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Declaration of Covenants, Conditions and Restrictions

PARTIES TO DOCUMENT

Declarant: Koko Villas, LLC
Honolulu, Hawaii 96813

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

(Koko Villas)

THIS DECLARATION is made as of October 28, 2004, by **KOKO VILLAS, LLC**, a Hawaii limited liability company, whose place of business and post office address is 841 Bishop Street, Suite 1000, Honolulu, Hawaii 96813 ("Declarant").

RECITALS:

Declarant is the fee owner of certain property at Maunaloa, Honolulu, State of Hawaii, which is more particularly described in Exhibit "A" attached to and made a part of this Declaration (the "Subdivision"); and

The Subdivision includes seventy (70) single-family residential lots ("Residential Lots") and other lots for use for roadways and other purposes; and

Declarant intends to organize a Hawaii nonprofit corporation to be known as "Koko Villas Homeowners' Association" (the "Association"), to operate, manage, administer, maintain, repair, replace, landscape and improve Common Areas (defined below) for the use and benefit of some or all of the owners and occupants of the Residential Lots, to control the exterior design of other improvements within the Subdivision, to perform and provide for services necessary or desirable for the benefit of the Subdivision and the owners and occupants of the Lots, and to perform all of the obligations of the Association described in this Declaration;

NOW, THEREFORE, Declarant, in order to establish a plan for the operation, use and maintenance of the Subdivision and the Common Areas as provided in this Declaration, declares that the Subdivision, each and every Lot in the Subdivision, and each and every interest in them, shall hereafter be held, leased, mortgaged, conveyed, used, occupied and improved subject to and with the benefit and protection of the following terms, restrictions, covenants, conditions and provisions, which terms, restrictions, covenants, conditions and provisions shall be deemed covenants running with the land.

1. DEFINITIONS

(a) "Association": The Koko Villas Homeowners Association, a Hawaii nonprofit corporation, and its successors and assigns.

(b) "Back Yard": The area at the back and on the sides of a Villa on a Residential Lot. The boundaries of the Back Yard run:

(i) from the point along the garage wall that is nineteen and one-half (19.5) feet from the front boundary, to the point on the nearest side boundary that is nineteen and one-half (19.5) feet from the front boundary;

(ii) then along the side boundary to the rear boundary;

(iii) then along the rear boundary to the other side boundary;

(iv) then along the other side boundary to the point that is eighteen inches (18") further from the front boundary than the front corner of the Villa on that side;

(v) then to the point along the Villa wall that is eighteen inches (18") back from the front corner of the Villa.

A drawing of the Back Yard is attached to the Guidelines.

(c) "Board" or "Board of Directors": The Board of Directors of the Association.

(d) "City": The City and County of Honolulu, State of Hawaii.

(e) "Common Areas": All property, real and personal, in which the Association owns or holds an interest or which the Association is obligated to maintain in accordance with this Declaration, easements granted in favor of the Association or agreements between the Association and Declarant or the City, for the use and/or enjoyment of all or some of the Owners or occupants of the Lots and others so entitled, and may include, without limitation, estates in fee, estates for a term of years, easements, leases, licenses and permits. The Common Areas will include without limitation the Association's interests in the Landscape Setbacks, the Entrance Area, the Landscaped Median including the Mailboxes and street signs, the Drainage Easement, and the Preservation Area to the extent provided in Section 13.

(f) "Committee": The design committee established in accordance with Section 11.

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

(h) "Declarant's Control Period": The period during which the Declarant owns any interest in any portion of the Subdivision, or such shorter period as the Declarant may establish by an amendment to this Declaration.

(i) "Drainage Easement": The areas designated on the File Plan as Easement 16 affecting Lots 74 and 75 for drainage purposes, Easements 17 and 18 affecting Lot 75, for drainage purposes and Easement 19 for flowage purposes, which the Association will use as a retention basin, and the document granting an easement over those areas in favor of the Association to be executed by the Declarant and the Association prior to conveyance of the Residential Lots to persons other than the Declarant. The Drainage Easement will include obligations of the Association to maintain the improvements of the Drainage Easement. Easement 19 will also be granted to the City for flowage purposes.

(j) "Enforcing Persons": The Declarant, the Association (acting through the Board, the Committee or the Association's Managing Agent). After Declarant's Control Period Enforcing Persons will include any Residential Lot Owner.

(k) "Entrance Areas": The two areas designated on the File Plan as Easements 1 and 4 affecting Lots 1 and 34 at the entrances to the Subdivision.

(l) "Fence Easement": The area designated on the File Plan as Easement 20 affecting certain Residential Lots adjoining Lot 73 that is part of the Preservation Area.

(m) "File Plan": File Plan No. 2381 recorded in the Bureau of Conveyances of the State of Hawaii and showing the Lots in the Subdivision and the easements designated over those Lots.

(n) "Front Yard": The area in front and on the sides of a Villa on a Residential Lot up to the boundary with the Back Yard, but excluding the Landscape Setback. A drawing of the Front Yard is attached to the Guidelines.

(o) "Golf Course": The golf course adjacent to the Subdivision.

(p) "Governmental Regulations": All applicable laws, ordinances, codes, rules and regulations of the federal, state, county or other governmental authorities having jurisdiction.

(q) "Guidelines": The Guidelines described in Section 11(g).

(r) "Hillside": The lot currently zoned P-2 by the City that is shown on the File Plan as Lot 74, which is part of the Preservation Area but subject to certain additional restrictions.

(s) "HRS": Hawaii Revised Statutes, as amended.

(t) "Improvements": The Improvements described in Section 5(b).

(u) "Koko Crater Park Access Road": The road leading from Kealahou Street to Koko Crater along the northern boundary of the subdivision.

(v) "Landscape, Fence, Wall and Access Easement": The perpetual easement described and granted in Section 4.

(w) "Landscape Median": The grassed or landscaped area in the roadway Lots between a sidewalk and the curb of the adjacent street, lying within the Roadsides. Above ground only Permitted Plantings, mailboxes with their supporting columns and address numbers and street signage shall be allowed in the Landscape Median while the Association has an easement over the Roadsides.

(x) "Landscape Setback": The areas designated on the File Plan as Easements 2, 3, 5 and 6 for landscaping purposes, affecting all Residential Lots, extending approximately eleven and one-half feet wide from the front boundary of each Residential Lot plus an area approximately nineteen and one-half feet from the front

boundary on the garage side of the Residential Lot. A drawing of the Landscape Setback is attached to the Guidelines.

(y) "Lot": Each subdivided lot in the Subdivision.

(z) "Owner": The record owner of fee simple title, or to the extent provided in Section 7(a) the record lessee, for each Residential Lot.

(aa) "Permitted Plantings": Those trees and other plants that are permitted to be planted in the Landscape Setback, Landscape Median, Front Yards, Back Yards or all of them. The list of Permitted Plantings and in which areas they may be planted, will be established by the Guidelines. The Committee will have the power to add to the list of Permitted Plantings as provided in Section 11.

(bb) "Person": Any person, individual or entity (including, without limitation, any trustee, mortgagee, personal representative, profit or nonprofit corporation, general or limited partnership, unincorporated association, joint venture or trust).

(cc) "Preservation Area": The Lots that are currently zoned P-2 by the City and shown on the File Plan as Lots 73, 74 and 75. The Preservation Area is subject to certain utility easements more particularly described in Exhibit "A" and is subject to the Drainage Easement.

(dd) "Rear Boundary Fence": The fence installed by Declarant along the rear boundary of a Residential Lot, or across the common rear boundaries with respect to Residential Lots that have common rear boundaries and any wall constructed as a foundation for such fence.

(ee) "Residential Lot": Each residential Lot in the Subdivision.

(ff) "Roadsides": The area in each of roadway Lots 71 and 72 lying between the outer boundary of each roadway lot and the edge of the curb of the pavement and including the Sidewalk Area and Landscape Median.

(gg) "Side Fence": A fence along the boundaries of the Back Yard, except the rear boundary, complying with the Guidelines, which may be constructed by the Owner of a Residential Lot in accordance with Section 3(b).

(hh) "Sidewalk Area": The areas in the roadway Lots between the front boundaries of the Residential Lots and the Landscape Median, lying within the Roadsides.

(ii) "Subdivision": The property described in Exhibit "A" attached hereto.

(jj) "Villa": The improvements consisting of a single-family dwelling and attached garage, constructed on a Residential Lot.

2. PROPERTY SUBJECT TO DECLARATION

(a) Property Subject to Declaration The property subject to this Declaration shall be the property described in Exhibit "A" attached hereto and made a part hereof (and all subdivided portions of it), together with improvements now or later located on them. The property is shown on the File Plan and consists initially of seventy-five (75) Lots including seventy (70) Residential Lots, two (2) roadway Lots, and three (3) Preservation Area Lots.

(b) No Other Property Subject to this Declaration Nothing in this Declaration or in any amendment to it shall be deemed to be a representation, warranty or commitment that Declarant will commit or subject to this Declaration any property it may now own or later acquire other than that property described in Exhibit "A".

(c) Withdrawal of Property Real property may be withdrawn by the Declarant from the real property subject to this Declaration thereby releasing such real property from all covenants, conditions, limitations and restrictions contained in this Declaration. The Declarant may make such withdrawals without the consent of the Owners provided that the Declarant is the sole owner of the property to be withdrawn. Such withdrawal of real property from the Declaration shall be effective upon the execution and recordation of a document which describes the property withdrawn and declares that such property is released from the provisions of this Declaration; provided, however, Declarant may provide in such document, or in a later recorded document, pursuant to Section 8(a), that the withdrawn property shall have rights to use the Drainage Easement. Currently it is the Declarant's intention to withdraw the roadway Lots upon their dedication to the City and County of Honolulu and to withdraw a portion of the Hillside upon subdivision of the Hillside.

3. USE OF OWNER'S LOT; COMPLIANCE WITH LAWS Each Owner and occupant of a Lot shall at all times comply with all Governmental Regulations on the Lot and Common Areas. In addition, each Owner and occupant shall at all times comply with and observe each of the following provisions; provided, however, that in the event of any conflict between or among the provisions set out in this Section 3 and Governmental Regulations, the most restrictive provision or Governmental Regulation shall control:

(a) Use and Site Development Restrictions and Requirements.

(i) Use of Residential Lots Each Residential Lot shall be used only for single-family dwelling purposes, regardless of whether applicable zoning and other Governmental Regulations permit a more intensive or different use.

(ii) Limitation on Number of Dwellings All Residential Lots shall be limited to one single family dwelling and an attached garage. No ohana unit shall be permitted on any Residential Lot.

(iii) No Rezoning Subdivision or Consolidation Without the prior written consent of Declarant during Declarant's Control Period and the Board thereafter, no Residential Lot shall be rezoned, subdivided, or consolidated with another Lot and no condominium as defined under Chapter 514A HRS shall be permitted.

