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Castle & Cooke Land Company
for Castle & Cooke Waikoloa, LLC
P. O. Box 898900
Mililani, HI 96789-8900
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DECLARATION OF CONDOMINIUM PROPERTY REGIME

OF

MAKANA KAI AT WEHILANI - PHASE I

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WHEREAS, CASTLE & COOKE WAIKOLOA, LLC, a Hawaii limited liability company, whose principal place of business is 100 Kahelu Avenue, 2nd Floor, Mililani, Hawaii 96789, and whose post office address is P. O. Box 898900, Mililani, Hawaii 96789, hereinafter referred to as the "Developer", is the owner in fee simple of certain real property situated at South Kohala, Island and County of Hawaii, State of Hawaii, hereinafter referred to as the "Land", as more particularly described in Exhibit "A" attached hereto and hereby made a part hereof; and

WHEREAS, Developer intends to improve the Land by constructing thereon certain improvements in accordance with plans and specifications therefor filed in the Bureau of Conveyances of the State of Hawaii as Condominium File Plan 4294 hereinafter referred to as the "Condominium Map", which Condominium Map is hereby incorporated herein by reference;

NOW, THEREFORE, in order to create a condominium project consisting of said Land and the improvements constructed or to be constructed thereon (hereinafter called the "Project"), the Developer hereby submits said property and all of its interests therein to a Condominium Property Regime established by the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended, and any successor statute, as amended, hereinafter sometimes referred to as the "Condominium Property Act", and in furtherance thereof makes the following declarations as to divisions, limitations, restrictions, covenants and conditions, and hereby declares and agrees that said property is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, restrictions and conditions set forth herein and in the By-Laws of the Association of Unit Owners of Makana Kai at Wehilani - Phase I (hereinafter referred to as the "By-Laws") recorded in the Bureau of Conveyances of the State of Hawaii concurrently herewith, as the same may be amended from time to time, which declarations, restrictions, and conditions shall constitute covenants running with the land and shall be binding on and for the benefit of the Developer and its successors and assigns, and all subsequent owners, lessees and sublessees of all or any part of the Project and their respective heirs, devisees, personal representatives, successors and assigns:

A. NAME OF PROJECT. The Condominium Property Regime established hereby shall be known as "MAKANA KAI AT WEHILANI - PHASE I".

B. DESCRIPTION OF LAND. All of the Land described in Exhibit "A" attached hereto is hereby submitted to the Condominium Property Regime.

C. DESCRIPTION OF BUILDINGS. There will be constructed on the Land, twenty (20) separate 2-story residential buildings, without basements, designated as Buildings 1 to 6, inclusive, and 25 to 38, inclusive, as shown on the Condominium Map. Buildings 1 through 6, inclusive, 25, 26, 27, 29, 30, 31, 33, 35, 36 and 38 each will

contain four (4) residential units. Buildings 28, 32, 34 and 37 each will contain seven (7) residential units. The units will be located in the buildings as set forth in Exhibit "B" attached hereto and hereby made a part hereof.

The buildings will be constructed primarily of wood and galvanized light gauge steel, but will also contain gypsum board, composition siding, asphalt shingles, glass and other allied construction materials.

In addition to the buildings, the Project will contain two hundred seventeen (217) regular size, uncovered parking stalls (twenty-five (25) of which are guest parking stalls and eight (8) of which are appurtenant to one or more units in a condominium project in the vicinity of the Project).

D. DIVISION OF PROJECT. The Project is hereby divided into the following separate freehold estates:

1. Units. Ninety-two (92) separate freehold estates are hereby established in the spaces within the perimeter walls, floors and ceilings of each of the ninety-two (92) units in the Project, as shown on the Condominium Map.

The ninety-two (92) units in the Project are identified by unit number and unit type on the Condominium Map and are located in the Project as shown on the Condominium Map. There are eight (8) one bedroom/one bath units, twenty (20) two bedroom/two bath units, twenty-six (26) two bedroom/two and one-half bath units, and thirty-eight (38) three bedroom/two and one-half bath units in the Project. The floor plans of each of the units are as shown on the Condominium Map. Subject to the provisions of Section R of this Declaration, the units are described as follows:

Each Type 1 and Type 1R unit will have two (2) bedrooms, two and one-half (2½) bathrooms, a living/dining room, a kitchen, a laundry and a lanai.

Each Type 2 and Type 2R unit will have three (3) bedrooms, two and one-half (2½) bathrooms, a living/dining room, a kitchen, a laundry and a lanai.

Each Type 3 and Type 3R unit will have two (2) bedrooms, two (2) bathrooms, a living/dining room, a kitchen, a laundry and a lanai.

Each Type 3A and Type 3AR unit will have two (2) bedrooms, two (2) bathrooms, a living/dining room, a kitchen, a laundry and a balcony.

Each Type 4 and Type 4R unit will have two (2) bedrooms, two (2) bathrooms, a living/dining room, a kitchen, a laundry and two (2) lanais.

Each Type 5 and Type 5R unit will have one (1) bedroom, one (1) bathroom, a living/dining room and a kitchen.

Subject to the provisions of Section R of this Declaration, each unit will have the number of rooms and approximate net living floor area in square feet (exclusive of laundries, lanais and balconies), approximate net laundry floor area, approximate net lanai floor area, and approximate net balcony floor area in square feet, as set forth in Exhibit "B" attached hereto.

The approximate net living floor areas set forth in Exhibit "B" are based on measurements taken from the interior surface of all perimeter walls, except that no reduction is made to account for interior walls, ducts, vents, shafts, stairways and the like located within the perimeter walls. The approximate net laundry floor areas set forth in Exhibit "B" are based on measurements taken from the interior surface of all perimeter walls which do not separate the interior of the units from the laundries, from the exterior surface of all perimeter walls which separate the interior of the units from the laundries, and from the interior edge of the laundry doors, walls or other exterior boundaries of the laundries. The approximate net lanai floor areas set forth in Exhibit "B" are based on measurements taken from the interior surface of all perimeter walls which do not separate the interior of the units from the lanais, from the exterior surface of all perimeter walls which separate the interior of the units from the lanais, and from the interior edge of the railings, walls or other exterior boundaries of the lanais. The approximate net balcony floor areas set forth in Exhibit "B" are based on measurements taken from the interior surface of all perimeter walls which do not separate the interior of the units from the balconies, from the exterior surface of all perimeter walls which separate the interior of the units from the balconies, and from the interior edge of the railings, walls or other exterior boundaries of the balconies. All floor areas set forth in Exhibit "B" are not exact but are approximations based on the floor plans of each type of unit. All floor areas set forth in Exhibit "B" have also been rounded to the next lowest full square foot where the approximation of such floor areas exceed a square foot by any fraction of a square foot.

The measurements set forth in Exhibit "B" do not follow the designation of the limits of the units (the legally designated areas of the units) set forth below and the floor areas set forth in Exhibit "B" may be greater than the floor areas of the units as so designated and described below.

Each of the units will have immediate access to the walkways, stairways, roadways and/or other common areas of the Project and to the public roads.

Notwithstanding the floor areas set forth in Exhibit "B" and the manner in which such floor areas are measured, the respective units shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls or interior load-bearing walls or partitions, the foundations, columns, girders, beams, footings, floor slabs,

supports, roofs and ceilings located within or at the perimeter of or surrounding such unit, any pipes, cables, conduits, chutes, flues, ducts, wires, vents, shafts, other utility or service lines or any other fixture running through or otherwise located within such unit which are utilized for or serve more than one unit, all of which are deemed common elements as hereinafter provided. Each unit shall be deemed to include all of the walls and partitions which are not load-bearing and which are within its perimeter walls; the inner decorated or finished surfaces of all walls, floors and ceilings; all windows, window frames, louvers (if any), shutters (if any), doors and door frames along the perimeter of the unit; the laundry, if any; the lanai(s), if any; the balcony, if any; and all of the fixtures and appliances originally installed therein.

Should the descriptions and divisions set forth in this Declaration conflict with the depictions and divisions shown on the Condominium Map, the Condominium Map shall control. The Condominium Map, however, is intended to show only the layout, location, unit numbers and dimensions of the units and elevations of the buildings and is not intended and shall not be deemed to contain or make any other representation or warranty.

2. Common Elements. One freehold estate is hereby designated in all remaining portions of the Project, being described and referred to herein as "common elements", including specifically, but not limited to:

(a) Said Land in fee simple;

(b) All foundations, columns, girders, beams, footings, floor slabs, supports, unfinished perimeter, party and load-bearing walls and partitions, roofs, stairways, walkways, corridors, ramps, fences (if any), entrances, entryways and exits of all buildings of the Project;

(c) All walkways, roadways, sidewalks, perimeter walls, retaining walls, fences (if any), gates, yard areas, driveways, parking areas, loading zones, yards, grounds, landscaping, trash enclosures, mail kiosks and mailboxes;

(d) Those portions of any pipes, cables, conduits, chutes, flues, ducts, wires, vents, shafts, other utility or service lines or any other fixtures, sewage treatment equipment and facilities (if any), electrical equipment, electrical closets, communications rooms, or other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one unit for services such as power, light, gas (if any), sewer, water, telephone and television signal distribution (if any);

(e) The two hundred seventeen (217) regular size, uncovered parking stalls (twenty-five (25) of which are guest parking stalls, and eight (8) of which are appurtenant to one or more units in a condominium project in the vicinity of the Project), all as shown on the Condominium Map;

(f) The Recreation Pavilion;

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

(h) The limited common elements described in Paragraph 3 of Section D hereinbelow.

3. Limited Common Elements. Certain parts of the common elements, herein called and designated "limited common elements", are hereby set aside and reserved for the exclusive use of certain units, and such units shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements so set aside and reserved are as follows:

(a) Each of the parking stalls, other than the parking stalls designated on the Condominium Map as guest parking stalls or the parking stalls which are appurtenant to one or more units in a condominium project in the vicinity of the Project, shall be a limited common element appurtenant to and reserved for the exclusive use of the unit to which it is assigned, as set forth in Exhibit "B" attached hereto;

(b) Each of the yard areas within the Project, designated on the Condominium Map as Yard Areas Y-101, Y-102, Y-103, Y-104, Y-201, Y-202, Y-203, Y-204, Y-301, Y-302, Y-303, Y-304, Y-401, Y-402, Y-403, Y-404, Y-501, Y-502, Y-503, Y-504, Y-601, Y-602, Y-603, Y-604, Y-2501, Y-2502, Y-2503, Y-2504, Y-2601, Y-2602, Y-2603, Y-2604, Y-2701, Y-2702, Y-2703, Y-2704, Y-2901, Y-2902, Y-2903, Y-2904, Y-3001, Y-3002, Y-3003, Y-3004, Y-3101, Y-3102, Y-3103, Y-3104, Y-3301, Y-3302, Y-3303, Y-3304, Y-3501, Y-3502, Y-3503, Y-3504, Y-3601, Y-3602, Y-3603, Y-3604, Y-3801, Y-3802, Y-3803, Y-3804, as shown on the Condominium Map, shall be a limited common element appurtenant to and reserved for the exclusive use of the unit to which it is assigned, as set forth in Exhibit "B" attached hereto;

(c) With respect to any pipe, cable, conduit, chute, flue, duct, wire, vent, shaft or other utility, service line and any other fixture which lies partially within and partially outside of a unit, those portions thereof

serving only that unit shall be a limited common element appurtenant to and reserved for the exclusive use of such unit;

(d) Any walkway, stairway, entrance, exit, or steps which would normally be used only for the purposes of ingress to and egress from a specific unit or units shall be a limited common element appurtenant to and reserved for the exclusive use of such unit or units;

(e) Any mailbox assigned to a unit by the Developer or the Association of Unit Owners of the Project shall be a limited common element appurtenant to and reserved for the exclusive use of such unit.

