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This Document contains 55 pages.

Tax Map Key Nos. (4) 4-3-003:005 (por) (KULANA Subdivision)
(4) 4-3-003:022 (Remnant 3)
(4) 4-3-003:021 (Remnant 4)
(4) 4-3-003:005 (por) (Remnant 7)

AMENDED AND RESTATED
DECLARATION OF
CONDOMINIUM PROPERTY REGIME

"KULANA"

(Condominium File Plan No. 3902)

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Exhibit A. Guest House Requirements.
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THIS AMENDED AND RESTATED DECLARATION, made this ____ day of January, 2005, by KAPAA 382, LLC, a Hawaii limited liability company, whose post office address is 4569 Kukui Street, Suite 200, Kapaa, Hawaii 96746, hereinafter referred to as the "Declarant";

W I T N E S S E T H :

WHEREAS, a condominium project named "KŪLANA" (herein called "Project"), was created by a Declaration of Condominium Property Regime, herein called "Declaration", which was recorded with the Bureau of Conveyances of the State of Hawaii as Document No. 2004-252101; and

WHEREAS, the Declaration was entered into by KAPAA 382, LLC, a Hawaii limited liability company, as the owner of the fee simple interest in the property described in Exhibit "A" attached thereto and incorporated herein by this reference (called therein and herein, the "Property") and such was further described on Condominium File Plan No. 3902 (the "Condominium Map"); and

WHEREAS, a portion of the Property described as Remnant Lot 3 and Remnant Lot 4 (collectively, the "Remnant Lots") has been conveyed by Declarant to (a) KULANA PARTNERS, LLC, a Hawaii limited liability company, whose post office address is 6580 Maid Marion, Alphretta, Georgia 30005 ("Remnant Lot 3 Owner"); and (b) WILLIAM R. HANCOCK, TRUSTEE OF THE WILLIAM R. HANCOCK REVOCABLE LIVING TRUST, whose post office address is 4569 Kukui Street, Suite 200, Kapaa, Hawaii 96746; DANIEL J. DIAMOND, husband of Alice J. Diamond, whose post office address is P.O. Box 1654, Kapaa, Hawaii 96746; and EDELLE SHER, whose post office address is 5880 Kahiliholo Road, Kilauea, Hawaii 96754 (collectively, "Remnant Lot 4 Owner") (collectively, the foregoing Remnant Lot 3 Owner and the Remnant Lot 4 Owner may be referred to as "Remnant Lot Owners") subject to the Declaration and the Condominium Map; and

WHEREAS, a portion of the Property described as Lot 8 has been conveyed by Declarant to HALEIWA SURF SANCTUARY, LLC, a Hawaii limited liability company, whose post office address is 4646 Wailapa Road, Kilauea, Hawaii 96754 ("Lot 8 Owner"), subject to the Declaration and the Condominium Map; and

WHEREAS, Declarant continues to be the owner of more than seventy five (75%) of the undivided interest of all Unit Owners and may amend the Declaration; and

WHEREAS, Declarant wishes to amend the Original Declaration in order to accomplish, among other things, the following: (i) to provide for certain reserved and retained rights in favor of the Declarant; (ii) to incorporate certain provisions from the Master CCRs Declaration; and (iii) to make other modifications to the Declaration.

NOW, THEREFORE, the Declaration is hereby amended and restated as follows:

I. INTRODUCTORY DEFINITIONS AND INTERPRETATION.

1. The following words when used in this Declaration, as amended (unless the context shall otherwise provide), shall have the following meanings:

"Act" or "Condominium Act" means Chapter 514A, Hawaii Revised Statutes, as it may be amended from time to time.

"Agriculture" and "Agricultural Activities" means activities and uses for actual and legitimate agricultural purposes permitted by the CZO in the CZO Agriculture District and Open District and/or pursuant to HRS Sections 205-2(d) and 205-4.5 in the State Land Use Commission Agricultural District. In order to qualify as legitimate and actual Agricultural Activities, such activities and use shall be required to qualify as "agricultural use" as defined by the County of Kauai in Article 9, Chapter 5A of the Kauai County Code, 1987 ("KCC"), as amended from time to time, and in the Agricultural Dedication Program Rules adopted by the County of Kauai to implement KCC Chapter 5A, Article 9, as amended from time to time.

"Association" shall mean the Association Of Apartment Owners Of KŪLANA condominium project, an association formed under this Declaration in accordance with the Act, and its successors and assigns.

"Association Documents" means the Declaration, the Association Bylaws, the Association Rules, the Design Review

Committee Rules, the Design Guidelines and the Master CCRs Declaration.

"Association Rules" shall mean the rules, if any, from time to time in effect, adopted by the Board of Directors of the Association.

"Board" or "Board of Directors" shall mean the Board of Directors of the Association.

"Building" shall mean buildings, garages, residences, or enclosed structures.

"Bureau of Conveyances" shall mean the Bureau of Conveyances of the State of Hawaii, and any successor thereto.

"Bylaws" shall mean the Bylaws of the Association.

"Common Property" shall, mean all property, real and personal, in which the Association owns or holds an interest, including an interest by way of an easement, or which the Association is obligated to maintain or elects to maintain for the use and/or enjoyment of all or some of the Owners and others so entitled, including but not limited to roadways, roadway shoulders, drainage, utilities, easements, signs, street lighting systems, landscaping, sewers, waterlines and facilities, landscape and agricultural irrigation systems, gate, the Ditches, Kainahola Stream, the Ponds, the Agricultural Water System, and personal property used for the maintenance or security of the KŪLANA Subdivision.

"Condominium Unit" or "Unit" or "Apartment Unit" are intended to have identical meanings and shall mean the structures and improvements comprising a condominium apartment unit within the Project as defined and designated in Sections 3 and 4 of this Declaration, together with each Unit's appurtenant common interests, limited common elements, and easements.

"Construction" shall mean exterior construction alterations, repairs, replacements, additions, demolition, excavation, grading, paving, filling in, landscaping, seeding, sodding, planting and similar activities.

"County" shall mean the County of Kauai.

"County Permit" shall mean the Planning Commission's approval of Subdivision No. S-99-49, and all conditions of such approval.

"CZO" shall mean the Comprehensive Zoning Ordinance of the County as codified in Chapter 8 of the Kauai County Code, 1987, as amended from time to time.

"Declarant" shall mean Kapaa 382, LLC, a Hawaii limited liability company, and its successors and assigns, or such other Person to whom Declarant, its successors or assigns, may assign its rights as the Declarant pursuant to this Declaration. (For purposes of this definition of "Declarant", the Declarant's "successors and assigns" shall not include any Person to whom Declarant conveys or leases a Lot or Unit, unless the rights of the "Declarant" expressly have been assigned to such Person).

"Declaration" or "this Declaration" shall mean the Declaration of Condominium Property Regime for KŪLANA dated November 24, 2004, initially recorded in the Bureau of Conveyances as Document No. 2004-252101 (which may be referred to as the "Original Declaration"), as such may be amended and restated from time to time.

"Design Review Committee" and "Committee" shall mean the Design Review Committee established by this Declaration.

"Design Review Committee Rules" shall mean those rules adopted by the Declarant or the Design Review Committee pursuant to the Master CCRs Declaration, as may be amended from time to time.

"Design Guidelines" shall mean the Design Guidelines attached to the Master CCRs Declaration as Exhibit "C" and incorporated therein.

"Dwelling Unit" shall have the same meaning as contained in Section 8-1.5 of the CZO, as amended from time to time.

"Farm Dwelling" shall have the same meaning as contained in H.R.S. Section 205-4.5(a)(4), as amended from time to time. (At present, this term means a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling.)

"Government Entity" shall mean any governmental body or agency, or any department thereof.

"Guest House" shall have the same meaning as contained in Section 8-1.5 of the CZO, as amended from time to time.

"HRS" shall mean the Hawaii Revised Statutes, as amended from time to time.

"Improvement" shall mean and include all buildings, outbuildings, roads, driveways, parking areas, swimming pools, water features, fences, screens, walls, stairs, decks, hedges, windbreaks, plants, trash enclosures, utilities, excavation, grading, landscaping, poles, signs, sewers, culverts and other drainage structures, and any and all other structures, facilities and amenities of any type or kind whatsoever.

"Interest in the Lot" or "Interest in the Unit" shall mean and include any legal or equitable interest, leasehold interest, the interest or lien of the holder of any encumbrance (such as a mortgage), or any other interest in, to or upon any Lot (or any portion thereof) or any Unit (or any portion thereof).

"Laws" shall mean all applicable laws, ordinances, rules and regulations (state, federal or county or any agency thereof).

"Lot" shall mean any portion of the Property which is treated under the CZO as a separate zoning lot, such Lots being presently described as Lots 1 through 23 and Remnant Lots 3, 4 and 7 in Exhibit "A" attached to the Declaration.

"Master CCRs Declaration" shall mean that certain Declaration Of Covenants, Conditions And Restrictions For The KŪLANA Subdivision, dated August 27, 2004, recorded in the Bureau of Conveyances as Document No. 2004-191224, as amended from time to time.

"Master Grant of Easements" shall mean that certain Declaration Of Grant and Reservation of Easements for The KŪLANA Subdivision, February 13, 2004, recorded in the Bureau of Conveyances as Document No. 2004-214158, as amended from time to time.

"Owner" or "Unit Owner" shall mean the record owner (including Declarant) whether one or more persons, of a fee simple title to a Condominium Unit within the Project.

"Permit" and "County Permit" shall mean the Planning Commission approval of the subdivision of the Property (Subdivision S-99-49).

"Person" shall mean any person, individual or entity, including, without limitation, any trustee, mortgagee, personal representative, corporation (profit or nonprofit), partnership (general or limited), joint venture, association of apartment owners established pursuant to the Act or HRS or an unincorporated association or trust.

"Project" shall mean the condominium project called "KŪLANA" formed in accordance with the Act and the Association Documents.

"Property" or "Land" shall mean those parcels of land which are more particularly described as Lots 1 through 23 and Remnant Lots 3, 4 and 7 in Exhibit "A" attached to the Declaration, which lots are also shown on the Subdivision Map for the KŪLANA Subdivision dated March 14, 2004 which was approved by the Planning Commission of the County of Kauai in Subdivision Application No. S-99-49 on August 24, 2004.

"Record" shall mean to file or record a document in the Bureau of Conveyances.

