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STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
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/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

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LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN TO: BY: MAIL PICKUP

Housing and Community Development Corporation of Hawaii
677 Queen Street, Suite 300
Honolulu, Hawaii 96813

Tax Map Key No.: (2) 4-5-021: 020

Tax Map Key Nos.: (2) 4-5-036: parcels 1 through 105

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

VILLAGES OF LEIALI'I

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
VILLAGES OF LEIALI'I

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF VILLAGES OF LEIALI'I is made on this ____ day of _____, 200____, by HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII, a body corporate and politic of the State of Hawaii (hereinafter called "Declarant"), whose principal place of business is 677 Queen Street, Suite 300, Honolulu, Hawaii 96813.

1. RECITALS

1.01 The Property.

Declarant and the Department of Land and Natural Resources of the State of Hawaii are the owners in fee simple of those certain real properties located in Wahikuli, situate at Lahaina, County of Maui, State of Hawaii, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Property"). Declarant is the master developer of the Property.

1.02 The Initial Development.

Declarant intends to develop or convey to Developers who in turn will develop portions of the Property with single-family residences, multi-family residences, condominiums, rental units for low and moderate income families, elderly housing, special needs housing, schools, parks, churches, community facilities, open spaces, archaeological preserves and other complementary uses, pursuant to the plan for a community development to be collectively named Villages of Leialii (hereinafter referred to as the "Villages of Leialii"). The initial development is an area being developed by the Declarant as "Village 1", which is more particularly described in Exhibit "B", attached hereto and made a part hereof. Other portions of the Property will be annexed hereto and made subject to this Declaration, pursuant to Article IV of this Declaration. The initial master plan for the Villages of Leialii is shown in Exhibit "C", attached hereto and made a part hereof. This master plan is subject to change at the sole and absolute discretion of the Declarant.

1.03 Villages of Leialii.

The Villages of Leialii will combine practical usefulness and economic benefit with aesthetic enjoyment in a complete town setting that will grow and intensify in its uses, densities, and activities, year by year, resulting in the establishment of an urban community, specifically distinct from a uniform, detached suburban development.

1.04 Covenants, Conditions, and Restrictions.

In order to enhance the orderly and proper development and use of the Property pursuant to the plan for the Villages of Leialii, to protect the value, desirability, and attractiveness of the Villages of Leialii and to promote the quality of improvement and use of the

Property as a whole, Declarant deems it necessary and appropriate to subject all of the Property to certain mutual covenants, conditions, and restrictions, which will inure to the benefit of all present and future owners of the Property.

2. DECLARATION

2.01 Declaration.

Declarant hereby declares that all of the property described in Exhibit "B" and any other portions of the Property, which become annexed thereto as provided herein shall be held, sold, conveyed, encumbered, leased, occupied, and improved, subject to the covenants, conditions and restrictions (hereinafter called the "Restrictions") set forth in this Declaration, all of which are established and declared and agreed to be for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property. These Restrictions shall create mutual equitable servitudes upon each Lot within the Property in favor of every other Lot (as hereinafter defined) and shall create reciprocal rights and obligations in, between, and among all persons and entities having any right, title or interest in and to any Lot within the Property. In addition, the Restrictions shall run with such portions of the Property annexed hereto and any Lot therein and shall be binding upon all parties having or acquiring any right, title or interest in and to the Property or any Lot therein, and shall inure to the benefit of Declarant, Developers, the Association, and each Owner (all as hereinafter defined) and each successor-in-interest of an Owner.

3. DEFINITIONS

3.01 Defined Terms.

Unless the context in the Restrictions otherwise specifies or requires, the terms defined in this Article 3 shall have the meanings herein specified:

Apartment: An Apartment, as defined in Chapter 514A, Hawaii Revised Statutes, as amended, or a rental apartment unit in a rental apartment building.

Apartment Owner: The Owner of an Apartment.

Architect: A person registered to practice architecture, professional engineering or landscape architecture in the State of Hawaii, pursuant to Chapter 464, Hawaii Revised Statutes, as amended, or pursuant to the laws of the state of his principal place of business.

Articles of Incorporation: The Articles of Incorporation of the Association duly filed with the Department of Commerce and Consumer Affairs of the State of Hawaii, as the same may be amended from time to time.

Association: The Villages of Leiali'i Association, or its equivalent, a Hawaii nonprofit corporation to be organized, pursuant to Article 7, and its successors and assigns.

Association Member: The meaning as defined in Section 7.02.

Board: The Board of Directors of the Association.

Bureau of Conveyances: The Bureau of Conveyances of the State of Hawaii and the Office of the Assistant Registrar of the Land Court of the State of Hawaii, as appropriate.

By-Laws: The Association By-Laws, which have been or shall be duly adopted by the Association, as the same may be amended from time to time.

Committee: Depending on the context, either the New Construction Committee or Modifications Committee, or both.

Common Area: The portions of the Property (including drainage easements, flowage areas, and open space areas) conveyed to the Association or designated by the Declarant for the common use and benefit of the Owners or for the administration and management by the Owners, together with all of the Improvements constructed on any such portion of the Property from time to time, which Common Area shall not be considered a Lot.

Condominium: A Condominium Property Regime as defined in Chapter 514A, Hawaii Revised Statutes, as amended.

Cotenancy Area: Any portion of a Private Area owned by more than one owner or a Sub-Association to be used by and maintained for multiple Owners, and any common area or limited common area as defined in a Sub-Declaration to be used by and maintained by such owners or the members of the Sub-Association, including, without limitation, roads, driveways, parks, open spaces, and any common area or limited common area as defined in a Sub-Declaration. A Cotenancy Area shall not be deemed a Lot. The interest of an Owner in a Cotenancy Area shall be deemed appurtenant to the Lot or Apartment owned by such Owner.

Declarant: The Housing and Community Development Corporation of Hawaii, a body corporate and politic of the State of Hawaii, and its successors and assigns.

Declaration: This Declaration of Covenants, Conditions and Restrictions of Villages of Leialii.

Declaration of Annexation: This Declaration with respect to Village 1 described in Exhibit "B", and any recorded Declaration of Annexation, which formally annexes additional Property, subject to this Declaration.

Developer: A Developer designated by Declarant to develop any Private Area into Residences or Lots. There may be more than one Developer, and Declarant may act as a Developer.

Excavation: Any disturbance of the surface of land (except temporarily for planting), which results in removal of earth or rock for a depth of more than eighteen (18) inches.

Exempt Organization: Any private nonprofit religious, educational, community, and civic organization.

Family: An individual or two or more persons related by blood, state sanctioned adoption, foster parentage, guardianship or marriage, or a group of not more than five unrelated persons (excluding servants), occupying a Lot. The term includes individuals in larger group living situations described as group living facilities and family child care homes, if permitted under these Restrictions.

Fill: 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.

Fiscal Year: The Fiscal year of the Association presently ending December 31 of each year.

Garage: A garage for a motor vehicle, including a carport or similar outbuilding appurtenant to a Residence, whether or not connected to the Residence.

Governmental Agency: Any department, division or agency of any federal, state or municipal governmental, except for Declarant, and any public or private utility.

HUD: The Federal Housing Administration of the U. S. Department of Housing and Urban Development, and any successor agency authorized by the federal government to insure loans secured by mortgages of residential real property.

Improvement: All buildings, outbuildings, grading, roads, drainage facilities, driveways, parking areas, loading areas, screening walls and barriers, fences, retaining walls, poles, signs, water lines, sewer facilities, and pump stations, electrical and gas transmission and distribution facilities, irrigation facilities, hedges, windbreaks, plantings, planted trees, and shrubs, ponds, exterior illumination, and all other structures, installations and landscaping of any type or kind, whether on, above or below the surface of the land.

Initiation Assessment: The fee assessed to each new Association Member, pursuant to Section 8.02.

Insured Mortgage: A mortgage of a Lot that secures a loan insured by HUD.

Lot: Within any Private Area, any residential Lot designated for residential use by Declarant, any Apartment in a Condominium or any residential unit within a rental apartment project, cooperative project or any other type of project consisting of multiple residential units. Upon the subdivision, consolidation or development of any Lot, a Lot shall include each finished Lot, Apartment or residential unit into which such Lots have been so subdivided, consolidated or developed. Each undeveloped Lot designated for residential use, or portion thereof, shall be deemed to consist of 4.9 Lots per acre of such undeveloped property, until completion of construction and issuance of certificates of occupancy for all Residences proposed for development thereon.

Maintenance Assessment: Any monthly or periodic fee assessed to an Association Member, pursuant to Section 8.03.

Manager: The person or corporation appointed to manage the Common Area, pursuant to Section 7.05.

Member: A Member of the New Construction Committee or Modifications Committee, or both.

Modifications Committee: The Modifications Committee, created, pursuant to Article 6 of this Declaration.

Modification Rules and Guidelines: The rules and guidelines adopted by the Modifications Committee, pursuant to Section 6.03.

New Construction Committee: The New Construction Committee, created, pursuant to Article 6.

New Construction Design Handbook: The design guidelines and procedures adopted by the New Construction Committee, pursuant to Section 6.04.

Notice: A notice delivered, pursuant to Section 9.09.

Operating Fund: The fund created, pursuant to Section 8.01.

Owner: A person, corporation, partnership or other legal entity who is the beneficial owner in fee simple, or the lessee of a Lot with an initial lease term of thirty (30) years or more, including the purchaser of such fee simple or leasehold interest under an agreement of sale; provided, however, that:

(a) For the purposes of limitations and restrictions set forth in Article 5, Owner shall not include Declarant or any Developer with respect to any Lot owned by the Declarant or owned by any Developer;

(b) Owner shall include the Family of any Owner for the purposes of Article 5, unless the context requires otherwise.

Private Area: The portions of the Property, which are planned for single family and multi-family residential use and related community facilities, or have been developed into Residences and related community facilities and which are or may be classified as such in a Declaration of Annexation.

Property: The real property, more particularly described in Exhibit "A", together with such other real property annexed thereto from time to time, pursuant to Section 4.03.

Record: With respect to any document or subdivision map, to record or file such document or subdivision map in the Bureau of Conveyances or the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

Recreational Facility: Any improvement used for or in connection with any recreational purpose or activity, including without limitation, park and playground facilities, riding stables, and

trails, tennis courts, community gathering halls and auditoriums, hobby centers, arts and craft centers, and swimming pools.

Residence: An Apartment or a single-family dwelling building on a Lot within the Private Area used for residential purposes, together with a Garage.

Restrictions: The covenants, conditions, and restrictions contained in this Declaration, as amended from time to time.

Road: Any paved vehicular way constructed within or upon any portion of the Common Area or the Cotenancy Area, excluding any apron or other paved area constructed for the purpose of providing paved access from such way to any Private Area or within any Cotenancy Area.

Rules: The rules to be adopted, pursuant to Section 7.06, as amended from time to time.

Special Assessment: Any assessment levied by the Association, pursuant to Section 8.04.

Sub-Association: An association of Apartment Owners or Lot Owners of portions of the Property.

Subdivision: The division of any Lot into two or more Lots.

Subdivision Map: Any map showing a Subdivision recorded in the Bureau of Conveyances or in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, or having received final subdivision approval from the County of Maui.

Village: Each separate phase of the development of the Villages of Leiali'i as designated by Declarant.

Village 1: The first development to be developed, consisting of the property described in Exhibit "B".

Villages of Leiali'i: The planned urban community to be developed on the Property as described in Sections 1.02, 1.03, and 1.04.

Visible from a Public Street: With respect to any given object or activity, that such object or activity in a Lot visible from any point of a street fronting the Lot or adjacent to the Lot.

4. PROPERTY SUBJECT TO RESTRICTIONS

4.01 Villages of Leiali'i: Initial Development.

(a) The real property initially subject to the Restrictions shall be the portion of the Property described in Exhibit "B", comprising Village 1, as the same shall be held, sold, conveyed, encumbered, leased, occupied, and improved. The remaining portions of the

Property may from time to time be annexed hereto, pursuant to Sections 4.02, 4.03 and 4.07. An initial general plan of the Villages of Leiali'i which shows the relative proposed size, location and land use of various developments to be developed within the Property is set forth in Exhibit "C".

