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(This document consists of 105 pages.)

TITLE OF DOCUMENT:

**HILO HILLSIDE ESTATES
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

PARTY TO DOCUMENT:

DECLARANT: MOANIALA HOLDINGS LLC, a Hawaii limited liability company
616 Moaniala Street
Honolulu, Hawaii 96821

TAX MAP KEY(S): (3) 2-4-082:001 to 056, inclusive
Certificate of Title No. 738,191

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**HILO HILLSIDE ESTATES
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this 19th day of January, 2012, by **MOANIALA HOLDINGS LLC**, a Hawaii limited liability company, whose address is 616 Moaniala Street, Honolulu, Hawaii 96821 (hereinafter referred to as "**Declarant**").

ARTICLE I. RECITALS

Section 1.1 Description of Property.

(a) The land to which this Declaration applies is the land described in **Exhibit A** attached hereto and made a part hereof, and any additional property which is annexed thereto in the future by Recording one or more Supplemental Declarations (hereinafter the "**Property**"). Located on the Property is the Hilo Hillside Estates subdivision project (the "**Project**")

(b) No property, except that described in **Exhibit A** and hereby made subject to this Declaration and except that specifically annexed as provided herein, shall be deemed subject to this Declaration, whether or not shown on any subdivision map or file plan filed by Declarant or described or referred to in any document executed and Recorded by Declarant. No designation of any parcel, lot or other area on any map or plan Recorded by Declarant as a common area, road, street, school or park or as any other type of parcel, lot or area shall be deemed to be a dedication or commitment or representation that such parcel, lot or area is or will be used, devoted to, or restricted to such use, except with respect to parcels, lots or areas specifically described in **Exhibit A**, or specifically later annexed as provided herein, and so designated on a subdivision map or file plan for such use; nor shall any Owner, or the public, or any public body or agency or any other person, corporation or entity acquire any interest or rights therein by reason of such designation or filing, except as provided herein. Nothing in this Declaration or in any amendment to this Declaration, or in any Recorded or unrecorded subdivision map or file plan, nor in any picture, drawing, brochure or other representation of a scheme of development, shall be deemed to be a representation, warranty or commitment that Declarant will commit or subject (or be construed as requiring Declarant to commit or subject) to this Declaration any real property other than that described in **Exhibit A** or any amendment thereto.

Section 1.2 Land Use Approvals, Restrictions, and Conditions.

(a) The Property that is submitted to this Declaration is subject to various land use approvals, restrictions, and conditions imposed by the County of Hawaii and State of Hawaii, to include, without limitation, the requirements and restrictions for the development of Dwellings within the State Land Use Agricultural District and such other conditions that have been imposed or may be imposed throughout the course of development of the Property. These conditions and approvals impose significant obligations and restrictions on the Association, Declarant, and the Owners.

(b) This document does not and is not intended to create a condominium under Hawaii law.

Section 1.3 Binding Effect.

(a) All property described in Exhibit A, and any additional property which is made a part of the Project in the future by Recording one or more Supplemental Declarations, shall be owned, conveyed, and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Project, their heirs, successors, successors-in-title, and assigns.

(b) This Declaration, as it may be amended, shall remain in effect and shall be enforceable by Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date it is Recorded. After such time, this Declaration shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by a majority of the then Owners has been Recorded within the year preceding any extension, agreeing to terminate this Declaration. In the latter case, it shall terminate as of the date specified in such instrument. Notwithstanding this, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Hawaii law restricting the period of time that covenants on land may be enforced, such provision shall expire 21 years after the death of the last survivor of the now living descendants of President George W. Bush, III. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

Section 1.4 Exhibits.

The following documents, as they may be amended from time to time, attached hereto as Exhibits A through E, are hereby made a part of this Declaration:

Exhibit A - Land

Exhibit B - Articles of Incorporation of the Association

Exhibit C- Bylaws of the Association

Exhibit D- Rules & Regulations

Exhibit E - Design Guidelines

Section 1.5 Governing Documents.

(a) The Project's Governing Documents consist of the following, as they may be amended from time to time:

- (1) This Declaration and such Recorded Supplemental Declarations;
- (2) The Articles of Incorporation and Bylaws of the Association;
- (3) Rules & Regulations of the Project;

- (4) Design Guidelines and;
- (5) Resolutions of the Board of Directors.

(b) Nothing in this Section shall preclude any Supplemental Declaration or other Recorded covenants applicable to any portion of the Project from containing additional restrictions or provisions which are more restrictive than those of this Declaration and, in such case, the more restrictive provision shall control.

(c) The Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal the Rules & Regulations. The Rules & Regulations are to be certified by the Secretary of the Association. A copy of the Rules & Regulations shall be filed in and available at all times at the office of the Association and duplicate copies shall be delivered to each Owner upon the Owner's acquisition of a Lot. A copy of each new rule or any amendment of an existing rule and/or regulation and notice of repeal of any rule and/or regulation shall be given to each Owner when the same becomes effective. The initial Rules & Regulations are attached hereto as **Exhibit D**. Failure to deliver to any Owner a copy of any rule and/or regulation, amendment of a rule and/or regulation, or notice of repeal of a rule and/or regulation shall not render such rule and/or regulation, amendment, or repeal, invalid.

(d) The Governing Documents apply to all Owners and occupants of property within the Project, as well as to their respective tenants, guests, and invitees. Any lease on a Lot shall provide that the tenant and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents.

Section 1.6 Severability. If any court or government commission, board, or agency having jurisdiction should determine by final judgment, order, or decree that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall in no way affect the validity or application of other provisions of this Declaration, which shall remain in full force and effect according to their terms.

ARTICLE II. DEFINITIONS

Unless the context otherwise specifies or requires, the following capitalized terms used in this Declaration shall have the following meanings:

Section 2.1 "Agricultural Uses" shall mean the use and occupation of any portion of the Property that: (1) implements a conservation program for the Property, as approved by the applicable soil and water conservation district directors and filed with the Soil Conservation Service; (2) provides a source of income from agricultural activities to the person(s) who resides on a Lot or any portion of the Property; (3) is dedicated for agricultural activities in accordance with applicable Real Property Tax Department procedures, or (4) produces floricultural, horticultural, viticultural, forestry, animal husbandry, fruit, nut, foliage, coffee, farm, landscaping, or plantation products as the result of the agricultural activities within any Lot or any portion of the Property. Agricultural Uses shall also include without limitation, all permitted uses within the State Land Use Agricultural District pursuant to Hawaii Revised Statutes Chapter

205 (the “State Land Use Law”) and Section 25-5-72 (Agricultural Districts) the Hawaii County Code Chapter 25 (the “Zoning Code”).

Section 2.2 “Agricultural Lot Easement” shall mean that portion of the Natural Area reserved for Agricultural Uses and as described in Section 4.4 (Owners Solely Responsible for Agricultural Uses on Lots).

Section 2.3 “Area of Common Responsibility” shall mean the Common Areas, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declarations, and/or other applicable covenants, contracts, or agreements.

Section 2.4 “Articles” shall mean the Articles of Incorporation of the Association granted to or to be granted pursuant to Chapter 414D of the Hawaii Revised Statutes, as amended. A copy of the initial Articles is attached to this Declaration as Exhibit B.

Section 2.5 “Association” shall mean The Hilo Hillside Estates Community Association, Inc., a non-profit Hawaii corporation, and its successors and assigns.

Section 2.6 “Association Easement” shall mean those easements in favor of the Association that are within the Project and: (i) shown on the Final Subdivision Map, as the same may be amended from time to time; or (ii) established pursuant to this Declaration, including without limitation, all Historical Sites located in the Common Area.

Section 2.7 “Base Assessment” shall mean assessments levied on all Lots subject to assessment under Article VII (The Community Association) to fund Common Expenses for the general benefit of all Lots, as determined by Section 7.14 (Budgeting and Allocating Common Expenses).

Section 2.8 “Board of Directors” or “Board” shall mean the Board of Directors of the Association.

Section 2.9 “Building Envelope” shall mean the portion of each Lot reserved for the building of a Dwelling and is where all related Improvements must be located.

Section 2.10 “Bylaws” shall mean the Bylaws of the Association, as they may be amended. A copy of the initial Bylaws is attached to this Declaration as Exhibit C.

Section 2.11 “Class ‘B’ Control Period” shall mean the time period during which the Class B Member is entitled to appoint a majority of the members of the Board as provided in the Bylaws. The Class “B” Control Period shall terminate on the first to occur of the following:

(a) when ninety percent (90%) of the total number of Lots in the Project have been conveyed to Class “A” Members and Final Inspection for a Dwelling thereon has been issued by the County of Hawaii; or

(b) December 31, 2050; or

(c) when, in its discretion, the Class "B" Member so determines.

Section 2.12 "Common Area" shall mean all real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners and the Project including, without limitation, the Association Easements.

Section 2.13 "Common Expenses" shall mean the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development or other original construction costs unless Members representing a majority of the total Class "A" vote of the Association approve. Payments due under leases of capital improvements such as street lights shall not be considered an initial development or original construction cost.

Section 2.14 "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing at the Project, or the minimum standards established pursuant to the Design Guidelines, Rules & Regulations, and Board resolutions, whichever is the highest standard. Declarant shall initially establish such standard, which may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within the Project change.

Section 2.15 "Declarant" shall mean MOANIALA HOLDINGS LLC, or any successor, successor-in-title, or assign who takes title to any portion of the Property for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument.

Section 2.16 "Design Guidelines" shall mean the architectural, design, and construction guidelines and review procedures adopted pursuant to Article V (Construction and Design Standards), as the same may be amended.

Section 2.17 "Design Application" shall such materials to be submitted for review and approval under Article V (Construction and Design Standards), as the same may be amended, including without limitation, plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable.

Section 2.18 "Design Review Committee" or "DRC" shall mean the Design Review Committee established or to be established pursuant to Article V (Construction and Design Standards) to review plans and specifications for the construction and use of Improvements within the Project, and to approve or disapprove the same in accordance with Declaration and the Design Guidelines.

Section 2.19 "Dwelling" shall mean a "farm dwelling" as defined by Section 205-4.5(a)(4) of Hawaii Revised Statues, which includes a single-family dwelling located on and used in connection with a Farm, or where agricultural activities provide income to the family

occupying the dwelling. Any residential building within the Project is required to be a Dwelling, in compliance with all applicable laws of the State of Hawaii and the County of Hawaii.

Section 2.20 **“Farm”** shall mean land used for the purpose of agricultural production or any Lot within the Property on which Agricultural Uses are conducted.

Section 2.21 **“Governing Documents”** shall be a collective term referring to this Declaration and any applicable Supplemental Declaration, the Articles, the Bylaws, the Rules & Regulations, the Design Guidelines, and the Resolutions of the Board of Directors, as they may be amended.

Section 2.22 **“Final Subdivision Map”** shall mean the subdivision map approved by the County of Hawaii Planning Director in Subdivision File No. SUB-93-000090 for the Property.

Section 2.23 **“Historical Sites”** shall mean and include any above-ground or underground burial sites and other significant cultural, historic and/or archaeological sites that are identified by Declarant and/or existing within the Project.

Section 2.24 **“Improvement”** shall mean any thing or device placed on a Lot within the Project that may affect the appearance or use of such Lot, including, but not limited to, any Dwelling, building, outbuilding, garage, shed, deck, landscaping, road, driveway, excavation, fill, grading, parking area, fence, retaining wall or other wall, tanks, reservoir, pipes, lines, meters, drainage, appurtenances, cables, conduit, utility, hedge, windbreak, pole, marker, sign, mailbox, newspaper box or other delivery receptacle, or any other structure or improvement of any type or kind.

Section 2.25 **“Lessor”** shall mean a lessor under a Recorded lease with a term of twenty (20) or more years from its commencement.

Section 2.26 **“Lot”** shall mean a portion of the Project, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as a Dwelling and related Agricultural Use. The term shall refer to the land which is part of the Lot as well as any Improvements thereon.

To the extent permitted by Hawaii law, and subject to the express written consent of Declarant, two or more contiguous Lots may be consolidated and treated as a single Lot for the purposes of architectural control pursuant to Article V (Construction and Design Standards) and the Design Guidelines, assessments and voting rights, provided that:

- (a) the Lots to be consolidated are owned by the same Owner;
- (b) only one Dwelling has been or will be constructed on the consolidated Lots;
- (c) the Owner of the consolidated Lots executes all documents necessary and required;
- (d) the Owner shall pay all costs related to the consolidation of the Lots; and

(e) if a Dwelling exists on the consolidated Lots, or construction has commenced on a Dwelling on the consolidated Lots, the Lots may not be subdivided or otherwise designated as separate Lots without the express written consent of Declarant.

Section 2.27 **“Member”** shall mean a Person or Persons entitled to membership in the Association pursuant to **Section 7.3 (Membership)**.

Section 2.28 **“Mortgage”** shall mean a mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot. The term **“Mortgagee”** shall refer to a beneficiary or holder of a Mortgage.

Section 2.29 **“Natural Area”** shall mean that portion of each Lot that is not within the Building Envelope, and which is to remain in essentially the same condition as found at the time of the initial closing on the Lot, Agricultural Uses excepted. No Improvements may be constructed in this area except for Improvements related to Agricultural Uses or Improvements consisting of the limited construction of privacy walls or other non-significant Improvements, all as may be approved by the Design Review Committee.

Section 2.30 **“Ohana Dwelling” or “Second Dwelling Unit”** shall mean a second attached or detached dwelling unit on the Property with facilities for sleeping and cooking, and shall not include or mean a guest house as defined in the Zoning Code and Section 5.12 hereunder.

Section 2.31 **“Ordinance”** shall mean all ordinances applicable to the development and operation of the Project.

Section 2.32 **“Owner”** shall mean one or more persons, including natural persons, corporations, partnerships, trustee, or any other legal entities, who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee Owner) will be considered the Owner. If a Lot is subject to a Recorded lease with a term of twenty (20) or more years from its commencement date, the Person or Persons having the right of occupancy to such Lot, will be considered an Owner of such Lot during the term of the lease.

Section 2.33 **“Person”** shall mean a natural person, a corporation, a partnership, or any other legal entity.

Section 2.34 **“Project”** shall mean the subdivision on the Property, consisting of one hundred forty three (143) Lots, Project Roadways and those easements for access, utilities, drainage and no vehicle access/planting and other purposes developed on the Property, as depicted on the Final Subdivision Map and described herein and in **Exhibit A**, together with such additional property as is subjected to this Declaration in accordance with **Article VIII (Annexation)**.

Section 2.35 **“Project Roadways”** shall mean the roadways constructed over lots 462, 463, 464, 465 and 466 mas shown on Land Court Map 109, Land Court Application 1205, and

any additional roadways within the Project or adjacent lands annexed or substituted by the Declarant as a Project Roadway.

Section 2.36 **“Property”** shall mean all real property described in **Exhibit A** together with such additional property as is subjected to this Declaration in accordance with **Article VIII (Annexation)**.

Section 2.37 **“Record”, “Recording”, “Recorded” or “Recordation”** shall mean, with respect to any document, the recordation or filing of such document in the public records of the State of Hawaii, including, but not limited to, the Bureau of Conveyances and/or the Office of the Assistant Registrar of the Land Court, or such other place as may be designated as the official location for recording deeds, plats, and similar documents affecting title to real estate.

Section 2.38 **“Reviewer”** shall mean the entity having jurisdiction over the matters contained in **Article V (Construction and Design Standards)**.

Section 2.39 **“Rules & Regulations”** shall mean the Rules & Regulations of the Project, as they may be adopted, amended, and repealed as provided in **Section 3.2 (Rule Making Authority)**. The initial Rules & Regulations are attached hereto as **Exhibit D**.

Section 2.40 **“Special Assessment”** shall mean an assessment levied in accordance with **Section 7.16 (Special Assessment)**.

Section 2.41 **“Specific Assessment”** shall mean an assessment levied in accordance with **Section 7.17 (Specific Assessment)**.

Section 2.42 **“Subdivision Improvements”** shall mean the Improvements constructed by Declarant within the Project, including, but not limited to, berms, swales, drainage facilities, sidewalks, streets, trees, landscaping, fencing, irrigation facilities, lighting, utility lines and facilities, curbing, paving, and adjacent amenities.

Section 2.43 **“Supplemental Declaration”** shall mean an instrument Recorded pursuant to **Article VIII (Annexation)** which subjects additional property to this Declaration and/or imposes additional restrictions and obligations on the land described in such instrument.

Section 2.44 **“Zoning Code”** shall mean Chapter 25 of the Hawaii County Code, as the same may be amended from time to time.

ARTICLE III. USE AND CONDUCT

Section 3.1 **Framework for Regulation**. The Governing Documents establish, as part of the general plan of development for the Project, a framework of affirmative and negative covenants, easements, and restrictions which govern the Project. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends and technology. Therefore, this Article establishes procedures for modifying and expanding the initial Rules & Regulations set forth in **Exhibit D**.

Section 3.2 Rule Making Authority.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the Rules & Regulations and to impose reasonable fees for the use of the facilities of the Association. The Board shall mail notice to all Owners concerning any proposed action at least five business days prior to the Board meeting at which such action is to be considered.

Such action shall become effective, after compliance with subsection (c) below, unless Members representing more than fifty percent (50%) of the total Class "A" votes in the Association and the Class "B" Member, if any, disapprove. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition of the Members as required for special meetings in the Bylaws. Upon such petition of the Members prior to the effective date of any Board action under this Section, the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, Members, representing more than fifty percent (50%) of the total Class "A" votes in the Association at an Association meeting duly called for such purpose, may vote to adopt rules which modify, cancel, limit, create exceptions to, or expand the Rules & Regulations then in effect. Such action shall require approval of the Class "B" Member, if any.

(c) Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Rules & Regulations to each Owner. The effective date shall be not less than thirty (30) days following distribution to Owners. The Association shall provide, without cost, a copy of the Rules & Regulations then in effect to any requesting Member or Mortgagee.

