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TITLE GUARANTY OF HAWAII, INCORPORATED

Return by Mail () Pickup (X) To:
 Brooks Tom Porter & Quitiquit, LLP
 841 Bishop Street, Suite 2125
 Honolulu, Hawaii 96813

Tax Map Key No. (4) 2-1-003-005
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**BYLAWS
OF
THE KEALA'ULA HOMEOWNERS ASSOCIATION**

WHEREAS, PORT ALLEN RESIDENTIAL LLC, a Hawaii limited liability company (the "Declarant"), whose mailing address is 822 Bishop Street, Honolulu, Hawaii 96813, is the owner in fee simple of the land described in Exhibit "A" attached hereto and made a part hereof (the "Land"); and

WHEREAS, the Declarant intends to develop and improve the Land as a fee simple residential subdivision known as "Keala'ula" consisting of Lots 1 through 61 and Lots 64 through 67, inclusive, as shown on the Subdivision Map (described below); and

WHEREAS, the Declarant has submitted all of its interest in the Land and all improvements now or hereafter placed thereon to that certain Declaration of Covenants, Conditions and Restrictions for Keala'ula dated concurrently with these Bylaws and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2007 - 120734 (the Declaration of Covenants, Conditions and Restrictions for Keala'ula, as the same may be amended from time to time, is hereinafter referred to as the "Declaration");

NOW, THEREFORE, the Declarant hereby declares that the Land and all improvements now or hereafter placed thereon are and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the Declaration and to the following Bylaws of the Keala'ula Homeowners Association, as the same may be lawfully

amended from time to time (the "Bylaws"), all of which are declared to be in furtherance of the plan set forth in the Declaration and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Community and in accordance with the provisions and requirements of Chapter 421J of the Hawaii Revised Statutes, as amended. These Bylaws shall constitute covenants running with the Land and shall be binding upon and inure to the benefit of the Declarant, its successors and assigns, and all present and future Owners, mortgagees, tenants, and occupants of any Lots in the Community, as such terms are hereinafter defined.

ARTICLE I DEFINITIONS

SECTION 1.1 Definitions. The following terms shall have the meanings set forth below. In the case of terms previously defined herein, the terms and their meanings are repeated below for convenience:

"Articles" or "Articles of Incorporation" means the articles of incorporation for the Association filed with the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with the procedures and requirements of Chapter 414D of the Hawaii Revised Statutes, as amended.

"Association" means the Keala'ula Homeowners Association, a Hawaii nonprofit corporation created in accordance with the requirements of Chapter 414D of the Hawaii Revised Statutes and existing and operating as a planned community association pursuant to and in accordance with the terms of the Articles, the Declaration, these Bylaws and the requirements of Chapter 421J of the Hawaii Revised Statutes, and any amendments to any of the foregoing.

"Association Documents" means the Articles of Incorporation, the Declaration, these Bylaws, the Design Guidelines, the Detention Basin Agreement, the Detention Area Operation Manual and any rules or regulations now or hereafter promulgated by the Declarant or the Association relating to the use, improvement, alteration, maintenance or control of any Community Lots, and any amendments to any or all such documents.

"Board of Directors" or "Board" means the Board of Directors of the Association appointed or elected in accordance with these Bylaws.

"Business Day", whether or not capitalized, means Monday, Tuesday, Wednesday, Thursday and/or Friday. Saturdays, Sundays and state and federal holidays are not "business days".

"Chapter 421J" means Chapter 421J of the Hawaii Revised Statutes, as now or hereafter amended.

"Common Area" means any portions of the Roadway Lots, the Detention Area, the Sewer System or other parts of the Community that are required, whether by the Declaration, these Bylaws, the Detention Basin Agreement or any governmental agency or authority

(including but not limited to the County of Kauai), to be landscaped and/or maintained and/or operated by the Association, whether or not such areas are owned by the Association, one or more Lot Owners, the Declarant or any other third party.

“Community” means the Keala’ula subdivision and all Community Lots comprising the subdivision and all rights and easements appurtenant thereto or benefiting all or any part thereof, including all improvements constructed therein or thereon by the Declarant and all improvements subsequently made thereto or placed thereon.

“Community Lot” means any of the Residential Lots, the Detention Area and the Roadway Lots (until such time as the Roadway Lots are dedicated to the County of Kauai or the State of Hawaii).

“Day” or **“Days”**, when not preceded by “business” and whether or not capitalized, means a calendar day or days, as the case may be.

“Declaration” means the Declaration of Covenants, Conditions and Restrictions for Keala’ula recorded in the Bureau, as the same may be amended from time to time.

“Declarant” means Port Allen Residential LLC, a Hawaii limited liability company.

“Declarant Control Period” has the meaning given to such term in Section 4.21 of these Bylaws.

“Design Guidelines” means any rules, restrictions or guidelines for the construction of improvements or the modification or alteration of existing improvements in the Community now or hereafter adopted by the Declarant and/or the Association and subsequently administered by the Declarant and/or the Association, as the same may be amended from time to time. The Design Guidelines may also include guidelines and rules for landscaping the Residential Lots.

“Detention Area” means that certain Community Lot designated on the Subdivision Map as Lot 14, together with the Detention Basin located thereon, and together also with any and all other improvements, apparatus, equipment or facilities of any kind that are or may be located thereon or therein and required for the proper operation and functioning of the Detention Area, including the Detention Basin. Subject to the terms of section 4 of the Declaration, the Detention Area will be owned by the Association.

“Detention Area Operation Manual” means the plans, specifications, instructions and/or guidelines provided to the Association by the Declarant and relating to the proper operation, care, upkeep, replacement, repair and maintenance of the Detention Area, and any additional instructions, guidelines or information subsequently provided to the Association by the Declarant, any manufacturer or provider of any equipment, machinery or other component(s) of the Detention Area, or any governmental agency or authority in connection therewith.

“Detention Basin” means that certain drainage pond facility designed to collect and temporarily store storm runoff from the Community Lots and located within and comprising part of the Detention Area.

“Detention Basin Agreement” means that certain Port Allen Residential Detention Basin Agreement dated _____, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. _____, made by the Declarant in favor of the County of Kauai and pertaining to the Detention Basin.

“Land” means the land described in Exhibit “A” attached hereto and made a part hereof, together with all rights, entitlements and easements appurtenant thereto.

“Lot Deed” means a Deed with Reservations and Conditions transferring title to a Residential Lot, together with a membership interest in the Association, from the Declarant (or the Declarant’s successor in interest) to any person.

“Majority” or “Majority of Owners” shall mean the Owners of more than fifty percent (50%) of the Residential Lots.

“Mortgagee of a Lot” or “Lot Mortgagee” means the holder of a mortgage encumbering the fee title to, or any recorded leasehold interest in, a Residential Lot.

“Owner” or “Lot Owner” means any person or entity, including the Declarant, who owns a fee simple interest in a Residential Lot, and any person to whom all rights as Owner (including voting) and membership in the Association shall have been transferred by means of (a) a deed, (b) a recorded lease of said Residential Lot for a period in excess of 20 years, or (c) an agreement of sale which transfers all rights of possession and occupancy; provided, however, that in each such case the transferee of said rights will not be recognized as an “Owner” by the Association unless a written notice of transfer is filed by the transferor with the Board.

“Person” (whether or not capitalized) means any individual, corporation, association, partnership, limited liability company, agency, trust, institution, organization, or other entity, and his, her, or its legal representative.

“Record” or “recorded” or any variation thereof shall refer to the recordation of a document or instrument in the Bureau of Conveyances of the State of Hawaii.

“Residential Lot” means any of the sixty (60) residential lots located exclusively within the Community and designated on the Subdivision Map as Lots 1 through 13, inclusive, and Lots 15 through 61, inclusive.

“Roadway Lot” means any one of the four (4) roadway lots located exclusively within the Community and designated on the Subdivision Map as Lots 64, 65, 66 and 67, and all gates or other enclosures (if any) limiting access to such Roadway Lots.

“Sewer System” means the private waste-water and sewer system serving the Community, to be owned and operated by the Association, and all equipment, pipes, pumps, drains, machinery, facilities, easements and easement rights owned or hereafter acquired by the Association in connection with the ownership, maintenance, use and/or operation of the Sewer System.

“Share” or “Owner’s Share” means a 1/60 interest in all of the rights and obligations of the Association, including the obligation to pay all assessments levied against the Residential Lots and/or the Association’s members by the Association, and including also the right to vote on all matters to be decided by, or within the power and authority of, the Association. Each Residential Lot shall have appurtenant thereto one Share and one vote, and each Residential Lot’s Share and vote shall be inseparable from such Residential Lot and shall be transferred automatically with the transfer of title to such Residential Lot, regardless of whether such Share is mentioned in the conveyance instrument.

“Subdivision Map” means the final subdivision map for the “Port Allen Residential Subdivision”, as approved (and stamped) by the Planning Commission of the County of Kauai on May 9, 2006. The Port Allen Residential Subdivision shall be commonly known as “Keala’ula” as provided herein and in the Declaration.

ARTICLE II APPLICATION AND ENFORCEMENT

SECTION 2.1 Administration and Operation. The administration and operation of the Community shall be governed by the Association Documents and all other applicable laws.

SECTION 2.2 Personal Application. All present and future Owners, mortgagees, tenants and occupants of Residential Lots and their guests and employees, and any other person who may use the Community in any manner are subject to these Bylaws and the other Association Documents, as each may be amended from time to time. The acceptance of a Lot Deed, conveyance, mortgage or similar instrument, or the acquisition of any interest in the Community, or the entry into or the act of occupancy of a Lot, shall constitute an agreement that the provisions of these Bylaws and the other Association Documents are accepted, ratified and shall be complied with.

SECTION 2.3 Compliance with Association Documents. Each Lot Owner, such Lot Owner’s employees, tenants, guests, invitees, and any other persons using the Community shall comply strictly with the covenants, conditions and restrictions set forth in the Association Documents. Each Lot Owner is fully responsible for ensuring that all employees, tenants, guests, and invitees of the Lot Owner comply strictly with such covenants, conditions and restrictions, and shall be personally liable for any such noncompliance. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board of Directors on behalf of the Association or, in a proper case, by an aggrieved Lot Owner.

SECTION 2.4 Attorneys' Fees and Expenses of Enforcement.

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

- (1) Collecting any delinquent assessments against any Owner or any Owner's Lot;
- (2) Foreclosing any lien on any Lot;
- (3) Enforcing any provision of the Association Documents or Chapter 421J;

against a Lot Owner, such Lot Owner's employees, tenants, guests, or invitees, or any other person who in any manner may use any portion of the Community, shall be promptly paid on demand to the Association by such person or persons; provided that if the Association is not the prevailing party, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the Association, shall be promptly paid on demand to the person by the Association. The reasonableness of any attorneys' fees paid by a person or by the Association as a result of an action pursuant to section 2.4(2) above shall be determined by the court.

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

- (1) The Owner first shall have demanded and allowed reasonable time for the Board of Directors to pursue an enforcement; or,
- (2) 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 an Owner is not the prevailing party in any court action against the Association, any of its officers or directors, or the Board of Directors, to enforce any provision of the Association Documents or Chapter 421J, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the Association shall be awarded to the Association, unless the action was filed in small claims court, or, prior to filing the action in a higher court, the Owner has first submitted the claim to mediation pursuant to section 421J-13 of Chapter 421J, and made a good faith effort to resolve the dispute under any of those procedures.

(c) Nothing in this section shall be construed to prohibit the Board of Directors from authorizing the use of a collection agency.

SECTION 2.5 Conflicts. These Bylaws are set forth to comply with the requirements of Chapter 421J and the Declaration. In case any of these Bylaws conflict with

Chapter 421J or the Declaration, the provisions of Chapter 421J or the Declaration, as the case may be, shall control.

ARTICLE III ASSOCIATION

SECTION 3.1 **Purpose of Association; Qualifications for Membership.** The Association shall be organized and operated for the purposes of:

- (a) owning, operating, maintaining, repairing, insuring and otherwise caring for the Detention Area, the Sewer System and any other property, property rights, easements, interests, and funds owned by the Association or which the Association is otherwise obligated to operate, maintain, repair, and/or insure regardless of who owns such property; and
- (b) administering and enforcing the terms of the Association Documents; and
- (c) observing and performing all of the obligations and functions of the Association as set forth in the Association Documents, including these Bylaws.

All Lot Owners of the Community (and only such Lot Owners) shall constitute and be members of the Association. The Owner of any Lot upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such Lot ceases for any reason or until the Association is dissolved by expiration or termination of the Declaration or by other process, at which time his membership in the Association shall automatically cease.

SECTION 3.2 **First Meeting; Annual Meetings.** The first annual meeting of the Association shall be held at any time upon the written request to the Declarant of not less than 10% of the Lot Owners, but in any event not later than one (1) year after the closing of the first conveyance of a Residential Lot to a person other than the Declarant. Thereafter, the annual meetings of the Association shall be held within three calendar months following the end of the fiscal year selected by the Board, and if the annual meeting for any year shall not be held or called within said period, then the annual meeting for such year shall be held on the first day of the fourth calendar month following the end of the fiscal year selected by the Board. Except as otherwise provided in Section 4.21 below, at such annual meetings, including the first annual meeting, the Board of Directors shall be elected by ballot of the Lot Owners in accordance with Article IV, Section 4.3 of these Bylaws. The Lot Owners may transact such other business at such meetings as may properly come before them.

SECTION 3.3 **Place of Meetings.** All meetings of the Association shall be held at a convenient location on the Island of Kauai, or elsewhere within the State of Hawaii convenient to the Lot Owners as determined by the Board of Directors.

SECTION 3.4 **Method of Calling Special Meetings.** Except as otherwise provided herein, special meetings of the Association shall be held at any time upon the call of the President or upon written request signed by at least twenty-five percent (25%) of the Lot Owners

and presented to the Secretary. Upon the receipt of such call or written request, the Secretary shall send written notice of the meeting to all Lot Owners and the meeting shall be held no earlier than fourteen (14) and no later than sixty (60) days from the receipt of such call or written request, at such time, date, and place as shall be determined by the Board.

SECTION 3.5 Notice of Meetings. Written notice of all Association meetings, whether annual or special, shall be given to each Lot Owner at least fourteen (14) days but not more than ninety (90) days prior to the meeting, in any of the following ways: (a) by delivering it personally to the Lot Owner, or (b) if, the Lot Owner resides in the Community, by leaving it at such Lot Owner's residence in the Community, or (c) by mailing it, postage prepaid, addressed to the Lot Owner at the address of such Owner as it appears on the Association's record of ownership, or (d) by sending it by email to an email address designated by the Lot Owner. The written notice of meeting shall contain at least: the date, time and place of the meeting, the items on the agenda for the meeting, and a standard proxy form authorized by the Association, if any. Upon notice being given in accordance with the provisions of this Section, the failure of any member of the Association to receive actual notice of any meeting shall not in any way invalidate the meeting or proceedings thereat. The presence of a Lot Owner or Lot mortgagee in person or by proxy at any meeting shall be deemed a waiver of any required notice to such Owner or Lot mortgagee unless such Owner or Lot mortgagee shall at the opening thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof.

SECTION 3.6 Quorum. At all meetings of the Association, the presence in person or by proxy of a majority of Lot Owners shall constitute a quorum, and the acts of a majority of the Lot Owners present in person or by proxy at any meeting of the Association at which a quorum is present shall be binding upon all Lot Owners for all purposes, except as otherwise provided in the Declaration or in these Bylaws.

SECTION 3.7 Voting. Voting shall be on a percentage basis, and the percentage of the total vote to which each Lot is entitled shall be the Share assigned to such Lot pursuant to the Declaration. Votes may be cast in person or by proxy by the Lot Owners. A personal representative, executor, administrator, guardian, beneficiary or trustee may vote in person or by proxy at any meeting of the Association the vote for any Lot owned or controlled by him in such capacity, provided that prior to such meeting he shall first present to the Secretary written evidence, satisfactory to the Board of Directors, that he owns or controls such Lot in such capacity. The vote for any Lot owned by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and, in case of protest, each co-tenant shall be entitled to only a share of such vote in proportion to that co-tenant's share of ownership in such Lot. In the case of joint tenants, each Owner's share of ownership for voting purposes shall be deemed to be a fraction of the total vote allocated to the Lot, the numerator of which shall be one (1) and the denominator of which shall be the total number of joint owners of the Lot. In the case of tenants by the entirety, each co-tenant shall have one-half (1/2) of the total vote allocated to the Lot. Corporations, general partnerships, limited partnerships and limited liability companies which are Owners shall designate an officer, general partner, manager or member for the purpose of exercising the vote, and prior to any meeting at which such representative intends to vote, the representative shall present to the

Secretary written evidence satisfactory to the Board of his or her designation and authority as representative of such corporation, general partnership, limited partnership or limited liability company.