"Recorded Instrument" shall mean any recorded instrument conveying, encumbering or otherwise affecting any interest in a Lot or Unit (including a deed, agreement of sale or lease).

"Remnant Lots" shall mean those lots described in Exhibit "A" to this Declaration as Remnant Lot 3, Remnant Lot 4 and Remnant Lot 7.

"Residence" means one single family dwelling unit as defined in the CZO, or a farm dwelling as defined by HRS Section 205-4.5(a)(4), together with appurtenant outbuildings as maybe approved by the Design Review Committee.

"Residential Use" means residential occupation and use of a residence by a single household (including servants) in conformity with the Association Documents and the requirements imposed by the CZO and any other applicable zoning laws or other state or county rules and regulations.

"Roadway Lots" means those portions of the Property shown as Lot 21, Lot 22 and Lot 23 on the Subdivision Map and as described in Exhibit "A" attached to the Declaration.

"Subdivision" and "KŪLANA Subdivision" shall mean a portion of the Property shown as Lots 1 through 23 on the Subdivision Map and as such Lots are described in Exhibit "A" attached to the Declaration.

"Subdivision Map" shall mean the final subdivision map for the KŪLANA Subdivision, dated March 15, 2004, which was approved by the Planning Commission in Subdivision Application No. S-99-49 on August 24, 2004.

"Utilities" shall mean drainage improvements as well as services for sewer and wastewater disposal; gas; water (including potable water and/or irrigation water); and telephone, electric, cable television and other services for communications employing electrical or electronic means of transmission.

2. The terms "majority" or "majority of Unit Owners" herein means the owners of Units to which are appurtenant more than fifty percent (50%) of the common interest of the Project, and any specified percentage of the Unit Owners mean the owners

of Units to which are appurtenant such percentage of the common or fractional interests.

3. The headnotes or captions of each paragraph or section are for convenience only and shall not be construed as enlarging, restricting, modifying or otherwise affecting the meaning or context thereof.

4. All references herein to any particular Government Entity, statute, ordinance or governmental approval or permit shall mean any successor thereto or replacement thereof or most nearly comparable substitution therefor.

II. SUBSTANTIVE PROVISIONS OF DECLARATION

WHEREAS, Declarant owns in fee simple that certain real property situate in Kapaa, County of Kauai, State of Hawaii, such land being more particularly described in Exhibit "A" attached to the Original Declaration and incorporated herein by reference (the "Land" or "Property");

WHEREAS, the Land was previously improved and will be further improved from time to time by construction of roads, utilities, buildings and other Improvements; and

WHEREAS, Declarant now desires to submit the Land and such improvements to a condominium property regime, such improvements being in accordance with plans incorporated herein by reference and filed in the Bureau of Conveyances of the State of Hawaii as Condominium File Plan No. 3902 (referred to as the "Condominium Map"); and

NOW, THEREFORE, in order to create a condominium project consisting of said Land and improvements (herein called the "Project") and to be known as "KŪLANA", Declarant hereby submits the Land and all of its estate, right, title and interest therein to a Condominium Property Regime established by the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended (the "Act") and in furtherance thereof, makes the following declarations as to divisions, limitations, restrictions, covenants and conditions, and hereby declares and agrees that said real property is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and

improved subject to said declarations, restrictions and conditions set forth herein and in the Bylaws which was heretofore recorded in the Bureau of Conveyances, as the same may from time to time be amended, which declarations, restrictions and conditions shall constitute covenants running with the Land and shall be binding on and for the benefit of Declarant, its successors and assigns, and all subsequent owners and lessees of all or any part of said real property and their respective successors, heirs, personal representatives and assigns. All of the provisions of this Declaration are intended to create mutual servitudes upon each unit within the condominium project herein described and to create reciprocal rights between and among the respective Unit Owners.

1. NAME, LOCATION AND DESCRIPTION OF PROPERTY.

1.1 Name of Project: "KULANA"

1.2 Location: Off Olohena, Hauiki and Kaapuni Roads, Kapaa, Hawaii 96746.

1.3 Tax Map Key Nos.: TMK (4)4-3-003:005 (por) (Kulana Subdivision); TMK(4)4-3-003:022 (Remnant 3); TMK(4)4-3-003:021 (Remnant 4) and TMK(4)4-3-003:005 (por) (Remnant 7)

1.4 Description of Land: The Project is located on those certain fee simple parcels of land, as more particularly described in Exhibit "A" attached to the Declaration.

2. DESCRIPTION OF PROJECT.

The Project consists of the Land together with appurtenant rights thereto and 108 shade structures described below and other improvements or replacements therefor made in accordance with this Declaration.

The Land consists of Lots 1 through 20 within the KULANA Subdivision, three Remnant Lots and three Roadway Lots. The Roadway Lots will be used for roadway purposes and may be dedicated to the County. Remnant Lots are owned by Remnant Lot Owners. Lot 8 is owned by Lot 8 Owner. All other Lots are owned by Declarant.

Although the Land is subdivided into the Lots pursuant to the Subdivision Map, as of the date hereof construction and installation of roadway and utilities and other subdivision improvements required by the County Permit have not been completed.

One or more temporary shade structures (as each may be replaced and changed from time to time in accordance with this Declaration) is or will be located on each of the Remnant Lots and on each of the KŪLANA Lots other than the Roadway Lots or Lot 6 (the "Reservoir Lot".) Such structures shall initially constitute the condominium units within the Project, but each shed may be changed or replaced as provided in this Declaration.

An Owner of a Unit has (a) the exclusive right to use the land area on which such Unit is located and the land surrounding it, as shown on the Condominium Map (each such area is called an "Exclusive Area") and the right to use other portions of the Land with other (but not all of Owners), as described in Section 6 below as the Limited Common Elements appurtenant to his Unit; and (b) the right in common with all other Owners to use other areas described in Section 5 below as Common Elements (exclusive of the Limited Common Elements).

3. DESCRIPTION OF UNITS AND ADJACENT AREAS.

3.1 Buildings. Each of the 108 sheds constitutes an initial condominium unit. Each shed is constructed of four metal posts with shade cloth on the top. The net area of each shed is approximately 16 square feet.

3.2 Unit Location and Access. The location of each building and its appurtenant Exclusive Area is as shown on the Condominium Map.

Each of the Units has or will have direct access onto Olohena Road, Hauiki Road or Kaapuni Road or over an interior roadway which connects onto one of the foregoing public roads. In accordance with the County Permit, Hauiki Road shall be re-located and improved, as indicated on the Condominium Map, and will provide direct access of several of the Units located on Lot 1 and Lot 12.

3.3. Description of Units: One (1) freehold estate is hereby designated in each of the 108 Condominium Units contained in the Project. The boundary for each of the Units is set forth in Section 4 below. A Unit Owner has the right to replace or to make other changes to his Unit in accordance with this Declaration.

3.4 Parking. The Project does not contain any designated parking areas. However, the land area appurtenant to each Unit is ample for future parking as may be decided upon by the Owner of such Unit.

4. UNIT DEFINITION AND BOUNDARIES.

4.1 Definition and Boundaries of Units. Each Unit shall consist of (a) all footings, floors, foundations, perimeter walls and roofs of all Improvements from time to time located on or upon th the Exclusive Area that is appurtenant exclusively to such Unit; (b) all of the space, walls and other Improvements located within such footings, floors, foundations, perimeter walls and roofs of such Improvements, as may be changed or renovated; and (c) all exterior surfaces and finishes of such footings, floors, foundations, perimeter walls and roofs of such Improvements, as such may be changed in accordance with Section 20 of this Declaration.

4.2 Calculation of Floor Areas. The approximate net floor areas set forth herein are based on measurements taken from the interior surface of all perimeter walls, except that no reduction has been made to account for any interior walls, ducts, vents, shafts, stairways and the like located within the perimeter walls. All floor areas set forth herein are not exact but are approximations, and have been rounded to the next lowest full square foot where the approximation of such floor areas exceeds a square foot by any fraction of a square foot.

The measurements of the floor areas set forth herein do not follow the designation of the limits of the Units (the legally designated areas of the Units) set forth herein, and the measurement of the floor areas set forth herein may be less than the floor areas of the Units as their boundaries are designated and described herein.

5. COMMON ELEMENTS. One freehold estate is hereby designated in all of the remaining portions of the Project, herein called the "Common Elements," including specifically, but not limited to:

(1) The Land in fee simple;

(2) The Common Property;

(3) Those Ponds located on Lots 12, 13 and 14; and rights, if any, obtained by Declarant now or in the future on behalf of the Owners in accordance with Paragraph 22.5 of this Declaration.

(4) Easements and rights in favor of the Association under the Master Grant of Easements;

(5) Lot 6 , the man-made reservoir located on Lot 6, entry gates and pavilions, any trails and any other recreational facilities of common use.

(6) Those portions of the Land designated on the Condominium Map as "Common Element", including without limitation those designated as Common Element 2Y, 5W, 5Y, 5Z, 7X, 7Y, 8X, 10X, 11X, 12X, 13X, P-2, P-3, 15X, 17X or 17Y.

(7) All ducts, vents, shafts, sewer lines, sewage treatment equipment and facilities (if any), electrical equipment, telephone equipment, pipes, wiring and other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one Unit for services such as power, light, water, gas (if any), cablevision (if any), sewer, refuse, telephone, and radio and television signal distribution;

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

6. LIMITED COMMON ELEMENTS.

6.1 Certain parts of the Common Elements, herein called and designated limited common elements, are hereby set aside and reserved for the exclusive use of certain Units and such Units shall have appurtenant thereto exclusive easements for the use of such limited common elements.

The limited common elements so set aside and reserved are as follows:

(1) Any entrance, exit, gateway, entry, patio, yard, driveway or steps which would normally be used only for the purposes of ingress to and egress from a Unit shall be a limited common element appurtenant to and reserved for the exclusive use of such Unit.

(2) That portion of the Land designated on the Condominium Map as a "Lot" (together with the airspace above such Land area), is for the exclusive use of the Unit having the same letter designation as such Land area on such Condominium Map (such area may be referred to as an "Exclusive Area"). Schedule 1 attached hereto contains a list of the Units, and the area of the Exclusive Area appurtenant to such Unit.