(d) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Declaration other than the initial Rules & Regulations set forth in Exhibit D. In the event of a conflict between the Design Guidelines and the Rules & Regulations, the Design Guidelines shall control.

(e) No action taken under this Article shall have the effect of unreasonably impeding Declarant's right to develop the Project.

(f) No action taken under this Article shall have the effect of interfering with the use or operation of any Lot that is in compliance with this Declaration.

(g) The procedures required under this Section shall not apply to the enactment and enforcement of administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, hours of operation of a recreational facility, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times.

Section 3.3 Owners' Acknowledgment and Notice to Purchasers. All Owners are given notice that use of their Lots and the Common Area is limited by this Declaration, and by the Rules & Regulations as amended, expanded, and otherwise modified from time to time. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his/her Lot can be affected by these provisions and that the Rules & Regulations may change from time to time. All purchasers of Lots are on notice that the Association may have adopted changes. Copies of the current Rules & Regulations may be obtained from the Association.

ARTICLE IV. COVENANTS AND RESTRICTIONS

Section 4.1 Permitted Uses. Based on land use regulations that apply to the Property, including without limitation the State Land Use Law, each of the Lots within the Property shall be used exclusively for Dwellings, Agricultural Uses and uses accessory thereto.

Section 4.2 No Commercial Use. Except as may be otherwise designated by Declarant in its sole discretion, no Lot shall be used for any commercial, professional or business use including without limitation, garage sales; provided, however, that nothing in this Article IV (Covenants and Restrictions) shall be construed as restricting Agricultural Uses permitted under the State Land Use Law or the Zoning Code. Notwithstanding anything in the preceding sentence, "home occupations" as defined in the Zoning Code, shall be permitted with the prior written approval of the Association, provided, however, that no "day care center" or "school", both as defined in the Zoning Code, may be operated on any Lot. The following activities shall be permitted without prior written approval of the Association:

- (a) Reasonable sales activities on any Lot for the purpose of selling such Lot, including but not limited to reasonable placement of signs and advertising of the Lot for sale; and
- (b) Declarant's activities in connection with the sale of any Lot in the Project, including but not limited to the construction and operation of offices for any property manager retained by the Association, model homes, information center and/or sales offices.

Section 4.3 Protection of Owners and Others. The limitations contained in this Section shall only limit rulemaking authority exercised under Section 3.2 (Rule Making Authority); they shall not apply to the Declaration, any amendments to the Declaration adopted in accordance with Article XVIII (Amendment of Declaration), or the initial Rules & Regulations set forth in Exhibit D. Rules & Regulations adopted pursuant to the rulemaking authority granted by Section 3.2 (Rule Making Authority) shall comply with the limitations of that Section and the following provisions:

- (a) **Similar Treatment.** Similarly situated Owners shall be treated similarly.
- (b) **Displays.** Owners' rights to display religious and holiday signs, symbols, and decorations inside structures on their Lots of the kinds normally displayed in Dwellings located in agricultural neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the Dwelling.

No rules shall regulate the content of political signs; however, rules may regulate the time, place and manner of posting such signs (including design criteria).

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

(d) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of Dwellings, except that the Association may prohibit activities not normally associated with property restricted to Agricultural Uses, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the Dwelling, or that create an unreasonable source of annoyance.

(e) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article VII (The Community Association).

(f) Alienation. No rule shall prohibit leasing or transfer of any Lot, or require consent of the Association or Board for leasing or transfer of any Lot; provided, the Association or the Board may require a minimum lease term of not less than sixty (60) days. The Association may require that Owners use lease forms approved by the Association.

(g) Abridging Existing Rights. No rule shall require an Owner to dispose of personal property that was in or on a Lot prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to subsequent Owners who take title to the Lot after adoption of the rule.

Section 4.4 Owners Solely Responsible for Agricultural Uses on Lots

(a) It is Declarant's intention that each Owner shall control, to the maximum extent possible, and as permitted by all relevant laws, Ordinances and regulations, the Agricultural Uses within the Owner's Lot. A minimum of fifty-one percent (51%) of each Lot shall be reserved for Agricultural Uses (the "**Agricultural Lot Easement**").

(b) Each Lot shall contain an area designated as the Building Envelope, which is that portion of the Lot reserved for the building of a Dwelling and all related Improvements.

(c) Each Lot shall also have an area designated as Natural Area, which shall be utilized as open space or for Agricultural Uses. Each Owner acknowledges and agrees that the portion of the Lot designated as the Agricultural Lot Easement may be expanded into the Natural Area as necessary to comply with federal, state, or local laws and regulations.

(d) Except for Improvements related to Agricultural Uses, no Owner may construct any Improvement on that portion of the Lot outside of the Building Envelope. Any Owner that constructs any Improvement outside of the Building Envelope shall be required, upon notice from the Board, to remove such Improvement at his/her expense and restore the applicable portion of the Lot to its preexisting condition. Neither the Association nor Declarant shall have any liability for any damages, increased construction costs, or delays caused by the limitation to Agricultural Uses on a Lot.

(e) Conditions (*i.e.*, topography, soil, and access to sunlight) vary from one Lot to another, as well as within Lots, and may therefore impact what portions of the Lot may be best utilized for Agricultural Use. Based on these factors, the Agricultural Uses on a Lot may impact the manner in which an Owner may improve and/or use such Lot. Prior to undertaking any Improvements on a Lot, the Owner of the Lot shall take reasonable steps to determine the possible effects such Improvements may have on the Agricultural Uses within the Lot.

Section 4.5 View Impairment. The Agricultural Uses conducted on the Property may diminish or impair views within the Project. Therefore, views within the Project are not protected, and any negative impact to any Owner's view caused by Agricultural Uses shall not provide a basis for any claim or right of action. Neither Declarant nor the Association shall have any obligation to prune or thin trees or modify or restrict any other Agricultural Uses. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Section 4.6 Termination of Agricultural Use. In the event that Agricultural Uses on the Property or any Lot are no longer required through rezoning of the Property, change in state or local law, decision of a governmental entity, or through any other cause, the Agricultural Uses on a Lot may be reduced or eliminated by Declarant and/or the Association.

ARTICLE V. CONSTRUCTION AND DESIGN STANDARDS

Section 5.1 Purpose. The purpose of the construction and design standards set forth in this Article are to (a) insure the best and most appropriate development and improvement of each Lot; (b) protect the Owners of Lots against improper use and development of any other Lot which might depreciate the value of the Project as a whole; (c) preserve as far as practicable the natural beauty of each Lot and the Project as a whole; and (d) guard against the erection of structures which are poorly designed or proportioned, or structures built of improper or unsuitable materials.

Section 5.2 General. No structure or thing shall be placed, erected, or installed upon any Lot, and no Improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing Improvements, or planting or removal of landscaping) shall take place within the Project, except in compliance with this Article V

(Construction and Design Standards) and the Design Guidelines; provided, however, that nothing in this Article V (Construction and Design Standards) shall be construed as limiting Agricultural Uses as permitted under the State Land Use Law.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of any Improvement on the Owner's Lot without approval. However, modifications to the interior of screened porches, patios, landscaping and similar portions of a Lot visible from any roadway shall be subject to approval.

All Dwellings constructed on any portion of the Project shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee otherwise approves in its sole discretion. Any two or more Lots that are consolidated under the terms of the Declaration and approved by the County of Hawaii shall be deemed to constitute one Lot.

This Article V (Construction and Design Standards) shall not apply to the activities of Declarant and/or assignees of Declarant's interest under the Declaration, nor to activities of the Association during the Class "B" Control Period.

Section 5.3 Design Review.

(a) By Declarant. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Project, acknowledges that, as the developer of the Project and as an Owner of portions of the Project, Declarant has a substantial interest in ensuring that the Improvements within the Project enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner's Lot unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article shall continue so long as Declarant owns any portion of the Project or any real property adjacent to the Project, unless earlier terminated in a written instrument executed and Recorded by Declarant.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to: (i) a Design Review Committee appointed by the Board of Directors, or (ii) a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation shall be in writing specifying the scope of responsibilities delegated. It shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (ii)

Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates to it.

(b) By Design Review Committee. Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the DRC, shall assume jurisdiction over architectural matters. The DRC shall consist of five (5) members. Each member shall hold office until such time as the member resigns, has been removed, or has had a successor appointed. Members shall serve staggered two (2) year terms. There is no limit as to the number of consecutive terms that can be served by any member.

All members of the DRC shall initially be appointed by Declarant on behalf of the Association. Upon expiration or termination of Declarant's rights under this Article, all members of the DRC shall be appointed by the Board. Members of the DRC need not be members of the Association.

The DRC may contract and/or assign some of the DRC's administrative duties, but not authority, to any qualified design professional as needed.

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

(c) Review Fees; Assistance. For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for the initial review of submissions and may require such fees to be paid in full by the Owner prior to commencement of review of any submission. If the initial fees collected are insufficient to cover the actual costs incurred in the review process, the Reviewer may recover from the Owner the actual costs incurred in having any submission reviewed by architects, landscape architects, engineers, or other professionals. Declarant and the Association may employ landscape architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget.

Section 5.4 Guidelines and Procedures.

(a) Design Guidelines. The initial Design Guidelines are attached hereto as Exhibit E. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Reviewer in considering submissions. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval of any submission.

Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any portion of or has a right to expand the Project pursuant to Section 8.1 (Annexation by Declarant), unless Declarant specifically delegates the power to amend the Design Guidelines.

Upon termination or delegation of Declarant's right to amend, the DRC shall have the authority to amend the Design Guidelines with the Board's consent.

Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Project. The Recorded version of the Design Guidelines, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures. Except as otherwise specifically provided in the Design Guidelines, no activities shall commence on any portion of the Project until the final submission required by the Design Guidelines has been submitted to and approved by the Reviewer. Such submission shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The DRC and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any submission.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with the procedures set forth herein.

The design review process shall take place in four (4) steps: (i) a Pre-Design Conference; (ii) Preliminary Design Review; (iii) Final Design Review; and (iv) Construction Monitoring. The Reviewer shall provide design review according to the following schedule:

Pre-Design Conference: Meeting scheduled within fourteen (14) working days of receipt of pre-design conference request form.

Preliminary Design Review: Application documents to be submitted seven (7) working days prior to the next scheduled meeting of the Reviewer.

Written comments from the meeting with the Reviewer provided to Owner within twelve (12) working days, subject to Declarant's veto right pursuant to this Section.

If a second review meeting is necessary to review corrected and/or new materials, the Owner shall submit such corrected and/or new materials five (5) working days prior to the next regularly scheduled meeting of the Reviewer.

Final Design Review:

Application documents to be submitted seven (7) working days prior to the next scheduled meeting of the Reviewer, and within one year of preliminary design approval.

Written comments from the meeting with the Reviewer and/or written notice of final design approval provided to Owner within twelve (12) working days, subject to Declarant's veto right pursuant to this Section.

If a second review meeting is necessary to review refinements, revisions and/or new materials, the Owner shall submit such materials five (5) working days prior to the next regularly scheduled meeting of the Reviewer.

Any subsequent construction or other changes that differ from the approved final design documents must first be submitted in writing to the Reviewer for review and approval.

Construction Monitoring:

Owner applies to the County of Hawaii for all applicable building and use permits. Any adjustments to the final approved plans required by the County of Hawaii must be resubmitted to the Reviewer for review prior to the commencement of construction.

Notice of Completion issued by the Reviewer within seven (7) working days of observation.

The DRC and Reviewer will make a reasonable effort to comply with the design review schedule. However, the DRC and Reviewer shall not be liable for any delays that are caused by circumstances beyond their control.

Until expiration of Declarant's rights to amend the Design Guidelines under this Article, Declarant shall have the right to veto the approval by the DRC of any submission within the scope of matters delegated to the DRC by Declarant. The DRC shall notify Declarant in writing within three (3) business days after the DRC has approved any submission. The notice shall be accompanied by a copy of the submission and any additional information which Declarant may

require. Declarant shall have fourteen (14) days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the DRC. The Reviewer shall notify the applicant in writing of the final determination on any submission within five (5) days after the earlier of: (i) receipt of notice of Declarant's veto or waiver thereof; or (ii) expiration of the fourteen (14) day period for exercise of Declarant's veto.

In the event that the Reviewer fails to respond in a timely manner, approval shall be deemed to have been given, subject to Declarant's right to veto pursuant to this Section. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 5.6 (Variances). Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

If construction for the approved Improvement does not commence within one (1) year after the date of approval of the final submission required by the Design Guidelines, such approval shall be deemed withdrawn and it shall be necessary for the Owner to resubmit for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within twenty-four (24) months of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant, or any aggrieved Owner.

The Reviewer may, by resolution, exempt certain activities from the submission and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

Section 5.5 No Waiver of Future Approvals. Each Owner acknowledges that the Persons reviewing submissions under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the Improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of submissions or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar submissions, plans, or other matters subsequently or additionally submitted for approval.

Section 5.6 Variances. The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any

governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 5.7 Limitation of Liability. The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Project; they do not create any duty to any Person. Review and approval of any submission pursuant to this Article is made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all Dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

Declarant, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Board, the DRC, and the members of each shall be defended and indemnified by the Association as provided in Section 7.10 (Indemnification of Officers, Directors and Others).

Section 5.8 Certificate of Architectural Compliance. Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such request within thirty (30) days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

Section 5.9 Notice to Comply. When as a result of a construction observation or final inspection, the Reviewer finds (i) changes and/or alterations that have not been approved; or (ii) that construction work was done not in compliance with the approved final design documents, the Reviewer shall issue a Notice to Comply to the Lot Owner within three (3) working days of the observation/inspection. Such Notice shall describe with reasonable particularity the nature of the non-compliance and a timetable for compliance.

Upon receipt of the Notice to Comply, the Lot Owner shall remedy the non-compliance within a minimum of thirty (30) days or such other time period set forth in the Notice to Comply. Failure to remedy the non-compliance within the time period provided in the Notice to Comply may result in enforcement action against the Lot Owner including all rights and remedies contained within this Declaration and the Design Guidelines including, but not limited to, fines and removal or modification of the Improvement with the costs for such modification or removal to be assessed against such Owner's Lot.

Section 5.10 Disruption of Historical Sites. Declarant has conducted a survey of the Property in a reasonable effort to identify all Historical Sites on the Property. However, some

Historical Sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving or walks, may exist on the Property that have not been identified (“**Undiscovered Sites**”). Historical Sites may be located on Lots as well as under Lots in portions of lava tubes and caves. Such Historical Sites may impact the manner in which an Owner may improve his/her Lot.

In the event an Owner discovers the existence of an Undiscovered Site after commencing construction of an Improvement, the Owner shall cease construction and notify the Association immediately of the existence and location of the Undiscovered Site or remains. The Owner shall then grant the Association, its agents, employees, and any governmental officials and inspectors access to the site to conduct any required evaluation, testing, data recovery, preservation, and mitigation that may be required by Ordinance, Rules and Regulations, the State of Hawaii Department of Land and Natural Resources - Historic Preservation Division (“**SHPD**”) regulations as of the date this Declaration is Recorded, or Hawaii law. Subsequent work shall proceed upon an archaeological clearance from the SHPD and the Planning Department of the County of Hawaii upon a finding that sufficient mitigative measures have been taken. Neither the Association nor Declarant give any warranty, or make any representation, that all Historical Sites that exist within the Project have been discovered. Undiscovered Sites may affect the manner in which Lots within the Project may be developed. Neither the Association nor Declarant shall have any liability for any damages, increased construction costs, or delays caused by the existence of, or the discovery of, a Historical Site or Undiscovered Sites.

Section 5.11 Construction of Improvements. Declarant has a legitimate interest in assuring that all construction undertaken within the Project is of the highest quality. Construction of Improvements should be conducted expeditiously with the least possible disruption to adjacent and neighboring Lots and properties so the property values within the Project may, at all times, be protected and maintained at the highest possible levels. Construction of any and all Improvements within the Project must be undertaken only by builders who are duly licensed by the State of Hawaii as general contractors. Prior to commencement of construction of Improvements on a Lot, the Owner of the Lot, and/or the Owner’s general contractor, shall secure and maintain adequate public liability, builder’s risk insurance, and performance and payment bonds with face amounts equal to at least one hundred percent (100%) of the cost of construction, and the Owner shall be named as an additional insured on such policies. Prior to commencing construction, a copy of the policy or certificate thereof shall be delivered to Declarant and the Reviewer if different.

No Improvement built by any Owner on the Owner’s Lot shall encroach upon any adjoining Lot. Declarant shall not be responsible for any encroachment of any such Improvement upon an adjoining Lot. The Reviewer may require that an Owner conduct a survey to ensure that any Improvement constructed on the Owner’s Lot will not encroach upon any adjoining Property. An Owner shall indemnify, defend, and hold Declarant, the Association, their agents and employees, harmless from and against any and all claims, losses, expenses, damages, liabilities, or injuries suffered by reason of any acts, omissions, or alleged acts or omissions arising out of an Owner’s performance or nonperformance of the Owner’s obligations under this Section, including, but not limited to, the encroachment of any Improvement upon any adjoining Lot, including, but not limited to, any judgment, award, settlement, reasonable

attorney's fees and other costs, or expenses incurred in connection with the defense of any actual or threatened action, proceeding, or claim.

Each Owner shall maintain the Owner's Lot in a neat and orderly condition before, during, and after any construction on the Lot and take all reasonable dust control measures, including watering the Lot and/or erecting dust screens, to alleviate the generation of dust. In addition, Owners shall not allow trash and debris to accumulate anywhere on the Lot. Owners shall not store any construction materials on the Lot, except during the period that construction is actually occurring on the Lot. Owners shall keep roadways, easements, and other property within the Project clear of trash and materials related to construction on the Lots.

Declarant may construct Subdivision Improvements within the Project at any time during the Class "B" Control Period. Preservation of Subdivision Improvements contributes substantially to property values in the Project. As such, each Owner hereby grants to Declarant an easement coupled with an interest, and right of entry upon each Owner's Lot to survey, design, construct and inspect such Subdivision Improvements.