SECTION 3.8 Proxies and Pledges.

(a) A proxy shall be in writing and shall be valid for only a specified meeting of the Association and any adjournments of that meeting.

(b) An Owner may give a proxy to any person or the Board of Directors as an entity, and the proxy may be limited as indicated by the Owner. No proxy shall be irrevocable unless:

- (1) The proxy is coupled with a financial interest in the Owner's Lot; or
- (2) The proxy is held pursuant to a first mortgage of record encumbering the Lot or an agreement of sale affecting the Lot.

(c) To be valid, a proxy shall:

- (1) Be delivered to the Secretary of the Association or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains;
- (2) Contain at least the name of the Association, the date of the meeting of the Association, the printed name and signature of the person or persons giving the proxy, the Lot or Lots for which the proxy is given, and the date that the proxy is given; and
- (3) Contain boxes wherein the Owner has indicated that the proxy is given:
 - (A) For quorum purposes only;
 - (B) To the individual whose name is printed on a line next to this box;
 - (C) To the Board of Directors as a whole and that the vote be made on the basis of the preference of the majority of the Board; or
 - (D) To those Directors present at the meeting and the vote to be shared with each Board member receiving an equal percentage.

(d) If the Board of Directors uses Association funds to distribute proxies that include the election of Directors, the Board shall first post notice of its intent to distribute proxies in prominent locations within the Community at least thirty days prior to its distribution of proxies; provided that if the Board receives within seven days of the posted notice a request by any Owner for nomination to the Board accompanied by a statement, the Board shall mail to all Owners either:

- (1) A proxy form containing the names of all Owners who have requested nomination to the Board accompanied by their statements; or
- (2) A proxy form containing no names, but accompanied by a list of names of all Owners who have requested nomination to the Board and their statements.

The statement shall not exceed one hundred words, indicating the Owner's qualifications to serve on the Board and reasons for wanting to receive proxies.

(e) Nothing in this section 3.8 shall affect the holder of any proxy under a first mortgage of record encumbering a Lot or under an agreement of sale affecting a Lot.

(f) Nothing in this section shall prohibit the use of proxies for filling vacancies that occur after the notice of the annual meeting has been distributed.

(g) Any one of two or more persons owning any Lot may give or revoke a proxy for the entire vote of such Lot. No proxy may be given by a co-Owner or co-Owners for only a share of a Lot's vote and any attempt to do so shall be void. Any proxy given by a co-Owner or co-Owners of a Lot may be exercised to cast the entire vote for such Lot in the absence of protest by another co-Owner or the holder of a proxy from another co-Owner, and, in case of such protest, the entire vote allocated to such Lot shall not be counted except for purposes of establishing a quorum.

SECTION 3.9 Adjournment of Meetings. Any meeting of the Association may from time to time be adjourned to a time not less than forty-eight (48) hours from the time the original meeting was called as may be determined by a majority of the Lot Owners present, without any further notice other than the announcement at such meeting. If a quorum is present upon reconvening such adjourned meeting, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

SECTION 3.10 Conduct of Association Meetings. All meetings of the Association shall be conducted in accordance with the most current edition of Robert's Rules of Order, Newly Revised.

ARTICLE IV BOARD OF DIRECTORS

SECTION 4.1 Powers and Duties. The affairs of the Association, except as otherwise provided by the Declaration, or these Bylaws, shall be conducted and managed by a Board of Directors. Each Director shall owe the Association a fiduciary duty in the performance of the Director's responsibilities. Pursuant to Section 6.2 of these Bylaws, the Board may employ a responsible managing agent with such powers and duties of the Board as shall be delegated by the Board.

SECTION 4.2

Number; Qualification; and Compensation.

(a) The Board of Directors shall initially be constituted of five (5) persons, each of whom shall be an Owner, co-Owner, vendee under an agreement of sale, or an officer of any corporate Owner of a Lot or, in the case of fiduciary owners, the fiduciary or officers of corporate fiduciaries. The partners in a general partnership, the general partners of a limited partnership, the managing member(s) of a manager-managed limited liability company and any member of a member-managed limited liability company shall be deemed to be the Owners of a Lot for this purpose.

(b) There shall be no more than one representative on the Board of Directors from any one Lot that is owned by any person other than the Declarant.

(c) No resident manager or employee of the managing agent of the Association shall serve on the Board of Directors.

(d) No member of the Board of Directors shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the course of acting as such Director, provided that a majority of a quorum of the Board has first approved such expenses.

SECTION 4.3

Method of Electing the Board. Except as otherwise provided in Section 4.21 below regarding the Declarant Control Period, election of Directors shall be by cumulative voting by secret ballot at each annual meeting of the Association and any special meeting called for that purpose; provided, however, that at any meeting at which Directors are to be elected, the requirement that voting for Directors be by secret ballot may be waived by the vote of a majority of those persons present and entitled to vote at such meeting.

SECTION 4.4

Term of Office. At the first annual meeting of the Association, the term of office of the two (2) members of the Board receiving the greatest number of votes shall be fixed at three (3) years, the term of office of the two (2) members of the Board receiving the next greatest numbers of votes shall be fixed at two (2) years, and the term of office of the member of the Board receiving the next greatest numbers of votes shall be fixed at one (1) year. After the expiration of the term of office of each of the initial members, each successor member of the Board shall be elected to serve for a term of three (3) years. Each member of the Board shall continue to exercise the powers and duties of the office until his successor shall have been elected by the Lot Owners.

SECTION 4.5

Removal of Directors. At any regular or special meeting of the Association, any one or more of the members of the Board of Directors may be removed with or without cause by a majority of the Lot Owners and a successor shall then and there be elected for the remainder of the term to fill the vacancy thus created; provided, however, that an individual Director shall not be removed (unless the entire Board is removed) if Owners having sufficient votes to elect one Director by cumulative voting present at such meeting shall vote against his removal. A member of the Board of Directors whose removal is proposed by the Lot Owners shall be given an opportunity to be heard at the meeting. If such removal and replacement is to

occur at a special meeting, the call for such meeting shall be by the President or by a petition to the Secretary or managing agent signed by not less than twenty-five percent (25%) of the Lot Owners as shown in the Association's record of ownership; provided that if the Secretary or managing agent does not send out the notices for the special meeting within fourteen (14) days of receipt of the petition, the petitioners shall have the authority to set the time, date and place for the special meeting and to send out notices for the special meeting in accordance with the requirements for notice contained herein. Such meeting for the removal from office and replacement of Directors shall be scheduled, noticed and conducted in accordance with these Bylaws. In addition, if any Director shall fail to attend four (4) consecutive meetings of the Board for any reason, the Board, by a vote of a majority of the other members, may remove him and select a replacement to serve his unexpired term.

SECTION 4.6 Annual Meetings. The Board of Directors shall meet at least once a year. Each annual meeting of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association. At such meeting the Board shall elect the officers of the Association for the ensuing year. The first meeting of the first elected Board shall be held at the place of and immediately following the first annual meeting of the Association as provided in Section 3.2 of these Bylaws.

SECTION 4.7 Proxy Vote. A Director shall not vote by proxy at any Board meeting.

SECTION 4.8 Conflict of Interest. A Director shall not vote at any Board meeting on any issue in which the Director has a conflict of interest. If there is any disagreement as to whether or not there exists a conflict of interest, the determination of whether a conflict of interest exists as to a particular Director or Directors shall be made by a majority of the non-interested Directors, which determination shall be conclusive and binding on all parties.

SECTION 4.9 Disclosure of Conflict. A Director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

SECTION 4.10 Board Meetings. All meetings of the Board of Directors shall be conducted in accordance with the most current edition of Robert's Rules of Order, Newly Revised. Whenever practicable, all meetings of the Board of Directors, other than executive sessions, shall be open to all members of the Association, and Association members who are not on the Board of Directors may participate in any deliberation or discussion of the Board of Directors, other than executive sessions, unless a majority of a quorum of the Board of Directors votes otherwise. The Board of Directors, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or litigation in which the Association is or may become involved, or as may be necessary to protect the attorney-client privilege of the Association. The general nature of any business to be considered in executive session shall first be announced in the regular session.

SECTION 4.11 **Regular Meetings.** Regular meetings of the Board of Directors may be held at any location on the Island of Kauai convenient to the Board members, or elsewhere within the State of Hawaii and at such time as shall be determined from time to time by the Board of Directors. Unless the Board of Directors determines otherwise, meetings shall be held quarterly; provided, however, that at least one (1) regular meeting, in addition to the annual meeting of the Board, shall be held during each fiscal year. Whenever practicable, notice of the time and place for each regular meeting of the Board of Directors shall be given to each member of the Board of Directors in writing, or by email to an email address designated by the Director, at least three (3) business days prior to the day named for such meeting.

SECTION 4.12 **Special Meetings.** Special meetings of the Board of Directors may be called by the President or any one Director on ten (10) business days written (or email) notice to each member of the Board of Directors, which notice shall state the time, place and purpose of the meeting.

SECTION 4.13 **Notice of Board Meetings.** Whenever practicable, notice of all Board meetings shall be given to the Owners by the Secretary at least seventy-two (72) hours prior to the meeting in such manner as the Board deems appropriate under the circumstances.

SECTION 4.14 **Waiver of Notice.** Any member of the Board of Directors may at any time waive notice of any meeting of the Board and such waiver shall be deemed equivalent to the timely receipt of such notice. Attendance by a member of the Board of Directors at any meeting of the Board of Directors shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board of Directors are present at any meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

SECTION 4.15 **Minutes of Meetings.** The minutes of meetings of the Board of Directors shall include the recorded vote of each member of the Board of Directors on all motions except motions voted on in executive session.

SECTION 4.16 **Decisions of Board of Directors.** At all meetings of the Board of Directors, a majority of the members thereof shall constitute a quorum for the transaction of business. The vote of a majority of Directors present at a meeting at which a quorum of Directors is present shall constitute the decision of the Board. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting. Following such adjournment, at any reconvened meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

SECTION 4.17 **Vacancies.** Vacancies in the Board of Directors caused by any reason other than the removal of a member thereof by a vote of the Lot Owners shall be filled by a vote of a majority of the remaining members at any meeting of the Board at which a majority of the remaining members are present called for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum. Each person so elected shall hold office until the next annual meeting of the Association, at which time a successor Director shall be elected by the Lot Owners. Any

successor Director elected by the Lot Owners in the foregoing manner shall serve for the remaining unexpired term in respect of which the vacancy occurred.

SECTION 4.18 Liability and Indemnity of the Board of Directors and Officers.

The members of the Board of Directors and the officers of the Association shall not be liable to the Association or any of the Lot Owners for any mistake of judgment or otherwise except for their own gross negligence or willful misconduct. The Association may, upon request of any Director or officer, obtain and maintain, as a common expense, a policy of directors' and officers' liability insurance covering the Directors and officers of the Association and shall indemnify each Director and officer of the Association against all costs, expenses and liabilities, including judgments, amounts paid in compromise settlements and amounts paid for services of counsel and other related expenses which may be incurred by, or imposed on him in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted or threatened in which he may be involved as a party or otherwise by reason of his being or having been such Director or officer, or by reason of any past or future action taken, authorized or approved by him or any omission to act as such Director or officer, whether or not he continues to be such Director or officer at the time of the incurring or imposition of such costs, expenses or liabilities, but not including such costs, expenses or liabilities as shall relate to matters as to which he shall in such action, suit or proceeding be finally adjudged to be, or shall be, liable by reason of his gross negligence or willful misconduct toward the Association in the performance of his duties as such Director or officer. The foregoing right of indemnification shall not be exclusive of other rights which any Director or officer may have and shall inure to the benefit of the heirs and personal representatives of each Director and officer.

SECTION 4.19 Inspection by Directors; Copies of Documents. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. This right of inspection by a Director includes the right to make extracts and copies of documents at the Director's sole cost and expense, unless a majority of the Board determines that making such extracts or copies of documents is in the best interest of the Association and that the cost thereof shall be paid by the Association as a common expense.

SECTION 4.20 Telephone, Video, Electronic Meetings. Any other provision of these Bylaws notwithstanding, at any regular or special meeting of the Board at which at least one (1) Board member is physically present, whether held in open or executive session, any member of the Board not physically present may participate in such meeting by telephone conference, video conference or similar electronic (including internet) conference for purposes of constituting a quorum and for all other purposes, and the Board may carry on all business within the Board's authority as if all members participating by such means were physically present at such meeting; provided, however, that all persons authorized to participate in and actually participating in such meeting are at all times during such meeting able to hear and, when appropriate, be heard by all other participants.

SECTION 4.21 Declarant Control Period. Notwithstanding anything to the contrary set forth in these Bylaws, the Declarant shall have the right (but not the obligation) to appoint and remove all of the Association's officers and directors at all times prior to thirty (30)

days after conveyance of the forty-fifth Residential Lot to any Person other than the Declarant or an affiliate of the Declarant (the "Declarant Control Period"). The Declarant may exercise this right at the Association's first meeting or at any time prior thereto by providing written notice to the Association members that the Declarant intends to appoint directors and officers in accordance with the rights reserved in this Section 4.21 and identifying all such appointees. At any time during the Declarant Control Period, the Declarant may voluntarily surrender its right to appoint and remove directors and officers by written notice to the Association members of its election to do so. Such notice shall be given to the Association members not less than thirty (30) days prior to the date that the Declarant's surrender of rights shall become effective. In the event that the Declarant appoints officers and directors in accordance with this Section 4.21, then not later than the termination of the Developer Control Period (whether it terminates by transfer of the forty-fifth Residential Lot or by the Declarant's voluntary surrender of its rights hereunder), the Association shall elect a new Board of Directors as provided herein, and the newly elected board shall thereupon elect new officers as provided herein.

ARTICLE V OFFICERS

SECTION 5.1 Election and Term of Office. The officers of the Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by (and in the case of the President from among) the Board of Directors. Except as provided in Section 4.21 above during the Declarant Control Period, all officers shall be Owners. The Board of Directors may designate and elect such other officers as in its judgment may be necessary. The officers of the Association shall be elected annually by the Board of Directors and shall hold office at the pleasure of the Board of Directors

SECTION 5.2 Restriction on Qualification. An Owner shall not act both as an officer of the Association and as an employee of the managing agent employed by the Association, if any.

SECTION 5.3 President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are incident to the office of President of a corporation organized under the laws of the State of Hawaii, including, but not limited to, the power to appoint committees from among the Lot Owners from time to time as he may in his discretion decide to be appropriate to assist in the conduct of the affairs of the Association.

SECTION 5.4 Vice President. The Vice President shall have all of the general powers and duties which are incident to the office of Vice President of a corporation organized under the laws of the State of Hawaii. In particular, he shall perform all of the duties and exercise all of the powers and rights of the President provided by these Bylaws or otherwise during the absence or disability of the President, or whenever the office of President is vacant, and shall perform all other duties assigned by the Board.

SECTION 5.5 Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors. He shall see that all notices are given in

accordance with these Bylaws. He shall have charge of such books and papers of the Association as the Board of Directors may direct. He shall, in general, perform all the duties incident to the office of Secretary of a corporation organized under the laws of the State of Hawaii. Duties of the Secretary may be delegated to and performed by the managing agent, if any.

SECTION 5.6 Treasurer. The Treasurer shall keep the financial records and books of account of the Association showing all receipts and disbursements, and shall be responsible for the preparation of all required financial data. He shall be responsible for the deposit of all moneys and other valuable effects of the Association in such depositories as shall be designated by the Board of Directors. He shall, in general, perform all the duties incident to the office of Treasurer of a corporation organized under the laws of the State of Hawaii. Duties of the Treasurer may be delegated to and performed by the managing agent, if any, or any outside accounting organization.

SECTION 5.7 Audits.

(a) The Association shall require an annual audit of the Association's financial accounts by a public accountant; provided that if the Association at any time consists of less than twenty (20) Owners, the annual audit may be waived by a majority vote of all Lot Owners taken at an Association meeting.

(b) The Board of Directors shall make available a copy of the annual audit to each Lot Owner at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year, but in any event not later than one hundred twenty (120) days following the Association's fiscal year-end. If the annual audit has not been completed by that date, the Board shall make available:

(i) An unaudited year end financial statement for the fiscal year to each Lot Owner at least thirty (30) days prior to the annual meeting; and

(ii) The annual audit to all Owners at the annual meeting, or as soon as the audit is completed, whichever occurs later.