- (b) The initial annexed area shall be classified as a Private Area.

4.02 Annexation of Property to Villages of Leiali'i.

Declarant may annex portions of the Property to the Villages of Leiali'i without the consent of the Owners, upon satisfaction of the following requirements:

- (a) Declarant is the owner in fee simple of the Property to be annexed, or the fee simple owner joins in the Declaration of Annexation executed by Declarant;

- (b) Declarant and the applicable Developer, if any, shall record a Declaration of Annexation, which may consist of one or more documents, which, among other things:

- (1) describes the portions of the Property to be annexed;

- (2) sets forth or refers to the Restrictions and to such other further limitations, restrictions, covenants and conditions, which are to be applicable to such portions of the Property;

- (3) declares that such portions of the Property are to be held, sold, conveyed, encumbered, leased, occupied, and improved subject to the Restrictions;

- (4) classifies such portions of the Property as Private Area, Common Area or other special use areas, pursuant to Section 5.01; and

- (5) identifies the Developer of such portions of the Property.

- (c) Declarant may, but shall not be obligated to impose an annexation fee to be paid by a Developer in addition to the Initiation Assessment.

4.03 Annexation of Real Property to the Property.

Declarant may annex real property not within the Villages of Leiali'i to the Property, thereby subjecting such real property to the Restrictions, without the consent of the owners, upon satisfaction of the following requirements:

- (a) Declarant is the owner in fee simple of the real property to be annexed, or the fee simple owner joins in the Declaration of Annexation executed by Declarant;

- (b) Declarant shall record a Declaration of Annexation which may consist of one or more documents, which:

- (1) describes the real property, which is to be made a part of the Property, subject to the Restrictions;

(2) sets forth or refers to such other and further limitations, restrictions, covenants, and conditions which are to be applicable to such real property;

(3) declares that such real property is to be held, sold, conveyed, encumbered, leased, occupied, and improved subject to the Restrictions;

(4) classifies such real property as Private Area, Common Area or other special use areas, pursuant to Section 5.01; and

(5) describes any conditions under which such real property shall become annexed to the Villages of Leiali'i.

(c) Following annexation of any real property to the Property, Declarant may further subdivide such real property into Lots, Common Areas, and other special use areas, pursuant to a duly recorded Subdivision Map.

4.04 Additional Restrictions Affecting Added Real Property.

Any provision in this Declaration to the contrary notwithstanding, Declarant by recording a declaration as provided in Sections 4.02 or 4.03 above, may subject the real property added to the Property to such other covenants, conditions, and restrictions as Declarant may deem appropriate, including but not limited to:

(a) The designation of land classifications not provided for in Section 5.01 hereof and such covenants, conditions, and restrictions with respect to the use of real property in such land classifications as Declarant may deem appropriate; and

(b) Such additional covenants, conditions, and restrictions with respect to the land classifications provided for in Section 5.01 as Declarant may deem appropriate, provided that additional covenants, conditions, and restrictions shall be subject to the Restrictions and shall be exclusively applicable to such real property annexed to the Property.

4.05 Withdrawal of Property From the Villages of Leiali'i.

Declarant may withdraw portions of the Property from the Villages of Leiali'i thereby releasing such portions of the Property from the Restrictions without the consent of the Owners, provided that (a) Declarant or a Developer is the sole owner of the portion of the Property to be withdrawn; and (b) such portion of the Property has direct access to a public roadway. Upon such withdrawal, such portion of the Property shall no longer comprise a portion of the Villages of Leiali'i and shall be effective upon the execution and recordation of a document which describes such portion of the Property and declares such portions of the Property to be withdrawn from the provisions of this Declaration.

4.06 Property Subject to Restrictions Limited.

(a) No real property, except for the Property and the real property specifically annexed to the Property pursuant to this Article 4, shall be deemed subject to the Restrictions, whether shown on any Subdivision Map recorded by Declarant or described or referred to in any

document executed or recorded by Declarant. Nothing contained in this Declaration or in any Declaration of Annexation shall be deemed to be a representation or warranty that Declarant will commit or subject to the Restrictions any real property Declarant now owns or may hereafter acquire, other than the Property; and

(b) No designation of any Lot or other area as a Private Area, Common Area, Cotenancy Area, road, school or park or for any other type of use on any map recorded by Declarant, shall be deemed a dedication or representation or warranty that such Lot or area is or will be used, or restricted to such use, nor shall any owner, the public, any public agency or any other person acquire any rights to such Lot or other area by reason of such designation.

4.07 Annexation of Subsequent Developments.

Association may, with the consent of the owner of the real property to be annexed, pursuant to the provisions of this section, from time to time and in its sole discretion, annex to the Villages of Leialii all or any part of any real property situate in Lahaina, Maui, Hawaii (not then constituting a part of the Villages of Leialii) upon approval by an affirmative vote of seventy-five percent (75%) of all Class A Association Members and one hundred percent (100%) of all Class B Association members, if any, as defined in Section 7.02, and Declarant (if such real property is not owned by Declarant), at a meeting duly called for this purpose, written notice of which meeting shall have been sent to all Association Members not less than 30 days in advance of the meeting, setting forth the purpose of the meeting.

(a) The annexation of such real property shall become effective and such real property shall become a part of the Villages of Leialii when Declarant or Association and the Owner(s) of the real property to be annexed shall have recorded:

(1) A Declaration of Annexation which:

(i) describes the real property to be annexed to the Villages of Leialii;

(ii) sets forth or refers to such additional or other covenants, conditions, and restrictions applicable to such real property;

(iii) declares that such real property is held and shall be held, sold, conveyed, encumbered, leased, occupied, and improved subject to the Restrictions;

(iv) classifies such real property as Private Area or Common Area; and

(v) describes any conditions under which such real property shall become annexed to the Villages of Leialii.

(b) The Declaration of Annexation may, with respect to all or any part of the real property described in such Declaration of Annexation, provide such new land classifications not then provided for in Section 5.01 and such covenants, conditions, and restrictions as the Association may deem to be appropriate for the development and use of such real property;

(c) This Association may impose an annexation fee to be paid in addition to the initial assessment.

5. LAND CLASSIFICATIONS AND RESTRICTIONS

5.01 Land Classifications.

All the Property within the Villages of Leiali'i shall be classified into one of the following areas: (a) Private Area; (b) Common Area; and (c) other special use areas designated in Exhibit "C" or in a recorded Declaration of Annexation. Declarant may amend any of the foregoing classifications from time to time, pursuant to Sections 9.01 and 9.05.

5.02 Private Area: Uses and Restrictions.

Each Lot in the Private Area shall be for the exclusive use and benefit of its Owner, subject, however, to the following covenants, conditions and restrictions:

(a) Only one Family (including domestic servants and transient guests) shall occupy each Lot in the Private Area, and each Owner shall construct only one single-family Residence (which may include a guest room without a kitchen connected to the main dwelling) on any Lot in a Private Area designated for single-family residential purposes. The foregoing provision will not be enforced in any manner that will constitute a violation of any applicable statute, ordinance, rule, or regulation adopted by any governmental authority, including, but not limited to, the provisions of the Federal Fair Housing Act and Chapter 515, Hawaii Revised Statutes, as amended.

(b) No Owner other than Declarant or Developer shall make any improvement or perform other work which alters any Lot in any way from its natural state or improved state existing on the date such Lot was first conveyed in fee by Declarant or Developer to the Owner of such Lot, except in compliance with the provisions of Section 5.03. No Owner of a Lot bordering on a public street shall alter any landscaping or fencing visible from such public street without first obtaining the approval of the Modifications Committee.

(c) Each Owner shall use such Owner's Lot in the Private Area exclusively for residential purposes and shall not use any Lot or structure on a Lot for or in connection with the conduct of any trade or business; provided, however, that nothing in this paragraph (c) shall be deemed to prevent:

(1) The use of a Lot for business pursuits, including, but not limited to artists, artisans, or craftsmen, so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the Lot; (b) the business activity conforms to all zoning and land use requirements for the Property; (c) the business activity does not involve persons coming to or visiting the Lot or deliveries made to or picked up from the Lot; (d) the business activity does not involve the sale or offer for sale of any item to the public on the Lot; (e) the business activity does not increase the liability or casualty insurance obligation or premium of the Association; and (f) the business activity is consistent with the residential character of the Association and does not constitute a nuisance or

hazardous or offensive use, as may be determined in the sole discretion of the Board of Directors; or

(2) Declarant or any Owner from renting the Residence on any Lot from time to time, subject, however, to the Restrictions.

(3) Declarant or a Developer from operating a temporary sales office from any Lot.

(4) The use of a Lot for the purpose of providing child care services in a family child care home, which is either licensed by the Department of Human Services of the State of Hawaii or legally exempt from such license requirements (under rules or regulations promulgated by the Department of Human Services).

(d) Each Owner shall maintain all Improvements erected on such Owner's Lot and all landscaping and vegetation planted on such Lot from time to time in good and clean condition and repair and in such manner as not to create a fire, safety or health hazard to the Villages of Leialii or any part thereof, at such Owner's sole cost and expense. The Owner of any Lot shall maintain, or cause such Owner's Sub-Association to maintain in a neat and attractive condition any planting strip or portion thereof lying between the sidewalk and the street bordering such Lot. Each Owner of a Lot bordering on a public street shall maintain or cause to be maintained in a neat, clean, and healthy condition all landscaping visible from such public street.

(e) Each Owner of a Lot will maintain or cause such Owner's Sub-Association, if applicable with respect to areas to be maintained by such Sub-Association, to maintain in good repair any fence or wall along any street boundary of such Owner's Lot or within the Cotenancy Area, respectively, which had been erected by Declarant or Developer, and will also maintain any fence or wall erected by Declarant or Developer on the Lot or within two (2) feet of any common boundary between the Lot and any neighbor's Lot. Each Owner with a fence or wall along such a common boundary shall be liable to the Owner of the adjoining Lot for half the cost of maintenance or repair of such fence or wall incurred by such Owner of the adjoining Lot, unless such fence or wall is maintained by a Sub-Association.

No Owner shall replace any fence or wall without the approval of the Committee. Existing fences and walls may be replaced with fences and walls of the same or like material or such other materials approved by the Committee from time to time.

(f) No Owner shall subdivide or consolidate and resubdivide a Lot or Lots to create additional residential Lots, except pursuant to the provisions of Section 9.04.

(g) No Owner shall place or use exterior speakers, horns, whistles, bells or other sound devices on any Lot, except security devices used exclusively to protect the security of the Lot and Improvements thereon.

(h) No Owner shall keep or maintain any animals on any Lot other than a reasonable number of generally recognized house pets for such Owner's personal pleasure and not for sale or other commercial purposes. No Owner shall keep or maintain fowl or birds, other than caged

songbirds on any Lot. No Owner shall keep or maintain animals or birds, which are a nuisance to neighbors.

(i) No Owner shall erect any sign upon any Lot, including without limitation, commercial, political or similar signs, visible from a Public Street except:

(1) such signs as may be required by legal proceedings;

(2) one or more residential identification signs having a maximum combined area of one square foot per Lot;

(3) during the construction of any Residence or other improvement, a job identification sign having a maximum area of six (6) square feet and of the type usually displayed by contractors, subcontractors, financial institutions and tradesmen;

(4) no more than one "For Sale" or "For Rent" sign, having a maximum area of three (3) square feet. Such sign shall refer only to the Lot on which it has been placed;

(5) signs warning of hazardous or dangerous conditions and security alarm/system signs, which have been approved by the Committee; and

(6) other signs approved by the Committee from time to time.

