborhood under this Charter.

Article I Neighborhood Designation

Pursuant to the Charter, the property described as Units (residential lots) 1 through 88, open space Lots 89 through 91 ("**Open Space Lots**"), and interior roadway Lots 92 through 95 (the "**Roadway Lots**"), described in that certain document titled, "Kukui'ula Residential Subdivision, Phase I, Lots 1 through 95, Easements AU-1 through AU-4, D-1, through D-3, S-1 through S-3, E-1 through E-14, SD-1 through SD-4, ED-1, L-1, L-2 and PT-1 through PT-3," recorded in the Bureau on October 4, 2006, as Document No. 2006-181721, and containing the certification of Erik S. Kaneshiro, Licensed Professional Land Surveyor, Certificate No. 9826 were and are designated as being the Neighborhood known as Parcel "Y." Units (residential lots) 56 and 57 were subsequently consolidated into Unit (residential lot) A. Owners of Units (residential lots) within Parcel "Y" shall be members of the Association as provided in Section 4.1 of the Charter and members of The Club, as provided in Section 4.2 of the Covenant. The Parcel "Y" Neighborhood boundaries may be adjusted and/or amended to include other property assigned to and made a part of the Parcel "Y" Neighborhood by Declarant in the future.

Article II Additional Covenants

2.1. **Zoning; Temporary Vacation Rentals.** Parcel "Y" is zoned R-4 (Residential) under the zoning regulations for the County of Kaua'i and is designated as Urban by the State of Hawai'i Land Use Commission. The Units in Parcel "Y" may be used only for single-family houses and accessory purposes, which include transient and permanent residential dwellings. The foregoing notwithstanding, the property described in the Master Plan (the "**Master Community**") is zoned as one large Visitor Destination Area ("**VDA**") and Units in the Master Community can be designated as Transient Vacation Rentals ("**TVRs**"), which allows transient rental of a Unit. The all of the Units in Parcel "Y" are designated for TVR use as provided in Section 7.1(g) of the Charter. Owners may (but need not necessarily) rent Units for a minimum of seven consecutive days, subject to the rental provisions set forth in Chapter 7 of the Charter and any Supplement designating additional TVRs. Parcel "Y" also includes the Roadway Lots and the Open Space Lots.

2.2 **Disclosures.** ALL OWNERS AND PROSPECTIVE PURCHASERS OF UNITS IN PARCEL "Y" ARE ENCOURAGED TO INDEPENDENTLY INVESTIGATE THE FOLLOWING MATTERS AND ARE HEREBY DEEMED TO HAVE CONSTRUCTIVE NOTICE THEREOF:

(a) **View Impairment.** Declarant hereby gives notice that Sections 14.3 and 15.4 of the Charter provide that neither the Declarant, the Association, nor The Club guarantee or represent that any view over and across the Units (or improvements thereon), any open space within the Master Community, the Golf Course, or any other of the Club Amenities will be preserved without impairment. Neither Declarant, affiliates of Declarant, the Association, nor The Club shall have any obligation to relocate, prune, or thin trees or other landscaping, except to maintain the Community-Wide Standard or as otherwise re-

quired under a separate covenant or agreement. The Association (with respect to the Association Amenities) and The Club (with respect to the Club Amenities) shall have the right to add or remove trees and other landscaping from time to time, subject to applicable laws. There shall be no express or implied easements for view purposes or for the passage of light and/or air. Notwithstanding the foregoing, the provisions of Section 5.9 of the Charter apply to certain Limited Improvement Areas.

(b) Utility Easements. The following easements, which are subject to change, may have the effect of limiting where the owner of an affected Unit may construct improvements on that Unit or how portions of the Unit may be used:

(1) Easements for sewer line purposes, affecting Units (residential lots) 5, 16, 33, 77, 79, 80, and Open Space Lots 89 to 91, Roadway Lots 92 through 95, inclusive.

(2) Easements for drainage purposes, affecting Units (residential lots) 16, 38, 56, 81, and Open Space Lots 90 and 91, Roadway Lots 92 through 95.

(3) Easements for utility purposes (including, but not limited to, water, electrical, and telecommunications), affecting Open Space Lots 90 and 91, Roadway Lots 92 through 95.

(4) Easements for electrical purposes affecting Units (residential lots) 2, 3, 18, 19, 20, 24, 27, 30, 37, 44, 49, 50, 52, 55, 56, 82, and 83.

(5) Easement for landscaping purposes affecting Units (residential lots) 35 and 53.

(6) Easements for path and trails affecting Unit (residential lot) 80 and Open Space Lot 91, and Roadway Lots 92 through 95, inclusive.

(7) Easements for community or individual mail box units, the identity and location of which shall be determined by the as-built location of each mail box located within Parcel "Y."

