



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, 1998, 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 "All 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, 211 229 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.

(1) 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 clothesline 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 therefore 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 quest 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 benefiting 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, non-ownership 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 therefore. 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 therefore, 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 f 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  
COUNTY OF KAUAI

SS:

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 given 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