(3) Each Exclusive Area is subject to any nonexclusive easements shown on the Condominium Map which are for the benefit of other Unit Owners, provided that the Owner of the Unit burdened by such easement reserves the right to make use of such easement, subject to the terms and conditions set forth in Paragraph 8.1 of this Declaration and provided further, that such Owner may not construct fences or buildings or plant trees on or over such easement that are for access or utility purposes.

(4) Any other common element of the Project which is rationally related to fewer than all the Units shall be deemed a limited common element appurtenant to and for the exclusive use of such Unit(s) to which it is rationally related.

6.2 A Unit Owner may grant easements on or over the Exclusive Area appurtenant to his Unit, provided that the use of such easement does not present a danger to other Units and does not materially change the level of activity on the Project as a whole.

7. FRACTIONAL UNDIVIDED INTEREST IN THE COMMON ELEMENTS.

(a) Subject to (b) below, the fractional undivided interest in the Common Elements appurtenant to each of the Units shall be 1/108th.

(b) Such fractional common interest in the Common Elements shall be automatically revised if and when a Remnant Lot (including each of the Units and its appurtenant Exclusive Area) are removed from the Condominium Regime in accordance with Paragraph 20.5, in which event the common interest allocable to such Unit located on the Remnant Lot so removed shall be added equally to each of the remaining Units.

(c) Each Unit shall have said fractional interest in all common profits of the Project and for all other purposes, except as otherwise stated in the Declaration.

(d) Except as set forth in (b), no change or reallocation of the common interest appurtenant to any Unit may be made without the consent of the Unit Owners affected thereby and by holders of any first mortgage on each such Unit, if a consent is required by such mortgage.

(e) At the request of the Declarant, each Unit Owner shall join in the execution and delivery of an amendment to the Declaration and in the execution and delivery of deeds or other instruments required to effectuate the change in any undivided interest appurtenant to his Unit made in accordance with this Section 7.

8. EASEMENTS, RESERVATIONS AND RIGHTS.

In addition to any easements designated as limited common elements, the Units and Common Elements shall have and be subject to the following easements:

8.1 Ingress, Egress, Etc. and Utilities.

Each Owner of a Unit ("Benefitted Owner") shall have appurtenant to his Unit perpetual, nonexclusive easements (i) to use all pipes, wires, ducts, cables, conduits, lines and other improvements furnishing Utilities now or hereafter located in another Unit or on or in an Exclusive Area appurtenant to another Unit, so long as such utility serves or was designed to serve the Unit of the Benefitted Owner; and (ii) over, under and across the common and limited common elements designed for such purposes in the Project for ingress to, egress from, utility services for use and support of the Unit of the Benefitted Owner.

The Owner of a Unit exercising the rights herein shall do so subject to the following:

(a) Such easement(s) shall be the minimum size, extent and duration required for the stated purpose, and the Benefitted Owner of the Unit or Units benefitted thereby shall bear all costs and incur all risks of damages arising from the use thereof.

(b) The Benefitted Owner making access or utility improvements within an easement area located within a common element or within an easement shared by more than one Unit, or within an Exclusive Area appurtenant to another Unit (collectively, "Easement Improvements"), shall do so with due regard to the use by other affected Unit Owners and, if such Benefitted Owner shall desire to make excavations, trenching or similar improvements, within such easement area, such Benefitted Owner shall provide at least fifteen(15) days prior written notice to the Owners of all affected Units and to the Association before commencing such excavation, trenching or similar improvements, so that other affected Owners and the Association shall have the opportunity to protect themselves from potential damage to crops and Improvements, to participate in the work where considered desirable, to limit the amount of disturbance which may be caused within the affected easement areas and the common elements and to realize potential cost savings. Upon completion of such Improvements, the Benefitted Owner shall restore any such easement area which shall have been affected by the work of the Benefitted Owner to its condition prior to such excavation to the extent that such is reasonably achievable.

(c) Permanent Easement Improvements (such as paving of access easements) made by the Benefitted Owner within common elements or within shared easement areas shall not be done as a common expense without the prior consent of the Association (as to common elements) or shall not be done as a limited common expense without the prior consent of all of the Affected Owners (as to limited common elements). If the prior consent shall have been received as aforesaid, then permanent Easement Improvements, when completed in accordance with the provisions of this Paragraph 8.1 shall thereafter be treated as common elements (subject to repair and maintenance by the Association), or as shared limited common elements, as applicable, unless otherwise provided herein or in an agreement between the Benefitted Owner and the Association or the Owners of other affected Units.

(d) Declarant and the Association (and each of them) shall have the right to permit an Owner or any other third party who holds rights to use easements located within the Project to make improvements within such easement areas at such Owner's or third party's expense on such terms and conditions as may be imposed by Declarant or the Association.

8.2 Encroachment. If any Common Element or Unit now encroaches upon any Limited Common Element appurtenant to another Unit or upon or within a required set back, a valid easement for such encroachment and the maintenance thereof, so long as it continues, does and shall exist. If any building or other improvement shall be partially or totally destroyed and then rebuilt, minor encroachments by any common element upon any Unit or limited common element or by any Unit upon any other Limited Common Element due to reconstruction shall be permitted, and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist; PROVIDED, that in no event shall a valid easement for encroachment be created in favor of the Owner of any Unit or in favor of any owners of the Common Elements if such encroachment occurred due to the negligence or misconduct of said Owner or Owners or if such Improvement was not lawfully constructed. Minor encroachments by an existing Unit upon any other Limited Common Area shall be permitted, and valid easements for any such encroachment and the maintenance thereof, so long as they shall continue, shall exist.

8.3 Right to Enter. All of the Unit Owners acting through the association of Unit Owners in accordance with this Declaration and the Bylaws (the "Association") shall have the right, to be exercised by its Board of Directors (the "Board") or

the Managing Agent, if any, to enter each Unit and its limited common elements, if any, from time to time during reasonable hours as may be necessary for the operation of the Project and to effect repairs, improvements, replacements and maintenance, as deemed necessary by the Board, or at any time for making emergency repairs therein necessary to prevent damage to any Unit or common element.

9. PARTITION.

Except as otherwise provided in the Declaration, the Common Elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by the Condominium Act.

In the event that the Project is ordered to be sold under Section 514A-21 of the Act, then notwithstanding the provisions thereof, the net proceeds of sale, together with the net proceeds of any insurance on said property shall be divided among the Unit Owners in proportion to the values of the Unit owned by each Unit Owner, provided that no payment shall be made to a Unit Owner until there has first been paid off out of the Unit Owner's share of such net proceeds all liens on the Owner's Unit. In the event the Unit Owners are unable to agree as to the value of each of the Units, such shall be determined by arbitration as set forth in Section 25 below.

10. AGRICULTURAL USES AND RESTRICTIONS ON USE.

10.1 Permitted Uses, generally. Each of the Units may be occupied and used by the Owner thereof, their families, employees, business invitees, personal guests and tenants, (i) for purposes of Agriculture and Agricultural Activities, (ii) as Farm Dwellings as permitted under the CZO, and (iii) for such other purposes as shall be permitted under the CZO. Except as aforesaid or as otherwise provided in this Declaration, a Unit shall not be used for any other purpose.

10.2 Farm Dwellings.

(a) Number of Dwelling Units. The number of Dwelling Units within the Project shall not exceed one hundred and three(103) Dwelling Units, and each of the Units in the Project

other than those Units located on any of Lots 1, 2, 4 or 5 and designated with the letter "x" or "y" (as shown on Schedule 1) shall be permitted to have one Dwelling Unit. Each permitted Dwelling Unit shall be a Farm Dwelling. Improvements other than Dwelling Units shall be permitted on each of the Units located on any of Lots 1, 2, 4 or 5 and designated with the letter "x" or "y", subject to the CZO and this Declaration.

(b) Conditions relating to Farm Dwellings. In addition to the general conditions referred to in Paragraph 10.1 above, the following conditions shall apply to use of a Unit as a Farm Dwelling:

(i) The Owner seeking to obtain permits for a Farm Dwelling shall enter into a Farm Dwelling Agreement with the County, which Agreement shall provide, among other things, that the occupant of a Farm Dwelling derive income from Agricultural Activities conducted on the property and that such Owner shall maintain that the level of Agricultural Activity required by the County in issuing the permit for such Farm Dwelling.

(ii) No more than one Farm Dwelling plus accessory outbuildings (other than Guest Houses) may be constructed on any Unit unless additional rights are expressly granted from the Declarant in the form of a Recorded Instrument.

10.3 Guest Houses.

(a) One Guest House may be constructed on each Remnant Lot and on each of Lots 1 through 5 and on each of Lots 7 through 20 of the Property, subject to the terms and conditions of this Declaration.

(b) Declarant shall have the right to designate from time to time, upon such terms and conditions as Declarant may decide, which Unit located on a Lot shall be given the right to construct a Guest House on such Lot, provided that no more than one Guest House shall be allowed per Lot. The designation to a Unit of such right to construct a Guest House shall be made by Recorded Instrument. Such right granted to an Owner of a Unit shall be appurtenant to the Owner's Unit.

(c) Such right may conveyed and transferred by the Owner of the Unit ("transferor") to another Owner of a Unit (to which

such right shall become appurtenant) provided that the transferee's Unit is located on the same Lot as transferor's Unit and such transfer shall be evidenced by a Recorded Instrument executed by the transferor and transferee; and provided, further, if the transferor shall have constructed the Guest House before transferring such right, that such Guest House shall be removed before transferee shall construct a Guest House.

(d) Construction of the Guest House shall also be subject to the restrictions applicable to any Building or Improvement on the Remnant Lots or the other Lots in the Project.

10.4 Special Obligations of Unit Owners relating to Agricultural Activities.

(a) County requirements relating to Agricultural Activities apply to the Project. Such requirements may change from time to time. The action taken by each Owner with respect to the Owner's Unit may impact the ability of other Owners subsequently to obtain permits to build Farm Dwellings.

(b) In addition to a Unit Owner's obligation to engage in Agricultural Activities as a condition to issuance of a permit by the County for a Farm Dwelling, each Unit Owner who shall have constructed a Farm Dwelling shall thereafter maintain Agricultural Activities with respect to his Unit and shall cause the Association to maintain Agricultural Activities within the Project, as such may be required by the County.

