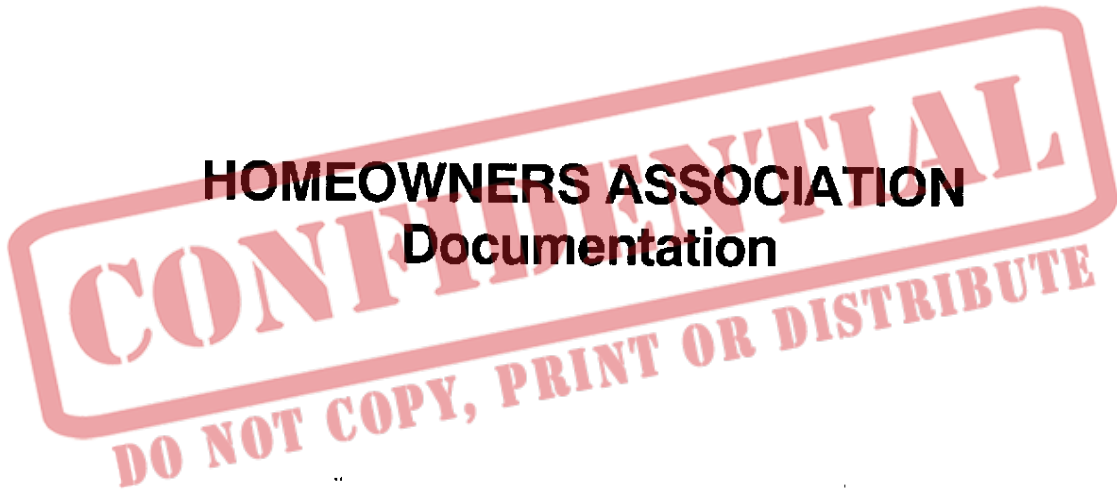


**WAILEA
COMMUNITY ASSOCIATION**

**HOMEOWNERS ASSOCIATION
Documentation**



**555 Kaukahi
Wailea, Maui, Hawaii 96753**

DOCUMENT SERVICES OF MAUI

HOMEOWNERS ASSOCIATIONS: Condominiums - Single Family
PO Box 2155, Kihei, Hawaii 96753 808-879-4440(off) 808-879-4420(fax)

Escrow: SEE MAIN TABLE OF CONTENTS
FOR THE SUBJECT HOMEOWNERS ASSOCIATION

PLANNED COMMUNITY MASTER ASSOCIATION

(As per C-64 of the DROA)

Disclosure Documents for :

WAILEA COMMUNITY ASSOCIATION

xx Declarations and Amendments
xx Bylaws and Amendments
na* Minutes of the last 3 (approved) Board of Directors meetings
na* Minutes of the last (approved) Annual Meeting
na* Board of Directors and Annual Association Meeting Minutes issued
during escrow period, (if applicable and/or available)
na* Financial Statements (Year End)
na* Current Budget
na* Reserve Study or Summary
xx House Rules (Design Committee Rules)
xx Articles of Incorporation/Association and Amendments
na* Copy of any and all pending litigation complaints filed by or against the
Owner's Association and/or its directors that are currently unresolved.
na* Insurance Summary
na* Property Information Form RR105c

***Wailea Community Association does not release these documents.
For further information, please contact WCA.**

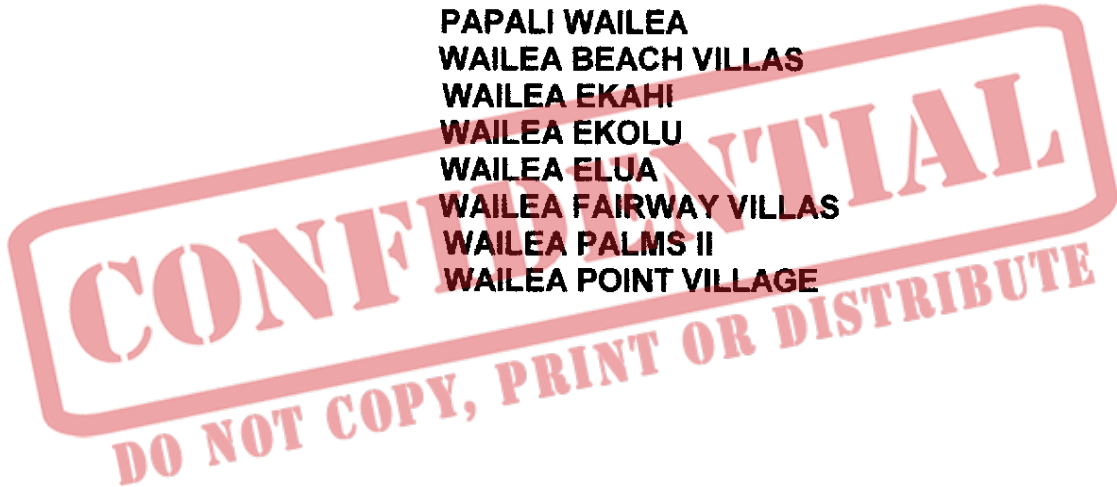
NOTE:

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WAILEA COMMUNITY ASSOCIATION
PARTICIPATING HOMEOWNERS ASSOCIATIONS

CONDOMINIUMS

GRAND CHAMPIONS VILLAS
HO'OLEI
KAI MALU AT WAILEA
KANANI WAILEA
PALMS at WAILEA I
PAPALI WAILEA
WAILEA BEACH VILLAS
WAILEA EKAHI
WAILEA EKOLU
WAILEA ELUA
WAILEA FAIRWAY VILLAS
WAILEA PALMS II
WAILEA POINT VILLAGE



SINGLE FAMILY RESIDENCES

WAILEA FAIRWAYS
WAILEA GOLF ESTATES
WAILEA GOLF VISTAS
WAILEA HIGHLANDS
WAILEA KAI HOMESITES
WAILEA KIALOA HOMESITES
WAILEA PUALANI ESTATES

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WALLEA COMMUNITY ASSOCIATION
AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS

WHEREAS, Wailea Development Company, Inc., a Hawaii corporation (hereinafter called "Declarant"), executed that certain Wailea Community Association Declaration of Covenants and Restrictions dated December 19, 1986, which Declaration was filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1427923 (hereinafter called the "Declaration") and is noted on the Transfer Certificates of Title described in Schedule "1" attached hereto and made a part hereof, which Transfer Certificates of Title represent all of the property currently covered by the Declaration; and

WHEREAS, the Declaration was amended by (i) that certain Amendment of Wailea Community Association Declaration of Covenants and Restrictions dated September 2, 1994, and filed as aforesaid as Document No. 2180541, and (ii) that certain Amendment to Amendment of Wailea Community Association Declaration of Covenants and Restrictions dated September 29, 1997, and filed as aforesaid as Document No. 2408259; and

WHEREAS, Article XI, Section 9 of the Declaration provides that the Declaration may be amended in certain respects, upon the vote or written consent of both (a) the Declarant and (b) the vote or written consent of fifty-one percent (51%) of the total votes of all Owners (as defined in the Declaration), including Declarant; and

WHEREAS, at a meeting of Wailea Community Association (the "Association") duly held on March 6, 1998, for the purpose of, among other things, amending the Declaration, the vote of both the Declarant and fifty-one percent (51%) of the total votes of all Owners, including Declarant, was obtained to amend the Declaration in the manner submitted to the Declarant and the Owners at that time; and

WHEREAS, a quorum of the Board of Directors of the Association voted unanimously on June 10, 1998 at a regular Board of Directors meeting to record a restatement of the Declaration, which would set forth the provisions of the original Declaration and all of the foregoing amendments in a single document.

NOW THEREFORE, the Declaration is hereby amended and restated as set forth below.

This Declaration of Covenants and Restrictions (this "Declaration") is made this 19th day of December, 1986, by WALLEA DEVELOPMENT COMPANY, INC., a Hawaii corporation (hereinafter called "Declarant"), whose principal place of business and post office address is 161 Wailea Ike Place, Wailea, Maui, Kihei, Hawaii 96753.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of fee simple title to all of the property described in Exhibit "A" attached hereto, located at Wailea, County of Maui, State of Hawaii; and

WHEREAS, Declarant desires to have such property developed, maintained and preserved as a first-class, luxury resort development consisting of hotels, condominium projects, single-family residential subdivisions, commercial facilities, common areas and various other improvements and amenities; and

WHEREAS, Declarant has organized or intends to organize a Hawaii non-profit corporation to be known as the "Wailea Community Association" to operate, manage, administer, maintain and landscape various Common Property (as hereinafter defined), to perform and provide for various services necessary or desirable for the benefit of the owners and occupants of the property now and hereafter made subject to this Declaration, and to perform all of the duties of the Association described in this Declaration; and

WHEREAS, by making this Declaration, Declarant desires to promote, maintain and enhance the orderly development, aesthetics, health, safety, welfare, attractiveness and desirability of the property now and hereafter made subject to this Declaration;

NOW, THEREFORE, Declarant hereby declares that all of the property now and hereafter made subject to this Declaration shall be held, leased, mortgaged, encumbered, conveyed, used, occupied and improved subject to and with the benefit and protection of the following terms, restrictions, covenants, conditions and provisions, which terms, restrictions, covenants, conditions and provisions shall be deemed covenants running with the land:

ARTICLE I
DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall otherwise provide) shall have the following meanings:

a. "Additional Declaration" shall mean any recorded declaration of restrictive covenants, other than this Declaration, which has been recorded against the title to a Lot and which has been executed, or by recorded instrument consented to, by Declarant. Such Additional Declaration may contain covenants, conditions and restrictions supplementing and modifying the provisions of this Declaration, subject, however, to the restrictions on modifications described in Section 1(k) below.

b. "annexation" shall mean the process by which Annexed Property is made subject to this Declaration pursuant to Article II or Article III.

c. "Annexed Property" shall mean all property from time to time annexed to Wailea and made subject to this Declaration pursuant to Article II or Article III.

d. "Association" shall mean the Wailea Community Association, a Hawaii nonprofit corporation, and its successors and assigns.

e. "Association Rules" shall mean the rules from time to time in effect, adopted by the Board of Directors pursuant to Article III, Section 8.

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

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

h. "Bylaws" shall mean the Bylaws of the Association, as the same has been or hereafter may be amended.

i. "Charter" shall mean the Charter of Incorporation of the Association, as the same may now or hereafter be amended.

j. "Commercial Facility" shall mean any structure or improvement which is used for commercial or business purposes, whether or not ancillary to a Hotel or Condominium Project, including, without limitation, any of the following or similar facilities: shopping centers, restaurants, bars, offices, retail stores, spa and health facilities, convention centers and auditoriums.

k. "Commercial Unit" shall mean every five hundred (500) square feet (or fraction thereof) of Floor Space located in any structure (including any Hotel, Condominium Project or Commercial Facility) located on a Lot. As used herein, "Floor Space" shall mean the gross square footage of all floor and mezzanine space used, or available and intended to be used, for retail (such as shop space, store space, restaurants, bars, etc.), commercial, business or office purposes. Such floor space shall be measured from the interior surface of all demising or perimeter walls (or, if there are no demising or perimeter walls, then from the edge of the useable floor space), without deduction for columns, closet or storage space, stairways, mechanical rooms, unusable space, interior partitions, etc., but excluding all mezzanine and storage areas not used for income-

generating purposes. The term "Commercial Unit" shall not mean or include:-

(i) office space which is used by the Owner (and not rented out to others) exclusively for the administration of the structure (such as office space used by the Owner of a Hotel exclusively for the administration of the Hotel),

(ii) meeting rooms and areas where none of the persons using such rooms and areas is charged any fees or other charges for the use of such rooms and areas.

(iii) lobby or mezzanine areas where hotel guests are served food or beverages, provided the cost of all food and beverages served in such areas is included within and already covered by the guests' regular room rates, or

(iv) any land devoted for use as a golf course or tennis center (but shall include any structures (such as clubhouses, shops and restaurants, but not tennis courts), which fall within the definition of a Commercial Unit and which are located on or serve such golf courses and tennis centers).

1. "Commercial Zoned Lot" shall mean any Zoned Lot which is designated, or in which the majority of the land area comprising the Zoned Lot is designated, "Commercial" or "Business" under the Community Plan.

m. "Commercial Zoned Lot Unit" shall mean every 10,000 square feet (or fraction thereof) of land area comprising a Commercial Zoned Lot.

n. "Common Property" shall mean all of the following that are available for use by the general public or are for the direct or indirect benefit of Owners and are within the boundaries described in Exhibit "C" and shown on Exhibit "B": (i) all roadways, roadway shoulders, parks, beach accesses, parking lots, easements and similar property or interests therein dedicated to any Government Entity or utility company, or owned or held by the Association; (ii) any property or interest therein which is owned or held by, or leased, licensed or otherwise transferred to, the Association, and which is not used for income generating purposes (such as but not limited to shopping centers, golf courses and tennis courts), or, if used for income generating purposes, where the net income from such property is received by the Association; (iii) all drainage ways and easements (except drainage ways and easements which the owner of the property on which such drainage ways and easements are located is obligated under this Declaration or by written agreement to maintain); (iv) all roadways and roadway shoulders owned by Declarant, after the same have been constructed; (v) all facilities used by security personnel, maintenance personnel,

a

employees or agents of the Association; (vi) The Lot(s) upon which the facilities referred to in (v) above are located; and (vii) all tools, equipment and other personal property used for the maintenance or security of Wailea; provided, however, that (A) with respect to the Lots shown on the attached Exhibits "B" and "C" which are located south of Kaukahi Street, the Common Property related to or serving a particular Lot shall not be deemed to be "Common Property" hereunder until such Lot is annexed to this Declaration in accordance with Article II below, and (B) as to the facilities and Lots referred to in clauses (v) and (vi) above, the costs attributable to such facilities shall be apportioned equitably between the owner thereof and the Association on the basis of considerations including the relative amount of use of the same for Association-related purposes, and the costs attributable to such Lots shall be apportioned equitably between the owner thereof and the Association on the basis of considerations including the relative areas of such Lots occupied by such facilities.

o. "Community Plan" means the Community Plan adopted by the County of Maui pursuant to the General Plan of the County of Maui and which is from time to time applicable to Wailea. If a Community Plan is not in effect for Wailea, then all references in this Declaration to "Community Plan" shall mean the General Plan of the County of Maui, and if the General Plan is not in effect, then all references to "Community Plan" shall mean the applicable County of Maui zoning ordinances.

p. "Condominium Project" shall mean any condominium project in Wailea established pursuant to a recorded Declaration of Horizontal Property Regime and Chapter 514A, HRS.

q. "Condominium Unit" shall mean an apartment used for residential purposes (including transient occupancy) within a Condominium Project, whether or not the Condominium Project is operated as a hotel.

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

s. "Declarant" shall mean Wailea Development Company, Inc., a Hawaii corporation, its successors and assigns, or such other person to whom Wailea Development Company, Inc., its successors or assigns, may assign its rights as the Declarant pursuant to Article XI, Section 1. (For purposes of this definition of "Declarant", Wailea Development Company, Inc.'s "successors and assigns" shall not include any person to whom Wailea Development Company, Inc., conveys or leases a Lot, unless the rights of the "Declarant" expressly have been assigned to such person.)

t. "Design Committee" shall mean the Design Committee established by Article VI.

u. "Design Committee Rules" shall mean those rules adopted by the Design Committee pursuant to Article VI, Section 4.

v. "Enforcing Person" shall mean any of the Enforcing Persons identified in Article VII, Section 1.

w. "Fiscal Year" shall mean January 1 through December 31 of each year, or such other fiscal year as may be adopted by the Board.

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

y. "Hotel" shall mean any structure (other than a Condominium Project) in which the rooms or apartments are occupied for residential purposes or by guests on a transient basis and where typical hotel services (such as a front desk and maid and/or room service) are provided to the persons occupying such rooms or apartments.

z. "Hotel Unit" shall mean each hotel room or suite (designed for living accommodations) in any Hotel.

aa. "HRS" shall mean the Hawaii Revised Statutes, as amended.

bb. "Improvement" shall mean and include all buildings, outbuildings, roads, driveways, parking areas, fences, screens, retaining 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.

cc. "interest in the Lot" 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 the Lot (or any portion thereof) or any Unit (or any portion thereof).

dd. "Land Court" shall mean the Land Court of the State of Hawaii, and any successor thereto.

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

ff. "Long-term Lease" shall mean a lease having a term (exclusive of all options to extend the term) of thirty (30) years or more.

gg. "Lot" shall mean and include (i) each lot in Wailea created pursuant to final subdivision (or resubdivision) approval of Maui County under the Maui County Code, together with all Improvements on such lot, and (ii) each Unit. Where two or more lots have been consolidated into one lot under the Maui County Code, then the term "Lot" shall mean the lot resulting from such consolidation.

hh. "Multi-Family Zoned Lot" shall mean any Zoned Lot which is designated, or in which the majority of the land area comprising the Zoned Lot is designated, "Multi-Family" or "Hotel" under the Community Plan.

ii. "Multi-Family Zoned Lot Unit" shall mean every 10,000 square feet (or fraction thereof) of land area comprising a Multi-Family Zoned Lot.

jj. "1975 Declaration" shall mean that certain Declaration of Covenants and Restrictions dated January 17, 1975, recorded in the Office of the Assistant Registrar as Document No. 713123, as amended and supplemented.

kk. "Office of the Assistant Registrar" shall mean the Office of the Assistance Registrar of the Land Court of the State of Hawaii, and any successor thereto.

ll. "Open Lot" shall mean (i) any Lot which is designated, or in which the majority of the land area comprising the Lot is designated, "Agriculture", "Public", "Park" or "Open Space" under the Community Plan, and (ii) any Lot which is being used as a golf course or as a tennis center; provided, however, that if any Commercial Facility or Residential Structure is developed or located on any of the Lots described in clauses (i) or (ii) above, the Owner(s) of the Hotel Units, Condominium Units and Commercial Units located in or comprising such Commercial Facility or Residential Structure, shall have voting rights and shall be obligated to pay assessments on the basis of, the number of Hotel Units, Condominium Units or Commercial Units located in or comprising such Commercial Facility or Residential Structure.

mm. "Owner" shall mean: (i) the record owner (including Declarant and the Association), whether one or more persons, of a fee simple title to any Lot which is a part of Wailea, and (ii) each Project Association or person which is admitted as an Owner pursuant to Article III, Section 1. The Charter or Bylaws may classify Owners into different classes.

nn. "Paramount Mortgage" shall mean the Paramount Mortgages referred to in Article IV, Section 9.

oo. "person" shall mean any person, individual or entity (including, without limitation, any trustee, mortgagee, personal representative, corporation (profit or non-profit), partnership (general or limited), joint venture, association of apartment owners established pursuant to Chapter 514A, HRS, unincorporated association or trust).

pp. "Project Association" shall mean: (i) any association of apartment owners of a condominium project located within the area described on the attached Exhibits "B" and "C", (ii) any association of homeowners of a single-family residential lot subdivision located within the area described on the attached Exhibits "B" and "C", and (iii) WPOA.

qq. "Public Property" shall mean: (i) any Lot which is owned in fee simple or leasehold by any Government Entity or public utility company, and (ii) any Lot which is used as a parking lot or public roadway, park, school or for a similar public use or purpose.

rr. "Public Records" shall mean the Bureau of Conveyances, the Office of the Assistant Registrar, or the Land Court, and each of their respective successors.

ss. "record" shall mean to file or record a document in the Public Records.

tt. "Recorded Instrument" shall mean (i) any recorded instrument conveying any interest in a Lot (including a deed, agreement of sale or lease), other than security instruments (such as mortgages), (ii) any Additional Declaration, and (iii) any Supplemental Declaration; and any amendments to the instruments described in (i), (ii) and (iii) above. No modifications of the provisions of this Declaration contained in any particular Recorded Instrument may serve to delete from the attached Exhibit "A" any of the Lots described on said Exhibit "A", or serve materially to increase any burdens or obligations, or materially to impair or limit any rights, under this Declaration or under any other Recorded Instrument of any Owner who is not subject to such particular Recorded Instrument, including, without limitation, materially impairing the voting rights or materially increasing the assessment obligations of any such Owner. Subject to the foregoing provisos concerning modifications, in the event of any conflict between the provisions of this Declaration and a Recorded Instrument, the provisions of the Recorded Instrument shall control.

uu. "Residential Structure" shall mean any structure used for residential or dwelling purposes, such as a Hotel, Condominium Project or home.

vv. "Single-Family Residential Lot" shall mean any Lot zoned or limited by restrictive covenants for single-family residential purposes.

ww. "Single-Family Zoned Lot" shall mean any Zoned Lot which is designated, or in which the majority of the land area comprising the Zoned Lot is designated, "Single-Family" under the Community Plan, prior to the subdivision of such Zoned Lot into Single-Family Residential Lots.

xx. "Single-Family Zoned Lot Unit" shall mean every 10,000 square feet (or fraction thereof) of land area comprising a Single-Family Zoned Lot.

yy. "SMA Permit" shall mean a Special Management Area permit issued by the County of Maui.

zz. "Step I", "Step II" or "Step III" "Planned Development Approval" shall mean Step I, Step II and Step III Planned Development Approval, respectively, as those terms are defined or used from time to time by the Maui County Planning Department.

aaa. "Supplemental Declaration" shall mean the Supplemental Declarations referred to in Article II, Section 3, annexing Annexed Property to this Declaration.

bbb. "Units" or "Unit" shall mean all or any Hotel Units, Condominium Units, Commercial Units, Single-Family Residential Lots and Zoned Lot Units, together with such other Units as may hereafter be identified in any amendment to this Declaration or in any Supplemental Declaration or Additional Declaration (or amendment thereto), and any portion of or interest in any Unit.

ccc. "Wailea" shall mean (i) all of the land described in Exhibit "A", (ii) all land that hereafter may be annexed to Wailea and made subject to this Declaration, (iii) all land owned by the members of any Project Association which is admitted as a member of the Association, and (iv) all Improvements on the land described in clauses (i), (ii) and (iii) above.

ddd. "WPOA" shall mean the Wailea Property Owners' Association, a Hawaii non-profit corporation, referred to in the 1975 Declaration, its successors and assigns.

eee. "Zoned Lot" shall mean any Lot (but not an Open Lot), which is designated, or in which a majority of the land area comprising the Lot is designated, "Commercial", "Business", "Multi-Family", "Hotel", or "Single-Family" under the Community Plan, and which has not been developed or improved with any Commercial Facility or Residential Structure or which has not been subdivided into Single-Family Residential Lots.

fff. "Zoned Lot Unit" shall mean a Multi-Family Zoned Lot Unit, Single-Family Zoned Lot Unit or Commercial Zoned Lot Unit, as applicable in the context.

