

RECORDATION REQUESTED BY:

AFTER RECORDATION: ADDRESSEE:

RETURN BY: MAIL () PICKUP ()

We hereby certify that this is a true copy of the original
filed as Land Court Document No. 1432988
and/or recorded in Lib. 20284 on Page 384
on JAN 16 1987 at 8:01 o'clock A. M.
TITLE GUARANTEE OF HAWAII, INCORPORATED

TELEPHONE:

By C. Kuroki

**FOURTH AMENDMENT TO THE MAUNA LANI
RESORT ASSOCIATION DECLARATION
OF COVENANTS AND RESTRICTIONS**

WHEREAS, the Mauna Lani Resort Association Declaration of Covenants and Restrictions (hereinafter referred to as the "Declaration") made on June 3, 1982 was filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1120889 and noted on Transfer Certificate of Title No. 154,928 and also recorded in the Bureau of Conveyances of the State of Hawaii in Liber 16425, at Page 203;

WHEREAS, an Amendment of Mauna Lani Resort Association Declaration of Covenants and Restrictions (hereinafter referred to as the "First Amendment") was filed in said Office of the Assistant Registrar of the Land Court as Document No. 1121081 and noted on Transfer Certificate of Title No. 154,928 and also recorded in said Bureau in Liber 16428, at Page 456;

WHEREAS, a second Amendment of Mauna Lani Resort Association Declaration of Covenants and Restrictions (hereinafter referred to as the "Second Amendment") was filed in said Office of the Assistant Registrar of the Land Court as

Document No. 1129996 and noted on Transfer Certificate of Title No. 154,928 and also recorded in said Bureau in Liber 16545, at Page 345;

WHEREAS, a third Amendment of Mauna Lani Resort Association Declaration of Covenants and Restrictions (hereinafter referred to as the "Third Amendment") was filed in said Office of the Assistant Registrar of the Land Court as Document No. 1380755 and noted on Transfer Certificate of Title No. 154,928 and also recorded in said Bureau in Liber 19613, of Page 236;

WHEREAS, Mauna Lani Resort, Inc., a Hawaii corporation, the Declarant herein, has been required to make certain changes to the original Declaration, First Amendment, Second Amendment and Third Amendment in order to obtain a registration permit from the State of California; and

WHEREAS, the Declarant herein desires to modify and amend said Declaration, as amended by the First, Second and Third Amendments, to comply with and incorporate the changes required for registration under the laws of the State of California and to replace said Declaration, as amended, in its entirety, with this Fourth Amendment.

NOW, THEREFORE, Declarant hereby amends in its entirety said Declaration, as amended by the First, Second and Third Amendments, as follows:

1. The Declaration, as amended, shall be as set forth in Exhibit A attached hereto and incorporated herein by reference.
2. In the event of any conflict between the terms and conditions contained in the Declaration, or any amendment thereto, and this Fourth Amendment, this Fourth Amendment shall be controlling.

MAUNA LANI RESORT ASSOCIATION
DECLARATION OF COVENANTS AND RESTRICTIONS

EXHIBIT A

TABLE OF CONTENTS

DECLARATION OF COVENANTS AND RESTRICTIONS

		<u>Page</u>
ARTICLE I	<u>DEFINITIONS</u>	
Section 1	Definitions	2
1(a)	Annexation	2
1(b)	Association Rules	2
1(c)	Association	2
1(d)	Board	2
1(e)	Bylaws	2
1(f)	Charter	3
1(g)	Commercial Entity	3
1(h)	Commercial Lot	3
1(i)	Commercial Owner	3
1(j)	Committee	3
1(k)	Committee Rules	3
1(l)	Condominium Unit and Apartment	3
1(m)	Common Property	4
1(n)	Declaration	4
1(o)	Declarant	4
1(p)	Lot	4
1(q)	Mauna Lani Resort	4
1(r)	Mauna Lani Resort Restrictions	4
1(s)	Multiple Family Residential Lot	4
1(t)	Owner	5
1(u)	Residential Owner	5

1(v)	Secondary Association	6
1(w)	Single Family Residential Lot	6
1(x)	Supplemental Declaration	6
1(y)	Voting Rights	6

ARTICLE II MAUNA LANI RESORT ASSOCIATION

Section 1	Organization	6
Section 2	Membership	6
Section 3	Voting Rights	7
Section 4	Duties of Association	7
Section 5	Powers and Authority of the Association	9
Section 6	Association Rules	15
Section 7	Limitation of Liability	17
Section 8	Exclusive Right of Association	17
Section 9	Declarant	17

ARTICLE III ANNEXATION

Section 1	Development Plan	18
Section 2	Annexation	18
Section 3	Limitation on Annexation	20

ARTICLE IV ASSESSMENTS

Section 1	Responsibility	20
Section 2	General Assessment	20
Section 3	Purpose	22
Section 4	Supplemental General Assessments	22

Section 5	Special Assessment	22
Section 6	Assessments for Capital Contributions	23
Section 7	Lien and Default	24
Section 8	Exemption	25
Section 9	Estoppel Certificate	25
Section 10	Collection from Subtenant	25
Section 11	Mortgagee Protection	26

ARTICLE V RESTRICTIVE COVENANTS

Section 1	Land Use	27
1(a)	General Restrictions	27
1(b)	Construction and Alteration of Improvements: Change in Topography; Approval of Plans; Community Design Committee	34
1(c)	General Restrictions Applicable to Construction and Alteration of Improvements on Single Family Residential Lots	41
1(d)	General Restrictions Applicable to Construction and Alteration of Improvements on Multiple Family Residential Lots	42
1(e)	General Restrictions Applicable to Construction and Alteration of Improvements on Commercial Lots or Hotel Sites	42
1(f)	General Restrictions Applicable to Common Property	42
1(g)	Common Property: Construction and Alteration of Improvements, etc.	43
1(h)	Damage and Destruction Affecting the Common Property	45
Section 2	Application of Land Use Restrictions	49

Section 3	Enforcement of Land Use Restrictions	49
Section 4	Community Design Committee; Mauna Lani Design Board	50
4(a)	Organization	50
4(b)	Committee Duties	51
4(c)	Committee: Meetings; Action; Compensation; Expenses	51
4(d)	Committee Rules	51
4(e)	Mauna Lani Design Review Board	52
4(f)	Nonwaiver	52
4(g)	Variances	52
4(h)	Estoppel Certificate	53
4(i)	Liability	53

ARTICLE VI MISCELLANEOUS PROVISIONS

Section 1	Amendment	54
Section 2	Audit	55
Section 3	Attorneys' Fee	55
Section 4	Severability	56
Section 5	Interpretation	56
Section 6	Original Subdivision and Development Work	56
Section 7	Easements to Governmental Agencies	56
Section 8	Easements, Licenses or Permits for the Use of the Mauna Lani Resort Golf Course, Tennis Courts and Other Recreational Facilities	57
Section 9	Term	58
Section 10	Declarant; Held Harmless	58
Section 11	Notices; Documents; Delivery	58

DECLARATION OF COVENANTS AND RESTRICTIONS

This Declaration, made this ____ day of _____, 19 ____, but effective as of _____, 19 ____, by MAUNA LANI RESORT, INC., a Hawaii corporation, whose post office address is P. O. Box 4959, Kawaihae, Hawaii 96743-4959 (the "Declarant"). Declarant owns land in Kalahuipua'a and Anaehoomalu, South Kohala, Hawaii, shown on Exhibit A attached hereto and made a part hereof ("Master Plan Area" consisting of approximately 1,400 acres). Declarant intends to develop or cause to be developed, the Master Plan Area as shown on Exhibit A. During the course of development Declarant shall from time to time annex and make subject hereto certain lands contained within the Master Plan Area ("Annexed Property") as more particularly described in Exhibit B attached hereto and made a part hereof. The Annexed Property shall be developed with residences, apartments, hotels, stores and other commercial uses, parking areas, roads, parks, recreational areas, open areas, golf courses and a variety of other uses by means of a planned community development, and to also provide a variety of services within this resort community. The purpose of this Declaration is to create and keep the community desirable, attractive, beneficial and suitable in architectural design, materials and appearance; and to enhance the natural beauty and protection of owners within the community area. Initially, Declarant intends to develop or cause to be developed the Master Plan Area reserving the right to impose these covenants and restrictions upon the Annexed Property, from time to time, such that the entire property may ultimately be developed, owned, used, managed, occupied and improved as a single community for the benefit of every part thereof and interest therein and the Owners of such parts and interests.

Declarant hereby declares that upon annexation the Annexed Property shall hereafter be held, sold, conveyed, encumbered, leased, occupied and improved, subject to the Mauna Lani Resort Restrictions, meaning the limitations, restrictions, covenants and conditions set forth in this Declaration, all of which are established and declared and agreed to be for the purpose of enhancing and protecting the value, desirability and attractiveness of such real property. These limitations, restrictions, covenants and conditions shall run with the land and shall be binding upon all persons having or who acquire any right, title or interest in and to the land, and shall inure to the benefit of the Declarant, the Association and each person who becomes an owner of the land.

ARTICLE I

DEFINITIONS

Section 1. The following words when used in this Declaration or any supplemental declaration (unless otherwise provided therein) shall have the following meanings:

(a) "Annexation" shall mean the process by which portions of the Annexation Property are made subject hereto pursuant to Article III hereof.

(b) "Association Rules" shall mean the rules from time to time in effect, pursuant to the provisions of Section 6 of Article II hereof.

(c) "Association" shall mean the Mauna Lani Resort Association, a nonprofit corporation, and its successors and assigns.

(d) "Board" shall mean the board of directors of the Association.

(e) "Bylaws" shall mean the bylaws of the Association, as amended from time to time.

(f) "Charter" shall mean the charter of incorporation of the Association, as amended from time to time, granted or to be granted, pursuant to Chapter 416, Hawaii Revised Statutes.

(g) "Commercial Entity" shall mean the owner of property within the Mauna Lani Resort which is used for recreational, commercial, restaurant convention or similar uses.

(h) "Commercial Lot" or "Commercial Apartment" shall mean any lot or apartment unit, respectively, within the Mauna Lani Resort designated for commercial purposes; excluding all housing provided and to be provided by Declarant for Declarant's employees and other personnel, whether or not employees of Declarant, involved or otherwise connected with the construction and/or maintenance of any project or development within the Mauna Lani Resort; provided that the term Commercial Apartments shall mean a building or structure containing apartment units which are owned substantially by a single common entity and rented or leased for profit.

(i) "Commercial Owner" shall mean an owner who holds, owns or occupies a Commercial Lot(s) or Commercial Apartment(s) or other property within the Mauna Lani Resort primarily for commercial purposes.

(j) "Committee" shall mean the Mauna Lani Resort Design Committee established by the Declarant.

