

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer: ROHNAR R. BOYD
Address: 6 Via Palma, Laguna Niguel, California 92677

Project Name(*): Luxour Condominium
Address: Lot 24-A, Seacliff Plantation at Kilauea Bay Subdivision
Kilauea, Kauai, Hawaii

Registration No. 4536

Effective date: February 20, 2001
Expiration date: March 20, 2002

Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission or any other government agency. Neither the Commission nor any other government agency has judged or approved the merits or value, in any, of the project or of purchasing an apartment in the project.

Buyers are encouraged to read this report carefully, and to seek professional advice before signing a sales contract for the purchase of an apartment in the project.

Expiration Date of Reports. Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the effective date unless a Supplementary Public Report is issued or unless the Commission issues an order, a copy of which is attached to this report, extending the effective date for the report.

Exception: The Real Estate Commission may issue an order, a copy of which shall be attached to this report, that the final public report for a two apartment condominium project shall have no expiration date.

Type of Report:

PRELIMINARY: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A final Public Report will be issued by the developer when complete information is filed.

X FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
[X] No prior reports have been issued.
[] This report supersedes all prior public reports.
[] This report must be read together with

SUPPLEMENTARY: (pink) This report updates information contained in the:
[] Preliminary Public Report dated:
[] Final Public Report dated:
[] Supplementary Public Report dated:

And [] Supersedes all prior public reports
[] Must be read together with
[] This report reactivates the public report(s) which expired on

(*) Exactly as named in the Declaration

This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required and attached to this report Not required - Disclosures covered in this report.

Summary of Changes from Earlier Public Reports:

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

No prior reports have been issued by the developer.

Changes made are as follows:

SPECIAL ATTENTION

This is a CONDOMINIUM PROJECT, **not** a subdivision. There are County restrictions on the number of residential dwelling units, or other structures, which may be built on the property. Therefore, unless the Purchaser is buying an existing residential dwelling, **THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE PROPERTY. THERE IS ALSO NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO A RESIDENTIAL USE.** The Purchaser should consult with the appropriate County agencies to determine whether the Purchaser may build a residential dwelling unit, or any other type of structure, on the property.

1. There are presently **NO RESIDENTIAL STRUCTURES ON THE PROPERTY.** The only buildings on the property are agricultural shade sheds, each of which may be defined as an "apartment" under the condominium property act.
2. This public report does **not** constitute an approval of the project by the Real Estate Commission or any other governmental agency, nor does it warrant that all applicable County codes, ordinances, and subdivision requirements have necessarily been complied with.
3. The land area beneath and immediately appurtenant to each unit is designated a **LIMITED COMMON ELEMENT** and is **not** a legally subdivided lot. The dotted lines on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.
4. Facilities and improvements normally associated with County-approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owners and emergency traffic, drainage facilities, etc., may not be provided, and services such as County street maintenance and trash collection may not be available for interior roads and driveways.

THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS REFERENCED IN THIS PUBLIC REPORT FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING.

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General Information On Condominiums

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. In addition, certain requirements and approvals of the County in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owners/tenants) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements at the lessee's expense. Leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

If you are a typical condominium apartment owner, you will have two kinds of ownership: (1) ownership in your individual apartment; and (2) an undivided interest in the common elements.

"Common Elements" are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of certain apartments. These common elements are called "limited common elements" and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift, or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the project's Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

Operation of the Condominium Project

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Developer: ROHNAR R. BOYD Phone: (949) 495-6626
6 Via Palma
Laguna Niguel, California 92677

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a Limited Liability Company (LLC) (attach separate sheet if necessary):

N/A

Real Estate Broker: All Islands, Inc., dba Century 21 All Islands Phone: (808) 826-7211
P. O. Box 3195
Princeville, Hawaii 96722

Escrow: First Hawaii Title Corporation Phone: (808) 826-6812
P. O. Box 507
Hanalei, Kauai, Hawaii 96714

General Contractor: Kendall Pacific, Inc. Phone: (808) 826-9390
P. O. Box 1077
Hanalei, Kauai, Hawaii 96714

Condominium Managing Agent: Self-managed by Association of Unit Owners Phone: N/A _____

Attorney for Developer: Max W. J. Graham, Jr. Phone: (808) 245-4705
Belles Graham Proudfoot & Wilson
4334 Rice Street, Suite 202
Lihue, Kauai, Hawaii 96766-1388

*For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

**II. CREATION OF THE CONDOMINIUM;
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

Proposed

Recorded - Bureau of Conveyances: Document No. 2000-150428

Book _____ Page _____

Filed - Land Court: Document No. _____

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]:

First Amendment to Declaration of Condominium Property Regime of Luxour Condominium dated November 9, 2000, and recorded in said Bureau as Document No. 2000-163711.

B. **Condominium Map (File Plan)** shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, and dimensions of each apartment.

The Condominium Map for this condominium project is:

Proposed

Recorded - Bureau of Conveyances Condo Map No. 3180

Filed - Land Court Condo Map No. _____

The Condominium Map has been amended by the following instruments [state name of document, date and recording/filing information]:

C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

Proposed

Recorded - Bureau of Conveyances: Document No. 2000-150429

Book _____ Page _____

Filed - Land Court: Document No. _____

The Bylaws referred to above have been amended by the following instruments [state name of document, date and recording/filing information]:

D. **House Rules.** The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the developer.

The House Rules for this condominium are:

Proposed* Adopted Developer does not plan to adopt House Rules

*Note: The Association has the power to adopt house rules, but none have yet been adopted.

E. **Changes to Condominium Documents.** Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. Apartment Owners: Minimum percentage of common interests which must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	<u>100%</u>
Bylaws	65%	<u>100%</u>
House Rules	----	<u>N/A</u>

*The percentages for individual condominium projects may be more than the minimum set by law for projects with five or fewer apartments.

2. Developer

- No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.
- Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:

The Developer reserves the right to change the Declaration and Condominium Map as provided for in Section M. of the Declaration, and further the Developer reserves the right to change the Bylaws as provided for in Section 13.5 of the Bylaws.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

[X] Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.

[] Leasehold or Sub-leasehold: Individual apartments and the common elements, which include the underlying land will be leasehold.

Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.

Exhibit _____ contains further explanation regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: _____ Rent Renegotiation Date(s): _____

Lease Rent Payable: [] Monthly [] Quarterly
[] Semi-Annually [] Annually

Exhibit _____ contains a schedule of the lease rent for each apartment per [] Month [] Year

For Sub-leaseholds:

[] Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:
[] Canceled [] Foreclosed

[] As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

[] Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or Sub-leasehold:

Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.

Exhibit _____ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: _____ Rent Renegotiation Date(s): _____

Lease Rent Payable: [] Monthly [] Quarterly
[] Semi-Annually [] Annually

Exhibit _____ contains a schedule of the lease rent for each apartment per: [] Month [] Year

[] Other:

IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

B. Underlying Land:

Address: Lot 24-A of the Seacliff Plantation At Kilauea Bay
Kilauea, Kauai, Hawaii

Tax Map Key: (TMK): (4) 5-2-04:97

[X] Address [X] TMK is expected to change because addresses will be assigned by the County when houses are constructed; CPR numbers will be added to the current TMK number.

Land Area: 10.01

[] square feet [X] acre(s)

Zoning: SLUC-Agricultural/
CZO – Open/ST-R

Fee Owner: ROHNAR R. BOYD
6 Via Palma
Laguna Niguel, California 92677

Lessor: N/A
Name _____
Address _____

C. Buildings and Other Improvements:

1. New Building(s)
 Conversion of Existing Building(s)
 Both New Building(s) and Conversion

2. Number of Buildings: 2 Floors Per Building 1

Exhibit "A" contains further explanations.

3. Principal Construction Material:

Concrete Hollow Tile Wood

Other Steel posts and screen

4. Permitted Uses by Zoning:

	No. of Apts.	<u>Use Permitted by Zoning</u>	
<input type="checkbox"/> Residential	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Agricultural	_____	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Other: Shed)	<u>2</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Is/Are this/ these use(s) specifically permitted by the project's Declaration or Bylaws?

Yes No

5. Special Use Restrictions:

The Declaration and Bylaws may contain restrictions on the use and occupancy of the apartments. Restrictions for this condominium project include but are not limited to:

- Pets: Animals and pets are limited as provided in Section 13.1 of the Bylaws.
- Number of Occupants: _____
- Other: _____
- There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 0 Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)</u>	<u>Identify</u>
<u>Unit A</u>	<u>1</u>	<u>0/0</u>	_____	<u>20</u>	<u>Shade Shed</u>
<u>Unit B</u>	<u>1</u>	<u>0/0</u>	_____	<u>20</u>	<u>Shade Shed</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total number of Apartments: 2

***Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.**

Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used.

Boundaries of Each Apartment:

See Exhibit "A"

Permitted Alterations to Apartments:

See Exhibit "B"

Apartments Designated for Owner-Occupants Only:

Fifty percent (50%) of **residential** apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by Section 514A-102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer has _____ elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls: 4

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit)	<u> </u>	<u>2</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u>4</u>
Guest	<u> </u>						
Unassigned	<u> </u>						
Extra for Purchase	<u> </u>						
Other: <u> </u>	<u> </u>						
Total Covered & Open:	<u>4</u>	<u> </u>	<u>0</u>	<u> </u>	<u>0</u>	<u> </u>	<u>4</u>

Each apartment will have the exclusive use of at least 2 parking stall(s).
Buyers are encouraged to find out which stall(s) will be available for their use.

- Commercial parking garage permitted in condominium project.
- Exhibit contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

- There are no recreational or common facilities.
- Swimming pool Storage Area Recreation Area
- Laundry Area Tennis court Trash Chute/Enclosure(s)
- Other: Common Driveway/Common Utilities

9. Compliance With Building Code and Municipal Regulations; Cost to Cure Violations

- There are no violations. Violations will not be cured.
- Violations and cost to cure are listed below. Violations will be cured by
(Date)

10. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations
(For conversions of residential apartments in existence for at least five years):

N/A

11. Conformance to Present Zoning Code

- a. No variances to zoning code have been granted.
 Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawfully at one time but which does not now conform to present zoning requirements:

	Conforming	Non-Conforming	Illegal
Uses	<u> X </u>	_____	_____
Structures	<u> X </u>	_____	_____
Lot	<u> X </u>	_____	_____

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

D. Common Elements, Limited Common Elements, Common Interests:

1. Common Elements. Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

- described in Exhibit "C" .
 as follows:

2. **Limited Common Elements:** Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

There are no limited common elements in this project.

The limited common elements and the apartments which use them, as described in the Declaration, are:

described in Exhibit "D".

as follows:

NOTE: Land areas referenced herein are not legally subdivided lots.

3. **Common Interests:** Each apartment will have an undivided fractional interests in all of the common elements. This interest is called the "common interests." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

described in Exhibit _____.

as follows:

Each unit shall have appurtenant thereto an undivided one-half (1/2) interest in all common elements of the property, and the same proportionate share in all common profits and common expenses of the property (except as may be otherwise provided in the Bylaws) and for all other purposes, including voting. The fractional common interest for each unit is determined by assigning a 1/2 fractional interest to both of the units irrespective of the actual land areas contained in the limited common elements appurtenant to each unit.

- E. **Encumbrances Against Title:** An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property on or your purchase and ownership of an apartment in the project.

Exhibit "E" describes the encumbrances against the title contained in the title report dated October 27, 2000 and issued by First Hawaii Title Corporation.

Blanket Liens:

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

[] There are no blanket liens affecting title to the individual apartments.

[X] There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
Mortgage	Lender has priority over Buyer's rights under a sales contract, and has a right to terminate sales contracts upon foreclosure of its mortgage before an apartment sale is closed. Should the lender terminate Buyer's sales contract, Buyer shall be entitled to a refund of all deposits, less escrow cancellation fee.

F. Construction Warranties:

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

1. Building and Other Improvements:

None: Units are sold "as is".

2. Appliances:

N/A

G. **Status of Construction and Date of Completion or Estimated Completion Date:**

The construction of Units A and B were completed on October 1, 2000.

H. **Project Phases:**

The developer has has not reserved the right to add to, merge, or phase this condominium.

Summary of Developer's plans or right to perform for future development (such as additions, mergers or phasing):

IV. CONDOMINIUM MANAGEMENT

A. **Management of the Common Elements:** The Association of Apartment Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.

Initial Condominium Managing Agent: When the developer or the developer's affiliated is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial condominium managing agent for this project, named on page five (5) of this report is:

not affiliated with the Developer the Developer or the Developer's affiliate.
 self-managed by the Association of Apartment Owners other _____

B. **Estimate of Initial Maintenance Fees:**

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your apartment and the apartment may be sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.

Exhibit "F" contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

C. **Utility Charges for Apartments:**

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

None Electricity (____ Common Elements only ____ Common Elements & Apartments)
 Gas (____ Common Elements only _____ Common Elements & Apartments)
 Water Sewer Television Cable
 Other _____

V. MISCELLANEOUS

A. Sales Documents Filed With the Real Estate Commission:

Sales documents on file with the Real Estate commission include but are not limited to:

- Notice to Owner Occupants
- Specimen sales Contract
Exhibit "G" contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated August 4, 2000
Exhibit "H" contains a summary of the pertinent provisions of the escrow agreement.
- Other _____

B. Buyer's Right to Cancel Sales Contract:

1. Rights Under the Condominium Property Act (Chapter 514A, HRS):

Preliminary Report: Sales made by the developer are not binding on the prospective buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

Final Report or Supplementary Report to a Final Report: Sales made by the developer are binding if:

- A) The developer delivers to the buyer a copy of:
 - 1) Either the Final Public Report **OR** the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission; **AND**
 - 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;
- B) The buyer is given an opportunity to read the report(s); **AND**
- C) One of the following has occurred:
 - 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
 - 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
 - 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; **AND**
- B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

2. **Rights Under the Sales Contract:** Before signing the sales contract, prospective buyers should ask to see and carefully review all the documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
 - B) Declaration of Condominium Property Regime, as amended.
 - C) Bylaws of the Association of Apartment Owners, as amended.
 - D) House Rules, if any.
 - E) Condominium Map, as amended.
 - F) Escrow Agreement.
 - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
 - H) Other _____

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P.O. Box 541, Honolulu HI 96809, at a nominal cost.

This Public Report is a part of Registration No. 4536 filed with the Real Estate Commission on December 6, 2000.

Reproduction of Report. When reproduced, this report must be on:

YELLOW paper stock WHITE paper stock PINK paper stock

C. Additional Information Not Covered Above:

1. Purchasers should be aware that Chapter 205, Hawaii Revised Statutes ("H.R.S."), does not authorize residential dwellings as a permissible use in an agricultural use district, unless the dwelling is related to an agricultural activity or is a "farm dwelling".

The term "farm dwelling" is defined in H.R.S. Chapter 205-4.5(a)(4) as a "single family dwelling located on and used in connection with a farm, including clusters of single-family farm dwelling permitted within agricultural parks developed by the State or where agricultural activity provides income to the family occupying the dwelling."

The penalty for violation of H.R.S. Section 205-4.5, is a fine of not more than \$5,000. If any person who is cited for a violation of the law fails to remove the violation within six months of such citation and the violation continues, such person is subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation.

In order for any purchaser to obtain a building permit to construct a single family residential unit (farm dwelling), the County of Kauai will require the purchase to sign a Farm Dwelling Agreement in the form attached hereto as Exhibit "I".

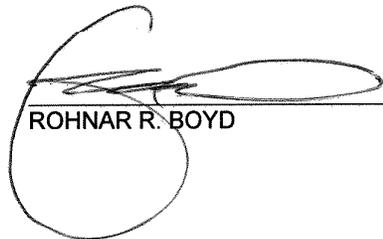
In addition, Section K.2. of the Declaration imposes a duty of each unit owner to bear an equal burden proportionate to the unit owner's respective appurtenant interest in the common area for the cost of maintaining agricultural activities on the Project that are satisfactory to the Planning Department of the County of Kauai and that will allow the issuance of a Farm Dwelling Agreement and corresponding building permit to all of the units with the Project. See Section K.2. of Exhibit "B", Alteration of Project.

2. The use of hazardous material is restricted except as provided under Article H of the Declaration and all hazardous materials laws.
3. The Project and any development within shall be subject to the following:
 - a. The Fourth Amendment And Complete Restatement Of Declaration of Covenants, Conditions And Restrictions Of The Seacliff Plantation At Kilauea Bay Community attached hereto as Exhibit "J".
 - b. The Design Committee Rules And Guidelines Pursuant To The Declaration of Covenants, Conditions And Restrictions Of The Seacliff Plantation At Kilauea Bay Community (As Amended) attached hereto as Exhibit "K".
 - c. Special Management Area Use Permit SMA(U)-82-2 attached hereto as Exhibit "L".
4. Purchasers should be aware that because the Project is located within the Special Management Area, with the exception of the first farm dwelling unit (Condominium House) to be constructed on the Project, no development, including the second farm dwelling unit (Condominium House), will be allowed unless and until a Special Management Area (SMA) Permit is obtained pursuant to the Special Management Area Rules And Regulations Of The County Of Kauai.
5. Purchasers should be aware that because the Project is located within the Special Treatment District (Scenic/Cultural Resources) of the Comprehensive Zoning Ordinance of the County of Kauai ("CZO"), no development, use or structure, including the construction of any farm dwelling unit (Condominium House), will be allowed on the Project unless and until a Use Permit is obtained pursuant to the CZO.

6. Unit A and Unit B shall both be subject to a Building Setback Line, as may be revised from time to time. Development within the areas described by the Building Setback Line, as revised from time to time, shall be subject to the following restrictions:
 - (a) Except as provided herein, no Buildings (as described in paragraph A of this Declaration) shall be placed, constructed or located on any portion of the Property located to the eastern side of the Building Setback Line or any revised Building Setback Line.
 - (c) Notwithstanding the restrictions contained herein, and provided that the prior approval of the County of Kauai is first obtained, Buildings (as described in Paragraph A of this Declaration), structures and other improvements may be located within that portion of the Property contained within the Building Setback Exclusion Line (Area = 0.588 acre) as shown on the Condominium Map.
7. Purchasers should be aware that Unit B is subject to View Easement V-1, as shown on the Condominium Map, which is an exclusive easement located on Unit B running in favor of Unit A for view purposes. No Buildings (as that term is defined in Paragraph A of the Declaration) may be constructed, placed or installed within View Easement V-1.
8. Purchasers should be aware that because the Project is located within the Open District of the CZO, land coverage within the Project shall be limited to ten percent (10%) of the total size of the property. As a result, the total land coverage is approximately 43,603.56 square feet. The remainder of the available land coverage, after deduction of any land coverage contained in the common element, shall be allocated to the Units as follows: Unit A – 70%; and Unit B – 30%.

- D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-] (The developer is required to make this declaration for issuance of an effective date for a final public report.
- E. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

ROHNAR R. BOYD
Owner/Developer



ROHNAR R. BOYD

October 12, 2000
Date

Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai

***Must be signed for a: corporation by an officer; partnership or Limited Liability Partnership (LLP) by the general partner, Limited Liability Company (LLC) by the manager or member; and for an individual by the individual.**

EXHIBIT "A"

DESCRIPTION OF BUILDINGS

The project consists of two (2) agricultural shade sheds constructed principally of steel posts and screen, without a basement or foundation.

Units A and B, located as shown on the Condominium Map, each contain a total area of 20 square feet.

The approximate net floor areas of each unit as set forth above is measured from the interior surface of the unit perimeter walls and includes all of the walls and partitions within its perimeter walls.

EXHIBIT "B"

ALTERATION OF PROJECT

Paragraph K of the Declaration provides that:

1. Provided that the unit owner satisfies the applicable terms and conditions of the Project Documents and obtains all of the necessary governmental permits, each unit owner shall have the right at his sole option at any time and from time to time, as hereinafter set forth, without the consent and/or approval of the owner of any other unit or any other persons or entity, to construct, reconstruct, repair, maintain, improve, renovate, remodel, make additions to, enlarge, remove, replace, alter or restore the improvements to or in his unit or portions thereof or upon or within the Yard Areas or other limited common elements or easements appurtenant to his unit (collectively, the foregoing are referred to as "alterations"). Each unit owner who makes such alterations (hereinafter referred to as the "Altering Owner") shall have the right without the consent or joinder of any other person to amend this declaration and the Condominium Map to accomplish any such alterations. If required by the Act, promptly upon completion of such alterations the Altering Owner shall duly record such amendment to this declaration in the Bureau of Conveyances, together with a complete set of the floor plans of such unit as so altered, certified by a registered architect or professional engineer to fully and accurately depict the altered portions of the property as built. All existing unit owners and all future unit owners and their mortgagees, by accepting an interest in a unit, consent to all such alterations and agree to give and shall be deemed to have given the Altering Owner a power of attorney to execute an amendment to the declaration solely for the purpose of describing the alterations to such unit in the declaration so that the Altering Owner shall hereafter have a power of attorney from all the other unit owners to execute such amendment to the declaration. This power of attorney shall be deemed coupled with each owner's interest in his unit (including his common interest) and shall be irrevocable. If, despite the provisions of this paragraph, any governmental agency shall require some or all of the owners of units in the Project (other than the Altering Owner) to sign the necessary governmental permit application or related documents, then all of the other unit owners shall be required to sign any such permit applications or related documents (including authorizations allowing the Altering Owner to sign such governmental permits on behalf of such other owners) as may be necessary to allow the Altering Owner to obtain all such governmental permit necessary to make the alterations authorized by this paragraph. Any such unit owner who wrongfully refuses to sign such permits or provide the Altering Owner with the necessary authorizations: shall be liable to the Altering Owner for all such damages (including costs and attorneys' fees) incurred by the Altering Owner as a result of such refusal; and shall be subject to such other legal and/or equitable remedies as may be available to the Altering Owner.