(c) If the Law requires increases in the level of Agricultural Activities on any Unit or within the Project as a precondition to allowing other Owners to obtain building permits for Farm Dwellings, then each affected Owner shall commence such increased Agricultural Activities promptly. In this regard, the Owner of each Unit with a Farm Dwelling and each Owner then desiring to construct a Farm Dwelling, shall have the burden of conducting such Agricultural Activities. It shall be the duty of an Owner to maintain and/or increase Agricultural Activities consistent with such Owner's proportionate share of land available for agricultural use within the Lot on which Owner's Unit is located and consistent with such Owner's proportionate share of all of the land reasonably available for agricultural use within the Project.

(d) The provisions contained in this Paragraph 10.4 creating reciprocal obligations among Unit Owners shall apply until either (i) all Units which are permitted Farm Dwellings under this Declaration shall have been constructed, and no Agricultural Activities must be maintained as a condition of allowing the continued use of Farm Dwellings in the Project or (ii) the County shall have adopted a policy of assessing each condominium unit as a separate entity in determining the sufficiency of Agricultural Activities in connection with issuance of building permits for a Farm Dwelling. Notwithstanding the foregoing, if a Unit Owner agrees as part of a Farm Dwelling Agreement to undertake Agricultural Activities, that obligation shall continue unless the County and such Owner agree that such obligation shall no longer apply to the Unit of such Owner.

10.5 Changes in Agricultural Activities Requirements.

(a) Should Agricultural Activities within the Project no longer be required under County or State Law because the Law has been changed or the CZO zoning designation affecting the Project has been changed, then, subject to the Master CCRs Declaration and the CZO, the Owners by a vote of 75% of the Unit Owners may amend this Section 10 and any other requirements in this Declaration requiring Agricultural Activities.

(b) Except as set forth in (a) above, no provision contained in this Declaration shall be construed to prohibit Agricultural Activities on the Project.

10.6 Rentals and Other Transient Use. No Unit shall be used as a hotel or for timeshare use. A Unit Owner shall have the right to rent or lease his Unit for purposes permitted under this Declaration, provided that (a) any such lease is in writing and is expressly made subject to the covenants and restrictions contained in this Declaration, the Bylaws, and the House Rules, if any; and (b) any limitations as to the permitted use of a Unit provided for in any such lease.

11. ASSOCIATION OF UNIT OWNERS.

Administration of the Project shall be vested in its Association of Unit Owners, herein called the "Association", consisting of all Unit Owners of the Project in accordance with

the By-Laws of the Association recorded herewith and incorporated by reference, as such may be amended from time to time. The Owner of any Unit upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as its ownership of such Unit ceases for any reason, at which time its membership in the Association shall automatically cease.

12. ADMINISTRATION OF THE PROJECT.

Operation of the Project and maintenance, repair, replacement and restoration of the Common Elements, and any additions and alterations thereto, shall be in accordance with the provisions of the Condominium Act, this Declaration and the other Association Documents. The Owner of each Unit shall be solely responsible for the maintenance, repair, replacement and restoration of those limited common elements appurtenant to his Unit, except as otherwise provided herein, and the Association shall be responsible for all Common Elements of the Project, and specifically but without limitation shall:

12.1 Make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Project or any part thereof.

12.2 Keep all Common Elements of the Project in a strictly clean and sanitary condition and observe and perform all Laws now or hereafter made by any Government Entity for the time being applicable of the Project or the use thereof.

12.3 Well and substantially repair, maintain, amend and keep all Common Elements including without limitation the buildings thereof, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided herein, and maintain and keep said land and all adjacent land between any street boundary of the Project and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass therein on good cultivation and replant the same as may be necessary, and repair and make good all defects in the Common Elements of the Project herein required to be repaired by the Association, of which notice shall be given by any Owner or its agent, within 30 days

after the giving of such notice.

12.4 Observe any setback lines affecting the Project shown on said Condominium Map or required under the CZO or County Permit, and not erect, place or maintain any building or structure whatsoever along such boundary.

12.5 Not erect or place on the Project (other than on the limited common elements) any building or structure, including fences and walls, nor make additions or structural alterations to or exterior changes of any Common Elements of the Project, except in accordance with plans and specifications, including detailed plot plan first approved in writing by a majority of Unit Owners or such larger numbers thereof as may be required by laws, including all Owners of Unit thereby directly affected, and complete any such improvements diligently after the commencement thereof.

12.6 Not make or suffer any strip or waste or unlawful, improper or offensive use of the Project.

13. SERVICE OF PROCESS.

The person hereby authorized to receive service of legal process in all cases provided in the Act shall be William R. Hancock, an officer of Declarant, whose address is 4569 Kukui St., Suite 200, Kapaa, HI 96746, or any of the principal officers of the Association.

14. COMPLIANCE WITH DECLARATION, BYLAWS AND MASTER CCRS DECLARATION ETC.

All Unit Owners, their tenants, families, servants and guests, and any other persons who may in any manner use the Project, shall be bound by and comply strictly with the provisions of the County Permit, the Master CCRs Declaration, this Declaration and the other Association Documents, and all agreements, decisions and determinations of the Association lawfully made or amended from time to time, and failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board of Directors or Managing Agent, if any, on behalf of the Association, or in a proper case, by an aggrieved Unit Owner.

Notwithstanding the foregoing, an Owner of a Unit that is located on a Remnant Lot is not subject to and the Owner thereof shall not be obligated to comply with the Master CCRs Declaration, provided, however that the Owners of all Units located on a Lot may impose restrictions and covenants affecting their lot by Recorded Instrument.

15. ALTERATION AND TRANSFER OF INTERESTS.

The undivided percentage interest in the Common Elements, appurtenant to each Unit shall have a permanent character, shall not be altered without the consent of all of the Unit Owners affected expressed in an amendment to this Declaration duly recorded, shall not be separated from the Unit to which they appertain, and shall be deemed to be conveyed, leased or encumbered with such Unit even though such undivided percentage, limited common elements or other easements are not expressly mentioned or described in the conveyance or other instrument. The right of each Unit Owner to transfer his Unit and appurtenant common interest in the Project is not subject to any right of first refusal or similar restriction in favor of the Association.

16. COMMON EXPENSES AND LIMITED COMMON EXPENSES.

16.1 Common Expenses.

(a) All charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration of the Project, including without limitation thereof, operation of the Project and maintenance, repair, replacement and restoration of the Common Elements (including without limitation, all common utilities, and the maintenance of the Water Tank Lot (identified by Kauai Tax Map Key (4) 4-4-03:89, even though such Lot is owned by the County), any additions and alterations to the Common Elements, all liability whatsoever for loss or damage arising out of or in connection with the Common Elements, or any accident or fire on the Common Elements or any nuisance thereon, and all premiums for hazard and liability insurance herein required with respect to the Project, shall constitute common expenses of the Project for which the Unit Owners shall be severally liable in accordance with their respective common interest; provided, however, the premiums for hazard insurance (if obtained under a blanket policy by the Association) shall be allocated to each Unit according to its full replacement cost.

(b) For purposes hereof, all costs relating to maintenance, repair, replacement and restoration of the Common Elements (including, for this purpose, limited common elements) shall be treated as a common expense if the improvements made to, on, or under such common element or limited common element was initially made by Declarant either (i) in complying with either the Phase 1 or the Phase 2 requirements of the County Permit or (ii) was otherwise made by Declarant with the intent that such improvements were to benefit more than one Unit in the Project. (Such improvements are called "Developer's Initial Improvements." Improvements other than Developer's Initial Improvements made to, on or under a limited common element shall be the obligation of the Unit Owners who are benefitted by such limited common element, and costs of installation, maintenance, repair, replacement and restoration thereof shall be treated as a limited common expense under Paragraph 16.2 below.

16.2 Limited Common Expenses. Except as stated in Paragraph 16.1 above, all charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration of the limited common elements, including without limitation thereof, maintenance, repair, replacement and restoration of the limited common elements, any additions and alterations thereto, all liability whatsoever for loss or damage arising out of or in connection with the limited common elements, or any accident or fire on the limited common elements or any nuisance thereon, and all premiums for hazard and liability insurance herein required with respect to the limited common elements, shall constitute limited common expenses of the Project for which each of the Owners of the Units to which the limited common elements are appurtenant shall be severally liable in accordance with their respective common interest.

16.3 Assessments by the Board. The Board shall from time to time assess (a) the common expenses against all the Units in the respective proportionate share based upon the common interest of each Owner, and (b) the limited common expenses against the Units to which are appurtenant the limited common expenses in the respective proportionate share based upon the common interest of the Owners among whom the limited common expenses are to be assessed. The unpaid amount of such assessments against such Unit shall constitute a lien against such Unit which may be foreclosed by the Board as provided by the Condominium Act, provided that 30 days prior written notice of intention to foreclose shall be mailed, postage prepaid, to all other persons having any interest in the Unit as shown by the Association's record of ownership.

17. INSURANCE.

17.1 Fire and Extended Coverage Insurance.

(a) Individual Unit Owners. Subject to the requirements of the Condominium Act, each Unit Owner at its own expense shall at all times keep the Buildings and other Improvements constituting his Unit and located in or within the Exclusive Area and other limited common elements appurtenant to his Unit insured by a separate policy against loss or damage by fire with extended coverage in an insurance company or companies authorized to do business in Hawaii in an amount as near as practicable to the full replacement cost thereof without deduction for depreciation, with an inflation guard endorsement. In every case of such loss or damage to any Unit, subject to Section 18 of this Declaration, all proceeds of such separate insurance shall be used as soon as reasonably possible by the respective Unit Owner for rebuilding, repairing or otherwise reinstating the Unit in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as hereinafter provided, and the Unit Owner at its own expense shall make up any deficiency in its respective separate insurance proceeds.

(b) Association.

(i) The Board, on behalf of the Association, at its common expense, shall at all times keep the Buildings and other Improvements constituting the Common Elements (exclusive of Limited Common Elements) insured by a policy against loss or damage by fire with extended coverage in an insurance company or companies authorized to do business in Hawaii in an amount as near as practicable to the full replacement cost thereof without deduction for depreciation, with an inflation guard endorsement.