(j) No Owner shall keep, place or maintain any house trailer, mobile home, permanent tent or similar facility or structure upon any Lot at any time; provided, however, that this paragraph shall not prevent an Owner from maintaining temporary construction shelters for a period not to exceed one year to be used exclusively in connection with the construction of any work or improvement permitted in Section 5.03,

(k) No Owner shall keep, place or maintain any truck of more than one (1) ton capacity upon any Lot in such a manner that such truck is visible from a Public Street; provided, however, that this paragraph shall not prevent an Owner from maintaining construction equipment for a period not to exceed one (1) year to be used exclusively in connection with the construction of any work or improvement permitted by Section 5.03.

(l) No Owner shall construct, place or maintain any accessory structures or buildings upon any Lot prior to the construction of the main structure of the Residence; provided, however, that this paragraph shall not prevent an Owner from maintaining temporary construction shelters for a period not to exceed one (1) year to be used exclusively in connection with the construction of any work or improvement permitted in Section 5.03.

(m) No Owner shall construct, reconstruct or repair any trailer, vehicle or boat upon any Lot in such a manner that such construction, reconstruction or repair is visible from a public street nor shall an Owner maintain any vehicle not in good operating condition upon any Lot so as to be visible from a public street; provided that this paragraph shall not prevent an Owner from performing maintenance work and minor repairs on such Owner's own trailer, vehicle or boat in such Owner's Garage. Without limiting any other remedy set forth in this Declaration, the Association shall have the right to enter any Lot to remove any trailer, vehicle or boat being

constructed, reconstructed or repaired in violation of this Section to a public dump, a repair shop, or a storage yard. The Owner of the Lot shall be responsible for all costs involved (whether or not such Owner is the owner of the removed trailer, vehicle or boat) and shall pay to the Association all costs incurred. Neither the Association nor its agents shall be liable for trespass, for invasion of privacy, or for conversion or any damages for the removal of such trailer, vehicle or boat.

(n) No Owner shall keep garbage or trash on any Lot so as to be visible from a Public Street, except in closed receptacles placed for garbage or trash removal or except as otherwise screened from view from the adjoining Public 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 a Public Street.

(o) No Owner shall openly store furniture, fixtures, appliances and other goods and chattels not in active use so as to be visible from a Public Street, and no Owner shall keep outside clothes lines or other outside clothes drying or airing facilities, except within a fenced service yard and not visible from a Public Street.

(p) No Owner shall permit any exterior fires, except barbecue fires and decorative tiki torches, nor shall any Owner permit any condition on such Owner's Lot, which creates a fire hazard.

(q) No vehicular access is permitted from any Lot to a Road over a boundary which is indicated on the Subdivision Map covering the Lot to have restricted access, nor over any strip of Common Area lying between the boundary of a Lot and a Road (except where such access over such Common Area is the only access from the Lot to any Road and an easement has been obtained from the Association). No Owner shall cut any curb along any Road adjacent to any boundary, which is shown on the Subdivision Map as having restricted access.

(r) No Owner shall park a motor vehicle on any sidewalk area or on any Common Area or on any portion of a Lot, except in a Garage or on a paved driveway area. No Owner shall keep any motor vehicle on any Lot, unless such motor vehicle is in operating condition, is currently registered with the Department of Motor Vehicles of the County of Maui, and bears a current safety inspection sticker. No Owner shall keep any boat, trailer or truck camper on any Lot, except in a Garage.

(s) No Owner shall use a Garage for other than the parking of motor vehicles and boats, unless the Garage is enclosed so as not to be Visible from a Public Street and normally kept closed. No Owner shall use a Garage as a laundry or for storage purposes, unless the Garage is enclosed.

(t) No Owner shall violate or permit the violation on such Owner's Lot of any applicable law or ordinance pertaining to zoning, buildings, fires, signs or other matter relating to the use and development of such Lot.

(u) No Owner shall undertake an activity upon any Lot or in or about any Lot, which would unreasonably disrupt or impair the privacy and quiet enjoyment of any other Lot or Owner thereof and no unlawful activity on any Lot.

(v) No Owner shall construct any building or structure between the street boundary of the Lot and any applicable building setback line along such boundary; provided, however, that an Owner may construct walks, fences, walls, driveways, and garbage receptacle enclosures if not otherwise in violation of any other restriction contained in this Declaration or in the New Construction Design Handbook or the Modifications Rules and Guidelines.

(w) No Owner shall use any reflective finishes on exterior surfaces (other than non-mirrored glass). Exterior paint shall be either flat or semi-gloss.

(x) No Owner shall finish any roof with built-up tar and gravel, except that flat roofs may be finished with built-up tar and gravel in colors of dark brown to red-brown and gray to blue-gray.

(y) No Owner shall install metal siding on a Residence, and no Owner may install liquid petroleum gas tanks on any Lot, if such tanks are Visible from a Public Street.

(z) No Owner shall install or maintain permanent exterior electric lighting without the prior approval of the Modifications Committee. No exterior lighting shall be installed that creates an annoyance or nuisance to other Lots. No owner shall install or maintain any antenna which is Visible from a Public Street, except that an Owner may install an antenna not exceeding ten (10) feet in height above normal grade area if such antenna is not visible from the adjacent street.

(aa) All telephone and electric power lines, water pipe lines, and all other conduits for utilities shall be installed underground when outside the walls of the Residence.

(bb) No Owner other than Declarant or a Developer shall remove any tree within twenty-five (25) feet of the property line of any Lot without the prior approval of the Committee.

(cc) No Owner, other than Declarant or Developer, may plant trees within any setback area established in the New Construction Design Handbook or the Modifications Rules and Guidelines without the prior written approval of the Committee.

(dd) No Owner may use second hand or used lumber or other material in any construction on any Lot.

(ee) If due to the peculiar location, size or topography of a particular Lot, an Owner cannot reasonably build a Residence without violating a specific provision of this Section 5.02, the Board shall have the authority, with the prior written approval of the Committee, to grant a variance from such specific restriction, which would permit such Owner to proceed to build and occupy a Residence without regard to the specific restriction.

(ff) The Association shall have the rights set forth in Section 7.05 with respect to each Lot.

(gg) During the course of development and construction on any Lot, the terms of this Section 5.02 will be waived for Declarant and Developer to the extent necessary to permit construction of a Residence, pursuant to plans approved by Declarant.

5.03 Private Area; Construction and Alteration of Improvements: Excavations.

No Owner may construct, reconstruct, refinish, alter or maintain any improvement upon, under or above any Lot of a Private Area or may make or create any Excavation or Fill thereon, or may make any change in the natural or existing surface drainage thereof, or may install any utility line (wire or conduit) thereon, except in compliance, as the case may be, with the New Construction Design Handbook and the Modifications Rules and Guidelines, as may be amended from time to time, and all provisions of this section:

(a) Except to the extent reasonably necessary for the construction, reconstruction or alteration of any such improvement for which the Owner has obtained approval from the Committee, pursuant to this Section 5.03:

(1) no Owner shall conduct any Excavation or Fill which would be Visible from a Public Street; and

(2) no Owner shall install a power, telephone or other utility line (wire or conduit) on or under any Lot in a Private Area which would be Visible from a Public Street. The Association shall, in the event of any violation of the provisions of this subsection, restore such Private Area to its state existing immediately prior to such violation, including the removal of any unauthorized power, telephone or other utility line. The Owner of the Lot shall reimburse the Association for all expenses incurred by the Association in performing any curative action under this subsection.

(b) Any Owner proposing to construct, reconstruct, refinish or alter any part of the exterior of any improvement or to perform any other work, which requires prior written approval of the Committee, shall apply to the appropriate Committee for approval in accordance with the New Construction Design Handbook or the Modifications Rules and Guidelines.

(c) No approval of the Committee shall be required for any interior Improvements or alterations, nor shall approval of the Committee be required for reconstruction or refinishing in accordance with the plans for Improvements previously made by Declarant or a Developer or previously approved by the Committee.

(d) The provisions of this Section 5.03 to the contrary notwithstanding, no approval by the Committee shall be required for any construction done by or for Declarant or any Developer, including without limitation any construction of Residences by Declarant or any Developer and any work done by Declarant or any Developer, their representatives, agents, employees or contractors in connection with the construction of subdivision Improvements required by the State of Hawaii or the County of Maui or in connection with the construction of any roadways, signage or landscaping or any electrical, cable television, communication, water, sewer or other utilities.

(e) The Committee shall have no power to vary any of the standards and restrictions set forth in the Restrictions, except as may be permitted herein or authorized by the Board or Declarant. The Association shall have the right to commence and pursue any remedy provided

in the Restrictions for any violation by an Owner of the Restrictions, whether or not the Committee shall have approved plans and specifications.

(f) In reviewing plans and specifications, the Committee shall consider whether the proposed Improvement complies with the restrictions stated in Section 5.02 and whether the proposed Improvement:

(1) is compatible as to the quality, type of materials, workmanship, and external design with reference to existing structures and other Improvements in the area, and location of the proposed Improvement is compatible with respect to topography and ground elevation;

(2) conforms to the New Construction Design Handbook and/or Modifications Rules and Guidelines and general plan of the Villages of Leialii;

(3) constitutes a suitable and adequate development of the Lot;

(4) is, in the case of a Residence, comparable to other Residences in the area in value and design; and

(5) will not, because of its design unreasonably interfere with the light and air to or view from adjoining Lots.

5.04 Common Area: Uses; Restrictions.

Non-exclusive use of the Common Area shall be reserved equally to all Owners, except as specifically provided herein, and every Owner shall have a right and easement in and to the Common Area, which easement shall be appurtenant to every Lot, subject, however, to the following restrictions:

(a) Use of the Common Area shall be subject to the Rules.

(b) Use of the Common Area shall be subject to such easements and rights-of-way then existing or reserved by Declarant or a Developer with Declarant's consent, at the time of conveyance to the Association, 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 utility easements as may from time to time be granted or conveyed by Declarant or a Developer, the right to make such grants of easement being expressly reserved to Declarant and to a Developer to whom Declarant has expressly delegated such right, or to the Association pursuant to the provisions of paragraph (c) of Section 7.05.

(c) No Improvements, Excavation or other work, which in any way alters any Common Area from its natural state or existing state on the date when such Common Area was conveyed to the Association, shall be done except in strict compliance with provisions of this Section 5.05.

(d) Except to the extent otherwise permitted pursuant to the provisions of paragraph (b) above, Section 5.05 below, and Article 3 and Article 10 herein and the applicable

subsections thereof, the Common Area shall be exclusively devoted to natural recreational uses which do not damage the Common Area or the vegetation therein, increase the cost of maintenance thereof, or cause unreasonable embarrassment, disturbance or annoyance to Owners in their enjoyment of the Private Areas, or in their enjoyment of the Common Areas. Nothing herein is intended to prohibit recreational play (e.g., soccer, baseball, etc.) which would, by the very nature of the play, cause some damage to the vegetation and some increase in the cost of maintenance. The Board of Directors shall have the authority to regulate the type of recreational play permitted on the Common Areas. The following restrictions shall apply:

(1) there shall be no camping in Common Areas, except as permitted by the Board by written license.

(2) no fires shall be started in Common Areas, except fires started and controlled by the Association incidental to maintenance of the Common Area, and fires in enclosed cooking facilities and campfires in picnic areas within Recreational Facilities developed by the Association.

(3) no animals shall be permitted on Common Areas, except generally recognized house pets under the control of their owners, livestock owned by the Association, and horses in areas developed or maintained by the Association as bridle paths or equestrian recreational facilities.

(e) The right to use and enjoy the Common Areas shall extend to Owners and families of all Owners and invitees.

(f) Declarant may reserve certain Common Areas within the Villages of Leialii for the development and operation of private Recreational Facilities, the use of which require payment of assessments or other fees. Any such private Recreational Facility may be owned, operated or managed by the Association or a private party, including without limitation, a Sub-Association or other association of apartment owners.