2. In certain cases, H.R.S. Chapter 205 may require that the Condominium Houses located within the Project qualify and be used as Farm Dwellings. If one or more of the Condominium Houses within the Project must qualify as a Farm Dwelling, then the affected unit owner will be required to enter into an agreement with the County of Kauai certifying that the

Farm Dwelling will be used in connection with a farm or where agricultural activity provides income to the family occupying the Farm Dwelling. In addition, the Planning Department of the County of Kauai may not allow any Farm Dwelling to be constructed after the first Farm Dwelling within the Project unless the Planning Department inspects the Project to confirm whether agricultural activities are being conducted on the Project in accordance with H.R.S. Chapter 205. Each unit owner in the Project, therefore, shall bear an equal burden proportionate to the unit owner's respective appurtenant interest in the common area, for the cost of maintaining agricultural activities on the Project that are satisfactory to the Planning Department of the County of Kauai and that will allow the issuance of a Farm Dwelling Agreement and corresponding building permit to all of the units within the Project. Any assessment that may be necessary to maintain agricultural activities pursuant to this paragraph may be imposed upon each unit in accordance with the Bylaws as a common expense of the association in connection with the operation of the Project.

3. Any alteration of a unit pursuant to this paragraph K shall be subject to the following conditions:

(a) All such alterations shall conform with all applicable governmental regulations, laws and ordinances.

(b) Such alterations may decrease or increase the size of the affected unit, provided that no alteration shall extend or place the unit outside of the limits of the Yard Area appurtenant to such unit.

(c) All such alterations shall be at the sole expense of the unit owner making the change and shall be made within one (1) year of the commencement thereof and in a manner that will not unreasonably interfere with the other unit owner's use of his unit or Yard Area.

(d) The owner of the altered unit, at such owner's sole expense, shall have the right to utilize, relocate, construct, reconstruct, realign and/or develop additional, central and appurtenant installations for services to the unit affected by such alteration for electricity, sewer and other utilities and services. When necessary, the owner of the altered unit may add, delete, relocate, realign, designate and grant easements and rights-of-way over, under and on the common elements as necessary or desirable in connection therewith. Provided, however, that no work done pursuant to this paragraph shall cause any unreasonable interruption in the service of such utilities to any other part of the Project, nor shall it unreasonably interfere with any other unit owner's use or enjoyment of his unit or Yard Area.

4. Under current laws, the Project is entitled to construct one (1) Guest House. The right to construct said Guest House is reserved to the owner of Unit A. Said right may be assigned by the owner of Unit A to any other unit owner within the Project at any time. All provisions of the Comprehensive Zoning Ordinance and any other laws, ordinances or regulations which are applicable shall be observed by the unit owner to which the right to build a Guest House

applies. The unit owner shall also consult with the appropriate County and/or State agencies regarding all applicable laws or regulations prior to construction.

5. Each and every conveyance, lease and mortgage or other lien made or created on any unit and all common interests, limited common elements, and other appurtenances thereto shall be subject to the provisions of this paragraph and any lease of a unit shall reserve to all unit owners the rights set forth in this paragraph.

* SPECIAL NOTATION: When applying for or submitting Farm Dwelling Agreements, building permits, use permits, zoning permits or any other land use permits with governmental agencies, the governmental agency may require some or all of the owners of the Project to sign the permit forms. In such case, all unit owners shall be required to sign such permit applications and related documents as may be necessary for any unit owner to obtain such permits, so long as the requesting unit owner has complied with the Condominium Documents.

The issuance of an effective date for the Condominium Public Report should not be construed to mean that all governmental laws, ordinances and regulations have been complied with and all subsequent development and use shall comply with applicable governmental laws, ordinances and regulations.

Additionally, the creation of the Condominium Property Regime does not mean that the land has met the subdivision requirements of the County. As such, certain facilities and improvements normally associated with County approved subdivisions may not be necessarily included as part of this Project.

EXHIBIT "C"

COMMON ELEMENTS

The common elements of the project shall specifically include, but are not limited to, the following:

1. The Property described in Exhibit "A", attached to the Declaration, in fee simple.
2. All central and appurtenant installations for common services, including utilities.
3. Any and all apparatus and installations of common use and all other parts of the project necessary or convenient to its existence, use, maintenance or safety, or normally in common use.
4. The common element driveway shown on the Condominium Map.

EXHIBIT "D"

LIMITED COMMON ELEMENTS

Certain units shall have appurtenant thereto easements for the exclusive use of certain limited common elements as follows:

Yard Area A: Yard Area A consists of the land area under and surrounding Unit A, contains approximately 3.0 acres as designated on the Condominium Map, and is reserved for the exclusive use of Unit A for the support of the building and other improvements comprising Unit A, and for the purposes described in the Project Documents.

Yard Area B: Yard Area B consists of the land area under and surrounding Unit B contains approximately 6.925 acres as designated on the Condominium Map, and is reserved for the exclusive use of Unit B for the support of the building and other improvements comprising Unit B, and for the purposes described in the Project Documents.

EXHIBIT "E"

ENCUMBRANCES AGAINST TITLE

1. Any taxes that may be due and owing and tax liens that may exist, refer to Director of Finance, Kauai County.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Building setback line as shown on map prepared by Thomas H. Oi, Licensed Professional Land Surveyor, dated September 4, 1998.
4. Restriction of access into and from Kahili Quarry Road, as shown on map prepared by Thomas H. Oi, Licensed Professional Land Surveyor, dated September 4, 1998.
5. Easement D-4 (15' wide) for drainage purposes as shown on map prepared by Thomas H. Oi, Licensed Professional Land Surveyor, dated September 4, 1998.
6. Easement E-1 (25' wide) for electrical purposes as shown on map prepared by Thomas H. Oi, Licensed Professional Land Surveyor, dated September 4, 1998.
7. The terms, provisions, covenants, easements and reservations as contained in the following:

Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community dated August 31, 1983, and recorded in said Bureau in Book 17405 at Page 411, but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, handicap, familial status or national origin, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

The foregoing Amendment was amended by the following:

<u>Book</u>	<u>Page</u>	<u>Dated</u>
21704	1	undated
22367	21	09/09/88
22766	559	12/28/88

8. The terms, provisions, covenants, easements and reservations as contained in the following:

Declaration dated July 25, 1988, and recorded in said Bureau in Book 22226 at Page 340, but omitting any covenants or restrictions, if any, based upon race, color, religion, sex, handicap, familial status or national origin, unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

9. Right-of-Entry in favor of Citizens Utilities Company, a Delaware corporation, and GTE Hawaiian Telephone Company Incorporated, a Hawaii corporation, dated October 12, 1988, and recorded in said Bureau in Book 22768 at Page 454.
10. Any facts which a correct boundary and improvement survey or archaeological study would disclose, including, without limitation, trails, rights of way, historic property and burial sites which are not shown by public records.
11. A nonexclusive easement for view purposes over across said Lot 24 in favor of Lot 25 of the "Seacliff at Kilauea Bay" subdivision, as provided in that certain Declaration of View Easement recorded in said Bureau as Document No. 92-090957.
12. The terms, conditions, covenants and restrictions contained in that certain unrecorded Agreement referred to in Partition Deed dated November 30, 1998, recorded in said Bureau as Document No. 98-181344, by and between New Vistas Holdings, LLC, and Elizabeth Anne Freeman, regarding use, setbacks, and viewplane easements affecting Lots 23 and 24 of the Seacliff Plantation at Kilauea Bay.
13. Waiver and Release dated June 22, 2000, recorded in said Bureau as Document No. 2000-091007, re: no existing County-supplied water service.
14. Waiver of Construction Drawings dated June 22, 2000, recorded in said Bureau as Document No. 2000-112613, re: water meter.
15. The covenants, agreements, obligations, conditions, easements and other provisions as contained in the following:

Declaration of Condominium Property Regime of Luxour Condominium dated October 12, 2000, and recorded in said Bureau as Document No. 2000-150428.

Condominium Map No. 3180 to which reference is hereby made.

Said Declaration was amended by that certain First Amendment to Declaration of Condominium Property Regime of Luxour Condominium dated November 11, 2000, and recorded in said Bureau as Document No. 2000-163711.

16. Bylaws of the Association of Unit Owners of Luxour Condominium dated June 15, 2000, and recorded in said Bureau as Document No. 2000-150429.

17. Easement "U-1" and Easement "U-2" for underground utility purposes in favor of Unit A and Unit B, as shown on the Condominium Map No. 3180, and as set forth by said Declaration of Condominium Property Regime dated October 12, 2000, recorded as Document No. 2000-150428.
18. View Easement V-1, an exclusive easement for view purposes, located on Unit B in favor of Unit A, as shown on Condominium Map No. 3180, and as set forth by said Declaration of Condominium Property Regime dated October 12, 2000, recorded as Document No. 2000-150428. No buildings may be constructed, placed or installed within View Easement V-1.

EXHIBIT "F"

ESTIMATE OF INITIAL MAINTENANCE FEES
AND
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee x 12 months = Yearly Total</u>
Unit A	\$225 x 12 = \$2,700.00
Unit B	\$225 x 12 = \$2,700.00

The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency.

Estimate of Maintenance Fee Disbursements:

Monthly Fee x 12 months = Yearly Total

Utilities and Services

- Air Conditioning
- Electricity
 - common elements only
 - common elements and apartments
- Elevator
- Gas
 - common elements only
 - common elements and apartments
- Refuse Collection
- Telephone
- Water and Sewer

Maintenance, Repairs and Supplies

Building				
Grounds	\$100.00	x	12	= \$1,200.00

Management

- Management Fee
- Payroll and Payroll Taxes
- Office Expenses

Insurance	\$ 50.00	x	12	= \$ 600.00
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Reserves(*)

Taxes and Government Assessments

Audit Fees

Other (Seacliff Plantation At Kilauea Bay Community Fees)	\$300.00	x	12	= \$3,600.00
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TOTAL	\$450.00	x	12	= <u>\$5,400.00</u>
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I, ROHNAR R. BOYD, the developer for the LUXOUR CONDOMINIUM project, hereby certifies that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.



 ROHNAR R. BOYD

1/30/01

 Date

(*) Mandatory reserves assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for "Reserves", the Developer has conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Pursuant to §514A-83.6, HRS, a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting.

End of EXHIBIT "F"

NOTE: The Project has shared utilities and shared improved roads which are common elements, and thus may require replacement.

Developer discloses that Developer has not conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules.

EXHIBIT "G"

SUMMARY OF DEPOSIT RECEIPT AND SALES CONTRACT

The Deposit Receipt and Sales Contract, including the terms and conditions attached thereto as Article IV (hereinafter collectively called the "Sales Contract") contain the price and other terms and conditions under which a purchaser will agree to buy a unit in the Project. Among other things, the Sales Contract states:

(a) The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of a unit.

(b) That the purchaser acknowledges having received and read a public report (either preliminary or final) for the Project prior to signing the Sales Contract.

(c) That the Developer makes no representations concerning rental of a unit, income or profit from a unit, or any other economic benefit to be derived from the purchase of a unit.

(d) That the purchaser's money will be held in escrow, under the terms of the Escrow Agreement.

(e) Requirements relating to the purchaser's financing of the purchase of a unit.

(f) That the unit and the Project will be subject to various other legal documents which the purchaser should examine, and that the Developer may change these documents under certain circumstances.

(g) That the Developer makes no warranties regarding the unit, the Project or anything installed or contained in the unit or the Project.

(h) That the purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.

(i) That the purchaser will not receive interest on deposits made under the Sales Contract.

(j) If the buyer shall default:

(1) The contract may, at the seller's option, be terminated by written notice to the buyer; and

(2) Any sums paid by the buyer shall belong to the seller as liquidated damages (up to a maximum of 20% of the total purchase price); and

(3) The seller may pursue any other remedy, including specific performance, permitted by law or equity. All costs, including reasonable attorneys' fees, incurred by reason of default by the buyer shall be borne by the buyer.

Further, if the buyer shall default in making any payment when due, a late charge of one percent (1%) per month shall accrue from the due date until such payment, together with such late charge, is paid, or at any time prior to the time that such payment and late charge is paid in full, the seller may, at its option, terminate this contract as provided in paragraphs (1) through (3) above.

The Sales Contract contains various other important provisions relating to the purchase of a unit in the Project. It is incumbent upon purchasers and prospective purchasers to read with care the specimen sales Contract on file with the Real Estate Commission.

EXHIBIT "H"

SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement sets up an arrangement under which the deposits a purchaser makes pursuant to a Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement, these things will or may happen:

- (a) Escrow will let the purchaser know when payments are due.
- (b) Escrow will arrange for the purchaser to sign all necessary documents.
- (c) The purchaser is entitled to a refund if the purchaser or seller cancels the Sales Contract in accordance with its cancellation provisions, or if the purchaser terminates its reservation before the Sales Contract is binding. However, Escrow may deduct from the refund cancellation fees in accordance with the Sales Contract.

In the event of a default by the purchaser, the funds paid by the purchaser shall belong to the seller as liquidated damages (up to a maximum of twenty percent (20%) of the total purchase price).

The Escrow Agreement contains various other important provisions and establishes certain charges with which a purchaser should be familiar. It is incumbent upon purchasers and prospective purchasers to read with care the executed Escrow Agreement on file with the Real Estate Commission.

(d) The purchaser's funds that are placed in trust prior to closing may be used by the seller after (1) the purchaser has (i) been provided with a final public report; (ii) executed a receipt and notice and has waived his right to cancel or thirty (30) days have elapsed since the purchaser has been provided with the final public report and receipt and notice of right to cancel; and (2) the seller notifies escrow in writing that since (i) and (ii) have happened, the Sales Contract is binding; and (3) the seller's attorney advises escrow that the Sales Contract is binding and the requirements of Hawaii Revised Statutes, Sections 514A-63 and -65 have been met.

(e) Escrow may not disburse any buyer's funds in the construction of the project until completion of the project and the expiration of the mechanic's and materialmen's lien period. Escrow may disburse prior to completion of the project and expiration of the applicable lien period if the Developers would furnish each purchaser an Owners Title Insurance with an endorsement against any future liens placed on the apartments or project as a result of the development, plus providing the Real Estate Commission a release of the General Contractor's lien rights.

EXHIBIT "I"

LAND COURT SYSTEM

REGULAR SYSTEM

RETURN BY: MAIL [] PICKUP [] To:

County of Kauai
Planning Department
4280 Rice Street
Lihue, Kauai, Hawaii 96766

FARM DWELLING AGREEMENT

This agreement made and entered into as of the _____ day of _____, 19 _____, by and between _____

whose mailing address is _____

hereinafter called the "APPLICANT(S)", and the COUNTY OF KAUAI, Planning Department, whose business and mailing address is 4280 Rice Street, Lihue, Hawaii 96766, hereinafter called the "DEPARTMENT",

W I T N E S S E T H :

WHEREAS, the APPLICANT(S) warrant and represent that they are the _____ of that certain parcel of land, Tax Map Key No. _____ more particularly described in Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, this document pertains only to _____ as shown in Exhibit "B" and made part hereof; and

WHEREAS, that certain parcel of land is classified Agriculture by the State Land Use Commission and is zoned Agriculture by the County of Kauai; and

WHEREAS, Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations only permit "farm dwellings" within the State Agriculture Land Use District unless otherwise relieved from the restriction by a special permit obtained pursuant to Chapter 205, Section 6, Hawaii Revised Statutes; and

WHEREAS, a "farm dwelling" is defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations as "a single family dwelling located on and used in connection with a farm where agricultural activity provides income to the family occupying the dwelling"; and

WHEREAS, the parcel identified by Tax Map Key No. _____ is entitled to _____ residential units and one guest house; and

WHEREAS, this agreement is evidenced that _____ is entitled to one of those residential units; and

WHEREAS, a "family" as used in the definition of a "farm dwelling" is defined by the State Land Use District Regulations as "an individual or two or more persons related by blood, marriage or adoption or a group comprising not more than five persons, not related by blood, marriage or by adoption"; and

WHEREAS, the APPLICANT(S) acknowledge that a violation of Chapter 205, Hawaii Revised Statutes, and the State Land Use District restriction is subject to a citation and fine of not more than \$5,000 pursuant to Chapter 205, Section 13, Hawaii Revised Statutes, as amended; and

WHEREAS, the APPLICANT(S) also acknowledge that failure to abide by this agreement may result in the removal of the prohibited structure at the owner's expense; and

WHEREAS, the DEPARTMENT is charged with the enforcement of the restriction by Chapter 205, Hawaii Revised Statutes; and

WHEREAS, the APPLICANT(S) wish to construct a dwelling unit on that certain parcel of land described in Exhibit A; and

WHEREAS, the APPLICANT(S) wish to execute this Farm Dwelling Agreement without first obtaining the signatures of all interest holders in the CPR;

NOW THEREFORE, for and in consideration of the terms, covenants and conditions hereinafter contained, the parties hereby mutually agree as follows:

1. That the dwelling permitted to be constructed on the parcel of land described in Exhibit "A" classified Agriculture by the State Land Use Commission shall be a "farm dwelling" as defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations, as recited herein; and

2. That the dwelling shall only be occupied by a "family", as defined by the State Land Use District Regulations and as recited herein, who derive income from the agricultural activity on the parcel; and

3. That the APPLICANT(S) and all present and future owners, lessees and occupants of said land grant the DEPARTMENT the right of entry at the request of the DEPARTMENT to inspect the premises to assure compliance with the provisions of this agreement; and

4. That this agreement shall be a covenant running with the land and be binding on the APPLICANT(S), and all present and future owners, lessees and occupants of said land and anyone claiming under said APPLICANT(S), their heirs, executors, administrators, successors and assigns, as owners or occupants thereof or otherwise; and

5. That this agreement shall remain in effect so long as the land retains its Agriculture District classification under the State Land Use Commission and the pertinent restrictive provisions of Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations remain in effect; and

6. That the APPLICANT(S) expressly set forth the provisions of this agreement in any subsequent conveyance, deed, lease or rental agreement to said property executed by them, so as to give effect to said covenant; and

7. That this agreement shall be recorded with the State of Hawaii Bureau of Conveyances, fees to be paid by the APPLICANT(S); and

8. The DEPARTMENT and APPLICANT(S) shall execute the Farm Dwelling Agreement; and

9. The APPLICANT(S), for themselves (himself/herself), their (his/her) heirs, administrators, successors and assigns, do hereby waive and release the DEPARTMENT and the County of Kauai, a political subdivision of the State of Hawaii, whose principle place of business is 4396 Rice Street, Lihue, Hawaii, 96766, from all claims and causes of action, either legal or equitable, which may hereafter accrue by reason of the DEPARTMENT'S execution of said Farm Dwelling Agreement; and

10. The APPLICANT(S) do(es) hereby promise to indemnify and hold the DEPARTMENT and the County of Kauai, its successors, assigns, offices, employees, agents, attorneys or any other person or legal entity connected with or legally responsible to them, harmless from any and all claims, actions, causes of action, lawsuits, demands or liability for damages of whatever kind and nature, arising out of the DEPARTMENT'S execution of said Farm Dwelling Agreement; and

11. This Agreement shall be a covenant running with the portion of land described in Exhibit A, and shall be binding on APPLICANT(S) and all present and future owners and occupants of said portion of land and any one claiming under APPLICANT(S), their successors, and assigns, as owners or occupants thereof. The APPLICANT(S) further agree(s) to expressly set forth the provisions of this waiver and indemnity agreement in any subsequent conveyance, deed, lease, or rental agreement so as to give effect to said covenant.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the _____ day of _____, 19 _____.