(k) "Committee Rules" shall mean the rules from time to time in effect, pursuant to the provisions of Section 4 of Article V hereof.

(l) "Condominium Unit" and "Apartment" shall mean a condominium apartment within a condominium project established within Mauna Lani Resort pursuant to Chapter 514A, Hawaii Revised Statutes, as amended, and an apartment unit in a multi-unit planned development, planned unit development, cluster, or cooperative housing project, but excluding

Commercial Apartments as hereinabove defined in subparagraph (h) of this Section 1 and single-family detached residences.

(m) "Common Property" shall mean all real property and interest therein which has or may be conveyed to the Association. Such interest may include, without limitation, estates in fee, estates for a term of years, or easements and shall also include any personal property acquired by the Association if said personal property is designated as "Common Property".

(n) "Declaration" shall mean this Declaration of Covenants and Restrictions for the Mauna Lani Resort and any and all amendments thereto.

(o) "Declarant" shall mean Mauna Lani Resort, Inc., and such other person or entity to the extent it is designated as Declarant or Co-Declarant by Mauna Lani Resort, Inc. and it accepts the rights and obligations of Declarant hereunder, in a recorded document. "Declarant's Nominee" shall mean any division, subsidiary or affiliate of Declarant or other person or entity (whether or not related to Declarant) nominated by Declarant to hold and exercise any of its rights hereunder, which nomination shall be in writing but need not be recorded.

(p) "Lot" shall mean any subdivided parcel shown in Exhibit B and also include those subdivided parcels within lands annexed to the resort community but within the lands as described in Exhibit A.

(q) "Mauna Lani Resort" shall include all land described in Exhibit B, together with such other land as may be annexed thereto.

(r) "Mauna Lani Resort Restrictions" shall mean the limitations, restrictions, covenants and conditions as set forth in this Declaration.

(s) "Multiple Family Residential Lot" shall mean any Lot used for residential purposes by more than one (1) family.

(t) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to the real property or real property improvements, which give rise to voting rights and assessments responsibilities hereunder, with "Owner" to exclude mortgagees acting in such capacity; except that, with respect to a Condominium Unit, the Grantee under a Condominium Conveyance Document (i.e., a document deeding the apartment in fee simple and leasing an undivided interest in the land) or the Lessee under an Apartment Lease (i.e., a document leasing both the apartment and the undivided interest in the land) or the Lessee under a development lease for property designated for hotel use (i.e., a document requiring the Lessee to build and construct a hotel project) for an original term of twenty (20) years shall be deemed the "Owner" of the Condominium Unit. The term "Owner" shall not include a Sublessee of any Condominium Unit or Lot; individuals or entities who are merely renting the use of one or more Condominium Units; Lots or Multiple Family Residential Lots; and the owner of fee interest to property which has been leased to a party for a period of twenty (20) consecutive years or greater. Prior to the first conveyance or lease of any Lot by Declarant, "Owner" shall mean Declarant unless and to the extent Declarant has designated in writing that someone else is to exercise its rights and bear the burdens of its ownership or unless otherwise stated herein.

(u) "Residential Owners" shall mean all those owners of condominium units or single family lots or dwellings, who hold, own or occupy said properties for residential purposes, exclusive of the Declarant.

(v) "Secondary Association" shall mean all Condominium Associations, Home Owner Associations and any other associations other than the Mauna Lani Resort Association, existing and operating within the Mauna Lani Resort and covered by the Declaration.

(w) "Single Family Residential Lot" shall mean any Lot used for single family residential purposes.

(x) "Supplemental Declaration" shall mean an amendment to this Declaration.

(y) "Voting Rights" shall mean the voting rights as defined by the ByLaws of the Mauna Lani Resort Association.

ARTICLE II

MAUNA LANI RESORT ASSOCIATION

Section 1. Organization. The Association is a nonprofit corporation charged with the duties and empowered with the rights set forth herein and its Charter and Bylaws. If the Association as a corporate entity is dissolved, a nonprofit, unincorporated association governed by the Bylaws shall forthwith and without further action or notice, be formed and succeed to all the rights, duties, privileges and obligations of the Association.

Section 2. Membership. Every Owner shall be a member of the Association; provided that any such person or entity who holds such interest merely as a security for performance of an obligation shall not be a member. Membership shall be appurtenant to and may not be separated from the real property or real property improvement giving rise to the status of Owner. Rights to membership terminate upon termination of status as an Owner. Upon conveyance of an Owner's entire interest in his property, the conveying Owner shall be relieved of liability for assessment levied from and after the date of

such conveyance. No Owner may avoid the obligations of membership during the period when he is an Owner by nonuse of the Common Property, renunciation or abandonment of his property, or any other act of abandonment or renunciation.

Section 3. Voting Rights. The voting rights of the members shall be as set forth in the Charter and Bylaws of the Association. For the limited purposes of establishing Voting Rights, and formulating assessments the term "Owner" or "Owners" shall be categorized into the voting classes of Commercial Owners, Declarant, and Residential Owners as hereinabove defined in Article I.

Section 4. Duties of Association. The Association shall have the obligations and duties to do and perform each and every one of the following, subject to the Mauna Lani Resort Restrictions, for the benefit of the Owners and for the maintenance and improvements of the Mauna Lani Resort.

(a) The Association shall accept all Owners as members of the Association.

(b) The Association shall accept title to all Common Property conveyed to it or leased on reasonable terms to it by Declarant or Declarant's Nominee. The Association may also acquire and accept title to any other property, real, personal or mixed.

(c) The Association shall maintain, repair, replace and landscape the Common Property and, at the discretion of the Board, such property dedicated to the County of Hawaii, the lands designated by appropriate governmental authority as Historic Preservation areas, and other property immediately adjacent to the Mauna Lani Resort if the Board determines that such dedicated property is not being maintained or landscaped in a manner comparable to the Common Property.

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

(e) Unless provided by a municipal, county or other governmental agency, or the Declarant, and unless the cost thereof is assessed directly or indirectly against the Owners by any such party, the Association may contract for, employ or otherwise provide police, fire, refuse disposal and other necessary or desirable services as deemed appropriate.

(f) The Association shall obtain and maintain in force the following policies of insurance:

(1) A policy or policies of fire insurance, with extended coverage endorsement, including, without limitation, insurance against vandalism and malicious mischief, for the full insurable replacement value of any improvements on the Common Property, or such other fire and casualty insurance as the Board shall determine gives substantially equal or greater protection;

(2) A policy or policies insuring against any liability to the public or to the Owners, incident to the ownership and use of the Common Property and any other property or interest owned by the Association, and including the personal liability exposure of the Owners with respect to such property. Limits of liability under such insurance shall not be less than Five Hundred Thousand Dollars (\$500,000) for any one person injured, One Million Dollars (\$1,000,000) for

any one accident, and One Hundred Thousand Dollars (\$100,000) for property damage for each occurrence (such limits and coverage to be reviewed at least annually by the Board and increased in its discretion). The above policy of liability insurance if and to the extent it can be obtained, shall cover as insureds the Declarant, the Association, the Board, the Committee, the Owners, and their agents, representatives, and employees. Each policy of insurance obtained by the Association shall expressly waive any and all rights of subrogation against Declarant, the Association, the Board, the Committee, the Owners, and their agents, officers, representatives and employees.

Section 5. Powers and Authority of the Association.

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

(a) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot or Condominium Unit for the purposes of maintaining and repairing any Lot or any improvement thereon or Condominium Unit, if for any reason the Owner fails to maintain and repair such Lot or improvement or Condominium Unit, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon a Lot or

Condominium Unit in violation of Article V. The Association may maintain and repair any roads, sidewalks, parks or public areas in or adjoining Mauna Lani Resort, including landscaping and planting the same and repairing improvements thereon when public authorities, in the opinion of the Board have failed to do so in a manner befitting the standards of the community. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Mauna Lani Resort Restrictions, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration.

(b) In fulfilling any of its duties under the Mauna Lani Resort Restrictions, including its duties for the maintenance, repair, operation or administration of the Common Property, and to the extent necessary by the failure of the Owners of Condominium Units or Lots or in exercising any of its rights to construct improvements or other work upon any Common Property, the Association shall have the following power and authority; provided, however, that any contract for goods or services entered into by the Association shall be limited to a term of one (1) year, unless otherwise approved by a majority of the Voting Rights of the Association;

(1) To enforce the provisions hereof and the Charter and Bylaws of the Association;

(2) To contract and pay for, or otherwise provide for, construction, maintenance, repair of all improvements to Common Property and the landscaping of Common Property on such terms and conditions as the Association shall deem appropriate.

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

(4) To contract and pay for, or otherwise provide for, such utility services including, but without limitation, water, sewer, trash, electrical, telephone, cable television and natural gas services as the Board may from time to time deem desirable;

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

(6) To contract and pay for, or otherwise provide for, fire, police and such other protection services as the Board deems desirable for the benefit of the Owners or any property located within the Mauna Lani Resort or public beaches and property dedicated to the County of Hawaii adjacent to the Mauna Lani Resort;

(7) To pay and discharge any and all liens placed upon any Common Property on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration; provided, however, that if any such materials, supplies, furniture, equipment, services and labor are

provided for particular Lots or Condominium Units, the cost thereof shall be specially assessed to the Owners of such Lots or Condominium Units unless covered by insurance;

(8) To contract and pay for, or otherwise provide for the maintenance of the Historic Preservation areas, which shall include security and clean-up of the Historic Preservation areas within the Mauna Lani Resort; and

(9) Except as otherwise prohibited to delegate its powers to committees, agents, officers, representatives and employees.

(c) The Association through its Board shall ordinarily be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the voting power of the Association residing in the Residential Owners:

(1) Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Property or the Association for a term longer than one year with the following exceptions:

(A) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration and/or in accordance with Section 5(e) hereinbelow;

(B) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission of the State of Hawaii provided,

however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(C) Prepaid casualty and/or liability insurance policies of not to exceed three years duration provided that the policy permits short rate cancellation by the insured;

(D) Lease agreements for laundry room fixtures and equipment of not to exceed five years duration provided that the lessor under the agreement is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more; and

(E) Agreements for cable television services and equipment of not to exceed five years duration provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(2) Incurring aggregate expenditures for capital improvements to the Common Property in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

(3) Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

(4) Paying compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business

provided, however, that the Board may cause a director or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

(5) Annexing up to January 1, 2007, real property which is not included in the property described in Exhibit A; and on and after January 1, 2007, the annexing of any real property.

