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REGISTRAR OF CONVEYANCES

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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KAUAI LAGOONS

**DECLARATION OF COVENANTS CONDITIONS AND  
RESTRICTIONS FOR KAUAI LAGOONS**

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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KAUAI LAGOONS

This Declaration of Covenants, Conditions and Restrictions of Kauai Lagoons ("**Declaration**") is made by **KAUAI LAGOONS LLC**, a Hawaii limited liability company (in its capacity as land owner "**KLL**"), and **KAUAI LAGOONS COMMUNITY ASSOCIATION**, a Hawaii nonprofit corporation ("**Association**") with the joinder of **MORI GOLF (KAUAI), LLC**, a Delaware limited liability company ("**KLG**").

### RECITALS:

A. KLL and KLG are the owners of the real property described in Exhibit "A" (the "**Land**").

B. KLL is the "**Declarant**" to hold Declarant's Rights under this Declaration.

C. KLL, with the joinder of KLG, intends by this Declaration to impose upon Kauai Lagoons (as defined below) mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property within Kauai Lagoons.

D. KLL and KLG are willing to grant the Association certain easements, licenses and other rights over their respective properties as described below in consideration of the rights and privileges reserved to KLL under this Declaration.

E. KLL now declares that all of the real property described in Exhibit "A" shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions. All such provisions shall run with the real property subjected to this Declaration. This Declaration shall be binding on all parties having any right, title, or interest in Kauai Lagoons or any part of it, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of Kauai Lagoons to the extent provided in this Declaration.

### 1. **DEFINITIONS.**

1.1 "**Actual Points**". Defined in Exhibit "C".

1.2 "**Affiliate**". Any limited liability company, corporation, partnership or other entity that controls, is controlled by, or is under common control with a Person is an Affiliate of that Person.

1.3 "**Annexation Amendment**". An amendment to this Declaration that annexes additional property to Kauai Lagoons and makes it subject to this Declaration.

1.4 "**Approved Annexation Area**". The parcels of land shown on Exhibit "A-1", and any other land located on the Island of Kauai, which may be annexed to Kauai Lagoons by its owner, as provided in Section 7.

1.5 **"Area of Common Responsibility"**. The Common Area, together with those areas, if any, which become the responsibility of the Association, at the sole and absolute discretion of the Association, and by written contract with any other association, with any commercial establishment, any golf club, hotel, or with the owner of any apartment building or cooperative within Kauai Lagoons, or with the County of Kauai, State of Hawaii, United States government or other governmental entity, but only to extent provided in such contract. For example, if the Association agrees to perform landscaping services for an association's common property the Association will not by doing so assume other responsibilities for the landscaped area, such as insurance, unless the contract so provides, nor will the Members of the Association have the right to use the landscaped area unless the contract so provides.

1.6 **"Articles" or "Articles of Incorporation"**. The Articles of Incorporation of the Association filed with the Director of the Department of Commerce and Consumer Affairs for the State of Hawaii, as they may be amended from time to time.

1.7 **"Assessments"**. The assessments of the Association, described in Section 9, including General Assessments, District Assessments, Special Assessments, Limited Assessments and Service Assessments.

1.8 **"Association"**. Shall have the meaning given to it in the Preamble to this Declaration and shall include that Person and its successors and assigns. When any decision or action is described in this Declaration as taken by the Association, it shall mean the Association acting through the Board, unless otherwise specified, or acting through the managing agent if the decision or action is delegated to the managing agent by the Board. The use of the term "association" or "associations" in lower case shall refer to any residential, commercial, condominium, or other community association having jurisdiction over any part of Kauai Lagoons.

1.9 **"Beach Parks"**. The areas which the Land Use Requirements for Kauai Lagoons require the developer of Kauai Lagoons to construct. The Land Use Requirements further require the perpetual maintenance of the Beach Parks and this Declaration provides for that maintenance by the Association. The Beach Parks include all facilities and improvements for use by the public as required by the Land Use Requirements or granted by KLL and may include comfort stations, showers, recreational shelters, picnic areas, cart paths, walkways, sidewalks, railings, steps, ramps, landscaping, irrigation, retaining walls, lighting, signage, sewerage and other utilities. When the Beach Parks have been located by agreement with the County the Declarant may amend the Master Plan to show their locations.

1.10 **"Board of Directors" or "Board"**. The Board of Directors of the Association.

1.11 **"Bylaws"**. The Bylaws of the Association as they may be amended from time to time.

1.12 **"Class "A"'"**. The class of membership in the Association described in Section 3.2.1.

1.13 **"Class "B"'"**. The class of membership in the Association described in Section 3.2.2.

1.14 "**Common Area**". All real property which the Association now or later owns in fee or leasehold or otherwise holds, for example by easement, license or use agreement, whether exclusive or nonexclusive, for the common use and enjoyment of the Owners or for the operation of the Association. The initial portion of Common Area shall be conveyed, in fee simple, or by lease, grant of easement, license or use agreement to the Association prior to the conveyance of the first Resort Unit to a purchaser who is not an Affiliate of Declarant.

1.15 "**Common Expenses**". The actual and estimated expenses incurred or anticipated to be incurred by the Association in performing its responsibilities under this Declaration and the Bylaws, including operating expenses, other expenses found necessary or appropriate by the Board in accordance with this Declaration, the Bylaws and Articles, and reasonable reserves. Common Expenses shall not include any expenses incurred during Declarant's Control Period for initial development, original construction, installation of infrastructure, original capital improvements or other original capital construction costs, unless approved by the Delegates representing a majority of the total Class "A" vote of the Association.

1.16 "**Community-Wide Standard**". The standard of conduct, maintenance, or other activity generally prevailing throughout Kauai Lagoons and consistent with a first class, well-maintained mixed-use community. Such standard may be more specifically determined and set out by the Board and the Design Guidelines and shall apply to both undeveloped and developed Lots, but in the case of undeveloped Lots shall permit them to be maintained in their natural state and require only that they be kept reasonably free of debris and not allowed to become unsightly.

1.17 "**Conditions**". Defined in Section 17.2.

1.18 "**Consent**". Prior written consent unless otherwise specified. If a Consent is to a recorded document, the Consent shall also be recorded.

1.19 "**Construction**". The placing, erection or installation of any structure, including fences or walls, on any portion of Kauai Lagoons, or any construction or modification (which shall include staking, clearing, excavation, grading and other site work, exterior painting and other exterior changes and initial landscaping but not solely internal modifications).

1.20 "**Declarant's Rights**". All rights of Declarant granted or reserved by this Declaration or the Articles or Bylaws.

1.21 "**Declarant**". Declarant is KLL or any successor or assign who is designated as a successor Declarant in an instrument executed by the immediately preceding Declarant, or in the case of foreclosure or deed in lieu of foreclosure of a mortgage or security interest granted by Declarant, or a tax sale, judicial sale, or sale under the Bankruptcy Code, of Declarant's Rights, in accordance with Section 16.1.

1.22 "**Declarant's Control Period**". The period ending as specified in Section 3.2.2.

1.23 "**Declarant's Rights**". All rights of Declarant granted or reserved by this Declaration or the Articles or Bylaws.

1.24 **"Declaration"**. Shall have the meaning given to it in the preamble to this document, as such is amended or otherwise modified from time to time.

1.25 **"Delegate"**. The representative selected by the Owners of Units within each District in accordance with Section 3.3, who shall be responsible for casting all votes attributable to the Units which he or she represents on all matters requiring a vote of the membership, except as otherwise specifically provided in this Declaration, the Bylaws, or the Articles. The term "Delegate" shall also refer to the alternate Delegate acting in the absence of the Delegate and any Owner authorized personally to cast the vote for his or her respective Unit in accordance with Section 3.3.

1.26 **"Design Committee"**. The Design Committee established under Section 10.2.

1.27 **"Design Guidelines"**. The unrecorded detailed standards for maintenance and development of Units, including undeveloped Lots, within Kauai Lagoons, prepared by Architect's Hawaii and dated April 2005 and submitted to the County of Kauai together with the application for Special Management Area Use Permit that was issued as Special Management Area Use Permit SMA (U) 2005=8, as partially amended by the standards submitted to the County of Kauai together with the Application for Amendment to Special Management Area Use Permit SMA (U) 2005=8 and other permits. Specific buildings and developments in the Design Guidelines are subject to change. The Design Guidelines may be amended from time to time as provided in Section 10. Among other matters the Design Guidelines provide timetables for the improvement of the Parcels consistent with the Land Use Requirements.

1.28 **"District"**. Upon improvement each separately developed residential, commercial or resort area subject to this Declaration, whether or not governed by an association; for example, each condominium project, townhome community, single-family detached housing subdivision, commercial development, office complex, retail center, hotel, rental apartment complex, and golf course may constitute a separate District. Where the context permits or requires, the term District shall also refer to the owners association having jurisdiction over the particular District, or in the case of a wholly owned District, the Owner of it. District boundaries may be established and modified as provided in Section 3.3.

1.29 **"District Assessments"**. Assessments provided for in this Declaration or by any Subsequent Amendment to fund District Expenses.

1.30 **"District Expenses"**. The actual and estimated expenses incurred or anticipated by the Association for the primary benefit of the Owners and occupants of the Units within a particular District or Districts, all as may be specifically authorized from time to time by the District and the Board of Directors in accordance with this Declaration or any Subsequent Amendment.

1.31 **"Eligible Holders"**. Defined in Section 15.1.

1.32 **"General Assessment"**. Assessments levied on all Units subject to assessment under Section 9.2, to fund expenses for the general benefit of all Units, as more particularly described in Section 9.1.

1.33 **"Golf Course"**. Any portion of Kauai Lagoons designated as a golf course on the Master Plan, including any club house and related facilities such as parking lots, tennis courts, swimming pools, health clubs, and other facilities associated with the golf course. Where the context may require, the term shall also refer to the Owner of a Golf Course. The current Owner of the two golf courses currently shown on the Master Plan is KLG. KLG currently intends to reduce the number of golf holes at the Golf Course from thirty-six (36) holes to twenty-seven (27) holes.

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

1.35 **"HUD"**. Defined in Section 19.1.2(c).

1.36 **"Improvements"**. Defined in Exhibit "C".

1.37 **"include" or "including"**. These words mean "without limitation" unless otherwise specified..

1.38 **"Kauai Lagoons"**. The real property described in Exhibit "A", any additional property annexed to Kauai Lagoons, as well as any other real property which is owned by the Association but not real property withdrawn from Kauai Lagoons.

1.39 **"KLG"**. Defined in the preamble to this Declaration.

1.40 **"KLL"**. Defined in the preamble to this Declaration.

1.41 **"Land"**. Defined in Recital A to this Declaration.

1.42 **"Land Use Requirements"**. The requirements, conditions and limitations of the State of Hawaii land use designations, the County of Kauai zoning applicable to Kauai Lagoons and the land use permits, approvals and variances listed on Exhibit "D", as they may be amended from time to time, including the Special Management Area Permit described on Exhibit "D" and any future Special Management Area and zoning permits.

1.43 **"Lagoons"**. The artificial lagoons shown on the Master Plan. Except to the extent of any rights granted to the Association by the owners of the Lagoons, the Lagoons are a Private Amenity.

1.44 **"Liability Policy"**. Defined in Section 5.2.

1.45 **"Limited Common Area"**. A portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all Districts, as more particularly described in Section 2.2.

1.46 **"Limited Assessment"**. Assessments levied in accordance with Section 9.8 against a particular Unit or Units constituting less than all Units subject to assessment under Section 9.2.

1.47 "**Lot**". An area of land that has been Subdivided in accordance with the subdivision regulations of the County of Kauai. A Lot may be a single Unit or may contain several Units if it has been submitted to a condominium property regime or established as a cooperative project.

1.48 "**Master Plan**". The Master Plan attached as Exhibit "B" and described in Section 11.1 as it may be amended in accordance with Section 11.2. Any Parcel numbers referenced in this Declaration and its exhibits refer to the Parcel numbers as shown on the Master Plan, as it may be amended from time to time.

1.49 "**Member**". A Person entitled to membership in the Association, as provided in Section 3.1.

1.50 "**Minimum Points**". Defined in Exhibit "C".

1.51 "**Mortgage**". Any interest in real property subject to this Declaration which is given as security for repayment of a loan, as evidenced by a mortgage, a deed of trust, or a similar form of security instrument recorded in the Record Office.

1.52 "**Mortgagee**". A holder of a Mortgage.

1.53 "**Mortgagor**". The Person who gives a Mortgage.

1.54 "**Owner**". One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. In addition, if a Unit is sold under a recorded agreement of sale or leased for a term of thirty (30) years or more under a recorded lease, the purchaser or lessee, respectively (rather than the fee owner), will be considered the Owner if the agreement of sale or lease so provides and a copy of it is filed with the Secretary of the Association.

1.55 "**Parcel**". Each numbered parcel of real property shown on the Master Plan. A Parcel may include more than one Lot. The boundaries of a Parcel for purposes of this Declaration may not be changed without the Consent of the Declarant during the Declarant's Control Period or the Board afterwards.

1.56 "**Person**". A natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

1.57 "**Points**". Defined in Exhibit "C".

1.58 "**Private Amenity**". Any real property, including the improvements and facilities on it, located adjacent to, in the vicinity of, or within Kauai Lagoons, which is privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise. The term shall include the Golf Courses, initially the Lagoons, any marina and all related and supporting facilities and improvements.

1.59 "**Property Policy**". Defined in Section 5.1

- 1.60 "**Protected Person**". Defined in Section 17.1.
- 1.61 "**Record Office**". The Bureau of Conveyances of the State of Hawaii or the Office of the Assistant Registrar of the State of Hawaii, or both as applicable.
- 1.62 "**Residential/Resort Unit**". Any Unit that is not used for office, restaurant, spa, retail, marina, maintenance or other commercial purposes.
- 1.63 "**Roadway and Utility Easement Agreement**". The Roadway and Utility Easement Agreement dated January 30, 1991 recorded as Document No. 91-012273 and Land Court Document No. 1797886, as amended.
- 1.64 "**Section**". Unless otherwise stated section numbers refer to the sections of this Declaration.
- 1.65 "**Service Assessments**". Assessments levied in accordance with Section 9.9.
- 1.66 "**SFL**". Defined in Exhibit "C".
- 1.67 "**Special Assessment**". Assessments levied in accordance with Section 9.7.
- 1.68 "**Subdivision**" or "**Subdivided**". Final subdivision approval by the County of Kauai of a subdivision map and the recording in the Record Office of a File Plan, Land Court Map or metes and bounds descriptions of the lots created by the subdivision.
- 1.69 "**Subsequent Amendment**". An amendment to this Declaration, which may also be an Annexation Amendment, which imposes, expressly or by reference, additional restrictions and obligations on the real property described in it or reduces the restrictions and obligations on the real property described in it. No Subsequent Amendment shall impose additional restrictions or obligations on real property that is not owned by Declarant without the Consent of the Owner of such property. The term "Declaration" includes all Subsequent Amendments.
- 1.70 "**Transportation System**". A system of transportation over land, over the Lagoons or both as described in Section 14.
- 1.71 "**Trustee**". Means the Association's managing agent unless otherwise designated by the Association in which case the Trustee shall be a bank or trust company having a principal place of business in the State of Hawaii that is designated to hold and administer condemnation or insurance proceeds for the Association.
- 1.72 "**Unit**". A portion of Kauai Lagoons, whether improved or unimproved, for residential, resort or commercial use, capable of independent ownership and located on a Parcel shown on the Master Plan. The term shall refer to the land, if any, which is part of the Unit as well as any improvements on it. A subdivided Lot shall be a single Unit unless it is submitted to a condominium property regime under Chapter 514B Hawaii Revised Statutes (or any successor statute), in which case each condominium apartment shall be a Unit, or unless it is established as a cooperative housing project under Chapter 421I Hawaii Revised Statutes in which case each

cooperative apartment shall be a Unit. Lots such as roadway or drainage lots shall not be considered Units.

## **2. PROPERTY RIGHTS.**

2.1 **General.** Every Owner shall have a right and non-exclusive easement for use of, access to and enjoyment of the Common Area for its intended purposes, subject to:

2.1.1 All rights and restrictions set out in this Declaration and the Bylaws, as they may be amended;

2.1.2 Any restrictions or limitations contained in any deed, grant of easement or other document conveying such Common Area or an interest in the Common Area to the Association;

2.1.3 The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use particular portions of the Common Area (as well as any Areas of Common Responsibility in which Owners have a use right), provided such rules and regulations do not favor any one or more groups of Owners;

2.1.4 The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation of the Declaration, the Bylaws, or rules of the Association after notice and a hearing in accordance with the Bylaws;

2.1.5 The right of the Association, acting through the Board and with Declarant's Consent during Declarant's Control Period, to dedicate or transfer all or any part of the Common Area or any interest in it to any local, state or federal governmental or quasi-governmental entity or any utility;

2.1.6 The right of the Board, with Declarant's Consent during Declarant's Control Period, to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests and to charge or waive user fees to such persons;

2.1.7 The right of the Association, acting through the Board and with Declarant's Consent during Declarant's Control Period, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

2.1.8 The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Area" as more particularly described in Section 2.2.

Rights to use and enjoy the Common Area shall generally be appurtenant to the Units rather than personal rights so that the occupants of a Unit (such as a tenant) rather than its Owner will have those rights, unless otherwise permitted by the Board. Subject to that general rule any Owner may delegate his or her right of enjoyment to the members of his or her family,

tenants, business and social invitees subject to regulation by the Board and in accordance with procedures the Board may adopt.

2.2 **Limited Common Area.** Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of Units within a particular District or Districts. By way of illustration and not limitation, Limited Common Area may include entry features, recreational facilities, landscaped medians and cul-de-sacs, and other portions of the Common Area serving a particular District or Districts. All costs associated with maintenance, repair, replacement, and insurance of any Limited Common Area shall be assessed as a Limited Assessment against the Owners of Units in those Districts to which the Limited Common Area is assigned. Limited Common Areas under this Declaration are distinguished from common elements or limited common elements under condominium declarations or common areas under subdivision declarations.

2.2.1 Initially, any Limited Common Area shall be designated as such and the exclusive use of it shall be assigned in the deed or grant of easement by which the Declarant conveys the Common Area to the Association or on the subdivision map relating to such Common Area; provided, any such assignment shall not preclude the Declarant from later assigning use of the same Limited Common Area to additional Units and/or Districts during Declarant's Control Period. After Declarant's Control Period, a portion of the Common Area may be assigned as Limited Common Area of a particular District or Districts and Limited Common Area may be reassigned upon approval of the Board and the vote of Delegates representing a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the District(s) to which the Limited Common Area is assigned, if previously assigned, and within the District(s) to which the Limited Common Area is to be assigned or reassigned.

2.2.2 The Association may, upon approval of a majority of the Owners of Units of a District which has no District association, or the board of directors of the District association for the District(s) to which any Limited Common Area are assigned, permit Owners of Units in other Districts to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the District Expenses attributable to such Limited Common Area.

2.3 **Private Amenities.** Access to and use of any Private Amenity, including any Golf Course, is strictly subject to the rules and procedures of the Owner of such Private Amenity, and no Person gains any right to enter or use any Private Amenity solely by virtue of membership in the Association or solely by ownership or occupancy of a Unit.

2.3.1 All Persons, including all Owners, are advised that no representations or warranties have been or are made by the Declarant, the Association, any builder, or any Person acting on behalf of any of the foregoing, with regard to the initial construction or continuing ownership or operation of the current or future Private Amenities, as depicted on the Master Plan, any land use plan, marketing display, subdivision map or otherwise. No purported representation or warranty, written or oral, in regard to the Private Amenities shall be effective unless specifically set out in a written instrument executed by the record Owner of the Private Amenity.

2.3.2 The ownership or operation of any Private Amenity may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations by an independent Person, (b) establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of a Private Amenity or an entity owned or controlled by its members become the Owner(s) and/or operator(s) of the Private Amenity, (c) the conveyance of a Private Amenity to one or more Affiliates, employees, or independent contractors of the Declarant, or (d) the conveyance of a Private Amenity to the Association, with or without consideration and subject or not subject to any mortgage(s) or other lien(s) or encumbrance(s). No consent of the Association, any District association, any Delegate, or any Owner other than the Owner of the Private Amenity, shall be required to effectuate any change in ownership or operation of any Private Amenity. KLG may convey a Private Amenity to the Association without the Consent of the Board but shall require the Consent of Declarant during Declarant's Control Period. Any other Person may convey a Private Amenity to the Association only with the Consent of the Board, and the Consent of Declarant during Declarant's Control Period. A Private Amenity conveyed to the Association may be outside Kauai Lagoons provided it is within the Approved Annexation Area. To the extent of the conveyance to the Association, the Private Amenity shall cease to be a Private Amenity and become a Common Area, but subject to any reserved rights of the grantor; for example if the Declarant or KLG grants an easement to the Association over the Lagoons, the easement may be a nonexclusive easement in common with the grantor.

2.3.3 Rights to use the Private Amenities will be granted only to such Persons, and on such terms and conditions, as may be determined by their respective Owners. Such Owners shall have the right, from time to time in their sole and absolute discretion and without notice, but subject to any contracts pertaining to the Private Amenities, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether.

2.3.4 Limitations on the rights of an Owner of a Private Amenity under this Section 2.3 may be imposed only by a Subsequent Amendment with the Consent of the Owner of the Private Amenity or by written contract between the Owner of the Private Amenity and the Association.

### 3. **MEMBERSHIP AND VOTING RIGHTS.**

3.1 **Membership.** Every Owner shall be deemed to have a membership in the Association; however, there shall be only one membership per Unit. In the event the Owner of a Unit is more than one Person, all co-Owners shall be entitled to the privileges of membership, subject to the restrictions on voting set out in Section 3.2 and in the Bylaws. All such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners under this Declaration. The rights and privileges of membership may be exercised by a Member or, if the ownership is in an individual's name, by the Member's spouse with respect to use rights but not voting rights. The membership rights in the case of an Owner that is a corporation, partnership, or other legal entity shall be exercised by the individual designated in a written instrument filed with the Secretary of the Association from time to time or, in the absence of such designation, by the president, chief executive officer, general partner or manager of such entity.

3.2 **Voting.** The Association shall have two (2) classes of membership, Class "A" and Class "B" as follows:

3.2.1 **Class "A".** Class "A" Members shall be all Owners with the exception of the Class "B" Member, if any.

(a) Class "A" Members shall be entitled to a vote weighted in accordance with the formula set out in Exhibit "C" for each Unit in which they hold the interest required for membership by Section 3.1. As provided in Exhibit "C", votes shall be weighted by the number of "Points" allocated to a Unit based on the higher of the Minimum Points shown on the Master Plan for each Parcel and the Points allocated to the Parcel's land and actual improvements as provided in Exhibit "C". However, there shall be only one vote per Unit and there shall be no vote allocated to any property which is exempt from assessment under Section 9.14.

(b) Unless otherwise specified in this Declaration, the Articles or the Bylaws, the Delegate, representing the District of which the Unit is a part, shall exercise the votes for each Unit. The Delegate may cast all such votes as the Delegate, in the Delegate's discretion, deems appropriate. The constituent documents for an association may provide that the board of the association may direct the Delegate in the casting of votes, but the Association shall be under no duty to enquire whether the Delegate is complying with such directions and no duty to enforce such compliance.

(c) In any situation where a Member is entitled personally to exercise the vote for his Unit, and there is more than one co-Owner of the Unit, the vote for such Unit shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association prior to the vote. In the absence of such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

3.2.2 **Class "B".** The sole Class "B" Member shall be Declarant. The rights of the Class "B" Member, including the right to approve or withhold approval of actions proposed under this Declaration and the Bylaws, are specified elsewhere in this Declaration and the Bylaws. The Class "B" Member shall have three votes for every one vote that it would have if it were a Class "A" Member.

(a) Class "B" membership shall end when Declarant's Control Period ends unless Declarant earlier records an instrument terminating Class "B" membership.

When Class "B" membership ends, Declarant (if an Owner) shall become a Class "A" Member entitled to vote in accordance with the formula set out in Exhibit "C" for each Unit which it owns. At such time, the Declarant shall notify the Delegates in writing of the termination of Class "B" status.

(b) Declarant's Control Period shall end on the first to occur of the following:

(i) When Declarant no longer owns any Unit in Kauai Lagoons and has no further rights to annex property to Kauai Lagoons;

- (ii) January 1, 2050; or
- (iii) When Declarant records an instrument terminating Declarant's Control Period.

Declarant may terminate Declarant's Class "B" membership and waive one or more but less than all of Declarant's Rights without terminating Declarant's Control Period.