If the Association's fiscal year ends less than two months prior to the convening of the annual meeting, the year to date unaudited financial statement may cover the period from the beginning of the Association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed.

SECTION 5.8 Removal of Officers. Upon the affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

SECTION 5.9 Compensation of Officers. No officer shall receive any compensation from the Association for acting as such, but may be reimbursed for actual

expenses incurred in the course of acting as such officer, provided that a majority of a quorum of the Board has first approved such expenses.

SECTION 5.10 Agreements, Contracts, Deeds, Checks and Other Instruments.

All agreements, contracts, certificates, deeds, leases, checks and other instruments of the Association, including any amendments to these Bylaws, shall be signed by the President or the Vice President and one other officer of the Association, or such other person or persons as may be designated by resolution of the Board of Directors, provided that no officer, though he may hold more than one office, shall sign any instrument in more than one capacity.

**ARTICLE VI
MANAGEMENT**

SECTION 6.1 Management and Operation.

The Board of Directors shall at all times manage and operate the Association and those parts of the Community for which the Association is responsible and shall have the powers and duties necessary or proper therefor, including the power and authority to carry out and enforce the provisions of any and all of the Association Documents, and may do all acts and things except such as by law, the Declaration or these Bylaws may not be delegated to the Board of Directors by the Lot Owners. Such powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep, replacement, repair and maintenance of the Detention Area in accordance with the Detention Area Operation Manual and the Detention Basin Agreement;
- (b) Operation, care, upkeep, replacement, repair and maintenance of the Sewer System as may be required from time to time;
- (c) Maintenance, upkeep, replacement and repair of all other Common Areas and all improvements, facilities and/or landscaping located thereon;
- (d) Purchasing and maintaining insurance pursuant to the Declaration and these Bylaws;
- (e) Preparation annually of a budget of the common expenses required for the affairs of the Association (including, without limitation, the operation and maintenance of the Detention Area, the Sewer System and the Common Area) and determination of the amounts of monthly and special assessments;
- (f) Levy and collection of monthly and special assessments of the common expenses and other charges payable by the Lot Owners;
- (g) Opening of bank accounts on behalf of the Association and designating the signatories required therefor;

(h) Procuring legal and accounting services necessary or proper for the administration and operation of the Association or the interpretation, enforcement or implementation of the Declaration or these Bylaws, and any other material documents or decisions affecting the Association or the Community;

(i) Purchasing, leasing or otherwise procuring any other materials, equipment, supplies, labor and services, making repairs and structural alterations, and paying all taxes and assessments and other common expenses which the Board is required to procure, make or pay pursuant to the Declaration, these Bylaws or by law or which in its opinion shall be necessary or proper for the operation of the Detention Area or Basin, the Sewer System, the Association or the enforcement of the Declaration or these Bylaws, provided that if any such materials, equipment, supplies, labor, services, repairs, structural alterations, insurance, taxes or assessments are required because of the particular actions or negligence of the Owners of a particular Lot, the cost thereof shall be specially assessed to the Owners of such Lot;

(j) Payment of any amount necessary to discharge any lien or encumbrance levied against the Detention Area, the Sewer System, the Common Area or any part thereof or easements thereon. If one or more Owners are responsible for the existence of any such lien, they shall be jointly and severally liable for the cost of discharging it and the costs incurred by the Board by reason of such lien;

(k) Appointing a manager or managing agent or both and delegating to them or either of them such of its powers as it deems necessary or appropriate, delegation of which is not otherwise prohibited herein or in the Declaration or by law;

(l) Employment, designation, supervision and dismissal of personnel necessary for the maintenance, repair, replacement and restoration of the Detention Area, the Sewer System and the Common Area;

(m) Establishment of such penalties and fines and any interest thereon as it deems appropriate with respect to enforcement of the provisions of the Declaration and these Bylaws, including penalties and fines and any interest thereon for failure or refusal to pay to the Association on demand all costs, expenses, common expenses and assessments (special or otherwise) required to be paid hereunder; provided such penalties and fines are not inconsistent with applicable laws or the provisions of these Bylaws;

(n) Subject to the affirmative vote or written consent of all of the Lot Owners, the Board may purchase or otherwise acquire any Lot in the name of the Association on behalf of all Lot Owners and may borrow money and give a mortgage on the Lot to secure repayment of such money and do all other things reasonably required by any institutional lender to facilitate purchase money financing for the purchase of such Lot;

(o) Subject to the prior written consent of a majority of Lot Owners, the Board may authorize the borrowing of money to be used by the Association for the repair, replacement, maintenance or operation of the Detention Area, the Sewer System and the Common Area, or the making of any required additions, alterations and improvements thereto. The cost of such

borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to such borrowing, shall be a common expense of the Association, payable by each Lot Owner in accordance with such Lot Owner's Share;

(p) Custody and control of all funds of the Association, maintenance of full and accurate books of account and records of such funds and preparation of regular financial reports thereof; and

(q) Delegation of its powers to committees, agents, officers, representatives and employees.

SECTION 6.2 Employment of Manager or Managing Agent. Upon the vote or consent of a majority of Lot Owners, the Board of Directors may employ a responsible manager or managing agent, subject at all times to direction by the Board, with such powers and duties of the Board as shall be delegated by the Board. The compensation of the manager or managing agent shall be specified by the Board. The Declarant shall have the right to select an initial manager or managing agent for the Community, provided, however, that any contract for the employment of any initial manager or managing agent selected by the Declarant shall expressly provide that such contract shall be subject to termination by such manager or managing agent or a majority of the Lot Owners at any time and without cause upon not less than thirty (30) days prior written notice to the other party.

SECTION 6.3 Abatement and Enjoinment of Violations by Lot Owners. The breach of any of these Bylaws or any provision of the Declaration or any other Association Document shall give the Board the rights (in addition to any other rights set forth in these Bylaws) to enjoin, abate or remedy, by appropriate legal proceedings, the continuance of any such breach, and all costs thereof, including attorneys' fees, shall be paid by the defaulting Lot Owner on demand.

SECTION 6.4 Association Funds; Handling and Disbursement.

(a) The funds in the general operating account of the Association shall not be commingled with funds of other activities, nor shall the managing agent, if any, commingle any Association funds with the managing agent's own funds.

(b) All funds collected by the Association, or by the managing agent for the Association, shall be:

(i) Deposited in a financial institution, including a federal or Community credit union, located in the State of Hawaii and whose deposits are insured by an agency of the United States government; or

(ii) Held by a corporation authorized to do business under Article 8 of Chapter 412 of the Hawaii Revised Statutes, as amended;

(iii) Held by the United States Treasury; or

(iv) Purchased in the name of and held for the benefit of the Association through a securities broker that is registered with the Securities and Exchange Commission, has an office in the State of Hawaii, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation.

(c) All funds collected by the Association, or by the managing agent for the Association, shall be invested only in:

(i) Demand deposits, investment certificates, and certificates of deposit;

(ii) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten (10) years after the purchase date unless approved otherwise by a majority vote of the Lot Owners at an annual or special meeting of the Association or by written consent of a majority of the Lot Owners; or

(iii) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten (10) years after the purchase date unless approved otherwise by a majority vote of the Lot Owners at an annual or special meeting of the Association or by written consent of a majority of the Lot Owners.

Notwithstanding anything herein to the contrary, before any investment longer than one (1) year is made by the Association, the Board must approve the action. In addition, the Board must clearly disclose to Lot Owners all investments longer than one (1) year at each year's annual Association meeting.

(d) The managing agent or the Board shall not transfer Association funds by telephone between accounts, including but not limited to the general operating account and any reserve fund account.

(e) The Board or the managing agent shall keep and disburse funds collected on behalf of the Lot Owners in strict compliance with any agreement made with the Lot Owners, Chapter 467 of the Hawaii Revised Statutes, as amended, and all other applicable laws.

ARTICLE VII COMMON EXPENSES

SECTION 7.1 Common Expenses Defined. Common expenses means and includes all sums designated in the Declaration or in these Bylaws as common expenses, all sums incurred by or on behalf of the Board of Directors in the conduct and management of the affairs of the Association pursuant to the Declaration and these Bylaws, such amounts as the Board of Directors deems proper to maintain an adequate reserve fund for the operation and maintenance

of the Detention Area, the Sewer System and the Common Area, including, without limitation, anticipated needs for working capital, capital improvements, and for replacements, repairs and contingencies, and such amounts as the Board of Directors deems proper to make up any deficit in the common expense assessments for any prior year. Without limiting the generality of the foregoing, common expenses shall include all charges for taxes (except taxes that are or may hereafter be assessed separately on each Lot or any other interest of the Owner), assessments, insurance (including hazard and other casualty and liability insurance) for the Detention Area and the Sewer System (if available), liability insurance for the Common Area, costs of repair, reinstatement, rebuilding and replacement of the Detention Area and Sewer System, costs of landscaping, yard work and other similar services in connection with the Detention Area and the Common Area, wages, accounting and legal fees, management fees and other necessary expenses of upkeep, maintenance, management and operation of the Detention Area, the Sewer System and the Common Area actually incurred by the Association, and the cost of all utility services provided to the Detention Area (and to the Common Area, if the Association is required to provide utility services thereto). The interest of any Lot Owner in the reserves of the Association may not (except upon the termination of the Declaration) be withdrawn or assigned separately, but shall be deemed to be transferred automatically with each transfer of the Lot, whether or not mentioned or described expressly in the transfer document.

SECTION 7.2 Method of Determining and Collecting Common Expenses.

Except as otherwise provided in the Declaration or these Bylaws, each Lot Owner shall be liable for and pay a share of the common expenses, in proportion to the Share appurtenant to his Lot as set forth in the Declaration. Assessments of common expenses shall be payable in monthly installments on the first day of each month, or at such other times as shall be determined by the Board of Directors. The Declarant shall fix the rate of the assessments of common expenses until such rate shall be redetermined by the Board of Directors. The Board of Directors shall annually fix the rate of assessments of common expenses and shall notify each Lot Owner in writing of the amount of the assessments applicable to such Owner's Lot not less than thirty (30) days in advance of the beginning of such annual assessment period. The Board of Directors may from time to time during any year increase the assessment rate or impose a special assessment, provided the Board of Directors shall notify each Lot Owner in writing of such increase or special assessment not less than thirty (30) days before the effective date of such increase or assessment. Any portion of an Owner's assessments used or to be used by the Association for capital improvements or any other capital expenditure shall not be treated as income to the Association but shall be treated as a capital contribution by the Owners to the Association and shall be credited by the Association upon its books as paid-in-surplus.

SECTION 7.3 Payment as Agent. The Board will pay or cause to be paid, on behalf of the Owners, all common expenses owed or payable to third persons. Each Owner, as principal, shall be liable for and pay his Share, determined as provided in the Declaration and these Bylaws, of all common expenses; and the Board shall be responsible, as agent for each Owner, only to transmit the payments made by the Owner to third persons to whom such payments must be made. The Board may require the managing agent to assist in its duties hereunder. The Board or the managing agent collecting the common expenses shall not be liable for payment of such common expenses as principal but only as the agent of all Owners.

SECTION 7.4 Annual Budget; Reserves.

(a) The Board of Directors shall prepare and adopt an annual operating budget and distribute it to the Lot Owners. At a minimum, the budget shall include an estimate of the operating expenses of the Association for the next fiscal year, which expenses shall include all costs of maintaining, repairing, operating and insuring the Detention Area and the Sewer System, performing such obligations of the Association as are required in connection with the Common Area, and any other costs and expenses that the Association anticipates that it might incur for that year, including administrative costs.

(b) The Association shall monthly assess the Lot Owners individually, in accordance with each Lot's Share, in an amount required to fund the anticipated Association expenses for the next fiscal year. Estimated Association expenses for the Association's first year of operation (which shall be the first year in which title to any of the Residential Lots is transferred to any person other than the Declarant) shall be collected as part of the closing costs for each initial Lot sale.

(c) Neither the Association nor any Lot Owner, director, officer, managing agent, or employee of the Association who makes a good faith effort to calculate the estimated expenses for the Association shall be liable if the estimate subsequently proves incorrect.

(d) The Board of Directors may not exceed its total adopted annual operating budget by more than twenty percent (20%) during the fiscal year to which the budget relates, except in emergency situations. Prior to the imposition or collection of an assessment under this subsection 7.4(d), the Board of Directors shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Owners with the notice of assessment.

(e) Any Lot Owner may enforce the Board's compliance with this Section 7.4 in the event the Board fails to so comply.

(f) As used in this section "Emergency situation" means any of the following:

(i) An extraordinary expense required by an order of a court;

(ii) An extraordinary expense necessary to repair or maintain any part of the Community for which the Association is responsible where a threat to health or the safety of persons or property within or outside of the Community is discovered;

(iii) An extraordinary expense necessary to repair any part of the Community for which the Association is responsible that could not have been reasonably foreseen by the Board of Directors in preparing and distributing the annual operating budget;

(iv) An extraordinary expense necessary to respond to any legal or administrative proceeding brought against the Association that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget; or

(v) An extraordinary expense necessary for the Association to obtain adequate insurance for the property which the Association must insure.

SECTION 7.5 Default in Payment of Assessments. Each monthly (or other periodic) assessment and each special assessment shall be the separate, distinct and personal debt and obligation, as of the date of assessment, of the Owner against whom the same is assessed and, in the case of a Lot owned by more than one person, shall be the joint and several obligation of such co-Owners. Any assessment not paid within ten (10) days after the due date thereof shall accrue interest at the rate of twelve percent (12%) per annum from such due date until paid and shall be subject to the assessment of a late charge in such amount as may be determined by the Board from time to time. The Board may adopt a schedule of priorities specifying the order in which amounts paid shall be applied to an Owner's outstanding obligations to the Association, provided that such schedule shall be consistent with all applicable laws pertaining to the application of payments. All unpaid amounts of such assessments (or any other assessments provided for in the Declaration or these Bylaws) against any Lot or Lot Owner shall constitute a lien on such Lot and all improvements thereon with such priority as may be permitted by applicable law; provided, however, that in no event shall such lien be prior to (i) liens for taxes and assessments lawfully imposed by governmental authority against such Lot, and (ii) liens of any bona fide mortgage encumbering such Lot which was recorded prior to the recording of a notice of a lien by the Association. Such lien for an unpaid assessment may be foreclosed by suit or by non-judicial or power of sale foreclosure procedures set forth in chapter 667 of the Hawaii Revised Statutes (as amended), brought by the Board on behalf of the Association, in like manner as the foreclosure of a mortgage of real property, provided that ten (10) days prior written notice of intention to foreclose such lien shall be mailed by registered mail, postage prepaid, to the Owner of the Lot to be foreclosed upon. In any such foreclosure, the Lot Owner shall be required to pay a reasonable rental for the Lot, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the same. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing such assessments.

To the extent permitted by applicable law, in the event of a default or defaults in payment of any such assessment or assessments, and in addition to any other remedies the Board of Directors may have, the Board of Directors may enforce each such obligation as follows:

(a) By suit or suits at law to enforce such assessment obligation. Each such action must be authorized by a majority of the Board at a regular or special Board meeting, and any such suit may be instituted by the Board or the managing agent (if so authorized by the Board in writing), on behalf of the Association. Any judgment rendered in favor of the Association in any such action shall include reasonable attorneys' fees and costs. Upon full satisfaction of any such judgment, the Board shall authorize any two (2) members thereof or officers of the Association, acting in the name of the Board and the Association, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

(b) At any time after the occurrence of any such default, the Board may give a notice to the defaulting Lot Owner stating the date and amount of the delinquency. If the delinquent amount is not paid within ten (10) days after delivery or mailing of such notice, the Board may record a notice of lien against the Lot of such delinquent Lot Owner. Any such notice of lien shall be signed and acknowledged by any two (2) members of the Board or officers of the Association or the attorney for the Association. Regardless of whether or not such a notice of lien is recorded, the Board shall have all remedies provided in these Bylaws and by law on account of the occurrence of any such default. Each default shall constitute a separate basis for a notice of lien, but a single notice of lien may be filed with respect to more than one default.

A certificate executed and acknowledged or made under penalty of perjury by any two (2) members of the Board or officers of the Association or the managing agent shall be conclusive upon the Association and the Owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any Owner shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his Lot (or the fact that all assessments due are paid if such is the case) within fifteen (15) days after demand therefor and upon payment of a reasonable fee or service charge, in an amount fixed from time to time by the Board. If any notice of lien is filed as aforesaid and thereafter the Board receives payment in full of the amount claimed to be due and owing (including accrued interest, late fees and any costs of enforcement and/or attorneys' fees) then upon demand of the Lot Owner and payment of a reasonable fee, the Board, acting by any two (2) members of the Board or officers of the Association, shall execute, acknowledge and deliver to the Owner a release of lien, stating the date of the original notice of lien, the date, the filing data of the notice of lien and that the lien is fully satisfied, released and discharged.