(d) The Board shall be required to grant and convey in fee, by deed or otherwise and with or without consideration, to Declarant, or Declarant's Nominees, and any third parties easements or rights-of-way in, on, over or under any Common Property without payment to the Association when required by Declarant or Declarant's Nominees; provided, however, that such easements or rights-of-way must be exercised in such manner as to not materially interfere with the use to which the Association has devoted such Common Property. Notwithstanding the provisions contained in Section 5, of this Article II, the Board shall also have the right to dedicate or convey in fee, at any time, by deed or otherwise and with or without consideration, all or any part of its interest in the Common Property to any public entity or agency.

(e) The Board may from time to time employ the services of a manager to manage the affairs of the Association; provided, however, that no such employment shall be by contract having a term of more than two (2) years. Provided that it has been authorized to do so, the Board may delegate to the manager any of its powers, subject to the limitations set forth in Section 5(c) of this Article II.

(f) The Board shall have the right to pay, compromise, contest, or appeal any or all taxes and assessments levied against all or any part of the Common Property.

(g) The Association may charge reasonable fees for use of any facilities in the Common Property to help defray the costs of construction, maintenance, repair or operation of such facilities.

Section 6. Association Rules. The Board from time to time and subject to the Mauna Lani Resort Restrictions may adopt, amend and repeal rules and regulations to be known as the Association Rules governing, among other things:

- (a) the use of the Common Property;
- (b) the use of the roads owned by the Association;
- (c) the collection and disposal of refuse;
- (d) the burning of open fires; and
- (e) the maintenance of animals within the Mauna Lani Resort area.

The following provisions shall govern the promulgation of the Association Rules authorized herein which shall include the establishment of a system of fines and penalties;

(1) The Board in its discretion shall recommend to the Owners such rules and regulations as are consistent with and in furtherance of existing law, and the Association's Charter, Bylaws and Declaration. Upon the affirmative vote or written consent of a majority of all of the Voting Rights of the Association, such rules and regulations shall take effect as the Association Rules.

(2) The Board in its discretion shall recommend to the Owners a list of specific fines and penalties for the violation by any Owner of the provisions of the Association's Charter, Bylaws, Declaration and the Association Rules. Upon the affirmative vote or written consent of a majority of all of the Voting Rights of the Association, such fines and penalties

shall be binding on all Owners and shall be enforceable by the Board as a Special Assessment. Such a remedy shall not be deemed to be exclusive and the Board shall have other remedies as are provided for by applicable law.

(3) Any Association Rules promulgated pursuant to this Section shall provide that no fine or penalty shall be levied without the following procedural safeguards.

(A) A written statement of the alleged violations shall be provided to any Owner against whom such charges are made, and such written statement shall provide a date on which the charges shall be heard;

(B) No proceedings under this Section shall be brought against any Owner unless such Owner shall have received a written statement of charges at least thirty (30) days prior to that hearing;

(C) No proceeding shall be brought against any Owner more than sixty (60) days after such Owner is provided a written statement of charges;

(D) The Board shall appoint a panel of three (3) capable persons (one of whom shall be designated a chairman) who may or may not be Owners, and who shall hear the charges and evaluate the evidence of the alleged violation;

(E) At such hearing the Owner so charged shall have the right to present oral and written evidence and to confront and cross-examine adverse witnesses;

(F) The panel shall deliver to the Owner so charged within seven (7) days after the hearing a written decision which specifies the fines or penalties levied, if any, and the reasons therefor.

(G) The decision of the panel shall be binding upon the Owner so charged and shall not be appealable.

(4) If an Owner shall correct an alleged violation prior to the hearing date, the Board shall discontinue the proceedings.

Section 7. Limitation of Liability. No member of the Board shall be personally liable to any Owner, guest, lessee or to any other person, including the Declarant, for any error or omission of the Association, its representatives and employees, the Committee or the manager; provided, however, that such Board member has acted in good faith.

Section 8. Exclusive Right of Association. The Association, through the Board and its duly authorized representatives, shall have the exclusive right to exercise the powers and authorities referred to in Subsection b(6) of Section 5 herein.

Section 9. Declarant. Mauna Lani Resort, Inc., as Declarant, hereby reserves its right during the term of this Declaration to designate one or more Co-Declarants to serve collectively as Declarant hereunder; Co-Declarant shall accept any rights and obligations of the Declarant hereunder as may be apportioned to it by a recorded document.

ARTICLE III

ANNEXATION

Section 1. Development Plan. The Development Plan is hereby defined as the appropriate County General Plan or County Development Plan(s) and such zoning maps, including but not limited to, Land Use Pattern Allocation Guide Maps, as may be approved by the County of Hawaii (collectively referred to as the "Development Plan"). The development of the Mauna Lani Resort shall be in accordance with the Development Plan as amended from time to time according to the procedures established by the County of Hawaii, such amendments to include, but not be limited to any County General Plan or Development Plan amendments, Hawaii County Zoning Code amendments and zoning changes. The term Development Plan as used herein shall include all such amendments.

Section 2. Annexation. Notwithstanding any provision to the contrary contained in this Declaration, (a) up to January 1, 2007, the Declarant may, pursuant to the following provisions of this Section, from time to time and in its sole discretion, add lands to the Annexed Property; provided, that said lands are included in the Master Plan Area and are being developed substantially in accordance with the Development Plan. Lands which are not part of the Master Plan Area, may be, from time to time, added to the Annexed Property; provided that such annexation is approved by a majority vote of the Association residing in the Residential Owners.

(b) From January 1, 2007 and thereafter, the adding of lands to the Annexed Property, whether included in the Master Plan Area or not, shall be within the power of the Board and shall require the affirmative vote of a bare majority of the Association residing in the Residential Owners.

(c) The annexation of such land shall be effected by Declarant's having filed in the Bureau of Conveyances of the State of Hawaii, a Supplemental Declaration (1) describing the real property to be annexed; (2) setting forth such additional limitations, restrictions, covenants and conditions, if any, as are applicable to such land; (3) declaring the land is to be held, sold, conveyed, encumbered, leased, occupied and improved subject to the Mauna Lani Resort Restrictions and (4) stating whether such property is a Condominium Unit, Lot and/or Common Property.

(d) Upon the annexation becoming effective, the Property conveyed by such annexation shall become a part of the Mauna Lani Resort, provided, however, that the property so annexed shall not be or become liable for assessments for the debts or obligations of the Association incurred prior to the date of annexation. Undeveloped property annexed to the Mauna Lani Resort Association shall not be or become liable for assessments levied by the Association, nor shall the Owner of said undeveloped property acquire any voting rights hereunder, unless and until; (i) the undeveloped property is developed in accordance with the laws of the County of Hawaii; and (ii) the sale of the first Lot or Condominium Unit is closed; or in case where such undeveloped property is developed for commercial purposes, upon said commercial use being open for business.

(e) The Supplemental Declaration described in Section 2(a) above may provide for such additional limitations, restrictions, covenants and conditions with respect to use not inconsistent with the provisions hereof and the Development Plan as Declarant may deem to be appropriate.

(f) No land, except that shown on Exhibit B and except that specifically annexed as above provided shall be deemed subject to the Mauna Lani Resort Restrictions whether or

not shown on any subdivision map filed by Declarant or described or referred to in any documents executed or recorded by Declarant. Nothing herein or in any amendment hereto shall be deemed to be a representation, warranty or commitment that the Declarant will:

(1) commit or subject to the Mauna Lani Resort Restrictions any land it may now own or hereafter acquire other than shown on Exhibit B; or

(2) develop any part or all of the land shown on Exhibits A and B or any other land.

Section 3. Limitation on Annexation. Declarant's rights to unilaterally annex such land shall expire with respect to any land not theretofore annexed by January 1, 2007; thereafter the provisions contained in Article III, Section 2(b) shall become effective.

ARTICLE IV

ASSESSMENTS

Section 1. Responsibility. Each Owner of any Lot or Condominium Unit by acceptance of a purchase and sale agreement, deed, lease or other conveyance document therefor, whether or not it shall be so expressed in any such deed, lease or any other conveyance, shall be deemed to covenant and agree to pay his proportionate share of the general and special maintenance assessments and the assessments for capital contributions, such assessments to be fixed, allocated and collected from time to time as provided herein.

Section 2. General Assessment. At least forty-five (45) days prior to the first day of July of each year or the fiscal year as may from time to time be established by the Board or the Association, the Board shall prepare a budget for operation of the Common Property in accordance with generally

accepted accounting practices used with respect to books of account maintained on a cash, accrual or modified cash basis. Such budget shall include the estimated normal costs of the Common Property for such fiscal year, which costs shall include only those costs permitted by Section 3 below, and shall also include any estimated receipts for such fiscal year from any persons as may utilize the Common Property. The excess of the estimated normal costs over the estimated receipts, other than assessments, shall be allocated among the Owners in accordance with the proportion represented by the Voting Rights of each Owner divided by the total Voting Rights of all Owners (sometimes referred to as the "proportionate share"); provided, that, such costs shall be allocated to Declarant in accordance with the proportion represented by the total Voting Rights of the Declarant as determined under Section 2.2(a) of the ByLaws divided by the total Voting Rights of all Owners. Each Owner shall pay his proportionate share of assessments as levied out to his respective Secondary Association, Commercial Entity or Hotel in equal quarterly or monthly installments or in such other reasonable manner as the respective Boards shall designate. All Secondary Associations, Hotels or Commercial Entities shall collect such assessments from their respective Owners and shall then be responsible to pay over all assessments collected and assessed to them to the Association. Any unexpended amounts at the end of any year shall be applied toward such normal costs in the following year, unless the Association votes to return such expended amounts to the Secondary Association, Hotel or Commercial Entity or Declarant in accordance with their respective voting rights held at the

time of the assessment. The Board may not, without the vote or written assent of a majority of the voting power of the Association residing in the Residential Owners, impose a regular annual assessment which is more than ten percent (10%) greater than the regular assessment for the immediately preceding fiscal year.

Section 3. Purpose. The assessments levied by the Association shall be used exclusively for the purposes provided for in these Mauna Lani Resort Declaration.

Section 4. Supplemental General Assessments. If additional land shall be annexed to the Mauna Lani Resort during the fiscal year, the Association will prepare a supplemental budget which shall reflect the change of circumstances, and shall either levy a supplemental general assessment for increased normal costs of the Common Property, or shall provide a credit toward future assessments. In addition, if the regular general assessment proves inadequate for any reason, including nonpayment of any Secondary Association, Hotel, Commercial Entity or Declarant's share thereof, the Association may prepare a supplemental budget and levy a further general assessment for normal costs in the amount of such actual or estimated inadequacy. In any fiscal year, the Board may not, without the vote or written assent of a majority of the voting power of the Association residing in the Residential Owners, levy special assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

Section 5. Special Assessment. In addition to the general assessments authorized above, and subject to the

procedural requirements of Section 2 of Article III hereof, the Board shall also levy a special assessment against any Secondary Association, Hotel, Commercial Entity or Declarant for monies expended by the Association in performing its functions under the Mauna Lani Resort Restrictions which functions were directly or indirectly caused by such Secondary Association, Hotel, Commercial Entity or Declarant's act or failure or refusal to act or otherwise comply with the Mauna Lani Resort Restrictions, the Association Rules or the Committee Rules. Such assessment shall be in the amount so expended and shall be due and payable to the Association when levied. Monies so expended shall include, without limitation, reasonable engineers', architects', attorneys' and accountants' fees incurred by the Association.