Construction and other activities conducted by an Owner shall not result in any damage to or alteration of any Subdivision Improvements. If any damage shall occur, the Owner responsible for such damage shall promptly repair such damage. Each Owner agrees to indemnify and hold harmless Declarant, the Association, their agents and employees, and other Owners of Lots in the Project from and against any and all claims, damages, expenses (including reasonable attorneys' fees and court costs), and liabilities of any nature whatsoever asserted against, or incurred by the same, in connection with any damage to or alteration of Subdivision Improvements caused by such Owner, the Owner's employees, agents, or independent contractors.

Section 5.12 Prohibitions Against Second Dwelling Unit and/or Submittal of Any Lot to Condominium Property Regime. The construction of an Ohana Dwelling or a Second Dwelling on a Lot is expressly prohibited. The construction of a guest house is allowed subject, however, to compliance with all applicable requirements of the Zoning Code. No Lot shall be submitted for a Condominium Property Regime pursuant to Hawaii Revised Statutes Chapter 514B.

ARTICLE VI. MAINTENANCE AND REPAIR

Section 6.1 Maintenance of Lots. Subject to the rights and obligations of the Association set forth in this Declaration, each Owner shall maintain such Owner's Lot and all landscaping and Improvements on the Lot in a manner consistent with the Governing Documents, the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot. This Section shall not be interpreted as giving the Owner the right to prune, trim, cut or remove any tree, plant or other vegetation from the Area of Common Responsibility.

Section 6.2 Responsibility for Repair and Replacement. Unless otherwise specifically provided in the Governing Documents, or in other instruments creating and

assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary, to maintain the Property to a level consistent with the Community-Wide Standard.

By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable Improvements on the Owner's Lot, less a reasonable deductible, unless the Association carries such insurance (which they may but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, premiums for such insurance shall be levied as a Specific Assessment against the benefited Lot and the Owner.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising the Owner's Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article V (Construction and Design Standards). Alternatively, the Owner shall clear the Lot and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

ARTICLE VII. THE COMMUNITY ASSOCIATION

Section 7.1 Organization. The Association is organized under the Hawaii Revised Statutes as a Hawaii non-profit corporation without stock. The Association is charged with the duties and vested with the powers prescribed by law, subject to the limitations and provisions of the Governing Documents. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. If there should exist any ambiguity in any provision of the Articles or Bylaws, then such provision shall be construed, to the extent possible, so as to be consistent with the provisions of this Declaration.

Section 7.2 Function. The Association is the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also is the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Hawaii law.

Section 7.3 Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 7.4(c) (Exercise of Voting Rights) and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, member, trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

Section 7.4 Voting. The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 7.3 (Membership) except that there shall be only one vote per Lot. No vote shall be exercised for any property which is exempt from assessment under Section 7.21 (Exempt Property). All Class "A" votes shall be cast as provided in Section 7.4(c) (Exercise of Voting Rights).

(b) Class "B". The sole Class "B" Member shall be Declarant. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in the Bylaws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents. After termination of the Class "B" Control Period, the Class "B" Member shall have the right to disapprove actions of the Board and committees as provided in the Bylaws.

The Class "B" membership shall terminate upon the earlier of:

- (i) two years after expiration of the Class "B" Control Period pursuant to the Bylaws; or
- (ii) when, in its discretion, Declarant so determines and declares in a Recorded instrument.

Upon termination of the Class "B" membership, Declarant shall be a Class "A" Member entitled to Class "A" votes for each Lot it owns.

(c) Exercise of Voting Rights. Except as provided herein, during the Class "B" Control Period the vote for each Lot owned by a Class "A" Member shall be exercised by such Class "A" Member. In any situation where a Member is entitled personally to exercise the vote for the Member's Lot, and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

(d) Additional Classes of Membership. In recognition of the different character and intended use of the Property subject to such Supplemental Declaration, Declarant may, by Supplemental Declaration, create additional classes of membership for the Owners of Lots within any Property made subject to this Declaration pursuant to Article VIII (Annexation). These classes shall have such rights, privileges, and obligations as specified in such Supplemental Declaration.

Section 7.5 Acceptance and Control of Association Property. The Association may acquire, hold, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property. The Association may enter into leases, licenses, or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by community organizations and by others, whether nonprofit or for profit, for the provision of goods or

services for the general benefit or convenience of Owners, occupants, and residents of the Project.

Declarant and its designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved, described in Exhibit A. Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Area Declarant originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

Section 7.6 Maintenance of Area of Common Responsibility. The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) all portions of and structures situated on the Common Area;
- (b) landscaping within public rights-of-way within or abutting the Project;
- (c) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association;
- (d) any Historical Sites located within the Common Area;
- (e) all portions of and all structures, equipment, landscaping, trees, plants and other Improvements situated on the Association Easement with the exception of any structures, equipment, landscaping, trees, plants and other Improvements installed or constructed on the Association Easement by an Owner;
- (f) any Property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such Property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property which it does not own, including, without limitation, undeveloped Lots and property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been grossly negligent in the performance of its maintenance responsibilities.

The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members representing seventy five percent (75%) of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced except with Declarant's prior written approval as long as Declarant owns any property described in **Exhibit A** of this Declaration.

The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other Recorded covenants, or agreements with the owner(s) thereof.

Section 7.7 Insurance.

(a) **Required Coverages.** The Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable Improvements on the Common Area and within the Area of Common Responsibility to the extent that Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured Improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

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

(iv) Directors and officers liability coverage;

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

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Hilo area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the Policy in determining whether the Policy limits satisfy the requirements of Section 7.7(a) (Required Coverages). In the event of an insured loss, the deductible shall be treated as a Common Expense. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Specific Assessment.

All insurance coverage obtained by the Board shall:

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

(ii) be written in the Association's name as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;

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

(iv) contain an inflation guard endorsement;

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

(vi) provide that the Declarant and each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member);

(vii) provide a waiver of subrogation under the policy against any Owner or household member of a Owner;

(viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Declarant and Owners as additional insureds and provide:

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

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

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

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

(xiv) a cross liability provision; and

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

(c) Restoring Damaged Improvements. In the event of damage to, or destruction of, Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged Improvements on the Common Area shall be repaired or reconstructed unless the Members representing at least seventy five percent (75%) of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within sixty (60) days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

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

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

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against the Owners.

Section 7.8 Compliance and Enforcement.

(a) Every Owner and occupant of a Lot shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after notice and a hearing in accordance with the procedures set forth in the Bylaws. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Lot. (In the event that any occupant, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(ii) suspending an Owner's right to vote;

(iii) suspending any Person's right to use any recreational facilities within the Common Area; provided, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;

(iv) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association;

(v) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(vi) requiring an Owner, at its own expense, to (a) remove any structure or Improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition; or (b) maintain vegetation and landscaping on the Owner's Lot prior to construction, and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and/or restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vii) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article V and the Design Guidelines from continuing or performing any further activities in the Project; and damages or both.

(viii) levying Specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents.

(b) In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the Bylaws:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform the Owner's maintenance responsibility, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Specific Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem within a thirty (30) day period after receipt of such notice, prior to taking such enforcement action.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents against an Owner, if the Association prevails, it shall be entitled to recover from such Owner all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

(c) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

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

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

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

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

Such a decision shall not be construed a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

(d) The Association, by contract or other agreement, may enforce applicable County Ordinances, if applicable, and permit Hawaii County to enforce Ordinances within the Project for the benefit of the Association and its Members.

Section 7.9 Implied Rights: Board Authority. The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its members.

In exercising the Association's rights and powers, making decisions on the Association's behalf, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the Bylaws.

Section 7.10 Indemnification of Officers, Directors and Others. Subject to Hawaii law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles, and Hawaii law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. As a Common Expense, the Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 7.11 Safety and Security. All Owners and occupants of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Project. The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to enhance the level of safety or security which each Person provides for himself and his property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Project, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Project, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges and understands that the Owner shall be responsible for informing the Owner's tenants and all occupants of the Owner's Lot that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within the Project assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

Section 7.12 Provision of Services. The Association may provide, or provide for, amenities, services and/or facilities for the Members and/or their Lots, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant or Persons affiliated with Declarant, to provide such services and facilities. The Board may charge use or service fees for any such amenities, services and/or facilities provided at the option of an Owner, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the Base Assessment if provided to all Lots. By way of example, such services and facilities might include landscape maintenance, pest control service, security, caretaker, utilities, and similar amenities, services and/or facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services

provided to all Owners or Lots as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

Section 7.13 Relationships with Other Properties. The Association may enter into contractual agreements or covenants to share costs with any neighboring property to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

Section 7.14 Budgeting and Allocating Common Expenses. All assessments, fees, income and profits received or collected by the Association shall be maintained in one or more separate accounts at a bank selected by the Board. The Board shall determine whether the account will be federally insured or interest bearing.

At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare, or shall cause to be prepared, a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 7.16 (Budgeting for Reserves). The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Lots.

The Association is authorized to levy Base Assessments equally against all Lots subject to assessment to fund the Common Expenses. In determining the Base Assessment rate per Lot, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 7.19(b) (Declarant's Option to Fund Budget Deficits), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner at least thirty (30) days prior to the effective date of such budget. The budget shall automatically become effective unless disapproved at a meeting by Members representing at least seventy five percent (75%) of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in the Bylaws. Any such petition must be presented to the Board within ten (10) days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

Section 7.15 Budgeting for Reserves. The Board shall prepare and review at least annually a reserve budget for the Area of Common Responsibility. The budget shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the Common Expense budget adopted pursuant to Section 7.14 (Budgeting and Allocating Common Expenses) a capital contribution to fund the reserve budget in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period.

Section 7.16 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment for Common Expenses may be levied against the entire membership. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members representing more than fifty percent (50%) of the total votes allocated to Lots which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

Section 7.17 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot as follows:

(a) to cover the cost (including overhead and administrative costs) of providing any special services to an Owner at his/her request, pursuant to any menu of special services which may be offered by the Association (which might include the items identified in Section 7.12 (Provision of Services)). Specific Assessments for special services may be levied in advance of the provision of the requested service;

(b) to cover costs of correcting deficiencies resulting from an Owner's failure to comply with the Governing Documents, or costs incurred as a consequence of any conduct by the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests in violation of the Governing Documents; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying any Specific Assessment under this subsection (c).

Section 7.18 Authority to Assess Owners; Time of Payment. Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Lot on the first day of the month following: (a) the month in which the Lot

is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment, if any, levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

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

Section 7.19 Obligation for Assessments.

(a) Personal Obligation. Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Project, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate equal to the higher of: (i) prime rate of interest announced from time to time by Citibank N.A., or its successors, plus two percent (2%), per annum, or (ii) ten percent (10%) per annum, (subject to the limitations of Hawaii law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

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

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

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

(b) Declarant's Option to Fund Budget Deficits. During the Class "B" Control Period, Declarant may satisfy its obligation for assessments on Lots which it owns either by paying such assessments in the same manner as any other Owner or by paying the difference between the amount of assessments levied on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year.

Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

Section 7.20 Lien for Assessments. The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Hawaii law), and costs of collection (including court costs and attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any Recorded first Mortgage (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

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

Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner to the foreclosed Lot shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 7.19 (Obligation for Assessments), including such acquirer, its successors, and assigns.

Section 7.21 Exempt Property. The following property shall be exempt from payment of Base Assessments and Special Assessments:

(a) All Common Area and such portions of the Property owned by Declarant as are included in the Area of Common Responsibility; and

(b) Any Property dedicated to and accepted by any governmental authority or public utility.

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

Section 7.22 Capitalization of Association. Upon acquisition of record title to a Lot by the first Owner thereof other than Declarant, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in the amount of \$500.00. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom at closing to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the Bylaws. In its sole discretion, the Board of Directors may increase the amount of this fee.

Section 7.23 Community Enhancement Fee.

(a) **Authority.** On behalf of the Association, the Board shall have the authority to establish and collect a transfer fee from the transferring Owner upon each transfer of title to a Lot in the Project, which fee shall be payable to the Association at the closing of the transfer and shall be secured by the Association's lien for assessments under Section 7.20 (Lien for Assessments). Owner shall notify the Secretary of the Association of a pending title transfer at least seven (7) days prior to the transfer. Such notice shall include the name of the buyer, the date of title transfer, and other information as the Board may require.

(b) **Fee Limit.** The initial amount of the transfer fee shall be \$500.00. In its sole discretion, the Board of Directors may increase the amount of this fee.

(c) **Purpose.** All transfer fees which the Association collects shall be deposited into the Association's accounts and used to supplement the funds collected by assessments in such manner as the Board deems beneficial for the Project. By way of example and not limitation, such transfer fees might be used to assist the Association or one or more tax-exempt entities in funding:

(i) preservation and maintenance of the Area of Common Responsibility;

(ii) enhancement or development of new Improvements in the Area of Common Responsibility; and

(iii) the creation of additional reserves to cover unanticipated expenses of the Association.

(d) **Exempt Transfers.** Notwithstanding the above, no transfer fee shall be levied upon transfer of title to a Lot:

- (i) by or to Declarant;
- (ii) among co-Owners of a Lot;
- (iii) to the Owner's estate, surviving spouse, or child upon the death of the Owner;
- (iv) to an entity wholly owned or controlled by the grantor; provided, however, that the transfer fee shall become due upon any subsequent transfer of an ownership interest in such entity; or
- (v) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage.

ARTICLE VIII. ANNEXATION

The Declaration reserves various rights to Declarant in order to facilitate the smooth and orderly development of the Project including, but not limited to, the following:

Section 8.1 Annexation by Declarant. Declarant may from time to time annex additional property to the Project, which additional property shall then be subject to the provisions of this Declaration, by Recording a Supplemental Declaration describing the additional property to be annexed. A Supplemental Declaration Recorded pursuant to this Section shall not require the consent of any Person except the Owner of such property, if other than Declarant. Declarant's right to annex additional property to the Project pursuant to this Section shall expire forty (40) years after this Declaration is Recorded. Nothing in this Declaration shall be construed to require Declarant or any successor to annex additional property to the Project.

Section 8.2 Annexation by the Association. The Association may also annex additional property to the Project, which additional property shall be subject to the provisions of this Declaration by Recording a Supplemental Declaration describing the additional property to be annexed. Any such Supplemental Declaration shall require the affirmative vote of Members representing more than fifty percent (50%) of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Owner of the property. In addition, so long as Declarant owns Property subject to this Declaration or which may become subject to this Declaration in accordance with Section 8.1 (Annexation by Declarant), Declarant's consent shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property and by Declarant, if Declarant's consent is necessary.

Section 8.3 Additional Covenants and Easements. Declarant may subject any portion of the Project to additional covenants and easements, including covenants obligating the Association to maintain and insure such Property and easements which encumber Association property. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such Property to this Declaration or in a separate Supplemental Declaration referencing Property previously subjected to this Declaration. If the Property is

owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject Property in order to reflect the different character and intended use of such Property.

Section 8.4 Effect of Filing Supplemental Declaration. A Supplemental Declaration shall be effective upon Recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

ARTICLE IX. ADDITIONAL RIGHTS RESERVED TO DECLARANT

Section 9.1 Withdrawal of Property. Declarant reserves the right to amend this Declaration, so long as it has a right to annex additional property pursuant to Section 8.1 (Annexation by Declarant), for the purpose of removing any portion of the Project from the coverage of this Declaration, provided such withdrawal does not reduce the total number of Lots then subject to the Declaration by more than thirty three percent (33%). Such amendment shall not require the consent of any Person other than the Owner(s) of the Property to be withdrawn, if other than the Declarant. If the Property is Common Area, the Association shall consent to such withdrawal.

Section 9.2 Marketing and Sales Activities. Declarant may construct and maintain upon portions of the Common Area and Lots owned by Declarant such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Lots, including business offices, signs, model units, and sales offices. The design of such facilities shall be consistent with the Community-Wide Standard. Declarant shall have easements for access to and use of such facilities at no charge.

Section 9.3 Right to Develop. Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing and installing such Improvements to the Common Area as it deems appropriate in its sole discretion.

Section 9.4 Right to Phased Development. The Declarant reserves the right to develop the Property and Project in two or more phases, provided, however, that Declarant does not warrant, promise or represent that any phase other than the one in which the Lot is located, or that any additional Lots will be developed. Each Owner hereby consents to any such phased development and to all the conditions and consequences thereof, and at the request of Declarant, agrees to execute documents and take necessary actions as necessary or convenient to effect such phased development, and hereby appoints Declarant an irrevocable power of attorney coupled with an interest, which shall survive the execution and recordation of the Deed, to execute any such documents and to take such actions on behalf of the Owner.

Section 9.5 Easements for Utilities, etc. In addition to the easement rights set forth in Article X (Easements) herein, Declarant reserves the right to grant the State of Hawaii, County

of Hawaii, Department of Water Supply of the County of Hawaii, or any other appropriate government agency or public utility or other public or private corporation, without notice to or consent of any Owner, easements for electrical, gas, drainage, access, communications, cable television and other utility facilities and purposes over, under, along, across or through the Property, including the Lots covered by this Declaration, under the usual terms and conditions required by the grantee of such easements and to do all other things necessary to effectuate such grants. This power-of-attorney is coupled with an interest, is irrevocable, and shall survive the execution and recording of the deed for any Lot.

Section 9.6 Right to Approve Additional Covenants. No Person shall Record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Project without Declarant's review and written consent. Any attempted Recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and Recorded by Declarant.

Section 9.7 Right to Change Rules & Regulations or Design Guidelines. Declarant shall have the right to make changes to any of the Rules & Regulations or Design Guidelines so long as Declarant owns any Lot subject to this Declaration, or which may become subject to this Declaration.

Section 9.8 Right to Approve Changes in Project Standards. No amendment to or modification of any Rules & Regulations or Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns Property subject to this Declaration or which may become subject to this Declaration in accordance with Section 8.1 (Annexation by Declarant).

Section 9.9 Right to Transfer or Assign Declarant Rights. Any or all of Declarant's special rights and obligations set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and Records. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise.