(iv) No Time-Sharing. No Villa may be conveyed, leased, occupied, or used for or in connection with any time-sharing purpose or under any time-sharing plan, arrangement or program, or transient vacation rental, including without limitation any so called "vacation license," "travel club membership" or "time-interval ownership" arrangement. The term "time-sharing" as used in this paragraph 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 Residential Lot or Villa upon the Residential Lot rotates among various persons on a periodically recurring basis according to a fixed or floating interval or period of time, whether by way of deed, lease, association or club membership, co-tenancy agreement, partnership or otherwise.

(v) Utilities. Except for propane gas and trash collection, utility services will be provided to the boundary of each Villa in a primarily underground distribution and/or collection system. Trash receptacles shall be screened from view of adjacent properties and roadways by being kept only in the portion of the Back Yard that is not visible from the street, except when required to be placed on the curb for City trash collection. Trash receptacles shall be removed to the Back Yard as soon as practicable after trash collection. Propane gas must be kept in the Back Yard in a storage enclosure complying with the Guidelines and approved by the Committee.

(vi) Easements. Easements for the installation and maintenance of utilities and drainage facilities are as set forth in or are as shown on (a) the File Plan and Exhibit "A" and (b) the deed conveying the Lot to the Owner. No improvements, roof eaves or overhangs, or trees shall be placed on, below or above these easements (except by Declarant) without the prior consent of Declarant during Declarant's Control Period and thereafter by the Board, and any applicable governmental authority or utility company.

(vii) Grading. The Owner shall accept the condition of the Lot in "as is" condition, as of the date of completion of all contracts for the grading, roadway and utility improvements for the Subdivision. All subsequent site work performed by the Owner shall be in strict accordance with plans as approved by the Committee and all Governmental Regulations.

(viii) Lot Drainage. The flow of surface and/or subsurface drainage onto, across or from each Lot in accordance with the configuration of the drainage at the time of conveyance by the Declarant to a third party shall not be obstructed. No alteration after such conveyance may cause the flow of water into an adjoining Lot.

(ix) Limitation on Animals. No animals, livestock or poultry shall be kept on the Residential Lots, except for cats and dogs not exceeding three (3) in number and caged birds or other small caged animals not exceeding three (3) in number, on a Residential Lot at any one time, which are not kept or bred for commercial purposes. Animals shall be leashed at all times that they are not confined within the Villa or a fenced Back Yard. If any animal shall conduct itself to cause an unreasonable annoyance to occupants of the Subdivision, as determined by the Board, then the Board may require that it be permanently removed from the Subdivision.

(x) Noxious Activities.

(1) No noxious or offensive activities shall be carried out upon any Lot, including without limitation excessive noise and traffic.

(2) Each Residential Lot Owner will prevent unsanitary conditions on the Residential Lot or any hazard to the general health and welfare of neighboring Residential Lots from activities conducted on the Residential Lot.

(3) No hazardous wastes or hazardous materials shall be used, generated, manufactured, stored, processed, treated, disposed, handled, released or in any way dealt with on or from the Residential Lot, except that reasonable amounts of household cleaning and garden supplies may be kept and used on the Residential Lot provided that all Governmental Regulations are complied with.

(4) Nothing shall be done or kept on a Residential Lot or Common Area, that will result in the cancellation, increase in premium or deductible, or reduction in coverage of insurance maintained by the Association.

(xi) Vehicles, Trailers and Watercraft. Only cars and other private passenger vehicles may be parked on roadways within the Subdivision and shall not be parked continuously or regularly. Without limiting the foregoing, any such vehicle parked on a roadway lot for more than twenty four (24) consecutive hours shall be in violation of this provision whether or not the location of the vehicle has been moved within the roadway. Only occasional parking by guests or by vehicles servicing a Lot shall be permitted on such roadways. No watercraft, trailers or buses may be parked on roadways within the Subdivision. These limitations shall continue to the use of roadways by Owners, occupants and visitors to the Subdivision after dedication to the City and withdrawal from the Subdivision, to the extent permitted by Governmental Regulations.

(xii) Garages. The garage of a Villa shall be used only for parking of vehicles, trailers, and watercraft, which shall be parked only inside the closed garage and not on any other portion of the Residential Lot. No vehicle, trailer, watercraft or other equipment, may be dismantled, repaired or serviced in the Subdivision outside of the closed garage of a Villa. Garage doors must be closed at all times except for the entrance and exit of vehicles, watercraft or trailers. Accessory permitted uses of garages are laundry, storage or minor repairs not otherwise prohibited, so long as no such use is visible outside the Residential Lot. No garage shall be used for living, cooking or sleeping purposes.

(b) Strict Limits on Exterior Changes. The Subdivision has been designed to present a uniform and attractive appearance and to maintain that appearance strict limitations are imposed by this Declaration and shall be observed by all Owners. Except as provided in this Section 3(b) no exterior alterations, additions or attachments to the Villa, driveway, pathway, fences or exterior lights or any improvement originally constructed or installed by the Declarant on a Residential Lot are permitted, including without limitation alterations to their design, materials, coatings or colors, roofs, gutters, exterior walls, windows or doors. Any repair that changes the exterior appearance, materials or colors will be deemed an alteration. In the event that a particular material, coating or color is no longer available, repairs or repainting or resurfacing may use a substitute approved by the Committee. Neither the Declarant nor the Board will be

responsible for the safety or durability of any approved substitute. All exterior changes will be subject to the Guidelines.

(i) General Requirements. All items permitted by this Section 3(b) shall require the prior review and approval of the Committee, unless the Guidelines specifically waive such prior review and approval and the Guidelines are followed strictly.

(ii) Front Yard. Only the following items may be added in the Front Yard: a sign indicating house protection arrangements; landscaping in accordance with Section 3(c); and such other items as may be specifically permitted by the Guidelines.

(iii) Landscape Setback. Nothing may be planted or installed by the Owner in the Landscape Setback except underground drainage pipes connecting the Owner's drainage system to the private drainage system installed by Declarant, to be approved by the Committee in connection with approval of the Owner's landscaping plan.

(iv) Back Yard. Only the following items may be added in the Back Yard: a storage bin; air conditioning; garden furniture; barbecue equipment and playground equipment; a below ground swimming pool and spa; a sundeck; gazebo or pool cabin; a patio or open lanai; energy conservation equipment; Side Fences; landscaping in accordance with Section 3(c); and such other items as the Committee approves in accordance with the Guidelines. The addition of a covered or screened lanai or other extensions or additions to a Villa are allowed only in the Back Yard and no such extension or addition shall extend the roof line any closer to the side boundaries of the Residential Lot than the original roof line of the Villa nor closer than fifteen (15) feet to the rear boundary of the Residential Lot. Flat roofs are prohibited and roof tiles and other external materials shall match the original construction.

(c) Landscaping and Yard Standards.

(i) Landscaping Guidelines. The Guidelines include landscaping Guidelines. Prior to installing landscaping, the Owner of a Residential Lot shall provide a landscaping plan, prepared by a landscape architect, for review and approval by the Committee.

(ii) Required Landscaping. Landscaping of the Front Yard and Back Yard shall be commenced on or before six (6) months after conveyance of a Residential Lot to any person other than Declarant and shall be completed on or before one (1) year after conveyance. Landscaping shall include grassing of all bare areas to avoid dust and erosion.

(iii) Top Soil. Top or fill soil material brought to the Residential Lot by the Owner shall be free of clay, termites and other deleterious matter.

(iv) Maintenance of Landscaping. Landscaping shall be kept well trimmed, irrigated and weeded with dead plants removed.

(v) Permitted Plantings. Only Permitted Plantings will be allowed to be planted or placed in the Front Yard or Back Yard, including Permitted Plantings added to the Guidelines by the Committee in accordance with Section 11.

(vi) Vegetable Gardens. Vegetable and herb gardens will be located only in the Back Yard and only with Committee approval.

(d) Residential Lot Maintenance.

(i) Each Owner of a Residential Lot in the Subdivision shall at all times keep and maintain the exterior of the Villa, the Residential Lot and all improvements except those to be maintained by the Association, in an attractive manner, free of tall grass or weeds, trash, litter and debris and shall not store or keep upon the Residential Lot any derelict or inoperable vehicle(s), or unsightly material or equipment. Each Residential Lot Owner shall prevent unsanitary conditions on the Residential Lot or any hazards to the general health and welfare of other Residential Lots from activities conducted on the Residential Lot.

(ii) Without limiting other rights of enforcement provided in this Declaration, if an Owner fails or neglects to comply with the requirements of this subparagraph, the Declarant or Association, after fifteen (15) days written notice to the Owner(s), may, directly or by way of contract(s) with others, do all acts and things necessary or convenient to bring such Residential Lot into compliance with this Section 3(d) including but not limited to the repair of any Side Fence, repair of the driveway and any pathway, repainting of the Villa, the cutting of grass and weeds and the removal of the litter, trash, debris or other unsightly material. The Declarant or Association may charge the cost and expense of bringing the Residential Lot into compliance to the Owner(s) of such Residential Lot as provided in this Declaration.

(e) Applicable Laws. The Owners or their respective architects, landscape architects, engineers or other professionals, shall be responsible for all submissions to the appropriate state and county agencies and for complying with all Governmental Regulations and shall acquire all permits and approvals necessary before commencement of any construction or alteration permitted by this Declaration.

4. LANDSCAPE, FENCE, WALL AND ACCESS EASEMENT IN FAVOR OF THE ASSOCIATION

(a) Grant. Effective upon the conveyance of the first Residential Lot and Villa to a person other than Declarant, Declarant grants to the Association a perpetual easement, the Landscape, Fence, Wall and Access Easement over the following easement areas:

(i) the Landscape Setbacks for the purpose of maintaining, repairing and replacing, landscaping and related irrigation and drainage systems.

(ii) the Entrance Areas for the purpose of maintaining, repairing and replacing, landscaping and related irrigation and drainage systems, entrance signage and a portion of the wall along Koko Crater Park Access Road.

(iii) the Fence Easement for the purpose of maintaining, replacing and repairing any retaining wall that may be constructed by Declarant in accordance with Section 13(e).

(iv) along the rear boundary of each Residential Lot in the Subdivision and the side boundary of the Residential Lots along Koko Crater Park Access Road, and over the Fence Easement, for the purpose of maintaining, repairing and replacing the Rear Boundary Fences, the wall along Koko Crater Park Access Road, or within the Entrance Areas or the retaining wall described in Section 13(e) if installed by Declarant.

(v) for access purposes over and across each Lot to the extent necessary to enable the Association to perform its maintenance, repair and other obligations and exercise its rights under this Declaration.

(vi) the roadway Lots for access purposes, until dedication of the roadway Lots to the City.

(vii) the Roadsides, including the Sidewalk Areas and Landscape Medians, for the purpose of maintaining, repairing and replacing, landscaping and related irrigation and drainage systems, street signage and the mailboxes in the Landscape Median and irrigation and drainage systems related to the landscaping under the Sidewalk Areas, until dedication of the roadway Lots to the City.

(b) Easements as Common Areas. The easement areas shall be Common Areas to the extent of the Association's interest in them provided that the Association's rights of access to Residential Lots shall not give any Owner a right of access to any other Owner's Residential Lot.