SECTION 7.6 Assessment Disputes.

(a) No Lot Owner shall withhold any assessment claimed by the Association. A Lot Owner who disputes the amount of an assessment may request a written statement clearly indicating:

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

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

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

Payment in full of the assessment will not prevent the Lot Owner from contesting the assessment or receiving a refund of amounts not owed. Nothing in these Bylaws shall limit the rights of a Lot Owner to the protection of all fair debt collection procedures mandated under federal and state law.

SECTION 7.7 **Waiver.** The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of an Owner hereunder or to exercise any right or option herein contained or to serve any notice or to institute any action or summary proceeding shall not be construed as a waiver or a relinquishment for the future of such covenant, option or right, but such covenant, option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by an Owner hereunder, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach; and no waiver, express or implied, by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in a resolution of the Board of Directors.

SECTION 7.8 **Liability of Acquirer of Title on Foreclosure for Unpaid Common Expenses.** Where the Lot mortgagee of a mortgage of record or other purchaser of a Lot obtains title to the Lot as a result of foreclosure on the mortgage, the acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to the Lot which became due prior to the acquisition of title to the Lot by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Lot Owners, including the acquirer, his successors, and assigns. The acquirer shall be deemed to acquire title and shall be required to pay the Lot's share of common expenses and assessments upon recordation of the instrument of conveyance.

SECTION 7.9 **Joint and Several Liability of Grantor and Grantee for Unpaid Common Expenses.** In a voluntary conveyance the grantee under a Lot Deed shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his Share of the common expenses up to the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

SECTION 7.10 **Abandonment of Lot.** No Lot Owner may exempt himself from liability for his contribution towards the common expenses by abandonment of his Lot.

SECTION 7.11 **Taxes and Assessments.** Each Owner of a Lot shall be obligated to have the real property taxes for such Lot assessed separately by the proper governmental authority and to pay the amount of such real property taxes so determined. The foregoing sentence shall apply to all types of taxes which now are or may hereafter be assessed separately by law on each Lot or the personal property or any other interest of the Owner. Each Owner shall execute such documents and take such action as may be reasonably specified by the Board to facilitate dealing with the proper governmental authority regarding such taxes and assessments. Each Owner shall be obligated to pay to the Board, as part of the common expenses, his proportionate Share of any taxes or assessments assessed against the Detention Area, the Sewer System, the Common Area or any other Association property, such payment to be made as directed by the Board and secured by the lien created by Section 7.5 hereof.

SECTION 7.12 **Utility Expenses, etc.** The cost of utility services (including but not limited to electricity, telephone, cable, water, gas, refuse collection, etc., but excluding sewer service, which shall be provided by the Association and paid for by each Owner as a common

expense) to any Residential Lot shall be payable directly to the provider by the Owner of such Lot. For all Community utility expenses not separately metered or billed (including, but not limited to, all utility expenses allocable to the Detention Area and the Common Area, if any) or not otherwise directly allocable to an individual Residential Lot, the Board shall allocate a share of such utility expenses to each Lot, based upon the Lot's appurtenant Share.

ARTICLE VIII MAINTENANCE, REPAIR, ALTERATION AND USE

SECTION 8.1 Maintenance and Repair of Lots and Lot Improvements.

(a) Each Owner of a Lot shall, at the Owner's expense, keep the Lot and all improvements and landscaping thereon in good order, condition and repair and do such maintenance to the Lot, landscaping and improvements as may be necessary to protect the health, safety and welfare of all other members, residents and guests of the Community or any other Lot, and to maintain the good appearance and condition of the Lot and the good appearance, reputation and value of the Community as a whole.

(b) Each Owner shall be liable for all loss or damage whatsoever to any other Lot, landscaping or improvements or any other part of the Community caused by such Owner's failure to perform diligently any maintenance or other work to his Lot, landscaping or improvements required herein and shall reimburse the Association promptly on demand for all expenses incurred by the Association in performing any work authorized by the Board and required to repair such damage or remedy such loss.

SECTION 8.2 Maintenance and Repair of Detention Area, Sewer System and Common Area. All maintenance, repairs and replacements of the Detention Area and the Sewer System and periodic maintenance of the other Common Area shall be made only by or at the direction of the Board and be charged to all of the Owners as a common expense; provided that the costs of maintenance, repairs and replacements necessitated by the negligence, misuse or neglect of an identified Lot Owner shall be charged to such Lot Owner as a special assessment constituting a lien on such Owner's Lot in accordance with Section 7.5 of Article VII hereof.

SECTION 8.3 Alterations and Additions to Lots and Lot Improvements. The following provisions of this Section 8.3 are in addition to all of the terms and provisions of the Declaration and Design Guidelines pertaining to alterations and additions to Lots and Lot improvements. In the event of a conflict between any provision of this Section 8.3 and the provisions of the Declaration or the Design Guidelines, the more restrictive of the conflicting provisions shall control.

(a) No building or other structure shall be erected or permitted to remain on a Residential Lot other than (i) one detached, single-family dwelling with a maximum covered aggregate floor area (excluding carport) of not more than such Residential Lot's Share of the total aggregate floor area coverage permitted for all of the Residential Lots in the Community, and (ii) a carport with an area of not more than 500 square feet; and (iii) such other structures as are customarily ancillary to a single-family residence and are permitted by applicable zoning;

excluding, however, any "Ohana" unit or guest house or other structure that would qualify as a "residence" or "dwelling" under applicable zoning, notwithstanding that such additional structure may be permitted by applicable zoning. All buildings and structures must at all times comply with all applicable County of Kauai codes and regulations and any and all Design Guidelines provided by the Declarant or otherwise applicable to the Community.

(b) With the exception of the landscaping required by subsection 8.3(c) below and the addition of swimming pools and of certain fences and other minor enclosures for which building and/or other County permits are not required, no Lot Owner shall, without the prior written approval of the Declarant (which approval may be withheld in the Declarant's sole discretion), make any material improvements to his Residential Lot or the residence and carport originally constructed on the Lot for a period of 24 months after recordation of the Lot Deed conveying such Lot to such Owner. This restriction shall automatically terminate as to all Residential Lots upon recordation of a Lot Deed conveying the last Residential Lot owned by the Declarant to any person not related to the Declarant.

(c) Each Lot Owner shall be required to landscape his or her Residential Lot in accordance with the general landscaping provisions (if any) contained in the Design Guidelines and a landscaping plan established by the Lot Owner and submitted to the Board for its approval no later than 60 days after recordation of the Lot Deed conveying such Lot to such Owner. Each Lot Owner shall commence landscaping in accordance with an approved plan no later than 90 days after recordation of the Lot Deed and shall substantially complete landscaping no later than one year after recordation of the Lot Deed. At the minimum, Lot landscaping shall include the provision of lawn or similar ground cover over all portions of the Lot that are not otherwise improved, paved or planted so that there shall be no exposed areas of bare earth that may contribute to the creation of dust or encourage the growth of weeds.

(d) Subject to subsections 8.3(a), (b) and (c) above, and except as otherwise provided herein or in the Declaration, an Owner may make alterations and additions solely within his Lot or to improvements existing on his Lot, at the Owner's sole cost and expense, provided that such alterations or additions are in strict compliance with the Design Guidelines and do not (i) affect any other Lot without the prior written consent of the Owner of such other Lot, or (ii) in the reasonable judgment of the Board adversely affect the over-all appearance and character of the Community; and provided, further, that any building permit or other governmental permit or authorization required for such alterations or additions is first duly obtained and filed with the Board, and all other requirements in the Declaration and the Design Guidelines for the construction or alteration of improvements have been met.

(e) All proposed additional improvements to a Residential Lot shall require the prior written approval of the Declarant (for so long as the Declarant retains an ownership interest in any Lot) and the Board, and shall conform with all requirements of applicable zoning, building codes and ordinances and the Design Guidelines originally promulgated by the Declarant, as modified or amended by the Declarant or the Association. Only such materials (including but not limited to paint color and type, siding and roofing materials) as are permitted by the Design Guidelines may be used in the construction of any additional improvements or in the alteration or modification of any existing improvements.

(f) It is intended that the Community present and retain an integrated, attractive, desirable appearance and character in keeping with the residences as originally constructed and the ambience of Hawaii in general and the Island of Kauai in particular. Accordingly, whenever Board approval is required for any proposed modification, change, addition to or alteration of any Lot or Lot improvement, the Board shall base its decision to grant or deny approval at least in part upon considerations of whether (and to what extent) the proposed modification, change, addition or alteration will adversely affect the appearance and/or character of the Community. Except as otherwise provided in Section 8.4 below in connection with proposed modifications to accommodate Owners with disabilities, if the Board determines that the proposed modification, change, addition or alteration will materially adversely affect the appearance or character of the Community, the Board shall deny its approval. It is acknowledged that the Board's determination will unavoidably involve an element of subjective taste. Therefore, the Board's determination that a proposed modification, change, addition or alteration will materially adversely affect the appearance of the Community shall not be challengeable by any Lot Owner or group of Lot Owners on the grounds that the determination is to any extent based upon subjective criteria.

(f) Whenever Board approval is required for any proposed modification, change, addition to or alteration of any Lot or Lot improvement, if the Board determines that the proposed modification, change, addition or alteration will not materially adversely affect the appearance or character of the Community or violate or otherwise be inconsistent with the Declaration, these Bylaws or the Design Guidelines, the Board shall not unreasonably withhold its approval, provided that it shall not be deemed unreasonable for the Board to withhold its approval if the proposed modification, change, addition or alteration may, in the Board's best estimate, adversely affect any Lot or other part of the Community in any way, or increase the Community's common expenses, or threaten the health, safety or welfare of any Lot Owner, tenant or guest at the Community, or otherwise violate any applicable law, code or governmental rule or regulation.

SECTION 8.4 Exemptions for Persons With Disabilities. Notwithstanding any other provisions herein, in the Declaration or the Design Guidelines, Owners with disabilities shall be permitted to make reasonable modifications to their Lots and the improvements thereon at their sole expense (including the cost of obtaining any bonds required by the Declaration or these Bylaws), if such modifications are necessary to enable them to use and enjoy their Lots and/or improvements, provided that any Owner with a disability desiring to make such modifications shall make such request, in writing, to the Board of Directors. That request shall set forth, with specificity and in detail, the nature of the request and the reason that the requesting party needs to make such modifications. If the proposed modification will change the appearance or character of the Community or any part thereof, the Board's approval of the request may be conditioned upon evidence satisfactory to the Board that the needs of the disabled Owner cannot adequately be met at reasonable cost without causing such change, and that the proposed modification shall cause the least change in appearance or character reasonably possible under all of the circumstances. The Board of Directors 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 in order to consider such request, whichever shall last occur.

SECTION 8.5 Alteration of the Detention Area, the Sewer System or Common Area.

(a) Except as otherwise provided herein or in the Declaration, additions, alterations, repairs or improvements to the Detention Area, the Sewer System or the Common Area may be made only by or at the direction of the Board of Directors, and in the case of the Detention Basin within the Detention Area, only as is permitted by or is not inconsistent with the terms of the Detention Basin Agreement.

(b) Whenever in the judgment of the Board, the Detention Area, the Sewer System or other Common Area shall require additions, alterations, repairs or improvements, the Board shall proceed with such additions, alterations, repairs or improvements and shall assess the cost thereof to all Lot Owners as a common expense.

SECTION 8.6 Use.

(a) Each Residential Lot and all improvements thereon shall be used only for the purposes set forth in the Declaration.

(b) The Detention Area shall be used only for the purposes for which it is intended, as more particularly described and disclosed in the Detention Area Operation Manual and the Detention Basin Agreement, and the Sewer System shall be used only for such purposes as are permitted and/or required for comparable private waste-water and sewage disposal systems by applicable codes and laws.

(c) No Lot Owner shall make or permit to be made any noise or objectionable odors or create any nuisance by himself or his tenants, employees, guests, or invitees, which will unreasonably annoy or interfere with the rights, comfort or convenience of other Owners or occupants of the Community.

(d) Every Lot Owner and occupant shall at all times keep his Lot and all landscaping and improvements thereon in a strictly neat, clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority or the Association applicable to the maintenance and use of the Lots.

(e) No refuse, garbage or trash of any kind shall be thrown, placed or kept in any Common Area of the Community or on the roadways, and all such garbage and trash shall at all times be kept on the Owner's Lot in enclosed containers or otherwise properly bagged or wrapped so as not to attract insects and vermin or otherwise cause annoying odors or other nuisances or disturbances to anyone within the Community.

(f) No Lot Owner or occupant shall make any unlawful, improper or offensive use of his Lot or the improvements thereon.

ARTICLE IX MORTGAGES

SECTION 9.1 Notice to Lot Mortgagees. All notices permitted or required to be given to a Lot Owner pursuant to these Bylaws or the Declaration shall also be given to the Lot Mortgagee of such Lot Owner if such Lot Mortgagee has delivered to the Board of Directors written request for such notices.

SECTION 9.2 Notice to Board of Directors. An Owner who mortgages his interest in a Lot shall notify the Board of Directors of the name and address of his Mortgagee and within ten (10) days after the recordation of the same shall provide the Board of Directors with a true copy of the mortgage as recorded in the Bureau. The Board of Directors shall maintain such documents in a book entitled "Mortgages of Lots."

SECTION 9.3 Mortgagee Protection. Notwithstanding any provisions to the contrary contained herein:

(a) Any holder or insurer of a duly recorded first mortgage of a Lot or any interest therein whose interest appears in the record of ownership of (or who has otherwise delivered a written request to) the Association shall be entitled to timely written notice of:

- (i) any proposed amendment to the Declaration or these Bylaws;
- (ii) any proposed termination of the Declaration;
- (iii) any actual or threatened condemnation or eminent domain proceeding affecting the Community or any portion thereof;
- (iv) any default under the Declaration or these Bylaws of any Lot Owner whose Lot is subject to such mortgage, if the default has not been cured within sixty (60) days;
- (v) any significant damage or destruction to a Lot covered by the first mortgage held or insured by such party; and
- (vi) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

(b) Any holder or insurer of a duly recorded first mortgage of a Lot or any interest therein whose interest appears in the record of ownership of (or who has otherwise delivered a written request to) the Association shall also be entitled to a copy of all pleadings filed in any lawsuit, administrative proceeding, or other action affecting the Community or any portion thereof, at such party's expense for reproduction costs and at such party's specific written request.

(c) No amendment to this Section 9.3 shall affect the rights of any Lot Mortgagee whose mortgage is recorded prior to the recordation of such amendment and who does not consent thereto.

SECTION 9.4 Release of Information. The Board may provide any information available to it pertaining to a Lot or the Community to the first Mortgagee of such Lot and such Mortgagee may provide any information to the Board regarding the mortgagor, the mortgagor's loan and the status of such loan, without liability to the Owner of the mortgaged Lot.

ARTICLE X GENERAL PROVISIONS

SECTION 10.1 Insurance.