(ii) Notwithstanding the foregoing, if the first mortgagee of a Unit requires that a blanket insurance policy for fire and extended coverage be carried by the Association or if the Board decides that it would be more efficient or cost effective that there be a blanket insurance policy for fire and extended coverage covering the Project, then, in either event the Association shall procure and maintain the appropriate policy of fire insurance, with extended coverage, insuring the entire project against loss by fire and other casualty. Any such policy

or policies shall meet all of the requirements applicable to individual Unit policies as set forth above and shall be in the name of the Association, for the use and benefit of each Unit Owner. The Association or any insurance trustee with whom the Association may enter into an insurance trust agreement shall hold any proceeds from such insurance in trust for the Unit Owners and their first mortgage holders, as their interests may appear. Each Unit Owner and each Unit Owner's mortgagee shall be beneficiaries of the policy in the percentage, as their interests may appear. Certificates of insurance shall be issued to each Unit Owner and mortgagee upon request. The cost of the policy shall be allocated according to paragraph 16.1 above. Such policy shall be primary in the event a Unit Owner has other insurance covering the same loss.

(c) Every such policy shall (unless unobtainable at a reasonable cost):

1. Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration or contribution by reason of any other insurance obtained by or for any Unit Owner;

2. Contain no provision relieving the insurer from liability for loss occurring while the hazard to such Unit is increased, whether or not within the knowledge or control of the Unit Owner or the Board, or because of any breach of warranty or condition or any other act or neglect by the Unit Owner or the Board or other Unit Owner or any other persons under either of them;

3. Provide that such policy may not be canceled (whether or not requested by the Board or an individual Unit Owner) except by the insurer giving at least thirty (30) days' prior written notice thereof to the Board, the holder of a mortgage covering the Unit, and every other person in interest who shall have requested such notice of the insurer;

4. Contain a waiver by the insurer of any right of subrogation to any right of the Board or Unit Owners against any of them or any other persons under either of them;

5. Contain a standard mortgagee clause which shall:

(i) Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any Unit, in their respective order of priority, whether or not named therein;

(ii) Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board or the Unit Owners or any persons under any of them;

(iii) Waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause.

6. Contain a provision requiring the insurance carrier, at the inception of the policy and on each anniversary date thereof, to provide the Owners and the Board with a written summary in layman's terms of the policy, including the type of policy, description of coverage and limits thereof, amount of annual premium and renewal date.

(d) If the Project is located in an identified flood hazard area as designated by the U.S. Department of Housing and Urban Development, each Unit Owner or the Association, as applicable, shall also obtain and maintain flood insurance.

17.2 General Liability Insurance.

(a) Each Unit Owner at its own expense shall effect and maintain at all times comprehensive general liability insurance covering the Unit Owner with respect to claims for personal injury, death and property damage in connection with the operation, maintenance or use of his Unit and its appurtenant limited common elements.

(b) The Board, on behalf of the Association, at its common expense, shall also effect and maintain at all times comprehensive general liability insurance covering all the Unit

Owners with respect to claims for personal injury, death and property damage in connection with the operation, maintenance or use of the Common Elements of the Project and all Units of the Project and, if required by the holder of any mortgage covering a Unit, legal liability arising out of lawsuits related to employment contracts of the Association, if any.

(c) Any such policy shall be maintained with a responsible insurance company and shall have minimum limits of not less than \$1,000,000 for injury to one person and \$3,000,000 for injury to more than one person in any one accident or occurrence and \$300,000 for property damage, and from time to time upon receipt thereof deposit promptly with the Board current certificates of such insurance, without prejudice to the right of any Unit Owners to maintain additional liability insurance for their respective Units. Such insurance shall (a) provide that the same shall not be invalidated by any act or neglect of the Board or Unit Owners or any persons under any of them, and may not be canceled or substantially modified without at least thirty (30) days prior written notice to the Association and to each holder of a first mortgage of any Unit, and (b) contain a waiver by the insurer of any right of subrogation to any right of the Board or Unit Owners against any of them or any other persons under them.

(d) All premiums for insurance herein required to be obtained by the Board on behalf of the Association shall be a common expense to be paid by timely assessments thereof, and such payments shall be held in a separate escrow account of the Association and used solely for the payment of such premiums as the same become due.

(e) Liability Insurance for Members of the Board and Officers of the Association. The Board, on behalf of the Association at its common expense, may effect and maintain liability insurance covering members of the Board and officers of the Association with minimum coverage in such amounts as shall be determined by the Board. Any such insurance policy shall require the insurance carrier, at the inception of the policy and on each anniversary date thereof, to provide the Board with a written summary of the policy, including the type of policy, a description of the coverage and limits thereof, amount of annual premium, and renewal dates; and the summary shall be in layman's terms and the Board shall provide a copy thereof to each Unit Owner.

17.3 Review by the Board. The Board shall review not less frequently than annually the adequacy of its entire insurance program, including all policies of insurance required to be carried by the individual Unit Owners hereunder, and the Board and the individual Unit Owners shall adjust such insurance coverage accordingly; the Board shall then report in writing its conclusions and action taken on such review to the Owner of each Unit and to the holder of any mortgage on any Unit who shall have requested a copy of such report or copies of all such reports.

18. DAMAGE OR CONDEMNATION OF A UNIT.

18.1 If any part of a Unit, its appurtenant limited common element or any improvements thereon shall be damaged by an insured or uninsured casualty or shall be taken or condemned by any entity having the power of eminent domain (or shall be sold to such entity under threat of condemnation), the determination of whether or not to reconstruct or repair the same shall be made as follows:

Any Unit which shall be so damaged or destroyed, or condemned as aforesaid shall be reconstructed or repaired by the Owner of such Unit unless said Owner, with the approval of the holder of any mortgage affecting the Unit, decides against such reconstruction or repair, or if this Declaration is terminated by vote of all of the Unit Owners pursuant to the provisions of Section 514A-21 of the Act.

18.2 Such reconstructing or repair shall be made promptly and diligently by the Owner of the Unit affected ("Affected Owner") provided that (a) the Unit Owner shall have a reasonable period for adjusting any insurance loss, collection of condemnation proceeds, preparations of building plans, hiring of contractors, architects, and other professionals and arranging of financing, (b) all such reconstruction and repair shall be made in accordance with the conditions and standards set forth in Paragraph 20.1 below, as if such conditions and standards applied to any construction work or change to the Unit; and (c) the Owner of the Unit which shall not have been damaged or condemned shall cooperate with the Affected Owner, provided that all costs associated with the reconstruction and repair shall be borne by the Affected Owner.

18.3 If the Owner of a damaged or destroyed Unit elects not to repair or reconstruct the Unit in accordance with the provisions of this Declaration, the Owner shall be responsible at its own cost and expense to remove all remains of the Unit so damaged or destroyed and to restore the site thereof to good orderly condition and even grade.

18.4 Any insurance proceeds or condemnation proceeds payable with respect to the Unit shall be paid to the Owner of such Unit and its mortgagees, as their interests may appear.

19. DAMAGE OR CONDEMNATION OF COMMON ELEMENTS.

19.1 In case at any time or times any Common Elements (excluding limited common elements) shall be damaged or destroyed or shall be taken or condemned by any entity having the power of eminent domain (or shall be sold to such entity under threat of condemnation), then the Association shall promptly reconstruct and repair such improvements or what remains thereof unless the Declaration is terminated by vote of all of the Unit Owners pursuant to the provisions of Section 514A-21 of the Act, with the consent of the holders of the first mortgages covering all of the Units.

19.2 Restoration of the Common Elements (excluding limited common elements) shall be completed diligently by the Association as its common expense.

19.3 Unless restoration of the Common Elements (excluding limited common elements) is undertaken within a reasonable time after such casualty, the Association, at its common expense, shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good orderly condition and even grade.

19.4 Any insurance proceeds or condemnation proceeds payable with respect to the Common Elements (excluding limited common elements) shall be paid to the Owners of the Units in accordance with each common interest.

20. ALTERATION OF PROJECT.

20.1 Construction and Other Changes to Units.

Each Unit Owner at his sole option, at any time and from time to time, without the consent or joinder of the Association, the Board, any person having an Interest in a Lot or any person having an Interest in a Unit (other than the holder of a mortgage lien affecting the Owner's Unit, if such mortgage requires consent of such holder,) shall have the right to improve, renovate, remodel, make additions to, enlarge, remove, replace or restore the Buildings and Improvements to or in the Owner's Unit or portions thereof or upon the Exclusive Area appurtenant to Owner's Unit (the foregoing are referred to singly, as a "Change" and collectively as "Changes") upon the conditions set forth in this Section 20.

20.2 Conditions to Making Changes. The following conditions shall apply to an Owner making Changes to his Unit:

(a) All Changes shall comply with the Declaration and the other Association Documents;

(b) All Changes within or to a Unit or its appurtenant Exclusive Area located on any of Lots 1 through 5 and Lots 7 through 20 inclusive shall comply with the Master CCRs Declaration. The Master CCRs Declaration provides, in pertinent part, that no Building or Improvement may be constructed, erected or maintained nor may any Agricultural Activity be undertaken, on any Lot or Unit until plans therefor have been submitted to and approved by the Design Review Committee.

(c) Notwithstanding (b), Changes within or to a Unit or its appurtenant Exclusive Area located on any of Remnant Lots shall not be required to comply with the Master CCRs Declaration.

(d) All Changes shall conform with the CZO and the applicable Laws, including the requirements for issuance of building and, if the Change relates to construction of a Farm Dwelling, complying with permits by the County for Farm Dwellings and other Improvements.

(e) The Improvements and Buildings constituting the change are within the uses permitted under Section 10 of the Declaration.

(f) Any such Change shall be at the expense of the Unit Owner making the Change (who shall indemnify the Association and the other Unit Owners from all such costs) and such Change shall be expeditiously made and done in a manner that will not unreasonably interfere with the use or enjoyment by Owners of other Units, the limited common elements appurtenant to each of such Units or the Common Elements.

(g) During the course of making such Change, the Unit Owner making such Change will cause to be maintained at his expense builder's all-risk insurance in an amount considered reasonably prudent. At the request of the Association, the Owner making the Change shall cause the Association to be named as an additional insured and shall deposit with the Association evidence of such insurance.

(h) The Unit Owner making the Change shall have the right to utilize, relocate and realign existing and/or to develop additional, central and appurtenant installations for services to the Unit affected by such Change for electricity, sewer and other utilities and services; provided that the same shall not cause any permanent interruption in the services of such utilities to any other Unit Owners and shall not otherwise unreasonably interfere with another Unit Owner's use or enjoyment of his Unit, the Common Elements or the Unit's appurtenant limited common elements.