(c) Indemnity. The Association shall indemnify the Declarant against all claims and loss in connection with the use of the easement areas granted by the Landscape, Fence, Wall and Access Easement contained in this Section 4 as more fully provided in Section 10 and Section 14.

(d) Roadsides. The Declarant reserves the right to request the City to approve a grant by the City to the Association or to accept the roadway Lots subject to an easement over the Roadsides for some or all of the purposes described in Section 4(a)(vii). In the event the City approves such an easement the Association will at the Declarant's request enter into an easement agreement for the Roadsides, or so much of the Roadsides as are covered by the City's approval. Whether or not the City grants or takes subject to such an easement, to the extent the Association is permitted by the City to perform the obligations described in Section 4(a)(vii), the Association will perform such obligations as a part of its obligations under this Declaration.

5. ADMINISTRATION OF COMMON AREAS AND IMPROVEMENTS.

(a) Common Areas. Every Owner shall have a right and easement for enjoyment in and to the Common Areas, but only for their permitted purposes, which easement shall be appurtenant to and shall pass with the title to each Residential Lot. The Association shall be obligated to accept any property or interest in it (including, without

limitation, leases, easements, rights-of-way and licenses) which is conveyed or transferred to it, whether as a Common Area or otherwise, by Declarant, and the Association may, at its election, accept any property or interest in it which is conveyed or transferred to it by any other Person. Common Areas which are real property and which have been conveyed or transferred to the Association by Declarant shall not be consolidated, subdivided or rezoned, except with the written consent of Declarant. Common Areas and any interest in them shall not be conveyed, assigned, dedicated or in any way transferred by the Association except as provided in this Declaration.

Unless approved by both the Board and Declarant, residences or other structures for habitation shall not be constructed or placed upon any Common Area nor shall the Common Areas be used by the Association for commercial or business purposes.

The Association shall at all times operate and maintain, irrigate, fertilize, landscape, plant and replant the Common Areas and maintain all improvements in the Common Areas (including, but not limited to, roads, utility systems, irrigation systems and right-of-way areas between the boundary line of all Lots and the curb of all public or private roadways adjacent to such Lots to the extent not dedicated to and maintained by governmental entities or public utility companies or required by law or agreement to be maintained by individual Residential Lot owners), and do all things as are reasonably necessary to insure the fullest possible use and/or enjoyment of the Common Areas by the owners and occupants of the Lots and others so entitled and, except as otherwise provided in this Declaration, shall be solely responsible for the care, maintenance and preservation of the Common Areas. The Association shall at all times maintain, irrigate, fertilize, landscape, plant and replant the Common Areas at a superior level and standard of maintenance and appearance which is consistent with that of a first-class residential development. However, no Owner shall be or be deemed to be absolutely liable for damage to the Common Areas or any Lot in the Subdivision.

(b) Improvements. The Association shall at all times maintain, repair and replace, in good order, condition and appearance, all Improvements which are transferred to or owned by the Association, or which are located within the Common Areas or which are located within easements across, over or upon Lots within the Subdivision and which run in favor of the Association, "Improvements" shall include, without limitation, all roadways, pavement, curbs, gutters, sidewalks, mailboxes, storm drain systems, drainage systems, signs, equipment, street lighting systems (other than those owned by a utility company), landscape irrigation systems (including the cost of electricity and water to operate the landscape irrigation systems) and other similar systems, facilities and improvements. "Improvements" shall not include improvements or systems which have been dedicated to or are owned by the City (or any department of it) or a private or public utility or a private cablevision company or that are located on a Residential Lot and serve only that Residential Lot, unless required by Governmental Regulations or agreement with the City; provided, however, the Association shall maintain, irrigate, fertilize, plant and replant all grass, plants and landscaping in the areas in which such improvements or systems are located, at a superior level and standard of maintenance and appearance consistent with that of a well maintained residential development.

Notwithstanding the foregoing, the Owner of a Residential Lot will be responsible for: the driveway, and any pathway originally installed by Declarant, that lies within the Landscape Setback and any portion of the Owner's drainage system up to the point where it connects with the private drainage system installed by Declarant within the Landscape Setback; any removal, repair or replacement of such improvements shall be performed by the Owner at the Owner's expense. Any necessary replacements of landscaping disturbed by such activities shall be performed by the Association at the Owner's expense.

(c) Landscaping. The Association shall maintain and replant the landscaping in the Landscape Setbacks, Entry Areas and Landscape Median and maintain, replace and repair the irrigation systems installed by Declarant in those areas.

(d) Drainage. The Association shall maintain, replace and repair the drainage system installed by the Declarant:

(i) in the Landscape Setbacks and the Entry Areas; and

(ii) in the Sidewalk Areas, Landscape Median and roadway Lots, until dedication of the roadway Lots is accepted by the City, from which time the Association shall not longer have responsibility for those portions of the drainage system accepted by the City; and

(iii) as provided in the Drainage Easement.

(e) Fences and Walls. The Association shall maintain, replace and repair the Rear Boundary Fences, the wall along Koko Crater Access Road and, if installed by Declarant, the retaining wall described in Section 13(e).

(f) Roadway Lots. The Association shall maintain and repair the roadway Lots until the City accepts dedication of the roadway Lots.

(g) Easements. The Association shall be required to grant and convey to any third parties easements, licenses, rights-of-way or other rights, benefits or interests in, on, over or under any Common Areas and Improvements (without payment to the Association) whenever required by Declarant; provided, however, that such easements, licenses, rights-of-way or interests must be exercised in such manner as not materially to interfere with the use to which the Association has devoted such Common Areas and Improvements.

(h) Insurance. To the extent available and obtainable at a reasonable cost, the Association shall maintain the following insurance upon all Common Areas and Improvements:

(i) Liability insurance with combined single limit coverage of not less than \$1,000,000 per occurrence for bodily injury or death to one or more persons and for property damage, naming the Association and Declarant as insureds, subject to increase from time to time as required by Declarant in its reasonable business judgment; and

(ii) Fidelity insurance with respect to the acts or omissions of the directors and officers of the Association.

The Association shall also maintain such other insurance as may be from time to time determined by the Board of Directors.

(i) Rules and Regulations. The Board shall have the right to adopt, amend, modify or revoke such rules and regulations as it deems necessary or desirable for the proper maintenance and operation of the Common Areas and Improvements, including without limitation suitable regulations for and restrictions on the use of Common Areas and Improvements, and penalties for the violation of them; provided, however, there shall be no rule or regulation which may in any manner adversely affect or limit Declarant's use and enjoyment of the Common Areas and Improvements, or Declarant's rights, privileges, powers and interests with regard to the Common Areas and Improvements, as such rights may have been reserved to Declarant in any deed, declaration or other document relating to the Common Areas and Improvements. The rules and regulations may also restrict emanations such as noise or fumes from one Residential Lot to another. The Association, through the Board, may enforce such rules and regulations by any lawful means.

(j) No Delegation of Duties. Except as provided in this Declaration, the obligations of the Association set forth in this Declaration shall not be assigned, delegated or transferred by the Association either in whole or in part; however, the Board may enter into contracts or other similar arrangements with any Person, for the performance of duties to be undertaken by the Association under this Declaration.

6. POWERS OF THE ASSOCIATION.

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

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

(ii) Powers of Administration and Management. In fulfilling any of its duties under this Declaration, including its duties for administering and managing the Association, and for the maintenance, repair, operation or administration of the Common Areas and Improvements, the Association shall have the following powers and authority:

(1) To obtain, maintain and pay for such insurance policies or bonds as are required by this Declaration to be obtained by the Association or as the Association may deem to be appropriate for the protection or benefit of the Association, Declarant, the members of the Board or the Owners;

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

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

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

(5) To contract for and pay for, or otherwise provide for, such materials, supplies, furniture, equipment, services and labor as and to the extent the Association deems desirable, and to pay and discharge any and all liens placed upon any Common Areas or Improvements on account of any work performed by the Association.

(iii) Employment of Manager. The Association may, from time to time, employ the services of a manager to manage the affairs of the Association and employees and agents; provided, however, the Association cannot delegate to such manager the power to execute any contract binding on the Association for a sum in excess of Ten Thousand Dollars (\$10,000.00) for any one job or service; nor for the performance of any work or services which cannot be completed within sixty (60) days. The Declarant shall have the right to appoint the initial manager, which may be the Declarant or a company affiliated with Declarant, provided that the term of such initial management contract shall expire upon the earlier to occur of five (5) years from the date of this Declaration or recordation of the conveyance of all Residential Lots by Declarant to Owners unrelated to the Declarant.

(iv) Taxes and Assessments. The Association shall have the right to pay, compromise or contest any or all taxes and assessments levied against all or any part of the Common Areas and Improvements that are owned in fee simple or leasehold by the Association; provided that during Declarant's Control Period any compromise will require Declarant's consent.

(b) Limitation on Powers. Notwithstanding the foregoing there shall be the following limitations on the powers of the Association and its Board:

(i) neither the Association, nor its Board, nor any officer acting in such capacity, nor any other person acting on behalf of the Association, shall have the power to object to, oppose, propose the imposition of any condition, request any contested case hearing, or initiate any litigation with respect to: any permit or rezoning or change in land use designation or subdivision of any Lot in the Preservation Area, to

permit the development of such Lot for residential purposes. Any vote to make such objection or opposition, whether a vote of the Owners or the Board shall be void and of no effect.

(ii) The Association shall not have the power to represent the Owners in any claim or action against the Declarant or its members, managers, employees, agents, design professionals, consultants, suppliers, insurers, contractors or subcontractors with respect to the common areas, the Villas, or their construction or the Lots or any improvements on the Lots. In the event that the Association has any claim relating to the Common Areas, the Board shall not commence or prosecute any lawsuit or any arbitration or other legal proceeding against the Declarant or its members, managers, employees, agents, contractors or subcontractors, or any company related to the Declarant, unless it first meets the following requirements:

(1) The Board must call a special meeting of the Association.

(2) The Board must provide to each Owner, together with the notice of the special meeting of the Association, a copy of the list of claims and estimates of attorneys' fees and other costs of such lawsuit, arbitration, or legal proceeding and a letter from Hawai'i licensed counsel representing that to the attorneys' best knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

a. the claims will not be presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of negotiation or litigation;

b. the claims and other legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

c. the allegations and other factual contentions to be made have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

d. if the claims include denials of factual contentions likely to be made by the persons against whom the claims are made, those denials are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(3) At the special meeting, Owners owning at least two-thirds of the total votes of the Class A membership (not including any Class A membership held by Declarant), must authorize the Board to start and prosecute the lawsuit or any other arbitration or other legal proceeding and must approve the expenditure of Association funds, whether previously budgeted or by a special assessment for the costs of such lawsuit or any other arbitration or other legal proceeding including the costs for the retention and payment of legal counsel and design/construction consultants.

The rule in this Section 6(b)(ii) does not apply to suits filed solely to collect assessments that are past due.

(c) Limitation Of Liability. No member of the Board or officer of the Association shall be personally liable to any Owner or any other Person for any act, error or omission of such Board member or Association officer, or for any act, error or omission of the Association or the Board, or their representatives, employees, agents and contractors, the Committee or the manager; provided that such member or officer has not acted in bad faith.