5.05 Common Area: Construction and Alteration of Improvements.

No Improvements, Excavation or other work which alters any Common Area from its natural or improved state on the date when such Common Area was conveyed to the Association shall be done, except in compliance with the following provisions:

(a) No person other than Declarant, a Developer, the Association or a Governmental Agency, and their respective contractors and employees shall improve, excavate, construct, reconstruct, refinish, alter or maintain any Excavation or Fill upon or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub or other vegetation from or plant any tree, shrub or vegetation upon any Common Area;

(b) The Association shall first submit the final plans and specifications for any proposed construction, reconstruction, refinishing or alteration of the exterior of any Improvement located or to be located upon any Common Area, or for any proposed Excavation or Fill or change to the natural or existing drainage or for removal of any existing trees having a height in excess of six (6) feet or a trunk measuring six (6) inches or more in diameter at ground

level from any Common Area to the appropriate Committee for approval in such form and containing such information as the Committee may from time to time require. The Committee shall approve the plans and specifications upon satisfaction of the following conditions:

(1) any plans to construct any new Improvements, or to alter the exterior appearance of any existing Improvement upon any Common Area shall comply with the standards set forth in Section 5.03(f)(1) through (5) inclusive, which standards will also apply to Common Areas, and that the design of such Improvements is in harmony with other Improvements and the overall appearance of the Villages of Leialii;

(2) the Committee shall review and shall either approve or disapprove such plans in writing within sixty (60) days after submission, unless said time period is extended as hereinafter provided and in the event of disapproval shall state in writing the reasons for such disapproval. If the Committee is unable to act on the plans within sixty (60) days, the Committee may either deny the application or extend the time for response for a period of an additional thirty (30) days. If the time period is extended, the Committee shall make a reasonable effort to notify the Association of its decision to extend the time for its response. The Committee's failure to approve or disapprove the plans within said sixty (60) day period, or ninety (90) day period if the time period is extended, shall be deemed approval.

(3) the Association is not required to obtain the approval of Declarant or any Developer.

(c) The provisions of this Section 5.05 to the contrary notwithstanding, no approval by the Committee shall be required for any construction done by or for Declarant or any Developer, including without limitation any construction of Recreational Facilities by Declarant or any Developer and any work done by Declarant or any Developer, their representatives, agents, employees or contractors in connection with the construction of subdivision Improvements required by the State of Hawaii or the County of Maui or in connection with the construction of any roadways, signage or landscaping or any electrical, cable, television, communication, water, sewer or other utilities.

(d) The Association may, without approval of the Committee at any time:

(1) reconstruct, replace, refinish any improvement upon a Common Area in accordance with Plans previously approved by the Committee, or if such Improvement existed upon the Common Area when such Common Area was conveyed to the Association, then in accordance with the original design and the original or a higher standard of construction of such Improvement;

(2) construct, reconstruct, replace or refinish any roadway 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 in a Common Area, or plant trees, shrubs and ground cover, and install appropriate irrigation system.

(4) place and maintain upon any Common Area such signs as the Association may deem necessary for the identification of the Villages of Leialii and of Roads for

the regulation of traffic, parking and use of the Common Area and for the health, safety, and general welfare of Owners and the public, provided that the design of any such signs first shall be approved by the Committee.

(e) Any Owner may, with the prior written approval of the Committee and having previously obtained an easement from the Association install and maintain a subsurface utility system within a Common Area.

5.06 Cotenancy Areas: Uses and Restrictions; Construction and Alteration of Improvements.

Each Cotenancy Area shall be for the exclusive use and benefit of its Owners, subject, however, to the following covenants, conditions and restrictions:

(a) The Association, or its duly authorized agents, shall have the rights set forth in Section 7.05 with respect to each Cotenancy Area.

(b) No Improvement or other work which alters any Cotenancy Area from its natural or improved state existing on the date the first undivided interest in such Cotenancy Area was conveyed by Declarant or a Developer to an Owner or Sub-Association shall be done, except in compliance with the following provisions:

(1) no Owner will undertake any such Improvement or work without the written consent of the other Owners of the Cotenancy Area, or if applicable, the written consent of the Sub-Association, which maintains the Cotenancy Area.

(2) any Improvement to or other work to be done on a Cotenancy Area other than construction by Declarant or a Developer shall require approval of the Committee, the standard for approval being the standard required for any Improvement or other work on a Lot to which an undivided interest in a Cotenancy Area is appurtenant.

(3) a Sub-Association shall not be required to obtain consent of the Owners prior to making any Improvements in a Cotenancy Area.

(c) A Cotenancy Area may be used for any purposes for which such Cotenancy Area was expressly created, as described in any declaration or conveyance document. No Owner shall use any Cotenancy Area for any use to which such Owner cannot also put such Owner's dominant Lot under the provisions of the Restrictions.

(d) All Owners of undivided interests, and if so provided in an appropriate declaration, a Sub-Association shall be responsible for maintaining their Cotenancy Area and all landscaping planted on such Cotenancy Area in good and clean condition and repair and in such manner as not to create a fire, safety or health hazard to any part of the Villages of Leialii. The Sub-Association may assess each Owner of an interest in a Cotenancy Area a proportionate share of any expenses incurred by such Sub-Association in so maintaining the Cotenancy Area.

(e) An Owner shall neither convey an undivided interest in a Cotenancy Area separately from the Lot to which the undivided interest in the Cotenancy Area is appurtenant nor convey the Lot to which the undivided interest in the Cotenancy Area is appurtenant without also conveying the undivided interest in the Cotenancy Area; provided, however, that all of the Owners of the Cotenancy Area may jointly grant an easement in favor of a Sub-Association over a Cotenancy Area or dedicate their respective undivided interest in the Cotenancy Area to a Sub-Association, the State of Hawaii or County of Maui for public purposes, or to the Association to be held as a Common Area if the Association is willing to accept the dedication. Upon acceptance of such conveyance by the State of Hawaii or County of Maui, or by the Association, the Cotenancy Area so dedicated shall become a Common Area.

5.07 Lots Owned by Exempt Organizations.

The restrictions on Improvements, use and occupancy set forth in this Article 5 shall apply to any Lot even if such Lot is owned by or leased to any Exempt Organization. An Exempt Organization which utilizes its Lot for public, governmental or public utility purposes, exclusive of any residential use, shall, however, have no right to vote as a member of the Association, and shall not be liable for any assessments under the provisions of Article 8, but shall be liable for all costs and expenses incurred by the Association in enforcing the provisions of the Restrictions.

5.08 Exempt Areas.

The provisions of Article 5 to the contrary notwithstanding, the restrictions on Improvements use and occupancy set forth in Section 5.02 shall not apply to any Lot or, so long as such Lot is owned by or leased to any Governmental Agency, and used for public, governmental or public utility purposes, exclusive of any residential use, to the extent that such restrictions shall prevent reasonable use of such Lot for said purposes. All restrictions not preventing reasonable use for public, governmental or public utility purposes shall continue to apply as if the Lot is used by a private Owner, including without limitation, all requirements of the Committee approval, regarding Improvements to be made by the Governmental Agency. On cessation of such governmental use, the restrictions of this Article 5 shall become applicable to the Lot. Declarant and the Association shall have the power to release any Lot or other real property, temporarily or forever from any restrictions in this Article 5, if such waiver shall be necessary or advisable to obtain acceptance of such real property by the Governmental Agency. A Governmental Agency which uses its Lot for public, governmental or public utility purposes, exclusive of any residential use, shall have no right to vote as a member of the Association, and shall not be liable for any assessments under the provisions of Article 8, but shall be liable for all costs and expenses incurred by the Association in enforcing the provisions of the Restrictions.

5.09 Presumption of Compliance.

For purposes of the Restrictions, the following Improvements, Excavation, Fill, and other work shall conclusively presumed to be in compliance with the provisions of this Article 5 and the New Construction Design Handbook:

(a) All Improvements, Excavation, Fill, and other work existing or maintained on any Lot within the Villages of Leiali'i at the time such Lot became a part of the Villages of Leiali'i.

(b) All Improvements, Excavation, Fill and other work existing or maintained on any Private Area at the time such Private Area was first conveyed by Declarant or Developer to an Owner or a Sub-Association.

(c) All Improvements, Excavation, Fill, and other work from time to time constructed, or maintained by Declarant or any Developer upon any Lot or Cotenancy Area in any Private Area, or upon any Common Area, or Cotenancy Area.

5.10 Agricultural Operations.

The Owner of each Lot by acceptance of a deed or lease for such Lot shall be deemed to acknowledge that the Villages of Leiali'i is located near or adjacent to land and easements used for and in connection with diversified agricultural operations, including, but not limited to, open burning, percolating, evaporating, milling, generating power, trucking, plowing, hauling, fertilizing, grading, storage, herbicide, ripener, and pesticide spraying, crop dusting, water diversion, irrigating, and all other activities incidental to the planning, cultivating, harvesting, and processing of crops, which may from time to time cause surface water runoff, noise, soot, smoke, dust, light, heat, vapors, odors, chemicals, vibrations, and other substances and phenomena of every description (collectively the "Agricultural Effects") to be discharged, emitted, or transmitted over and upon the Property, which may bother or be a nuisance to such Owner and any person occupying or using any Lot in the Villages of Leiali'i. Such Owner shall also be deemed to acknowledge that the Hawaii Right to Farm Act (H.R.S. Chapter 165) and the Hawaii law limit the circumstances under which farming operations may be deemed to be a nuisance.

The Villages of Leiali'i are also located adjacent to the Lahaina Civic and Recreation Center from which noise, dust, and traffic arise.

Also located or to be located in the Villages of Leiali'i are elementary schools and other schools, and also facilities which may open to the public, such as churches, community centers, and the like, from which noise, dust, and traffic arise.

Residents of the Villages of Leiali'i may also be subject to possible odor, air, noise, and dust pollution resulting from the Honoapiilani Highway, Leiali'i Parkway, Lahaina Bypass Highway, Cane Haul Road, and any other roadways which are within, adjacent to or near the project site.

Such Owner, for himself or herself, his or her heirs, personal representatives, successors, assigns, and any person using or occupying any Lot in the Villages of Leiali'i shall be deemed by acceptance of such deed or lease to waive, release, and agree to indemnify and hold harmless the State of Hawaii, Declarant, Developers, and their respective officers, directors, employees, agents, successors and assigns from, any and all actions, claims for damages and costs (whether brought in nuisance, trespass, or any other area of law or equity, but excluding negligence), including attorney's fees arising directly or indirectly out of or from

the Agricultural Effects or any of the conditions or uses described herein, and these provisions shall be included in the subsequent conveyance of any Lot in the Villages of Leialii.

6. NEW CONSTRUCTION COMMITTEE AND MODIFICATIONS COMMITTEE

6.01 General.

Responsibility for administration of design guidelines and procedures and review of all applications for construction and modifications under this Article 6 shall be handled by two committees, as described in Sections 6.02 and 6.03.

6.02 New Construction Committee.

The New Construction Committee ("NCC") shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction on any portion of the Property. Until one hundred percent of the Property has been developed and conveyed to Owners other than Developers, the Declarant retains the right to appoint all Members of the NCC who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time, except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Association shall appoint the members of the NCC, who shall serve and may be removed at the discretion of the Association.

6.03 Modifications Committee.

The Association may establish a Modifications Committee ("MC") to consist of at least three and no more than five persons, all of whom shall be appointed by, and shall serve at the discretion of, the Association. Members of the MC may include Architects or similar professionals who are not Association Members. The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing structures or Improvements on Lots and the open space, if any, appurtenant thereto; provided, however, the MC may delegate its authority as to a particular Village to the appropriate Sub-Association or committee, if any, so long as the MC has determined that such Sub-Association or committee has in force review and enforcement practices, procedures, and appropriate standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed by the MC at any time by written notice. Notwithstanding the above, the NCC shall have the right to veto any action taken by the MC which the NCC determines, in its sole discretion, to be inconsistent with the rules and guidelines, promulgated by the NCC.

6.04 Guidelines and Procedures.

(a) The Declarant shall prepare the initial design and development guidelines and application and review procedures (the "New Construction Design Handbook"), which shall be applicable to all construction activities within the Property. The New Construction Design Handbook may contain general provisions applicable to all of the Property, as well as specific provisions which vary from one portion of the Property to another depending upon the location, unique characteristics, and intended use thereof.