Section 9.10 Exclusive Rights To Use Name of Development. No Person shall use the name "HILO HILLSIDE ESTATES" or any logo, depiction, or derivative of such name in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "HILO HILLSIDE ESTATES" in printed or promotional matter where such term is used solely to specify that particular property is located within the Project, and the Association and other entities related to Declarant shall be entitled to use the words "HILO HILLSIDE ESTATES" in its name.

Section 9.11 Right to Notice of Design or Construction Claims. No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or Improvements within the Project in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant has been first notified in writing and given an opportunity to meet with the Owner of the Lot to discuss the Owner's concerns and conduct its own inspection.

Section 9.12 Termination of Rights. The rights contained in this Article shall not terminate until the earlier of (a) forty (40) years from the date this Declaration is Recorded, or (b) Recording by Declarant of a written statement that all sales activity has ceased.

ARTICLE X. EASEMENTS

Section 10.1 Easements in Common Area. Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such Property to the Association; and
- (c) The Board's right to:
 - (i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
 - (ii) suspend the right of an Owner to use recreational facilities, if any, within the Common Area (A) for any period during which any charge against such Owner's Lot remains delinquent, and (B) for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the Bylaws;
 - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration; and
 - (iv) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend the Owner's right of use and enjoyment to the members of the Owner's family, lessees, and guests, as applicable, subject to reasonable regulation by the Board. An Owner who leases the Owner's Lot shall be deemed to have assigned all such rights to the lessee of such Lot for the period of the lease.

Section 10.2 Easements of Encroachment. Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance

with the terms of these restrictions) to a distance of not more than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

Section 10.3 Easements for Utilities, etc.

(a) **Installation and Maintenance.** Declarant reserves for itself, so long as Declarant owns any property described in **Exhibit A** of this Declaration, to designate and grant to the Association and all utility providers (including, but not limited to, privately owned and operated utilities), perpetual non-exclusive easements throughout the Project (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve the Project, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, drainage systems, street lights and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on Recorded plats;

(ii) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other Improvements described in Section 10.3(a)(i); and

(iii) access to read utility meters.

(b) **Specific Easements.** Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in Declarant's sole discretion, in connection with the orderly development of any property described in **Exhibit A**. The Owner of any Lot to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) **Minimal Interference.** All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. Exercise of these easements shall not extend to permitting entry into the Dwelling on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

Section 10.4 Easements to Serve Additional Property. Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any additional property that may be annexed to the Project pursuant to **Section 8.1 (Annexation by Declarant)** or any adjoining property that is or may be owned by Declarant, whether or not such property is

made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of its respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors, or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such property.

Section 10.5 Easements for Maintenance, Emergency and Enforcement. Declarant grants to the Association easements over the Project as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.6 (Maintenance of Area of Common Responsibility). The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

Section 10.6 Easement to Inspect and Right to Correct. Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, Improvement, or condition which may exist on any portion of the Property within the Project, including Lots, and a perpetual, nonexclusive easement of access throughout the Project to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a Dwelling shall be permitted without the Owner's consent.

Section 10.7 Easements for Historical Sites. Historical Sites may exist within the Property and may be located within the Common Area and Lots, or in lava tubes or caves beneath Lots or the Common Area.

Declarant reserves for itself and the Association a perpetual, nonexclusive easement over the Common Area and Lots to (a) travel to and from any Historical Sites, and (b) inspect, evaluate, perform data recovery, maintain and preserve the Historical Sites identified on the Property from time to time. Such easement shall affect only such portions of the Common Area and Lots as Declarant or the Association, as the case may be, deems reasonably necessary for such purposes. Declarant further reserves for itself and the Association the right to grant perpetual, nonexclusive easements over the Common Areas and Lots to (a) travel to and from such Historical Sites, (b) inspect, evaluate, perform data recovery, maintain and preserve such Historical Sites, and/or (c) perform traditional, cultural and/or religious practices at such Historical Sites, to any Person who is or may be entitled under Hawaii law to exercise any such rights. Such easements shall affect only such portions of the Common Areas and Lots as Declarant or the Association, as the case may be, deems reasonably for such purposes and may

be subject to such reasonable terms, conditions and restrictions that Declarant or the Association may impose consistent with Hawaii law.

Burial sites may exist within the Property. These burial sites may have important cultural, religious, personal, scientific and historical significance. Burial sites may be located on the Common Area, Lots or in lava tubes or caves beneath Lots. In an effort to show respect for the decedents at the burial sites and their descendants, all Owners of Lots within the Project shall avoid disruption or destruction of burial sites existing on their Lots. Owners of Lots containing burial sites shall grant an easement of access to the burial sites to the extent required by Hawaii law. Due to the sensitive nature of this type of easement, the potential exists for conflict between Persons using easements pursuant to this Section and Owners. In order to avoid or eliminate any potential conflicts that may arise, an environment of mutual respect between Persons using the easements and Owners must prevail. Owners shall exercise caution to avoid disruption of Historical Sites and shall take no action to prevent or hinder access to Historical Sites. Persons utilizing easements pursuant to this Section shall do so in a careful and conscientious manner and take reasonable steps to avoid disturbing Owners. To the extent permitted by Hawaii law, the Association may adopt reasonable restrictions as the use of easements for access to Historical Sites. Neither the Association nor Declarant shall have any liability to any Owner or Person for any damages, increased construction costs, or delays caused by the existence of, or the discovery of, a Historical Site or the designation or use of an easement related to such Historical Site.

Section 10.8 Easement for Maintenance of Lots. Declarant reserves for itself and the Association, an easement of ingress and egress over such portions of a Lot necessary for the purpose of removing, replacing, installing, and maintaining trees, plants, and other vegetation on such Lot. Declarant and the Association shall have the right to exercise this easement over the entire area of a Lot until the Owner of such Lot completes construction of a Dwelling on the Lot.

The activities undertaken pursuant to this Section may include, but not be limited to, grading of a Lot and the removal, replacement, installation, and maintenance of trees, plants and other vegetation. Any costs incurred by the Association under this Section shall be charged as a Specific Assessment to the Owner of such Lot. No tree, plant, or other vegetation installed pursuant to this Section, including but not limited to, trees, plants, and other vegetation, shall be modified, pruned, cut, or removed without the approval of Declarant.

Except as otherwise provided by the Governing Documents, after an Owner has completed construction of a Dwelling on his/her Lot the right to exercise this easement shall be limited to the Association Easements. Declarant and the Association shall have the right, but not the obligation, to undertake any, or all, of the activities described in this Section.

Section 10.9 Easement for Drainage. The Property is burdened with a perpetual and nonexclusive easement over, through, and across the Property as necessary to accommodate drainage from or across property adjacent to the Lot in its currently existing and natural pattern and flow. Each Owner assumes all liability for damage to persons or property caused by interference with the natural flow of drainage from, over, through, or across the Lot in connection with Owner's activities on all or any part of the Lot, and agrees to indemnify, defend, and hold harmless Declarant and the Association from and against any liability, claim, demand, action, or suit arising out of, or in connection with, any such interference with drainage.

Section 10.10 Association Easement. Declarant reserves for itself, so long as Declarant owns any property described in **Exhibit A** of this Declaration, and grants to the Association and its successors, assigns, and designees, the nonexclusive right and easement to the portion of each Lot that is designated as Association Easement for the purposes of installing, maintaining and repairing utilities, widening roads, installing structures and Improvements, installing and maintaining landscaping, and any other reasonable purpose as may be determined in the discretion of Declarant or the Association as the case may be. Provided, however, that the Declarant or the Association, as applicable, shall to the extent reasonably possible, avoid disrupting or damaging any portion of any Lot designated as an Association Easement where Agricultural Uses are undertaken.

No Owner may remove, damage, or destroy any Improvement, structure, landscaping, plants, or trees located within any portion of the Association Easement unless given express, written consent by the Board. Any Owner who, in the opinion of the Board, has committed any damage to, alteration of, any portion of the Association Easement shall be solely responsible for the restoration of that portion of the Association Easement so damaged or altered. In the event an Owner fails to take such action as required by the Board, the Association shall have the right to remedy such damage or alteration and restore the Association Easement. The costs for such action may be levied against such Owner's Lot as a Specific Assessment.

Any Owner that constructs any Improvement or installs any landscaping on a portion of his/her Lot that is designated as Association Easement shall be required, upon notice from the Board, to remove such Improvement or landscaping at his/her expense and restore the Association Easement to substantially the same condition as it existed prior to the construction or installation of such Improvement or landscaping. In the event an Owner fails to take such action as required by the Board, the Association shall have the right to remove such landscaping or Improvement and restore the Association Easement. The costs for such action may be levied against such Owner's Lot as a Specific Assessment.

ARTICLE XI. WATER SYSTEM

Section 11.1 Design and Construction. Upon the County of Hawaii, Department of Water Supply ("DWS") upgrading its water system by completing the Piihonua-Kukua Reservoir and Transmission Improvements, Declarant shall construct and install the water transmission lines and facilities necessary for the Association and individual Owners to connect to the DWS system. All of the water transmission lines and facilities will be paid for by Declarant or its affiliates. Owners are required to utilize the DWS system.

Section 11.2 Ownership and Operation of the Water System. Declarant or its affiliates will dedicate the water transmission lines and facilities described in **Section 11.1** above to the DWS. Until such dedication is accepted by the DWS, the water transmission lines and facilities will be owned and maintained by the Declarant. Upon the completion of the dedication, the Project will receive potable water service from the DWS.

Section 11.3 Access to Water System and Rates for Service. Potable water service shall be provided by the DWS to Owners pursuant to rates, terms and conditions established by

the DWS and approved by the Public Utilities Commission of the State of Hawaii from time to time.

Section 11.4 Maintenance and Repair of the Water System. Upon dedication of the water transmission lines and facilities described in **Section 11.1** above to the DWS, the DWS shall maintain and repair the water system. The costs associated with maintenance and repair of the water system may be recovered by the DWS from ratepayers through utility service rates and charges. To complete the required maintenance and repair of the water system, the DWS, its successors and assigns, shall be granted an easement over, under, and across the Project to the extent necessary to conduct such maintenance and repair. Such easement shall include a right of ingress and egress over Common Areas, roads, Association Easements and Lots as reasonably necessary.

ARTICLE XII. WASTEWATER DISPOSAL

Section 12.1 Connection Required Prior to Occupancy. Each Lot shall be serviced by an individual wastewater system ("IWS") prior to occupancy of the Lot. Each Owner is responsible for the costs of constructing and connecting the Owner's Dwelling to the IWS, including construction of the wastewater line from the Dwelling to the IWS, and for the subsequent maintenance of the IWS. Prior to making the connection, each Owner shall obtain approval of the IWS from the State of Hawaii Department of Health and the County of Hawaii Department of Environmental Management. The IWS shall be constructed in accordance with all applicable federal, State and County laws, rules, regulations and ordinances. All IWS and other sewage disposal facilities shall be fully screened from the view of Lot Owners and streets in a form approved by the DRC.

ARTICLE XIII. PARTY WALLS AND OTHER SHARED STRUCTURES

Section 13.1 General Rules of Law to Apply. Any wall, fence, driveway, or similar structure built as a part of the original construction on the Lots which serves and/or separates any two adjoining Lots shall constitute a party wall or shared structure (collectively referred to herein as "party structure"). To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party structures and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIII (Dispute Resolution and Limitation on Litigation).

Section 13.2 Maintenance: Damage and Destruction. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

ARTICLE XIV. DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

Section 14.1 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members; 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 that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 13.2 (Dispute Resolution Procedures) in a good faith effort to resolve such Claim.

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

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

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

(iii) the design or construction of Improvements within the Community, other than matters of aesthetic judgment under Article V (Construction and Design Standards), which shall not be subject to review;

The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 13.2 (Dispute Resolution Procedures):

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

(v) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as a court of competent jurisdiction may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;

(vi) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(vii) any suit in which any indispensable party is not a Bound Party; or

(viii) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 13.2(a) (Notice) unless the party or parties against whom the Claim is made agree to toll the statute of

limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

Section 14.2 Dispute Resolution Procedures.

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

- (i) the nature of the Claim, including the Persons involved and the Respondent’s role in the Claim;
- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises),
- (iii) the Claimant’s proposed resolution or remedy; and
- (iv) the Claimant’s desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

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

(c) **Mediation.** If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice described in Section 13.2(a) (Notice) (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Hilo area.

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

If the Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys’ fees, and each Party shall share equally all fees charged by the mediator.

(d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the

terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

(e) **Mandatory Arbitration.** Any parties that have failed to reach the settlement of a Claim through negotiation and mediation as provided by this Article may submit the Claim to arbitration. The party, or parties, that desire to submit a Claim to arbitration shall promptly so notify the other party in writing. Any Claim submitted for arbitration shall be submitted to arbitration to Dispute Prevention and Resolution, Inc. ("DPRI") or such other dispute resolution agency as the parties to the dispute may mutually select. Claims involving \$25,000 or less shall be heard by a single arbitrator. Claims involving more than \$25,000 or non-monetary issues shall be heard by a panel of three arbitrators. The arbitrator(s) shall be selected and the arbitration conducted in accordance with the commercial arbitration rules then in effect for DPRI unless otherwise agreed by the parties. The decision of the arbitrator, if the Claim is heard by a single arbitrator, or a majority of the arbitrators, if the Claim is heard by a three arbitrator panel, shall be final, conclusive and binding on the parties to the arbitration. All proper costs and expenses of the arbitration including, without limitation, witness fees, attorney's fees, and the fees of the arbitrator(s) shall be allocated among the parties in such amounts as the arbitrator, if the Claim is heard before a single arbitrator, or a majority of the arbitrators, if the Claim is heard before a three arbitrator panel, shall determine at the time of the award. In the event of the failure, inability, or refusal of any arbitrator to act, a new arbitrator shall be appointed in such arbitrator's stead by DPRI. The arbitration award shall be binding in all aspects and shall be subject to the provisions of Hawaii Revised Statutes Chapter 658A (Uniform Arbitration Act), as the same be amended from time to time (with the exception of Hawaii Revised Statutes Sections 658A-15(b)(2) and (c); 17(c); 19; and 21(a), (c) and (e), which the parties hereby agree to waive). In the resolution of any dispute or controversy as set forth in this Section, each party hereby irrevocably waives the right to a jury trial and any right and claim to exemplary or punitive damages in any jurisdiction. Any documents of assignment, lease, or conveyance of any Lot or other interest in the Project shall be deemed to incorporate the provisions for arbitration of disputes set forth in this Section, as if the same were fully set forth in any such document. Any person who is injured by reason of the fact that a dispute, subject to the terms of this arbitration provision, is resolved other than by arbitration, may recover as damages the cost and expense incurred by reason of the fact that the dispute was not submitted to arbitration for resolution. Any arbitration proceedings under this Section will be submitted to arbitration in Honolulu, Hawaii.

Section 14.3 Initiation of Litigation by Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless, prior to initiation of the proceedings, one hundred percent (100%) of the total Class "A" votes in the Association are cast in favor of commencing such proceeding. Notwithstanding the foregoing, no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge ad valorem taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless seventy five percent (75%) of the total Class "A" votes in the Association are cast in favor of such amendment.

Section 14.4 Contractor Repair Act. Notwithstanding anything else in this Article 13 (Dispute Resolution and Limitation on Litigation) to the contrary, claims by Owner, Declarant and/or the Association against a contractor for construction defects, as such terms are defined in the Contractor Repair Act, shall be handled in accordance with the provisions of the Contractor Repair Act. The dispute resolution procedures set forth in this Article XIII (Dispute Resolution and Limitation on Liability) shall be modified as necessary to comply with the provisions of the Contractor Repair Act.

ARTICLE XV. MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on lots in the Project.

Section 15.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "**Eligible Holder**"), will be entitled to timely written notice of any:

- (a) Condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (b) Delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency, has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Lot or the Owner or Occupant which is not cured within sixty (60) days;
- (c) Lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

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

Section 15.2 Other Provisions for First Lien Holders. To the extent not inconsistent with Hawaii law:

(a) Any restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Lots to which more than fifty percent (50%) of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Lots to which more than fifty percent (50%) of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated, to such election to terminate.

Section 15.3 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 15.4 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

ARTICLE XVI. CHANGES IN THE COMMUNITY

Communities such as the Project are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change; as the residents age and change over time; and as the surrounding community changes. The Project and its Governing Documents must be able to adapt to these changes while protecting the things that make the Project unique.

Section 16.1 Changes in Ownership of Lots. Any Owner desiring to sell or otherwise transfer title to the Owner's Lot shall give the Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

Section 16.2 Changes in Common Area.

(a) **Condemnation.** If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least sixty seven percent (67%) of the total Class "A" votes in the Association and of Declarant, as long as Declarant owns any Property subject to the Declaration

or which may be made subject to the Declaration in accordance with Section 8.1 (Annexation by Declarant) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(i) If the taking or conveyance involves a portion of the Common Area on which Improvements have been constructed, the Association shall restore or replace such Improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking Declarant, so long as Declarant owns any Property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 8.1 (Annexation by Declarant), and Members representing at least seventy five percent (75%) of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.7(c) (Restoring Damaged Improvements) regarding funds for restoring Improvements shall apply; or

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

(b) Partition. Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

(c) Transfer or Dedication of Common Area. The Association may dedicate portions of the Common Area to the County of Hawaii, State of Hawaii, or to any other local, state, or federal governmental or quasi-governmental entity.

ARTICLE XVII. DISCLOSURES

Section 17.1 Ongoing Construction and Sales Activities. Construction activity by Declarant or other Lot Owners may continue within the Project, as well as on properties adjacent to and in the vicinity of the Project. Such construction activity may result in the transmission, discharge, or emission of surface water runoff, smoke, noise, dust, odors, noxious vapors, chemicals, vibrations, and other annoyances, as well as pose certain risks of injury to an Owner and the Owner's guests and visitors, and may limit the Owner's access to portions of the Project. Additionally, Declarant's sales activities, including the use of signs, model homes and sales displays and activities, will continue in the Project until the sale of the last lot in the Project. All sales display and activities will be consistent with the Community-Wide Standard.