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

ARTICLE II
PROPERTY SUBJECT TO DECLARATION: ANNEXATION

Section 1. Property Initially Subject to Declaration. The land initially subject to this Declaration shall be all of the land described in Exhibit "A" attached hereto, together with any and all Improvements thereon.

Section 2. Covenants Running with the Land. All of Wailea shall be held, sold, conveyed, encumbered, leased, occupied, used and improved subject to the covenants, conditions, restrictions and limitations set forth in this Declaration, all of which are established and declared and agreed to be for the purpose of enhancing, protecting and preserving the desirability, attractiveness, aesthetics and environment of Wailea. Said covenants, conditions, restrictions and limitations shall constitute covenants running with the land, binding according to the terms hereof and upon all persons having or acquiring any right, title or interest or estate in Wailea or any part thereof. Each person, upon acquiring title to or any other interest, right or estate in a Lot or other property in Wailea, or by occupying any portion of Wailea, shall be deemed to covenant and agree to observe, perform and comply with each and every provision of this Declaration, whether or not it shall be so expressed in the instrument by which such person acquired such title, interest, right or estate or commenced such occupancy. Each Owner shall be fully responsible for ensuring that all guests, tenants, invitees, employees, agents and customers of the Owner strictly comply with the provisions of this Declaration, and shall be personally liable for any non-compliance.

Section 3. Annexation of Additional Property. Declarant may, from time to time and in its sole discretion, but not beyond December 31, 2016, annex all or portions of the

property shown on the map attached hereto as Exhibit "B" (the perimeter boundaries of which are described in the attached Exhibit "C"), and which is not already described in the attached Exhibit "A", upon an undertaking in writing by Declarant or other owner of such property to perform and comply with this Declaration as to such property. In addition, Declarant may from time to time annex any other property not described in Exhibits "B" or "C" upon the vote or consent of fifty-one percent (51%) of the total votes of all Owners (excluding Declarant) and upon such undertaking as to such property. Annexation shall subject such property to this Declaration and constitute the same as a part of Wailea. All property annexed pursuant to this Section 3 is referred to in this Declaration as "Annexed Property". Nothing contained in this Declaration shall be construed in any manner to obligate Declarant to annex, or constitute any representation or warranty that Declarant will annex, all or any portion of the property described in the attached Exhibits "B" or "C".

a. Recording of Supplemental Declaration. The annexation of Annexed Property shall be effected by recording in the Public Records, a Supplemental Declaration executed by Declarant and (if Declarant is not the owner) the owner of the Annexed Property: (i) describing the property to be annexed; (ii) containing the undertaking of Declarant or such other owner of the Annexed Property to perform and comply with this Declaration as to the Annexed Property; and (iii) declaring the property to be used, held, sold, conveyed, encumbered, leased, occupied, improved and otherwise enjoyed subject to this Declaration. Annexation shall be deemed effective on the date (the "Annexation Date") the Supplemental Declaration is recorded or such other date as may be set forth in the Supplemental Declaration as the effective date of annexation.

b. Annexed Owners' Obligations. The Owners of the Annexed Property shall automatically be members of the Association and shall be obligated to perform and observe all of the provisions of this Declaration commencing as of the Annexation Date, and the Voting Units assigned to the Annexed Property and Owners' obligation to pay assessments shall become effective as of the Annexation Date. The Owners of the Annexed Property shall not be liable for any liabilities of the Association which may have accrued prior to the Annexation Date.

c. Annexing Property Subject to 1975 Declaration. Portions of the property described in the attached Exhibits "B" and "C" consist of property which is or may in the future be subject to the 1975 Declaration. The owners of the property subject to the 1975 Declaration are or were members of WPOA. If the members of WPOA should elect to become members of the Association and amend the 1975 Declaration to provide that the owners subject to the 1975 Declaration shall be bound by this Declaration, and if the Board elects to accept such members and

their property under this Declaration, then upon the date such amendment to the 1975 Declaration (the "Amendment") is recorded:

(i) All of the property subject to the 1975 Declaration, or such lesser portion thereof which may be described in the Amendment (the "WPOA Property"), shall be deemed annexed to and subject to this Declaration, with the same force and effect as if such property had been annexed to Wailea and this Declaration by way of a Supplemental Declaration, and

(ii) The owners of the WPOA Property shall be deemed to be "Owners" under this Declaration with all of the same rights and obligations of an "Owner" under this Declaration, and commencing as of the effective date set forth in the Amendment (or if no effective date is expressly provided for, then as of the date the Amendment is recorded in the Public Records), the Owners of the WPOA Property shall be obligated to perform and observe all of the provisions of this Declaration and the Voting Units assigned to the WPOA Property and the WPOA Owners' obligation to pay assessments shall become effective.

Nothing contained in the foregoing or elsewhere in this Declaration shall mean that any Owner who is subject to this Declaration shall be subject also to the 1975 Declaration or that any Owner other than such WPOA members shall be subject to the 1975 Declaration.

d. Additional Rights of Annexation. The rights of annexation described in paragraph (c) above are in addition to any right to annex property owned by individual members of WPOA pursuant to other provisions of this Section 3, and the Board of Directors' right to annex property or admit any individual persons and/or Project Associations (including persons and Project Associations which may be members of WPOA) as members of the Association pursuant to Article III, Section 1(c) below.

e. Improvements on Annexed Property. Notwithstanding anything to the contrary contained herein, all Improvement on Annexed Property, the construction of which shall have commenced or been completed as of the Annexation Date, shall be deemed to be in compliance with the provisions of this Declaration (whether or not in fact in compliance) and no consent of the Board, Declarant or the Design Committee otherwise required under this Declaration shall be required therefor; provided, however, that (i) all modifications made to such Improvements and all actions taken by the Owner of such Improvements after the Annexation Date, shall be subject to the provisions of this Declaration, and (ii) all Improvements hereafter constructed on property which is owned as of the date hereof by Declarant and hereafter annexed to Wailea, and all Improvements constructed upon property after such property has been acquired by Declarant and which is hereafter annexed to

Wailea, shall not be exempt from the provisions of this Declaration.

f. No Opposition to Declarant's Efforts.

Declarant may, at its expense and effort, take all actions necessary or desirable (i) pursuant to paragraph (c) above, to subject the WPOA Property to this Declaration and to cause the election of the WPOA members to become members of the Association or to amend the 1975 Declaration to provide the WPOA members shall be bound by this Declaration, and (ii) to encourage Project Associations and persons to become members of the Association pursuant to Article III, Section 1(c). No Owner shall oppose or interfere with Declarant's efforts to cause such election and amendment, provided there is compliance with the provisions of paragraph (c) above, or to cause such Project Associations and persons to become members, provided there is compliance with the provisions of Article III, Section 1(c).

Section 4. Supplemental Restrictions and Limitations Established by Declarant. Subject to the provisions of Article I, Section 1(tt), Declarant shall have the right to supplement the provisions of this Declaration by including supplemental covenants, conditions, restrictions and limitations in any Recorded Instrument applicable to property owned by Declarant.

Section 5. Amendments to Supplemental Declaration. Any Supplemental Declaration may be amended in the manner described in the Supplemental Declaration or if not so described, by the vote or consent of Declarant and fifty-one percent (51%) of the Owners covered by the Supplemental Declaration.

ARTICLE III
WAILA COMMUNITY ASSOCIATION

Section 1. Organization: Members.

a. Non-Profit Status: Dissolution. The Association is a nonprofit corporation charged with the duties and empowered with the rights set forth herein and its Charter and Bylaws. In the event that the Association as a corporate entity is dissolved, then unless otherwise provided for by the Association, a nonprofit, unincorporated association governed by the Bylaws shall, forthwith and without further action or notice, be formed and succeed to all the rights, duties, privileges, assets, benefits and obligations of the Association.

b. Membership - General. Each Owner shall automatically be a member of the Association upon the acquisition of fee simple title to a Lot. Membership shall be appurtenant to and may not be separated from ownership of the Owner's Lot. Rights to membership terminate upon termination of status as an

Owner. Upon conveyance of an Owner's entire interest in the Owner's Lot, the conveying Owner shall be relieved of liability for assessments levied from and after the date of such conveyance. An Owner may, by written instrument, assign all or a portion of the Owner's rights of membership in the Association (including voting rights) to (i) any lessee leasing the Owner's Lot under a recorded Long-term Lease, or (ii) any vendee purchasing the Owner's Lot under a recorded agreement of sale; provided, however, that no such assignment shall (A) relieve the Owner from any of the Owner's obligations or liability under this Declaration (including the Owner's personal liability for the payment of any assessments levied against the Owner's Lot), or (B) diminish or impair any liens created under this Declaration upon the Owner's fee simple title to the Owner's Lot or the priority of such liens, or (C) diminish or impair any rights of any Enforcing Person under this Declaration. An assignment of an Owner's rights of membership pursuant to the preceding sentence shall be effective only upon the Board of Director's receipt of written notice of such assignment and a true and correct copy of the recorded agreement of sale or Long-term Lease.

c. Membership - Project Associations and Individual Members. Subject to the requirements and limitations imposed under this paragraph (c), Project Associations and persons who own property within the area shown on the attached Exhibits "B" and "C" but who are not otherwise subject to this Declaration, may be admitted as members of the Association and if so admitted their property may (but need not necessarily) be annexed to this Declaration and Wailea, upon such terms and conditions as may be designated by the Board and accepted by the Project Association and such persons, and upon the written undertaking of such Project Association or person to perform and comply with such terms and conditions. Such terms and conditions may include the granting of any or all membership rights of an "Owner" (including voting rights) and the assumption by each admitted Project Association or person of any or all obligations of an "Owner" (including the payment of assessments). Without limiting the foregoing, the Board shall have the right and power from time to time to reduce or increase the assessments payable by a Project Association or person, or to waive or modify the provisions of this Declaration, to induce or encourage such Project Association or person to become a member of the Association or to consent to the annexation of their property to this Declaration and Wailea. Notwithstanding the foregoing provisions of this paragraph (c), unless consented to by fifty-one percent (51%) of the total votes of the Owners (exclusive of Declarant), (a) the Board shall not be empowered to pay to any such Project Association or person any Association funds to induce or encourage the Project Association or person to become a member of the Association or to consent to the annexation of their property to this Declaration and Wailea, (b) the voting rights assigned to any such Project Association or person shall

be in proportion to the amount of the assessments paid by or on behalf of such Project Association or person, and (c) the admission of any such Project Association or person or the annexation of their property may not result in any materially greater assessments payable by the other members of the Association.

Any annexation of property pursuant to this paragraph (c) shall be accomplished by the recordation of a Recorded Instrument executed by the Board and the owner of the property being annexed, which Recorded Instrument shall set forth the terms and conditions of annexation and the undertaking of the owner to perform and comply with such terms and conditions.

Notwithstanding anything to the contrary contained in this paragraph (c), the provisions of this paragraph (c) shall not apply to any property which is owned as of the date hereof by Declarant. The annexation of such property to this Declaration and Wailea shall be governed by the provisions of Article II, Section 3 above.

d. No Limitation on Membership of Individual Lot Owners. The admission and annexation of persons, Project Associations and property under paragraph (c) above are in addition to Declarant's rights under Article II, Section 3, to annex property to this Declaration. If any property is annexed to this Declaration pursuant to Article II, Section 3, or if any person is admitted as a member of the Association pursuant to Article III, Section 1(c), and if in either case the Owner of such annexed property or such person is a member of a Project Association which is admitted as a member of the Association pursuant to Article III, Section 1(c), then the voting rights applicable to such Owner's property or such person may be exercised only by: (i) such Owner or person, in which event such voting rights may not be exercised by, or be included as a part of voting rights of, the Project Association in which such Owner or person is a member, or (ii) the Project Association in which such Owner or person is a member, in which event such voting rights may not be exercised by such Owner or person. The determination of whether voting rights shall be exercised in the manner described in clause (i) or clause (ii) shall be made by the Board of Directors.

e. Membership Classes. All of the Owners shall be divided into two classes: Class A shall consist of all Owners other than Declarant, and Class B shall consist exclusively of Declarant. Declarant's Class B membership shall be converted into Class A membership upon the date Declarant no longer holds ten percent (10%) or more of the total votes of all Owners, or upon such earlier date as Declarant may specify in a written notice to the Association.

Section 2. Membership.

a. No Avoidance of Obligations. No Owner may avoid the obligations of membership by non-use of the Common Property, renunciation or abandonment of the Owner's Lot, or any other act of abandonment or renunciation.

b. Termination of Membership. No membership shall be terminated, forfeited or transferred and no member shall be expelled, except upon transfer of the Owner's entire interest in the Owner's Lot.

c. Charter and Bylaws. The Membership status, rights, duties, privileges and obligations of an Owner as a member of the Association shall be as set forth in this Declaration, the Charter and the Bylaws. Each Owner shall at all times comply with the provisions of the Charter and the Bylaws.

d. Suspension of Voting Rights. The voting rights and other membership rights of any Owner may be suspended by action of the Board of Directors during the period when the Owner shall be in default in (i) the payment of any assessment owed under this Declaration, or (ii) the observance of any provision of this Declaration; provided, however, that (A) upon the cure of such default, such Owner's voting and other rights shall automatically be restored, and (B) prior to the suspension of such Owner's voting or other membership rights, the Board shall give the Owner not less than fifteen (15) days' written notice of the Board's proposed action and the reasons therefor, and an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the effective date of the suspension. Any notice required hereunder may be given by any method reasonably calculated to give actual notice, and any notice given by mail must be sent by first-class or registered or certified mail sent to the last address of the Owner shown on the Association's records. No suspension of any Owner's voting or other membership rights shall in any manner be deemed to waive, suspend, affect or reduce any of such Owner's obligations under this Declaration (including the obligation to pay assessments).

Section 3. Voting Rights. Voting rights in the Association shall be determined as provided below.

Each Owner shall have voting rights equal to the number of Voting Units assigned to the Unit Type which the Owner owns. The Unit Types and their assigned Voting Units are as follows:

<u>Unit Type</u>	<u>Voting Units</u>
<u>"developed" property</u>	
studio Condominium Unit	1.0
one (1) bedroom Condominium Unit	1.25
two (2) bedroom Condominium Unit	1.50
three (3) or more bedroom Condominium Unit	1.75
Single-Family Residential Lot (with or without house)	2.0
Hotel Unit	1.0
Commercial Unit	2.0
<u>"undeveloped" property</u>	
Multi-Family Zoned Lot Unit	3.0
Single-Family Zoned Lot Unit	2.0
Commercial Zoned Lot Unit	7.0
Open Lot	-0-
Public Property	-0-

The Voting Units assigned to each Project Association or individual person who is admitted as a member of the Association pursuant to Section 1(c) above, shall be as set forth in the Recorded Instrument or other agreement applicable to such Project Association's or person's admission.

Section 4. Method of Calculating Votes. Whenever this Declaration refers to the vote or consent of a stated percentage of the "total votes of all Owners" (or similar such phrase), such percentage shall refer to the percentage of the total Voting Units of all Owners whose voting rights are not suspended at the time the voting is held. Whenever this Declaration refers to the vote or consent of a stated percentage of the "Owners present at a meeting of the Association" (or similar such phrase), such percentage shall refer to the percentage of the total Voting Units actually present (or represented by proxy) at any meeting of the Association at which a quorum is present.

Section 5. Disagreements as to Voting Units. In the event any disagreement should arise between an Owner and the Association as to whether any Unit has been properly classified

in accordance with this Declaration, or whether the size of any Unit has been properly calculated in accordance with this Declaration, such dispute shall be settled by mandatory arbitration in accordance with the arbitration procedures described in Article X. The Owner of the Unit shall, pending arbitration, pay all assessments and other sums as and when due in the amount assessed by the Association, and the Owner and the Association shall, within fifteen (15) days after the arbitrator's decision has been rendered, pay or reimburse to the other party (as the case may be) all sums, if any, owing to such other party as a result of such decision.

Section 6. Duties of Association. The Association shall have the obligation and duty, subject to the terms of this Declaration, to do and perform each and every one of the following:

a. **Acceptance of All Owners.** The Association shall accept all Owners as members of the Association.

b. **Acceptance of Common Property Conveyed by Declarant.** The Association shall accept title to (but shall not be required to purchase) all Common Property that (i) is conveyed or transferred to the Association by Declarant and (ii) is for the direct or indirect benefit of the Owners or Wailea; provided, however, that the Association shall not be obligated to accept (but may accept upon the vote or written consent of fifty-one percent (51%) of the total votes of the Owners (exclusive of Declarant)), any Common Property (A) which is subject to a mortgage, security interest or other monetary lien (other than the lien for non-delinquent real property taxes and assessments (or installments thereof, if payable in installments)), or other lien, or (B) which is not described on, or is not located upon or within the lands described on, the attached Exhibits "B" and "C", or (C) which is subject to any encumbrance which would preclude the Association from using the property for its intended purposes (if any), or (D) which is leased, licensed or transferred by a non-title conveyance to the Association, unless the terms of such lease, license or transfer have been first approved by the Board. Nothing contained in the foregoing shall be deemed to obligate the Association to bear the expenses of the construction of Improvements upon property conveyed by Declarant to the Association hereunder in order to permit the intended use (if any) as of the date of such conveyance, of such property as Common Property, or be deemed to preclude the Association from constructing such improvements as the Association may deem desirable upon such property. Declarant shall, with respect to any Common Property it conveys or transfers to the Association in accordance with this paragraph (b), be liable for any liabilities (including taxes and assessments (or installments thereof, if payable in installments)) which may have accrued as to such Common Property prior to the date of conveyance or transfer to

the Association. The Association shall fulfill, satisfy and discharge any obligations and duties connected with or related to such Common Property from and after the date of such conveyance or transfer, and shall indemnify, defend and hold harmless Declarant from any liability, claim, loss, demand, cost and expense, including reasonable attorneys' fees (the "Indemnified Claims and Expenses") connected with or relating to such Common Property or asserted against or incurred by Declarant after the date such Common Property has been conveyed or transferred to or otherwise acquired by the Association, to the extent such Indemnified Claims and Expenses are not attributable to Declarant's negligence or willful misconduct; provided, however, that the Association's obligation to indemnify, defend and hold harmless Declarant hereunder shall not apply to any Indemnified Claims and Expenses which were the result of an identifiable event which occurred prior to the date of such conveyance or transfer, as opposed to being the result of a defect inherent in the condition of the property being conveyed or transferred.

c. Granting of Easements. The Association shall be required to grant and convey to any third parties easements, licenses, rights-of-way or other rights, benefits or interests in, on, over or under any Common Property (without payment to the Association) whenever required by Declarant for the development of any property located in Wailea or to comply with any requirements imposed by any Government Entity or provider of utility services as a condition to the development of any property in Wailea; provided, however, that such easements, licenses, rights-of-way or interests must be exercised and the grants thereof must be made in such manner as not to interfere materially with the Association's use of such Common Property, and that all utility lines must be located underground.

The grantee of the easement (i) in connection with any installation, removal, maintenance or repair or work done to or upon the easement area covered by an easement, shall have the right to cut through pavement areas located upon, and remove shrubbery, trees and other vegetation growing upon, the easement area, provided the grantee promptly restores the easement area at the grantee's expense to the reasonably equivalent condition existing immediately prior to such work, except for any improvements, trees or shrubbery which the Association or any person has constructed, placed or grown upon the easement area contrary to any of the provisions of this Declaration or the grant of easement, and (ii) shall be required to exercise its easement rights in such a manner as not to interfere unreasonably with any Owner's use of their property. The form and terms of the grant of easement shall be in the form and upon the terms customarily required by the grantee, including but not limited to any indemnity agreement customarily provided by the grantee, if such grantee is a Government Entity or public utility; provided, however, that Declarant shall use reasonable efforts to obtain

the agreement of any grantee which is not a Government Entity or public utility to indemnify, defend and save harmless the Association and its members from any claims, actions, damages, costs and expenses made against or incurred by the Association or any of its members as a result of the exercise of the grantee's easement rights. The Association shall not be required to make any covenant or warranty in connection with the grant of any easement. No easement granted pursuant to this subparagraph (c) shall impair the right of the Association or any Owner to claim and recover from any condemning authority any compensation payable on account of all or any part of or interest in the property affected by the easement being condemned or taken for any public domain. If the area covered by any easement should be dedicated to any Government Entity for the purpose for which the easement was established or the easement area is then being used, then such easement shall cease and determine. Unless otherwise required by a grantee which is a Government Entity or public utility, any easement granted pursuant to this subparagraph (c) shall be subject to this Declaration and the grantee shall be required to observe the provisions of this Declaration with respect to the easement area.

d. Taxes and Assessments. To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Property.

e. Insurance. The Association shall maintain in force the following policies of insurance:

(i) A policy or policies of fire insurance, with extended coverage endorsement, including, without limitation, insurance against theft, vandalism and malicious mischief, for the full insurable value of any Improvements on or comprising the Common Property or any other Improvements maintained, controlled or used by the Association, or such other fire and casualty insurance as the Board shall determine provides substantially equal or greater protection.