(c) Drainage/Flood Maps. Declarant hereby gives notice that no Owner shall be permitted to cause drainage or excess storm water runoff to flow from a Unit or any other portion of Parcel "Y" onto or over the Golf Course or onto other Units. The foregoing prohibition specifically includes, but is not limited to, the flow and drainage of swimming pool backwash water, which restriction shall be subject to enforcement as described in Section 13.10 of the Charter.

Based on the Flood Insurance Rate Map ("**FIRM**") prepared by the Federal Emergency Management Agency ("**FEMA**"), the southern portion of the Master Community near Lawai Road is designated Flood Zone "AE," which includes "Special flood hazard areas inundated by 100-year flood with base flood elevations determined" as shown on the available maps. The base flood elevations for the "AE" zone within the Master Community range from approximately 10 feet to 16 feet above mean sea level. None of the Units within Parcel "Y" (*i.e.*, those Units that are the subject of this Supplement to the Charter) are within the Flood Zone "AE" designation.

A portion of the Master Community just mauka (north) of the "AE" zone (including Units (residential lots) 10, 11, 15, 16, and Open Space Lot 90 of Parcel "Y") is designated Zone "X," which includes "Areas of 500-year flood; areas of 100-year flood with average depths of less than one foot or with drainage areas less than one square mile; and areas protected by levees from 100-year flood." The other Units in Parcel "Y" are not in a federally designated flood zone. Units (residential lots) 80 through 84 and 88 abut a drainageway/detention basin.

(d) SMA Permit. Units (residential lots) 6 through 29, inclusive, 47, and 48, Open Space Lots 89 through 91, and Roadway Lot 94 in Parcel "Y" (collectively, the "**SMA Lots**") are within the Special

Management Area. Use and development of the SMA Lots may be subject to some or all of the conditions set forth in Special Management Area Use Permit SMA (U)-2005-3, dated December 16, 2004 (the “SMA Permit”), issued by the County of Kaua’i Planning Department (the “Planning Department”), which conditions shall run with the title to the SMA Lots and may be reflected in a Supplement to the Charter. The conditions in the SMA Permit address, among other matters, external colors of improvements and landscaping. The proposed color scheme and the landscape plan for each Unit must be submitted to the County Planning Department for review and approval prior to applying for a building permit. The approved landscape plan must be implemented prior to certification of occupancy. To minimize adverse impacts on the “Federally Listed Threatened Species,” Newell’s Shearwater and other seabirds, external lighting may be regulated. Certain procedures must be followed if historic/cultural remains, such as archaeological artifacts, charcoal deposits, or human burials, are found. Best Management Practices (BMP’s) must be used in the construction of improvements on the SMA Lot and the County Grading Ordinance and State Department of Health NPDES requirements must be complied with during grading and construction activities. If the development is found to adversely impact the surrounding neighborhood or the scenic qualities of the area, as seen from public viewing locations, the County Planning Commission shall have the right to revise, modify, or add conditions of approval, or revoke the SMA Permit. Prior to construction on and use of an SMA Lot, additional government agency conditions and fees may be imposed, which conditions must be resolved with the respective agencies.

(e) Golf Course. Declarant hereby gives notice that Section 13.7 of the Charter provides that Declarant’s liability is limited with respect to certain risks of living near a golf course, and Owners are advised that portions of Parcel “Y” are adjacent to the Golf Course.

(f) Adjacent Street/Open Space Use. Declarant hereby gives notice that certain Units within Parcel “Y” will be adjacent to Neighborhood open space areas within Kukui’ula, which may cause such Units to be exposed to noise, light, dust, increased pedestrian and vehicular traffic, construction traffic and other matters associated with public use of a principal collector street. Adjacent lands near Parcel “Y” are expected to be developed for commercial uses, residential uses and Association uses, including golf maintenance facilities, all of which may create nuisances or disturbances associated with such facilities.

(g) Construction Activities. Owners are advised that for many years there will be ongoing construction, development and sales activities by the Declarant, Sub-Developers and other purchasers in Parcel “Y” and throughout the Master Community, both before and after Owners have occupied their Units. During construction and development there will be adverse effects on air quality and excessive noise throughout the community at times including early morning hours. Effects may include dust, lighting, odors, traffic hazards and other annoyances.

Several temporary construction yards will be located within the Master Community from time to time during active development periods. The construction yards will include trailers and storage of construction equipment. A rock crushing operation may be located near or adjacent to the Golf Course. Temporary materials storage yards may be located within Parcel “Y” during residential home building operations.