3.2.3 **Amendment of Exhibit "C"**. During Declarant's Control Period, Declarant may amend Exhibit "C" from time to time, whether or not in connection with an annexation or withdrawal of land, but shall not change the Minimum Points for a Unit that is not owned by Declarant without the Consent of the Owner of the Unit. The percentage of the total votes and assessments that a Unit represents may change because the total number of Points increases or decreases either because of an amendment of Exhibit "C" or development of Units in excess of the Minimum Points. Additional restrictions on Declarant's amendment right benefiting a particular District may be included in the special restrictions for that District which are part a Subsequent Amendment.

### 3.3 **Districts and Delegates.**

#### 3.3.1 **Districts.**

(a) Every Unit shall be located within a District though a District may consist of a single Unit. The Units within a particular District may be subject to additional covenants, and/or the Unit Owners may all be members of a District association in addition to the Association. The additional covenants may be included in a separate declaration of covenants for that District or may be added to this Declaration by a Subsequent Amendment. However, a District association shall not be required except in the case of a condominium or cooperative project or if otherwise as required by law.

(b) Any District may request, through its Delegate, that the Association provide a higher level of service or special services for the benefit of Units in such District and, upon Board approval, and Declarant's Consent during Declarant's Control Period, the Association shall provide the requested services. In requesting services the Delegate shall be directed by the association board, unless otherwise provided in the association's governing documents. The cost of such services, which may include a reasonable administrative charge, shall be assessed against the Units within such District as a District Assessment in accordance with Section 9.6.

(c) Each Parcel shall initially constitute a separate District, subject to subdivision into more than one District as provided below. During Declarant's Control Period, the Declarant may redesignate District boundaries by providing written notice to the Association indicating the boundaries of each District; or by amending the Master Plan in accordance with Section 11.2.1, provided, two or more existing Districts shall not be combined nor a District divided, without the Consent of Owners of a majority of the Units in the affected Districts, unless otherwise provided in the condominium, subdivision or other declarations of covenants governing the affected Districts.

(d) The Owners of a majority of the Units within any District may at any time petition the Board of Directors through its Delegate to divide the property comprising the District into two or more Districts. Such petition shall be in writing and shall include a survey of the entire Parcel that indicates the proposed boundaries of the new Districts or otherwise identifies the Units to be included within the proposed Districts. Such petition shall be deemed granted sixty (60) days following the filing of all required documents with the Board unless the Board of Directors denies such application in writing within such sixty (60) day period. The Board may deny an application only upon determination that there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Districts. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect. During Declarant's Control Period the application shall also require the Consent of Declarant.

### 3.3.2 **Delegates.**

(a) Each District shall elect (or appoint) a Delegate who shall be responsible for casting all votes attributable to Units owned by Class "A" Members in the District on all Association matters requiring a membership vote, except as otherwise specified in this Declaration or the Bylaws. In addition, each District shall elect (or appoint) an alternate Delegate who shall be responsible for casting such votes in the absence of the Delegate.

(b) In the case of a District in which all of the property is under common ownership, the Owner may designate in writing to the Board the individuals who shall serve as the Delegate and alternate Delegate, respectively, for such District, and no ballot or meeting shall be required. Such individuals may be removed and replaced in the Owner's discretion upon written notice to the Board. In the case of a District in which the Owner is developing improvements on the Unit for resale in the ordinary course of such person's business, the Owner's designees shall serve until the election provided in Section 3.3.2(c).

(c) Except as otherwise set forth in Section 3.3.2(b), The Board shall call for the first election of a Delegate from a District not later than one year after the conveyance of a Unit in the District to a Person other than Declarant or a Person constructing improvements on the Unit for resale in the ordinary course of such person's business. Subsequent elections shall be held at least once in each calendar year except that if the first election is on or after July 1 of a calendar year, then the second election may be held in the next calendar year or the one following. Each Class "A" Member who owns a Unit within the District shall be entitled to cast the weighted vote allocated to such Unit in accordance with Exhibit "C" for the election of the Delegate. First the Delegate shall be elected and the candidate who receives the greatest number of votes for Delegate shall be elected as Delegate, then the alternate Delegate shall be elected and the candidate receiving the greatest number of votes for alternate Delegate shall be elected as the alternate Delegate. The Delegate and the alternate Delegate shall each serve a term of one year and until their respective successors are elected.

(d) If a District has an association, Delegates and alternate Delegates shall be members of the board of that association. The Delegate and alternate Delegate from each District shall be elected on an annual basis, either by written ballot or at a meeting of the Class "A" Members within such District, as the Board determines; provided, upon written

petition signed by Class "A" Members holding at least 10% of the Class "A" votes within a District, the election for such District shall be held at a meeting. The presence, in person or by proxy, of Class "A" Members representing at least 15% of the total Class "A" votes in the District shall constitute a quorum at any District meeting for selecting a Delegate. Notwithstanding the foregoing, after Class "B" membership ends, Declarant may exercise any of its Class "A" votes directly, unless and until Declarant or such Member gives written notice to the Association that this right is waived.

(e) Any Delegate or alternate Delegate may be removed, with or without cause, upon the vote or written petition of Owners of a majority of the Class "A" votes in the District that the Delegate represents.

3.4 **Association Articles and Bylaws.** The Articles and Bylaws shall be consistent with the provisions of this Declaration and shall include the following.

3.4.1 The Class "A" and Class "B" memberships and voting allocations.

3.4.2 The Delegate system of voting.

3.4.3 That any amendment to the Articles or Bylaws during Declarant's Control Period shall require Declarant's Consent.

3.4.4 That during Declarant's Control Period, Declarant shall appoint and replace all Directors, unless and to the extent Declarant gives written notice to the Association that Declarant permits the Class "A" Delegates to elect one or more Directors.

3.4.5 Except for Directors appointed by Declarant, every Director shall be an officer or director of a District association or an Owner in a District that has no association.

#### 4. **MAINTENANCE.**

##### 4.1 **Association's Responsibility.**

4.1.1 The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as provided below. The Area of Common Responsibility may include, but need not be limited to:

(a) all landscaping and other flora, structures and improvements situated upon the Area of Common Responsibility;

(b) the Lagoons and the facilities described in Section 13.3,

(c) the Beach Parks;

(d) all improvements and landscaping within the rights-of-way or landscaping lots or easements adjacent to rights-of-way, or any private streets held by the Association as Common Area;

(e) improvements and landscaping located within the median strips or border strips of public road rights-of-way (if any) within Kauai Lagoons, including street trees located on them, to the extent required by agreements with the County of Kauai;

(f) any facilities leased by the Association as support for its activities, including office space and staging areas for landscaping and other activities;

(g) utility equipment and facilities including conduits, pipes, wires and other transmission facilities not owned by the utility provider, and sewer force mains;

(h) bikeways and pedestrian ways;

(i) all or portions of the "Utility Corridors" defined in the Roadway and Utility Easement Agreement;

(j) drainage channels and swales within Kauai Lagoons;

(k) the main entry signs to Kauai Lagoons and welcome facilities at or near the entrance and any associated camera system or other equipment;

(l) a central check-in facility for Owners and occupants of Units;

(m) any and all areas required for ongoing operations of the Association;

(n) the waste management system for Kauai Lagoons, exclusive of the waste management systems of the individual Parcels;

(o) all roads within the Area of Common Responsibility; and

(p) all utilities located within the Area of Common Responsibility.

4.1.2 The Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of Declarant during Declarant's Control Period. Additionally, any portion of the Area of Common Responsibility that becomes the responsibility of the Association by contract or agreement with the County of Kauai may not be reduced by amendment of this Declaration or any other means except with the prior written approval of the County of Kauai.

4.1.3 The Association may maintain other property which it does not own, including property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. During Declarant's Control Period, Declarant's Consent shall be required, before such maintenance decision becomes effective. After Declarant's Control Period the vote of the Board necessary to make such a determination shall be at least seventy-five percent (75%) of the Board members.

4.1.4 The Association shall also be responsible for maintenance, repair and replacement of property within any District to the extent so provided in any Subsequent

Amendment applicable to the District. The Association may, in the discretion of its Board, also assume the maintenance responsibilities imposed on any District by this Declaration or any Subsequent Amendment, or in any declaration subsequently recorded. This assumption of responsibility may take place either by contract or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs incurred by the Association in accordance with this paragraph shall be assessed only against those Districts or Units to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

4.1.5 Except as otherwise specifically provided in this Declaration, all costs incurred by the Association in carrying out its responsibilities under this Section shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek contribution or reimbursement from the Owner(s) or other Person(s) responsible for portions of the Area of Common Responsibility in accordance with this Declaration, other recorded covenants, or agreements with the Owner(s) of the Units.

4.2 **Owner's Responsibility.** In accordance with this Declaration and any additional declaration which may be filed on portions of Kauai Lagoons, the performance and cost of all repairs to and maintenance of a Unit and all structures, driveways, parking areas, and other improvements comprising a Unit, including sidewalks and irrigation systems in any landscaped area within the Unit, shall be the sole responsibility of the Unit Owner, except to the extent that such responsibility is expressly delegated to and undertaken by the Association or another association, or by the District of which the Unit is a part.

4.3 **District's Responsibility.** In accordance with this Declaration, and any additional declaration which may be filed on portions of Kauai Lagoons, the performance and cost of all repairs to and maintenance of the common areas or common elements of any District (as distinguished from Common Area) including driveways, sidewalks and irrigation systems in any landscaped area on the common areas or common elements and landscaping between the sidewalk and the curb line of any adjacent public or common area right-of-way, shall be the sole responsibility of such District, except to the extent that such responsibility is expressly assigned to the Owners of Units within the District by the declaration, if any, applicable only to the District or is reserved to the Association under this Declaration or any subsequent declaration.

#### 4.4 **Standard of Performance.**

4.4.1 The term "maintenance," as used in this Section, shall include the obligation to maintain, repair and replace as necessary. Maintenance of an undeveloped Lot or undeveloped portion of a Lot shall include establishing or maintaining grass or other ground cover permitted by the Design Guidelines, keeping it in attractive condition and preventing the development of areas of bare earth or dust conditions. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants and Governmental Regulations. All Owners and Districts shall pay all utility charges, water and sewer rates, garbage rates, and other charges, assessments, and applicable fees of every description attributable to their respective properties before such charges are overdue.

4.4.2 Notwithstanding anything to the contrary contained in this Declaration, the Association, an Owner and/or a District may be held liable for damage or injury occurring on, or arising out of the condition of, property which it does not own only to the extent that it has been negligent or guilty of willful misconduct in the performance of its maintenance responsibilities under this Declaration.

4.4.3 If any Owner or District fails to properly perform its responsibilities under this Section 4, the Association or the Declarant may do so and assess the Owner or District for the costs of performance in accordance with Section 9. However, except when entry is required due to an emergency situation, the Owner or District responsible shall be given at least thirty (30) days' written notice and an opportunity to cure the problem prior to entry.

## 5. **INSURANCE AND CASUALTY LOSSES. INSURANCE AND RESTORATION.**

5.1 **Property Insurance.** The Association, acting through the Board or its managing agent, except where this Section 5.1 says otherwise, shall procure, purchase, and at all times maintain physical damage insurance, which shall be written by financially sound companies of recognized responsibility to cover the Area of Common Responsibility (excluding land, excavation and foundation costs), including fixtures and equipment on the Area of Common Responsibility. The Association shall have the authority to and interest in insuring any privately or publicly owned property to the extent that the Association has contractually assumed the insurance responsibility and responsibility for maintenance, repair and/or replacement in the event of a casualty including any insurable improvements on or related to the Beach Parks, Lagoons, rights-of-way, medians, easements, and walkways. The physical damage insurance policy ("**Property Policy**"):

5.1.1 shall contain such varying deductibles and uninsured retentions for different risks as the Board and the Association's managing agent shall deem prudent under the circumstances;

5.1.2 shall provide that all buildings, improvements including furniture, fixtures and equipment of the Area of Common Responsibility must be insured in an amount equal to 100% replacement cost, exclusive of land, foundation and excavation costs, and all other items normally excluded from such coverage. All property of the Association shall be insured for its current replacement cost, as determined from time to time by the Board, or the Board may obtain an appraisal from a recognized engineering firm. The Property Policy shall include all perils normally covered by the standard ISO special cause of loss form providing for risk of direct physical loss, and more commonly called "all risk" subject to limitations and exclusions, where such is available, including coverage for sprinkler leakage, sprinkler damage and water damage. To the extent they are available and reasonably affordable, the Board shall have the discretion to purchase coverages to afford protection against such other risks in reasonable amounts, including flood as indicated in Section 5.3, windstorm, earthquake, terrorism, law and ordinance, and such other exposures as from time to time may be covered with respect to buildings, improvements including furniture, fixtures and equipment similar in construction, location and use to the buildings of the Area of Common Responsibility, as may from time to time be required by law or be deemed by the Board of Directors to be necessary, proper, and in the best interests of the Association as a whole;

5.1.3 shall include the cost of demolition and debris removal;

5.1.4 if the buildings of the Area of Common Responsibility have central heating or cooling or the contain a steam boiler, shall include a broad form policy of repair and replacement steam boiler and machinery insurance (or endorsement) in reasonable amounts; and

5.1.5 shall provide that the named insured, if purchased by the Association, or the additional insured, if purchased by the managing agent or other entity, will be the Association individually, and as agent for the Owners collectively, without naming them, and as agent for their respective Mortgagees.

The Association has the authority to amend this Declaration, without regard to any requirement for Mortgagee approval of amendments affecting insurance requirements, if any, to conform the Declaration to the coverage requirements of Hawaii law.

5.2 **Commercial General Liability Insurance.** The Association, acting through the Board or the managing agent, shall procure and maintain from a reputable company or companies a policy or policies (the "**Liability Policy**") of public liability insurance to insure the Association, the Board, the officers, and the managing agent and employees of the Association against liabilities arising out of the management, maintenance or use of the Areas of Common Responsibility and any other areas under the control of the Association, against claims for personal injury, death and property damage arising at the Areas of Common Responsibility or out of activities thereon under a Comprehensive General Liability form to include contractual liability. Premiums, deductibles, uninsured retentions and any co-insurance amounts shall be Common Expenses allocated among Owners in proportion to their respective Points or as otherwise determined by the Board in its business judgment. The Liability Policy:

5.2.1 shall provide that the Liability Policy may not be cancelled or reduced except by giving the named insured thirty (30) days' written notice of such cancellation or such reduction (except for non-payment of premium which shall require ten (10) days' written notice);

5.2.2 shall contain minimum limits of not less than TWENTY MILLION DOLLARS (\$20,000,000.00) for injury to one or more persons in any one accident or occurrence or for property damage, or such higher limits as the Board may from time to time establish with due regard to then prevailing prudent business practice;

5.2.3 shall contain a "severability of interest" endorsement;

5.2.4 to the extent available at commercially reasonable rates and terms and if required by the Association or managing agent, shall provide "worldwide defense and indemnity" against claims for bodily injury, death or property damage; and

5.2.5 shall provide that the named insured, if purchased by the Association, or the additional insured, if purchased by the managing agent or other entity, will be the Association individually and as agent for the owners collectively, without naming them, and as agent for their respective mortgagees.

5.3 **Flood Insurance and Insurance Against Additional Risks.** If the Area of Common Responsibility is located in an identified flood hazard area as designated by the Federal Department of Housing and Urban Development, the Association shall procure, purchase and at all times maintain flood insurance under the provisions of the federal Flood Disaster Protection Act of 1973 in an amount equal to at least the lesser of one hundred percent (100%) of the insurable value of the Area of Common Responsibility or the maximum coverage available under the appropriate National Flood Insurance Administration program. The Association may also procure insurance against such additional risks as the Association may deem advisable for the protection of the Association of a character normally carried with respect to properties of comparable character and use in the State of Hawaii.

5.4 **Miscellaneous Insurance Provisions.** The Association, acting through the Board or the managing agent, shall use its best efforts to obtain and maintain all insurance required under this Section 5, as well as such other insurance as may be carried as the Board determines from time to time to be desirable, as required by law or as customarily required by the managing agent, including marine hull and liability or protection and indemnity, workers' compensation, fidelity insurance or directors and officers liability insurance. The coverage customarily called "Marine Liability/Protection and Indemnity (P&I)" shall provide third-party marine liability coverage for seamen or third-party passengers in an amount not less than FIVE MILLION DOLLARS (\$5,000,000) or such greater amount as determined by the Board or managing agent in the event the vessel is designed to hold more than 12 passengers. The Board shall review not less frequently than annually the adequacy of its insurance program. The Board may cause, as part of the budget process, a reserve account to be established to pay the amount of deductibles, self-insured retentions or uninsured losses, if any, on insurance policies purchased by the Association. In computing the reserve account the Board may use any expected life calculation that it deems reasonable. Premiums, deductibles, uninsured retentions, and any co-insurance amounts shall be Common Expenses included in the General Assessments, District Assessments, Limited Assessments or Special Assessments as determined by the Board.

5.5 **Insurance Company and Amounts.** Unless otherwise approved by the Board, any primary insurance policies required pursuant to this Section 5 shall be issued by a financially responsible insurance company(ies) with a rating of A-, VII or better by The A.M. Best Company, or their equivalent if the rating system changes. During the term of the Declaration the insurance industry may change, among other things, the scope of coverage afforded by the various policies of insurance named in this Declaration or the nomenclature by which the scope of coverages contemplated under the various policies of insurance named in this Declaration are known in the insurance industry. In the event of such or similar change, it is the intent of this Declaration and the obligation of the Association at all times during the term of this Declaration to maintain the scope of insurance coverage afforded at the date of this Declaration by the forms of the various policies of insurance named in this Declaration, to the extent that maintaining the same is reasonably or commercially practicable, regardless of the nomenclature by which such scope of coverages may be or become known in the insurance industry.

All insurance coverage amounts or types required pursuant to this Section 5 shall be reviewed and adjusted by the Board for increases recommended by insurance industry recommended standards for similar properties, located on Kauai, State of Hawaii similar in construction type, location and use or if there are none on Kauai then in the State of Hawaii.

5.6 **Damage and Destruction.** If the buildings of the Area of Common Responsibility are damaged by fire or other casualty which is insured against by the Association the Board shall determine whether to repair or rebuild the damaged property, or to demolish it with the consent of Declarant within Declarants' Control Period:

5.6.1 The Board shall contract to demolish the damaged property, or to repair or rebuild the damaged portions of the building or buildings, in accordance with their plans and specifications which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board and by the Design Committee under the procedures established in accordance with Section 10. The insurance proceeds shall be paid by the Trustee to the contractor employed for such work, in accordance with the terms of the contract for such construction and in accordance with the terms of this Section 5.6 . If the insurance proceeds are insufficient to pay all the costs of demolishing, repairing and/or rebuilding the Common Area improvements or for any uninsured costs, the Board is expressly authorized to pay such costs in excess of the insurance proceeds from the reserves and, if such funds are insufficient for this purpose, the Board shall levy a Special Assessment, District Assessment or Limited Assessment as determined by the Board.

5.6.2 The cost of the work shall be paid out from time to time or at the direction of the Board as the work progresses, but subject to the following conditions:

(a) An architect, engineer, general contractor or other licensed industry professional (who may be an employee of the Association or its managing agent) shall be in charge of the work to the extent necessary.

(b) Each request for payment shall be made on seven (7) days' prior written notice to the Trustee and to the extent necessary shall be accompanied: (i) by a certificate to be made by such architect or engineer stating that all of the work completed has been done in compliance with the approved plans and specifications and that the sum requested is justly required to reimburse the Board for payments by the Board to, or is justly due to, the contractor, subcontractors, material men, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services and materials), and that when added to all sums previously paid out by the Trustee the sum requested does not exceed the value of the work done to the date of such certificate; (ii) by waivers of liens satisfactory to the Trustee, covering that part of the work for which payment or reimbursement is being requested; (iii) by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Trustee, that there has not been recorded with respect to the premises any mechanics' or other lien or instrument for the retention of title in respect of any part of the work not discharged of record; and (iv) with respect to any request for any payment made after the work has been completed, a copy of any certificate or certificates required by law to render occupancy of the premises legal.

(c) The fees and expenses of the Trustee, mutually agreed upon by the Board and the Trustee shall be paid by the Association as Common Expenses, and such fees and expenses may be deducted from any proceeds at any time in the hands of the Trustee.

(d) Such other conditions not inconsistent with the foregoing as the Trustee may reasonably request.

5.6.3 Upon the completion of the work repair, rebuilding or demolition as the case may be, and payment for it in full, any remaining proceeds of insurance then or later in the hands of the Board or the Trustee shall be retained by and for the benefit of the Association and placed in a capital improvements account.

5.6.4 To the extent that any loss, damage or destruction to the building(s) or other property is covered by insurance procured by the Association, or should be covered under the provisions of this Section 5, the Association shall have no claim or cause of action for such loss, damage or destruction against any Owner or lessee. To the extent that any loss, damage or destruction to the property of any Owner or lessee is covered by insurance procured by such Owner or lessee, or should be covered under the provisions of this Section 5, such Owner or lessee shall have no claim or cause of action for such loss, damage or destruction against the Board, the Association's managing agent, any other Unit Owner, or the Association. All policies of insurance referred to in this Section 5.6.4 shall contain appropriate waivers of subrogation. Although this Section 5.6.4 does not bar claims for certain uninsured losses, it is not intended to create any such claim that would not otherwise exist. All policies of insurance referred to in this Section 5 shall contain appropriate waivers of subrogation.

5.7 **Insurance Required of Owners.** All Owners shall be required to procure the insurance described in their respective association documents, if any. The Association shall not be responsible, for any claims, losses, injuries or damages that result from the negligent acts or omissions of the Owners, their agents, invitees or guests that occur on the Areas of Common Responsibility or for claims, losses, injuries or damages, that occur within the Owner's Unit whether or not the Unit is at that time being used, occupied or rented by the Owner.

5.8 **Indemnification.** Each Owner shall indemnify, defend and save harmless the Declarant, and the Association, as well as their respective officers, directors, employees, members, agents and representatives from any and all claims and demands, including claims for property damage, bodily injury, personal injury, or wrongful death, having to do with (a) the use or occupancy of the Owner's Unit, or which may arise from or in connection with the act or omission of the Owner or the Owner's partners, agents or employees, (b) any accident or fire on the Owner's Unit, (c) any nuisance arising out of the Owner's Unit, (d) any failure of the Owner to maintain the Owner's Unit in a safe condition or otherwise as required in this Declaration, (e) any failure by Owner to observe and comply with this Declaration, or (f) any failure by Owner to observe and comply with any Governmental Regulations or Land Use Requirements. The only exclusion from this indemnity shall be claims that are determined, in a final nonappealable decision of a court of competent jurisdiction to have been caused solely and directly by the gross negligence or willful misconduct of the Person who would otherwise be entitled to this indemnity. This indemnity shall include all costs and expenses, including reasonable attorneys' fees, which would be paid or incurred by the Declarant and the Association in connection with any such claims, including all costs of defense, research regarding settlement, and other preventive measures that the Declarant and the Association may take prior to the filing of such action or to attempt to prevent the filing of such action. The Association may, in appropriate cases, assume the responsibility of this indemnification. The indemnification

requirements set out in this Section 5.8 shall not be limited by the insurance requirements set out in this Section 5.

6. **CONDEMNATION.** Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Association with the Consent of the Declarant during Declarant's Control Period) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of it. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows. (a) If the taking involves a portion of the Common Area on which improvements have been constructed, except for a roadway which has been taken for roadway purposes, then the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available in accordance with plans approved by the Board of Directors, unless within sixty (60) days after such taking the Declarant, during Declarant's Control Period, and the Board shall otherwise agree. If such improvements are to be repaired or restored, the above provisions in Section 5 regarding the disbursement of funds for repair of casualty damage or destruction shall apply. (b) If the taking does not involve any improvements on the Common Area, or if the Association makes a decision in accordance with this Section 6 to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors shall determine.

7. **ANNEXATION AND WITHDRAWAL OF PROPERTY.**

7.1 **Annexation of Property.**

7.1.1 Declarant during Declarant's Control Period, shall have the unilateral right, privilege, and option, from time to time at any time, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the Approved Annexation Area. Such annexation shall be accomplished by recording with the Record Office an Annexation Amendment describing such property and amending the Master Plan to add such property. Such Annexation Amendment shall not require the Consent of Delegates, but shall require the Consent of the Owner or lessee of such property, if other than Declarant, and the Consent of any Mortgagee of such property.

7.1.2 Any such annexation shall be effective upon the filing for record of such Annexation Amendment unless otherwise provided in the Annexation Amendment. Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex additional property which is reserved to Declarant in this Declaration, provided that such transferee or assignee shall be the developer of at least a portion of the Land that such transfer is memorialized in a written instrument executed by Declarant and recorded in the Record Office.

7.2 **Withdrawal of Property.** Declarant reserves the right during Declarant's Control Period to amend this Declaration unilaterally at any time, without prior notice and without the consent of any Person other than the Owner and any Mortgagee of the property to be withdrawn (if not the Declarant), for the purpose of removing certain portions of Kauai Lagoons from the provisions of this Declaration as a result of any changes whatsoever in the plans for Kauai Lagoons desired to be effected by the Declarant.