Declarant shall have an easement over and upon each Owner's Lot and over the Project for the transmission, discharge, or emission of surface water runoff, smoke, noise, dust, noxious vapors, odors, chemicals, vibrations, or other substances or nuisances over the Project which are

created by or result from such construction activities. Declarant may do such things as may be reasonably required in connection with such construction activities, including, but not limited to, grading; excavation; depositing fill material; installing drainage systems; and installing water, electrical, gas, telephone, and/or television cable lines.

Section 17.2 Expansion and/or Modification. Declarant may consider the development of additional properties in addition to the Property. Declarant does not represent, promise, or warrant that any other property will be developed. Declarant has the right, pursuant to this Declaration, to add, modify, or eliminate Lots and Common Areas (and, if any, facilities thereon) to, on, or from the Property generally, and no representation, warranty, or assurance has been made (a) that any such Lots or Common Areas or facilities will or will not be added, modified, or eliminated, or (b) as to the financial or other impact on the Association which may assess charges against the Owners in the Project.

Section 17.3 Hazardous Materials. Each Owner assumes all risks of Hazardous Materials (as used herein, the term "**Hazardous Materials**" means all substances identified, listed, or defined as a "**hazardous substance**" under any federal, state or local environmental laws or otherwise regulated as a dangerous, hazardous, toxic, or carcinogenic substance) existing on, about, around, under, over, or within the Owner's Lot, including all risks of: (a) any and all enforcement, clean up, or other governmental or regulatory actions instituted or threatened pursuant to any Hazardous Materials Law affecting the Lot; (b) all claims made or threatened by any third party against an Owner or Declarant relating to damage, contribution, compensation, loss, or injury resulting from any Hazardous Materials, and (c) having sole responsibility for, and defending, indemnifying, and holding harmless Declarant and its partners, officers, directors, employees, agents, successors, and assigns (each of said parties herein called an "**Indemnitee**"), from and against all claims, demands, actions, lawsuits, proceedings, fines, penalties, damages, liabilities, judgments, awards, expenses, and costs (including attorneys' fees and costs) which may arise out of or may directly or indirectly be attributable to the use, generation, manufacture, treatment, handling, refining, production, storage release, discharge, disposal, or presence of any Hazardous Materials on, about, around, over, or within the Lot or the Project. This indemnification shall not apply to claims, demands, actions, losses, damages, liabilities, costs, and expenses caused by any Indemnitee's proven gross negligence, willful misconduct, or violation of applicable laws, established by a final, nonappealable judgment of a court of competent jurisdiction. This provision shall not apply to any institutional lender, investor, or federal housing agency (including any successors or assigns) who holds a Mortgage covering the Lot or who takes title to the Lot upon foreclosure or by way of deed in lieu of foreclosure or otherwise.

Section 17.4 Impacts on Lot. Each Lot, and the Improvements thereon, may be affected periodically by various hazards and by noise, dust, smoke, earthshock, soot, ash, volcanic lava or emissions, odor, noxious vapors, transmission of pollutants or other hazardous materials, surface water runoff, or other adverse environmental conditions created by or attributable to surrounding construction, development, pasture, and other non-residential uses and activities, including, but not limited to:

- (a) fertilization and pest and weed control;

(b) Agricultural Use operations; and

(c) real estate development and other changes in use (due to zoning changes or other governmental authorization or otherwise), construction, grading, improvement and maintenance of adjacent and surrounding properties, including roadways.

Section 17.5 View Impairment. The activities conducted on the Property pursuant to Article IV (Covenants and Restrictions), Article V (Construction and Design Standards), Article IX (Additional Rights Reserved to Declarant), and Article X (Easements) may diminish or impair views within the Property. Therefore, views within the Project are not protected, and any negative impact to any Owner's view caused by such activities shall not provide a basis for any claim or right of action. Neither Declarant nor the Association shall have any obligation to prune or thin landscaping or trees, and shall have the right, in their sole and absolute discretion, to add Improvements, landscaping, and trees from time to time. In addition, Declarant and/or the Association may, in their sole discretion, change the location, configuration, size and elevation of Improvements, trees, and landscaping from time to time. Any such additions or changes may diminish or obstruct views from the Lots. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. However, Declarant will use its reasonable efforts to insure that any development on adjoining Lots will be done in such a manner so as to minimize (as determined by Declarant in its sole discretion) the impact that the development will have on the view planes of Improvements already constructed (or approved for construction) on adjoining Lots.

Section 17.6 Roadways. Unless and until the same are dedicated to Hawaii County, and Hawaii County accepts such dedication, the Association shall be responsible for the Project Roadways which will be a part of the Common Area. In order for Hawaii County to accept dedication of such roadways, the roadways must be in a condition that meets the standards of Hawaii County for such dedications. This Section shall not be interpreted to require the Association to dedicate the roadways to Hawaii County, nor shall it be interpreted to require either the Association or Declarant to construct and maintain the roadways in a condition that meets the standards of Hawaii County for such dedications. Declarant reserves the right to dedicate any and all roadways and rights therein within the Project to the County of Hawaii or to any applicable governmental agency. All roadways within the Project may become future thoroughfares connecting to adjoining properties.

Section 17.7 Wells and Irrigation Systems. No Owner or Member may construct, drill, install, or maintain any sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Project, except that Declarant and the Association shall have the right to draw water from such sources.

Section 17.8 Phased Development. Declarant is developing and marketing the Project in phases. Declarant, however, does not represent, promise, or warrant that any particular phase or additional Lots will be developed.

ARTICLE XVIII. AMENDMENT OF DECLARATION

Any restrictions, covenants, conditions, and provisions of this Declaration may, from time to time, be amended or modified by Declarant or by the Members, as set forth below. The amendment shall be Recorded, and a copy of the recorded amendment shall be distributed to all Members of the Association.

Section 18.1 By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period, Declarant may, unless otherwise prohibited by Hawaii law, unilaterally amend this Declaration for any purpose. Thereafter, so long as Declarant owns any property described in Exhibit A, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Lots; or (d) to satisfy the requirements of any local, state, or federal governmental agency.

Section 18.2 By Members. Except as otherwise specifically provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy five percent (75%) of the total Class "A" votes in the Association, and Declarant's consent, so long as Declarant owns any Property or Lot subject to this Declaration or which may become subject to this Declaration in accordance with Section 8.1 (Annexation by Declarant).

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

Section 18.3 Validity and Effective Date. Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Section 18.4 Limitations on Amendments. If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to so consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

ARTICLE XIX. MISCELLANEOUS

Section 19.1 Laws of Hawaii; Non-Waiver. The provisions hereof shall be construed and enforced under the laws of the State of Hawaii. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or 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 Person entitled to enforce this Declaration.

Section 19.2 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.

Section 19.3 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development of the Project. The headings of paragraphs and articles are inserted only for ease of reference and shall not define or limit the scope or intent of any provision of this Declaration.

Section 19.4 Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

Section 19.5 Word Usage. The use of the masculine gender herein shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, whenever the text so requires.

Section 19.6 Notice, Information, or Material. Any notice, information, or material required to be given hereunder shall be deemed furnished or delivered to a party at the time a copy thereof is deposited in the mail, postage or charges prepaid, addressed to the party, and in any event, when such party actually receives such notice, information, or material.

Any notice, information, or material delivered or furnished to the name and address of a Member as last shown on the books of the Association shall be deemed to be the proper delivery or furnishing of such notice, information, or material. If notice of a meeting is given as provided for above, non-receipt of actual notice by any Member shall in no way invalidate the meeting or any proceedings taken or any business done at the meeting. Any Member may waive notice of any meeting either prior to or at or after the meeting, with the same effect as though notice of the meeting had been given to the Member. The presence of any Member at a meeting shall be the equivalent of a waiver by that Member of notice of the meeting.

Notices, information, and material required to be given hereunder to Declarant shall be addressed to Declarant at c/o Steven S.C. Lim, Carlsmith Ball LLP, 121 Waiianuenue Avenue, Hilo, Hawaii 96720. Notices, information, and material required to be given hereunder to the Association or the Board shall be addressed to such entity in care of the Association at the office of the Association.

Section 19.7 Limited Liability. Neither Declarant, the Association, the Board, nor any member, agent, officer, or employee of any of the same, shall be liable to any party for any action or for any failure to act with respect to any matter.

Section 19.8 Exhibits. Exhibits A, B, C, D and E attached to this Declaration are incorporated by this reference, and amendment of such exhibits shall be governed by this Article. Any other exhibits are for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

IN WITNESS WHEREOF, the Declarant has entered into this Declaration as of the date first written above.

MOANIALA HOLDINGS LLC, a Hawaii
limited liability company

By: 

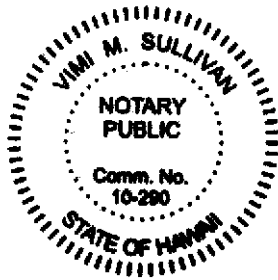
Name: JAMES LEE

Title: Its Manager

“Declarant”

STATE OF HAWAII)
) ss.
 CITY & COUNTY OF HONOLULU)

On this 18th day of November, 2011, before me personally appeared JAMES LEE, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



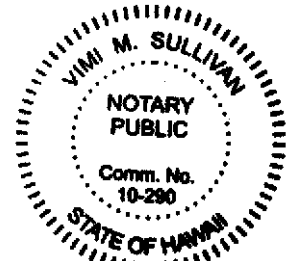
Vimi M. Sullivan

Name: Vimi M. Sullivan

Notary Public, State of Hawaii

My commission expires: September 5, 2014

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description:	<u>Hilo Hillside Estates Declaration of Covenants, Conditions and Restrictions</u>
Document Date:	<u>NOV 18 2011</u>
No. of Pages:	<u>64 w/o exhibits</u>
Jurisdiction (in which notarial act is performed):	<u>First Judicial Circuit</u>
<i>Vimi M. Sullivan</i>	<u>NOV 18 2011</u>
Signature of Notary	Date of Notarization and Certification Statement
<u>Vimi M. Sullivan</u>	
Printed Name of Notary	



(Notary Stamp or Seal)

EXHIBIT A

PROPERTY DESCRIPTION

All of that certain parcels of land situate at Kukuau 1st, South Hilo, Island and County of Hawaii, State of Hawaii, described as follows:

Lots 406 to 461, inclusive, as shown on Map 109, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Land Court Application No. 1205 of Cooke Trust Company, Limited, as set forth by Land Court Order No. 188684 filed on October 4, 2011, as amended by Land Court Order No. 189103, filed on November 9, 2011, as the same may be further amended from time to time

Being the land described in Transfer Certificate of Title No. 738,191. ✓

EXHIBIT B

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

STATE OF HAWAII

In the Matter of the Incorporation

HRS § 414D-32

of

**HILO HILLSIDE ESTATES
COMMUNITY ASSOCIATION, INC.**

ARTICLES OF INCORPORATION

OF

HILO HILLSIDE ESTATES COMMUNITY ASSOCIATION, INC.

Steven S.C. Lim, Esq.
CARLSMITH BALL LLP
121 Waianuenue Avenue
Hilo, Hawaii 96720

Attorney for HILO HILLSIDE ESTATES COMMUNITY ASSOCIATION, INC.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

STATE OF HAWAII

In the Matter of the Incorporation

of

**HILO HILLSIDE ESTATES
COMMUNITY ASSOCIATION, INC.**

HRS § 414D-32

**ARTICLES OF INCORPORATION
OF
HILO HILLSIDE ESTATES COMMUNITY ASSOCIATION, INC.**

The undersigned, desiring to form a nonprofit corporation in accordance with the laws of the State of Hawaii and to obtain the rights and benefits conferred by said laws upon nonprofit corporations, does hereby execute the following Articles of Incorporation.

I. NAME

The name of the Association shall be Hilo Hillside Estates Community Association, Inc.

II. MAILING ADDRESS

The mailing address of the Association shall be c/o _____.

III. INITIAL REGISTERED OFFICE; INITIAL REGISTERED AGENT

The name of the Association's initial registered agent in the State of Hawaii is James Lee. The street address of the Association's initial registered office is c/o 616 Moaniala Street, Honolulu, HI 96821.

IV. INCORPORATOR

The name and address of the incorporator is:

Name

Address

Steven S.C. Lim

c/o Carlsmith Ball LLP
ASB Tower, Suite 2200
1001 Bishop Street
Honolulu, Hawaii 96813

V. PERIOD OF DURATION

The period of the Association’s duration is perpetual.

VI. DEFINITIONS

All capitalized terms used herein which are not defined shall have the same meaning as set forth in the Recorded Hilo Hillside Estates Declaration of Covenants, Conditions and Restrictions as may be amended from time to time (the “**Declaration**”).

VII. PURPOSES

This Association shall be a nonprofit corporation within the meaning of Chapter 414D of the Hawaii Revised Statutes. The Association is and is intended to be a homeowner’s association as that term is defined in Internal Revenue Service Code 528 and the corresponding provisions of any subsequent tax laws.

The Association is organized for the following specific purposes and powers:

To be and constitute the Association to which reference is made in the Declaration, to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified therein, in the Bylaws, and as provided by law;

To provide an entity for the furtherance of the interests of the Owners of real property subject to the Declaration; and

To have and exercise all of the powers conferred by law on nonprofit corporations.

VIII. POWERS

The powers of the Association shall include and be governed by the following provisions:

(a) The Association shall have all of the common law and statutory powers conferred upon nonprofit corporations under Hawaii law and all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the Bylaws, or the Declaration, including, without limitation, the power:

(i) to fix, collect, and enforce payment, by any lawful means, of assessments and other charges to be levied against the Lots and/or Apartments;

(ii) to manage, control, operate, maintain, repair, and improve the property subject to the Declaration and any other property for which the Association, pursuant to the Declaration, other covenants, easements or contracts, has a right or duty to provide such services;

(iii) to make rules and regulations and to enforce covenants, conditions, or restrictions affecting any property to the extent the Association may be authorized to do so under the Declaration or Bylaws;

(iv) to engage in activities which will actively foster, promote, and advance the common interests of Owners of Lots and/or Apartments subject to the Declaration;

(v) to buy or otherwise acquire, sell, dedicate for public use, or otherwise dispose of, mortgage, or otherwise encumber, exchange, lease, own, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Association, subject to such limitations as may be set forth in the Declaration or Bylaws;

(vi) to borrow money for any purpose, subject to such limitations as may be contained in the Declaration or Bylaws;

(vii) to enter into, make, perform, or enforce contracts of every kind and description, and to do all other acts necessary, appropriate, or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation, or other entity or agency, public or private;

(viii) to act as agent, trustee, or other representative of other corporations, firms, or individuals, and as such to advance the business or ownership interests in such corporations, firms, or individuals;

(ix) to adopt, alter, and amend or repeal the Bylaws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, such Bylaws may not be inconsistent with or contrary to any provisions of the Declaration;

(x) to provide any and all supplemental municipal services to the real property subject to the Declaration as the Board of Directors may determine necessary or proper; and

(xi) to sue and be sued.

(b) The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other rights and powers which may now or hereafter be permitted by law; the powers specified in each of the paragraphs of this Article are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph of this Article.

(c) The Association shall make no distribution of income to its Members, directors or officers, except as otherwise authorized by the Declaration or Bylaws.

IX. MEMBERS

The Association shall have Members. The authorized number and qualifications of Members of the Association, the different classes of membership, if any, the property, voting and other rights and privileges of the Members, and their liabilities to dues and assessments and the method of collection thereof, shall be as set forth in the Declaration and Bylaws.

X. BOARD OF DIRECTORS

The business and affairs of the Association shall be managed by the Board of Directors, which shall consist of not less than three (3) members and may be increased in accordance with the Bylaws. The Members of the Board of Directors shall be elected or appointed at such times, in such manner and for such terms as may be prescribed by the Bylaws.

XI. APPOINTMENT OF DIRECTORS

The following three (3) Persons shall act as the initial Directors of the Association until their successors are duly elected or appointed as provided for in the Bylaws:

<u>Name</u>	<u>Address</u>
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The method of election, removal, and filling of vacancies on the Board and the terms of office of Directors shall be as set forth in the Bylaws.

Subject to the terms of the Bylaws, the Board may delegate all or any portion of its operating authority to such corporations, individuals, and committees as it, in its discretion, may determine.

XII. DIRECTOR CONFLICT OF INTEREST

No contract or other transaction between the Association and one or more of its Directors or any other corporation, firm, association or entity in which one or more of its directors are directors or officers, or are financially interested, shall be either void or voidable because of the relationship or interest or because the Director or Directors are present at the meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies the contract or transaction or because the vote of the interested Director or Directors are counted for that purpose, if:

(a) The material facts of the transaction and the Director's relationship or interest is disclosed or known to the Board of Directors or committee which authorizes, approves

or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of the interested Director or Directors; or

(b) The contract or transaction is fair and reasonable to the Association at the time it is entered into.

XIII. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS

(a) As used in this Article, unless the context otherwise requires:

“Person” means any Person who is or was a Director, Officer, employee or other agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, trustee, employee or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, or was a director, officer, employee or agent of a foreign or domestic corporation which was a predecessor corporation of the Association or of another enterprise at the request of the predecessor corporation.

“Expenses” include, without limitation, attorney’s fees and any expenses of a completed action or proceeding, whether civil, criminal, administrative or investigative.

(b) The Association shall have power to indemnify any Person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the name of the Association or where the Person was found liable on the basis of his or her improper receipt of a personal benefit) by reason of the fact that the Person is or was an agent of the Association against expenses (including reasonable attorneys’ fees and expenses), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding if the Person acted in good faith and in a manner the Person reasonably believed to be (1) in or not opposed to the best interests of the Association if the Person was acting in an official capacity; or (2) in all other cases, at a minimum, did not oppose the Association’s best interests; and, with respect to any criminal proceeding, had no reasonable cause to believe the conduct of the Person was unlawful. No indemnification shall be made in respect of any claim, issue or matter as to which the Person shall have been adjudged to be liable for negligence or misconduct in the performance of the Person’s duty to the Association. A Director’s conduct with respect to an employee benefit plan for a purpose the Director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subparagraph (2) hereof. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative of the Person’s failure to meet the standard of conduct described herein.