E. COMMON INTEREST. Except as otherwise provided in Section S or in any other section of this Declaration, each unit shall have appurtenant thereto an undivided percentage interest in the common elements of the Project, hereinafter referred to as the "common interest", and the same proportionate share in all common profits and expenses of the Project and for all other purposes, including voting, as set forth in Exhibit "B" attached hereto. The percentages of common interests appurtenant to the various units in the Project were determined by dividing the net living floor area of the respective units, as provided in Exhibit "B" attached hereto, by the total net living floor area of all units in the Project and then translating each quotient into its percentage equivalent. Slight adjustments were then made in the percentages assigned to certain of the units so as to yield percentage interests totaling 100%.

F. EASEMENTS. In addition to any easements described in Exhibit "A" attached hereto and to the exclusive easements established in the limited common elements, the units and common elements shall also have and be subject to the following easements:

1. Each unit shall have appurtenant thereto nonexclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for and support, maintenance and repair of such unit; in the other common elements for use according to their respective purposes; and in all other units and common elements of the building in which it is located or any adjacent buildings for support.

2. If any part of the common elements now or hereafter encroaches upon any unit or limited common element, or if any unit now or hereafter encroaches upon any other unit or upon any portion of the common elements, a valid easement for such encroachment and the maintenance thereof shall and does exist so long as such encroachment continues. In the event the buildings of the Project shall be partially or totally destroyed and then rebuilt, minor encroachments of any parts of the common elements or of any unit due to such construction shall be permitted and valid easements

for such encroachments and the maintenance thereof shall exist for so long as such encroachment exists.

3. The Association of Unit Owners of the Project shall have the irrevocable right, to be exercised by its Board of Directors or the Managing Agent, to have access to each unit and/or the limited common elements from time to time during reasonable hours as may be necessary for the operation of the Project, for making emergency repairs therein necessary to prevent damage to any units or common elements or for the inspection, installation, repair, maintenance or replacement of any common elements.

4. The Association of Unit Owners of the Project shall have the right, exercisable by its Board of Directors, to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the common elements of the Project for any reasonable purpose, which may include, but shall not be limited to, those purposes which are necessary to the operation, care, upkeep, maintenance or repair of any unit, the common elements or any easements for utilities or for any public purpose.

5. The Association of Unit Owners of the Project shall have the right, exercisable by its Board of Directors, to transfer, cancel, relocate and otherwise deal with any easement over, under, across or through any lands adjacent to the Project, which may be appurtenant to the Land of the Project, for any reasonable purpose, which may include, but shall not be limited to, any of the same purposes set forth in Paragraph 4 of this section or for the reason that any owner of any such lands adjacent to the Project exercises any right to require the relocation of any such easement.

6. Until December 31, 2012, the Developer shall have the right to conduct extensive sales activities utilizing the common elements and any unit(s) still owned by the Developer, including the use of model units, sales and management offices, and extensive sales displays, signage and activities.

7. Until December 31, 2012, the Developer, its agents, employees, contractors, licensees, successors and assigns shall have a nonexclusive easement over the common elements of the Project, as may be reasonably necessary for the completion of any improvements to and correction of defects and other punchlist items in the common elements.

8. The Developer, its successors and assigns shall have the right to transfer, cancel, relocate and otherwise deal with any easement over, under, across, along, upon and through any lands adjacent to or in the vicinity of the Project, which would be or may be appurtenant to the Land, for electrical, gas, telephone, cable television,

communications and other utility purposes, and for sanitary sewer, drainage and drainline, waterline, and flowage purposes.

9. The Developer, its successors and assigns shall have a nonexclusive easement for access and utility purposes over, under, across, along, upon and through the roadways which are included in the common elements of the Project, including, without limitation Easement A-1 as shown on File Plan No. 2427; together with the right to grant to the owner or owners from time to time of all or any portion of the land described in Exhibit "C", the owner or owners of land in the vicinity of the Project and/or any public or private utility or other corporation, partnership, individual or entity, easements for such access and utility purposes over, under, across, along, upon and through the roadways which are included in the common elements of the Project, including, without limitation Easement A-1 as shown on File Plan No. 2427.

10. The Developer, its successors and assigns shall have a nonexclusive easement for access purposes over, under, across, along, upon and through Easements A-3 and A-4 as shown on File Plan No. 2427; together with the right to grant to the owner or owners from time to time of all or any portion of the land described in Exhibit "C", the owner or owners of land in the vicinity of the Project and/or any public or private utility or other corporation, partnership, individual or entity, easements for such access purposes over, under, across, along, upon and through Easements A-3 and A-4 as shown on File Plan No. 2427.

11. The Developer, its successors and assigns shall have a nonexclusive easement for recreation and mailbox purposes over and upon Easement PM-1 as shown on File Plan No. 2427; together with rights of reasonable access thereto in connection with the exercise of said easement rights; together also with the right to grant to the owner or owners from time to time of all or any portion of the land described in Exhibit "C" and/or any corporation, partnership, individual or entity, easements for such recreation and mailbox purposes over and upon Easement PM-1 as shown on File Plan No. 2427.

12. The Developer, its successors and assigns shall have an easement for parking purposes over and upon Easements P-1, P-2 and P-3 as shown on File Plan No. 2427; together with rights of reasonable access thereto in connection with the exercise of said easement rights; together also with the right to grant to the owner or owners from time to time of all or any portion of the land described in Exhibit "C" and/or any corporation, partnership, individual or entity, easements for such parking purposes over and upon Easements P-1, P-2 and P-3 as shown on File Plan No. 2427.

13. The Developer, its successors and assigns shall have nonexclusive easements for electrical, gas, telephone, cable television, communications and other utility purposes, easements for sanitary sewer, drainage and drainline, waterline, and

flowage purposes, and easements for planting screen purposes, over, under, across, along, upon and through the Land, including but not limited to any and all Easements shown on File Plan No. 2427, together with the right to designate easements for the aforesaid purposes, if necessary or desirable, subject to the reasonable consent of the Association of Unit Owners as to location, and together also with rights of reasonable access thereto in connection with the exercise of said easement rights, and to grant to the owner or owners from time to time of all or any portion of the land described in Exhibit "C", the owner or owners of land in the vicinity of the Project, the State of Hawaii, the County of Hawaii, Hawaii Electric Light Company, Inc., Hawaiian Telcom, Inc., West Hawaii Water Company, West Hawaii Sewer Company, Waikoloa Village Association, any other appropriate governmental agency, and/or any other public or private utility or other corporation, partnership, individual or entity, easements for the purpose of providing such services over, under, across, along, upon and through the Land under the usual terms and conditions required by the grantee of such easement rights, and together also with the right to also delete or cancel designated or granted easements that are not required or no longer serve the aforesaid purposes; provided, however, that such easement rights must be exercised in such manner as to not unreasonably interfere with the use of the Land by the unit owners and those claiming by, through or under the unit owners, and in connection with the installation, maintenance or repair of any facilities pursuant to any of said easements the Land shall be promptly restored by and at the expense of the person owning and exercising such easement rights to substantially the condition of the Land immediately prior to the exercise thereof; and the acceptance or acquisition by any party of any interest in the Project shall constitute an undertaking and agreement by such party (a) to join in and execute, upon request, any and all documents designating and/or granting any such easements, and (b) to perform and carry out at such party's expense, or to cause the Association of Unit Owners to perform and carry out as a common expense, any obligation in any such grant of easement rights, or in any grant of easement specifically referred to in this Declaration, any obligation with respect to providing and maintaining any screening or landscaping or similar requirement as to facilities within the Land which may now or hereafter be required by law, ordinance or governmental agency.

G. ALTERATION AND TRANSFER OF INTERESTS. Except as otherwise provided in Section S or in any other section of this Declaration, the common interest and easements appurtenant to each unit shall have a permanent character, shall not be altered without the consent of all owners of units affected thereby as expressed in an amendment to this Declaration duly recorded in the Bureau of Conveyances of the State of Hawaii, shall not be separated from the unit to which they appertain, and shall be deemed to be conveyed, leased or encumbered with such unit even though not expressly mentioned or described in the conveyance or other instrument. The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by said Condominium Property Act.

H. PURPOSES AND RESTRICTIONS AS TO USE.

1. Each unit shall be occupied and used for residential purposes only. If a unit owner rents his unit to any third party, the unit owner shall provide each tenant with a copy of this Declaration, the By-Laws and the Rules and Regulations. An owner who rents his unit shall at all times remain primarily and severally liable to all other unit owners and to the Association for any failure on the part of such owner's tenant(s) to observe and comply with all provisions of this Declaration, the By-Laws, the Rules and Regulations and all other applicable laws. Notwithstanding any other provision contained in this Declaration or the By-Laws to the contrary, no unit shall be used for bed and breakfast establishment purposes, boarding facilities, rooming or lodging houses, group living facilities, the promotion or sale of timeshare, fractional ownership, exchange (whether the program is based on direct exchange of occupancy rights, cash payments, reward programs or other point or accrual systems) or other membership programs, plans or arrangements through which a participant in the program, plan or arrangement acquires an ownership interest in the unit with attendant rights of periodic use and occupancy or acquires contract rights to such periodic use and occupancy of the unit or acquires contract rights to a portfolio of accommodations including the unit (an "Occupancy Plan"), or for the operation of any business that directly or indirectly promotes the sale of an Occupancy Plan. Other than the foregoing restrictions (including restrictions contained in the condominium unit deed conveying a unit), the owners of the respective units shall have the right to lease the same, provided that such lease is in writing and for a term of not less than thirty (30) days, is in accordance with the terms and provisions of the Waikoloa Village Covenants (as hereinafter defined) and all applicable laws, and is expressly made subject to the covenants and restrictions contained in this Declaration, the By-Laws and the Rules and Regulations.

2. The Association of Unit Owners of the Project and any unit owner shall not suffer anything to be done or kept in his unit or elsewhere in the Project which will (a) jeopardize the soundness or safety of the Project, reduce the value thereof, or impair any easement, as reasonably determined by the Board, (b) interfere with or otherwise unreasonably disturb the rights of other owners and occupants, (c) obstruct any walkway, stairway or corridor of any building, or (d) increase the rate of property insurance on any building or the contents thereof.

3. Except as otherwise expressly provided in Section R of this Declaration, a unit owner shall not, without the prior written consent of the Board of Directors of the Association, make any structural alteration in or additions to the unit, make any interior alterations in or additions to the unit visible from the exterior of the unit, or make any alterations in or additions to the exterior of the unit or to any other portion or portions of the common elements.

4. Notwithstanding anything contained hereinabove to the contrary, the Developer shall have the right to conduct extensive sales activities at and in the Project, including the use of model units, sales and management offices, and extensive sales displays, signage and activities as set forth in Paragraph 6 of Section F of this Declaration.

5. As to all units located on the second floor of the residential buildings (the "Second Floor Units"), hard floor surfaces shall be limited to the areas of the entry foyer, the kitchen and the bathroom, as provided in the original construction of the respective units. The owners of the Second Floor Units shall be required to utilize continuous carpet and pad over all other floor surfaces of such units, or to utilize such other flooring materials and/or systems which meet the acoustic standards of an Acoustic Impact Isolation Class of IIC 45 or better (ASTM Designation E492).

6. Notwithstanding anything to the contrary contained in this Declaration, the By-Laws or the Rules and Regulations, owners with disabilities shall be allowed reasonable exemptions from this Declaration, the By-Laws and the Rules and Regulations, when necessary to enable them to use and enjoy their units and the common elements, provided that any owner with a disability desiring such an exemption shall make such request, in writing, to the Board. The request shall set forth, with specificity and in detail, the nature of the request and the reason that the requesting party needs to be granted such an exemption. The Board shall not unreasonably withhold or delay its consent to such request, and any such request shall be deemed to be granted if not denied in writing, within forty-five (45) days of the Board's receipt thereof, or within forty-five (45) days of the Board's receipt of additional information reasonably required by the Board in order to consider such request, whichever shall last occur.