7. ASSOCIATION MEMBERSHIP.

(a) Members of Association. Membership in the Association shall always consist of and be limited to Declarant during Declarant's Control Period and the record Owners of the fee simple title to a Residential Lot or leasehold title under a recorded lease giving a right of occupancy of a Residential Lot having a term of twenty or more years from its commencement date; provided, however, that an Owner may, to the extent provided for in any recorded agreement of sale, assign such Owner's membership rights (including voting rights) to the vendee under the agreement of sale, but in no event shall such assignment serve to (i) release the Owner of any of the Owner's obligations and liabilities under this Declaration (including the Owner's personal liability for the payment of all assessments levied by the Association), (ii) diminish or impair any liens created by this Declaration upon the Owner's fee simple title to the Owner's Residential Lot or the priority of such liens, or (iii) diminish or impair any of the Association's rights under this Declaration (including the right to foreclose its lien upon the Owner's fee simple title to the Residential Lot). Any such assignment shall not become effective unless and until a true and correct copy of the recorded agreement of sale has been delivered to the Board.

(b) Classes of Ownership.

(i) Class A Members: "Class A" members shall have one (1) vote for each Residential Lot owned by such member. Class A members shall consist of all members other than Declarant, except that upon the conversion of Declarant's Class B membership into Class A membership (as provided below), the Class A members shall include Declarant. Each Residential Lot owned by a Class A member shall have only one (1) whole vote, even though more than one person may be the Owner of such Residential Lot.

(ii) Class B Member:

(1) The "Class B" member shall have three (3) votes for each Residential Lot owned by such member.

(2) The "Class B" member shall have sixty (60) votes for the Lots of the Preservation Area. Upon development of each Residential Lot in the Preservation Area that is not withdrawn in accordance with Section 13, one (1) of the sixty (60) votes shall be allocated to such Residential Lot.

(3) The Class B member shall be Declarant, except that Declarant's Class B membership shall be converted into Class A membership at the end

of Declarant's Control Period at which time any remaining votes allocated by subsection (2) shall terminate.

(4) Notwithstanding Declarant's Class B membership, the assessments which Declarant shall be obligated to pay for each Residential Lot owned by Declarant shall not be greater than the amount of the assessments payable for such Residential Lot if it were owned by a Class A member (i.e., the assessments levied against Declarant's Residential Lots shall not be tripled).

(c) Corporate or Partnership Members. For purposes of voting, directorships, officerships and the exercise of membership privileges, a corporate, partnership, limited liability company or limited liability partnership Owner may act through or be represented by an officer, director, partner, member, manager, employee or other designated representative.

(d) No Avoidance of Obligations. No Owner may avoid the obligations of membership by nonuse of the Common Areas or Improvements, renunciation or abandonment of the Owner's Residential Lot, or any other act of abandonment or renunciation.

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

(f) Articles and Bylaws. The membership status, rights, duties, privileges and obligations of an Owner as a member of the Association shall be as set forth in this Declaration and the Articles and Bylaws. Each Owner of a Lot shall at all times comply with and observe all of the provisions of the Articles and Bylaws.

(g) Suspension of Voting Rights. The voting rights of any Owner may be suspended by action of the Board of Directors during the period when the Owner shall be in default in (i) the payment of any assessment owed under this Declaration, or (ii) the observance of any provision of this Declaration; provided, however, that (A) upon the curing of such default, such Owner's voting rights automatically shall be restored, and (B) prior to suspending such Owner's voting rights, the Board shall give the Owner not less than fifteen (15) days written notice of the Board's proposed action and the reasons for it, and an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the effective date of the suspension.

8. RESERVATIONS IN FAVOR OF DECLARANT. Declarant specifically reserves to itself, its successors and assigns, the right at any time and from time to time, in its sole determination and discretion:

(a) Easements, Licenses, Etc. To designate and grant to any Person, and/or reserve to Declarant, easements, licenses, permits and rights-of-way for public or private access and/or utility purposes, sewer, drainage, gas distribution systems, pedestrian walkways, roadways, electrical, telephone and television-cables and other or similar purposes uses in, over, across, through and under any Common Areas and Improvements as Declarant deems appropriate or necessary, including without limitation the Roadsides and the Landscape Setbacks. In connection with the foregoing reservations, each Owner irrevocably appoints Declarant as such Owner's attorney-in-fact

to file maps designating such easements and to grant such easements and rights and to do all things necessary or convenient in connection with such easements, and upon Declarant's request, each Owner, promptly and for no additional consideration, shall execute all documents which may be requested by Declarant to designate such easements on any map and to grant such easements and rights.

(b) Common Areas. To enter upon the Common Areas, including without limitation, the Landscape Setback, the Entrance Area, the Landscape Median, the Sidewalk, the Drainage Easement, and the Preservation Area for the purpose of landscaping, planting, irrigation and maintenance. Declarant may also construct entrance and street signage upon the Entrance Easement and street signage upon the Landscaped Median and alter, repair, remove, demolish or reconstruct such signage. The landscaping easements shall include the right to install electricity and water lines and equipment and to grant easements for such utilities to utility companies or the Association.

(c) Entry and Use. To enter on and use any Common Areas and Improvements for the purpose of selling Lots, including without limitation posting and maintaining signs and other advertisements relating to the sale of Lots, or of constructing any improvements or changes in or appurtenant to the Common Areas and Improvements as it may deem appropriate or necessary, provided that the work is performed in a good and workmanlike manner and free and clear of all liens.

(d) Assignment of Rights. To assign and transfer, mortgage or grant security interests over, in whole or in part, all or any of its rights, privileges, powers, reservations, interests and obligations under this Declaration to any other Person, including without limitation, to any successor designated by Declarant or to the Association.

(e) Approval of Amendments. To approve or disapprove any proposed amendment to this Declaration.

(f) Approval of Changes to Common Areas, Etc. To approve or disapprove any change in use of the Common Areas and the Improvements, and further to approve or disapprove any and all improvements, alterations and other work performed to, in, on, over, under and across the Common Areas and the Improvements.

(g) Transfer to Association of Common Areas, Etc. To transfer from time to time to the Association ownership, possession and the obligation to maintain, landscape, repair and replace Common Areas and Improvements, other real property including without limitation any portion of the Preservation Area, (whether or not such portion has been previously withdrawn from the real property subject to this Declaration pursuant to Section 2(c) and/or Section 13(c)) and personal property and interests (including, without limitation, leases, easements, rights-of-way and licenses).

(h) Loans to Association. To make interest free loans to the Association from time to time for working capital and reserves prior to the time that all Residential Lots have been conveyed to Owners unrelated to Declarant. Such loans shall be repaid first from any lump sum payable to the Association by such Owner at the time of conveyance, in accordance with the contract between Declarant and such purchaser, and any balance shall be payable upon the earlier of (1) conveyance of the last Residential Lot; or (2) six (6) months after demand by Declarant.

(i) Partial Waiver of Rights. Except for the rights reserved by Section 8(a) the rights reserved in this Section 8 shall terminate at the end of Declarant's Control Period. Declarant may from time to time, in Declarant's sole discretion, by amendment to this Declaration, waive some of the rights reserved by Declarant under this Declaration without waiving, restricting or diminishing any rights not specifically waived.

9. ASSESSMENTS.

(a) Responsibility. Each Owner of a Residential Lot, by acceptance of fee simple or leasehold title to such Residential Lot, whether or not it shall be expressed in any deed or lease to such Residential Lot or any other conveyance instrument, shall be deemed to covenant and agree to pay such Owner's, proportionate share of assessments in accordance with the provisions of this Declaration. No mortgagee of a Residential Lot shall be required to collect assessments.

(b) General Assessments.

(i) At least thirty (30) days prior to the date set for each annual meeting of the Association, or such earlier time as may be required by law, the Board shall prepare or cause to be prepared a budget for the upcoming fiscal year of the Association; provided, however, that in the case of the initial budget of the Association, the Board shall have the right (but not the obligation) to adopt such budget at any time (in the Board's sole discretion) after the recordation of this Declaration. Such budget shall cover all of the then applicable estimated costs of all operations, activities and obligations of the Association, including the cost of operating and maintaining the Common Areas and Improvements, as provided in this Declaration, the payment of any taxes, insurance and other expenses of the Association, the cost of performing all of the Association's obligations under this Declaration, amounts for capital expenditures and reserves (if any), and the cost of performing all necessary or desired services. Until all Residential Lots have become assessable the Board may adopt a budget that takes account of the lower costs and smaller number of assessable Residential Lots available to carry those costs at the beginning of the Association's operations and that increases as additional Residential Lots become assessable and additional costs are incurred.

(ii) A Residential Lot shall become assessable on the earlier of (A) the date of conveyance of the Residential Lot by Declarant to an Owner unrelated to the Declarant or (B) sixty (60) days after substantial completion of a Villa on the Residential Lot. Assessments based on the budget shall be allocated equally among each of the Residential Lots that have become assessable (regardless of such factors as the size, value or location of the Residential Lots or, except as expressly set forth in Section 9(d), the degree to which a particular Residential Lot may or may not be benefiting from the services performed by the Association).

(iii) The initial assessments for the Subdivision shall commence as of a date determined by the Board in its sole discretion, and no delay in the commencement of such assessments shall in any manner affect, impair or waive the right of the Board to commence later such assessments. Similarly, the failure to include any particular item or expense within such assessment shall not preclude the inclusion of such item or expense in any later assessment.

(iv) A copy of the Board's budget and the amount of assessments to be paid by the Owners shall be sent to each Owner at least twenty (20) days before the commencement of the fiscal year (or other period of time) for which such budget applies, or as soon as practicable thereafter; provided, however, that a copy of the initial budget need not be distributed by the Board to the Owners until such budget has been adopted by the Board.

(v) If for any reason the Board should fail to adopt a budget for the upcoming fiscal year, then the assessments to be paid by the Owners automatically shall continue on the basis of the last budget in effect; provided, however, that the Board shall have the right to levy supplemental assessments as provided below.

(vi) Each Owner shall pay the assessments to the Association, in advance, in monthly, quarterly or semi-annual installments or in such other reasonable manner and installments as the Board shall designate.

(c) Supplemental Assessments. In the event that the general assessments payable under Section 9(b) above prove inadequate for any reason, including nonpayment of any Owner's share of them or unanticipated damage to any Common Areas or Improvements (such as by Acts of God or by Owners or nonowners), the Board may prepare or cause to be prepared a supplemental budget and levy further assessments in the amount of such actual or estimated inadequacy, allocating such supplemental assessments equally among the Owners of each Residential Lot. Such assessments shall be due and payable by the Owners within twenty (20) days after the date of levy, or on such installment basis as may be determined by the Board.