APPROVED:

Applicant(s)

Planning Director

APPROVED AS TO FORM
AND LEGALITY:

County Attorney

STATE OF HAWAII)
) ss.
COUNTY OF KAUAI)

On this _____ day of _____, 19 _____, before me personally appeared _____

to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Notary Public, Fifth Judicial Circuit
State of Hawaii

My commission expires:

WHEREAS, PALI MOANA COMPANY, formerly known as Roberson/Larson Partners, a New Mexico partnership, herein called "Pali Moana", developed certain real property situate at Kilauea, Island and County of Kauai, State of Hawaii, in the subdivision known as the Seacliff Plantation at Kilauea Bay; and

WHEREAS, Pali Moana's predecessor, Roberson/Larson Partners, recorded that certain Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community, dated August 31, 1983, in the Bureau of Conveyances of the State of Hawaii in Liber 17405 at Page 411, amended by instrument (acknowledged March 1, 1988, March 2, 1988, March 3, 1988, and March 7, 1988), recorded in Liber 21704 at Page 1; and

WHEREAS, Pali Moana recorded that certain Amended Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantations At Kilauea Bay Community, dated September 9, 1988, in the Bureau of Conveyances of the State of Hawaii in Liber 22367 at Page 21, and that certain Third Amendment To Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community, dated December 28, 1988, and recorded in said Bureau of Conveyances on January 13, 1989 in Liber 22766 at Page 559; and

WHEREAS, the said Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community, as amended, herein collectively called the "Declaration", provided the Declarant, as defined in the By-Laws of the Seacliff Plantation at Kilauea Bay Community Bay Association, with certain voting rights and obligations as a "Class B Member" of the Seacliff Plantation at Kilauea Bay Community Association; and

WHEREAS, the By-Laws of the Seacliff Plantation at Kilauea Bay Community Association, defines the Declarant as Pali Moana Company and its successors and assigns, but also provides that the Class B membership shall cease and be converted to Class A membership upon the sale of all of the farm dwelling sites by such Class B Member; and

WHEREAS, all of the farm dwelling sites has been sold, thus terminating all rights of a Class B Member in the said Association; and

WHEREAS, at a meeting of the Class A Members of the

Seacliff Plantation at Kilauea Bay Community Association, herein called the "Association", held on _____, 1999, more than 75% of the Class A Members of the Association elected to further amend the Declaration, as set forth herein, and authorized the Secretary of the Association to record the same as a restatement of the Declaration in its entirety,

NOW, THEREFORE, the Association, on behalf of its members, hereby declares that all of the property described in Exhibit "A" of the said Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community, dated August 11, 1983, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 17405 at Page 411, as amended by instrument recorded in Liber 21704 at Page 1, as further amended by the said Amended Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community, dated September 9, 1988, in the Bureau of Conveyances of the State of Hawaii in Liber 22367 at Page 21, and as further amended by instrument dated December 28, 1988, in the Bureau of Conveyances of the State of Hawaii in Liber 22766 at Page 559, and any other property as may be hereafter annexed thereto as provided herein, shall be held, sold, conveyed, encumbered, leased, occupied and improved, subject to the SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY RESTRICTIONS, meaning the limitations, restrictions, covenants and conditions set forth in this restated Declaration, all of which are established and declared and agreed to be for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and the surrounding environment. The limitations, restrictions, covenants and conditions contained in this Declaration shall run with said property and shall be binding upon all parties having or acquiring any right, title or interest in and to the described property or any part thereof and shall inure to the benefit of each owner thereof and the Association.

This restated Declaration shall supersede and amend the aforesaid Declaration, as amended, in its entirety.

ARTICLE I

DEFINITIONS

Unless the context in the Seacliff Plantation at Kilauea Bay Community Restrictions otherwise specifies or requires, the terms defined in this Article I shall for all purposes of

this Declaration shall have the meanings herein specified:

1. "Architect" shall mean a person registered to practice architecture in the State of Hawaii under the authority of Chapter 464, Hawaii Revised Statutes, as amended.

2. "Articles" shall mean the Articles of Incorporation of the Association granted or to be granted pursuant to Chapter 416, Hawaii Revised Statutes, as amended, substantially in the form attached hereto as Exhibit "B" and incorporated herein, as such Articles may from time to time be amended.

3. "Association" shall mean the Seacliff Plantation at Kilauea Bay Community Association, a non-profit corporation described in Article V herein and its successors and assigns.

4. "Bed and Breakfast" shall mean those bed and breakfast operations as is defined by applicable law.

5. "Board" shall mean the Board of Directors of the Association.

6. "By-Laws" shall mean the By-Laws of the Association which have been or shall be duly adopted substantially in the form attached hereto as Exhibit "C" and incorporated herein, as such By-Laws may from time to time be amended.

7. "Common Area" shall mean all of the real property which has been conveyed to or leased to the Association for the common use and enjoyment of all Owners of the Seacliff Plantation at Kilauea Bay Community, pursuant to the provisions hereinafter set forth, together with all of the improvements from time to time constructed thereon, for the general use of all Owners in the Seacliff Plantation at Kilauea Bay Community.

8. "Condominiumizing" shall mean any means or manner whereby separate and distinct interests (other than as tenants in common of an undivided interest in the whole) in any lot within the Seacliff Plantation at Kilauea Bay Community are created which permits individual ownership of a specific portion of the lot and/or the individual financing of that specific portion. This includes registration as a condominium under the laws of the State of Hawaii (whether the

same be designated as a horizontal property regime, condominium property regime, or any other nomenclature), the conveyance of the property to a land trust under the laws of the State of Hawaii for the purposes of permitting individual ownership of specific portions of the lot, or any other means to achieve such ends.

9. "Declarant" shall mean the Pali Moana Company, and its successors and assigns.

10. "Design Committee" shall mean the Committee created pursuant to Article IV hereinafter set forth.

11. "Design Committee Rules" shall mean those rules adopted by the Design Committee pursuant to Section 4.04 of Article IV.

12. "Excavation" shall mean any disturbance of the surface of the land (except temporarily for planting) which results in removal of earth or rock for a depth of more than eighteen (18) inches or an area exceeding one hundred (100) square feet.

13. "File" or "Filed" shall mean with respect to any subdivision map or file plan such map or plan which has been recorded in the Bureau of Conveyances of the State of Hawaii.

14. "Fill" shall mean any addition of rock or earth materials to the surface of the land which increases the previous elevation of such surface by more than eighteen (18) inches or an area exceeding one hundred (100) square feet.

15. "Fiscal Year" shall mean the year from January I to December 31.

16. "Farm Dwelling" shall mean a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling. In keeping with the intent of the State Land Use Law (Chapter 205, Hawaii Revised Statutes), agricultural activity must be established before any additional farm dwellings in excess of one (1) per parcel will be permitted by the County of Kauai.

17. "Farm dwelling site" shall mean those areas

within a lot in the Seacliff Plantation at Kilauea Bay Community wherein farm dwellings are permitted to be constructed by the County of Kauai, pursuant to Special Management Area Use Permit SMA(U)-82-2.

18. "Improvements" shall include buildings, outbuildings, roads, driveways, parking areas, fences, retaining walls, stairs, decks, hedges, windbreaks, planted trash surrounds, poles, signs and any other structures of any type or kind, and shall include any physical appearance of the structure, including by way of example, but not limited to, adding or removing square footage area space to or from a structure, painting or repainting a structure, or in any way altering the size, shape, or physical appearance of any structure.

19. "Maintenance Assessment" shall mean any assessment levied pursuant to Section 6.02.

20. "Maintenance Reserve Fund" shall mean such fund established pursuant to Section 6.02.

21. "Managing Agent" shall mean the person or corporation appointed as such pursuant to Section 5.05.

22. "Member" shall mean those owners and Class A Members as set forth in the By-Laws of the Seacliff Plantation at Kilauea Bay Community Association.

23. "Notice" shall mean notice delivered pursuant to Section 7.12.

24. "Ohana Unit" shall mean any additional dwelling unit or farm dwelling in excess of the allowable density under the applicable zoning code which may be Permitted under any ohana zoning law of the State of Hawaii or the County of Kauai as presently enacted or as may be enacted in the future. Ohana zoning law shall mean any legislation which, notwithstanding allowable density under a zoning law, permits additional dwelling or dwellings to be built provided certain conditions are met. An example of an ohana zoning law is Section 8-3.3(d) of Article 3 of the County of Kauai's Comprehensive Zoning Ordinance.

25. "Operating Fund" shall mean the fund created pursuant to Section 6.01.

26. "Owner" shall mean the person or persons, corporation or corporations, or other legal entity or entities, as set forth in Section 5.02, provided, however, that:

(a) For the purposes of limitations and restrictions set forth in Article III, "Owner" shall not include the Declarant with respect to any real property not yet conveyed to an individual lot owner.

(b) "Owner" shall include for the purposes of Article 111, unless the context otherwise requires, family, invitees, licensees, and lessees of any Owner.

27. "Primary Recreational Facility" shall mean and include any improvement for the general use of all Owners of lots in the Seacliff Plantation at Kilauea Bay Community for or in connection with any recreational purpose of activity, interpreted broadly to include without limitation, park and picnic facilities, riding trails, and/or pedestrian pathway systems, as the same may be designated as such on any map or file plan.

28. "Private Area" shall mean any real property for the exclusive use of the Owner of a certain lot or farm dwelling site in the Seacliff Plantation at Kilauea Bay Community, whether or not conveyed to such Owner, together with all improvements from time to time constructed thereon.

29. "Record" and "Recorded" shall mean with respect to any document, that such document has been recorded in the Bureau of Conveyances of the State of Hawaii.

30. "Road" shall mean any paved vehicular way constructed within or upon any portion of any common area, co-tenancy area, or private area, or upon other lands of the Declarant used to provide access to the Seacliff Plantation at Kilauea Bay Community, except any apron or other paved area constructed for the purpose of providing paved access from such way to any private area.

31. "Seacliff Plantation at Kilauea Bay Community Association Rules" and/or "Seacliff Plantation Community Association Rules" shall mean the rules from time to time in effect pursuant to the provisions of Section 5.06.

32. "Seacliff Plantation at Kilauea Bay Community" and/or "Seacliff Plantation Community" shall mean all of the real property referred to in Section 2.01, together with all improvements from time to time constructed thereon.

33. "Seacliff Plantation at Kilauea Bay Community Restrictions" and/or "Seacliff Plantation Restrictions" shall mean, with respect to all property within the Seacliff Plantation at Kilauea Bay Community, the limitations, restrictions, covenants and conditions set forth in this Declaration, as such Declaration may from time to time be amended.

34. "Special Assessment" shall mean any assessment levied pursuant to Section 6.03.

35. "Subdivision Map" shall mean any map prepared for the subdivision of Parcel 9, Kilauea, Kauai., Hawaii, or a portion thereof, which map may be recorded in the Bureau of Conveyances of the State of Hawaii.

ARTICLE II

SEACLIFF PLANTATION AT KILAUEA BAY PROPERTY SUBJECT TO COMMUNITY RESTRICTIONS

Section 2.01. The Development.

(a) The development shall be all of the property described in the Declaration, as amended, or as may hereafter be annexed and made a part of the Seacliff Plantation at Kilauea Bay Community, and the same shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the Seacliff Plantation at Kilauea Bay Community Restrictions.

(b) No property, except that described in said Declaration, as amended, or as may hereafter be annexed, and hereby made subject to the Seacliff Plantation Community Restrictions, shall be deemed subject to the Seacliff Plantation Community Restrictions, whether or not shown on any subdivision map or file plan filed by Pali Moana or described or referred to in any document executed and/or recorded by Pali Moana. No designation of any parcel, lot or other area on any map or plan filed by the Declaration as a private area, common area, road, street, park or as an other type of parcel,

lot or area shall be deemed to be a dedication or commitment or representation that such parcel, lot or area is or will be used, devoted to or restricted to such use, except with respect to parcels, lots or areas specifically described in the Declaration and so designated on a subdivision map or file plan for such use, nor shall any Owner, or the public, or any public body or agency or any other person, corporation or entity, acquire any interest or rights therein by reason of such designation or filing, except as aforesaid. Nothing herein or in any amendment hereto, or in any recorded or unrecorded subdivision map or file plan, nor in any picture, drawing, brochure or other representation of a scheme of development, shall be deemed to be a representation, warranty or commitment that the Declarant will commit or subject or be construed as requiring the Declarant to commit or subject to the Seacliff Plantation Community Restrictions any real property situated in Kilauea aforesaid, other than that described in said Declaration, or such amendment.

(c) Pali Moana Company reserves the right, at any time prior to December 31, 2002, without the consent of the Association or any Owner of a lot or any other person or corporation or entity holding any interest in a farm dwelling site, from time to time and in its sole discretion, to annex to the Seacliff Plantation Community the roadway lots within the Seacliff Plantation Community by conveying and/or leasing said roadway lots to the Seacliff Plantation Community Association, or to annex additional lands resulting from further subdivision of said Parcel 9 to the Seacliff Plantation Community.

ARTICLE III

RESTRICTIVE COVENANTS

Section 3.01. Use Restrictions: Homesites and Private Areas. Each lot and farm dwelling site in the Seacliff Plantation Community, and any private or co-tenancy area appurtenant thereto, shall be for the exclusive use and benefit of the Owner thereof, subject, however, to all of the following limitations and restrictions:

(a) The Association, or its duly authorized agents, shall have the rights set forth in Section 5.05 with respect to each farm dwelling site or lot.

(b) No improvement or other work which in any way significantly alters any lot or farm dwelling site from its natural or improved state existing on the date such lot was first conveyed by Pali Moana to an Owner shall be made or done except upon strict compliance with and within the restrictions of the provisions of Section 3.05.

(c) So long as the zoning of the lots in the Seacliff Plantation Community remains unchanged, only farm dwellings, as may be permitted by applicable law, shall be constructed within those areas approved by the County of Kauai, pursuant to Special Management Area Use Permit SMA-82-2. In keeping with the intent of the State Land Use Law (Chapter 205, Hawaii Revised Statute, as may be amended), agricultural activity must be established before any additional dwellings in excess of one. (1) per parcel will be permitted by the County of Kauai.

(d) Lots 1, 2, 3, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24 and 25 in the Seacliff Plantation Community are subject to a building setback line which was approved by the county of Kauai in the said SMA(U)-82-2 on February 10, 1982 and as shown on the subdivision map approved by the County of Kauai. All structures on the lots must be in conformity with the said building setback line, as approved or as may be amended from time to time with the approval of the County of Kauai.

(e) All building locations and designs shall be subject to the review and approval of the Planning Department of the County of Kauai at the time of building permit application. The building locations shall be constructed on the ground in strict adherence to the approved subdivision map for the Seacliff Plantation Community and the building plot plan submitted to and approved by the Planning Department during the building permit application process. Any structures found constructed in violation of the approved plans shall be relocated at the owner's expense.

(f) To protect views and to maximize a blending of structures with the natural environment, no structure erected on any of the said lots shall exceed a building height limit of twenty-five (25) feet, measured from grade at all points along the structure to the roof peak; provided, however, that notwithstanding compliance with the foregoing height limitation, the Design Committee shall have the power to deny

approval of any structure or Improvement on a lot which substantially impairs views from the adjoining lot or lots.

(g) All farm dwellings shall contain not less than 2,000 square feet of livable floor area, exclusive of lanais, patios, servant's quarters, attached guest house or facility, garage storage space, and workshop. Each farm dwelling shall have appurtenant to it a garage designed to accommodate at least two automobiles which is architecturally harmonious with the farm dwelling to which it is appurtenant.

(h) All structures shall be built entirety of new materials, and no old and/or "Quonset" or "geodesic dome" type of building shall be erected, placed or maintained on any of said lots.

(i) No structure erected on the lots shall use mirrored glass, reflective sun screens, or other highly reflective materials for any exterior windows.

(j) The roofs of all structures erected on the lots shall be surfaced with wood shakes or shingles, clay tile or other materials of minimum reflectivity. The use of any roofing materials which is highly reflective, such as corrugated iron, tiles with a smooth, shiny finish, and the like, shall be prohibited.

(k) All structures erected on the lots, including the roof, shall have an earthen tone exterior color, or have a finish of earthen tone color.

(l) The area around each structure exceeding 2,000 square feet in floor area shall be landscaped with trees, shrubbery, and/or plantings in such a fashion so as to minimize the visual intrusion of such structures upon that portion of Parcel 9, Kilauea, Kauai, Hawaii, more commonly known as "Crater Hill".

In the event that an owner desires to construct any structure exceeding 2,000 square feet in floor area, he shall submit a complete landscaping plan to, and obtain the approval of the Design Committee as herein provided, prior to obtaining a building permit for such structure. The Design Committee as herein provided, shall have the right, in its discretion, to approve, approve with modifications, or deny the landscaping plan so submitted, the criteria being whether the proposed

landscaping is reasonably sufficient to minimize the visual intrusion of such structure upon Crater Hill as viewed from Kilauea town and Kuhio Highway.

(m) Any bare areas resulting from excavation or fill by a lot owner shall be revegetated immediately to avoid erosion and visual impacts.

(n) No fences, corrals, and the like shall be painted or contain a finish other than earthen tones.

(o) Each farm dwelling site shall be occupied and used only as a farm dwelling by the respective Owner thereof, his tenants, family, employees and guests, and for no other purpose (including bed and breakfast operations).

(p) Each farm dwelling and any and all improvements from time to time located thereon shall be maintained by the Owner thereof in good and clean condition and repair and in such manner as not to create a fire, safety or health hazard to the Seacliff Plantation Community or any part thereof, all at such Owner's sole cost and expense.

(q) No signs whatsoever, including without limitation, commercial, political or similar signs, visible from neighboring property, shall be erected or maintained upon any lot except:

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

(2) Residential identification signs of a combined total face area of one (1) square foot or less for each resident.

(3) During the time of construction of any farm dwelling or other improvement, job identification signs having a maximum face area of six (6) square feet per sign and of the type usually employed by contractors, subcontractors and tradesmen, and

(4) Not more than one (1) "For Sale" or "For Rent" sign having a maximum face area of two (2) square feet, such sign to refer only to the premises on which it is situated.

(r) No house trailer, mobile home, permanent tent or similar facility or structure shall be kept, placed or maintained upon any lot at any time, provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of any work or improvement permitted in Section 3.05.

(s) No vehicle of more than one (1) ton capacity shall be kept, placed or maintained upon any lot in such manner that such truck is visible from the adjoining streets and neighboring property, unless such vehicle is necessary to and regularly used for agricultural activities conducted on the lot, provided, however, that the provisions of this paragraph shall not apply to construction equipment maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of any work or improvement permitted by Section 3.05.

(t) No accessories, structures or buildings shall be constructed, placed or maintained upon any lot prior to the construction of the main structure of the farm dwelling, provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained for a period not to exceed one (1) year during and used exclusively in connection with the construction of the main structure of the farm dwelling, nor apply to facilities reasonably required in the conducting of agricultural activities on the lot. Guest houses (as allowed by law) may be permitted to be constructed by the Design Committee prior to the construction of the main structure of the farm dwelling if, and only if, such guest house is part of the master plan for the construction of farm dwelling(s) on the lot and sufficient assurances are given to the satisfaction of the Design Committee that the farm dwelling(s) shown on such master plan will be built in accordance therewith within a reasonable time.

(u) No trailer, vehicle or boat shall be reconstructed or repaired upon any homesite in such a manner that such construction, reconstruction or repair is visible from neighboring properties, nor shall any vehicle not in good operating condition be maintained upon any lot so as to be visible from any adjoining streets or neighboring properties, provided that nothing in this paragraph shall prevent an Owner

from performing minor maintenance work and minor repairs on his own trailer, vehicle or boat in his garage.

(v) No garbage or trash shall be permitted on any lot except in closed receptacles screened from view from any adjoining street, and no accumulated waste plant materials will be permitted on any lot, except as part of an established compost pile maintained in such a manner as not to be visible from neighboring property, or as a necessary part of the agricultural activities conducted on such lot.

(w) No open storage of boats, vehicles, furniture, fixtures, appliances and other goods and chattels will be permitted. These items may only be stored in an enclosed structure. No outside clothes line or other outside clothes drying or airing facilities shall be permitted except within a fenced service yard and not visible from neighboring property.

(x) The Owner shall not violate or permit the violation on his lot of any applicable law or ordinance pertaining to zoning, building, fires, signs or other matter relating to the use and development of his lot or farm dwelling site.

(y) No garage shall be for other than the parking of vehicles and boats, unless the same be enclosed so as not to be visible from neighboring property by a partition, wall, door or screen, normally kept closed. Specifically, and without limiting the generality of the foregoing, no garage not so enclosed shall be used for laundry or for storage purposes.

(z) Except for dogs, cats and other typical household pets kept in reasonable numbers and under reasonable conditions, no animals shall be kept or maintained on any lot except with the approval of the Design Committee, which shall have the power to control in accordance with uniformly applied standards as may be adopted from time to time, the kinds of animals which may be kept or maintained on a lot, the numbers of each type of animal which may be kept or maintained on a lot, and the conditions under which such animals may be kept or maintained, including, without limitation, the kind of structures or enclosures in which such animals may be kept. All animals kept or maintained on a lot, whether domestic pets, livestock, game and fish or any other animal or aquatic

life propagated for economic or personal use shall be kept and maintained only in a density compatible with neighboring residential and agricultural use and shall be cared for in conformance with practices of good animal husbandry, including but not limited to: (a) prompt removal of excess amounts of manure and other waste; (b) disposal in an ecologically sound manner of any effluent from the practice of agriculture or other processes; (c) control of flies, insects, worms and other pests; (d) control of weeds and other noxious grasses; (e) adequate fencing and animal housing facilities adequate to restrict such animals to the lot where maintained; and (e) control of noise and noxious odors to levels which are customary under practices of good animal husbandry and which are compatible with neighboring residential and agricultural use. Storage of hay, fodder and other food supplies shall be accomplished in such manner as to prevent scattering of such materials by the wind and water runoff. Notwithstanding the foregoing, the keeping and maintaining of pigs, chickens (except for personal use and consumption) and fighting chickens are expressly prohibited as being incompatible with the neighboring residential and agricultural use.