(ii) A policy or policies of liability insurance, incident to the ownership and use of the Common Property and any other property maintained, controlled or used by the Association or in which the Association has an interest. Limits of liability under such insurance shall be set by the Board and shall, to the extent obtainable at a reasonable cost, not be less than Three Million Dollars (\$3,000,000.00) for injury or death to one or more persons in any one occurrence and not less than Three Hundred Thousand Dollars (\$300,000.00) for property damage (such limits and coverage to be increased by the Board in its discretion). The above policy of liability insurance shall name as insureds Declarant, the Association, the Board and such other persons as the Board may determine.

(iii) If the same can be obtained at reasonable expense, an errors and omissions policy covering the officers and directors of the Association and the Board, and the members of the Design Committee, with such limits and other provisions as the Board deems appropriate.

Each policy of insurance obtained by the Association shall, to the extent reasonably obtainable, expressly waive any and all rights of subrogation against Declarant and any Owner, and their respective agents, officers, representatives and employees.

f. Performance of Association's Obligations. The Association shall observe and perform all of the duties and obligations imposed upon or applicable to it under this Declaration.

The duties and obligations of the Association described in this Section 6 shall be performed by the Association by and through the Board.

Section 7. Powers and Authority of the Association and the Board. The Association (acting by and through the Board) and the Board shall have all the powers set forth in the Charter and the Bylaws, together with all legal general powers permitted a nonprofit corporation, and to do any and all things which may be authorized, required or permitted to be done by the Association or the Board under or by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association (acting through the Board) and the Board shall have the following powers:

a. Enforcement of this Declaration. The Association shall have the power and authority, from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration, or to enforce by mandatory injunction, declaratory judgment or otherwise any provision of this Declaration, or to recover damages or obtain any other relief available at law or in equity as a result of any breach of this Declaration.

b. Fulfilling the Duties of the Association. In fulfilling any of its duties under this Declaration, including its duties for administering and managing the Association, for the maintenance, repair, operation or administration of the Common Property and other property, for the purpose of remedying defaults or failures of the Owners or for the purpose of exercising any of its rights to construct Improvements or other work upon any Common Property, the Association shall have the

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following power and authority; provided, however, that any contract for goods or services having a term of more than two (2) years shall provide that it may be terminated at any time by the Association for cause or by mutual agreement:

(i) To contract and pay for, or otherwise provide for, construction, maintenance, repair and landscaping of the Common Property and other property in accordance with the provisions of this Declaration;

(ii) To obtain, maintain and pay for such insurance policies or bonds as the Association may deem to be appropriate for the protection or benefit of the Association, Declarant, the members of the Board, the members of the Design Committee, or the Owners;

(iii) To contract and pay for, or otherwise provide for, such utility and other services including, without limitation, water, sewer, trash, electrical, telephone and gas services as the Association may deem desirable;

(iv) To contract for and pay for, or otherwise provide for, the services of architects, engineers, attorneys and certified public accountants or such other professional or nonprofessional services as the Association may deem desirable;

(v) To contract for and pay for, or otherwise provide for, fire, police, security, sanitary, communications, transportation and such other services as the Association may deem desirable;

(vi) To contract for and pay for, or otherwise provide for, such material, supplies, furniture, equipment, services and labor as and to the extent the Association may deem desirable; and

(vii) To pay and discharge any and all liens placed upon any Common Property or other property on account of any work performed by the Association.

c. Employing a Manager. The Association may, from time to time, employ the services of a manager to manage the affairs of the Association and employees and agents; provided, however, that any such employment contract having a term of more than two (2) years shall provide that it may be terminated at any time by the Association for cause or by mutual agreement. The Board may delegate to the manager any of its powers under this Declaration; provided, however, the Board cannot delegate to such manager, unless such delegation is otherwise determined by the Board to be prudent and reasonable under the circumstances, the power to execute any contract binding on the Association for a sum in excess of Ten Thousand Dollars (\$10,000.00) for any one

job or service; nor for the performance of any work or services which cannot be completed within sixty (60) days; nor the power to sell, convey, transfer, mortgage or encumber any Common Property.

d. Taxes and Assessments. The Association shall have the right to pay, compromise or contest any or all taxes and assessments levied against all or any part of the Common Property.

e. Charging User Fees for Facilities. The Association may charge reasonable user fees for use of any facilities on or comprising the Common Property to help defray the costs of construction, maintenance, repair or operation of such facilities.

f. Right to Contract With Others. The Association shall have the power and authority, from time to time, to contract with (i) any Project Association for the performance of any services by the Association for such Project Association, or vice-versa, and (ii) any Owner or occupant of a Lot for the performance of any services by the Association for such Owner or occupant, or vice-versa; provided, however, that any such contract having a term of more than one (1) year shall, unless otherwise agreed to by the vote or written consent of fifty-one percent (51%) of the total votes of the Owners, provided that it may be terminated by either party at or at any time after the end of such year upon not more than ninety (90) days written notice.

g. Administration and Maintenance of Property. The Association shall have the right to maintain, operate, administer, repair, replace and landscape any property and Improvements which is in or adjacent to Wailea or any other property shown on the map attached hereto as Exhibit "B" (including any property, such as roadways and roadway shoulders, beach accesses and easements, owned by or granted to any Government Entity), if (i) such property or improvements are not being, or will not be, maintained, operated, administered, repaired, replaced or landscaped in a superior manner and condition, consistent with a first-class luxury resort development, and (ii) the Board determines that the maintenance, operation, administration, repair, replacement and landscaping of such property or Improvements by the Association would be desirable for the uniform and/or attractive appearance, maintenance and upkeep of Wailea or for the direct or indirect benefit of the health, security, safety, welfare or aesthetics for and of Wailea or the Owners.

h. Dedication of Common Property. The Association shall have the right to dedicate or lease all or any part of the Common Property or any interest therein to any

Government Entity in accordance with the provisions of Article XI, Section 2.

i. Services. Unless provided (to the satisfaction of the Board) by a Government Entity or other person, and unless the cost thereof is assessed directly or indirectly against the Owners by such party, the Association may contract for, employ or otherwise provide security, transportation, sanitation, refuse disposal, landscaping and other similar, necessary or desirable services.

Section 8. Association Rules. The Board, from time to time and subject to the provisions of this Declaration, may adopt, amend and repeal reasonable rules and regulations to be known as the Association Rules governing, without limitation: the operation and use of the Common Property; the collection and disposal of refuse; the burning of open fires; the maintenance and control of animals within Wailea; and such other matters affecting the health, safety and welfare of the Owners, so long as such rule or regulation is reasonable and not inconsistent with the provisions of this Declaration. A copy of the Association Rules, when adopted, and as from time to time amended, shall be sent to each person who is an Owner as of the date of such adoption or amendment. Each Owner shall at all times comply with the Association Rules and shall cause a copy of the Association Rules to be provided to each person to whom such Owner may sell or lease or otherwise transfer any interest in such Owner's Lot.

Section 9. Limitation of Liability. No member of the Board or officer of the Association shall be personally liable to any Owner or any other person for any error or omission of the Association or the Board, or their representatives, employees, agents and contractors, the Design Committee or the manager; provided that such member or officer has not acted in bad faith or engaged in willful misconduct.

Section 10. Conversion of Lots and Units: Additional Units.

a. Conversion of Open Lots. Each Open Lot shall be deemed converted into a Zoned Lot on the effective date of any amendment to the Community Plan which changes the designation of such Lot. The Voting Units for such Lot shall be adjusted, and the assessments for such Lot shall commence, as of the first day of the month immediately following the month in which such change becomes effective. The Owner of each Open Lot shall promptly notify the Association of the date that such change became effective. In addition, the Owner(s) of any Hotel Units, Condominium Units or Commercial Units developed or located on an Open Lot shall have voting rights and begin paying assessments on the basis of the number of such Hotel Units, Condominium Units or

Commercial Units owned by such Owner, as of the first day of the month immediately following the month in which the permanent certificate of occupancy covering such Hotel Unit, Condominium Unit or Commercial Unit has been issued by the appropriate County agency. The Owner of the Hotel Unit, Condominium Unit or Commercial Unit shall promptly notify the Association of the date each such certificate of occupancy has been issued.

b. Conversion of Zoned Units. A Zoned Lot or Zoned Lot Unit shall be deemed converted into another type of Lot or Unit in accordance with the following provisions:

(i) Single-Family Residential Lots. If a Zoned Lot is subdivided into Single-Family Residential Lots, then the Zoned Lot shall be deemed converted into Single-Family Residential Lots and cease being a Zoned Lot when the last of the following events has occurred:

(A) The Zoned Lot has received final County of Maui and, if applicable, Land Court subdivision approval, and

(B) The first Recorded Instrument conveying a Lot in the subdivision has been recorded.

The Voting Units and obligation of each Owner of a Single-Family Residential Lot to pay assessments on the basis of a Single-Family Residential Lot, shall be adjusted and commence as of the first day of the month immediately following the month in which the last of the foregoing events has occurred. The Owner of the Zoned Lot shall promptly notify the Association of the date the last of the foregoing events has occurred.

(ii) Hotel and Commercial Units. If a Hotel and/or other Commercial Facility is developed on a Zoned Lot, then the Zoned Lot shall be deemed converted into Hotel Units or Commercial Units (as the case may be) and cease being a Zoned Lot when the first permanent certificate of occupancy covering the Hotel or Commercial Facility constructed upon the Zoned Lot has been issued by the appropriate County agency. The Owner's Voting Units and obligation to pay assessments on the basis of Hotel Units or Commercial Units (as the case may be) shall be adjusted and commence as to each Hotel Unit and Commercial Unit in the Hotel and/or Commercial Facility, as of the first day of the month immediately following the month in which such permanent certificate of occupancy has been issued. The Owner of the Zoned Lot shall promptly notify the Association of the date such certificate of occupancy has been issued.

(iii) Condominium Units. If a Condominium Project is developed on a Zoned Lot, then the Zoned Lot shall be deemed converted into Condominium Units and cease being a Zoned Lot when the last of the following events has occurred:

(A) The Zoned Lot has been submitted to a horizontal property regime, and the Condominium Project has been established, pursuant to Chapter 514A, HRS, by the recordation against title to the Zoned Lot of a Declaration of Horizontal Property Regime, and

(B) A permanent certificate of occupancy covering the first apartment in the Condominium Project has been issued by the appropriate County agency; provided, however, the Voting Units and obligation of each Owner of a Condominium Unit to pay assessments on the basis of Condominium Units, shall not be adjusted until, and shall not commence until, the first day of the month immediately following the month in which the permanent certificate of occupancy for such Condominium Unit has been issued by the appropriate County agency. The Owner of the Zoned Lot shall promptly notify the Association of the date each permanent certificate of occupancy for a Condominium Unit in the Project has been issued.

c. Creation of Subsequent Units and Changed Units. If after the conversion of any Zoned Lot into Hotel Units, Commercial Units and/or Condominium Units pursuant to paragraphs (ii) and (iii) above, or if in the case of any Lot already developed with a Hotel, Commercial Facility or Condominium Project:

(i) any additional Hotel Units, Commercial Units and/or Condominium Units should be created, constructed upon or added to any such Lot, or

(ii) the use of any Unit should be changed so that such Unit qualifies as a different type of Unit,

then the Owner's Voting Units and obligation to pay assessments for such additional Units or changed Units shall be adjusted and commence as of the first day of the month immediately following the month in which the permanent certificate of occupancy covering the Unit has been issued by the appropriate County agency or such change in the use of the Unit becomes effective. The Owner of each such Unit shall notify promptly the Association of the date such certificate of occupancy has been issued or such change in use has become effective.

d. Certificates of Occupancy. If for any reason occupancy of a Zoned Lot or a Unit shall commence without the issuance of a permanent certificate of occupancy, then all references above to "permanent certificate of occupancy" shall mean instead the date of substantial completion of the Improvement being occupied, as the term "substantial completion" is or would be defined or construed under Section 507-43(f), HRS.

e. Failure to Adjust Voting Units and Assessments. Failure by the Association to assess any Open Lot as a Zoned Lot or to assess the Owner of any Hotel Units, Condominium Units or Commercial Units on an Open Lot in accordance with paragraph (a) above, or to assess any Zoned Lot or Zoned Lot Unit on the basis of any other type of Lot or Unit in accordance with paragraph (b) above, or to assess any subsequently created or changed Units in accordance with paragraph (c) above, shall not preclude the Association from subsequently and retroactively adjusting the amount of any Owner's assessments so as to comply with the provisions of said paragraphs (a), (b) and (c); provided, however, that any failure to adjust any Owner's Voting Units in accordance with the provisions of said paragraphs shall not affect or void any vote which already may have been taken or cast or affect or nullify the actions or decisions approved pursuant to such vote or require a re-vote.

f. Cooperation. Each Owner shall cooperate fully with the Association and provide such information and documents as reasonably may be requested by the Association to assist in the determination of whether any Open Lot has been converted into a Zoned Lot, or whether any Zoned Lot or Zoned Lot Unit has been converted into any other type of Lot or Unit, or whether any additional Units have been created or the use of any Units has changed.

ARTICLE IV ASSESSMENTS

Section 1. Responsibility. Each Owner shall pay such Owner's Proportionate Share (as defined below) of all general and supplemental assessments, and shall pay all special assessments levied against such Owner. Such assessments shall be fixed, allocated, collected and paid, from time to time, as provided herein (including Article III, Section 10 above). The levying of assessments under this Declaration shall commence as and when determined in the sole discretion of the Board of Directors, and no delay in the commencement of such assessments shall in any manner affect, impair or waive the right of the Board to commence later such assessments.

Section 2. General Assessments. Prior to the commencement of the Fiscal Year (or, in the case of the initial budget adopted by the Board, thirty (30) days prior to the commencement of assessments), the Board shall prepare a budget for the operations of the Association. Such budget shall include the estimated costs of all operations, activities and obligations of the Association, including but not limited to the maintenance, repair, replacement and landscaping of the Common Property and of any other property which the Association has elected or is obligated to maintain, repair, replace or landscape, and the

provision of services to and for Wailea and the Owners, and shall include appropriate reserves for contingencies, cost overruns and anticipated capital expenditures; provided, however, that unless the purchase of land has been approved by the vote or written consent of fifty-one percent (51%) of the total votes of the Owners (exclusive of Declarant) present at a meeting of the Association, the budget may not include the cost of purchasing any land. The budget shall also include the estimated receipts (other than assessments), if any, for such Fiscal Year from such persons as may utilize the Common Property or other services of the Association. The excess of the estimated costs over the estimated receipts (other than assessments) shall be allocated among and assessed to each Owner in accordance with the provisions of Section 4 below. Assessments shall be payable in advance in equal quarterly or monthly installments or in such other reasonable manner as the Board may designate. The Board shall notify Owners in writing of any increase in general assessments at least thirty (30) days prior to the increase.

Section 3. Supplemental Assessments. In the event that the general assessments prove inadequate for the operations, activities or obligations of the Association, including unanticipated shortfalls or contingencies or nonpayment by any Owners, the Board may prepare a supplemental budget and levy a further assessment in the amount of such actual or estimated inadequacy. Such supplemental assessment may be assessed on the basis of one lump sum payment by the Owners or on the basis of periodic installment payments. Each Owner shall pay such Owners' Proportionate Share of such supplemental assessments. Such assessments shall be due and payable within thirty (30) days after the date of levy or at such later date as may be determined by the Board. In the event that any Annexed Property shall be annexed to Wailea, or any Project Associations or individual persons shall be admitted as members of the Association, or any Open Lots or Zoned Lots or Zoned Lot Units shall be converted into other types of Lots or Units in accordance with the provisions of Article III, Sections 10(a) and 10(b), or any additional Units shall be created or any Units changed into other Units as described in Article III, Sections 10(a) and 10(c), the Board may prepare a supplemental budget which shall reflect the change of circumstances, and, as appropriate, may either levy a supplemental assessment or provide a credit toward future assessments.

Section 4. Determination of Assessments. The amount of each Owner's assessments (general and supplemental) shall be equal to the total amount of the assessments to be collected from all Owners, multiplied by each such Owner's Proportionate Share. An Owner's "Proportionate Share" shall be equal to the following fraction:

(a) The numerator shall be equal to the total Voting Units assigned to the Owner pursuant to Article III, Section 3.

(b) The denominator shall be equal to the total Voting Units assigned to all Owners pursuant to Article III, Section 3.

Each Owner's Proportionate Share shall be determined by the Board at least thirty (30) days prior to the commencement of each Fiscal Year, or the commencement of assessments under this Declaration, and shall be adjusted by the Board whenever the Voting Units and assessments are required to be adjusted pursuant to Article II, Section 3(b) or Article III, Section 10; provided, however, that if the Board has failed to adjust any Voting Rights or assessments as of the date such adjustment is required to be made in accordance with said Sections 3(b) and 10:

(i) No such failure to adjust Voting Units shall affect or void any votes which already may have been taken or cast or affect or nullify the actions or decisions approved pursuant to such vote or require any re-vote, and

(ii) The Board, to avoid unnecessary cost and administrative time, shall not be required to (but may if it so elects) retroactively adjust (but not beyond the prior 12-month period) the assessments actually paid by the Owners prior to the date the adjustment is actually made effective by the Board, if the result of adjusting such assessments on the date such adjustments should have occurred would have been to increase or decrease the amount of the assessments actually paid by the Owners by ten percent (10%) or less.

Section 5. Special Assessments. In addition to the general and supplemental assessments authorized above, the Board may also levy an assessment against any Owner for monies expended by the Association in performing functions which were caused by such Owner's act or failure or refusal to act or otherwise comply with this Declaration. Such assessment shall be in the amount so expended plus an amount to cover the Association's overhead equal to ten percent (10%) of the amount so expended (or such other amount for overhead as may be determined by the Board), and shall be due and payable to the Association within ten (10) days after the date of levy. Monies so expended shall include, without limitation, reasonable engineers', contractors', architects', attorneys' and accountants' fees and any costs incurred by the Association.

Section 6. Lien and Default. Each assessment (whether regular, supplemental or special) and every other sum owed by an Owner under this Declaration shall be a separate, distinct and personal debt and obligation of such Owner. Each assessment or

any installment thereof when due, all other sums owed under this Declaration, all costs and expenses of collection, including all reasonable attorneys' fees, and the interest and late charges referred to in Section 10 below, shall also be and are a continuing and perpetual lien and charge upon the fee simple title to such Owner's Lot and upon the Owner's interest in such Lot. Upon an Owner's failure to pay any such assessment (or installment thereof) or other sums due under this Declaration, the Association may, but need not, record a Notice of Default in the Public Records. The Association's lien shall be subject and subordinate to the lien of the Paramount Mortgages as more particularly set out in Section 9 below, but shall be prior to all other liens, encumbrances and interests upon or in the Lot or the Owner's interest in the Lot, including any leases and agreements of sale. The Association's lien may be foreclosed through suit in like manner as a mortgage on real property (including by foreclosure pursuant to Chapter 667, HRS), and the Association shall have power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the same. A suit to recover a money judgment for damages or for unpaid assessments and other sums shall also be maintainable without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any other remedies provided by law or in equity for the enforcement of each Owner's obligations.

Section 7. Voluntary Conveyances: Co-Owners. In a voluntary conveyance of any Lot, the transferee and the transferor of the Lot shall be jointly and severally liable for all unpaid assessments and other sums, interest and late charges owed as of the date of conveyance, together with the costs of collecting such unpaid assessments, sums, interest and late charges, without prejudice to the transferee's right to recover from the transferor the amounts paid therefor by the transferee. If more than one person owns a Lot or interest therein, all such persons shall be jointly and severally liable for the payment of all assessments, sums, interest, late charges and costs of collection.

Section 8. Estoppel Certificate. When requested by an Owner, the Association shall execute a certificate stating the amount of any delinquent or unpaid assessment owed by the Owner. Such certificate shall, except as to the amount of any unpaid assessments which such certificate failed to reflect due to any checks which, within thirty (30) days before or after the date of the certificate, have been or are dishonored or not otherwise paid, be conclusive upon the Association in favor of all persons who may in good faith rely thereon, as to the amount of such delinquency as of the date of the certificate. The Association shall be entitled to a reasonable servicing charge as a condition to issuing the certificate. No such certificate, however, shall constitute any representation or agreement by the Association

that the Owner is in compliance with any other provision of this Declaration.