I. ADMINISTRATION OF PROJECT. Administration of the Project shall be vested in its Association of Unit Owners, herein called the "Association", consisting of all unit owners of the Project, in accordance with the By-Laws of the Association. Operation of the Project and maintenance, repair, replacement and restoration of the units, common elements, and any additions and alterations thereto, shall be in accordance with the provisions of said Condominium Property Act, this Declaration and the By-Laws, and specifically but without limitation the Association shall:

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

2. Keep all common elements of the Project in a strictly clean and sanitary condition, and observe and perform all laws, ordinances, rules and regulations

now or hereafter made by any governmental authority for the time being applicable to the Project or the use thereof; provided, however, that unless otherwise specifically provided in Paragraph 4 of this Section I, the owner of each unit shall be primarily responsible to keep such unit and the yard area, if any, appurtenant to such unit in such clean and sanitary condition.

3. Well and substantially repair, maintain, amend and keep all common elements of the Project, the lanais and the balconies with all necessary reparations and amendments whatsoever in good order and condition, except as otherwise provided herein; provided, however, that unless otherwise specifically provided in Paragraph 4 of this Section I, the owner of each unit shall be primarily responsible to well and substantially repair, maintain, amend and keep such unit (other than the lanai, if any, and the balcony, if any) and the yard area, if any, appurtenant to such unit with all such necessary reparations and amendments whatsoever in good order and condition.

4. Regularly inspect, maintain, paint, resurface and/or replace the exterior surfaces of all perimeter walls of the buildings and the exterior surfaces of all exterior doors, exterior door frames, window frames, trim, fences and walls in the buildings, with the right to regulate the design and appearance of such exterior surfaces, the types of surfaces, and the types and colors of paint or other materials to be used, and with the right to enter, and permit entry by its contractors into, any unit or limited common elements appurtenant thereto from time to time during reasonable hours as may be necessary for the performance of such inspection, maintenance, painting, resurfacing or replacement. Payment for any such inspection, maintenance, painting, resurfacing or replacement shall be made out of the general maintenance fund of the Association; provided, however, that any such inspection, maintenance, painting, resurfacing or replacement necessitated by the negligence, misuse or neglect of a unit owner or occupant or any person under either of them shall be charged to such unit owner or the unit owner of the unit of such occupant, as a special assessment secured by the lien created under Section K of this Declaration.

5. Maintain and keep said Land and all adjacent land between any street boundary of the Project and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass thereon in good cultivation, and replant the same as may be necessary, and repair and make good all defects in the common elements of the Project herein required to be repaired by the Association, of which notice shall be given by any unit owner or his agent.

6. Not erect or place on the Project any building or structure, including fences and walls, nor make additions or structural alterations to, or exterior changes of, any common elements of the Project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with Section R of this Declaration and in

accordance with plans and specifications, including detailed plot plan, prepared by a licensed architect, if so required by the Board of Directors of the Association, and approved by the Board of Directors of the Association, and complete any such improvements diligently after commencement thereof.

7. Before commencing or permitting construction of any improvement on or to the Project where the cost thereof exceeds Twenty-Five Thousand and No/100 Dollars (\$25,000.00) or such other amount as may be determined by the Board of Directors from time to time, obtain a performance and lien payment bond naming as obligees, the Board of Directors of the Association, the Association, and collectively all unit owners and their respective mortgagees of record, as their respective interests may appear, with a responsible corporate surety authorized to do business in the State of Hawaii, guaranteeing the full and faithful performance of the contract for such construction free and clear of all mechanics' and materialmen's liens for such construction and the payment of all subcontractors, labor and materialmen, for a penal sum of not less than one hundred percent (100%) of the cost of such construction.

8. Have the irrevocable right, to be exercised by its Board of Directors or Managing Agent, to have access to any unit or limited common elements appurtenant thereto from time to time during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs therein required to prevent damage to any units or common elements or for the installation, repair or replacement of any common elements.

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

10. Not commit any act or neglect whereby the Project or any part thereof at any time becomes subject to any attachment, judgment, lien, charge or encumbrance whatsoever.

11. Comply with all encumbrances, restrictive covenants and agreements, and setback lines affecting the use of the Land upon which the Project is situated which are referred to or described in Exhibit "A" attached hereto or otherwise affect the Land from time to time.

12. Be bound by the waivers of claims, rights of action and suits against the Developer, its successors and assigns, contained in the unit conveyances by the Developer to purchasers of units in the Project, and the Association shall not bring against the Developer, its successors and assigns, any claim or right of action or suit relating to any of the matters waived by the purchasers in such unit conveyances.

13. Comply with the terms and provisions of that certain Declaration of Covenants (Gulch Maintenance) dated June 19, 2006, recorded as Document No. 2006-114334, as amended from time to time, including but not limited to maintaining and repairing the Slope and improvements described in such declaration.

J. MANAGING AGENT AND SERVICE OF PROCESS. Operation of the Project shall be conducted for the Association by a responsible Managing Agent which shall be appointed by the Association in accordance with the By-Laws, except that the initial Managing Agent shall be appointed by the Developer. The Managing Agent is hereby authorized to receive service of legal process in all cases provided in said Condominium Property Act. In addition, process may be served upon any member of the Board of Directors of the Association who has a residence or place of business within the County of Hawaii, State of Hawaii. Mike Tobias, whose principal place of business is at 68-1689 Waikoloa Road, Waikoloa, Hawaii 96738, and whose post office address is P.O. Box 38310, Waikoloa, Hawaii 96738, is hereby designated as the agent to receive service of process until such time the Developer designates a successor agent to receive service of process or such time as the Board of Directors of the Association is elected, whichever shall first occur.

K. COMMON EXPENSES.

1. Except as otherwise provided herein, all charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration of the Project, including without limitation of the generality of the foregoing, all charges for taxes (except real property taxes and such other taxes which are or may hereafter be assessed separately on each unit and the common interest in the common elements appertaining thereto or the personal property or any other interest of the unit owner), assessments, insurance, including fire and other casualty and liability insurance required to be maintained by the Association pursuant to Section L of this Declaration, any liability whatsoever for loss or damage arising out of or in connection with the common elements or any accident, fire or nuisance thereon, costs of repair, reinstatement, rebuilding, replacement, and restoration of the common elements of the Project and any additions and alterations thereto, yard, janitorial and other similar services, wages, accounting and legal fees, management fees and other necessary expenses of upkeep, maintenance, management and operation incurred on or for the common elements of the Project, the balconies and the lanais, and the cost of all utility services, including water, electricity, gas, garbage disposal, telephone and other similar services, unless separately metered or assessed, the cost of all maintenance and repair of sanitary sewer, drainage, flowage and other lines and equipment upon or adjoining or in connection with or for the use of the Project or any part thereof, unless separately assessed, the wages of the resident manager, if any, the cost of leasing the resident manager's unit, if any, and all other sums designated as common expenses under the Condominium Property Act, this

Declaration and the By-Laws, shall constitute common expenses of the Project for which all unit owners shall be severally liable in proportion to the common interests appurtenant to their respective units; PROVIDED, HOWEVER, that all charges, costs and expenses incurred by the Association only for or in connection with any of the limited common elements, including without limitation of the generality of the foregoing, all costs of maintenance, repair, replacement, additions and improvements to the limited common elements, shall constitute limited common expenses of the Project for which only the owners of the units to which such category of limited common elements are appurtenant shall be severally liable in proportion to the ratio that their respective common interests bear to the sum of the common interests of the units to which such category of limited common elements are appurtenant (such charges, costs and expenses incurred only for or in connection with any of the limited common elements are hereinafter called "limited common expenses"); and PROVIDED, FURTHER, HOWEVER, that all charges, costs and expenses incurred by the Association which are necessitated by the negligence, misuse or neglect of a unit owner or occupant or any person under either of them shall be charged to such unit owner or the unit owner of the unit of such occupant, as a special assessment secured by the lien created under this Section K.

2. No unit owner may exempt the unit owner from liability for the unit owner's contribution toward the common expenses or limited common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit.

3. The Board of Directors of the Association shall from time to time assess the common expenses and limited common expenses against all the units in their respective proportionate shares as set forth in this Section K. All sums assessed by the Association but unpaid for the share of common expenses or limited common expenses shall constitute a lien on such unit with priority over all other liens, except: (i) liens for taxes and assessments lawfully imposed by governmental authority against such unit; and (ii) all sums unpaid on any mortgage of record that was recorded prior to the recordation of a notice of a lien by the Association, and costs and expenses including attorneys' fees provided in such mortgages. The lien of the Association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in Chapter 667 of the Hawaii Revised Statutes, by the Board or the Managing Agent on behalf of the Association, in like manner as a mortgage of real property. The Board or the Managing Agent, acting on behalf of the Association, may bid on the unit at such foreclosure sale, and acquire and hold, lease, mortgage and convey the unit. Action to recover a money judgment for unpaid common expenses or limited common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses or limited common expenses owed.

4. In a voluntary conveyance the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid common expenses, limited common expenses or assessments chargeable to such unit up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantor or grantee, however, shall be entitled to a statement from the Board, either directly or through the Managing Agent or the resident manager, if any, setting forth the amount of the unpaid common expenses, limited common expenses or assessments chargeable to such unit, and except as to the amount of subsequently dishonored checks mentioned in such statement as having been received within the 30-day period immediately preceding the date of such statement, the grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth in the statement.

5. Except as provided in the Condominium Property Act, when the mortgagee of a mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of the mortgage, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the common expenses, limited common expenses or assessments by the Association chargeable to the unit which became due prior to such acquisition of title to the unit by the acquirer. The unpaid share of common expenses, limited common expenses and assessments shall be deemed common expenses collectible from all unit owners, including the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the unit shall be deemed to acquire title and shall be required to pay the unit's share of common expenses, limited common expenses and assessments beginning: (a) thirty-six (36) days after the order confirming the sale to the purchaser has been filed with the court; (b) sixty (60) days after the hearing at which the court grants the motion to confirm the sale to the purchaser; (c) thirty (30) days after the public sale in a nonjudicial power of sale foreclosure pursuant to Section 667-5 of the Hawaii Revised Statutes; or (d) upon the recording of the instrument of conveyance, whichever occurs first; provided that the mortgagee of record or other purchaser of the unit shall not be deemed to acquire title under paragraph (a), (b), or (c), if transfer of title is delayed past the thirty-six (36) days specified in paragraph (a), the sixty (60) days specified in paragraph (b), or the thirty (30) days specified in paragraph (c), when a person who appears at the hearing on the motion or a party to the foreclosure action requests reconsideration of the motion or a party to the foreclosure action requests reconsideration of the motion or order to confirm sale, objects to the form of the proposed order to confirm sale, appeals the decision of the court to grant the motion to confirm sale, or the debtor or mortgagor declares bankruptcy or is involuntarily placed into bankruptcy. In any such case, the mortgagee of record or other purchaser of the unit shall be deemed to acquire title upon recordation of the instrument of conveyance.

6. No unit owner shall withhold any assessment claimed by the Association. A unit owner who disputes the amount of an assessment may request a written statement clearly indicating:

(a) The amount of common expenses or limited common expenses included in the assessment, including the due date of each amount claimed;

(b) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;

(c) The amount of attorneys' fees and costs, if any, included in the assessment;

(d) That under Hawaii law, a unit owner has no right to withhold assessments for any reason;

(e) That a unit owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of the Association's assessment, provided the unit owner immediately pays the assessment in full and keeps assessments current; and

(f) That payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owed.

Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law.