Article III Landscape Services for Private Landscape Maintenance Areas

3.1 Services for Private Landscape Maintenance Areas. Each Owner of a Unit within Parcel “Y,” by accepting title to such Unit, is deemed to acknowledge and agree that it is mutually beneficial and highly desirable to have the landscaped areas located outside of the walls or fences on Units (whether in the front,

side or rear of such Units) (“**Private Landscape Maintenance Areas**”) maintained in a professional manner that will present a consistent, uniform and well-maintained appearance among all such Private Landscape Maintenance Areas and the Areas of Common Responsibility, if any, within Parcel “Y.” This can best be achieved if the landscaping within all of the Private Landscape Maintenance Areas and Areas of Common Responsibility within Parcel “Y” is maintained on the same schedule by a single experienced landscape company. In furtherance thereof, Owner, on behalf of itself, its heirs, personal representatives, successors and assigns, and all future owners of its Unit, by accepting title to a Unit, covenants that it will participate with all other owners of Units in Parcel “Y” in a cooperative effort intended to ensure such consistent appearance and standard as hereinafter provided.

The Association intends to engage a company from time to time to provide landscape maintenance services (the “**Maintenance Company**”) with respect to the Areas of Common Responsibility, if any, within Parcel “Y,” and, as contemplated by Section 10.1 of the Charter, may facilitate arrangements for the same Maintenance Company to contract separately with each Owner of a Unit in Parcel “Y” to provide landscape maintenance services for the Private Landscape Maintenance Area(s), if any, within its Unit. Upon the Association's designation of a Maintenance Company for Parcel “Y,” the Association shall provide each Owner of a Unit within Parcel “Y” with the Maintenance Company's contact information and each such Owner shall promptly contract with such Maintenance Company for the performance of all landscape maintenance services for the Private Landscape Maintenance Area of such Owner's Unit, at the Owner's sole cost and expense. Once the Association elects to designate the Maintenance Company for Parcel “Y,” an Owner shall not have the right to have any person or entity other than the designated Maintenance Company perform any landscape maintenance with respect to the Private Landscape Maintenance Area of its Unit unless the Association agrees otherwise in writing. The Owner shall remain solely responsible for maintenance of any landscaping on its Unit which is not part of the Private Landscape Maintenance Areas, unless the Owner arranges for such maintenance to be performed by the Maintenance Company.

The Maintenance Company shall bill each Owner directly for the maintenance rendered to its Unit, and each Owner shall be solely responsible for payment of such invoices. If an Owner fails to pay the Maintenance Company in accordance with the terms of its contract with the Maintenance Company, the Association may, but shall have no obligation to, make payment to the Maintenance Company on the Owner's behalf and levy a Specific Assessment against the Owner's Unit to recover the costs incurred.

Alternatively, the Association may assume responsibility for maintaining landscaping on Units within Parcel “Y” pursuant to Section 6.2 of the Charter. However, unless and except to the extent that the Association assumes such responsibility, each Owner shall be solely responsible for maintaining all landscaping on its Unit in accordance with the Community-Wide Standard at its sole cost and expense. Such responsibility shall be met, as to the Private Landscape Maintenance Area on the Unit, by contracting with the Maintenance Company designated by the Association, if any, as provided above.

Any Maintenance Company designated by the Association to perform landscape maintenance within Parcel “Y” shall have the unimpeded right to enter upon those portions of each Unit outside of the dwelling to perform such maintenance. Such maintenance shall be performed to a level which equals or exceeds the Community-Wide Standard and is uniform among Units in Parcel “Y.” Each Owner shall continually provide sufficient water to all irrigation systems on its Unit to ensure that all plants and other live landscape materials remain healthy.

3.2 Ownership of Landscaping Improvements. All of the landscaping and irrigation improvements on a Unit shall be the property of the Owner of such Unit, and the Owner shall be responsible for

any and all costs of repair and replacement thereof, regardless of the cause, including without limitation, due to any fault of the Maintenance Company. Each Owner shall cause all landscaping irrigation improvements (such as, for example, drip irrigation lines, sprinkler systems and timers) to be properly maintained and in good working order at all times so as to adequately water all landscaping installed from time to time on its Unit. Each Owner shall allow the designated Maintenance Company for Parcel "Y," if any, to have access to all landscaping equipment on its Unit at all times so that the same may be inspected, serviced and/or adjusted as appropriate from time to time in connection with the maintenance to be provided by the Maintenance Company.

3.3 No Responsibility of Association. Nothing herein shall be construed to impose any responsibility or liability whatsoever on the Association for maintenance of any Private Landscape Maintenance Area or any costs in connection therewith. By accepting title to its Unit, each Owner is deemed to acknowledge and agree that the Association shall have no responsibility for the acts or omissions of any Maintenance Company (or its employees or agents) and is merely serving to facilitate arrangements for the Maintenance Company to provide landscape maintenance to the Private Landscape Maintenance Areas on Units in Parcel "Y." Further, each Owner shall be solely responsible for handling directly with the Maintenance Company all relations and dealings (such as, for example, requests for additional services, complaints, etc.) between the Owner and the Maintenance Company, and shall not attempt to contact or involve the Association with respect thereto.