(d) Special Assessments. In addition to the assessments authorized above, the Board may also levy an assessment against any Owner or limited group of Owners for fines levied in accordance with Section 12(b)(iii) or sums expended by the Association in performing any act, function or duty (i) directly or indirectly caused by such Owner's or limited group's act (including without limitation damage to mailboxes or other Improvements), or failure or refusal to act, or failure to comply with this Declaration, the Articles, the Bylaws or the rules and regulations of the Association or (ii) which benefits only such Owner or group and which provide no benefit to other members of the Association as determined by the Board. Such assessment shall be in the amount so expended plus an amount to cover the Association's overhead equal to ten percent (10%) of the amount so expended (or such other amount for overhead as may be determined by the Board), and shall be due and payable to the Association within ten (10) days after the date of levy. Monies so expended shall include, without limitation, reasonable engineers', architects', attorneys' and accountants' fees incurred by the Association.

(e) Interest and Late Charges. All sums not paid when due from an Owner shall bear interest from the due date until paid in full at the rate of one percent (1%) per month, or at such other interest rate as may be set from time to time by the Board. In addition, each Owner shall be subject to a late charge of five percent (5%) of the unpaid amount if not paid within fifteen (15) days of its due date, or such other late charge as may be set from time to time by the Board. The failure by the Association to collect such interest or late charge shall not constitute a waiver of the right to do so at any time thereafter.

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

(g) Voluntary Conveyances; Co-Owners. In a voluntary conveyance of any Residential Lot, the transferee of the Residential Lot shall be jointly and severally liable with the transferor for all unpaid assessments and other sums, interest, late charges and costs of collection, without prejudice to the transferee's right to recover from the transferor the amounts paid therefor by the transferee. If more than one Person owns a Residential Lot or interest in it, all such Persons shall be jointly and severally liable for the payment of all assessments, sums, interest, late charges and costs of collection.

(h) Estoppel Certificate. When requested by an Owner or the holder of a first or second mortgage in favor of any institutional lender on such Owner's Residential Lot, the Association shall execute a certificate stating the amount of any delinquent or unpaid assessment owed by the Owner. Such certificate shall, except as to the amount of any unpaid assessments which such certificate failed to reflect due to any checks which, within thirty (30) days before or after the date of the certificate, have been or are dishonored or not otherwise paid, be conclusive upon the Association in favor of all Persons who may in good faith rely on them, as to the amount of such delinquency as of the date of the certificate. The Association shall be entitled to a reasonable servicing charge as a condition to issuing the certificate. No such certificate, however, shall constitute any representation or agreement by the Association that the Owner is in compliance with any other provision of this Declaration.

(i) Paramount Liens. Notwithstanding all other provisions of this Section 9:

(i) A lien created hereunder upon any Residential Lot shall be subject and subordinate to the following liens and indebtedness secured by such liens ("Paramount Liens"):

(1) the lien of any recorded purchase money mortgage in favor of Declarant;

(2) the lien of any recorded first mortgage in favor of any institutional lender (meaning a mortgage having first priority over other mortgages) upon the fee simple interest in the Residential Lot made in good faith and for value;

(3) the lien of any recorded second mortgage in favor of any institutional lender (meaning a mortgage having second priority over other mortgages) provided that the aggregate principal amounts secured by such second mortgage and the first mortgage shall not exceed eighty per cent (80%) of the original purchase price of the Residential Lot from Declarant.

(ii) If a Residential Lot should be conveyed pursuant to a foreclosure of a Paramount Lien encumbering such Residential Lot, the purchaser at such foreclosure sale shall not be liable for any assessments or other sums payable under this Declaration and accruing prior to the date of recordation of the conveyance instrument, but shall be liable for all assessments and other sums accruing thereafter. No such conveyance shall relieve the prior Owner of personal liability for the payment of all such assessments and sums accruing prior to such conveyance.

(iii) No amendment to this Section 9(i) shall affect the rights of the holder of any Paramount Lien who does not join in the execution of it.

(iv) By written subordination agreement authorized by the Board and during Declarant's Control Period by Declarant, the benefits of subsections (i) (ii) and (iii) above may be extended by the Board to mortgages and other liens not otherwise entitled to them.

10. **INDEMNITY.** The Association and all Owners and occupants of Lots shall defend, indemnify and hold harmless Declarant from and against all claims and demands for loss or damage, including property damage, personal injury or wrongful death, arising out of or in connection with the exercise by them or their agents, contractors, servants, guests or invitees of any easements and rights created by this Declaration, and shall use and permit the use of the Common Areas and the Improvements at their sole risk without any obligation or responsibility whatsoever of Declarant for the condition, control or other use of them, and shall jointly and severally reimburse Declarant for any and all costs and expenses, including without limitation reasonable attorneys' fees, incurred in connection with the defense of any such claim or demands, or incurred in connection with any act or failure to act by the Association, or in case Declarant, without any fault on its part, shall be made a party to any litigation commenced by or against the Association.

11. **COMMITTEE.**

(a) **Organization; Members.** The Committee shall have not more than five members as determined by the Person appointing the Committee. In addition, one or more alternates may be appointed, from time to time, as members of the Committee. Such alternates shall have the power to act as voting members of the Committee in the event the members for whom they are alternates are unavailable to act as members of the Committee. Declarant may appoint its employees or officers as members of the

Committee. Each member shall hold office until such time as such member has resigned, has been removed, or a successor has been appointed.

(b) Appointment of Members. Declarant shall have the right to appoint the members of the Committee (and their alternates) during the Declarant's Control Period, and the Board shall have the right to appoint the members (and their alternates) thereafter.

(c) Need Not be Owners. Committee members need not be Owners of Lots.

(d) Committee Duties. It shall be the duty of the Committee to consider and act upon such proposals or plans from time to time submitted to it pursuant to this Declaration, to adopt, if deemed necessary or appropriate, Committee Rules, and to perform such other related duties from time to time delegated to it by this Declaration or by the Board. The Committee shall have the right to appoint one or more sub-committees with such responsibilities and decision-making authority (including the authority to review and approve plans, specifications and other items submitted by Owners for Committee approval under this Declaration), as may be delegated to such sub-committees by the Committee, and shall have the right to retain professionals and other consultants upon such terms and conditions as may be determined by the Committee; provided, however, that any compensation payable to such professionals or consultants shall be subject to the approval of the Board.

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

If for any reason the Committee is unable to meet or function on a particular matter by the time for action or decision required under this Declaration, the Declarant, during Declarant's Control Period, or the President of the Association or, in his or her absence, the Board thereafter, shall be empowered to perform the functions of the Committee or to appoint an alternate Committee for so long as the Committee is unable to meet or function.

(f) Committee Rules. The Committee shall by majority vote have the exclusive power to adopt, amend and repeal rules and regulations, to be known as "Committee Rules," which interpret or implement the provisions of this Declaration insofar as they relate to matters within the jurisdiction of the Committee and are not inconsistent with the Guidelines. A copy of the Committee Rules, as they from time to time may be amended, shall be maintained with the records of the Association and shall be available for inspection by any Owner. During Declarant's Control Period the Committee Rules shall be subject to Declarant's consent. The initial Committee Rules are incorporated in the Guidelines.

(g) Guidelines. The Declarant has adopted the initial Guidelines for the Subdivision. All Villas and other improvements on the Residential Lots shall

conform to the Guidelines. During Declarant's Control Period, Declarant, or the Committee with the consent of Declarant, may amend the Guidelines. The Committee may add additional trees and plants to the list of Permitted Plantings in the Guidelines, without the consent of Declarant. After the twentieth (20th) anniversary of the date of this Declaration or after Declarant's Control Period whichever is earlier, the Association by a two-thirds vote of the Owners, may amend the Guidelines. The Guidelines shall not apply to Lots owned by Declarant.

(h) No Variances. No variances will be permitted from the Guidelines.

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

(j) Costs and Expenses. All costs and expenses incurred by the Association in connection with approvals and review required under this Declaration shall be paid by the Person requesting such approval or review. As one method of charging such costs and expenses the Committee shall have the right to charge the Owner a processing fee for its review of any item submitted to it, in accordance with such fee schedule as from time to time may be provided in the Guidelines.

(k) Expiration of Approval. All approvals of the Committee shall expire if the Owner has not commenced and completed the construction of the improvement or work covered by the Committee's approval within the time periods required by the Guidelines, and if expired, the Owner shall be required to comply with such further requirements as may be imposed by the Committee (including the submission of revised plans, drawings and specifications), and the Committee shall not be bound by any approval previously given by the Committee. The Owner shall be deemed to have "commenced the construction of the improvement" for purposes of this paragraph when the "visible commencement of operations" (as that term is defined in Section 507-

41, HRS) for the construction of the improvements shall have occurred on the Owner's Residential Lot.

(l) Consents. No consent or approval of the Committee shall be deemed given unless given in writing.

12. **ENFORCEMENT OF THIS DECLARATION.**

(a) Enforcing Persons. The Enforcing Persons shall have the right to exercise any remedy in law or in equity for the enforcement of this Declaration:

(b) Remedies. If any Owner or other person subject to this Declaration shall breach or fail to comply with any provision of this Declaration, and such breach or noncompliance shall not be fully remedied within fifteen (15) days after notice of the breach or noncompliance is sent to or received by the Owner or, if such breach or noncompliance cannot reasonably be remedied within said 15-day period, such Owner shall have failed to begin to remedy such noncompliance within said 15-day period or shall have failed to exercise good faith and due diligence to remedy such breach or noncompliance as soon as reasonably possible and in any event within forty five (45) days after such notice, then:

(i) Declarant or the Association shall have the right, without liability to the Owner or any other Person for trespass, damage or otherwise, and upon not less than five (5) days prior written notice to the Owner, to enter upon the Residential Lot and any improvements upon the Residential Lot, and to perform, or require the Owner to perform immediately, in either case at the Owner's cost and expense, all work (including the planting, watering, fertilizing, cutting and trimming of trees, shrubbery and other vegetation) necessary or desirable to remedy such breach or noncompliance, and/or to summarily abate and remove all improvements or anything else or any condition which is not in compliance.

(ii) Each Enforcing Person shall have the right to commence and maintain actions and suits to require the Owner to remedy such breach or noncompliance or for specific performance, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration, or to restrain or enjoin any breach or threatened breach of this Declaration, or to recover damages, and/or;

(iii) The Board shall have the right, in accordance with procedures set out in the Bylaws, to levy fines upon the Owner, which shall be secured by the lien for assessments and shall be collectible as special assessments levied under Section 9(d).

(iv) Each Enforcing Person shall have the right to pursue all other rights and remedies available at law or in equity.

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

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

No Enforcing Person nor any other Person shall have any duty or obligation whatsoever to enforce the provisions of this Declaration and no Enforcing Person nor any other Person shall have any liability whatsoever if any Enforcing Person elects not to enforce such provisions or if any Enforcing Person undertakes such enforcement and terminates enforcement activities or does not succeed in such enforcement activities. Without limiting the foregoing, Declarant, for itself and its affiliated companies, expressly disclaims any obligations to undertake any enforcement of this Declaration.