(aa) No noxious or offensive activity shall be carried on upon the Common Area or any lot or any farm dwelling site, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. All occupants shall exercise extreme care about making noises and in the use of musical instruments, radios, televisions, and amplifiers that may disturb other occupants.

(bb) Access from any of the lots in the Seacliff Plantation Community to both the Kilauea Lighthouse Road and the Kahili Quarry Road is restricted. Access to and from the lots in the Seacliff Plantation Community will be limited to the subdivision.

(cc) Building setback lines have been established along the natural watercourse that traverses through the Seacliff Plantation Community property, as shown on the subdivision map approved by the County of Kauai, and in particular affecting Lots 16, 17, 18, 21, 22, 23, 24, and 25, to prevent structures from being constructed in an area subject to flooding and drainage problems. No structures will be permitted within these setback areas. The Owners of lots affected by the watercourse setback lines are required to maintain the function of the watercourse by not constructing,

filling or fencing within the setback areas.

(dd) Because of the high elevation of portions of Lots 1, 2, 3, 4, 5, 6, 11, 12, 13, 14 and the remainder of Lot 9, a dependable supply of water cannot be assured above the 375 feet elevation above sea level. The lot owner of those lots will be required to sign an elevation agreement with the Department of Water of the County of Kauai upon application for water service, agreeing to accept such water service as the Department is able to render.

(ee) Notwithstanding any laws to the contrary, as now existing or as may hereafter be enacted, ohana dwelling units are expressly prohibited within the Seacliff Plantation at Kilauea Bay Community.

(ff) None of the farm dwellings or other improvements within the Seacliff Plantation at Kilauea Bay Community shall be used for bed and breakfast operations.

(gg) The condominiumizing of any lot or lots within the Seacliff Plantation at Kilauea Bay Community may be permitted only if approved by the Design Committee in the manner set forth herein and developed in accordance with the conditions of such approval, failing which such condominiumizing shall be deemed in violation of these covenants and restrictions. The condominiumizing of any lot within the Community shall not result in a number of units or interests larger than the maximum number of farm dwellings permitted under the applicable zoning ordinance and this Declaration for that particular lot.

(hh) The Design Committee shall have the authority to prohibit additional types of activities on and uses of the lots by the Owner through the due adoption of the Seacliff Plantation Community Association Rules, where such activities and/or uses are not compatible with the neighboring residential and agricultural uses within the Seacliff Plantation at Kilauea Bay Community.

Section 3.02. Easements Affecting Lots.

(a) As an incident of ownership of lots in the Seacliff Plantation Community, the Owners also have rights to use Easement "ET-1" (being a 20 foot wide equestrian trail), Easement "PT-1" (being a 20 foot wide pedestrian trail, and

Easement "PA-1" (being a picnic area), which easements are over and across the Remainder of Lot 9 of the Seacliff Plantation subdivision, which easements are shown in that certain subdivision map prepared by Portugal and Associates, Inc., dated July 15, 1988, for the Consolidation of A Portion of the Remainder of Lot 9 with Lot 11 into Lot 11-A and Remainder of Lot 9, which map is incorporated by reference herein.

(b) Lots 2, 3, 4, 5, 6, 7, 8, 9, 10 and 26 shall be subject to a nonexclusive irrigation easement for the purposes of providing agricultural irrigation waters to any of these lots in the Seacliff Plantation Community desiring such irrigation water. The irrigation easement area shall be a ten foot wide strip fronting the respective lot and abutting the subdivision roadway serving the lot. Any Owner of any of these lots in the Seacliff Plantation Community desiring the use of this irrigation easement for the purpose of bringing irrigation water to his lot shall have the right to install pipelines, conduits, or other means of carrying irrigation water within the said 10-foot easement area on the lots between the nearest source of such water and his lot, provided that the use of the easement area shall not unreasonably interfere with the use nor infringe upon the rights of access to and from the roadway of any servient lot; and provided, further, that the Owner utilizing such easement area shall restore the easement area as reasonably possible to its original condition upon completion of the installation of the irrigation water system. No open ditches shall be permitted as a means of transporting irrigation water across the easement area.

(c) Each of the lots in the Seacliff Plantation Community shall be subject to sheetflow of surface waters to such lot from the roadways fronting the respective lot.

(d) The following lots are affected by the following drainage easements:

Drainage Easement "D-1". Lots 11, 12, 13, 14
and 15

Drainage Easement "D-2" Lots 2, 3, 4, 5, 6
and 7

Drainage Easement "D-3": Lots 8 and 9

Drainage Easement "D-4": Lots 10, 23, 24, 25
and 26.

(e) The following lots are affected by the
following utility easements:

Utility Easement "U-1" : Lot 2

Utility Easement "U-2" : Lot 8

Utility Easement "U-3" : Lot 9

Utility Easement "U-4" : Lot 17

Utility Easement "U-5" : Lot 18

Utility Easement "U-6" : Lot 19

Utility Easement "U-7" : Lot 22

Section 3.03. Restrictions on Drainage Ditches and Culverts. Surface runoff and storm waters for the Seacliff Plantation Community is handled through a system of open ditches, drainage inlets, culverts and outlets. In order for the designed system to function properly, this system must be kept free from obstructions or impeding of the water floor. As such, all of the lots in the Seacliff Plantation Community are subject to the following restrictions and covenants:

(a) Each Owner is responsible to maintain the drainage ditches, inlets, culverts, and outlets upon his property for the free flowage of storm water.

(b) The Owner will accept full responsibility and liabilities of the drainage ditch and culvert system, such as failing or driving into the ditch, and ditch flowage such as erosion, volume of water, etc.

(c) The Owners of Lots 6, 7, 10, 11, 12, 13, 14, 15, 25, 26 and the remainder of Lot 9 must construct driveways or other accesses that completely bridge the ditch so that there are no obstructions to flow of waters therein.

(d) The Owners shall absolve and hold the County of Kauai harmless from any responsibility and liabilities as a result of the drainage system and any damages or injuries that

may result therefrom.

Section 3.04. Use of Lots Zoned "Agriculture", Pursuant to Chapter 205, Hawaii Revised Statutes.

(a) Pursuant to Act 199, Session Laws of Hawaii 1976, the use of the lands classified as "Agriculture" by the State Land Use Commission shall be primarily in pursuit of agricultural activities and only for those uses permissible in an agricultural district as contained in Chapter 205, Hawaii Revised Statutes, as amended, which provides as follows:

(1) Within the agricultural district all lands with soil classified by the Land Study Bureau's Detailed Land Classification as Overall (Master) Productivity Rating Class A or B shall be restricted to the following permitted uses:

(a) Cultivation of crops, including but not limited to flowers vegetables, foliage, fruits, forage and timber;

(b) Game and fish propagation;

(c) Raising of livestock, including but not limited to poultry, bees, fish and other animal or aquatic life that are propagated for economic or personal use;

(d) Farm dwellings, employee housing, farm buildings, or activity or uses related to farming and animal industry;

Farm dwellings as used herein shall mean a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling;

(e) Public institutions and buildings which are necessary for agricultural practices;

(f) Public and private open area types of recreational uses including day camps, picnic grounds, parks and riding stables, but not including drag strips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;

(g) Public, private, and quasi-public utility lines and roadways, transformer stations, solid waste transfer stations, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants and major storage tanks not ancillary to agricultural practices, or corporation yards or other like structures;

(h) Retention, restoration, rehabilitation or improvement of buildings or sites of historic or scenic interests;

(i) Roadside stands for the sale of agricultural products grown on the premises;

(j) Buildings and uses, including but not limited to mills, storage and processing facilities, maintenance facilities that are normally considered direct accessory to the above-mentioned uses; or

(k) Agricultural parks.

(2) All of the aforementioned restrictive covenants and conditions contained in this Section 3.04 shall run with the land until such time as the land is reclassified to a Land Use District other than Agriculture.

(3) Any violation of the above restrictive covenants and conditions contained in this Section 3.04 shall be subject to a citation and a fine of not more than \$5,000 pursuant to Chapter 205, Hawaii Revised Statutes, as amended.

Section 3.05. Farm Dwelling Sites, Privacy and Private Areas- Landscaping, Construction and Alteration of Improvements, Excavations, etc.

(a) The Owner of each farm dwelling site shall at its sole cost and expense comply and observe the covenants contained in Section 3.01 hereinbefore, including but not limited to condominiumizing, landscaping and revegetation requirements where applicable. In the event the Owner fails to comply with such landscaping and/or revegetation requirements within a reasonable time, then the Declarant and/or Association may at its option perform all such landscaping and/or revegetation work upon the farm dwelling

site, and Owner shall reimburse Declarant or the Association for the cost thereof promptly upon demand together with interest thereon at the rate of twelve percent (12%) per annum; provided, however, that in no event shall such costs and expenses chargeable to Owner exceed \$20,000.00. In the event of Owner's default in the payment of the same, the amount thereof shall be and become a lien upon the homesite as provided in Section 6.05 hereof.

(b) The right of an Owner to construct, reconstruct, refinish or alter any improvement upon, under or above any lot or to make or create any excavation or fill thereon, or to make any change in the natural or existing surface drainage thereof, or landscape said farm dwelling site, or to condominiumize a lot is prohibited until and unless the Owner of such lot or farm dwelling site has obtained prior written approval therefor from the Design Committee as herein provided and has otherwise complied with all of the provisions of this Section.

(c) Any Owner proposing to perform any work which under the provisions of paragraph (b) above requires prior approval of the Design Committee shall apply to the Design Committee for approval thereof as follows:

(1) The Owner shall submit to the Design Committee for approval prior to commencing such work preliminary plans for the proposed work, prepared by an architect, unless otherwise permitted by the Design Committee, and showing in detail with dimensions the nature of the improvements. The Design Committee shall review any such preliminary plans within sixty (60) days after the submission of them to it and shall return such plans to the Owner either with approval or with disapproval, in which latter case the general nature of the objections shall be indicated. Failure to make such return within said sixty (60) day period shall be deemed to mean that the plans are approved.

(2) Thereafter and still prior to commencement of such work, the Owner shall submit six (6) sets of the final plans and specifications of the proposed work to the Design Committee, including where appropriate and without limitation, a plot plan showing easements and setback contour lines, the location of all existing and/or proposed improvements, the proposed drainage plan, the proposed sanitary disposal facilities, and the location of all proposed utility

installations. The plans and specifications shall indicate all exterior materials finishes and colors to be used. Also the Owner shall indicate his proposed construction schedule. The Design Committee shall require that the submission of plans and specifications be accompanied by a reasonable fee for the inspection thereof. The Design Committee shall from time to time adopt and post with the Association a schedule of its inspection fees; provided, however, that no change in such fees shall be effective until thirty (30) days after the same have been posted.

(3) The Design Committee shall review the final plans and specifications submitted to it pursuant to subparagraph (2) and shall either approve the same or disapprove the same in writing within sixty (60) days. Any disapproval shall set forth in writing the reasons for disapproval. Failure to so approve or disapprove within said sixty (60) day period shall be deemed to mean that the plans are approved. On request of an Owner, at any time, the Chairman or any member of the Design Committee shall give to the Owner a certificate in writing evidencing the approval of any plans which have been so approved.

(4) Nothing herein shall be deemed to require an Owner to obtain approval from the Design Committee as to any interior improvements or alterations, or as to any exterior alterations or improvements which are not visible from neighboring property, nor shall an Owner be required to obtain approval from the Design Committee when simply reconstructing or refinishing in accordance with the color and design of previous improvements made by the Declarant or previously approved by the Design Committee.

(5) Approval as hereinbefore provided shall be effective for a period of one (1) year and shall be deemed revoked if the Owner shall not have commenced such work within said one (1) year period and shall not thereafter complete the same within one (1) year after the commencement of such construction, or in the case of condominiumizing if the Owner shall not have completed the process within one (1) year. If the Owner shall not so commence within said one (1) year period, or completed the condominiumizing process within said one (1) year period, the Owner shall be required to resubmit said final Plans and specifications for approval, and the Design Committee shall not be bound by any previous decision in reviewing again such plans and specifications, but shall

either approve or disapprove the same in writing within sixty (60) days after such resubmission, and the Design Committee may require another inspection fee.

(6) Upon the completion of any work for which approved plans are required pursuant to this Section, the Owner shall give written notice thereof to the Design Committee which shall within thirty (30) days inspect such work to determine whether it was completed in substantial compliance with the approved plans and specifications. If the Design Committee finds that such work was not done in substantial compliance with such approved plans and specifications, it shall notify the Owner of such noncompliance and require the Owner to remedy such noncompliance. If the Owner shall have failed to remedy such noncompliance within sixty (60) days from the date of such notification, or such longer time as may reasonably be required, provided that the Owner has in good faith commenced action to remedy within said sixty (60) days period, the Design Committee shall notify the Association of such failure, and the Association shall either remove the improvement or remedy the noncompliance, and the Owner shall reimburse the Association for all expenses incurred in connection therewith. If for any reason the Design Committee shall fail to notify the Owner of any such noncompliance within thirty (30) days after receipt of such notice of completion thereof from the Owner, the improvement shall be deemed to have been completed in accordance with said approved plans.

(7) The Design Committee shall have no power either deliberately or through inadvertence to vary any of the standards and restrictions set forth in the Seacliff Plantation Community Restrictions, except as may be specifically permitted therein, and in the event of violation of any of such Seacliff Plantation Community Restrictions by an Owner, whether or not the Design Committee shall have approved the plans and specifications, the Association or any other Owner shall have the right to commence and pursue any remedy provided in the Seacliff Plantation Community Restrictions for the violation by an Owner of any such restrictions.

(8) In reviewing plans and specifications, the Design Committee shall consider the requirements and restrictions set forth in this Declaration and also shall

consider whether the proposed improvement:

(1) Is compatible and in harmony with the surrounding environment as well as to quality and type of materials and workmanship and as to external design and appearance with reference to existing structures and other improvements in the area and with reference to the location of the proposed improvement with respect to topography and ground elevations.

(2) Conforms to the general plan of the entire development.

(3) Constitutes a suitable and adequate development of the lot and/or farm dwelling site.

(9) In reviewing plans and specifications for the condominiumizing of any lot, and in addition to the foregoing considerations, the Design Committee shall further consider the following:

(1) The size and quality of the individual interests and farm dwellings to be constructed thereon.

(2) The placement of farm dwellings and other improvements relative to the roadways, adjacent lots and the viewplanes affected by the proposed placement. A master plan for the entire lot, showing the exclusive, common and limited common elements of the proposed condominiumizing, and the placement of farm dwellings and other improvements shall be submitted to the Design Committee at the time of application. The Design Committee may require such other details and information as may be deemed appropriate by the Design Committee to permit a thorough evaluation of the application to address the restrictive covenants and conditions herein contained and to avoid a lessening of the quality of the Community.

(3) The adequacy and quality of landscaping for the lot. A master landscaping plan shall be submitted to the Design Committee at the time of application, indicating in sufficient detail the nature, type and degree of landscaping proposed.

(4) The adequacy of the condominiumizing

documents to insure the observance and conformance of the restrictive covenants and conditions herein contained.

(d) The Association shall, in the event of any violation of the provisions of this Section, restore such lot or farm dwelling site to its state existing immediately prior to such violation, including the removal of any unauthorized power, telephone or other utility line. The Owner of such lot or farm dwelling site shall reimburse the Association for all expenses incurred by it in performing its obligations under this paragraph.

Section 3.06. Common Area; Uses and Restrictions. The Declarant may, but shall be under no obligation to set aside certain areas within the Seacliff Plantation Community as common areas for recreational use by the Owners. In such event, the use of the common areas shall be subject to the following terms and conditions hereinafter set forth or as may be contained herein.

(a) The use of the Common Area shall be reserved to all Owners, except as herein specifically provided, and every Owner shall have an easement for the use of the Common Area, which easement shall be appurtenant to and shall pass with the title to every lot, subject, however, to the following limitations and restrictions:

(1) The use of the Common Area shall be subject to the Seacliff Plantation Community Rules.

(2) The use of the Common Area shall be subject to such easements and rights-of-way reserved therefrom at the time of conveyance or lease of any common area to the Association, to such rights as may be reserved to the Declarant, the County of Kauai and its successors, and to any other person or association or governmental authority as provided in this Declaration, to such road and public utility easements and rights-of-way as may from time to time be taken under the power of eminent domain, and to such other road and public and private utility easements as may from time to time be granted or conveyed by the Association, pursuant to the provisions of paragraph (c) of Section 5.05.

(3) No improvement, excavation, fill or other work which in any way alters any common area from its natural or existing state upon the date which such common area was

conveyed or leased to the Association shall be made or done except upon strict compliance with and within the restrictions and limitations of the provisions of Section 3.05.

(4) The use thereof shall be subject to all terms, conditions and restrictions set forth in the lease of any such common area to the Association.

(5) Except to the extent otherwise permitted pursuant to the provisions of subparagraph (2) above and Section 3.05, there shall be no use of the Common Area, exclusive of roads, except recreational uses which do not injure or scar the Common Area or the vegetation thereof, increase the cost of maintenance thereof, or cause unreasonable embarrassment, disturbance or annoyance to Owners in their enjoyment of the Common Area; without limiting the generality of the foregoing:

(i) There shall be no camping in the Common Area;

(ii) There shall be no fires started or maintained in the Common Area, except for fires contained in areas or facilities provided by the Association specifically for such purposes;

(iii) No animals shall be permitted in the Common Area except generally recognized house or yard pets when accompanied by and under the control of the Owners to whom they belong.

(6) The rights to use and enjoy the Common Area shall extend to the members of the families of all Owners and their invitees.

Section 3.07. Common Area: Construction and Alteration of Improvements. No improvement, excavation or work which in any way alters any common area or improvement thereon from its natural or existing state on the date when such common area or improvement was acquired by or leased to the Association, shall be made or done, except in strict compliance with and within the restrictions and limitations of the following provisions of this Section.

(a) Except to the extent otherwise provided in

paragraph (c) below and except to the extent otherwise permitted under any conveyance or lease of any common area to the Association. no person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter, maintain or create any excavation or fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub, ground cover or vegetation upon any common area, or construct, reconstruct, refinish, alter or maintain any part of the exterior of any improvement upon, under or above any common area.

(b) Except to the extent otherwise provided in paragraph (c) below, if the Association proposes to do any of the acts mentioned in paragraph (a) above, the Association shall submit to the Design Committee for approval the final plans and specifications for any such work in such forms and containing such information as the Design Committee shall approve the plans and specifications submitted to it pursuant to this paragraph only if the following conditions have all been satisfied;

(1) If the plans are to construct any new improvements, including any alteration of the exterior appearance of any existing improvements upon any common area, the Design Committee finds that such improvements complies with the standards and restrictions set forth in subparagraph (8) of paragraph (c) of Section 3.05 with respect to farm dwelling sites, or any private or co-tenancy area appurtenant thereto, which standards and restrictions will also apply to common areas, and that the design or such improvement is reasonably necessary or desirable in order to carry out the aims of the Association and is in harmony with other improvements and the overall appearance of the Seacliff Plantation Community as planned.

(2) The Design Committee finds that the proposed work shall not because of its design materially prejudice the Seacliff Plantation Community or any Owner therein in the use and enjoyment of its property. Such approval shall be in writing, except that plans which have neither been approved or rejected within sixty (60) days from the date of submission thereof to the Design Committee shall be deemed approved. Rejection of plans by the Design Committee shall be in writing and shall set forth with particularity the reasons for such rejection. In the event of any such rejection any member of the Board shall have the right to submit to a

meeting of the Association duly called, the notice of which shall contain reference to the consideration of the matter, the question of whether to abandon the proposed work or to have the same redesigned and resubmitted to the Design Committee for approval.

(c) The Association may, at any time and from time to time:

(1) Reconstruct, replace or refinish any improvement or portion thereof upon a common area in accordance with the last plans thereof approved by the Design Committee, or if such improvement existed upon the common area when such common area was conveyed or leased to the Association, then in accordance with the original design, finish or standard of construction of such improvement when such common area was conveyed or leased to the Association.

(2) Construct, reconstruct, replace or refinish any road improvement upon any portion of the Common Area designated on a subdivision map as a road.

(3) Replace any destroyed trees or any other vegetation upon a common area and to the extent the Association deems necessary for the conservation of water and soil, plant trees, shrubs and ground cover.

(4) Place and maintain upon any common area such signs and markers as the Association may in its sole discretion deem necessary for the identification of the Seacliff Plantation Community and of roads, for the regulation of traffic, including parking, and for the regulation and use of the common area and for the health and welfare and the safety of Owners and to the public, provided that the design of any such signs or markers be first approved by the Design Committee.

Section 3.08. Presumption of Compliance. All of the following improvements, excavations, fills and other such work shall for all purposes of the Seacliff Plantation Community Restrictions be conclusively presumed to be in compliance with and within the restrictions and the provisions of this Article III:

(a) Those existing or maintained within or upon any property within the Seacliff Plantation Community at the time

such property became a part of Seacliff Plantation Community.