(i) If notwithstanding Paragraph 20.1 above, the consent or joinder of another Unit Owner is required in connection with making the Change, or seeking building or other permits with a Governmental Entity or person providing utility services, then the Unit Owner shall be deemed to have a special power of attorney from each such other Unit Owner to provide such consent or joinder; provided that all cost and expense relating to the Change shall be borne by the Owner making the Change.

20.3 Conditions to Changes Relating to a Farm Dwelling.
In addition to the conditions set forth in Paragraph 20.2 above, an Owner whose Change relates to constructing a Farm Dwelling may not do so until the completion of roadway and other subdivision

Improvements made in accordance with the County Permit and with the Land Use Agreement and the acceptance thereof by the County ("County Permit Requirements"), unless such condition is waived by the County and Declarant or unless the Change is to be made within or to a Unit or its appurtenant Exclusive Area which is located on any of Remnant Lots.

20.4 Changes in Boundaries of Exclusive Areas.

(a) The Owners of Units to which are appurtenant contiguous Exclusive Areas may, from time to time, and without the necessity of the consent or joinder of the Declarant, the Association, the Board, or any Person having an Interest in a Lot or having an Interest in a Unit, change the boundaries between such Exclusive Areas and may re-allocate portions of each Exclusive Area between or among the Units.

(b) Any such change in boundaries shall be effective upon the execution and recording in the Bureau of Conveyances (without the necessity of the consent or joinder of the Declarant, the Association, the Board, or any Person having an Interest in a Lot or having an Interest in a Unit) of an amendment to this Declaration and the Condominium Map which shall contain (i) a legal description of the resulting Exclusive Area appurtenant to each of the Units; and (ii) an amended site map accurately depicting the resulting Exclusive Areas.

20.5 Rights of Remnant Owner to Remove a Remnant Lot and Units from the Project.

(a) All of the Owners of a Remnant Lot ("Electing Remnant Owners") shall have the right (without the necessity of the consent or joinder of the Declarant, the Association, the Board, or any Person having an Interest in a Lot or having an Interest in a Unit) to remove a Remnant Lot (and all Units located thereon) from the Project and from being subject to the Act (the "Election").

(b) If the Electing Remnant Owners decide to make the Election, they shall notify Declarant in writing and the following conditions shall apply to effectuate the Election:

(i) The Electing Remnant Owners shall execute and record (without the necessity of the consent or joinder of the Association, the Board, any other Unit Owner or any other person who has an Interest in a Lot or an Interest in a Unit) an amendment to the Declaration and the Condominium Map which amendment shall contain (i) a description of the Land remaining subject to the Condominium Property Regime; (ii) notification that the Remnant Lot is being removed from the Project; and (iii) any additional common and limited common elements and easements which shall thereafter be appurtenant to the Units in the Project still remaining, any revisions to the common interest effective upon such subdivision and removal in accordance with Section 7 of the Declaration and such other matters necessary or desirable to effect any such change in the Project;

(ii) Delivery and recordation of a deed from the Electing Remnant Owners (and any person having an Interest in the Remnant Lot) conveying to Owners remaining in the Project (the "Remaining Owners") any rights of the Electing Remnant Owners in the land remaining within the Project; and

(iii) Delivery and recordation of a deed or deeds from the Remaining Owners of any Remaining Owners' interest in the Remnant Lot being removed.

(c) Notwithstanding that a Remnant Lot is removed from the Project, (i) the Units located on Remnant Lot 3 or 4 shall continue to utilize the roadways and other common elements of the Project, and shall continue to pay an assessment equal to that payable by other Unit Owners; and (ii) if the Units located on Remnant Lot 7 shall elect to utilize the roadways and other common elements of the Project, such Owners shall continue to pay an assessment equal to that payable by other Unit Owners.

20.6 Changes to Other Than Units. Except as to Changes allowed in Paragraphs 20.1 through 20.5 or otherwise permitted by this Declaration, Changes to the Project different in any material respect from the Condominium Map of the Project, shall be undertaken by the Association only pursuant to an amendment of this Declaration, duly executed by or pursuant to vote of 75% of the Unit Owners and accompanied by the written consent of the holders of all liens affecting any of the Units, and in accordance with complete plans and specifications therefor first approved in writing by the Board, and promptly upon completion of such restoration, replacement or construction, the Association

shall duly file such amendment in the Bureau of Conveyances, together with a complete set of the floor plans of the Project as so altered, certified as built by a registered architect or professional engineer.

20.7 Provisions Generally Applicable to Section 20. The following provisions shall apply to each of the paragraphs within Section 20 unless the context and usage would clearly indicate to the contrary:

(a) The rights set forth in each of the preceding paragraphs within Section 20 create certain rights and benefits in favor of a Unit Owner (including without limitation, Declarant) (each of whom may be referred to herein as the "Benefitted Owner") and such may not be amended without the consent of such Benefitted Owner.

(b) In furtherance of the rights granted under Paragraphs 20.1 through 20.6 inclusive, the Benefitted Owner shall have the right, (without the necessity of the consent or joinder of the Association, the Board, any other Unit Owner or any other person who has an Interest in a Lot or an Interest in a Unit other than a holder of a mortgage lien on his Unit, if such mortgage requires the consent by the holder) (i) to execute and deliver (on behalf of all of the Unit Owners and their respective mortgagees, if necessary) applications, petitions, agreements and other instruments which such Benefitted Owner deems necessary or desirable (including without limitation, documents to be filed or recorded with the Planning Department of the County, the Bureau of Conveyances, any Government Entity, public utility company or private parties); (ii) to execute and deliver documents and to take such actions in connection with the foregoing as shall be in the sole and absolute discretion of the Benefitted Owner, and his delivery of such instrument or the taking of such action shall be sufficient determination; and (iii) to amend the Declaration and the Condominium Map to reflect rights of the Benefitted Owner set forth herein.

(c) If notwithstanding that a paragraph within this Section 20 does not require the consent or joinder of any other Unit Owner or any other person who has an Interest in a Lot or an Interest in a Unit ("Third Party") to the action or change by the Benefitted Owner, but the Act, Law (including that of the County), title insurance companies, a Governmental Entity or public utility companies nonetheless does require the consent or

joinder by the Third Party, then upon the request of Benefitted Owner, each such Third Party hereby consents in advance to such action or change being made by the benefitted Owner and agrees to consent to and join in, as aforesaid, and to execute all instruments or documents necessary or desirable so that Benefitted Owner may effectuate his change or otherwise do as permitted under the respective paragraph within this Section 20.

If the Third Party fails to provide such requested written joinder, consent, or take such action, as the case may be, such shall be accomplished by signature of the Benefitted Owner acting under an irrevocable power-of-attorney in favor of Benefitted Owner from each of the other Owners and Third Parties, the acquiring or acceptance of ownership in an Interest in a Unit or an Interest in a Lot or of any other interest in the Project being a grant of such power, and the grant being coupled with an interest, being irrevocable.

(d) The rights of a Benefitted Owner (including, without limitation, the Declarant) granted under each of the Paragraphs within Section 20 may be assigned, mortgaged or otherwise be transferred by such benefitted Owner only in connection with the assignment, mortgage or other transfer of the Unit owned by Benefitted Owner.

(e) Each and every conveyance, lease and mortgage or other lien made or created on any Unit and all common interests and other appurtenances thereto shall be subject to the provisions of each of the Paragraphs within Section 20.

(f) In furtherance of the rights granted in the prior subparagraphs of this Paragraph 20.7, each Unit Owner, by accepting a conveyance of his Unit, shall be deemed to have granted an irrevocable power-of-attorney in favor of (i) Declarant and (ii) after the first meeting of the Association, to the president of the Association, and to each of them ("Grantee") so that each such Grantee, in the name and on behalf of a Unit Owner may execute and deliver applications, petitions, agreements and other instruments or take such actions in connection with the foregoing that Declarant deems to be necessary or desirable in connection with making subdivision improvements by Declarant as required under the County Permit, making of other Improvements to a Unit by the Owner thereof; or in connection with the subsequent development, operation and maintenance of the Project and the Common Elements by the Association or Declarant.

The documents and instruments intended to be covered by this power of attorney shall include, without limitation, documents filed with the agencies of the County or State, documents to be recorded with the Bureau of Conveyances, or documents to be filed or delivered to any Government Entity, public utility company or private party.

This power of attorney may also be utilized by Grantee in connection with building or other applications for Improvements being made or sought to be made by a Unit Owner, and in connection with any consent or joinder in such applications that may be required by County, other Government Entity or Utility by the Owners of other Units located on the same Lot as the Unit being improved.

Such power of attorney shall also empower the Grantee to execute and deliver documents and to take such actions in connection with the foregoing in connection with the making of Improvements on the Project by Declarant or by any Unit Owner. The grant of such power is deemed to be coupled with an interest, and is irrevocable.

Each Grantee shall promptly process relevant requests and, where appropriate, execute all such documents that do not violate Law or any of the Association Documents with respect to those matters that are approved by the Association or the Design Review Committee and the Design Guidelines adopted pursuant thereto.

21. AMENDMENT OF DECLARATION.

21.1 Generally. Except as otherwise provided herein, this Declaration may be amended by vote of seventy-five percent (75%) of the Unit Owners, effective only upon the recording of an instrument setting forth such amendment and vote duly executed by such Owners or by the proper officers of the Association; provided, however, that so long as Declarant owns more than ten(10%) of the Units in the Project, the consent by Declarant shall be required for any amendment.

21.2 Mortgagee's Consent. In addition, the approval of "eligible holders" of first mortgages on Units to which are appurtenant at least 51% of the common interest of the project

shall be required for any material amendment to the Declaration or any amendment of a provision for the express benefit of holders or insurers of first mortgages on Units.

An "eligible holder" is a holder of a first mortgage on a Unit which has made a written request to the Association that it receive notices of proposed Changes to the Declaration. A "material amendment" to the Declaration is one which establishes, provides for, governs or regulates any of the following: (1) voting; (2) assessments, assessment liens, or subordination of such liens; (3) reserves for maintenance, repair and replacement of the Common Elements; (4) insurance or fidelity bonds; (5) rights to use of the Common Elements; (6) responsibility for maintenance and repair of the project; (7) expansion or contraction of the project for the addition, annexational or withdrawal of property to or from the project; (8) boundaries of any Unit; (9) the interest in the Common Elements; (10) convertibility of Units into Common Elements or of Common Elements into Units; (11) leasing of Units; (12) imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey its or her interest in the Unit; or (13) establishment of self management by the Association after professional management has previously been required by any of the mortgage holders.