(a) **Commercial Property Insurance.** The Board, on behalf of the Association, shall at all times keep the Detention Area and the Sewer System insured against loss, destruction and damage by all perils of direct physical damage by a commercial property insurance policy or policies written on the Insurance Service Office (commonly referred to as "ISO") "Special Form" used in the State of Hawaii or its equivalent, with an amount of coverage equal to 100% of the replacement cost of all improvements, equipment, facilities, machinery and apparatus of any kind that comprises any part of the Detention Area and Sewer System and is required for their proper operation. If the Detention Area or Sewer System is located in an identified flood hazard area as now or hereafter designated by the United States Department of Housing and Urban Development, the Association shall also procure flood insurance required under the provisions of the Flood Disaster Protection Act. The Association shall purchase the insurance required under this section from an insurance company authorized to do business in Hawaii and having a rating by Best's Insurance Reports of Class A:VI or better, in the name of the Association as owner of the properties insured. If possible at reasonable cost, the policy will also name the Association of Unit Owners of Kai `Ōlino as additional insureds as to the coverage for the Detention Area or otherwise reflect that the Kai `Ōlino condominium project also benefits from the use of the Detention Area. In every case of such loss or damage to the Detention Area or the Sewer System, all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the damaged portions or improvements in a good and substantial manner according to the original plans therefor or such modified plans conforming to current operational requirements and laws and ordinances then in effect, and the Association at its common expense shall make up any deficiency (including deductible amounts) in such insurance proceeds. All premiums on the policy or policies required under this section shall be paid by the Owners of the Lots in proportion to their Shares. Every such policy of insurance shall, unless unobtainable (or unobtainable at reasonable cost):

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

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

(3) Provide that such policy and the coverage thereunder may not be cancelled, reduced or substantially modified (whether or not requested by the Board) except by the insurer giving at least thirty (30) days' prior written notice thereof to the Board, every Mortgagee of a Lot, and any other person in interest who shall have requested such notice of the insurer;

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

(5) Require the insurance carrier, at the inception of the policy and on each anniversary date thereof, to provide the Board with a written summary of the policy, including the type of policy, a description of the coverage and limits thereof, amount of annual premium, and renewal dates; and the summary shall be in layman's terms and the Board shall provide a copy thereof to each Owner;

(6) Contain a standard mortgage clause on ISO commercial property form which shall, unless unobtainable on commercially reasonable terms:

(i) Name the holder of any mortgage affecting any Lot whose name shall have been furnished to the Board and to the insurer and provide that any reference to a Mortgagee in such policy shall mean and include all holders of mortgages of any Lot in the Community, in their respective order and preference, whether or not named therein; and

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

(b) **Liability Insurance.** The Board, on behalf of the Association, shall also effect and maintain at all times, to the extent reasonably available, commercial general liability insurance, including coverage for premises/operations, independent contractors, contractual liability, personal injury, employees as additional insureds, broad form property damage, covering the Association and all Owners with respect to the Detention Area, the Sewer System and the Common Area, in an insurance company authorized to do business in Hawaii, with combined single limits of liability for bodily injury and property damage of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate or such higher limits as the Board may from time to time establish with due regard to the prevailing prudent business practice in the State of Hawaii as reasonably adequate for the protection of the Association, the Board, all Owners, the managing agent and employees of the Association, without prejudice to the right of any of the Owners to maintain additional liability insurance for their respective Lots. All premiums on the policy or policies required under this section shall be borne by the Owners of the Lots in

proportion to their Shares. Each such policy, unless unobtainable on commercially reasonable terms, shall:

(1) Contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the Detention Area, the Sewer System or the Common Area, whether within the control or knowledge of the Board, or because of any breach of warranty or condition caused by any Owner or by any act or neglect of the Owner or tenant of a Lot;

(2) Provide that the policy and its coverage may not be cancelled, reduced or substantially modified (whether or not requested by the Board) except by the insurer giving at least thirty (30) days' prior written notice thereof to the Board, all Owners and their Mortgagees and every other person in interest who shall have requested such notice of the insurer;

(3) Contain a waiver by the insurer of any subrogation to any right of the Board, the managing agent or any Owner against any of them or any other person under their control; and

(4) Contain a "severability of interest" clause precluding the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

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

(d) **Review of Insurance Program.** The Board shall review not less frequently than annually the adequacy of its entire insurance program and shall report in writing its conclusions and action taken on such review to the Owner of each Lot and to the holder of any mortgage on any Lot who shall have requested a copy of such report. At the request of any Mortgagee of any interest in any Lot, the Board shall furnish to such Mortgagee a copy of the property and liability policies referred to in this section.

SECTION 10.2 Right of Access. The Board, the managing agent and any other person authorized by the Board (or, in case of an emergency, authorized by any Lot Owner) shall have a right of access to any Owner's Lot for the purpose of correcting any condition existing in a Lot and threatening another Lot, the Detention Area, the Sewer System or any of the Common Area, provided that requests for entry shall be made in advance and any such entry shall be at a time reasonably convenient to the Owner; provided further, however, that in case of an emergency, no prior request for entry need be made and such right to enter shall be deemed granted and effective immediately, whether or not the Owner is present at the time.

SECTION 10.3 Amendment.

(a) **Required Percent.** These Bylaws may be amended in any respect consistent with law or the Declaration by affirmative vote of at least sixty-five percent (65%) of all Lot Owners at any meeting of the Association duly called for such purpose or by written consent of at least sixty-five percent (65%) of all Lot Owners, and shall be effective only upon the recording in the Bureau of an instrument setting forth such amendment duly executed by the authorized officers of the Association.

(b) **Amendments Required by Law, Lenders, Title Insurers, Etc.** Any other provision of these Bylaws notwithstanding, for so long as the Declarant retains any interest in a Lot in the Community, the Declarant shall have the right (but not the obligation) to amend these Bylaws, the Declaration (and the Subdivision Map, if appropriate) without the consent or joinder of any Lot Owner, lienholder or other person or entity, for the purpose of meeting any requirement imposed by (i) any applicable law, (ii) the State of Hawaii, (iii) the County of Kauai, (iv) any title insurance company issuing a title insurance policy on any of the Lots, (v) any institutional lender lending funds on the security of any of the Lots, or (vi) any other governmental or quasi-governmental agency including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development or the Veterans Administration; provided, however, that no amendment that would change the size or layout of a Lot or the Share appurtenant to a Lot shall be made without the consent of all persons having an interest in such Lot. Each and every party acquiring an interest in the Community, by such acquisition, consents to the amendments described in this subsection and agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same, and appoints the Declarant and its assigns as his or her attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the duration of such reserved rights, and shall not be affected by the disability of such party or parties.

SECTION 10.4 Association Documents.

(a) The Association, at its own expense, shall provide all Board members with a current copy of each of the Association Documents and the Subdivision Map, and all amendments thereto. Current copies of all such documents shall also be available for inspection by each Owner during reasonable hours, at a location designated by the Board.

(b) Upon approval by the Board, the most current financial statement of the Association and the minutes of the most recent meeting of the Board of Directors (other than minutes of executive sessions) shall be made available for examination by any Owner at no cost, during reasonable hours, at a location designated by the Board.

(c) The approved minutes of other meetings of the Board, other than executive sessions, and the approved minutes of meetings of the Association for the current and prior year, shall be made available for examination by Owners during reasonable hours at a location

designated by the Board. Copies of those meeting minutes shall be provided to any Owner upon the Owner's request if the Owner pays a reasonable fee for duplication, postage, stationery and other administrative costs associated with handling the request.

(d) Financial statements, general ledgers, accounts receivable ledgers, accounts payable ledgers, check ledgers, insurance policies, contracts, invoices of the Association for the current and prior year, and any documents regarding delinquencies of ninety days or more, shall be made available for examination by Owners at reasonable hours at a location designated by the Board; provided that Owners shall pay for all costs associated with the examination of documents. The Board may require Owners to furnish the Association with an affidavit stating that the foregoing information is requested in good faith for the protection of the interests of the Association, its members, or both. Copies of these documents shall be provided to any Owner upon the Owner's request if the Owner pays a reasonable fee for duplication, postage, stationery and other administrative costs associated with handling the request.

(e) Owners may view proxies, tally sheets, ballots, Owner's check-in lists, and the certificates of election, if any, for a period of thirty days following any Association meeting; provided that Owner's shall pay for all costs associated with the examination of the documents. The Board may require Owners to furnish the Association with an affidavit stating that the foregoing information is requested in good faith for the protection of the interests of the Association, its members, or both. Proxies and ballots may be destroyed following the thirty-day period. Copies of tally sheets, Owners' check-in lists, and the certificates of election from the most recent Association meeting shall be provided to any Owner upon the Owner's request if the Owner pays a reasonable fee for duplication, postage, stationery and other administrative costs associated with handling the request.

(f) Owners may file a written request with the Board to examine other documents of the Association. The Board shall give written authorization, or written refusal with an explanation of the refusal, for the examination within sixty calendar days of receipt of the request. The Board may condition its approval of any such request upon payment of reasonable fees. Without limitation, books and records kept by or on behalf of the Association may be withheld from inspection and copying to the extent that they concern any of the matters listed in section 421J-7(e) of the Hawaii Revised Statutes.

SECTION 10.5 Animals. No pets or animals whatsoever shall be allowed or kept in or on any Lot or any other part of the Community except as provided in the Declaration, as the same may be amended from time to time.

SECTION 10.6 Mediation of Disputes.

(a) At the request of any party, any dispute concerning or involving one or more Owners and the Association, its Board or managing agent (if any), or one or more other Owners relating to the interpretation, application or enforcement of the Association Documents, shall first be submitted to mediation.

(b) Nothing in the foregoing subsection (a) shall be interpreted to mandate the mediation of any dispute involving:

- (1) Actions seeking equitable relief involving threatened property damage or the health or safety of Association members or any other person;
- (2) Actions to collect assessments;
- (3) Personal injury claims; or
- (4) Actions against the Association, the Board or one or more directors, officers, agents, employees, or other persons for amounts in excess of \$2,500 if insurance coverage under a policy of insurance procured by the Association or the Board would be unavailable for defense or judgment because mediation was pursued.

(c) If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the Association and any Owner involved.

SECTION 10.7 Membership List. The Association shall use good faith efforts to keep an accurate and current list of the names and addresses of all Owners. If the list is not provided directly to Owners, the Association shall develop a reasonable procedure by which Owners may solicit votes or proxies or provide information to other Owners with respect to Association matters. The Board may require Owners to furnish the Association with an affidavit stating that the use of the list is requested in good faith for the protection of the Association, its members, or both.

SECTION 10.8 Notices. All notices to the Association shall be either mailed or delivered to the members of the Board of Directors at their respective addresses as shown on the membership list, or to such other address as the Board of Directors may designate by notice to all Owners and all Lot mortgagees. Except as otherwise provided herein or as required by applicable law, all notices to any Owner shall be either mailed or delivered to him at his address as shown on the membership list. All notices to Lot mortgagees shall be mailed to their respective addresses as shown on the membership list, or to such other addresses as designated by them by notice to the Board of Directors. All notices shall be in writing and service of such notice shall be deemed complete upon the earlier of the date of actual delivery or, if mailed, the third day after the date of mailing, except notices of addresses and changes of addresses, which shall be deemed to have been given when received.

SECTION 10.9 Captions. The captions of these Bylaws are inserted only as a matter of convenience and shall in no way define, limit or prescribe the scope of these Bylaws or the intent of any provision hereof.

SECTION 10.10 Pronouns. All pronouns used in these Bylaws include the male, female, and neuter genders and include the singular and plural numbers, as the case may be.

SECTION 10.11 Interpretation. The provisions of these Bylaws shall be liberally construed to effectuate the purpose of creating and operating Keala'ula as a uniform, mutually beneficial and efficient residential community in which the Association and the Lot Owners shall observe and perform all of the covenants, conditions, obligations and restrictions they are respectively required to observe and perform under the terms of these Bylaws and the Declaration.

SECTION 10.12 Severability. The provisions of these Bylaws shall be deemed independent and severable, and the invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

SECTION 10.13 Changes in Law. In the event any change in Chapter 421J or any other applicable law shall result in a conflict or inconsistency between the provisions of these Bylaws and such law, the provisions of the law shall prevail.

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IN WITNESS WHEREOF, the Declarant has executed and adopted these Bylaws as of
the 21 day of June, 2007.

PORT ALLEN RESIDENTIAL LLC, a
Hawaii limited liability company

By: A & B PROPERTIES, INC., a Hawaii
corporation
Its Manager

By: 
R.R. SASAKI

Its PRESIDENT

By: 
CHARLES W. LOOMIS

Its ASST. SECRETARY

STATE OF HAWAII

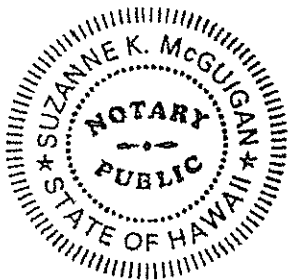
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CITY AND COUNTY OF HONOLULU

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On this 27 day of June, 2007, before me personally appeared R.K.SASAKI, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Suzanne K. McGuigan
SUZANNE K. McGUIGAN
Notary Public, State of Hawaii

My commission expires:

STATE OF HAWAII

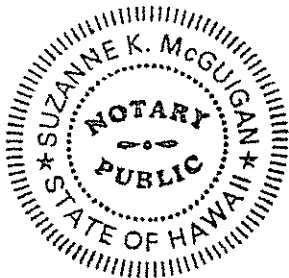
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) SS

CITY AND COUNTY OF HONOLULU

)

On this 21 day of June, 2007, before me personally appeared CHARLES W. LOOMIS, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Suzanne K. McGuigan
SUZANNE K. McGUIGAN
Notary Public, State of Hawaii

My commission expires: 2/18/09

EXHIBIT "A"

ALL of those certain parcels of land situate at Eleele, Koloa, Island of Kauai, State of Hawaii, being Lots 1 through 61 and Lots 64 through 67, inclusive, of the Port Allen Residential Subdivision (also known as "Keala'ula"), (County of Kauai, Planning Department Reference No. S-2005-01) as shown on the Port Allen Residential Subdivision final map which was approved by the Planning Commission of the County of Kauai on May 9, 2006 (the "Final Map") as recertified on June 15, 2007 (the "Recertified Final Map"). The Final Map was recorded in the Bureau of Conveyances of the State of Hawaii attached to the Affidavit of Ryan M. Suzuki dated May 17, 2006, recorded as aforesaid as Document No. 2006-101756 and the Affidavit of Ryan M. Suzuki dated June 18, 2007, recorded as aforesaid as Document No. 2007-112839, respectively.

Together with all easements, easement rights and other rights and interests appurtenant to or for the benefit of all or any of such Lots now existing or hereafter created.

Subject to all easements, easement rights and other encumbrances of record burdening or encumbering such Lots.

BEING A PORTION OF THE PREMISES ACQUIRED BY QUITCLAIM DEED

GRANTOR : A&B PROPERTIES, INC., a Hawaii corporation

GRANTEE : PORT ALLEN RESIDENTIAL LLC, a Hawaii limited liability company

DATED : May 19, 2006

RECORDED : Document No. 2006-101757

This is a copy of Bureau of Conveyances
Document No. 2007-120734, and / or
Land Court Document No. _____
affecting Certificate of Title No. _____
recorded on 7/6/07 at 8:01 o'clock am.

TITLE GUARANTY OF HAWAII, INCORPORATED

Return by Mail () Pickup (X) To:
 Brooks Tom Porter & Quitiquit, LLP
 841 Bishop Street, Suite 2125
 Honolulu, Hawaii 96813

Tax Map Key No. (4) 2-1-003-005
Total No. of Pages:

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
KEALA'ULA**

WHEREAS, **PORT ALLEN RESIDENTIAL LLC**, a Hawaii limited liability company whose business and post office address is 822 Bishop Street, Honolulu, Hawaii 96813 (the "Declarant"), is the current owner of the land (the "Land") described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Land consists of sixty (60) Residential Lots designated on the Subdivision Map (described below) as Lots 1 through 13 and 15 through 61, four (4) Roadway Lots designated on the Subdivision Map as Lots 64 through 67, and one Common Area lot reserved for use as the Detention Basin and designated on the Subdivision Map as Lot 14; and

WHEREAS, the Land, together with all improvements now or hereafter placed thereon and all easements and easement rights and other interests appertaining thereto, shall comprise the fee simple residential subdivision identified on the Subdivision Map as "Port Allen Residential Subdivision" but to be known as "KEALA'ULA" (the "Community") located at Eleele, Koloa, Island and County of Kauai, State of Hawaii; and

WHEREAS, the Community is adjacent to a residential condominium project also owned and being developed by the Declarant and known as "Kai `Ōlino"; and

WHEREAS, to promote the general quality, continuity and desirability of the Community, the Declarant wishes to subject all of the Community Lots, all improvements now or hereafter placed thereon and all easements and easement rights and other interests

appertaining thereto to the covenants, conditions and restrictions set forth in this Declaration, all of which shall run with the Land and be binding upon and inure to the benefit of each Community Lot and all of such Community Lots' successive owners and occupants.

NOW, THEREFORE, the Declarant, as the current owner of the Land hereby submits all of the Declarant's right, title and interest in and to the Land, and all improvements now or hereafter made thereto or placed thereon, together with any and all easements and/or rights benefiting or otherwise appurtenant to the Land or any part or portion thereof, to this Declaration; and in furtherance thereof, the Declarant hereby declares that the Land and improvements and all such easements and/or rights are held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, restrictions and conditions set forth herein, in any rules or design guidelines now or hereafter adopted by the Declarant and pertaining to the Community, and in the Bylaws of the Keala'ula Homeowners Association executed 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 Declarant and its successors and assigns, and all subsequent owners, mortgagees, tenants and occupants of all or any part of the Community and their respective heirs, devisees, personal representatives, successors and assigns.

1. Definitions.

1.1 "Articles" or "Articles of Incorporation" means the articles of incorporation for the Association filed with the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with the procedures and requirements of Chapter 414D of the Hawaii Revised Statutes, as amended.