Section 9. Mortgagee Protection. Notwithstanding all other provisions of this Declaration:

a. Paramount Mortgages. The lien created under Section 6 above upon any Lot shall be subject and subordinate to the lien of any recorded first mortgage (meaning a mortgage having first priority over other mortgages) or recorded purchase money mortgage (such first mortgages and purchase money mortgages being herein referred to as a "Paramount Mortgage"), encumbering a Lot or the lessee's interest under a Long-term Lease, and which has been given in good faith and for adequate consideration. In the event a Lot or Long-term Lease should be conveyed or assigned pursuant to a foreclosure of a Paramount Mortgage encumbering such Lot or Long-term Lease, the purchaser at such foreclosure sale shall not be liable for any unpaid assessments or other sums accruing prior to the date of conveyance or assignment, but shall be liable for all assessments and other sums accruing thereafter. No such conveyance or assignment shall relieve the prior Owner of personal liability for the payment of all such assessments and sums accruing prior to such conveyance or assignment.

b. Other Mortgages. By written subordination agreement approved by the Board, the benefits of paragraph (a) above may be extended by the Board to mortgages and liens not otherwise entitled thereto.

c. No Amendment Affecting Paramount Mortgages. No amendment to this Declaration shall affect or impair the priority and rights of the holder of any Paramount Mortgage which was recorded in the Office of the Assistant Registrar prior to the date of such amendment.

Section 10. Payment of Assessments. All assessments shall be paid in legal United States tender to the Association at the Association's principal place of business or to such other address as the Association may advise the Owners in writing. Any sum not paid within ten (10) days of its due date shall bear interest until paid in full at the rate of one percent (1%) per month, or at such other rate of interest as shall be set by the Board of Directors. In addition, any sum not paid within ten (10) days of its due date shall be assessed a one time late charge of five percent (5%) of the amount overdue, or such other late charge as may be set by the Board. Failure to assess such interest or late charges shall not constitute a waiver of the right to do so in the event of the same or any subsequent late payment. If the payment of the foregoing interest or late charge shall exceed the maximum amount permitted under applicable law, then the same automatically shall be reduced to the maximum amount prescribed by applicable law, and any excess amounts

received by the Association shall, upon the Owner's demand, be refunded promptly to the Owner.

Section 11. Collection by Project Associations. If requested by the Association, each Project Association whose Owners are subject to this Declaration shall (a) include in the regular billing notices or "coupon" books (or similar method of identifying the payments due) sent by the Project Association (or its collection agent) to each Owner who is a member of the Project Association, the amount of regular and supplemental assessments owed by such Owner to the Association, (b) accept (or cause its collection agent to accept) the Association assessments paid by such Owner to the Project Association (or its collection agent), and (c) promptly remit (or cause the collection agent to remit promptly), no later than by the 20th day of each month, such Owner's payments to the Association, together with a written statement in reasonable detail disclosing the amount (if any) paid by such Owner and the date such payment was received by the Project Association (or its collection agent); provided, however, that the Project Association (and its collection agent) shall have no obligation to enforce the collection of the assessments payable by such Owner to the Association. Each Owner shall take such steps as may be required (including exercising its voting rights in the Project Association) to ensure that such Owner's Project Association duly performs all of its obligations under this Section 11, and duly performs all other obligations which may be imposed upon or apply to such Owner's Project Association under any other provision of this Declaration. Each Owner shall pay all Association assessments directly to the Project Association (or its collection agent) as and when billed by the Project Association (or its collection agent).

**ARTICLE V
USE AND DEVELOPMENT RESTRICTIONS**

The following provisions are standards, covenants, conditions, restrictions and requirements which apply to and govern the use of, and construction and development on, each Lot. These restrictions supplement any other provision, restriction, covenant or condition applicable to the Lot under Law or by separate instrument or agreement (including any Recorded Instrument), but in the event of any conflict, the strictest provision, restriction, covenant or condition shall apply and control, except that any conflict between the provisions of any Recorded Instrument applicable to a particular Owner and the provisions of this Declaration shall as to such Owner only, be controlled as provided in Article I, Section 1(f). The provisions of any Recorded Instrument shall apply only to the persons subject to such Recorded Instrument, and shall not be deemed to relieve any person not subject to such Recorded Instrument from having to comply with all of the provisions of this Declaration.

No improvement, excavation, fill, landscaping, construction or other work shall be undertaken on any portion of any Lot except in strict compliance with the following provisions:

Section 1. Land Use Restrictions. Each Lot shall be subject to, and the Owner of each Lot shall strictly comply with, the following provisions:

a. Compliance with Laws. No construction or occupation of any Improvements shall take place which is in violation of applicable Laws.

b. Condition of Lot. Each Lot shall at all times be maintained in a strictly clean, sanitary and orderly condition. No Owner shall commit, suffer or permit any waste, nuisance, strip or unlawful, improper or offensive use of the Lot; or permit any tall weeds, litter, debris or tall grass to be grown on or remain upon the Lot; or create or allow any fire, safety or health hazard.

c. Soil Shifting and Erosion. All vegetation shall be planted and maintained in good condition and in such a manner as to prevent shifting or erosion of soil.

d. Offensive Activities. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done or placed thereon which may be or become a nuisance, or cause embarrassment, disturbance or annoyance to other Owners in Wailea. Without limiting any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Improvements, shall be placed or used without the Design Committee's prior approval.

e. Camping. There shall be no camping upon any Lot.

f. Animals. No animals of any kind shall be permitted upon any Lot except that (a) exotic display animals in a Hotel shall be permitted with the Design Committee's prior approval, and (b) a reasonable number of generally recognized house pets may be kept in a Condominium Unit and on Single-Family Residential Lots (if permitted under the applicable Project Association's documents). No animals may be bred on any Lot on a commercial basis.

g. Vehicles. Except for construction trailers approved pursuant to Section 4(g) below, no mobile home, travel trailer, truck camper, house trailer, or stripped down, wrecked or junk motor vehicle shall be kept, parked, stored or maintained on any Lot. No vehicle bearing commercial insignias or names

shall be parked on any Lot except within an enclosed structure or screened area which prevents a view thereof from adjoining property or roads, unless such vehicle is temporarily parked for delivery purposes. All boats and boat trailers shall be kept within a fully enclosed structure. No dune buggies or similar all terrain vehicles shall be permitted to be operated or driven upon any Lot.

h. Garbage. All garbage, rubbish and trash shall be kept in covered containers. In no event shall such containers be maintained so as to be visible from neighboring properties or roads.

i. Clotheslines. Outside clotheslines or other outside clothes washing, drying or airing facilities shall be screened or maintained in such a manner and in such location as not to be visible from neighboring properties or roads.

j. Drilling, etc. Except when necessary for the construction of a Commercial Facility or Residential Structure, no drilling, refining, quarrying or mining operations of any kind shall be permitted upon any Lot and no derrick, structure or equipment designed for use in any such activity shall be erected, maintained or permitted on any Lot.

k. Destroyed Improvements. All Improvements which have been partially or totally destroyed shall be fully repaired, reconstructed or removed within six (6) months from the date of destruction or such reasonably longer period of time as may be necessary to complete any repair or reconstruction with due diligence and continuity; provided, however, that the time for completion of such repair, reconstruction or removal shall be extended for the period of actual delay encountered due to reasons beyond the Owner's control (other than the Owner's financial inability), such as strikes, lockouts, embargoes, shortage of labor and materials, wars, riots and acts of God. In the event of removal, the land shall be cleared of all debris and restored to the grade which existed prior to the destruction of the Improvement thereon (provided, however, that all basements and similar excavations shall be restored to the level of the surrounding grade), and shall be landscaped promptly in accordance with landscaping plans first approved in writing by the Design Committee.

l. Hunting, Firearms. There shall be no hunting or discharge of firearms on any Lot.

m. Water Wells. Except for any water wells drilled or owned by Declarant and/or the subsequent owners of the Wailea golf courses, no water wells are permitted on any Lot. Declarant and/or such golf course owners shall have and hereby reserve the exclusive right to extract, pump, remove and withdraw

from wells located within Wailea, any and all water that may be located below the surface of any Lot.

n. Fuel Tanks. No fuel tanks or similar storage facilities shall be constructed upon any Lot except with the Design Committee's prior approval.

o. Toilet Facilities. No outside toilet facilities, other than self-contained portable toilet units used during construction or for special events and beachfront toilet facilities, shall be constructed or placed on any Lot. All permanent plumbing fixtures (other than fixtures for incoming water), dishwashers, garbage disposals, toilets or sewage disposal systems shall be connected to a sewage system approved by the appropriate governmental authorities.

p. Towers, etc. No towers or windmills shall be installed or maintained on any Lot. No satellite dishes or similar facilities for the reception or transmission of radio or television signals, and no exterior antennae of any sort, shall be installed or maintained on any Lot, except in accordance with the Design Committee Rules. No activity shall be conducted within any Lot which interferes with television or radio reception in Wailea.

q. Occupancy. No structure shall be occupied until (i) the same has been completed in accordance with plans and specifications previously approved by the Design Committee in accordance with this Declaration, and all certificates required by the Design Committee under this Article V have been delivered; (ii) a notice of substantial completion has been published in a newspaper of general circulation in the County of Maui; (iii) a final inspection has been performed by Maui County and all deficiencies have been corrected; and (iv) in the case of a residential structure, the structure may be occupied for its intended use or, in the case of a non-residential structure, a certificate of occupancy has been obtained.

r. New Materials. All Improvements shall be constructed with new materials (except for used materials incorporated into the Improvements for decorative or aesthetic effect), and no used structure shall be relocated to or placed upon any Lot (except for temporary use in construction or sales).

s. Models. No structure that is to be used as a model or exhibit shall be permitted on any Lot except with the Design Committee's prior approval.

t. Fences. No fence shall be constructed on any Lot except with the Design Committee's prior approval.

u. No Time Sharing. No time share ownership plan or time share use plan (as those terms are defined in Chapter 514E, HRS), shall be permitted to exist within any Lot or with respect to the use, occupancy or ownership of any Lot.

v. Explosives. There shall be no blasting or discharge of explosives upon any Lot except with the Design Committee's prior approval.

w. Furniture. All furniture, fixtures, appliances or other goods or materials shall be stored in such a manner so as to be concealed from view from neighboring properties or roads, except for normal outdoor furniture and fixtures.

x. Fires. There shall be no exterior fires, except barbecue and incinerator fires contained within facilities or receptacles and in areas first approved by the Design Committee for such purposes; provided, however, that the Owner of a Single-Family Residential Lot shall be permitted to have barbecue fires without the Design Committee's approval. No Owner shall permit any condition which creates a fire hazard or is in violation of any fire prevention regulations.

y. Injection Wells. No injection wells (such as sewer injection wells) are permitted on any Lot.

z. Roads. All roads, driveways and turnaround areas within each Lot shall be paved and maintained in good condition and repair.

aa. Utility Lines. All power, telephone, water, sewer, television and other utility lines shall be installed underground.

bb. Irrigation Water. Declarant has no responsibility to make any irrigation water from wells that Declarant has drilled or may in the future drill available to any Owner for any purpose, including landscape irrigation purposes. No Owner (except Declarant) may drill any wells on any Lot or develop its own source of brackish water for irrigation purposes.

cc. Walkways. There shall be no obstruction of any pedestrian walkways located on any Lot or any interference with the free use thereof for walkway purposes except for such obstruction as reasonably may be required for the repair and replacement thereof.

dd. Support of Adjacent Lot. In the event of any excavation on a Lot, the Owner of such Lot shall provide artificial support as is necessary to support adjacent Lots.

ee. Swimming Pool and Water Feature Drainage. Swimming pools or water features shall not be drained directly onto a golf course or other private property. The water shall be disposed in the storm drain system of the project in which the pool or feature is located.

ff. Parking. No mobile homes, travel trailers, truck campers, house trailers, automobiles, trucks, commercial vehicles, motorcycles, mopeds, dune buggies, all terrain vehicles, boats, boat trailers, or other vehicles shall be parked, stored or otherwise left (i) on any of the roadways, roadway shoulders or roadway Lots which are Common Property, or (ii) overnight on any of the roadways, roadway shoulders or roadway Lots which are located in any single-family residential lot subdivision, except in designated parking stalls. Variances may be granted and administered by individual Project Associations on a case-by-case basis to allow temporary overnight parking within their projects.

Section 2. Architecture. The following standards are applicable to all construction, reconstruction and refinishing of Improvements, and shall be complied with by each Owner:

a. Materials. Materials should be selected for their construction function and aesthetic appearance. Materials of permanence, and solidity, resistance to corrosive effects of wind, sun and salt spray, high quality of material and low maintenance requirements are recommended. Unless approved by the Design Committee, the use of materials which are either imitations of other materials, transient fads or untested for their proposed use will not be permitted. Highly reflective exterior surfaces are not permitted.

b. Exterior Color. All exterior colors shall be subject to approval by the Design Committee. Predominantly colors of earthtone, pastel or other subdued color should be used with spots of brighter colors for smaller, nondominating architectural features, such as sunshades, canvasses, umbrellas, canopies and doors.

c. Exterior Walls. Recommended exterior wall materials and finishes are concrete, precast concrete, plaster, exposed brick, stonework and wood siding. Concrete and precast concrete shall be smooth textured, sandblasted, brushhammered or form finished and left natural or painted off-white (use of stark white is not permitted, except for trim) or other compatible colors approved by the Design Committee. Brick and stonework shall be left natural. Wood siding shall be left with a clear finish or painted with a color approved by the Design Committee. The exterior wall coating is to be limited to an eggshell or flat finish and trim paint shall be of a semi-gloss or eggshell finish.

d. Windows and Frames. Exterior doors and window frames should be of finished wood, metal or vinyl. All finishes and colors are subject to prior Design Committee approval. No exterior glass windows or doors may be mirrored or have any other form of highly reflective finish.

e. Roofs. Roof forms shall be chosen which are appropriate in their function with regard to the climatic conditions and the size and shape of the building, and shall be of a design appropriate to the aesthetic appearance of the structure. Shiny bright colored or reflective surfaces shall not be used except for minor architectural features approved by the Design Committee. Mechanical equipment, vents, roof protrusions, skylights, solar panels and similar items shall be incorporated into the architectural design since most roofs will be visible from higher elevations.

(i) General Requirements. Pitched roofs are recommended for all buildings. Generous roof overhangs are encouraged to create shade and protection for wall surfaces, doors and windows and activities on the ground. Materials shall be wood shakes, wood shingles, copper, concrete or clay tiles. All other roofing materials shall require Design Committee prior approval. Colors shall be in the browns, grays, reddish browns, dark to medium greens and dark to medium blue or similar colors. Wood shakes and wood shingles shall be left natural, clear sealed or stained with dark brown penetrating stain.

(ii) Flat Roofs. Flat roofs shall exhibit significant quality in their design. No reflective materials shall be permitted. Roof surfaces shall not be finished with a light color in order to reduce the impact of glare onto surrounding areas. All colors for flat roofs shall be subject to the Design Committee's prior approval.

Flat roof areas for residential buildings shall be limited to a maximum of fifteen percent (15%) of the total roof area. These flat roof areas shall not be visible from the street and the flat roofing material shall be closely matched to the color of the surrounding roof materials.

All roofs shall be considered flat where their slopes are less than a 3 to 12 pitch, excluding lanais that also serve as roof area in a multi-level structure.

In single family Residential Structures, roof terraces, balconies, lanais, lookouts, or any and all such similar viewing areas shall not be permitted higher than the floor elevation of an adjacent interior inhabitable space, shall be accessible from that space, and shall not be permitted above the second floor.

f. Mechanical Installations. All mechanical (HVAC etc.) installations shall be screened from view. These installations for the most part shall be set into a recessed well with a parapet wall placed around them. The Design Committee shall have final review and approval of all installations of this nature.

Solar panels are to be integrated into the roof design and generally follow the roof slope. Frames should be finished to complement adjacent roof surfaces. Support solar equipment shall be located out of public view or enclosed and screened from view to the extent practical. Solar water tanks shall not be located on roofs. The Design Committee shall have final review and approval of all installations of this nature.

g. Exterior Lighting. All exterior steps, stairs, parkways, parking areas and common walkways shall be lighted and shall conform with the architectural lighting standards listed below. Emphasis should be on the "moodsetting" effect rather than on the intensity of illumination, except for safety and security. Light shall not exceed a lumen level of one foot candle at the ground, unless a greater intensity is required for safety reasons or by applicable laws.

Lighting of buildings primarily for aesthetic effect will be recommended for exterior lighting.

The following items shall not be used for any exterior lighting:

- (1) Mercury vapor lamps, or lamps which emit light of a similar character.
- (2) Neon lamps. (This also applies to the use of light tubing for the creation of a sign.)
- (3) Flashing and moving lights or lamps of any type whatsoever.
- (4) Exposed fluorescent and metal halide lamps that are visible from common areas and adjacent properties. Where such are used, they shall be shielded from view.

(5) Colored lights, with the exception of approved subdued ambers and grays or similar colors.

h. Signs.

(i) Signs. All signs (including street signs and project "for sale" signs) shall conform to the County of Maui ordinance and specific planned unit development requirements, and shall be subject to prior approval by the Design Committee as to location, size, appearance and lighting. All project identification signs shall also conform to Declarant's roadside signage program.

(ii) Construction Signs. During the time of construction, one construction sign denoting the architects, engineers, contractor and other related subjects, shall be permitted. Signs for the construction of a Hotel, Commercial Facility, Condominium Project and Single-Family Lot subdivision shall not exceed thirty-two (32) square feet in total area. Signs for the construction of a dwelling on a Single-Family Residential Lot shall not exceed six (6) square feet in total area. Each sign shall be subject to prior approval by the Design Committee.

(iii) For Sale Signs. No "for sale" or "for rent" or similar such signs (other than project "for sale" signs permitted under clause (i) above) shall be permitted on any Lot, except that Single-Family Residential Lots shall be permitted one "for sale" sign. Such sign shall not exceed six (6) square feet in total area, and shall conform to the design standards adopted by the Design Committee. No such sign shall be permitted to face onto any golf course or arterial road frontage; all such signs must face only onto the street frontage to which the Lot's main driveway is connected.

Except as described above, no other signs or posters shall be permitted upon any Lot, except with the prior approval of the Design Committee or in accordance with the Design Committee Rules.

1. Outdoor Furniture. The design, colors and materials of all outdoor furniture, including benches, trash receptacles, planters, telephone booths and graphics should be compatible with the project design. To avoid visual clutter of

outdoor furniture at common locations, consideration should be given to consolidating these uses.

j. Mechanical System Noise. All air conditioning and pool pump installations, and similar noise producing objects, shall be concealed and muffled to meet Maui County Ordinance Noise Standards, and State Department of Health noise regulations. Air conditioning, swimming pool filter pump units and other mechanical equipment systems shall be sound treated to prevent noise nuisance.

The level of noise or sound pressure emanating from any Lot shall not exceed the maximum level permitted for single-family residential districts under the Maui County Ordinance or the following Wailea Noise Guidelines, whichever is more restrictive.

To assist in maintaining the tranquil conditions in the subdivision and to minimize the likelihood of complaints from neighboring residents, the level of sound or noise emanating from air conditioning and other mechanical equipment on any Lot shall not exceed 40 dBA (decibels) at any point on the property line of the Lot.

Special attention to noise control measures is required during the design process to ensure compliance with a 40 dBA property line criterion. Suitable measures would normally include, but not necessarily be limited to, the following:

1. Selecting the quietest available equipment, ideally the equipment sound rating of 7.2 bels (10 decibels = 1 bel) or lower.
2. All exterior mounted air conditioning equipment and housing shall be enclosed and located within the buildable area.
3. Locating the equipment as far as possible from neighboring noise sensitive areas (such as bedrooms, patios, etc.) with a minimum twenty (20) foot setback from the closest property line of the Lot.
4. Providing partial (three- or four-sided) equipment enclosures, comprised of masonry walls at least four (4) to six (6) feet high, with durable sound absorptive treatment applied to the interior surface of the walls. The enclosure design shall allow for adequate access and clearance for maintenance purposes, as well as permitting sufficient airflow.

Equipment with sound ratings of higher than 7.2 bels could possibly be used with larger setbacks and/or full enclosures. Setback distances of less than twenty (20) feet may also be feasible in certain cases where quieter equipment (7.0 bels or lower) and/or full enclosures are utilized. The Committee may, without limitation or liability, allow placement of equipment closer to the setback line or equipment with higher bels ratings provided the combination of measures employed produces the desired result of 40 dBA or less at the property line of a Lot.

All designs shall be reviewed by the Committee. If the proposed noise mitigation measures appear to be insufficient, the Committee may request more information justifying the adequacy of the proposed measures, or the incorporation of additional treatment.

Notwithstanding the above, should complaints occur after start-up, the Committee may, without liability or limitation, restrict or prohibit the operation of any air conditioning or mechanical equipment found to be generating property line noise levels exceeding 40 dBA, until additional noise mitigation measures are provided by the Owner and approved in writing by the Committee.

k. Refuse Storage and Collection. All refuse storage locations shall be concealed and, in the case of all Lots other than Single-Family Residential Lots, shall be constructed of material compatible with a first-class hotel or condominium project. No unpleasant odors, loud noises, distracting light sources or unsightly views that may emanate from any refuse, refuse areas or refuse disposal methods shall be permitted. All practicable means shall be employed to keep refuse areas free of rats, mice, flies and other vermin and insects.