Section 6. Assessments for Capital Contributions. If the Association decides to purchase additional Common Property beyond that originally contributed, or to make capital additions or improvements to the Common Property, or to make other capital expenditures, so as to enhance the value of the Owners' property overall, the funds required for the specific capital addition shall be contributed to the capital of the Association by the Secondary Association, Hotel, Commercial Entity and Declarant, in accordance with their proportionate shares, and specifically earmarked and segregated for the designated purpose. However, in any fiscal year, the Board may not, without the vote or written assent of a majority of the voting power of the Association residing in the Residential Owners, levy special assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

Section 7. Lien and Default. Each assessment under this Article shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed, and each Owner by acceptance of a purchase and sale agreement, deed, lease, or other conveyance document, whether or not it shall be so expressed in any such purchase and sale agreement, deed or lease, shall be deemed to covenant and agree to pay the same to the Association, provided that no mortgage, or any officer, director or trustee thereof, shall be personally obligated to pay any assessment although the assessment will be a charge against the Lot, Condominium Unit, hotel or other building or improvement (the "property") subject to the assessment as provided hereafter. If the Owner does not pay such assessment or any installment thereof when due, the Owner shall be deemed in default and the amount of the assessment not paid, together with the amount of any subsequent default, plus interest at twelve percent (12%) per annum and costs, including reasonable attorney's fees, shall be and become a lien upon the property of such Owner upon filing by the Association of a notice of default in the Bureau of Conveyances of the State of Hawaii. Concurrent with such filing in the Bureau, the Association shall send a copy of such notice of default to each holder of a mortgage covering the property of such Owner or interest therein whose name and address has theretofore been furnished to the Association. Such lien shall be subject to and subordinate to the lien of the first recorded mortgage, as defined in Section 11(a) of this Article IV, on the property of such Owner. A foreclosure of any such paramount lien, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, shall extinguish the lien as to the payments of assessments which become due prior to such sale, transfer or conveyance, but no such sale, transfer or

conveyance shall relieve such property, or the purchaser or transferee thereof with regard to assessments thereafter becoming due except as to any mortgagee as provided above. Association liens may be foreclosed through suit in like manner as a mortgage of real property, and the Association shall have power to bid on the property at foreclosure sale and to acquire and hold, lease, mortgage or convey the same. A suit to recover a money judgment for unpaid assessments shall 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 for the enforcement of such assessment obligation.

Section 8. Exemption. The Common Property and Undeveloped Property which has not met the requirements under subparagraph (i) and (ii) of Section 2(d) of Article III shall be exempt from assessment pursuant to the provisions of this Article IV.

Section 9. Estoppel Certificate. When requested by an Owner, the Association shall execute a certificate stating the indebtedness secured by the lien upon the Property of the Owner, and such certificate shall be conclusive upon the Association and the Owners in favor of all persons who rely thereon in good faith as to the amount of such indebtedness as of the date of the certificate. The Association shall be entitled to a reasonable fee as a condition to issuing the certificate.

Section 10. Collection from Subtenant. If the Owner shall at any time rent or lease his Lot, Condominium Unit or Apartment and shall default for a period of thirty (30) days or more in the payment of the Owner's proportionate share of maintenance assessments and special assessments, the Board may, at its option, after giving ten (10) days written notice to the

Owner of said default and so long as such default shall thereafter continue, demand and receive from any renter or lessee (hereinafter in this paragraph referred to as "lessee") of the Owner occupying the Apartment, the rent due or becoming due from such lessee to the Owner up to an amount sufficient to pay all sums due from the Owner, including interest, if any, and any such payment of such rent to the Board by the lessee shall be sufficient discharge of such lessee, as between such lessee and the Owner to the extent of the amount so paid; but any such demand or acceptance of rent from any lessee shall not be deemed to be a consent to or approval of any lease by the Owner or a release or discharge of any of the obligations of the Owner hereunder or an acknowledgment of surrender of any rights or duties hereunder.

In the event that the Board makes demand upon the lessee as aforesaid, the lessee shall not have the right to question the right of the Board to make such demand, but shall be obligated to make the said payments to the Board as demanded by the Board with the effect as aforesaid, provided, however, that the Board may not exercise this right if a receiver has been appointed to take charge of the premises pending a mortgage foreclosure or if a mortgagee is in possession pending a mortgage foreclosure.

Section 11. Mortgage Protection. Notwithstanding all other provisions of Article IV hereof:

(a) The lien which may be created hereunder upon any property shall be subject and subordinate to the indebtedness secured by any recorded first mortgage (meaning a mortgage with first priority over other mortgages) upon such interest made in good faith and for value; provided, however, that after the foreclosure of any such mortgage a lien may be created pursuant to Section 7 of this Article on the interest of the purchaser

at such foreclosure sale to secure all assessments, assessed hereunder to such purchaser as an Owner, after the date of such foreclosure sale; and

(b) No amendment to this Section shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

ARTICLE V

RESTRICTIVE COVENANTS

Section 1. Land Use. The following provisions shall apply to the use of all property subject to the Mauna Lani Resort Restrictions:

(a) General Restrictions. (Not Applicable to Common Property).

(1) No improvement, excavation, fill or other work which in any way alters any Lot from its natural or improved state existing on the date such Lot was first conveyed by Declarant to an Owner other than Declarant or Declarant's Nominees shall be made or done except upon strict compliance with the provisions hereof.

(2) Each Lot and all improvements located thereon, shall be maintained by the Owner thereof in good condition and repair, and in such manner as not to create a fire hazard, all at Owner's expense.

(3) Vegetation within any Lot shall be planted and maintained at the Owner's expense in good condition and in such a manner as to prevent or retard shifting or erosion.

(4) No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners in the enjoyment of their Lots or Condominium Units or the Common Property. Without limiting any of the foregoing, no exterior speakers, horns, whistles,

• bells or other sound devices, except security devices used exclusively to protect the security of the Lot and improvements located thereon, shall be placed or used upon any Lot without prior written approval of the Committee.

(5) There shall be no camping upon any Lot.

(6) No house pets or other animals shall be kept on any Lot or in an Apartment on a Multiple Family Residential Lot or in a Condominium Unit without the prior amendment of the Mauna Lani Restrictions pursuant to Section 1 of Article VI herein, unless specifically permitted by any Secondary Association Rules or in the absence of a Secondary Association by the Declarant or Declarant's Nominee who shall be designated in writing.

(7) No signs whatsoever shall be erected or maintained upon any Lot, except:

(A) Such signs as may be required by legal proceedings.

(B) Such signs as Declarant or Declarant's Nominees may erect or maintain relating to sales, leasing, or other development activities within the Mauna Lani Resort.

(C) Such signs as shall be permitted in this Declaration or in any Supplemental Declaration annexing a Commercial Lot.

(D) Any sign which does not comply with the above, but has been allowed by written permission of the Committee, provided such sign complies with such permit.

(8) Except to the extent desired by Declarant or Declarant's Nominees to be used in connection with, and during, the development of Lots with the Mauna Lani Resort no mobile home, travel trailer, truck camper, house trailer or similar facility, or any boat, shall be placed upon any Lot except in strict accordance with Association Rules in effect from time to time. Mobile homes shall be allowed on Lots, in strict accordance with Association Rules in effect from time to time, as a temporary facility during periods of construction of permanent structures on Lots. No stripped down, wrecked or junk motor vehicle shall be kept, parked, stored or maintained on any Lot. No commercial vehicle bearing commercial insignias or names shall be parked on any Lot except within an enclosed structure or a screened area which prevents such view thereof from adjoining Lots, roads and Common Property unless such vehicle is temporarily parked for the purpose of serving such Lot, or unless a Lot is specifically designated in a Supplemental Declaration as a parking area. The parking of vehicles on the roads shall at all times be subject to and in accordance with applicable laws, the provisions

of this Declaration and further restrictions established by Supplemental Declarations or Association Rules.

(9) No accessory structures shall be constructed, placed or maintained upon any Lot prior to the construction of the main structure except by written permit of the Committee, but then only subject to the limitations of such permit, provided that this restriction shall not apply to temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of the main structure. This restriction shall not apply to any structure upon any Lot to be used by Declarant or Declarant's Nominees as a sales office or in conjunction with the development of Lots by Declarant or Declarant's Nominees in the Mauna Lani Resort.

(10) All garbage, rubbish and trash shall be kept in covered containers. In no event shall such containers be maintained so as to be visible from neighboring Lots, roads, or Common Property. The storage, collection and disposal of garbage, rubbish and trash shall be in strict compliance with Association Rules.

(11) No outside clotheslines or other outside clothes drying or airing facilities shall be maintained or used on any Lot at any time.

(12) No drilling (except for a water well expressly permitted), refining, geothermal energy development, quarrying or mining operations of any kind shall be permitted upon any Lot except by Declarant and no derrick, structure, pump or equipment designed for use in any such activity shall be

erected, maintained or permitted on any Lot.

(13) No improvement which has been partially or totally destroyed shall be allowed to remain on any Lot in such state for more than six (6) months from the date of such destruction.

(14) Except in the case of Commercial Lots, no gainful occupation, profession or trade shall be maintained on any Lot or in any structure on any Lot without the prior approval of the Board, except that this provision shall in no way limit or restrict Declarant or Declarant's Nominees in their activities prior to the sale, leasing or other development of Lots within the Mauna Lani Resort nor prevent Owners from renting their houses, apartment units or Condominium Units.

(15) There shall be no hunting or discharge of firearms on any Lot.

(16) There shall be no water well on any Lot (except for those approved by Declarant or Declarant's Nominees) unless (A) a permit has been obtained from the Board for the use of a water well thereon, and (B) the location and facilities used in connection with such well have been approved by the Board.

(17) All improvements shall be constructed in accordance with applicable building line and setback provisions of applicable zoning ordinances and in compliance with any setback requirements prescribed by the Declaration or any Supplemental Declaration.

(18) All fuel tanks or similar storage facilities shall be constructed only with the prior written approval of the Board and in a manner approved by the Committee.

(19) No outside toilet, other than self contained portable toilet units used during construction, or golf course toilet facilities shall be constructed or maintained on any Lot. All plumbing fixtures, dishwashers, garbage disposals, toilets or sewage disposal systems shall be connected to the Mauna Lani Resort Sewage Treatment Plant; provided, however, Declarant may on a temporary basis utilize any other sewage disposable system permitted by appropriate governmental authority.