1.2 "Association" means the Keala'ula Homeowners Association more particularly described in section 2 below and in the Bylaws.

1.3 "Association Documents" means the Articles of Incorporation, this Declaration, the Bylaws, the Design Guidelines, the Detention Basin Agreement, the Detention Area Operation Manual and any rules or regulations now or hereafter promulgated by the Declarant or the Association relating to the use, improvement, alteration, maintenance or control of any Community Lots, and any amendments to any or all such documents.

1.4 "Bylaws" means the Bylaws of the Association.

1.5 "Common Area" means any portions of the Roadway Lots, the Detention Area, the Sewer System or other parts of the Community that are required, whether by this Declaration, the Bylaws, the Detention Basin Agreement or any governmental agency or authority (including but not limited to the County of Kauai), to be landscaped and/or maintained and/or operated by the Association, whether or not such areas are owned by the Association, one or more Lot Owners, the Declarant or any other third party.

1.6 "Community" means the Keala'ula subdivision and all Community Lots comprising the subdivision and all rights and easements appurtenant thereto or benefiting all or

any part thereof, including all improvements constructed therein or thereon by the Declarant and all improvements subsequently made thereto or placed thereon.

1.7 **“Community Lot”** means any of the Residential Lots, the Detention Area and the Roadway Lots (until such time as the Roadway Lots are dedicated to the County of Kauai or the State of Hawaii).

1.8 **“Declarant Control Period”** means the period prior to thirty (30) days after conveyance of the forty-fifth Residential Lot to any person other than the Declarant or an affiliate of the Declarant, as more particularly described in Section 19 of this Declaration and in section 4.21 of the Bylaws.

1.9 **“Design Guidelines”** means any rules, restrictions or guidelines for the construction of improvements or the modification or alteration of existing improvements in the Community now or hereafter adopted by the Declarant and/or the Association and subsequently administered by the Declarant and/or the Association, as the same may be amended from time to time. The Design Guidelines may also include guidelines and rules for landscaping the Residential Lots.

1.10 **“Detention Area”** means that certain Community Lot designated on the Subdivision Map as Lot 14, together with any and all improvements, apparatus, equipment or facilities of any kind that are or may be located thereon or therein and required for the proper operation and functioning of the Detention Area, including the Detention Basin. Subject to the terms of section 4 of this Declaration, the Detention Area will be owned by the Association.

1.11 **“Detention Area Operation Manual”** means the plans, specifications, instructions and/or guidelines provided to the Association by the Declarant and relating to the proper operation, care, upkeep, replacement, repair and maintenance of the Detention Area, and any additional instructions, guidelines or information subsequently provided to the Association by the Declarant, any manufacturer or provider of any equipment, machinery or other component(s) of the Detention Area, or any governmental agency or authority in connection therewith.

1.12 **“Detention Basin”** means that certain drainage pond facility designed to collect and temporarily store storm runoff from the Community Lots and located within and comprising part of the Detention Area.

1.13 **“Detention Basin Agreement”** means that certain Port Allen Residential Detention Basin Agreement dated December 27, 2005, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2006-012805, made by the Declarant in favor of the County of Kauai and pertaining to the Detention Basin.

1.14 **“Lot Deed”** means a Deed with Reservations and Conditions transferring title to a Residential Lot, together with a membership interest in the Association, from the Declarant (or the Declarant’s successor in interest) to any person.

1.15 “Majority” or “Majority of Owners” shall mean the Owners of more than fifty percent (50%) of the Residential Lots.

1.16 “Owner” or “Lot Owner” means any person or entity, including the Declarant, who owns a fee simple interest in a Residential Lot, and any person to whom all rights as Owner (including voting) and membership in the Association shall have been transferred by means of (a) a deed, (b) a recorded lease of said Residential Lot for a period in excess of 20 years, or (c) an agreement of sale which transfers all rights of possession and occupancy; provided, however, that in each such case the transferee of said rights will not be recognized as an “Owner” by the Association unless a written notice of transfer is filed by the transferor with the Board.

1.17 “Person” (whether or not capitalized) means any individual, corporation, association, partnership, limited liability company, agency, trust, institution, organization, or other entity, and his, her, or its legal representative.

1.18 “Record” or “recorded” or any variation thereof shall refer to the recordation of a document or instrument in the Bureau of Conveyances of the State of Hawaii.

1.19 “Residential Lot” means any of the sixty (60) residential lots located exclusively within the Community and designated on the Subdivision Map as Lots 1 through 13, inclusive, and Lots 15 through 61, inclusive.

1.20 “Roadway Lot” means any one of the four (4) roadway lots located exclusively within the Community and designated on the Subdivision Map as Lots 64, 65, 66 and 67, and all gates or other enclosures (if any) limiting access to such Roadway Lots.

1.21 “Share” or “Owner’s Share” means a 1/60 interest in all of the rights and obligations of the Association, including the obligation to pay all assessments levied against the Residential Lots and/or the Association’s members by the Association, and including also the right to vote on all matters to be decided by, or within the power and authority of, the Association. Each Residential Lot shall have appurtenant thereto one Share and one vote, and each Residential Lot’s Share and vote shall be inseparable from such Residential Lot and shall be transferred automatically with the transfer of title to such Residential Lot, regardless of whether such Share is mentioned in the conveyance instrument.

1.22 “Sewer System” means the private waste-water and sewer system serving the Community, to be owned and operated by the Association, and all equipment, pipes, pumps, drains, machinery, facilities, easements and easement rights owned or hereafter acquired by the Association in connection with the ownership, maintenance, use and/or operation of the Sewer System.

1.23 “Subdivision Map” means the final subdivision map for the “Port Allen Residential Subdivision”, as approved (and stamped) by the Planning Commission of the County of Kauai on May 9, 2006, as the same may now or hereafter be amended, revised, supplemented

or replaced with the approval of the County of Kauai. The Port Allen Residential Subdivision shall be commonly known as "Keala'ula".

2. **Association.** Each owner of a Residential Lot, by acquiring such Lot, shall automatically become a member of the Association, a Hawaii nonprofit corporation incorporated pursuant to the requirements of Chapter 414D of the Hawaii Revised Statutes and existing and operating as a planned community association pursuant to and in accordance with the terms of this Declaration, the Bylaws and the requirements of Chapter 421J of the Hawaii Revised Statutes, and any amendments thereto, and also in accordance with any rules and regulations, Design Guidelines or similar documents now or hereafter executed by the Declarant or by the Association.

3. **General Description of the Community.** The Community shall consist of (i) the Residential Lots as described in Exhibit "A" attached hereto and as shown on the Subdivision Map; (ii) the Roadway Lots as described in Exhibit "A" and as shown on the Subdivision Map as for so long as such Roadway Lots are owned by the Declarant or the Association, provided, however, that in the event that any Roadway Lot is dedicated and conveyed to the County of Kauai or the State of Hawaii, such Roadway Lot shall become a public roadway and will automatically cease to be subject to this Declaration upon transfer of title to such Roadway Lot to the County of Kauai or the State of Hawaii; (iii) the Detention Area; (iv) the Common Area; and (v) such rights, rights-of-way, easements and appurtenances as may now or hereafter benefit the Community, including, but not limited to, a nonexclusive perpetual easement for pedestrian access to the shoreline over and across that certain easement area designated on the condominium map for the "Kai `Ōlino" condominium project adjacent to the Community, which easement area is a portion of the Kai `Ōlino condominium project's common elements.

4. **Association Property.** The Declarant shall have the right, at any time before or after transfer of title to any Residential Lot(s) to any Person or Persons other than the Declarant, to transfer to the Association all of the Declarant's right, title and interest in and to the Detention Area and/or the Sewer System, and all improvements, equipment, apparatus and/or easements necessary or convenient for the ownership, use and/or operation of the Detention Area, the Detention Basin and/or the Sewer System, and upon such transfer(s), whether by way of deed(s) or grant(s) or by whatever means shall be legally sufficient, the Association shall become the owner of all real and personal property, improvements, easements and easement rights so transferred for all purposes. Upon any such transfer, the Detention Area, the Sewer System and any and all property and property rights and interests so transferred shall continue to be subject to this Declaration, the Bylaws and all other applicable Association Documents and agreements pertaining to the property and property rights and interests transferred.

5. **Association's Obligations and Authority.** The Association shall be responsible for the care, maintenance, repair and operation of the Detention Area and any and all improvements, apparatus, equipment or facilities of any kind that are or may be located thereon or therein and required for the proper operation and functioning of the Detention Area in accordance with the Detention Area Operation Manual and the Detention Basin Agreement, including, but not limited to, procuring and maintaining a hazard insurance policy and a commercial general liability insurance policy covering the Detention Area and naming the

Association (and the Association of Unit Owners of Kai `Ōlino, as to the hazard policy) as insureds as more particularly set forth in the Bylaws. The Association shall also be responsible for the care, maintenance, repair and operation and insurance of the Sewer System and any and all improvements, apparatus, equipment or facilities of any kind that are or may be located anywhere in the Community and required for the proper operation and functioning of the Sewer System in accordance with all applicable codes, ordinances, rules and laws of the County of Kauai and the State of Hawaii. The Association may also be responsible for periodic maintenance of certain other Common Areas in accordance with the requirements of the County of Kauai or other governmental authority, including landscaping areas adjacent to the Community's roadways whether such areas are owned by the Association, the Declarant, the County of Kauai or any other third parties. The Association shall have the obligation, and is hereby granted the authority, to negotiate, contract or otherwise arrange for the provision of all services, materials and insurance as may be required in connection with the ownership and proper operation and functioning of the Detention Area, the Sewer System and any Common Areas, and for any and all other services, materials and insurance that may be required in connection with any other property or property rights that the Association may now have or own or shall hereafter acquire (including, but not limited to, easements, easement rights, licenses and rights-of-way).

6. **Owners' Obligations.** It shall be the individual obligation of each Owner to observe and comply with all of the requirements pertaining to the use and ownership of a Lot set forth in the Association Documents, including (but not limited to) the obligation to pay such Owner's Share of all costs and expenses of the Association, and failure to do so in the manner and at the time(s) provided in any notice of assessment delivered by the Association to an Owner shall entitle the Association to exercise all of the rights and remedies available to the Association as provided in this Declaration, in the Bylaws, in any other Association documents and at law or in equity.

7. **Easements Shown on Subdivision Map.** The Subdivision Map specifically describes certain easements over, across and affecting certain Community Lots. Each of such easements is established for those purposes and in those locations ("Easement Areas") that are shown on the Subdivision Map. Each easement shall be for the benefit of (a) the Residential Lot or Lots served by such easement; (b) the Association (including each Owner) in each case where an easement benefits the Detention Area, the Sewer System, the Roadway Lots or the Association; (c) the public or private utility provider(s) whose pipes or lines are installed within any such easement; or (d) any other person, entity or land (outside of the Community) benefited by such easement, as the case may be. Each easement shall confer the right to the benefited property, person or entity to construct, operate, maintain, repair, improve and replace such utilities, lines, pipes, equipment, structures, or drainage structures within the Easement Area as may be reasonably necessary or appropriate for the purposes for which the easement is established as stated on the Subdivision Map and the individual plot plans for the Community Lots and/or in any express grants of easement recorded in the Bureau of Conveyances, subject to any conditions which may be set forth in the document(s) establishing, granting or reserving such easement(s). All work within each Easement Area shall be conducted in a reasonable and orderly manner, so as to minimize any disturbance to the Owners and occupants of the encumbered Community Lots, and all excavations will be filled in and promptly returned to even

grade without unreasonable delay. If, upon the completion of the installation of any utility line, water line, sewer line, drainage structure, or other facility over, under, across or upon any Community Lot, it is determined that the location of the line, structure or facility inadvertently encroaches on any land outside of the easement area as defined on the Subdivision Map, a nonexclusive, perpetual easement shall thereafter exist for the maintenance, operation, repair, improvement and replacement of such line, structure, or facility in its location as built, provided that its location outside of the Easement Area shall not unreasonably interfere with the reasonable use and enjoyment of any affected Residential Lot by the Owners and occupants thereof or cause any diminution in value of the encumbered Residential Lot.

8. Additional Easements. The Declarant hereby reserves for itself and its successors in interest the right, without the joinder or consent of the Association, any Lot purchaser, Lot Owner, lender, lienholder or any other person, to designate, grant and create further easements within the Community Lots, including the Residential Lots, for the purpose of establishing or relocating utility lines, water lines, sewer lines, effluent lines, as well as pumps, controls, access points, meters, poles, anchors, stays and wires or any other equipment necessary or appurtenant thereto, and for the purpose of establishing any necessary drainage structures or areas. Also, if after installation of any pole, line, pipe, utility or other facility it shall appear that said facility shall be located on a Residential Lot outside of the boundaries of said facility designated on the Subdivision Map or as previously established by recorded easement, the Declarant shall have the power and authority, without requiring the consent or joinder of the Owner of said Residential Lot, any lender, lienholder or any other person, to execute and record an amendment of the easement previously established, of the Subdivision Map, or both, in order to conform the easement to "as built" conditions.

9. Miscellaneous Restrictions and Conditions. The following restrictions and conditions apply to all of the Residential Lots. Further restrictions and conditions are set forth in the Bylaws. In the event that any of the provisions set forth herein or in any other Association Documents are more restrictive than those imposed by the County of Kauai, the State of Hawaii or any other governmental authority with jurisdiction over the Community and/or the Residential Lots, the more restrictive provisions shall control. The Association shall have the right and the authority to enforce all such restrictions and conditions.

9.1 Uses.

9.1.1 Permitted Uses. Keala'ula is intended to be a single-family residential community. Accordingly, each Residential Lot shall be used exclusively for single-family residential purposes and such uses as are customarily appurtenant to a single-family residence. The term "single-family residence" means a residence designed to accommodate no more than one family and its guests. Subject to the restrictions set forth in Section 9.1.2 below and such other restrictions as may be contained in the Lot Deeds (including but not limited to owner-occupancy restrictions), the Owners of the respective Lots shall have the right to lease the same, provided that such lease is in writing, is for a term of not less than thirty (30) days and is expressly made subject to the covenants and restrictions contained in this Declaration, the Bylaws and the other Association Documents.

9.1.2 Restrictions. No Residential Lot or improvements thereon shall be used for any commercial, professional or business use. In no event shall any Lot or improvements or any interest therein be sold, transferred, conveyed, leased, occupied, rented or used for or in connection with any time-sharing purpose or under any time-sharing plan, arrangement or program, including without limitation any so-called "vacation license," "residence club membership," "travel club membership" or "time interval ownership" arrangement. The term "time-sharing" as used herein shall be deemed to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess a residence or dwelling or any part thereof in the Community is available to, or rotates among, various persons (whether or not identified) on a periodically recurring or nonrecurring basis, whether according to a fixed or floating interval or period of time or otherwise, and whether by way of deed, lease, association or club membership, license, rental or use agreement, cotenancy agreement, partnership or otherwise, and whether or not the program or arrangement is registered or required to be registered under Chapter 514E, Hawaii Revised Statutes, as amended. No Lot or improvements thereon may be used as a rooming house or for bed and breakfast purposes.

9.2 Permitted Structures. No building or other structure shall be erected or permitted to remain on a Residential Lot other than (a) one detached, single-family dwelling with a maximum covered aggregate floor area (excluding carport) of not more than such Residential Lot's Share of the total aggregate floor area coverage permitted for all of the Residential Lots in the Community, and (b) a carport with an area of not more than 500 square feet; and (c) such other structures as are customarily ancillary to a single-family residence and are permitted by applicable zoning; excluding, however, any "Ohana" unit or guest house or other structure that would qualify as a "residence" or "dwelling" under applicable zoning, notwithstanding that such additional structure may be permitted by applicable zoning. It is the express intent of this Section 9.2 that no more than one "residence", "dwelling" or other structure for temporary or permanent human habitation shall be permitted on any Residential Lot. All buildings and structures must at all times comply with all applicable County of Kauai codes and regulations and any and all Design Guidelines provided by the Declarant.

9.3 Additional Improvements Generally. Each Residential Lot is being originally sold as improved with a single-family residence and a carport. It is the Declarant's intent that the Community at all times retain an integrated, attractive appearance consistent with the original development plans. Accordingly, there are certain requirements and restrictions upon the future alteration or improvement of any of the Residential Lots. Some of these requirements and restrictions are set forth herein, and some are set forth in the Bylaws and the Design Guidelines provided by the Declarant.