7. A unit owner who pays the Association the full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If the unit owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under the Condominium Property Act; provided that a unit owner may only file for arbitration if all amounts claimed by the Association are paid in full on or before the date of filing. If the unit owner fails to keep all Association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the unit owner pays all Association assessments within thirty (30) days of the date of suspension, the unit owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all Association assessments by the end of the 30-day period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The unit owner shall be entitled to a refund of any amounts paid to the Association which are not owed.

L. INSURANCE – PROPERTY AND LIABILITY.

1. The Association, at its common expense, shall purchase and at all times maintain the following:

(a) Property insurance (i) on the common elements, including the limited common elements, the units, and common personal property of the Association, (ii) providing coverage for special form causes of loss; and (iii) in a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date. If available, the property insurance also shall include an agreed amount endorsement and an inflation guard endorsement. The property insurance shall be in the name of the Association. The property insurance need not cover improvements and betterments to the units installed by the unit owners, but if improvements and betterments are covered, any increased cost of such insurance shall be assessed by the Association against the units affected. For purposes of this paragraph, "improvements and betterments" mean all decorating, fixtures, and furnishings installed or added to and located within the boundaries of the unit, including electrical fixtures, appliances, air conditioning and heating equipment, water heaters or built-in cabinets installed by unit owners.

(b) Commercial general liability insurance written on an occurrence form to include coverage for claims and liabilities arising in connection with the ownership, existence, use or management of the Project, coverage for premises and operations, products and completed operations, personal and advertising injury, blanket contractual liability, lawsuits related to employment contracts, and fire legal liability with the following minimum limits:

Bodily Injury and Property Damage

\$1,000,000 per occurrence
\$2,000,000 general aggregate
\$1,000,000 products and completed operations

Personal and Advertising Injury

\$1,000,000 per person/organization
\$1,000,000 general aggregate

Fire Legal Liability

\$100,000 any one fire

\$100,000 general aggregate

The liability insurance policy shall insure the Board, the Association, all unit owners, the Managing Agent and its employees, and the employees of the Association with respect to the Project.

(c) A fidelity bond covering the Managing Agent and all directors, officers, trustees, employees and volunteers who control or disburse funds belonging to or administered by the Association, naming the Association as the insured and providing coverage in such amounts as the Board deems adequate, but in no event in any amount less than (a) the estimated maximum funds (including reserve funds) that will be in the custody of the Association or the Managing Agent at any time; (b) a sum equal to three (3) months' aggregate assessments on all units (including reserve funds); or (c) any minimum amount required under the Condominium Property Act. Every such bond shall contain a waiver of any defense based upon the exclusion of persons who serve without compensation from any definition of the term "employee" or similar term, and, by appropriate endorsement, provide coverage for any such persons not otherwise covered.

(d) Directors and officers liability coverage at a level deemed reasonable by the Board.

(e) Flood insurance if the property is located in a special flood hazard area as delineated on flood maps issued by the Federal Emergency Management Agency. The flood insurance shall comply with the requirements of the National Flood Insurance Program and the Federal Insurance Administration.

2. The Board, in the case of a claim for damage to a unit or the common elements, may: (a) pay the deductible amount as a common expense; (b) after notice and an opportunity for a hearing, assess the deductible amount against the owners who caused the damage or from whose units the damage or cause of loss originated; or (c) require the unit owners of the units affected by the damage to pay the deductible amount.

3. The Board of Directors of the Association may also procure insurance against such additional risks as the Board of Directors considers appropriate to protect the Association, the unit owners, or officers, directors or agents of the

Association, of a character normally carried with respect to properties of comparable character and use in the State of Hawaii.

4. The Board of Directors of the Association will review not less frequently than annually the adequacy of its insurance program and shall report in writing its conclusions and action taken on such review to each unit owner and to each mortgagee of record of any interest in a unit which shall have requested a copy of such report. In conducting the review discussed in the immediately prior sentence, the Board of Directors may consult with its insurer or other insurance consultant. The Board of Directors of the Association shall increase the limits of all insurance from time to time so that the same are not less than such limits as are being carried generally for similar properties in the area.

5. Copies of every policy of insurance procured by the Board of Directors of the Association shall be available for inspection by any unit owner (or purchaser holding a contract to purchase an interest in a unit) at the office of the Managing Agent, and certificates of insurance shall be issued to each unit owner and mortgagee upon request.

6. Any insurance coverage required in this Section L shall be subject to availability with responsible insurance companies authorized to do business in the State of Hawaii. Where such coverage is not available, or is not available at a reasonable cost, then the Board shall substitute such other insurance coverage as is acceptable to institutional lenders for units in projects similar in construction, location and use.

7. Insurance policies carried pursuant to this section shall include each of the following provisions:

(a) If obtainable at reasonable cost, provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of setoff, counterclaim, apportionment, proration or contribution by reason of any other insurance obtained by or for any unit owner;

(b) If obtainable at reasonable cost, contain no provision relieving the insurer from liability for loss occurring while the hazard to such buildings is increased, whether or not within the knowledge or control of the Board of Directors of the Association, the Managing Agent, any unit owner or any other persons under any of them or because of any breach of warranty or condition or any other act or neglect by the Board of Directors of the Association, the Managing Agent, any unit owner or any other persons under any of them;

(c) If obtainable at reasonable cost, provide that such policy may not be canceled or reduced by amount or type of coverage, whether or not requested by the Board of Directors of the Association, except by the insurer's giving at least sixty (60) days' prior written notice thereof to the Board of Directors of the Association and any mortgagee of record of any interest in any unit;

(d) If obtainable at reasonable cost, contain a waiver by the insurer of any right to deny liability because of vacancy of any unit or units;

(e) If obtainable at reasonable cost, contain a "severability of interest" endorsement precluding the insurer from denying the claim of the Board of Directors of the Association, the Association, the Managing Agent, or any unit owner because of negligent acts of any of the others;

(f) Contain a standard mortgagee clause which shall:

(1) Provide that any reference to a mortgagee in such policy shall mean and include all holders, insurers and guarantors of mortgages of any unit of the Project, their respective successors and assigns, in their respective order and preference, whether or not named therein;

(2) Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board, the Association, the Managing Agent, any unit owner or any other persons under any of them; and

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

(g) If obtainable at reasonable cost, contain a provision waiving any right of the insurer to repair, rebuild or replace if a decision is made pursuant to this Declaration and the By-Laws not to reinstate, rebuild or restore the damage or destruction;

(h) Satisfy all other requirements for insurance (1) under the Condominium Property Act, (2) under other applicable federal, state or local law, or (3) by any purchaser, insurer or guarantor of loans, including, for example, the Federal Housing Administration, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to

enable it to purchase, insure or guarantee a loan made on the security of the Project or any of the units.

8. Any insurance coverage procured by the Board of Directors of the Association shall be without prejudice to the right of any unit owner to insure his unit, the limited common elements appurtenant thereto, and the contents thereof for his own benefit and at his own expense.

M. INSURED CASUALTY.

1. Any loss covered by the property insurance policy under Section L shall be adjusted by and with the Association. The insurance proceeds for that loss shall be payable to the Association, or to an insurance trustee designated by the Association for that purpose. The insurance trustee or the Association shall hold any insurance proceeds in trust for unit owners and mortgagees as their interests may appear.

2. If the Project is damaged by fire or other casualty which is insured against and said damage is limited to a single unit and/or the limited common elements appurtenant thereto, all of the insurance proceeds shall be used by the Association or insurance trustee for payment of the contractor employed by the Board of Directors of the Association to rebuild or repair such unit and/or limited common elements, including paint, floor covering and fixtures, in accordance with plans and specifications therefor which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said plans and specifications is not permissible under the laws then in force, in accordance with such plans and specifications as shall be previously approved by the Board of Directors of the Association, any mortgagee of record of any interest in the unit so damaged, and the eligible holders of first mortgages (as defined in Section T of this Declaration) on units to which at least fifty-one percent (51%) of the votes of units subject to mortgages held by such eligible holders of first mortgages are allocated.

3. If such damage extends to two or more units and/or the limited common elements appurtenant thereto, or to any other common elements, the Board of Directors of the Association shall thereupon contract to repair or rebuild the damaged portions of any building or buildings, including all units and limited common elements so damaged, as well as the common elements, in accordance with plans and specifications therefor which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plans as shall be previously approved by the Board of Directors of the Association, any mortgagee of record of any interest in a unit directly affected thereby, and the eligible holders of first mortgages (as defined in Section T of this Declaration) on units to which at least fifty-one percent (51%) of the votes of units subject to mortgages held by such eligible holders of first mortgages are allocated;

provided that in the event said modified plans eliminate any unit and such unit is not reconstructed the Trustee shall pay the owner of said unit and any mortgagee of record of any interest in said unit, as their interests may appear, the portion of said insurance proceeds allocable to said unit (less the proportionate share of said unit in the cost of debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds.

4. Prior to the commencement of any rebuilding or repair pursuant to this Section M, the Board of Directors or the unit owner contracting for such rebuilding or repair shall comply with all of the requirements of Paragraph 6 of Section I of this Declaration.

5. The insurance proceeds shall be paid by the Association or insurance trustee to the contractor employed for such work, in accordance with the terms of the contract for such construction and in accordance with the terms of this Section M. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding any common elements, the Board of Directors of the Association shall levy a special assessment on the owners of all units in proportion to their respective common interests. Any costs in excess of the insurance proceeds for the repairing and/or rebuilding of any unit shall be specially assessed against such unit and said special assessment shall be secured by the lien created under Section K of this Declaration.

6. The cost of the work (as estimated by the Board of Directors of the Association) shall be paid out from time to time at the direction of the Board of Directors as the work progresses, but subject to the following conditions:

(a) An architect or engineer (who may be an employee of the Board of Directors) shall be in charge of the work;

(b) Each request for payment shall be made on seven (7) days' prior notice to the Association or insurance trustee and shall be accompanied by a certificate to be made by such architect or engineer stating that all of the work completed has been done in compliance with the approved plans and specifications and that the sum requested is justly required to reimburse the Board for payments by the Board of Directors to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services or materials), and that when added to all sums previously paid out by the Association or insurance trustee the sum requested does not exceed the value of the work done to the date of such certificate;

(c) Each request shall be accompanied by waivers of liens satisfactory to the Association or insurance trustee, covering that part of the work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Association or insurance trustee, that there has not been filed with respect to the premises any mechanics' or other lien or instrument for the retention of title with respect to any part of the work not discharged of record;

(d) The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the premises legal;

(e) The fees and expenses of the insurance trustee, if any, as determined by the Board of Directors and the insurance trustee shall be paid by the Association as common expenses, and such fees and expenses may be deducted from any proceeds at any time in the hands of the insurance trustee; and

(f) Such other conditions not inconsistent with the foregoing as the Association or insurance trustee may reasonably request.

7. Upon completion of the work and payment in full therefor, any remaining proceeds of insurance then or thereafter in the hands of the Board of Directors of the Association or insurance trustee shall be paid or credited to the owners of the units and the holders of any mortgages on the units, as their interests may appear, in proportion to the respective common interests appurtenant to each unit.

8. To the extent that any loss, damage or destruction to any buildings or other property is covered by (or, under Paragraph 1 of Section L of this Declaration, should have been covered by) insurance procured by the Board of Directors of the Association, the Board of Directors of the Association shall have no claim or cause of action for such loss, damage or destruction against any unit owner (other than for any special assessment levied pursuant to Paragraph 5 of this Section M). To the extent that any loss, damage or destruction to the property of any unit owner is covered by insurance procured by such unit owner, such unit owner shall have no claim or cause of action for such loss, damage or destruction against the Board of Directors of the Association, the Managing Agent or any other unit owner or any person claiming under any of them.