(20) No exterior antenna of any sort shall be installed or maintained on any Lot except of a height, size and type approved by the Committee, provided, however, that this restriction shall not apply to any cable, television or satellite earth station facility installed by Declarant or Declarant's Nominees. No activity shall be conducted within the Mauna Lani Resort which interferes with television or radio reception in the Mauna Lani Resort except with the prior written permission of the Board.

(21) No structure (except for those completed for or by Declarant or Declarant's Nominees) shall be occupied until the same has been substantially completed in accordance with plans and specifications previously approved by the Committee.

(22) All structures constructed on any Lot shall be constructed with new materials unless otherwise permitted by the Committee, and no used structure shall be relocated or placed on any Lot.

(23) No Owner of any Lot, except Declarant or Declarant's Nominees, shall build or permit the building thereon of any structure that is to be used

as a model or exhibit unless a permit to do so has been granted by the Committee and then only subject to the limitations of such permit.

(24) No fence shall be constructed (except by Declarant or Declarant's Nominees) on any Lot unless and until a permit for same has been issued by the Committee, and then only in strict accordance with the terms of such permit.

(25) There shall be no blasting or discharge of explosives upon any Lot except as permitted by the Board. This provision shall in no way limit or restrict Declarant or Declarant's Nominees in their activities in connection with the sale, leasing, development, construction or demolition of Condominium Units or Lots within the Mauna Lani Resort.

(26) No furniture, fixtures, appliances or other goods and chattels shall be stored in such a manner that such property is visible from neighboring Lots, roads or Common Property, except during construction.

(27) There shall be no exterior fires, except barbecue and incinerator fires contained within facilities or receptacles and in areas designated by the Board for such purpose. No Owner shall permit any condition which creates a fire hazard, creates a nuisance or is in violation of any fire prevention regulations.

(28) There shall be no obstruction of the pedestrian walkways, tramways or roadways located upon any Lot for purposes of circulation of foot or vehicular traffic or any interference with free use thereof except such obstruction as may be reasonably required in connection with repairs of such walkways,

tramways or roadways or in connection with construction. Use of all the walkways, tramways and roadways shall be subject to regulation by rules adopted by the Association and furnished in writing to the Owners. The Association shall promptly take such action as may be necessary to abate or enjoin any interference with or obstruction of the walkways, roadways or tramways contrary to the provisions hereof and shall have a right of entry for purposes of removing the same, and any costs incurred by the Association in connection with such abatement, injunction or corrective work shall be specially assessed to the Owner or Owners responsible therefor. Free use of the walkways, roadways and tramways and free circulation of foot and vehicular traffic are essential elements of the Development Plan and the foregoing remedies are in addition to all other remedies the Association may have at law and in equity.

(29) The Owners shall be responsible for the care and maintenance of their respective property and improvements and the Board may require the exterior painting or exterior repair of such property or improvements and regulate the type and color of paint to be used.

(b) Construction and Alteration of Improvements:

Change in Topography; Approval of Plans; Community Design Committee.

The right of an Owner of a Lot (including collectively or individually the Owners of Condominium Units on a Lot) to construct, reconstruct, refinish, alter or maintain any improvement on his Lot, or to install any utility line (wire or conduit) thereon, or to make any excavation, or to cut or

remove any trees from his Lot, or do any act which would affect the drainage thereof, shall (except for Declarant and Declarant's Nominees) be subject to all of the following:

(1) Any act mentioned in the previous paragraph of this Section 1(b) is absolutely prohibited unless and until the Owner of such Lot first obtains the approval thereof from the Committee, and otherwise complies with the following provisions of this paragraph; provided, however, that if any such act as mentioned in the previous paragraph of this Section 1(b) is deemed to be a "minor" improvement or alteration, as determined by the Committee, approval for such improvement or alteration shall be obtained only from the Committee, or its nominee; provided, further, that for purposes of this Article V a "minor" improvement or alteration shall be defined as any act to construct, reconstruct, refinish, alter or maintain any improvement on any Lot, or the installation of any utility line thereon, or any excavation, or to cut or remove any trees from any Lot, or any act which would affect the drainage thereon, having a total cost of less than TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00), which amount may from time to time be increased by the Committee; provided, however, that the term "minor" improvement shall not include the construction of any improvement on property designated for hotel or commercial use; and provided, further, that all other acts not deemed to be a "minor" improvement or alteration shall constitute a "major" improvement or alteration. The Association shall have the right to remove any improvement constructed, reconstructed, refinished, altered or maintained in

violation hereof and the Owner shall reimburse the Association for all expenses incurred in connection herewith.

(2) Any owner proposing to do a minor improvement or alteration shall apply to the Committee or its nominee for approval. The Owner shall submit for approval such preliminary or final plans and specifications or other materials as may be requested by Committee. All determinations made by Committee shall be final, binding and non-appealable.

(3) Any Owner proposing to do any major improvement or alteration shall apply to the Committee for approval as follows:

(A) The Owner shall submit to the Committee for approval such preliminary and final plans and specifications for the proposed work, including, but not limited to, the following, as the Committee may request:

(i) A plot plan of the Lot showing
(a) building space, (b) contour lines, (c) the location of all existing and/or proposed improvements, (d) the proposed drainage plan, (e) the location of all trees and vegetation which the Owner proposes to remove, (f) the location of all proposed utility installation, and (g) the design and location of the sewage facilities to serve said Lot;

(ii) Floor plans;

(iii) Drawings showing all elevations of structures;

(iv) Description of exterior materials and color, with samples;

(v) Preliminary drawings and preliminary construction specifications for all structures;

(vi) Working drawings and construction specifications of all structures;

(vii) Description of provisions for replanting trees and vegetation and for stabilizing slopes during and after construction;

(viii) The Owner's proposed construction schedule. The Committee may require that any such submission shall be accompanied by a reasonable inspection fee set by the Committee which may be changed from time to time but in an amount not less than \$100.00; provided, that, said amount may be reduced by the approval of the majority of all of the Voting Rights of the Association.

(B) If at any time the Committee shall determine that it would be in the best interests of the Mauna Lani Resort for such Owner to employ an architect to design any improvement involved in the proposed work, the Committee shall inform such Owner in writing of its determination, whereupon all plans and specifications designated by the Committee to be so prepared must be prepared by such an architect.

(C) The Committee shall approve the plans, drawings and specifications of any structure submitted to it only if the Committee finds that:

(i) The working plans and specifications of the proposed structure, on the property, conforms to these Mauna Lani Resort Restrictions; and

(ii) The proposed structure is aesthetically compatible with the physical site, the adjoining properties (in so finding, the Committee may consider whether the structure interferes with the views of adjoining properties and may determine to what extent to disregard such interference), or the environment of the Mauna Lani Resort;

(iii) Any setback requirements have been complied with; and

(iv) The proposed structure will be structurally sound if built according to the plans and specifications.

(D) Any application which has been neither approved or rejected within sixty (60) days from the date of complete submission thereof to the Committee shall be deemed approved twenty (20) days after the Committee receives notice from the Owner that he intends to proceed in accordance with the plans submitted unless the Committee acts within such twenty (20) day period.

(E) Owner may not rely upon the committee's approval of his preliminary plans and

specifications as submitted but only upon the Committee's approval of the Owner's final working plans and specifications.

(4) Upon receipt of the approval from the Committee, the Owner shall, as soon as practical, proceed with the commencement, and completion, of the work contemplated by the application, pursuant to the approved plans and specifications. If the Owner shall fail to commence the work within one (1) year from the date of approval, the approval shall be deemed revoked unless upon the written request of the Owner made to the Committee prior to the expiration of said one (1) year period, and upon a finding by the Committee that there has been no change in circumstances, the time for such commencement is extended in writing by the Committee. In any event, the Owner shall complete the construction of the foundation and all exterior surfaces (including the structure on his Lot) within twelve (12) months after commencing construction thereof, or such longer period as the Committee may approve in writing, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, scarcity of materials or other causes beyond the control of Owner. If the Owner fails to comply with this paragraph, the Committee shall notify the Association of such failure, and the Association at its option shall either complete the exterior of any structure in accordance with the approved plans or remove the structure, and the Owner shall reimburse the Association for all expenses incurred in connection therewith.

(5) Upon the Completion of any work for which approval of the Committee is required under this section, and within thirty (30) days thereafter the Committee, or its duly authorized representative, may inspect such work to determine whether it was done in substantial compliance with the approved application. If the Committee finds that such work was not done in substantial compliance with an approved application, it shall notify the Owner of such noncompliance within such thirty (30) day period and shall require the Owner to remedy such noncompliance within the period of time specified in such notice. If upon the expiration of such period of time specified by the Committee the Owner shall have failed to remedy such noncompliance, the Committee shall notify the Association of such failure, and the Association, at its option, shall have the right to remedy the noncompliance, and the Owner shall reimburse the Association for all expenses incurred in connection therewith. If for any reason the Committee fails to notify the Owner of any noncompliance within thirty (30) days after receipt of said notice of completion thereof from the Owner, the work shall be deemed to be in accordance with said approved application.

(6) Any denial of a proposed major improvement or alteration by the Committee may be subject to review and reconsideration by and at the sole discretion of the Mauna Lani Design Review Board. The Mauna Lani Design Review Board reserves the right to reverse such Committee's denial of a particular application for a major improvement or alteration.

(c) General Restrictions Applicable to Construction and Alteration of Improvements on Single Family Residential Lots.

(1) Such Lot shall be used only for single family residential purposes and no more than one house shall be constructed on any Single Family Residential Lot, except that a guest house or servants quarters meeting all requirements of all applicable laws in effect from time to time may be constructed on a Single Family Residential Lot upon obtaining approval of the Committee.

(2) No structure or improvement shall be constructed having a height of more than two (2) stories; provided, however, that the height of a structure or improvement may exceed two (2) stories if permissible by law and if the Committee determines that the proposed height is compatible with the physical site involved and adjoining properties (in so finding, the Committee may consider whether the structure interferes with the views of adjoining properties and may determine to what extent to disregard such interference).

(3) Each Single Family Residential Lot shall have off-the-road parking facilities for at least two (2) automobiles except as otherwise permitted by the Committee.

(4) No reflective finishes (other than glass) shall be used on exterior surfaces (other than surfaces of hardware fixtures) except as permitted by the Committee.

(5) There shall be no exterior lighting of any sort either installed or maintained, the light source

of which is visible from neighboring property, except as permitted by the Committee.

(d) General Restrictions Applicable to Construction and Alteration of Improvements on Multiple Family Residential Lots. (Applicable Only to Subdivisions Having Multiple Family Residential Lots.)