9.3.1 No Improvements for 24 Months. With the exception of the landscaping required by section 8.3(c) of the Bylaws and the addition of swimming pools and of certain fences and other minor enclosures for which building and/or other County permits are not required, no Lot Owner shall, without the prior written approval of the Declarant (which approval may be withheld in the Declarant's sole discretion), make any material improvements to his Residential Lot or the residence and carport originally constructed on the Lot for a period of 24 months after the date of recordation of the Lot Deed conveying such Lot to such Owner.

This restriction shall automatically terminate as to all Residential Lots upon recordation of a Lot Deed conveying the last Residential Lot owned by the Declarant to any person not related to the Declarant.

9.3.2 Horizontal or Vertical Expansion. Under applicable zoning, the original structures built on some of the Residential Lots may be further improved either by horizontal or vertical expansion. However, in no event shall the structures or other improvements placed on a Residential Lot be permitted to exceed the Residential Lot's Share of maximum permitted density for the entire Community or any height or floor area limitations imposed by applicable zoning and/or this Declaration or the other Association Documents.

9.3.3 Compliance with Laws and Design Guidelines. All proposed additional improvements to a Residential Lot shall require the prior written approval of the Declarant (for so long as the Declarant retains ownership of any Lot) and the Board, and shall conform with all requirements of applicable zoning, building codes and ordinances and the Design Guidelines originally promulgated by the Declarant, as modified or amended by the Declarant or the Association. Only such materials (including but not limited to paint color and type, siding and roofing materials) as are permitted by the Design Guidelines may be used in the construction of any additional improvements.

9.3.4 Plans and Permits. No additional improvement to a Residential Lot shall be made unless the Lot Owner has first submitted to the Declarant (for so long as the Declarant retains ownership of any Lot) and the Board plans and specifications for such improvements prepared by an architect licensed to do business in the State of Hawaii, and the Declarant (if the Declarant retains ownership of any Lot) and the Board have determined that the proposed improvements, as represented in such plans and specifications, are permitted by and are consistent with the Design Guidelines and with the overall quality and appearance of the Community as originally planned and constructed. No construction of any improvements shall commence until the Lot Owner has obtained all required governmental permits for such construction and has provided copies of such permits to the Declarant (if the Declarant retains ownership of any Lot) and the Board. For improvements costing in excess of \$5,000, no construction shall commence until the Lot Owner provides evidence satisfactory to the Declarant (if the Declarant retains ownership of any Lot) and the Board of sufficient available funds to complete such construction and/or a performance bond in the amount of 100% of the cost to complete such construction. The Lot Owner will be required to pay the Association a reasonable review fee to be determined by the Board, together with all costs and expenses actually incurred by the Association in connection with the review (by the Association or its agents or designees) of all such plans and specifications, copies of permits and evidence of available funds and/or bonding as required herein.

9.4 No Further Subdivision. Notwithstanding any County of Kauai codes or ordinances relating to the subdivision of real property, the Community shall at no time contain more than sixty (60) Residential Lots. Accordingly, no Residential Lot shall be further subdivided into two or more new Residential Lots, nor shall any Residential Lot be submitted to a condominium property regime pursuant to Chapter 514B of the Hawaii Revised Statutes, as amended, or any successor law.

9.5 Increased Drainage Flow. Any increased drainage flow run-off on individual lots due to future improvements will be the responsibility of the individual Lot Owner and must comply with Kauai county codes and be retained on site or adequately channeled to existing drainage facilities, at the Lot Owner's expense. Prior to the construction of any future improvements, the Lot Owner must provide a drainage plan prepared by a civil engineer licensed in the State of Hawaii. The plan shall address increased runoff caused by future improvements from a 50-year 1-hour storm.

9.6 Enclosure of Carports; Fences. Carports originally provided on the Residential Lots may be enclosed with the prior written approval of the Declarant (for so long as the Declarant retains an interest in any Community Lot) and the Association, and (for so long as the Declarant retains an interest in any Community Lot) in accordance with plans provided by and pre-approved by the Declarant. All such enclosures must be made in compliance with the Design Guidelines. Owners may enclose their Lots with fencing of a type approved by the Developer (for so long as the Declarant retains an interest in any Community Lot) and the Association and in accordance with the Design Guidelines and applicable zoning requirements.

9.7 Animals and Pets. No animals (including, but not limited to, chickens, horses, cows, pigs, goats and other animals typically considered to be "barnyard" or "farm" animals, peacocks, parrots and other exotic birds) shall be kept or permitted on any Residential Lot or anywhere in the Community, except that (i) any combination of up to two rabbits, hamsters or guinea pigs, (ii) any combination of up to two dogs or cats, and (iii) any combination of up to two caged parakeets or other small birds that do not make sounds audible from outside of the boundaries of an Owner's Lot may be kept as pets, provided that such animals are at all times kept within the boundaries of the Owner's Lot (or are on a leash or otherwise within the Owner's or the Owner's agent's complete control when anywhere outside of the boundaries of the Owner's Lot) and do not cause a nuisance or annoyance to any other Owners, and provided also that no animal shall be kept, used or bred anywhere in the Community for any commercial purpose. Prohibited nuisances and annoyances include (but are not limited to) noise, odors and any unsanitary conditions that attract vermin or otherwise jeopardize or may jeopardize the health, safety or welfare of any Owner of any Lot.

10. Surrounding Use Effects And Operations.

10.1 Construction Effects. The Community will be constructed over an extended period of time. The Community is located in the vicinity of the Kai `Ōlino condominium project that will also be constructed over an extended period of time. Construction activity at the Community and in the general vicinity of the Community may continue after the completion of construction of a residence on a Lot and after the Owner has occupied the residence, and this activity may result in noise, dust or other nuisances or annoyances to the Owner and may temporarily limit the Owner's access to portions of the Community (collectively, the "Construction Effects").

10.2 Airport Effects. The Community is located in the vicinity of an airport used for helicopter and light aircraft operations. Aircraft may fly in the proximity of or directly over the

Community and such overflights and other airport activities may result in noise, dust, vibration, and other nuisances, disturbances or hazards (collectively, the "Airport Effects") to persons and property on or within the Community.

10.3 Agricultural Effects. The Community is located in the general vicinity of lands used for or in connection with the cultivation of sugar cane, coffee and diversified agricultural operations, which may include, but are not limited to, open burning, trucking, plowing, hauling, fertilizing, grading, storing, herbicide and pesticide spraying, crop dusting, water diversion, irrigation, and other activities incidental to the planting, cultivating, harvesting and processing of crops. These activities may from time to time cause the Community to be affected by surface water runoff, noise, soot, smoke, dust, vapors, unpleasant odors, vibrations, insect pests, and other substances and phenomena incidental to such activities (collectively, the "Agricultural Effects") that may bother or be a nuisance to the Lot Owners and any persons occupying or using the Lots or the Community. Each Lot Owner, by acquiring a Lot, expressly acknowledges that the Hawaii Right to Farm Act (Chapter 165 of the Hawaii Revised Statutes, as amended) and Hawaii law limit the circumstances under which farming operations may be deemed to be a nuisance.

10.4 Utility Effects. The Community is located in the vicinity of an electric power generating facility and high-powered electrical transmission lines that may result in nuisances, such as periodic noise and vibrations and other disturbances or hazards (collectively, the "Utility Effects") to persons and to property on or within the Community. The Declarant is not insuring or guaranteeing the health or safety of any Lot Owner or other occupiers or users of the Community and disclaims liability for personal injury, illness or any other loss or damage caused by or arising from the Utility Effects, including, without limitation, the presence or malfunction of any electrical distribution systems that may be located adjacent to, near, or over any part of the Community.

10.5 Facility Effects. The Community is located in the vicinity of a wastewater treatment plant, a facility used for the mixing of fertilizers and a fuel storage facility, any one or all of which may result in nuisances or other disturbances to the Lot Owners or other persons within the Community, including but not limited to periodic noise and the emission of unpleasant odors (collectively, the "Facility Effects").

10.6 Harbor Effects. The Community is located in the vicinity of Port Allen Harbor, a commercial deep-draft boat harbor with an adjacent small boat harbor. The commercial harbor includes two piers and two 600-foot long berths for the docking of ships. The lands adjacent to and comprising part of the harbor include approximately one and one-half acres of shed and open storage space. The harbor operates at all hours and such operations may result in noise, bright lights and other nuisances or disturbances (collectively, the "Harbor Effects") to the Lot Owners or other persons within the Community.

10.7 Public Housing Facility. The Community is located in the general vicinity of a federally-assisted public housing complex operated by the state Housing and Community Development Corporation of Hawaii ("HCDCH") and known as Hale Hoonanea. According to information provided by HCDCH, although Hale Hoonanea is considered an elderly housing project, eligible persons with disabilities also reside at the facility.

10.8 Waiver, Release and Indemnity. By acquiring a Residential Lot, each Owner represents and warrants to the Declarant that the Owner, in the Owner's sole discretion, has determined that the benefits of owning and enjoying the Lot and an interest in the Community outweigh the risks of the Construction Effects, the Airport Effects, the Agricultural Effects, the Utility Effects, the Facility Effects, the Harbor Effects and the proximity of the Lot and the Community to a public housing complex (collectively, the "Property Conditions"). By acquiring a Lot, each Owner will thereby irrevocably agree to suffer and permit all actions and consequences incidental to the Property Conditions and will thereby covenant and agree to assume all risks of impairment of the Owner's use and enjoyment of the Lot or the Community, loss of market value of the Lot and any improvements thereon, and property damage or personal injury arising from the Property Conditions, and the Owner, for the Owner and the Owner's tenants, lessees, family, servants, guests, invitees, licensees, agents, employees, and those who use the Lot, any improvements thereon or any part of the Community through the Owner, will thereby waive any claims or rights of action or suits against the Declarant, the Declarant's members, managers and all of their respective officers, directors, employees, agents, successors and assigns, arising from such impairment of the use and enjoyment of the Lot or the Community, loss of market value of the Lot and any improvements thereon, and property damage or personal injury arising from one or more of the Property Conditions. Each Owner shall indemnify, hold harmless and defend the Declarant, the Declarant's members, managers and all of their respective officers, directors, employees, agents, successors and assigns from any and all liability, claims, losses, damages, or expenses, including attorneys' fees, arising from such impairment of the use and enjoyment of such Owner's Lot or any improvements thereon or the Community, loss of market value of the Lot or any improvements thereon, or property damage or personal injury to the property or person of such Owner, such Owner's tenants, lessees, family, servants, guests, invitees, licensees, agents, employees, and those who use the Lot, the improvements thereon or any part of the Community through the Owner, as a result of one or more of the Property Conditions. Each Owner further covenants that such Owner will notify all occupants and transferees of such Owner's Lot of the risks of the Property Conditions. The foregoing covenants shall be included in the Lot Deed conveying title to each Residential Lot and in every subsequent conveyance of the Lot and shall be binding upon and inure to the benefit of the parties and their respective estates, heirs, devisees, personal representatives, successors, successors-in-trust and assigns; provided that the foregoing agreement to indemnify, hold harmless and defend shall not be applicable to, and shall not extend to obligate, any institutional lender or investor who holds a mortgage covering a Residential Lot or who takes title to such Lot upon foreclosure or by way of deed in lieu of foreclosure or otherwise.

11. Right to Enforce Restrictions and Abate Violations. If any person or entity shall violate or attempt to violate any of the covenants herein contained or in the Bylaws or the Design Guidelines or any rules or regulations of the Association, the Association or any Owner of any Residential Lot may commence legal action at law or in equity against such person or entity, either to prevent or abate such violation or to recover damages caused by such violation, or both. Said damages may expressly include a judgment for all of the plaintiff's costs of suit, including reasonable attorney's fees, and any fines for noncompliance as may be adopted by the Board of Directors of the Association as part of its rules and regulations. The Association may in its absolute discretion elect (a) not to take action with respect to any violation or alleged violation, (b) to discontinue any such action once commenced, (c) to settle any dispute with

respect thereto, (d) to take any other action as the Association deems appropriate, including but not limited to the establishment and enforcement of a system of fines and penalties.

12. **Resolution of Disputes.** Disputes among Owners, the Association, its Board and other parties shall be resolved in accordance with the applicable provisions of the Bylaws.

13. **Duration of Declaration.** This Declaration shall remain in full force and effect and shall be binding until _____, 2047, or for such longer period as this Declaration shall be extended by the affirmative vote or written consent of the Owners of not less than 65% of all of the Residential Lots; provided, however, that if this Declaration is extended beyond _____, 2047, in accordance with the terms of this section, this Declaration may thereafter be terminated at any time by the affirmative vote or written consent of Owners of not less than 65% of all Residential Lots. Both the extension and the subsequent termination of this Declaration in accordance with the terms of this section shall be effective only upon the recordation in the Bureau of an instrument in writing, reciting said vote or election to extend or terminate this Declaration, signed and sworn by the members of the Board of Directors of the Association authorized to sign such instrument by a special resolution of the Board adopted by the vote of the required percentage of Owners at a regular or special meeting of the Association.

14. **Amendment.** This Declaration may be amended at any time by the affirmative vote or the written consent of the Owners of not less than 75% of all Residential Lots in Community; provided, however, that for so long as the Declarant owns an interest in any Community Lot, no such amendment shall be effective without the prior written consent of the Declarant. Said amendment shall be effective upon recording in the Bureau an instrument which shall (a) set forth said amendment; (b) recite that the Owners of not less than 75% of all Residential Lots voted for, or gave their written approval for, said amendment, and (c) be signed and sworn by the members of the Board of Directors of the Association authorized to sign by special resolution of the Board, and, if the Declarant's consent is required, signed by the Declarant.

Notwithstanding anything herein to the contrary, for so long as the Declarant retains any interest in a Community Lot, the Declarant shall have the right (but not the obligation) to amend this Declaration, the Bylaws (and the Subdivision Map, if appropriate) and any other Association Documents without the consent or joinder of any Lot Owner, lienholder or other person or entity, for the purpose of meeting any requirement imposed by (i) any applicable law, (ii) the State of Hawaii, (iii) the County of Kauai, (iv) any title insurance company issuing a title insurance policy on any of the Lots, (v) any institutional lender lending funds on the security of any of the Lots, or (vi) any other governmental or quasi-governmental agency including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development or the Veterans Administration; provided, however, that no amendment that would change the size or layout of a Lot or the Share appurtenant to a Lot shall be made without the consent of all persons having an interest in such Lot. Each and every party acquiring an interest in the Community, by such acquisition, consents to the amendments described in this subsection and agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same, and appoints the Declarant and its assigns as his or her attorney-in-fact with full power

of substitution to execute and deliver such documents and instruments and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the duration of such reserved rights, and shall not be affected by the disability of such party or parties.

15. **Severability.** Invalidity of any one or more of the provisions of this Declaration by judgment or court order shall not affect the validity of any other provisions hereof.

16. **Perpetuities.** If any of provision of this Declaration shall be void or voidable for violation of the Rule Against Perpetuities in effect in the State of Hawaii, said provision shall continue only until the end of such period as shall not violate the Rule Against Perpetuities, measured by the lives of the following persons on the date of this Declaration: The members of the United States Senate serving in office on the date of recordation of this Declaration, and the descendants of such persons living on the date of recordation of this Declaration.

17. **Notice Of Transfer Of Title.** Upon the sale or transfer of title to any Residential Lot, the transferee shall promptly notify the Association in writing of the name of each new Owner of said Residential Lot and his or her mailing address and home and business phone numbers.

18. **Records of Ownership and Notices.** The Declarant and the Association shall be entitled to rely conclusively on the records of ownership of the Residential Lots provided to the Association pursuant to the foregoing paragraph, for all purposes, including, but not limited to, names and addresses for all communications, notices, service of process, approvals, voting and consents, it being the obligation and burden of each Owner of each Residential Lot to ensure that the Declarant and the Association have ownership records which are accurate and up-to-date. The Declarant and the Association may also conclusively rely, in the sole discretion of each, on the records of ownership and addresses of Owners of each Residential Lot as shown on the real property tax records of Kauai County in any particular case.

19. **Declarant Control Period.** The Declarant hereby expressly reserves the right to appoint and remove all of the Association's officers and directors for the duration of the Developer Control Period, subject to and in accordance with the terms of section 4.21 of the Bylaws, which section is hereby incorporated into this Declaration by this reference.

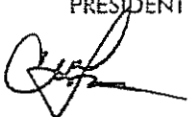
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IN WITNESS WHEREOF, the Declarant has executed these presents on this
21 day of June, 2007.