N. UNINSURED CASUALTY. In case at any time or times any improvements of the Project shall be substantially damaged or destroyed by any casualty not insured against, such improvements shall be rebuilt, repaired or restored unless sixty-seven percent (67%) of all unit owners vote not to rebuild, repair or restore. Any such

restoration of the common elements shall be completed diligently by the Association at its common expense and the unit owners shall be solely responsible for any restoration of their respective units so damaged or destroyed, according to the original plans and specifications thereof or such other plans and specifications first approved in the same manner as provided in Paragraph 6 of Section I of this Declaration. Unless such restoration is undertaken within a reasonable time after such casualty, the Association at its common expense shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good order and condition and even grade.

O. CONDEMNATION.

1. In case at any time or times the Project or any part thereof shall be taken or condemned by any authority having the power of eminent domain, or shall be sold to such authority under threat of condemnation, all compensation and damages payable for or on account of the Land, the buildings and other improvements of the Project shall be payable to the Association or such bank or trust company authorized to do business in the State of Hawaii as the Board shall designate as trustee for all unit owners and mortgagees of record affected thereby, according to the loss or damage to their respective units and appurtenant common interests, and shall be used promptly by the Association to the extent necessary for restoring or replacing said buildings and other improvements on the remaining Land according to modified plans and specifications therefor first approved as herein provided, unless such restoration or replacement is impractical in the circumstances. In the event of a partial taking in which any unit is eliminated or not restored, the Association or the trustee shall disburse the portion of the proceeds of such award allocable to said unit less the proportionate share of said unit in the cost of debris removal, to the owner and mortgagee, if any, of said unit, as their interests may appear. The Association or the trustee shall disburse the remainder of the proceeds of such award payable for or on account of said buildings and other improvements to the contractor engaged in such repair and restoration in the same manner funds are disbursed for repair and restoration work under Section M above, and in the event such proceeds are insufficient to pay the costs thereof the Board of Directors of the Association shall levy a special assessment or assessments on the owners of the units in the same manner as set forth in Paragraph 5 of Section M hereof in case of damage by fire or other casualty and said special assessment or assessments shall be secured by the lien created under Section K hereof. Unless such restoration or replacement is undertaken within a reasonable time after such condemnation, the Association at its common expense shall remove all remains of such improvements so taken or condemned and restore the site thereof to good order and condition and even grade. In the event the sums received by the Association or trustee are in excess of the cost of repairing, restoring or removing said buildings and other improvements, such excess proceeds shall be divided between the owners of the units and any mortgagees of the units, as their interests may appear.

2. In case at any time or times only a leasehold interest in the Project or any part thereof shall be taken or condemned by any authority having the power of eminent domain, or shall be sold to such authority under threat of condemnation, then and in every such case, notwithstanding the foregoing provisions of Paragraph 1 of this Section O, all compensation and damages payable for or on account of such leasehold interest shall be payable to the unit owners affected by such taking or condemnation and any mortgagees of such units; provided, however, that such taking or condemnation shall not affect the obligations of such unit owners under this Declaration.

P. PARTIAL RESTORATION. Restoration of the Project with less than all of the units after casualty or condemnation may be undertaken by the Association only pursuant to an amended declaration, duly adopted by the affirmative vote of all of the unit owners and by all holders of liens affecting all or any part of the Project, (i) removing the Project from the condominium property regime established by the execution and recordation of this Declaration, (ii) reconstituting all of the remaining units and common elements to be restored as a new condominium property regime, and (iii) providing for payment to the owner of each unit not to be restored the agreed value of such unit and the common interest appurtenant thereto.

Q. DETERMINATION AGAINST RESTORATION. When an election is permissible under the terms of this Declaration, the Project shall be repaired, rebuilt or restored in the event of damage or destruction to all or any part of the buildings and common elements, unless, within ninety (90) days after such damage or destruction, it is determined by the vote of sixty-seven percent (67%) of the unit owners (including the owners of sixty-seven percent (67%) of the damaged or destroyed units) that the Project not be so repaired, rebuilt or restored.

R. ALTERATION OF PROJECT.

1. Except as otherwise provided herein or in the By-Laws, restoration, repair or replacement of the Project or of any building or other facility or construction of any additional building or structural alteration or addition to any structure, different in any material respect from said Condominium Map of the Project, shall be undertaken by the Association or any unit owners only pursuant to an amendment of this Declaration, duly executed by or pursuant to the affirmative vote or written consent of sixty-seven percent (67%) of the unit owners and accompanied by the written consent of all unit owners whose units or appurtenant limited common elements are directly affected, as determined in a reasonable manner by the Board, and in accordance with all of the requirements of Paragraph 6 of Section I of this Declaration, and promptly upon completion of such restoration, replacement or construction, the Association shall duly file of record such amendment, together with a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer;

PROVIDED, HOWEVER, that notwithstanding any other provision in this Declaration to the contrary, the owner of a unit may make any alterations or additions within a unit. The alterations or additions permitted by the immediately preceding proviso shall require only the written approval thereof, including approval of the unit owner's plans therefor, by the holders of first mortgage liens affecting such unit (if the lien holders require such approval), by the appropriate agencies of the State of Hawaii and the County of Hawaii if such agencies so require, by the Board of Directors of the Association (which approval shall not be unreasonably or arbitrarily withheld or delayed), and such alterations or additions may be undertaken without an amendment to this Declaration or filing of a complete set of floor plans of the Project as so altered.

2. Notwithstanding any other provision in this Declaration to the contrary, prior to (a) the time that all units in the Project have been sold and recorded and (b) the recordation by the Developer of the "as-built" verified statement (with plans, if applicable) required by the Condominium Property Act (but in no event later than December 31, 2012), the Developer shall have the right to make alterations in the Project (and to amend this Declaration and the Condominium Map accordingly) without the approval, consent or joinder of any unit owner, which change the configuration of, alter the number of rooms of, decrease or increase the size of, or change the location of any unit (and the limited common elements appurtenant thereto) in the Project which is not sold and recorded; or to make other alterations in the Project (and to amend this Declaration and the Condominium Map accordingly) without the approval, consent or joinder of any unit owner, which make minor changes in any unit in the Project or the common elements which do not affect the physical location, design or size of any unit which has been sold and recorded, including, without limitation, changes to the metes and bounds or dimensions of the limited common elements; PROVIDED, HOWEVER, that any such changes shall be reflected in an amendment to the Declaration as provided in Paragraph 3 of Section T of this Declaration. As used herein the term "sold and recorded" shall mean and refer to the sale of units in the Project and the recordation in the Bureau of Conveyances of the State of Hawaii of unit conveyances transferring interests in the units from the Developer to parties not signatory to this Declaration.

3. Notwithstanding any other provision in this Declaration to the contrary, prior to the time that all units in the Project have been sold and recorded, the Developer shall have the right to make alterations in the Project (and to amend this Declaration, the By-Laws and the Condominium Map accordingly) without the approval, consent or joinder of any unit owner, which consist of changing the unit type of any of the units in the Project; PROVIDED, HOWEVER, that any such changes shall be reflected in an amendment to the Declaration as provided in Paragraph 4 of Section T of this Declaration. As used herein the term "sold and recorded" shall mean and refer to the sale of units in the Project and the recordation in the Bureau of Conveyances of the State

of Hawaii of unit conveyances transferring interests in the units from the Developer to parties not signatory to this Declaration.

4. Notwithstanding any other provision in this Declaration to the contrary, the Board shall have the right to install or cause the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements of the Project; provided that the same shall not be installed upon any limited common element without the consent of the owner or owners of the unit or units for the use of which the limited common element is appurtenant; and the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements by the Board shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit, or to be a structural alteration or addition to any building constituting a material change in the plans of the Project filed in accordance with the Condominium Property Act; provided that no such installation shall directly affect any nonconsenting unit owner. Notwithstanding any other provision in this Declaration to the contrary, the Board shall have the right to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence or to provide an equivalent function by different means or methods. The abandonment or change of use of any television signal distribution or telecommunications equipment by the Board due to technological or economic obsolescence or to provide an equivalent function by different means or methods shall not be deemed to alter, impair or diminish the common interest, common elements, and easements appurtenant to each unit or to be a structural alteration or addition to any building different in any material respect from the plans of the Project filed in accordance with the Condominium Property Act. As used in this paragraph, "directly affect" means the installation of television signal distribution and telecommunications equipment in a manner which would specially, personally, and adversely affect a unit owner in a manner not common to the unit owners as a whole, and "television signal distribution" and "telecommunications equipment" shall be construed in their broadest possible senses in order to encompass all present and future forms of communications technology.

S. MERGER OF ADDITIONAL INCREMENTS.

1. Merger of Project with Additional Phases. The provisions of that certain Declaration of Merger of Condominium Phases (hereinafter referred to as the "Declaration of Merger") recorded or to be recorded in the Bureau of Conveyances of the State of Hawaii concurrently herewith, as it may be amended from time to time, are incorporated into this Declaration and made a part hereof and shall govern in the event of a conflict with the provisions of this Declaration and the By-Laws. The Declaration of Merger, among other things, gives the Developer the right, in its sole and absolute

discretion, to cause and effect an administrative merger or mergers of the Project with a condominium project or projects (which are sometimes referred to in this Declaration and the By-Laws as the additional or other phase or phases regardless of the name(s) of these other condominium project(s) and whether or not such name(s) are similar to the name of this Project) located or to be located on lands (or a portion or portions thereof) in the vicinity of the Land of the Project, which lands are described in Exhibit "C" attached hereto and hereby made a part hereof, as part of the same incremental plan of development of the Project such that the use of the respective common elements, the respective common expenses and the management of the respective affairs of the Project and the additional phases are shared, and the administration of the Project and the additional phases is unified under one association of unit owners, but the ownership interests of the unit owners in the Project and the additional phases are not altered or affected. The Declaration of Merger also gives the Developer the right, in its sole and absolute discretion, to cause and effect an ownership merger or mergers of the Project and the additional phases, as an alternative to an administrative merger or mergers of the Project and the additional phases, to provide for the common ownership of the Project and the additional phases, by all of the unit owners of the Project and the additional phases. Upon an ownership merger, all of the units in the merged phases shall be treated as though they were all included in a single condominium project (the "Merged Project"), all common elements of the merged phases will become the common elements of the Merged Project, and each unit owner's percentage of undivided interest in the common elements and in all common profits and expenses will be altered from the percentage set forth in Exhibit "B" of this Declaration to the applicable percentage to be set forth in the Certificate of Ownership Merger filed by the Developer in accordance with the Declaration of Merger.

2. No Obligations Regarding Other Phases. Nothing in this Section S as to merger shall be construed as a representation or warranty by Developer that any of the other phases will be developed or merged with the Project, or to require Developer to develop any of the other phases or to merge any of the other phases into the Project, or to prohibit Developer from dealing freely with the property described in Exhibit "C" attached hereto, including, without limitation, developing the whole or any part of such property for a purpose inconsistent with the merger of such property into the Project.