The NCC shall adopt such New Construction Design Handbook at its initial organizational meeting and, thereafter shall have sole and full authority to amend them from time to time, without the consent of the Owners.

The NCC shall make the New Construction Design Handbook available to Owners and Developers who seek to engage in development of or construction upon all or any portion of the Property and all such persons shall conduct their activities in strict accordance with such New Construction Design Handbook.

Any amendments to the New Construction Design Handbook, adopted from time to time by the NCC in accordance with this Section, shall apply to construction and modifications commenced after the date of such amendment only, and shall not apply to require modifications to or removal of structures previously approved by the NCC or MC, once the approved construction or modification has commenced.

The MC may promulgate detailed application and review procedures and design standards for modifications governing its area of responsibility and practice ("Modifications Rules and Guidelines"). Any such standards and amendments shall be consistent with those set forth in the New Construction Design Handbook and shall be subject to review and approval or disapproval by the NCC. Revisions to the MC design standards requires unanimous approval of the MC and approval by the NCC.

(b) Plans and specifications showing the nature, kind, shape color, size, materials, and location of all proposed construction and modifications shall be submitted to the appropriate Committee for review and approval (or disapproval). In reviewing each submission, the Committees may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things.

No approval, whether expressly granted or deemed granted, shall be inconsistent with the New Construction Design Handbook.

6.05 No Waiver of Future Approvals.

The approval of either the NCC or MC or any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval or consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters subsequently or additionally submitted for approval or consent.

6.06 Variance.

The NCC may authorize variances from compliance with any of its guidelines and procedures when circumstance such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, providing such variances are consistent with governmental rules, regulations, ordinances, and laws. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to the restrictions set forth in this Declaration; or (c) estop the NCC from

denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

6.07 Estoppel Certificate.

Upon payment to the Association of a reasonable fee to be determined from time to time by the Association, any Owner may request that the Committee deliver to such Owner within thirty (30) days of the request an estoppel certificate executed by any two of its Members in form determined by the Committee, certifying with respect to such Owner's Lot that, as of the date of its execution, either (a) all Improvements and other work done upon such Lot complies with the Restrictions, or (b) such Improvements and work does not so comply, in which event the certificate shall (1) identify the noncomplying Improvements and/or work, and (2) set forth the reason for such noncompliance. Any purchaser or mortgagee of such Owner shall be entitled to rely on the matters therein set forth in such certificates, such matters being conclusive as between the Association, the Owner and such purchaser or mortgagee.

6.08 Liability.

The New Construction Committee, Modifications Committee and any Member of the New Construction Committee or the Modifications Committee shall not be liable to the Association or to any Owner or to any other person for any damage or loss 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 and specifications, (c) the development of any Lot or (d) the execution and filing of an estoppel certificate pursuant to Section 6.07 or the accuracy of any facts stated therein; provided, however, that such Member has acted in good faith. The Committees, or any Member, may, but is not required to, confer with the Association or any Owner or Owner's Architect with respect to any plans, drawings or specifications or any other proposals submitted to such Committee.

6.09 Non-existence of Modifications Committee.

In the event that at any time through death, absence from the State, resignation, or for any other reason, there shall not be sufficient Members of the Modifications Committee necessary to act on a particular matter for a period of at least twenty (20) days, then until there shall again be sufficient Members of the Modifications Committee, the President or any Vice President of the Association, shall act for the Committee, and such officer's certificate that there had been no Modifications 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 Association, the Owners, any purchaser or mortgagee. The President or a Vice President acting under this Section shall be entitled to employ an Architect to render technical advice.

7. THE VILLAGES OF LEIALI'I ASSOCIATION

7.01 Organization.

The Association shall be organized as a nonprofit corporation under Chapter 415B, Hawaii Revised Statutes, as amended. The Association shall have the duties, obligations, and

powers set forth in this Declaration and in the Association's Articles of Incorporation and By-Laws.

Creation of the Association may be deferred at the sole discretion of the Declarant, provided that Declarant undertakes the functions required of the Association as described in this Declaration. The Association or Declarant (prior to the formation of the Association) may delegate all or a portion of the functions of the Association as to a particular Village to the appropriate Sub-Association, if any. Such delegation may be revoked and jurisdiction reassumed at any time by written notice.

7.02 Association Membership.

(a) Each Owner of a Lot shall be a member of the Association (the member is hereinafter referred to as an "Association Member" and membership of such Association Member is hereinafter referred to as the "Association Membership").

(b) For the purposes of determining Association Membership status, an "Association Member" shall include:

(1) the Owner of any Lot within the Private Area who utilizes such Owner's Lot for residential use, excluding Declarant and Developer; and

(2) Declarant or any Developer, so long as Declarant or such Developer is the Owner of any Lot or has any development interest in the Property.

(c) No Association Member shall be terminated, or such Association Membership forfeited, except upon transfer of such Association Member's interest in the Lot; provided, however, that upon execution, delivery and recordation of a valid agreement of sale of interest in a Lot and delivery of a copy of such agreement of sale to the Secretary of the Association, the vendor's Association Membership and all voting rights and obligations incident thereto, shall be considered temporarily transferred to the vendee, such transfer becoming permanent upon subsequent execution, delivery, and recordation of a deed or assignment of lease in satisfaction of said agreement of sale or vesting equitable title in the vendor in the event of termination of said agreement of sale. No Association Member may withdraw, transfer or otherwise dispose of such Association Member's Association Membership, except upon the conveyance, assignment or transfer (or transfer by agreement of sale) of a Lot to which the Association Membership is appurtenant.

(d) There shall be two (2) classes of Association Membership as follows:

(1) Class A Association Members shall include all Owners described in subsection (b)(1) above; and

(2) Class B Association Members shall include Declarant and all Developers described in subsection (b)(2) above.

Declarant's Class B Association Membership and all voting rights and obligations incident thereto shall cease and terminate upon the conveyance and transfer of all interest in

the Property by Declarant to Developers, Owners, the Association, and other third parties such that Declarant no longer retains any interest in the Property.

A Developer's Class B Association Membership and all voting rights and obligations incident thereto shall cease and terminate with respect to a Lot upon the sale and transfer of such Lot by a Developer to the initial owner of such Lot. A Developer's Class B Association Membership shall cease and convert to a Class A Association Membership with respect to a Lot if, pursuant to Section 8.05, a Developer fails to certify to the Association at the time the Residence on such Lot is rendered fit for occupancy that such Developer is not retaining or taking title with the intent of holding such Lot for such Developer's own use or for resale later than twelve (12) months following the date of such certificate.

(e) An Association Member shall have all rights, duties, privileges, and obligations of an Owner as set forth in this Declaration, and in the Articles of Incorporation and the By-Laws of the Association.

7.03 Voting Rights.

Association Members shall be entitled to vote as follows:

(a) Each Class A Association Member shall be entitled to one (1) vote for each Lot owned in the Private Area.

(b) Each Class B Association Member shall be entitled to one (1) vote for each Lot in the Property for which such Member is the Developer, or has any development interest in the Property.

(c) If an Association Member is an Owner comprised of more than one person or entity, any one person or entity shall exercise the votes attributable to such Association Member in the absence of protest by the other co-Owners. In case of protest, each co-Owner shall be entitled to vote its respective fraction of the one vote in proportion to the co-owner's share of ownership in the Lot.

7.04 Duties and Obligations Of the Association.

The Association shall have the following duties and obligations subject to the Restrictions, to be performed and for the maintenance and improvement of the Villages of Leiali'i for the benefit of the Owners:

(a) The Association shall consider as part of the Villages of Leiali'i all real property annexed to the Villages of Leiali'i pursuant to Sections 4.02, 4.03 and 4.07 and shall accept all Owners as Association Members.

(b) The Association shall acquire, accept, and hold title to all Common Areas and other real property from time to time conveyed to the Association, pursuant to Section 9.05. The Association may also acquire, accept, and hold title to any other real, personal or mixed property; provided that Association shall not carry on any business or trade for profit. The Association may charge reasonable fees to Owners for use of the Recreational Facilities on the

Common Areas to defray the costs of construction, maintenance, repair or operation of Recreational Facilities, or of other facilities owned by the Association, where permitted under the Internal Revenue Code of 1986, as amended from time to time.

(c) The Association shall maintain the Common Area and other property owned by the Association, including without limitation Recreational Facilities, drainage facilities, equipment, landscaping, Lots, and easements designated or reserved for dedication to Governmental Agencies, but held by the Association pending such dedication and all Improvements located on the Common Area and other property in good order and repair. The Association shall have no obligation to maintain in good order and repair any improvement constructed upon the Common Area by any Owner, but may compel such Owner to maintain such improvement.

(d) The Association shall accept and undertake to fulfill any delegation, responsibility or liability for the upkeep, repair, and maintenance in good order of any property and Improvements, including drainage facilities and equipment and landscaping, which obligation, responsibility or liability is imposed by or exists by virtue of law or which is imposed by or exists by virtue of a private agreement entered into by Declarant or commitment made by Declarant to a Governmental Agency in the course of the development of the Property, whether or not the Association was or is made a party to such agreement or commitment.

(e) The Association shall accept and undertake the responsibility, and obligation to upkeep, repair, and maintain any area within the Property (whether or not such area is formally designated a Lot) for which such responsibility and obligation has been delegated to the Association by Declarant, or by a Developer with the consent of Declarant, provided that, (1) the area is intended to be conveyed to the Association as a Common Area, (2) the area is available for use by all Owners within the Villages of Leialii or is of general benefit to the Villages of Leialii and (3) Declarant or a Developer gives the Association thirty (30) days prior written notice that responsibility for upkeep, maintenance and repair is being transferred to the Association.

(f) The Association shall pay all real property taxes and assessments levied upon any portion of the Common Area to the extent not assessed to or paid by the Owners.

(g) The Association may contract for, employ or otherwise provide security and refuse disposal services, if such services are not provided by the County of Maui or other governmental agency, and if the cost for such services is assessed directly or indirectly against the Owners.

(h) The Association shall obtain, maintain, and enforce the following policies of insurance:

(1) all Improvements owned by the Association and located upon any Common Area shall be insured against (i) loss or damage by fire (group I perils), (ii) the risks covered by the standard extended coverage endorsements (group II perils) and all risks (special perils), and (iii) such other hazards (including boiler and machinery comprehensive perils) or risks, which a prudent businessman would insure against by an insurance company authorized to do business in Hawaii and in time of war against war damage to the extent such

governmental insurance is obtainable at reasonable cost in an amount as near as practicable to the full replacement costs without deduction for depreciation through the replacement cost endorsement, and if applicable, the inflation guard endorsement to ensure policy limits are maintained at full replacement value by blanket policy or policies in the name of the Association, and

(2) comprehensive general liability insurance with respect to the Common Area and Improvements thereon, under policies, in an amount not less than a combined single limit for bodily injury and property damage with endorsements for general aggregate, products and completed operations liability for ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per occurrence or such higher limits as the Association may from time to time establish with due regard to prevailing prudent business practices in Hawaii.

The policy or policies of insurance referred to in subparagraph (2) above shall name as insureds (i) the Association and its officers, the Board and its members, the New Construction Committee, and the Modifications Committee and their members and the employees of the Association, Board, and such Committees; and (ii) with respect to any liability arising out of the maintenance and use of the Common Area, the Owners. Such policy or policies shall protect each of the insureds as if each were separately insured under separate policies; provided, however, that such policy or policies shall not require the insured or insurers to pay any amounts in excess of the maximum limits stated therein. Each policy of insurance obtained by the Association shall expressly waive all rights of subrogation against Declarant and any Owner.

The Association shall also obtain and maintain in force any policies of insurance covering such other risks the Board as may be determined to be necessary or advisable.