## 8. **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION.**

8.1 **Area of Common Responsibility.** The Association, subject to the rights of the Owners set out in this Declaration, shall be responsible for the exclusive management and control of the Common Area and, to the extent applicable, any other Area of Common Responsibility and all improvements on them (including related furnishings and equipment and personal property of the Association used in connection with the Area of Common Responsibility), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, in accordance with this Declaration and the Bylaws and consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

8.2 **Personal Property and Real Property for Common Use.** The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant and its designees may convey to the Association additional real property, improved or unimproved, or any interest in real property, located within Kauai Lagoons, including any lot, easement or condominium apartment, which, upon conveyance or dedication to the Association, the Association shall accept and then shall maintain at its expense for the benefit of its Members, subject to any restrictions or limitations set out in the instrument of conveyance. For example, the conveyance of a roadway lot may require the Association to dedicate the roadway lot to the County of Kauai upon request of the Declarant or the conveyance of a roadway easement may be subject to cancellation upon dedication of the underlying roadway to the County of Kauai. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold or other property interests within Kauai Lagoons that the Declarant may convey to it in "as is" condition, with all defects whether open or hidden, as of the date of conveyance.

8.3 **Land Use Requirements.** The Association shall comply with all Land Use Requirements that apply (a) to Kauai Lagoons generally, as distinguished from Land Use Requirements specific to a Parcel or District, and (b) to the Area of Common Responsibility. If such Land Use Requirements require the construction of improvements, such as the comfort stations for the Beach Parks, the initial construction of the improvements shall not be the responsibility of the Association but the ongoing maintenance, repair and replacement of such improvements shall be the responsibility of the Association.

8.4 **Roadway and Utility Easement Agreement.** To the extent that any obligation under the Roadway and Utility Easement Agreement applies to a Common Area or an Area of Common Responsibility or to a utility used by more than one District, the Association shall assume that obligation. If such obligations require the construction of improvements, such as a roadway, the initial construction of the improvements shall not be the responsibility of the Association but the ongoing maintenance, repair and replacement of such improvements shall be the responsibility of the Association.

8.5 **Landscaping.** The Association shall install, maintain and replace the landscaping in the Area of Common Responsibility. The Association shall also provide landscaping services to the Districts upon request of a District for such services and acceptance by the Association as

provided in Section 3.3.1(b). Further, the Association may, at its sole discretion, also provide landscaping services to a District, without the request or consent of a District, if the Association believes, in its sole discretion, that the District is not maintaining its landscaping to the Community-Wide Standard. The Association may levy a District for any funds expended by the Association in order to bring the District's landscaping up to the Community-Wide Standard, as provided in Section 9.7.3.

8.6 **Enforcement.** The Association, through its Board, may impose sanctions for violations of this Declaration, any Annexation Amendment or Subsequent Amendment, the Bylaws, or Association rules in accordance with procedures set out in the Bylaws, which sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use any recreational facilities within the Common Area. In addition, the Association may exercise self-help to cure violations and may suspend any services it provides to the Unit of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The costs of self-help shall include an overhead fee of ten percent (10%) in addition to out of pocket costs. All remedies set out in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails it shall be entitled to recover all costs, including attorneys fees and court costs, reasonably incurred in such action from the Owner responsible for the violation. The Board shall have the power to seek relief in any court for violations or to abate nuisances. In addition, the Association, through the Board, may, by contract or other agreement, enforce county ordinances and permit the County of Kauai to enforce ordinances on Kauai Lagoons for the benefit of the Association and its Members.

8.7 **Implied Rights; Board Authority.** The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it in this Declaration or the Bylaws or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Articles or the Bylaws, the Board may exercise all rights and powers of the Association without a vote of the membership.

8.8 **Powers of Association With Respect to Districts.** The Association shall have the power, without obligation, to enforce any provisions benefiting the Association or its Members contained in any other covenants affecting Kauai Lagoons.

## 9. **ASSESSMENTS.**

### 9.1 **Creation of Assessments.**

9.1.1 There are created by this Declaration assessments for Association expenses, as from time to time may be specifically authorized by the Board, to be commenced at the time and in the manner set out in Section 9.2. There shall be five types of assessments:

(a) General Assessments, which are allocated among all Units subject to assessment under Section 9.2, except as otherwise provided in Section 9.4;

(b) District Assessments, as described in Section 9.6;

- (c) Special Assessments, as described in Section 9.7;
- (d) Limited Assessments, as described in Section 9.8; and
- (e) Service Assessments, as described in Section 9.9.

9.1.2 Each Owner, by acceptance of the instrument by which he becomes an Owner, is deemed to covenant and agree to pay all of the assessments described in this Section 9, as applicable. All such assessments, together with:

- (a) late charges in the amount of Twenty (\$20.00) Dollars or ten percent (10%) of the amount past due, whichever is greater;
- (b) interest at a rate equal to two (2) percentage points above the prime interest rate charged by First Hawaiian Bank (but not to exceed the highest rate allowed by law) as computed from the date the delinquency first occurs; and
- (c) costs, and reasonable attorneys' fees;

shall be a continuing lien upon the Unit against which the assessment is made. If First Hawaiian Bank no longer operates or no longer states a prime rate, then the Board shall choose a similar index rate.

9.1.3 Each such assessment, together with interest, costs, late charges, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for such portion of the amount due as may be due and payable at the time of conveyance. However, no first Mortgagee or third party that obtains title to a Unit in accordance with the remedies provided in a Mortgage, the lien of which has priority over assessments under Section 9.12, shall be liable for unpaid assessments which accrued prior to such acquisition of title.

9.1.4 All assessments shall be paid in such manner and on such dates as may be fixed by the Board, which may include acceleration of any annual assessments for delinquents. The General Assessment and District Assessment shall be annual assessments which, unless the Board otherwise provides, shall be payable in an annual payment. After notice and hearing, the Board may temporarily suspend the vote attributable to the Unit of any Owner who is in default in payment of any assessment.

9.1.5 The following rules shall apply to District associations and sub-associations.

- (a) Except as provided in Section 9.1.5(b), in the case of any District governed by a District association, the District association shall be jointly and severally obligated with the Owners of Units in the District subject to its jurisdiction for all assessments levied against such Units. Each District association shall include in its common expense budget, and shall be responsible for collecting and paying to the Association, the total amount of all assessments levied by the Association against the Units within such District. To the extent

permitted by applicable law, such amount shall have first priority for payment out of the income of the District association. The obligation of each District association for the collection and payment of assessments to the Association shall be enforceable by the Association. The Association may bring suit against any District association to collect delinquent assessments, in addition to any other rights or remedies it may have under this Declaration or at law or in equity. The Association may not, however, enforce its lien against any Unit for which the Owner has paid to the District association the Unit's assessments in full, whether or not the other Owners of Units in the District have paid. The obligation of each District association to collect and pay such assessments to the Association in accordance with this Section 9.1.5 shall not relieve any Owner of liability for its pro rata share of any amounts not paid by the District association.

(b) If a District has an association but also has one or more sub-associations, for example a condominium project that has a vacation owner's association governing certain units in the condominium and a residence owner's association governing other units in the condominium, then the association that is subject to the obligations of Section 9.1.5(b) shall be the sub-association and not the District association. However, if some units in the District are not governed by a sub-association then the District association will still be liable for those units not governed by a sub-association but only those units will be liable for the District association assessments which pass through the Association assessments.

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

9.1.7 The Association is specifically authorized to enter into subsidy contracts with Declarant or other entities for the payment of some portion of the Common Expenses or District Expenses. Such subsidy contracts may be limited to subsidies for certain types of Units or certain Districts. For example, the Association and the Declarant may agree that Declarant will subsidize the assessments of Residential/Resort Units only, or to a greater degree than commercial Units, or that Declarant will subsidize a certain District or Districts only, or to a greater degree than other Districts.

9.2 **Date of Commencement of Assessments.** The obligation to pay assessments provided for in this Declaration shall commence, as to each Unit, on the first day of the month following the earlier of:

9.2.1 the date of recording an instrument in the Bureau by which the first Person other than the Declarant or one of Declarant's Affiliates becomes the Owner of the Unit, or

9.2.2 the date upon which a temporary or permanent certificate of occupancy is issued for structures on the Unit, or if the Unit is of a type for which a certificate of occupancy is not issued then the date of its substantial completion.

The first annual assessments levied on each Unit shall be adjusted according to the number of months remaining in the Association's fiscal year at the time assessments commence on such Unit.

9.3 **Budget.** It shall be the duty of the Board, at least ninety (90) days before the beginning of each fiscal year, to prepare and approve a budget covering the estimated costs of operating the Association during the coming year. During Declarant's Control Period, Declarant shall have the right to approve the budget. The budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and shall separately list expenses for general purposes and for District purposes, identifying the District(s) to which they apply. The Board shall cause a copy of the budget and notice of the amount of the assessments to be levied against each Unit for the following year to be delivered to the Owner at least thirty (30) days and, in the case of a District governed by a District association, delivered to the District association, at least seventy-five (75) days, in each case prior to the beginning of the Association's fiscal year. However, in the event that the Board fails for any reason to determine the budget for any fiscal year, then the most recent budget in effect shall remain in effect until such time as a new budget shall have been determined by the Board and, if required, approved by Declarant.

9.4 **Declarant's Obligation for Assessments.** Notwithstanding anything in this Declaration to the contrary, Declarant shall annually elect in writing to the Association at least one hundred and twenty (120) days prior to the end of the fiscal year either of the following alternatives as a method of paying its share of Association expenses, in lieu of paying assessments to the Association for each of its Units during such fiscal year:

9.4.1 **Option One** pay the assessments for each unsold Unit subject to assessment under **Section 9.2**, or

9.4.2 **Option Two** pay to the Association in the form of a subsidy, the difference between (i) the amount of the actual expenditures required to operate the Association for the year and (ii) the amount levied on all Units, other than those owned by Declarant, under **Section 9.5**.

9.4.3 Payment under **Option One** or **Option Two** shall constitute full payment of all assessments owed by Declarant under this Declaration. In the absence of any written election by Declarant, Option Two shall apply.

9.5 **Computation of Assessments.** The General Assessments shall be allocated, using the formula set out in **Exhibit "C"**, among all Units subject to assessment under **Section 9.2**. By accepting conveyance of a Unit in Kauai Lagoons, each Owner acknowledges that the limited share of General Assessments attributed to the Golf Course is in consideration of KLG's granting of easements and use rights over its land and Lagoons for the benefit of the Association.

9.6 **District Assessments.** The Board shall levy District Assessments against the Units within a particular District to cover the costs, including overhead and administrative costs (such as management costs, liability insurance, etc.), of providing those benefits, items, or services to the District that are requested by the District and provided by the Association in

accordance with Section 3.3.1(b). District Assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the District.

#### 9.7 **Special Assessments.**

9.7.1 In addition to the other assessments authorized in this Section 9, the Association, acting through the Board, may levy a Special Assessment from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment may be levied against the entire membership if such Special Assessment is for Common Expenses or against the Units within any District if such Special Assessment is for District Expenses. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

9.7.2 The Association, acting through the Board, may also levy a Special Assessment against any Unit to reimburse the Association for costs (i) incurred in bringing such Unit into compliance with the provisions of the Declaration, the Articles, the Bylaws, the Design Guidelines, the Land Use Requirements, or the Association rules, or (ii) incurred as a consequence of the conduct of the Owner or occupant of the Unit, or their contractors, employees, licensees, invitees, or guests. Special Assessments levied under this Section 9.7.2 may be levied upon the vote of the Board after written notice to the Owner specifying the nature of the noncompliance and giving the Owner thirty (30) days in which to comply. If the Owner fails to comply within the time period provided, the Board shall serve written notice of the amount of the proposed Special Assessment and the right to a hearing upon request. The decision of the Board after the hearing, if requested, shall be final.

9.7.3 The Association may also levy a Special Assessment against any District to reimburse the Association for costs incurred in bringing the District into compliance with the provisions of the Declaration, the Articles, the Bylaws, the Design Guidelines, the Land Use Requirements, or the Association rules, which Special Assessment may be levied upon the vote of the Board after written notice to the Delegate representing the District and an opportunity for a hearing. The decision of the Board after the hearing, if requested, shall be final.

9.8 **Limited Assessments.** The Board shall have the power to levy Limited Assessments against a particular Unit or Units constituting less than all Units within Kauai Lagoons or within a District to cover the costs, including overhead and administrative costs (such as management costs, liability insurance, etc.), of providing benefits, items, or services to the Unit or occupants of it upon request of the Owner in accordance with a menu of special services that the Board may from time to time authorize to be offered to Owners (which might include landscape maintenance, pest control, etc.). Limited Assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner.

## 9.9 **Service Assessments.**

9.9.1 The Board shall have the power to levy Service Assessments for the provision of services, such as shuttle services, that the Board determines are used or likely to be used by some Districts more intensively than others. Service Assessments shall be segregated from the General Assessments and allocated based on actual or projected usage. For example, if the Association provides a transportation system with a shuttle service, the Board may determine to have shuttle service more often for time share projects than residential subdivisions and therefore allocate a larger share of the total shuttle service expenses to such time share projects.

9.9.2 The Board shall also have the power to levy Service Assessments for the provision of irrigation water, potable water and any other utility that is not directly billed by a third party service provider.

## 9.10 **Lien for Assessments.**

9.10.1 The Association shall have a lien against the property of each Owner within Kauai Lagoons to secure payment of delinquent assessments against such property, as well as interest, late charges (subject to the limitations of Hawaii law), and costs (including attorneys fees). The Association may file a notice of lien with the Record Office. However, filing a notice of lien shall not affect the priority of the assessment lien, which shall be perfected as of the date of recording this Declaration, subject to the priorities of Section 9.12. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages are foreclosed under Hawaii law.

9.10.2 The Association shall have the power to bid for the property subject to such lien at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which such property is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be assessed or levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share (computed in accordance with Exhibit "C") of the assessment that would have been charged such foreclosed property had it not been acquired by the Association as a result of foreclosure.

Suit to recover a money judgment for unpaid assessments and other charges authorized hereunder shall be maintainable without foreclosing or waiving the lien securing the same.

9.11 **Reserve Budget and Capital Contribution.** The Board shall annually prepare a reserve budget which takes into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The budget shall separately list assets maintained by General Assessments and by District Assessments. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the reserve budget, with respect both to amount and timing by annual General Assessments or District Assessments, as appropriate, over the period of the budget. The capital contribution shall be included within the operating budget and levied as a General Assessment or District

Assessment, as appropriate, in accordance with Section 9.3. A copy of the reserve budget shall be distributed to each Owner or District association in the same manner as the operating budget.

9.12 **Subordination of the Lien to First and Certain Second Mortgages.** The Association's lien for assessments shall be prior and superior to all other liens, except the lien of (a) all taxes, bonds, assessments, and other levies which by law would be superior and (b) (i) any first Mortgage (meaning any Mortgage with first priority over other Mortgages) held by an institutional lender made in good faith and for value or (ii) any first or second Mortgage (meaning any Mortgage with first or second priority over other Mortgages) held by Declarant, or any Affiliate of Declarant providing purchase money financing, made in good faith and for value. The sale or transfer of any property shall not affect the assessment lien. However, the sale or transfer of any property, in accordance with judicial or nonjudicial foreclosure or by conveyance in lieu of foreclosure, of a Mortgage to which the lien is subordinate in accordance with this Section 9.12 shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer and in such event, neither the Mortgagee of such Mortgage nor its successors and assigns nor any purchaser upon foreclosure shall be liable for the share of the Common Expenses or assessments by the Association chargeable to such property that became due prior to the acquisition of title to such property by such acquirer. Such unpaid assessments shall be deemed to be Common Expenses collectible from the Owners of all Units subject to assessment, including such acquirer, his successors and assigns. No sale or transfer, including transfer to a receiver or trustee in bankruptcy, shall relieve such property from lien rights for any assessments later becoming due.

9.13 **Capitalization of Association.** The first Owner of each Unit other than Declarant or a Person who takes title solely for the purposes of construction of a structure on it for resale in the ordinary course of such Person's business, shall make a one-time contribution to the capital of the Association upon becoming the Owner in an amount equal to two (2) monthly installments of the annual General Assessment for that type of Unit for that year. This amount shall be in addition to, and not in lieu of, the General Assessments due for such Unit and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed to the Association for use in covering operating expenses and other expenses incurred by the Association in accordance with this Declaration and the Bylaws.

9.14 **Exempt Property.** The following property shall be exempt from payment of Assessments:

9.14.1 all Common Area;

9.14.2 all property dedicated to and accepted by any governmental authority or public utility, including public schools, public streets, and public parks;

9.14.3 any property owned by a District association for the common use and enjoyment of its members, or owned by the members of a District association as tenants-in-common; and

9.14.4 the Beach Parks and, subject to Section 13.1, the Lagoons.

9.15 **Failure to Assess.** The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay annual assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

## 10. **ARCHITECTURAL STANDARDS.**

### 10.1 **General.**

10.1.1 Any Construction shall take place in strict compliance with this Section 10 until the requirements of this Section 10 have been fully met, and until the approval of the Design Committee has been obtained as provided below. However, the Board may by resolution exempt certain activities from the application and approval requirements of this Section 10, provided such activities are undertaken in strict compliance with such resolution.

10.1.2 The members of the Design Committee established under this Section 10 need not be Members of the Association and may, but need not, include architects, engineers or similar professionals whose compensation, if any, shall be established from time to time by the Board.

10.1.3 The Declarant, or the Board on behalf of the Association, shall have the authority and standing to enforce in courts of competent jurisdiction decisions of the Design Committee.

10.1.4 The approval procedure in this Section 10 shall be in addition to and not in derogation from any approval procedure under any declaration governing a District or portion of a District, such as approvals by a condominium association's board of directors.

10.1.5 This Section 10 shall not apply to Construction by Developer or its Affiliates.

### 10.2 **Design Guidelines and Design Committee.**

10.2.1 Construction shall take place in strict conformity with the Design Guidelines.

10.2.2 The Design Committee shall have jurisdiction over all Construction on any portion of Kauai Lagoons. The initial Design Guidelines are those presented to the County of Kauai in connection with the Land Use Requirements. The Design Committee may amend the Design Guidelines, with Declarant's Consent during Declarant's Control Period, provided that no such amendment shall cause the Design Guidelines to be in conflict with the Land Use Requirements. The Design Committee shall make the application and review procedures available to Owners, builders, and developers who seek to engage in Construction on all or any portion of Kauai Lagoons and such Owners, builders and developers shall conduct their operations strictly in accordance with such procedures and this Declaration.

10.2.3 No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications, or for tee or green placement or any other operational issues affecting use of the Golf Course. Nothing contained in this Section 10 shall be construed to limit the right of an Owner to remodel the interior or to paint the interior of structures on its Unit any color desired, so long as such remodeling or painting (i) does not affect the structural integrity of the building in which the Unit is located, or (ii) does not adversely affect any utilities or other systems that serve other Units or other parts of Kauai Lagoons, or (iii) is not visible in any way from outside the Unit.

10.2.4 No Consent or approval of the Design Committee shall be deemed given unless given in writing.

10.2.5 The Design Committee may assess a reasonable fee to the applicant for its services. In addition, all costs of review by architects, engineers or other professionals at the request of the Design Committee shall be charged to the applicant, including the costs associated with any request for a waiver. The Person requesting such approval or review shall pay all costs and expenses incurred by the Design Committee, in connection with approvals and review required under this Declaration. The Design Committee may require such fees and charges, including an estimated amount for costs and expenses to be paid in full prior to the review of any application, with actual costs and expenses in excess of the estimate to be billed to and promptly paid by the applicant.

10.2.6 During Declarant's Control Period, the Declarant retains the right to appoint and remove all members of the Design Committee, which may have a single member and not more than five (5) members. Declarant may appoint its employees or officers or employees or officers of Declarant's Affiliates, as members of the Design Committee. There shall be no surrender of Declarant's right to appoint and remove members of the Design Committee during Declarant's Control Period, except in a recorded instrument executed by the Declarant. Upon the expiration of such right, the Board shall appoint the members of the Design Committee, who shall serve at the discretion of the Board. Each member shall hold office until such time as such member has resigned, has been removed, or a successor has been appointed.

10.3 **No Waiver of Future Approvals.** The approval of the Design Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and Consent of the Design Committee, shall not be deemed to constitute a waiver of any right to withhold approval or Consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or Consent.

10.4 **Variance.** The Board may authorize variances from compliance with the Design Guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require, but only in accordance with its duly adopted application and review procedures. No variance shall (i) be effective unless in writing, (ii) be contrary to the restrictions set out in the body of this Declaration, or (iii) prevent the Design Committee or the Board from denying a variance in other circumstances.

10.5 **Delegation of Authority.** The Design Committee shall have the right to appoint one or more sub-committees with such responsibilities and decision-making authority (including the authority to review and approve plans, specifications and other items submitted by Owners for Design Committee approval under this Declaration), as may be delegated to such sub-committees by the Design Committee, and shall have the right to retain professionals and other consultants upon such terms and conditions as may be determined by the Design Committee; provided, however, that any compensation payable to such professionals or consultants shall be subject to the approval of the Board, unless charged to the applicant.

10.6 **Limitation of Liability.** None of the Association, the Board, the Design Committee, Declarant, Declarant's Affiliates or any of their respective members, employees, agents, or consultants, shall be responsible in any way for ensuring the structural integrity or soundness of approved Construction, nor for ensuring compliance with Governmental Regulations, nor for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, including the provisions concerning variances, nor for defects in any work done according to such plans and specifications. No review or approval by the Design Committee of any item submitted to the Design Committee in accordance with this Declaration shall in any manner constitute the Design Committee's (or any Design Committee member's), Declarant's, Declarant's Affiliates, the Board's or the Association's representation, warranty or agreement that such item (a) has been prepared free of defects or is of good workmanship or design, or will result in improvements which are readily marketable or free of design or construction defects, or (b) complies with any or all Governmental Regulations or the Land Use Requirements, or (c) will result in any governmental agency's or any other Person's approval of the same. None of the Design Committee (or any Design Committee member), Declarant, Declarant's Affiliates, the Association, the Board, or any member, director, officer, agent, employee or representative of any of them, shall be liable to any Owner or any other Person for any damage, loss or prejudice suffered or claimed on account of (i) the Design Committee's (or any Design Committee member's) mistake in judgment or negligence, (ii) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, or other request or item, whether or not defective, (iii) the approval or rejection of any variance request, (iv) the construction of any improvement or performance of any work, whether or not such construction or performance complies with this Declaration or the terms of any approval of the Design Committee, (v) the manner, appearance, style or quality in which any Parcel or Unit is developed, improved, landscaped, maintained or operated, (vi) the erroneous execution of an estoppel certificate, (vii) the failure of any plan, drawing, specification or other item approved by the Design Committee to comply with any or all Governmental Regulations, or (viii) any other matter, decision, act or omission; provided that such member(s) shall not have acted in bad faith and in such event only the member or members who acted in bad faith shall be liable and not Declarant, Declarant's Affiliates, the Association, the Board or other members.

10.7 **Enforcement: Right of Entry and Removal.** Any Construction in violation of this Section 10 shall be deemed to be nonconforming. Upon written notice from the Board or the Declarant, Owners shall, at their own cost and expense, within thirty (30) days after such notice, remove such Construction and restore the property to substantially the same condition as existed prior to the Construction.

10.7.1 Should an Owner fail to remove and restore as required in the preceding paragraph, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the Construction. The Owner shall be liable for all costs of removal and restoration, and costs of enforcement, as provided in Section 9.7.2 and 9.7.3, together with interest at the rate provided in Section 9.1.2, and the Association shall have the right to assess such costs and interest as a Special Assessment as provided in Section 9.7.

10.7.2 Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Section 10 may be excluded by the Board from Kauai Lagoons, subject to the notice and hearing procedures for the Owner contained in the Bylaws. In such event, neither the Association, its officers, nor Directors shall be held liable to any Person for exercising, or refraining from exercising, the rights granted by this paragraph.

10.7.3 In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of Section 10 and the decisions of the Design Committee.

## **11. USE RESTRICTIONS AND RULES.**

11.1 **Master Plan.** Declarant has established this Declaration including the Master Plan as a general plan of development for Kauai Lagoons as a master planned community in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within Kauai Lagoons, and the vitality of and sense of community within Kauai Lagoons, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the master planned community and to regulate and control the Area of Common Responsibility. Kauai Lagoons and all Persons that develop, own, occupy and/or use any property at Kauai Lagoons are subject to the land development, architectural, and design provisions set out in Section 10 and the other provisions of this Declaration governing individual conduct and uses of or actions upon Kauai Lagoons, and the rules and restrictions promulgated in accordance with this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration, as the same may be modified, amended and supplemented from time to time.