3. Easements for Construction and Sale of Other Phases. In connection with, and only to the extent necessary for, the development, construction and sale of units and common elements in any of the other phases as aforesaid, the Developer, its employees, agents and contractors, shall have the right to enter upon the common elements of the Project for all purposes reasonably necessary for or useful to (a) the construction and completion of any of the other phases according to plans and specifications or amended plans and specifications approved by the officer of the County of Hawaii having jurisdiction over the issuance of building permits, (b) the sale of units

in any of the other phases, (c) the connection of the units and common elements in any of the other phases, to utilities serving the Project, and (d) the relocation or realignment of any existing easements, rights-of-way or utilities, provided that any such relocation or realignment shall not materially impair or interfere with the use and enjoyment of any unit in the Project. The Developer shall have, and hereby reserves, an easement over, under and across the common elements of the Project for the purposes of commencing and completing all work connected with or incidental to the development, construction and sale of the units and other improvements contemplated for any of the other phases, together with the right, in the form of an easement, to create and cause noise and other nuisances necessitated by and resulting from any work connected with or incidental to the development, construction and sale of the units and improvements contemplated for any of the other phases. The Developer further reserves the right to grant, for the benefit of the owner or owners from time to time of all or any portion of each of the other phases and without the consent or joinder of any party having any interest in the Project, easements over, under, across, along, upon and through the common elements for roadway and utility purposes, park, parking stall and mailbox purposes, parking stall purposes, electrical, gas, communications and other utility purposes, sanitary sewer, drainage and drainline, waterline, and flowage purposes, and all other purposes, to the State of Hawaii, the County of Hawaii, Hawaii Electric Light Company, Inc., Hawaiian Telcom, Inc., West Hawaii Water Company, West Hawaii Sewer Company, any other appropriate governmental agency, and/or any public or private utility or other corporation, partnership, individual or entity, provided that such easements and rights-of-way do not materially impair or interfere with the use of any unit in the Project or the common elements.

4. Easements for Sales Activities. The Developer shall have the right to conduct extensive sales activities utilizing the common elements of the Merged Project and any unit(s) still owned by the Developer, including the use of model units, sales and management offices, and extensive sales displays and activities.

5. Easements for Completion of Improvements. The Developer, its agents, employees, contractors, licensees, successors and assigns shall have a nonexclusive easement over the common elements of the Merged Project, as may be reasonably necessary for the completion of any improvements to and correction of defects and other punchlist items in the common elements of the Merged Project.

6. Easements in favor of Developer and Owner or Owners of the Land Described in Exhibit "C". The Developer has certain easements over, under, across, along, upon and through the Land, together with the right to grant some or all of said easements to the owner or owners from time to time of all or any portion of the land described in Exhibit "C". These easements include nonexclusive easements for road and utility purposes over, under, across, along, upon and through the roadways which are

included in the common elements of the Project (the "Roadway Areas") (the Roadway Areas and all other easement areas subject to easements in favor of the Developer are herein collectively called the "Easement Areas"). The Association, and not the Developer, is responsible for the maintenance, repair, replacement and restoration of the Easement Areas. In the event that the Developer, in its sole and absolute discretion, grants some or all of its easement rights to the owner or owners of the land described in Exhibit "C", the Association, and not the Developer or said owner or owners of the land described in Exhibit "C", shall be responsible for the maintenance, repair, replacement and restoration of the Easement Areas; provided, however, that notwithstanding the foregoing, in the event the Project is merged with any of the other phases, upon such merger the responsibility for the maintenance, repair, replacement and restoration of the Easement Areas will be determined in accordance with the provisions of the Declaration of Merger.

T. AMENDMENT OF DECLARATION.

1. Except as otherwise provided herein or in said Condominium Property Act, this Declaration may be amended by the affirmative vote or written consent of the owners of units to which are appurtenant sixty-seven percent (67%) of the common interests, and shall be effective only upon the recordation in the Bureau of Conveyances of the State of Hawaii of an instrument setting forth such amendment and vote or written consent duly executed by the proper officers of the Association; provided, however, that this Section T and any other provision herein which gives the Developer any right or authority can be amended only if, in addition to such vote or written consent of the unit owners, Developer or its successors or assigns gives written consent to such amendment; provided further, however, that the approval of eligible holders of first mortgages (as defined below) on units to which at least fifty-one percent (51%) of the votes of units subject to mortgages held by such eligible holders of first mortgages are allocated shall be required for amendments of a material nature, which consist of a change to any of the provisions governing the following: (a) voting; (b) assessments, assessment liens or subordination of such liens; (c) reserves for maintenance, repair and replacement of the common elements; (d) insurance or fidelity bonds; (e) rights to use of the common elements; (f) responsibility for the maintenance and repair of the several portions of the Project; (g) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project in a manner other than that specified in Section S of this Declaration; (h) boundaries of any unit; (i) the interests in the common elements or the limited common elements; (j) convertibility of units into common elements or of common elements into units; (k) leasing of units; (l) imposition of any right of first refusal or similar restriction on the right of a unit owner to sell, transfer or otherwise convey his or her unit; (m) establishment of self-management by the Association where professional management has been required previously by this Declaration or the By-Laws or by an eligible holder of first mortgage; (n) any provision

that expressly benefits holders, insurers or guarantors of mortgages on units in the Project; (o) restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard in a manner other than that specified in this Declaration and in accordance with the plans and specifications therefor which will restore the same to the design immediately prior to condemnation or damage; (p) any election to terminate the legal status of the Project as a condominium property regime after substantial destruction or a substantial taking in condemnation of the Project; (q) reallocation of the interests in the common elements after a partial condemnation or a partial destruction of the Project in a manner other than that specified in this Declaration or by applicable law; provided further, however, that the approval of eligible holders of first mortgages on units to which at least sixty-seven percent (67%) of the votes of units subject to mortgages held by such eligible holders of first mortgages are allocated shall be required to terminate the legal status of the Project as a condominium property regime for reasons other than substantial destruction or a substantial taking in condemnation of the Project. To qualify as an "eligible holder of first mortgage", a first mortgagee must have made a written request to the Association for timely written notice of proposed amendments to the condominium instruments. In the event that an eligible holder of first mortgage fails to appear at a meeting of the Association at which amendments to this Declaration are proposed and considered, or fails to file a written response with the Association within thirty (30) days after it receives proper notice of the proposed amendment, delivered by certified or registered mail, with a "return receipt" requested, then and in any such event the approval of such amendments by such eligible holder of first mortgage shall be conclusively assumed. Notwithstanding the foregoing, at any time prior to the recordation in said Bureau of Conveyances of the first unit conveyance in favor of a party not a signatory to this Declaration, the Developer hereby reserves the right to amend this Declaration, the By-Laws and the Condominium Map in any manner, without the approval, consent or joinder of any other person.

2. Notwithstanding the foregoing and until the recordation in said Bureau of Conveyances of unit conveyances or agreements of sale with respect to all of the units in the Project, in favor of parties not a signatory to this Declaration, the Developer hereby reserves the right to amend this Declaration, the By-Laws and the Condominium Map, without the approval, consent or joinder of any purchaser of a unit or any of the persons then owning or leasing any unit, to make such amendments as may be required by law, by the Real Estate Commission of the State of Hawaii, by any title insurance company issuing a title insurance policy on the Project or any of the units, by any institutional lender lending funds on the security of the Project or any of the units, by any purchaser, insurer or guarantor of loans, including, for example, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable it to purchase, insure or guarantee a loan made on the security of the Project or any of the units, or by any governmental agency; provided, however, that, except as otherwise provided herein, no such amendment which would

change the common interest appurtenant to a unit or substantially change the design, location or size of a unit or the building in which it is located shall be made without the consent to such amendment by all persons having an interest in such unit.

3. Notwithstanding the foregoing and notwithstanding the filing of any unit conveyances or agreements of sale with respect to any or all of the units in favor of any person, the Developer hereby reserves the right to successively amend this Declaration (including the By-Laws and, when applicable, the Condominium Map), without the approval, consent or joinder of any purchaser of a unit or any of the persons then owning or leasing any unit, to file the "as built" verified statement (with plans, if applicable) required by the Condominium Property Act, (i) so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed or being filed simultaneously with such amendment fully and accurately depict the layout, location, unit numbers and dimensions of the units as built, or (ii) so long as any plans filed therewith involve only changes to the layout, location, unit numbers or dimensions of or other changes to the units and common elements as built which the Developer is permitted to make in accordance with Paragraph 2 of Section R of this Declaration.

4. Notwithstanding the foregoing and notwithstanding the filing of any unit conveyances or agreements of sale with respect to any or all of the units in favor of any person, the Developer hereby reserves the right to successively amend this Declaration (including the By-Laws and, when applicable, the Condominium Map), without the approval, consent or joinder of any purchaser of a unit or any of the persons then owning or leasing any unit, or any other person, to make such amendments necessary or appropriate to reflect such alterations in the Project which the Developer is permitted to make in accordance with Paragraph 3 of Section R of this Declaration.

5. Notwithstanding the foregoing, unit owners shall have the right to change the designation of parking stalls which are appurtenant to their respective units by amendment of this Declaration and the respective deed(s) involved. The amendment need only be signed by the owners of the units whose parking stalls are being changed; provided that unit mortgages may also require the consent of the mortgagees of the units involved. The amendment shall be effective only upon recordation in the Bureau of Conveyances of the State of Hawaii. A copy of the amendment shall be promptly delivered to the Association. Notwithstanding the foregoing, the Developer hereby reserves the right to amend this Declaration, without the approval, consent or joinder of any other person, to change the designation of parking stalls which are appurtenant to units owned by the Developer. The amendment need only be signed by the Developer and shall be effective upon recordation in said Bureau of Conveyances.

U. COMPLIANCE WITH DECLARATION, BY-LAWS AND WAIKOLOA VILLAGE COVENANTS. All unit owners, their tenants, lessees, families, servants, guests, invitees, licensees, employees, and any other persons who may in any manner use the Project, or any part thereof, shall be bound by and subject to the provisions of said Condominium Property Act and to the provisions of this Declaration, the By-Laws of the Association, and all agreements, decisions and determinations of the Association as lawfully made or amended from time to time. All unit owners, their tenants, lessees, families, servants, guests, invitees, licensees, employees, and any other persons who in any manner use the Project, or any part thereof, shall comply strictly with the By-Laws and with the Rules and Regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Managing Agent or the Board of Directors of the Association on behalf of the Association or by the Developer or, in a proper case, by an aggrieved unit owner.

In addition, the Association, all unit owners, their tenants, lessees, families, servants, guests, invitees, licensees, employees, and any other persons who may in any manner use the Project, or any part thereof, shall be bound by and subject to the provisions of that certain Declaration of Protective Covenants dated May 27, 1971, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 7577 at Page 66, as amended from time to time (herein called the "Waikoloa Village Covenants").

In the event of the failure of any unit owner to comply fully with any of the foregoing within thirty (30) days after written demand therefor by the Board of Directors of the Association, the Board of Directors shall promptly give written notice of such failure to the holder of any mortgage of such unit as shown in the Association's record of ownership or who has given the Board of Directors notice of its interest through the Secretary of the Association or the Managing Agent.

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

1. collecting any delinquent assessments against any owner's unit; or
2. foreclosing any lien thereon; or
3. enforcing any provision of the Waikoloa Village Covenants, this Declaration, the By-Laws and/or the Rules and Regulations adopted pursuant to the By-Laws or said Condominium Property Act; or

4. enforcing the rules of the Real Estate Commission of the State of Hawaii;

against an owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the Project shall be promptly paid on demand to the Association by such person or persons; provided that if the claims upon which the Association or Board of Directors takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the Association or Board of Directors, shall be promptly paid on demand to such person or persons by the Association.

If any claim by an owner is substantiated in any action against the Association, any of its officers or directors, or the Board of Directors to enforce any provision of this Declaration, the By-Laws of the Association, the Rules and Regulations adopted pursuant thereto, or the Condominium Property Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by the owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless: (i) the owner first shall have demanded and allowed reasonable time for the Board of Directors to pursue such enforcement; or (ii) the owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board of Directors would have been fruitless.

If any claim by a unit owner is not substantiated in any court action against the Association, any officer or director of the Association, or the Board to enforce any provision of this Declaration, the By-Laws, the Rules and Regulations, or the Condominium Property Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by the Association shall be awarded to the Association, unless before filing the action in court the unit owner has first submitted the claim to mediation, or to arbitration under the Condominium Property Act, and made a good faith effort to resolve the dispute under any of those procedures.