Adequate space and containers must be provided to accommodate a full range of recycling efforts as they become available on Maui.

l. Refuse Collection. The Owners shall be responsible to dispose of and pay for the disposal of any and all refuse through engagement of an independent, public or private refuse collection firm, or through the use of refuse collection provided by the County of Maui or the Association. The location, construction and design of all refuse areas shall be subject to the Design Committee's prior approval.

m. Tennis Facilities. No tennis courts may be constructed or placed on any Lot except with the Declarant's prior written consent, which consent may be withheld in Declarant's sole and absolute discretion. All tennis courts upon any Lot (other than the tennis courts operated in conjunction

with the tennis center complex located on Lot 305 as shown on Land Court Map 34 filed with Land Court Application No. 1804, or any other commercial tennis center complex established by Declarant) shall be used primarily by the Owner of the Lot and such Owner's guests, and shall not be used in conjunction with the operation of a commercial tennis center or complex.

n. Drainage. All plans for the drainage of each Lot shall be submitted to the Design Committee for the Design Committee's prior approval. The plans shall include maximum flow calculations and projections for drainage from other properties at maximum buildout over and through the Lot, and all drainage plans for the Lot must take into account and accommodate such flow calculations and projections. All drainage plans must be prepared and stamped by a professional engineer licensed in the State of Hawaii. The Owner shall keep all drainage ditches, swales or culverts located upon the Owner's Lot free and unobstructed for the flowage of surface waters, and in a well-maintained condition.

No Owner shall construct or permit to be constructed on his Lot any Improvement which will create a problem of flooding, erosion or interference with natural water flow or original runoff pattern damaging to his Lot or adjacent properties, nor shall any Owner fail to act so as to minimize runoff damage or interference with natural flow of storm waters. The flow of surface and/or subsurface drainage onto, across, or from each Lot shall not be unreasonably obstructed, or transferred outside of its natural drainage course. Such runoff shall be percolated (preferable), dispersed or channeled by surface swales or other facilities in such a manner as to prevent erosion and damage to property. Each Owner shall provide for the installation of such drywells, culverts and drainage facilities upon his Lot as required. Each Owner shall keep all such drywells, drainage facilities and culverts so installed on his Lot, as well as any other drywells, drainage facilities and culverts located on his Lot, free and unobstructed and in good repair.

o. Parking. All parking lots shall be screened from view as much as practical by the use of plant material (trees, hedges, shrub masses), grade differential (i.e., berming, raising or lowering elevations of parking areas) and Improvements such as walls, fences, trellises, etc. Wherever possible, several smaller parking areas shall be utilized instead of a single larger parking lot. The use of permeable surfaces such as grass block and grass crete are encouraged where appropriate.

p. Entry Design. The design of all entries to each Lot shall be subject to the Design Committee's prior approval.

q. Garages. All garages for Single-Family Residential Lots shall be fully enclosed with roll-up doors or covered wooden doors and shall accommodate at least two cars. Portes cocheres are permitted for Single-Family Residential Lots. Carports are permitted for Condominium Projects, subject to Design Committee prior approval.

r. View Corridor and Site Plan. The site plan for each Lot shall be developed with due regard for topography, view, frontages to the ocean, and relationship to street frontage, as well as the need for creating a well-designed project overall. The site plan shall take advantage of the intrinsic characteristics of the location, including sunlight, temperature, ocean breezes and most importantly, the relationship to mountain and ocean views. View corridors shall orient through the project from east to west. Greenbelts shall be used to link individual buildings to common areas and facilities as well as channelize view corridors. The site plan shall exhibit an open and varied footprint.

s. Building Elements.

1. Entries

Entries are to be clearly defined elements with a sense of arrival with safe and efficient access for pedestrians and service personnel.

2. Openings

Openings are to be provided for maximum natural ventilation but still provide for adequate protection against strong tradewinds and storms and protect against excessive sun exposure.

3. Screening Elements

Equipment and activities not directly related to guest or tenant primary uses, i.e., service loading areas, refuse collection and storage areas, mechanical equipment and transformers shall be screened from view by trellis, landscaping or structural means.

4. Balconies and Lanais

Balconies and lanais are encouraged to express the resort lifestyle. They should be designed as follows:

- . Whenever possible, balconies and lanais should be screened from view using a trellis or covering.
 - . In order to reduce glare impacts onto surrounding areas, paving materials shall not be of a light color.
 - . Provide adequate drainage with minimum impact to lower floors.
5. Flashing, Sheetmetal and Vents.

All flashing, sheet metal, vents and pipes shall be finished to match or complement adjacent building surfaces.

t. Landscape Guidelines.

1. Fundamental Principles

Landscaping represents a critical factor in establishing and maintaining the Wailea Resort as a destination resort. Proposed landscape plans shall accomplish the following:

- . Provide protection from the sun and wind exposure.
- . Screen unattractive areas and activities.
- . Provide buffers between vehicular and pedestrian ways.
- . Frame and articulate views.
- . Create the ambiance of a tropical setting.
- . Provide variety in form, color, texture, and fragrance.
- . Function as erosion and accretion control elements.
- . Provide for installation of root barriers on all new street trees.
- . Establish a street tree planting pattern as follows:

Wailea Ike Drive (mauka/makai orientation - parkway)

- . large canopy trees (i.e. monkey pods) and accent palms (loulou and coconut).

Wailea Alanui Drive (north/south orientation - parkway)

- . large canopy trees (i.e. monkey pods).

Wailea Alanui Drive (north/south orientation - street (between Kilohana and Okolani)

- . medium canopy trees (i.e. Bauhinia)

Kapili and Kalai Waa (north/south orientation - streets)

- . medium flowering canopy trees (i.e. Shower, Tacoma, Hong Kong Orchid, St. Thomas)

Kilohana Drive and Kaukahi Streets

- . medium canopy trees (i.e. Fern or Shower)

Actual tree species shall be approved by the Design Committee. Landscape architects shall be directed to appropriately consider invasive root systems and/or root barriers for selected plant materials. Additional single family landscape rules and standards may be adopted by the Design Committee.

2. Water Conservation

Recognizing the need for water conservation, plant materials shall be selected for their aesthetic effects as well as their water requirements. Plant selection shall be based on ecological habitats, tolerance to exposure, adaptability for area soil types, and sensitivity to moisture, salinity and climatological limits.

Section 3. Special Covenants for Makai Properties.

The following provisions apply to all Lots located makai (on the ocean side) of Wailea Alanui Drive:

a. Building Setbacks. No Improvements (other than landscaping approved by the Design Committee) may be constructed or placed on any Lot anywhere within 150 feet from any ocean shoreline boundary (determined in accordance with applicable Law) of the Lot, except that along (and only to the extent of) any rocky ocean shoreline boundary, the aforementioned 150 feet shall be reduced to 75 feet.

No Improvements (other than landscaping approved by the Design Committee) having a height which exceeds the lesser of (i) thirty (30) feet from the finished grade of the land on which the Improvement is located to the peak elevation of the roof of the Improvement, or (ii) two (2) stories, may be constructed or placed on any Lot anywhere within 150 feet to 300 feet from the ocean shoreline boundary (determined in accordance with applicable Law) of the Lot, except that along (and only to the extent of) any rocky ocean shoreline boundary, the aforementioned 150 feet shall be reduced to 75 feet and the aforementioned 300 feet shall be reduced to 150 feet.

b. Height Limits. The Design Committee generally attempts to limit the height of all Improvements makai of Wailea Alanui Drive to not more than twenty-five (25) feet above the centerline profile of Wailea Alanui Drive. No Owner shall cause such general height limit to be exceeded except with the Design Committee's prior written approval. In passing upon any request to exceed such limit, the Design Committee shall consider such matters as the distance of the proposed structure from Wailea Alanui Drive and the grade existing at the location where the Improvement would exceed the limit. It is the Design Committee's intent not to have a massive or monolithic Improvement which would rise higher than the top of mature canopy trees along Wailea Alanui Drive which, at maturity, are approximately 25 feet high.

c. Shoreline Pedestrian Walkway. Declarant has agreed with the County of Maui that a paved public pedestrian pathway along the ocean shoreline shall be constructed and maintained by the Owners of the Lots makai of Wailea Alanui Drive. The Owner of each such Lot shall assume and fulfill all requirements that the County of Maui may impose for the pathway. The pathway system shall be lighted for night use. The pathway shall conform to at least the standards exhibited in the pathway fronting the Elua II condominium project. Connection points of the pedestrian pathway on the north and south boundaries of the Lots will require the prior written approval of the Design Committee and must be located so as to permit free, easy and safe passage of pedestrians to and from the pathway system located on

adjacent Lots. To the extent permitted by the terrain, the pathways should not include any stairs.

d. Seawalls, Groins, or Revetments. No Owner shall erect or build or cause anyone on its behalf to erect or build any seawalls, groins, revetments or other structure in the ocean along the shoreline or in or on the land area adjacent to the shoreline.

e. Additional Requirements. The provisions above are in addition to such other agreements or restrictive covenants which may apply to any Lots located makai of Wailea Alanui Drive.

Section 4. Construction Covenants. Each Owner shall abide by the restrictions described below during the course of any construction upon the Owner's Lot. Prior to commencing any construction, the Owner and/or general contractor must meet with a representative of the Design Committee to review construction procedures and requirements and to coordinate the construction activities within Wailea. Only contractors who are licensed in the State of Hawaii and who sign the Association's Contractor's Acknowledgment Form may construct buildings in Wailea. Should an Owner change contractors during construction of a home in Wailea, a new building permit must be obtained from Maui County referencing the new licensed Contractor. The new building permit must then be filed with the Association along with a new Contractors Acknowledgment Form.

a. Maximum Fines. Without limiting any other remedies available to the Association, the Committee or Board of Directors, if an Owner commences construction of any new Improvements, or substantially deviates in construction from the approved plans, without first obtaining the approval of the Design Committee, such Owner shall be subject to a maximum fine of not more than \$10,000. Such maximum fine may be imposed and collected by the Association as a Special Assessment in accordance with the provisions of Article IV Section 5 hereof.

b. Fencing During Construction. Except for Single-Family Residential Lots, all portions of the Lot which are adjacent to a completed and occupied project or which are exposed to public view must be fenced so as to shield the construction work to be performed from public view and to prevent the public from entering upon the site. Such fences must first be approved by the Design Committee.

c. Limitation on Construction Noise and Blasting. Construction or blasting shall not commence prior to 7:30 a.m. or continue after 5:00 p.m. There shall be no construction or blasting on Sunday or state or federal holidays, except with the prior approval of the Design Committee.

d. Grading and Excavation. Unless otherwise approved by the Design Committee, no Owner shall take or borrow any fill material from any land in Wailea (other than from the Owner's Lot) nor dispose of any material from the Owner's Lot on any land in Wailea (other than the Owner's Lot).

e. Sand Removal. No Owner shall mine or remove any sand from any Lot, except for any removal necessary for the construction of Improvements upon the Lot as approved by the Design Committee.

f. Dust Control and Erosion. Each Owner shall take all adequate and reasonable precautions during the construction of Improvements (including, but not limited to, perimeter dust fences and watering) to control dust and erosion. All streets must be kept clear of mud and debris. Owners are encouraged to use a properly permitted fire hydrant hookup to assist in dust control. The Design Committee may require specific measures to be followed by each Owner on a case-by-case basis.

g. Construction Trailers. The appearance and location of all construction trailers, field offices and the like shall require the prior approval of the Design Committee.

h. Removal of Debris, Trash and Construction Materials. All trash, debris, and leftover and unused construction materials on the construction site shall be cleaned up and removed from each construction site at least once a week to a dumping site located outside of Wailea. Each construction site must have a dumpster or disposal bin placed on it for the deposit of construction debris, and such dumpster or disposal bin shall be serviced weekly. Lightweight material, packaging and similar items shall be covered or weighted down to prevent wind from blowing such materials off the construction site. Concrete trucks shall wash out spill pans before entering Wailea and before leaving the construction site. Each construction site shall be kept neat and shall be policed properly to prevent it from becoming a public eyesore or nuisance. Dirt, mud, debris or concrete resulting from activity on each construction site shall be removed promptly from public or private roads, open spaces, driveways and other portions of Wailea. No vacant lot may be used as a storage or construction site for another lot prior to or after completion of construction.

i. Construction Vehicles. No construction vehicles or machinery or private vehicles of the construction crew may be parked, stored or otherwise left (i) on any of the roadways, roadway shoulders or roadway Lots which are dedicated to any government Entity or owned by the Association or by Declarant (after the same have been constructed), or (ii) overnight on any of the roadways, roadway shoulders or roadway

Lots which are located in any single-family residential lot subdivision.

j. Compliance with Laws. Each Owner shall comply with all Laws governing or administering the construction of Improvements upon the Owner's Lot.

k. Dust and Noise. Property within Wailea and property adjacent to Wailea will be developed and Improvements will be constructed thereon by Declarant and other third-parties. Each Owner understands and accepts that such construction activities will result in the creation of dust, noise, vibrations and other nuisances by Declarant or by such third-parties, and agrees that such construction activities, dust, noise, vibrations and other nuisances shall not constitute a breach of any covenant or warranty by Declarant or serve as the basis for the filing of any suit against Declarant for abatement or injunction of such activities, dust, noise, vibrations or nuisances or for damages or otherwise or for any complaint with any court or regulatory agency.

Section 5. Procedures for Approval of Plans and Construction. No construction (including any grading, excavation or fill work) shall be performed or commenced on any Lot without the prior approval of the Design Committee. Prior to preparing preliminary or conceptual plans or design schematics for any Hotel, Commercial Facility or Condominium Project (including prior to any grading), the Owner and the Owner's engineer (if any) and architect must meet with a representative of the Design Committee to discuss and review the Owner's concepts and plans for development and the Design Committee's requirements for and standards of review and approval.

a. Prior to Step I Approval. Each Owner shall be required to obtain the Design Committee's prior approval of the following plans, specifications and other items for the proposed design and construction of the Improvements, prior to the submission of any application to the County of Maui for any Step I Planned Development Approval or any SMA Permit:

- (i) A site plan for the parcel showing (A) proposed building locations, (B) existing and proposed contour lines, (C) the location of existing improvements, (D) the proposed location of all amenities and utilities, (E) the proposed erosion control and drainage plan, (F) proposed auto access, (G) proposed parking, (H) proposed easements, (I) existing historic sites, (J) proposed public access pathways, (K) the proposed location, materials, heights, design and terracing of all fences and walls;

Site topographical survey performed by a land surveyor registered in the State of Hawaii;

- (ii) Existing site utilities and improvement;
- (iii) Archaeological survey and site map;
- (iv) Proposed site plan at a scale of 1" = 40'0" or larger. The site plan shall include, but not be limited to, the following:
 - a. Proposed contour lines;
 - b. Finished grades;
 - c. Proposed driveways, roads, cart paths, pedestrian paths;
 - d. Proposed erosion control and drainage plan;
 - e. Single line schematic layout for sewer, water, electricity, communication and drainage;
 - f. Site development proposal including location of buildings, number of stories, roof overhangs and setbacks;
 - g. Proposed location of all recreation areas and buildings;
 - h. Proposed parking lots including location of stalls, loading zones, handicap facilities, ratio of compact to full size stalls, and guest parking;
 - i. Landscape plan showing layout, plant type and size, open areas and green belts;
 - j. All proposed easements and a description of the purpose;
 - k. Proposed public access pathways; and
 - l. The proposed location, materials, heights, design and terracing of all fences and walls.

- (v) Schematic floor plans (minimum 1/8" = 1'0") and elevations;
- (vi) Drawings showing all elevations of all Improvements;
- (vii) Sections indicating the relationships between buildings on site, views from on site, the impact of off-site views and major fill and cut areas.
- (viii) Description of exterior materials and color, with samples;
- (ix) Description of provisions for landscaping and planting trees and vegetation and for stabilizing slopes during and after construction;
- (x) Information on lot coverage and floor area ratio; and
- (xi) The Owner's proposed construction schedule including any phasing provisions.

b. Prior to Step II Approval. Upon receiving (or having received) Step I Planned Development Approval from the County of Maui, the Owner shall prepare preliminary plans and specifications for the proposed Improvements, including landscaping and building exterior and interior designs for the Improvements and common areas and updated information on lot coverage, floor area ratio and parking ratios. These plans shall include the drawings and descriptions outlined in Section 5(a) above, but in more detail. Each Owner shall be required to obtain the Design Committee's prior approval of these plans and specifications prior to filing any application with the County of Maui for any Step II Planned Development Approval or any SMA Permit.

c. Prior to Step III Approval. Upon receiving (or having received) Step II Planned Development Approval from the County of Maui, the Owner shall proceed to prepare final plans and specifications for the proposed Improvements, including landscaping and exterior and interior designs. Each Owner shall be required to obtain the Design Committee's prior approval of these plans and specifications (or such other plans and specifications as may be required under any applicable Recorded Instrument) prior to filing any application with the County of Maui for any Step III Planned Development Approval or any SMA Permit.

d. Prior to Building or Grading Permits. Upon receiving (or having received) Step III Planned Development Approval and the SMA Permit, the Owner shall be required to obtain the Design Committee's prior approval of the final plans and specifications for the proposed Improvements (or such other plans and specifications as may be required under any applicable Recorded Instrument) prior to applying to the County of Maui for any building or grading permits.

e. Prior to All Other Work. Each Owner shall submit the final plans, specifications and sample materials for all other Improvements, landscaping and work not covered by Sections 5(a) through 5(d) above to the Design Committee for the Design Committee's prior approval before commencing such Improvements, landscaping or work, if the performance of such Improvements, landscaping or work:

- (i) requires any governmental approval or permit, or
- (ii) will result in any modification of or change to the exterior of any existing Improvements on, or to the landscaping of, the Owner's Lot (other than modifications or changes which are immaterial or insubstantial).

f. Subsequent Changes. Any amendment, variation, change, omission from or addition to any item previously approved by the Design Committee (other than amendments, variations, changes and additions which are immaterial or insubstantial), shall require the Design Committee's prior approval.

g. Use of Architects. All building plans and specifications must be prepared and signed by an architect licensed to practice in Hawaii. All landscape plans must be prepared and stamped by a landscape architect licensed in the State of Hawaii.

h. Scope of Approvals. The Design Committee's approval of any item submitted to the Design Committee in connection with the construction of any Improvement on the Lot shall not constitute any obligation on the part of the Design Committee to approve any similar item for any subsequent Improvement constructed upon the Lot or upon any other Owner's Lot, it being understood that the Design Committee's requirements for approval may be different for different circumstances or times.

i. Completion of Work. All work approved by the Design Committee shall be prosecuted to completion diligently and in good faith, within eighteen (18) months from the time the

Owner "commenced the construction of the Improvement" (as defined in Section 11 below) for new construction and within twelve (12) months from the time the Owner "commenced the construction of the Improvement" (as defined in Section 11 below) for renovations. The Design Committee may, upon an Owner's request, extend the time for completion for large projects such as Hotels and Condominium Projects, or in cases where the Owner can demonstrate extraordinary hardship circumstances. Promptly upon the completion of any work for which the approval of the Design Committee is required, the Owner doing such work or for whom such work was done shall give written notice thereof to the Design Committee, together with a certificate from the Owner's architect certifying that construction has been completed in accordance with the plans and specifications approved by the Design Committee. If an Owner fails to provide such certificate, the Design Committee may obtain such certificate from the Owner's architect or any other architect, at the Owner's expense. Within thirty (30) days after receipt of said notice and certificate, the Design Committee or its duly authorized representative, may (but shall not be obligated to) inspect such work to determine whether it was done in compliance with the Design Committee's approval, and shall notify the Owner of any non-compliance within such thirty (30) day period, whereupon the Owner shall remedy such non-compliance within a period of fifteen (15) days after notice of such non-compliance is received by the Owner, or if such non-compliance reasonably cannot be remedied within said 15-day period, shall remedy such compliance as soon as reasonably possible in good faith and with due diligence. The Design Committee and/or the Association shall also have the right to require the Owner or the Owner's contractor to provide written certification that the height of the Improvements complies with the approved plans and specifications. If an Owner fails to provide such certificate, the Design Committee may obtain such certificate from the Owner's contractor or any surveyor, at the Owner's expense.

j. Alterations, etc. After construction of any Improvement upon the Lot is completed, no Owner shall, except with the prior approval of the Design Committee, make any alterations to such Improvement which would affect the exterior appearance thereof or change the basic layout, design concept, character or ambience of such Improvement or lower the standards of such Improvement (other than any alterations or changes which are immaterial or insubstantial).

Section 6. Standards of Approval. The Design Committee shall use reasonable judgment in approving or disapproving any item submitted to the Design Committee for its approval or consent under this Declaration. The Design Committee shall, however, have the right to withhold its approval or consent, without liability to the person requesting such approval or to any other person, if:

a. The item submitted to the Design Committee does not conform to or satisfy the provisions or requirements of this Declaration or the Design Committee Rules;

b. The proposed Improvement or work does not conform to or satisfy the provisions or requirements set forth in any Recorded Instrument applicable to the Lot; or

c. The proposed Improvement or work is not aesthetically compatible with the physical characteristics of the Lot and other Lots in Wailea, or with the projects, homes, Improvements and landscaping now or then existing in Wailea and on the other property shown on the map attached hereto as Exhibit "B", or with the environment or long range development of Wailea and the other property shown on the map attached hereto as Exhibit "B", or with the objectives of this Declaration.

Subject to the foregoing reasonableness requirement, the Committee shall have sole discretion to approve or disapprove all improvements, excavation, fill, landscaping, construction and other work on any Lot or portion thereof, whether or not the matter is specifically addressed herein.