21.3 Declarant's Rights to Make Amendments Required by Law, Lenders, Title Insurers, Etc.

Notwithstanding Paragraphs 21.1 and 21.2,

(a) at any time prior to the first recordation in the Bureau of Conveyances of a conveyance of a Unit, the Declarant may amend this Declaration (including all exhibits) and the Bylaws in any manner, without the consent of any Unit purchaser; and

(b) at any time after the first recordation in the Bureau of Conveyances of a conveyance of a Unit:

(i) Declarant may amend this Declaration (and when applicable, the Condominium Map) to file the "As Built" verified statement required by Section 514A-12 of the Act (i) so long as such statement is merely a verified statement of a registered

architect or professional engineer certifying that the final plan thereto filed fully and accurately depicts layout, location, unit numbers, and the dimensions of an improvement or change in a Unit as-built; and so long as the plans filed therewith involve only immaterial Changes to the layout, location, or dimensions of the units as built or any change in any Unit number; and

(ii) So long as Declarant retains any interest in an Unit in the Project,

Declarant shall have the right (but not the obligation) to amend this Declaration and the Bylaws (and the Condominium Map, if appropriate) (without the necessity of the consent or joinder of the Association, the Board, any other Unit Owner or any other person who has an Interest in a Lot or an Interest in a Unit) for the purpose of meeting any requirement imposed by (aa) applicable Law, (bb) the Real Estate Commission of the State of Hawaii, (cc) any title insurance company issuing a title insurance policy on the Project or any of the Units, (dd) any institutional lender lending funds on the security of the Project or any of the Units, or (ee) any other governmental or quasi-governmental agency including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development or the Veterans Administration; and

(c) Declarant shall have the right to amend this Declaration and the Condominium Map to make minor alterations in the Project, any Unit or in the common elements, so long as such to do not affect the physical location, design or size of any Unit, the use available for the Owner of such Unit for the Unit's of its appurtenant limited common elements, change the common interest appurtenant to an Unit which has been sold and filed in the Bureau of Conveyances location or size of a Unit shall be made without the consent of all persons having an interest in such Unit.

(d) Each and every person party acquiring an interest in the Project, by such acquisition, shall be deemed to have consented to the amendments described in this Section 23 and to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same, and appoints Declarant and its assigns as his or her attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on

his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the duration of such reserved rights, and shall not be affected by the disability of such party or parties.

21.4 Amendment to Reflect Changes. A Unit Owner shall have the right and the obligation without the consent or joinder of any other person to amend this Declaration and the Condominium Map to reflect the Changes made to a Unit in accordance with Paragraph 20.2 of this Declaration. Within thirty days of completion of such Changes, the Owner of the Unit being changed shall execute and record with the Bureau of Conveyances an amendment to this Declaration and to the Condominium Map, together with a complete set of the floor plans of the Project as so altered, certified as built by a registered architect or professional engineer.

21.5 Amendments by Owners of Contiguous Units. Owners of two or more Units which have contiguous Exclusive Areas shall have the right without the consent or joinder of any other person to amend this Declaration and the Condominium Map to reflect the changes made in the boundaries between their Exclusive Areas in accordance with Paragraph 20.4 of this Declaration.

22. RESERVED RIGHTS OF DECLARANT.

Notwithstanding any provision to the contrary contained in this Declaration, Declarant has reserved certain rights set forth in this Declaration, including the following rights which Declarant may exercise without the necessity of the consent or joinder of the Association, the Board, any other Unit Owner or any other person who has an Interest in a Lot or an Interest in a Unit:

22.1 Easement to Make Improvements, Complete Repairs and Maintenance of the Project. Declarant shall have and hereby reserves an easement over and upon any portion of the Project, including the common elements and any Unit and its appurtenant Exclusive Area, as may be reasonably necessary for Declarant or for any agent or other party performing such work on behalf of Declarant, for the construction of Improvements which the Declarant is obligated or in its discretion decides to make; the repair, maintenance or replacement of any such Improvements which the Declarant is obligated or in its discretion decides to make,

and for the correction of defects and other punch-list matters in connection with the foregoing Improvements.

22.2 Sales Activities. Declarant shall have and hereby reserves, and Declarant's mortgage lender(s) shall have, the right and easement to conduct extensive activities on or from the Project, including the common elements, in connection with the sale of the units in the Project, including the use of models, management offices, parking stalls and extensive sales and leasing displays and activities. "Mortgage lender" shall mean any holder of a mortgage encumbering any of the Declarant's interest in the Project or in a condominium Apartment or any person acquiring such interest of the Declarant or its unit at foreclosure of such mortgage, or by conveyance in lieu of foreclosure.

22.3 Compliance with Law by Declarant. If the Project is found not to be in compliance with any federal, state County or other law during the period that Developer is selling the Units in the Project or thereafter, Declarant shall have the right (but not the obligation), at its election, at any time thereafter to enter the Project and make such modifications to the common elements as are necessary, in Declarant's judgment, to bring the Project into compliance with the applicable laws. This right shall include, but shall not be limited to, the right to cause noise, dust and other disturbances and nuisances incidental to modifying the common elements as required; provided, however, that Declarant or any party performing such work on behalf of Declarant shall make reasonable efforts to minimize such disturbances and nuisances.

22.4 Reservation relating to Roadway Lots. Declarant reserves the right from time to time to grant and convey to any public or Government Entity (including the County) any and all rights relating to the Roadway Lots (or portion or portions thereof), upon such terms and conditions relating to the dedication and acceptance thereof as Declarant and such grantee may agree, provided that following such exercise of such right and grant, Unit Owners shall have rights similar to those of other members of the public to use the area or areas that shall have been granted or conveyed by Declarant.

22.5 Reservation relating to Agreements with Neighbors Declarant reserves the right from time to time to enter into easements, licenses and other forms of agreements ("Sharing

Agreements") with owners of properties outside the Project ("Neighbors") if such Sharing Agreements are, in Declarant's discretion, for the benefit of the Project or if such Sharing Agreements are required under the County Permit or previously agreed upon Land Use Agreement recorded in the Bureau as Document No. 2003-229571, which is a prior encumbrance against the Project and provides for certain benefits for the Owner of Lot 86-B(TMK(4)4-6-07:73 (which is located adjacent to the Project.)

Such Sharing Agreements may include, by way of illustration, agreements relating to the use of utility lines, utility services, access, or other rights in, under or over the property of others, and may include granting rights in favor of the Neighbors to use the Common Elements of the Project. Any such agreements, may include (but shall not require) agreements granting reciprocal rights between the Association and the Neighbors, provided that any rights granted to such Neighbor shall be in return for having granted rights for the benefit of the Project.

Such right reserved to Declarant hereunder shall expire on the earlier of December 31, 2015 or upon the sale by Declarant of 90% of the Units to third parties.

22.6 Reserved Rights of Declarant to Grant Easements.

In addition to the rights reserved in favor of Declarant under the Master Grant of Easements, Declarant further reserves (a) the right to grant to any public or governmental authority rights-of-way and other easements or to obtain easements or access rights onto public ways, which are for the sole benefit of the Project or which do not materially interfere with the use nor materially impair the value of, any Unit, over, across, under and through the Common Elements and limited common elements for lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage and other public services and utilities; (b) the right to enter for the purpose of installing, repairing, altering and removing such lines and facilities and of trimming any trees in the way thereof; and (c) the right to amend the terms and conditions of any existing easement to reflect the final configuration of the Improvements intended to be made within such area of the easement if such change shall become necessary or desirable after the completion of roadways and other public facilities, private roadways or utilities; provided, however, that any such changes shall not materially change the use by a Unit Owner of such easement or easements. The rights granted herein in favor of

Declarant shall terminate when Declarant no longer owns any Units in the Project. Thereafter, the Association, through the Board, with the consent or agreement of any holder of any then existing easement affected thereby, is authorized to grant, convey, transfer, cancel, relocate and otherwise deal with any and all such public services and utilities easements now or hereafter located on or affecting the Project.

22.7 Joinder by Third Party.

(a) To the extent that the joinder or consent of the ("Third Party" singly) may be required in order to confirm, effectuate or exercise any of the rights reserved to the Declarant under this Declaration or to validate any act or thing done pursuant to exercise of such rights reserved to the Declarant,, such joinder or consent may be executed by the Declarant as attorney-in-fact for, and in the name and stead and on behalf of, the Third Party, who by acquiring or accepting the ownership of a Unit or a lien covering a Unit or any other Interest in a Unit or Interest in a Lot shall be deemed (i) to have appointed Declarant as the Association's or such Third Party's attorney-in-fact as aforesaid, such appointment being coupled with an interest and being irrevocable, and (ii) to have agreed that such Third Party shall promptly upon Declarant's request and for no further consideration, execute, acknowledge and deliver to the Declarant such instruments as the Declarant may require evidencing or confirming such joinder or consent.

(b) Association Joinder, if necessary. To the extent that joinder, approval or consent of the Association may be required in order to effect any of the changes contemplated by, caused by or arising in connection with Declarant's right reserved in this Declaration, such joinder, approval or consent may be given by the Board acting on behalf of and in the name of the Association in accordance with a resolution to so act approved by a majority of the Board but without requiring any other approval by the members of the Association, and any and all instruments thereby required, including (but not limited to) any amendments to this Declaration, Bylaws and/or the Condominium Map shall be signed by such officer or officers of the Board as are authorized to sign such instruments pursuant to said resolution.

23. BINDING EFFECT.

All of the covenants, agreements and conditions herein contained shall extend to and be binding upon the heirs, executors, administrators and assigns of the respective parties hereto.

24. EXISTING STRUCTURES BEING CONVERTED.

24.1 Declarant states that to the extent that each of the existing sheds in the Project constitutes an "existing structure" as defined under the Act, then each such shed is in compliance with all ordinances, codes, rules, regulations, or other requirements in force at the time of their construction; and that all existing structures and uses of the Project conform with all existing laws, and that the Project does not contain any legally "non-conforming" structure or use.