The acceptance of a unit conveyance, agreement of sale, mortgage or rental agreement, or the entering into occupancy of any unit in the Project, shall constitute an agreement that the provisions of the Waikoloa Village Covenants, this Declaration, the By-Laws of the Association and the Rules and Regulations adopted pursuant thereto, as each may be amended from time to time, are accepted, ratified and will be strictly complied with by a unit owner, his tenants, lessees, family, servants, guests, invitees, licensees and employees, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit as though such provisions were recited and stipulated at length in each and every unit conveyance, agreement of sale, mortgage or rental agreement thereof.

The Association shall be bound by the waivers of claims, rights of action and suits against the Developer, its successors and assigns, contained in the unit conveyances by the Developer to purchasers of units in the Project, and the Association shall not bring against the Developer, its successors and assigns, any claim or right of action or suit relating to any of the matters waived by the purchasers in such unit conveyances.

V. SECURITY. Neither the Developer nor the Association shall be considered in any way an insurer or guarantor of security within the Project and each unit owner agrees not to hold the Developer or the Association liable for any loss or damage such unit owner or anyone else may suffer by reason of a failure to provide adequate security or from the ineffectiveness of any security measures undertaken at the Project. Each unit owner assumes all risk of injury, loss or damage that may arise due to a failure to provide adequate security or from the ineffectiveness of any security measures undertaken at the Project. By acquiring an interest in a unit in the Project, each unit owner acknowledges and agrees that neither the Developer nor the Association has made any representations or warranties, either express or implied, about any security measures at the Project and such unit owner has not relied upon any such representations or warranties.

W. MEDIATION/ARBITRATION OF CERTAIN DISPUTES INVOLVING THE DEVELOPER OR DEVELOPMENT TEAM MEMBERS.

1. Any and all claims or disputes in any way connected with the design, development, construction, sale, marketing, financing, warranties, or any other activity or matter relating to the Project, between one or more unit owners and/or the Association, on the one hand, and the Developer and/or the Developer's affiliates, on the other hand (a "Dispute"), and the parties to such Dispute are unable to resolve the Dispute through negotiation, the Dispute shall be submitted to mediation, if applicable, and final and binding arbitration, all pursuant to and in accordance with the provisions contained in the limited warranty agreement (the "Limited Warranty Agreement"), issued by the Developer to unit owners, administered by Professional Warranty Service Corporation ("PWC").

2. The parties will follow the mediation and arbitration provisions set forth in the Limited Warranty Agreement even if the Dispute is excluded from coverage under the Limited Warranty Agreement or if the limited warranty provided under the Limited Warranty Agreement has expired or is no longer in effect.

3. At the Developer's option, the mediation and/or arbitration shall include all or any of the Developer's agents, architects, consultants, engineers, contractors, subcontractors, suppliers, representatives or other third parties ("Related Parties"), and any action by the unit owner(s) and/or the Association against any of the

Related Parties (and not directly against the Developer) in respect of the Project which the Developer shall determine directly or indirectly affects the Developer, shall at the Developer's option, be subject to these mediation and arbitration provisions.

4. All fees and costs in connection with the mediation and/or arbitration shall be allocated in accordance with the Limited Warranty Agreement; provided, however, that any fees charged by PWC that are not addressed by the Limited Warranty Agreement shall be shared equally by (a) the unit owner(s) and the Association, and (b) the Developer.

5. The foregoing provisions are intended to comply with (and shall be construed consistent with) the requirements of the Hawaii Contractor Repair Act, Chapter 672E of the Hawaii Revised Statutes ("Hawaii Contractor Repair Act"). In the event of an irreconcilable conflict between the foregoing provisions and the provisions of said Hawaii Contractor Repair Act, the provisions of the Hawaii Contractor Repair Act shall govern and control.

X. CONFLICTS; CHANGES IN LAW. In the event of any conflict or inconsistency between the provisions of this Declaration and the Condominium Property Act, the provisions of the Condominium Property Act shall prevail. In the event any change in the Condominium Property Act shall result in a conflict or inconsistency between the provisions of this Declaration and the Condominium Property Act, the provisions of the Condominium Property Act shall prevail.

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

Z. WAIVER. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

AA. CAPTIONS. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.


BB. DEFINITIONS. The terms "majority" or "majority of unit owners" herein means the owners of units to which are appurtenant more than fifty percent (50%) of the common interests, and any specified percentage of the unit owners means the owners of units to which are appurtenant such percentage of the common interests. The term "unit conveyance" herein means a unit deed conveying a unit in the Project, together

with the common interest appurtenant thereto, to the purchaser thereof. References to "Developer" shall include the Developer and its successors and assigns.

IN WITNESS WHEREOF, the Developer has executed these presents this 6th day of July, 2006.

CASTLE & COOKE WAIKOLOA, LLC
By Castle & Cooke Homes Hawaii, Inc.
Its Member

By 
Name: ALAN K. ARAKAWA
Title: EXECUTIVE VICE PRESIDENT

By 
Name: JON UCHIYAMA
Title: SR. VICE PRESIDENT & CONTROLLER

Developer

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

On this 6th day of July, 2006, before me

personally appeared ALAN K. ARAKAWA and JON UCHIYAMA, to me personally known, who being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

ss

D. Humamura
Typed or Printed Name: Deborah Y. Humamura
Notary Public, State of Hawaii

My Commission expires 10-16-07

EXHIBIT "A"

All of that certain parcel of land situate at Waikoloa, District of South Kohala, Island and County of Hawaii, State of Hawaii, being Lot 59-B of the "MAKANA KAI AT WEHILANI", as shown on File Plan Number 2427, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 7.700 acres, more or less.

Being a portion of the premises acquired by Deed dated June 22, 2001, by and between PMO Joint Venture, a Hawaii registered general partnership, as Grantor, and Castle & Cooke Waikoloa, LLC, a Hawaii limited liability company, as Grantee, recorded in said Bureau as Document No. 2001-095348.

TOGETHER WITH the following:

1. A nonexclusive appurtenant easement for access, utility and flowage purposes over, under, across, along, upon and through Easement A-2 as shown on File Plan No. 2427; PROVIDED, HOWEVER, that Castle & Cooke Waikoloa, LLC, its successors and assigns, reserves the right to relocate all or a portion of the easement, or to cancel the easement and grant in lieu thereof a different easement for access, utility and/or flowage access purposes, all without the consent or joinder of any other person; and PROVIDED, FURTHER, HOWEVER, that in the event that said easement or portions thereof shall be conveyed to the State of Hawaii, the County of Hawaii or other governmental authority and dedicated to public use, said easement or portions thereof so conveyed and dedicated shall immediately terminate.

2. A nonexclusive appurtenant easement for drainage purposes over, under, across, along, upon and through Easement D-2-A as shown on File Plan No. 2427; PROVIDED, HOWEVER, that Castle & Cooke Waikoloa, LLC, its successors and assigns, reserves the right to relocate all or a portion of the easement, or to cancel the easement and grant in lieu thereof a different easement for drainage purposes, all without the consent or joinder of any other person; and PROVIDED, FURTHER, HOWEVER, that in the event that said easement or portions thereof shall be conveyed to the State of Hawaii, the County of Hawaii or other governmental authority and dedicated to public use, said easement or portions thereof so conveyed and dedicated shall immediately terminate.

3. A nonexclusive appurtenant easement for flowage purposes over, under, across, along, upon and through Easement F-1 as shown on File Plan No. 2427; PROVIDED, HOWEVER, that Castle & Cooke Waikoloa, LLC, its successors and assigns, reserves the right to relocate all or a portion of the easement, or to cancel the easement and grant in lieu thereof a different easement for flowage purposes, all without the consent or joinder of any other person; and PROVIDED, FURTHER, HOWEVER,

that in the event that said easement or portions thereof shall be conveyed to the State of Hawaii, the County of Hawaii or other governmental authority and dedicated to public use, said easement or portions thereof so conveyed and dedicated shall immediately terminate.

4. A nonexclusive appurtenant easement for sewer purposes over, under, across, along, upon and through Easements S-5-B and S-5-C, as shown on File Plan No. 2427, and Easement S-1, as shown on File Plan No. 1976; PROVIDED, HOWEVER, that Castle & Cooke Waikoloa, LLC, its successors and assigns, reserves the right to relocate all or a portion of the easement, or to cancel the easement and grant in lieu thereof a different easement for sewer purposes, all without the consent or joinder of any other person; and PROVIDED, FURTHER, HOWEVER, that in the event that said easement or portions thereof shall be conveyed to the State of Hawaii, the County of Hawaii or other governmental authority and dedicated to public use, said easement or portions thereof so conveyed and dedicated shall immediately terminate.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

2. The restrictions on use and other restrictions and all other of the covenants, agreements, obligations, conditions, reservations, easements and other provisions set forth in that certain Declaration of Protective Covenants dated May 27, 1971, recorded in said Bureau in Liber 7577 at Page 66, as amended and/or supplemented by instruments recorded in said Bureau in Liber 7577 at Page 94, Liber 8026 at Page 291, Liber 8306 at Page 196, Liber 9360 at Page 369, Liber 9794 at Page 32, Liber 9956 at Page 597, Liber 10701 at Page 5, Liber 10706 at Page 490, Liber 13453 at Pages 142 and 147, Liber 13588 at Page 658, Liber 13904 at Page 310, Liber 14266 at Page 453, Liber 15016 at Page 403, Liber 18999 at Page 418, Liber 19199 at Page 37, Liber 20893 at Page 418, Liber 21761 at Page 582, Liber 22070 at Page 414, Liber 22127 at Page 733, Liber 22361 at Page 1, Liber 22791 at Page 30, Liber 23172 at Pages 387 and 414, Liber 23182 at Page 398, Liber 23806 at Page 238, as Document No. 90-029591, as Document No. 91-077792, as Document No. 96-013206, as further supplemented and amended. Said Declaration was supplemented by instrument dated September 4, 2001, recorded in said Bureau as Document No. 2001-050419, and by instrument dated January 26, 2005, recorded in said Bureau as Document No. 2005-023801.

3. Deed dated January 5, 1990, recorded in said Bureau as Document No. 90-001488.

4. Designation of Easement "N-1" for "No-Access" planting screen purposes, as shown on File Plan No. 1976.

5. Designation of Easement "N-2" for "No-Access" planting screen purposes, as shown on File Plan No. 1976.

6. Designation of Easement A-1 for access and utility purposes, as shown on File Plan No. 2427.

7. Designation of Easements A-3 and A-4 for access purposes, as shown on File Plan No. 2427.

8. Designation of Easements D-2-B and D-2-C for drainage purposes, as shown on File Plan No. 2427.

9. Designation of Easements P-1, P-2 and P-3 for parking purposes, as shown on File Plan No. 2427.

10. Designation of Easement PM-1 for recreation and mailbox purposes, as shown on File Plan No. 2427.

11. Designation of Easement S-5-A for utility purposes, as shown on File Plan No. 2427.

12. Designation of Easement W-1 for waterline purposes, as shown on File Plan No. 2427.

13. Declaration of Covenants (Gulch Maintenance) dated June 19, 2006, recorded in said Bureau as Document No. 2006-114334.

14. Declaration of Merger of Condominium Phases dated July 6, 2006, recorded in said Bureau as Document No. _____, as amended from time to time.