PORT ALLEN RESIDENTIAL LLC, a
Hawaii limited liability company

By: A & B PROPERTIES, INC., a Hawaii
corporation
Its Manager

By 
R.K. SASAKI
Its PRESIDENT

By 
CHARLES W. LOOMIS
Its ASST. SECRETARY

DECLARANT

STATE OF HAWAII

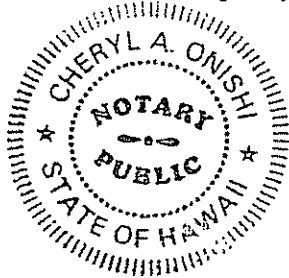
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CITY AND COUNTY OF HONOLULU

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On this 27th day of June, 2007, before me personally appeared R.K. SASAKI, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Cheryl A. Onishi

CHERYL A. ONISHI
Notary Public, State of Hawaii

My commission expires: APR 17 2009

STATE OF HAWAII

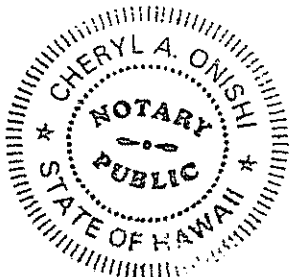
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CITY AND COUNTY OF HONOLULU

) SS

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On this 27th day of June, 2007, before me personally appeared CHARLES W. LOOMIS, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Cheryl A. Onishi

CHERYL A. ONISHI
Notary Public, State of Hawaii

My commission expires: APR 17 2009

EXHIBIT "A"

ALL of those certain parcels of land situate at Eleele, Koloa, Island of Kauai, State of Hawaii, being Lots 1 through 61 and Lots 64 through 67, inclusive, of the Port Allen Residential Subdivision (also known as "Keala'ula"), (County of Kauai, Planning Department Reference No. S-2005-01) as shown on the Port Allen Residential Subdivision final map which was approved by the Planning Commission of the County of Kauai on May 9, 2006 (the "Final Map") as recertified on June 15, 2007 (the "Recertified Final Map"). The Final Map was recorded in the Bureau of Conveyances of the State of Hawaii attached to the Affidavit of Ryan M. Suzuki dated May 17, 2006, recorded as aforesaid as Document No. 2006-101756 and the Affidavit of Ryan M. Suzuki dated June 18, 2007, recorded as aforesaid as Document No. 2007-112839, respectively.

Together with all easements, easement rights and other rights and interests appurtenant to or for the benefit of all or any of such Lots now existing or hereafter created.

Subject to all easements, easement rights and other encumbrances of record burdening or encumbering such Lots.

BEING A PORTION OF THE PREMISES ACQUIRED BY QUITCLAIM DEED

GRANTOR : A&B PROPERTIES, INC., a Hawaii corporation

GRANTEE : PORT ALLEN RESIDENTIAL LLC, a Hawaii limited liability company

DATED : May 19, 2006

RECORDED : Document No. 2006-101757

Keala'ula

DESIGN GUIDELINES

The Keala'ula Design Guidelines have been adopted by the Developer for and on behalf of the Association pursuant to the Declaration of Keala'ula, as the same may be amended (the "Declaration"), and are meant to facilitate the orderly administration of any improvements or modification or alteration of existing improvements at Keala'ula.

APPROVAL PROCESS.

No Improvement requiring Design Committee approval shall be commenced, erected or installed unless the homeowner ("Owner") first obtains the approval of the Design Committee, as follows:

The Owner shall submit to the Design Committee a completed Application, together with preliminary plans and specifications ("plans") for the proposed work, which plans shall show in detail the nature and dimensions of the proposed work.

Within thirty (30) days after submission of the preliminary plans, the Design Committee shall review the plans and return them to the homeowner indicating its approval or disapproval. If disapproval is indicated, the general nature of the Design Committee's objections shall be so stated.

If the plans are disapproved by the Design Committee, the homeowner may correct or modify the same to account for the reasons given for disapproval by the Design Committee and resubmit the same within thirty (30) days after receiving the Design Committee's disapproval. Within fifteen (15) days after resubmission of the corrected or modified plans, the Design Committee shall either approve or disapprove the same in writing.

All Applications must be accompanied by the appropriate deposit. All deposits will be refunded to the owner once the modification, alteration, or improvement is complete as was approved. The deposits to be charged to Owners are as follows, and such deposits are subject to change without prior notice:

Room Additions and Room Extensions: \$100.00

Other Major Improvements and Modifications: \$100.00

Minor Improvements and Modifications: \$25.00

Major Improvements and Modifications include improvements (other than Room Additions and Room Extensions) that significantly alter the home or appurtenant yard area or incorporate new structures or additions to the home or appurtenant yard area. As a general rule, this category will include, but is not limited to, any Application that requires architectural consultation and a building permit and/or that requires multiple Improvements or other modifications. Examples of Major Improvements and Modifications include but are not limited to the installation of new or major modifications to existing; fences or walls, swimming pools, driveways, patios, decks, solar water heating systems, storage sheds, and roofing.

Examples of Minor Improvements and Modifications include but are not limited to the installation of window tinting, wall or window air conditioners, planter boxes, security windows, exterior painting, re-roofing with the same style and color of roofing material, basketball standards, antenna and satellite dishes, and screen doors.

DURATION OF APPROVAL; REVOCATION.

All work approved by the Design Committee shall be finished to completion and in good faith. Approval of plans by the Design Committee shall be effective for a period of one (1) year from the date of approval, and such approval may be revoked if the work pursuant to such plans has not commenced within said one-year period or does not proceed in a timely manner (i.e., more than ninety (90) days elapses without substantial or significant progress toward completing the improvements). If the work is abandoned at any time prior to completion, the Design Committee and/or Association may take any and all reasonable steps to have the work completed or the property restored to its pre-existing condition, and may specially assess the homeowner for all costs and expenses incurred in connection therewith.

COMPLIANCE.

Upon the completion of any improvement for which approved plans are required, the homeowner shall give written notice thereof to the Design Committee. Within thirty (30) days after such notice is given, the Design Committee shall inspect the improvements or work in order to determine whether or not there has been compliance with the approved plans. If the Design Committee finds that there has not been substantial compliance with the plans, it shall notify the homeowner of such non-compliance and require the homeowner to remedy the same within sixty (60) days after such notice is given. If the homeowner fails to remedy such non-compliance within said sixty-day period, the Design Committee and/or Association may take any and all reasonable steps to remedy the non-compliance or to restore the property to its pre-existing condition, and may specially assess the homeowner for all costs and expenses incurred in connection therewith.

DISPOSAL OF CONSTRUCTION WASTE AND DEBRIS.

The homeowner shall be responsible for promptly disposing of construction waste and debris and for keeping the public, private and common areas of the subdivision free of waste and debris at all times. No hazardous materials or liquids may be stored or drained on or around any home or appurtenant yard area.

OTHER CODES, LAWS, RULES AND ORDINANCES.

All exterior painting must be the same color, style, and texture as stated in the Color Scheme Legend for Keala'ula.

All lumber shall be pressure-treated against termite infestation and shall be guaranteed in writing against such infestation for a period of five (5) years. All field cuts of lumber and materials shall be field treated.

The approval of plans by the Design Committee does not eliminate the homeowner's obligation to comply with all existing laws, ordinances, rules and regulations made by any governmental authorities or with any terms and conditions required under the Declaration.

NO LIABILITY.

The review and approval of any Application for a proposed improvement ("Application") by the Design Committee is made on the basis of aesthetic considerations only. The Design Committee shall not bear any responsibility for ensuring the structural integrity or soundness of any improvement or for ensuring compliance with building codes and other applicable governmental requirements. In addition, neither the Design Committee, the Developer, the Association or the Board, nor their respective members or duly authorized representatives, shall be held liable for any injury, damages, loss or prejudice suffered or claimed on account of (i) a mistake in judgment or negligence, (ii) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications or other request or item, whether or not defective, (iii) the manner or quality of any approved improvement or the performance of any work, whether or not such construction or performance complies with these Design Guidelines, the Declaration or any other Project documents, (iv) the manner, appearance, style or quality pertaining to the development, maintenance or operation of any improvement, (v) the erroneous execution of any estoppel certificate, (vi) the failure of any plan, drawing, specification or other item approved by the Design Committee to comply with any applicable law, or (vii) any other matter, decision, act or omission; provided that the members of the Design Committee have acted in good faith upon knowledge actually possessed by them.

NO REPRESENTATIONS, WARRANTIES OR AGREEMENTS.

No approval by the Design Committee of any item submitted to the Design Committee shall in any manner constitute a representation, warranty or agreement by the Design Committee, the Developer, the Board, the Association, and their respective members, duly authorized representatives and attorneys, that such item (1) has been prepared free of defects or is of good workmanship or design, or will result in improvements that are readily marketable or free of design or construction defects, (2) complies with applicable laws (including building code requirements) or (3) will result in the approval of the same by any governmental agency or subdivision thereof, or any other person.

AMENDMENT OF DESIGN GUIDELINES.

The Design Committee reserves the right to amend the Keala'ula Design Guidelines from time to time, upon a majority vote of the Design Committee or a unanimous written consent of the members of the Design Committee for such amendment, provided that no amendment which shall adversely impact the Developer's rights hereunder or under any of the Project documents shall be effective without the Developer's prior written consent, which may be withheld in its sole discretion.

DESIGN COMMITTEE.

From the date of conveyance of the last lot, or, from one (1) year following the date of the first duly called meeting of the Keala'ula Homeowners Association, whichever is earlier, the right to appoint and remove all members shall be reserved to and vested solely in the Developer. From and after one (1) year from the date of the first duly called meeting of the Association, the Association shall have the right to appoint and remove the members previously appointed by the Developer.

Unless otherwise authorized by the Board, the members of the Design Committee shall not receive compensation for services rendered.

KEALA`ULA HOMEOWNERS ASSOCIATION HOUSE RULES

The purpose of these rules and regulations is to keep the community a desirable place to live and to enhance the value of the property. Since we live in close proximity to each other, anything we do may affect the well being of our neighbors. Therefore, these rules serve as a commonsense guide to consideration for others so as to create a friendly, pleasant, and tranquil atmosphere and provide maximum enjoyment for everyone.

These rules supplement, but do not change the obligations of the owners and tenants contained in the Declarations and Bylaws. They apply to all owner-guests of the community as well as to members of their families.

The Board of Directors has the authority to make other rules from time to time, or to amend the House Rules as may be deemed necessary for the safety, care, and appearance of the premises and to ensure the comfort and well being of all residents of the community.

The Board of Directors and Association Manager have the full authority and responsibility of enforcing the House Rules. All owners and guests shall be bound by these rules and standards of reasonable conduct whether covered explicitly or implied. However, neither the Board of Directors or the Association Manager shall be responsible for any noncompliance or violation of the House Rules by owners and guests.

Each homeowner who leases a home to any guest shall ensure that a copy of these House Rules is attached as an exhibit to the rental agreement, as the owner is liable.

OCCUPANCY

- 1. The homes shall be occupied and used as a private residence or may be used as a home business but shall not be in nature to those types of businesses which generate walk-in traffic.**

2. Owners and guests shall complete and file a standard occupant information form with the Board of Directors or the Association Manager upon purchasing or taking occupancy of a unit, and shall furnish the Board of Directors with other reasonable information as shall be requested from time to time.
3. Owners and guests shall be responsible for the conduct of their family members, including children, and of their guests.

TEMPORARY OCCUPANCY

1. Subject to the terms of the home deed and the bylaws of the Association and House Rules, owners may lease (for not less than 30 days) their home or make it available to friends, but the person(s) living in the home must abide by the House Rules.
2. Per the declaration of the Association, no Lot may be used for any commercial, professional, or business use. No Lot shall be used for time-sharing purposes, which includes, but is not limited to: any plan, program, or arrangement under which the right to use, occupy, or own a residence is available to or rotates among various persons on a periodically recurring or nonrecurring basis. Therefore, no Lot may be used as a vacation rental, rooming house, or bed and breakfast.
3. The homeowner shall be personally responsible for the conduct of their guests and shall, at request of the Board of Directors or Association Manager immediately abate and/or remove at their expense any structure, thing, or condition that may exist concerning the occupancy of their home contrary to the meaning and provisions of the Association Bylaws and House Rules. If the owner cannot control the behavior of the residents of their home to conform to the said provisions, they shall immediately remove such guests from the premises without compensation for lost rentals or any other damage resulting therefrom.
4. In conformity with state law, each owner who lives off island or will be absent for a period of 30 days or more shall be responsible for designating a local agent to represent their interests. Each such owner shall file his/her off-island address and phone number of the

designated agent with the Association Manager and Board of Directors.

MAINTENANCE

The maintenance of lot 14, fence, and entrance area are the responsibility of the Association.

- 1. State or Federal flags may be displayed on individual homes at any time.**
- 2. Fireworks are allowed if they are legally obtained, not hung from street lights, and the area is cleaned up afterward.**
- 3. Each residence may erect up to five (5) political yard signs, and one window sign. Each sign must be less than or equal to 500 square inches (an 18 x 24 inch sign is 432 square inches). There is no limit to the number of bumper stickers that may be placed on vehicles. Political signs may be erected sixty (60) days before an election, and must be removed within ten (10) days following the election.**
- 4. Temporary holiday decorations are permitted in front yards, on doors, eaves, windows, and rooftops. All decorations must be securely fastened, and all electrically powered decorations must be fireproof and UL approved. Rooftop decorations should not project more than six (6) feet above the top of the roof. All decorations will be removed no later than fifteen (15) days after the holiday, with the exception of Christmas. Christmas decorations will be removed by January 31st.**
- 5. No plants or cuttings may be planted in the common area without the permission of the Board of Directors.**
- 6. Burning of green waste is not permitted; however, an enclosed fire in the yard is allowed if it is properly contained and safely monitored and extinguished.**
- 7. Cleaning of game or fish is allowed if cleaned and disposed of properly.**
- 8. Residents shall exercise care when cleaning on the rim lots so as not to allow dirt, debris, or water to fall off the edge.**
- 9. Residents and guests are to park in carports/garages, and on their respective driveways, and once full, overflow vehicles may park on road shoulders or easements.**

PETS

- 1. All pets must be kept within the boundaries of the owner's lot at all times, and are only allowed in the common areas and front yards when in transit or when on a leash. Pets may not cause a nuisance or annoyance to other owners, such as noise, odors and any unsanitary conditions that attract vermin or jeopardize the health, safety, or welfare of any owner.**
- 2. No pet may be kept, used, or bred anywhere in the community for any commercial purpose.**
- 3. Two pets are allowed per lot, in any combination of: dogs, cats, rabbits, hamsters, guinea pigs, caged parakeets and small birds, that do not make sounds audible from outside the owner's lot. No farm animals, such as, pigs, chickens, goats, horses, cows, etc. are allowed, nor are exotic birds, such as peacocks or parrots.**
- 4. The pet owner is responsible for immediately cleaning up after any pet that defecates anywhere in the area. Failure to do so will assess a fine.**

NOISE

Quiet hours are between 10:00 pm and 8:00 am Sunday through Thursday, and 11:30 pm to 8:00 am on Friday and Saturday. However, out of consideration for others, there shall be no excessive noise at any time. Excessive noise includes, but is not limited to: loud stereos, car stereos, noisy pets, parties, yelling and loud voices, verbal confrontations, etc. Excessive noise should be reported to the Board of Directors, who will take appropriate action.

AESTHETICS

No resident shall permit an unsightly condition to be maintained in open view from such residence. For the purpose of this provision, "unsightly condition" includes, but is not limited to, the following: litter; inoperative or broken vehicles, machinery or equipment or parts thereof; cans, bottles; weeds, untrimmed grass and other uncultivated plant life.

1. Roll-up Lanai Blinds

Blinds must be kept clean and in good condition.

2. Deck/Concrete Slab Criteria

Owners desiring to build decks or construct slabs on their yard areas must submit, in writing, a request for such. Permission from the Board must be given prior to construction. All decks and slabs will be considered on a case by case basis. No deck will be built within 24" of a building to allow for termite treatment or inspections.

VIOLATION OF HOUSE RULES AND PENALTIES

- 1. The first infraction of the House Rules shall result in a warning notice from the Association Manager to the guest, with a copy to the owner, if different. This letter will state the specific violation and date of the violation, along with other details such as the resolve deadline, if applicable.**
- 2. The second instance of violation shall result in a second notice assessing a \$25.00 fine, with the opportunity for the owner to appear before the Board of Directors meeting concerning the alleged violation. The Board has the right to rescind the fine, should the situation warrant such action.**
- 3. Fines will continue to double for each repetition of the violation. Fines will be assessed to the Homeowners Association monthly billing for maintenance fees. Any fines not paid will result in legal action.**
- 4. Should a violation occur which places a financial obligation on the Association, then the owner responsible for this violation shall reimburse the Association, by way of special assessment, for this financial obligation including legal costs and attorney's fees.**