(c) The Association shall have the power to indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action by or in the right of the Association to procure a judgment in its favor by reason of the fact that the Person is or was an agent of the Association against expenses (including reasonable attorneys’ fees and expenses) actually and reasonably incurred by the Person in connection with the defense or settlement of such action if the Person acted in good faith and in a manner the Person shall

reasonably believed to be in or not opposed to the best interests of the Association. No indemnification shall be made in respect of any claim, issue or matter as to which the Person shall have been adjudged to be liable for negligence or misconduct in the performance of the Person's duty to the Association unless and only to the extent that the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, the Person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

(d) To the extent that a Person has been successful on the merits or otherwise in defense of a proceeding referred to in subsection (b) or (c), or in defense of any claim, issue or matter therein, the Person shall be indemnified by the Association against expenses (including reasonable attorneys' fees and expenses) actually and reasonably incurred by the Person in connection therewith.

(e) Any indemnification of a Person under subsection (b) or (c) of this Article shall be upon a determination made by the Association only as authorized in the specific case. The determination shall be made in the following manner: (1) the Board of Directors by a majority vote of a quorum consisting of Directors who were not at the time parties to the proceeding; or (2) if a quorum is not obtainable, the majority vote of a committee duly designated by the Board consisting of two or more Directors not at the time parties of the proceeding; or (3) independent legal counsel selected by (1) or (2); or (4) the full Board of Directors if a quorum cannot be obtained under (1) or a committee appointed under (2); or (5) the Members of the Association; or (6) the court in which the proceeding is or was pending upon application made by the Person.

(f) Expenses incurred in defending any proceeding may be paid by the Association in advance of the final disposition of the proceeding upon (1) receipt of a written affirmation of the Person's good faith belief that the Person has met the applicable standard of conduct under subsection (b) or (c) of this Article; (2) receipt of a written undertaking by or on behalf of the Person to repay such amount if it shall ultimately be determined that the Person did not meet the applicable standard of conduct; and (3) the Association making a determination that the facts then known would not preclude indemnification.

(g) The indemnification provided by this Article is not exclusive of any other rights available to the Person being indemnified, and shall inure to the benefit of the heirs and personal representatives of such a Person.

(h) The Association shall have the power to purchase and maintain insurance on behalf of any Person against any liability asserted against or incurred by the Person whether or not the Association would have the power to indemnify the Person against such liability under the provisions of this Article. Any such insurance may be procured from any insurance company designated by the Board of Directors, including any insurance company in which the Association shall have any equity or other interest through stock ownership or otherwise.

(i) This Article does not apply to any proceeding against any investment manager or other fiduciary of an employee benefit plan in such Person's capacity, though such Person may also be an agent of the employer corporation as defined in subsection (a). Nothing

contained in this Article shall limit any right to indemnification to which a trustee, investment manager or other fiduciary may be entitled by contract or otherwise.

XIV. DISSOLUTION

In the event that the Association as a corporate entity is dissolved, then unless otherwise provided for by the Association, a nonprofit, unincorporated association shall forthwith and without further action or notice be formed to succeed to all the rights and duties of the Association hereunder. The affairs of such unincorporated Association shall be governed by the laws of the State of Hawaii and, to the extent not inconsistent therewith, by the Declaration, Articles and Bylaws of the Association as if they were created for the purpose of governing the affairs of an unincorporated association.

XV. BYLAWS

The initial Bylaws of the Association shall be adopted by the Board of Directors. The Bylaws may be altered, amended or repealed, and new Bylaws may be adopted, in the manner provided for in the Bylaws.

I certify, under the penalties of Section 414D-12 of the Hawaii Revised Statutes, that I have read the above statements and that the same are true and correct.

Witness my hand this _____ day of _____, 20____.

Incorporator

EXHIBIT C

BYLAWS OF THE HILO HILLSIDE ESTATES COMMUNITY ASSOCIATION, INC.

ARTICLE I. PURPOSES; NONPROFIT CHARACTER

SECTION 1.1 Purposes. The purposes of the Association shall be as specifically set forth in Article I of the Articles of Incorporation.

SECTION 1.2 Nonprofit Character. The Association shall be a nonprofit corporation. The Association shall not authorize or issue shares of stock. No dividend shall be paid and no part of the income or earnings which may be derived from its operations, in pursuance of the purposes of the Association, shall be distributed to or inure to the benefit of any Member, Director or Officer of the Association, or any private individual, but shall be used to promote the purposes of the Association.

ARTICLE II. DEFINITIONS

All capitalized terms used herein which are not defined shall have the same meaning as set forth in the Hilo Hillside Estates Declaration of Covenants, Conditions and Restrictions as may be amended from time to time (the "**Declaration**").

ARTICLE III. PRINCIPAL OFFICE; PLACE OF MEETINGS; SEAL

SECTION 3.1 Principal Office. The principal office of the Association shall be maintained at such place within or without the State of Hawaii, and the Association may have such other offices within or without the State of Hawaii, as the Board of Directors shall determine.

SECTION 3.2 Place of Meetings. All meetings of the Members and of the Board of Directors shall be held at the principal office of the Association, unless some other place is stated in the call. Any meeting, regular or special, of either the Board of Directors or of the Members may be held by conference telephone or similar communication equipment as long as all Directors or all Members participating in the meeting can hear one another, and all such Directors or Members shall be deemed to be present in person at the meeting.

SECTION 3.3 Seal. The Association may have a corporate seal as the Board of Directors shall determine.

ARTICLE IV. MEMBERS

SECTION 4.1 Members. The Association shall have two classes of membership consisting of Class "A" and Class "B," as more fully set forth in the Declaration. The provisions of the Declaration pertaining to membership are incorporated herein by this reference.

SECTION 4.2 Annual Meeting. The annual meeting of the Members shall be held on such day within ninety (90) days following the close of each fiscal year as the Board of Directors

shall designate, or, if the Board of Directors shall not have designated such day by the end of the second month following the close of the fiscal year, the annual meeting shall be held on the first Monday of April in each year, if not a legal holiday, and if a legal holiday, on the next calendar day following.

SECTION 4.3 Regular Meetings. The Members may establish regular meetings to be held in such places and at such times as the Members may from time to time by vote determine, and when such meeting or meetings shall be so determined, no further notice thereof shall be required.

SECTION 4.4 Special Meetings. Special meetings of the Members may be held at any time upon the call of the President or any two (2) Directors, or upon the call of twenty-five percent (25%) of all of the Class "A" Members. Upon receipt of such call or written request, the Secretary shall send out notices of the meeting to all Members in the same manner as for annual meetings of the Members.

SECTION 4.5 Notice of Meetings. Subject to Section 4.3 above, notice setting forth the time and place of the annual and any special meetings and the general nature of the business to be considered thereat shall be given by the Secretary, or by the person or one of the persons calling the meeting, to each Member. Such notice shall be given to each such Member by advising him or her of the meeting by telegram or by personally delivering written notice thereof to him or her, in each case not less than forty-eight (48) hours prior to the time set for the meeting, or by mailing written notice thereof, postage prepaid, addressed to him or her at his or her residence or usual place of business at least ten (10) nor more than sixty (60) days prior to the time set for the meeting. Non-receipt by a Member of notice of a meeting mailed to such Member by first class or certified mail shall not invalidate any business done at the meeting while a quorum is present.

SECTION 4.6 Waiver of Notice.

(a) Any Member may waive notice of any meeting of Members in writing signed by himself or herself or his or her duly authorized proxy or attorney-in-fact either prior to, at or after the meeting.

(b) The presence or representation at any meeting of any Member shall be the equivalent of the waiver of the giving of notice of such meeting to such Member, unless the Member, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting.

SECTION 4.7 Quorum. At any meeting of the Members of which proper notice has been given, a majority of Class "A" Members present in person or by proxy (provided that not more than three-fourths (75%) of the votes present are by proxy) shall constitute a quorum, and the concurring vote of a majority of the Members constituting a quorum shall be valid and binding upon the Association, except as otherwise provided by law, these Bylaws or the Articles of Incorporation.

SECTION 4.8 Voting; Proxies. The voting rights of the Members shall be as set forth in the Declaration and in these Bylaws, and such voting rights provisions are specifically incorporated by reference. The authority given by a Member to any person to represent such Member at meetings of the Members shall be in writing specifying the Lot or Apartment for which it is given, signed by such Member, dated and shall be filed with the Secretary prior to the meeting for which it is to be effective. No proxy shall be valid after eleven (11) months from the date of such proxy, unless otherwise provided in such proxy.

SECTION 4.9 Adjournment. Any meeting of the Members, whether annual or special, may be adjourned from time to time, whether a quorum be present or not, without notice other than the announcement at the meeting, unless a new record date is or must be fixed under Hawaii Revised Statutes § 414D-107, in which event notice of the adjourned meeting shall be given to the Members of record as of the new record date. Such adjournment may be to such time and to such place as shall be determined by a majority of the Members present. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted by a quorum at the original meeting as originally called.

SECTION 4.10 Action by Members Without a Meeting. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by eighty percent (80%) of the Class "A" Members with respect to the subject matter thereof and filed with the records of the meetings of the Members. Such consent shall have the same effect as a vote of the Members at a meeting and may be stated as such in any articles or documents filed with the Director of the Department of Commerce and Consumer Affairs.

SECTION 4.11 Assessments. Members shall be liable for such assessments as set forth in the Declaration. The provisions of the Declaration pertaining to assessments are incorporated herein by this reference.

ARTICLE V. BOARD OF DIRECTORS

SECTION 5.1 Powers. The Board of Directors shall manage the property and business of the Association and shall have and may exercise all of the powers of the Association except such as are reserved to or may be conferred from time to time by law, the Declaration, the Articles of Incorporation and any amendments thereto, or the Bylaws upon the Members of the Association.

SECTION 5.2 Number; Appointment/Election.

(a) There shall be a Board of Directors of the Association, to consist of not less than three (3) members, all appointed by the Class "B" Member during the Class "B" Control Period as provided in Section 7.4(b) of the Declaration.

(b) Following the termination of the Class "B" Control Period as provided in the Declaration, the number of Directors for the ensuing year shall be fixed by the Members at each annual meeting, and the number so designated shall then be elected by ballot by the Members to hold office until the next annual meeting and thereafter until their successors shall

be duly elected, and the number of Directors may be decreased or increased by the Members at any special meeting and, in case the number is increased, the additional Directors shall be elected by ballot as if elected at an annual meeting. Notwithstanding the foregoing, the Members may, by vote of a majority of them, determine that the Directors shall serve on a staggered basis, with one-third (1/3) of the Directors to be elected for a one-year term, one-third (1/3) for a two-year term, and one-third (1/3) for a three-year term, with one-third (1/3) of the Board of Directors elected annually thereafter for a three-year term.

SECTION 5.3 Chairman. The Board of Directors may appoint from among its members a Chairman who shall preside at all meetings, serve during the pleasure of the Board of Directors, and perform such other duties as may be assigned to him or her by the Declaration, the Articles of Incorporation, these Bylaws or the Board of Directors.

SECTION 5.4 Annual Meeting. A meeting of the Board of Directors shall be held at the place of each annual meeting of the Members and immediately following such meeting. At such annual meeting, the Board of Directors shall elect the Officers of the Association for the ensuing year.

SECTION 5.5 Regular Meetings. The Board of Directors may establish regular meetings to be held in such places and at such times as it may from time to time by vote determine, and no further notice thereof shall be required.

SECTION 5.6 Special Meetings. Special meetings of the Board of Directors may be called at any time by the President or by any two (2) Directors.

SECTION 5.7 Notice of Meetings. Except as otherwise expressly provided, reasonable notice of any meeting of the Board of Directors shall be given to each Director (other than the person or persons calling the meeting and other than the person giving notice of the meeting) by the Secretary, or by the person or one of the persons calling the meeting, by advising the Director of the meeting by word of mouth or by telephone or by leaving written notice thereof with him or her or at his or her residence or usual place of business. Such written notice shall be mailed not less than ten (10) days prior to the date of the meeting. Nonreceipt by a Director of any written notice of a meeting mailed to such Director shall not invalidate any business done at the meeting while a quorum is present.

SECTION 5.8 Waiver of Notice.

(a) Any Director may, prior to, at the meeting, or subsequent thereto, waive notice of any meeting in writing, signed by him or her.

(b) The presence at any meeting of any Director shall be the equivalent of a waiver of the requirement of the giving of notice of said meeting to such Director, unless the Director, at the beginning of the meeting or prior to the vote on a matter not properly noticed, objects to the lack of notice and does not thereafter vote or assent to the objected action.

SECTION 5.9 Quorum. A majority of the total number of Directors at which the Board of Directors has been fixed by the Class "B" or Class "A" Members shall constitute a

quorum to transact business, and, in order to be valid, any act or business must receive the approval of a majority of such quorum. A vacancy or vacancies in the membership of the Board of Directors shall not affect the validity of any action of the Board of Directors, provided there is present at the meeting a quorum of all the Directors at which the Board of Directors has been fixed.

SECTION 5.10 Adjournment. In the absence of a quorum at a meeting duly called, the President or a majority of the Directors present may adjourn the meeting from time to time without further notice, and may convene or reconvene the meeting when a quorum shall be present.

SECTION 5.11 Action by Directors Without a Meeting. Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors with respect to the subject matter thereof and filed with the records of the meetings of the Board of Directors. Such consent shall have the same effect as a unanimous vote of the Board of Directors and may be stated as such in any articles or documents filed with the Director of the Department of Commerce and Consumer Affairs.

SECTION 5.12 Permanent Vacancies. If any permanent vacancy shall occur in the Board of Directors through death, resignation, disqualification, removal or other cause other than temporary absence, illness or disability, the remaining Directors, by the affirmative vote of a majority of all remaining members of the Board of Directors, may elect a successor Director to hold office for the unexpired portion of the term of the Director whose place shall be vacant or until the Class "B" or Class "A" Members shall appoint or elect a successor Director.

SECTION 5.13 Temporary Vacancies, Substitute Directors. If any temporary vacancy shall occur in the Board of Directors through the sickness or disability of any Director, the remaining Directors, whether constituting a majority or a minority of the whole Board of Directors, may by the affirmative vote of a majority of such remaining Directors appoint some person as a substitute Director, who shall be a Director during such absence, sickness or disability and until such Director shall return to duty or the office of such director shall become permanently vacant.

SECTION 5.14 Proxies. Voting by proxy shall not be permitted at any meeting of the Board of Directors or of any committees, boards or bodies created by the Board of Directors.

SECTION 5.15 Executive and Other Committees.

(a) The Board of Directors, by resolution adopted by a majority of the Board of Directors, may designate and appoint an Executive Committee and any other committees, each of which, to the extent provided in the resolution, the Declaration, the Articles of Incorporation or these Bylaws, shall have and may exercise all the authority of the Board of Directors; except that no such committee shall have the authority of the Board of Directors in reference to:

- (1) Authorizing distributions;

(2) Approving or recommending to the Members dissolution, merger, or the sale, pledge or transfer of all or substantially all of the property and assets of the Association;

(3) Electing, appointing or removing any member of any such committee or any Director or Officer of the Association;

(4) Adopting, amending, altering or repealing the Articles of Incorporation or Bylaws;

(b) The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors or any individual Director of any responsibility imposed upon the Board of Directors or the Director by law.

SECTION 5.16 Compensation. The Board of Directors shall have authority to fix the compensation of members of the Board of Directors.

SECTION 5.17 Gifts and Contributions. The Board of Directors may accept on behalf of the Association any contribution, gift, bequest or devise for the general purposes, or for any special purpose, of the Association.

SECTION 5.18 Procedure. The Board of Directors shall fix its own rules of procedure which shall not be inconsistent with these Bylaws.

ARTICLE VI. OFFICERS AND MANAGEMENT

SECTION 6.1 Appointment, Term, Removal. The Officers of the Association shall be the President, Vice President, the Secretary, the Treasurer, and in addition thereto, one or more Assistant Secretaries, one or more Assistant Treasurers and such other Officers, with such duties, as the Board of Directors shall from time to time determine. The Officers shall be elected annually by the Board of Directors at the first meeting thereof after the annual or special meeting of the Members at which the Board of Directors is appointed or elected and shall hold office at the pleasure of the Board of Directors until the next annual meeting and thereafter until their respective successors shall be duly elected or appointed and qualified. Each Officer must be a Director and Member of the Association. Any person may hold more than one office. The Board of Directors may, in its discretion, from time to time limit or enlarge the duties and powers of any officer appointed by it.

SECTION 6.2 The President. The President shall be the Chief Executive Officer of the Association. He or she shall preside at all meetings of the Members and in the absence of the Chairman of the Board of Directors, or if no Chairman of the Board of Directors shall have been appointed, the President shall preside at all meetings of the Board of Directors. He or she may call special meetings of Members at his or her discretion and shall call annual meetings of Members, as provided by these Bylaws. Subject to the direction and control of the Board of Directors, the President shall:

- (a) be in personal charge of the principal office of the Association;
- (b) have the general management, supervision and control of all of the property, business and affairs of the Association, prescribe the duties of the managers of all branch offices, and exercise such other powers as the Board of Directors may from time to time confer upon him or her; and
- (c) subject to approval of the Board of Directors, appoint heads of departments and generally control the engagement, government and discharge of all employees of the Association, and fix their duties and compensation.

He or she shall at all times keep the Board of Directors fully advised as to all of the Association's business.

SECTION 6.3 The Vice President or Vice Presidents. The Vice President shall, in such order as the Board of Directors shall determine, perform all of the duties and exercise all of the powers of the President provided by these Bylaws or otherwise during the absence or disability of the President or whenever the office of President shall be vacant, and shall perform all other duties assigned to him, her or them by the Board of Directors or the President.