Section 7. Manner of and Time for Approvals. All requests for the Design Committee's approval must be submitted in writing. Whenever the Design Committee's approval is required or requested under this Declaration or the Design Committee Rules, such approval shall be effective or deemed given only if given in writing and signed by the Design Committee (unless Design Committee's approval is deemed given under the last sentence of this paragraph). The person requesting the Design Committee's approval shall submit all documents and information required to be submitted by this Declaration and the Design Committee Rules, and such additional documents and information which reasonably may be requested by the Design Committee, in order for the Design Committee to determine whether the standards of approval described in Section 6 above have been satisfied, provided that such request for further documents and information is made by the Design Committee within twenty (20) days after the Owner's request for the Design Committee's approval has been received. The Design Committee shall have a period of thirty (30) days from the date the last of the requested documents has been received by the Design Committee within which to give its approval or disapproval. The Design Committee's failure to express any disapproval and the reasons therefor within said 30-day period shall be deemed to constitute the Design Committee's approval.

The time periods set forth above may be modified for any Lot by a Recorded Instrument applicable to such Lot, in which event the Design Committee shall be obligated to comply with such modified time periods.

Section 8. No Representations by the Design Committee.
Nonliability. No review or approval by the Design Committee of any item submitted to the Design Committee pursuant to this Declaration or any Recorded Instrument shall in any manner constitute the Design Committee's (or any Design Committee member's), Declarant's, the Board's, the Association's or any of their attorneys' representation, warranty or agreement that such item (1) has been prepared free of defects or is of good workmanship or design, or will result in improvements which are readily marketable or free of design or construction defects, or (2) complies with any or all applicable Laws (including building code requirements), or (3) will result in any Government Entity's or any other person's approval of the same. Neither the Design Committee (or any member thereof) nor Declarant nor the Association nor the Board (or any member thereof) nor any of their attorneys shall be liable to any Owner or any other person for any damage, loss or prejudice suffered or claimed on account of (a) the Design Committee's (or any Design Committee member's) mistake in judgment or negligence, (b) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, or other request or item, whether or not defective, (c) the construction of any Improvement or performance of any work, whether or not such construction or performance complies with this Declaration, any Recorded Instrument, the Design Committee Rules or the terms of any approval of the Design Committee, (d) the manner, appearance, style or quality to or in which any Lot in Wailea is developed, improved, landscaped, maintained or operated, (e) the erroneous execution of an estoppel certificate, (f) the failure of any plan, drawing, specification or other item approved by the Design Committee to comply with any or all Laws, or (g) any other matter, decision, act or omission; provided that such member(s) shall not have acted in bad faith.

Section 9. Special Application to the Association.
Project Associations and Other Persons. For purposes of this Article V, all references to "Owner" shall mean and include: (a) the Association, (b) each Project Association (whether or not the Project Association has been admitted as a member of the Association pursuant to Article III, Section 1), and (c) each person performing any work upon the Owner's Lot, whether or not such person is an Owner (including, without limitation, any lessees or vendees of an Owner).

Section 10. Review Fees; Fines; Deposits. The Design Committee shall charge the Owner a reasonable processing fee for its review of any item submitted to it or any inspections performed by it, in accordance with such fee schedule as from time to time may be established by the Design Committee. In addition, the Design Committee may employ the services of an architect, landscape architect, land planner, engineer, attorney, or any other consultant to render professional advice, and may

pay a reasonable compensation for such services, which compensation may be charged, in addition to the fee provided in the foregoing sentence, to any Owner who has submitted plans or constructed any Improvement requiring review or other action by the Design Committee or any architect, landscape architect, land planner, engineer, attorney, or other consultant.

Without limiting any other remedies available to the Association, the Design Committee or the Board of Directors, if an Owner commences construction of any new Improvements or substantially deviates in construction from the approved plans, without first obtaining the approval of the Design Committee, or if an Owner fails to comply with any other provision of this Article V, such Owner shall reimburse the Association for all costs and expenses incurred by the Association and shall be subject to a fine in the amount from time to time set forth by the Association. Such fine may be imposed and collected by the Association as a Special Assessment in accordance with the provisions of Article IV, Section 5 hereof.

Any Owner subject to the requirements of this Article V shall deposit with the Association the following amount as a construction compliance deposit (the "Deposit"), in the form of a check made payable to the Association, together with a signed Contractor's Acknowledgment form, prior to the date the Owner "commences the construction of the Improvement" (as defined in Section 11 below):

a. for any Single Family Residential Lot, \$8,000.00 or such other amount as determined from time to time by the Board; or

b. for all other Lots, such amount as determined from time to time by the Board.

The Board shall deposit the Deposit in an interest-bearing account selected by the Board, and may, after giving notice to the Owner and an opportunity to be heard, deduct from the Deposit all amounts payable by such Owner under the terms of this Article V, including but not limited to, all review fees, charges, professional services fees and fines. When all of the requirements for completing the work have been satisfied in accordance with Section 5.1 above, the remaining balance of the Deposit (if any), together with all remaining interest earned thereon (if any), shall be paid to the Owner.

Section 11. Expiration of Approval. All approvals of the Design Committee may be revoked by the Design Committee if the Owner has not commenced the construction of the Improvement or work covered by the Design Committee's approval within twelve (12) months from the date of the Design Committee's approval, and if so revoked, the Owner shall be required to comply with such

further requirements as may be imposed by the Design Committee (including the submission of revised plans, drawings and specifications), and the Design Committee shall not be bound by any approval previously given by the Design Committee. The Owner shall be deemed to have "commenced the construction of the Improvement" for purposes of this Section 11 when the "visible commencement of operations" (as that term is defined in Section 507-41, HRS) for the construction of the Improvements shall have occurred on the Owner's Lot. The Design Committee, upon receiving a written request from the builder or developer, at least forty-five (45) days prior to the expiration period, and for good cause, may extend the twelve (12) month period for periods not to exceed an additional twelve (12) month period beginning on the original expiration date.

Section 12. [intentionally deleted]

Section 13. Special Covenants for Mauka Properties.

The following provisions apply to Lots located mauka (on the mountain side) of Wailea Alanui Drive and on which a Commercial Facility will be constructed, in addition to the other provisions contained in Article V (and in the event of any conflict between the provisions of this Section 13 and other provisions of Article V or any applicable Project Association documents, the strictest provision shall apply):

a. Building Setbacks. No Improvements (other than landscaping and related hardscape approved by the Design Committee) may be constructed or placed on any Lot within 20 feet from any street boundary, within 15 feet from the side boundaries of the Lot, and within 20 feet from the rear boundary of the Lot.

b. Height Limits. It is the intent of this special covenant to limit the height of Commercial Facilities to low rise structures, generally two stories. With this intent in mind, no commercial Improvements, other than landscaping, shall be constructed to exceed thirty-five (35) feet in height, as calculated by either of the following methods:

- (i) thirty-five (35) feet above finished grade at any point on the Lot; or
- (ii) creating a ceiling which is thirty-five (35) feet in height measured along all Lot boundary lines.

c. Floor Area Ratio ("FAR"). The FAR for Commercial Facilities shall not exceed fifty percent (50%) of the Lot area.

d. Lot Coverage. The allowable Lot coverage or "building footprint" for Commercial Facilities shall not exceed thirty-five percent (35%) of the Lot area.

e. Development Intent. It is the intent of this Section 13 to promote a campus/garden style development mauka of Wailea Alanui Drive. Therefore, all Improvements shall be built in accordance with this Section 13, unless a variance is approved in writing prior to construction by the Design Committee. All decisions of the Design Committee shall be final and binding.

f. Permitted Land Uses. It is the position of the Declarant and the Association that certain commercial land uses are not acceptable development options within the resort community of Wailea. Therefore, only the following uses shall be permitted on such properties within Wailea:

1. Retail goods establishments that are engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods, including sporting good stores; antique shops; apparel and accessory shops; book, stationery or gift stores; camera shops; food and liquor stores; hardware and garden supply stores; jewelry stores; music stores and studios; pharmacies; specialty boutiques; and other similar uses. The establishments may include display rooms and incidental manufacturing of goods for retail sale on the premises only.
2. Retail services establishments that are providing services or entertainment, as opposed to products, to the general public, including real estate offices; transient accommodation agencies; amusement enterprises, excluding billiard parlors or arcades; professional and financial offices; information centers; libraries; museums; art galleries; auditoriums and theaters; clinics and offices; medical, optical or dental offices; parcel delivery stations; dancing and hula studios; printing, lithography or publishing shops; private clubs or organizations; and schools such as business schools, art schools, preschools, music academies, or other similar type uses.
3. Retail food establishments where food or drink is offered or prepared for retail sale or service. This includes restaurants, cafes

or bars, and catering establishments provided a retail food outlet is associated on the premises. One (1) drive-thru restaurant will only be allowed on the area bounded by Wailea Ike Drive, Kalai Waa Street and the southern boundary of Land Court Lot 623, as shown on Land Court Map 71 filed with Land Court Application No. 1804 and described in Transfer Certificate of Title No. 480,759 issued to Wailea Resort Company, Ltd., with ingress and egress strongly encouraged from Ike Drive only.

4. Personal service establishments which are primarily engaged in providing services involving the care of a person's appearance or apparel including photographic studios, beauty and barber shops, tailors, health and fitness studios, and other similar uses.

5. One (1) gasoline retailing establishment shall only be allowed on the area bounded by Wailea Ike Drive, Kalai Waa Street and the southern boundary of Land Court Lot 623, as shown on Land Court Map 71 filed with Land Court Application No. 1804 and described in Transfer Certificate of Title No. 480,759 issued to Wailea Resort Company, Ltd., provided that no servicing, repairing, storing or maintenance of vehicles will be permitted on the premises, and with ingress and egress strongly encouraged from Ike Drive only.

6. Government offices.

7. Communication and technology services including radio and television studios.

8. Public and private parking lots or buildings, only as an adjunct to an approved companion use.

9. Storage facilities provided they are fully enclosed within a building.

g. Additional Restrictions. The following uses shall not be permitted on properties bounded by the southern boundary of Land Court Lot 623, as shown on Land Court Map 71 filed with Land Court Application No. 1804 and described in Transfer Certificate of Title No. 480,759 issued to Wailea Resort Company, Ltd., Kalai Waa Street and the northern boundary of Land

Court Lot 460, as shown on Land Court Map 52 filed with Land Court Application No. 1804 and described in Transfer Certificate of Title No. 314,101 issued to Diamond Resort Corp.:

1. Food services (including restaurants, cafes, or bars);
2. Auditoriums or theaters;
3. Recreational or amusement establishments; or
4. Religious, benevolent or philanthropic facilities.

**ARTICLE VI
DESIGN COMMITTEE**

Section 1. Organization: Members. There shall be a Design Committee consisting of either three members or five members. In addition, one or more alternates may be appointed, from time to time, for members of the Design Committee. Such alternates shall have the power to act as voting members of the Design Committee in the event the members for whom they are alternates are unavailable to act as members of the Design Committee. Each member shall hold office until such time as such member has resigned, has been removed, or a successor has been appointed.

a. **Appointment of Members.** Declarant shall have the right to appoint a majority of the members of the Design Committee (and their alternates), and the Board shall have the right to appoint the remaining members (and their alternates), until the date ninety percent (90%) of the Lots in Wailea have been developed. Thereafter, the Board shall have the right to appoint a majority of the members of the Design Committee (and their alternates), and Declarant shall have the right to appoint the remaining members (and their alternates) until the date one hundred percent (100%) of the Lots in Wailea have been developed. Thereafter, the Board shall have the right to appoint all of the members of the Design Committee. In addition, Declarant may at any earlier date send a written notice to the Board that after a specified date the Board may appoint and remove such larger than a majority number of members of the Design Committee as may be specified in such notice. (Declarant shall have the right to remove at any time any of its appointees and to appoint a successor to such removed member.)

b. **Need Not be Owners.** Members appointed to the Design Committee need not be Owners of Lots.

c. **Definition of "Majority".** As used herein, the term "majority" shall mean two members (or their alternates) if the Design Committee consists of three members, and three members (or their alternates) if the Design Committee consists of five members.

d. Definition of "Developed". For purposes of this Section 1, a Lot shall be deemed "developed" when a permanent certificate of occupancy has been issued by the appropriate County agency for all Improvements which are intended to be constructed upon such Lot or, if no certificates of occupancy are issued for the type of Improvements to be constructed, when all Improvements intended to be constructed upon such Lot have been substantially completed (as the term "substantial completion" is or would be defined or construed under Section 507-43(f), HRS).

Section 2. Committee Duties. It shall be the duty of the Design Committee to consider and act upon such proposals or plans from time to time submitted to it pursuant to this Declaration or any Recorded Instrument, to adopt, if deemed necessary or appropriate, Design Committee Rules, to act upon all plans, specifications and other items submitted to the Design Committee with respect to the Improvements hereafter constructed upon the Annexed Property referred to in Article II, Section 1(e)(ii) above, and to perform such other related duties from time to time delegated to it by this Declaration or by the Board or by any Recorded Instrument. The Design Committee shall have the right to appoint one or more sub-committees with such responsibilities and decision-making authority (including the authority to review and approve plans, specifications and other items submitted by Owners for Design Committee approval under this Declaration), as may be delegated to such sub-committees by the Design Committee, and shall have the right to retain professionals and other consultants upon such terms and conditions as may be determined by the Design Committee; provided, however, that any compensation payable to such professionals or consultants shall be subject to the approval of the Board of Directors.

Section 3. Meetings; Action; Compensation; Expenses. The members of the Design Committee shall meet or communicate with each other from time to time as necessary to perform the duties of the Design Committee. Any act approved by a majority of the members shall constitute the act of the Design Committee. The Design Committee shall keep and maintain a record of all final action taken by it at such meetings or otherwise. The members of the Design Committee shall receive such reasonable compensation and reimbursement of expenses from the Association as may be approved by the Board of Directors.

If for any reason the Design Committee is unable to meet or function on a particular matter by the time for action or decision required under this Declaration or any Recorded Instrument, the President of the Association or, in his or her absence, the Board, shall be empowered to perform the functions of the Design Committee or to appoint an alternate Design

Committee for so long as the Design Committee is unable to meet or function.

Section 4. Committee Rules. The Design Committee shall by majority vote have the exclusive power to adopt, amend and repeal rules and regulations, to be known as "Design Committee Rules", which interpret or implement the provisions of this Declaration insofar as they relate to matters within the jurisdiction of the Design Committee. A copy of the Design Committee Rules, as they from time to time may be amended, shall be maintained with the records of the Association and shall be available for inspection by any Owner.

Section 5. Nonwaiver. The approval by the Design Committee of any plans, drawings or specifications for any work done or proposed, or in connection with any other matter requiring the approval of the Design Committee, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter.

Section 6. Variances. The Design Committee shall have the power to allow, in its sole and absolute discretion, reasonable variances from the provisions of Article V in order to overcome practical difficulties and to prevent unnecessary hardships.

Section 7. Estoppel Certificate. Within thirty (30) days after written request therefor is delivered to the Design Committee by any Owner, and upon payment therewith to the Association of a reasonable fee from time to time to be fixed by the Board, the Design Committee shall issue an estoppel certificate executed by any two of its members, certifying with respect to the Lot of such Owner, that as of the date thereof either (a) all Improvements and other work made or done upon or within such Lot comply with the requirements of this Declaration, or (b) such Improvements or work do not so comply, in which event the certificate shall also set forth the nature of such noncompliance. Such certificate shall be conclusive as between the Association and all Owners, purchasers and mortgagees who may rely in good faith on such certificate.

ARTICLE VII ENFORCEMENT OF THIS DECLARATION

Section 1. Persons Entitled to Enforce this Declaration. The following persons (the "Enforcing Persons") shall have the right to exercise any remedy at law or in equity for the enforcement of this Declaration:

- a. The Association (acting through the Board).

b. Any Owner or any person to whom the Owner's rights of membership have been assigned pursuant to Article III, Section 1.

c. Declarant.

d. Any Project Association if (i) such Project Association is a member of the Association, or (ii) a majority of the members of such Project Association are members of the Association.

Section 2. If any Owner or other person subject to this Declaration shall breach or fail to comply with any provision of this Declaration, and such breach or non-compliance shall not be fully remedied within fifteen (15) days after notice of the breach or non-compliance is sent to or received by the Owner or, if such breach or non-compliance cannot reasonably be remedied within said 15-day period, such Owner shall have failed to begin to remedy such non-compliance within said 15-day period and shall have failed to exercise good faith and due diligence to remedy such breach or non-compliance as soon as reasonably possible, then each Enforcing Person (except as otherwise stated) shall have the following rights and remedies:

a. Without liability to the Owner or any other person for trespass or damages, and upon not less than five (5) days prior written notice to the Owner, to enter upon the Lot or any improvements thereon (but not into any Unit used for residential purposes) and to perform, or require the Owner to perform immediately, in either case at the Owner's cost and expense, all work (including the planting, watering, fertilizing, cutting and trimming of trees, shrubbery and other vegetation) necessary or desirable to remedy such breach or non-compliance, and/or to abate summarily and remove any Improvement or anything else or any condition which is not in compliance, and/or

b. Without liability to the Owner or any other person for trespass or damages, to require the Owner's Project Association (if any) to enter into any Unit used for residential purposes, and require such Owner at the Owner's cost and expense to perform immediately all work necessary or desirable to remedy such breach or non-compliance, and/or to abate summarily and remove any Improvement or anything else or any condition which is not in compliance, and/or

c. To commence and maintain actions and suits to require the Owner to remedy such breach or non-compliance or for specific performance, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration, or to restrain or enjoin any breach or threatened breach of this Declaration, or to recover damages, and/or

d. To pursue all other rights and remedies available at law or in equity.

In addition to the foregoing, the Owner shall reimburse the Association for all costs and expenses incurred by the Association in connection with such breach or non-compliance, and shall be subject to a fine in the amount set forth by the Board from time to time. Such fine may be imposed and collected by the Association as a Special Assessment in accordance with the provisions of Article IV, Section 5 hereof.

In any action for the enforcement of the provisions of this Declaration or for damages or any other form of relief, the prevailing party in such action shall be entitled to recover from the losing party all of the prevailing party's costs, expenses and reasonable attorneys' fees.

No remedy herein reserved is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to any remedy given hereunder or now or hereafter existing at law or in equity. The Enforcing Person shall have the right to hire contractors and agents in performing any work to be performed by the Enforcing Person.

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

**ARTICLE VIII
INSURANCE**

Section 1. Casualty Insurance. Unless waived by the Board, each Owner shall at all times keep all Improvements owned by such Owner insured against loss or damage on an all risk basis in an amount equal to the full replacement cost thereof (but with a reasonable deductible as is customary in the industry), and shall pay all premiums thereon when due. Each Owner shall deposit with the Board (1) the policy or policies of insurance (or certificates thereof), said policies to require thirty (30) days notice to the Board of any proposed cancellation, expiration or change in material terms thereof, and (2) the receipt of every premium so paid, or in lieu thereof, proof of premium payment satisfactory to the Board. Every policy shall be made payable in case of loss or damage to the parties as their interests may appear and, subject to the rights of the holder of any Paramount Mortgage to the insurance proceeds, all compensation, indemnity or other monies paid on account of any loss or damage, other than rental value insurance, shall with all convenient speed be applied to (i) rebuilding, repairing or otherwise reinstating the

Improvements in a good and substantial manner according to the plan and elevation of the Improvements so destroyed or damaged, or according to such modified plan as shall be approved previously by the Design Committee in writing, or (ii) the removal of the damaged Improvements and restoration according to the provisions of Article V, Section 1(k); and in the event such proceeds are inadequate the Owner promptly shall make up such deficiency from the Owner's own funds.

Section 2. Liability Insurance. Unless waived by the Board, each Owner shall at all times keep in full force and effect a policy or policies of general liability and property damage insurance with respect to the Owner's Lot in such amounts as may be from time to time established by the Board, but initially with limits for bodily injury liability of not less than \$1,000,000 per occurrence for Single-Family Residential Lots and \$3,000,000 per occurrence for all other Lots, and with limits for property damage liability of not less than \$500,000 per occurrence (or with such other limits as may be set forth in any Recorded Instrument applicable to such Owner's Lot); provided, however, that such limits shall not in any way limit the Owner's liability or be construed as a representation of sufficiency to protect the Owner fully. Said policy or policies shall name the Owner, the Association and Declarant as insureds, shall (or certificates thereof) be deposited promptly with the Board, shall contain a provision waiving all rights of subrogation of the insurer against the Association, Declarant and all Owners and shall require thirty (30) days notice to the Association and Declarant of any proposed cancellation, expiration or change in material terms thereof.

Section 3. Project Associations. If the Owner is a member of a Project Association, then all references to "Owner" in Sections 1 and 2 above shall mean, alternatively, the Owner's Project Association and references to "Improvements owned by" an Owner shall mean, alternatively, Improvements subject to or comprised in such Project Association, and such Owner shall be deemed to have satisfied his or her obligations under said Sections if the Project Association procures and maintains the insurance described in said Sections.

Section 4. Free Choice of Insurer. Each Owner is hereby notified that all Owners are free to procure any insurance required under this Declaration from any insurance company authorized to do business in the State of Hawaii.

ARTICLE IX INDEMNITY

Each Owner shall indemnify, defend and hold harmless the Association, Declarant and all other Owners from and against any and all claims arising from any breach or default in the

performance of any of such Owner's obligations under, or such Owner's non-compliance with any of the provisions of, this Declaration.

ARTICLE X
DISPUTES

Section 1. Agreement Regarding Disputes.