(b) Those existing or maintained within a private or co-tenancy area at the time such private or co-tenancy area was first conveyed to or leased to an Owner.

(c) Those from time to time constructed, reconstructed, refinished, altered, installed or maintained upon any property by the Declarant, or, if not in conflict with any specific restrictions in the Seacliff Plantation Community Restrictions, pursuant to plans and specifications approved by the Design Committee.

ARTICLE IV

DESIGN COMMITTEE

Section 4.01. Design Committee, Organization, Power of Appointment and Removal of Members:

(a) There shall be a Design Committee of three (3) regular members, consisting of at least one (1) representative of the Declarant and at least one (1) representative of the Owners. In addition to the three members on the Design Committee, there shall also be an alternate member, who shall act only in the absence of a regular member of the Design Committee.

(b) The following persons are hereby designated as the initial members of the Design Committee:

- (1) Dorn L. Schmidt
- (2) Coda C. Roberson
- (3) James R. O'Connor
- (4) Gregory A. Kamm (alternate member)

Each of said persons shall hold his office until such time as he has resigned or he has been removed or his successor has been appointed, as herein set forth.

(c) Except as otherwise provided herein, the right from time to time to appoint and remove all members of the

Design Committee shall be and is hereby reserved and vested solely in the Declarant.

(d) The Association shall have the right to appoint and remove all members of the Design Committee from and after ten (10) years from the date of the initial Declaration, provided, however, that if the Declarant fails to exercise its rights under paragraph (c) above, or records a declaration waiving such rights, the Association shall thereupon and thereafter have the right to appoint and remove all members of the Design Committee.

(e) Any member of the Design Committee may at any time resign from the Design Committee upon written notice delivered to the Declarant, or to the Association, whichever then has the right to appoint and remove members.

(f) In the event that at any time, through illness, absence, resignation or for any other reason, one or more members of the Design Committee is temporarily unable to perform his or her duties as a committee member, the alternate member may act in place of such member so long as such member is unable to perform his or her duties.

Section 4.02. Design Committee Duties. It shall be the duty of the Design Committee to consider and act upon such proposals or plans from time to time submitted to it, pursuant to the provisions of Article III, to adopt Design Committee rules pursuant to Section 4.04 and to perform such other duties from time to time delegated to it by the Seacliff Plantation Community Restrictions.

Section 4.03. Design Committee Meetings, Action, Compensation Expenses. The Design Committee shall meet from time to time as necessary properly to perform its duties hereunder. The vote or written consent of any two (2) members shall constitute the act of the Design Committee, unless the unanimous action of its members is otherwise required by the Seacliff Plantation Community Restrictions. The Design Committee shall keep and maintain a record of all actions from time to time taken by the Design Committee at such meetings or otherwise. Such fees shall be charged by the Design Committee and shall be provided for in the rules promulgated pursuant to Section 4.04, except that no fees shall be charged the Association. Unless otherwise authorized by the Association, the members of the Design Committee shall not receive any

compensation for services rendered. All members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Design Committee function.

Section 4.04. Design Committee Rules. The Design Committee may from time to time and in its sole discretion, adopt, amend and repeal by unanimous vote, rules and regulations to be known as the "Design Committee Rules" which, among other things, interpret or implement the provisions of the applicable sections of Article III pertaining to the design of improvements, permitted and prohibited uses and activities upon the lots and within the Seacliff Plantation at Kilauea Community; and permitted and prohibited animals upon the lots, which must be approved by the Design Committee. A copy of the Design Committee Rules, as they may from time to time be adopted, amended or repealed, certified by any member of the Design Committee shall be kept available at all times at the office of the Association and/or at the offices of the Declarant, for the inspection of any Owner, architect or agent of the Owner. The Design Committee Rules shall, to the extent practical, establish the standards which shall be required in the construction of any improvements to be constructed in the Seacliff Plantation Community.

Section 4.05. Nonwaiver. The approval by the Design Committee of any plans and specifications for any work done or proposed or in connection with any other matter requiring the approval of the Design Committee under the Seacliff Plantation Community Restrictions, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter whatever subsequently or additionally submitted for approval.

Section 4.06. Liability. Neither the Design Committee nor any member thereof shall be liable to the Association or to any Owner or to any other person for any damage, loss or prejudice suffered or claimed on account of (a) the approval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work whether or not pursuant to approved plans, drawings and specifications, or (c) the development or manner of development of any property within the Seacliff Plantation Community, provided, however, that such member has, with the actual knowledge possessed by him, acted in good faith. Without in any way limiting the generality of the foregoing,

the Design Committee or any member thereof may, but is not required to, consult with or hear the Association or any Owner or his architect with respect to any plans, drawings or specifications or any other proposals submitted to the Design Committee.

Section 4.07. Absence of Committee. In the event that at any time through death, resignation or for any other reason, there shall not be a Design Committee or there shall not be the members necessary to act on a particular matter, the approval or action by the Design Committee being required hereunder for such matter and such situation lasts for a period of not less than twenty (20) days, then, and until there shall again be a Design Committee with sufficient members, during the first ten (10) years of the initial Declaration all matters requiring such approval or action may be approved or done by the Declarant and thereafter by the President of the Seacliff Plantation Community Association, or any Vice President thereof, and their certificate that there had been no Design Committee, or that the required members were not present, and that he was acting pursuant to the authority of this Section shall be conclusive between the Owners, the Association, any purchaser, lessee, mortgagee or other encumbrances, and any other persons. The Declarant, President or Vice-President, as the case may be, acting hereunder may employ a registered Hawaii architect or engineer to render technical advice in connection with such matter and to receive reasonable compensation, to be set by the Board, for his services.

ARTICLE V

SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY ASSOCIATION

Section 5.01. Organization.

(a) The Association is a non-profit corporation charged with the duties and empowered with the rights set forth herein and in its Articles and By-Laws.

(b) In the event that the Association as a corporate entity is dissolved, all of the assets of the corporation shall be disposed of as set forth in the Articles.

Section 5.02. Membership.

(a) Each person, corporation or other legal entity who is, or such persons, corporations or other legal entities who are the owners (herein called an "Owner") of any farm dwelling sites within the Seacliff Plantation Community shall automatically become a member of the Association upon acquiring such ownership and shall remain a member thereof until such time as such ownership ceases for any reason, at which time such membership in the Association shall automatically cease. No person other than an Owner may be a member of the Association. Membership shall be appurtenant to and may not be separate from the ownership of any farm dwelling site.

(b) The rights, duties, privileges and obligations of an Owner as a member of the Association shall be those set forth in, and shall be exercised and imposed in accordance with, the provisions of the Seacliff Plantation Community Restrictions, the Articles and the By-Laws of the Association.

Section 5.03. Voting Rights.

(a) The voting rights of the members shall be as set forth in the Articles and the By-Laws of the Association. The members shall be the Owners, as defined in Article I herein, of farm dwelling sites. The Owner, or Owners in the aggregate, of any farm dwelling sites, whether individuals, corporations or other legal entities, shall be entitled to one (1) vote for each farm dwelling or potential farm dwelling permitted by the Hawaii Revised Statutes and/or the Comprehensive Zoning Ordinance of the County of Kauai on each lot owned. If more than one (1) person or entity owns one given farm dwelling site, any one of said persons or entities may exercise said one (1) vote as they shall determine, and if they cannot agree they may each vote their fractional interest in the vote allotted to their membership. In no event, however, shall more than one (1) vote be cast with respect to any one farm dwelling site.

(b) Every Owner of a residential homesite shall promptly cause to be duly recorded or filed of record the deed, assignment or other conveyance to him of such homesite or other evidence of his title thereto and shall file such conveyance with and present such other evidence of his title to the Board of Directors, and the secretary shall maintain all such information in the record of ownership of the Association. Any Owner who mortgages his homesite or any

interest therein shall notify the Board of Directors of the name and address of his mortgagee, and also of the release of such mortgage, and the secretary shall maintain all such information in the record of ownership of the Association.

(c) The Board of Directors may make such regulations, consistent with the terms of the Seacliff Plantation Community Restrictions, the Articles and the By-Laws of the Association as it deems advisable for any meeting of members, in regard to proof of membership in the Seacliff Plantation Community Association, evidence of right to vote the, the appointment and duties of inspectors of votes, registration of members for voting purposes, and such other matters concerning the conduct of meeting and voting as it shall deem fit.

(d) Any member who is in violation of the Seacliff Plantation Community Restrictions, as determined by the majority of the Board, pursuant to the provisions of this Declaration, shall not be entitled to vote during any period in which such violation continues. Any member who is delinquent in the payment of any assessment, other fees or charges levied pursuant to the provisions of this Declaration shall not be entitled to vote during any period in which any such fees or assessments are delinquent.

Section 5.04. Duties and Obligation of the Association. The Association shall have the rights, obligations and duties, subject to the Seacliff Plantation Community Restrictions, to do and perform each and every one of the following for the benefit of the Owners and for the maintenance and improvement of Seacliff Plantation Community:

(a) The Association shall accept, as part of Seacliff Plantation Community, all property conveyed or leased to Seacliff Plantation at Kilauea Bay Community Association pursuant to Section 2.01 and shall accept all Owners as members of the Association.

(b) The Association shall accept all common areas conveyed or leased to it from time to time pursuant to Section 7.04. The Association may also acquire and accept title to any other property, real, personal or mixed, nothing herein to be construed to authorize the Association to acquire or invest in property simply for the purpose of acquiring income or otherwise making a financial profit therefrom, and

the Association shall not carry on any business, trade, association, or profession for profit, but nothing herein shall prevent the Association from charging reasonable fees to Owners for use by them and their families and guest of the recreational facilities on the common areas to defray the costs of construction, maintenance, repair or operation of such facilities, or of other facilities owned by or leased to the Association.

(c) The Association shall maintain or provide for the maintenance of common areas and other property owned by or leased to the Association, including without limitation all secondary recreational facilities and all improvements of whatever kind and for whatever purpose from time to time located on the common areas and other such property in good order and repair, provided, however, that notwithstanding the foregoing the Association shall have no obligation to maintain in good order and repair any improvement constructed upon the common areas by any Owner, excluding the Declarant, but may use all legal means to force such Owner to maintain the same himself.

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

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

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

(1) Fire and extended coverage insurance on all improvements from time to time owned by or leased to the Association and located upon or within any common area, in an insurance company authorized to do business in Hawaii in an amount as near as practicable to the full replacement cost thereof without deduction for depreciation, in the name of the Association as trustee for all Owners and mortgagees of farm dwelling sites in the Seacliff Plantation Community and for all mortgagees of the common area, and payable in case of loss to such bank or trust company authorized to do business in Hawaii as the Board of Directors of the Association shall

designate for the custody and disposition as herein provided of all proceeds of such insurance. In every case of such loss or damage all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as shall be first approved as herein provided, and the Association shall make up any deficiency in such insurance proceeds. Every such policy of insurance shall to the extent such insurance is available:

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

(ii) Contain no provision relieving the insurer from liability for loss occurring while the hazard to such buildings is increased, whether or not within the knowledge or control of said Board, or because of any breach of warranty or condition or any other act or neglect by said Board or any owner or any other persons under either of them;

(iii) Provide that such policy and the coverage thereunder may not be canceled or substantially modified (whether or not requested by said Board) except by the insurer giving at least sixty (60) days' prior written notice thereof to said Board and every other person in interest who shall have requested such notice of the insurer;

(iv) Contain a waiver by the insurer of any right of subrogation to any right of said Board or Owners against any of them or any other persons under them; and shall:

(a) Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of the fee simple interest in a lot or farm dwelling site in their respective order and preference, whether or not named therein;

(b) Provide that such insurance as to the interest of any mortgagee shall not be invalidated

by any act or neglect of said Board or Owners or any persons under any of them;

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

(d) Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by said Board.

(2) Comprehensive, general liability insurance, covering the Association, the Board of Directors, and the members of the Association, in an insurance company authorized to do business in Hawaii with minimum limits of not less than \$1,000,000 for injury to one or more persons in any one accident or occurrence and \$500,000 for property damage, without prejudice to the right of any Owners to maintain additional liability insurance for their respective lots and farm dwelling site.

(3) Any policies of insurance covering any other reasonable risks as may be determined to be proper and necessary or advisable in the sole discretion of the Board of Directors.

(g) The Association shall from time to time make, establish, promulgate, and amend and repeal the Seacliff Plantation Community Rules as provided for in Section 5.06.

(h) To the extent provided for in Section 4.01, the Association shall exercise its right to appoint and remove members of the Design Committee to insure that at all reasonable times there is available a duly constituted and appointed Design Committee.

(i) The Association shall have all the powers set forth in the Seacliff Plantation Community Restrictions, including without limitation, the power to levy assessments, to make contracts and to acquire and dispose of property, and shall take such action, whether or not expressly authorized by Seacliff Plantation Community Restrictions, as may reasonably be necessary to enforce the restrictions, limitations, covenants and conditions of Seacliff Plantation Community

Restrictions, the Seacliff Plantation Community Rules and the Design Committee Rules.

Section 5.05. Powers and Authority of Association. The Association shall have all the powers set forth in the Articles, together with its general powers as a non-profit corporation, subject, however, to the limitations upon the exercise of such powers as are expressly set forth in the Articles and By-Laws and in the Seacliff Plantation Community Restrictions, to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of the Seacliff Plantation Community Restrictions, and to do and perform any and all acts which may be necessary and proper for, or incidental to, the exercise of any of the express powers of the Association or for the peace, health, comfort, safety and/or general welfare of the Owners of Seacliff Plantation Community. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall have the power and authority at any time and from time to time and without liability to any Owner or Owners for trespass, damage or otherwise, to enter upon any private area, or co-tenancy area; for the purpose of maintaining and repairing any such area, if for any reason whatsoever the Owner or Owners thereof fails to maintain and repair such areas as required under Article III hereinabove or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such area in violation of said Article III. The Association may maintain and repair any roads, parks or other public areas in or adjoining the Seacliff Plantation Community, including landscaping and planting the same and repairing improvements thereon when public authorities, in the opinion of the Directors, have failed to do so in a manner benefitting the standards of the community. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Seacliff Plantation Community Restrictions, or to enforce by mandatory injunction or otherwise all of the provisions of the Seacliff Plantation Community Restrictions.

(b) In fulfilling any of its obligations or

duties under the Seacliff Plantation Community Restrictions, including without limitation, its obligations or duties for the maintenance, repair, operation or administration of common areas and to the extent necessary by the failure of its rights to construct improvements or other work upon any common area, including, without limitation, any recreational facility, the Association shall have the power and authority:

(1) To contract and pay for, or otherwise provide for maintenance, restoration and repair of all improvements of whatever kind or whatever purpose from time to time located upon common areas and to contract and pay for or otherwise provide for the construction of improvements or other work upon such areas, or otherwise in carrying out its functions as set forth in the Seacliff Plantation Community Restrictions on such terms and conditions as the Association shall deem appropriate, and to pay and discharge all liens arising out of work.

(2) To obtain, maintain and pay for such insurance policies or bonds whether or not required by Section 5.04 as the Association may deem to be appropriate for the protection or benefit of Seacliff Plantation Community, the Association, the members of the Board, the members of the Design Committee, or the Owners, including but without limitation, war risk insurance, builders' risk, workmen's compensation insurance, malicious mischief insurance, automobile, nonownership insurance and performance and fidelity bonds.

(3) To contract and pay for, or otherwise provide for, such utility services including, but without limitation, water, sewer, garbage, electrical, telephone and gas services as may from time to time be required.

(4) To contract and pay for, or otherwise provide for, the services of architects, engineers, attorneys and certified public accountants or such other professional or nonprofessional services as the Association may deem necessary.

(5) To contract and pay for, or otherwise provide for, fire, police and such other protection services as the Association shall from time to time deem necessary for the benefit of the Seacliff Plantation Community any property located within the Seacliff Plantation Community, and the

Owners, and

(6) To contract and pay for, or otherwise provide for, such materials, supplies, furniture, equipment and labor as and to the extent the Association deems necessary, and to pay and discharge any and all liens from time to time placed or imposed upon any common areas or co-tenancy areas on account of work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration.

(c) The Association shall have the power and authority from time to time to grant, convey or lease to any third parties for reasonable compensation, and on such other terms as the Board may approve, the right, title and interest of the Association or any member thereof for easements, rights-of-way, parcels or strips of land in, on, over or under any common areas, for the purpose of:

(1) Constructing, direct, operating and maintaining thereon, therein and thereunder, public roads, streets, walks, driveways, parkways and park areas.

(2) Installing, operating and maintaining poles, wires, conduits, transformers, switching terminals and other equipment for the transmission of electricity for lighting, heating, power, telephone, television and other purposes, and necessary facilities in connection therewith, and

(3) Constructing, operating and maintaining public and private sewers, storm waters drains, land drains and water systems, sprinkler systems, water heating and gas lines or pipes and necessary facilities in connection with the foregoing.

(d) The Association may from time to time employ the services of a managing agent to manage the affairs of the Association, and to the extent not inconsistent with the laws of the State of Hawaii and upon such conditions as are otherwise deemed advisable by the Association, the Association may delegate to such manager any of its powers under the Seacliff Plantation Community Restrictions, provided, however, that the Association cannot delegate to such manager the power to execute any contract binding on the Association for a sum in excess of \$10,000 or for the performance of any work or

services, which work or services are not to be completed within sixty (60) days, nor the power to sell, convey, mortgage or encumber any property of the Association other than unserviceable maintenance or recreation equipment. It is understood and agreed that the Declarant has the right to appoint the initial managing agent.

(e) The Association shall have the right from time to time to pay, compromise or contest any or all taxes and assessments levied against all or any part of the common areas or upon any personal property belonging to the Association.

(f) The Association shall have the authority to exchange or to sell and convey, or otherwise dispose to exchange or to sell and convey, or otherwise dispose of, for cash or on such terms as it shall approve, the right, title and interest of the Association or any member thereof in and to any portion or portions of the common area, with improvements thereon, or other property of the Association, the retention of which is no longer necessary, advantageous or beneficial for the Association or for the members thereof, and to borrow money, without limit as to the amount, for any purpose within the powers and authority of the Association under this Article V and to secure the same by a mortgage of the common area then owned by or leased to the Association, or any part thereof, provided, however, that no such borrowing and mortgaging shall be made unless the same shall have been first approved by an affirmative vote of not less than two-thirds (2/3) of the members who may vote in person or by proxy at a meeting of the Association duly called, the notice for which shall have described such exchange, sale or disposition, or the amount of such borrowing and the security to be mortgaged, and shall have given the reasons therefor. All proceeds of any disposition or borrowing, less the expenses thereof, shall be invested by the Association for the benefit of the Association and the members, or in improving the property of the Association.

(g) Upon payment of a reasonable fee and upon written request of any Owner, the Association shall furnish a written statement setting forth the amount of assessments, charges, fines or penalties, if any, due or accrued and then unpaid with respect to the Owner, the lot owned by such Owner and such owner's invitees and agents and the amount of the assessments for the current fiscal period of the Association payable with respect to the lot owned by such Owner, which

statement shall, with respect to the party to whom it is issued, be conclusive against the Association that no greater or other amounts were then due or accrued and unpaid.

Section 5.06. Seacliff Plantation Community Association Rules.

(a) The Association may from time to time and subject to the provisions of the Seacliff Plantation Community Restrictions, adopt, amend and repeal rules and regulations to be known as the Seacliff Plantation Community Association Rules governing, among other things:

(1) The use of the common areas including without limitation the recreational facilities, if any.

(2) The collection and disposal of refuse.

(3) The maintenance of the improvements on the respective lots so as to preserve the quality of life in the Seacliff Plantation Community.

(4) The maintenance of animals within Seacliff Plantation Community which are incompatible or inconsistent with the ideals underlying the Seacliff Plantation Community.

(5) The permitting or prohibition of uses or activities within Seacliff Plantation Community which are incompatible or inconsistent with the ideals of and the residential and agricultural nature of the Seacliff Plantation Community.

(b) With respect to subparagraph (a)(1) above, the Seacliff Plantation Community Association Rules may without limitation and to the extent deemed necessary by the Association in order to preserve the benefits of Seacliff Plantation Community for all Owners, their families, invitees, licensees, lessees, and guests, restrict and/or govern the use of common areas by any Owner or by the family, invitees, licensees or lessees of such Owner.

(c) A copy of the Seacliff Plantation Community Association Rules as they may from time to time be adopted, amended or repealed, certified by the secretary or the assistant secretary of the Association, shall be filed in and available at all times at the office of the Association and

duplicate copies thereof shall be delivered to each Owner on his acquisition of a lot or farm dwelling site, and a copy of each new rule or of any amendment of an existing rule and notice of repeal of any rule shall be given to each Owner when the same becomes effective. Upon the promulgation and filing thereof in said office, the Seacliff Plantation Community Association Rules shall have the same force and effect as if they were set forth and were a part of the Seacliff Plantation Community Restrictions. Failure to deliver to any Owner a copy of any rule, amendment of a rule, or notice of repeal of a rule shall not render such rule, amendment or repeal invalid.