11.1.1 All provisions of this Declaration, the Bylaws and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit except as specifically limited to certain properties. Any lease of a Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the Bylaws, and the rules of the Association.

11.1.2 All Parcels and Units shall be used for the purposes shown on the Master Plan. The purposes shown on the Master Plan follow the current zoning for the Parcels. The Master Plan also shows certain consolidations and resubdivisions requested by Declarant and KLG to realign the lots with the zoning boundaries or required setbacks. If and when those changes are approved the Master Plan, Exhibit A or both will be deemed amended accordingly.

11.1.3 No designation of a use for a Parcel on the Master Plan shall imply that the Parcel will ever be developed for that use. It is in the sole discretion of Declarant whether to develop or cause the development of any of Kauai Lagoons and the timing of any development.

## 11.2 **Master Plan Amendments.**

11.2.1 **By Declarant.** The Master Plan may be amended by Declarant from time to time, with or without any annexation to or withdrawal of land from Kauai Lagoons, to reflect changes in the zoning or other approvals for Kauai Lagoons, including any increase in density or transfer of density, which were sought by Declarant, and to vary the uses and boundaries shown on the Master Plan, but shall not vary the uses or boundaries of any Parcel or Unit which is not owned by Declarant or the Association without the Consent of its Owner. If additional uses, for example multifamily housing on Parcels not previously zoned for multifamily housing, are subsequently permitted by zoning, Declarant shall have the right during Declarant's Control Period, and thereafter with respect to Parcels or Units owned by Declarant, unilaterally to amend this Declaration to address such uses. No Person other than Declarant or its Affiliates shall seek any change in zoning on any portion of Kauai Lagoons during Declarant's Control Period.

11.2.2 **By the Association.** After Declarant's Control Period the Master Plan may only be amended by an amendment to this Declaration in accordance with Section 19.2. No amendment to the Master Plan that varies the uses or boundaries of any Parcel that is not owned by the Association may be made without the Consent of the Owner of each such Parcel.

11.3 **Declarant's Right to Approve Restrictions.** During Declarant's Control Period, no Person shall record in the Record Office any declaration of covenants, conditions and restrictions, or declaration of condominium property regime, or similar instrument affecting any portion of Kauai Lagoons without Declarant's Consent, and any attempted filing without Declarant's Consent, shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium property regime, or similar instrument being void and of no force and effect unless subsequently approved by Declarant's Consent.

11.4 **Rules.** The Board shall have the right to adopt, amend, modify and revoke such rules and regulations as it deems necessary or desirable for the proper maintenance and operation of Kauai Lagoons, including suitable rules for and restrictions on the use of the Area of Common Responsibility and those aspects of the use of Units which affect other Units, such as noise levels, light levels or emanations of smells, fumes or substances as well as penalties for the violation of them. The Board shall have the right to establish in the rules standards for any commercial use of the Kauai Lagoons area to ensure that such usage shall be compatible with the Community Wide Standard. However, there shall be no rule that may in any manner adversely affect or limit Declarant's use and enjoyment of the Area of Common Responsibility or Kauai Lagoons or Declarant's (or its Affiliates') rights, privileges, powers and interests with regard to the Area of Common Responsibility or Kauai Lagoons (or such rights, privileges, powers and interests of Declarant's Affiliates) as such rights may have been reserved to Declarant in this Declaration or in any deed, declaration or other document relating to the Area of Common Responsibility or such portion of Kauai Lagoons (or such rights, privileges, powers and interests of Declarant's Affiliates). The Association, through the Board, may enforce such rules by any

lawful means. During Declarant's Control Period any such rules and any amendments shall require Declarant's Consent.

11.5 **Smoking**. No cigarettes, cigarette butts, pipes, cigars or similar refuse may be put out or thrown on any part of the Common Area, or on any other part of the Area of Common Responsibility to the extent the Association controls its use. Smoking is not allowed inside or outside any building in the Common Area, or on any other part of the Area of Common Responsibility to the extent the Association controls its use; except that the Association may designate specific smoking areas in which smoking is allowed, subject to any restrictions set by the Association. The Declarant's right to amend this Declaration under Section 19.1 shall include the right to amend this Section 11.5.

11.6 **Owners' Acknowledgment**. All Owners and occupants of Units are given notice that such rules and regulations, as they may be amended, expanded and otherwise modified, may limit use of the Common Area or if applicable other portions of the Area of Common Responsibility. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected and that the rules and regulations may change from time to time.

## 12. **GOLF COURSES.**

12.1 **Ownership of Golf Course**. The Golf Course is a Private Amenity with all rights reserved in accordance with Section 2.3. The Golf Course is not owned by the Association and will not be included within the Common Area.

12.2 **Rights of Access and Parking**. The Golf Course and its members (if any and regardless of whether such members are Owners of Units in Kauai Lagoons), employees, agents, customers, patrons, licensees, invitees, contractors and designers shall at all times have a right and non-exclusive easement of access and use over all roadways located within Kauai Lagoons as reasonably necessary to travel from or to the entrance of Kauai Lagoons to and from the Golf Course and, further, over those portions of the Common Area reasonably necessary to the operation, maintenance, repair, replacement, operation and use of the Golf Course and its facilities. The Board agrees to work with all Districts and the Owner of the Golf Course for a mutually acceptable parking plan for golf tournaments held at the Golf Course(s).

12.3 **Limitations on Amendments**. In recognition of the fact that the provisions of this Section 12 are for the benefit of the Golf Course, no amendment to this Section and no amendment in derogation of this Section 12 to any other provision of this Declaration may be made without the written approval of such amendment by the Owner(s) of the affected Golf Course. The foregoing shall not apply, however, to amendments made by the Declarant.

12.4 **Golf Cart Path Easement**. There may be golf cart path easements designated as such on subdivision maps of Kauai Lagoons or granted for the benefit of the Golf Course, which shall be used for golf cart paths, pedestrian walkways, maintenance and vehicular access, and unhindered access between said paths and the Golf Course. Nothing shall be placed or maintained in any golf cart path easement which shall interfere with utilization of it as a playable part of the Golf Course.

### 13. LAGOONS AND IRRIGATION SYSTEM.

13.1 **Ownership.** The Lagoons will be a Private Amenity except to the extent that the owner of a Lagoon or a portion of a Lagoon grants rights of access and use to the Association. The granting instruments may also reserve to the grantor the unilateral right to withdraw the whole or portions of any Lagoon from that grant. Individual Owners of property located n Kauai Lagoons shall have no right to use the Lagoons in any manner without written authorization from the Owner(s) of the Lagoons or the Association as applicable.

13.2 **Disclaimer.** All Persons, including all Owners, are advised that no representations or warranties have been or are made by the Declarant or any other Person with regard to the continued existence, extent or ownership of the Lagoons as depicted in any land use plan or map, or in any marketing material or displays. No representations or warranties, written or oral, are made regarding the size or capacity of the Lagoons, or the ability of the Lagoons to accommodate any and all Owners and occupants of Units, and members of the general public who may be permitted to use the Lagoons. No purported representation or warranty, written or oral, in such regard shall ever be effective without an amendment to this Declaration executed by Declarant.

13.3 **Lagoon Maintenance and Irrigation System.** The Lagoon maintenance and irrigation systems for Kauai Lagoons may include Lagoon water, water filtration units, compressors for aerations, plants for “polishing” non-potable water to a standard permitting its lawful use in the vicinity of residential property, wells, pipes, conduits, and such other plants, equipment, mechanical or chemical systems, or both, or to the technology, as Declarant may determine during Declarant’s Control Period; and after Declarant’s Control Period as the Association may determine in accordance with this Declaration and any easements, leases or other agreements as may be binding upon the Association. Lagoon water may be used for irrigation and for cooling purposes for air conditioning systems, in accordance with easements or other agreements between the owners of the Lagoons and the Association or District associations or both.

13.4 **Operation of Lagoon Maintenance and Irrigation System.** It is anticipated that Declarant will grant rights of access and use to the Association for purposes including the operation of the water portion of the Transportation System (including motorized boats) and certain recreational uses of the Lagoons (not including motorized boats). It is also anticipated that Declarant will grant to the Association the use of the system described in Section 13.3. The granting documents are anticipated to include the assumption by the Association of the responsibility for the maintenance, cleaning, and operation of the Lagoons, and for the maintenance, cleaning, repair and replacement of the system described in Section 13.3, including upgrades from time to time to obtain the benefit of new or improved technologies.

13.5 **Supply of Irrigation Water.** In the event the Association is granted the use of the system described in Section 13.3, the granting documents will include the assumption by the Association of the obligation to provide irrigation water to the Districts and Area of Common Responsibility. Charges for the expenses of the irrigation system may be included in the General Assessments, the District Assessments or the Service Assessments, as determined by the Board

and if not included in the General Assessments may be based on metering, submetering or calculations of usage.

13.6 **Limitations on Use.** In the event that the granting instruments permit the Association to use the Lagoons for recreational purposes, such as swimming, kayaks and canoes, they may also reserve to the Declarant or the grantor, the rights to place limits on the hours and days of operation, the number of users, and the extent and nature of such uses. Such limitations shall not prevent the Board from imposing stricter limits from time to time under the provisions of Section 11.4.

#### 14. **TRANSPORTATION SYSTEM.**

14.1 **Operation by the Association.** If so determined by the Board, or by the Declarant during Declarant's Control Period, the Association shall operate a Transportation System, on land or on the Lagoons or both. The land Transportation System may also include transportation to nearby amenities such as shopping centers outside Kauai Lagoons provided that any necessary governmental permits are obtained. The Transportation System, if any, shall be reserved for the primary use and benefit of the Owners, occupants and guests of Kauai Lagoons and for transport of management and maintenance personnel. The Declarant makes no representation that the Transportation System will exist or, if established, that it will continue in operation, nor that the Transportation System will be sufficient to serve all eligible users should they attempt to use the Transportation System at the same time.

14.2 **Expenses of the Transportation System.** The expenses of the Transportation System may be charged as General Assessments, or portions as General Assessments and portions as District or Service Assessments as determined by the Board, taking into account the usage of the Transportation System.

#### 15. **MORTGAGEES' RIGHTS.**

The following provisions are for the benefit of institutional holders, insurers and guarantors of first Mortgages on Residential/Resorts Units which may be used for dwelling purposes. For the purposes of this Section 15 institutional holders include Declarant and its Affiliates. To the extent applicable, necessary or proper, the provisions of this Section apply to both this Declaration and to the Bylaws. Where indicated, these provisions apply only to "Eligible Holders," as defined below.

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

15.1.1 the creation (if subsequent to recording of this Declaration) and any proposed termination of the Association;

15.1.2 any condemnation loss or any casualty loss which affects a material portion of Kauai Lagoons or which affects any Residential/Resort Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

15.1.3 any delinquency in the payment of assessments or charges owed by an Owner of a Residential/Resort Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or Bylaws relating to such Residential/Resort Unit or the Owner or occupant of it which is not cured within sixty (60) days; or

15.1.4 any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

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

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

15.4 **Amendment by Board.** Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the notice provisions of this Section or make any such requirements less stringent, the Declarant during Declarant's Control Period and subsequently the Board, without approval of the Owners, may cause an amendment to this Section to be recorded in the Bureau to reflect such changes.

15.5 **Applicability.** The provisions of this Section shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Delegates where a larger percentage vote is specifically required by this Declaration for any action.

15.6 **Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board or Declarant to respond to or consent to any action shall be deemed to have approved such action if the Association or Declarant does not receive a written response from the Mortgagee within thirty (30) days after the date of mailing of the Association's or Declarant's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

## 16. **DECLARANT'S RIGHTS.**

### 16.1 **Assignment and Disclaimer.**

16.1.1 Any or all of the special rights and obligations of the Declarant (including its Class "B" Member status in connection with a transfer of all or substantially all of Declarant's remaining Units) may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation or enlarge a right beyond that contained in this Declaration. Any such

transfer shall be ineffective unless it is in a written instrument signed by the Declarant and duly recorded in the Record Office, or in the case of foreclosure or a deed in lieu of foreclosure of a security interest granted by Declarant, tax sale, judicial sale, or sale under the Bankruptcy Code, the Person acquiring title to the property being transferred may succeed to any or all of the Declarant's Rights under this Declaration as set out in the written instrument evidencing the conveyance and duly recorded in the Record Office. Any partial transfer of Declarant's Rights shall specify which of Declarant's Rights are transferred and, if applicable, to which Parcels or Units such transfer applies.

16.1.2 Nothing in this Declaration shall be construed to require Declarant, or any successor to develop any of the property owned by Declarant in any manner whatsoever, nor shall the formation of the Association impair the Declarant's right to form other associations from time to time for other purposes.

## **16.2 Sales and Advertising Activities.**

16.2.1 Notwithstanding any provisions contained in this Declaration to the contrary, so long as the construction and initial sale of Units shall continue or Declarant or its Affiliates shall be engaged in the resale or brokerage of Units, it shall be expressly permissible for Declarant or any of its Affiliates to maintain and to carry on upon portions of the Common Area such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the construction or sale or resale of such Units, including business offices, signs, model units, sales offices, and promotional activities and the Declarant shall have an easement for access to such facilities and to the Common Area for such activities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Residential/Resort or other Units owned by the Declarant or its Affiliates as models and sales offices and for other purposes incidental to marketing and sale.

16.2.2 In connection with advertising, marketing and other promotional activities, Declarant shall have an easement for filming or video activities over the Common Area and the common elements or common properties of Districts already wholly or partly sold to third parties, provided that such activities do not materially and substantially interfere with the use of such Common Area or common elements or common properties by the Owners of Units in those Districts.

16.2.3 In connection with advertising and marketing the various bars, restaurants, shops and other amenities within Kauai Lagoons, Declarant and its Affiliates shall have a perpetual easement to place and replace from time to time signs within the Common Area and the common elements or common properties of Districts already wholly or partly sold to third parties, and to have access to the same for such placement and replacement.

16.3 **Rezoning.** By accepting conveyance of a Unit each Owner for itself and its successors and assigns:

16.3.1 acknowledges that Declarant or any of its Affiliates has made and may in the future make applications for rezoning or for discretionary permits or changes in the Land Use Requirements; and

16.3.2 agrees not to oppose such applications either orally or in writing, and not to testify against them or file any appeal from any decision favorable to the applicant, and to indemnify, defend and hold harmless the applicant from any loss or damage arising from any breach by such Owner of this covenant.

16.4 **Rights with respect to certain Agreements.** Declarant is granted all rights to enforce or amend the following documents, that burden or benefit portions of Kauai Lagoons, including the right to withdraw or annex lands subject to or benefited by any of these documents, subject to any required agreement of parties to the documents who are not Owners of property in Kauai Lagoons:

16.4.1 Deed dated June 29, 1977, recorded in Liber 12300 at Page 260.

16.4.2 Certificate of Conditions dated May 16, 1984, recorded in Liber 17931 at Page 249.

16.4.3 Right of Entry dated September 24, 1987, recorded in Liber 21309 at Page 338.

16.4.4 Deed dated March 25, 1987, recorded in Liber 20496 at Page 304, as corrected in Correction Deed (The Kauai Lagoons - Lots 2, 5, 6, 7, 8, 10 and 11) dated as of January 15, 1988, recorded in Liber 21584 at Page 334.

16.4.5 File Plan 1905 Subdivision Agreement dated January 15, 1988, recorded in Liber 22624 at Page 432.

16.4.6 Grant dated January 15, 1988, filed as Land Court Document No. 1527017, recorded in Liber 21584 at Page 403.

16.4.7 Unrecorded agreement dated June 1, 1992, of which a Memorandum is filed as Land Court Document No. 1937365, recorded as Document No. 92-123466.

16.4.8 Grant of Avigation and Noise Easement dated March 21, 2002, recorded as Document No. 2002-228662.

16.4.9 Grant dated January 15, 1988, filed as Land Court Document No. 1527016, recorded in Liber 21584 at Page 379.

16.4.10 Deed dated January 30, 1991 recorded Document No. 91-012227.

16.4.11 Unrecorded Kauai Lagoons Resort Golf and Tennis Play Agreement dated August 3, 1994, of which a Short Form Golf and Tennis Play Agreement is dated August 3, 1994, filed as Land Court Document No. 2169457, and recorded as Document No. 94-129351. Assignment and Assumption of Kauai Lagoons Golf and Tennis Play Agreement dated as of June 15, 2001, filed as Land Court Document No. 2716832, recorded as Document No. 2001-097935 and any matters arising from or affecting the same.

16.4.12 Roadway and Utility Easement Agreement dated as of January 30, 1991, filed as Land Court Document No. 1797886, recorded as Document No. 91-012273 as amended

by instrument dated August 3, 1994, filed as Land Court Document No. 2178041 and recorded as Document 94-129352.

16.4.13 Certificate and Authorization dated November 6, 1991, recorded as Document No. 92-081744.

16.4.14 Unrecorded Marriott Kauai Hotel Use Agreement dated August 3, 1994, of which a Short Form Hotel Use Agreement is dated August 3, 1994, filed as Land Court Document No. 2169456, and recorded as Document No. 94-129350.

16.4.15 Limited Warranty Deed dated --- (acknowledged October 13, 2005), recorded as Document No. 2005-209699.

16.4.16 Tennis Encroachment Easement and Agreement dated January 30, 1991, recorded as Document No. 91-012274.

16.4.17 Consolidation and Resubdivision Agreement dated as of January 30, 1991, filed as Land Court Document No. 1797887.

16.4.18 That certain unrecorded Kauai Lagoons Resort Golf Play Agreement dated October 13, 2005, a Short Form of which is dated October 13, 2005, recorded as Document No. 2005-209701 but any such amendment by Declarant shall require the agreement of the Owner of the portion of the Golf Course affected.

16.4.19 Any declaration, deed restriction or other covenant entered into prior to or after the recording of this Declaration by Declarant or KLG as a condition of the Land Use Requirements.

**16.5 Owner's Acceptance of Declarant's Rights.** Each and every Person acquiring an interest in the Land or in any Parcel or Unit in Kauai Lagoons by such acquisition:

16.5.1 consents to Declarant's Rights:

16.5.2 agrees to execute, deliver and record such documents and instruments and to do such other things as may be necessary or convenient to effect the same, including any subdivision, consolidation or permit applications, any amendments of this Declaration, the Articles or the Bylaws, and any grant of easements; and appoints Declarant and its assigns as his attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of Developer's Control Period, and shall not be affected by the disability of such party or parties, and which grant of such power shall be binding upon any assignee of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any such assignee or successor-in-interest upon any transfer of any Parcel or Unit or any interest in it, whether by deed, mortgage, lease, agreement of sale, or any other instrument of conveyance;

16.5.3 consents to the recording in the Record Office of any and all documents that in the opinion of Declarant are necessary or useful to effect Declarant's Rights, including any easements and any amendments of this Declaration, the Articles or the Bylaws.

## 17. ACKNOWLEDGMENT OF POTENTIAL CONDITIONS.

17.1 **Protected Persons.** As used in this Section 17 "**Protected Person**" means and includes Declarant and its members, KLG, and all their Affiliates, in their respective capacities as the Declarant and the developer of Kauai Lagoons, and the initial sellers of the Parcels and Units in Kauai Lagoons, and the owners, lessees or operators of the Golf Course, all their successors and assigns, and their Affiliates. Protected Person also includes the County of Kauai, the Land Use Commission of the State of Hawaii, the United States government to the extent required by the permits or land use approvals for Kauai Lagoons or the Project, or by any encumbrance described in this Declaration.

### 17.2 **Description of Potential Conditions.**

17.2.1 **Agricultural Activities.** Kauai Lagoons is adjacent to, nearby or in the vicinity of lands being, or which in the future may be, actively used for the growing, harvesting and processing of agricultural products (such growing, harvesting and processing activities collectively called the "**Agricultural Activities**"), which activities may from time to time bring upon each Parcel or result in exposure to smoke, dust, odors, noise, heat, agricultural chemicals, particulates and similar substances and nuisances (collectively called the "**Agricultural By-Products**").

17.2.2 **Pest Conditions.** Without limiting Section 17.2.1, the Agricultural Activities or other characteristics of Kauai Lagoons or adjacent lands may result in insects (including mosquitoes), rodents and other pests and vermin (collectively called the "**Pest Conditions**") coming onto the Parcels or Units.

17.2.3 **Golf Course.** Kauai Lagoons is adjacent to, nearby or in the vicinity of the Golf Course, the use and operation of which may from time to time bring upon each Lot or result in exposure to dust, odors, vibrations, noise, pesticides and other chemicals, particulates, straying golf balls, including golf balls that may break windows or other glass in the improvements in Kauai Lagoons, non-potable water or treated wastewater used for irrigation, and similar substances and nuisances incidental to golf-course operations and golf-related activities (collectively called the "**Golf Course Conditions**").

17.2.4 **Wastewater Treatment Plant Conditions.** Kauai Lagoons is adjacent to and served by a wastewater treatment plant operated by the County of Kauai. The operation of the wastewater treatment plant may cause odors or other nuisances which may have adverse health effects (collectively called the "**Plant Conditions**").

17.2.5 **Utility and Other Conditions.** Kauai Lagoons has located within it or adjacent to it, electrical lines, retention basins, the Lagoons, sewer lines, cable, utility poles and other utility facilities which may cause odors, interference with views, television and radio reception and which may have adverse health effects (collectively called the "**Utility Conditions**").

17.2.6 **District and Sales Activities.** Declarant reserves for itself and its Affiliates the right to develop Parcels and Units, construct improvements and to sell Parcels, Units, dwellings and buildings. Such development and sales activity will result in blasting, dust,

noise, vibrations, increased traffic, obstruction of views or ventilation and other nuisances (collectively called the "**Development Conditions**").

17.2.7 **Noise Conditions.** Kauai Lagoons is within the areas shown on the maps prepared by the federal Department of Transportation in accordance with federal aviation regulation Part 150 - Airport Noise Compatibility Planning and is subject to noise and vibration emanating from the adjacent Lihue airport (collectively called the "**Noise Conditions**").

17.2.8 **Drainage and Runoff Conditions.** Kauai Lagoons includes the Golf Course and may include or be adjacent to other areas that may serve as natural drainage basins or overflow runoff areas. Flooding, erosion, runoff, or damage to this and adjacent areas, including Kauai Lagoons, may occur, and such areas may be damaged or made unusable for some period of time (collectively called the "**Drainage and Runoff Conditions**").

17.2.9 **Commercial Conditions.** Within Kauai Lagoons are commercial complexes which may contain restaurants, bars, spas and other businesses likely to generate noise, light and vibrations, perhaps late at night and a boat maintenance facility that may generate noise, dust and vibrations (collectively called the "**Commercial Conditions**").

17.2.10 **Lagoon Conditions.** The Association and others may be granted easements or use rights to use the Lagoons for boat transportation, water sports and recreation that may generate noise, odors, vibrations and other disturbances (collectively called the "**Lagoon Conditions**").

17.2.11 **Shoreline Access.** Shoreline access for the public may result in additional noise, crowding, litter or other effects (collectively called the "**Shoreline Access Conditions**".)

The Agricultural Activities, Agricultural By-Products, Pest Conditions, Golf Course Conditions, Plant Conditions, Utility Conditions, Development Conditions, Noise Conditions, Drainage and Runoff Conditions Commercial Conditions, Lagoon Conditions and Shoreline Access Conditions are collectively called the "**Conditions**".

The listing of certain items in this Section 17.2 is not a representation that there are no other sources of potential interference with the enjoyment of the Parcels or Units.

17.3 **Assumption Release, Waiver and Indemnity.** Each Owner, by acquiring any interest in a Parcel or Unit, automatically:

17.3.1 Assumes complete risk of and forever releases the Protected Persons from all claims for damages (including consequential, special, exemplary and punitive damages) and nuisances occurring on the Parcel or Unit or in Kauai Lagoons and arising out of any of the Conditions;

17.3.2 Forever waives any right to require, and releases the Protected Persons from, any obligation, to take any action to correct, modify, alter, eliminate or abate any of the Conditions and waives any right to file any suit or claim against any Protected Person for injunction or abatement of nuisances or damages;

17.3.3 Agrees to and shall indemnify, defend and hold harmless each Protected Person from and against all claims, demands, actions, losses, damages, liabilities, costs and expenses, including attorneys' fees, asserted against or incurred by any Protected Person which arise out of any injury, death or damage to person, property or business that occurs on the Owner's Parcel or Unit and is the result of any of the Conditions irrespective of the theory of liability asserted against a Protected Person; and

17.3.4 Agrees that any Conditions and any claim, demand, action, loss, damage, liability, cost or expense arising from them, shall not constitute a breach of any covenant or warranty of any Protected Person or be the basis for a suit or other claim for injunction or abatement of nuisances or damages, and forever waives any right to file any such suit or claim.