Notwithstanding anything to the contrary contained in this Declaration, the Association, the Board, the Association's managing agent or manager, the Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes, and to avoid the emotional and financial costs of litigation if possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving Wailea, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of Act 132 of the 1997 Session Laws of Hawaii (the "Act"), this Declaration, the Charter, the Bylaws, the Design Committee Rules or the Association Rules (collectively "Claims"), except for certain exempt claims specified below, shall be resolved using the procedures set forth in this Article.

Section 2. Mediation.

a. At the request of any Bound Party, the Claim shall first be submitted to mediation.

b. Nothing in subsection (a) shall be interpreted to mandate the mediation of any dispute involving the following ("Exempt Claims"):

(i) Actions seeking equitable relief involving threatened property damage or the health or safety of Association members or any other person;

(ii) Actions to collect assessments;

(iii) Personal injury claims; or

(iv) Actions against the Association, the Board or one or more directors, officers, agents, employees or other persons for amounts in excess of \$2,500 if insurance coverage under a policy of insurance procured by the Association or the Board would be unavailable for defense or judgment because mediation was pursued.

c. If any mediation under this section is not completed within two (2) months from commencement, no further

mediation shall be required unless agreed to by the Association and the member. If the Parties do not agree to further mediation within ten (10) days thereafter, the Bound Party having the Claim ("Claimant") shall have ten (10) additional days to submit the Claim to arbitration in accordance with Section 3 below, or the Claim shall be deemed abandoned, and the other Bound Party ("Respondent", which together with Claimant are referred to as "Parties") shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, however, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

d. If none of the Bound Parties request mediation, then any Party may submit the Claim to arbitration in accordance with Section 3 below.

Section 3. Final and Binding Arbitration.

a. The following Claims ("Additional Exempt Claims") shall be exempt from the provisions of this Section 3:

- (i) any Exempt Claim;
- (ii) any suit against any Bound Party to enforce the assessment, fining and payment provisions of this Declaration, the Association Rules or the Design Rules;
- (iii) any suit to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as a court may deem necessary in order to enforce the Association Rules or the architectural provisions and use restrictions of this Declaration or the Design Rules;
- (iv) any suit between Owners seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the laws of the State of Hawaii in the absence of a claim based on the Declaration, By-Laws, Charter, Design Rules or Association Rules, if the amount in controversy exceeds \$10,000.00, or such other amount as may be determined by the Board from time to time;
- (v) any suit arising out of any written agreement between Owners which would constitute a cause of action under the laws of the State of Hawaii in the absence of the Declaration, Bylaws, Charter, Design Rules or Association Rules; and
- (vi) any suit in which all parties are not Bound Parties.

b. All Claims which are arbitrated shall be determined by an arbitration conducted under the auspices and pursuant to the Commercial Rules of the American Arbitration Association or any other dispute resolution organization agreed to by the Parties ("DRO"), and the results of the arbitration will be conclusive and binding on the Parties. In the event arbitration is invoked, the Parties shall, within fifteen (15) days after written notice that arbitration has been invoked, attempt to select a single arbitrator. If they cannot agree upon an arbitrator, the selection shall be made by the DRO. The arbitrator shall be neutral and qualified by reason of education and experience. Neither the parties nor the arbitrator may disclose the existence, content or result of any arbitration without the prior written consent of all parties.

This Section 3 is an agreement of the Bound Parties to arbitrate all Claims except Additional Exempt Claims and is specifically enforceable under the applicable arbitration law of the State of Hawaii. The arbitration award shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Hawaii.

Section 4. Allocation of Costs. Each Party shall bear all of its own costs incurred prior to and during all mediation and/or arbitration proceedings, including the fees of its attorney or other representative and its witnesses. Each Party shall share equally all costs and fees of the mediator and/or arbitrator.

Section 5. Enforcement. If (a) the Parties agree to resolve any Claim through mediation and/or arbitration in accordance with this Article and any Party thereafter fails to abide by the terms of such proceedings, (b) the Parties settle any Claim through negotiation and any Party thereafter fails to comply with the settlement agreement, (c) the Parties agree to accept the decision following mediation and any Party thereafter fails to comply with such decision, or (d) any Party fails to comply with any arbitration award, then any other Party shall have the rights and remedies of an Enforcing Person as described in Article VII hereof and, where applicable, the rights and remedies described in Article V hereof.

ARTICLE XI MISCELLANEOUS PROVISIONS

Section 1. Assignment of Rights and Duties.
Declarant, its successors and assigns, shall have the right to assign, delegate, convey or transfer in any manner, to any person(s), without limitation, all or any part or its rights, privileges, powers, interest and obligations hereunder; provided, however, that there shall at all times be only one "Declarant"

who shall be the sole person authorized to give any consents or approvals required or requested of the "Declarant" under this Declaration as Declarant, or to enforce this Declaration as Declarant or take any other action as Declarant hereunder.

Section 2. Dedication. If any Lot should be dedicated in fee simple or leased to any Government Entity, the Government Entity need not comply with the provisions of this Declaration; provided, however, that should such Government Entity thereafter convey, license, lease, sublease, assign or transfer its interest or rights in such Lot to any person who is not a Government Entity, such Lot and conveyance, license, lease, sublease, assignment or transfer automatically shall be subject to and governed by this Declaration and the grantee, licensee, lessee, sublessee, assignee or transferee automatically shall be bound by and required to comply with all of the provisions of this Declaration, whether or not such conveyance, license, lease, sublease, assignment or transfer expressly refers to or is made subject to this Declaration.

Section 3. Notices. Whenever any notices are sent to an Owner, such notices shall be sent to the address of the Owner's Lot (or to such other address as previously shall have been given in writing by the Owner to the Association and sent by registered or certified mail by such Owner), and shall be deemed to be received by the Owner on the earlier of actual date of delivery or three business days after postmark (whether or not actually received by the Owner). If a Lot is owned by more than one person, notice to any one person shall be deemed to be notice to all such persons. Each Owner, upon conveying fee simple ownership of a Lot to a new Owner, immediately shall deliver or cause the new Owner to deliver a true and correct copy of the recorded conveyance instrument to the Association at the Association's principal place of business (or to such other address as the Association previously shall have given in writing to the Owners). Until such conveyance instrument is received by the Association, any notice identifying the previous Owner as addressee shall be deemed notice to the new Owner.

Section 4. Joint and Several Liability. If an Owner consists of more than one person, all of the obligations of the Owner under this Declaration shall constitute the joint and several obligation of all such persons. The obligations of more than one Owner under this Declaration shall constitute the joint and several obligation of all such Owners. Each Owner shall be liable for all acts and omissions of such Owner's guests, invitees, agents, employees, customers and contractors, and their failure to comply with the provisions of this Declaration.

Section 5. Inspection. The Board and the Design Committee and their respective authorized agents shall have the right at all reasonable times and without notice to or consent of

any Owner, to enter upon the Owner's Lot (but not into any Residential Structure) and, upon not less than two (2) days notice to the Owner, into the Owner's Residential Structure, for purposes of inspecting the same and determining whether the same is in compliance with this Declaration, without liability for trespass or damages. Notwithstanding the foregoing, the Board and its authorized agents shall have the right to enter upon the Lot or into any Residential Structure at any time and without any notice or consent in the event of an emergency. Each Owner promptly shall produce all documents which the Board or the Design Committee reasonably may request to evaluate whether such Owner is in compliance with the provisions of this Declaration.

Section 6. Duration. Subject to prior termination as provided herein, the provisions of this Declaration shall be valid and shall run with and bind the land for a term of fifty-five (55) years from the date this Declaration is recorded in the Office of the Assistant Registrar. After such 55-year period, they automatically shall be extended for successive periods of ten (10) years each unless terminated in accordance with the provisions of Section 9 below; provided, however, that in the event that the application of this Section 6 to any of the provisions of this Declaration, would violate the Rule Against Perpetuities or any other limitation on duration imposed by Law, then such provisions of this Declaration shall be deemed to remain in effect only for the maximum period permitted by Law.

Section 7. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability or any other provision hereof.

Section 8. Interpretation; No Waiver. The provisions hereof shall be construed and enforced under the laws of the State of Hawaii and shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of Wailea. The headings of paragraphs, sections and articles herein are inserted only for ease of reference and shall not define or limit the scope or intent of any provision of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce thereafter said provision or to enforce any other provision hereof. No acceptance of any assessment paid by any Owner shall be deemed to be a waiver of any breach by such Owner of any provision of this Declaration or a waiver of any rights of any Enforcing Person or any other person under this Declaration, or be construed as any agreement or representation by any Enforcing Person that such Owner is in compliance with the provisions of this Declaration.

Section 9. Amendment. This Declaration may, at any time, be amended or repealed, in whole or in part, upon the happening of all the following events:

a. The approval by both (i) Declarant and (ii) the vote or written consent of fifty-one percent (51%) of the total votes of all Owners (including Declarant) of the proposed amendment or repeal; provided, however, that (A) Declarant's approval under clause (i) shall not be required after December 31, 2016, or the date the Declarant is the holder of less than ten percent (10%) of the total votes of all Owners, whichever occurs first, (B) no amendment which serves disproportionately and materially to increase or decrease the Voting Units assigned to the Owners or the assessments payable by the Owners shall be valid or effective without the approving vote or written consent thereto of seventy-five percent (75%) of the total vote of all Owners adversely affected by such amendment, (C) no amendment of any provision in this Declaration may be made by any percentage vote less than the percentage required by such provision in order to take the action covered by such provision, (D) no amendment may change or remove the persons who must approve action pursuant to the provision being amended (such as, but not limited to, Declarant or a certain percentage of Owners other than Declarant) without the approving vote or written consent thereto either (1) of such persons, or (2) if such provision refers to a certain percentage of such persons, of such percentage of such persons, and (E) no repeal of this Declaration shall be effective without the vote or written consent of both Declarant and fifty-one percent (51%) of the total votes of all Owners (exclusive of Declarant), and

b. The recording in the Public Records of a certificate of the Secretary or an Assistant Secretary of the Association, setting forth in full the amendment or repeal, and certifying that such amendment or repeal has been approved in accordance with the provisions of this Section 9.

Notwithstanding the provisions of paragraphs a. and b. above, the Board may at any time amend the Declaration as may be required in order to conform with the provisions of the Act or of any other statute, ordinance, rule or regulation enacted by any governmental authority, by a resolution adopted by the Board, and the amendments shall be as fully effective for all purposes as if adopted by the vote or written consent of the Declarant and the Owners; provided that any amendment adopted pursuant to this paragraph shall identify each portion of the Declaration so amended and shall contain a statement that that portion has been amended solely for purposes of information and convenience, identifying the statute, ordinance, rule or regulation implemented by the amendment. The amendment shall be recorded in the manner provided in paragraph b. above.

Section 10. Audit. Any Owner may, at any reasonable time and at such Owner's own expense, cause an audit or inspection to be made of the books and records of the Association. The Association shall furnish to each Owner a report on the financial records of the Association within one-hundred twenty (120) days after the end of each Fiscal Year.

Section 11. No Rights in Property of Declarant. Except as may be expressly provided in a separate writing duly executed by Declarant, no person or entity shall have any right, title or interest in or to, or any right to use or enjoy, any Lot (or interest therein or portion thereof) owned or controlled by Declarant or any parent, subsidiary, sister corporation or affiliate of Declarant, regardless of whether such Lot is undeveloped or developed (and whether developed with recreational facilities such as golf courses, tennis clubs or otherwise) and regardless of whether or not such Lot is in Wailea.

Section 12. Attorneys' Fees and Expenses of Enforcement.

a. All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for:

(i) collecting any delinquent assessments against any Lot or the Owner of any Lot;

(ii) foreclosing any lien on any Lot;

(iii) enforcing any provision of the Association documents or the Act;

against an Owner, occupant, tenant, employee of an Owner, or any other Person who in any manner may use the Lot, shall be promptly paid on demand to the Association by such Person or Persons; provided that if the Association is not the prevailing party, all costs and expenses, including reasonable attorneys' fees, incurred by any such Person or Persons as a result of the action of the Association, shall be promptly paid on demand to the Person by the Association. The reasonableness of any attorneys' fees paid by a Person or by the Association as a result of an action pursuant to paragraph (ii) shall be determined by the court.

b. If any Owner is the prevailing party in any action against the Association, any of its officers or directors, or the Board to enforce any provision of the Association documents or the Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by the Owner shall be awarded to the Owner; provided that no such award shall be made in any derivative action unless:

(i) The Owner first shall have demanded and allowed reasonable time for the Board to pursue an enforcement action; or

(ii) The Owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board would have been fruitless.

If an Owner is not the prevailing party in any court action against the Association, any of its officers or directors, or the Board, to enforce any provision of the Association documents or the Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by the Association shall be awarded to the Association, unless the action was filed in small claims court, or, prior to filing the action in a higher court, the Owner has first submitted the claim to mediation pursuant to Article X and made a good faith effort to resolve the dispute under any of those procedures.

Nothing in this Section 12 shall be construed to prohibit the Board from authorizing the use of a collection agency.

The undersigned Secretary of the Association hereby certifies that the foregoing amendments and restatement were duly adopted at the meeting described above.

IN WITNESS WHEREOF, the undersigned has caused these presents to be duly executed on July 13, 1998.

WALEA COMMUNITY ASSOCIATION, a
Hawaii non-profit corporation

By [Signature]
Hideki Hayashi
Its Secretary

By [Signature]
Al Teter
Its President

By [Signature]
Bill Overton
Its Manager

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 13th day of July, 1998, before me appeared Hideki Hayashi, Al Teter, and Bill Overton, to me personally known, who being by me duly sworn, did say that they are the Secretary, President, and Manager, respectively, of WAILEA COMMUNITY ASSOCIATION, a Hawaii non-profit corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and the said officers and manager acknowledged said instrument to be the free act and deed of said corporation.

Michele Baqoa

Notary Public, State of Hawaii

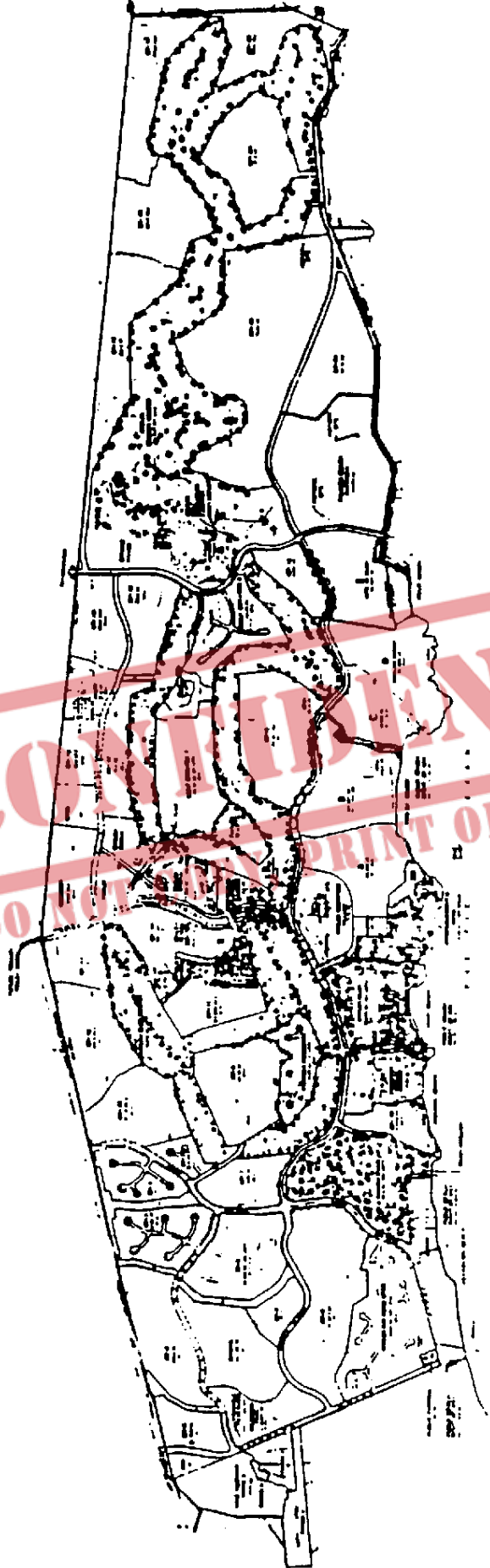
Michele Baqoa

My Commission Expires: 3/24/99

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NOTHING SHOWN ON THIS MAP CONSTITUTES ANY COMMITMENT, REPRESENTATION OR WARRANTY WHATSOEVER THAT ANY LAND OR PROPERTY HAS BEEN, WILL BE OR CAN BE DEVELOPED, IMPROVED, LANDSCAPED, SUBDIVIDED, ZONED, OWNED OR USED IN THE MANNER OR FOR THE PURPOSES SHOWN ON THE MAP. THIS MAP IS NOT NECESSARILY DRAWN TO SCALE AND ALL BOUNDARIES, DISTANCES AND ACREAGE REFERENCES ARE APPROXIMATIONS ONLY.

EXHIBIT "B"

EXHIBIT "C"

DESCRIPTION

LAND SITUATE AT PAEAHU, PALAUEA, KEAHOHU, KALIHI, WAIPAO AND PAPAANUI, HONUAULA, Island and County of Maui, State of Hawaii, being portions of Grant 548 to J.Y. Kanehoa, L.C. Award 11216, Apana 21 to M. Kekauonohi, L.P. 8213, L.C. Award 6715 to Hoomanawanui, Grant 234 to Linton L. Torbert and William Wilcox and Grant 5008 to Henry Waterhouse Trust Co., Ltd., and more particularly described as follows:

BEGINNING at a cross (+) on a big rock at the northeasterly corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU 10" being 12,476.50 feet North, and 17,756.72 feet West, thence running by azimuths measured clockwise from true South:

1. 346° 10' 40" 6,900.00 feet along Maui Meadows Subdivision, Unit I, File Plan No. 1022 and along the remainder of Grant 548 to J.Y. Kanehoa;
2. 5° 36' 20" 11,341.69 feet along the remainders of Grant 548 to J.Y. Kanehoa, L.C. Award 11216, Apana 21 to M. Kekauonohi, L.P. 8213, L.C. Award 6715 to Hoomanawanui and Grant 234 to Linton L. Torbert and William Wilcox;
3. 86° 15' 1,952.23 feet along Lot 7 of Land Court Application 1846;
4. 112° 36' 566.90 feet along the remainder of Grant 234 to Linton L. Torbert and William Wilcox;
5. 112° 36' 100.00 feet along same;
6. 115° 27' 10" 40.24 feet across Lot 9 of Land Court Application 1846;
7. 211° 44' 245.53 feet along Lot 8-C of Land Court Application 1846;

8. 121° 44' 20.00 feet along same;
9. Thence along same on a curve to the left with a radius of 355.71 feet, the chord azimuth and distance being: 189° 29' 30" 269.28 feet;
10. Thence along same, on a curve to the right with a radius of 416.60 feet, the chord azimuth and distance being: 193° 37' 30" 370.14 feet;
11. Thence along same, on a curve to the left with a radius of 417.46 feet, the chord azimuth and distance being: 197° 27' 30" 320.07 feet;
12. 174° 55' 995.03 feet along Lot 8-C of Land Court Application 1846 and Exclusion "B", Kukahiko Estate Tract, File Plan 248;
13. 156° 36' 30" 194.66 feet along Lot 8-A of Land Court Application 1846;
14. 89° 16' 508.54 feet along Lot 8-A of Land Court Application 1846;
15. 132° 00' 26" 63.12 feet along the seashore at highwater mark;
16. 228° 10' 26" 89.97 feet along same;
17. 263° 12' 56" 427.82 feet along the remainder of L.P. 8213, L.C. Award 6715 to Hoomanawanui;
18. 156° 34' 1,265.23 feet along same and along Lots 30 to 37, inclusive, of Makena Beach Lots;
19. 167° 03' 111.70 feet along a 20 foot Roadway;

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20. Thence along the Consolidation of Lots 43 to 55, inclusive, of Makena Beach Lots on a curve to the right with a radius of 960.00 feet, the chord azimuth and distance being: 176° 06' 50" 261.22 feet;
21. 93° 56' 0.92 feet along same;
22. 183° 56' 629.02 feet along same;
23. Thence along same, on a curve to the left with a radius of 420.00 feet, the chord azimuth and distance being: 165° 30' 265.61 feet;
24. 147° 04' 228.17 feet along same;
25. Thence along same and along a Consolidation of Lots 56, 57 and 58 of Makena Beach Lots on a curve to the right with a radius of 460.00 feet, the chord azimuth and distance being: 167° 54' 327.20 feet;
26. 188° 44' 700.00 feet along Lots 59A, 60, 61, 62, A and B of Makena Beach Lots;
27. 278° 41' 23" 1.60 feet along Lot 1 of Kahili Resort Subdivision;
28. 188° 41' 23" 299.88 feet along same;
29. 188° 44' 8.26 feet along same;
30. 103° 07' 30" 337.13 feet along same;
- Thence along the seashore at highwater mark for the next one hundred eight courses the direct azimuths and distances being:
31. 161° 53' 24.99 feet;