(1) All such restrictions shall be as set forth in the Supplemental Declaration applicable to any subdivision in the Mauna Lani Resort having any Commercial Lot therein.

(2) Each restriction set forth in Section 1(c)(4) and (5) of this Article with respect to Single Family Residential Lots shall be equally applicable to Multiple Family Residential Lots.

(e) General Restrictions Applicable to Construction and Alteration of Improvements on Commercial Lots or Hotel Sites. (Applicable Only to Subdivisions Having Commercial Lots or Hotel Sites). All such restrictions shall be as set forth in the Supplemental Declaration applicable to any subdivision in the Mauna Lani Resort having any Commercial Lot or Hotel therein.

(f) General Restrictions Applicable to Common Property.

(1) The use of Common Property shall at all times be subject to the rules, regulations and user charges, if any, prescribed by the Association from time to time, in the Association Rules or Bylaws.

(2) No improvement, excavation or other work which in any way alters any Common Property shall be made except in accordance with any rights reserved in any deed, lease or other instrument conveying the Common Property to the Association or upon approval of

sixty-six and two-thirds percent (66-2/3%) of all of the Voting Rights of the Association entitled to be cast for the year; provided that nothing herein shall prevent the repair or reconstruction of Common Property nor the relocation of easements for walkways, roadways or tramways.

(3) There shall be no use of Common Property which injures, erodes, or scars the Common Property or the vegetation thereon, or increases the cost of maintenance thereof, unless expressly permitted by the Association and, in any event, there shall be no use of a Common Property which causes unreasonable embarrassment, disturbance or annoyance to Owners in the enjoyment of their Lots or their Condominium Units.

(4) All of the restrictions contained in Section 1(a) of Article V, except subparagraphs (1), (2), (3), and (19) shall apply to the Common Property.

(g) Common Property: Construction and Alteration of Improvements, etc.

After the conveyance or lease of a Common Property to the Association by Declarant or Declarant's Nominees, no improvement, excavation or work which in any way alters such Common Property from its state on the date such Common Property is so conveyed, shall be made or done except upon strict compliance with the following provisions of this section:

(1) With the exception of the Association, or a public utility or governmental agency (by right of easement or lease), no person shall have the right to construct any improvement upon, or shall make or create any excavation or fill upon or shall change the drainage of, or shall destroy or remove any tree,

shrub, or other vegetation, from, or plant any tree, shrub or other vegetation upon any Common Property.

(2) If the Association, or any person or entity (with the exception of the Declarant or Declarant's Nominees, prior to the time that the Association has title to said Common Property), proposes to construct or reconstruct, or to refinish or alter the exterior of, any improvement located or to be located upon the Common Property, to make or create any excavation or fill, or to change the natural or existing drainage of surface waters, or to remove any trees, shrubs, or ground cover, or to plant any trees, shrubs, or ground cover upon a Common Property, it shall not do so until a permit has been obtained from the Committee. The Association, person or entity proposing to do such work shall submit to the Committee for approval two (2) sets of final plans and specifications for any such work in such form and containing such information as the Committee may require. The Committee shall not approve the plans and specifications submitted to it pursuant to this paragraph unless all of the following conditions have been satisfied.

(A) If the plans are to construct any new improvement, including any alteration of the exterior appearance of any existing improvement, upon a Common Property, the Committee finds that such improvement complies with the Mauna Lani Resort Restrictions; and

(B) That such improvement (i) is reasonably necessary for any utility installation serving any property within Mauna Lani Resort or any property to be annexed to the Mauna Lani Resort or any

property for which an easement has been reserved or granted by Declarant or Declarant's Nominees, or (ii) is desirable in order to provide or improve access to or to enhance the use and enjoyment of any such property or (iii) is desirable to protect or preserve any property within the Mauna Lani Resort; and

(C) The Committee finds that the proposed work does not detract from the value, desirability and attractiveness of the Mauna Lani Resort.

(3) Without approval of the Committee the Association may:

(A) Construct, reconstruct, replace or refinish any improvement or portion thereof upon Common Property in accordance with the plans for such improvement as they existed upon the Common Property when it was conveyed by Declarant or Declarant's Nominees;

(B) Take whatever temporary or emergency measures which may be necessary to prevent damage to any Common Property or injury to any person thereon.

(h) Damage and Destruction Affecting the Common Property.

If any portion of the Common Property is damaged or destroyed by fire or other casualty, then:

(1) If:

(A) The insurance proceeds initially offered or paid by the insurer do not exceed the sum of Twenty Thousand and No/100 Dollars

(\$20,000.00); provided, that, said amount may be changed by approval of a majority of all of the Voting Rights of the Association; and

(B) The cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than Twenty Thousand and No/100 Dollars (\$20,000.00); provided, that, said amount may be changed by approval of a majority of all of the Voting Rights of the Association; the insurance proceeds shall be paid to the Association, to be held and disbursed as hereinafter provided. The Association shall thereupon contract to repair or rebuild the damaged portions of the Common Property substantially in accordance with the original condition thereof. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Association shall levy a supplemental general assessment on all Owners to make up any deficiency which shall be levied in the proportion that the Owners share the general assessments provided for in Section 2 of Article IV hereof.

(2) If subparagraph (1) is inapplicable, then:

(A) All insurance proceeds shall be paid to an insurance trustee designated by the Board to be held for the benefit of the Owners as their respective interests shall appear;

(B) The Board shall obtain firm bids (including a performance bond premium) from two or more responsible contractors to rebuild the Common Property substantially in accordance with

its original condition. As soon as the Board has obtained bids, it shall call a special meeting of the Owners to consider the bids. At such meeting, the Owners may, upon affirmative vote of two-thirds (2/3) of all Voting Rights of the Association, elect to reject all such bids. Failure thus to reject all such bids shall authorize the Board to accept the bid it considers most favorable;

(C) If all such original bids are rejected, the Board may prepare and present to the Owners various alternative plans for repair and reconstruction. Before presenting any such plan to the Owners, however, the Board shall obtain approval of the Committee and obtain firm bids (including a performance bond premium) from two or more responsible contractors to perform the work of repair or reconstruction in accordance with each such plan. Such bids shall be considered at a meeting of the Owners subject to supplemental general assessment as soon as possible after they have been obtained. The Owners may, upon affirmative vote of two-thirds (2/3) of all Voting Rights of the Association present, elect to reject all of such bids or, upon affirmative vote of fifty percent (50%) of all of the Voting Rights of the Association, elect to reject all such bids involving a total cost exceeding the amount of available insurance proceeds by more than Twenty Thousand and no/100

Dollars (\$20,000.00). Failure thus to reject all such bids shall authorize the Board to accept the bid it considers most favorable;

(D) If a bid is acceptable, the Board shall levy a supplemental general assessment against the Owners in the proportion that the Owners share the general assessments provided for in Section 2 of Article IV hereof to make up any deficiency between the total insurance proceeds and the contract price for such repair or rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of mortgages, shall be paid to said insurance trustee to be used for such rebuilding. If any Owner shall fail to pay the supplemental general assessment within thirty (30) days after the levy thereof, the Board shall make up the deficiency by payment from the maintenance funds. Upon payment, the Board shall award the contract to the successful bidder;

(E) If no such bid is accepted within twelve (12) months from the date such damage or destruction occurs, then the Board shall use any insurance proceeds to demolish and remove all damaged or destroyed structures or improvements from the Common Property and level and landscape the sites thereof. If all of the said insurance proceeds are not required to perform this work, the excess not so required shall be deposited in the maintenance fund. If the insurance proceeds are not sufficient to accomplish such demolition and removal site finishing, then the Board shall

levy a supplemental general assessment against the Owners in the same proportions that the Owners share general assessments as provided for in Section 2 of Article IV hereof.

Section 2. Application of Land Use Restrictions. The provisions of Section 1 of this Article shall not apply to any improvement or structure constructed on any Lot or Common Property by Declarant or Declarant's Nominees prior to the time that such Lot or Common Property is conveyed by Declarant or Declarant's Nominee to an Owner other than Declarant or Declarant's Nominee.

Section 3. Enforcement of Land Use Restrictions. The Declarant or the Association shall have no duty under any circumstances to enforce compliance with the Restrictions. Failure of Declarant, the Association or any Owner to enforce any of the limitations, covenants, restrictions, easements or charges herein contained shall, in no event be deemed a waiver of the right to do so thereafter. The following persons shall have the right to exercise any remedy at law or in equity for the strict compliance with the Mauna Lani Resort Restrictions.

(a) Declarant, so long as it has any interest in the Annexation Property or in the Mauna Lani Resort or Declarant's Nominees.

(b) Any owner of a Lot or Condominium Unit within the Mauna Lani Resort area.

(c) The Board of Directors of the Mauna Lani Resort Association or the Board of Directors of any Secondary Association.

(d) If any person or entity brings an action for the enforcement of the Mauna Lani Resort Restrictions, such person or entity shall be entitled to reasonable attorneys' fees and costs if he or it prevails in such action.

Section 4. Community Design Committee; Mauna Lani
Design Review Board.

(a) Organization. A Community Design Committee is hereby created.

(1) The Committee shall consist of five (5) members. The following persons are hereby designated as the initial members of the Committee:

James R. Bell
Kenneth F. Brown
Harrell L. McCarty
Raymond H. Suefuji

In addition to the above named members, the Committee shall consist of the President of Mauna Lani Resort, Inc. or his nominee. Each of said persons shall hold his office until such time as he has resigned, has been removed, or his successor has been appointed.

(2) Except as provided for in paragraph (3) following, the right to appoint and remove all members of the Committee is reserved to and vested solely in the Declarant.

(3) After January 1, 1992, the Board shall appoint and designate a Residential Owner to serve on the Committee to represent the interests of the Residential Owners of the Association and shall replace one member of the Committee. After January 1, 2002, the Board shall appoint and designate another Residential Owner to serve as the second member of the Committee representing the interests of the Residential Owners of the Association. Said appointee shall replace one member of the Committee.

(4) The Committee may hire and engage the services of administrative personnel to assist the

Committee in carrying out its responsibilities and duties as set forth herein.

(b) 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 Committee Rules, and to perform such other related duties from time to time delegated to it by the Board.

(c) Committee: Meetings: Action: Compensation: Expenses. The Committee shall meet from time to time as necessary to perform its duties. The vote or written consent of a majority of all of the members of the Committee shall constitute an act by the Committee unless the unanimous decision of its members is otherwise required. The Committee shall keep and maintain a record of all action taken by it at such meetings or otherwise. Unless authorized by the Board, the members of the Committee shall not receive any compensation, but all members shall be entitled to reimbursement from the Association for reasonable expenses incurred in the performance of any Committee function. In any event, the Committee shall not be entitled to compensation or reimbursement from the Association so long as said Committee is appointed by Declarant under Section 4(a)(2) of this Article.