3.4 Neighborhood Committee. The Owners of Units within Parcel "Y" may elect a Neighborhood Committee pursuant to Section 3.2 of the Charter for purposes of providing input and suggestions to the Association as to the type, quality and frequency of the landscape maintenance services to be provided by the Association or the Maintenance Company within Parcel "Y," including, without limitation, the level of services to be provided, or whether to discontinue or reduce any services being provided. However, the Association shall retain the sole right to make all decisions regarding such services regardless of any input provided by any Neighborhood Committee to ensure that landscape maintenance within the Private Landscape Maintenance Areas and Areas of Common Responsibility is performed consistently among Units within Parcel "Y" and to a level consistent with the Community-Wide Standard.

EXHIBIT "F"

Parcel "M1/M4" Supplement to the Charter

Declarant desires to submit Parcel "M1/M4" to additional covenants and restrictions. In addition, Declarant desires to designate Parcel "M1/M4" (created as of the recordation date of this Charter) as a Neighborhood under this Charter.

Article I

Neighborhood Designation

Pursuant to the Charter, Units (residential lots) 1 through 3, 6 through 35, interior roadway Lots 36 through 38 (the "**Roadway Lots**"), and open space Lots 39 and 42 (the "**Open Space Lots**"), all as described in that certain document title, "Kukui'ula Residential Subdivision, Phase IIA, Lots 1 through 42 and Easements S-1 through S-3 and D-1," recorded in the Bureau on August 2, 2006, as Document No. 2006-140563, and containing the certification of Erik S. Kaneshiro, Licensed Professional Land Surveyor, Certificate No. 9826, are and were designated as being the Neighborhood known as Parcel "M1/M4." Owners of Units within Parcel "M1/M4" shall be members of the Association as provided in Section 4.1 of the Charter and members of The Club, as provided in Section 4.2 of the Covenant. The Parcel "M1/M4" Neighborhood boundaries may be adjusted and/or amended to include other property assigned to and made a part of the Parcel "M1/M4" Neighborhood by Declarant in the future.

Article II

Additional Covenants

2.1. Zoning: Temporary Vacation Rentals. The property in Parcel "M1/M4" is zoned R-4 (Residential) under the zoning regulations for the County of Kaua'i and is designated as Urban by the State of Hawai'i Land Use Commission. The Units in Parcel "M1/M4" may be used only for single-family houses and accessory purposes, which include transient and permanent residential dwellings. The foregoing notwithstanding, the property described in the Master Plan (the "Master Community") is zoned as one large Visitor Destination Area ("**VDA**") and Unit in the Master Community can be designated as Transient Vacation Rentals ("**TVRs**"), which allows transient rental of a Home. However, the 33 Units in Parcel "M1/M4" have **not** been designated for TVR. Therefore, Owners may **not** rent such Units as TVRs and will be subject to the leasing provisions set forth in Chapter 7 of the Charter. Parcel "M1/M4" also includes the Roadway Lots and the Open Space Lots.

2.2 Disclosures. **ALL OWNERS AND PROSPECTIVE PURCHASERS OF UNITS IN PARCEL "M1/M4" ARE ENCOURAGED TO INDEPENDENTLY INVESTIGATE THE FOLLOWING MATTERS AND ARE HEREBY DEEMED TO HAVE CONSTRUCTIVE NOTICE THEREOF:**

(a) View Impairment. Declarant hereby gives notice that Sections 14.3 and 15.4 of the Charter provide that none of the Declarant, the Association, or The Club guarantee or represent that any view over and across the Units (or improvements thereon), any open space within the Master Community, the Golf Course, or any other of the Club Amenities will be preserved without impairment. Neither Declarant, Declarant's affiliates, the Association, nor The Club shall have any obligation to relocate, prune, or thin trees or other landscaping, except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Association (with respect to the Association Amenities) and The Club (with respect to the Club Amenities) shall have the right to add or remove trees and other landscaping from time to time, subject to applicable laws. There shall be no express or implied easements for

view purposes or for the passage of light and/or air. Notwithstanding the foregoing, the provisions of Section 5.9 of the Charter apply to certain Limited Improvement Areas.

(b) Utility Easements. The following easements, which are subject to change, may have the effect of limiting where the owner of an affected Unit may construct improvements on that Unit or how portions of the Unit may be used:

- (1) Easements for sewer line purposes, affecting the Unit (residential lot) 6, and Roadway Lots 36, 37, and 38.
- (2) Easements for drainage purposes, affecting Roadway Lots 36, 37, and 38.
- (3) Easements for utility purposes (including, but not limited to, water, electrical, and telecommunications), affecting Roadway Lots 36, 37, and 38.
- (4) Easements for community or individual mail box units, the identity and location of which shall be determined by the as-built location of each mail box located within Parcel "M1/M4."

(c) Drainage/Flood Maps. Declarant hereby gives notice that no Owner shall be permitted to cause drainage or excess storm water runoff to flow from a Unit or any other portion of Parcel "M1/M4" onto or over the Golf Course or onto other Units. The foregoing prohibition specifically includes, but is not limited to, the flow and drainage of swimming pool backwash water, which restriction shall be subject to enforcement as described in Section 13.10 of the Charter.