Section 5.07. Liability of Member of the Board. No member of the Board shall be personally liable to any Owner, guest, lessee or to any other person, including the Declarant, for any error or omission of the Association, its representatives and employees, the Design Committee or the manager, provided, however, that such member has with actual knowledge possessed by him, acted in good faith.

Section 5.08. Powers of the Association. The Association, through the Board and its duly authorized representatives, shall have the exclusive right to exercise the powers and authorities referred to in paragraphs (b) through (f) inclusive of Section 5.05.

ARTICLE VI

FUNDS AND ASSESSMENTS

Section 6.01. Operating Fund. There shall be an operating fund in which the Association shall deposit all moneys paid to it as:

- (a) Maintenance assessments;
- (b) Special assessments;
- (c) Use fees paid by users of recreational facilities, if charges by the Association;
- (d) Income and profits attributable to the Operating Fund and from which the Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

Section 6.02. Maintenance Assessment.

(a) Within thirty (30) days prior to the commencement of each fiscal year, the Board shall estimate the costs and expenses to be incurred by the Association during such fiscal year in performing its functions under Article V and in paying all fees and expenses of the Design Committee. The Board shall include in this estimate a reasonable provision for reserves for contingencies, for reconstruction and replacements, and for alterations and improvements upon the common areas. From this estimate shall be subtracted an amount equal to the anticipated balance (exclusive of any accrued reserves as provided for above) in the Operating Fund at the start of each fiscal year which is attributable to maintenance assessments.

(b) The sum or net estimate determined pursuant to paragraph (a) shall be divided and assessed by the Board as a maintenance assessment against the Owners, in proportion to the numbers of farm dwelling sites owned by each Owner.

(c) The first maintenance assessment shall be adjusted according to the number of months remaining in the first fiscal year of the Association. The maintenance assessments provided for herein shall commence as to each farm dwelling site on the date that the Declarant notifies the owners of the farm dwelling sites that it will commence the maintenance assessments; provided, however, that once one owner has commenced paying maintenance assessments all owners of homesites will be billed including the Declarant, provided that the "offsite improvements" to each lot have been completed.

(d) If at any time and from time to time during any fiscal year, the maintenance assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy which shall be assessed to the Owners in the manner set forth in paragraph (b) above.

(e) Maintenance assessments shall be due and payable by the Owners to the Association in equal monthly installments on or before the first day of each month, or in such other manner as the Association shall designate, but not in advance in any amount in excess of the estimate for the full year.

Section 6.03. Special Assessment. The Board shall levy a special assessment against any owner as a direct result of whose acts or failure or refusal to act or otherwise to comply with the Seacliff Plantation Community Restrictions, the Seacliff Plantation Community Rules or the Design Committee Rules, monies were expended from the Operating Fund by the Association in performing its functions under the Seacliff Plantation Community Restrictions.

Such assessments shall be in the amount so expended and shall be due and payable to the Association when levied. Monies so expended shall include without limitation, engineers', architects', attorneys' and accountants' fees where reasonably incurred by the Association.

Section 6.04. Association, Declarant and Other Exemptions. Anything herein to the contrary notwithstanding, it is understood that the Association shall be exempt in whole or in part from assessments under this Article VI.

Section 6.05. Default in Payment of Assessments.

(a) Each assessment under this Article VI shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed, and each Owner of any lot or farm dwelling site by acceptance of any document of conveyance therefor, whether or not it shall be so expressed in any such document, is deemed to covenant and agree to pay the same to the Association. If the Owner does not pay such assessment or any installment thereof when due, the Owner shall be deemed in default and the amount of the assessment not paid, together with the amount of any subsequent default, plus interest at twelve percent (12%) and costs, including reasonable attorney's fees, shall be and become a lien upon the lot or farm dwelling sites of such Owner upon recordation by the Association of a notice of default. Such lien shall be subject and subordinate to the lien of any mortgage upon the lot or farm dwelling site of such owner, and the sale or transfer of any lot or interest therein in foreclosure of any such mortgage, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, or the transfer or conveyance to the mortgagee in lieu of foreclosure, shall extinguish the lien as to payments of assessments which become due prior to such sale, but not such sale, transfer or conveyance shall relieve such lot or the purchaser or transferee thereof with regard to assessments thereafter

becoming due. The Association shall record such notice of default within ninety (90) days following the occurrence of such default and shall commence proceedings to enforce such lien within six (6) months following such recordation. Such lien may be foreclosed by suit by the Association in like manner as mortgage of real property, and the Association shall have power to bid on the lot or farm dwelling site at foreclosure sale to acquire and hold, mortgage or convey the same. A suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such assessment obligation.

(b) The Association shall execute and acknowledge a certificate stating the indebtedness secured by the lien upon any homesite or homesites and such certificate shall be conclusive upon the Association and the Owners in favor of all persons who rely thereon in good faith as to the amount of such indebtedness as of the date of the certificate. The Association shall furnish a copy of such certificate to any Owner upon request at a reasonable fee.

Section 6.06. Notice of Assessment. Notice of any maintenance or special assessment provided for herein, with the exception of the first maintenance assessment, shall be mailed to all Owners of homesites at such addresses as are shown on the record of ownership of the Association; provided, however, that notice of an change in any maintenance or special assessment shall be mailed not less than thirty (30) days before such assessment shall become effective.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 7.01. Amendment or Repeal - Duration.

(a) Unless specifically provided to the contrary herein, the Seacliff Plantation Community Restrictions, or any part thereof, as from time to time in effect with respect to all or any part of Seacliff Plantation Community, and any limitation, restriction, covenant or condition thereof may, at any time be amended or repealed upon the happening of all of the following events:

(1) The prior written approval of any proposed amendment or repeal by the Planning Commission of the County of Kauai for any provision or provisions of the Seacliff Plantation Community Restrictions which were required by the County of Kauai pursuant to Special Management Area Use Permit SMA(U)-82-2, approved by the County of Kauai on February 10, 1982.

(2) The vote of the Class B Member, if any, and not less than seventy five percent (75%) of the Class A Members, approving the proposed amendment or amendments or the repeal of Seacliff Plantation Community Restrictions at a meeting of the Association duly held, the notice of which shall have stated as a purpose the consideration of the amendment or repeal of the Seacliff Plantation Community Restrictions, giving the substance of any proposed amendments or indicating the provisions to be repealed, as the case may be.

(3) The recordation of a certificate of the Secretary or an Assistant Secretary of the Association setting forth in full the amendment or amendments to the Seacliff Plantation Community Restrictions so approved, including any portion or portions thereof repealed, and certifying that said amendment or amendments have been approved by vote of the Owners pursuant to this paragraph, and

(4) The recordation of a written instrument also setting forth in full said amendment or amendments to the Seacliff Plantation Community Restrictions, executed by the Class B Member, if any, and not less than seventy five percent (75%) of the Class A Members.

(b) All of the limitations, restrictions, covenants and conditions of the Seacliff Plantation Community Restrictions shall continue and remain in full force and effect at all times with respect to all property, and each part thereof, included within the Seacliff Plantation Community, to the Owners and to the Association, subject, however, to the right to amend and repeal as provided in paragraph (a) above, until the 1st day of January, 2012, after which time the said limitations, restrictions, covenants and conditions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by not less than a majority of the then Class A Members has been recorded, agreeing to change said covenants in whole or in

part.

Section 7.02. Enforcement, Nonwaiver.

(a) Except to the extent otherwise expressly provided herein, the Declarant, Association or any Owner or Owners shall have the right to enforce any and all of the limitations, restrictions, covenants, conditions, obligations, liens and charges now or hereafter imposed by the Seacliff Plantation Community Restrictions upon other Owners or upon any property within the Seacliff Plantation Community, and the costs of enforcement, including court costs and attorney's fees, shall be paid by any Owner who violated any such limitation, restriction, covenant or condition, or failed to pay and satisfy when due any such lien or charge. No entry upon the homesite of any Owner or other action to enforce any such limitation, restriction, covenant, condition, litigation, lien or charge may be made or taken without first giving not less than thirty (30) days' written notice and demand to the Owner concerned to cure or rectify the default of breach involved.

(b) Except to the extent otherwise expressly provided herein, any Owner or Owners shall have the right to enforce any and all limitations, restrictions, covenants, conditions and obligations now or hereafter imposed by the Seacliff Plantation Community Restrictions upon the Seacliff Plantation Community Association, provided, however, anything herein to the contrary notwithstanding, no Owner as such shall have any right to enter upon the property of any other Owner or to abate any nuisance or enforce any provision hereof against another Owner or the Association except by proper legal proceedings and authority of the court having jurisdiction.

(c) Every act or omission whereby any restriction, conditions or covenant of the Seacliff Plantation Community Restrictions is violated, in whole or in part, is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether or not relief sought is for negative or affirmative action, by the Association or by an Owner or Owners as provided for in paragraphs (a) and (b) above, provided, however, that any provision to the contrary notwithstanding only the Association or its duly authorized agents may enforce any limitation, restriction, covenant, condition or obligation herein set forth by its or their own

action without authority of a court having jurisdiction.

(d) Each remedy provided for in the Seacliff Plantation Community Restrictions is cumulative and nonexclusive.

(e) Any and all liabilities for the violation or noncompliance with any of the limitations, restrictions, covenants, conditions, obligations, liens and charges which may be imposed by the Seacliff Plantation Community Restrictions shall be joint and several unto all persons and/or entities holding any interest in and to the lot and/or farm dwelling sites upon which such violation or noncompliance occurs.

(f) The failure in any case to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien or charge of the Seacliff Plantation Community Restrictions shall not constitute a waiver of any right to enforce any such provision or any other provisions of the Seacliff Plantation Community Restrictions in another case against or with respect to the same Owner or farm dwelling site or any other Owner or farm dwelling site.

Section 7.03. Construction, Compliance with Laws, Severability, Singular and Plural, Titles.

(a) All of the limitations, restrictions, covenants and conditions of the Seacliff Plantation Community Restrictions shall be liberally construed together to promote and effectuate the fundamental concepts of the Seacliff Plantation Community as set forth in the introductory paragraphs of this Declaration.

(b) No provisions of the Seacliff Plantation Community Restrictions shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or over Seacliff Plantation Community Restrictions to the contrary notwithstanding, if all uses to which a farm dwelling site may be put under the provisions of the Seacliff Plantation Community Restrictions are illegal under the applicable zoning ordinances or statutes, an Owner may use his site for any purpose which is lawful under such ordinance or statute, subject, however, to all other provisions of the Seacliff Plantation Community Restrictions which can lawfully apply to

the site as so used.

(c) Notwithstanding the provisions of paragraph (a) above, the limitations, restrictions, covenants and conditions of Seacliff Plantation Community shall be deemed independent and severable and the invalidity or partial invalidity of any provision or portion thereof, or of any such limitations, restrictions, covenants or conditions shall not affect the validity or enforceability of any other provision.

(d) The singular shall include the plural and the plural, the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter as the context requires.

(e) All titles used in the Seacliff Plantation Community Restrictions, including those of Articles and Sections, are intended solely for convenience or reference and the same shall not, nor shall any of them, affect that which is set forth in such Articles and Sections, nor any of the terms or provisions of the Seacliff Plantation Community Restrictions.

Section 7.04. Conveyance of Lease of Common Area, Reservation of Easements and Rights-of-Way and Classification of Land Area.

(a) The Association shall accept all of the real property and interests in real property conveyed or leased to it as common area or as a co-tenancy area by the Declarant, provided that the Association need not accept any such property subject to any exceptions, liens and encumbrances except as follows:

(1) The lien of any real property taxes and assessments nondelinquent;

(2) Such restrictions as to use and enjoyment and such easements and rights-of-way on, over, or under all or any part thereof as may be reserved to the Declarant or granted to any Owner in any recorded document or in accordance with the provisions of the Seacliff Plantation Community restrictions

(3) Such easements and rights-of-way on, over or under all or an), part thereof as may be reserved to the

Declarant or any adjoining Owner of land for access to land contiguous to the real property, and such easements and rights-of-way on, over or under all or any part thereof as may be excepted or reserved unto persons for roadway, electrical, gas, communications and other utility purposes, and for sewer, drainage and water facilities, and for walkways, pathways, bird sanctuaries, or parks, over, under, along, across and through said real property, together with the right to grant to the United States of America, the State of Hawaii, County of Kauai, Board of Water Supply of the County of Kauai or any other appropriate governmental agency or public utility, or to any other public or private corporation or association, or to any individual, easements for such purposes over, under, across, along and through said real property;

(4) The obligations imposed directly or indirectly by virtue of any statute, law, ordinance, resolution or regulation of the United States of America, the State of Hawaii, the County of Kauai or any other political or governmental organization having jurisdiction over such property;

(5) Any other lien, encumbrance or defect in title of any kind whatsoever (other than a type which would at any time or from time to time create a lien upon such properties to secure an obligation to pay money) which would not materially and actually prejudice the Owners in their use and enjoyment of such property.

(b) The land classification of any property within the Seacliff Plantation Community which is not a common area may be changed to a common area by the transfer of such property to the Association from all persons having any right, title or interest therein and the acceptance by the Association of such property.

(c) At any time and from time to time following conveyance or lease of a common area by the Declarant to the Association pursuant to this Section, the Declarant may construct, reconstruct, refinish or alter any improvements upon or make or create any excavation on or fill upon or change the natural or existing drainage of or remove or plant any trees, shrubs, or ground cover upon such work if the Declarant shall determine that any such work (i) is reasonably necessary for any utility installation servicing any property within the Seacliff Plantation Community, (ii) is reasonably

necessary for the construction of any facility for use by the owners, (iii) is desirable in order to provide or improve access to or to enhance the use and enjoyment of such area, or (iv) is desirable to protect, support or preserve any property which constitutes a part of the Seacliff Plantation Community.

Section 7.05. Reservation of Easements. All real property within the Seacliff Plantation Community shall be subject to the exception and reservation unto the Declarant, of easements for roadway, electrical, gas, communications, and other utility purposes and for sewer, drainage and water facilities, and for walkways, pathways, bird sanctuaries, or parks, over, under, along, across and through said real property, together with the right to grant to the United States of America, the State of Hawaii, County of Kauai, Board of Water Supply of the County of Kauai or any other appropriate governmental agency or public utility, or to any other public or private corporation or association, or to any individual, easements for such purposes over, under, across, along and through said real property under the usual terms and conditions required by the Declarant or the grantee for such easement rights; provided, however, that such easement rights must be exercised in such manner as to not unreasonably interfere with the use of said real property by the Owners thereof, their successors and assigns, and in connection with the installation, maintenance or repair of any facilities pursuant to any of said easements said real property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the condition of said real property immediately prior to the exercise thereof. Declarant shall have the right to grant or lease any such easements without the consent or joinder of the Association or any person then owning a lot or farm dwelling site in the Seacliff Plantation Community.

Section 7.06. Assignment of Powers. Any and all of the rights and powers vested in the Declarant pursuant to the Seacliff Plantation Community Restrictions may be delegated, transferred, assigned, conveyed or released by the Declarant to the Association and the Association shall accept the same effective upon the recording by the Declarant of a notice of such delegation, transfer, assignment, conveyance or release.

Section 7.07. Condemnation. In case at any time or times all or any portion of the common area shall be taken or condemned by any authority having the power of eminent domain,

then and in every such case the entire award and compensation shall be paid to the Association. No Owner shall be entitled to any portion of such award and no Owner shall be entitled to participate as a party or otherwise in any proceedings relating to such condemnation, such right of participation being herein reserved exclusively to the Association which shall in its name alone represent the interest of all Owners.

Section 7.08. Uninsured Casualty. In case at any time or times any common area or improvements thereon shall be substantially damaged or destroyed by any casualty not herein required to be insured against, such common area or improvement shall be rebuilt, repaired or restored unless two-thirds (2/3) of the members vote to the contrary. Any such approved restoration of the common area or improvements thereon shall be completed diligently by the Association at its own expense and in accordance with plans first approved in writing by the Design Committee. Unless such restoration is undertaken within a reasonable time after such casualty, the Association at its common expense shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good orderly condition and even grade.

Section 7.9. Obligation of Owners, Avoidance, Termination.

(a) No Owner through his non-use of any common area or by abandonment of his farm dwelling site, may avoid the burdens or obligations imposed on him by the Seacliff Plantation Community Restrictions by virtue of his being an Owner.

(b) Upon the conveyance, sale, assignment or other transfer of a lot to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such lot and payable after the date of such transfer, and no person after the termination of his status as an Owner shall incur any of the obligations or enjoy any of the benefits of an Owner under the Seacliff Plantation Community Restrictions following the date of such termination.

Section 7.10. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land

to enforce any lien created by these covenants; and failure by the Association or any Owner or the County of Kauai to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 7.11. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 7.12. Notices, Demands, Delivery.

(a) Any notice or other document permitted or required by the Seacliff Plantation Community Restrictions to be delivered may be delivered either personally or by mail. If delivery is to be made by mail, it shall be deemed to have been delivered to the Association seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Seacliff Plantation Community Association at the address designated by the Association from time to time by written notice to the Owners, and shall be deemed to have been delivered to the Design Committee seventy-two (72) hours after a copy of the same has been deposited in the same manner addressed to the Design Committee in care of the Seacliff Plantation Community Association at the latter's then current address.

The post office address of an Owner shall be the last known address of such Owner, shown in the Association's records, and delivery by mail shall be deemed complete to an Owner seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Owner at such address.

(b) Delivery to any member of the Board of Directors of the Association shall be deemed adequate delivery to the Association and delivery to any member of the Design Committee shall be deemed adequate delivery to the Design Committee.

(c) Where there is more than one Owner of a lot or farm dwelling site, the delivery personally or by mail to any Owner shall be effective delivery to all Owners of such lot or farm dwelling site.

Section 7.12. Amendment in Entirety. This
IN WITNESS WHEREOF, the Seacliff Plantation at Kilauea
Bay Community Association has hereunto set forth its hand as
of this ____ day of _____, 1999.

SEACLIFF PLANTATION AT KILAUEA
BAY COMMUNITY ASSOCIATION

By _____ (name)
Its Secretary

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this ____ day of _____, 1999, before me
appeared _____, to me personally known,
who, being by me duly sworn, did say that (s)he is the
Secretary of the SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY
ASSOCIATION; that the foregoing instrument was signed in
behalf of said Association by authority of its members; and
said _____ acknowledged the instrument to be the
free act and deed of said Association.

(name)
Notary Public, Fifth Judicial
Circuit, State of Hawaii

My Commission expires:

CERTIFICATE OF SECRETARY

The undersigned, being the Secretary of the Seacliff Plantation at Kilauea Bay Community Association, being first duly sworn, hereby affirms and certifies that:

(1) A meeting of the Seacliff Plantation at Kilauea Bay Community Association was duly called and held on the _____ day of January, 1999, notice of which meeting was giving _____ stating as a purpose, the consideration of amending the Seacliff Plantation at Kilauea Bay Community Association's Restrictions and Bylaws, giving the substance of all proposed amendments;

(2) At such meeting, more than seventy-five percent (75%) of the members entitled to vote, voting in person or by proxy, approved the proposed changes to the Seacliff Plantation at Kilauea Bay Community Association's Restrictions and Bylaws;

(3) That the foregoing Fourth Amendment and Complete Restatement incorporates all of the amendments to the Seacliff Plantation at Kilauea Bay Community Association's Restrictions, as approved by the membership at such meeting.

Dated: January ____, 1999.

Name: _____
Secretary, Seacliff Plantation
at Kilauea Bay Community
Association

AMENDED BY-LAWS

of the

SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY ASSOCIATION

ARTICLE I

NAME AND LOCATION

The name of the non-profit corporation is SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY ASSOCIATION, herein called the "Association". The initial principal place of the corporation shall be located at 4270-B Kilauea Road, Island and County of Kauai, State of Hawaii, but meetings of members and directors may be held at such places within or without the State of Hawaii as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to the SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY ASSOCIATION, its successors and assigns.

Section 2. "Board" shall mean and refer to the Board of Directors of the Association established by the Articles of Incorporation and these By-Laws.

Section 3. "Declarant" shall mean the Pali Moana Company, and its successors and assigns.

Section 4. "Declaration" shall mean that certain Amended Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community, made by the Declarant to be recorded in the Bureau of Conveyances of the State of Hawaii.

ARTICLE III

MEMBERSHIP

Section 1. The rights of membership are subject to the payment of the assessments levied by the Association, the obligation of which assessments is imposed against each Owner and becomes a lien upon the interest of such Owner in the farm dwelling site against which such assessments are made.

Section 2. The membership rights of any person whose interest in the farm dwelling site is subject to assessments hereunder, may be suspended by action of the Board during the period when the Member shall be in default in the payment of any assessment levied by the Association; but, upon payment of such assessments, his rights and privileges shall be automatically restored.

Section 3. No membership shall be terminated or forfeited and no Member shall be expelled, except upon sale of any of the Member's interest in the farm dwelling site, provided, however, that upon execution and delivery of a valid agreement of sale of any interest in the farm dwelling site, the vendor's membership, including voting rights adhering thereto, shall be considered as having been temporarily transferred to the vendee, such transfer becoming permanent upon subsequent delivery of the conveyance or revesting in the vendor in the event of termination of said agreement of sale. No Member may withdraw, nor shall any Member transfer or otherwise dispose of his membership, except upon lawful conveyance, assignment or transfer (or agreement of sale) of his rights and duties as such Owner.