(d) Committee Rules. The Committee shall by vote have the exclusive power to adopt, amend and repeal rules and regulations, to be known as "Design Committee Rules" which interpret or implement the provisions of these Mauna Lani Resort Restrictions insofar as they relate to matters within the jurisdiction of the Committee. A copy of the Design Committee Rules, as they may from time to time be amended, shall be maintained with the records of the Association and shall be available for inspection by any Owner. The Design Committee Rules may from time to time establish setback

requirements, height limitations, landscaping requirements, structural requirements and restrictions on the minimum size and quality of structure permitted to be erected on Lots in Mauna Lani Resort and such requirements and restrictions need not be uniform. No such requirement or restriction shall apply to any structure constructed in accordance with plans and specifications previously approved by the Committee.

(e) Mauna Lani Design Review Board. The Mauna Lani Design Review Board shall be comprised of the Chairman and Vice Chairman of the Board of Directors of Mauna Lani Resort, Inc. and the Chairman of the Community Design Committee or their respective designees. The Mauna Lani Design Review Board, at its sole discretion, may reconsider any decision of the Committee which denies any major improvement or alteration proposal and may reverse the decision of the Committee.

(f) Nonwaiver. The approval by the Committee of any plans, drawings or specifications for any work done or proposed, or in connection with any other matter requiring the approval of the Committee under these Mauna Lani Resort Restrictions shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter.

(g) Variances. The Committee shall have the power to allow reasonable variances to the provisions of Section 1 of this Article in order to overcome practical difficulties and prevent unnecessary hardships, provided the following conditions are met:

- (1) A public hearing on the application for such variance is held by the Committee after giving ten (10) days prior written notice (A) to owners of

Property in the Mauna Lani Resort within a radius of one-half (1/2) mile of the subject property; and (B) to the Association; and

(2) The Committee finds that the variance will not be materially detrimental to other property in Mauna Lani Resort.

(h) Estoppel Certificate. Within thirty (30) days after written demand therefor is delivered to the Committee by any Owner and upon payment therewith to the Association of a reasonable fee from time to time to be fixed by the Association, the Committee shall record an estoppel certificate executed by any two (2) of its members certifying with respect to any property of said Owner, that as of the date thereof either (1) all improvements and other work made or done upon or within the property by the Owner, or otherwise, comply with the Mauna Lani Resort Restrictions, or (2) such improvements and/or work do not so comply in which event the certificate shall also (A) identify the noncomplying improvements and/or work, and (B) set forth the nature of such noncompliance. Any purchaser from the Owner or mortgagee or other encumbrancer shall be entitled to rely on said certificate with respect to the matter therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and any purchaser, mortgagee or other encumbrancer.

(i) Liability. Neither the Committee nor any member thereof or the Mauna Lani Design Review Board or any member thereof shall be liable to the Association, or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (1) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, whether or not defective, (2) the construction or performance of any work, whether or not pursuant to approved plans, drawings and

specifications, (3) the development or manner of development of any property within the Mauna Lani Resort Restrictions or (4) the execution and filing of an estoppel certificate, provided, however, that such member has acted in good faith.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 1. Amendment. Notwithstanding the rights reserved to the Declarant to modify, annex property to, or supplement the Mauna Lani Resort Restrictions with respect to land annexed to the Mauna Lani Resort which shall be subject to Section 5(d) of Article II, the Mauna Lani Resort Restrictions may, at any time, be repealed or amended, including an amendment to release any part, parts or all of the Annexation Property from the limitations, restrictions, covenants and conditions contained herein, as follows:

(a) By Declarant, or Declarant's Nominees, to effect any changes or amendments required by an administrative agency of any state, territory, possession or foreign country or other foreign jurisdiction as a condition precedent to marketing any portion of the Mauna Lani Resort therein; provided, however, that no such amendment shall be effective until Declarant or Declarant's Nominees have recorded a Certificate setting forth in full the amendment or amendments to the Mauna Lani Resort Restrictions so approved and specifying and identifying any portion or portions thereof repealed.

(b) By a majority vote of the Board and sixty-six and two-thirds percent (66 2/3%) of all Voting Rights of the Association and a bare majority of the votes of the Residential Owners, by written consent or at a meeting of the Association duly called, approving the proposed amendment or amendments or the repeal in whole or in part of the Declaration. The notice

of the meeting shall state that the purpose of the meeting is to consider the amendment or repeal of the Mauna Lani Resort Restrictions, giving the substance of any proposed amendments or indicating the provisions to be repealed, as the case may be; provided, however, that no such amendment shall be effective until the Secretary of the Association has recorded a certificate setting forth in full the amendment or amendments to the Mauna Lani Resort Restrictions so approved and specifically identifying any portion or portions thereof repealed, and certifying that said amendments or repealed portions have been approved by vote of the Owners pursuant to Section 1(b) of this Article. Provided further, that no such amendment shall be effective until the Board has received an opinion from Declarant's legal counsel to the effect that such amendment does not conflict with, contravene, improperly amend any of the terms, or is otherwise inconsistent with any public report, permit or similar authorization to sell, or application, received by or submitted by Declarant from or to any administrative agency of any state, territory, possession of the United States of America or foreign country.

Section 2. Audit. Any Secondary Association, Hotel or Commercial Entity may, at any reasonable time, and at their own expense, cause an audit or inspection to be made of the books and records of the Association and the Association shall furnish upon written request a copy of an audit of its books and records performed by a certified public accountant to such Secondary Association, Hotel or Commercial Entity within ninety (90) days after June 30th of each year.

Section 3. Attorneys' Fee. In any action brought by the Association to enforce the provisions hereof, whether legal or equitable, the Association shall be entitled to costs and a

reasonable attorneys' fee as fixed by the Court if it is the prevailing party to the action.

Section 4. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

Section 5. Interpretation. The provisions hereof shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the Mauna Lani Resort. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

Section 6. Original Subdivision and Development Work. Nothing herein contained shall be deemed to limit or restrict the right of Declarant, or Declarant's Nominees, their contractors, employees, materialmen or assigns from entering upon all or any portion of the Mauna Lani Resort for the purpose of conducting therein and thereon such work of subdivision, improvement, construction and development as Declarant or Declarant's Nominees may deem necessary or desirable; provided, however, that all such work shall be performed in accordance with the Development Plan and without cost or expense by any Owner other than Declarant or Declarant's Nominees, except in such instances where another Owner or Owners have expressly contracted for the performance of said work, or is otherwise responsible for such work pursuant to the provisions hereof.

Section 7. Easements to Governmental Agencies. Any easement (whether in fee, lease or otherwise) which may be granted by Declarant for any purpose to any governmental department, agency, or other governmental entity of the County

of Hawaii, the State of Hawaii, or the United States Government, may be granted free and clear of any and all requirements (including without limitation, of any use restrictions contained herein), under this Declaration of Covenants and Restrictions as Declarant and such governmental agency may require.

Section 8. Easements, Licenses or Permits for the Use of the Mauna Lani Resort Recreational Facilities and Amenities and for Access to Historic, Recreational and Scenic Areas

Required by Law. Any easements, licenses and/or permits for the use of or access to any and all recreational facilities and amenities and any and all historic, recreational and scenic sites and areas situated in or on the property subject to the Mauna Lani Resort Restrictions including, but not limited to, the golf courses, the tennis court areas, archaeological and historic preserves, shoreline areas, parks, open space areas, ponds and petroglyph areas, which may be granted by Declarant to individuals, persons, corporations and other entities, may be granted free and clear of any and all terms, covenants, conditions, restrictions or reservations contained herein as Declarant may desire, provided, however, that Declarant may not unilaterally allow said individuals, persons, corporations and other entities to use said recreational facilities and amenities which are common elements or limited common elements of the Secondary Associations and provided further, that nothing herein shall be deemed to exclude or substantially interfere with or hinder either (1) the Declarant's ability to conform to the requirements of the law pursuant to any government permit, approval, regulation, ordinance or statute or (2) the public's right of access to said historic, recreational and scenic sites and areas as may be required by law.

Section 9. Term. The term of this Declaration of Covenants and Restrictions shall be for a period of seventy-five (75) years from the date this Declaration is filed in the Bureau of Conveyances, State of Hawaii, or until the Declaration is terminated, whichever is sooner. If any of the privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then the provision herein creating such privilege or covenant or right shall, in any event, terminate upon the expiration of twenty-one (21) years after the death of the last survivor of the now living lawful descendants of John D. Waihee, Governor of the State of Hawaii,

Section 10. Declarant: Held Harmless. Owners and the Association shall hold Declarant harmless from any and all claims, damages, costs and expenses, including reasonable attorneys' fees, arising from the operation of the tennis court facilities, golf course(s) and driving range(s), golf club house(s) and restaurant(s), racquet club facilities, and beaches with regard to noise, lighting, traffic or odors which may emanate from or be engendered by such facilities or from such areas.

Section 11. Notices: Documents: Delivery. Any notice or any other document permitted or required by the Mauna Lani Resort Restrictions to be delivered may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered forty-eight (48) hours (or ninety-six (96) hours if mailed to destination outside of the United States) after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If

to the Association, at P. O. Box 4959, Kawaihae, Hawaii 96743-4959, if to an Owner, at the address from time to time given by such Owner to the Association for the purpose of service of such notice, or, if no such address has been so given, then at any Lot or Condominium Unit within the Mauna Lani Resort owned by the Owner; if to Declarant, at P. O. Box 4959, Kawaihae, Hawaii 96743-4959 if to a Declarant's Nominee, at the address from time to time given by such Nominee to the Association for the purpose of service of such notice, or, if no such address has been so given, in care of Declarant; provided, however, that any such address may be changed from time to time by any Owner or by Declarant or Declarant's Nominees, by notice in writing, delivered to the Association, or by the Association, by notice in writing delivered to all Owners. Notices to mortgagees shall be sent as aforesaid to the address furnished by such mortgagee to the Association. IN WITNESS WHEREOF, Declarant has executed this instrument this 0TH day of JANUARY 1987.

MAUNA LANI RESORT, INC.

By

Max Guk
Its PRESIDENT

By

L. H. Guk
Its SR. V.P.

0070m

DESCRIPTION

Being Lot 1-C, area 128.450 acres, as shown on Map 5, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1785 of Francis Hyde Ii Brown and being a portion of the land described in Transfer Certificate of Title No. 154,928 issued to Mauna Lani Resort, Inc.

Situate at Kalahuipuaa, Waimea, South Kohala, Hawaii.