Based on the Flood Insurance Rate Map ("**FIRM**") prepared by the Federal Emergency Management Agency ("**FEMA**"), the southern portion of the Master Community near Lawai Road is designated Flood Zone "AE," which includes "Special flood hazard areas inundated by 100-year flood with base flood elevations determined" as shown on the available maps. The base flood elevations for the "AE" zone within the Master Community range from approximately 10 feet above mean sea level to 16 feet above mean sea level. None of the Units within Parcel "M1/M4" (*i.e.*, those Units that are the subject of this Supplement to the Charter) are within the Flood Zone "AE" designation.

Parcel "M1/M4" is designated Zone "X," which is defined to include "Areas of 500-year flood; areas of 100-year flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 100-year flood." No Units in Parcel "M1/M4" are in a high risk flood zone with a flood insurance mandate as determined by FEMA. FEMA has defined the level of flood risk (*i.e.*, the severity and type) in Zone "X" geographic areas as a moderate to low risk of flood, as depicted on the FIRM.

In connection with the development of Parcel "M1/M4," changes in natural drainage may reduce the risk of flooding. To the Declarant's knowledge, flood insurance is not required by FEMA for a Zone "X" designation, which means that FEMA would not require flood insurance for any of the Units in Parcel "M1/M4." However, Owners in Parcel "M1/M4" may be required by public or private lending institutions or other parties to have flood insurance policies. Such Lot owners should check with their lenders to determine what its flood insurance requirements are. They should also check with various insurance carriers to determine what the cost of such insurance may be.

(d) SMA Permit. The "Special Management Area" (or "SMA") refers to certain coastal land in Hawai'i that extends inland from the shoreline, as designated by the State of Hawai'i on maps filed with the

appropriate governmental authorities. The primary purpose of such designation is to preserve, protect and, where possible, restore the natural resources within the SMA and to allow the counties to regulate development in the SMA in a manner that does not create substantial adverse environmental or ecological effects. No Lots within Parcel "M1/M4" are within the Special Management Area, but lots in other areas of the Master Community are in the SMA. Use and development of such lots may be subject to some or all of the various conditions set forth in Special Management Area Use Permit SMA (U)-2005-3, dated December 16, 2004, issued by the County of Kaua'i Planning Department.

(e) Golf Course. Declarant hereby gives notice that Section 13.7 of the Charter provides that Declarant's liability is limited with respect to certain risks of living near a golf course, and Owners are advised that Parcel "M1/M4" is planned to include a portion of the golf course to be constructed within or adjacent to Kukui'ula.

(f) Adjacent Street/Open Space Use. Declarant hereby gives notice that certain Units within Parcel "M1/M4" will be adjacent to Neighborhood open space areas and streets within Kukui'ula, which may cause such Units to be exposed to noise, light, dust, increased pedestrian and vehicular traffic, construction traffic and other matters associated with public use of a principal collector street. Adjacent lands near Parcel "M1/M4" are expected to be developed for commercial uses, residential uses, Association uses, including golf maintenance facilities, all of which may create nuisances or disturbances associated with such facilities.

(f) Construction Activities. Owners are advised that for many years there will be ongoing construction, development and sales activities by the Declarant, Sub-Developers and other purchasers in Parcel "M1/M4" and throughout the Master Community, both before and after Owners have occupied their Units. During construction and development there will be adverse effects on air quality and excessive noise throughout the community at times including early morning hours. Effects may include dust, lighting, odors, traffic hazards and other annoyances.

Several temporary construction yards will be located within the Master Community from time to time during active development periods. The construction yards will include trailers and storage of construction equipment. A rock crushing operation may be located upon or adjacent to golf course property. Temporary materials storage yards will be located within Parcel Y during residential home building operations.

During the active construction period of the Community, there will be an office compound of office and construction trailers located in Parcel N-2 and in a portion of Parcel N-3 with anticipated daily work activity. There may be additional noise, vehicular and pedestrian traffic, lights and signage to Units within Parcel M1/M4, which are typically associated with such facilities. The existing wastewater facility may not be removed until Parcels N-2 and N-3 are to be developed. These may be the last parcels in Kukui'ula to be developed.

Article III

Landscape Services for Private Landscape Maintenance Areas

3.1 Services for Private Landscape Maintenance Areas. Each Owner of a Unit within Parcel "M1/M4," by accepting title to such Unit, is deemed to acknowledge and agree that it is mutually beneficial

and highly desirable to have the landscaped areas located outside of the walls or fences on Units in Parcel "M1/M4" (whether in the front, side or rear of such Units) ("**Private Landscape Maintenance Areas**") maintained in a professional manner that will present a consistent, uniform and well-maintained appearance among all such Private Landscape Maintenance Areas and the Areas of Common Responsibility, if any, within Parcel "M1/M4". This can best be achieved if the landscaping within all of the Private Landscape Maintenance Areas and Areas of Common Responsibility within Parcel "M1/M4" is maintained on the same schedule by a single experienced landscape company. In furtherance thereof, Owner, on behalf of itself, its heirs, personal representatives, successors and assigns, and all future owners of its Unit, by accepting title to a Unit, covenants that it will participate with all other owners of Units in Parcel "M1/M4" in a co-operative effort intended to ensure such consistent appearance and standard as hereinafter provided.