## **18. RESERVED EASEMENTS.**

### **18.1 Utility Easements.**

18.1.1 Declarant hereby reserves for itself and its designees, (which may include the County of Kauai, the Association, and any utility company whether or not public) blanket easements upon, across, over, and under all of the Common Area and the Parcels and Units, for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar systems, walkways, facilities for altering and controlling drainage and water flow, and for all utilities, including water, hot water, chilled water, sewers, meter boxes, telephones, gas and electricity. Declarant may assign this reserved easement by written instrument to the Association, and the Association shall accept the assignment upon such terms and conditions as are acceptable to Declarant. If this reserved easement is assigned to the Association, the Board shall, upon written request, grant such easements as may be reasonably necessary for the development of any of Kauai Lagoons. Any utility company which is a designee of Declarant to use this general easement shall use commercially reasonable efforts to install and maintain the utilities provided for without disturbing the uses of the Owners, the Association, and the Declarant, shall proceed with its installation and maintenance activities as promptly and expeditiously as reasonably possible, and shall restore the surface to its original condition as soon as possible after completion of its work.

18.1.2 No matter what else this Section 18 says, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on Kauai Lagoons, except as may be approved by the Design Committee or by Declarant as part of the initial development and sale of Kauai Lagoons. Should any entity furnishing a service covered by the general easement provided in Section 18.1.1 request a specific easement by separate recordable document, the Declarant or the Board (with the Consent of Declarant during Declarant's Control Period) shall have the right to grant such easement within Kauai Lagoons without conflicting with the terms of this Section 18. The easements provided for in this Section 18 shall in no way adversely affect any other recorded easement on Kauai Lagoons in favor of any Person not subject to this Declaration.

18.1.3 In connection with the foregoing reservations, each Owner irrevocably appoints Declarant as such Owner's attorney-in-fact to file maps designating such easements and to grant such easements and rights and to do all things necessary or convenient in connection with such easements, which power of attorney shall be assignable to the Association and, being

coupled with an interest, shall be irrevocable and shall run with the Parcels and Units. Upon Declarant's request, each Owner, promptly and for no additional consideration, shall execute all documents that may be requested by Declarant to designate such easements on any map and to grant such easements and rights.

18.2 **Easement for Special Events.** Declarant hereby reserves for itself, its successors, assigns and designees a non-exclusive easement in gross over the Common Area so long as Declarant or its Affiliates have any right or interest in any part of Kauai Lagoons, for the purpose of conducting public and private functions, educational, cultural, artistic, musical, recreational, sporting and entertainment activities, and activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of himself and the occupants of his Unit to take no action, legal or otherwise, which would interfere with the exercise of such easement. Neither the Association nor any District association shall take any action that would interfere with or otherwise attempt to restrict the exercise of this easement.

18.3 **Easements of Encroachment.** There shall be reciprocal appurtenant easements of encroachment as between each Unit and such portion or portions of the Common Area adjacent thereto or as between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered on it (in accordance with the terms of these restrictions) to a distance of not more than one (1) foot, as measured from any point on the common boundary between each Unit and the adjacent portion of the Common Area or as between said adjacent Units, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, tenant, or the Association.

## 19. **AMENDMENT.**

### 19.1 **By Declarant.**

19.1.1 During Declarant's Control Period Declarant may unilaterally amend this Declaration for any purpose, except that where this Declaration specifically requires the consent of the Owner or Mortgagee of a Unit for an amendment affecting that Unit, the amendment shall not apply to that Unit without such consent.

19.1.2 No matter what else this Declaration says, the Declarant may from time to time, so long as Declarant is the Owner of any Parcel or Unit, amend this Declaration unilaterally without the consent of any Owner or mortgagee of any Parcel or Unit, for any of the following purposes:

- (a) To correct any drafting or typographical error;
- (b) To comply with any applicable law, rule or regulation of the State of Hawaii or the County of Kauai or any requirement or condition of any governmental agency

with jurisdiction over Kauai Lagoons, or as necessary to obtain any governmental approval, permit or order affecting Kauai Lagoons;

(c) To comply with any requirement of the State of Hawaii or the United States Department of Housing and Urban District ("**HUD**") in connection with the registration and sale of any Parcel or Unit or to obtain any exemption from registration requirements;

(d) To qualify some or all of the Parcels or Units for financing or financing assistance or guaranty from HUD, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or any other state or federal agency or authority which provides financing assistance for development projects similar to Kauai Lagoons or any Parcel; or

(e) In connection with the provision of utilities, if any utility company serving only Kauai Lagoons would be required to be regulated by the State of Hawaii Public Utilities Commission, unless all users of the utility are owners or members of the utility company, then to require all District associations or all Unit Owners or both to become owners or members of the utility company.

19.1.3 In the event that Declarant amends the Declaration under this Section 19.1 in a manner which waives, restricts or diminishes any of Declarant's Rights such amendment may simultaneously provide for similar or substitute rights of Declarant that comply with the requirements of the applicable agencies or lenders.

19.2 **By the Association.** Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or Consent, or any combination of them, of Delegates representing at least seventy-five percent (75%) of the total votes of the Association. However, the percentage of votes necessary for the Association to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause, and no amendment by the Association which changes the method of allocating Common Expenses or voting rights shall be effective without the Consent of all adversely affected Owners. No amendment shall be effective until it is recorded in the Record Office. During Declarant's Control Period, any amendment shall require Declarant's Consent.

19.3 **Limit on Amendments.** No amendment may remove, revoke, or modify any right or privilege of Declarant (whether described as a right or privilege of Declarant or the Class "B" Member) or KLG without the Consent of Declarant, or the Class "B" Member or the holder or assignee of any such right or privilege.

## 20. **GENERAL PROVISIONS.**

20.1 **Term.** The covenants and restrictions of this Declaration shall run with and bind Kauai Lagoons, and shall inure to the benefit of and shall be enforceable by the Declarant, the Association or the Owner of any Unit subject to this Declaration, and their respective legal representatives, heirs, successors, and assigns, for a term ending on the later of (a) thirty (30) years from the date this Declaration is recorded or (b) the end of Declarant's Control Period,

after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded in the Record Office within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate them.

20.2 **No Partition.** There shall be no judicial partition of the Common Area or any part of it. This Section shall not be construed to prohibit the Association from acquiring and disposing of tangible personal property, or from acquiring title to real property that may or may not be subject to this Declaration.

20.3 **Security.** The Association may, but shall not be obligated to, maintain or support certain activities within Kauai Lagoons designed to make Kauai Lagoons safer than it otherwise might be. Neither the Association nor Declarant (or its Affiliates) shall in any way be considered insurers or guarantors of security within Kauai Lagoons. Further, neither the Association nor the Declarant (or its Affiliates) shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken even in the case of such parties' negligence. All Owners, tenants, guests and invitees of any Owner, as applicable, acknowledge that none of the Declarant, Declarant's Affiliates, the Association, the Board, the Design Committee or any District association represent or warrant that any fire protection system or burglar alarm system or surveillance system (i) is not subject to being compromised or circumvented, (ii) will prevent loss by fire, smoke, burglary, theft, hold-up or otherwise, or (iii) will in all cases provide the detection or protection for which the system is designed or intended. Each Owner, tenant, guest or invitee of an Owner, as applicable, acknowledges and understands that the Declarant, Declarant's Affiliates, the Association, Board and its committees, and the District association are not insurers and that each Owner, tenant, guest and invitee assumes all risks for loss or damage to persons, to Units and to the contents of Units and further acknowledges that Declarant, Declarant's Affiliates, the Association, the Board and its committees, and the District associations have made no representations or warranties nor has any Owner, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire or burglar alarm system or surveillance system installed or any surveillance or security measures undertaken within Kauai Lagoons.

20.4 **Indemnification.** The Association shall have the powers and duties of indemnification set out in H.R.S. § 416-35, as it may be amended from time to time, which duty of indemnification shall extend to all former, current and future officers, directors and committee members.

20.5 **Severability.** Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision of this Declaration, all of which shall remain in full force and effect.

20.6 **Right of Entry.** The Association shall have the right, but shall not be obligated, to enter into or upon any portion of Kauai Lagoons for inspection, maintenance, emergency, security, and safety, which right may be exercised by the Association's Board, officers, agents, employees and managers, and by all policemen, firemen, ambulance personnel, and similar

emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner or District, as appropriate. This right of entry shall include the right of the Association to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner or District fails or refuses to cure the condition upon request by the Board.

20.7 **Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the late Senator Robert F. Kennedy.

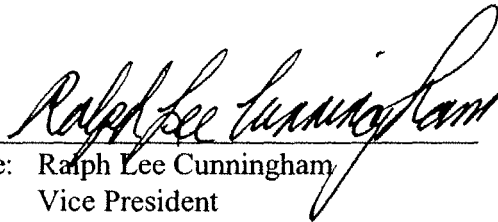
20.8 **Cumulative Effect: Conflict.** The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any District association and the Association may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants, restrictions, and provisions or any articles of incorporation, bylaws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any District association shall be subject and subordinate to this Declaration. The foregoing priorities shall apply to, but not be limited to, the liens for assessments created in favor of the Association.

20.9 **Use of the Word "Kauai Lagoons".** No Person shall use the words Kauai Lagoons or any derivative of any of this, or any registered trade name, trademark, or logo of Kauai Lagoons in the name of any commercial building or any business or enterprise or in any printed or promotional material without the Consent of the Declarant.

*[Signature page follows]*

IN WITNESS WHEREOF, KLL has executed this Declaration as of the day and year first above written.

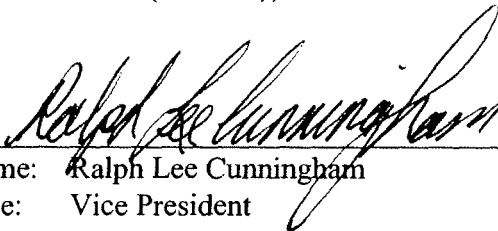
**KAUAI LAGOONS LLC**

By   
Name: Ralph Lee Cunningham  
Title: Vice President

**JOINDER OF KLG**

KLG joins in this Declaration to submit its real property described in Exhibit "A" to the provisions of this Declaration.

**MORI GOLF (KAUAI), LLC**

By   
Name: Ralph Lee Cunningham  
Title: Vice President

STATE OF FLORIDA

)

SS:

COUNTY OF ORANGE

)

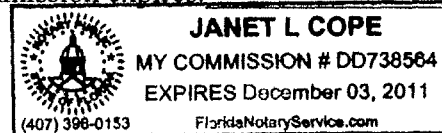
On this 22 day of February, 2008, before me personally appeared Ralph Lee Cunningham, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Signature: [Signature]

Print Name: JANET L. COPE

Notary Public, State of Florida

My commission expires: DEC 3, 2011



STATE OF FLORIDA

)

SS:

COUNTY OF ORANGE

)

On this 22 day of February, 2008, before me personally appeared Ralph Lee Cunningham, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Signature: [Signature]

Print Name: JANET L. COPE

Notary Public, State of Florida

My commission expires: DEC 3, 2011

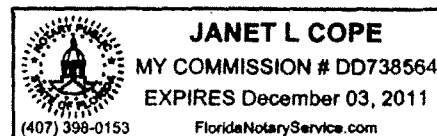


EXHIBIT "A"

**FIRST: LANDS OF KAUAI LAGOONS LLC**

-ITEM I:- (TMK (4) 3-5-001-172)

LOT 9 of the "THE KAUAI LAGOONS (2ND AMENDMENT)" containing an area of 25.881 acres, more or less, more particularly described in Exhibit "1" attached.

-ITEM II:- (TMK (4) 3-5-001-169)

LOT 6 of the "THE KAUAI LAGOONS (2ND AMENDMENT)" containing an area of 5.827 acres, more or less, more particularly described in Exhibit "1" attached.

-ITEM III:- (TMK (4) 3-5-001-170)

LOT 7 of the "THE KAUAI LAGOONS (2ND AMENDMENT)" containing an area of 8.176 acres, more or less, more particularly described in Exhibit "1" attached.

-ITEM IV:- (TMK (4) 3-5-001-171)

LOT 8 of the "THE KAUAI LAGOONS (2ND AMENDMENT)" containing an area of 9.251 acres, more or less, more particularly described in Exhibit "1" attached.

-ITEM V:- (TMK (4) 3-5-001-027 and 173 (por.))

Lot 10-A of Kauai County Subdivision File No. S-2006-21 containing an area of 7.649 acres, more or less, more particularly described in Exhibit "1" attached.

-ITEM VI:- (TMK (4) 3-5-001-027 and 173 (por.))

Lot 10-B of Kauai County Subdivision File No. S-2006-21 containing an area of 8.626 acres, more or less, more particularly described in Exhibit "1" attached.

**AS TO ITEMS I THROUGH IV, BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED**

GRANTOR : KAUAI DEVELOPMENT LLC, a Hawaii limited liability company

GRANTEE : KAUAI LAGOONS LLC, a Hawaii limited liability company

DATED : ---(acknowledged October 13, 2005)

RECORDED : Document No. 2005-209699

**AS TO ITEMS V AND VI, BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED WITH COVENANTS (Kauai Lagoons LLC Property –Subdivision Lots 10 A and 10 B)**

GRANTOR : KAUAI LAGOONS LLC, a Hawaii limited liability company and MORI GOLF (KAUAI), LLC, a Delaware limited liability company

GRANTEE : KAUAI LAGOONS LLC, a Hawaii limited liability company

DATED : February 22, 2008

RECORDED : Document No. 2008- 040612

SUBJECT TO ALL ENCUMBRANCES OF RECORD.

**SECOND: LANDS OF MORI GOLF (KAUAI), LLC**

-ITEM I:- (TMK (4) 3-5-001-027 and 173 (por.))

Lot 2-A of Kauai County Subdivision File No. S-2006-21 containing an area of containing a gross area of 306.747 acres, more or less, excluding Lots 3, 9, 10-A, 10-B, and Exclusion for a net area of 257.372 acres, more or less, more particularly described in Exhibit "1" attached.

-ITEM II:- (TMK (4) 3-5-001-168)

LOT 5 of the "THE KAUAI LAGOONS (2ND AMENDMENT)" containing an area of 188.146 acres, more or less, more particularly described in Exhibit "1" attached.

-ITEM III:- (TMK (4) 3-5-002-019)

All of that certain parcel of land situate at Kalapaki, District of Lihue, Island and County of Kauai, State of Hawaii, described as follows:

LOT 3, area 0.91 acre, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1819 of InterIsland Resorts, Ltd.;

Being the land(s) described in Transfer Certificate of Title No. 871,637 issued to Mori Golf (Kauai), LLC, a Delaware limited liability company.

AS TO ITEM I BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED WITH COVENANTS (MORI Golf (Kauai), LLC-Subdivision Lot 2-A)

GRANTOR : KAUAI LAGOONS LLC, a Hawaii limited liability company and MORI GOLF (KAUAI), LLC, a Delaware limited liability company

GRANTEE : MORI GOLF (KAUAI), LLC, a Delaware limited liability company

DATED : February 22, 2008

RECORDED : Document No. 2008-040611

AS TO ITEMS II AND III BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : K D GOLF OWNERSHIP LLC, a Hawaii limited liability company

GRANTEE : MORI GOLF (KAUAI), LLC, a Delaware limited liability company

DATED : --- (acknowledged July 19, 2007)

FILED : Land Court Document No. 3641266

RECORDED : Document No. 2007-144031

SUBJECT TO ALL ENCUMBRANCES OF RECORD

Note: Upon approval of Declarant's pending consolidation and resubdivision Declarant will amend this Exhibit "A" to confirm to the new lot descriptions and the Master Plan.

EXHIBIT "1"

**EXHIBIT "1"**

**Lot 9  
of The Kauai Lagoons (2<sup>nd</sup> Amendment)**

Being a portion of Royal Patent 4480, Land Commission Award 7713,  
Apana 2, Part 1 to V. Kamamalu

Situated at Kalapaki, Lihue, Kauai, Hawaii

Beginning at the Northeast corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALEPA" being 13,640.60 feet South and 5,026.22 feet East, thence running by azimuths measured clockwise from True South:

1.      0° 40'                      276.35 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
2.      305° 00'                    133.34 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
3.      353° 22'                    330.00 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
4.      5° 50'                        310.00 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
5.      17° 50'                      199.00 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
6.      66° 21'                      235.00 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
7.      41° 30'                      163.00 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
8.      7° 02'                        66.21 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;

EXHIBIT "1"  
To Exhibit "A"

- |     |                                                                                                                                                                                                                                                                                                 |        |                                                                                                                                                     |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| 9.  | 350° 10'                                                                                                                                                                                                                                                                                        | 321.29 | feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu; |
| 10. | 37° 50' 36"                                                                                                                                                                                                                                                                                     | 72.44  | feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu; |
| 11. | 53° 00'                                                                                                                                                                                                                                                                                         | 130.00 | feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu; |
| 12. | 3° 00'                                                                                                                                                                                                                                                                                          | 71.09  | feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu; |
| 13. | 74° 50'                                                                                                                                                                                                                                                                                         | 36.91  | feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu; |
| 14. | 92° 15'                                                                                                                                                                                                                                                                                         | 49.00  | feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu; |
| 15. | 63° 00'                                                                                                                                                                                                                                                                                         | 35.00  | feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu; |
| 16. | 30° 15'                                                                                                                                                                                                                                                                                         | 4.57   | feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu; |
| 17. | 110° 53'                                                                                                                                                                                                                                                                                        | 180.77 | feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu; |
| 18. | 200° 53'                                                                                                                                                                                                                                                                                        | 191.15 | feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu; |
| 19. | Thence along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu, on a curve to the left with a radius of 70.00 feet, the chord azimuth and distance being:<br>198° 07' 46"                      6.73 feet; |        |                                                                                                                                                     |
| 20. | 127° 53'                                                                                                                                                                                                                                                                                        | 214.00 | feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu; |

21.	149° 00'	206.00	feet along Lot 2 of The Kauai Lagoons (2nd Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;
22.	176° 58'	235.00	feet along Lot 2 of The Kauai Lagoons (2nd Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;
23.	206° 20'	44.00	feet along Lot 2 of The Kauai Lagoons (2nd Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;
24.	255° 18'	164.99	feet along Lot 2 of The Kauai Lagoons (2nd Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;
25.	199° 24'	55.42	feet along Lot 2 of The Kauai Lagoons (2nd Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;
26.	151° 30'	58.64	feet along Lot 2 of The Kauai Lagoons (2nd Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;
27.	198° 30'	48.00	feet along Lot 2 of The Kauai Lagoons (2nd Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;
28.	164° 55'	84.00	feet along Lot 2 of The Kauai Lagoons (2nd Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;
29.	208° 15'	248.00	feet along Lot 2 of The Kauai Lagoons (2nd Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;
30.	206° 36'	303.28	feet along Lot 2 of The Kauai Lagoons (2nd Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;
31.	218° 45'	164.82	feet along Lot 2 of The Kauai Lagoons (2nd Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;
32.	206° 10'	107.00	feet along Lot 2 of The Kauai Lagoons (2nd Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;

- |     |          |        |                                                                                                                                                                                                                       |
|-----|----------|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 33. | 244° 10' | 52.00  | feet along Lot 2 of The Kauai Lagoons (2nd Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;                                                                               |
| 34. | 204° 40' | 66.00  | feet along Lot 2 of The Kauai Lagoons (2nd Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;                                                                               |
| 35. | 224° 59' | 98.00  | feet along Lot 2 of The Kauai Lagoons (2nd Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;                                                                               |
| 36. | 246° 22' | 104.68 | feet along Lot 2 of The Kauai Lagoons (2nd Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;                                                                               |
| 37. | 270° 40' | 75.02  | feet along Lot 2 of The Kauai Lagoons (2nd Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu to the point of beginning and containing an Area of 25.881 Acres, more or less |

SUBJECT, however, to rights-of-way, restrictions, reservations and easements now existing or of record.

**Lot 6  
of The Kauai Lagoons (2<sup>nd</sup> Amendment)**

Being a portion of Royal Patent 4480, Land Commission Award 7713,  
Apana 2, Part 1 to V. Kamamahu

Situated at Kalapaki, Lihue, Kauai, Hawaii

Beginning at the South corner of this parcel of land, being, also, the East corner of Lot 7 of The Kauai Lagoons (2<sup>nd</sup> Amendment), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALEPA" being 13,501.61 feet South and 4,016.11 feet East, thence running by azimuths measured clockwise from True South:

- |    |          |        |                                                                                                                                                     |
|----|----------|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | 141° 30' | 850.52 | feet along Lot 7 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu; |
| 2. | 51° 30'  | 19.48  | feet along Lot 7 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu; |

3. 141° 30' 131.95 feet along Lot 7 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;
4. 197° 55' 143.03 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;
5. 284° 04' 237.00 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;
6. 322° 01' 460.09 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;
7. 311° 04' 389.69 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;
8. 355° 10' 11.37 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu;
9. Thence along Lot 8 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu, on a curve to the left with a radius of 1,100.00 feet, the chord azimuth and distance being:  
49° 17' 26" 91.76 feet;
10. 46° 54' 212.84 feet along Lot 8 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamahu to the point of beginning and containing an Area of 5.827 Acres, more or less.

SUBJECT, however, to rights-of-way, restrictions, reservations and easements now existing or of record.

**Lot 7  
of The Kauai Lagoons (2<sup>nd</sup> Amendment)**

Being a portion of Royal Patent 4480, Land Commission Award 7713,  
Apana 2, Part 1 to V. Kamamahu

Situated at Kalapaki, Lihue, Kauai, Hawaii

Beginning at the East corner of this parcel of land, being, also, the South corner of Lot 6 of The Kauai Lagoons (2<sup>nd</sup> Amendment), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALEPA" being 13,501.61 feet South and 4,016.11 feet East, thence running by azimuths measured clockwise from True South:

1. 46° 54' 93.37 feet along Lot 8 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
2. Thence along Lot 8 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu, on a curve to the right with a radius of 275.00 feet, the chord azimuth and distance being:  
82° 18' 318.60 feet;
3. 117° 42' 164.91 feet along Lot 8 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
4. Thence along Lot 8 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu, on a curve to the left with a radius of 175.00 feet, the chord azimuth and distance being:  
107° 38' 41" 61.11 feet;
5. 181° 20' 41.51 feet along Lot 1 of The Kauai Lagoons (File Plan 1905);
6. 91° 20' 164.72 feet along Lot 1 of The Kauai Lagoons (File Plan 1905);
7. Thence along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu, on a curve to the left with a radius of 356.00 feet, the chord azimuth and distance being:  
242° 31' 10" 24.68 feet;
8. 240° 32' 55.41 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
9. 169° 46' 478.11 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
10. 223° 23' 101.92 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
11. 206° 35' 156.00 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;

12.     321° 30'                   131.95 feet along Lot 6 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
13.     231° 30'                   19.48 feet along Lot 6 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
14.     321° 30'                   850.52 feet along Lot 6 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu to the point of beginning and containing an Area of 8.176 Acres, more or less.

SUBJECT, however, to rights-of-way, restrictions, reservations and easements now existing or of record.