ARTICLE IV

MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held on the fourth Tuesday of January of each year thereafter, at the hour of 4:00 o'clock p.m., or such other date and time as may be voted upon by majority vote during the preceding annual meeting. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a holiday.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board, or upon written request of the Members who are entitled to vote one-half (1/2) of all the votes of the Class A membership.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by

mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of Members entitled to vote, or of proxies entitled to vote, one-half (1/2) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation of the Association, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Voting. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his interest in the farm dwelling site. When more than one (1) person holds a farm dwelling site, all such persons shall be members, provided that the farm dwelling site shall only have 1 vote. Votes may be cast in person or by proxy by the respective Owners as shown in the record of the ownership of the Association. A personal representative, guardian or trustee may vote in person or by proxy at any meeting of the Association the vote for any farm dwelling site owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such interest in such capacity.

Section 6. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners of a farm dwelling site, and shall be entitled to one (1) vote for each farm dwelling site owned. The vote for any farm dwelling site owned of record by two (2) or more persons may be exercised by any one (1) of them present at any meeting in the absence of protest by the other or others, and in case of protest each co-

tenant shall be entitled to only a share of such vote in proportion to his share of ownership in such farm dwelling site.

Class B. The Class B Member shall be the Declarant. The Class B membership shall cease and be converted to Class A membership upon the sale of all the farm dwelling sites by such Class B Member or on December 31, 2008, whichever shall first occur. The Declarant shall have one vote as the Class B member, in addition to one vote as a Class A Member for each farm dwelling site it continues to own. Except as otherwise set forth in the Declaration, there shall be no other difference in Class A and Class B voting rights.

V

BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of Directors. The Board shall consist of five (5) directors. Directors need not be Members of the Association.

Section 2. Term of Office. At each annual meeting the Members shall elect all five (5) directors for a term of one (1) year each.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

ARTICLE VI

NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board shall be made by a nominating committee. Nomination may also be made from the floor at the annual meeting. The nominating committee shall consist of a chairman, who shall be a member

of the Board, and two or more Members of the Association. The nominating committee shall be appointed by the Board prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-members.

Section 2. Election. Election to the Board shall be by secret written ballot. At any election of the Board of Directors, every Member entitled to vote may cumulate his votes and give any one or more candidates a number of votes equal to the number of directors to be elected multiplied by the number of votes to which his farm dwelling site(s) entitle him, or any distribute his votes on the same principle among as many candidates as he desires.

ARTICLE VII

MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board shall be held at least once per year, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two directors, after not less than ten (10) days' notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS.

Section 1. Management. The Board of Directors shall at all times have the exclusive right and responsibility to perform the duties and obligations and to exercise the powers and authority of the Association as set forth in the Declaration. The Board shall only exercise the powers and authority of the Association as set forth in the Declaration and none others.

Section 2. Manager. The Board of Directors may annually employ a Manager to manage and control the project subject at all times to direction by the Board, with all the administrative functions set forth specifically in the preceding Section 1 and such other powers and duties and at such compensation as the Board may establish.

Section 3. Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts, and other instruments shall be signed on behalf of the Association by such person or persons as shall be provided by general or special resolution of the Board of Directors or, in the absence of any such resolution applicable to such instrument, by the President or Vice-President and by the Treasurer or Secretary.

ARTICLE IX

OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. the officers of this Association shall be a President, who shall at all times be a Member of the Board, a Vice-President, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create. One person may hold more than one office, and officers need not be members of the Association.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointment. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Duties. The duties of the officers are as follows:

(a) President. The President shall preside at all meetings of the Members and of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

(b) Vice-President. The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the

Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of such to the Members.

ARTICLE X

RULES AND REGULATIONS

Section 1. Adoption. The Board shall from time to time adopt and publish such rules and regulations, consistence with the Articles of Incorporation, these By-Laws and the Declaration, governing the use of the lots in the Seacliff Plantation at Kilauea Bay Community and the farm dwelling sites, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof.

Section 2. Promulgation. The Secretary shall mail a true and correct copy of all rules and regulations, or amendments thereto, to each Member of the Association as appears on the membership roll of the Association at his last known address, and shall enter upon the records of the Association his certificate of such mailing.

Section 3. Effective Date. Any such rule or regulation or amendment thereto adopted by the Board shall be effective commencing at 12:01 a.m. on the fifth (5th) day following the date of such mailing, unless the Board, in adopting the same, shall specify some other effective date.

Section 4. Advisory Committee. The President, with the approval of the Board, may appoint a committee of Members to prepare drafts of such rules and regulations, to suggest amendments thereto, and generally to advise the Board in regard to the use of the facilities of the Association.

ARTICLE XI

COMMITTEES

The Board shall appoint a nominating committee, as provided in these By-Laws. In addition, the Board shall appoint other committees as deemed appropriate in carrying out the purpose of the Association.

ARTICLE XII

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation of the Association and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XIII

ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association general and special assessments which are secured by a continuing lien upon the interest in the farm dwelling site or lot against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum and the Association may bring an action at law against the Owners personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the farm dwelling site or lot or abandonment of his interest.

ARTICLE XIV

CORPORATE SEAL

The Association shall not have a corporate seal.

ARTICLE XV

AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy, except that the

Declaration shall have the right to veto amendments while there is a Class B membership.

Section 2. In the case of any conflict between the Articles of Incorporation of the Association and these By-Laws, such Articles shall control; and in the case of any conflict between the Declaration and these By-Laws; the Declaration shall control.

ARTICLE XVI

MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

ADOPTION OF BY-LAWS

The undersigned Secretary of the SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY ASSOCIATION hereby certifies that the foregoing Amended By-Laws were adopted by vote of a majority of a quorum of Members present in person or by proxy, at a meeting duly noticed and held on the _____ day of _____, 1999.

SEACLIFF PLANTATION AT KILAUEA
BAY COMMUNITY ASSOCIATION

By _____
Its Secretary

DESIGN COMMITTEE RULES AND GUIDELINES
PURSUANT TO THE DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF THE SEACLIFF PLANTATION AT
KILAUEA BAY COMMUNITY (AS AMENDED)

The following rules and guidelines (herein called the "Design Rules") are hereby established and adopted by the Design Committee of the Seacliff Plantation at Kilauea Bay Community (herein called the "Design Committee"), pursuant to Section 4.04 of the Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community, dated August 31, 1983, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 17405 at Page 411, as amended by that certain Amended Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community, dated September 9, 1988, and recorded in said Bureau of Conveyances in Liber 22367 at Page 21, and as may be further amended from time to time (herein called the "Declaration").

Except as otherwise specifically provided herein, the terms used in these Design Rules shall have the meanings given to them in the Declaration.

The use of each and every farm dwelling site and each lot in the Seacliff Plantation at Kilauea Bay Community (herein called the "Community") and the rights of each Owner of a farm dwelling site and/or lot in the Community shall be subject to these Design Rules and the Declaration.

A. GENERAL STATEMENT

Owners of real estate within a particular subdivision find that dedication to standards of quality and the maintenance of these standards are vital to the preservations of value of their property and to the enjoyment of the residents over the years. To maintain and, if possible, improve the environmental quality of the Community a Design Committee has been established pursuant to the Declaration to guide any new improvements towards a clearly established standard of quality for the area.

The establishment and maintenance of such a standard of quality for the Community is not an easy thing to do in view of the differences in people's tastes and means, however, the developer has a responsibility to all the Owners to establish adequate standards of quality and design and to provide the necessary discipline to adhere to those standards so that the finished agricultural subdivision will provide the optimum enjoyment, productive potential, and value protection for all Owners.

The Declaration, together with these Design Rules for the Seacliff Plantation at Kilauea Bay Community are intended to accomplish these goals by establishing criteria and guidelines for controlling the real property use.

The intent of these Design Rules is to provide guidelines and standards for the Design Committee in their

review and evaluation of proposed improvements within the Community. All improvements, including site work, buildings, structures and landscaping, shall be subject to these Design Rules. No Owner as set forth in the Declaration shall be permitted to construct any improvements unless he or she has received express approval from the Design Committee.

B. GENERAL PROVISIONS

1. Design Committee Approval Required. Except as otherwise provided in the Declaration, no new improvements may be constructed nor may any existing improvement be materially altered on any lot, except in accordance with plans, specifications and other materials (the "Plans") submitted to and approved by the Design Committee, and in accordance with the Declaration and the applicable Design Rules.

2. Public Regulations. Each Owner is responsible for being informed of and complying with the appropriate federal, state and county laws, rules, regulations, codes and ordinances which are applicable to his/her property. If a standard set forth herein differs from standards established by the various regulating agencies, the stricter standard shall apply.

3. Compliance with Declaration. All Owners shall comply with the provisions of the Declaration.

4. Limited Liability. By the establishment and/or enforcement of these Design Rules, neither Declarant, nor the Design Committee, nor any of the members, employees, officers or directors of any of the foregoing shall be deemed to have made any representation whatsoever concerning the view, if any, available to a particular farm dwelling site or Lot or any improvement constructed thereon. Neither Declarant, nor the Design Committee, nor any of the members, employees, officers or directors of any of the foregoing shall be liable to any Owner or any other person for any damage, loss or prejudice suffered or claimed on account of the following, provided that the person against whom the claim is made was, upon the basis of such information as may be actually possessed by him, acted in good faith and without willful or intentional misconduct:

a) the approval or disapproval of any plans, specifications and other materials, whether or not defective; or

b) the requiring of modifications to any plans as a condition of the Design Committee's approval thereof; or

c) the construction or performance of any work, whether or not pursuant to approved plans, specifications and other materials; or

d) the development or manner of development of any land within the Community; or

e) the performance of any other function pursuant to the provisions of the Declaration or these Design Rules.

C. GENERAL GUIDELINES

The following design guidelines and standards are intended to be helpful in applying the design philosophy. In establishing these rules, guidelines, and standards, and in passing on the plans submitted by Owners, it is the Design Committee's intent to balance strict compliance to certain (hard to define) principles applicable to all development within the Community with enough flexibility (or suggested alternative solutions) to allow individuality of taste to be expressed.

1. Siting. The siting of all buildings and structures should be in harmony with existing structures, the topography of the parcel and other improvements, and should protect the views from all Lots within the Community, maintain the character of the area, minimize disturbance of natural land forms and vegetation patterns of the area, and be as permitted by the County of Kauai pursuant to Special Management Area Use Permit SMA(U)-82-2.

The siting of all structures and agricultural activities should conform to the general standard of quality of the subdivision. Improvements should be designed so as to minimize regrading work and change the existing contours as little as possible. Improvements should take advantage of existing natural features, and allow the site to guide the design. Owners should take advantage of all the property's features, but also take care to consider other property owners in the subdivision.

2. Architectural Style and Development. Improvements should establish a harmonious character. Buildings should be designed to allow individuality within the subdivision without discordant diversity of architectural style. Uses of the land that are consistent with the capability of the area are encouraged, while uses which create noxious or unsafe conditions for other Owners, farm dwelling sites, and Lots within the Community will be disallowed.

Buildings should be designed so that they do not appear bigger or taller than necessary. Unbroken two-story exterior walls should be avoided. Where possible, the rooflines of two-story buildings should be brought down to the first floor eave level. Structures should be designed to blend with the natural landscaping and grade of the area. Suggested techniques include "stepping down" the floors of buildings, and varying floor levels, number of stories and roof planes. Use of fences or walls to enclose areas around the structure is encouraged to provide privacy, wind shelter, and a good transition from landscaping to structure.

3. Drainage. The County's drainage control ordinances are explicit. Site grading should be designed so as to accommodate drainage onto and off each Owner's farm

dwelling site or Lot without erosion, danger to life, or damage to land (soil) and improvements, both onsite and offsite, under heavy rainfall conditions. Care should be taken to avoid problems which usually occur on uphill sides of buildings, at entrances, roof drain locations, and large paved areas. Drainage easements and restrictions set forth in the Declaration shall be observed.

4. Landscaping Design. The landscape setting is an integral part of Hawaiian architecture and strongly influences the overall success of a site. In general, landscaping should maintain the natural foliage and improve the appearance of individual parcels in particular and the area in general. Insofar as practical, landscaping should avoid disturbing existing ground cover and should ensure that manmade structures and improvements are properly screened from view from neighboring property or public roads. Landscaping should be simple in design, and landscape materials should be chosen to fit the environment. Plantings along the street frontage should be uniform and integrated with any fencing or walls. Accent plantings at driveway entrances are encouraged. Landscaping should not be intrusive on the viewplanes of the neighboring properties.

5. Roof. The roof is the most significant architectural feature and will be the most diligently controlled by the Design Committee. While variation of roof planes is encouraged to blend structures with the landscape, Owners should strive to design roofs with uniform pitches which are harmonious with the surroundings. Roofs with combination pitches, if well executed, may be permitted by the Design Committee. Flat roofs shall not be permitted.

6. Fences. Fences should be designed to match the building materials and should be geometrically related to the entire structural complex. Hedges or wind breaks are excellent alternatives to the fence or wall to break the wind, provide privacy or screen unsightly uses.

7. Quality. In order to assure an adequate level and uniformity of quality in the area, the Design Committee will approve or disapprove plans based on the quality of materials and on the adequacy of the construction methods specified in the plans as they affect design detailing, finishes and durability.

8. Overall Effect. The overall effect of the subdivision and the improvements therein should be one of natural materials, natural textures and natural colors and forms compatible with those occurring in the natural landscape of the area.

9. Disclaimer. Approval by the Design Committee does not warrant or imply the legality, safety, utility, durability or economy of any improvement constructed pursuant to such approval.

D. SITE IMPROVEMENT STANDARDS

Without limiting the generality of the General Guidelines set forth above, all site improvements shall conform to the following standards and guidelines:

1. Occupancy Limitations. No farm dwelling(s) on any Lot shall be used for living purposes by more persons than the dwelling was designed to accommodate pursuant to plans approved by the Design Committee. No portion of any Lot, other than the portion on which the permitted farm dwelling(s) are situated, shall be used as a residence or for living purposes. No mobile home, trailer home, portable building, shed, quonset hut, tent, or similar structure shall be used as a residence or for living purposes on any Lot.

2. Utilities. No overhead power lines shall be erected on any Lot except by the Declarant or by a public or private utility authorized to do so by the Declarant. No wind generators shall be erected on any Lot. No antennae, aeriials, satellite discs or other devices for the reception or transmission of radio or television broadcasts or other means of communication shall be erected or maintained on any Lot unless such devices are screened from view from adjoining properties and roads. All other utilities within a Lot shall be placed underground or screened or enclosed as hereinafter provided.

(a) Water. Upon construction of a farm dwelling, each Owner shall connect the water lines serving his dwelling to the central water distribution system owned and operated by the County of Kauai. Multiple farm dwellings on the same lot may be required to share water meters.

(b) Sewage Disposal. No outside toilet shall be constructed on any Lot. Upon construction of a farm dwelling, each Owner shall install a septic tank, cesspool or other sewage disposal system capable of handling all waste from his dwelling and Lot and approved by the appropriate governmental authorities. All plumbing fixtures, toilets and sewage disposal systems shall be connected to said septic tank, cesspool or other sewage disposal system.

(c) Propane Gas. If an Owner opts for propane gas in addition to the available electrical service, the gas tank must be kept underground or within an enclosure which screens the tank from adjacent Lots and streets and which is approved by the Design Committee.

3. Drainage. The flow of surface and/or subsurface drainage onto, across, or from each Lot shall not be unreasonably obstructed, or transferred outside of its natural drainage course. Such runoff shall be dispersed or channeled by surface swales or other facilities in such a manner as to prevent erosion and damage to property. No Owner shall construct or permit to be constructed on any Lot any improvements which will create a problem of flooding, erosion, or interference with natural flow of storm waters or cause damage to land or improvements belonging to the

Association or neighboring Lot Owners. Each Owner shall provide for the installation of such culverts and drainage facilities upon his Lot as required by the Design Committee. Each Lot Owner shall keep all such drainage facilities and culverts so installed on his Lot free and unobstructed and in good repair.

4. Construction Operation Hours. Hours of construction operation shall be limited from 7:00 a.m. to 6:00 p.m., Monday through Saturday.

5. Required Setbacks. The required front, rear, and side yard setbacks from the respective boundaries of each Lot as may be imposed by the County of Kauai shall be observed.

Construction within the required setback areas shall be limited to driveways, walkways, fences or walls not more than 72 inches in height, and landscaping; provided that no structures shall be permitted beyond the building setback line which was approved by the County of Kauai in SMA(U)-82-2, as noted in the Declaration.

6. Building Height. To protect views and to insure a blending of structures with the natural environment, no structure or other improvements may be erected which has a height exceeding 25 feet, measured vertically from grade at all points along the structure to the roof peak; provided, however, that notwithstanding compliance with the foregoing height limitations, the Design Committee shall have the power to deny approval of any structure or improvement on a Lot which substantially impairs views from adjoining Lots.

7. Site Grading. Grading and finished elevations shall respect the existing contours of the site. Excessive cuts or fill banks shall be avoided. In the event of any excavation on a Lot, the Owner of such Lot shall provide such artificial support as is necessary to support adjacent Lots.

Excavations or fills of greater than 18 inches in depth or 100 square feet in area are improvements which require Design Committee approval. The Lot Owner shall present sound reasoning to justify such work.

All dirt and debris resulting from excavation must be removed from the Lot prior to completion of the improvements. Exceptions will be made by the Design Committee if excavated dirt is immediately used for fill elsewhere on the Lot. Except where conditions make such excavation unavoidable, no excavation on a Lot shall affect any adjacent Lot. Each Owner shall control dust during the grading process to minimize annoyance which may be caused to other Lot Owners.

Each Lot Owner shall obtain a grading permit (if required by County ordinance or regulation) from the County of Kauai and shall submit a copy thereof to the Design Committee prior to commencing any site improvements. In order to preserve a natural appearance, grading should be limited to the building and landscaped areas. So as to

prevent potential problems from soil erosion, all land not landscaped or built on within 12 months after completion of grading shall be returned to its original state, as determined by the Design Committee. "Completion of grading" shall be determined by the Design Committee in its sole discretion.

8. Dwelling Requirements. Each farm dwelling erected on a Lot shall have a total floor area of not less than 2,000 square feet, exclusive of lanais, patios, servant's quarters, attached guest house or facility, garage storage space, and workshop. A single guest facility per Lot which is designed to accommodate no more than three (3) temporary guests, and which does not contain a kitchen or kitchen facilities, may be included as part of one such farm dwelling per Lot. Such guest facility shall have a total square area of not less than 400 or more than 500 square feet, exclusive of lanais, porches, patios, garages, exterior stairways and landings and exclusive, also, of the farm dwelling to which the guest facility is appurtenant.

9. Construction Schedule. Construction of improvements shall commence within 12 months after the date of approval of the plans and clarifications is given by the Design Committee. Every improvement constructed on a Lot shall be completed within 12 months after commencement of construction.

10. Animals. Except for dogs, cats and other typical household pets kept in reasonable numbers and under reasonable conditions, no animal shall be kept or maintained on any Lot except with the approval of the Design Committee, which shall have the power to control, in accordance with the standards set forth below and other uniformly applied standards from time to time adopted by the Design Committee, the kinds of animals which may be kept or maintained on a Lot, the numbers of each type of animal which may be kept or maintained on a Lot, and the conditions under which such animals may be kept or maintained, including, without limitation, the kind of structures or enclosures in which such animals may be kept. All animals kept or maintained on a Lot, whether domestic pets, livestock, poultry, game and fish or any other animal or aquatic life propagated for economic or personal use shall be kept and maintained only in a density compatible with neighboring residential and agricultural use and shall be cared for in conformance with practices of good animal husbandry, including but not limited to: (a) prompt removal of excess amounts of manure and other waste; (b) disposal of an ecologically sound manner of any effluent from the practice of aquaculture or other processes; (c) control of flies, insects, worms and other pests; (d) adequate fencing and animal housing facilities adequate to restrict such animals and poultry to the Lot where maintained; (e) control of noise and noxious odors to levels which are customary under practices of good animal husbandry and which are compatible with neighboring residential and agricultural use. Storage of hay, fodder and other food supplies shall be accomplished in such manner as to prevent scattering of such materials by the wind. Notwithstanding the foregoing, the keeping and maintaining of pigs, chickens (except for personal use and consumption)

and fighting chickens are expressly prohibited as being incompatible with the neighboring residential and agricultural use.