The Association intends to engage a company from time to time to provide landscape maintenance services (the "**Maintenance Company**") with respect to the Areas of Common Responsibility, if any, within Parcel "M1/M4," and, as contemplated by Section 10.1 of the Charter, may facilitate arrangements for the same Maintenance Company to contract separately with each Owner of a Unit in Parcel "M1/M4" to provide landscape maintenance services for the Private Landscape Maintenance Area(s), if any, within its Unit. Upon the Association's designation of a Maintenance Company for Parcel "M1/M4," the Association shall provide each Owner of a Unit within Parcel "M1/M4" with the Maintenance Company's contact information and each such Owner shall promptly contract with such Maintenance Company for the performance of all landscape maintenance services for the Private Landscape Maintenance Area of such Owner's Unit, at the Owner's sole cost and expense. Once the Association elects to designate the Maintenance Company for Parcel "M1/M4," an Owner shall not have the right to have any person or entity other than the designated Maintenance Company perform any landscape maintenance with respect to the Private Landscape Maintenance Area of its Unit unless the Association agrees otherwise in writing. The Owner shall remain solely responsible for maintenance of any landscaping on its Unit which is not part of the Private Landscape Maintenance Areas, unless the Owner arranges for such maintenance to be performed by the Maintenance Company.

The Maintenance Company shall bill each Owner directly for the maintenance rendered to its Unit, and each Owner shall be solely responsible for payment of such invoices. If an Owner fails to pay the Maintenance Company in accordance with the terms of its contract with the Maintenance Company, the Association may, but shall have no obligation to, make payment to the Maintenance Company on the Owner's behalf and levy a Specific Assessment against the Owner's Unit to recover the costs incurred.

Alternatively, the Association may assume responsibility for maintaining landscaping on Units within Parcel "M1/M4" pursuant to Section 6.2 of the Charter. However, unless and except to the extent that the Association assumes such responsibility, each Owner shall be solely responsible for maintaining all landscaping on its Unit in accordance with the Community-Wide Standard at its sole cost and expense. Such responsibility shall be met, as to the Private Landscape Maintenance Area on the Unit, by contracting with the Maintenance Company designated by the Association, if any, as provided above.

Any Maintenance Company designated by the Association to perform landscape maintenance within Parcel "M1/M4" shall have the unimpeded right to enter upon those portions of each Unit outside of the dwelling to perform such maintenance. Such maintenance shall be performed to a level which equals or exceeds the Community-Wide Standard and is uniform among Units in Parcel "M1/M4". Each Owner shall continually provide sufficient water to all irrigation systems on its Unit to ensure that all plants and other live landscape materials remain healthy.

3.2 Ownership of Landscaping Improvements. All of the landscaping and irrigation improvements on a Unit shall be the property of the Owner of such Unit, and the Owner shall be responsible for any and all costs of repair and replacement thereof, regardless of the cause, including without limitation, due to any fault of the Maintenance Company. Each Owner shall cause all landscaping irrigation improvements (such as, for example, drip irrigation lines, sprinkler systems and timers) to be properly maintained and in good working order at all times so as to adequately water all landscaping installed from time to time on its Unit. Each Owner shall allow the designated Maintenance Company for Parcel "M1/M4," if any, to have access to all landscaping equipment on its Unit at all times so that the same may be inspected, serviced and/or adjusted as appropriate from time to time in connection with the maintenance to be provided by the Maintenance Company.

3.3 No Responsibility of Association. Nothing herein shall be construed to impose any responsibility or liability whatsoever on the Association for maintenance of any Private Landscape Maintenance Area or any costs in connection therewith. By accepting title to its Unit, each Owner is deemed to acknowledge and agree that the Association shall have no responsibility for the acts or omissions of any Maintenance Company (or its employees or agents) and is merely serving to facilitate arrangements for the Maintenance Company to provide landscape maintenance to the Private Landscape Maintenance Areas on Units in Parcel "M1/M4". Further, each Owner shall be solely responsible for handling directly with the Maintenance Company all relations and dealings (such as, for example, requests for additional services, complaints, etc.) between the Owner and the Maintenance Company, and shall not attempt to contact or involve the Association with respect thereto.