EXHIBIT A

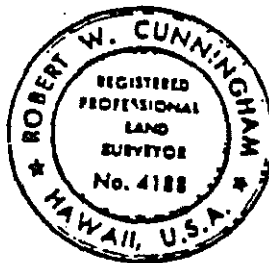
DESCRIPTION OF LOT 6

Being all of Lot 6 of Mauna Lani Resort-Phase I, area 11.289 acres, as shown on map filed in the Bureau of Conveyances of the State of Hawaii as File Plan 1729.

Situated at Kalahuipuaa and Waikoloa,
South Kohala, Island of Hawaii, Hawaii

Hawaii Building
745 Fort St., Suite 418
Honolulu, Hawaii

December 17, 1981



BELT, COLLINS & ASSOCIATES

Robert W. Cunningham
Registered Professional Surveyor
Certificate Number 4188

DESCRIPTION OF LOT 7

Being all of Lot 7 of Mauna Laní Resort-Phase I, area 1.388 acres, as shown on map filed in the Bureau of Conveyances of the State of Hawaii as File Plan 1729.

Situated at Kalahuipuaa and Waikoloa,
South Kohala, Island of Hawaii, Hawaii

Hawaii Building
745 Fort St., Suite 418
Honolulu, Hawaii

December 17, 1981



BELT, COLLINS & ASSOCIATES

Robert W. Cunningham
Registered Professional Surveyor
Certificate Number 4188

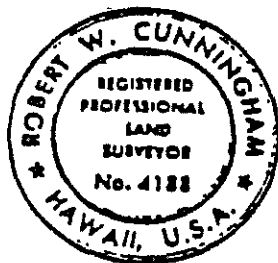
DESCRIPTION OF LOT 8

Being all of Lot 8 of Mauna Lanī Resort-Phase I, area 3.201 acres, as shown on map filed in the Bureau of Conveyances of the State of Hawaii as File Plan 1729.

Situated at Waikoloa,
South Kohala, Island of Hawaii, Hawaii

Hawaii Building
745 Fort St., Suite 418
Honolulu, Hawaii

December 17, 1981



BELT, COLLINS & ASSOCIATES

Robert W. Cunningham
Registered Professional Surveyor
Certificate Number 4188

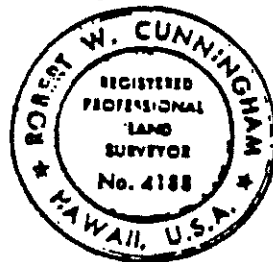
DESCRIPTION OF LOT 9

Being all of Lot 9 of Mauna Lani Resort-Phase I, area 5.753 acres, as shown on map filed in the Bureau of Conveyances of the State of Hawaii as File Plan 1729.

Situated at Waikoloa,
South Kohala, Island of Hawaii, Hawaii

Hawaii Building
745 Fort St., Suite 418
Honolulu, Hawaii

December 17, 1981



BELT, COLLINS & ASSOCIATES

Robert W. Cunningham
Registered Professional Surveyor
Certificate Number 4188

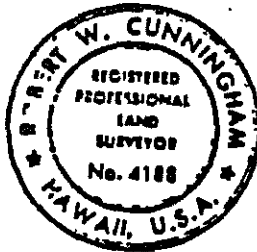
DESCRIPTION OF LOT 10

Being all of Lot 10 of Mauna Lani Resort-Phase I, gross area of 233.667 acres and net area of 232.936 acres after excluding and deducting Exclusion 2, as shown on map filed in the Bureau of Conveyances of the State of Hawaii as File Plan 1729.

Situated at Kalahuipuaa, Anaeoomalu and Waikoloa,
South Kohala, Island of Hawaii, Hawaii

Hawaii Building
745 Fort St., Suite 418
Honolulu, Hawaii

December 17, 1981



BELT, COLLINS & ASSOCIATES

Robert W. Cunningham
Registered Professional Surveyor
Certificate Number 4188

EXHIBIT A
6

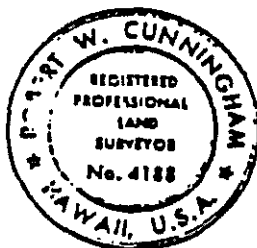
DESCRIPTION OF LOT 11

Being all of Lot 11 of Mauna Lani Resort-Phase I, area 20.902 acres, as shown on map filed in the Bureau of Conveyances of the State of Hawaii as File Plan 1729.

Situated at Waikoloa,
South Kohala, Island of Hawaii, Hawaii

Hawaii Building
745 Fort St., Suite 418
Honolulu, Hawaii

December 17, 1981



BELT, COLLINS & ASSOCIATES

Robert W. Cunningham
Registered Professional Surveyor
Certificate Number 4188

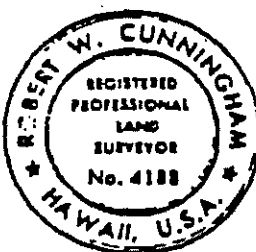
DESCRIPTION OF LOT 12

Being all of Lot 12 of Mauna Lani Resort-Phase J, area 96.489 acres, as shown on map filed in the Bureau of Conveyances of the State of Hawaii as File Plan 1729.

Situated at Kalahuipuaa and Waikoloa,
South Kohala, Island of Hawaii, Hawaii

Hawaii Building
745 Fort St., Suite 418
Honolulu, Hawaii.

December 17, 1981



BELT, COLLINS & ASSOCIATES

Robert W. Cunningham
Registered Professional Surveyor
Certificate Number 4188

DESCRIPTION

Being Lot 1-A, area 15.256 acres, as shown on Map 5, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1785 of Francis Hyde II Brown and being a portion of the land described in Transfer Certificate of Title No. 154,928 issued to Mauna Lani Resort, Inc.

Situate at Kalahuipuaa, Waimea, South Kohala, Hawaii.

EXHIBIT B

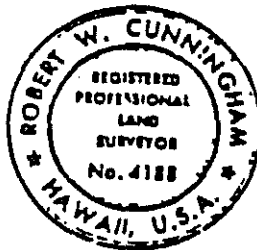
DESCRIPTION OF LOT 6

Being all of Lot 6 of Mauna Lani Resort-Phase I, area 11.289 acres, as shown on map filed in the Bureau of Conveyances of the State of Hawaii as File Plan 1729.

Situated at Kalahuipuaa and Waikoloa,
South Kohala, Island of Hawaii, Hawaii

Hawaii Building
745 Fort St., Suite 418
Honolulu, Hawaii

December 17, 1981



BELT, COLLINS & ASSOCIATES

Robert W. Cunningham
Registered Professional Surveyor
Certificate Number 4188

EXHIBIT B

DESCRIPTION

Being Lot 1-8, area 11.894 acres, as shown on Map 5, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1785 of Francis Hyde II Brown and being a portion of the land described in Transfer Certificate of Title No. 154,928 issued to Mauna Lani Resort, Inc.

Situate at Kalahuipuaa, Waimea, South Kohala, Hawaii.

EXHIBIT B

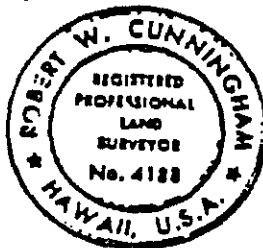
DESCRIPTION OF LOT 7

Being all of Lot 7 of Mauna Lani Resort-Phase I, area 1.388 acres, as shown on map filed in the Bureau of Conveyances of the State of Hawaii as File Plan 1729.

Situated at Kalahuipuaa and Waikoloa,
South Kohala, Island of Hawaii, Hawaii

Hawaii Building
745 Fort St., Suite 418
Honolulu, Hawaii

December 17, 1981



BELT, COLLINS & ASSOCIATES

Robert W. Cunningham
Registered Professional Surveyor
Certificate Number 4188

EXHIBIT B

DESCRIPTION

being all of Lot 3 of Mauna Lani Point, area 14.042 acres, as shown on map
filed in the Bureau of Conveyances of the State of Hawaii as File Plan 1856.

Situated at Kalahufpuaa and Anaehoomalu,
South Kohala, Island of Hawaii, Hawaii

EXHIBIT B

DESCRIPTION

Being all of Lot 14, area 3.741 acres, as shown on Map 7, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 1785 of Francis Hyde II Brown and being a portion of the land described in Transfer Certificate of Title No. 154,928 issued to Mauna Lani Resort, Inc.

Situated at Kalahuipuaa, Waimea, South Kohala,
Island of Hawaii, Hawaii

EXHIBIT B

(01/13/87) (Land Court)

<u>Project</u>	<u>Apartment Number</u>	<u>TCT** Number</u>
Mauna Lani Bay Hotel		285109*
		285110*
Mauna Lani Terrace	A 101	278498*
	A 102	257952*
	A 103	290760*
	A 104	256166*
	A 201	290687*
	A 202	255902*
	A 203	267188*
	A 204	288170*
	A 302	255903***
	A 303	258023*
	B 101	255904*
	B 102	255905*
	B 201	256163*
	B 202	288171*
	B 301	255971*
	B 302	255907***
	C 101	255908*
	C 102	262625*
	C 201	258457*
	C 202	263262*
	C 301	255909*
	C 302	282893*
	D 101	255911*
	D 102	259282***
	D 103	255945*
	D 201	256032*
	D 202	255912*
	D 203	256030*
	D 301	257800*
	D 302	255913***
	D 303	256031*
	E 101	255914*
	E 102	255915***
	E 201	255916*
	E 202	255944*
	E 301	256691*
	E 302	256162***
	F 101	255917***

* TCT is located at the Office of the Assistant Registrar of the Land Court in the Bureau of Conveyances of the State of Hawaii.

** TCT means Transfer Certificate of Title

*** Transfer Certificates of Title which are not being presented for notation.

F 102	255918*
F 201	255919*
F 202	255900*
F 301	255972*
F 302	266411*
G 101	256493*
G 102	256282*
G 201	255920*
G 202	255921*
G 301	255922*
G 302	255923*
H 101	268978*
H 102	256854*
H 103	256210***
H 201	288235*
H 202	283507*
H 203	257191*
H 301	255924*
H 302	260087*
H 303	284521*
J 101	256165*
J 102	257239*
J 103	154928*
J 104	260535*
J 201	266524*
J 202	261963*
J 203	265500*
J 204	274727*
J 302	256164*
J 303	256167***
K 101	256025*
K 102	255949*
K 201	269342*
K 202	255948*
K 301	258531*
K 302	259289***
L 101	259283*
L 102	255947*
L 201	256654*
L 202	256161*
L 301	278741*
L 302	255946*
Mauna Lani Point	
B 209	285606*
D 202	285607*
D 104	285608*
D 304	285609*
B 206	285610*
D 203	285611*
B 203	287642*
D 201	288785*
F 203	289244*
D 204	289417*
G 201	289846*

All other Mauna Lani Point condominium units are as yet unsold and are therefore noted on Transfer Certificate of Title No. 154,928.