32.	193°	55'	38.58 feet;
33.	163°	07'	95.00 feet;
34.	176°	31'	21.58 feet;
35.	283°	07' 30"	15.74 feet;
36.	166°	15'	10.99 feet;
37.	202°	53'	63.56 feet;
38.	188°	52'	117.96 feet;
39.	172°	47'	170.23 feet;
40.	120°	40'	61.92 feet;
41.	102°	20'	82.95 feet;
42.	121°	35'	142.81 feet;
43.	199°	39'	83.81 feet;
44.	222°	13'	68.49 feet;
45.	163°	03'	27.59 feet;
46.	77°	19'	70.00 feet;
47.	109°	02'	97.00 feet;
48.	218°	04'	53.00 feet;
49.	104°	08'	51.00 feet;
50.	184°	34'	44.00 feet;
51.	265°	04'	81.00 feet;
52.	140°	24'	92.00 feet;
53.	173°	42'	62.00 feet;
54.	228°	40'	53.55 feet;
55.	198°	48'	59.28 feet;

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56.	149°	00'	51.00 feet;
57.	153°	21'	58.30 feet;
58.	232°	03'	117.50 feet;
59.	94°	48'	69.41 feet;
60.	144°	01'	107.41 feet;
61.	242°	38'	46.00 feet;
62.	122°	14'	224.00 feet;
63.	153°	01'	53.10 feet;
64.	223°	50'	151.60 feet;
65.	183°	17'	79.00 feet;
66.	235°	33'	28.50 feet;
67.	190°	53'	100.96 feet;
68.	239°	53'	123.58 feet;
69.	217°	38'	32.99 feet;
70.	271°	43'	37.15 feet;
71.	328°	25'	39.09 feet;
72.	291°	00'	114.00 feet;
73.	149°	37'	88.00 feet;
74.	275°	29'	102.97 feet;
75.	224°	52'	36.47 feet;
76.	210°	54'	37.00 feet;
77.	249°	54'	77.00 feet;
78.	190°	53'	99.72 feet;
79.	114°	50'	27.67 feet;

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80.	190°	10'	139.19 feet;
81.	294°	50'	45.37 feet;
82.	330°	40'	2.55 feet;
83.	190°	15'	276.82 feet;
84.	205°	30'	51.50 feet;
85.	168°	40'	32.00 feet;
86.	192°	10'	93.00 feet;
87.	170°	35'	137.00 feet;
88.	199°	00'	82.00 feet;
89.	144°	45'	93.00 feet;
90.	177°	45'	106.00 feet;
91.	192°	20'	45.00 feet;
92.	117°	00'	25.00 feet;
93.	163°	36'	45.01 feet;
94.	126°	28'	58.23 feet;
95.	140°	13'	42.00 feet;
96.	60°	39'	33.00 feet;
97.	148°	29'	113.00 feet;
98.	198°	54'	35.99 feet;
99.	153°	42'	167.86 feet;
100.	140°	36'	81.00 feet;
101.	137°	17'	169.69 feet;
102.	82°	20'	73.04 feet;
103.	144°	15'	194.73 feet;

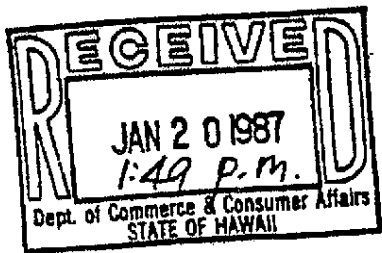
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104.	192°	09'	15"	239.12 feet;
105.	223°	26'		75.00 feet;
106.	193°	23'		92.00 feet;
107.	165°	36'		85.37 feet;
108.	114°	00'		62.29 feet;
109.	217°	38'		40.98 feet;
110.	198°	27'		122.50 feet;
111.	234°	04'		41.00 feet;
112.	187°	45'		86.00 feet;
113.	205°	30'		95.00 feet;
114.	206°	45'		118.00 feet;
115.	179°	08'		80.08 feet;
116.	98°	29'		16.71 feet;
117.	183°	19'		107.61 feet;
118.	225°	54'	10"	136.70 feet;
119.	278°	26'		69.00 feet;
120.	218°	02'		67.58 feet;
121.	175°	09'		308.16 feet;
122.	151°	36'		324.65 feet;
123.	136°	56'		155.99 feet;
124.	80°	21'		33.99 feet;
125.	167°	12'		92.50 feet;
126.	213°	43'		44.42 feet;

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IN THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Petition)
))
 of))
WAILEA COMMUNITY ASSOCIATION))
For a Charter of Incorporation))
_____)



PETITION FOR CHARTER
and
CHARTER OF INCORPORATION

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CADES SCHUTTE FLEMING & WRIGHT
Stanley M. Kuriyama
1000 Bishop Street
Honolulu, Hawaii 96813.

127.	219°	58'	145.92 feet;
128.	178°	50'	55.00 feet;
129.	270°	58'	27.54 feet;
130.	182°	01'	319.14 feet;
131.	164°	30'	352.22 feet;
132.	158°	20'	133.57 feet;
133.	148°	36'	93.47 feet;
134.	152°	30'	96.12 feet;
135.	166°	08'	70.11 feet;
136.	163°	48'	58.18 feet;
137.	238°	46'	122.77 feet;
138.	183°	08'	178.17 feet;
139.	264°	45'	258.56 feet along the remainder of Grant 548 to J.Y. Kanehoa;
140.	174°	45'	40.00 feet along same;
141.	174°	45'	958.53 feet along same;
142.	27°	30'	65.99 feet along same;
143.	64°	30'	186.92 feet along same;
144.	17°	20'	8.27 feet along same;
145.	107°	20'	75.48 feet along same;
146.	184°	37'	37.93 feet along the seashore at highwater mark;
147.	287°	20'	83.83 feet along the remainder of Grant 548 to J.Y. Kanehoa;

148.	17°	20'	8.27 feet along same;
149.	244°	30'	168.00 feet along same;
150.	207°	30'	84.29 feet along same;
151.	174°	45'	91.24 feet along the remainder of Grant 548 to J.Y. Kanehoa;
152.	164°	41'	994.76 feet along same;
153.	150°	02'	29.09 feet along the remainder of Grant 548 to J.Y. Kanehoa;
154.	97°	50'	80.48 feet along same;
155.	93°	18'	207.91 feet along same;
156.	177°	29'	32.05 feet along the seashore at highwater mark;
157.	273°	18'	213.69 feet along the remainder of Grant 548 to J.Y. Kanehoa;
158.	277°	50'	74.79 feet along same;
159.	164°	41'	233.74 feet along same;
160.	65°	52'	277.03 feet along same;
161.	169°	53'	20.61 feet along the seashore at highwater mark;
162.	245°	52'	275.14 feet along Lot 44 of Kamaole Beach Lots;
163.	265°	01'	60.99 feet across Kihei Road;
164.	245°	52'	1,950.39 feet along Lot A of Kamaole Beach Lots, along Government Land and along Grant 5008 to Henry Waterhouse Trust Co., Ltd.;
165.	174°	52'	488.24 feet along the remainder of Grant 5008 to Henry Waterhouse Trust Co., Ltd.;

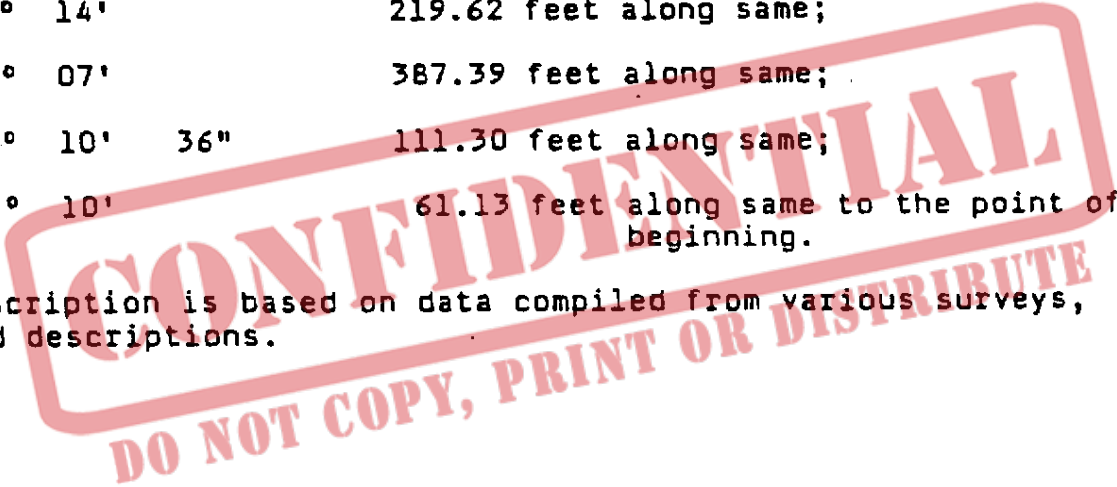
166.	174°	51'	675.33 feet along same;
167.	174°	52'	97.55 feet along same;
168.	174°	54'	179.61 feet along same;
169.	174°	58' 10"	180.35 feet along same;
170.	174°	26' 20"	128.55 feet along same;
171.	264°	54'	307.61 feet along Lots 21, 22 and 40 (Kauhale Street) of Kauhale Kai Subdivision, File Plan 1672;
172.	354°	22'	598.79 feet along the remainder of Grant 5008 to Henry Waterhouse Trust Co., Ltd.;
173.	271°	44'	216.90 feet along same;
174.	265°	57'	364.20 feet along same and along Lots 27, 142 (Ohina Street), 28, 29 and 30 of the Kihei Village Subdivision, File Plan 1430;
175.	280°	49'	150.75 feet along Lots 30, 31 and 32 of Kihei Village Subdivision, File Plan 1430;
176.	284°	23'	236.46 feet along Lots 32, 33, 34 and 152 of Kihei Village Subdivision, File Plan 1430;
177.	202°	14'	192.90 feet along Lots 152, 35 and 36 of Kihei Village Subdivision, File Plan 1430;
178.	197°	49'	100.39 feet along Lots 36 and 63 of Kihei Village Subdivision, File Plan 1430;

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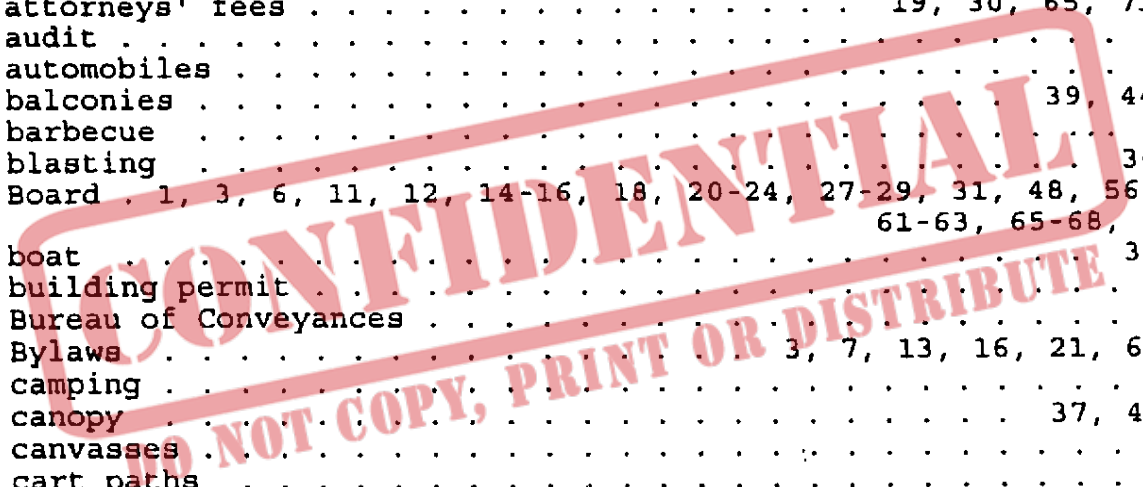
179.	172°	17'	209.64 feet along Lots 63, 64 and 65 of Kihei Village Subdivision, File Plan 1430;
180.	211°	22'	62.94 feet along Lot 65 of Kihei Village Subdivision, File Plan 1430;
181.	351°	59'	63.03 feet along the westerly side of Piilani Highway, F.A.P. No. RF-031-1(5);
182.	352°	17'	204.50 feet along same;
183.	17°	49'	110.99 feet along same;
184.	22°	14'	219.62 feet along same;
185.	315°	07'	387.39 feet along same;
186.	346°	10' 36"	111.30 feet along same;
87.	245°	10'	61.13 feet along same to the point of beginning.

This description is based on data compiled from various surveys, maps and descriptions.



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EXHIBIT "A"

ALL OF THOSE CERTAIN PARCELS OF LAND SITUATE AT HONUULA, ISLAND AND COUNTY OF MAUI, STATE OF HAWAII, DESCRIBED AS FOLLOWS:

(NOTE: ALL OF THE MAPS IDENTIFIED BELOW HAVE BEEN FILED WITH LAND COURT APPLICATION NO. 1804 OF MATSON NAVIGATION COMPANY, AND ALL OF THE TRANSFER CERTIFICATES OF TITLE IDENTIFIED BELOW HAVE BEEN ISSUED TO WAILEA DEVELOPMENT COMPANY, INC., A HAWAII CORPORATION)

(A) LOTS 1-A-2 AND 14-A, AS SHOWN ON MAP 41, BEING THE PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO. 261,727.

(B) LOT 76, AS SHOWN ON MAP 13, BEING THE PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO. 261,727.

(C) LOT 79-B, AS SHOWN ON MAP 19, BEING THE PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO. 261,727.

(D) LOTS 99 AND 100, AS SHOWN ON MAP 26, BEING THE PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO. 261,727.

(E) LOT 102, AS SHOWN ON MAP 28, BEING THE PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO. 261,727.

(F) LOT 296, AS SHOWN ON MAP 34, BEING THE PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO. 261,728.

(G) LOT 298, AS SHOWN ON MAP 34, BEING THE PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO. 261,729.

(H) LOTS 344 TO 459, INCLUSIVE, AS SHOWN ON MAP 49, BEING THE PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO. 261,730.

(I) LOT 301, AS SHOWN ON MAP 34, BEING THE
PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO.
261,731.

(J) LOT 302, AS SHOWN ON MAP 34, BEING THE
PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO.
261,732.

(K) LOT 303, AS SHOWN ON MAP 34, BEING THE
PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO.
261,733.

(L) LOT 304, AS SHOWN ON MAP 34, BEING THE
PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO.
261,734.

(M) LOT 218, AS SHOWN ON MAP 32, BEING THE
PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO.
261,737.

(N) LOT 219, AS SHOWN ON MAP 32, BEING THE
PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO.
261,737.

(O) LOT 309, AS SHOWN ON MAP 34, BEING THE
PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO.
261,739.

(P) LOT 310, AS SHOWN ON MAP 34, BEING THE
PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO.
261,740.

(Q) LOT 311, AS SHOWN ON MAP 34, BEING THE
PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO.
261,741.

(R) LOT 312, AS SHOWN ON MAP 34, BEING THE
PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO.
261,742.

(S) LOT 98, AS SHOWN ON MAP 26, BEING THE PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO. 270,335.

(T) LOT 332, AS SHOWN ON MAP 45, BEING THE PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO. 283,381.

(U) LOT 333, AS SHOWN ON MAP 45, BEING THE PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO. 283,382.

(V) LOT 335, AS SHOWN ON MAP 45, BEING THE PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO. 283,383.

(W) LOT 313, AS SHOWN ON MAP 34, BEING THE PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO. 261,743.

(X) LOTS 220, 222 AND 223, AS SHOWN ON MAP 32, BEING THE PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO. 261,747.

(Y) LOT 295-A, AS SHOWN ON MAP 40, BEING THE PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO. 261,748.

(Z) LOT 300-A, AS SHOWN ON MAP 40, BEING THE PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO. 261,749.

(AA) LOTS 336, 337, 338, 339, 340, 341, 342 AND 343, AS SHOWN ON MAP 48, BEING THE PREMISES DESCRIBED IN TRANSFER CERTIFICATE OF TITLE NO. 288,095.

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ASSISTANT REGISTRAR

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Total Pages: 103

**AMENDMENT OF
WAILEA COMMUNITY ASSOCIATION
DECLARATION OF COVENANTS AND RESTRICTIONS**

WHEREAS, Wailea Development Company, Inc., a Hawaii corporation, executed that certain Wailea Community Association Declaration of Covenants and Restrictions dated December 19, 1986, which Declaration was filed in the office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1427923 (the "Declaration") and is noted on the Transfer Certificates of Title described in Schedule "1" attached hereto and made a part hereof (unless otherwise defined, all capitalized terms used herein have the same meanings as set forth in the Declaration); and

WHEREAS, Article XI, Section 9.a of the Declaration provides that the Declaration may be amended to increase or decrease the Voting Units assigned to the Owners, upon the vote or written consent of both (a) the Declarant and (b) the vote or written consent of seventy-five percent (75%) of the total votes of all Owners adversely affected by such amendment; and

WHEREAS, at a meeting of the Association duly held on March 5, 2004, for the purpose of, among other things, amending the Declaration, the vote of both the Declarant and seventy-five percent (75%) of the total votes of all adversely affected Owners, was obtained to amend the Declaration in the manner set forth herein.

NOW THEREFORE, the Declaration is hereby amended in the following respects:

1. Article III, Section 3 is hereby amended to change the Voting Units assigned to each Unit Type, as follows:

<u>Unit Type</u>	<u>Voting Units</u>
<u>"developed" property</u>	
studio Condominium Unit	1.33
one (1) bedroom Condominium Unit	1.66
two (2) bedroom Condominium Unit	2.00
three (3) or more bedroom Condominium Unit	2.33
Single-Family Residential Lot (with or without house)	2.66
Hotel Unit	1.00
Commercial Unit	2.00
<u>"undeveloped" property</u>	
Multi-Family Zoned Lot Unit	3.00
Single-Family Zoned Lot Unit	2.00
Commercial Zoned Lot Unit	7.00
Open Lot	-0-
Public Property	-0-

2. Article III, Section 3 is hereby amended to add the following new paragraph:

"The purpose of this paragraph is to ensure that for any given vote or written consent, no "Voting Block" (as defined below) controls more than 49.5% of the total votes of all Owners in the Association. Therefore, notwithstanding anything to the contrary contained herein or in the Charter or Bylaws, if at the beginning of any Fiscal Year , the aggregate Voting Units assigned to (i) all Hotel Units (the "Hotel Voting Block"), (ii) all Condominium Units and Single-Family

Residential Lots (the "Residential Voting Block") or (iii) all Commercial Units (the "Commercial Voting Block"), exceeds forty nine and one-half percent (49.5%) of the total Voting Units in the Association, then the difference (the "Difference") between the aggregate Voting Units assigned to said Voting Block and 49.5% shall be allocated between the other two Voting Blocks, as follows:

If the Difference is with respect to the Hotel Voting Block, then the Difference shall be subtracted from the Hotel Voting Block so that the Voting Units assigned to each Hotel Unit are decreased equally, and (u) two-thirds ($2/3$) of the Difference shall be added to the Residential Voting Block so that the Voting Units assigned to each Condominium Unit and Single-Family Residential Lot are increased proportionately and (v) one-third ($1/3$) of the Difference shall be added to the Commercial Voting Block so that the Voting Units assigned to each Commercial Unit are increased equally.

If the Difference is with respect to the Residential Voting Block, then the Difference shall be subtracted from the Residential Voting Block so that the Voting Units assigned to each Condominium Unit and Single-Family Residential Lot are decreased proportionately, and (w) two-thirds ($2/3$) of the Difference shall be added to the Hotel Voting Block so that the Voting Units assigned to each Hotel Unit are increased equally and (x) one-third ($1/3$) of the Difference shall be added to the Commercial Voting Block so that the Voting Units assigned to each Commercial Unit are increased equally.

If the Difference is with respect to the Commercial Voting Block, then the Difference shall be subtracted from the Commercial Voting Block so that the Voting Units assigned to each Commercial Unit are decreased equally, and (y) one-half ($1/2$) of the Difference shall be added to the Residential Voting Block so that the Voting Units assigned to each Condominium Unit and Single-Family Residential Lot are increased proportionately and (z) one-half ($1/2$) of the Difference shall be added to the Hotel Voting Block so that the Voting Units assigned to each Hotel Unit are increased equally.

However, if the allocation of the Difference from one Voting Block to any other Voting Block as described herein results in the latter holding more than 49.5% of the total Voting Units in the Association, then the Difference calculated with respect to the latter Voting Block (i.e. the Voting Units which exceed 49.5%) shall be subtracted either proportionately (if the latter is the Residential Voting Block) or equally (if the latter is either the Hotel Voting Block or the Commercial Voting Block) in the manner described above, and shall be added to the remaining Voting Block so that the Voting Units assigned to each Unit in the remaining Voting Block are increased equally or proportionately (as the case may be), in the same manner as described above.

If during a Fiscal Year, any conversions occur under Article III, Section 10, which result in adjustments of Voting Units and assessments, then notwithstanding anything to the contrary contained in said Section 10, the adjustments in Voting Units shall take effect in the manner provided in said Section 10, but the assessments shall be reconciled by the Association at the beginning of the following Fiscal Year, at which time the Association shall retroactively adjust the amount of any Owner's assessments for the prior Fiscal Year.

In the event of any conflict between the provisions of this Section 3 and any other provision of this Declaration, the Charter, the Bylaws or any Recorded Instrument, this Section 3 shall control."

In all other respects, the Declaration is hereby ratified and confirmed and shall continue in full force and effect.

The undersigned Secretary of the Association hereby certifies that the foregoing amendments were duly adopted at the meeting described above.

IN WITNESS WHEREOF, the undersigned has executed these presents this _____ day of _____, 2004.

CONFIDENTIAL
WALLEA COMMUNITY ASSOCIATION
By _____
Its Secretary
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