3.4 Neighborhood Committee. The Owners of Units within Parcel "M1/M4" may elect a Neighborhood Committee pursuant to Section 3.2 of the Charter for purposes of providing input and suggestions to the Association as to the type, quality and frequency of the landscape maintenance services to be provided by the Association or the Maintenance Company within Parcel "M1/M4", including, without limitation, the level of services to be provided, or whether to discontinue or reduce any services being provided. However, the Association shall retain the sole right to make all decisions regarding such services regardless of any input provided by any Neighborhood Committee to ensure that landscape maintenance within the Private Landscape Maintenance Areas and Areas of Common Responsibility is performed consistently among Units within Parcel "M1/M4" and to a level consistent with the Community-Wide Standard.

EXHIBIT “G”

Lodge Program Terms

Pursuant to the Community Charter for Kukui‘ula, as amended and restated (the “**Charter**”), to which this Exhibit “G” is attached, Kukui‘ula Development Company (Hawaii), LLC, in its capacity as Declarant under the Charter, in conjunction with The Club at Kukui‘ula, a Hawai‘i non-profit corporation, has established the following Lodge Rental Program for the Community. Unless otherwise defined in Lodge Program Terms, capitalized terms shall have the same meanings given to them in the Charter.

1. General Description. The Lodge Rental Program (sometimes referred to in this exhibit as the “**Program**”) is a voluntary short-term rental program operated by The Club or such person or entity as The Club may designate from time to time, in which Owners of certain Units designated by Declarant pursuant to the Charter (“**Eligible Units**”) may from time to time elect to participate, as provided in Section 3 below. Units placed in the Lodge Rental Program are made available for rental on a short-term basis (which may include nightly rentals) affording the Lodge Program guests, during the term of their rental, access to and use of the Club Amenities and various services of The Club as provided in Section 2 below. The Club may from time to time delegate rental management and other responsibilities under the Lodge Rental Program to a third party. The term “**Operator**,” as used herein, refers to The Club or such other person or entity as The Club may designate to operate the Program from time to time. An Owner who places the Owner’s Eligible Unit in the Lodge Rental Program is referred to herein as a “**Participating Owner**,” and the Eligible Unit which it places in the Program is referred to as a “**Participating Unit**.”

2. Benefits. Under the Program, the Operator may enter into agreements with the Owners of Eligible Units who elect to participate in the Program to make their Eligible Units available for occupancy on a short-term rental basis (which may include nightly rental) and extend to such rental guests (“**Lodge Program Guests**”) the privilege of using the Club Amenities (which were existing as of the commencement date of the Program) on a basis comparable to that of a Plantation Member during the term of their rental, subject to availability and payment of a daily access fee and greens fees for golf play and other guest fees at the Lodge Program Guest rates established by The Club from time to time in accordance with Section 4 below. The Club shall have the right to implement policies for allocating tee times, spa appointments, dinner reservations, and other facilities and services with limited availability among Plantation Members and Lodge Program Guests as The Club shall determine. Participating Units shall be subject to and enjoy any benefits and privileges granted by the Charter and the Club Rules pertaining to the Neighborhood with Eligible Units and shall be exempt from the lease restrictions contained in Chapter 7 of the Charter. Additional benefits and privileges may be authorized by The Club and set forth in the Rental Management Agreement executed by the Participating Owner and the Operator pursuant to Section 3 below. All use by Lodge Program Guests shall be subject to The Club’s rules as in effect from time to time.

3. Terms of Participation. Participation in the Lodge Rental Program shall be subject to the following terms and conditions:

(a) The Unit proposed to be placed in the Lodge Rental Program must be an Eligible Unit.

(b) An Owner of an Eligible Unit may from time to time elect to participate in the Lodge Rental Program by providing no fewer than 90 days’ written notice of its election to the Operator and by entering into a Rental Management Agreement with the Operator, for a specified term, and upon terms and conditions mutually acceptable to the Owner and the Operator (“**Rental Management Agree-**

ment”). Participation shall be effective as of the date specified in the Rental Management Agreement, and the Operator may, in its discretion, waive or shorten the 90-day notice requirement.

(d) The Owner of the Eligible Unit shall be responsible for payment of operating costs for the Lodge Rental Program, including administrative costs of the Program operations and also including the cost of maintaining any amenities provided for the exclusive use of Lodge Program Guests, as described in the Rental Management Agreement executed by the Owner and Operator, which costs shall not be assessed against the members of the Community as a whole.

(e) Each Owner of a Participating Unit shall observe, perform and comply with its Rental Management Agreement and these Lodge Program Terms. Failure on the part of any Owner to observe, perform or comply with any term or condition of the Program Terms and Conditions shall be grounds for termination of the Rental Management Agreement, participation in the Program, or both.

(f) Participation shall be subject to terms and conditions from time to time established by the Operator, which shall be consistent with these Lodge Program Terms, as they may be amended. The Operator shall have the right from time to time to modify such terms and conditions as it deems appropriate, consistent with these Lodge Program Terms, as they may be amended, including the limitations on modifications described in Section 7 below.