24.2 Declarant states that no variance has been granted from any ordinance, code, rule, or regulation in force at the time of the existing structure's construction or from any current ordinance, code, rule, regulation or other requirement.

25. ARBITRATION. At the request of any Owner, any dispute between one or more of the Unit Owners or between a Unit Owner and the Association, the Board, or the managing agent (if any) with respect to the interpretation, application, or enforcement of the Condominium Act, the Declaration or any of the Association Documents shall be submitted to arbitration pursuant to the Act, as the same may be amended from time to time, or any successor thereto, provided that if the Act shall at any time be repealed and no successor thereto shall be enacted, such dispute shall be submitted to arbitration pursuant to Hawaii Rev. Stat. Chapter 658A, as the same shall be amended from time to time, or any successor thereto. The findings of the arbitrator shall be binding and conclusive upon the parties thereto. Except as otherwise provided by law, the prevailing party in such arbitration, as designated by the arbitrator, shall be entitled to recover all of such party's costs, expenses, and reasonable attorneys' fees incurred therein. Notwithstanding the foregoing, a Unit Owner who pays the Association the full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If the Unit Owner

Exhibit "A"

COUNTY OF KAUAI
PLANNING DEPARTMENT

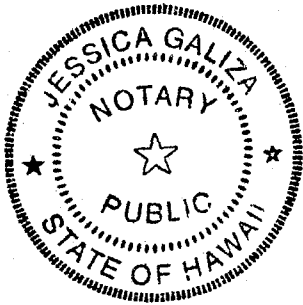
GUEST HOUSE REQUIREMENTS

1. It is located on a parcel of Land of at least 9,000 square feet.
2. It is physically separate from the dwelling unit and observes all required setbacks.
3. It is used only by guests and may not be rented out as a separate dwelling.
4. It does not contain a kitchen or any room used for cooking or preparing food.
5. It contains no more than 500 square feet of gross floor area, including all living space, storage, decks and garages under a single roof structure.
6. Decks and storage areas which are not covered by a roof need not be included as part of the floor area calculations.
7. If a garage exists on the main dwelling of a lot, an additional garage can be attached to the guest house provided that the garage area be included as part of the gross floor area.
8. If no garage exists on the main dwelling, then a garage or other accessory use to the main dwelling can be added to the guest house, without including the added area as part of the gross floor area, provided that the applicant sign a form stating that the garage or accessory use is for the purpose of servicing the main dwelling only.
9. It complies with all applicable State and County laws and regulations, including all of the above requirements.

NOTE: Servants' quarters must conform to the guest house requirements.

STATE OF HAWAII)
) SS.
COUNTY OF KAUAI)

On this 20th day of January 2005, before me personally appeared WILLIAM R. HANCOCK, 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 if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Jessica Galiza
JESSICA GALIZA, Notary Public,
above mentioned State

My Commission expires: 11/18/05

and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under Chapter 514A, Part VII; provided that a Unit Owner may only file for arbitration if all amounts claimed by the Association are paid in full on or before the date of filing. If the Unit Owner fails to keep all association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the Unit Owner pays all association assessments within thirty (30) days of the date of suspension, the Unit Owner may ask the arbitrator to recommence the arbitration proceedings. If the Unit Owner fails to pay all association assessments by the end of the thirty day period, the Association may ask the arbitrator to dismiss the proceedings. The Unit Owner shall be entitled to a refund of any amounts paid to the Association which are not owed.

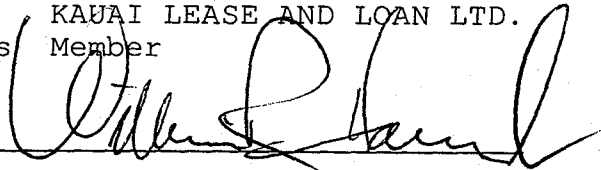
26. INVALIDITY.

The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such provision had never been included herein.

IN WITNESS WHEREOF, Declarant has caused this Amended and Restated Declaration to be duly executed on the day and year first above written.

KAPAA 382, LLC, a Hawaii limited liability company

By KAWAI LEASE AND LOAN LTD.
Its Member

By 
WILLIAM R. HANCOCK
Its president

SCHEDULE 1

KULANA SUBDIVISION			
CPR UNIT AREAS			
LOT	ACRES	CPR	LOCATION OF APT.
UNIT			
1A	2.709	1A	Southeast
1B	1.893	1B	West Central
1C	4.956	1C	West Central
1D	4.284	1D	Central
1E	5.202	1E	Central
1F	2.42	1F	Central
1G	2.129	1G	Northwest
1X	3.55	1X	
1Y	2.026	1Y	
TOTAL	29.169		
LOT 2:			
UNIT			
2A	2.428	2A	Central
2B	2.157	2B	Central
2C	1.562	2C	Central
2D	2.244	2D	Central
2E	4.193	2E	Central
2F	1.492	2F	East Central
2G	3.114	2G	South Central
2X	7.711	2X	
2Y	0.466	2Y	
TOTAL	25.367		
LOT 3:			
UNIT			
3A	3.994	3A	Central
3B	2.97	3B	Southeast
3C	2.579	3C	South Central
3D	2.496	3D	South Central
3E	4.01	3E	Southeast
TOTAL	16.049		
PAGE TOTAL:	70.585		

LOT 4:			
UNIT			
4A	4.544	4A	Eastern
4B	4.517	4B	Northwest
4C	4.502	4C	Central
4X	1.519	4X	
TOTAL	15.082		
LOT 5:			
UNIT			
5A	4.881	5A	South Central
5B	4.688	5B	Central
5C	2.56	5C	Southwest
5D	2.297	5D	Southeast
5X	7.619	5X	
5W	0.062	5W	
5Y	1.473	5Y	
5Z	3.341	5Z	
TOTAL	26.921		
LOT 6:			
RESERVOIR	5.363		
TOTAL	5.363		
LOT 7:			
UNIT			
7A	2.731	7A	Central
7B	3.547	7B	Eastern
7C	2.114	7C	West Central
7D	3.016	7D	Southeast
7E	3.903	7E	Southern
7X	3.483	7X	
7Y	0.07	7Y	
TOTAL	18.864		
LOT 8:			
UNIT			
8A	1.738	8A	Southwest
8B	2.363	8B	South Central
8C	3.05	8C	Northern
8D	1.266	8D	South Central
8E	2.127	8E	South Central
8X	2.641	8X	Northern
TOTAL	13.185		
PAGE TOTAL:	79.415		

LOT 9:			
UNIT			
9A	2.601	9A	Central
9B	3.058	9B	Central
9C	2.866	9C	Central
9D	2.631	9D	South Central
9E	2.055	9E	Central
TOTAL	13.211		
LOT 10:			
UNIT			
10A	2.696	10A	East Central
10B	2.483	10B	Central
10C	2.761	10C	Central
10D	1.988	10D	Central
10E	3.046	10E	Western
10X	0.163	10X	
TOTAL	13.137		
LOT 11:			
UNIT			
11A	3.124	11A	Eastern
11B	2.308	11B	Central
11C	2.576	11C	North Central
11D	2.419	11D	North Western
11E	3.068	11E	South Central
11X	0.218	11X	
TOTAL	13.713		
LOT 12:			
UNIT			
12A	2.117	12A	North Central
12B	1.82	12B	North Central
12C	3.206	12C	Central
12D	6.1	12D	Western
12E	2.202	12E	Northwest
12X	0.306	12X	
TOTAL	15.751		
PAGE TOTAL:	55.812		

LOT 13:			
UNIT			
13A	1.468	13A	South Central
13B	1.848	13B	South Central
13C	3.091	13C	North Central
13D	1.893	13D	South Central
13E	3.315	13E	South Central
13X	0.576	13X	
P-2	0.847	P-2	
TOTAL	13.038		
LOT 14			
UNIT			
14A	1.150	14A	North
14B	1.636	14B	Central
14C	4.55	14C	North Central
14D	2.779	14D	South Central
14E	2.929	14E	Central
P-3	0.635	P-3	
TOTAL	13.679		
LOT 15			
UNIT			
15A	1.763	15A	Central
15B	1.618	15B	Central
15C	4.055	15C	Northwest
15D	3.12	15D	Northwest
15E	1.773	15E	West Central
15X	1.422	15X	
TOTAL	13.751		
LOT 16			
UNIT			
16A	2.298	16A	South Central
16B	1.999	16B	Central
16C	3.86	16C	Southern
16D	3.361	16D	Central
16E	3.042	16E	West Central
TOTAL	14.56		
PAGE TOTAL:	55.028		

LOT 17			
UNIT			
17A	4.618	17A	South Eastern
17B	4.760	17B	Central
17C	3.091	17C	Central
17X	2.909	17X	North Western
17Y	1.189	17Y	Central
TOTAL	16.567		
LOT 18			
UNIT			
18A	6.036	18A	Southeast
18B	3.744	18B	North
18C	3.476	18C	South
18D	3.329	18D	Southwest
18E	2.122	18E	North Central
TOTAL	18.707		
LOT 19			
UNIT			
19A	4.372	19A	Northwest
19B	3.889	19B	Central
19C	4.856	19C	Northwest
19D	4.762	19D	Southwest
19E	3.685	19E	Northern
TOTAL	21.564		
LOT 20			
UNIT			
20A	4.009	20A	East Central
20B	8.338	20B	Central
20C	5.985	20C	East Central
20D	3.22	20D	West Central
20E	5.658	20E	Eastern
TOTAL	27.21		
PAGE TOTAL:	84.048		

LOT 21			
ROADWAY	2.098		
LOT 22			
ROADWAY	1.273		
LOT 23			
ROADWAY	1.666		
TOTAL	5.037		
TOTAL PROJECT			
AREA:	349.925		
REMNANT 3:		TMK# (4) 4-3-3-022	
UNIT			
26A	2.425	26A	North Central
26B	3.056	26B	West Central
26C	3.186	26C	Western
26D	2.467	26D	Southern
26E	3.498	26E	Central
TOTAL	14.632		
REMNANT 4:		TMK#(4) 4-3-3-021	
UNIT			
27A	5.158	27A	Northwest
27B	2.074	27B	Central
TOTAL	7.232		
REMNANT 7:		TMK# (4) 4-3-3-005 (por.)	
UNIT			
30A	0.831	30A	West Central
30B	0.888	30B	Northwest
TOTAL	1.719		
TOTAL			
REMNANTS	23.583		