13. **PRESERVATION AREA.**

(a) Association Easement. Until withdrawn by written notice from Declarant to the Association, which may be given by the Declarant at any time and may be given with respect to the entire Preservation Area or any portion of it, the Association shall have an easement over the Preservation Area for view purposes and drainage purposes. During the period such easement is in effect the Association shall pay all property taxes on the Preservation Area, include the Preservation Area in the Association's liability insurance policy and comply with all laws affecting the Preservation Area; provided however that the total costs of compliance with this sentence shall not exceed one hundred and twenty dollars (\$120.00) per annum per assessable Residential Lot in the Subdivision. In the event such costs would exceed the limit, the Association shall be relieved of complying with the preceding sentence unless the Declarant or the Owner of the Preservation Area shall pay directly or deposit with the Association the amount of the shortfall. The easement granted by this Section 13(a) is in addition to the Drainage Easement and the cost limitation does not apply to obligations of the Association under the Drainage Easement.

(b) Conveyance to the Association. If a Lot in the Preservation Area is conveyed to the Association the Lot may be used in perpetuity only for view purposes, drainage purposes or such other purposes as may be permitted by Declarant in an amendment to this Declaration. Such Lot shall be conveyed as a Common Area and shall be subject to the Drainage Easement, all easements and other encumbrances on such Lot described in Exhibit "A" or granted by Declarant prior to such conveyance, all easements granted in accordance with this Declaration and the rights in favor of Declarant contained in this Declaration.

(c) Rezoning of Lots in Preservation Area. If a Lot in the Preservation Area has not been conveyed to the Association, an application for a rezoning of such Lot to permit residential use may be made by Declarant.

(i) Single-Family Use. In the event that the Lot, or any portion of the Lot, is rezoned to permit single-family residential use, then upon subdivision of such Lot in accordance with a subdivision map approved by Declarant, wholly or partly into single-family residential lots and roadway lots, Declarant shall have the option of

withdrawing all or some of such residential lots and roadway lots from the real property subject to this Declaration, pursuant to the procedures set forth in Section 2(c). Unless or until Declarant exercises its right of withdrawal, any subdivided single-family residential lot shall become a "Residential Lot" as defined in this Declaration and roadway lots (until dedication) and landscape and other easements similar to the existing Common Area easements shall become Common Areas. Such Residential Lots shall be subject to all restrictions on a Residential Lot, except that Declarant shall have all rights, immunities and exemptions provided to Declarant in this Declaration with respect to such Residential Lot.

(ii) Multi-Family Use. In the event that the Lot, or any portion of the Lot is rezoned to permit residential use which includes multi-family residential use, then upon subdivision of such Lot in accordance with a subdivision map approved by Declarant, into residential lots and roadway lots, any subdivided residential Lot shall be withdrawn from the real property subject to this Declaration, prior to construction of any multi-family improvements, pursuant to the procedures set forth in Section 2(c). If despite such rezoning, any subdivided Lot is to be developed for single-family residential use, Declarant shall have the option to withdraw such Lot or retain it as subject to this Declaration as a Residential Lot.

(iii) Preservation Use. Any portion of the Preservation Area that remains zoned preservation after a rezoning shall remain a Preservation Area, subject to all rights of Declarant with respect to the Preservation Area, including without limitation withdrawal or further rezoning.

(d) Hillside.

(i) Building Line. Declarant agrees for the benefit of the Association that Declarant will not construct any buildings on the portion of the Hillside located to the south of an imaginary line (the "building line") that is the westward extension of the boundary line between Lots 4 and 5 and will not construct more than three (3) buildings on the portion of the Hillside located north of the building line. Subject to zoning requirements and the provisions of subsection (c)(ii), each of such buildings may be either for single-family or multi-family use.

(ii) Conveyance to Association. In the event that Declarant obtains subdivision approval for all or a portion of the Hillside south of the building line, provided that such subdivision approval does not prohibit Declarant from such action, Declarant shall convey such southerly Lot to the Association as part of the Common Area, subject to the easements and other encumbrances listed in Exhibit "A" or granted by Declarant prior to such conveyance, all easements granted in accordance with this Declaration, the rights reserved to Declarant under this Declaration and any restrictions or conditions contained in such subdivision approval.

(iii) Rezoning. The Declarant may make application for a rezoning of the Hillside or such northerly portion to permit residential use and may construct buildings north of the building line, up to the limit provided in subsection (i) and to the extent permitted by the current preservation zoning or such rezoning.

(iv) Maintenance. With respect to any portion of the Hillside over which the Association has the easement granted by Section 13(a) or which is

conveyed to the Association, the Association shall be responsible for the maintenance, repair and replacement of the Improvements on the Hillside including the drainage ditch and fences and for keeping the drainage ditch clear and free from debris. For the purpose of keeping the drainage ditch clear the Association shall as necessary cut the vegetation within ten (10) feet of the drainage ditch, measured horizontally and clear any accumulation of loose vegetation. The Association shall not construct any additional improvements on the Hillside.

(e) Right of Entry. Declarant reserves a right, to enter upon Residential Lots 62 through 70 (the "Adjacent Lots") which are adjacent to Lot 73, a part of the Preservation Area, for the purpose of constructing a retaining wall along the common boundary of the Adjacent Lots and Lot 73. Declarant may occupy the Fence Easement, remove the Rear Boundary Fence and any portion of the Side Fence, within the Fence Easement, construct the retaining wall and replace the Rear Boundary Fence and any Side Fence. In addition to replacing the fences, Declarant will restore any landscaping damaged by Declarant's construction. The Owners of Lots 62 through 70 will not plant any large trees in the Fence Easement nor plant or place anything on the Fence Easement that is difficult to remove or would interfere with Declarant's construction. During construction Declarant will name the Owners of the Adjacent Lots and their mortgagees as additional insureds on a policy of liability insurance with a single limit of not less than One Million Dollars (\$1,000,000.00).

14. DISCLAIMERS AND DISCLOSURES REGARDING OWNERSHIP OF LOTS IN THE SUBDIVISION.

(a) Security Disclaimer. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within or related to the Subdivision, and neither the Association nor Declarant shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken within or relating to the Subdivision. Each Owner and occupant acknowledges and understands that Declarant, the Association, the Board and the Committee are not insurers and that each Owner and occupant assumes all risks for loss or damage to Persons, to Lots and to the improvements and personal property thereon, and further acknowledges that Declarant, the Association, the Board and the Committee have made no representations or warranties, nor has any Owner or occupant relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any security measures or security systems undertaken, recommended or installed within or related to the Subdivision.

(b) Surrounding and Prior Uses:

(i) Koko Head Crater. The Subdivision is adjacent to, nearby or in the vicinity of lands being, or which in the future may be, actively used as a botanical garden and stables (such activities collectively called the "Rural Activities"), which activities may from time to time bring upon each Lot or result in smoke, dust, odors, noise, heat, pesticides and other farm chemicals, particulates, non-potable water or treated wastewater used for irrigation and similar substances and nuisances (collectively, the "Rural Nuisances").

(ii) Golf Course. The Subdivision is adjacent to, nearby or in the vicinity of the Golf Course, which activities may from time to time bring upon each Lot or result in dust, odors, noise, pesticides and other chemicals, particulates, straying golf balls, non-potable water or treated wastewater used for irrigation and similar substances and nuisances incidental to golf-course operations and golf-related activities (collectively, the "Golf Course Nuisances") and the Golf Course Nuisances may cause property damage or personal injury.

(iii) Pest Nuisances. The Rural Activities, nearby Golf Course or other characteristics of the Subdivision may result in insects (including but not limited to mosquitoes), rodents or other pests or vermin, molds and mildews (collectively called "Pest Nuisances") coming onto the Lot or the Subdivision.

(iv) Wastewater Treatment Plant Nuisances. The Subdivision is close to and served by a Wastewater Treatment Plant. The operation of the Wastewater Treatment Plant may cause odors or other nuisances which may have adverse health effects (collectively called "Plant Nuisances").

(v) Utility Nuisances. The Subdivision has located within it or adjacent thereto, electrical lines, retention basins, sewer lines, cable, utility poles and other utilities which may cause odors, interference with views, television and radio reception, and which may have adverse health effects (collectively called "Utility Nuisances").

(vi) Additional Nuisances. The Subdivision includes the Hillside, which presents a risk of rockslide and resulting injury; lands adjacent to or nearby the Subdivision are used for sanitary or other landfill activities (all these uses are called the "Additional Surrounding Uses" and their adverse effects and any adverse soil conditions in the Subdivision, whether or not related to the Additional Surrounding Uses, are called the "Additional Nuisances").

(vii) Soil Conditions. Declarant disclaims all express or implied warranties with respect to the condition of the soil and site conditions of any of the Lots, including, without limitation, any warranty regarding soil compaction, pesticides, hazardous or toxic wastes or substances, drainage and suitability of the property for the construction of any type of improvements. Accordingly, the Declarant shall have no liability to the Owners or the Association for any liability, loss or expenses incurred by them or any of them occasioned by defects in the condition of the soil or the soil, subsoil or site conditions or characteristics of any Lot which may affect the construction of any particular type of improvements on the Lot.

(viii) Proximity to Ocean. The Subdivision is less than one mile from the Pacific Ocean. The salty air from the ocean is likely to accelerate rust on metal surfaces, accelerate the deterioration of painted and other surfaces, particularly exterior surfaces and reduce the useful life of other portions of the property such as wood fences as well as some of the contents of the Villas such as books and computers.

The Rural Activities and Rural Nuisances, the Golf Course and Golf Course Nuisances, the Pest Nuisances, the Wastewater Treatment Plant and Plant Nuisances, the Utility Nuisances, the Additional Surrounding Uses and Additional

Nuisances, any adverse soil conditions and conditions from the proximity of the ocean are collectively called the "Nuisances".

(c) Waiver, Release and Indemnity. Each Owner, by acquiring any interest in a Lot, automatically:

(i) Assumes the complete risk and acknowledges and agrees that Declarant will not be liable for any actual, special, incidental or consequential damages based on any legal theory whatsoever, including, but not limited to, strict liability, breach of express or implied warranty, negligence or any other legal theory with respect to the presence and/or existence of the Nuisances and on behalf of itself and its family members, tenants, invitees and licensees, hereby releases Declarant from and against any and all claims, actions, damages, causes of action, liabilities and expenses (including without limitation, attorneys' fees and costs of enforcing this indemnity) for property damage, injury or death resulting from the Nuisances and from any loss of resale value due to the Nuisances.

(ii) Forever waives any right to require Declarant, and releases Declarant from any obligation, to take any action to correct, modify, alter, eliminate or abate any Nuisances;

(iii) Agrees to and shall indemnify, defend and hold harmless Declarant from and against all claims, demands, actions, losses, damages, liabilities, costs and expenses, including, without limitation, attorneys' fees, asserted against or incurred by Declarant, which arise out of any injury, death or damage to person, property or business that occurs on the Owner's Lot and is the result of any Nuisances, irrespective of the theory of liability asserted against Declarant;

(iv) Agrees that the Nuisances, and any claim, demand, action, loss, damage, liability, cost or expense arising from them, shall not constitute a breach of any covenant or warranty of Declarant or be the basis for a suit or other claim for injunction or abatement of nuisances or damages, and forever waives any right to file any such suit or claim; and

(v) Acknowledges and agrees that (1) right to use the Golf Course will be granted only to such persons, and on such terms and conditions, as may be determined by the owner of the Golf Course; (2) no representations or warranties have been made regarding the continuing ownership or operation of the Golf Course, and the ownership or management and administration of the Golf Course may change at any time and from time to time; and (3) the location of the Subdivision to the Golf Course may result in nuisances or hazards or injury to persons (including, without limitation, Owners, tenants, and guests) or property on or within the Subdivision as a result of operations on the Golf Course, including, without limitation, any existing or future golf driving ranges, clubhouse activities, relocation and reconfiguration of the golf course design, golf-related activities, commercial activities and traffic, noise, dust, and other Golf Course Nuisances.