**Lot 8  
of The Kauai Lagoons (2<sup>nd</sup> Amendment)**

Being a portion of Royal Patent 4480, Land Commission Award 7713,  
Apana 2, Part 1 to V. Kamamalu

Situated at Kalapaki, Lihue, Kauai, Hawaii

Beginning at the Northwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALEPA" being 13,512.91 feet South and 3,427.96 feet East, thence running by azimuths measured clockwise from True South:

1.     Along Lot 7 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu, on a curve to the right with a radius of 175.00 feet, the chord azimuth and distance being:  

287° 38' 41"                   61.11 feet;
2.     297° 42'                   164.91 feet along Lot 7 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
3.     Thence along Lot 7 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu, on a curve to the left with a radius of 275.00 feet, the chord azimuth and distance being:  

262° 18'                       318.60 feet;

4. 226° 54' 306.21 feet along Lots 7 and 6 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
5. Thence along Lot 6 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu, on a curve to the right with a radius of 1,100.00 feet, the chord azimuth and distance being:  
229° 17' 26" 91.76 feet;
6. 355° 10' 44.48 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
7. 26° 40' 372.21 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
8. 338° 50' 242.06 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
9. 39° 36' 261.00 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
10. 17° 34' 150.00 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
11. 34° 07' 286.00 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
12. 16° 30' 199.00 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
13. 75° 07' 139.93 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
14. 179° 24' 110.79 feet along Lot 11-A as shown on Map 7 of Land Court Application 1819;
15. 180° 24' 42.67 feet along Lot 11-A as shown on Map 7 of Land Court Application 1819;
16. 257° 10' 44.45 feet along Lot 1 of The Kauai Lagoons (File Plan 1905);
17. 157° 30' 127.95 feet along Lot 1 of The Kauai Lagoons (File Plan 1905);

- |     |          |                                                                                                                                                |
|-----|----------|------------------------------------------------------------------------------------------------------------------------------------------------|
| 18. | 247° 30' | 198.00 feet along Lot 1 of The Kauai Lagoons (File Plan 1905);                                                                                 |
| 19. | 157° 30' | 459.00 feet along Lot 1 of The Kauai Lagoons (File Plan 1905);                                                                                 |
| 20. | 192° 00' | 74.32 feet along Lot 1 of The Kauai Lagoons (File Plan 1905);                                                                                  |
| 21. | 157° 30' | 183.56 feet along Lot 1 of The Kauai Lagoons (File Plan 1905);                                                                                 |
| 22. | 131° 45' | 162.00 feet along Lot 1 of The Kauai Lagoons (File Plan 1905);                                                                                 |
| 23. | 181° 20' | 62.21 feet along Lot 1 of The Kauai Lagoons (File Plan 1905) to the point of<br>beginning and containing an Area of 9.251 Acres, more or less. |
- SUBJECT, however, to rights-of-way, restrictions, reservations and easements now existing or of record.**

**LOT 10-A**

at Kalapaki, Lihue, Kauai, Hawaii

Land situated approximately 500 feet in the Westerly direction  
from the Southern end of Lihue Airport

Being a portion of  
Royal Patent 4480, Land Commission Award 7713  
Apana 2, Part 1 to Victoria Kamamalu

Being also a portion of Lot 10  
of The Kauai Lagoons, (2<sup>nd</sup> Amendment) Subdivision,  
Kauai County Subdivision File No. S-2006-21

Beginning at the Northwest corner of this parcel of land, being  
the corner of Lot 10-B, also being the corner of Lot 2-A,  
the coordinates of said point of beginning referred to Government Survey  
Triangulation Station "Kalepa" being 13,848.08 feet South and 6,329.32 feet East,  
and running by azimuths measured clockwise from true South:

- |    |              |              |                                                                                                                                                                                              |
|----|--------------|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | 263° 25'     | 282.90 feet  | along Lot 2-A;<br><br>Thence along Lot 2-A on a curve to the left with a<br>radius of 190.00 feet, radial azimuth from center<br>being 12° 09' 02", the chord azimuth and distance<br>being: |
| 2. | 270° 50' 34" | 74.51 feet;  |                                                                                                                                                                                              |
| 3. | 347° 20'     | 147.46 feet; |                                                                                                                                                                                              |
| 4. | 28° 18'      | 294.77 feet; |                                                                                                                                                                                              |
| 5. | 3° 20'       | 258.00 feet; |                                                                                                                                                                                              |
| 6. | 13° 56'      | 387.77 feet; |                                                                                                                                                                                              |
| 7. | 87° 14'      | 91.02 feet;  |                                                                                                                                                                                              |
| 8. | 116° 02' 30" | 228.52 feet; |                                                                                                                                                                                              |

- |                  |              |                                                                                                         |
|------------------|--------------|---------------------------------------------------------------------------------------------------------|
| 9. 205° 15'      | 122.25 feet  | along the Easterly side of Lot 10-B;                                                                    |
| 10. 125° 07'     | 8.46 feet;   |                                                                                                         |
| 11. 198° 50'     | 23.60 feet;  |                                                                                                         |
| 12. 134° 17'     | 71.73 feet;  |                                                                                                         |
| 13. 113° 23' 30" | 73.83 feet;  |                                                                                                         |
| 14. 199° 27'     | 48.67 feet;  |                                                                                                         |
| 15. 210° 06'     | 581.75 feet; |                                                                                                         |
| 16. 149° 20'     | 167.07 feet  | along the Easterly side of Lot 10-B to the point of<br>beginning and containing an area of 7.649 acres. |

SUBJECT, HOWEVER to the following Easements:

1. A-3 for roadway purposes
2. A-4 for access purposes
3. R-3 for roadway purposes
4. 15 for road, utility, and parking purposes
5. 16 for pedestrian access purposes

735 Bishop Street, Suite 330  
Honolulu, Hawaii 96813  
(808) 521-3990

ACE LAND SURVEYING LLC

February 29, 2008

Kevin K. Kea  
Licensed Professional Land Surveyor  
Certificate Number 10928

LOT 10-B

at Kalapaki, Lihu'e, Kauai, Hawaii

Land situated approximately 900 feet in the Westerly direction  
from the Southern end of Lihue Airport

Being a portion of  
Royal Patent 4480, Land Commission Award 7713  
Apana 2, Part 1 to Victoria Kamamalu

Being also a portion of Lot 2 and Lot 10  
of The Kauai Lagoons, (2<sup>nd</sup> Amendment) Subdivision,  
Kauai County Subdivision File No. S-2006-21

Beginning at the most Northwest corner of this parcel of land,  
being the corner of Lot 2-A,  
the coordinates of said point of beginning referred to Government Survey  
Triangulation Station "Kalepa" being 13,683.64 feet South and 5,666.23 feet East,  
and running by azimuths measured clockwise from true South:

- |     |              |              |                                  |
|-----|--------------|--------------|----------------------------------|
| 1.  | 308° 18'     | 175.51 feet  | along Lot 2-A;                   |
| 2.  | 276° 12'     | 75.81 feet;  |                                  |
| 3.  | 298° 08' 30" | 148.49 feet; |                                  |
| 4.  | 311° 52'     | 106.92 feet; |                                  |
| 5.  | 248° 35'     | 257.19 feet; |                                  |
| 6.  | 329° 20'     | 167.07 feet  | along the West side of Lot 10-A; |
| 7.  | 30° 06'      | 581.75 feet; |                                  |
| 8.  | 19° 27'      | 48.67 feet;  |                                  |
| 9.  | 293° 23' 30" | 73.83 feet;  |                                  |
| 10. | 314° 17'     | 71.73 feet;  |                                  |
| 11. | 18° 50'      | 23.60 feet;  |                                  |
| 12. | 305° 07'     | 8.46 feet;   |                                  |
| 13. | 25° 15'      | 122.25 feet; |                                  |
| 14. | 120° 46' 45" | 239.91 feet  | along Lot 2-A;                   |
| 15. | 179° 52'     | 295.14 feet; |                                  |
| 16. | 133° 43' 30" | 195.04 feet; |                                  |
| 17. | 136° 36'     | 198.36 feet; |                                  |
| 18. | 153° 06' 30" | 123.22 feet; |                                  |
| 19. | 121° 17'     | 15.56 feet;  |                                  |
| 20. | 173° 00'     | 161.58 feet; |                                  |

21. 213° 40'                      119.34 feet                      to the point of beginning and containing an area of 8.626 acres.

SUBJECT, HOWEVER to the following Easements:

1. GC-4 for golf course purposes
2. A-2 for access purposes
3. 16 for pedestrian access purposes
4. U for utility purposes
5. R for access and utility purposes
6. P for pedestrian access purposes

735 Bishop Street, Suite 330  
Honolulu, Hawaii 96813  
(808) 521-3990  
February 29, 2008

ACE LAND SURVEYING LLC

Kevin K. Kea  
Licensed Professional Land Surveyor  
Certificate Number 10928

LOT 2-A

at Kalapaki, Lihu'e, Kauai, Hawaii  
Land situated between Lihue Airport  
and Nawiliwili Bay

Being a portion of  
Royal Patent 4480, Land Commission Award 7713  
Apana 2, Part 1 to Victoria Kamamalu

Being also a portion of Lots 2 and 10  
of The Kauai Lagoons, (2<sup>nd</sup> Amendment) Subdivision,  
Kauai County Subdivision File No. S-2006-21

Beginning at the most Northerly corner of this parcel of land, being  
the East side of Kapule Highway, also being the corner of Lot 3 of  
The Kauai Lagoons, the coordinates of said point of beginning  
referred to Government Survey Triangulation Station "Kalepa"  
being 9135.78 feet South and 1811.68 feet East,  
and running by azimuths measured clockwise from true South:

1. 354° 48' 43" 1221.04 feet along Lot 3 of The Kauai Lagoons;
2. 315° 00' 1095.27 feet;
3. 225° 00' 779.30 feet;
4. 315° 00' 95.77 feet;
5. 45° 00' 793.00 feet along Lot 4 of The Kauai Lagoons, (2<sup>nd</sup> Amendment)  
Subdivision, Kauai County Subdivision File No.  
S-2006-21;
6. 315° 00' 54.87 feet;
7. 303° 21' 144.08 feet;
8. 300° 00' 65.00 feet;
9. 282° 00' 53.00 feet;
10. 269° 00' 68.00 feet;
11. 254° 00' 47.00 feet;
12. 244° 00' 61.00 feet;
13. 233° 00' 93.00 feet;
14. 223° 00' 205.00 feet;
15. 211° 00' 99.00 feet;
16. 195° 00' 48.52 feet;
17. 303° 16' 262.83 feet along Lot 5 of The Kauai Lagoons, (2<sup>nd</sup> Amendment)  
Subdivision, Kauai County Subdivision File No. S-2006-21;

EXHIBIT "1"  
To Exhibit "A"  
Page 13 of 26

18. 284° 07'	130.00 feet;
19. 322° 18'	106.00 feet;
20. 351° 32'	95.00 feet;
21. 40° 57'	85.00 feet;
22. 62° 31'	178.00 feet;
23. 39° 36'	137.14 feet;

Thence on a curve to the right with a radius of 270.06 feet, radial azimuth to PT being 269°23'32", the chord azimuth and distance being:

24. 335° 45' 09"	216.58 feet;
25. 349° 43'	74.72 feet;
26. 285° 39'	234.00 feet;
27. 309° 25'	262.00 feet;
28. 323° 25'	300.00 feet;
29. 340° 06'	375.00 feet;
30. 341° 25'	359.00 feet;
31. 276° 44'	144.00 feet;
32. 256° 35'	131.00 feet;
33. 168° 48'	283.00 feet;
34. 161° 03'	174.00 feet;
35. 195° 02'	70.00 feet;
36. 173° 26'	161.00 feet;
37. 157° 50'	178.00 feet;
38. 127° 34'	100.00 feet;
39. 155° 47'	68.00 feet;
40. 100° 15'	68.00 feet;
41. 133° 02'	81.00 feet;
42. 268° 57'	254.00 feet;
43. 278° 24'	339.00 feet;
44. 234° 50'	380.00 feet;
45. 290° 57'	288.00 feet;
46. 294° 51'	226.00 feet;
47. 17° 44'	61.00 feet;
48. 41° 57'	145.00 feet;

49.	54° 16'	111.00 feet;
50.	19° 36'	120.00 feet;
51.	55° 17'	202.00 feet;
52.	46° 49'	135.00 feet;
53.	10° 51'	164.00 feet;
54.	47° 13'	127.00 feet;
55.	31° 10'	238.00 feet;
56.	324° 54'	132.00 feet;
57.	10° 07'	118.00 feet;
58.	351° 20'	146.00 feet;
59.	250° 46'	262.00 feet;
60.	263° 05'	115.00 feet;
61.	243° 17'	431.00 feet;
62.	236° 32'	127.00 feet;
63.	223° 55'	305.00 feet;
64.	216° 57'	247.00 feet;
65.	234° 13'	287.00 feet;
66.	270° 00'	290.00 feet;
67.	0° 00'	204.15 feet;
68.	61° 40'	54.10 feet;
69.	331° 40'	85.00 feet;
70.	241° 40'	8.27 feet;
71.	0° 00'	2348.98 feet;
72.	8° 31' 50"	224.31 feet;

Thence following along the high water mark at Seashore (Evidence of Highwater Mark varies) as certified on November 17, 2007 for the next thirty seven (37) courses, the direct azimuths and distances between points being:

73.	75° 58' 56"	98.72 feet;
74.	94° 20' 17"	71.01 feet;
75.	115° 31' 31"	124.91 feet;
76.	164° 11' 32"	87.75 feet;
77.	120° 52' 30"	137.77 feet;
78.	140° 45' 27"	70.28 feet;

79.	108° 52' 46"	87.99 feet;	
80.	97° 10' 20"	68.91 feet;	
81.	64° 30' 24"	159.63 feet;	
82.	104° 28' 31"	91.28 feet;	
83.	106° 04' 44"	96.97 feet;	
84.	115 ° 27' 33"	74.81 feet;	
85.	84° 20' 07"	106.53 feet;	
86.	105° 42' 57"	86.32 feet;	
87.	64° 30' 59"	64.72 feet;	
88.	93° 58' 31"	100.97 feet;	
89.	45° 18' 25"	146.09 feet;	
90.	68° 04' 03"	72.66 feet;	
91.	85° 19' 53"	114.08 feet;	
92.	90° 58' 48"	71.63 feet;	
93.	36° 29' 30"	131.73 feet;	
94.	57° 32' 18"	43.21 feet;	
95.	52° 02' 53"	103.85 feet;	
96.	40° 54' 18"	64.83 feet;	
97.	30° 49' 14"	56.65 feet;	
98.	32° 05' 08"	239.69 feet;	
99.	86° 47' 51"	56.17 feet;	
100.	87° 45' 42"	57.38 feet;	
101.	23° 15' 07"	115.59 feet;	
102.	80° 42' 21"	44.36 feet;	
103.	107° 26' 56"	65.34 feet;	
104.	130° 09' 37"	89.13 feet;	
105.	65° 43' 46"	172.93 feet;	
106.	84° 21' 46"	63.29 feet;	
107.	86° 21' 49"	294.74 feet;	
108.	128° 02' 56"	251.71 feet;	
109.	73° 59' 52"	44.79 feet;	
110.	184° 25'	213.07 feet	along Lot 3 and Lot 11-A of Ld. Ct. App. 1819;
111.	168° 09'	121.50 feet	along Lot 11-A of Ld. Ct. App. 1819;
112.	193° 40'	85.60 feet;	

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To Exhibit "A"  
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113.	184° 24'	68.10 feet;	
114.	155° 32'	78.67 feet;	
115.	166° 26'	83.20 feet;	
116.	210° 39'	85.30 feet;	
117.	179° 24'	230.11 feet;	
118.	255° 07'	139.93 feet;	
119.	196° 30'	199.00 feet	along Lot 1;
120.	214° 07'	286.00 feet	along Lot 8-A;
121.	197° 34'	150.00 feet;	
122.	219° 36'	261.00 feet;	
123.	158° 50'	242.06 feet;	
124.	206° 40'	372.21 feet;	
125.	175° 10'	55.85 feet;	
126.	131° 04'	389.69 feet;	
127.	142° 01'	460.09 feet;	
128.	104° 04'	237.00 feet;	
129.	17° 55'	143.03 feet;	
130.	26° 35'	156.00 feet;	
131.	43° 23'	101.92 feet;	
132.	349° 46'	478.11 feet;	
133.	60° 32'	55.41 feet;	
Thence along the Westerly side of Lot 7 on a curve to the right with a radius of 356.00 feet, the chord azimuth and distance being:			
134.	62° 31' 10"	24.68 feet;	
135.	91° 20'	319.54 feet	along Lot 1;
136.	75° 50'	113.00 feet;	
137.	150° 13' 30"	80.82 feet	along Parcel 1;
138.	143° 10'	21.00 feet;	
139.	131° 50'	56.00 feet;	
140.	136° 04'	54.83 feet;	
141.	146° 00'	140.00 feet;	
142.	152° 00'	50.00 feet;	
143.	132° 00'	95.00 feet;	

EXHIBIT "1"  
To Exhibit "A"  
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144. 117° 00'	200.00 feet;	
145. 146° 00'	220.00 feet;	
146. 135° 00'	55.00 feet;	
147. 157° 00'	220.00 feet;	
148. 201° 00'	105.00 feet;	
149. 195° 00'	90.00 feet;	
150. 186° 00'	80.00 feet;	
151. 170° 00'	105.00 feet;	
152. 161° 00'	150.00 feet;	
153. 152° 00'	93.00 feet;	
154. 132° 00'	30.00 feet;	
155. 101° 30'	123.00 feet;	
156. 74° 00'	367.00 feet;	
157. 85° 00'	261.00 feet;	
158. 67° 00'	104.00 feet;	
159. 33° 00'	175.00 feet;	
160. 64° 36'	15.00 feet;	
161. 182° 25'	34.18 feet	along Lot 16 of the Lihue Industrial Park, Unit 2;
162. 200° 56' 30"	73.89 feet	along Lot 9 and Lot 8 of the Lihue Industrial Park, Unit 2;
163. 216° 28' 30"	71.03 feet	along Lot 8 and Lot 7 of the Lihue Industrial Park, Unit 2;
164. 211° 49'	51.61 feet	along Lot 7 of the Lihue Industrial Park, Unit 2;
165. 208° 00'	225.00 feet	along Lot 7 and Lot 6 of the Lihue Industrial Park, Unit 2;
166. 204° 30'	130.00 feet	along Lot 5 and Lot 4 of the Lihue Industrial Park, Unit 2;
167. 229° 00'	150.00 feet	along Lot 4 and Lot 3 of the Lihue Industrial Park, Unit 2;
168. 213° 00'	162.19 feet	along Lot 3 and Lot 2 of the Lihue Industrial Park, Unit 2;
169. 123° 00'	106.97 feet	along Lot 2 of the Lihue Industrial Park, Unit 2;
170. 213° 00'	60.00 feet	along the Easterly end of Haoa Street;
171. 123° 00'	90.12 feet	along the North side of Haoa Street;
172. 213° 00'	70.17 feet	along Lot 1 of The Kauai Lagoons (2 <sup>nd</sup> Amendment) Subdivision, Kauai County Subdivision File No. S-2006-21;

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To Exhibit "A"  
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173. 138° 20' 411.00 feet;  
 174. 171° 44' 90.00 feet;  
 175. 186° 31' 67.00 feet;  
 176. 119° 56' 88.00 feet to the East side of Kapule Highway;

Thence along the East side of Kapule Highway,  
 on a curve to the left with a radius of 2060.00 feet,  
 the chord azimuth and distance being:

177. 206° 25' 12" 252.96 feet;  
 178. 202° 54' 1132.98 feet;

Thence along the East side of Kapule Highway,  
 on a curve to the left with a radius of 6050.00 feet,  
 the chord azimuth and distance being:

179. 200° 57' 39.6" 409.41 feet to the point of beginning and containing a gross  
 area of 306.747 acres, excluding the following  
 lots as mentioned below for a net area of 257.372  
 acres.

EXCLUDING: Lots 3, 9, 10-A, 10-B, and Exclusion

SUBJECT, HOWEVER, to the following Easements:

1. U-1 for utility purposes
2. 15 for road, utility, and parking purposes
3. R-2 for roadway purposes
4. A-2 for access purposes
5. 16 for pedestrian access purposes
6. A-3 for access purposes
7. GC-2 for golf course purposes
8. 4 for road and utility purposes
9. R-1 for road and utility purposes
10. L-2 for lake purposes
11. C-1 for chapel purposes
12. 5 for parking and utility purposes
13. 23 for road and utility purposes
14. L-1 for lake purposes
15. 2 for road and utility purposes
16. 10 for road and utility purposes
17. 12 for sanitary sewer purposes
18. 14 for road and utility purposes
19. 3 for road and utility purposes
20. Nawiliwili Sewer
21. Parcel A for sewer and road purposes
22. Area 1 for clear zone purposes
23. 9 for road and utility purposes
24. A for sanitary sewer purposes

25. 6 for road and utility purposes
26. 7 for road and utility purposes
27. 8 for road and utility purposes
28. 11 for road and utility purposes
29. 13 for road and utility purposes
30. R-3 for roadway purposes
31. R-4 for roadway purposes
32. A for access and utility purposes

735 Bishop Street, Suite 330  
Honolulu, Hawaii 96813  
(808) 521-3990  
February 29, 2008

ACE LAND SURVEYING LLC

Kevin K. Kea  
Licensed Professional Land Surveyor  
Certificate Number 10928

DESCRIPTION  
Lot 5  
of The Kauai Lagoons (2<sup>nd</sup> Amendment)

Being a portion of Royal Patent 4480, Land Commission Award 7713,  
Apana 2, Part 1 to V. Kamamalu;

Situated at Kalapaki, Lihue, Kauai, Hawaii

Beginning at the West corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALEPA" being 10,575.24 feet South and 3,247.62 feet East, thence running by azimuths measured clockwise from True South:

- |    |          |                                                                                                                                                            |
|----|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | 226° 00' | 1,765.34 feet along Lot 3 of The Kauai Lagoons (File Plan 1905);                                                                                           |
| 2. | 297° 00' | 2,184.28 feet along Lot 3 of The Kauai Lagoons (File Plan 1905);                                                                                           |
| 3. | 345° 47' | 1,575.82 feet along Lihue Airport, along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;                                        |
| 4. | 360° 00' | 587.81 feet along Lihue Airport, along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;                                          |
| 5. | 90° 00'  | 290.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu; |
| 6. | 54° 13'  | 287.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu; |
| 7. | 36° 57'  | 247.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu; |
| 8. | 43° 55'  | 305.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu; |
| 9. | 56° 32'  | 127.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu; |

10.	63° 17'	431.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
11.	83° 05'	115.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
12.	70° 46'	262.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
13.	171° 20'	146.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
14.	190° 07'	118.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
15.	144° 54'	132.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
16.	211° 10'	238.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
17.	227° 13'	127.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
18.	190° 51'	164.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
19.	226° 49'	135.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
20.	235° 17'	202.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
21.	199° 36'	120.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;

22.	234° 16'	111.00' feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
23.	221° 57'	145.00' feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
24.	197° 44'	61.00' feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
25.	114° 51'	226.00' feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
26.	110° 57'	288.00' feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
27.	54° 50'	380.00' feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
28.	98° 24'	339.00' feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
29.	88° 57'	254.00' feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
30.	313° 02'	81.00' feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
31.	280° 15'	68.00' feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
32.	335° 47'	68.00' feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
33.	307° 34'	100.00' feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;

34.	337° 50'	178.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
35.	353° 26'	161.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
36.	15° 02'	70.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
37.	341° 03'	174.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
38.	348° 48'	283.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
39.	76° 35'	131.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
40.	96° 44'	144.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
41.	161° 25'	359.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
42.	160° 06'	375.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
43.	143° 25'	300.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
44.	129° 25'	262.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
45.	105° 39'	234.00 feet along Lot 2 of The Kauai Lagoons (2 <sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;

46. 169° 43' 74.72 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
47. Thence along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu, on a curve to the left with a radius of 270.00 feet, the chord azimuth and distance being: 155° 45' 18" 218.58 feet;
48. 219° 36' 137.14 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
49. 242° 31' 178.00 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
50. 220° 57' 85.00 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
51. 171° 32' 95.00 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
52. 142° 18' 106.00 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
53. 104° 07' 130.00 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
54. 123° 16' 262.83 feet along Lot 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
55. 195° 00' 48.48 feet along Lot 4 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
56. 177° 00' 39.00 feet along Lot 4 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;

57. 165° 00' 73.00 feet along Lot 4 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
58. 149° 00' 92.00 feet along Lot 4 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
59. 142° 00' 70.82 feet along Lot 4 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu;
60. 135° 00' 170.45 feet along Lots 4 and 2 of The Kauai Lagoons (2<sup>nd</sup> Amendment), along the remainder of R.P. 4480, L.C. Aw. 7713, Apana 2, Part 1 to V. Kamamalu to the point of beginning and containing an Area of 188.148 Acres, more or less.

SUBJECT, however, to rights-of-way, restrictions, reservations and easements now existing or of record.