Doc 2006-127949
JUL 12, 2006 09:00 AM

EXHIBIT "B"

| Unit No. | Unit Type | Bldg. No. | Parking Stall No(s). | Yard Area No. | No. of Rooms in Unit | Approx. Net Living Floor Area in Sq. Ft. | Approx. Net Laundry Floor Area in Sq. Ft. | Approx. Net Lanai Floor Area in Sq. Ft. | Approx. Net Balcony Floor Area in Sq. Ft. | Common Interest |
|----------|-----------|-----------|----------------------|---------------|----------------------|--|---|---|---|-----------------|
| 101 | 2R | 1 | 9, 10 | Y-101 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 102 | 1 | 1 | 7, 8 | Y-102 | 7 | 1,017 | 11 | 31 | -- | 1.07432% |
| 103 | 1R | 1 | 6, 11 | Y-103 | 7 | 1,017 | 11 | 31 | -- | 1.07433% |
| 104 | 2 | 1 | 5, 12 | Y-104 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 201 | 1R | 2 | 4, 13 | Y-201 | 7 | 1,017 | 11 | 31 | -- | 1.07433% |
| 202 | 1 | 2 | 3, 14 | Y-202 | 7 | 1,017 | 11 | 31 | -- | 1.07432% |
| 203 | 1R | 2 | 2, 15 | Y-203 | 7 | 1,017 | 11 | 31 | -- | 1.07433% |
| 204 | 1 | 2 | 16, 17 | Y-204 | 7 | 1,017 | 11 | 31 | -- | 1.07432% |
| 301 | 2R | 3 | 22, 23 | Y-301 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 302 | 2 | 3 | 24, 25 | Y-302 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 303 | 2R | 3 | 20, 21 | Y-303 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 304 | 2 | 3 | 18, 19 | Y-304 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 401 | 2R | 4 | 32, 33 | Y-401 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 402 | 1 | 4 | 30, 31 | Y-402 | 7 | 1,017 | 11 | 31 | -- | 1.07432% |
| 403 | 1R | 4 | 34, 35 | Y-403 | 7 | 1,017 | 11 | 31 | -- | 1.07433% |
| 404 | 2 | 4 | 36, 37 | Y-404 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 501 | 2R | 5 | 42, 43 | Y-501 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 502 | 2 | 5 | 44, 45 | Y-502 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 503 | 2R | 5 | 40, 41 | Y-503 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 504 | 2 | 5 | 38, 39 | Y-504 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 601 | 2R | 6 | 50, 51 | Y-601 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 602 | 2 | 6 | 52, 53 | Y-602 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 603 | 2R | 6 | 48, 49 | Y-603 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |

| Unit No. | Unit Type | Bldg. No. | Parking Stall No(s). | Yard Area No. | No. of Rooms in Unit | Approx. Net Living Floor Area in Sq. Ft. | Approx. Net Laundry Floor Area in Sq. Ft. | Approx. Net Lanai Floor Area in Sq. Ft. | Approx. Net Balcony Floor Area in Sq. Ft. | Common Interest |
|----------|-----------|-----------|----------------------|---------------|----------------------|--|---|---|---|-----------------|
| 604 | 2 | 6 | 46, 47 | Y-604 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 2501 | 1R | 25 | 251, 252 | Y-2501 | 7 | 1,017 | 11 | 31 | -- | 1.07433% |
| 2502 | 1 | 25 | 253, 254 | Y-2502 | 7 | 1,017 | 11 | 31 | -- | 1.07432% |
| 2503 | 1R | 25 | 257, 387 | Y-2503 | 7 | 1,017 | 11 | 31 | -- | 1.07433% |
| 2504 | 1 | 25 | 258, 259 | Y-2504 | 7 | 1,017 | 11 | 31 | -- | 1.07432% |
| 2601 | 2R | 26 | 260, 261 | Y-2601 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 2602 | 2 | 26 | 262, 263 | Y-2602 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 2603 | 2R | 26 | 264, 378 | Y-2603 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 2604 | 2 | 26 | 265, 377 | Y-2604 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 2701 | 2R | 27 | 270, 271 | Y-2701 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 2702 | 2 | 27 | 272, 273 | Y-2702 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 2703 | 2R | 27 | 268, 269 | Y-2703 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 2704 | 2 | 27 | 266, 267 | Y-2704 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 2801 | 3 | 28 | 276, 366 | -- | 6 | 825 | 17 | 46 | -- | .87150% |
| 2802 | 3R | 28 | 278, 364 | -- | 6 | 825 | 17 | 46 | -- | .87150% |
| 2803 | 3A | 28 | 277, 365 | -- | 6 | 825 | 17 | -- | 42 | .87150% |
| 2804 | 3AR | 28 | 279, 363 | -- | 6 | 825 | 17 | -- | 42 | .87150% |
| 2805 | 4R | 28 | 274, 275 | -- | 6 | 900 | 18 | 110 | -- | .95073% |
| 2806 | 5R | 28 | 255, 367 | -- | 4 | 514 | -- | -- | -- | .54297% |
| 2807 | 5 | 28 | 256, 368 | -- | 4 | 514 | -- | -- | -- | .54297% |
| 2901 | 2R | 29 | 288, 289 | Y-2901 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 2902 | 2 | 29 | 290, 291 | Y-2902 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 2903 | 2R | 29 | 284, 285 | Y-2903 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 2904 | 2 | 29 | 286, 287 | Y-2904 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 3001 | 2R | 30 | 294, 295 | Y-3001 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 3002 | 2 | 30 | 292, 293 | Y-3002 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |

| Unit No. | Unit Type | Bldg. No. | Parking Stall No(s). | Yard Area No. | No. of Rooms in Unit | Approx. Net Living Floor Area in Sq. Ft. | Approx. Net Laundry Floor Area in Sq. Ft. | Approx. Net Lanai Floor Area in Sq. Ft. | Approx. Net Balcony Floor Area in Sq. Ft. | Common Interest |
|----------|-----------|-----------|----------------------|---------------|----------------------|--|---|---|---|-----------------|
| 3003 | 2R | 30 | 280, 281 | Y-3003 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 3004 | 2 | 30 | 282, 283 | Y-3004 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 3101 | 2R | 31 | 296, 297 | Y-3101 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 3102 | 1 | 31 | 298, 299 | Y-3102 | 7 | 1,017 | 11 | 31 | -- | 1.07432% |
| 3103 | 1R | 31 | 302, 303 | Y-3103 | 7 | 1,017 | 11 | 31 | -- | 1.07433% |
| 3104 | 2 | 31 | 300, 301 | Y-3104 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 3201 | 3 | 32 | 379, 380 | -- | 6 | 825 | 17 | 46 | -- | .87150% |
| 3202 | 3R | 32 | 385, 386 | -- | 6 | 825 | 17 | 46 | -- | .87150% |
| 3203 | 3A | 32 | 381, 382 | -- | 6 | 825 | 17 | -- | 42 | .87150% |
| 3204 | 3AR | 32 | 383, 384 | -- | 6 | 825 | 17 | -- | 42 | .87150% |
| 3205 | 4 | 32 | 388, 389 | -- | 6 | 900 | 18 | 110 | -- | .95073% |
| 3206 | 5R | 32 | 390, 392 | -- | 4 | 514 | -- | -- | -- | .54297% |
| 3207 | 5 | 32 | 391, 393 | -- | 4 | 514 | -- | -- | -- | .54297% |
| 3301 | 1R | 33 | 369, 370 | Y-3301 | 7 | 1,017 | 11 | 31 | -- | 1.07433% |
| 3302 | 1 | 33 | 371, 372 | Y-3302 | 7 | 1,017 | 11 | 31 | -- | 1.07432% |
| 3303 | 1R | 33 | 373, 374 | Y-3303 | 7 | 1,017 | 11 | 31 | -- | 1.07433% |
| 3304 | 1 | 33 | 375, 376 | Y-3304 | 7 | 1,017 | 11 | 31 | -- | 1.07432% |
| 3401 | 3 | 34 | 355, 359 | -- | 6 | 825 | 17 | 46 | -- | .87150% |
| 3402 | 3R | 34 | 358, 362 | -- | 6 | 825 | 17 | 46 | -- | .87150% |
| 3403 | 3A | 34 | 356, 360 | -- | 6 | 825 | 17 | -- | 42 | .87150% |
| 3404 | 3AR | 34 | 357, 361 | -- | 6 | 825 | 17 | -- | 42 | .87150% |
| 3405 | 4R | 34 | 353, 354 | -- | 6 | 900 | 18 | 110 | -- | .95073% |
| 3406 | 5R | 34 | 349, 352 | -- | 4 | 514 | -- | -- | -- | .54297% |
| 3407 | 5 | 34 | 350, 351 | -- | 4 | 514 | -- | -- | -- | .54297% |
| 3501 | 2R | 35 | 340, 341 | Y-3501 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 3502 | 1 | 35 | 347, 348 | Y-3502 | 7 | 1,017 | 11 | 31 | -- | 1.07432% |

| Unit No. | Unit Type | Bldg. No. | Parking Stall No(s). | Yard Area No. | No. of Rooms in Unit | Approx. Net Living Floor Area in Sq. Ft. | Approx. Net Laundry Floor Area in Sq. Ft. | Approx. Net Lanai Floor Area in Sq. Ft. | Approx. Net Balcony Floor Area in Sq. Ft. | Common Interest |
|----------|-----------|-----------|----------------------|---------------|----------------------|--|---|---|---|-----------------|
| 3503 | 1R | 35 | 338, 339 | Y-3503 | 7 | 1,017 | 11 | 31 | -- | 1.07433% |
| 3504 | 2 | 35 | 336, 337 | Y-3504 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 3601 | 1R | 36 | 330, 331 | Y-3601 | 7 | 1,017 | 11 | 31 | -- | 1.07433% |
| 3602 | 1 | 36 | 332, 333 | Y-3602 | 7 | 1,017 | 11 | 31 | -- | 1.07433% |
| 3603 | 1R | 36 | 326, 327 | Y-3603 | 7 | 1,017 | 11 | 31 | -- | 1.07433% |
| 3604 | 1 | 36 | 328, 329 | Y-3604 | 7 | 1,017 | 11 | 31 | -- | 1.07433% |
| 3701 | 3 | 37 | 314, 315 | -- | 6 | 825 | 17 | 46 | -- | .87150% |
| 3702 | 3R | 37 | 320, 321 | -- | 6 | 825 | 17 | 46 | -- | .87150% |
| 3703 | 3A | 37 | 316, 317 | -- | 6 | 825 | 17 | -- | 42 | .87150% |
| 3704 | 3AR | 37 | 318, 319 | -- | 6 | 825 | 17 | -- | 42 | .87150% |
| 3705 | 4 | 37 | 324, 325 | -- | 6 | 900 | 18 | 110 | -- | .95073% |
| 3706 | 5R | 37 | 323, 334 | -- | 4 | 514 | -- | -- | -- | .54297% |
| 3707 | 5 | 37 | 322, 335 | -- | 4 | 514 | -- | -- | -- | .54297% |
| 3801 | 1R | 38 | 312, 313 | Y-3801 | 7 | 1,017 | 11 | 31 | -- | 1.07433% |
| 3802 | 2 | 38 | 310, 311 | Y-3802 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 3803 | 2R | 38 | 306, 307 | Y-3803 | 8 | 1,245 | 17 | 48 | -- | 1.31518% |
| 3804 | 1 | 38 | 308, 309 | Y-3804 | 7 | 1,017 | 11 | 31 | -- | 1.07433% |

NOTE: All of the parking stalls are regular size.

Parking Stall Nos. 1G, 26G, 27G, 28G, 29G, 58G, 59G, 60G, 61G, 242G, 243G, 244G, 245G, 246G, 304G, 305G, 342G, 343G, 344G, 345G, 346G, 394G, 395G, 396G and 397G are guest stalls.

Parking Stall Nos. 54, 55, 56, 57, 247, 248, 249 and 250 are appurtenant to one or more units in a condominium project in the vicinity of the Project.

EXHIBIT "C"

ADDITIONAL PHASES

That certain parcel of land situate at Waikoloa, District of South Kohala, Island and County of Hawaii, State of Hawaii, being Lot 59-C of the "MAKANA KAI AT WEHILANI", as shown on File Plan Number 2427, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 8.003 acres, more or less.