7.05 Powers of Association.

The Association shall have all the powers set forth in the Articles of Incorporation, the By-Laws, and the Restrictions, and all powers conferred upon the Association by the Hawaii Nonprofit Corporation Act, Chapter 415B, Hawaii Revised Statutes, as amended, subject, however, to limitations upon the exercise of such powers as are expressly set forth in the Articles of Incorporation and By-Laws and in the Restrictions, to do all lawful things which may be authorized, required or permitted to be done by the Association under the Restrictions and to do and perform any and all acts, which may be necessary or proper for, or incidental to, the exercise of any of the purposes of the Association or for the health, safety and general welfare of the Owners of the Villages of Leialii. Without limiting the generality of the foregoing, the Association shall have the following express powers:

(a) The Association shall have all the powers set forth in the Restrictions, including without limitation, the power to levy assessments on Association Members, pursuant to Article 8, to defray the cost of satisfying the duties and obligations and take any such action, whether or not expressly authorized by Restrictions, the Rules or the Committee Rules;

(b) In fulfilling any of its duties and obligations under the Restrictions, including without limitation, its duties and obligations for the maintenance, repair, operation, and administration of the Common Area or in exercising any of its rights to construct Improvements

or other work upon any Common Area and any Recreational Facility, the Association shall have the following power:

(1) to contract and pay for and provide for the construction of Improvements or other work upon Common Area, and to contract and pay for and provide for the maintenance, restoration, and repair of all Improvements of whatever kind located on any Common Area, and to contract and pay for and provide for such other services as may be necessary or otherwise in carrying out its functions as set forth in Restrictions on such terms and conditions as the Association shall deem appropriate, and to pay and discharge all liens arising out of any work;

(2) to obtain, maintain, and pay for such insurance policies or bonds as the Association may deem appropriate for the protection or benefit of the Villages of Leialii, the Association, the members of the Board, the Committees or the Owners;

(3) to contract and pay for or provide for such utility services including without limitation, water, sewer, garbage disposal, refuse collection and recycling, electrical, telephone, community antenna television, and gas service, provided such services are made available to all owners on a commercially reasonable basis;

(4) to contract and pay for, or provide for the services of Architects, engineers, attorneys, and certified public accountants and such other services as the Association may deem necessary;

(5) to contract and pay for, or provide for, fire, police, and such other public safety and security as the Association may deem necessary for the benefit of the Villages of Leialii and the Owners; and

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

(c) The Association shall have the power and authority from time to time to convey to any Governmental Agency, public utility, private utility or third party for reasonable compensation or on such other terms as the Board may approve such easements, rights-of-way, parcels or strips of land in, on, over or under any Common Area, for the purpose of:

(1) constructing, directing, operating, and maintaining roads, public 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 water 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 manager (the "Manager") to manage the affairs of the Association, and to the extent not inconsistent with said Chapter 415B, the Association may delegate to the Manager any of its powers under the Restrictions; provided however, that the Manager may execute any contract on behalf of the Association for a sum not to exceed \$10,000 or for the performance of any work or services, which work or services will be completed within sixty (60) days, and shall not have the power to sell, convey, mortgage or encumber any real or personal property of the Association other than unserviceable maintenance or recreation equipment.

(e) The Association may from time to time pay, compromise or contest any or all taxes and assessment levied against all or any part of the Common Area, or upon any personal property belonging to the Association; provided, however that, prior to the sale or disposition of any property to satisfy the payment of any such tax assessments, the Association shall pay and discharge the lien imposed with respect to such property.

(f) The Association may exchange, sell, convey, or otherwise dispose of, for cash or on such terms as the Association shall approve, any portion of the Common Area, with Improvements thereon, or other property of the Association, the retention of which property the Association has determined is no longer necessary, advantageous or beneficial for the Association or for the Owners, and to borrow money, without limit as to the amount for any purpose and to secure the same by a mortgage of the Common Area then owned by the Association, or any other property of the Association; provided, however, that no such exchange, sale or other disposition of any real property in fee and no such borrowing and mortgaging shall be made, unless the same shall have been approved by an affirmative vote of not less than a two-thirds (2/3) interest of all Association Members (excluding Declarant and all Developers) who may vote in person or by proxy at a meeting of the Association duly called for such purpose. The notice for said meeting shall have described the real property to be sold and the terms of sale or the amount of the borrowing and the property to be mortgaged, and shall have given the reasons therefor. Any such mortgage, conveyance or encumbrance of any Common Area shall be subject to an easement for ingress and egress in favor of any Lot, which requires access through such Common Area. All proceeds of any disposition of any sale or borrowing, less the expenses thereof, shall be invested by the Association in additional property acquired for the benefit of the Association and the Owners, or in improving the properties of the Association.

(g) The Association shall have the power and authority, at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purposes of (i) maintaining and repairing any such Lot, if for any reason whatsoever the Owner of such Lot fails to maintain and repair such Lot in good condition and repair, (ii) removing any Improvement constructed, reconstructed, refinished, altered or maintained upon any Lot in violation of the provisions of these Restrictions, New Construction Design Handbook or the Modifications Rules and Guidelines, except as provided in Section 5.09 and (iii) inspecting such Lot to determine compliance with these Restrictions, New Construction Design Handbook or the Modifications Rules and Guidelines, except as provided in Section 5.09.

(h) The Association shall have the power and authority (but shall not be required) from time to time, in its own name or behalf or in the name and behalf of any Owner who consents thereto, to commence and maintain actions or suits to restrain and enjoin any breach or threatened breach of these Restrictions, the New Construction Design Handbook or the Modifications Rules and Guidelines, except as provided in Section 5.09, or to enforce by mandatory injunction or otherwise any of the provisions of these Restrictions or the New Construction Design Handbook or the Modifications Rules and Guidelines, except as provided in Section 5.09.

(i) All reasonable expenses incurred by the Association in exercising its rights under subsections (g) and (h) above, including court costs and attorneys' fees, shall be a special assessment levied pursuant to Section 8.04 against the Owner of the Lot whose violation of these Restrictions, the New Construction Design Handbook or the Modifications Rules and Guidelines resulted in the Association incurring expenses.

7.06 Rules.

(a) The Board may from time to time adopt, amend and repeal rules and regulations to be known as the Rules to govern the following:

(1) the use of Common Area, including Recreational Facilities by any Owner or by the Family, invitees, licensees, or lessees of such Owner;

(2) the use of Roads;

(3) the collection and disposal of refuse;

(4) the burning of open fires;

(5) the maintenance of animals within the Villages of Leiali'i; and

(6) the amount of the Initiation Assessment to be paid by each new Association Member.

(b) With respect to subsection (a) (2) above, the Rules may provide for:

(1) parking restrictions;

(2) maximum speeds for vehicular traffic on Roads;

(3) the time or times when commercial vehicles may be permitted to use Roads owned by the Association; and

(4) the types of vehicles other than passenger automobiles, which may be permitted to use Roads owned by the Association.

(c) The Association shall maintain a copy of the Rules as adopted, amended or repealed from time to time, certified by the secretary of the Association, and shall deliver a

duplicate copy to each Owner on his acquisition of a Lot, and shall deliver a copy of each new rule or amendment of an existing rule and notice of repeal of any rule to each Owner. The Rules shall be incorporated in and have the same force and effect as if they were a part of the Restrictions. Failure of any Owner to receive 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.

7.07 Liability of Members of the Board.

No member of the Board shall be personally liable to any Owner, guest, invitees or to any other person, including the Declarant, for any error or omission of the Association, its employees, the New Construction Committee, the Modifications Committee or the Manager of the Associations so long as such member has acted in good faith.

7.08 Exclusive Powers of the Association.

The Association, through the Board, shall have the exclusive authority to exercise the powers described in paragraphs (b) through (f) inclusive of Section 7.05.

7.09 Association Newsletters.

The Association may publish from time to time a newsletter covering Association business and events and other matters affecting the Association and the surrounding community. All Owners, as defined herein, shall be considered subscribers to the Association's newsletter and a copy shall be mailed to each Owner at the address of the Owner as shown in the Association's record of ownership. The cost of production and distribution of the Association newsletter shall be included in the Maintenance Assessments of the Association.

8. FUNDS AND ASSESSMENTS

8.01 Operating Fund.

The Association shall maintain an Operating Fund into which the Association shall deposit all monies received by the Association, whether from Initiation Assessments, Maintenance Assessments, Special Assessments, income attributable to the Operating Fund or any other rents, charges or fees levied by the Association. The Operating Fund shall comprise the working capital of the Association from which the Association shall make all disbursements and discharge all liabilities in the exercise and performance of its duties and obligations under this Declaration and the Articles of Incorporation and By-Laws of the Association.

8.02 Initiation Assessment.

The Association shall charge to each Owner, except Owners exempt under Section 8.05, an Initiation Assessment upon such Owner taking title to a Lot from a Developer thereby becoming an Association Member. The Initiation Assessment shall be in addition to any other Assessments provided for in this Article 8. The initial Initiation Assessment shall be ONE HUNDRED AND NO/100 DOLLARS (\$100.00). The Initiation Assessment may be increased or decreased pursuant to the Rules.

8.03 Maintenance Assessments.

(a) The initial Maintenance Assessment for each Association Member of each class shall be determined by the Association.

(b) No later than thirty (30) days prior to the commencement of each Fiscal Year beginning with the first Fiscal Year in which the first annual meeting of the Association shall be held, the Board shall estimate the costs and expenses to be incurred by the Association during Fiscal Year in performing its duties and obligations including, without limitation, the cost of utilities for the Common Area, janitorial services, trash disposal, repairs, and maintenance, security, management, the cost of management contracts, supplies, wages, and salaries of employees used in maintenance and general operations, payroll taxes (and similar governmental charges), depreciation or rental of equipment used in operation and maintenance, accounting and bookkeeping expenses, the Association's legal fees and expenses and financing expenses, relating to operation and management, and insurance premiums. In addition, the Board shall make a reasonable provision for contingencies, reconstruction, and replacements and for alterations, modifications, and improvements to existing Common Area and facilities, and for any development of new Recreational Facilities, and for all fees and expenses of the New Construction Committee and Modifications Committee and their operations. The Board shall subtract from the above imposed expenditures the following sources of income:

(1) an amount equal to the anticipated balance (exclusive of any accrued reserves for contingencies and replacements) in the Operating Fund at the start of the Fiscal Year; and

(2) the estimated receipts for all user fees to be collected from users of Recreational Facilities or other facilities during the Fiscal Year.

The sum thus derived shall constitute the basis for determining the Maintenance Assessment for each Fiscal Year.

(c) In each Fiscal Year, the Board shall determine the per unit Maintenance Assessment by dividing the sum determined pursuant to subsection 8.03(b) by the sum of the following:

(1) the total number of Lots in the Private Area owned by Class A Association Members, plus

(2) the total number of Lots in the Private Area owned by Class B Association Members, but excluding the number of Lots exempt from assessment pursuant to subsection 8.03(d).

(d) The following real property shall not be subject to assessment: (1) the Property or portions of the Property not annexed to the Villages of Leialii; (2) any portion of the Property which has not yet been subdivided into individual residential Lots; (3) Lots upon which the construction of proposed Residences has not been completed and such Residences are not fit

for occupancy; (4) any Lot owned by a Governmental Agency or Exempt Organization as described under Sections 5.07 and 5.08; (5) Common Areas; and (6) Cotenancy Areas.

(e) In each Fiscal Year, the Board shall, by a majority vote at a meeting duly called for such purpose, determine the individual Maintenance Assessment to be paid by each Association Member by multiplying the per unit Maintenance Assessment by:

(1) the number of Lots owned, in the case of each Class A Association Member; and

(2) the number of non-exempt Lots owned in the case of each Class B Association Member.

The Board shall prepare and send to all Association Members the budget determined and Maintenance Assessment so determined.

(f) In the event the Board does not determine the Maintenance Assessment by the commencement of a Fiscal Year, the Owners shall continue to pay a Maintenance Assessment in the amount determined for the preceding Fiscal Year.

(g) If at any time during any Fiscal Year, the estimated Maintenance Assessment proves inadequate for any reasons including nonpayment of any Owner's share thereof, the Board may upon notice to all non-exempt Association Members levy a special Maintenance Assessment in the amount of such actual or estimated inadequacy, which shall be assessed to the Owners in the manner set forth in subsection (a) above.