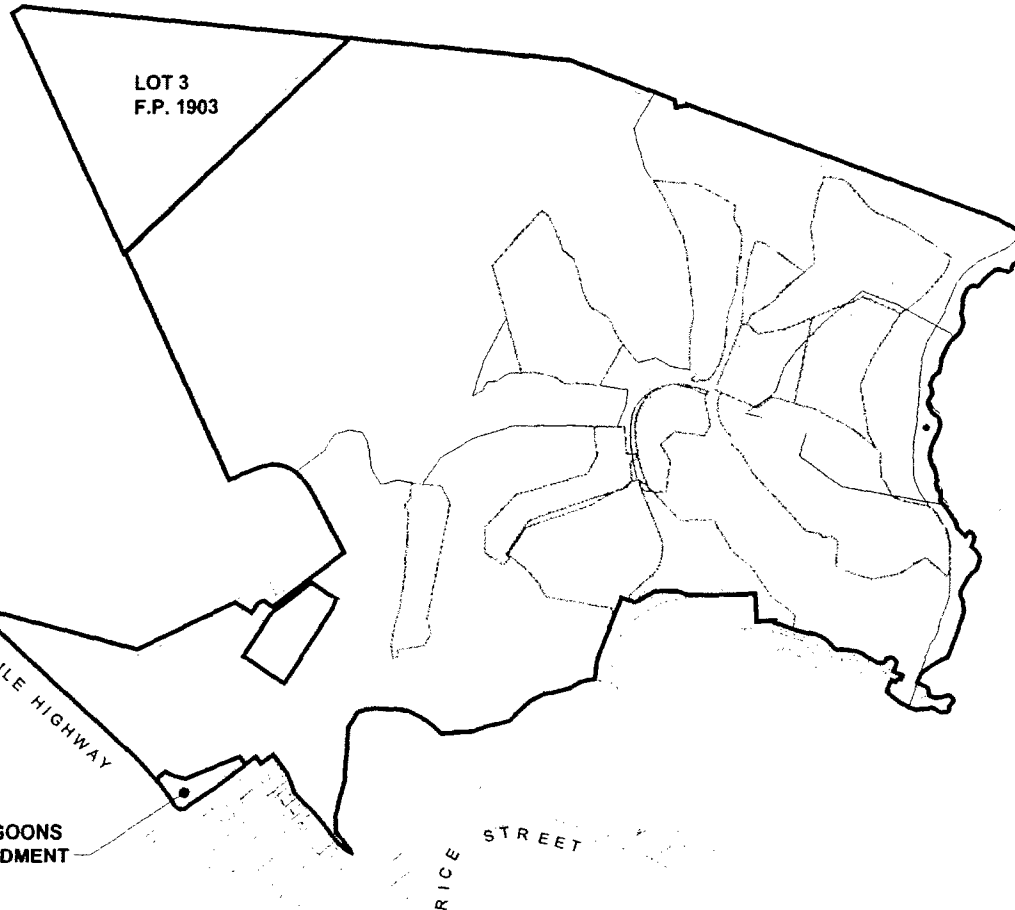
2153 North King Street  
Suite 200  
Honolulu, Hawaii 96819

February 20, 2003



BELT COLLINS HAWAII LTD.

*Robert W. Cunningham*  
Licensed Professional Land Surveyor  
Certificate Number 4188



SCALE: 1"=500'

0 200' 400' 600' 1600'

# **OUTLINE OF KAUAI LAGOONS RESORT** SCALE: 1"=800'

WCTAR INTERLUCE

For more information, please contact:  
WCTAR INTERLUCE  
1111 Kalia Road, Suite 100  
Honolulu, HI 96813  
Phone: (808) 943-1111  
Fax: (808) 943-1112  
Email: wctar@wctar.com

KAUAI LAGOONS

Makali'i


Price

Per Acre

Date 12.18.2007

Meeting 10

Meeting 10

EXHIBIT "A-1"

**FIRST: LANDS OF MORI GOLF (KAUAI), LLC**

(TMK (4) 3-5-001-060)

All of that certain parcel of land situate at Kalapaki, District of Lihue, Island and County of Kauai, State of Hawaii, being LOT 3 of "THE KAUAI LAGOONS", as shown on File Plan Number 1905 filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 47.839 acres, more or less.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KAUAI DEVELOPMENT LLC, a Hawaii limited liability company  
GRANTEE : MORI GOLF (KAUAI), LLC, a Delaware limited liability company  
DATED : --- (acknowledged July 19, 2007)  
RECORDED : Document No. 2007-144031

SUBJECT TO ALL ENCUMBRANCES OF RECORD

**SECOND: LANDS OF K D KAPULE LLC**

(TMK (4) 3-5-001-165)

LOT 1 of the "THE KAUAI LAGOONS (2ND AMENDMENT)" containing an area of 2.143 acres, more or less, more particularly described in Exhibit "1" attached.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KAUAI DEVELOPMENT LLC, a Hawaii limited liability company  
GRANTEE : K D KAPULE LLC a Hawaii limited liability company  
DATED : October 14, 2005  
RECORDED : Document No. 2005-209700

SUBJECT TO ALL ENCUMBRANCES OF RECORD

## EXHIBIT "1"

10. Thence along the southeasterly side of Kapule Highway, on a curve to the left with a radius of 2,060.00 feet, the chord azimuth and distance being:  
213° 09' 01" 230.72 feet to the point of beginning and containing  
an Area of 2.143 Acres, more or less.

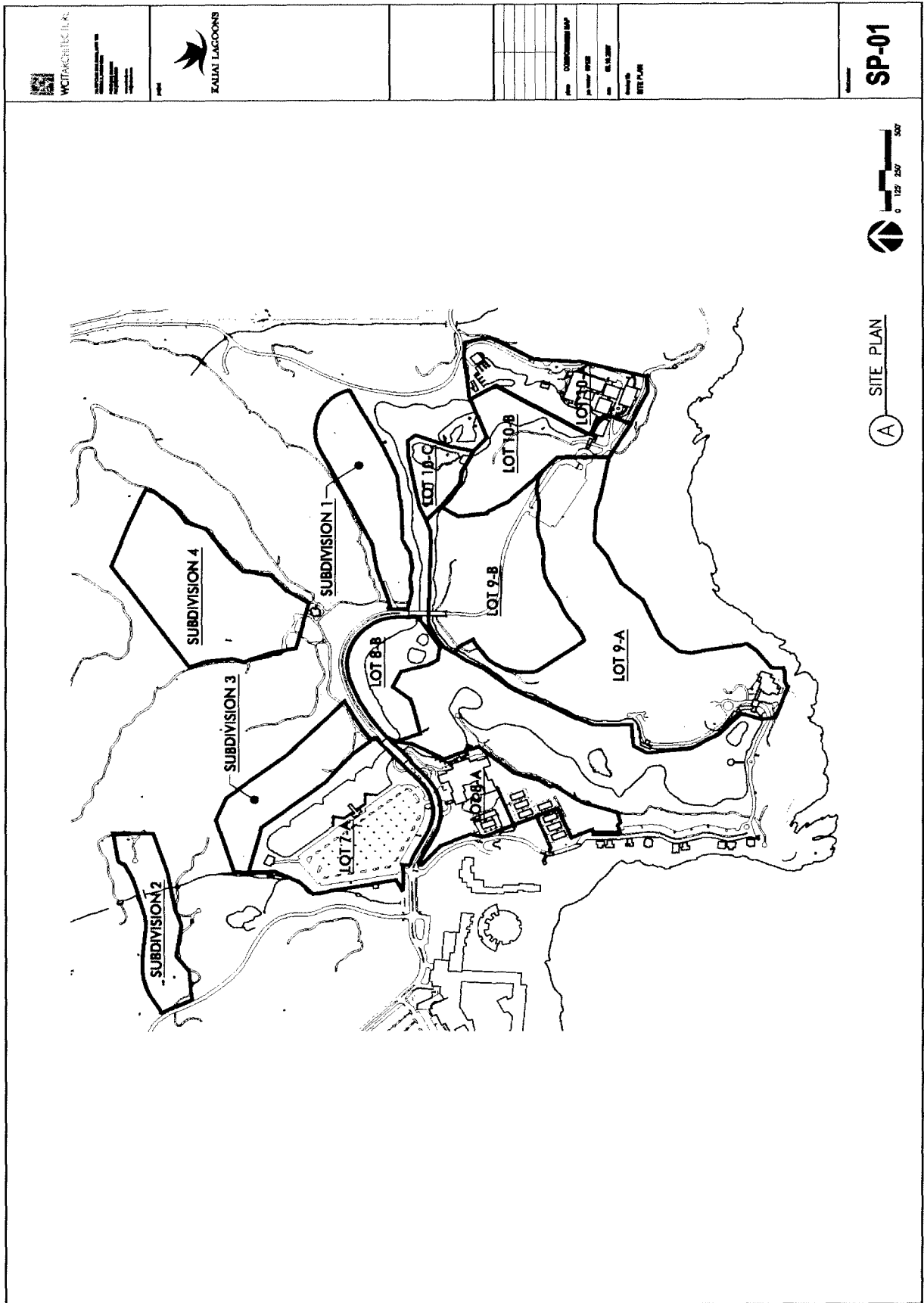
SUBJECT, however, to rights-of-way, restrictions, reservations and easements now existing or of record.

# EXHIBIT "B"

## Master Plan

### List of Parcels, Uses and Minimum Points

Parcel	Product	Units	Use	Minimum Points
Lot 7-A	Lagoon Townhomes Central Ops Building Welcome Center	14	Residential	14
Lot 8-A	MVCI Sequel	174	Timeshare	174
Lot 8-B	Lagoon Townhomes	12	Residential	12
Lot 9-A	Makali'i / Ritz-Carlton Residences Club	60 72	Residential Fractional (Timeshare)	60 72
Lot 9-B	MVCI Timeshare	286	Timeshare	286
Lot 10-A	Fashion Landing	0	Commercial	0
Lot 10-B	Kalanipu'u	78	Residential	78
Lot 10-C	na			
Subdivision 1	Single Family Lots	10	Residential	10
Subdivision 2	Single Family Lots	9	Residential	9
Subdivision 3	Single Family Lots	11	Residential	11
Subdivision 4	Single Family Lots	24	Residential	24
Golf Course	na	0	Golf Course and recreation	0
	Total	750		750



# EXHIBIT "B"

Page 2

Site Plan

All parcels not labeled are Golf Course Parcels. Buildings may not be as shown

## EXHIBIT "C"

### FORMULA FOR ASSESSING VOTES AND ASSESSMENT OBLIGATIONS

Voting rights and allocation of assessments under the Declaration shall be based upon the number of points assigned to a particular Unit relative to all other Units eligible to vote or subject to a particular assessment ("**Points**"). All votes are weighted on the basis of Points as set out in this Exhibit "C", and voting shall not be construed to be on an equality or per capita basis. The number of Points assigned to each Unit shall be determined as follows:

(A) Minimum Points.

(i) For purposes of voting and assessment, each Parcel shall be assigned the minimum number of Points designated for such Parcel on the Schedule of Minimum Points that is part of Exhibit "B" (the "**Minimum Points**").

(ii) Except as provided in subsection (iii) below, if the land of a Parcel is subdivided into two or more Lots, then the Minimum Points assigned to each Lot within the Parcel shall be determined by dividing the Minimum Points assigned to the Parcel on the Schedule by the total acreage of the Parcel, then multiplying the result by the acreage of land comprising the particular Lot.

(iii) Subsection (ii) applies when a Parcel shown on the Master Plan as Subdivision Single Family Lots ("**SFL**") is subdivided into smaller Units but has not yet been subdivided into single-family residential Units. This subsection (iii) applies to subdivision of an SFL Parcel (or a previously subdivided portion of an SLF Parcel) into single-family Residential Units. Upon subdivision into single-family residential Units the Minimum Points shall be divided equally among the single-family Residential Units. For example the Subdivision 1 Parcel has 10 Minimum Points and after subdivision might have 5 Units. Therefore each Unit in the Subdivision 1 Parcel would have 2.00 Minimum Points (10/5).

(B) Actual Points. Upon the earliest of (i) final subdivision approval subdividing a Parcel (or a portion of it) into single family lots or (ii) recording a declaration in the Record Office submitting all or a portion of the Parcel to a condominium regime, or (iii) upon issuance of a certificate of occupancy for structures on the Parcel (or a portion thereof) by the appropriate local governmental entity, or (iii) issuance by the architect of a certificate of substantial completion for structures on the Parcel (or a portion thereof), each Unit to which any of the foregoing instruments applies shall be assigned Points for purposes of voting and assessment equal to the greater of (1) the Minimum Points assigned to the Unit pursuant to paragraph (A) above, or (2) the total Points for all components of the Unit, to the extent determinable by any of the foregoing instruments, as assigned by the chart set forth below ("**Actual Points**" which shall be rounded to the nearest two decimal places).

<u>Use Type</u>	<u>Components of Unit</u>	<u>Points</u>
1.	studio apartment	.75
2.	one bedroom apartment	1.00

3.	two bedroom apartment	1.25
4.	three bedroom or larger apartment	1.50
5.	single-family detached dwelling site and Improvements (as defined below) on it, if any	2.0
6.	each 1,000 sq. ft. (or portion) of net leaseable and/or commercial floor area within Improvements (as defined below) within a Unit for commercial purposes except parking lots within structures	1.0
7.	each 10,000 sq. ft. (or portion) of land within a Unit for commercial purposes, including parking lots on grade	.50
8.	Golf Course	1.00

If land is required to be allocated among type 6 Improvements and other Improvements for the purpose of determining the type 7 allocation, it shall be allocated to the type 6 Improvements based on relative square footage.

**"Improvements"** shall mean any structure for which an initial certificate of occupancy has been issued or which is substantially complete as determined by the architect.

The percentage of a particular assessment to be levied on each Unit shall be computed by multiplying the total amount to be assessed by a fraction, the numerator of which is the Points assigned to such Unit as provided above and the denominator of which is the total Points assigned to all Units subject to the particular assessment. However, if an association or a subassociation is collecting and paying the assessments for the Units within the association or subassociation, then to the extent provided in the governing documents of that association or subassociation, its Board of Directors may reallocate the total assessments for that association or subassociation's Units. For example although the schedule above treats three and four bedroom apartments alike, an association or subassociation may choose to assess a three-bedroom apartment a smaller share than a four-bedroom apartment.

The percentage of the total voting power allocated to each Unit shall be computed by dividing the Points assigned to such Unit by the total Points assigned to all Units eligible to vote.

The percentages for allocation of assessments and voting rights shall be computed annually by the Board of Directors as of a date that is not less than 90 days prior to the beginning of each fiscal year. Notice of the percentages for each Unit shall be sent to each Owner and Delegate (if other than the Owner together with the annual notice of assessments).

Upon annexation of additional property to this Declaration between annual cutoff dates for computation of assessments and voting rights, the Board shall recompute assessment and voting percentages for each Unit and send notice of such recomputed percentages to each Owner or Delegate, as appropriate; however, no adjustments shall be made in any assessments previously levied to reflect such recomputation.

## EXHIBIT "C"

### Page 2

### Formula for allocating votes and assessment obligations

## EXHIBIT "D"

### LIST OF LAND USE PERMITS

Special Management Area Permit SMA (U) 2005-8,  
Condominium Development Use Permit U-2005-26,  
Use Permit U-2005-25,  
Variance Permit V-2005-7,  
Ordinance No. PM 2006-382 General Plan Amendment, Nawiliwili, Kauai  
Ordinance No. PM 2006-383 Zoning Amendment, Nawiliwili, Kauai  
Ordinance No. PM 2006-384 VDA Amendment, Nawiliwili, Kauai

As Land Use Permits are issued, or superseded by later Land Use Permits, or amended,  
Declarant may amend this Exhibit "D" to add or delete them as appropriate.

OFFICE OF THE  
ASSISTANT REGISTRAR, LAND COURT  
STATE OF HAWAII  
(Bureau of Conveyances)

THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS:  
STATE OF HAWAII

BUREAU OF CONVEYANCES

The original of this document was  
recorded as follows:

Doc 2009-093734  
JUN 18, 2009 02:00 PM

Doc 3870079  
CTN 871,637  
JUN 18, 2009 02:00 PM

AFTER RECORDATION, RETURN BY MAIL [ ] PICKUP [ X ]

Cades Schutte LLP (BL)  
1000 Bishop Street, Suite 1200  
Honolulu, Hawaii 96813  
Telephone No.: (808) 521-9200

This Document Contains 7 Pages

Tax Map Key No.: 3-5-001-027, 3-5-001-060, 3-5-001-165, 3-5-001-168, 3-5-001-169, 3-5-001-171 through 177, 3-5-001-180  
through 215, 3-5-002-019

**FIRST AMENDMENT TO**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR KAUAI LAGOONS**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KAUAI LAGOONS (this "**First Amendment**") is made this 12<sup>th</sup> day of June, 2009, by KAUAI LAGOONS LLC, a Hawaii limited liability company (the "**Declarant**").

**RECITALS:**

A. The Declarant, as the declarant, executed that certain Declaration of Covenants, Conditions and Restrictions recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2008-040613 and in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3723797 and noted on Transfer Certificate of Title No. 871,637 (the "**Declaration**"). The Declaration imposed certain covenants, conditions and restrictions, on certain real property described in Exhibit "A" to the Declaration (the "**Land**"). Capitalized terms not defined in this First Amendment have the meanings defined in the Declaration.

B. Section 19.1.1 of the Declaration provides in pertinent part that during Declarant's Control Period Declarant may unilaterally amend the Declaration for any purpose, except that where the Declaration specifically requires the consent of the Owner or Mortgagee of a Unit for an amendment affecting that Unit, the amendment shall not apply to that Unit without such consent. The Declaration defines the term "Declarant's Control Period" as the period ending on the first to occur of the following: when Declarant no longer owns any Unit in Kauai Lagoons

and has no further rights to annex property to Kauai Lagoons; January 1, 2050; or when Declarant records an instrument terminating Declarant's Control Period.

C. There are no Mortgagees of Units and the provisions amended by this First Amendment do not require the consent of any Owner other than the Declarant.

D. Declarant, acting within the Declarant's Control Period (as described above), now approves of and desires to amend the Declaration in certain respects as more particularly set forth in this First Amendment.

### **AMENDMENT TO DECLARATION:**

NOW, THEREFORE, in consideration of the Recitals set forth above and pursuant to the provisions for amendment contained in the Declaration, the Declarant, acting within the Declarant's Control Period now amends the Declaration in the following respects:

1. Paragraph 8.3 of the Declaration is deleted in its entirety and the following is substituted in its place.

8.3 **Land Use Requirements.** The Association shall comply with all Land Use Requirements that apply (a) to Kauai Lagoons generally, as distinguished from Land Use Requirements specific to a Parcel or District, and (b) to the Area of Common Responsibility. If such Land Use Requirements require the construction of improvements, such as the comfort stations for the Beach Parks, the initial construction of the improvements shall not be the responsibility of the Association but the ongoing maintenance, repair and replacement of such improvements shall be the responsibility of the Association. If such Land Use requirements also require enforcement by the Association, as may be the case with the conservation plans for the protection of endangered species described in Exhibit D, then the Association shall take such action as the Board deems appropriate against individuals or associations, to comply with such plans.

2. Paragraph 9.1.2 of the Declaration is deleted in its entirety and the following is substituted in its place.

9.1.2 Each Owner, by acceptance of the instrument by which he becomes an Owner, is deemed to covenant and agree to pay all of the assessments described in this Section 9, as applicable. All such assessments, including the late charges and interest provided in this Section 9.1.2 shall be a continuing lien upon the Unit against which the assessment is made. If the Owner fails to pay any assessment within fifteen (15) days after its due date, then he shall pay an additional assessment equal to the greater of (a) FIFTY AND NO/100 DOLLARS (\$50.00) or (b) an amount equal to five percent (5%) of the delinquent assessment for each such failure and all delinquent assessments shall bear interest at the lesser (i) twelve per cent (12%) per annum, or (ii) the maximum rate permissible under applicable law, from the assessment due date until paid. However, this

minimum FIFTY AND NO/100 DOLLARS (\$50.00) additional assessment and the interest rate may be adjusted from time to time by the Board, with the approval of the Declarant during Developer's Rights Period, subject to any limitations provided by law. In the event that any late charge or interest rate or portion of them is ever determined to violate laws concerning usury or consumer protection then any excess collected shall be credited against the principal of the delinquent assessment. All costs, including attorneys' fees and court costs, to collect assessments and to enforce any other duties under this Declaration shall also be assessed against the defaulting Owner if incurred by the Association or the managing agent.

3. Paragraph 9.1.5 of the Declaration is deleted in its entirety and the following is substituted in its place.

9.1.5 The following rules shall apply to District associations and sub-associations.

(a) Except as provided in Section 9.1.5(b), in the case of any District governed by a District association, the District association shall be jointly and severally obligated with the Owners of Units in the District subject to its jurisdiction for all assessments levied against such Units. Each District association shall include in its common expense budget, and shall be responsible for collecting and paying to the Association, the total amount of all assessments levied by the Association against the Units within such District. To the extent permitted by applicable law, such amount shall have first priority for payment out of the income of the District association. The obligation of each District association for the collection and payment of assessments to the Association shall be enforceable by the Association. The Association may bring suit against any District association to collect delinquent assessments, in addition to any other rights or remedies it may have under this Declaration or at law or in equity. The Association may not, however, enforce its lien against any Unit for which the Owner has paid to the District association the Unit's assessments in full, whether or not the other Owners of Units in the District have paid. The obligation of each District association to collect and pay such assessments to the Association in accordance with this Section 9.1.5 shall not relieve any Owner of liability for its pro rata share of any amounts not paid by the District association.

(b) If a District has an association but also has one or more sub-associations, for example a condominium project that has a vacation owner's association governing certain units in the condominium and a residence owner's association governing other units in the condominium, then any of the sub-associations may elect by at least thirty (30) days written notice to the District association and the Association, to be the association that is subject to the obligations of Section 9.1.5(a) instead of the District association (the "responsible sub-association"). If some units in the District are not governed by a responsible sub-association then the

District association will still be liable for the obligations of Section 9.1.5(a) with respect to those units not governed by a responsible sub-association, but only those units not governed by a responsible sub-association will be liable for the District association assessments which pass through the Association assessments. If a responsible sub-association wishes to cease being a responsible sub-association, then it shall give to the District association and the Association at least thirty (30) days prior written notice plus the number of days which the District association must give to the unit owners of the increase in District association assessments to cover the Association assessments, under any governing statute, such as Section 514B-144(h) Hawaii Revised Statutes.

4. Exhibit “D” attached to the Declaration and entitled “List of Land Use Permits” is deleted in its entirety and Exhibit “D” attached to this First Amendment is substituted in its place.

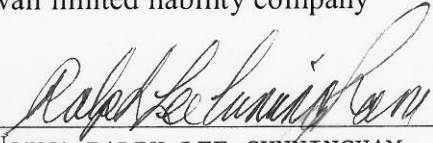
5. Ratification. The Declaration, as amended by this First Amendment, is hereby ratified and confirmed and shall remain in full force and effect.

[Signature page follows]

IN WITNESS WHEREOF, this First Amendment has been executed as of the date in the first paragraph.

Declarant:

KAUAI LAGOONS LLC,  
a Hawaii limited liability company

By   
Name: RALPH LEE CUNNINGHAM  
Title: Vice President

)

) SS.

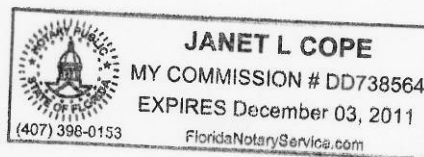
)

Signature: \_\_\_\_\_

Name:

Notary Public, in and for said State and County

My commission expires: DEC 3 2011



## LIST OF LAND USE PERMITS

Special Management Area Permit SMA (U) 2005-8,  
Condominium Development Use Permit U-2005-26,  
Use Permit U-2005-25,  
Variance Permit V-2005-7  
Class IV Zoning Permit Z-IV-2005-3  
all as amended by amendments approved June 10, 2008

Ordinance No. PM 2006-382 General Plan Amendment, Nawiliwili, Kauai  
Ordinance No. PM 2006-383 Zoning Amendment, Nawiliwili, Kauai  
Ordinance No. PM 2006-384 VDA Amendment, Nawiliwili, Kauai

Proposed conservation plans for the protection of endangered species including the Nene and Shearwater as they may be refined and approved in consultation with County, state and federal agencies.

As Land Use Permits are issued, or superseded by later Land Use Permits, or amended, Declarant may amend this Exhibit "D" to add or delete them as appropriate.

Kauai Lagoons Community Association

February 6, 2015

**VIA FEDEX AND E-MAIL**

Association of Owners of Kalanipu'u  
Condominium  
c/o Board of Directors  
3351 Ho'olaulea Way  
Lihue, HI 96766

Kalanipu'u Vacation Owners Association  
c/o Board of Directors  
3351 Ho'olaulea Way  
Lihue, HI 96766

Re: HCP Compliance - Second Amendment to Kauai Lagoons Declaration

Dear Kalanipu'u Board of Directors:

As you are aware, Kauai Lagoons, including the Kalanipu'u development, is subject to the Kaua'i Lagoons Habitat Conservation Plan dated February 2012 ("HCP"). The HCP identifies measures that must be implemented and observed to protect various bird species that may be found at Kauai Lagoons, many of which are threatened or endangered species. Compliance with the HCP is enforced by the United States Fish and Wildlife Service and the Hawaii Department of Land and Natural Resources. To ensure that Kauai Lagoons remains in compliance with the HCP, the Declaration of Covenants, Conditions and Restrictions for Kauai Lagoons<sup>1</sup> was recently amended by that Second Amendment to Kauai Lagoons Community Declaration recorded December 31, 2014 as Regular System Document No. A-54780169 and Land Court Document No. T-9130059 ("Second Amendment to Declaration").