SECTION 6.4 The Secretary. The Secretary shall attend all meetings of the Members and of the Board of Directors, and shall record the proceedings thereof in the minute book or books of the Association. He or she shall give notice, in conformity with these Bylaws, of meetings of Members and, where required, of the Board of Directors. In the absence of the Chairman of the Board of Directors and of the President and the Vice President, he or she shall have power to call such meetings and shall preside thereat until a President Pro Tempore shall be chosen. The Secretary shall perform all other duties incident to his or her office or which may be assigned to him or her by the Board of Directors or the President.

SECTION 6.5 The Treasurer. The Treasurer shall have custody of all of the funds, notes, bonds and other evidences of property of the Association. He or she shall deposit or cause to be deposited in the name of the Association all monies or other valuable effects in such banks, trust companies or other depositories as shall from time to time be designated by the Board of Directors. He or she shall make such disbursements as the regular course of the business of the Association may require or the Board of Directors may order. He or she shall perform all other duties incident to his or her office or which may be assigned to him or her by the President or the Board of Directors.

SECTION 6.6 Assistant Secretary and Assistant Treasurer. The Assistant Secretary or Assistant Secretaries and Assistant Treasurer or Assistant Treasurers, if elected or appointed, shall, in such order as the Board of Directors may determine, perform all of the duties and exercise all of the powers of the Secretary and Treasurer, respectively, during the absence or disability, and in the event of a vacancy in the office, of the Secretary or Treasurer, respectively, and shall perform all of the duties assigned to him, her or them by the President, the Secretary in the case of Assistant Secretaries, the Treasurer in the case of Assistant Treasurers, or the Board of Directors.

SECTION 6.7 Absence of Officers. In the absence or disability of the President and Vice President, the duties of the President (other than the calling of meetings of the Members and the Board of Directors) shall be performed by such persons as may be designated for such purpose by the Board of Directors. In the absence or disability of the Secretary and of the Assistant Secretary, or Assistant Secretaries if there be more than one, or of the Treasurer and the Assistant Treasurer, or Assistant Treasurers if there be more than one, the duties of the Secretary or of the Treasurer, as the case may be, shall be performed by such person or persons as may be designated for such purpose by the Board of Directors.

SECTION 6.8 Compensation. The Board of Directors shall have the authority to fix the compensation, if any, of the Officers, agents and employees.

ARTICLE VII. REMOVALS

During the Class "B" Control Period, the Class "B" Member may at any time depose or remove from office any Director, Officer, subordinate Officer, agent or employee, whenever, in their judgment, the best interests of the Association will be served thereby. Following the termination of the Class "B" Control Period, the Class "A" Members may at any time depose or remove from office any Director, Officer, subordinate Officer, agent or employee, whenever, in their judgment, the best interests of the Association will be served thereby. The number of votes cast to remove a Director must be sufficient to elect the Director at a meeting to elect Directors. The Board of Directors may at any time remove from office or discharge from employment any Officer, subordinate Officer, agent or employee appointed by it or by any person under authority delegated by it, whenever, in their judgment, the best interests of the Association will be served thereby.

ARTICLE VIII. AUDIT OF BOOKS

The Board of Directors shall cause a complete audit to be made of the books of the Association at least once in each fiscal year and more often if required by the Board of Directors, and shall thereafter make appropriate reports to all Members and the Board of Directors. The Board of Directors may appoint some person, firm or corporation engaged in the business of auditing to act as the auditor of the Association.

ARTICLE IX. EXECUTION OF INSTRUMENTS

SECTION 9.1 Proper Officers. Except as hereinafter provided or as required by law, all checks, drafts, notes, bonds, acceptances, deeds, leases, contracts, bills of exchange, orders for the payment of money, licenses, endorsements, powers of attorney, proxies, waivers, consents, returns, reports, applications, notices, mortgages and other instruments or writings of any nature, which require execution on behalf of the Association, shall be signed by (a) the Chairman of the Board and the President or one of such officers and (b) the Vice President, the Secretary or the Treasurer. The Board of Directors may from time to time authorize any such documents, instruments or writings to be signed by such Officers, agents or employees of the Association, or any one of them, in such manner as the Board of Directors may determine.

SECTION 9.2 Facsimile Signatures. The Board of Directors may, from time to time by resolution, provide for the execution of any corporate instrument or document, including but not limited to checks, warrants, letters of credit, drafts and other orders for the payment of money, by a mechanical device or machine or by the use of facsimile signatures under such terms and conditions as shall be set forth in any such resolution.

SECTION 9.3 Funds. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.

ARTICLE X. CORPORATE BOOKS AND RECORDS; INSPECTION OF SAME AND BYLAWS

SECTION 10.1 Books and Records. The Association shall keep correct and complete books and records of account of the Association and minutes of the proceedings of its Members, Board of Directors and any committee having any of the authority of the Board of Directors, and shall keep at its registered office or principal office in the State a record of the names and addresses of its Members. All books and records of the Association may be inspected, upon written demand, by any Member, Member's agent or attorney or any holder, insurer or guarantor of a first Mortgage on a Lot or Apartment for any proper purpose at any reasonable time. Demand of inspection other than at a meeting shall be made in writing upon the President, the Secretary or any other officer designated by the Board of Directors.

SECTION 10.2 Inspection of Bylaws. The Association shall keep in its principal office for the transaction of business a copy of the Bylaws of the Association as amended or otherwise altered to date, which shall be open to inspection by the Members at all reasonable times during office hours.

ARTICLE XI. FISCAL YEAR

The fiscal year of the Association shall be such as may from time to time be established by resolution by the Board of Directors.

ARTICLE XII. AMENDMENT TO BYLAWS

SECTION 12.1 By Class "B" Member. During the Class "B" Control Period, the Class "B" Member may unilaterally amend these Bylaws. Following the termination of the Class "B" Control Period, the Class "B" Member may unilaterally amend these Bylaws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots or Apartments; or (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Lots or Apartments; provided, however, that any such amendment shall not adversely affect the title to any Lot or Apartment unless the Owner shall consent thereto in writing. So long as the Class "B" membership exists, the Class "B" Member

may unilaterally amend these Bylaws for any other purpose, provided the amendment has no material adverse effect upon any right of any Class "A" Member.

SECTION 12.2 By Members Generally. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing fifty-one percent (51%) of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

SECTION 12.3 Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon the effective date specified therein. Any procedural challenge to an amendment must be made within six months of the effective date specified therein, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

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

CERTIFICATE OF SECRETARY

I certify that:

1. I am the Secretary of Hilo Hillside Estates Community Association, Inc.
2. The attached Bylaws are the Bylaws of the Association adopted by unanimous written consent of the Board of Directors effective as of _____, 20____.

DATED: _____, 20____.

Secretary

EXHIBIT D

RULES & REGULATIONS

1. General.

These Rules & Regulations are established pursuant to Section 3.2 of the Declaration for the purpose of supplementing the Governing Documents. The Project shall be used only as permitted by the Declaration and any Supplemental Declaration.

Any word term or phrase which begins with initial capitalization and which is not defined in these Rules & Regulations shall be given the definition of such word, term or phrase in the Declaration.

2. Prohibited Activities.

To the extent permitted under Hawaii Revised Statutes Chapter 205, the following activities are prohibited within the Project unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Subdivision into two or more Lots, submission of a Lot to a condominium property regime, or changing the boundary lines of any Lot after a subdivision plat including such Lot has been approved and Recorded, except that Declarant shall be permitted to subdivide or replat Lots which it owns;

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

(c) Construction of an Ohana Dwelling or second Dwelling on the Lot.

(d) Parking any vehicles on streets or thoroughfares, or parking commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other water craft, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages; provided, however, that: (i) construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Area; and (ii) temporary on-street parking for visitors of any Owner shall be permitted for a period of time not to exceed 24 hours;

(e) A reasonable number of pets such as dogs, cats, or other usual and common household pets may be permitted in a Lot; however, those pets which are permitted to roam free outside the Owner's Lot, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Lots, shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet at the Owner's cost. Dogs shall be kept on a leash or

otherwise confined in a manner acceptable to the Board whenever outside the Lot. Pets shall be registered, licensed, and inoculated as required by law;

(f) Any activity which emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Lots;

(g) Any activity which violates local, state, or federal laws, ordinances, rules or regulations; however, the Board shall have no obligation to take enforcement action in the event of any such violation;

(h) Pursuing hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Lot;

(i) Any noxious or offensive activity which, in the reasonable determination of the Board, tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Lots;

(j) Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a Dwelling on a Lot;

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

(l) Use and discharge of firearms, firecrackers and other fireworks; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(m) Dumping grass clippings, leaves, or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Project, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff, in accordance with all applicable laws, provided however, that Declarant may deposit and bury rocks, fill material and trees removed from a Lot on such Lot;

(n) Accumulating rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(o) Obstructing or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Association shall have such right; provided however, that the exercise of such right shall not materially diminish the value or unreasonably interfere with the use of any Lot without the Owner's consent;

(p) On-site storage of gasoline, heating oil, or other fuels, except that a reasonable amount of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to

any natural gas/propane tank authorized pursuant to Article V; provided however that any natural gas/propane tank installed shall not be visible from any roadway in the Project.

(q) With the exception of any Agricultural Uses, any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (ii) the business activity conforms to all zoning and legal requirements for the Project; (iii) the business activity does not involve door-to-door solicitation of residents of the Project; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Project which is noticeably greater than that which is typical of Lots in which no business activity is being conducted; and (v) the business activity is consistent with the character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

Notwithstanding the foregoing, the leasing of a Lot shall not be considered a business or trade within the meaning of this subsection (q). For purposes of this section, "leasing" is defined as regular, exclusive occupancy of a Lot by any Person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing, and shall require the Lessee to comply with the Declaration and Bylaws relating to use of the Lot. The Board may require a minimum lease term. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of the Declaration and Bylaws.

This subsection shall not apply to any activity conducted by Declarant with respect to Declarant's development and sale of the Project or its use of any Lots which it owns within Project;

(r) Capturing, trapping, or killing wildlife within the Project, except in circumstances posing an imminent threat to the safety of Persons using the Project;

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

(t) Converting any carport or garage to finished space for use as an apartment or other integral part of the living area on any Lot without prior approval pursuant to Article V;

(u) Operating motorized vehicles in any park maintained by the Association; and

(v) Constructing, erecting, placing, or modifying any thing, permanently or temporarily, on the outside portions of the Lot, whether such portion is improved or unimproved, except in strict compliance with the Design Guidelines. This shall include, without limitation, signs, basketball hoops, swing sets, and similar sports and play equipment, clotheslines, garbage cans, woodpiles, above-ground swimming pools, hedges, walls, dog runs, or fences of any kind.

Standard TV antennas and satellite dishes which are twenty four (24) inches in diameter or less shall be permitted at the Project. Such over-the-air reception devices shall comply with all Design Guidelines and other applicable provisions pertaining to the location and manner of installation; provided, such provisions do not unreasonably increase the costs of installation or unreasonably delay the installation of such devices. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of the Project, should any master system or systems be utilized by the Association and require such exterior apparatus.

3. Prohibited Conditions.

The following shall be prohibited at the Project:

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious or dangerous;

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

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Project, except that Declarant and the Association shall have the right to draw water from such sources.

EXHIBIT E
HILO HILLSIDE ESTATES
DESIGN GUIDELINES

(See attached)

**HILO HILLSIDE ESTATES
DESIGN GUIDELINES**

_____, 20____

1. **AUTHORITY**

The preparation and application of the Design Guidelines is accomplished under the authority of the Hilo Hillside Estates Declaration of Covenants, Conditions and Restrictions, dated _____, 20____, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. _____, as the same may be amended from time to time (the "**Declaration**"). Capitalized terms used herein but not defined shall have the same meanings as set for in the Declaration.

2. **PURPOSE; USAGE**

The Design Guidelines (the "**Guidelines**") for Hilo Hillside Estates (the "**Project**"), have been prepared to assist you in the development of a Dwelling and other Improvements within your Lot. The purpose of the Guidelines is to (a) insure the best and most appropriate development and improvement of each Lot; (b) protect the Owners of Lots against improper use and development of any other Lot which might depreciate the value of the Project as a whole; (c) preserve as far as practicable the natural beauty of each Lot and the Project as a whole; and (d) guard against the erection of structures which are poorly designed or proportioned, or structures built of improper or unsuitable materials.

The Guidelines shall apply to all construction, alteration, additions, grading, landscaping or removal of landscaping on any Lot at the Project. No structures or things shall be placed, erected, or installed upon the Lot, and no Improvements or other work shall take place within the Project, except in compliance with **Article V (Construction and Design Standards)** of the Declaration and the Guidelines; provided, however, that nothing in these Guidelines shall be construed as limiting Agricultural Uses as permitted under the State Land Use Law. Additionally, these Guidelines shall not apply to the activities of the Declarant and/or assignees of Declarant's interest under the Declaration, nor to activities of the Association during the **Class "B" Control Period**.

3. **AGRICULTURAL ZONING**

The Project is subject to various land use approvals, restrictions and conditions imposed by the County of Hawaii and the State of Hawaii, including without limitation, those restrictions set forth in Hawaii Revised Statutes Chapter 205 ("**State Land Use Law**"), and Hawaii County Code Chapter 25. Each Lot in the Hilo Hillside Estates ("**Project**") is within the State Land Use Agricultural District. Under the State Land Use Law any residences located within the Agricultural District must qualify as farm dwellings under the State Land Use Law. Farm dwellings include single-family dwellings located on and used in connection with a farm, or where agricultural activity provides income to the family occupying the dwelling. Nothing contained in the Declaration, the Design Guidelines, the Articles of Incorporation and Bylaws of the Hilo Hillside Estates Community Association, Inc., or any other rules or regulations shall prevent the use of a Lot for agricultural purposes. The County of Hawaii, as the enforcement and permitting agency of improvements built within the State Land Use Agricultural District, requires that an executed First Farm Dwelling Notice be submitted to the Planning Department with the Building Permit for the first dwelling developed on each Lot.

Prior to the commencement of any activity within the scope of these Guidelines, plans and/or specifications must be submitted to and approved by the Declarant or its designee, or upon the Declarant's delegation, the Design Review Committee as provided herein in Article 5, regarding Design Review Committee Organization (hereinafter collectively referred to herein as the "Reviewer"). The Reviewer may require the submission of additional information as may be reasonably necessary to fully evaluate any submission.

Review and approval of any Design Application is made on the basis of aesthetic considerations only. The Reviewer shall not bear any responsibility for insuring the structural integrity or soundness of approved construction or modifications, nor be responsible for ensuring compliance with building codes and other governmental requirements, nor the applicable codes or regulations of other entities holding authority over improvements within the Project. The Reviewer shall not be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on, or modifications to, any Dwelling or Improvement.

In the event of any conflict between the standards and restrictions set forth herein and any law, code, or ordinance, the more restrictive provision shall control. In the event of any conflict between the standards and restrictions set forth herein and the Declaration or other document made or created by the Declarant and applicable to the Project, the most recent document shall control.

4. SITE AND LANDSCAPE GUIDELINES

4.1 General Considerations

(a) Design Improvements

All Improvements shall be depicted in plans submitted by the Owner to the Reviewer for approval. A complete set of plans and specifications must be approved prior to the commencement of construction of any Improvement or grading; provided, however, that no approval shall be required for Agricultural Uses. Incomplete plans shall be rejected and the Owner notified in a timely manner that such plans are incomplete. The design review process shall not commence until a complete set of plans has been submitted for review and approval.

The construction of additional Dwellings or Ohana Dwellings is expressly prohibited. The construction of a guest house or other ancillary buildings is allowed subject to compliance with all applicable requirements of the Zoning Code, and provided that all applicable governmental approvals have been obtained and the plans for such structures have been approved by the Reviewer and the DRC, as applicable. All structures such as garages, barns, stables, gazebos, etc., are to be designed as integral parts or extensions of the Dwelling in terms of architecture, materials, and colors even if physically separated.

(b) Permissible Improvements

Each Lot shall contain no more than one Dwelling, in compliance with the State Land Use Law. It is expected that the design of each Dwelling and related Improvements will be tailored to the unique features of each individual Lot. To that end, Dwellings shall be constructed only within the Building Envelope for such Lot. Each Dwelling or other

Improvements should be sited so that important views are protected and natural drainage is not altered; provided, however, that nothing herein shall be construed as protecting any views within the Project. In addition, Declarant and/or the Association may, from time to time, in their sole discretion, change the location, configuration, size and elevation of Improvements, trees, and landscaping located on any Common Area.

(c) **Quality**

All Dwellings or other structures shall be constructed with new materials. Premium quality timber, recovered from an existing structure, re-milled and treated, may be regarded as new material. All exterior surfaces of structures and all exterior colors (with the exception of glass windows) shall be of earth-tone colors and shall be reviewed and approved by the Reviewer. All Dwellings and other structures shall exhibit the highest quality workmanship.

4.2 Lot Areas

Each Lot shall consist of the following areas:

(a) The Building Envelope where Dwellings and all related Improvements may be constructed;

(b) The Natural Area, which is that portion of a Lot that lies outside the Building Envelope and is to remain in an essentially natural condition, or may be used for Agricultural Uses; and,

(c) The Agricultural Lot Easement, which is that area of each Lot reserved for Agricultural Uses and consisting of no less than fifty-one percent (51%) of the Lot.

4.3 Grading and Drainage

No Owner shall alter the grade or topography of any Lot in a manner that would materially increase or change the location or direction of the flow of drainage from the Lot to any adjoining Lot or adjacent property, or to any road.

All grading shall be conducted in a manner that does not create erosion or loss of sod and topsoil. All Lots that have been graded or altered shall be re-grassed or landscaped in accordance with approved plans, unless being utilized for Agricultural Uses. Irrigation and watering of graded and re-grassed areas is required to be performed shortly after grading operations to maintain dust control.