11. No Unsightliness. No unsightliness shall be permitted on any farm dwelling site or Lot. Without limiting the generality of the foregoing: (a) all unsightly structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure or appropriately screened from view so as not to be visible from neighboring property; (b) all agricultural, garden or maintenance equipment and all tractors and trucks of more than one ton capacity shall be kept at all times in an approved enclosed structure or screened from view so as not to be visible from neighboring property, except when in actual use or unless such vehicle is necessary to and regularly used for agricultural activities conducted on the Lot; (c) refuse, garbage and trash shall be kept at all times in a covered container and any such container shall be kept within an approved enclosed structure or appropriately screened from view so as not to be visible from neighboring property; (d) service areas, storage piles, compost piles and facilities for handling, drying or airing clothing or household fabrics shall be appropriately screened from view so as not to be visible from neighboring property; (e) to the extent practical, all pipes for water, gas, sewer, drainage or other purposes and wires, antennae and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities and gas, oil, water or other tanks, and sewage and disposal systems or devices shall be kept and maintained within an approved enclosed structure or below the surface of the ground; (f) no lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Lot except within an approved enclosed structure or appropriately screened from view so as not to be visible from neighboring property; (g) no trailer, vehicle or boat shall be constructed, reconstructed, repaired or maintained upon any Lot in such manner that such construction, reconstruction, repair or maintenance is visible from neighboring property, nor shall any vehicle not in good operating condition be placed, kept or maintained upon any Lot so as to be visible from neighboring property, provided that nothing in this paragraph shall prevent an Owner from performing minor maintenance work and minor repairs on his own trailer, vehicle or boat in his garage or maintenance building; and (h) no garage or accessory building shall be used for other than the parking of vehicles, farm machinery and implements or boats, unless the same is enclosed by a partition, wall, door, or screen normally kept closed. Specifically, and without limiting the generality of the foregoing, no garage or accessory building not so enclosed shall be used for a laundry or for storage purposes or as a hobby shop or carpenter shop.

E. ARCHITECTURAL STANDARDS

In addition to the foregoing General Guidelines and Site Improvement Standards, the following architectural standards shall guide the improvement of all Lots.

1. Plans. See Section F for required items to be submitted for review and approval by the Design Committee prior to the construction, alteration, landscaping or grading of any improvement on a Lot.

2. Geodesic Domes. Geodesic domes and structures which incorporate geodesic domes in their external design shall be prohibited.

3. Portable Buildings, Mobile Homes, Quonset Huts. Temporary or portable buildings, mobile homes, and quonset huts shall be prohibited. Used buildings transported to the subdivision shall also be prohibited.

4. Labor and Materials. All construction work shall be performed, executed and completed by a general contractor licensed to practice in the State of Hawaii.

The materials used for structures shall be new and of a quality consistently associated with that used in quality homes. All building materials shall be installed in a neat and workmanlike manner, consistent with generally accepted construction practices. No used buildings shall be placed on any Lot, nor shall any used lumber or materials be a part of the construction of any improvement. Notwithstanding the generality of the foregoing, however, antique or aged materials may be used in the construction of improvements to achieve a desired aesthetic effect with the approval of the Design Committee (e.g., used brick, railroad ties, barn wood).

5. Exterior Dwelling Walls. The building material of the exterior walls of all dwellings shall be predominantly wood, masonry, and/or stucco.

All exterior surfaces of all improvements shall be in neutral or earth tone shades. Samples of exterior colors shall be submitted to the Design Committee for review and approval. The Design Committee may prepare a color palette of acceptable colors for use in the Community, and require all improvements to comply with the said color palette.

Vinyl or prefinished metal siding shall not be allowed and plywood siding shall be discouraged unless all joints are concealed and the Design Committee's approval is obtained.

6. Roofs. Roofs shall be of wood shake or shingle, clay tile, or other materials of minimum reflectivity as specifically allowed by the Design Committee. The use of any roofing material which is highly reflective, such as corrugated iron, tiles with a smooth, shiny finish, and the like, shall be prohibited.

7. Solar Heating Systems. Roof panels of solar heating systems should be sited so as to minimize their visibility from the streets and adjacent Lots within the Community. All such roof panels shall be mounted flush with the roof and shall be subject to review and approval by the Design Committee.

8. Glare Prevention. No highly reflective finish, other than glass (which, however, may not be mirrored), shall be used on exterior surfaces, including without limitation, roofs, exterior walls, retaining walls, doors, trim, fences, pipes, permanent outdoor equipment, mailboxes and newspaper tubes.

9. Chimneys. Chimneys are permitted but shall be subject to the review of the Design Committee in regard to height, material, color, spark arrestor and appearance.

10. Garages. Each farm dwelling constructed on a Lot shall have appurtenant to it a garage designed to accommodate at least two automobiles which is architecturally harmonious with the farm dwelling. All garages shall be located to minimize the visibility of parked cars from the streets.

11. Foundations. Retaining walls and foundations which are more than 3 feet in height or which are placed upon embankments or filled areas shall be designed by an Architect or Engineer licensed to practice in the State of Hawaii and such designs shall require approval of the Design Committee.

12. Maintenance of Lots. Each farm dwelling site, whether occupied or unoccupied, and all improvements placed thereon, shall at all times be maintained in good, clean and attractive condition and in such a manner as to prevent such farm dwelling site, Lot, and improvements from becoming unsightly, unsanitary or a hazard to health. Each Owner shall, at his own expense, trim and restrain all trees, shrubs and plantings so that they do not exceed applicable height limits, if any, set by the Design Committee, nor overhang or otherwise encroach upon, any street or adjoining Lot, nor materially interfere with the view across such Lot from other Lots, unless prior approval of the Design Committee is obtained.

13. Abandoned Constructions. If construction of a dwelling or any other improvement is at any time abandoned, the Lot Owner shall cause the Lot to be cleared and returned to its original condition until recommencement of construction.

14. Driveways. Driveways shall use gravel or asphalt or concrete pavement, or other materials approved by the Design Committee.

15. Lighting. Exterior lighting plans shall be a part of the plans submitted to the Design Committee for review and approval. No light shall be emitted on any Lot which is unreasonably bright or causes unreasonable glare. Exterior light sources shall not be visible from neighboring

property. High intensity discharge exterior lights, including, without limitation, mercury vapor lamps or lamps which emit light of a similar character, fluorescent lamps, and neon lamps and tubing, shall not be permitted. All exterior lights shall be shielded downwards.

F. REQUIREMENTS AND PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS

1. Design Approval Procedure. In order to avoid frustration and unnecessary expense, it is strongly recommended that the following procedure be followed in a step-by-step sequence to obtain design approval.

Step One:

Gather basic facts about your site such as: topography, tree locations, property lines, wind direction, sun exposure, view planes and directions, building setback lines, height restrictions, driveway access route, drainage courses, soil classifications and depths, field layout, irrigation system, etc.

Step Two:

Select an Architect, landscape architect or land planner. Consider site in relation to crop, orchard, ponds, stables or other use of the property. Decide on location of the farm dwelling and any accessory buildings and improvements.

Step Three:

You and your Architect, landscape architect or land planner have a preliminary discussion with a member of the Design Committee (via personal meeting or telephone call) to verify understanding of the area of harmony and differences between your initial ideas and guidelines. Only then should you authorize your Architect, landscape architect or land planner to do any design work.

Step Four:

Prepare schematic drawings of your proposed improvements. Schematic drawings are simple drawings intended only to show the general concept of the improvements in order to get concurrence by the Design Committee before investing in detailed working drawings. In normal industry practice a set of schematic drawings show:

- a) The boundary, topography, and all basic facts of the site in accurate detail as evidence that all subsequent design will be soundly based.
- b) A simple site plan showing the location of buildings, agricultural areas, fences, ponds, roofed areas, paved areas, principal trees, roads, irrigation improvements, utility lines and improvements.
- c) A simple drawing of the buildings with spaces

labeled and openings indicated. Indicate elevation grade of floors.

- d) A single line roof plan showing ridges and eaves.
- e) Two or three simple elevation drawings showing the principal exterior elevations (front, back and a side).
- f) Principal exterior materials should be labeled: roof, walls, fences, windows, and ground cover.

Step Five:

Submit the schematic drawings to the Design Committee for review. This will be the point where major differences between guidelines and your intent are discovered. At this stage the investment in drawings and specifications has been limited and changes can be incorporated easily and relatively inexpensively. At this review the Design Committee will be looking primarily at:

- a) General siting of the buildings and structures -- where they are on the Lot and how they fit into the topography.
- b) Compliance with setback, height and view plane rules.
- c) Functional practicality of the scheme.
- d) Building massing and roof shapes.
- e) Very general architectural style, including exterior materials.
- f) Driveway and entry arrangements to dwellings and accessory buildings.
- g) Drainage and grading effect.
- h) Agricultural improvement plan.
- i) Landscape plan, if any.

To avoid unproductive design expenditures, you should wait receipt of the Design Committee's comments before proceeding further with design otherwise you may be wasting design expense.

If you and your Architect, landscape architect or land planner are not sure about the intent of the Design Committee's comments, then a personal or telephone discussion is desirable before proceeding.

ALL SUBMISSIONS SHOULD BE IN DUPLICATE; one set to be retained in Design Committee files, and one set to be returned each time with comments or approval stamp.

The Design Committee will approve or disapprove the preliminary plans in writing within 45 days after receipt by

the Design Committee of a completed application, including the plans. If the Design Committee disapproves of any such plans, it will send notice of its disapproval to the person or persons applying for said approval at the address set forth in the application. If notice of approval or disapproval is not sent within said 45 day period, the preliminary plans submitted shall be deemed to have been approved by the Design Committee.

The Committee shall, in reviewing plans, specifications and other materials submitted to it, consider the suitability of the proposed building, landscaping, grading, or other improvement or use for the area in which it will be located; their compliance with the Declaration and any applicable Design Rule; the quality of the materials to be used in construction; and the effect of the proposed building, landscaping, grading, or other improvement or use, including without limitation the effect thereof on view planes of other Lot Owners. The Committee shall require that the overall visual character of the Community be one of natural materials, natural textures, natural colors and forms compatible with those occurring in the natural landscape and that the roofs and other exterior portions of all buildings and other improvements in the Community conform to aesthetic standards contained in and/or be constructed with materials specified in these Design Rules. The Design Committee may grant variances from time to time from the strict requirements of the Design Rules, provided that the variance does not violate any of the standards set forth herein or in the Declaration, and provided also that the proposed building, landscaping, grading or other improvement would be suitable for the location in which it is to be located. The approval or disapproval of any plans or specifications or other materials by the Design Committee in any one case shall not be deemed a waiver by the Committee of its right to approve, disapprove, object to or consent to any of the features or elements embodied therein when the same features or elements are embodied in plans submitted in any other cases.

THIS FIFTH STEP MAY BE REPEATED IN ORDER TO OBTAIN DESIGN COMMITTEE APPROVAL AND TO SATISFY THE DESIGN COMMITTEE'S CONCERNS.

Step Six:

Complete detailed working drawings and specifications consistent with schematic drawings showing at least the following:

- a) Site plan at 1/8" - 1' scale or larger showing:
 - 1) Property lines and dimensions.
 - 2) Setback and height limits and view channels.
 - 3) Existing 2' contour lines and final 2' contour lines after any proposed grading with elevations above sea level shown.
 - 4) Solution of surface drainage with elevations

of invert.

- 5) Buildings, fences and walls locations and roof edges.
- 6) Driveways and walks and other paved areas.
- 7) Compass and wind rose and view directions.
- 8) Cesspool location.
- 9) Proposed retaining walls.
- 10) Location of major trees and shrub massings - indicate, new or existing.
- 11) Agricultural areas, windbreaks, ditch system, etc.
- 12) Landscaping, if any.

b) Floor plans of principal structures for each level showing layout and uses and location of openings and exterior living areas and floor elevations and edges of roofs. Drawings scaled at 1/8" - 1' or larger.

c) A scaled drawing of each of four exterior elevations of the principal structures at least 1/8" - 1' or larger showing:

- 1) Roof shape, pitch, overhand and material.
- 2) Exterior wall material, color, textures, and window and door details including frame materials.
- 3) Fences and walls related to the structure.
- 4) Details of railings and any other applied exterior decorative features of the improvements.

d) Agricultural and Landscaping Plan showing:

- 1) Principal trees, their mature height and canopy spread as well as species.
- 2) Ground cover boundaries and material.
- 3) Agricultural improvement plan.
- 4) Layout of irrigation system.
- 5) Location and fixture type of any lighting on the exterior of buildings or on grounds.

e) Outline specification of materials and methods.

f) Actual color and material samples for all exterior surfaces or as requested by the Design Committee at time of schematic plan approval.

Step Seven:

Submit six (6) copies of the above-described final working drawings with Architect's or registered engineer's stamp affixed, final specifications, and the required fees payable to the Design Committee, for comments or approval.

a) Review of Plans. The Design Committee will approve or disapprove the plans in writing within 60 days after receipt by the Design Committee of a completed application, including the plans. If the Design Committee disapproves of any such plans, it will send notice of its disapproval to the person or persons applying for said approval at the address set forth in the application. If notice of approval or disapproval is not sent within said 60-day period, the plans submitted shall be deemed to have been approved by the Design Committee. After approval of any plans, the Design Committee will, upon written request from the person seeking said approval, provide said person with a statement of approval in a form appropriate for recordation.

b) Standards of Review. The Design Committee shall, in reviewing plans, specifications and other materials submitted to it, consider the suitability of the proposed building, landscaping, grading, or other improvement or use for the area in which it will be located; their compliance with the Declaration and any applicable Design Rule; the quality of the materials to be used in construction; and the effect of the proposed building, landscaping, grading, or other improvement or use in the Community, including without limitation the effect thereof on view planes of other Lot Owners. The Committee shall require that the overall visual character of the Community be one of natural materials, natural textures, natural colors and forms compatible with those occurring in the natural landscape and that the roofs and other exterior portions of all buildings and other improvements in the Community conform to aesthetic standards contained in and/or be constructed with materials specified in these Design Rules. The Design Committee may grant variances from time to time from the strict requirements of the Design Rules, provided that the variance does not violate any of the standards set forth herein or in the Declaration, and provided also that the proposed building, landscaping, grading of other improvement would be suitable for the location in which it is to be located. The approval or disapproval of any plans or specifications or other materials by the Design Committee in any one case shall not be deemed a waiver by the Design Committee of its right to approve, disapprove, object to or consent to any of the features or elements embodied therein when the same features or elements are embodied in plans submitted in any other cases.

2. Fees. The Design Committee shall have the right to require payment of a reasonable fee for review of proposed plans. Until and unless adjusted by the Design Committee by amendment of these Design Rules, such review fee shall be \$500.00.

3. Professional Advice. The Design Committee may employ the services of an Architect, landscape architect, land planner, attorney, or any other consultant to render professional advice, and may pay a reasonable compensation for such services, which compensation may be charged, in addition to the fee as provided in the preceding paragraph F(2) above, to any person who has submitted plans requiring review by such architect, landscape architect, land planner, attorney, or other consultant, provided that such compensation may be charged to such person only if he has been informed in advance that such compensation will be charged to him.

G. REMEDIES

In the event any Lot Owner shall fail to comply with the Declaration or any of these Design Rules, the Design Committee shall have available to it all of the rights and remedies described in the Declaration, including without limitation the following:

1. Enforcement Costs; Lien Rights. If any court proceedings are instituted in connection with the right of enforcement and/or remedies provided in these Design Rules or the Declaration, the Design Committee shall be entitled, in the event it shall prevail in such proceeding, to recover its costs and expenses in connection therewith, including reasonable attorneys' fees. The Committee shall have a lien against an Owner's Lot for any unpaid fees, compensation or other charges for which such Owner is obligated under these Design Rules or the Declaration to pay to the Design Committee. The rights and remedies provided for in this Section G.1 are cumulative with all other rights and remedies available to the Design Committee and/or the Association under these Design Rules, the Declaration and at law and in equity.

2. Notice of Nonconformance. The Design Committee may record a Notice of Nonconformance against an Owner's Lot if improvements have not been approved, if any approval has been revoked, if any improvement has not been completed in accordance with approved plans, if any improvement has not been completed within the appropriate time period, or if any improvement has not been maintained in conformity with the Design Rules.

ADOPTED on this 15th day of SEPTEMBER, 1988.

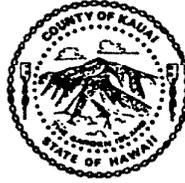
DESIGN COMMITTEE OF THE SEACLIFF
PLANTATION AT KILAUEA BAY COMMUNITY

Colette Adams

John H. Stewart

James R. O'Connor

EDUARDO E. MALAPIT
MAYOR



BRIAN K. NISHIMOTO
PLANNING DIRECTOR
AVERY H. YOUNG
DEPUTY PLANNING DIRECTOR
TELEPHONE 245-3919

COUNTY OF KAUAI
PLANNING DEPARTMENT
4280 RICE STREET
LIHUE, KAUAI, HAWAII 96766

February 11, 1982

Mr. Walton D.Y. Hong
Attorney at Law
P. O. Box 1727
Lihue, Hawaii 96766

Subject: Special Management Area Use Permit SMA(U)-82-2
Roberson-Larson Partnership
TMK: 5-2-04:47 Kilauea, Kauai

The Planning Commission at its meeting held on February 10, 1982, voted to reconsider its action of December 23, 1981, and approved the SMA Use Permit subject to the following conditions:

1. The proposed building limit setback line "C" shall be established on the ground and on the map at the time of subdivision review and approval in accordance to the criteria as presented in delineation of the setback line which is presently interpreted to be generally as shown (for SMA Permit purposes) on the map submitted by the Applicant with the February 5, 1982, letter to the Planning Commission. More specifically, the criteria to be used are as follows:
 - a) On the western portion of Crater Hill, the building limit setback line shall be such that no buildings shall penetrate the ridgeline horizon when viewed from Kilauea Town.
 - b) On the eastern portion of Crater Hill, the building limit setback line shall be such that no buildings appear to be placed any higher than the profile line of the flat land between Kuhio Highway and Crater Hill when viewed from the visible points along Kuhio Highway.

EXHIBIT L

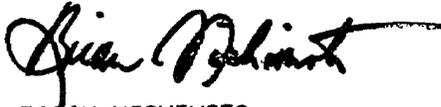
Mr. Walton D.Y. Hong
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February 11, 1982

2. As represented by the Applicant, with the adoption of building limit setback line "C", the Applicant shall:
 - a) Dedicate the 75+ acres of prime agricultural land to the County for agricultural purposes;
 - b) Fence the shoreline area of Crater Hill;
 - c) Turn management of the fenced wildlife bird refuge areas to the Nature Conservancy Organization, or equivalent; and
 - d) Substantially perform on other representations made in the proceedings of this application.
3. A building height limit of 25 feet, measured from grade at all points along a building to the roof peak, shall be included in the restrictive covenants for the project.
4. As represented by the Applicant:
 - a) All structures erected on the lots shall be painted or finished in earth tone colors;
 - b) Roofing materials shall be non-reflective; and
 - c) The use of mirrored glass, reflective sun screens or other highly reflective materials for exterior windows shall be prohibited.
5. Building locations and designs shall be subject to Planning Department review and approval at the time of building permit application. The building locations shall be constructed on the ground in strict adherence to the approved subdivision map and building plot plan. Buildings found constructed in violation of the approved plans shall be relocated at the owner's expense.
6. As represented by the applicant, all bare areas resulting from excavation by the lot owner shall be revegetated immediately to avoid erosion and visual impacts.
7. Lateral, traversable beach access easement to the cliffs and shoreline shall be provided by the applicant. Details shall be addressed at the time of subdivision.

8. Vehicular access easement to the communications station on the top of Crater Hill shall be provided along its existing route or along a route that does not visually scar the hillside (the exact route shall be mutually established by the subdivider and the Planning Department).
9. In order to assure proper management of the wildlife habitat, the areas involved shall be defined by an easement or as a separate lot such that it can be assigned to a Federal, State, or private non-profit managing agency.
10. At the time of subdivision review and approval, the following shall be adhered to by the subdivider:
 - a) The restrictive covenants document to address the SMA concerns, including but not limited to the building limit setback line, building height limits, building colors and non-reflective roof materials, landscaping, erosion control measures, etc., shall be reviewed and approved by the Planning Department prior to final subdivision approval.
 - b) Land alterations for roadways and building sites shall be kept at the very minimum to minimize erosion and scarring problems to the hillside developments. Erosion control measures as required by the Public Works Department shall be strictly adhered to. Road particulars and standards shall be addressed and resolved at time of subdivision.
 - c) As recommended by the Water Department, approval of any actual development or subdivision of this area will be dependent upon the adequacy of the source, storage and transmission facilities existing at that time.
 - d) As recommended by the State Health Department:
 1. Potable water from the County system shall be made available for each lot.
 2. Effective water pollution measures shall be provided to prevent the pollution of Kilauea Stream and the ocean.
 3. Due to the general nature of the plans submitted, we reserve the right to impose further environmental health restrictions on this proposal when more detailed plans are submitted.

Mr. Walton D.Y. Hong
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- e) The recommendations of the Fire Department shall be resolved at the time of subdivision application.
 - f) An irrigation system for agricultural purposes shall be provided for review and approval.
 - g) In keeping with the intent of the State Land Use Law, agricultural activity must be established before any additional dwelling in excess of one (1) per parcel will be allowed.
11. The applicant is advised that prior to and/or during construction, additional governmental agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).



BRIAN NISHIMOTO
Planning Director

cc: David Sproat
Mayor
Pub. Works Dept.
Water Dept.
Health Dept.
Real Property Div.