4. Lodge Program Guest Fees. Rental management fees and costs associated with the Program shall be as set forth in the Operator’s terms and conditions and/or in the Rental Management Agreement executed by each Owner. The guest fees charged by The Club to Lodge Program Guests (directly or through the Operator) for use and enjoyment of the facilities and services of The Club shall be as published by The Club from time to time; provided, such rates shall not exceed the greater of: (a) 125% of the rates charged to guests of Plantation Members for enjoyment of the same facilities and services; or (b) the rates generally being charged by first-class resorts on the Island of Kaua’i (*e.g.*, the Grand Hyatt Kaua’i Resort and Spa) to their resort guests for access to and use of similar facilities and services.

5. Owner Privileges. During period(s) of participation in the Lodge Rental Program, a Participating Owner shall continue to hold its Plantation Membership in The Club and may continue to enjoy the rights and privileges of, and shall remain responsible for the obligations of, such Plantation Membership, subject to any terms, conditions and limitations set forth in the Program Terms and Conditions.

6. Withdrawal from Program. A Participating Owner may from time to time withdraw its Participating Unit from the Program by cancelling its Rental Management Agreement in accordance with its terms.

7. Modification to Lodge Rental Program. The Club, with the written consent of Declarant during the Development and Sale Period, shall have the right from time to time to amend these Lodge Program Terms; provided, any proposed amendment which would constitute a “material adverse change” (as defined in this Paragraph 9) shall also require the written consent of Owners of at least 51% of the Participating Units.

The Owners of Participating Units shall be given at least fourteen (14) days’ prior written notice of any proposed amendment to these Lodge Program Terms. Notwithstanding that a proposed amendment may not constitute a “material adverse change” requiring approval of Owners hereunder, if Owners of at least 30% of the Participating Units sign and submit to The Club within such 14-day period a written petition calling for a meeting to consider the amendment, then prior to adoption of the amendment The Club shall set a date for and call a meeting of the Owners of Participating Units at a location within the State of

Hawaii, on not less than ten (10) days' notice to each Owner of a Participating Unit. If a motion to veto the amendment is made, seconded, and approved at such meeting by Owners of at least 75% of the total number of Participating Units, the amendment shall not be adopted.

Any duly approved amendment to these Lodge Program Terms which is not vetoed as provided herein shall be effective upon execution by The Club and those persons whose written consent is required hereunder and recording of the amendment in the Bureau of Conveyances of the State of Hawaii.

The Club shall have the right to amend these Lodge Program Terms from time to time, subject to such approvals and veto rights as set forth herein. For purposes of determining whether a proposed amendment would constitute a "materially adverse change" triggering the approval rights of Participating Owners under these Lodge Program Terms, only the following shall be considered a "materially adverse change" to the Program:

- any change which results in the elimination or impairment of privileges afforded to Lodge Program Guests to use the Club Amenities and services as set forth in this Description of the Lodge Rental Program; or
- any change which would cause or permit the Lodge Program guest rates to exceed the limitations on such rates set forth in these Lodge Program Terms; or
- suspension of the Lodge Rental Program for a period exceeding one year or the termination of the Lodge Rental Program; or
- any increase in the percentage of rental revenues payable by Participating Owners to the Operator ("**Rental Management Fees**") for participation in the Lodge Rental Program, unless such increase is attributable to:
 - (i) a corresponding increase in operating costs; or
 - (ii) an increase in the rental management services provided to Participating Owners and their Units or the services and benefits made available to Lodge Program Guests, which increase is reasonably designed and intended to support an increase in rental revenues to offset such increase in Rental Management Fees.
- any change to this description of what constitutes a "material adverse change" or the methodology for approving a "material adverse change."

The Declarant shall have the unilateral right to record a Supplement to the Charter to make additional Units eligible to participate in the Lodge Rental Program and such an amendment shall not constitute a "material adverse change" triggering the rights of Owners under this Section 7. In addition, the Declarant or the Club may amend a Supplement to the Charter to terminate the eligibility of certain Units to participate in the Program, but only with the consent of the Owner of the Unit whose eligibility is being terminated.

Nothing herein shall give Participating Owners any rights to approve or disapprove any change in the Operator or the terms of any operating agreement between The Club and the Operator for operation of the Lodge Rental Program in a manner consistent with these Lodge Program Terms, as it may be amended hereunder.

Nothing in this document shall be construed as any representation, warranty, assurance, or guaranty that the Lodge Rental Program will continue in its present form.

The Lodge Rental Program was previously described in that certain Second Amendment to Supplement to Kukui‘ula Charter and Declaration of Easements dated October 31, 2011, recorded in the Bureau on November 2, 2011, as Document No. 2011-180579, which is an amendment to the Parcel CC Supplement. All references in the Parcel FF Supplement and the Club Villas Supplement to the Lodge Rental Program shall refer to the provisions of this Charter and this Exhibit “G.”