Each Owner acknowledges that the Hawaii Right-to-Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

As used in this Section 14, all references to "Declarant" shall mean and include Declarant and all parent, subsidiary, sister and affiliated companies of in their respective capacities as the Declarant under this Declaration and the developer of the Subdivision and the initial seller of the Lots, and all successors and assigns of Declarant and its subsidiary, sister and affiliated companies.

(d) Development and Sales Activities. Declarant reserves the right to develop Lots (including the Preservation Area if its zoning is changed), construct dwellings on the Residential Lots and to sell the Lots, dwellings and buildings and no restriction in this Declaration, including without limitation Section 3, shall apply to Declarant in connection with any such activities. Such development and sales activity will result in dust, noise, increased traffic, the use of Residential Lots for sales and management offices, the posting and maintenance of signs relating to such sales activities, obstruction of views or ventilation and other nuisances (collectively called "Development and Sales Activities"). Each Owner, by acquiring an interest in a Lot, automatically:

(i) Consents to the rezoning and change in land use designation of the Preservation Area to permit the development of the Preservation Area for residential lots and agrees that such Owner will not object to or oppose such rezoning;

(ii) Assumes complete risk of all claims for damages (including but not limited to, consequential, special, exemplary and punitive damages) arising out of any Development and Sales Activities;

(iii) Forever waives any right to require Declarant, and releases Declarant from any obligation, to take any action to eliminate or abate any Development and Sales Activities, and waives any right to file any suit or claim against Declarant for injunction or abatement of nuisances or damages;

(iv) Agrees to and shall indemnify, defend and hold harmless Declarant from and against all claims, demands, actions, liens, damages, liabilities, costs and expenses, including, without limitation, attorneys' fees, asserted against or incurred by Declarant, which arise out of any injury, death or damage to person, property or business that occurs on the Owner's Lot and is the result of any Development and Sales Activities, irrespective of the theory of liability asserted against Declarant; and

(v) Agrees that any Development and Sales Activities, and any claim, demand, action, loss, damage, liability, cost or expense arising therefrom, shall not constitute a breach of any covenant or warranty of Declarant or be the basis for a suit or other claim for injunction or abatement of nuisances or damages, and forever waives any right to file any such suit or claim.

The listing of certain uses, risks and conditions in this Section 14 is not a representation that there are no other sources of potential interference with the enjoyment of the Lots.

As used in this Section 14 and the Indemnity Section 10, all references to "Declarant" shall mean and include Declarant and all parent, subsidiary, sister and affiliated companies of in their respective capacities as the Declarant under this Declaration and the developer of the Subdivision and the initial seller of the Lots and all

agents, successors and assigns of Declarant and its subsidiary, sister and affiliated companies.

15. **BINDING EFFECT.** All restrictions, covenants, conditions and provisions hereof shall constitute covenants and servitudes running with the land and the Lots in the Subdivision, and shall be binding on and inure to the benefit of each Owner of a Lot and such Owner's heirs, personal representatives, successors and assigns. Each Owner of a Lot will be responsible for ensuring that the provisions of this Declaration are complied with by each occupant of the Owner's Lot (including without limitation any tenant, lessee or vendee of the Owner's Lot), and the Owner shall be personally liable for any noncompliance by such occupant.

16. **AMENDMENT.**

(a) **Amendments Generally.** Except as otherwise provided in this Declaration, any provision of this Declaration may, from time to time, be amended by filing in the Bureau of Conveyances of the State of Hawaii, an amendment duly executed by both (i) two (2) officers of the Association, and (ii) Declarant during Declarant's Control Period; provided that such amendment shall have been previously approved by the vote or written consent of at least two-thirds (2/3) of the total votes of the members of the Association including Declarant.

(b) **Reserved Amendment Rights.** Notwithstanding anything in this Declaration to the contrary, the Declarant may from time to time amend this Declaration unilaterally without the consent of any Owner or mortgagee of any Lot:

(i) To correct any drafting or typographical error;

(ii) To comply with any applicable law, rule or regulation of the State of Hawaii or the City, or any requirement or condition of any governmental agency with jurisdiction over the Subdivision, or as necessary to obtain any governmental approval, permit or order affecting the Subdivision, including any rezoning or other governmental approval for the development of the Preservation Area;

(iii) To comply with any requirement of the State of Hawaii or HUD in connection with the registration and sale of any Lots or to obtain any exemption from registration requirements;

(iv) To qualify some or all of the Lots for financing or financing assistance from any institutional lender, or from HUD (FHA), VA, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or any other state or federal agency or authority which provides financing assistance for development projects similar to the Subdivision;

(v) In the event that Declarant amends the Declaration under this Section 16(b) in a manner which waives, restricts or diminishes any of Declarant's rights under this Declaration, such amendment may simultaneously provide for similar or substitute rights of Declarant that comply with the requirements of the applicable agencies or lenders;

(vi) To reflect any development of the Preservation Area and describe the Residential Lots, roadway Lots and other Lots and easements therein; or

(vii) To exercise any reserved right of Declarant under this Declaration;

The Declarant's rights under this section shall expire upon the earlier of (a) the expiration of Declarant's Control Period or (b) Declarant's voluntary relinquishment of such rights by written release recorded in the Bureau of Conveyances of the State of Hawaii

17. **SEVERABILITY**. The invalidation of any restriction, covenant, condition or other provision hereof by final judgment, order or decree of any court or governmental commission, board or agency having jurisdiction of them shall in no way affect the other restrictions, covenants, conditions and provisions hereof, which shall remain in full force and effect according to their terms.

18. **DURATION**. The provisions of this Declaration shall be valid and shall run with and bind the land for a term of fifty-five (55) years from the date this Declaration is recorded. After such 55-year period, they shall automatically be extended for successive periods of ten (10) years each unless an instrument agreeing to terminate them, signed by the Owners of not less than eighty-five percent (85%) of the total Residential Lots, shall be filed in the Bureau of Conveyances of the State of Hawaii; provided, however, that in the event the application of this paragraph would, as to any provision of this Declaration, violate the rule against perpetuities or any other limitation on duration imposed by law, then such provision shall be deemed to remain in effect only for the maximum duration permitted by law.

19. **ESTOPPEL CERTIFICATE**. Upon request of an Owner and the payment of such reasonable fee as the Association may set, the Association shall issue an estoppel certificate stating whether or not such Owner and/or the improvements on such Owner's Lot are in compliance with or are in default of the Articles, the Bylaws, this Declaration or any rules and regulations of the Association. If such Owner or the improvements are not in such compliance, the certificate shall specify the areas of noncompliance or default.

20. **DEDICATION**. If any Lot in the Subdivision should be dedicated in fee simple to any government body or agency ("Government Entity"), the Government Entity need not comply with the provisions of this Declaration; provided, however, that should such Government Entity thereafter convey, license, lease, assign or transfer its interest or rights in such Lot to any Person who is not a Government Entity, such Lot and conveyance, license, lease, assignment or transfer automatically shall be subject to and governed by this Declaration and the grantee, licensee, lessee, assignee or transferee automatically shall be bound by and required to comply with all of the provisions of this Declaration, whether or not such conveyance, license, lease, assignment or transfer expressly refers to or is made subject to this Declaration.

21. **NOTICES**. Whenever any notices are sent to an Owner such notices shall be sent to the address of the Owner's Lot (or to such other address as shall have previously been given in writing by the Owner to the Association and sent by registered or certified mail), and shall be deemed to be received by the Owner on the earlier of

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

22. **JOINT AND SEVERAL LIABILITY.** If an Owner consists of more than one Person, all of the obligations of the Owner under this Declaration shall constitute the joint and several obligation of all such Persons. The obligations of more than one Owner under this Declaration shall constitute the joint and several obligation of all such Owners. Each Owner shall be liable for all acts and omissions of such Owner's guests, invitees, agents, employees, customers and contractors, and their failure to comply with the provisions of this Declaration.

23. **INSPECTION.** The Board and its authorized agents shall have the right at all reasonable times and without notice to or consent of any Owner, to enter upon the Owner's Lot for purposes of inspecting the same and determining whether the same is in compliance with this Declaration, without liability for trespass or damages. Notwithstanding the foregoing, the Board and its authorized agents shall have the right (but not the duty) to enter upon the Lot at any time and without any notice or consent in the event of an emergency. Each Owner shall promptly produce all documents that the Board may reasonably request to evaluate whether such Owner is in compliance with the provisions of this Declaration.

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

25. **AUDIT.** Any Owner may, at any reasonable time and at such Owner's own expense, cause an audit or inspection to be made of the books and records of the Association. The Association shall furnish to each Owner a report on the financial status of the Association within one hundred twenty (120) days after the end of each fiscal year of the Association.

26. **NO RIGHTS IN PROPERTY OF DECLARANT.** Except as may be expressly provided in a separate writing duly executed by Declarant, no Person shall have

any right, title of interest in or to or any right to use or enjoy any lot or other property owned or controlled by Declarant or any parent, subsidiary, sister corporation or affiliate of Declarant, regardless of whether such lot or property is undeveloped or developed, and regardless of whether or not such lot or property is in the Subdivision.

27. **CONDEMNATION OF COMMON AREAS.** If at any time all or any portion of the Common Areas or any interest in them is taken by the right of eminent domain or by purchase in lieu of eminent domain, the entire award and compensation shall be paid to the Association. No Owner shall be entitled to any portion of such award, and no Owner shall be entitled to participate as a party in any proceedings relating to such condemnation, such right of participation being reserved exclusively to the Association, which shall in its name alone represent the interest of all Owners.

28. **PERSONS WITH DISABILITIES.** The Association shall, to the extent required by the federal Fair Housing Amendments Act or Chapter 515, HRS, as amended, or other applicable laws, make reasonable accommodations in its policies, practices, procedures and services, including without limitation the provisions of this Declaration, when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy the dwellings within the Subdivision, including public or common areas of the Subdivision, or may otherwise be required by law.

29. **PROJECT NAME.** Declarant reserves the right to use the name "Koko Villas" and any name which is a variation of them.

30. **SUBORDINATION.** The provisions of the Articles and the Bylaws are subordinate and subject to all provisions of this Declaration and any amendments hereto, and in the case of any conflict, this Declaration shall control.

IN WITNESS WHEREOF, Declarant has executed these presents as of
the day and year first above written.