(h) An Owner's obligation to pay the Maintenance Assessment shall commence upon the later of annexation or at such time as such Owner's Lot is fit for occupancy, pursuant to subsection 8.03(d). Owners shall pay the Maintenance Assessment to the Association in equal quarterly installments on or before the first day of each January, April, July, and October, or in such other installments as the Board may designate.

(i) Any assessment charged pursuant to this Article to any Owner of an Apartment or a Lot within a Condominium will be in addition to any assessment or maintenance fees levied by any Sub-Association or association of Apartment Owners.

8.04 Individual Special Assessments.

The Board shall levy a special assessment against any Owner whose acts or failure to comply with the Restrictions, the Rules, the Rules or Guidelines of the Committees or decisions resulting in the Association expending monies from the Operating Fund to enforce the Restrictions, the Rules, the Rules or Guidelines of the Committees or decisions. 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, interest, all costs of enforcement, and engineers', Architects', attorneys', and accountants' fees incurred by the Association.

8.05 Association, Declarant and Other Exemptions.

Owners of the following Lots shall be exempt from assessments under this Article 8 as follows: (a) the Association shall be wholly exempt; (b) Declarant shall be wholly exempt; (c) a Sub-Association shall be wholly exempt; (d) any Governmental Agency as described in Section 5.08 shall be wholly exempt; (e) any Exempt Organization as described in Section 5.07 shall be wholly exempt; and (f) a Developer shall be exempt from the Initiation Assessment, pursuant to Section 8.02, unless such Developer retains or takes title to a Lot, and fails to certify to the Association at the time the Residence on such Lot is rendered fit for occupancy that such Developer is not retaining or taking title with the intent of holding such Lot for its own use or for resale later than twelve (12) months following the date of such certificate.

8.06 Default in Payment of Assessments.

(a) Each assessment under this Article 8 shall be a separate distinct and personal debt and obligation of the Owner of the Lot against which the assessment is made; provided, however, that no Owner of a Lot shall have any personal liability for the payment of the debts and liabilities of the Association or for damage to any Common Area or any Lot not caused by such Owner. Each Owner of a Lot by acceptance of a deed or lease, whether or not so expressed in any such deed or lease, is deemed to covenant and agree to pay such assessment to the Association. If the Owner does not pay any installment of such assessment when due, the Owner shall be deemed in default and the amount of the unpaid assessment, together with the amount of any subsequent unpaid assessments plus interest at twelve percent (12%) per annum plus costs, including reasonable attorneys' fees, shall be and become a lien upon the Lot or Lots of such Owner upon recordation by the Association of a notice of default. Such lien shall be subordinate to the lien of any mortgage upon the Lot; provided, however, that no mortgagee shall be required to collect any assessment on a Lot. The Lot Owner's failure to pay an assessment shall not be deemed or constitute a default under any Insured Mortgage.

(b) The sale or transfer of any Lot in foreclosure of any such mortgage, whether by judicial proceedings or, pursuant to a power of sale contained in such mortgage, shall extinguish the lien as to payments of assessments, which became due prior to such sale or transfer, but no such sale or transfer shall relieve such Lot or the Purchaser or transferee of the obligation to pay prospective assessments. The Association may record such notice of default any time following the occurrence of such default and may commence proceedings to enforce such lien at its discretion following such recordation. The Association may foreclose such lien by suit in like manner as a mortgage of real property, and the Association shall have power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the same. The Association may also maintain a suit to recover a money judgment for unpaid assessments without foreclosing or waiving the lien on the Lot. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such assessment obligation.

(c) Upon the request of an Owner, the Association shall execute a certificate stating the amount of the unpaid assessments secured by the lien upon any Lot or Lots. Such certificate shall be conclusive upon the Association and the Owner as to the amount of such unpaid assessment as of the date of the certificate. The Association may charge a reasonable fee for furnishing such certificate.

(d) The foregoing sections of this Article 8 notwithstanding, in the event that an Owner who is a lessee under a lease from Department of Hawaiian Home Lands ("DHHL") does not pay any installment of such assessment when due, the following procedures shall control:

(1) The Association shall not have a lien against the leasehold interest of the Owner.

(2) The Association shall request in writing the assistance of DHHL to obtain payment from the delinquent Owner, and DHHL shall promptly take such steps as may be necessary or required under DHHL's administrative policies to collect such delinquent amounts from the Owner in default.

(3) If a lease is revoked by DHHL, DHHL shall pay all amounts owed by the Owner of lease to the Association and shall continue to be liable for, and shall pay, all assessments against the Lot, until such time as DHHL issues a new lease for the Lot.

(4) If DHHL does not make payments of assessments and other delinquent amounts as required, DHHL shall be subject to judicial action for collection by the Association.

9. MISCELLANEOUS PROVISIONS

9.01 Amendment or Repeal.

(a) Declarant may by written amendment at any time, until one hundred percent of the Property has been developed and conveyed to Owners other than Developers, unilaterally amend or supplement:

(1) these Restrictions; or

(2) the general plan of the Villages of Leiali'i as described in Exhibit "C"; or

(b) These Restrictions may also be amended or repealed by the affirmative vote of not less than sixty-seven percent (67%) of the total number of each class of Association Members who are present in person or by proxy at a duly called and held meeting of the Association at which a quorum is present. The notice of such meeting shall state as a purpose the consideration of such amendment or repeal and shall include the proposed text of the amendment or identification of the provisions to be repealed. The Board shall be authorized to restate the provisions of this Declaration from time to time to include the provisions of any amendments duly adopted in accordance with the provisions herein or any provisions contained in any supplemental and/or annexing Declarations filed in accordance with the provisions hereof. The Board may record said restated Declaration in the Bureau of Conveyances of the State of Hawaii or the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

(c) The provisions of subsection 9.01(b) above to the contrary notwithstanding, no provision of this Declaration may be amended or repealed, the effect of which amendment or repeal would be to limit, abridge, modify or terminate any rights, easements, privileges, and immunities of Declarant, any Developer or any authority and powers reserved to Declarant, any

Developer, unless Declarant, all affected Developers consent in writing to such amendment or repeal prior to the consideration of such amendment or repeal.

9.02 Enforcement, Non-Waiver.

(a) The Association or any Owner shall have the right to enforce any of the covenants, conditions, restrictions, obligations, liens, and charges now or hereafter imposed by the Restrictions upon other Owners or upon any property within the Villages of Leiali'i, and the costs of enforcement, including court costs and attorneys' fees, shall be paid by any Owner who violated any such restriction, covenant, condition, or restriction or failed to pay and satisfy when due any such lien or charge.

(b) No Owner or the Association shall have any right to enter upon the Lot of any other Owner or to abate any nuisance or enforce any provision hereof against another Owner or the Association, until reasonable notice and demand has been given to the Owner of the Lot to cure or rectify the violation involved, provided that no notice need be given, if the violation involved poses an immediate threat of personal injury or property.

(c) The Association or any Owner shall have the right to enjoin or abate every act or omission constituting a violation of any condition, covenant or restriction of the Restrictions, which violation is hereby declared to constitute a nuisance to be abated, by the Association or by an Owner, pursuant to subsections (a) and (b) above. Insofar as any breach of these Restrictions may not adequately be compensated by the recovery of damages, the Association, in addition to all other remedies available at law or in equity, may require and shall be entitled to the remedy of injunction to restrain or abate any such violation or breach or any threatened violation or breach by any Owner.

(d) Each remedy provided for in the Restrictions is cumulative and non-exclusive.

(e) The failure in any case to enforce the provisions of any covenant, condition, restriction, obligation, lien or charge of the Restrictions shall not constitute a waiver of any right to enforce any such provision of the Restrictions in any other case with respect to any Owner or Lot. No right of action shall accrue in favor of any Owner against the Association or Declarant for or on account of any failure by the Association or Declarant to bring any action on account of any violation or breach, by any Owner of the provisions of these Restrictions or the Rules or Guidelines of the Committees.

9.03 Construction, Compliance with Laws, Severability, Singular, and Plural.

(a) All of the covenants, conditions and restrictions of the Restrictions shall be liberally construed to promote and effectuate the purposes of the Villages of Leiali'i as set forth in the recitals to this Declaration.

(b) No provision of the Restrictions shall excuse any person from observing any law or regulation of any Governmental Agency having jurisdiction over such person or over the Villages of Leiali'i. If all uses to which a Lot may be devoted under the provisions of the Restrictions are illegal under the applicable zoning ordinances or statutes, an Owner may use

such Owner's Lot for any purpose which is lawful under such ordinance or statute, subject, however, to all other provisions of the Restrictions which lawfully apply to the Lot.

(c) If any provision of the Restrictions is held to be invalid or unenforceable, the validity and enforceability of the other provisions will remain unaffected.

(d) The singular shall include the plural and the plural shall include 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) The titles of sections and paragraphs herein are inserted only for convenience and reference and shall in no way define, limit or describe the scope or intent of any provision of the Restrictions.

9.04 Subdivision and Consolidation.

No Lot within the Villages of Leiali'i shall be subdivided or consolidated and resubdivided by any Owner, other than Declarant or Developer, for other than the dedication or granting of easements by the Association or any Owner, without the prior written approval of the Declarant. The Declarant shall review the proposed subdivision or consolidation and resubdivision for compliance with the Restrictions. The Declarant may charge a reasonable fee for review as determined by the Declarant. If the approval of the Declarant is given, the Declarant shall certify its approval on a copy of the subdivision map.

9.05 Conveyance of Common Area: Reservation of Easements and Rights-of-Way and Classification of Land Area.

(a) Declarant or a Developer upon obtaining Declarant's prior written consent may convey without the consent or approval of the Association real property or interests in real property to the Association as Common Area, and the Association shall thereafter hold title to the real property in fee or to the interests in real property together with any conditions, restrictions or reservations, as conveyed, subject to the following exceptions, liens, and encumbrances:

(1) the lien of any non-delinquent real property taxes and assessments;

(2) easements and rights-of-way on, over or under all or any part of such real property as may be reserved to Declarant or a Developer with Declarant's consent or granted to any Owner or Sub-Association in accordance with the Restrictions;

(3) easements, licenses and rights-of-way on, over or under all or any part of such real property as may be reserved to Declarant or to a Developer or to an Owner for access to real property contiguous to the Common Area, or to be granted to or for the benefit of a Governmental Agency, the State of Hawaii, the County of Maui, or any public utility, Sub-Association, or to any Lot for the purpose of constructing, erecting, operating, and maintaining roads, poles, wires, pipelines or ditches for lighting, electricity, telephone, gas, community antenna, television, water, sewer, irrigation, and storm water transmission and any other utility systems;

(4) easements and licenses for roads, poles, wires, pipelines or ditches for lighting, electricity, telephone, gas, community antenna television, water, sewer, irrigation and storm water transmission and any other utility systems in favor of public utilities, Governmental Agencies, Sub-Associations or individuals; and

(5) any other lien, encumbrance or defect in title (other than a lien to secure an obligation to pay money), which would not materially prejudice the Owners in their use and enjoyment of such real property.

(b) Declarant or a Developer upon obtaining Declarant's consent in writing may change the land classification of any real property not previously designated as Common Area of which Declarant or such Developer is the owner, and may convey such real property to the Association, pursuant to the provisions of Section 4.03 and this Section 9.05.

(c) The Association may accept dedication of the Common Area in a Village prior to the recordation of the first Insured Mortgage of a Lot in such Village.

(d) All Owners of any real property within the Villages of Leiali'i which is not a Common Area may petition the Association to accept a dedication of such real property as a Common Area. The Association may accept the same, if the Board finds the use of such real property to be of benefit to all Association Members or to the members of a Sub-Association. Such real property shall become Common Area upon acceptance.