A copy of the HCP and Second Amendment to Declaration is enclosed herewith for your reference and for distribution to your owners and occupants. The Second Amendment to Declaration generally requires the Community Association to comply with operational requirements under the HCP. It also requires subassociations, which include the Association of Owners of Kalanipu'u Condominium and the Kalanipu'u Vacation Owners Association, as well as the owners, occupants, tenants, invitees and guests of condominiums within Kauai Lagoons to comply with the HCP and implementing rules that may be adopted in the future. Subassociations and the owners, occupants, tenants, invitees and guests of condominiums within Kauai Lagoons are also prohibited from harming any endangered or threatened bird species covered by the HCP. Pets must be properly controlled and kept within established pedestrian walkways and sidewalks at all times. Dogs and cats must be kept on a leash or reins held by a person capable of controlling the animal at all times. Pets that harm or threaten to harm protected bird species may be banned from Kauai Lagoons. Trash and food waste must also be properly disposed of and, to

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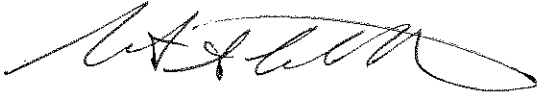
<sup>1</sup> Recorded March 14, 2008 as Regular System Document No. 2008-040613 and Land Court Document No. 3723797 of Official Records, as amended by that First Amendment to Declaration of Covenants, Conditions and Restrictions recorded June 18, 2009 as Regular System Document No. 2009-093734 and Land Court Document No. 3870079.

Kauai Lagoons Community Association

ensure that protected bird species do not come into contact with potentially dangerous trash or food waste, care must be taken to ensure that trash receptacle lids remain closed. Note that subassociations and Owners are liable for any HCP related losses resulting from their failure to comply with the HCP, the Second Amendment to Declaration and any implementing rules or regulations.

As the Association for the Owners, we encourage you to provide an affirmative notice of the HCP related requirements under the Second Amendment to Declaration to all of your owners and occupants subject to your jurisdiction. Thank you in advance for your cooperation in complying with the HCP and the role you play in protecting the local environment. Please feel free to contact David Nagao if you have any questions or wish to discuss the content of this letter further.

Very truly yours,



Michael A. Cuthbertson  
Kauai Lagoons Community Association  
President, Board of Directors

SMR11:435969362.2

cc: Mr. Edward Bushor  
Mr. Taejo Kim  
Sean Roberts, Esq.  
Jessica Malchow, Esq.

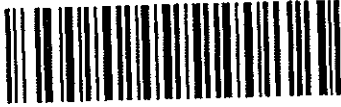
26AM  
**DOUBLE SYSTEM**



**STATE OF HAWAII  
OFFICE OF ASSISTANT REGISTRAR  
RECORDED**

December 31, 2014 8:01 AM

Doc No(s) T-9130059  
on Cert(s) 871637  
Issuance of Cert(s)



1 1/24 DML  
B-32567221

/s/ NICKI ANN THOMPSON  
ASSISTANT REGISTRAR



**STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED**

December 31, 2014 8:01 AM

Doc No(s) A-54780169



1 2/24 DML  
B-32567221

/s/ NICKI ANN THOMPSON  
REGISTRAR

LAND COURT

REGULAR SYSTEM

Return By Mail ☐ Pick-Up ☒ To:

u Case Lombardi & Pettit (LKJ)  
737 Bishop Street, Ste 2600  
Honolulu, Hawaii 96813

1 (FAM) DS D/S  
4630148  
(This document contains 10 pages.)

TITLE OF DOCUMENT:

**SECOND AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR KAUAI LAGOONS**

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KAUAI LAGOONS (this "Second Amendment") is made this 29 day of December, 2014, by KAUAI LAGOONS LLC, a Hawaii limited liability company (the "Declarant") with reference to the facts set forth below.

**RECITALS**

A. Kauai Lagoons LLC, as the declarant, executed that certain Declaration of Covenants, Conditions and Restrictions recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2008-040613 and in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3723797 and noted on Transfer Certificate of Title No. 871,637, as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2009-093734 and in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3870079 (collectively, the "Declaration"). The Declaration imposed certain covenants, conditions and restrictions, on certain real property described in Exhibit "A" to the Declaration (the "Land"). Capitalized terms not defined in this Second Amendment have the meanings defined in the Declaration.

B. Kauai Lagoons is subject to that certain Kaua'i Lagoons Habitat Conservation Plan dated February 2012 ("HCP") and Implementing Agreement for the Kaua'i Lagoons Habitat Conservation Plan by and between Declarant, United States Fish and Wildlife Service

("USFWS") and Hawaii Department of Land and Natural Resources ("DLNR") dated September 2012. The HCP identifies monitoring, reporting and mitigation measures that must be implemented in connection with the operation of Kauai Lagoons because Kauai Lagoons has been colonized by or provides habitat for several bird species which are listed as threatened or endangered or candidate for listing under the federal Endangered Species Act and Hawai'i Revised Statutes Chapter 195D ("Covered Species"). As further described in the HCP, Covered Species include the following: the Hawaiian Goose or Nēnē (*Branta sandvicensis*), the Hawaiian endemic sub-species of the Black-necked Stilt (*Himantopus mexicanus knudseni*), Hawaiian Coot (*Fulica alai*), the Hawaiian endemic sub-species of the Common Moorhen (*Gallinula chloropus sandvicensis*), the Hawaiian Duck (*Anas wyvilliana*), the Hawaiian Petrel (*Pterodroma sandwichensis*), the Newell's Shearwater (*Puffinus auricularis newelli*), and Band-rumped Storm-Petrel (*Oceanodroma castro*).

C. To ensure uniformity and consistency in implementation of the HCP, Declarant desires that the Association be responsible for complying with the operational requirements of the HCP. Owners, occupants, tenants, invitees and guests of Kauai Lagoons shall also be obligated to comply with certain requirements of the HCP, as set forth herein.

D. Section 19.1.1 of the Declaration provides, in pertinent part, that during Declarant's Control Period, Declarant may unilaterally amend the Declaration for any purpose, except that where the Declaration specifically requires the consent of the Owner or Mortgagee of a Unit for an amendment affecting that Unit, the amendment shall not apply to that Unit without such consent. The Declaration defines the term "Declarant's Control Period" as the period ending on the first to occur of the following when Declarant no longer owns any Unit in Kauai Lagoons and has no further rights to annex property to Kauai Lagoons; January 1, 2050; or when Declarant records an instrument terminating Declarant's Control Period.

E. The provisions amended by this Second Amendment do not require the consent of any Owner or Mortgagee of a Unit, other than the Declarant.

F. Declarant, acting within the Declarant's Control Period (as described above), now approves of, and desires to amend, the Declaration in certain respects as more particularly set forth in this Second Amendment.

#### **AMENDMENT TO DECLARATION**

NOW, THEREFORE, in consideration of the Recitals set forth above and pursuant to the provisions for amendment contained in the Declaration, the Declarant, acting within the Declarant's Control Period now amends the Declaration as set forth below:

1. Rights and Obligations of the Association – HCP Compliance. The following is added as a new Section 8.9 of the Declaration:

The Association shall be responsible for complying with and performing all operational mitigation measures, monitoring and reporting requirements under the HCP, including those set forth in Sections 4 and 6 of the HCP ("HCP Compliance"). The Association shall not be responsible for complying with or

performing construction mitigation measures, monitoring or reporting requirements under the HCP, except to the extent that the Association engages in construction activities. The Association's obligations under the HCP shall include, without limitation, installing and maintaining permanent speed limit and covered species warning signage; maintaining bird friendly lighting; employing biological monitors as required by the HCP; implementing measures recommended by the biological monitors, including with regard to night time lighting measures designed to mitigate the risk of seabird fallout (which occurs when migratory birds become distracted or disoriented by nighttime lighting, resulting in falls that may cause injury or death); conducting endangered species awareness training for golf course, resort, sales, landscaping and all other Kauai Lagoons staff; conducting predator control programs; providing and maintaining adequate trash receptacles with lids and recycle containers to ensure food scraps and trash are properly disposed of; promoting awareness of the Covered Species, including the risk of seabird fallout amongst owners, occupants, tenants, invitees, guests and visitors of Kauai Lagoons; and funding any bonds or other security required pursuant to the HCP. The costs associated with HCP Compliance shall be a Common Expense allocated among all Units as part of the General Assessment.

2. Use Restrictions and Rules – HCP Compliance. The following is added as a new Section 11.7 of the Declaration:

11.7.1 The Association, any future subassociation or other owners association formed to govern a residential, commercial or resort area subject to this Declaration, and each Owner, occupant, tenant, invitee and guest of a Unit shall comply with all rules established by the Association and with all recommendations of the biological monitors employed pursuant to the HCP in furtherance of HCP Compliance. Such rules and recommendations may include limitations or restrictions on the type and brightness of indoor and outdoor lighting, shading and shielding for outdoor lighting, restrictions on use of outdoor lighting, and the requirement to utilize shades or other light mitigating devices when lights are on within a structure, particularly during the seabird fallout season (September 15 to December 15).

11.7.2 The Association, any future subassociation or other owners association formed to govern a residential, commercial or resort area subject to this Declaration, and each Owner, occupant, tenant, invitee and guest of a Unit shall observe any setback or buffer areas established for the temporary or permanent protection of Covered Species or habitat that supports Covered Species, and

shall also avoid, and shall not harm, harass, threaten or otherwise disturb any Covered Species existing within Kauai Lagoons. Such Covered Species may be identifiable through signage and the publication of other educational materials.

11.7.3 All pets shall be properly controlled and must be kept within established pedestrian walkways and sidewalks at all times. Pets shall not be permitted to run or wander through landscaped or open space areas or to harass, harm or threaten any Covered Species. All dogs and cats must be kept on a leash or reins held by a person capable of controlling the animal at all times. Each Owner shall clean up after such pets that have deposited droppings or otherwise used any portion of the Kauai Lagoons. The Board shall have the power to prohibit the keeping or maintenance of any animal, which, in the opinion of the Board, is deemed by the Board to constitute a nuisance to any Covered Species or any other Owner or which constitutes a threat to the personal safety of any Covered Species or any Owner in the sole and absolute opinion of the Board. Nothing contained herein shall constitute a restriction on service animals.

11.7.4 To protect Covered Species from coming into contact with food scraps and other waste, the Association, any future subassociation or other owners association formed to govern a residential, commercial or resort area subject to this Declaration, and each Owner, occupant, tenant, invitee and guest of a Unit shall deposit trash and food waste within proper trash receptacles or recycling containers. All trash containers shall be maintained such that the lids remained closed.

3. Indemnities – HCP. Each Owner, the Association and any future subassociation or other owners association formed to govern a residential, commercial or resort area subject to this Declaration shall be liable to Declarant and Declarant's officers, directors, members, partners, affiliates successors and assigns ("**Declarant Parties**") for any damage or loss resulting from such Owner's or the Association's or any other owners association's failure to comply with the foregoing HCP requirements or any other provisions of the Declaration, rules promulgated by the Association or the Design Guidelines that results in any injury or death to a Covered Species or a violation of the HCP and shall indemnify, protect, defend and hold Declarant and Declarant Parties entirely free and harmless from any and all liability, actions, penalties or damages arising from or attributable to any such failure.

4. Architectural Standards. Section 10.1.5 of the Declaration is hereby amended to delete the term "Developer" and replace it with the term "Declarant."

5. Exemption. Section 10.1 is hereby amended to add the following new Section as Section 10.1.6:

10.1.6 The requirements for approval by the Design Review Committee set forth in this Article 10 shall not apply to the initial construction of improvements by the Owner of Parcel 9E as described on Exhibit "A" to this Amendment. The initial construction on Parcel 9E shall be subject to the approval of Declarant and not the Design Review Committee.

6. Ratification. The Declaration, as amended by this Second Amendment, is hereby ratified and confirmed and shall remain in full force and effect.

IN WITNESS WHEREOF, this Second Amendment has been executed as of the date in the first paragraph.

DECLARANT:

KAUAI LAGOONS LLC,  
a Hawaii limited liability company

By: Donald L. Baarman

Name: Donald L. Baarman

Title: Authorized Signatory

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

On December 7, 2014, before me personally appeared **Donald L. Baarman**, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Catherine Villegas  
Print name: Catherine Villegas  
Notary Public, State of Hawaii  
My commission expires: 8/7/2017

Date of Doc:	<u>undated</u>	# Pages:	<u>10</u>
Name of Notary:	<u>Catherine Villegas</u>	Notes:	
Doc. Description:	<u>CRUDND AMBUDMENT TO</u> <u>DECLARATION OF COVENTS, CONDITIONS</u> <u>AND RESTRICTIONS FOR KAUAI LAGAKS</u>		
		(stamp or seal)	
<u>Catherine Villegas</u>	<u>DEC - 7 2014</u>		
Notary Signature	Date		
<i>First Circuit, State of Hawaii</i>			
<b>NOTARY CERTIFICATION</b>			

## EXHIBIT "A"

### LOT 9E

All of that certain parcel of land (being a portion of Royal Patent No. 4480, Land Commission Award No. 7713, Apana 2, Part 1 to Victoria Kamamalu) situate at Kalapaki, District of Lihue, Island and County of Kauai, State of Hawaii, being Lot 9-E, as shown on Kauai County Subdivision File No. S-2010-11, being also a portion of Lot 9-A, as shown on Kauai County Subdivision File No. S-2008-02, and Lot 9-B, as shown on Kauai County Subdivision File No. S-2008-02.

Beginning at the West corner of this parcel of land, being the North corner of Lot 9-D, as shown on Kauai County Subdivision File No. S-2010-11, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Kalepa" being 13,763.14 feet South and 4,749.46 feet East, and running by azimuths measured clockwise from true South:

1. 212° 50' 73.45 feet

along Lot 2-A, as shown on Kauai County Subdivision File No. S-2010-11;

2. 232° 53' 62.30 feet;

3. 242° 05' 104.59 feet;

4. 270° 00' 95.49 feet;

5. 271° 58' 246.16 feet;

6. 270° 40' 239.33 feet;

7. 248° 57' 70.57 feet;

8. 313° 14' 121.01 feet

along Lot 10-C, as shown on Kauai County Subdivision File No. S-2010-11;

9. 33° 40' 119.34 feet

along Lot 10-B, as shown on Kauai County Subdivision File No. S-2010-11;

10. 353° 00' 161.58 feet;

11. 301° 17' 15.56 feet;

12. 333° 06' 30" 123.22 feet;

13. 316° 36' 198.36 feet;

14. 313° 43' 30" 67.11 feet;

thence on a curve to the left with a radius of 42.00 feet, the chord azimuth and distance being:

15. 119° 34' 01" 18.06 feet along Lot 2-A;

thence on a curve to the left with a radius of 285.00 feet, the chord azimuth and distance being:

16. 93° 01' 06" 139.20 feet

along Lot 2-A and Road Lot E, as shown on Kauai County Subdivision File No. S-2010-11;

thence on a curve to the right with a radius of 279.00 feet, the chord azimuth and distance being:

17. 89° 02' 22" 98.40 feet along Road Lot E;

thence on a curve to the left with a radius of 361.00 feet, the chord azimuth and distance being:

18. 85° 46' 07" 167.66 feet;

thence on a curve to the right with a radius of 280.62 feet, the chord azimuth and distance being:

19. 82° 35' 10" 115.55 feet;

thence on a curve to the left with a radius of 323.00 feet, the chord azimuth and distance being:

20. 73° 47' 25" 228.45 feet;

thence on a curve to the right with a radius of 279.00 feet, the chord azimuth and distance being:

21. 60° 48' 46" 75.08 feet;

thence on a curve to the left with a radius of 421.00 feet, the chord azimuth and distance being:

22. 59° 12' 14" 136.67 feet;

thence on a curve to the right with a radius of 359.00 feet, the chord azimuth and distance being:

23. 57° 35' 12" 96.50 feet;

thence on a curve to the right with a radius of 179.00 feet, the chord azimuth and distance being:

24. 73° 08' 50" 48.81 feet;

thence on a curve to the right with a radius of 5.00 feet, the chord azimuth and distance being:

25. 107° 51' 18" 4.52 feet;

thence on a curve to the left with a radius of 45.00 feet, the chord azimuth and distance being:

26. 82° 02' 04" 71.58 feet;

thence on a curve to the left with a radius of 5.00 feet, the chord azimuth and distance being:

27. 179° 00' 47" 5.05 feet

along Lot 9-C, as shown on Kauai County Subdivision File No. S-2010-11;

28. 148° 41' 238.69 feet along Lots 9-C and 9-D;

thence on a curve to the right with a radius of 262.00 feet, the chord azimuth and distance being:

29. 170° 41' 40" 196.39 feet along Lot 9-D;

30. 282° 42' 20" 3.00 feet;

thence on a curve to the right with a radius of 259.00 feet, the chord azimuth and distance being:

31. 204° 51' 10" 109.00 feet;

32. 217° 00' 152.46 feet;

33. 218° 43' 30" 15.60 feet;

thence on a curve to the left with a radius of 23.00 feet, the chord azimuth and distance being:

34. 205° 50' 16" 11.61 feet;

thence on a curve to the right with a radius of 37.00 feet, the chord azimuth and distance being:

35. 210° 35' 20" 24.53 feet;

36. 229° 57' 18.00 feet;

thence on a curve to the right with a radius of 37.00 feet, the chord azimuth and distance being:

37. 249° 18' 42" 24.53 feet;

thence on a curve to the left with a radius of 23.00 feet, the chord azimuth and distance being:

38. 254° 03' 37" 11.61 feet;

thence on a curve to the right with a radius of 259.00 feet, the chord azimuth and distance being:

39. 240° 56' 31" 13.70 feet;

40. 150° 54' 25.40 feet;

41. 122° 29' 50.91 feet to the point of beginning.



R-46

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

MAR 23, 2010 08:01 AM

Doc No(s) 2010-038754

/s/ NICKI ANN THOMPSON  
REGISTRAR

20 2/6 212

AFTER RECORDATION, RETURN BY MAIL ☒ PICKUP ☐Cades Schutte LLP (BL)  
1000 Bishop Street, Suite 1200  
Honolulu, Hawaii 96813  
Telephone No.: (808) 521-9200

FIRSTAM -3451129-LTB

This Document Contains 6 Pages

Tax Map Key No.: 3-5-001-027, 3-5-001-060, 3-5-001-165, 3-5-001-168, 3-5-001-169, 3-5-001-171 through 177, 3-5-001-180 through 215, 3-5-002-019

**ANNEXATION OF KAMAMALU CONDOMINIUM TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KAUAI LAGOONS**

THIS ANNEXATION TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KAUAI LAGOONS (this "Annexation Amendment") is made as of March 17, 2010 by **KAUAI LAGOONS LLC**, a Hawaii limited liability company (the "Declarant") with the consent of **K D KAPULE LLC**, a Hawaii limited liability company.

**RECITALS:**

A. The Declarant, as the declarant, executed that certain Declaration of Covenants, Conditions and Restrictions recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2008-040613 and in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3723797 and noted on Transfer Certificate of Title No. 871,637 as amended by First Amendment to Declaration of Covenants, Conditions and Restrictions for Kauai Lagoons recorded as Documents No. 2009-093734 and Land Court Document No. 3870079 (the "Declaration"). The Declaration imposed covenants, conditions and restrictions, on real property described in Exhibit "A" to the Declaration. Except as otherwise provided in this Annexation Amendment capitalized terms have the meanings defined in the Declaration and Section and Exhibit references are to sections and Exhibits of the Declaration.

B. Section 19.1.1 provides that during Declarant's Control Period Declarant may unilaterally amend the Declaration for any purpose, except that where the Declaration specifically requires the consent of the Owner or Mortgagee of a Unit for an amendment affecting that Unit, the amendment shall not apply to that Unit without such consent. Section 7.1.1 provides in pertinent part that during Declarant's Control Period Declarant may unilaterally annex a portion of the Approved Annexation Area to Kauai Lagoons with the consent of its Owner and any Mortgagee by an Annexation Amendment. Section 1.69 provides in pertinent part that a Subsequent Amendment, which may also be an Annexation Amendment, may reduce the restrictions and obligations on the real property described in it.

C. "Kamāmalu Condominium" is the condominium described in Exhibit 1 to this Annexation Amendment and is part of the Annexation Area, described in Exhibit A-1 to the Declaration as item Second: Lands of K D Kapule LLC. K D Kapule LLC is the Owner of all the units of Kamāmalu Condominium. There is no Mortgagee of units in Kamāmalu Condominium.

D. Kamāmalu Condominium has been developed in accordance with the Land Use Requirements and under the Third Amended Agreement (Kaua'i Lagoons Affordable Housing) effective as of February 18, 2005 as it may be further amended (the "Affordable Housing Agreement"). The Affordable Housing Agreement requires that the units in Kamāmalu Condominium be non-paying members of the Association, entitled to the benefits of membership in the Association that other members enjoy, but shall not be required to pay any dues, fees or assessments associated with such membership.

E. Declarant, acting within the Declarant's Control Period (as described above), now desires to amend the Declaration in certain respects as more particularly set forth in this Annexation Amendment.

#### **AMENDMENT TO DECLARATION:**

Pursuant to the provisions for amendment and annexation contained in the Declaration, the Declarant, acting within the Declarant's Control Period now amends the Declaration in the following respects:

1. The property described in Exhibit 1 to this Annexation Amendment is annexed to Kauai Lagoons and added to Exhibit A to the Declaration. Exhibit A-1 to the Declaration is amended to delete the property described as item Second: Lands of K D Kapule LLC.

2. Exhibit B the Master Plan is amended to add the following:

Parcel	Product	Units	Use	Minimum Points
Lot 1-A	Affordable Housing	31	Residential	0

3. Exhibit C the Formula for Assessing Votes and Assessment Obligations is amended by adding the following paragraph to item (B) Actual Points.

The Actual Points for the property described in Exhibit A as Kamāmalu Condominium, and described in the Master Plan as Lot 1-A Affordable Housing, shall be deemed to be zero (0).

Consent. K D Kapule LLC joins in this Annexation Amendment to consent to it.

Ratification. The Declaration, as amended by this Annexation Amendment, is ratified and confirmed and shall remain in full force and effect.

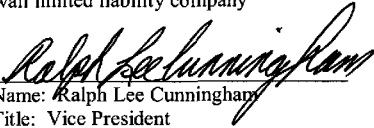
[Signature page follows]

This Annexation Amendment has been executed as of the date in the first paragraph.

Declarant:

KAUAI LAGOONS LLC,  
a Hawaii limited liability company

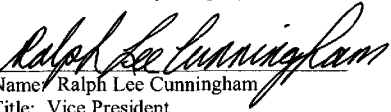
By

  
Name: Ralph Lee Cunningham  
Title: Vice President

Owner

K D KAPULE LLC,  
a Hawaii limited liability company

By

  
Name: Ralph Lee Cunningham  
Title: Vice President

STATE OF FLORIDA  
COUNTY OF ORANGE

)  
) SS.  
)

On this 17 day of March, 2010, before me personally appeared Ralph Lee Cunningham, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person and in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Signature: Jennifer S. Nix  
Name: Jennifer S. Nix  
Notary Public, in and for said State and County

My commission expires: May 25, 2012

STATE OF FLORIDA  
COUNTY OF ORANGE

)  
) SS.  
)

On this 17 day of March, 2010, before me personally appeared Ralph Lee Cunningham, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person and in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Signature: Jennifer S. Nix  
Name: Jennifer S. Nix  
Notary Public, in and for said State and County

My commission expires: May 25, 2012

## EXHIBIT 1

### KAMĀMALU CONDOMINIUM

The thirty-one units and their appurtenant common interests listed below, comprising the whole of that certain condominium project known as "KAMĀMALU CONDOMINIUM" (the "Condominium"), which Condominium consists of that certain parcel of land situate at Kalapaki, Island and County of Kauai, State of Hawaii, more particularly described in that certain Declaration of Condominium Property Regime for "Kamāmalu Condominium" condominium project, dated as of September 17, 2009 recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2009-178108, and their improvements and appurtenances as described in and established by the Declaration of Condominium Property Regime, as the same may have been or may be later amended or restated from time to time and as shown on the plans of the Condominium filed in the Bureau as Condominium File Plan No. 4855 as the same may have been or may be later amended from time to time:

Unit No.	Common interest %	Unit No.	Common interest %
111	3.3097	222	3.1652
112	3.1652	223	3.1652
113	3.1652	224	3.1652
114	3.1652	225	3.3097
115	3.3097	311	3.3097
121	3.3097	312	3.1652
122	3.1652	313	3.1652
123	3.1652	314	3.3097
124	3.1652	321	3.3097
125	3.3097	322	3.1652
211	3.3097	323	3.1652
212	3.1652	324	3.3097
213	3.1652	332	3.1652
214	3.1652	333	3.1652
215	3.3097	334	3.3100
221	3.3097		

BEING A PORTION OF THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : KAUAI DEVELOPMENT LLC, a Hawaii limited liability company  
GRANTEE : K D KAPULE LLC, a Hawaii limited liability company  
DATED : --- (acknowledged October 13, 2005)  
RECORDED : Document No. 2005-209700

SUBJECT TO ALL ENCUMBRANCES OF RECORD