No grass or topsoil may be transported into the Project without Reviewer approval (to maintain uniformity and to prevent the intrusion of foreign matter such as termites, undesirable seeds and chemicals); provided, however, that nothing herein shall restrict the Agricultural Uses of the Lots.

4.4 Car Parking

Each Lot shall provide parking for vehicles either under the main roof or in a separate garage. All garages shall have a garage door.

4.5 Fencing

Fencing shall be new and shall complement the Dwelling and the Project. Chain link fences are prohibited.

4.6 Vacant Lots

Vacant Lots shall be maintained in a manner consistent with the Community-Wide Standard.

4.7 Exterior Lighting

All exterior lights shall be approved by the Reviewer prior to installation. All exterior lighting, including the light sources and fixture reflectants, shall be designed, placed and constructed so that no portion of the lighting rays unreasonably encroach upon adjacent Lots. Outdoor recreational lighting, and wall-washing lighting on buildings and landscaping are discouraged. Sub-level lighting for swimming pools is permitted if not viewed from any other Lot or road. Temporary holiday or party lighting is exempted. If driveway lighting is installed, it shall consist of low-wattage fixtures and shielded to shine downward. Exterior security flood lighting shall be allowed only if connected to motion, heat or similar type sensor, or if normally left off and turned on only in response to an immediate and temporary concern.

4.8 Setbacks

All Improvements shall comply with applicable minimum set back requirements as specified under the Zoning Code.

4.9 Minimum Square Footage

All Dwellings shall have a minimum of 1,200 square feet of living area, excluding parking garages, carports, lanais, patios, porches and the like.

4.10 Building Height

The maximum building height for all structures and improvements placed or constructed on each Lot shall be the maximum height allowable under the Zoning Code. Such maximum height for a structure shall be measured from the pad height to the highest point of the structure's roof but exclusive of the structure's chimney. No Improvements shall be placed or constructed upon any Lot in excess of the maximum building height established by the benchmark elevation point which is set at above sea level. No chimney shall extend more than four (4) feet above the highest point of the roof of the Dwelling.

4.11 Termite Treatment

Soil under all Improvements shall be treated or protected against termites as required by the Hawaii County Building Code. Construction material shall be treated or protected against termites as required by the Hawaii County Building Code.

4.12 Utilities

All power, telephone or other utility lines (wire or conduit) shall be installed pursuant to all applicable laws, codes, or ordinances. Connections to utilities shall be designed in accordance with the Design Guidelines and overall design standards for the Project. The piping for all structures shall be concealed underground or within walls.

4.13 Waste Water Disposal

Each Lot shall be serviced by an individual wastewater system ("IWS") approved by the State of Hawaii Department of Health prior to occupancy of the Lot. All IWS, other sewage disposal fixtures or facilities and plumbing fixtures shall be fully screened from the view of other Lots and Project roadways in a form approved by the Reviewer.

4.14 Solar Water Heater Installation

No solar water heater shall be installed except the approved model and type on file with the Reviewer. In the event a more efficient unit is warranted, then the new unit shall conform to the color (housing and glass) and not exceed the height and low profile, or have piping in excess of the approved model and type. No solar water heater shall be installed on the ground or on any roof that is visible from the roadways, drivecourts and parks. Scaled drawings showing the proposed installation and location of the solar water heater system shall be submitted to the Reviewer for approval before any installation commences.

4.15 Skylight Installation

No skylight shall be installed except the approved model and type on file with the Reviewer. In the event a more efficient unit is warranted, then the new unit shall conform to the color (housing and glass) and not exceed the height and low profile, or have piping in excess of the approved model and type. No skylight shall be installed on the ground or on any roof that is visible from the roadways, drivecourts and parks. Scaled drawings showing the proposed installation and location of any skylights shall be submitted to the Reviewer for approval before any installation commences.

5. DESIGN REVIEW COMMITTEE ORGANIZATION

Initially, during the Project's development, the Declarant or its designee shall have authority to review and approve all proposed activities within the scope of these Guidelines as provided under Article V(Construction and Design Standards) of the Declaration. In reviewing and acting upon any request for approval, the Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. The Declarant's rights in this regard shall continue so long as Declarant owns any portion of the Project or any real

property adjacent to the Project, unless earlier terminated in a written instrument executed and Recorded by the Declarant.

The Declarant may from time to time delegate all or a portion of its reviewing authority to a Design Review Committee ("DRC") as provided in **Article V (Construction and Design Standards)** of the Declaration. Upon delegation by Declarant or upon expiration or termination of Declarant's rights thereunder, the Association, acting through the DRC shall assume jurisdiction over architectural matters.

The DRC shall be organized as follows:

5.1 Design Review Committee Membership

The DRC shall consist of five (5) members. Each member shall hold office until such time as the member resigns, has been removed or has had a successor appointed. .

5.2 Appointment of Members

All members shall initially be appointed by the Declarant on behalf of the Association. At such time as the Declarant no longer owns any Lots or property within the Project, all members shall be appointed by the Board. Members shall serve staggered two (2) year terms. There is no limit to the number of consecutive terms that can be served by any member.

5.3 Function of the DRC

It will be the duty of the DRC to consider and act upon such proposals or plans from time to time submitted to it in accordance with the design review procedures established by the Guidelines; to amend the Guidelines as deemed appropriate with the approval of the Board; and to perform any duties assigned to it by the Declarant, or the Board as set forth in this document and the Declaration.

5.4 Meetings

The DRC will meet monthly, or as needed, to properly perform its duties. The DRC's action on matters will be by a majority vote. Any action required to be taken by the DRC may be taken without a meeting if a consent in writing, setting forth the action so taken, will be signed by all members of the DRC. The DRC will keep and maintain a record of all actions it takes.

5.5 Amendment of Design Guidelines

Upon termination of the Declarant's rights to amend the Guidelines, the DRC may, from time to time, with the approval of the Board, amend the Guidelines. Each Owner is responsible for obtaining from the DRC a copy of the most recently revised Guidelines.

5.6 Non-Liability

Neither the Board, the DRC, any member thereof, nor the Declarant, or their respective successors or assigns, shall be liable to the Association or to any Owner or other person for the damage, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, or specifications, or (c) the development, or manner of development of any Property within the Project. Every Owner or other person who submits plans to the DRC for approval agrees by submission of such plans and specifications, that he will not bring any action or suit against the DRC, any member, the Association, the Board, or the Declarant to recover damages. Approval by the DRC, any member, or the Declarant shall not be deemed to be a representation or warranty that the Owner's plans or specifications or the actual construction of a Dwelling or other Improvement comply with applicable governmental ordinances or regulations, including but not limited to the Zoning Code and local building codes, and it shall be the sole responsibility of the Owner or other person submitting plans to the DRC or performing any construction on a Lot.

6. DESIGN REVIEW PROCEDURE

The purpose of the design review process set forth in the Design Guidelines is to ensure that all Improvements within the Project conform to and implement the purpose and intent of the Declaration and the design concepts and development standards and guidelines set forth herein. A Design Application must be approved by the Reviewer prior to the construction of any Improvement (including staking, clearing, excavation, grading and other site work, exterior alterations of existing Improvements, or planting or removal of landscaping) on a Lot. The design review process shall take place in four (4) steps: (i) a Pre-Design Conference; (ii) a Preliminary Design Review; (iii) a Final Design Review; and (iv) a Construction Monitoring.

6.1 Pre-Design Conference

Prior to the submission of any formal materials for review, the Owner and/or Owner's consultant(s) (as used in this **Section 6 (Design Review Procedure)**, the "Applicant") shall request a preliminary conference with the Reviewer (the "Pre-Design Conference"). Within fourteen (14) working days of such request, the Reviewer shall hold the Pre-Design Conference, wherein the Applicant shall meet with the Reviewer in person or by teleconference to answer any questions the Applicant may have with respect to the Guidelines and Applicant's proposed construction.

6.2 Preliminary Design Review

Following the Pre-Design Conference, the Applicant shall submit preliminary Design Application materials no later than seven (7) working days prior to the next scheduled meeting of the Reviewer. The preliminary Design Application materials shall include, without limitation, the following:

- (a) Site plans indicating Lot elevation and building height.

- (b) Floor plans indicating floor area.
- (c) Elevations and sections sufficient to demonstrate the design intent and impact (three dimensional illustrations are desirable, but not required).
- (d) Structural design.
- (e) Schedule of materials, finishes and colors, including roof, walls, trim, etc.
- (f) Location of all outbuildings, lanais, terraces, trellis structures, appurtenances and other Improvements.

The Reviewer shall provide written comments to the Applicant within twelve (12) working days of submission of the preliminary Design Application materials, subject, however, to the Declarant's veto right pursuant to **Section 5.4(b)** of the Declaration. The comments of the Reviewer on the preliminary Design Application shall be advisory only, and shall not be binding upon either the Applicant or the Reviewer.

A second review meeting may be necessary to review corrected and/or new materials. Corrected materials will be provided to the Reviewer a minimum of five (5) working days prior to the next regularly scheduled meeting of the Reviewer. If a second review meeting is necessary to review corrected and/or new materials, the Applicant shall submit such corrected and/or new materials five (5) working days prior to the next regularly scheduled meeting of the Reviewer.

The Reviewer shall either approve or disapprove the Applicant's preliminary Design Application within twelve (12) working days from the submission of the Applicant's last submitted Design Application materials, subject, however, to the Declarant's veto right pursuant to **Section 5.4(b)** of the Declaration. If approved, the Reviewer shall set a time for the next scheduled meeting of the Reviewer and the Applicant.

6.3 Final Design Review

Applicant shall submit final Design Application materials within one (1) year of preliminary design approval, and within seven (7) working days prior to the next scheduled meeting with the Reviewer. The final Design Application shall provide all information necessary to reflect the design of the proposed building(s), landscape or other features requiring the approval of the Reviewer. The final Design Application materials shall generally conform to the Design Application approved at the Preliminary Design Review.

Upon receipt of the required documents, the Reviewer shall notify the Applicant of the scheduled meeting date to review the final Design Application materials. The Reviewer will review and comment on the final Design Application at the meeting, allow time for discussion with the Applicant, and subsequently provide the Applicant with approval or conclusive recommendations in writing for refinements to the final Design Application within twelve (12) working days, subject, however, to the Declarant's veto right pursuant to **Section 5.4(b)** of the Declaration.

If a second review meeting is deemed necessary by the Reviewer, the Applicant shall submit whatever additional materials requested by the Reviewer no later than five (5) working days prior to the next scheduled meeting between Reviewer and Applicant.

The Reviewer shall approve or disapprove the final Design Application within twelve (12) working days of the last meeting between the Reviewer and the Applicant, subject, however, to the Declarant's veto right pursuant to Section 5.4(b) of the Declaration. The Reviewer's disapproval shall be in writing and shall provide a written statement of the basis for such disapproval.

The Reviewer will make a reasonable effort to comply with the design review schedule. However, the Reviewer shall not be liable for any delays that are caused by circumstances beyond their control.

6.4 Construction Monitoring

The Applicant shall apply for all applicable building permits and/or other approvals from the County of Hawaii after receiving approval of its final Design Application from the Reviewer. Any adjustments to Reviewer-approved plans required by the County of Hawaii must be resubmitted to the Reviewer for review and approval prior to the commencement of construction.

Any subsequent construction or other changes that differ from the approved final Design Application materials must be submitted in writing to the Reviewer for review and approval.

The Reviewer shall issue a Notice of Completion within seven (7) working days of observation.

6.5 Resubmittal of Plans

In the event that the final Design Application is not approved by the Reviewer, the Applicant shall follow the same procedures for any resubmission as for original submittals. An additional design review fee must accompany each resubmission as required by the Reviewer.

7. CONSTRUCTION

7.1 Commencement of Construction

Upon receipt of final approval from the Reviewer, the Owner may proceed with the commencement of construction. If the Owner fails to commence construction within one (1) year from the date of final design approval, the approval shall be deemed withdrawn and it shall be necessary for the Owner to resubmit for approval before commencing any activities; provided, however, that an extension may be allowed by the Reviewer upon written application by the Owner.

The Owner shall complete all Improvements within sixty (60) months of commencing construction. A maximum of two (2) 12-month time extensions may be allowed by the Reviewer upon written application by the Owner.

7.2 Work in Progress

The Reviewer may enter upon Lots for which construction has been approved and inspect all work in progress and give notice to the Owner of non-compliance. Absence of such inspection and notification during the construction period does not constitute either approval of the Reviewer of work in progress or compliance with the Guidelines or the Declarations.

7.3 Notice to Comply

When as a result of a construction observation, the Reviewer finds changes or alterations that have not been approved, the Reviewer will issue a Notice to Comply within three (3) working days of the observation. The Reviewer will describe the specific instances of non-compliance and will require the Owner to comply or resolve the discrepancies.

7.4 Final Review

Upon completion of construction, the Owner shall give written notice to the Reviewer. The Reviewer will make a final observation of the property within seven (7) business days of the notification. Within seven (7) business days of the final observation, the Reviewer will either issue in writing (i) a Notice of Completion; or (ii) a notice of non-compliance stating that construction has not been performed in substantial compliance with the approved final plans and listing any items of non-compliance the Owner will be required to remedy.

If the Owner fails to correct all items of non-compliance within sixty (60) days following the date of the mailing of the notification of non-compliance, the Reviewer shall notify the Association of such failure, and the Association, at its option, shall have the right to remedy the non-compliance or remove the non-conforming Improvement, and the Owner shall reimburse the Association for all expenses incurred in connection therewith, including all attorney's fees.

If the Reviewer does not notify the Owner of any items of non-compliance within sixty (60) days after receipt of a complete notice from the Owner, the Improvements shall be deemed to be in accordance with the Guidelines and the Declaration.

7.5 Insurance for Construction

Prior to the commencement of construction of any Improvements, the Owner and/or the Owner's general contractor, shall secure and maintain adequate public liability, builder's risk insurance, and performance and payment bonds with face amounts equal to at least one hundred percent (100%) of the cost of construction, and the Owner shall be named as an additional insured on such policies. A copy of the policy or certificate thereof shall be delivered to the Declarant and the Reviewer.

8. CONSTRUCTION REGULATIONS

The following Construction Regulations shall be enforced during the construction of all Improvements, and all Owners, contractors and their respective agents, employees and subcontractors shall be bound by these regulations as well as all applicable governmental regulations. All Owners will be responsible for the conduct and behavior of their agents, representatives, contractors, and subcontractors with respect to the construction of Improvements.

8.1 Debris and Trash Removal

Trash and debris shall be removed from each construction site to a dumping site not located within the Project. Owners and contractors are prohibited from dumping, burying or burning trash anywhere on a Lot or within the Project. Lightweight material, packaging, and other 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 the Project and before leaving the construction site.

Dirt, mud, debris or concrete resulting from any construction activity shall be promptly removed from roads and driveways or other portions of the Project.

Any clean-up costs incurred by the Association in enforcing these requirements will be billed to and shall be paid by the Owner.

8.2 Dust Control

The Owner will be responsible for clean-up of any construction generated dirt and debris, including cleaning of dwellings downwind from the construction site.

8.3 Sanitary Facilities

Each Owner and contractor shall provide adequate sanitary facilities for their construction workers. These temporary facilities shall be maintained regularly to prevent obnoxious odors or unsightly appearance.

8.4 Access, Traffic, Parking

Construction crews shall not park on, or otherwise use, common roads or shoulders, or Lots non currently under construction by such crews. Private and construction vehicles and machinery shall be parked only in such areas and in such a manner that is not damaging to existing vegetation on, or adjacent to, the Lot. The Reviewer may institute parking restrictions in certain areas in connection with the construction of Improvements.

All construction personnel must observe speed limits and other traffic controls.

All heavy tracked equipment shall be hauled to the construction site on trailers, and not "walked" across pavement.

Any damage or ruts to road, shoulders, or infrastructure shall be repaired to the satisfaction of the Association and billed to the Owner.

8.5 Excavation Materials

Excess excavation materials shall be hauled away from the Lot.

8.6 Restoration or Repair of Other Property Damaged

Damage and scarring to other Lots or Improvements shall be repaired and/or restored promptly at the expense of the person causing the damage or by the Owner of the Lot for whose benefit the work which caused the damage was undertaken.

8.7 Noise

The Owner and contractor shall make every effort to keep noise to a minimum.

8.8 Daily Operation

Daily working hours for each construction site shall be 30 minutes after sunrise and 30 minutes after sunset Monday through Saturday. No work is permitted on Sundays and major holidays, including Thanksgiving Day, Christmas Day and New Years Day.

8.9 Non Waiver

The approval by the Reviewer of any plans, drawings, or specifications, or other submittal for any work done or proposed, or in connection with any other matter requiring the approval of the Reviewer under the Guidelines or the Declaration, including a waiver by the Reviewer, shall not be deemed to constitute precedent, or the waiver of any right to withhold approval as to any similar plan, drawing, specification, or matter whenever subsequently or additionally submitted for approval. It is understood that the person reviewing submissions will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Guidelines may vary accordingly. Approval of submissions or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver on the rights to withhold approval as to any similar submissions, plans, or other matters subsequently or additionally submitted for approval.

8.10 Right of Waiver

The Reviewer reserves the right to waive or vary any of the procedures or standards set forth herein at its discretion, for good cause shown.

8.11 Enforcement

The Association shall have the right to remove any Improvement constructed, reconstructed, refinished, altered or maintained in violation hereof and the Owner shall reimburse the Association for all expenses incurred in connection therewith, including all attorneys' fees.

8.12 Variances to Design Guidelines

The Reviewer may authorize variances from compliance with any of its guidelines, and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to the Guidelines; or (c) estopp the Reviewer from denying a variance in other circumstances. Inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

9. APPLICATION FEES

In order to defray the expense of reviewing plans, monitoring construction and related data, and to compensate consulting architects and other professionals, the DRC shall assess an application fee which shall be payable by the Owner upon the submittal of the Owner's application for a Pre-Design Conference. The application fee shall be established on annual basis by the DRC. Owners should obtain the current application fee from the DRC.

Fees for resubmittals shall be established by the DRC on a case by case basis.

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