KOKO VILLAS, LLC,
a Hawaii limited liability company

By Koko Villas, LLC
Its sole Manager

By _____
Its President

)

)

)

)

Lynn J. Oshears

10

DESCRIPTION

TMK: (1) 3-9-010-045

All of those certain parcels of land situate at Maunalua, City and County of Honolulu, Island of Oahu, State of Hawaii, being lots of the "KOKO VILLAS SUBDIVISION, UNIT II", as shown on File Plan Number 2381, filed in the Bureau of Conveyances of the State of Hawaii, and being more particularly described as follows:

LOT	AREA
1	7,584 square feet
2	7,076 square feet
3	7,076 square feet
4	7,076 square feet
5	7,076 square feet
6	7,076 square feet
7	7,076 square feet
8	7,076 square feet
9	7,076 square feet
10	7,076 square feet
11	7,076 square feet
12	7,076 square feet
13	7,076 square feet
14	7,076 square feet
15	7,076 square feet
16	7,312 square feet
17	6,937 square feet
18	7,076 square feet
19	7,076 square feet
20	7,076 square feet
21	7,076 square feet
22	7,076 square feet
23	7,076 square feet
24	7,076 square feet
25	7,076 square feet
26	7,076 square feet
27	7,076 square feet
28	7,076 square feet
29	7,076 square feet
30	7,076 square feet
31	7,076 square feet
32	7,076 square feet
33	8,179 square feet
34	7,821 square feet
35	6,954 square feet
36	6,954 square feet

EXHIBIT "A"

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LOT	AREA
37	6,954 square feet
38	6,954 square feet
39	6,954 square feet
40	6,954 square feet
41	6,954 square feet
42	6,954 square feet
43	6,954 square feet
44	6,954 square feet
45	6,954 square feet
46	6,954 square feet
47	6,954 square feet
48	6,954 square feet
49	6,954 square feet
50	6,954 square feet
51	7,547 square feet
52	8,140 square feet
53	7,164 square feet
54	7,070 square feet
55	7,068 square feet
56	7,068 square feet
57	7,068 square feet
58	7,068 square feet
59	7,068 square feet
60	7,068 square feet
61	7,068 square feet
62	7,068 square feet
63	7,068 square feet
64	7,068 square feet
65	7,068 square feet
66	7,068 square feet
67	7,068 square feet
68	7,068 square feet
69	7,068 square feet
70	7,957 square feet
71 (Roadway)	47,856 square feet
72 (Roadway)	52,386 square feet
73	144,793 square feet
74	390,437 square feet and
75	906,548 square feet, all more or less.

Together with a non-exclusive easement and right of access for ingress and egress purposes over and across Roadway Lot 1 of the "KOKO VILLAS SUBDIVISION, UNIT I", as shown on File Plan No. 2370, Maunaloa, City and County of Honolulu, Island of Oahu, State of Hawaii; provided, however, that in the event said Roadway Lot, or any portion or portions thereof, is conveyed or dedicated to the City and County of Honolulu, State of Hawaii or other governmental authority for use as public roadway,

EXHIBIT "A"

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then said easement over and across said Roadway Lot or any portion or portions thereof so conveyed or dedicated shall automatically terminate.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : KONAKOH, INC., a California corporation
GRANTEE : KOKO VILLAS, LLC, a Hawaii limited liability company
DATED : March 7, 2003
RECORDED : Document No. 2003-053904

SUBJECT HOWEVER, to the following, as they may be hereafter amended, released or partially released, with the consent of the Declarant during Declarant's Control Period, which consent may be evidenced by Declarant's joining in the amendment, release or partial release. Upon such amendment, release or partial release this Exhibit A shall be deemed amended to reflect such amendment, release or partial release; provided further that the Association, with the consent of Declarant during Declarant's Control Period, or Declarant acting alone during Declarant's Control Period may amend the Declaration to substitute a revised Exhibit "A" reflecting such amendment, release or partial release.

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : AGREEMENT
DATED : September 19, 1972
RECORDED : Liber 8754 Page 250
PARTIES : TRUSTEES UNDER THE WILL AND OF THE ESTATE OF
BERNICE P. BISHOP, DECEASED, "Bishop", CITY AND COUNTY OF
HONOLULU, "City", and KAISER HAWAII KAI DEVELOPMENT CO.,
"Kaiser"
RE : pedestrian and vehicular access rights

3. Unrecorded LICENSE NO. 26 for access roadway, dated December 10, 1968, by and among the Trustees of Bishop Estate, City and County of Honolulu, Kaiser Hawaii Development Co., United States Army and Charles Pietsch, as referenced in Agreement recorded in Liber 8754 at Page 250, but only to the extent such unrecorded license remains in effect.
4. GRANT TO: HAWAIIAN ELECTRIC COMPANY, INC. and GTE
HAWAIIAN TELEPHONE COMPANY
INCORPORATED, now known as VERIZON HAWAII
INC.
DATED: November 2, 1972
RECORDED: Liber 8797 Page 85
GRANTING: a perpetual right and easement for utility purposes as shown on the map attached thereto

5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: AGREEMENT
DATED: September 29, 1972
RECORDED: Liber 8973 Page 157
PARTIES: TRUSTEES UNDER THE WILL AND OF THE ESTATE OF
BERNICE P. BISHOP, DECEASED, "Bishop", CITY AND COUNTY OF
HONOLULU, "City", and KAISER HAWAII KAI DEVELOPMENT CO.,
"Kaiser"
RE: pedestrian and vehicular access

6. -AS TO LOTS 74 AND 75:-

GRANT TO: CITY AND COUNTY OF HONOLULU
DATED: July 30, 1985
RECORDED: Liber 19017 Page 1
GRANTING: an easement, 10 feet wide, area 18,099 square feet, for
water pipeline purposes

7. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: QUITCLAIM DEED WITH RESTRICTIVE
COVENANTS
DATED: October 1, 1999
RECORDED: Document No. 99-159661

8. REAL PROPERTY MORTGAGE AND FINANCING STATEMENT

MORTGAGOR: KOKO VILLAS, LLC, a Hawaii limited liability company
MORTGAGEE: FIRST HAWAIIAN BANK, a Hawaii corporation
DATED: November 5, 2003
RECORDED: Document No. 2003-245206
AMOUNT: \$14,600,000.00

ABOVE MORTGAGE AMENDED BY INSTRUMENT

DATED: November 26, 2003
RECORDED: Document No. 2003-261025

9. FINANCING STATEMENT

DEBTOR: KOKO VILLAS, LLC
SECURED PARTY: FIRST HAWAIIAN BANK
RECORDED: Document No. 2003-261026

10. ADDITIONAL CHARGE MORTGAGE

MORTGAGOR: KOKO VILLAS, LLC, a Hawaii limited liability company
MORTGAGEE: FIRST HAWAIIAN BANK, a Hawaii corporation
DATED: May 6, 2004
RECORDED: Document No. 2004-090688
AMOUNT: \$4,500,000.00
Being an additional charge to that certain Mortgage recorded as Document No. 2003-245206.

11. -AS TO LOT 73:-

EXISTING EASEMENT "A"

PURPOSE: sewer

SHOWN: on File Plan No. 2381

12. -AS TO LOTS 1, 33, 34, 70, 73 AND 74:-

RESTRICTION OF VEHICULAR ACCESS RIGHTS

SHOWN: on File Plan No. 2381

13. -AS TO LOT 1:-

DESIGNATION OF EASEMENT "1"

PURPOSE: landscaping

SHOWN: on File Plan No. 2381

14. -AS TO LOTS 1 TO 16, INCLUSIVE:-

DESIGNATION OF EASEMENT "2"

PURPOSE: landscaping

SHOWN: on File Plan No. 2381

15. -AS TO LOTS 17 TO 33, INCLUSIVE:-

DESIGNATION OF EASEMENT "3"

PURPOSE: landscaping

SHOWN: on File Plan No. 2381

16. -AS TO LOT 34:-

DESIGNATION OF EASEMENT "4"

PURPOSE: landscaping

SHOWN: on File Plan No. 2381

17. -AS TO LOTS 34 TO 51, INCLUSIVE:-

DESIGNATION OF EASEMENT "5"

PURPOSE: landscaping

SHOWN: on File Plan No. 2381

18. -AS TO LOTS 52 TO 70, INCLUSIVE:-

DESIGNATION OF EASEMENT "6"

PURPOSE: landscaping

SHOWN: on File Plan No. 2381

19. -AS TO LOT 32:-

DESIGNATION OF EASEMENT "7"

PURPOSE: electrical

SHOWN: on File Plan No. 2381

20. -AS TO LOT 28:-

DESIGNATION OF EASEMENT "8"

PURPOSE: electrical

SHOWN: on File Plan No. 2381

21. -AS TO LOT 24:-

DESIGNATION OF EASEMENT "9"

PURPOSE: electrical

SHOWN: on File Plan No. 2381

22. -AS TO LOT 21:-

DESIGNATION OF EASEMENT "10"

PURPOSE: electrical

SHOWN: on File Plan No. 2381

23. -AS TO LOT 69:-

DESIGNATION OF EASEMENT "11"

PURPOSE: electrical

SHOWN: on File Plan No. 2381

24. -AS TO LOT 66:-

DESIGNATION OF EASEMENT "12"

PURPOSE: electrical

SHOWN: on File Plan No. 2381

25. -AS TO LOT 61:-

DESIGNATION OF EASEMENT "13"

PURPOSE: electrical

SHOWN: on File Plan No. 2381

26. -AS TO LOT 57:-

DESIGNATION OF EASEMENT "14"

PURPOSE: electrical

27. SHOWN: on File Plan No. 2381
-AS TO LOT 53:-
- DESIGNATION OF EASEMENT "15"
PURPOSE: electrical
SHOWN: on File Plan No. 2381
28. -AS TO LOTS 74 AND 75:-
- DESIGNATION OF EASEMENT "16" (10 feet wide)
PURPOSE: drainage
SHOWN: on File Plan No. 2381
29. -AS TO LOT 75:-
- (a) EXISTING HECO POWERLINE EASEMENT (25 feet wide)
PURPOSE: powerline
SHOWN: on File Plan No. 2381
 - (b) DESIGNATION OF EASEMENT "17" (20 feet wide)
PURPOSE: drainage, water and sanitary sewer
SHOWN: on File Plan No. 2381
 - (c) DESIGNATION OF EASEMENT "18" (20 feet wide)
PURPOSE: drainage, water and sanitary sewer
SHOWN: on File Plan No. 2381
 - (d) DESIGNATION OF EASEMENT "19"
PURPOSE: flowage
SHOWN: on File Plan No. 2381
 - (e) DESIGNATION OF EASEMENT "21"
PURPOSE: electrical
SHOWN: on File Plan No. 2381
 - (f) DESIGNATION OF EASEMENT "22"
PURPOSE: waterline
SHOWN: on File Plan No. 2381
30. -AS TO LOTS 62 TO 70, INCLUSIVE:-
- DESIGNATION OF EASEMENT "20"
PURPOSE: fence
SHOWN: on File Plan No. 2381
31. Encroachments, if any, which would be shown on a correct ALTA survey.