(e) Following the conveyance of Common Area by Declarant or by a Developer to the Association, Declarant or such Developer may, without the approval of any Committee, construct, reconstruct, refinish or alter any Improvement 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 Common Area, if Declarant or such Developer shall determine that any such work (1) is reasonably necessary for any utility installation serving any property within the Villages of Leiali'i, (2) is reasonably necessary for the construction of any facility for use by the Owners, (3) is desirable in order to provide access to or to enhance the use and enjoyment of the Common Area, or (4) is desirable to preserve any property which constitutes a part of the Villages of Leiali'i.

9.06 Assignment of Powers.

Declarant may delegate, transfer, assign or release to the Association or a Developer any rights and powers vested in Declarant pursuant to the Restrictions and the Association or such Developer shall accept the same upon the recording by Declarant of a notice of such delegation, transfer, or assignment or release.

9.07 Condemnation of Common Area.

If any portion of the Common Area or any interest therein shall be taken by eminent domain or by purchase in lieu of eminent domain, the entire award and compensation shall be paid to the Association. No Owner shall be entitled to any portion of such award and no Owner shall be entitled to participate as a party or otherwise in any proceedings relating to such condemnation.

9.08 Obligations of Owners, Avoidance, Termination.

No Owner through non-use of any Common Area, including any Recreational Facility, or by abandonment of such Owner's Lot, may avoid the burdens or obligations of ownership imposed on the Owner by the Restrictions.

9.09 Notices, Documents, Delivery.

Whenever notice is required, reasonable notice shall be deemed to be five (5) days. All notices, demands or documents which are required or permitted to be given or served hereunder shall be in writing and sent by first class mail prepaid postage, or by hand delivery, or by facsimile telecopier with a copy sent by first class mail, to any Owner at the address of the Owner as shown in the Association's record of ownership or the address of the Lot owned by the Owner if no other address has been designated, to the Declarant at 677 Queen Street, 3rd Floor, Honolulu, Hawaii or such other address as may be designated by Declarant from time to time for receipt of notices, and to the Association, the Board of Directors, or the New Construction Committee or Modifications Committee at the address of the Association's Managing Agent or Manager or such other address as is designated by the Association, the Board, or New Construction Committee or Modifications Committee for receipt of notices from time to time. Any such address may be changed from time to time by sending notice to all other parties as above provided. Service of such notice or demand shall be deemed complete on the date of actual delivery or at the expiration of the second day after the date of mailing, whichever is earlier.

9.10 Governing Law.

These Restrictions shall be governed by and construed in accordance with the laws of the State of Hawaii.

9.11 Captions/Gender/Plural vs. Singular.

The headings of paragraphs herein are for convenience and reference only and shall in no way define, limit, or describe the scope or intent of any provision herein. The use of any gender herein shall be deemed to include the other gender and the use of the singular herein shall be deemed to include the plural (and vice versa) whenever appropriate. The reference to a person or persons or Owner or Owners shall include natural persons, corporations, unincorporated associations, partnerships, joint ventures, governmental entities, eleemosynary corporations, and/or any other form of entity recognized by law.

10. IMPOSITION OF FINES

10.01 Imposition of Fines. The Board of Directors shall have the right, in addition to any other right set forth in this Declaration, the Articles of Incorporation, By-Laws, New Construction Design Handbook, Modifications Rules and Guidelines, or Association Rules, to impose monetary fines upon Owners, tenants, and any other person using or coming upon the Property or any part thereof for any purpose whatsoever, for violations of this Declaration, the Articles of Incorporation, By-Laws, New Construction Design Handbook, Modifications Rules and Guidelines, or Association Rules or any statute, ordinance, or applicable requirement of any

Governmental Agency, in accordance with a reasonable schedule of fines to be imposed in a fair and impartial manner. The Board of Directors may authorize the Managing Agent, the Manager, or other persons designated by the Board from time to time, to impose the aforementioned fines in accordance with such schedule. Notice of the initial schedule of fines and each new schedule of fines, including any amendments, may be published at least once in an Association newsletter prior to the imposition of any fines thereunder. If published, said newsletter shall be mailed to all Owners at their address as shown in the Association's record of ownership. Failure to receive said newsletter shall not invalidate the schedule of fines or any fines imposed in accordance with this provision.

The unpaid amount of such fines against any Owner shall constitute a lien against such Owner's interest in the Owner's Lot which may be foreclosed by the Association through its Board of Directors in the same manner as provided herein for Maintenance Assessments.

The Board shall adopt and may amend from time to time, appeal procedures to be followed by persons who believe that they have been wrongfully or unfairly fined. The Board may publish the initial appeal procedure and any amendments thereof at least once in the Association's newsletter before implementing the appeal procedure or any amendment thereof. If published, said newsletter shall be mailed to all Owners at their address as shown in the Association's record of ownership. Failure to receive said newsletter shall not invalidate any fines imposed in accordance with this provision.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 6th day of December, 2004.

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII, a body corporate and politic of the State of Hawaii

By Stephanie Aveiro
Stephanie Aveiro
Its Executive Director

Approved as to Form:

[Signature]
Deputy Attorney General

Date: 3-2-04

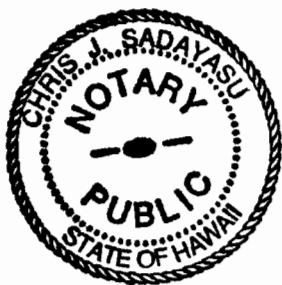
STATE OF HAWAII

SS.

CITY AND COUNTY OF HONOLULU

On this 6th day of December,

200 4, before me personally appeared STEPHANIE AVEIRO, to me personally known, who, being by me duly sworn or affirmed, did say that she is the EXECUTIVE DIRECTOR, of HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII, a public body and body corporate and politic of the State of Hawaii, that the seal affixed to the foregoing instrument is the corporate seal of said HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII; that said instrument was signed and sealed in behalf of said HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII by authority of its Board of Directors, and said STEPHANIE AVEIRO acknowledged said instrument to be the free act and deed of said HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII.





Notary Public, State of Hawaii

My Commission Expires: MAR 30 2007

Chris J. Sadayasu
Notary Public, State of Hawaii

EXHIBIT "A"

THE VILLAGES OF LEIALI'I

I. LANDS OWNED BY HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII ("HCDCH")

The following lots in the Villages of Leiali'i, as shown on File Plan 2132, recorded in the Bureau of Conveyances of the State of Hawaii, being a portion of the Government (Crown) Land of Wahikuli, situate at Lahaina, County of Maui, State of Hawaii, and being all of Grant S-15,792 to the Housing Finance and Development Corporation:

Lot 1-A	14.619 Acres
Lot 1-B	5.518 Acres
Lot 2	24.617 Acres
Lot 3	50.858 Acres
Lot 4	12.195 Acres
Lot 5	<u>435.918 Acres</u>
Total	543.725 Acres

II. LANDS OWNED BY DEPARTMENT OF LAND AND NATURAL RESOURCES ("DLNR")

Lot 6, area 584.305 acres, in the Villages of Leiali'i, as shown on File Plan 2132, recorded in the Bureau of Conveyances of the State of Hawaii, being a portion of the Government (Crown) Land of Wahikuli, situate at Lahaina, County of Maui, State of Hawaii.

III. TOTAL

HCDCH Lands	543.725 Acres
DLNR Lands	<u>584.305 Acres</u>
Total	1,128.030 Acres

EXHIBIT "B"

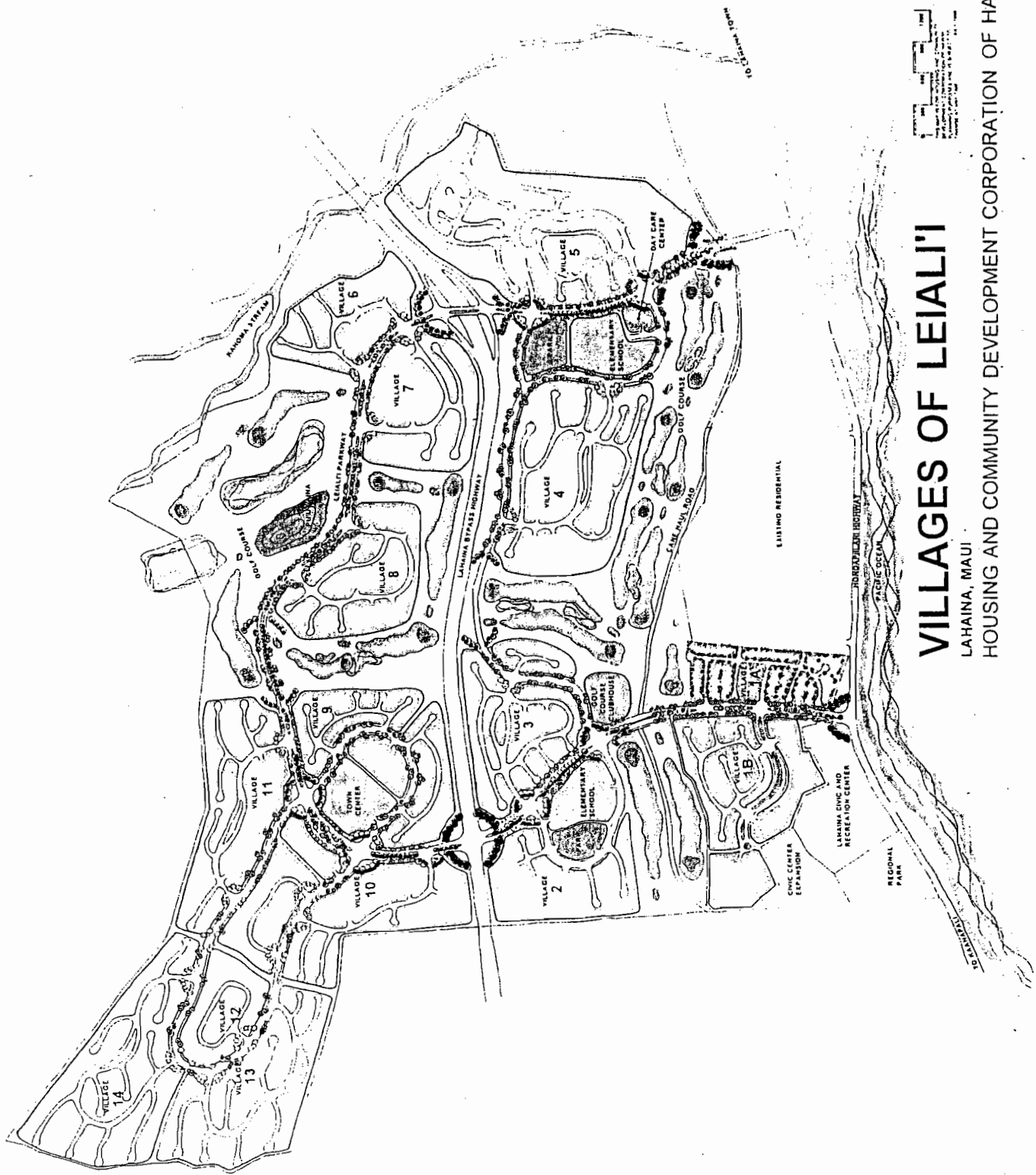
THE VILLAGES OF LEIALI'I – VILLAGE 1

PHASE 1A

Lots 1 through 105 in Village 1 – Phase 1A, of the Villages of Leiali'i, as shown on File Plan 2135, recorded in the Bureau of Conveyances of the State of Hawaii, being portions of the Government (Crown) Land of Wahikuli, situate at Lahaina, County of Maui, State of Hawaii, Grant S-15,792 to the Housing Finance and Development Corporation, and Lot 2 of the Villages of Leiali'i, File Plan 2132.

PHASE 1B

Lot 3, area 50.858 acres, in Village 1 – Phase 1B, of the Villages of Leiali'i, as shown on File Plan 2132, recorded in the Bureau of Conveyances of the State of Hawaii, being portions of the Government (Crown) Land of Wahikuli, situate at Lahaina, County of Maui, State of Hawaii, Grant S-15,792 to the Housing Finance and Development Corporation.



VILLAGES OF LEIALII

LAHAINA, MAUI
 HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII

EXHIBIT "C"